TOWN OF MALDEN

Shoreline Master Program

Council Adoption Draft

June 8, 2016

Table of Contents

READER'S GUIDE RG-1

1. INTRODUCTION 1

1.1 Title 1

1.2 Adoption Authority 1

1.3 Purpose and Intent 1

1.4 Purpose and Relationship to state planning and shoreline laws 1

1.5 Applicability 2

1.6 Liberal Construction 3

1.7 Severability 3

1.8 Effective date 3

2. SHORELINE VISION AND GOALS 3

2.1 Shoreline Vision 3

2.2 Shoreline Goals 3

3. SHORELINE JURISDICTION AND ENVIRONMENT DESIGNATIONS 5

3.1 Shoreline Jurisdiction and Use Preferences 5

3.2 Shoreline Environment Designations 7

4. GENERAL POLICIES AND REGULATIONS 9

4.1 Introduction 9

4.2 Shoreline Use and Development Regulations 9

4.3 Environmental Protection 10

4.4 Shoreline Vegetation Conservation 12

4.5 Water Quality, Stormwater, and Nonpoint Pollution 14

4.6 Flood Hazard Management 15

4.7 Archaeological, Historical, and Cultural Resources 17

4.8 Public Access 18

4.9 Unclassified Uses 19

4.10 Shoreline Use and Modification Table 20

4.11 Shoreline Development Standards 22

5. SHORELINE USE POLICIES AND REGULATIONS 22

5.1 Agriculture 22

5.2 Aquaculture 24

5.3 Commercial Development 24

5.4 In-Stream Structural Uses 25

5.5 Industrial Development 26

5.6 Recreational Development 27
5.7 Residential Development 27
5.8 Transportation and Parking 28
5.9 Utilities 29
5.10 Redevelopment, Repair, and Maintenance 30
6. SHORELINE MODIFICATION POLICIES AND REGULATIONS 31
6.1 General Requirements 31
6.2 Breakwaters, Jetties, Weirs, and Groins 31
6.3 Dredging and Dredge Material Disposal 32
6.4 Fill and Excavation 33
6.5 Shoreline Restoration and Enhancement 34
6.6 Shoreline Stabilization 35
7. ADMINISTRATION AND PERMITTING 39
7.1 General Compliance 39
7.2 Administrative Authority and Responsibility 39
7.3 Administration 40
7.4 Enforcement, Violations, and Penalties 41
7.5 Shoreline Activity Tracking 41
7.6 Shoreline Permits and Exemptions 42
7.7 Non-conforming Uses, Structures, Lots 45
7.8 Debris Accumulation and Obstruction 47
7.9 Amendment of Shoreline Master Program 48
Appendix A: Definitions
Appendix B: Shoreline Critical Areas Policies and Regulations
Appendix C: Shoreline Environment Designations Map

Reader's Guide

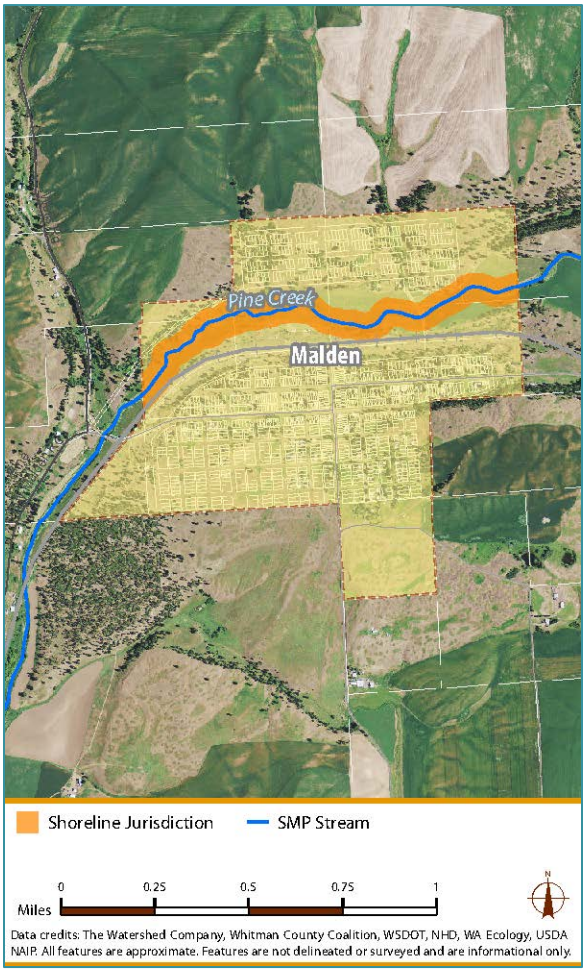
A. The Shoreline Management Act and the Town of Malden's SMP

Washington State's citizens voted to approve the Shoreline Management Act (SMA) of 1971 in November 1972. The SMA seeks to provide environmental protection for shorelines, preserve and enhance shoreline public access, and encourage appropriate development that supports water-oriented uses. The Town developed and adopted its first Shoreline Master Program (SMP) in 1974 as part of a regional effort with Whitman County. That SMP was developed more than 40 years ago and since then there has been some change along the Town's shoreline. In addition, knowledge of best development and conservation practices has evolved. There have also been changes in State laws and rules. Therefore, in accordance with the SMA, the Town has prepared this SMP to guide and manage its shoreline.

The Town of Malden SMP contains goals, policies, regulations, and a shoreline environment designation map that guide the development of shorelines in accordance with the SMA (Revised Code of Washington [RCW] 90.58), Washington State Department of Ecology (Ecology) SMP Guidelines (Washington Administrative Code [WAC] 173-26), and Shoreline Management Permit and Enforcement Procedures (WAC 173-27).

The goals and policies of Malden's SMP, approved under chapter 90.58 RCW, create a framework for the regulations of the SMP. They provide guidelines for future decision making and future development of lands within the Town's SMP jurisdiction boundaries.

All regulatory elements of this SMP, including, but not limited to, definitions and use regulations, are considered a part of the Town's development regulations.



B. Shoreline Jurisdiction

In accordance with state laws and rules, the jurisdiction of the Town of Malden's SMP encompasses Pine Creek, land within 200 feet of the ordinary high water mark (OHWM), its floodway, contiguous 100-year floodplain extending up to 200 feet inland of the floodway, and associated wetlands.

C. Applicability and Exemptions

The SMP applies to all proposed uses and development occurring within shoreline jurisdiction. This SMP does not apply to certain activities that do not alter structures or properties, such as interior building changes or routine gardening. It also does not apply to legally established uses already on the land such as existing agriculture, existing residences, and other existing uses, structures, and activities. See Section 1.5 for a complete description of SMP applicability.

There are also activities that are exempt from the Shoreline Substantial Development Permit system. These activities are subject to the standards of the SMP, but are not required to submit fees and other materials associated with Shoreline Substantial Development Permits. Common exemptions include, but are not limited to:

- Normal maintenance or repair of existing structures or developments
- Bulkheads common to single-family residences
- Emergency construction necessary to protect property from damage
- Construction and practices normal or necessary for farming, irrigation, and ranching activities including agricultural service roads and utilities, construction of a barn or similar agricultural structure, and the construction and maintenance of irrigation structures
- Construction of a single-family residence

Exemptions are fully described and listed in WAC 173-27-040 and RCW 90.58.030(3)(e), 90.58.140(9), 90.58.147, 90.58.355, and 90.58.515, as amended. See Section 7.6 for additional information on exemptions.

D. How to Read and Apply this SMP

When reading the SMP, it is useful to consider the definitions of the following terms that are based on definitions in the SMP Guidelines (WAC 173-26-020):

- Shall or must: means a mandate; the action must be done.
- Should: means that the particular action is required unless there is a demonstrated, compelling reason, based on policy of the Shoreline Management Act and shoreline master program, against taking the action.
- May: means the action is acceptable, provided it conforms to the provisions of this SMP and the Act.

In general, this SMP uses the word “should” in goals, objectives, and policies, and “shall” in the regulations. Additional definitions are located in Appendix A.

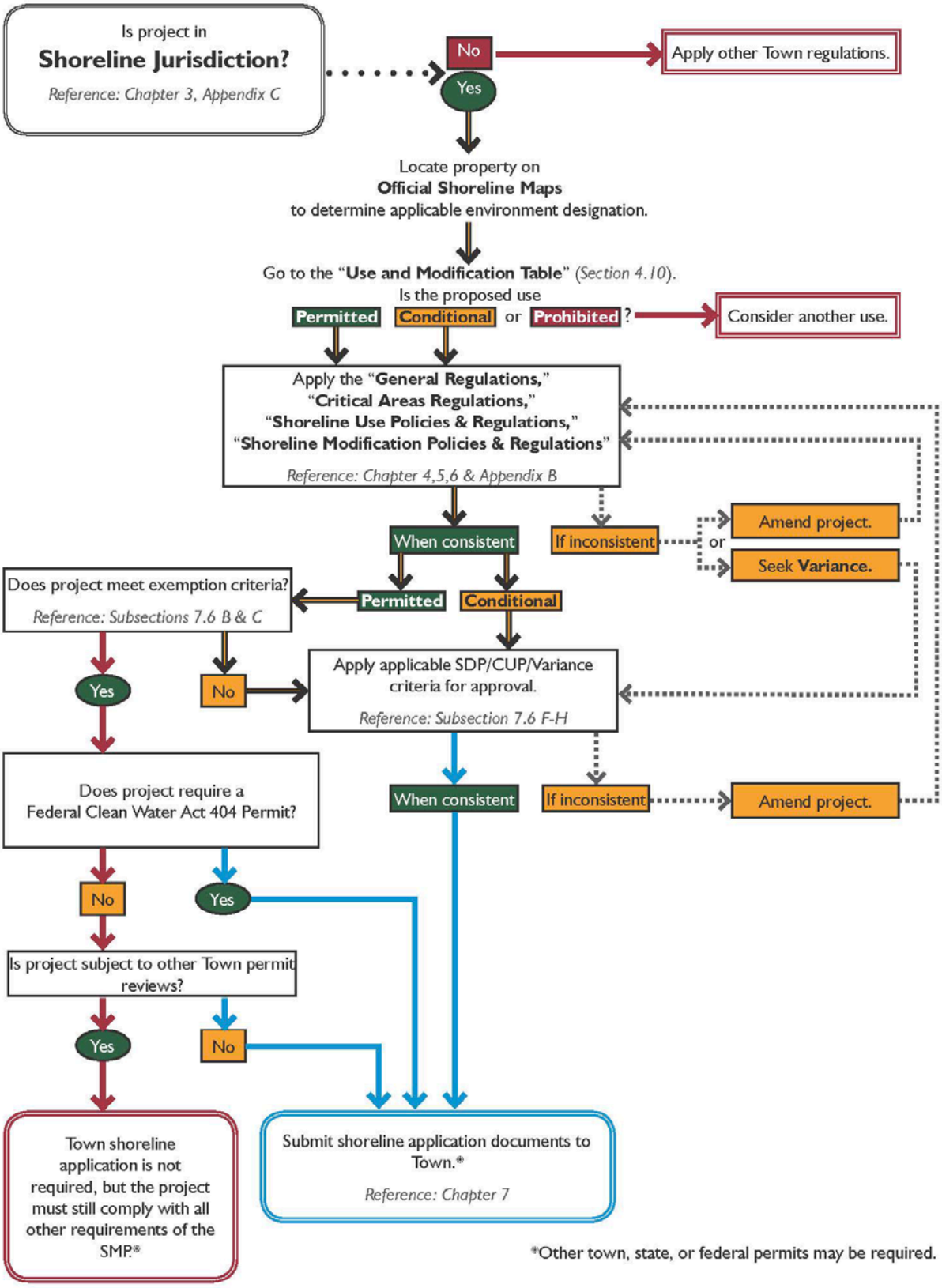
For informational purposes, the flow chart below (Figure RG-1) illustrates how an applicant could navigate the regulations to determine if and how they apply to a particular project and property. In addition to approval from the Town of Malden, any shoreline development or construction project may also require a permit or approval from the U.S. Army Corps of Engineers, Washington Department of Fish and Wildlife, Washington Department of Ecology, and/or the Washington Department of Natural Resources, among others.

E. Document Organization

The SMP establishes long-term planning goals and policies, specific development standards and use regulations, and permitting and administrative procedures. As such, the SMP is linked to other Town planning documents such as the Malden Municipal Code (MMC). The organization of the SMP and the purpose for each chapter is explained below.

- Chapter 1. Introduction: provides background, purpose and legal authority.
- Chapter 2. Shoreline Vision and Goals: provides the SMP vision statement and enacting goals.
- Chapter 3. Shoreline Jurisdiction and Environment Designations: Establishes the shoreline jurisdiction and includes the purpose, designation criteria and management policies for specific areas within the shoreline jurisdiction.
- Chapter 4. General Policies and Regulations: Provides general policies and regulations that apply broadly to uses and developments in all shoreline areas.
- Chapter 5. Shoreline Use Policies and Regulations: establishes policies and regulations for specific uses in shoreline jurisdiction.
- Chapter 6. Shoreline Modification Policies and Regulations: Establishes policies and regulations for shoreline modification activities and structures.
- Chapter 7. Administration and Permitting: provides procedures and process for permit applications associated with shoreline development.
- Appendix A. Definitions: provides definitions for terms used throughout the SMP.
- Appendix B. Shoreline Critical Area Policies and Regulations: Contains policies and regulations for developments and uses in shoreline critical areas.
- Appendix C. Shoreline Environment Designations Map. Contains the Official Shoreline Map illustrating the environment designations for shoreline jurisdiction in the Town of Malden.

Figure RG-1. Shoreline Application Process Flow Chart.



1. Introduction

1.1 TITLE

This document shall be known and may be cited as the Town of Malden Shoreline Master Program (the "Program," "Master Program" or "SMP").

1.2 ADOPTION AUTHORITY

This Program is adopted under the authority granted by the Shoreline Management Act (Act) of 1971, Revised Code of Washington (RCW) Chapter 90.58, and Washington Administrative Code (WAC) Chapter 173-26 as amended.

1.3 PURPOSE AND INTENT

Washington's Shoreline Management Act (SMA; RCW 90.58) was passed by the State Legislature in 1971 and adopted by the public in a referendum. The SMA was created in response to a growing concern among residents of the state that serious and permanent damage was being done to shorelines by unplanned and uncoordinated development. The goal of the SMA was "to prevent the inherent harm in an uncoordinated and piecemeal development of the state's shorelines." While protecting shoreline resources by regulating development, the SMA is also intended to provide for appropriate shoreline use by encouraging land uses that enhance and conserve shoreline functions and values. The SMA has three broad policies:

A. Encourage water-dependent and water-oriented uses: "uses shall be preferred which are consistent with control of pollution and prevention of damage to the natural environment, or are unique to or dependent upon use of the state's shorelines...."

B. Promote public access: "the public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the state shall be preserved to the greatest extent feasible consistent with the overall best interest of the state and the people generally."

C. Protect shoreline natural resources, including "...the land and its vegetation and wildlife, and the water of the state and their aquatic life...."

The intent of the Town of Malden Shoreline Master Program is to ensure comprehensive planning for the Town's shoreline and to ensure the adoption and implementation of use regulations, together with maps, diagrams, charts, or other description material and text, a statement of desired goals, and standards developed in accordance with the policies adopted by the State.

1.4 PURPOSE AND RELATIONSHIP TO STATE PLANNING AND SHORELINE LAWS

Washington State's citizens voted to approve the Shoreline Management Act (SMA) of 1971 in November 1972. In accordance with the SMA, Whitman County and incorporated cities and towns developed and adopted their first Shoreline Master Program (SMP) in 1974.

The SMA and implementing SMP Guidelines require all towns, cities, and counties across the state to comprehensively update their SMPs. The SMP update allows preparations of a locally tailored program that represents the visions and interests of our citizens and meets the needs of our rural communities.

The goals, policies, and regulations of this Program are intended to be consistent with the State shoreline guidelines in WAC 173-26. Consistent with RCW 36.70A.480, the goals and policies of this SMP that are approved under RCW 90.58 shall be considered an element of the Town's regulations.

After the Town's local development and adoption process is complete, the SMP is reviewed by the Washington State Department of Ecology (Ecology) to ensure compliance with the SMP Guidelines. The SMP does not become effective until it has been adopted by the Town and approved by Ecology.

1.5 APPLICABILITY

A. Unless specifically exempted by statute, all proposed uses and development occurring within the shoreline jurisdiction must conform to chapter 90.58 RCW, the Shoreline Management Act and this Master Program whether or not a permit is required.

B. Except as described in Subsection (C), all proposed uses and development occurring within shoreline jurisdiction must conform to the intent and requirements of the laws and rules cited in Section 1.2.

C. This SMP does not apply to the following activities:

1. Consistent with Appendix A (Definitions), WAC 173-26-020 (Definitions), and WAC 173-26-241(3)(a), as amended, agricultural activities on agricultural lands as of the date of adoption of the SMP.
2. Interior building improvements that do not change the use or occupancy;
3. Exterior structure maintenance activities, including painting and roofing, as long as it does not expand the existing footprint of the structure;
4. Routine landscape maintenance of established, ornamental landscaping, such as lawn mowing, pruning and weeding; and
5. As of the effective date of the SMP, legal pre-existing residential uses and structures where no change or new activity is proposed.

D. Activities that are exempt from the permit system in Subsection 7.6(B) shall comply with this SMP whether or not a permit or other form of authorization is required.

E. The shoreline permit procedures, policies and regulations established in this SMP shall apply Town-wide to all nonfederal uses, activities, and development.

F. This SMP applies to lands subject to nonfederal ownership, lease or easement, even though such lands may fall within the external boundaries of a federal ownership.

G. This SMP does not apply to annexed areas unless the requirements of WAC 173-26-150 and 160 have been met.

H. A proposed project or plan shall become vested to this Shoreline Master Program on the date a determination of completeness is made on a shoreline permit or exemption application. Thereafter, the application shall be reviewed under the shoreline regulations in effect on the date of vesting; provided, in the event an applicant substantially changes the proposal after a

determination of completeness, as determined by the SMP Administrator, the application shall not be considered vested until a new determination of completeness on the changes is made.

1.6 LIBERAL CONSTRUCTION

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

1.7 SEVERABILITY

The Act and this Program adopted pursuant thereto comprise the basic State and Town law regulating use of shorelines in Malden. In the event provisions of this Program conflict with other applicable Town policies or regulations, the more restrictive shall prevail.

1.8 EFFECTIVE DATE

The SMP is hereby adopted on the 8th day of June, 2016. This SMP and all amendments thereto shall become effective 14 days from the date of the Washington State Department of Ecology's written notice of final approval.

2. Shoreline Vision and Goals

2.1 SHORELINE VISION

It shall be the ultimate goal of the Town of Malden SMP to provide plans, policies and regulations consistent with the SMA (RCW 90.58) and with the SMP Guidelines (WAC 173-26), which will reflect the desires of the citizens of the Town of Malden regarding the balanced use of the Town's shoreline.

The following statements of goals and policies are directed to address individual elements as outlined in the SMA and SMP Guidelines.

2.2 SHORELINE GOALS

A. Shoreline Use

1. Promote the best use of the Town's shoreline through encouraging shoreline development and modifications that are placed wisely, consistent with the physical limitations of the area; serving the needs and desires of the local citizens; and protecting the functions and values of the shorelines.
2. Assure a distribution and pattern of land use along the shoreline that balances protection of the existing character of the Town as well as the shoreline environment, habitat, and ecological systems.
3. Consider agriculture as a water-related use in the Town of Malden.

B. Economic Development

1. Encourage development along shorelines that is compatible with existing environmental conditions and the desired land use character of the Town's shoreline. Shoreline economic growth and prosperity should take into account the existing rural character of the Town.

2. Permit those commercial, industrial, recreational, and other developments that require a location along the shoreline and which may contribute to the economic well-being of the Town while achieving no net loss of ecological function.

3. Promote new water-dependent, water-related, and water-enjoyment economic development; give preference first to water-dependent uses, then water-related uses and then water-enjoyment uses.

C. Public Access

1. Preserve and protect opportunities for the public to enjoy the physical and aesthetic qualities of the Town's shoreline.

2. Encourage that alteration to the natural conditions of the shoreline, in those limited instances when authorized, shall be given priority for development that provides opportunity for substantial numbers of people to enjoy the shoreline, while maintaining no net loss of ecological function.

D. Recreation

1. Protect and expand opportunities for recreation in the Town's shoreline area.

2. Encourage and maximize water-oriented recreational opportunities along the shoreline.

E. Conservation

1. Encourage sound management of renewable shoreline resources and protection of non-renewable shoreline resources.

2. Achieve sustainability of resource functions and values and no-net-loss of ecological functions by allowing shoreline development and modifications when impacts are minimized through mitigation sequencing and by encouraging and incentivizing restoration of ecological functions where they have been impaired.

3. Promote and protect the scenic aesthetic quality of shoreline areas and vistas to the greatest extent feasible.

F. Transportation and Circulation

1. Address the location of existing and proposed transportation routes and other public utilities and facilities used for the movement of people, vehicles, and goods and services in the Town's shoreline.

2. Maintain adequate safety, environmental, and aesthetic standards for existing and new transportation systems within shoreline jurisdiction.

3. Minimize conflicts between systems of circulation and shoreline uses when considering additions or modifications.

G. Restoration

1. Upgrade shoreline ecological functions and aesthetics to a level commensurate with their importance to the community and to achievement of regional goals for water quality and habitat recovery, such as through the projects, programs and plans established within the SMP Shoreline Restoration Plan.

2. Facilitate the permitting for restoration projects, and coordinate with agencies, tribes, and non-profit groups to achieve effective restoration of shoreline ecological functions and maximize public funding.

H. Archaeological, Historical, and Cultural Resources

1. Identify, preserve, protect and restore buildings, sites, or areas of the shoreline that have historic, cultural, archeological, scientific, or educational value.

I. Flood Hazard Management

1. Protect the Town from losses and damage created by flooding along the shoreline.

3. Shoreline Jurisdiction and Environment Designations

3.1 SHORELINE JURISDICTION AND USE PREFERENCES

A. Definition

1. As defined by the Shoreline Management Act of 1971, shorelines include certain waters of the State plus their associated "shorelands." The waterbodies designated as shorelines of the State are streams whose mean annual flow is 20 cubic feet per second (cfs) or greater and lakes whose area is greater than 20 acres. In the Town of Malden, the only designated shoreline waterbody is Pine Creek.

2. Shorelands, as adopted by the Town of Malden and indicated on the Official Shoreline Map available for review with the Clerk Treasurer and attached as Appendix C, are defined as:

   "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 and river deltas associated with the streams, lakes, and tidal waters which are subject to the provisions of this chapter…." (RCW 90.58.030)

   The Town will not extend shoreline jurisdiction to encompass critical area buffers that otherwise extend outside of the minimum shoreline jurisdiction.

3. The extent of shoreline jurisdiction is indicated on the Official Shoreline Map available for review with the Clerk Treasurer and attached as Appendix C. The purpose of the Official Shoreline Map is to identify Environment Designations (Section 3.2 below). The maps only approximately identify or depict the lateral extent of shoreline jurisdiction. The actual lateral extent of the shoreline jurisdiction shall be determined on a site-specific basis based on the location of the ordinary high water mark (OHWM), floodway, floodplain, and presence of associated wetlands.

4. In circumstances where shoreline jurisdiction does not include an entire parcel, only that portion of the parcel within shoreline jurisdiction and any use, activity or development proposed within shoreline jurisdiction on that portion of the parcel is subject to this Shoreline Master Program.

B. General Shoreline Use Preferences

1. This SMP adopts the following policy provided in RCW 90.58.020, and fully implements it to the extent of its authority under this SMP:

"It is the policy of the State to provide for the management of the shorelines of the State by planning for and fostering all reasonable and appropriate uses. This policy is designed to insure the development of these shorelines in a manner which, while allowing for limited reduction of rights of the public in the navigable waters, will promote and enhance the public interest. This policy contemplates protecting against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the State and their aquatic life, while protecting generally public rights of navigation and corollary rights incidental thereto...

In the implementation of this policy, the public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the State shall be preserved to the greatest extent feasible consistent with the overall best interest of the State and the people generally. To this end uses shall be preferred which are consistent with control of pollution and prevention of damage to the natural environment, or are unique to or dependent upon use of the state's shoreline. Alterations of the natural condition of the shorelines of the state, in those limited instances when authorized, shall be given priority for single family residences and their appurtenant structures, ports, shoreline recreational uses including but not limited to parks, marinas, piers, and other improvements facilitating public access to shorelines of the state, industrial and commercial developments which are particularly dependent on their location on or use of the shorelines of the state and other development that will provide an opportunity for substantial numbers of the people to enjoy the shorelines of the state. Alterations of the natural condition of the shorelines and shorelands of the state shall be recognized by the [D]epartment [of Ecology]. Shorelines and shorelands of the state shall be appropriately classified and these classifications shall be revised when circumstances warrant regardless of whether the change in circumstances occurs through man-made causes or natural causes. Any areas resulting from alterations of the natural condition of the shorelines and shorelands of the state no longer meeting the definition of "shorelines of the state" shall not be subject to the provisions of chapter 90.58 RCW.

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

2. When determining allowable uses and resolving use conflicts on shorelines within jurisdiction consistent with the above policy, the following preferences and priorities as listed in WAC 173-26-201(2)(d) shall be applied in the order presented below:

   a. Reserve appropriate areas for protecting and restoring ecological functions to control pollution and prevent damage to the natural environment and public health.

   b. Reserve shoreline areas for water-dependent and associated water-related uses … Local governments may prepare master program provisions to allow mixed-use developments

that include and support water-dependent uses and address specific conditions that affect water-dependent uses.

c. Reserve shoreline areas for other water-related and water-enjoyment uses that are compatible with ecological protection and restoration objectives.

d. Locate single-family residential uses where they are appropriate and can be developed without significant impact to ecological functions or displacement of water-dependent uses.

e. Limit nonwater-oriented uses to those locations where the above described uses are inappropriate or where nonwater-oriented uses demonstrably contribute to the objectives of the Shoreline Management Act.

3.2 SHORELINE ENVIRONMENT DESIGNATIONS

A. Aquatic

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

2. Designation Criteria: Assign an Aquatic environment designation to lands waterward of the ordinary high-water mark.

3. Management Policies:

a. Allow new over-water structures only for water-dependent uses, including public access or ecological restoration.

b. The size of new over-water structures should be limited to the minimum necessary to support the structure's intended use.

c. In order to reduce the impacts of shoreline development and increase effective use of water resources, multiple use of over-water facilities should be encouraged.

d. All developments and uses on navigable waters or their beds should be located and designed to minimize interference with surface navigation, to consider impacts to public views, and to allow for the safe, unobstructed passage of fish and wildlife, particularly those species dependent on migration.

e. Shoreline uses and modifications should be designed and managed to prevent adverse impacts to ecological functions and ecosystem-wide processes, including degradation of water quality and alteration of natural hydrographic conditions.

f. Adverse impacts shall not be allowed except where necessary to achieve the objectives of the Shoreline Management Act, and then only when mitigated as necessary to assure no net loss of ecological functions.

B. Urban Conservancy

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

2. Designation Criteria: Specific criteria for designation of the Urban Conservancy environment include areas or properties that:

a. Lie in the Town limits;

b. Are planned for development that is compatible with the principals of maintaining or restoring the ecological functions of the area;

c. Are suitable for water-enjoyment uses;

d. Are open space or floodplains, or;

e. Are areas that retain important ecological functions which should not be more intensively developed.

3. Management Policies:

a. Allowed uses for the Urban Conservancy environment generally include uses which preserve the natural character of the area, and promote the preservation of open space, floodplains or sensitive lands.

b. Water-oriented uses should be given priority over nonwater-oriented uses.

c. Development in the Urban Conservancy environment should only be allowed if it would not result in a net loss of shoreline ecological functions, and if significant ecological impacts can be mitigated.

d. Public access and recreation objectives should be implemented whenever feasible and significant ecological impacts can be mitigated.

C. Official Shoreline Map and Unmapped or Undesignated Shorelines

1. The Official Shoreline Map at the time of SMP adoption, which illustrates the approximate shoreline jurisdiction and environment designation in the Town, is available for review with the Clerk Treasurer. The Official Shoreline Map shall include the following language: "We hereby certify that this map constitutes the Official Shoreline Map as approved by Ordinance 508 of the Town Council and signed by its chair dated this 8th day of June, 2016." The Official Shoreline Map may be updated administratively or through an SMP amendment as indicated in Subsections (D)(2-4) below. The Department of Ecology will be provided with electronic files of the Official Shoreline Map when any updates are made. Minor mapping errors corrected administratively shall not be greater than 1.0 acre in size. If greater than 1.0 acre in size, an SMP amendment shall be completed within three years of finding the mapping error.

2. In the event of an environment designation mapping error where the SMP update or amendment record, including the public hearing process, is clear in term of the correct environment designation to apply to a property, the SMP Administrator shall apply the environment designation approved through the SMP Update or Amendment process and correct the map. Appeals of such interpretations may be filed pursuant to Section 7 (Administration and Permitting) and the Town's appeal procedures. If the environment designation criteria were misapplied, but the map does not show an unintentional error (e.g. the SMP hearing and adoption record does not indicate another designation was intended), a SMP amendment may be obtained consistent with WAC 173-26-100 and Section 7.9 (Amendment of Shoreline Master Program).

3. Any areas within shoreline jurisdiction that are not mapped and/or designated due to minor mapping inaccuracies in the lateral extent of shoreline jurisdiction from the shoreline waterbody related to site-specific surveys of OHWM, floodway, and/or floodplain are automatically assigned an Urban Conservancy designation. Correction of these minor mapping inaccuracies may be made and incorporated into the Official Shoreline Map without an SMP amendment.

4. All other areas of shoreline jurisdiction that were neither mapped as jurisdiction nor assigned an environment designation shall be assigned an Urban Conservancy designation.

5. The actual location of the OHWM, floodplain, floodway, and wetland boundaries must be determined at the time a development is proposed. Wetland boundary and OHWM determinations are valid for five years from the date the determination is made. Floodplain and floodway boundaries should be assessed using FEMA maps or the most current technical information available.

6. In addition, any property or portion thereof shown in shoreline jurisdiction that is later found based on the most current information available at the time of an application to not meet the criteria for shoreline jurisdiction shall not be subject to the requirements of this SMP. The Official Shoreline Map is based on information available at the time of adoption of this SMP, but this SMP recognizes that better information about the locations of the OHWM, floodway, or associated wetlands, for example, may be developed at the site-specific scale and site conditions may change over time. Revisions to the Official Shoreline Map may be made as outlined in this Subsection (D)(5) without an SMP amendment.

4. General Policies and Regulations

4.1 INTRODUCTION

General policies and regulations are applicable to all uses and activities that occur within all Shoreline Environment Designations. The policies and regulations found in this chapter are intended to be used in conjunction with the more specific use and activity regulations found in the following chapters. These policies apply to all uses within shoreline jurisdiction, whether or not a separate shoreline permit is required. These policies may be used to condition any required permit or letter of exemption.

4.2 SHORELINE USE AND DEVELOPMENT REGULATIONS

A. Policies

1. Give preference along the shoreline to water-oriented uses, while controlling pollution and preventing damage to the natural environment.

2. Nonwater-oriented accessory development or use that does not require a shoreline location should be located landward of shoreline jurisdiction unless such development is required to serve approved water-oriented uses and/or developments.

3. The design, density and location of all allowed uses and developments should reflect physical and natural features of the shoreline and should assure no net loss of ecological functions by avoiding and minimizing adverse effects on shoreline ecology.

4. Site plans and structural designs for shoreline development should acknowledge the water's proximity and value as an ecological and scenic resource. Development and uses should be designed in a manner that directs land alteration to the least sensitive portions of the site.

5. Protect current agricultural uses on agricultural land and provide for new agricultural uses so that they are located and designed to ensure no net loss of ecological functions and do not have a significant adverse impact on other shoreline resources and values.

B. Regulations

1. All uses in the shoreline shall comply with the Town's development code and this Program.

2. The shoreline use and modification table (Table 4.10-1) defines those uses that are permitted, conditional, or prohibited. All uses and modifications that are not specifically listed in the table are "unclassified." Unclassified uses shall be considered conditional uses and shall be governed by the policies in WAC 173-26.

3. All structures in the shoreline shall be designed and constructed consistent with the underlying zoning and shall not exceed 35 feet above average grade level, consistent with RCW 90.58.

4. To the extent feasible, shoreline developments shall locate the water-oriented portion of their development along the shoreline and place all other facilities landward, or outside the shoreline jurisdiction in compliance with use preferences stated in RCW 90.58.020, WAC 173-26-241(2)(a)(iii) and 173-26-211(3)(b).

5. In compliance with WAC 173-26-221(4)(d)(iv), where proposed development creates a conflict between water-dependent uses or physical public access and maintenance of views from adjacent properties, the water-dependent uses and physical public access shall have priority.

6. The design, construction, and operation of permitted uses in the shorelines shall minimize interference with the public's use of the water.

4.3 ENVIRONMENTAL PROTECTION

A. Policies

1. Protect all shorelines of the state in a manner consistent with all relevant constitutional and other legal limitations on the regulation of private property so that there is no net loss of ecological functions from both individual permitted or exempt development.

2. Protect and, where necessary, apply planning and land use measures to improve the quality and productivity of the Town's environmental resources (air, ground and surface waters, and indigenous biology).

3. Sustain a diverse, productive, and high quality natural environment for the use, health and enjoyment of Town residents.

B. Regulations

1. Ecological Functions. Uses and developments on the Town shoreline must be designed, located, sized, constructed and maintained to achieve no net loss of shoreline ecological functions necessary to sustain shoreline natural resources. New uses and developments must not have an unmitigated adverse impact on other shoreline functions fostered by this SMP.

2. Protection of Critical Areas and Buffers. Critical areas, critical areas buffers, and shoreline buffers must be protected in accordance with the provisions of Appendix B (Shoreline Critical Areas Policies and Regulations).

3. Mitigation Requirement. If a proposed shoreline use or development is entirely addressed by specific, objective standards (such as setback distances or materials requirements)

contained in this SMP, then the mitigation sequencing analysis described in Subsection 4.3(B)(4) is not required. In the following circumstances, the applicant must provide a mitigation sequencing analysis as described in Subsection 4.3(B)(4):

a. If a proposed shoreline use or development is addressed in any part by discretionary standards (such as standards requiring a particular action "if feasible" or requiring the minimization of development size) contained in this SMP, then the mitigation sequencing analysis is required for the discretionary standard(s); or
b. When an action requires a Shoreline Conditional Use Permit or Shoreline Variance Permit; or
c. When specifically required by regulations contained in this SMP.

4. Mitigation Sequence. In order to ensure that development activities contribute to meeting the no net loss provisions by avoiding, minimizing, and mitigating for adverse impacts to ecological functions or ecosystem-wide processes, an applicant required to complete a mitigation analysis pursuant to Subsection 4.3(B)(3) must describe how the proposal will follow the sequence of mitigation as defined below:

a. Avoid the impact altogether by not taking a certain action or parts of an action;
b. Minimize the impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;
c. Rectify the impact by repairing, rehabilitating, or restoring the affected environment to the conditions existing at the time of the initiation of the project or activity;
d. Reduce or eliminate the impact over time by preservation and maintenance operations during the life of the action;
e. Compensate for the impact by replacing, enhancing, or providing substitute resources or environments; and
f. Monitor the impact and the compensation projects and take appropriate corrective measures.

5. Adverse Impacts. Examples of common actions that may result in adverse ecological impacts include, but are not limited to, the following:

a. Removal of native plant communities in shoreline jurisdiction,
b. Removal of native or non-native trees that overhang the water,
c. Removal of native or non-native vegetation on slopes if that vegetation supports maintenance of slope stability and prevents surface erosion,
d. Removal or alteration of priority habitats or habitat for priority species,
e. Construction of new or expanded in- and over-water structures,
f. Construction of new or expanded shoreline stabilizations,
g. New discharges of water into Pine Creek that may introduce pollutants,
h. Construction of new impervious surfaces whose discharges are not infiltrated and thus may alter hydrologic conditions of shoreline waterbodies, and/or
i. Changes in grading or fill that reduce floodplain capacity.

6. Mitigation Plan. All proposed alterations to shoreline jurisdiction that may have adverse effects on ecological functions require mitigation sufficient to provide for and maintain the functions and values of the shoreline area or to prevent risk from a critical areas hazard. The applicant must develop and implement a mitigation plan prepared by a qualified professional. Mitigation in excess of that necessary to ensure that development will result in no net loss of ecological functions will not be required by the Town, but may

be voluntarily performed by an applicant. In addition to any requirements found in Appendix B (Shoreline Critical Areas Policies and Regulations), a mitigation plan must include:

a. An inventory and assessment of the existing shoreline environment including relevant physical, chemical and biological elements;

b. A discussion of any federal, state, or local management recommendations which have been developed for critical areas or other species or habitats located on the site;

c. A discussion of proposed measures which mitigate the adverse impacts of the project to ensure no net loss of shoreline ecological functions;

d. A discussion of proposed management practices which will protect fish and wildlife habitat both during construction, and after the project site has been fully developed;

e. Scaled drawings of existing and proposed conditions, materials specifications, and a minimum three-year maintenance and monitoring plan, including performance standards;

f. A contingency plan if mitigation fails to meet established success criteria; and

g. Any additional information necessary to determine the adverse impacts of a proposal and mitigation of the impacts.

7. Alternative Mitigation. When compensatory measures are appropriate pursuant to the mitigation priority sequence above, preferential consideration shall be given to measures that replace the impacted functions on site and in kind. To provide for flexibility in the administration of the ecological protection provisions of this SMP, alternative mitigation approaches may be approved within shoreline jurisdiction where such approaches provide increased protection of shoreline ecological functions and processes over the standard provisions of this SMP and are scientifically supported, or are consistent with the Shoreline Restoration Plan or watershed-level management plans. Potential alternative mitigation tools include advance mitigation and mitigation banking. Authorization of alternative compensatory mitigation measures may require appropriate safeguards, terms or conditions as necessary to ensure no net loss of ecological functions, and may require approval by other state or federal agencies.

4.4 SHORELINE VEGETATION CONSERVATION

A. Policies

1. Where new developments, uses and/or redevelopments are proposed, ensure shoreline vegetation, both upland and waterward of the OHWM, is conserved to maintain shoreline ecological functions and processes.

2. Encourage management and control of noxious and invasive weeds. Control of such species should be done in a manner that retains onsite native vegetation, provides for erosion control, and protects water quality.

B. Regulations

1. Vegetation conservation standards do not apply retroactively to existing legally established uses and developments. Vegetation associated with existing structures, uses and developments may be maintained within shoreline jurisdiction.

2. Vegetation within shoreline buffers, other stream buffers, wetlands and wetland buffers, WDFW-mapped priority habitats and species areas, and other critical areas must be managed consistent with Appendix B (Shoreline Critical Areas Policies and Regulations).

Regulations specifying establishment and management of shoreline buffers are located in Section 5.D (Fish and Wildlife Habitat Conservation Areas) of Appendix B.

3. Other vegetation within shoreline jurisdiction, but outside of shoreline buffers, creek buffers, wetlands and wetland buffers, and other WDFW-mapped priority habitats and species areas must be managed according to Section 4.3, Environmental Protection, and any other regulations specific to vegetation management contained in this SMP and Malden Municipal Code.

4. Vegetation clearing must be limited to the minimum necessary to accommodate approved shoreline development that is consistent with all other provisions of this SMP and Malden Municipal Code. Mitigation sequencing per Subsection 4.3(B)(4) must be applied unless specifically excluded by this SMP, so that the design and location of the structure or development, including septic drainfields, minimizes short- and long-term vegetation removal. The Town may approve modifications or require minor site plan alterations to achieve maximum tree retention.

5. Where vegetation removal conducted consistent with this Section results in adverse impacts to shoreline ecological function, new developments or site alterations are required to develop and implement a supplemental mitigation plan. Examples of actions that may result in adverse impacts include:

   a. Removal of native trees, shrubs or groundcovers;
   b. Removal of non-native trees or shrubs that overhang aquatic areas or stabilize slopes or stream banks; or
   c. Removal of native or non-native trees or shrubs that disrupts an existing vegetation corridor connecting the property to other critical areas or buffers.

   Mitigation plans must be prepared by a qualified professional or under the supervision of a government agency or the Pine Creek Conservation District, and must contain information required in Subsection 4.3(B)(6). All mitigation plantings shall be preferentially placed in the shoreline buffer, unless the trees provide connectivity to upland habitats or other critical areas. Mitigation measures must be maintained over the life of the use or development.

6. Where a tree poses a safety hazard, it may be removed or converted to a wildlife snag if the hazard cannot be eliminated by pruning, crown thinning, or other technique that maintains some habitat function.

7. Selective pruning of trees for views is allowed. Selective pruning of trees for views does not include removal of understory vegetation, and must not compromise the health of the tree.

8. Invasive Species Control.

   a. Hand removal or spot-spraying of invasive species or noxious weeds included on the Washington State Noxious Weed List as a Class A, B or C weed on shorelands outside of steep or unstable slope areas is permitted.
   b. Mechanical removal or large-scale (greater than 200 square feet) chemical treatment of invasive species.
      i. Mechanical removal or large-scale chemical treatment of invasive species or noxious weeds included on the Washington State Noxious Weed List as a Class A, B or C weed on shorelands outside of steep or unstable slope areas is permitted.

ii. Coordination with Pine Creek Conservation District is encouraged prior to undertaking invasive or noxious weed removal projects to ensure that the control and disposal technique is appropriate.

iii. Where noxious weeds and invasive species removal results in bare soils that may be subject to erosion or recolonization by invasive or noxious species, the area must be stabilized using best management practices and replanted with native plants (in or outside of shoreline or critical area buffers) or suitable non-native plants (outside of shoreline or critical area buffers). The replanted vegetation must be similar in size and structure at maturity to the removed vegetation.

iv. Invasive species removal efforts that exceed one-quarter acre should be phased if feasible to minimize potential erosion and sedimentation impacts.

c. Aquatic weed control must only be permitted where the presence of aquatic weeds will adversely affect native plant communities, fish and wildlife habitats, or an existing water-dependent recreational use. Aquatic weed control efforts must comply with all applicable laws and standards.

4.5 WATER QUALITY, STORMWATER, AND NONPOINT POLLUTION

A. Policies

1. Maintain and improve the water quality and quantity of the Town's shoreline, and preserve surface and groundwater for the beneficial use of the Town's citizens and wildlife over the long term.

2. Prevent impacts to water quality and surface water quantity that would result in a net loss of shoreline ecological functions, or a significant impact to aesthetic qualities or recreational opportunities.

3. Encourage effective erosion and sedimentation controls for construction in shoreline areas.

B. Regulations

1. Do not degrade ecological functions. Design, construction and operation of shoreline uses and developments shall incorporate all known, available, and reasonable methods of preventing, controlling, and treating stormwater to protect and maintain surface and ground water quantity and quality so that there is no net loss of ecological functions. All new uses and developments shall comply with the Environmental Protection regulations in Section 4.3(B).

2. Do not degrade views and recreation opportunities. Design, construction and operation of shoreline uses and developments shall incorporate measures to protect and maintain surface and groundwater quantity and quality in accordance with all applicable laws, so that significant impacts to aesthetic qualities (e.g., water color) or recreational opportunities (e.g., safe swimming and fishing) do not occur.

3. Requirements for new development.

a. New development and re-development shall manage short-term and long-term stormwater runoff to avoid and minimize potential adverse effects on shoreline ecological functions through compliance with the Town's stormwater management requirements and the use of best management practices. In the absence of Town standards for control of quality and quantity of stormwater runoff, applicants should consult Ecology's Stormwater Management Manual for Eastern Washington for guidance.

b. Deviations from any Town standards may be approved where it can be demonstrated that off-site facilities would provide better treatment, or where common retention, detention and/or water quality facilities meeting such standards have been approved as part of a comprehensive stormwater management plan.

4. Sewage management. New developments or failing septic systems shall connect to an existing municipal sewer service system if feasible, or install a system or make system corrections approved by Whitman County Public Health Department.

5. Materials requirements. All materials that may come in contact with water shall be untreated or approved treated wood, concrete, approved plastic composites, or steel that will not adversely affect water quality or aquatic plants or animals.

6. Storage. The bulk storage of oil, fuel, chemicals, or hazardous materials, on either a temporary or a permanent basis, shall not occur in shoreline jurisdiction without adequate secondary containment and an emergency spill response plan in place.

4.6 FLOOD HAZARD MANAGEMENT

A. Policies

1. Recognize and protect the hydrologic functions of floodplains by limiting the use of structural flood hazard reduction measures except where they are necessary to protect existing development and where non-structural flood hazard reduction measures are infeasible.

2. Ensure developments subject to damage or that could result in loss of life do not locate in areas of known flood hazards unless it can be demonstrated by the project proponent that the development is sited, designed and engineered for long-term structural integrity, and that life and property on and off-site are not subject to increased hazards as a result of the development.

3. Limit new development or uses in shoreline jurisdiction, including subdivision of land, that would likely require structural flood hazard reduction measures.

B. Regulations

1. Development in floodplains shall avoid significantly or cumulatively increasing flood hazards. Development shall be consistent with this SMP, including Section 4.3 (Environmental Protection), Section 6 (Frequently Flooded Areas) of Appendix B, and all applicable guidelines of the Federal Emergency Management Agency and an approved flood hazard management plan.

2. The channel migration zone (CMZ) is considered to be that area of a stream channel which may erode as a result of normal and naturally occurring processes and has been mapped consistent with WAC 173-26-221(3)(b). The Channel Migration Zone Map is available for review with the Clerk Treasurer. Applicants for shoreline development or modification may submit a site-specific CMZ study if they believe these conditions do not exist on the subject property and the map is in error. The CMZ study must be prepared consistent with WAC 173-26-221(3)(b), and may include, but is not limited to, historic aerial photographs, topographic mapping, flooding records, and field verification. The CMZ study must be prepared by a licensed geologist or engineer with at least five years of applied experience in assessing fluvial geomorphic processes and channel response.

3. The following uses and activities may be authorized within the CMZ or floodway, provided they are also consistent with Section 6 (Frequently Flooded Areas) of Appendix B:
   a. Actions that protect or restore the ecosystem-wide processes or ecological functions or development with a primary purpose of protecting or restoring ecological functions and ecosystem-wide processes.
   b. New development or redevelopment landward of existing legal structures, such as levees, that prevent active channel movement and flooding.
   c. Existing and ongoing agricultural activities provided that no new restrictions to channel movement are proposed.
   d. Development of new or expansion or redevelopment of existing bridges, utility lines, public stormwater facilities and outfalls, and other public utility and transportation structures, including trails, where no other feasible alternative exists or the alternative would result in unreasonable and disproportionate costs[1]. Where such structures are allowed, mitigation shall address adversely impacted functions and processes in the affected shoreline.
   e. New or redeveloped measures to reduce shoreline erosion, provided that it is demonstrated that the erosion rate exceeds that which would normally occur in a natural condition, that the measures do not interfere with fluvial hydrological and geo-morphological processes normally acting in natural conditions, and that the measures include appropriate mitigation of adverse impacts on ecological functions associated with the river or stream.
   f. Water-dependent installations which by their very nature must be in the floodway.
   g. Modifications or additions to an existing nonagricultural legal use, provided that channel migration is not further limited and that the modified or expanded development includes appropriate protection of ecological functions.
   h. Repair and maintenance of existing legally established use and developments, provided that channel migration is not further limited, flood hazards to other uses are not increased, and significant adverse ecological impacts are avoided.
   i. Uses and developments allowed in the floodway under Section 6 (Frequently Flooded Areas) of Appendix B, provided they are otherwise consistent with all provisions of this SMP.
4. Flood hazard reduction measures shall not result in channelization of normal stream flows, interfere with natural hydraulic processes such as channel migration, or undermine existing structures or downstream banks.
5. New development in shoreline jurisdiction, including the subdivision of land, shall not be permitted if it is reasonably foreseeable that the development or use would require structural flood hazard reduction measures within the channel migration zone or floodway.
6. New public and private structural flood hazard reduction measures:
   a. Shall not be approved, unless a scientific and engineering analysis demonstrates the following:
      i. That they are necessary to protect existing development;

[1] For the purposes of this Section "unreasonable and disproportionate" means that locations outside of the floodway or CMZ would add more than 20% to the total project cost. Other methods to determine unreasonable and disproportionate cost may be used on a case-by-case basis with approval of the SMP Administrator. [20% has been used as a threshold by WSDOT and the Federal Department of Justice for ADA standards]

ii. That nonstructural measures, such as buffers and setbacks, land use controls, wetland restoration, dike removal, use or structure removal or relocation, biotechnical measures, and stormwater management programs are not feasible;

iii. That adverse effects upon adjacent properties will not result relative to increased floodwater depths and velocities during the base flood or other more frequent flood occurrences;

iv. That the ability of natural drainage ways to adequately drain floodwaters after a flooding event is not impaired;

v. That the proposal has been coordinated through the appropriate diking district where applicable, and that potential adverse effects upon other affected diking districts have been documented; and,

vi. That adverse impacts on ecological functions and priority species and habitats can be successfully mitigated so as to assure no net loss.

b. Shall be consistent with an approved comprehensive flood hazard management plan.

c. Shall be placed landward of associated wetlands and designated shoreline buffers, except for actions that increase ecological functions, such as wetland restoration, or when no other alternative location to reduce flood hazard to existing development is feasible as determined by the SMP Administrator.

7. New public structural flood hazard reduction measures, such as levees, shall dedicate and improve public access pathways unless public access improvements would cause unavoidable health or safety hazards to the public, inherent and unavoidable security problems, unacceptable and unmitigable significant adverse ecological impacts, unavoidable conflict with the proposed use, or a cost that is disproportionate and unreasonable to the total long-term cost of the development.

8. The removal of gravel or other riverbed material for flood management purposes shall be consistent with Section 6.3 (Dredging and Dredge Material Disposal), and be allowed only after a biological and geo-morphological study shows that extraction has a long-term benefit to flood hazard reduction, does not result in a net loss of ecological functions, and is part of a comprehensive flood management solution.

4.7 ARCHAEOLOGICAL, HISTORICAL, AND CULTURAL RESOURCES

A. Policies

1. Continue to regulate archaeological, historic, and cultural resources.

2. Due to the limited and irreplaceable nature, destruction of or damage to any site having historic, cultural, scientific, or educational value as identified by the appropriate authorities, including affected Indian tribes and the Washington State Department of Archaeology and Historic Preservation, should be prevented.

B. Regulations

1. Permits issued in areas known to have, or suspected of having, archaeological artifacts or resources shall consult the Statewide Predictive Model and determine the appropriate action as follows:

a. If any of the following are met, the project will be exempt from taking action:

i. Prior negative archaeological survey is on file

ii. No ground disturbance will occur

iii. The project is in 100 percent culturally-sterile fill

b. If no known cultural resources are present, the Department of Archaeology and Historic Preservation Predictive Model shall be applied and the survey recommendations shall be followed according to the associated risk identified.

c. If cultural resources are present and ground-disturbance is proposed, then a site inspection or evaluation by a professional archaeologist is required in coordination with affected Tribes prior to initiating disturbance. The resource shall be avoided or a mitigation strategy shall be determined. Cost of the evaluation and inspection is the responsibility of the permit applicant.

2. In accordance with state law:

a. In the event that human remains, burials, funery items, sacred objects, or objects of cultural patrimony are found during project implementation, all provisions of RCW 68.50.645 must be adhered to.

b. In the event that prehistoric artifacts or historic-period artifacts or features are found during project implementation, all work shall cease immediately within 200 feet of the find, Washington State DAHP shall be contacted, and all provisions of RCW 27.53.060 shall be adhered to.

4.8 PUBLIC ACCESS

A. Policies

1. Promote and enhance the public interest with regard to rights to access waters held in public trust by the state while recognizing that public access does not include the right to enter upon or cross private property, except on dedicated public rights of way or easements or where development is specifically designed to accommodate public access.

1. Consistent with the overall best interest of the state and the people of Malden, protect the public's opportunity to enjoy the physical and aesthetic qualities of shorelines of the state, including water views, by regulating the design, construction, and operation of permitted uses in the Town's shoreline jurisdiction.

B. Regulations

1. Requirements and conditions for public access shall be consistent with all relevant constitutional and other legal limitations set on regulation of private property.

2. Where feasible, new development and uses shall be designed and operated to avoid and minimize blocking, reducing, or adversely interfering with the public's physical or visual access to the water and shoreline.

3. In compliance with RCW 36.87.130, public access provided by shoreline street ends, public utilities, and rights of way shall not be diminished.

4. Existing public access shall not be eliminated unless the applicant shows that there is no feasible alternative and replaces the public access with access of comparable functions and value at another location. Shoreline development shall not interfere with public access and enjoyment of any nearby publicly owned land areas.

5. Shoreline substantial developments and shoreline conditional uses shall provide for safe and convenient public access to and along the shoreline where any of the following conditions are present:

a. The development is proposed or funded by a public entity or is on public lands;

b. The nature of the proposed use, activity or development will likely result in an increased demand for public access to shoreline;

c. The proposed use, activity or development is not a water-oriented or other preferred shoreline use, activity or development under the Act, such as a nonwater-oriented commercial or industrial use; or

d. The proposed use, activity or development will interfere with the public use, activity and enjoyment of shoreline areas or waterbodies subject to the Public Trust Doctrine.

e. The proposed use is a multiunit residential development or a subdivision of land for more than four parcels.

6. An applicant shall not be required to provide public access where the Town determines that one or more of the following conditions apply:

a. Proposed use, activity or development only involves the construction of four or fewer single-family or multifamily dwellings or subdivision of four or fewer lots;

b. The proposed use, activity or development only involves agricultural activities;

c. The nature of the use, activity or development or the characteristics of the site make public access requirements inappropriate due to health, safety or environmental hazards. The proponent shall carry the burden to demonstrate by substantial evidence the existence of unavoidable or unmitigable threats or hazards to public health, safety, or the environment that would be created or exacerbated by public access upon the site;

d. The proposed uses, activity or development has security requirements that are not feasible to address through the application of alternative design features or other measures;

e. The economic cost of providing for public access upon the site is unreasonably disproportionate to the total long-term economic value of the proposed use, activity, or development.

f. Significant unmitigable harm to the shoreline environment would be likely to result from an increase, expansion or extension of public access upon the site;

g. Public access has reasonable potential to threaten or harm the natural functions and native characteristics of the shoreline;

7. Public access locations shall be clearly marked and available to the public.

8. The Town may condition public access proposals to ensure compatibility with existing public access or transportation facilities, address environmental conditions or environmental impacts, and/or address compatibility with adjacent properties. Public access facilities shall be made compatible with adjacent private properties through the use of techniques to define the separation between public and private space, including but not limited to, fencing, vegetation, and elevation separations.

9. The Town shall pursue public access to publicly owned lands and develop a coordinated system of linked public access wherever possible.

10. Where public access is provided, it shall be designed and located to achieve no net loss of existing shoreline ecological function.

4.9 UNCLASSIFIED USES

Uses that are not classified or set forth herein may only be authorized as conditional uses provided the applicant can demonstrate that the criteria set forth in Subsection 7.6(G) of the SMP are met. Unclassified uses approved as conditional uses should also remain consistent with the policies of this Program and RCW 90.58.020.

4.10 SHORELINE USE AND MODIFICATION TABLE

All uses and developments in the Town's shoreline jurisdiction shall be allowed or prohibited consistent with the Shoreline Use and Modification Table below. Refer to the text section of this Program for all applicable provisions related to specific uses and modification standards.

4.10-1 Shoreline Use and Modification Table

Shoreline Use or Modification	Urban Conservancy	Aquatic
Key: **P = Permitted use (Substantial Development Permit or Exemption) subject to policies and regulations of this SMP** **C = Shoreline Conditional Use Permit subject to policies and regulations of this SMP** **X = Prohibited Use** **N/A = Not Applicable**		
Agriculture		
Existing Agricultural Activities	Not regulated under this SMP	
New Agricultural Activities	P	N/A
Agricultural Related Activities	C	N/A
Aquaculture		
Commercial	X	X
Non-commercial	P	P
Boating Facilities		
Boating Facilities	X	X
Breakwaters, Jetties, Weirs and Groins		
To protect or restore ecological functions	P	P
All other purposes	C	C
Commercial Development		
Visitor-serving uses	C	X
Recreation concessions	P	X
Nonwater-oriented retail, trade or service	X	X
Dredging and Dredge Material Disposal		
Dredging	N/A	P
Dredge Material Disposal	C	X
Fill and Excavation		
Waterward of the OHWM - restoration	N/A	P
Waterward of the OHWM - other	N/A	C
Upland of the OHWM	P	N/A
Flood Hazard Management		
Modification of Existing Flood Hazard Facilities	P	P
New Facilities	C	C
Forest Practices		
Forest Practices	X	N/A
Industrial Development		
Industrial Development	C	X
In-Stream Structures		

Shoreline Use or Modification	Urban Conservancy	Aquatic
Key: **P = Permitted use (Substantial Development Permit or Exemption) subject to policies and regulations of this SMP** **C = Shoreline Conditional Use Permit subject to policies and regulations of this SMP** **X = Prohibited Use** **N/A = Not Applicable**		
To protect public facilities; to protect, restore, or monitor ecological functions or processes; or to support agriculture	P	P
Other	C	C
Mining		
Mining	X	X
Recreational Development		
Water-oriented	P	P
Nonwater-oriented	C	X
Redevelopment, Repair, and Maintenance		
Redevelopment, Repair, and Maintenance Projects	P	P
Residential Development		
Single-Family Dwelling	P	X
Mobile Homes	C	X
Multi-Family Dwelling	X	X
Shoreline Restoration and Enhancement		
Shoreline Restoration and Enhancement Projects	P	P
Shoreline Stabilization		
New Stabilization	P	P
Transportation and Parking		
Expansion of Existing Transportation and Parking Facilities	P	C
New Access Roads Serving Permitted Uses	P	N/A
New Highways, Freeways, Arterials & Collectors	C	N/A
New Bridges	C	C
New Railways	C	C
New Airstrips	X	N/A
New Trails	P	N/A
New Parking to Support Authorized Use[1]	P	N/A
Utilities		
Expansion of Existing Utilities	P	P
New Utility Services Accessory to Individual Shoreline Projects	P	C
New Utility Services to Projects outside Shoreline Jurisdiction	C	C
New Power Generating Facilities	C	C
New Utility Transmission Lines	P	C
New Utility Services, General	P	C

Shoreline Use or Modification	Urban Conservancy	Aquatic
Key: **P = Permitted use (Substantial Development Permit or Exemption) subject to policies and regulations of this SMP** **C = Shoreline Conditional Use Permit subject to policies and regulations of this SMP** **X = Prohibited Use** **N/A = Not Applicable**		
New Wastewater Treatment Facility	C	C

[1]: Parking as a primary use is prohibited in all designations per WAC 173-26-241(3)(k).

4.11 SHORELINE DEVELOPMENT STANDARDS

A. Shoreline developments shall comply with all dimensional requirements of the Malden Municipal Code.

B. When a development or use is proposed that does not comply with the dimensional performance standards of this SMP, such development or use can only be authorized by approval of a Shoreline Variance.

C. There shall be a 35-foot maximum building height for all structures, except that utility facilities and bridges are not required to meet this standard. To exceed 35 feet, an applicant must comply with the following criteria:

1. Demonstrate overriding considerations of the public interest will be served; and
2. Demonstrate that the proposal will not obstruct the view of a substantial number of residences on areas adjoining such shorelines or impair views from public lands or impair scenic vistas.

Water-oriented structures shall be allowed to exceed a height of thirty-five (35) feet without a Shoreline Variance when the need for the increased height of the proposed structure is demonstrated and is limited to the minimum height necessary to serve the intended purpose. Such structures may include, but are not limited to, cranes or other facilities designed to move or place products, fixed loading facilities that must provide clearance over vessels, storage facilities such as grain elevators, as well as accessory features such as lighting required for operations. All other structures must apply for a Shoreline Variance, and also meet standard Shoreline Variance criteria (Subsection 7.6(H)).

D. Shoreline buffers: See Subsection 5.D(3) of this Appendix B.

5. Shoreline Use Policies and Regulations

5.1 AGRICULTURE

A. Policies

1. Encourage erosion control measures in accordance with the United States Department of Agriculture Natural Resources Conservation Service agency guidelines.

2. Control irrigation runoff to minimize discharge of chemicals, fertilizer, sediment, and organic materials in aquatic areas in accordance with federal and state water quality standards.

3. Allow diversion of water for agricultural purposes consistent with water rights laws and rules.

4. Encourage maintenance of vegetative zones between tilled areas and aquatic areas to reduce stormwater runoff, reduce sedimentation, and promote fish and wildlife habitat.

B. Regulations

1. For shoreline purposes, Appendix A (Definitions), WAC 173-26-020 (Definitions) and WAC 173-26-241(3)(a) (Agriculture) shall determine the need for shoreline review for agricultural activities.

2. The provisions of this SMP do not limit or require modification of agricultural activities on agricultural lands as of the date of adoption of the SMP. In determining whether lands meet the definition of agricultural activities, the SMP Administrator shall consider laws and rules included in Subsection (1) and information regarding typical agricultural practices for the subject agricultural use, current use taxation records, conservation easements, and other relevant information. Examples of agricultural practices that could vary by the type of agriculture include but are not limited to: rotations of fields for grazing, cultivation, production, and harvests; animal breeding, feeding, or forage activities; type and frequency of maintenance, repair and replacement of agricultural facilities; and other typical practices.

3. SMP provisions shall apply in the following cases:

   a. New agricultural activities on land not meeting the definition of agricultural land;
   b. Expansion of agricultural activities on non-agricultural lands, or conversion of non-agricultural lands to agricultural activities;
   c. Conversion of agricultural lands to other uses;
   d. Other development on agricultural land that does not meet the definition of agricultural activities; and
   e. Agricultural development and uses not specifically exempted by the SMA.

4. Feed lots and stockyards are prohibited in shoreline jurisdiction.

5. Vegetative buffers consistent with Subsection 5.D of Appendix B shall be maintained between the OHWM and cultivated ground for purposes of erosion control and riparian vegetation protection, and shall apply to uses and activities subject to the SMP in Subsection (B)(3).

6. Diversion of water for agricultural purposes shall be consistent with federal and state water rights laws and rules.

7. No equipment or material shall be abandoned or disposed of in shoreline jurisdiction.

8. Development in support of agricultural uses shall be consistent with the environment designation intent and management policies, located and designed to assure no net loss of ecological functions, and shall not have a significant adverse impact on other shoreline resources and values.

5.2 AQUACULTURE

A. Policies

1. Encourage aquaculture that supports the recovery of endangered or threatened fish species.
2. Restrict aquaculture in areas where it would result in a net loss of ecological functions or significantly conflict with navigation or other water-dependent uses.
3. Consider visual access and aesthetic quality of the shoreline in siting aquaculture facilities.

B. Regulations

1. Aquacultural facilities must be designed and located to avoid:
   a. The spreading of disease, especially to native aquatic life;
   b. Introducing new non-native species which cause significant ecological impacts;
   c. Significantly conflicting with navigation and other water-dependent uses;
   d. A net loss of ecological functions; or
   e. Significantly impacting the aesthetic qualities of and visual access to the shoreline.
2. Potential locations for aquaculture are relatively restricted due to specific requirements for water quality, temperature, flows, oxygen content, adjacent land uses, wind protection, and commercial navigation. The technology associated with some forms of present-day aquaculture is still in its formative stages and experimental. Therefore, some latitude in the development of this use shall be given, while the potential impacts on existing uses and natural systems are recognized.

5.3 COMMERCIAL DEVELOPMENT

A. Policies

1. Give preference to water-dependent commercial uses over nonwater-dependent commercial uses in shoreline jurisdiction. Water-related and water-enjoyment uses should be prioritized over nonwater-oriented commercial uses.
2. Encourage new commercial development to locate in areas where commercial development uses already exist, and ensure that it does not significantly reduce scenic views or result in net loss of shoreline ecological function.

B. Regulations

1. Water-dependent, water-related, and water-enjoyment uses are permitted where allowed by zoning and this SMP and where they avoid impacts to existing navigation, recreation, and public access.
2. Preference shall be given to water-dependent commercial uses over nonwater-dependent commercial uses. Water-related uses and water-enjoyment uses shall be given priority over nonwater-oriented uses.
3. Commercial use that is not water-dependent shall not be allowed over water except where it is located within an existing building or where it is accessory to a water-dependent use.
4. Nonwater-oriented commercial development shall be prohibited unless they meet the following criteria:

a. The use is part of a mixed-use project that includes water-dependent uses and provides a significant public benefit with respect to provision of public access or ecological restoration; or

b. Navigability is severely limited at the proposed site, and the commercial use provides a significant public benefit with respect to provision of public access or ecological restoration.

5. In areas of the shoreline that allow commercial uses, nonwater-oriented commercial uses may be allowed on sites physically separated from the shoreline by another property or public right-of-way.

6. New commercial developments shall provide public access to the shorelines where feasible.

7. Commercial development shall be located, designed, and constructed in a way that ensures no net loss of shoreline ecological functions and without significant adverse impacts to other preferred land uses and public access opportunities as provided for in RCW 90.58.020.

5.4 IN-STREAM STRUCTURAL USES

A. Policies

1. Ensure the location, design, construction and maintenance of in-stream structures give due consideration to the full range of public interests, watershed functions and processes, and environmental concerns, with special emphasis on protecting and restoring priority habitats and species.

2. Encourage non-structural and non-regulatory approaches as an alternative to in-stream structures. Non-regulatory and non-structural approaches may include public facility and resource planning, land or easement acquisition, education, voluntary protection and enhancement projects, or incentive programs.

B. Regulations

1. In-stream structures must provide for the protection and preservation of ecosystem-wide processes, ecological functions, and cultural resources, including, but not limited to, fish and fish passage, priority habitats and species, other wildlife and water resources, shoreline critical areas, hydrogeological processes, and natural scenic vistas.

2. New in-stream structures shall not interfere with existing water-dependent uses, including recreation.

3. In-stream structures shall not be a safety hazard or obstruct water navigation.

4. In-stream structures shall be designed by a qualified professional.

5. Natural in-stream features, such as snags, uprooted trees, or stumps, shall be left in place unless it can be demonstrated that they are actually causing bank erosion or higher flood stages or pose a hazard to human safety.

6. In-stream structures shall comply with the Environmental Protection regulations in Section 4.3(B) and shall ensure no net loss of ecological function. Consistent with requirements for mitigation sequencing (4.3(B)(4)), all structures must be the minimum size necessary and designed to avoid and then minimize potential adverse impacts. All unavoidable adverse impacts must be mitigated, and a mitigation plan submitted.

7. The applicant must obtain all other state, local and federal permits required for in-stream structures in addition to the requirement of this SMP.

5.5 INDUSTRIAL DEVELOPMENT

A. Policies

1. Allow for existing and new industrial uses that serve the local industries, provided they are developed and operated according to the State's Shoreline Master Program Guidelines and other State and Town requirements.
2. Ensure that existing and new development of industrial facilities is consistent with all Shoreline Master Program Guidelines and achieves no net loss of shoreline ecological function.

B. Regulations

1. Industrial facilities that are water-dependent or water-related are permitted where allowed by zoning and this SMP. The applicant shall demonstrate that proposed uses are water-dependent and/or water-related.
2. In compliance with WAC 173-26-241(3)(f), industrial development shall be in accordance with the following regulations:
   a. Industrial development shall be located, designed, constructed, and operated in a manner that minimizes impacts to the shoreline, provides for no net loss of shoreline ecological function, and avoids unnecessary interference with shoreline use by adjacent property owners.
   b. In the review of shoreline developments, the Town shall give preference to water-dependent uses and then water-oriented industrial uses, in accordance with WAC 173-26-241(3)(f).
   c. Regional and statewide needs for water-dependent and water-related industrial facilities shall be carefully considered. Lands designated for industrial development shall not include shoreline areas with severe environmental limitations, such as critical areas.
   d. Unless public access cannot be provided in a manner that does not result in significant interference with operations or hazards to life or property, industrial development shall consider incorporating public access as mitigation.
   e. Where industrial land is proposed for use on land in public ownership, public access shall be required unless it meets an exception in accordance with Subsection 4.8(B)(6).
   f. Industrial development and redevelopment shall be encouraged to locate where environmental cleanup and restoration of the shoreline area can be incorporated.
3. In accordance with WAC 173-26-241(3)(f), new nonwater-oriented industrial development shall be prohibited on shorelines except when:
   a. The use is a part of a mixed-use project that includes water-dependent uses and provides a significant public benefit with respect to the Act's objectives, such as providing public access and ecological restoration.
   b. Navigability is severely limited at the proposed site; and the industrial use provides a significant public benefit with respect to the Act's objectives, such as providing public access and ecological restoration.
   c. The site is physically separated from the shoreline by another property or public right of way

5.6 RECREATIONAL DEVELOPMENT

A. Policies

1. Ensure consistency in shoreline policies, regulations, and long-term planning goals between Town, County and State parks departments.
2. Recreation facilities should be located, designed, and operated in a manner consistent with the purpose of the environment designation in which it is located and so as to assure that no net loss of shoreline ecological functions or ecosystem-wide processes results.
3. Prioritize shoreline recreational development that is related to access to, enjoyment and use of the water and shorelines of the state.
4. Where appropriate, provide shoreline recreation amenities at a capacity that is sufficient to the number of users and the expected future growth in users.

B. Regulations

1. Recreational development shall demonstrate achievement of no net loss of ecological functions and comply with the Environmental Protection regulations of Section 4.3.
2. Recreational uses and development must be compatible with existing or proposed uses in the area and must be consistent with Town development standards.
3. The location, design, and operation of recreational facilities shall be consistent with the purpose of the environment designation.
4. Recreational uses and facilities located within shoreline jurisdiction shall include features that relate to access, enjoyment and use of the water and shorelines of the state. Access to recreational areas shall emphasize both consolidated park or open space areas and trail access.
5. Commercial components of the use that are not explicitly related to the recreational operation must also conform to the standards of Section 5.3 (Commercial Development).

5.7 RESIDENTIAL DEVELOPMENT

A. Policies

1. Promote current and planned shoreline residential uses that have adequate provision of services and utilities while appropriately allowing for shoreline ecological protection.
2. Residential development in the Town should aim to control pollution and prevention of damage to the shoreline so as to ensure no net loss of ecological function.
3. Residential development should aim to minimize environmental impact through ecological restoration and other measures.
4. Recognize that single-family residences are a common form of shoreline development and are identified as a priority use when developed in a manner consistent with control of pollution and prevention of damage to the natural environment. Without proper management, single-family residential use can cause significant damage to the shoreline through cumulative impacts from shoreline armoring, stormwater runoff, septic systems, introduction of pollutants, and vegetation modification and removal.
5. Prohibit new floating homes.

B. Regulations

1. Residential development shall comply with all applicable subdivision, critical area, and zoning regulations and be consistent with applicable SMP environment designations and standards.

2. Single-family residences are considered a priority use only when developed in a manner consistent with control of pollution and prevention of damage to the natural environment.

3. New residential lots created through land division shall be in accordance with the following:

   a. Comply with all applicable subdivision and zoning regulations and all regulations of this Program.

   b. Plats and subdivisions must be designed, configured and developed in a manner that assures that no net loss of ecological functions result from the plat or subdivision at full build-out of lots.

   c. Prevent the need for new shoreline stabilization or flood hazard reduction measures that would cause significant impacts to other properties or public improvements or a net loss of shoreline ecological functions.

4. Residential development, including accessory uses and appurtenant structures, shall:

   a. Meet all applicable critical area, vegetation, and water quality standards of this SMP.

   b. Be sufficiently set back from steep slopes and shorelines vulnerable to erosion so that structural improvements, including bulkheads and other stabilization structures, are not required to protect such structures and uses.

   c. Be located, designed, and constructed in a manner that assures no net loss of shoreline ecological functions.

5. In accordance with WAC 173-26-241(j), new floating homes shall be prohibited.

6. Residential accessory uses or appurtenances shall not be located in required shoreline buffers unless specifically authorized in this SMP. Residential accessory uses shall be prohibited over the water unless clearly water-dependent for recreational or personal use.

7. New multiunit residential development, including mobile homes and subdivision of land for more than four parcels, should provide community and/or public access in conformance with this SMP.

5.8 TRANSPORTATION AND PARKING

A. Policies

1. Provide for safe, reasonable, and adequate circulation systems to, and through or over shorelines where necessary.

2. Allow for maintenance and improvements to existing roads, railroads and parking areas and for necessary new roads and parking areas where alternative locations outside of shoreline jurisdiction are not feasible.

3. Promote trail connections that are consistent with local and regional plans.

B. Regulations

1. Transportation and parking plans and projects shall be consistent with this SMP, public access policies, and provisions on environmental protection.

2. Circulation system planning shall include systems for pedestrian, bicycle, and public transportation where appropriate, and all circulation plans and projects shall support existing and proposed shoreline uses that are consistent with this SMP.

3. Plan, locate, and design proposed transportation and parking facilities where routes will have the least possible and adverse effect on unique or fragile shoreline features, will not result in a net loss of shoreline ecological functions or adversely impact existing or planned water-dependent uses.

4. Where other options are available and feasible, new roads, road expansions, or railroads shall not be built within shoreline jurisdiction. When new roads, road expansions, or railroads are unavoidable, proposed transportation facilities shall be planned, located, and designed to achieve the following:

   a. Minimize possible adverse effects on unique or fragile shoreline
   b. Maintain no net loss of shoreline ecological functions and implement mitigation standards of this SMP.

5. Parking facilities shall be allowed only as necessary to support an authorized use and are not a preferred use. Parking that does not require a shoreline location to carry out its functions shall:

   a. Be sited outside of shoreline jurisdiction unless no feasible alternative location exists.
   b. Be planted or landscaped, preferably with native vegetation, to provide a visual and noise buffer for adjoining dissimilar uses or scenic areas.
   c. Observe all regulations regarding critical areas and shoreline buffers.
   d. Be designed to incorporate low-impact development practices, such as pervious surfaces and bioswales, to the extent feasible.

5.9 UTILITIES

A. Policies

1. Allow for new, expanded, and maintained utilities with criteria for location and vegetation restoration as appropriate.

2. Minimize physical and aesthetic disturbance to the shoreline when siting utilities. When feasible, utilities should be placed underground or designed to do minimal damage to aesthetic qualities of the shoreline.

B. Regulations

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

2. Utility production and processing facilities, such as sewage treatment plants, or parts of those facilities, that are nonwater-oriented shall not be allowed in shoreline areas unless it can be demonstrated that no other feasible option is available.

3. Transmission facilities for the conveyance of services, such as power lines, cables, and pipelines, shall be located outside of the shoreline area where feasible and when necessarily located within the shoreline area shall assure no net loss of shoreline ecological functions.

4. Preference shall be given to utility systems contained within the footprint of an existing right-of-way or utility easement corridor over new locations.

5. Development of pipelines and cables and development of facilities that may require periodic maintenance which disrupt shoreline ecological functions shall be discouraged except where no other feasible alternative exists. When permitted, provisions shall assure that the facilities do not result in a net loss of shoreline ecological functions or significant impacts to other shoreline resources and values.

6. Existing utility services routed through shoreline areas shall not be a sole justification for more intense development.

5.10 REDEVELOPMENT, REPAIR, AND MAINTENANCE

This section addresses how regulations apply to redevelopment, repair, or maintenance activities; clarifies how SMP standards proportionally apply to redevelopment activities; and provides a process for multi-year management plans for maintenance and repair.

A. Policies

1. Allow all normal redevelopment, repair, and maintenance activities in the shoreline, as defined in Appendix A (Definitions), unless significant alterations or impacts to the shoreline ecological function will occur as a result of this activity.

B. Regulations

1. SMP provisions shall not apply retroactively to existing uses and developments.

2. Legally established uses and developments may be maintained, repaired, and operated within shoreline jurisdiction and within shoreline and critical area buffers established in this SMP. Normal maintenance and repair is exempt from a Shoreline Substantial Development Permit, but not the standards of this SMP.

3. SMP standards shall apply to expansions or alterations of uses or developments and to new development or redevelopment of a property as follows:

   a. The SMP Administrator shall determine the extent of compliance with SMP provisions.

   b. The required provisions shall be related to and in proportion to the proposal. For example, if an upper story is added to a structure, requirements related to building heights and views may apply.

6. Shoreline Modification Policies and Regulations

6.1 GENERAL REQUIREMENTS

A. Policies

1. Allow shoreline modifications if the use or activity is permitted under this Program or where it can be demonstrated that the proposed activities are necessary to support or protect an allowed use or development.
2. Allow shoreline modifications if the use or activity is permitted under this Program and only when adverse individual and cumulative impacts are avoided, minimized, and mitigated resulting in no net loss of shoreline ecological functions, in accordance with the mitigation sequence of this Program.

B. Regulations

1. Structural shoreline modifications are only allowed where they are demonstrated to be necessary to support or protect an allowed primary structure or a legally existing shoreline use that is in danger of loss or substantial damage, or are necessary for reconfiguration of the shoreline for mitigation or enhancement purposes.
2. As much as possible, the number and extent of shoreline modifications shall be limited.
3. Shoreline modifications shall only be approved if they are appropriate to the specific type of shoreline and environmental conditions for which they are proposed.
4. Assure that shoreline modifications individually and cumulatively do not result in a net loss of ecological functions by giving preference to those types of shoreline modifications that have a lesser impact on ecological functions and requiring application of mitigation sequencing. As shoreline modifications occur, all feasible measures to protect ecological shoreline functions and ecosystem-wide processes shall be incorporated.
5. Those shoreline modifications that have a lesser impact on ecological functions shall be given preference.
6. All feasible measures to protect ecological shoreline functions and ecosystem-wide processes as modification occur shall be incorporated

6.2 BREAKWATERS, JETTIES, WEIRS, AND GROINS

A. Policies

1. Allow breakwaters, jetties, weirs and groins to be located waterward of the OHWM only where necessary to support water-dependent uses, public access, shoreline stabilization, public safety, or other specific public purpose.
2. Consider alternative structures with less impact where physical conditions make such alternatives feasible.

B. Regulations

1. New, expanded or replacement structures shall only be allowed if it can be demonstrated that they will not result in a net loss of shoreline ecological functions and that they

support water-dependent uses, public access, public safety, shoreline stabilization, or other specific public purpose.

2. Breakwaters, jetties, weirs and groins shall be limited to the minimum size necessary.

3. Breakwaters, jetties, weirs and groins must be designed to protect critical areas, and shall implement mitigation sequencing to achieve no net loss of ecological functions.

4. Proposed designs for new or expanded structures shall be designed by qualified professionals, including both an engineer and a biologist.

6.3 DREDGING AND DREDGE MATERIAL DISPOSAL

A. Policies

1. Site and design new development to avoid or, if that is not possible, to minimize the need for new and maintenance dredging.

2. Ensure dredging and dredge material disposal is done in a manner that avoids or minimizes significant ecological impacts. Impacts that cannot be avoided should be mitigated in a manner that assures no net loss of shoreline ecological functions.

3. Discourage the disposal of dredge material on shorelands or wetlands within a channel migration zone.

B. Regulations

1. As regulated in this SMP, dredging is the removal of bed material from below the OHWM or wetlands using other than unpowered, hand-held tools for one of the allowed dredging activities listed in Subsection (B)(4) below. This Section is not intended to cover other removals of bed material waterward of the OHWM or wetlands that are incidental to the construction of an otherwise authorized use or modification (e.g. shoreline crossings, bulkhead replacements). These in-water substrate modifications should be conducted pursuant to applicable general and specific use and modification regulations of this SMP.

2. New development must be sited and designed to avoid or, if that is not possible, to minimize the need for new and maintenance dredging.

3. Dredging must be done in a manner that avoids or minimizes significant ecological impacts. Impacts that cannot be avoided must be mitigated in a manner that assures no net loss of shoreline ecological functions.

4. Dredging may only be permitted for the following activities:

   a. Development of new or expanded water-dependent industries of economic importance to the region only when there are no feasible alternatives or other alternatives may have a greater ecological impact.
   b. Development of essential public facilities when there are no feasible alternatives.
   c. Maintenance of irrigation reservoirs, drains, canals, or ditches for agricultural purposes.
   d. Restoration or enhancement of shoreline ecological functions and processes benefiting water quality and/or fish and wildlife habitat.
   e. Trenching to allow the installation of necessary underground utilities if no alternative, including boring, is feasible; impacts to fish and wildlife habitat are avoided to the maximum extent possible; and the installation does not alter the natural rate, extent, or opportunity of channel migration.

5. Dredging for the primary purpose of obtaining fill material is prohibited, except when the material is necessary for the restoration of ecological functions. The site where the fill is to be placed must be located waterward of the OHWM. The project must be either associated with a Model Toxics Control Act or Comprehensive Environmental Response, Compensation, and Liability Act habitat restoration project or, if approved through a Shoreline Conditional Use Permit, any other significant habitat enhancement project.

6. Dredge material disposal within shoreline jurisdiction is only permitted as outlined in Subsection B.5 and under the following conditions:

   a. Shoreline ecological functions and processes will be preserved, restored or enhanced, including protection of surface and groundwater; and

   b. Erosion, sedimentation, floodwaters or runoff will not increase adverse impacts to shoreline ecological functions and processes or property.

7. All applications for dredging or dredge material disposal shall include the following information, in addition to other application requirements:

   a. A description of the purpose of the proposed dredging activities.

   b. A site plan outlining the perimeter of the area proposed to be dredged and the dredge material disposal area, if applicable.

   c. A description of proposed dredging operations, including, but not limited to:

      i. The method of removal.

      i. The length of time required.

      ii. The quantity of material to be initially removed.

      iii. The frequency and quantity of projected maintenance dredging.

   d. A description of proposed dredge material disposal, including, but not limited to:

      i. Size and capacity of disposal site.

      ii. Means of transportation to the disposal site.

      iii. Future use of the site and conformance with land use policies and regulations, if applicable.

   e. Plans for the protection and restoration of the shoreline environment during and after dredging operations.

   f. An assessment of potential impacts to ecological functions or processes from the proposal.

   g. A mitigation plan to address identified impacts, if necessary.

6.4 FILL AND EXCAVATION

A. Policies

1. Allow fill when it is demonstrated to be the minimum extent necessary to accommodate an allowed shoreline use or development and with assurance of no net loss of shoreline ecological functions and processes.

2. Encourage fill when it is associated with restoration projects.

B. Regulations

1. All fills shall be located, designed and constructed to protect shoreline ecological functions and ecosystem-wide processes, including channel migration. Any adverse impacts to shoreline ecological functions must be mitigated.

2. Fills in wetlands, floodways, channel migration zones or waterward of the OHWM may be allowed only when necessary to support one or more of the following:
   a. Water-dependent uses.
   b. Public access.
   c. Cleanup and disposal of contaminated sediments as part of an interagency environmental clean-up plan.
   d. Disposal of dredged material considered suitable under, and conducted in accordance with, the Dredged Material Management Program of the Department of Natural Resources and/or the Dredged Material Management Office of the U.S. Army Corps of Engineers.
   e. Expansion or alteration of transportation facilities of statewide significance currently located in shoreline jurisdiction where alternatives to fill are infeasible.
   f. Ecological restoration or enhancement when consistent with an approved restoration plan.
   g. Maintenance or installation of flood hazard reduction measures consistent with a comprehensive flood hazard management plan and this SMP.
   h. Protection of cultural resources when fill is the most feasible method to avoid continued degradation, disturbance or erosion of a site. Such fills must be coordinated with any affected Indian tribes.
3. Upland fills not located within wetlands, floodways, or channel migration zones may be allowed provided they are:
   a. Part of an allowed shoreline use or modification, or necessary to provide protection to cultural resources.
   b. Located outside applicable buffers, unless specifically allowed in buffers.
4. All fills, except fills for the purpose of shoreline restoration, must be designed:
   a. To be the minimum size necessary to implement the allowed use or modification.
   b. To fit the topography so that minimum alterations of natural conditions will be necessary.
   c. To not adversely affect hydrologic conditions or increase the risk of slope failure, if applicable.
5. Unless site characteristics dictate otherwise, fill material within surface waters or wetlands shall be sand, gravel, rock, or other clean material with a minimum potential to degrade water quality and shall be obtained from a state-authorized source.

6.5 SHORELINE RESTORATION AND ENHANCEMENT

A. Policies

1. Promote restoration and enhancement actions that improve shoreline ecological functions and processes and target the needs of sensitive plant, fish and wildlife species as identified by Washington Department of Fish and Wildlife, Washington Department of Natural Resources, affected tribes, and/or U.S. Fish and Wildlife Service.
2. Ensure restoration and enhancement of shorelines is designed using principles of landscape and conservation ecology and restores or enhances chemical, physical, and biological watershed processes that create and sustain shoreline habitat structures and functions.

3. Seek funding to implement restoration and enhancement projects, particularly those that are identified in the Shoreline Restoration Plan of this SMP or in other pertinent plans. Funding may be sought by the Town or other entities.

4. Develop application processing guidelines that will streamline the review of restoration-only projects.

5. Allow for the use of tax incentive programs, mitigation banking, grants, land swaps, or other programs, as they are developed, to encourage restoration and enhancement of shoreline ecological functions and to protect habitat for fish, wildlife and plants.

B. Regulations

1. Applicability. Shoreline habitat and natural systems enhancement projects include those activities proposed and conducted specifically for the purpose of establishing, restoring or enhancing habitat for priority species in shorelines. Such projects may include shoreline modification actions such as modification of vegetation, removal of non-native or invasive plants, shoreline stabilization, dredging, and filling, provided that the primary purpose of such actions is clearly restoration of the natural character and ecological functions of the shoreline. This Section does not apply to mitigation.

2. Shoreline restoration and enhancement projects must be designed using the best available scientific and technical information, and implemented using best management practices.

3. All shoreline restoration and enhancement projects must protect the integrity of adjacent natural resources, including aquatic habitats and water quality.

4. Shoreline restoration and enhancement shall not significantly interfere with the normal public use of the navigable waters of the state without appropriate mitigation.

5. Long-term maintenance and monitoring shall be included in restoration or enhancement proposals.

6. Relief for OHWM shifts. Applicants seeking to perform restoration projects are advised to work with the Town to assess whether and how the proposed project is allowed relief under RCW 90.58.580, in the event that the project shifts the OHWM landward.

6.6 SHORELINE STABILIZATION

A. Policies

1. Locate and design new development to avoid the need for future shoreline stabilization to the extent feasible.

2. Use structural shoreline stabilization measures only when nonstructural methods are infeasible. Nonstructural methods include building setbacks, structure relocation, groundwater management, and other measures.

3. Ensure soft structural shoreline stabilization measures are used prior to hard stabilization measures unless demonstrated to be insufficient.

4. Allow new or expanded structural shoreline stabilization only where demonstrated to be necessary to support or protect an allowed primary structure or a legally existing shoreline use that is in danger of loss or substantial damage, or for reconfiguration of the shoreline for mitigation or enhancement purposes.

5. Ensure all proposals for structural shoreline stabilization, both individually and cumulatively, do not result in a net loss of ecological functions.

B. Regulations

1. New development must be located and designed to avoid the need for future shoreline stabilization, if feasible.
   a. Land subdivisions must be designed based on a geotechnical report to assure that future development of the created lots will not require shore stabilization for reasonable development to occur.
   b. New development adjacent to steep slopes or bluffs must be set back sufficiently to ensure that shoreline stabilization is unlikely to be necessary during the life of the structure, as demonstrated in a geotechnical report.
2. New development that would require shoreline stabilization that would cause significant impacts to adjacent or down-current properties and shoreline areas is prohibited.
3. All proposals for shoreline stabilization structures, both individually and cumulatively, must not result in a net loss of ecological functions, and must be the minimum size necessary. Soft approaches shall be used unless demonstrated not to be sufficient to protect primary structures, dwellings, and businesses.
4. New or enlarged structural shoreline stabilization measures shall not be allowed, except as follows
   a. To protect an existing primary structure, including residences, when conclusive evidence, documented by a geotechnical analysis, is provided that the structure is in danger from shoreline erosion caused by currents or waves. Normal sloughing, erosion of steep bluffs, or shoreline erosion itself, without a scientific or geotechnical analysis, is not demonstration of need. The geotechnical analysis must evaluate on-site drainage issues and address drainage problems away from the shoreline edge before considering hard or soft structural shoreline stabilization.
   b. In support of new nonwater-dependent development, including single-family residences, when all of the conditions below apply:
      i. The erosion is not being caused by upland conditions, such as loss of vegetation and drainage.
      ii. Nonstructural measures, such as placing the development farther from the shoreline, reducing the size or scope of the proposal, planting vegetation, or installing on-site drainage improvements, are not feasible or not sufficient.
      iii. The need to protect primary structures from damage due to erosion is demonstrated through a geotechnical report. The damage must be caused by natural processes, such as currents or waves.
   c. In support of water-dependent development when all of the conditions below apply:
      i. The erosion is not being caused by upland conditions, such as loss of vegetation and drainage.
      ii. Nonstructural measures, such as planting vegetation, or installing on-site drainage improvements, are not feasible over time or sufficient.
      iii. The need to protect primary structures from damage due to erosion is demonstrated through a geotechnical report.
   d. To protect projects for the restoration of ecological functions or for hazardous substance remediation projects pursuant to Chapter 70.105D RCW when nonstructural measures,

planting vegetation, or installing on-site drainage improvements, are not feasible or not sufficient to adequately address erosion causes or impacts.

5. New hard structural shoreline stabilization measures shall not be authorized, except when a report confirms that that there is a significant possibility that a primary structure will be damaged within three years as a result of shoreline erosion in the absence of such hard structural shoreline stabilization measures, or where waiting until the need is immediate results in the loss of opportunity to use measures that would avoid impacts on ecological functions. Where the geotechnical report confirms a need to prevent potential damage to a primary structure, but the need is not as immediate as three years, that report may still be used to justify more immediate authorization to protect against erosion using soft measures.

6. An existing shoreline stabilization structure, hard or soft, may be replaced with a similar structure if there is a demonstrated need to protect principal uses or structures from erosion caused by currents or waves. While replacement of shoreline stabilization structures may meet the criteria for exemption from a Shoreline Substantial Development Permit, such activity is not exempt from the policies and regulations of this SMP.

   a. For purposes of this Section, "replacement" means the construction of new structure to perform a shoreline stabilization function of existing structure that can no longer adequately serve its purpose. Any additions to or increases in the size of existing shoreline stabilization measures shall be considered new structures.

   b. Replacement shall be regulated as a new shoreline stabilization measure, except for the requirement to prepare a geotechnical analysis. A geotechnical analysis is not required for replacements of existing hard or soft structural shoreline stabilization with a similar or softer measure if the applicant demonstrates need to protect principal uses or structures from erosion caused by waves or other natural processes operating at or waterward of the OHWM.

   c. Replacement hard structural shoreline stabilization measures shall not encroach waterward of the OHWM or waterward of the existing shoreline stabilization measure unless the residence was occupied prior to January 1, 1992, and there are overriding safety or environmental concerns. In such cases, the replacement structure shall abut the existing shoreline stabilization structure. All other replacement hard structural shoreline stabilization measures shall be located at or landward of the existing shoreline stabilization structure.

   d. Hard and soft shoreline stabilization measures may allow some fill waterward of the OHWM to provide enhancement of shoreline ecological functions through creation of nearshore shallow-water habitat and shoreline rearing habitat for salmonids.

7. Repair and maintenance of existing shoreline stabilization measures may be allowed, subject to the following standards. While repair and maintenance of shoreline stabilization structures may meet the criteria for exemption from a Shoreline Substantial Development Permit, such activity is not exempt from the policies and regulations of this SMP.

   a. Repair and maintenance includes modifications to an existing shoreline stabilization measure that are designed to ensure the continued function of the measure by preventing failure of any part. Limitations on repair and maintenance include:

   b. If within a three-year time period, more than 50 percent of the length of an existing structure is removed, including its footing or bottom course of rock, prior to placement of new stabilization materials, such work will not be considered repair and maintenance

and shall be considered replacement. Work that only involves the removal of material above the footing or bottom course of rock does not constitute replacement.

c. Any additions to or increases in the size of existing shoreline stabilization measures shall be considered new structures.

d. The placement of a new shoreline stabilization structure landward of a failing shoreline stabilization structure shall be considered a new structure, not maintenance or repair.

e. Areas of temporary disturbance within the shoreline buffer shall be expeditiously restored to their pre-project condition or better.

8. Structural shoreline stabilization design and construction standards:

a. Structural shoreline stabilization measures shall not extend waterward more than the minimum amount necessary to achieve effective stabilization, except for those elements that enhance shoreline ecological functions and minimize impacts.

b. Stairs or other water access measures may be incorporated into shoreline stabilization measures, but shall not extend waterward of the measure or the OHWM.

c. All structural shoreline stabilization measures must minimize and mitigate any adverse impacts to ecological functions resulting from short-term construction activities. Techniques may include compliance with timing restrictions, use of best management practices, and stabilization of exposed soils following construction.

9. In addition to other submittal requirements, the applicant shall submit the following as part of a request to construct a new, enlarged, or replacement shoreline stabilization measure:

a. For a new or enlarged hard or soft structural shoreline stabilization measure, a geotechnical report prepared by a qualified professional with a Washington state engineering license. The report shall include the following:

i. An assessment of the necessity for structural shoreline stabilization by estimating time frames and rates of erosion and reporting on the urgency associated with the specific situation.

ii. An assessment of the cause of erosion, looking at processes occurring both waterward and landward of the OHWM, and documentation of the OHWM field determination.

iii. An assessment of alternative measures to shoreline stabilization.

iv. Where structural shoreline stabilization is determined to be necessary, the assessment must evaluate the feasibility of using soft shoreline stabilization measures in lieu of hard structural shoreline stabilization measures.

v. Design recommendations for minimum sizing of hard structural or soft structural shoreline stabilization materials, including gravel and cobble beach substrates necessary to dissipate wave energy, eliminate scour, and provide long-term shoreline stability.

b. For replacements of existing hard structural shoreline stabilization measures with a similar measure, the applicant shall submit a written narrative providing a demonstration of need. The narrative must be prepared by a qualified professional. The demonstration of need shall consist of the following:

i. An assessment of the necessity for continued structural shoreline stabilization, considering site-specific conditions such as water depth, orientation of the shoreline, wave fetch or flow velocities, and location of the nearest primary structure.

ii. An assessment of erosion potential resulting from the action of waves or other natural processes operating at or waterward of the OHWM in the absence of the hard

structural shoreline stabilization, and documentation of the OHWM field determination.

iii. An assessment of alternative measures to shoreline stabilization.

iv. An assessment of the feasibility of using soft shoreline stabilization measures in lieu of hard structural shoreline stabilization measures.

v. Design recommendations for minimizing impacts of any necessary hard structural shoreline stabilization.

vi. The demonstration of need may be waived when an existing hard structural shoreline stabilization measure is proposed to be repaired or replaced using soft structural shoreline stabilization measures, resulting in significant restoration of shoreline ecological functions or processes.

c. For all structural shoreline stabilization measures, including soft structural shoreline stabilization, detailed construction plans, including, but not limited to, the following:

i. Plan and cross-section views of the existing and proposed shoreline configuration, showing accurate existing and proposed topography and OHWMs.

ii. Detailed construction sequence and specifications for all materials, including gravels, cobbles, boulders, logs, and vegetation.

7. Administration and Permitting

7.1 GENERAL COMPLIANCE

RCW 90.58.140(3) requires the Town to establish a Program, consistent with the rules adopted by the Washington Department of Ecology, for the administration and enforcement of shoreline development.

7.2 ADMINISTRATIVE AUTHORITY AND RESPONSIBILITY

A. The Town shall designate an SMP Administrator, which shall be the Town's mayor or his or her designee. The SMP Administrator or his/her designee is hereby vested with the authority to:

1. Administrate this SMP.

2. Grant or deny exemptions from Shoreline Substantial Development Permit requirements of this SMP.

3. To grant, grant with conditions, or deny Shoreline Substantial Development Permits and time extensions to shoreline permits and their revisions.

4. Make field inspections as needed, and prepare or require reports on shoreline permit applications.

5. Make written recommendations to the Town Council. The SMP Administrator shall make recommendations to the Town Council regarding Shoreline Variances and Shoreline Conditional Use Permits. The SMP Administrator shall recommend SMP amendments to the Town Council.

6. Advise interested persons and prospective applicants as to the administrative procedures and related components of this SMP.

7. Determine and collect fees for all necessary permits as provided in Town ordinances or resolutions. The determination of which fees are required shall be established by resolution of the Town Council.

8. Make administrative decisions and interpretations of the policies and regulations of this SMP and the SMA.

B. The responsible SEPA official or his/her designee is authorized to conduct environmental review of all use and development activities subject to this SMP, pursuant to WAC 197-11 and RCW 43.21(C). The responsible official is designated in accordance with the Malden Municipal Code, or by the Town Council.

C. The Mayor is authorized to:

1. Decide on appeals of administrative decisions issued by the SMP Administrator.

2. Review the SMP as part of regular SMP updates required by RCW 90.58.080 as a major element of the Town's planning and regulatory program, and make recommendations for amendments thereof to the Town Council.

D. The Town Council is authorized to:

1. Grant or deny Shoreline Variances and Shoreline Conditional Use Permits under this SMP.

2. Initiate an amendment to this SMP according to the procedures prescribed in WAC 173-26-100.

3. Adopt all amendments to this SMP, after consideration of the recommendation of the Mayor. Amendments shall become effective 14 days from the date of the Washington Department of Ecology's written notice of final approval.

7.3 ADMINISTRATION

A. This Master Program shall be administered according to the standards and criteria in RCW 90.58 and WAC 173-27.

B. In addition to the requirements of the Act, permit review, implementation, and enforcement procedures affecting private property must be conducted in a manner consistent with all relevant constitutional and other legal limitations on the regulation of private property. The *Advisory Memorandum and Recommended Process for Evaluating Proposed Regulatory or Administrative Actions to Avoid Unconstitutional Takings of Private Property* (State of Washington Office of the Attorney General 2006) provides "…an orderly, consistent process that better enables

government to evaluate proposed regulatory or administrative actions to assure that these actions do not result in unconstitutional takings of private property."

C. Shoreline Substantial Development Permits and Shoreline Conditional Use Permits shall be subject to all of the applicable requirements of the Malden Municipal Code and Section 7.6 (Shoreline Permits and Exemptions) of this Chapter.

D. Shoreline Variances shall be processed in the same manner as a variance from the Town's zoning code and shall be subject to all applicable provisions of Malden Municipal Code and Section 7.6 (Shoreline Permits and Exemptions) of this Chapter.

E. Appeals to the Shoreline Hearings Board of a final decision on a Shoreline Substantial Development Permit, Shoreline Conditional Use Permit, Shoreline Variance, or a decision on an appeal of an administrative action, may be filed by the applicant or any aggrieved party pursuant to RCW 90.58.180 within thirty (30) days of receipt of the final decision by the Town or by Ecology as provided for in RCW 90.58.140(6).

F. The effective date of the Town's decision shall be the date of filing with the Department of Ecology as defined in RCW 90.58.140.

7.4 ENFORCEMENT, VIOLATIONS, AND PENALTIES

The Shoreline Management Act calls for a cooperative program between the Town and the Department of Ecology. It provides for a variety of means of enforcement, including civil and criminal penalties, orders to cease and desist, orders to take corrective action, and permit rescission.

A. The Town of Malden and/or Ecology is authorized to enforce the provisions of this Chapter, the ordinances and resolutions codified in it, and any rules and regulations promulgated there pursuant to the enforcement and penalty provisions of WAC 173-27-270 (Order to cease and desist), 173-27-280 (Civil penalty), and 173-27-290 (Appeal of civil penalty).

B. Enforcement action by Ecology or the Town may be taken whenever a person has violated any provision of the Act or this Master Program. The choice of enforcement action and the severity of any penalty should be based on the nature of the violation, the damage or risk to the public or to public resources, and/or the existence or degree of bad faith of the persons subject to the enforcement action.

C. When enforcement is undertaken by the Town, this Program will be enforced by the mechanisms identified in (A) above, in addition to other means and procedures that may be set forth in the Malden Municipal Code, and does not preclude other means of enforcement.

7.5 SHORELINE ACTIVITY TRACKING

A. Tracking

The Town will track all shoreline permits and exemption activities to evaluate whether the SMP is achieving no net loss of shoreline ecological functions. Activities to be tracked include development, conservation, restoration and mitigation, such as:

1. New shoreline development
2. Shoreline variances and the nature of the variance
3. Compliance issues

4. Net changes in impervious surface areas, including associated stormwater management
5. Net changes in fill or armoring
6. Net change in linear feet of flood hazard structures
7. Net changes in vegetation (area, character)

B. No Net Loss Report

Using the information collected in Subsection (A), a no net loss report shall be prepared every eight years as part of the Town's SMP evaluation. Should the no net loss report show degradation of the baseline condition documented in the Shoreline Analysis Report, changes to the SMP and/or Shoreline Restoration Plan shall be proposed at the time of the eight-year update to prevent further degradation and address the loss in ecological functions.

7.6 SHORELINE PERMITS AND EXEMPTIONS

A. Noticing Requirements

1. Applicants shall follow the noticing requirements of the Town. At a minimum, the Town shall provide notice in accordance with WAC 173-27-110, and shall be consistent with noticing requirements in the Malden Municipal Code.
2. Per WAC 173-27-120, the Town shall comply with special procedures (public notice timelines, appeal periods, etc.) for limited utility extension and bulkheads.

B. Exemptions from a Substantial Development Permit - Application and Interpretation

1. Exemptions shall be construed narrowly. Only those developments that meet the precise terms of one or more of the listed exemptions may be granted exemption from the Shoreline Substantial Development Permit process.
2. An exemption from the Shoreline Substantial Development Permit process is not an exemption from compliance with the SMA or this SMP, or from any other regulatory requirements. To be authorized, all uses and development must be consistent with the policies, requirements and procedures of this SMP and the SMA. A development or use that is listed as a conditional use pursuant to this SMP or is an unlisted use, must obtain a Shoreline Conditional Use Permit even though the development or use does not require a Shoreline Substantial Development Permit. When a development or use is proposed that does not comply with the bulk, dimensional and performance standards of this SMP, such development or use can only be authorized by approval of a Shoreline Variance.
3. The burden of proof that a development or use is exempt from the permit process is on the applicant.
4. If any part of a proposed development is not eligible for exemption, then a Shoreline Substantial Development Permit is required for the entire proposed development project.
5. The Town may attach conditions to the approval of exempted developments and/or uses as necessary to assure consistency of the project with the SMA and this SMP. Additionally, nothing shall interfere with the Town's ability to require compliance with all other applicable laws and plans.

C. Exemptions Listed

The shoreline activities listed in WAC 173-2040, WAC 173-27-040 and RCW 90.58.030(3)(e), 90.58.140(9), 90.58.147, 90.58.355 and 90.58.515, or successor laws shall be considered exempt from the requirement to obtain a Shoreline Substantial Development Permit, but shall obtain a Letter of Exemption, as provided for in Subsections (B) and (D) of this Section.

D. Letter of Exemption

1. A required Letter of Exemption shall be issued by the Town when a development application is determined to meet the listed criteria for an exemption and the development is required to obtain a section 404 permit under the Federal Water Pollution Control Act of 1972 (generally applying to any project which may involve discharge of dredge or fill material to any water or wetland area).

2. The Letter shall indicate the specific exemption provision from WAC 173-27-040 that is being applied to the development and provide a summary of the Town's analysis of the consistency of the project with this SMP and the SMA. The Letter of Exemption shall be sent to the applicant and the Department of Ecology.

3. Letters of Exemption may contain conditions and/or mitigating measures of approval to achieve consistency and compliance with the provisions of the Program and Act.

E. Permit application submittal requirements

1. Shoreline applications are classified as follows:

   a. Shoreline Substantial Development Permit
   b. Shoreline Conditional Use Permit
   c. Shoreline Variance
   d. Shoreline Exemption

2. Applications for Shoreline Substantial Development Permits, Shoreline Conditional Use Permits, Shoreline Variances, or Shoreline Exemptions shall be in a form prescribed and supplied by the Town.

3. The contents of permit applications must be consistent with WAC 173-27-180 and the Malden Municipal Code.

4. Where this SMP requires more information than the minimum required by WAC 173-27-180, the SMP Administrator may vary or waive requirements beyond WAC 173-27-180 if the information is unnecessary to process the application.

5. The SMP Administrator may require additional specific information if required by the nature of the proposal or the presence of sensitive ecological features, to ensure compliance with other local requirements or the provisions of this SMP.

6. At the time of application, the applicant must pay the application fee.

F. Shoreline Substantial Development Permit

1. A Shoreline Substantial Development Permit shall be required for all development of shorelines, unless the proposal is specifically exempt per Subsection 7.6(B) (Exemptions from a Substantial Development Permit) or is not subject to the SMP per Section 1.5 (Applicability).

2. A Shoreline Substantial Development Permit shall be granted only when the development proposed is consistent with:
   a. The policies and procedures of the SMA;
   b. The provisions of WAC 173-27; and
   c. This SMP.
3. The Town may attach conditions to the approval of permits as necessary to assure consistency of the project with the SMA and this SMP.
4. Nothing shall interfere with the Town's ability to require compliance with all other applicable plans and laws.
5. The Clerk-Treasurer maintains records of project review actions resulting in issuance of permits, including shoreline substantial development permits.

G. Shoreline Conditional Use Permit

A Shoreline Conditional Use Permit is intended to allow for the flexibility and the exercise of judgement in the application of regulations in a manner consistent with the policies of the Act and this Master Program. While not prohibited, these uses are an exception to the general rule.

1. Uses specifically classified or set forth in this SMP as conditional uses shall be subject to review and condition by the Town Council and by Ecology. Shoreline Conditional Use Permit applications shall be processed consistent with this SMP and Malden Municipal Code.
2. Other uses which are not classified or listed or set forth in this SMP may be authorized as conditional uses provided the applicant can demonstrate consistency with the requirements of this Section and the requirements for conditional uses contained in this SMP.
3. Uses which are specifically prohibited by this SMP may not be authorized as a conditional use.
4. Uses which are classified or set forth in this SMP as conditional uses may be authorized provided that the applicant demonstrates that the criteria in WAC 173-27-160(1) have been met.
5. In the granting of all Shoreline Conditional Use Permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if Shoreline Conditional Use Permits were granted for other developments in the area where similar circumstances exist, the total of the conditional uses shall also remain consistent with the policies of RCW 90.58.020 and shall not produce substantial adverse effects to the shoreline environment.

H. Shoreline Variance

1. The purpose of a variance is to grant relief to specific bulk or dimensional requirements set forth in this SMP where there are extraordinary or unique circumstances relating to the property such that the strict implementation of this SMP would impose unnecessary hardships on the applicant or thwart the policies set forth in RCW 90.58.020. Variances from the use regulations of the SMP are prohibited. Shoreline Variance applications shall be processed consistent with this SMP and the Malden Municipal Code.

2. Shoreline Variance permits should be granted in circumstances where denial of the permit would conflict with the goals of the SMA as listed in RCW 90.58.020. In all instances, the applicant must demonstrate that extraordinary circumstances exist and the public interest shall suffer no substantial detrimental effect.

3. Shoreline Variance permits for development and/or uses that will be located landward of the OHWM, as defined in RCW 90.58.030(2)(b), and/or landward of any wetland as defined in RCW 90.58.030(2)(h), may be authorized provided the applicant can demonstrate that the criteria in WAC 173-27-170(2) have been met.

4. Shoreline Variance permits for development and/or uses that will be located waterward of the OHWM, as defined in RCW 90.58.030(2)(b), or within any wetland as defined in RCW 90.58.030(2)(h), may be authorized provided the applicant can demonstrate that the criteria in WAC 173-27-170(3) have been met.

5. 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 variances were granted to other developments and/or uses in the area where similar circumstances exist, the total of the variances shall also remain consistent with the policies of RCW 90.58.020 and shall not cause substantial adverse effects to the shoreline environment.

I. Ecology Review Procedures Applicable to all Shoreline Permits

All applications for a permit or a permit revision shall be submitted by the County to Ecology upon a final decision by the County consistent with WAC 173-27-130 (Filing with department), and then processed by Ecology consistent with WAC 173-27-190 (Permits for substantial development, conditional use, or variance) and WAC 173-27-200 (Department review of conditional use and variance permits).

J. Time Limits

Construction and activities authorized by a Shoreline Substantial Development Permit, Shoreline Conditional Use Permit, or Shoreline Variance are subject to the time limitations of WAC 173-27-090 (Time requirements of a permit).

K. Revisions to Permits

All applications for a permit revision shall be submitted consistent with WAC 173-27-100 (Revisions to permits).

7.7 NON-CONFORMING USES, STRUCTURES, LOTS

A. Nonconforming uses or developments are shoreline uses or development which were lawfully constructed or established prior to the effective date of this Master Program as approved by Ecology, or amendments to this Master Program as approved by Ecology, but which do not conform to present regulations or standards of this Master Program. Such uses shall conform to all applicable Town regulations.

B. Non-conforming Uses and Structures

1. Structures that were legally established and are used for a conforming use but which are nonconforming with regard to setbacks, buffers or yards; area; bulk; height or density may be maintained and repaired and may be enlarged or expanded provided that said

enlargement does not increase the extent of nonconformity by further encroaching upon or extending into areas where construction or use would not be allowed for new development or uses.

2. Uses and developments that were legally established and are nonconforming with regard to the regulations of this Master Program may continue as legal nonconforming uses. Such uses shall not be enlarged or expanded, except that nonconforming single-family residences that are located landward of the ordinary high water mark may be enlarged or expanded in conformance with applicable bulk and dimensional standards by the addition of space to the main structure or by the addition of normal appurtenances as defined in WAC 173-27-040(2)(g) upon approval of a Shoreline Conditional Use Permit.

3. A use which is listed as a conditional use but which existed prior to adoption of this Master Program or any relevant amendment and for which a Shoreline Conditional Use Permit has not been obtained shall be considered a nonconforming use. A use which is listed as a conditional use but which existed prior to the applicability of this Master Program to the site and for which a Shoreline Conditional Use Permit has not been obtained shall be considered a nonconforming use.

4. A structure for which a variance has been issued shall be considered a legal nonconforming structure and the requirements of this Section shall apply as they apply to preexisting nonconformities.

5. A structure which is being or has been used for a nonconforming use may be used for a different nonconforming use only upon the approval of a Shoreline Conditional Use Permit. A Shoreline Conditional Use Permit may be approved only upon a finding that:

   a. No reasonable alternative conforming use is practical; and
   b. The proposed use will be at least as consistent with the policies and provisions of the Act and this Master Program and as compatible with the uses in the area as the preexisting use.

C. Non-conforming Lots

An undeveloped lot, tract, parcel, site, or division of land located landward of the ordinary high water mark which was established in accordance with local and state subdivision requirements prior to the effective date of the Act or this Master Program, but which does not conform to the present lot size standards, may be developed if permitted by other land use regulations of the Town and so long as such development conforms to all other requirements of this Master Program and the Act.

D. Alteration, Expansion, or Restoration of Nonconforming Uses and Structures.

1. Alteration, expansion, or restoration of nonconforming structures and uses are not allowed except as set forth in this Master Program and in Malden Municipal Code.

2. A nonconforming structure which is moved any distance must be brought into conformance with this Master Program and the Act.

3. If a nonconforming development is damaged to an extent not exceeding seventy-five percent of the replacement cost of the original development, it may be reconstructed to those configurations existing immediately prior to the time the development was damaged, provided that application is made for the permits necessary to restore the

development within six months of the date the damage occurred, all permits are obtained, and the restoration is completed within two years of permit issuance.

E. Pre-existing Legal Residential Uses. Notwithstanding Subsections (A) to (D) of this Section, the following shall apply only to pre-existing legal residential structures constructed prior to the effective date of this Master Program:

1. Residential structures and appurtenant structures that were legally established and are used for a conforming use, but that do not meet standards for the following shall be considered a conforming structure: Setback, buffers, or yards; area; bulk; height; or density.

2. The Town shall allow redevelopment, expansion, or change with the class of occupancy, of the residential structure if it is consistent with the SMP, including requirements for no net loss of shoreline ecological functions. For example, vertical, lateral or anterior expansions that do not intrude farther into a required buffer and which are consistent with the maximum height allowed by this SMP and underlying zoning may be allowed.

3. Pre-existing legal residential structures that are damaged or destroyed may be replaced to their prior size and location, in the same location and dimensions as existed before the damage occurred, if restoration begins within one year of the date the damage occurred. Upon showing a hardship or conditions causing delay, which are beyond the control of the applicant, the mayor may grant an extension of time for up to one additional year.

4. Nothing in this Section shall:

   a. Restrict the ability of this Chapter to limit development, expansion, or replacement of over-water structures located in hazardous areas, such as floodplains and geologically hazardous areas; or

   b. Affect the application of other federal, state, or Town requirements to residential structures.

7.8 DEBRIS ACCUMULATION AND OBSTRUCTION

Pursuant to Chapter 7.48 RCW, Chapter 9.66 RCW, and Chapter RCW 90.58, the following activities shall be prohibited in shoreline jurisdiction:

A. The outside storage within shoreline jurisdiction of abandoned, discarded or unused objects or equipment, excluding farm-related equipment or material; including but not limited to tires, household furniture, stoves, refrigerators and freezers.

B. The outside accumulation within the shoreline jurisdiction of two or more cubic yards of waste, rubbish and trash, including but not limited to bottles, cans, glass, wire, broken crockery, broken plaster and other similar abandoned, discarded or unused material, unless kept in covered bins or receptacles.

C. The presence of any unattached vehicle or boat parts or six or more abandoned or inoperable vehicles and/or boats that have remained in the same location or on the same contiguously owned property for more than sixty consecutive days, within shoreline jurisdiction.

D. An act, or omitting to perform a duty, which act or omission either:

1. Annoys, injures or endangers the comfort, repose, health or safety of others;

2. Unlawfully interferes with, befouls, obstructs or tends to obstruct, or render dangerous for passage, any stream, public park, street or highway; or

3. In any way renders other persons insecure in life, or in the use of property.

7.9 AMENDMENT OF SHORELINE MASTER PROGRAM

A. Purpose of Amendment.

This SMP carries out the policies of the Shoreline Management Act for the Town of Malden. It shall be reviewed and amended as appropriate in accordance with the review periods required in the SMA and in order to:

1. Assure that this SMP complies with applicable law and guidelines in effect at the time of the review; and

2. Assure consistency of this SMP with the Town's codes and development regulations adopted under chapter 36.70A RCW, if applicable, and other local requirements.

B. Effective Date.

This SMP and all amendments thereto shall become effective 14 days from the date of the Washington Department of Ecology's written notice of final approval.

C. Amendment Process.

1. Future amendments to this SMP may be initiated by any of the following:

   a. Town of Malden SMP Administrator;
   b. The Mayor of Malden; or
   c. The Town Council.

2. Applications for SMP amendments shall specify the changes requested and any and all reasons therefore. Applications shall be made on forms specified by the Town. Such applications shall contain information specified in the Town's procedures for regulation and information necessary to meet minimum public review procedures.

3. The Town shall accomplish the amendments in accordance with the procedures of the Shoreline Management Act and implementing rules including, but not limited to, RCW 90.58.080 and WAC 173-26-100.

4. Proposals for amendment of this SMP shall be heard by the Town Council in a public hearing. After conducting a hearing and evaluating testimony regarding the application, including a recommendation from the SMP Administrator, the Town Council shall submit its recommendation to the Town Council, who shall approve or deny the proposed amendment following their open record hearing.

5. Prior to approval, the Town shall make a finding that the amendment would accomplish (a) or (b), and must accomplish (c):

   a. The proposed amendment would make this Program more consistent with the SMA and/or any applicable Department of Ecology SMP Guidelines; or
   b. The proposed amendment would make this Program more equitable in its application to persons or property due to changed conditions in an area; and
   c. This Program and any future amendment hereto shall ensure no net loss of shoreline ecological functions and processes on a programmatic basis in accordance with the baseline functions present as of August 2014 (the Final Shoreline Analysis Report).

6. After approval or disapproval of a SMP amendment by the Department of Ecology as provided in RCW 90.58.090, the Town shall publish a notice that the SMP amendment has been approved or disapproved by Ecology.

APPENDIX A
DEFINITIONS

Appendix A - Definitions

A

Abandon. Abandon means to terminate the use of a structure by an affirmative act, such as changing to a new use; or to cease, terminate, or vacate a use or structure through non-action.

Accessory dwelling unit. An additional, smaller, subordinate dwelling unit on a lot with, or located in, an existing or new single-family dwelling.

Accessory use or structure. A building, part of a building or structure or use which is subordinate to, and the use of which is common or incidental to that of the main building, structure or use on the same lot of record or part of the same development.

Act. The Washington State Shoreline Management Act, chapter 90.58 RCW.

Activity. A specified pursuit in which a person partakes in the shoreline jurisdiction. Types of activities include development, modification, restoration, recreation, and other human activities.

Adjacent. To be nearby and not necessarily abutting.

Administrator or SMP Administrator. The Town designee charged with the responsibility of administering the Town of Malden SMP.

Advance mitigation. Mitigation of an anticipated critical area impact or hazard completed according to an approved critical area report and prior to site development.

Agricultural activity. Agricultural uses and practices including, but not limited to: Producing, breeding, or increasing agricultural products; rotating and changing agricultural crops; allowing land used for agricultural activities to lie fallow in which it is plowed and tilled but left unseeded; allowing land used for agricultural activities to lie dormant as a result of adverse agricultural market conditions; allowing land used for agricultural activities to lie dormant because the land is enrolled in a local, state, or federal conservation program, or the land is subject to a conservation easement; conducting agricultural operations; maintaining, repairing, and replacing agricultural equipment; maintaining, repairing, and replacing agricultural facilities, provided that the replacement facility is no closer to the shoreline than the original facility; and maintaining agricultural lands under production or cultivation.

Agricultural equipment and agricultural facilities. Includes, but is not limited to:

1. The following used in agricultural operations: Equipment; machinery; constructed shelters, buildings, and ponds; fences; upland finfish rearing facilities; water diversion, withdrawal, conveyance, and use equipment and facilities including, but not limited to, pumps, pipes, tapes, canals, ditches, and drains;
2. Corridors and facilities for transporting personnel, livestock, and equipment to, from, and within agricultural lands;
3. Farm residences and associated equipment, lands, and facilities; and
4. Roadside stands and on-farm markets for marketing fruit or vegetables.

Agricultural land. Those specific land areas on which agricultural activities are conducted as of the date of adoption of this SMP pursuant to the Shoreline Master Program Guidelines as evidenced by aerial photography or other documentation. After the effective date of this Master Program, land converted to agricultural use is subject to compliance with the requirements of this Master Program.

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

Agricultural related industries. Agricultural related industries include:

1. Packaging plants, which may include, but are not limited to washing, sorting, crating, and other functional operations such as drying, field crushing, or other preparation in which the chemical and physical composition of the agriculture product remains essentially unaltered. Does not include processing activities or slaughter houses, animal reduction yards, and tallow works.
2. Processing plants, which may include, but are not limited to, those activities which involve the fermentation or other substantial chemical and physical alteration of the agricultural product. Does not include slaughter houses or rendering plants.
3. Storage facilities, which may include those activities which involve the warehousing of processed and/or packaged agricultural products.

Agricultural stands. A structure used for the retail sale of agricultural and related incidental products, excluding livestock that is primarily grown on the same property where the stand is located.

Alkali wetlands. Alkali wetlands are characterized by the occurrence of shallow saline water. In eastern Washington these wetlands contain surface water with specific conductance that exceeds 3000 micromhos/cm. The salt concentrations in these wetlands have resulted from a relatively long-term process of groundwater surfacing and evaporating.

Alteration. Any human activity that results or is likely to result in an impact upon the existing condition of a shoreline is an alteration. Alterations include, but are not limited to grading, filling, dredging, draining, channelizing, applying herbicides or pesticides or any hazardous substance, discharging pollutants except stormwater, grazing domestic animals, paving, constructing, applying gravel, modifying for surface water management purposes, cutting, pruning, topping, trimming, relocating or removing vegetation or any other human activity that results or is likely to result in an impact to existent vegetation, hydrology, fish or wildlife, or fish or wildlife habitat. Alterations do not include walking, fishing, or any other passive recreation or other similar activities.

Alteration, critical area. Any human-induced change in an existing condition of a critical area or its buffer. Alterations include, but are not limited to, grading, filling, channelizing, dredging, clearing (vegetation), construction, compaction, excavation or any other activity that changes the character of the critical area.

Amendment. A revision, update, addition, deletion, and/or reenactment to an existing shoreline master program.

Appeal. A request for a review of the interpretation of any provision of this chapter or a request for a variance.

Applicant. A person who files an application for permit under this Chapter and who is either the owner of the land on which that proposed activity would be located, a lessee of the land, the person who would actually control and direct the proposed activity or the authorized agent of such a person.

Approval. An official action by a local government legislative body agreeing to submit a proposed SMP or amendments to the Department of Ecology for review and official action pursuant to this Chapter; or

an official action by the Department of Ecology to make a local government SMP effective, thereby incorporating the approved SMP or amendment into the state master program.

Aquaculture. The culture or farming of fish, shellfish, or other aquatic plants and animals. Aquaculture is dependent on the use of the water area and, when consistent with control of pollution and prevention of damage to the environment, is a preferred use of the water area.

Aquifer. A geological formation, group of formations, or part of a formation that is capable of yielding a significant amount of water to a well or spring.

Aquifer recharge areas. Areas having a critical recharging effect on aquifers used for potable water where an aquifer that is a source of drinking water is vulnerable to contamination that would affect the certifiable potability of water (WAC 365-190-110).

Aquifer susceptibility. The ease with which contaminants can move from the land surface to the aquifer based solely on the types of surface and subsurface materials in the area. Susceptibility usually defines the rate at which a contaminant will reach an aquifer unimpeded by chemical interactions with the vadose zone media.

Associated wetlands. Those wetlands which are in proximity to and either influence or are influenced by tidal waters or a lake or stream subject to the Shoreline Management Act.

B

Base flood or 100-year flood. The designation on the Federal Emergency Management Act (FEMA) Flood Insurance Maps that denote areas subject to floods having a one percent chance of being equaled or exceeded in any given year. The base flood is determined for existing conditions, unless a basin plan including project flows under future developed conditions has been completed and adopted by the Town; in these cases, future flow projections shall be used. In areas where the Flood Insurance Study includes detailed base flood calculations, those calculations may be used until projections of future flows are completed and approved by the Town. Designations of base flood areas on flood insurance map(s) always include the letters A or V.

Best management practices or BMP. Conservation practices or systems of practices and management measures that control soil loss and reduce water quality degradation caused by high concentrations of nutrients, animal waste, toxics, and sediment; minimize adverse impacts to surface water and ground water flow, circulation patterns, and to the chemical, physical, and biological characteristics of wetlands; protect trees and vegetation designated to be retained during and following site construction; and provide standards for proper use of chemical herbicides within critical areas.

Boat launch. An area that is developed for boating ingress and egress from the water.

Boating facilities. Developments and uses that support access to shoreline waters for purposes of boating, including marinas, community docks serving more than four single-family residences or multi-family units, public piers, and community or public boat launch facilities.

Bog. A low-nutrient, acidic wetland with organic soils and characteristic bog plants, which is sensitive to disturbance and impossible to re-create through compensatory mitigation.

Breakwater. A fixed or floating off-shore structure that protects the shore from wave action or currents.

Buffer. A designated area used to separate incompatible uses or protect resources or development. Buffers are generally undeveloped areas. There are different types of buffers for different purposes:

1. Buffers which protect sensitive natural resources (critical areas) from the adverse impacts of development are generally undeveloped open space which are ecologically part of the protected resource;
2. Buffers which protect the integrity of development from certain natural hazards such as slope instability, floods or fire prone areas, and which ensure that buildings and development avoid the hazardous condition;
3. Buffers to separate incompatible uses, such as residential from industrial, airports, or certain activities common to commercial agriculture, are generally open or sparsely populated.

Bulkhead. An erosion protection structure placed parallel to the shore consisting of concrete, timber, steel, rock, or other permanent material not readily subject to erosion.

C

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

Clearing. The cutting or removal of vegetation or other organic plant materials by physical, mechanical, chemical, or any other means.

Dairy. A farm operation producing milk products for commercial sales.

Commercial use. Those activities engaged in commerce and trade and involving the exchange of money, including but not limited to, retail, services, wholesale, or business trade activities.

Compensation project. Actions necessary to replace project-induced critical area and buffer losses, including land acquisition, planning, construction plans, monitoring, and contingency actions.

Compensatory mitigation. Replacing project-induced losses or impacts to a critical area, and includes, but is not limited to, the following:

1. Restoration – Actions performed to reestablish wetland functional characteristics and processes that have been lost by alterations, activities, or catastrophic events within an area that no longer meets the definition of a wetland;
2. Creation – Actions performed to intentionally establish a wetland at a site where it did not formerly exist;
3. Enhancement – Actions performed to improve the condition of existing degraded wetlands so that the functions they provide are of a higher quality; and
4. Preservation – Actions taken to ensure the permanent protection of existing, high-quality wetlands.

Comprehensive master program update. A master program that fully achieves the procedural and substantive requirements of the Department of Ecology's SMP Guidelines effective January 17, 2004, as now or hereafter amended.

Conditional use. A use, development, or substantial development which is classified as a conditional use or is not classified within this Master Program.

Conservation easement. A legal agreement that the property owner enters into to restrict uses of the land. Such restrictions can include, but are not limited to, passive recreation uses such as trails or scientific uses and fences or other barriers to protect habitat. The easement is recorded on a property

deed, runs with the land, and is legally binding on all present and future owners of the property, therefore, providing permanent or long-term protection.

Creation. The manipulation of the physical, chemical, or biological characteristics to develop a wetland on an upland or deepwater site, where a wetland did not previously exist. Creation results in a gain in wetland acreage and function. A typical action is the excavation of upland soils to elevations that will produce a wetland hydroperiod and hydric soils, and support the growth of hydrophytic plant species.

Critical aquifer recharge area (CARA). Areas designated by WAC 365-190-100 that are determined to have a critical recharging effect on aquifers used for potable water as defined by WAC 365-190-030(3).

Critical areas. Critical areas include the following areas and ecosystems: (a) wetlands, (b) areas with a critical recharging effect on aquifers used for potable water, (c) fish and wildlife habitat conservation areas, (d) frequently flooded areas, and (e) geologically hazardous areas.

Critical habitat. Habitat necessary for the survival of endangered, threatened, rare, sensitive or monitor species.

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

D

Data maps. That series of maps maintained by the Town or its referenced repository for the purpose of graphically depicting the boundaries of critical areas.

Developable area. A site or portion of a site that may be utilized as the location of development.

Development. The construction or exterior alteration of structures; dredging; drilling; dumping; filling; removal of any sand, gravel, or minerals; bulkheading; driving of piling; placing of obstructions; or any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to the Act at any stage of water level. See also "Substantial development." Development does not include the following activities:

1. Interior building improvements that do not change the use or occupancy;
2. Exterior structure maintenance activities, including painting and roofing as long as it does not expand the existing footprint of the structure;
3. Routine landscape maintenance of established, ornamental landscaping, such as lawn mowing, pruning and weeding; and
4. Maintenance of the following existing facilities that does not expand the affected area: septic tanks (routine cleaning); wells; and individual utility service connections.

Development permit. Any permit issued by the Town, or other authorized agency, for construction, land use, or the alteration of land.

Development regulation. Any controls placed on development or land use activities by the Town of Malden, including but not limited to, zoning ordinances, official controls, and subdivision ordinances.

Dock. A structure that is built over or floating upon the water and is used as a landing or moorage place for commercial and pleasure craft, marine transport, fishing, swimming, and other recreational uses. A dock typically consists of a combination of one or more of the following elements: pier, ramp, and/or float.

Dredging. Removal of earth from the bed of a stream, lake, or pond for the purpose of flood control; navigation; utility installation (excluding on-site utility features serving a primary use, which are accessory utilities and shall be considered a part of the primary use); the construction or modification of essential public facilities and regional transportation facilities; restoration (of which the primary restoration element is sediment/soil removal rather than being incidental to the primary restoration purpose); and/or obtaining minerals, construction aggregate, or landfill materials. This definition does not include excavation for mining within a pond created by a mining operation approved under this title or under a local zoning ordinance, or a mining operation in existence before Zoning, Shorelines, or Critical Areas permits were required for such operations. Dredging, as regulated in this SMP under Section 6.3, is not intended to cover other excavations waterward of the ordinary high water mark that are incidental to construction of an otherwise authorized use or modification (e.g., bulkhead replacements, large woody debris installations, boat launch ramp installation, pile placement).

E

Ecological functions or shoreline functions. Ecological functions or shoreline functions means work performed or the role played by the physical, chemical, and biological processes that contribute to the maintenance of the marine, aquatic and terrestrial environments that constitute the shoreline's natural ecosystem. See WAC 173-26-020(13).

Ecologically intact. Shoreline areas that retain the majority of their natural shoreline functions, as evidenced by the shoreline configuration and the presence of native vegetation. Generally, but not necessarily, ecologically intact shorelines are free of structural shoreline modifications, structures, and intensive human uses. In forested areas, they generally include native vegetation with diverse plant communities, multiple canopy layers, and the presence of large woody debris available for recruitment to adjacent waterbodies. Recognizing that there is a continuum of ecological conditions ranging from near natural conditions to totally degraded and contaminated sites, this term is intended to delineate those shoreline areas that provide valuable functions for the larger aquatic and terrestrial environments which could be lost or significantly reduced by human development. Whether or not a shoreline is ecologically intact is determined on a case-by-case basis.

Ecosystem-wide processes. The suite of naturally occurring physical and geologic processes of erosion, transport, and deposition; and specific chemical processes that shape landforms within a specific shoreline ecosystem and determine both the types of habitat and the associated ecological functions.

Enhancement. The manipulation of the physical, chemical, or biological characteristics of a wetland to heighten, intensify or improve specific function(s) or to change the growth stage or composition of the vegetation present. Enhancement is undertaken for specified purposes such as water quality improvement, flood water retention, or wildlife habitat. Enhancement results in a change in wetland function(s) and can lead to a decline in other wetland functions, but does not result in a gain in wetland acres. Examples are planting vegetation, controlling non-native or invasive species, and modifying site elevations to alter hydroperiods.

Erosion. The process in which soil particles are mobilized and transported by natural agents such as wind, rain, splash, frost action or stream flow.

Erosion hazard areas. At least those areas containing soils identified by the U.S. Department of Agriculture Natural Resources Conservation Service as having a "severe" rill and inter-rill erosion hazard and may experience significant erosion (WAC 365-190-030(5)). Erosion hazard areas also include channel migration zones.

Excavation. The mechanical removal of earth materials.

Exempt. Exempt developments are those set forth in WAC 173-27-040 and RCW 90.58.030(3)(e), 90.58.140(9), 90.58.147, 90.58.355, and 90.58.515 which are not required to obtain a Shoreline Substantial Development Permit, but which must otherwise comply with applicable provisions of the SMA and this Master Program.

F

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

Feasible. An action, such as a development project, mitigation, or preservation requirement, that meets all of the following conditions:

1. The action provides a reasonable likelihood of achieving its intended purpose; and
2. The action does not physically preclude achieving the project's primary intended legal action.

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

Federal Emergency Management Agency (FEMA). The agency that oversees the administration of the National Flood Insurance Program.

Fill. The addition of soil, sand, rock, gravel, sediment, earth-retaining structure, or other material to an area waterward of the OHWM, in wetlands, or on shorelands in a manner that raises the ground elevation or creates dry land.

Fish and wildlife. Any member of the animal kingdom, including without limitation, any vertebrate, mollusk, crustacean, arthropod, or other invertebrate, and includes any part, product, egg, or offspring thereof, or the dead body parts thereof.

Fish and Wildlife Habitat Conservation Areas. Areas necessary for maintaining species in suitable habitats within their natural geographic distribution so that isolated subpopulations are not created as designated by WAC 365-190-130 and Section 5 of Appendix B.

Fish habitat. Habitat that is used by fish at any life stage at any time of the year, including potential habitat likely to be used by fish that could be recovered by restoration or management and includes off-channel habitat.

Float. An anchored (not directly to the shore) floating platform that is free to rise and fall with water levels and is used for water-dependent recreational activities such as boat mooring, swimming, or diving. Floats may stand alone with no over-water connection to shore or may be located at the end of a pier or ramp.

Flood, Flooding. A general and temporary condition of partial or complete inundation of normally dry land areas from the unusual and rapid accumulation of runoff of surface waters from any source and/or the overflow of inland or tidal waters.

Flood control. Any undertaking for the conveyance, control, and dispersal of floodwaters caused by abnormally high direct precipitation or stream overflow.

Flood Insurance Rate Map (FIRM). The official map on which the Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

Flood Insurance Study. The official report by the Federal Insurance Administration that includes flood profiles, the Flood Boundary Floodway Map, and the water surface elevation of the base flood.

Floodplain. Synonymous with the one hundred-year floodplain and means that land area susceptible to inundation with a one percent chance of being equaled or exceeded in any given year. The limit of this area shall be based upon flood ordinance regulation maps or a reasonable method which meets the objectives of the SMA.

Floodway. The area, as identified in a master program, that either:

1. Has been established in federal emergency management agency (FEMA) flood insurance rate maps (FIRMs) or floodway maps; or
2. Consists of those portions of a river valley lying streamward from the outer limits of a watercourse upon which flood waters are carried during periods of flooding that occur with reasonable regularity, although not necessarily annually, said floodway being identified, under normal condition, by changes in surface soil conditions or changes in types or quality of vegetative ground cover condition, topography, or other indicators of flooding that occurs with reasonable regularity, although not necessarily annually.

Regardless of the method used to identify the floodway, the floodway shall not include those lands that can reasonably be expected to be protected from flood waters by flood control devices maintained by or maintained under license from the federal government, the state, or a political subdivision of the state.

Forest practices. Any activity conducted on or directly pertaining to forest land and relating to growing, harvesting, or processing timber, including but not limited to: road and trail construction; harvesting, or processing timber, including but not limited to road and trail construction; harvesting, final and intermediate; precommercial thinning; reforestation; fertilization; prevention and suppression of diseases and insects; salvage of trees; and brush control. Forest practice shall not include preparatory work such as tree marking, surveying and road flagging, and removal or harvesting of incidental vegetation from forest lands such as berries, ferns, greenery, mistletoe, herbs, mushrooms, and other products which cannot normally be expected to result in damage to forest soils, timber, or public resources.

Frequently flooded area. Lands in the floodplain subject to a one percent (1%) or greater chance of flooding in any given year and those lands that provide important flood storage, conveyance, and attenuation functions, as determined by the SMP Administrator in accordance with WAC 365-190-110. Frequently flooded areas perform important hydrologic functions and may present a risk to persons and property. Classifications of frequently flooded areas include, at a minimum, the 100-year floodplain designations of the Federal Emergency Management Agency and the National Flood Insurance Program.

Functions and values. The services provided by critical areas to society, including, but not limited to, improving and maintaining water quality, providing fish and wildlife habitat, supporting terrestrial and aquatic food chains reducing flooding and erosive flows, wave attenuation, historical or archaeological importance, educational opportunities, and recreation.

G

Geologically hazardous areas. Areas that may not be suited to development consistent with public health, safety, or environmental standards, because of their susceptibility to erosion, sliding,

earthquake, or other geological events as designated by WAC 365-190-120. Types of geologically hazardous areas include: erosion, landslide, seismic, mine, and volcanic hazards.

Geotechnical report or geotechnical analysis. A scientific study or evaluation conducted by a qualified expert that includes a description of the ground and surface hydrology and geology, the affected land form and its susceptibility to mass wasting, erosion, and other geologic hazards or processes, conclusions and recommendations regarding the effect of the proposed development on geologic conditions, the adequacy of the site to be developed, the impacts of the proposed development, alternative approaches to the proposed development, and measures to mitigate potential site-specific and cumulative geological and hydrological impacts of the proposed development, including the potential adverse impacts to adjacent and down-current properties. Geotechnical reports shall conform to accepted technical standards and must be prepared by qualified professional engineers or geologists who have professional expertise about the regional and local shoreline geology and processes.

Grade. The vertical location of the ground surface.

1. Natural grade is the grade as it exists or may have existed in its original undisturbed condition.
2. Existing grade is the current grade in either its undisturbed, natural condition or as disturbed by some previous modifications.
3. Rough grade is a stage where grade conforms approximately to an approved plan.
4. Finish grade is the final grade of the site which conforms to an approved plan.
5. Average grade level is the average of the natural or existing topography of the portion of the lot, parcel, or tract of real property which will be directly under the proposed building or structure. In the case of structures to be built over water, average grade level shall be the elevation of the OHWM. Calculation of the average grade level shall be made by averaging the ground elevations at the midpoint of all exterior walls of the proposed building or structure.

Grading. Excavation or fill or any combination thereof, including by not limited to the establishment of a grade following the demolition of a structure or preparation of a site for construction or development.

Groin. A barrier type structure extending from the stream bank into a waterbody for the purpose of the protection of a shoreline and adjacent uplands by influencing the movement of water or deposition of materials. Groins may serve a variety of functions, including bank protection, pool formation, and increased roughness, and may include rock structures, debris jams, or pilings that collect wood debris. See also “Weir.”

Groundwater. Water in a saturated zone or stratum beneath the surface of land or a surface waterbody.

Guidelines. Those standards adopted by the Department of Ecology into the Washington Administrative Code (WAC) to implement the policy of Chapter 90.58 RCW for regulation of use of the shorelines of the state prior to adoption of master programs. Such standards also provide criteria for local governments and the Department of Ecology in developing and amending master programs.

H

Habitat. The place or type of site where a plant or animal naturally or normally lives and grows.

Hard stabilization. Shoreline erosion control practices using hardened structures that armor and stabilize the shoreline from further erosion. Hard structural shoreline stabilization typically uses

concrete, boulders, dimensional lumber or other materials to construct linear, vertical or near-vertical faces. These include bulkheads, rip-rap, and similar structures.

Hazard areas. Areas designated as frequently flooded areas or geologically hazardous areas due to potential for erosion, landslide, seismic activity, mine collapse, or other geological condition.

Hazardous substances. Any liquid, solid, gas, or sludge, including any material, substance, product, commodity, or waste, regardless of quantity, that exhibits any of the physical, chemical, or biological properties described in WAC 173-303-090 or 173-303-100.

Height. Measured from average grade level to the highest point of a structure: Provided, that television antennas, chimneys, and similar appurtenances shall not be used in calculating height, except where such appurtenances obstruct the view of the shoreline of a substantial number of residences on areas adjoining such shorelines, or the SMP specifically requires that such appurtenances be included: Provided further, that temporary construction equipment is excluded in this calculation.

Houseboat or floating home. A dwelling unit constructed on a float that is moored, anchored, or otherwise secured in the water and is not designed for navigation under its own power.

Hydric soil. A soil that is saturated, flooded, or ponded long enough during the growing season to develop anaerobic conditions in the upper part. The presence of hydric soil shall be determined following the methods described in accordance with WAC 173-22-035 as amended.

I

Impervious surface. Any alterations to the surface of a soil that prevents or retards the entry of water into it compared to its undisturbed condition, or any reductions in infiltration that cause water to run off the surface in greater quantities or at an increased rate of flow compared to that present prior to development. Common impervious surfaces include, but are not limited to, rooftops, walkways, patios, driveways, parking lots or storage areas, concrete or asphalt paving, gravel roads, packed earthen materials, and oiled macadam or other surfaces which similarly impede the natural infiltration of stormwater.

Industrial. Activities and facilities for processing, manufacturing, and storage of finished or semi-finished goods, wholesale trade or storage, together with necessary accessory uses such as parking, loading, and waste storage treatment.

Infiltration. The downward entry of water into the immediate surface of soil.

In-kind compensation. To replace critical areas with substitute areas whose characteristics and functions closely approximate those destroyed or degraded by a regulated activity.

In-stream structures. Structures placed by humans within a stream or river waterward of the OHWM that either causes or has the potential to cause water impoundment or the diversion obstruction, or modification of water flow. In-stream structures may include those for hydroelectric generation, irrigation, water supply, flood control, transportation, utility service transmission, fish habitat enhancement, recreation, or other purpose.

Inter-rill. Areas subject to sheet wash.

Isolated wetlands. Those wetlands that are outside of and not contiguous to any 100-year floodplain of a lake, river, or stream and have no contiguous hydric soil or hydrophytic vegetation between the wetland and any surface water, including other wetlands.

J

Jetty. Jetties are structures generally built singly or in pairs perpendicular to the shore at harbor entrances or river mouths to prevent the shoaling or accretion of littoral drift. Jetties also protect channels and inlets from storm waves and cross-currents.

L

Landslide hazard areas. Areas that are potentially subject to risk of mass movement due to a combination of geologic, topographic, and hydrologic factors. These areas are typically susceptible to landslides because of a combination of factors including: bedrock, soil, slope gradient, slope aspect, geologic structure, groundwater, or other factors. For a complete definition, see WAC 365-190-120(6).

Livestock. Animals that are raised for use and profit.

Lot. A parcel of land which is separately described by a deed instrument or sales contract, which deed or contract has been officially recorded with the Whitman County Auditor, considered as a unit of real property, and legally described in metes and bounds; or a parcel of land shown by number of an officially recorded short plat or subdivision plat.

M

Maintenance, normal. Those usual acts to prevent a decline, lapse, or cessation from a legally established condition.

Manufactured home. A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term “manufactured home” does not include a “recreational vehicle.”

Master Program. The comprehensive shoreline master program for the Town of Malden, including the use regulations together with maps, diagrams, charts or other descriptive material and text.

Mature forested wetland. A wetland where at least one acre of the wetland surface is covered by woody vegetation greater than 20 feet in height with a crown cover of at least 30 percent and where at least 8 trees/acre are 80 to 200 years old OR have average diameters (dbh) exceeding 21 inches (53 centimeters) measured from the uphill side of the tree trunk at 4.5 feet up from the ground.

May. An action that is acceptable, provided it conforms to the provisions of the WAC 173-26 and this Program.

Mining. The removal of naturally occurring minerals and materials from the earth for commercial value. Mining includes processing and batching. Mining does not include large excavations for structures, foundations, parking areas, etc.

Mitigation. The use of any or all of the following actions that are listed in descending order of preference:

1. Avoiding the impact altogether by not taking a certain action or parts of an action;
2. Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;
3. Rectifying the impact by repairing, rehabilitating or restoring the affected sensitive area;
4. Reducing or eliminating the impact over time by preservation or maintenance operations during the life of the development proposal;

5. Compensating for the impact by replacing, enhancing or providing substitute sensitive areas and environments;
6. Monitoring the impact and taking appropriate corrective measures.

Mixed-use project. A use that contains a mix of water-dependent and nonwater-oriented uses use or developments. This definition is only applicable within shoreline jurisdiction as defined by this SMP.

Monitoring. The ongoing evaluation of the impacts of a development proposal on the biological, hydrologic and geologic conditions of critical areas or shoreline areas. Monitoring includes the gathering of baseline data and the assessment of the performance of required mitigation measures through the collection and analysis of data for the purposes of understanding and documenting changes in natural ecosystems and features.

Moorage facility. A marina, pier, dock, mooring buoy, or any other similar fixed moorage site.

Must. A mandate; the action is required.

N

Native vegetation. Plant species which are indigenous to the region and which reasonably could have been expected to naturally occur on the site. Native vegetation does not include noxious weeds.

No net loss of ecological function. A public policy goal and requirement to maintain the aggregate total of the Town's shoreline ecological functions at its current level. For purposes of reviewing and approving this SMP, "current" is equivalent to the date of the Final Shoreline Analysis Report (August 2014). As a development standard, it means the result of the application of Mitigation Sequencing, in which impacts of a particular shoreline development and/or use, whether permitted or exempt, are identified and addressed, such that there are no adverse impacts on shoreline ecological functions or processes relative to the legal condition just prior to the proposed development and/or use.

Nonconforming lots. An undeveloped lot, tract, parcel, site, or division of land located landward of the OHWM which was established in accordance with local and state subdivision requirements prior to the effective date of the Act or this Master Program, but which does not conform to the present lot size standards, may be developed if permitted by other land use regulations of the Town and so long as development conforms to all other requirements of this Master Program and the Act.

Nonconforming use or development. A use or development that was lawfully constructed or established prior to the effective date of this SMP, or amendments thereto, but which does not conform to present regulations or standards of this Program.

Nonwater-oriented uses. Those uses that are not water-dependent, water-related, or water-enjoyment.

O

Off-Site compensation. To replace critical areas or ecological functions away from the site on which a critical area or shoreline has been impacted.

On-Site compensation. To replace critical areas or ecological functions at or adjacent to the site on which a critical area or shoreline has been impacted.

Ordinary high water mark (OHWM). That mark which is found by examining the bed and banks of waterbodies and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland in respect to vegetation as that condition exists on June 1, 1971, as it may naturally change thereafter, or as it may change thereafter in accordance with permits issued by the Town or the

Department of Ecology: PROVIDED, that in any area where the ordinary high water mark cannot be found, the ordinary high water mark adjoining fresh water shall be the line of mean high water.

P

Permeability. The capacity of an aquifer or confining bed to transmit water. It is a property of the aquifer or confining bed and is independent of the force causing movement.

Permit. An approval for which there is a minimum standard, as stated in any of the relevant ordinances or state law, which must be met in order for the approval to be given.

Permit, Shoreline. Any Shoreline Substantial Development Permit, Shoreline Variance, Shoreline Conditional Use Permit, or revision authorized under chapter 90.58 RCW.

Pier. A fixed platform above the water and supported by piles, usually perpendicular to the shoreline. See also "Dock."

Potable water. Water that is safe and palatable for human consumption.

Poultry. Domesticated birds such as chickens, turkeys, ducks, and geese for meat or eggs for consumption.

Preservation. The removal of a threat to, or preventing the decline of, wetland conditions by an action in or near a wetland. This term includes the purchase of land or easements, repairing water control structures or fences, or structural protection. Preservation does not result in a gain of wetland acres but may result in a gain in functions over the long term.

Priority Habitat and Species (PHS). As classified by the Department of Fish and Wildlife Priority Habitats and Species Program, priority species require protective measures for their perpetuation due to their population status, sensitivity to habitat alteration, and/or recreational, commercial, or tribal importance including state endangered, threatened, sensitive, and candidate species; animal aggregations considered vulnerable; and those species of recreational, commercial, or tribal importance that are vulnerable. Priority habitats are those of habitat types or elements with unique or significant value to a diverse assemblage of species. A priority habitat may consist of a unique vegetation type or dominant plant species, a described successional stage, or a specific structural element. The PHS list is a catalog of habitats and species considered to be priorities for conservation and management. (WAC 173-26-020(28-29))

Prohibited. Developments, modifications and uses that are viewed as inconsistent with the definitions, policies or intent of the shoreline environment designation or Town zoning are not considered appropriate and are not allowed.

Project area. All areas within fifty (50) feet of the area proposed to be disturbed, altered, or used by the proposed activity or the construction of any proposed structures. When the action binds the land, such as a subdivision, short subdivision, binding site plan, planned unit development, or rezone, the project area shall include the entire parcel, at a minimum.

Preferred uses. Those uses which are consistent with control of pollution and prevention of damage to the natural environment, or are unique to or dependent upon use of the shoreline. "Preferred" uses include single-family residences, ports, shoreline recreational uses, water-dependent industrial and commercial developments, and other developments that provide public access opportunities.

Provisions. Policies, regulations, standards, guideline criteria or environment designations.

Public access. The ability of the general public to reach, touch, and enjoy the water's edge, to travel on the waters of the state, and to view the water and the shoreline from adjacent locations.

Public interest. The interest shared by the citizens of the state or community at large in the affairs of government, or some interest by which their rights or liabilities are affected including, but not limited to, an effect on public property or on health, safety, or general welfare resulting from a use or development.

Public Trust Doctrine. A common law principle generally holding that the waters of the state are a public resource owned by and available to all citizens equally for the purposes of navigation, conducting commerce, fishing, recreation and similar uses. While the doctrine protects public use of navigable water bodies below the OHWM, the doctrine does not allow the public to trespass over privately owned uplands to access the tidelands.

Q

Qualified professional. A person with experience and training in the pertinent scientific discipline, and who is a qualified scientific expert with expertise appropriate for the relevant subject in accordance with WAC 365-195-905. A qualified professional must have obtained a B.S. or B.A. or equivalent degree in biology, engineering, environmental studies, fisheries, geomorphology, or related field, and have at least two years of related work experience.

1. A qualified professional for wetlands must be a professional wetland scientist with at least two years of full-time work experience as a wetlands professional, including delineating wetlands using the state or federal manuals, preparing wetlands reports, conducting function assessments, and developing and implementing mitigation plans;
2. A qualified professional for habitat must have a degree in biology or a related degree and professional experience related to the subject species;
3. A qualified professional for a geological hazard must be a professional engineer or geologist, licensed in the state of Washington;
4. A qualified professional for critical aquifer recharge areas means a hydrogeologist, geologist, engineer, or other scientist with experience in preparing hydrogeologic assessments.

R

Recharge. The process involved in the absorption and addition of water to groundwater.

Recharge area. An area in which water is absorbed and added to the groundwater reservoir.

Recreation. An experience or activity in which an individual engages for personal enjoyment and satisfaction. Shore-based outdoor recreation includes but is not limited to fishing; various forms of boating, swimming, hiking bicycling, horseback riding, picnicking, watching or recording activities such as photography, painting, bird watching or viewing of water or shorelines, nature study and related activities.

Recreational Development. Commercial and public facilities that are designed and used to provide recreational opportunities to the public.

Recreational vehicle. A vehicle which is:

1. Built on a single chassis;
2. Four hundred square feet or less when measured at the largest horizontal projection;
3. Designed to be self-propelled or permanently towable by a light duty truck; and

4. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

Re-establishment. The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural or historic functions to a former wetland. Re-establishment results in rebuilding a former wetland and results in a gain in wetland acres and functions. Activities could include removing fill, plugging ditches, or breaking drain tiles.

Rehabilitation. The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural or historic functions and processes of a degraded wetland. Rehabilitation results in a gain in wetland function but does not result in a gain in wetland acres. Activities could involve breaching a dike to reconnect wetlands to a floodplain or returning tidal influence to a wetland.

Repair, normal. Restoring a development or structure to a state comparable to its original, legally established condition, including but not limited to its size, shape, configuration, location and external appearance, within a reasonable period after decay or partial destruction, except where repair causes substantial adverse effects to shoreline resource or environment. Replacement of a structure or development may be authorized as a repair where such replacement is the common method of repair for the type of structure or development and the replacement structure or development is comparable to the original structure or development including but not limited to its size, shape, configuration, location and external appearance and the replacement does not cause substantial adverse effects to shoreline resources or environment.

Residential. Buildings, structures or portions thereof that are designed and used as a place for human habitation. Included are single, duplex, or multi-family dwellings, mobile homes, manufactured homes, and other structures that serve to house people, as well as the creation of new residential lots through land division. This definition includes accessory uses common to normal residential use, including but not limited to, residential appurtenances, accessory dwelling units, and home occupations. Residential development also includes the creation of new residential lots through land division.

Restore, restoration, or ecological restoration. The reestablishment or upgrading of impaired ecological shoreline processes or functions. This may be accomplished through measures including, but not limited to, revegetation, removal of intrusive shoreline structures, and removal or treatment of toxic materials. Restoration does not imply a requirement for returning the shoreline area to aboriginal or pre-European settlement conditions.

Rill. Steep-sided channel resulting from accelerated erosion. A rill is generally a few inches deep and not wide enough to be an obstacle to farm machinery. Rill erosion tends to occur on slopes, particularly steep slopes with poor vegetative cover.

Rip-rap. A layer, facing, or protective mound of stone placed on shoulders, slopes, or other such places to protect them from erosion, scour, or sloughing of a structure or embankment.

S

Salmonid. A member of the fish family salmonidae.

Sediment. The fine grained material deposited by water or wind.

Seeps. A spot where water oozes from the earth, often forming the source of a small stream.

Seismic hazard areas. Areas that are subject to severe risk of damage as a result of earthquake-induced ground shaking, slope failure, settlement, or soil liquefaction.

SEPA. Washington State Environmental Policy Act, Chapter 43.21C RCW.

Setback. The distance in feet as measured from a lot line to the sill line of a building, or the closest point of a structure to the lot line. In the case where there is a leased area within a parcel of land, the setback shall be measured from the lease line to the sill of a building, or the closest point of a structure to the lease line.

Shall. A mandate; the action must be done.

Shorelands or shoreland areas. Those lands extending landward for two hundred feet in all directions as measured on a horizontal plane from the ordinary high water mark; floodways and contiguous floodplain areas landward two hundred feet from such floodways; and all wetlands and river deltas associated with the streams and lakes which are subject to the provisions of this chapter; the same to be designated as to location by the Department of Ecology.

Shorelines. All of the water areas of the state, including reservoirs, and their associated shorelands, together with the lands underlying them, except

1. Shorelines of statewide significance [not found in the Town of Malden];
2. Shorelines on segments of streams upstream of a point where the mean annual flow is twenty cubic feet per second or less and the wetlands associated with such upstream segments; and
3. Shorelines on lakes less than twenty acres in size and wetlands associated with such small lakes.

Shoreline areas and shoreline jurisdiction. All “shorelines of the state” and “shorelands” as defined in RCW 90.58.030.

Shoreline Hearings Board. A six member quasi-judicial body, created by the SMA, which hears appeals by any aggrieved party on the issuance of a shoreline permit or enforcement penalty, and appeals by the Town on Department of Ecology approval of master programs, rules, regulations, guidelines or designations under the SMA.

Shorelines of statewide significance. The following shorelines of the state are shorelines of statewide significance:

1. Those lakes, whether natural, artificial, or a combination thereof, with a surface acreage of one thousand acres or more measured at the ordinary high water mark [not found in the Town of Malden];
2. Those natural rivers or segments east of the crest of the Cascade range downstream of a point where the annual flow is measured at two hundred cubic feet per second or more, or those portions of rivers east of the crest of the Cascade range downstream from the first three hundred square miles of drainage area, whichever is longer [not found in the Town of Malden]; and
3. Those shorelands associated with 1 and 2, above.

Shorelines of the state. Total of all “shorelines” and “shorelines of statewide significance” within the state.

Shoreline environment designations. Classification of shorelines established by this SMP in order to provide a uniform basis for applying policies and use regulations within distinctively different shoreline areas.

Shoreline modifications. Those actions that modify the physical configuration or qualities of the shoreline area, usually through the construction of a physical element such as a dike, breakwater, pier,

weir, dredged basin, fill, bulkhead, or other shoreline structure. They can include other actions, such as clearing, grading, or application of chemicals.

Shoreline stabilization. Structural or non-structural modifications to the existing shoreline intended to address erosion impacts to property and dwellings, businesses, or structures caused by natural processes, such as current, flood, wind, or wave action. They are generally located parallel to the shoreline at or near the OHWM.

Should. The particular action is required unless there is a demonstrated compelling reason, based on policy of the Shoreline Management Act and this chapter, against taking the action.

Significant adverse effect/impact. Any noticeable or measureable degradation of an environmental condition, including ecological characteristics, such as vegetation, water quality, or habitat, as well as social values, such as public health, safety, or availability of public access.

Significant vegetation removal. Removal or alteration of trees, shrubs, and/or ground cover by clearing, grading, cutting, burning, chemical means, or other activity that causes significant ecological impacts to functions provided by such vegetation. The removal of invasive or noxious weeds does not constitute significant vegetation removal. Tree pruning, not including tree topping, where it does not affect ecological functions, does not constitute significant vegetation removal.

Slide. The downward mass movement of soil, rock, or snow resulting from failure of that material under stress.

Slope. The inclination of the surface of the land from the horizontal.

SMA. The Washington State Shoreline Management Act, chapter 90.58 RCW.

SMP Administrator. See “Administrator.”

Soft stabilization. Shoreline erosion control and restoration practices that contribute to restoration, protection or enhancement of shoreline ecological functions. Soft structural shoreline stabilization typically includes a mix of gravels, cobbles, boulders, logs and native vegetation placed to provide shore stability in a non-linear, generally sloping arrangement. Linear, vertical faces are an indicator of hard stabilization (see above definition).

Soil survey. The most recent soil survey for the local area or county by the Natural Resources Conservation Service, U.S. Department of Agriculture.

Special flood hazard areas. The land in the floodplain within an area subject to a one percent or greater chance of flooding in any given year. Designations of special flood hazard areas on flood insurance map(s) always include the letters A or V.

Species. Any group of animals or plants classified as a species or subspecies as commonly accepted by the scientific community.

Species, endangered. Any wildlife species native to the state of Washington that is seriously threatened with extinction throughout all or a significant portion of its range within the state (WAC 232-12-297, Section 2.4).

Species of local importance. Those species of local concern designated by the Town due to their population status or their sensitivity to habitat manipulation.

Species, Priority. Any fish or wildlife species requiring protective measures and/or management guidelines to ensure its persistence at genetically viable population levels as classified by the Washington Department of Fish and Wildlife, including endangered, threatened, sensitive, candidate and monitor species, and those of recreational, commercial, or tribal importance.

Species, Threatened. Any wildlife species native to the state of Washington that is likely to become an endangered species within the foreseeable future throughout a significant portion of its range within the state without cooperative management or removal of threats (WAC 232-12-297, Section 2.5).

Species, Sensitive. Any wildlife species native to the state of Washington that is vulnerable or declining and is likely to become endangered or threatened throughout a significant portion of its range within the state without cooperative management or removal of threats (WAC 232-12-297, Section 2.6).

State master program. The cumulative total of all shoreline master programs and amendments thereto approved or adopted by rule by Ecology.

Stockyards. Large yards containing pens, typically adjacent to a slaughterhouse, where livestock is kept and sorted.

Stream. An area where open surface water produces a defined channel or bed, not including irrigation ditches, canals, storm or surface water runoff devices, or other entirely artificial watercourses, unless they are used by salmonids or are used to convey a watercourse naturally occurring prior to construction. A channel or bed need not contain water year-round, provided there is evidence of at least intermittent flow during years of normal rainfall.

Structure. A permanent or temporary edifice or building, or any piece of work artificially built or composed of parts joined together in some definite manner, whether installed on, above, or below the surface of the ground or water, except for vessels (WAC 173-27-030(15)).

Substantial damage. Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50% of the market value of the structure before the damage occurred.

Substantial development. Any development of which the total cost or fair market value exceeds $6,416, or any development which materially interferes with the normal public use of the water or shorelines of the state. The dollar threshold established in RCW 90.58.030(3)(e) must be dusted for inflation by the Office of Financial Management every five years, beginning September 15, 2012, based upon changes in the consumer price index during that time period. (The consumer price index means, for any calendar year, that year's annual average consumer price index, Seattle, Washington area, for urban wage earners and clerical workers, all items compiled by the Bureau of Labor and Statistics, United States Department of Labor.) The Office of Financial Management must calculate the new dollar threshold and transmit it to the Office of the Code Reviser for publication in the Washington State Register at least one month before the new dollar threshold is to take effect. For the purpose of determining whether or not a permit is required, the total cost or fair market value shall be based on the value of development that is occurring on shorelines of the state as defined in RCW 90.58.030(2)(c). The total cost or fair market value of the development shall include the fair market value of any donated or found labor, equipment or materials. See WAC 173-27-040 for a list of developments that are not considered substantial.

Substantial improvement. Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure, either: (1) before the improvement or repair is started, or (2) if the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either: (1) any project for the improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which have been identified by County Environmental Health or

Town staff and which are the minimum necessary to assure safe living conditions, or (2) any alteration of a structure listed in the National Register of Historic Places or a State Inventory of Historic Places.

Substantially degrade. To cause significant ecological impact.

T

Transportation. Roads and railways, related bridges and culverts, fills, embankments, causeways, parking areas, and trails.

U

Unavoidable Impacts. Adverse impacts that remain after all appropriate and practicable avoidance and minimization has been achieved.

Upland. The area above and landward of the OHWM.

Use. The activity or purpose for which land or structures or combination of land and structures are designed, arranged, occupied, or maintained together with any associated site improvement. This definition includes the construction, erection, placement, movement or demolition of any structure or site improvement and any physical alteration to land itself including any grading, leveling, paving or excavation. Use also means any existing or proposed configuration of land, structures, and site improvements, and the use thereof.

Utility. A primary or accessory service or facility that produces, transmits, stores, processes, or disposes of electrical power, gas, water, sewage, communications, oil, and the like.

V

Vadose zone analysis. The characterization of the soil profile above the water table.

Variance. A variance is the means by which an adjustment may be made in the application of the specific regulations of this Code to a particular piece of property, which property, because of special circumstances applicable to it, is deprived of privileges commonly enjoyed by other properties in the vicinity and similar zone classification and which adjustment remedies the difference in privileges; provided, however, that a variance granted shall not authorize a use otherwise prohibited in the shoreline environment designation in which the property is located.

Vegetation. Any and all organic plant life growing at, below, or above soil surface.

Vernal pools. Vernal pool ecosystems are formed when small depressions in the scabrock or in shallow soils fill with snowmelt or spring rains.

Vessel. Includes ships, boats, barges, or any other floating craft which are designed and used for navigation and do not interfere with the normal public use of the water.

Visitor-serving uses. Those uses or businesses that would not be located in the Town if it were not for the presence of tourists or visitors to the region.

W

Water-dependent use. A use or portion of a use which cannot exist in a location that is not adjacent to the water and which is dependent on the water by reason of the intrinsic nature of its operations.

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

general public and the shoreline-oriented space within the project must be devoted to the specific aspects of the use that fosters shoreline enjoyment.

Water-oriented use. Any water-dependent, water-related, or water-enjoyment use.

Water table. That surface in an unconfined aquifer at which the pressure is atmospheric. It is defined by the levels at which water stands in wells that penetrate the aquifer just far enough to hold standing water.

Water quality. The physical characteristics of water within shoreline jurisdiction, including water quantity, hydrological, physical, chemical, aesthetic, recreation-related, and biological characteristics. Where used in this chapter, the term "water quantity" refers only to development and uses regulated under this chapter and affecting water quantity, such as impermeable surfaces and storm water handling practices. Water quantity, for purposes of this chapter, does not mean the withdrawal of ground water or diversion of surface water pursuant to RCW 90.03.250 through 90.03.340.

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

1. The use has a functional requirement for a waterfront location such as the arrival or shipment of materials by water or the need for large quantities of water; or
2. The use provides a necessary service supportive of the water-dependent uses and the proximity of the use to its customers makes its services less expensive and/or more convenient.

Watershed restoration plan. A plan, developed or sponsored by the Washington Departments of Fish and Wildlife, Ecology, Natural Resources, or Transportation; a federally recognized Indian tribe acting within and pursuant to the authority; a city; a county; or a conservation district that provides a general program and implementation measures or actions for the preservation, restoration, re-creation, or enhancement of the natural resources, character, and ecology of a stream, stream segment, drainage area, or watershed for which agency and public review has been conducted pursuant to chapter 43.21C RCW, the State Environmental Policy Act.

Watershed restoration project. A public or private project authorized by the sponsor of a watershed restoration plan that implements the plan or a part of the plan and consists of one or more of the following activities.

1. A project that involves less than ten miles of stream reach, in which less than twenty-five cubic yards of sand, gravel, or soil is removed, imported, disturbed or discharged, and in which no existing vegetation is removed except as minimally necessary to facilitate additional plantings;
2. A project for the restoration of an eroded or unstable stream bank that employs the principles of bioengineering, including limited use of rock as a stabilization only at the toe of the bank, and with primary emphasis on using native vegetation to control the erosive forces of flowing water; or
3. A project primarily designed to improve fish and wildlife habitat, remove or reduce impediments to migration of fish, or enhance the fishery resource available for use by all of the citizens of the state, provided that any structure, or other than a bridge or culvert or instream habitat enhancement structure associated with the project, is less than two hundred square feet in floor area and is located above the OHWM of the stream.

Waterward. Any point located on the water side from the OHWM.

Weir. A structure generally built perpendicular to the shoreline for the purpose of diverting water or trapping sediment or other moving objects transported by water.

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

Wetland edge. The line delineating the outer edge of a wetland established by using the procedures in the currently approved Federal Wetland Delineation Manual.

Wetland functions. The natural processes performed by wetlands and include functions which are important in facilitating food chain production, providing habitat for nesting, rearing and resting site for aquatic, terrestrial or avian species, maintaining the availability and quality of water such as purifying water, acting as recharge and discharge areas for groundwater aquifers and moderating surface water and storm water flows as well as performing other function including but not limited to those set out in U.S. Army Corps of Engineers regulations at 33 C.R.R. Section 320.4(b)(2)(1988).

Wetlands, isolated. Those wetlands that are outside of and not contiguous to any 100-year flood plain of a lake, river, or stream, and have no contiguous hydric soil or hydrophytic vegetation between the wetland and any surface water.

Wetland mitigation bank. A site where wetlands are restored, created, enhanced, or in exceptional circumstances, preserved expressly for the purpose of providing advance mitigation to compensate for future, permitted impacts to similar resources.

APPENDIX B
SHORELINE CRITICAL AREAS POLICIES AND REGULATIONS

Appendix B - Shoreline Critical Areas Policies and Regulations

1. Policies

A. Identify and protect critical fish and wildlife habitat from destruction or encroachment of incompatible uses.

B. Preserve natural wetlands that are important wildlife and game habitat or recreational areas.

C. Protect life and property by avoiding inappropriate developments in areas susceptible to natural disasters and hazards, such as floodplains and steep slopes.

2. General Regulations

A. Purpose, intent and applicability.

1. The purpose of this Appendix B is to designate, classify and protect the functions and values of critical areas within shoreline jurisdiction in a manner consistent with state law while allowing for reasonable use of private property. By adopting this Appendix B, the Town of Malden acknowledges that critical areas provide a variety of important biological and physical functions that benefit the community and its residents, or that they may pose a threat to human safety or property. Critical areas regulated by this Appendix B include:

   a. Wetlands as designated in Section 3 of this Appendix B,
   b. Critical aquifer recharge areas as designated in Section 4 of this Appendix B,
   c. Fish and wildlife habitat conservation areas as designated in Section 5 of this Appendix B,
   d. Frequently flooded areas as designated in Section 6 of this Appendix B, and
   e. Geologically hazardous areas as designated in Section 7 of this Appendix B.

2. All areas within the Town's shoreline jurisdiction meeting the definition of one or more critical areas, regardless of any formal identification, are hereby designated critical areas and are subject to the provisions of this Appendix B.

3. The critical area overlay zone in shoreline jurisdiction consists of that area within 250 feet of designated wetlands and critical wildlife habitat. Aquifer recharge areas, geologically hazardous areas (25-foot buffer) and frequently flooded areas (with Zone A or AE as shown on National Flood Insurance Program maps) are also included. Any development proposed on a parcel of land within shoreline jurisdiction and the critical area overlay zone shall be subject to project review as required in this Appendix B unless specifically exempted.

B. Data Maps.

1. Critical areas shall be designated on a series of data maps and contain the best available graphic depiction of critical areas. These maps are for information and illustrative purposes only and are not regulatory in nature. Copies of these maps shall be available for public reference with the Clerk Treasurer.

2. The critical areas data maps are intended to alert the development community, appraisers, current and prospective property owners of a potential encounter with a use or development limiting factor based on the natural systems. The presence of a critical area or resource designation on the data maps is sufficient foundation for the SMP Administrator to order an analysis of the factor(s) identified prior to acceptance of a development application as being complete and ready for processing under the applicable provisions, sections, and chapters of the Malden Municipal Code.

3. Interpretation of Data Maps.

   a. The SMP Administrator will interpret data maps. An affected property owner or other party with standing has a right to appeal the administrative determination to the town council.

   b. The data maps are to be used as a general guide to the location and extent of critical areas. Critical areas indicated on the data maps are presumed to exist in the locations shown and are protected under all the provisions of this chapter. The exact location of critical areas shall be determined by the applicant as a result of field investigations performed by qualified professionals using the definitions found in this Master Program. All development applications are required to show the boundary(ies) of all critical areas on a scaled drawing prior to the development application being considered "complete" for processing purposes.

4. Application of Data Maps. The conclusion of the SMP Administrator that a parcel of land or a part of a parcel of land that is the subject of a proposed development application is within the boundary(ies) of one or more critical areas as shown on the data maps, shall serve as cause for additional investigation and analysis to be conducted by the applicant. The site-specific analysis shall be limited to those critical areas indicated on the data maps. In the event of multiple designations, the Town will address each subject matter independently and collectively for the purpose of determining development limitations and appropriate mitigating measures.

C. Permitted, conditional and prohibited uses.

Uses allowed by Shoreline Exemption, a Shoreline Substantial Development Permit, or Shoreline Conditional Use Permit, or uses altogether prohibited in the critical areas overlay zone shall be the same as those allowed in the underlying zoning district and environment designation as established in this SMP.

D. General Regulations.

1. Shoreline permits or shoreline exemptions, and any other Town-required permits, for activities within the critical areas overlay zone and shoreline jurisdiction, as defined on the data maps (Subsection 2.B of this Appendix B), shall be subject to review under the provisions of this section, excepting: (1) those activities specifically exempted from a critical areas report in Subsection 2.D(3) of this Appendix B; and (2) agricultural activities. As part of this review, the Town shall:

   a. Verify the information submitted by the applicant;

   b. Evaluate the project area and vicinity for critical areas;

   c. Determine whether the proposed project is likely to impact the functions or values of critical areas; and

   d. Determine if the proposed project adequately addresses the impacts and avoids impacts to the critical area associated with the project.

2. Critical Areas Report.

   a. For those projects determined by the SMP Administrator or designee likely to have an impact to the critical areas, the applicant shall submit critical areas report identifying the precise limits of the critical area and its function and resource value as part of the application. The report shall be prepared by experts with demonstrated qualifications in the area of concern and shall apply the most current, accurate, and complete scientific and technical information available as part of its analysis. Critical areas reports must contain the following:

      i. The name and contact information of the applicant, a description of the proposal, and identification of the permit requested;

      ii. A copy of the site plan for the development proposal including:

         a) A map to scale depicting critical areas, buffers, the development proposal, and any areas to be cleared; and

         b) In the case of commercial or industrial development, a description of the proposed stormwater management plan for the development and consideration of impacts to drainage alterations. No stormwater plan is required for single-family residential construction;

      iii. The dates, names, and qualifications of the persons preparing the report and documentation of any fieldwork performed on the site;

      iv. Identification and characterization of all critical areas, wetlands, waterbodies, and buffers adjacent to the proposed project area;

      v. A statement specifying the accuracy of the report, and all assumptions made and relied upon;

      vi. An assessment of the probable cumulative impacts to critical areas resulting from development of the site and the proposed development;

      vii. An analysis of site development alternatives including a no development alternative;

      viii. A description of reasonable efforts made to apply mitigation sequencing pursuant to Subsection 4.3(B)(4) to avoid, minimize, and mitigate impacts to critical areas;

      ix. Plans for adequate mitigation, as needed, to offset any impacts, in accordance with Subsections 4.3(B)(6) and 2.F(4), including, but not limited to:

         a) The impacts of any proposed development within or adjacent to a critical area or buffer on the critical area; and

         b) The impacts of any proposed alteration of a critical area or buffer on the development proposal, other properties and the environment.

      x. A discussion of the performance standards applicable to the critical area and proposed activity;

      xi. Any additional information required for the critical area as specified in the corresponding section.

   b. Unless otherwise provided, a critical area report may be supplemented by or composed, in whole or in part, of any reports or studies required by other laws and regulations or previously prepared for and applicable to the development proposal site, as approved by the SMP Administrator.

3. The following activities shall be allowed in critical areas and their buffers without a critical areas report, provided they obtain any required Shoreline Permits, a Letter of Exemption, and all other Town and state or federal government approvals, and are conducted using best management practices and at a time and in a manner designed to minimize adverse impacts to the critical area:

a. Conservation or preservation of soil, water, vegetation, fish, shellfish and other wildlife;

b. Outdoor recreational activities which do not involve disturbance of the resource or site area, including, for example, fishing, hunting, bird watching, hiking, horseback riding and bicycling;

c. Harvesting wild crops in a manner that is not injurious to the natural reproduction of such crops and provided the harvesting does not require tilling of soil, planting of crops or alteration of the resource by changing existing topography, vegetation, water conditions or water sources;

d. Education, scientific research and use of nature trails;

e. Normal and routine maintenance of legally constructed irrigation and drainage ditches;

f. Normal and routine maintenance, repair or operation of existing serviceable structures, facilities or improved areas, not including expansion, change in character or scope or construction of a maintenance road;

g. Minor modification (such as construction of a patio, balcony or second story) of existing serviceable structures where the modification does not adversely impact the functions of the critical area.

h. Select Vegetation Removal Activities. Select vegetation removal activities are allowed. Accepted vegetation removal activities include: a) removing and controlling invasive or noxious weeds; b) removing trees that are hazardous, posing a threat to public safety, or posing an imminent risk of damage to private property; or c) removing vegetation to control a fire or halt the spread of disease or damaging insects consistent with the State Forest Practices Act (Chapter 76.09 RCW). Unless otherwise provided, or as a necessary part of an approved alteration, removal of any vegetation or woody debris from a habitat conservation area or wetland shall be prohibited.

i. Chemical Applications. The application of herbicides, pesticides, organic or mineral-derived fertilizers, or other hazardous substances, if necessary, as approved by the Town, provided that their use shall be restricted in accordance with state Department of Fish and Wildlife Management Recommendations and the regulations of the state Department of Agriculture and the U.S. Environmental Protection Agency;

j. Minor Site Investigative Work. Work necessary for land use submittals, such as surveys, soil logs, percolation tests, and other related activities, where such activities do not require construction of new roads or significant amounts of excavation. In every case, impacts to the critical area shall be minimized and disturbed areas shall be immediately restored.

k. Agricultural Ditch Cleaning and Construction. Historically, agricultural landowners have cleaned out drainages on their property for flood control and cleaning out drain tiles. This practice can continue on existing (prior to December 23, 1985) ditches, but a floodplain evaluation is required if a floodplain is present and a wetland evaluation is required if a wetland (not farmed) is present. Construction of new drainage ditches or the relocation of existing drainage ditches through farmed or non-farmed wetlands requires permitting.

E. Protection of Critical Areas.

1. Any action taken pursuant to this Section shall result in equivalent or greater functions and values of the critical areas associated with the proposed action, as determined by the most current, accurate, and complete scientific and technical information available.

2. All actions and developments shall be designed and constructed in accordance with Subsection 4.3(B)(4) to avoid, minimize, and restore all adverse impacts. Applicants must first demonstrate an inability to avoid or reduce impacts, before restoration and

compensation of impacts will be allowed. No activity or use shall be allowed that results in a net loss of the functions or values of critical areas.to

F. Mitigation Requirements.

1. The applicant shall avoid all impacts that degrade the functions and values of a critical area or areas. Unless otherwise provided in this Section, if alteration to the critical area is unavoidable, all adverse impacts to or from critical areas and buffers resulting from a development proposal or alteration shall be mitigated using the most current, accurate, and complete scientific and technical information available in accordance with an approved critical area report, so as to result in no net loss of critical area functions and values.

2. Mitigation shall be in-kind and on-site, when possible, and sufficient to maintain the functions and values of the critical area, and to prevent risk from a hazard posed by a critical area.

3. Mitigation shall not be implemented until after Town approval of a critical area report that includes a mitigation plan, and mitigation shall be in accordance with the provisions of the approved critical area report.

4. Mitigation Plan Requirements. When mitigation is required, the applicant shall submit for approval by the Town a mitigation plan as part of the critical area report. The mitigation plan shall include:

   a. Environmental Goals and Objectives. The mitigation plan shall include a written report identifying environmental goals and objectives of the compensation proposed and including:

      i. A description of the anticipated impacts to the critical areas and the mitigating actions proposed and the purposes of the compensation measures, including the site selection criteria; identification of compensation goals; identification of resource functions; and dates for beginning and completion of site compensation construction activities. The goals and objectives shall be related to the functions and values of the impacted critical area;

      ii. A review of the most current, accurate, and complete scientific and technical information available supporting the proposed mitigation and a description of the report author's experience to date in restoring or creating the type of critical area proposed; and

      iii. An analysis of the likelihood of success of the compensation project.

   b. Performance Standards. The mitigation plan shall include measurable specific criteria for evaluating whether or not the goals and objectives of the mitigation project have been successfully attained and whether or not the requirements of this Section have been met.

   c. Detailed Construction Plans. The mitigation plan shall include written specifications and descriptions of the mitigation proposed, such as:

      i. The proposed construction sequence, timing, and duration;

      ii. Grading and excavation details;

      iii. Erosion and sediment control features;

      iv. A planting plan specifying plant species, quantities, locations, size, spacing, and density; and

      v. Measures to protect and maintain plants until established.

      These written specifications shall be accompanied by detailed site diagrams, scaled cross-sectional drawings, topographic maps showing slope percentage and final grade

elevations, and any other drawings appropriate to show construction techniques or anticipated final outcome.

d. Monitoring Program. The mitigation plan shall include a program for monitoring construction of the compensation project and for assessing a completed project. A protocol shall be included outlining the schedule for site monitoring (for example, monitoring shall occur in years 1, 3, and 5 after site construction), and how the monitoring data will be evaluated to determine if the performance standards are being met. A monitoring report shall be submitted as needed to document milestones, successes, problems, and contingency actions of the compensation project. The compensation project shall be monitored for a period necessary to establish that performance standards have been met, but not for a period less than five (5) years.

e. Contingency Plan. The mitigation plan shall include identification of potential courses of action, and any corrective measures to be taken if monitoring or evaluation indicates project performance standards are not being met.

5. Innovative Mitigation

a. The Town may encourage, facilitate, and approve innovative mitigation projects that are based on the most current, accurate, and complete scientific and technical information available. Advance mitigation or mitigation banking are examples of alternative mitigation projects allowed under the provisions of this Section wherein one or more applicants, or an organization with demonstrated capability, may undertake a mitigation project together if it is demonstrated that all of the following circumstances exist:

i. Creation or enhancement of a larger system of critical areas and open space is preferable to the preservation of many individual habitat areas;

ii. The group demonstrates the organizational and fiscal capability to act cooperatively;

iii. The group demonstrates that long-term management of the habitat area will be provided; and

iv. There is a clear potential for success of the proposed mitigation at the identified mitigation site.

b. Conducting mitigation as part of a cooperative process does not reduce or eliminate the required replacement ratios.

G. Review Criteria.

1. Any alteration to a critical area, unless otherwise provided for in this Section, shall be reviewed and approved, approved with conditions, or denied based on the proposal's ability to comply with all of the following criteria:

a. The proposal minimizes the impact on critical areas in accordance with mitigation sequencing requirements in Subsection 4.3(B)(4);

b. The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site;

c. The proposal is consistent with the general purposes of this Section and the public interest;

d. Any alterations permitted to the critical area are mitigated in accordance with the mitigation requirements in Subsection 2.F of this Appendix B;

e. The proposal protects the critical area functions and values consistent with the most current, accurate, and complete scientific and technical information available and results in no net loss of critical area functions and values; and

f. The proposal is consistent with other applicable regulations and standards.

2. The Town may condition the proposed activity as necessary to mitigate impacts to critical areas and to conform to the standards required by this Section.

3. Except as provided for by this Section, any project that cannot adequately mitigate its impacts to critical areas in the sequencing order of preferences in Subsection 4.3(B)(4) shall be denied.

H. Unauthorized Critical Area Alterations and Enforcement.

Unauthorized critical area alterations will be addressed by the SMP Administrator consistent with Section 7.4 and the following.

1. When a critical area or its buffer has been altered in violation of this Appendix B, all ongoing development work shall stop and the critical area shall be restored. The Town shall have the authority to issue a stop work order to cease all ongoing development work, and order restoration, rehabilitation, or replacement measures at the owner's or other responsible party's expense to compensate for violation of provisions of this Appendix B.

2. Requirement for Restoration Plan. All development work shall remain stopped until a restoration plan is prepared and approved by the Town. Such a plan shall be prepared by a qualified professional using the most current, accurate, and complete scientific and technical information available and shall describe how the actions proposed meet the minimum requirements described in Subsection 2.H(3) of this Appendix B. The SMP Administrator shall, at the violator’s expense, seek expert advice in determining the adequacy of the plan. Inadequate plans shall be returned to the applicant or violator for revision and resubmittal.

3. Minimum Performance Standards for Restoration

   a. For alterations to critical aquifer recharge areas, frequently flooded areas, wetlands, and habitat conservation areas, the following minimum performance standards shall be met for the restoration of a critical area, provided that if the violator can demonstrate that greater functional and habitat values can be obtained, these standards may be modified:

      i. The historic structural and functional values shall be restored, including water quality and habitat functions;

      ii. The historic soil types and configuration shall be replicated;

      iii. The critical area and buffers shall be replanted with native vegetation that replicates the vegetation historically found on the site in species types, sizes, and densities. The historic functions and values should be replicated at the location of the alteration; and

      iv. Information demonstrating compliance with the mitigation plan requirements in Subsection 2.F(4) shall be submitted to the SMP Administrator.

   b. For alterations to flood and geological hazards, the following minimum performance standards shall be met for the restoration of a critical area, provided that, if the violator can demonstrate that greater safety can be obtained, these standards may be modified:

      i. The hazard shall be reduced to a level equal to, or less than, the pre-development hazard;

      ii. Any risk of personal injury resulting from the alteration shall be eliminated or minimized; and

      iii. The hazard area and buffers shall be replanted with native vegetation sufficient to minimize the hazard.

4. Site Investigations. The SMP Administrator is authorized to make site inspections and take such actions as are necessary to enforce this Section. The SMP Administrator shall present proper credentials and make a reasonable effort to contact any property owner before entering onto private property.

5. Penalties. Any person, party, firm, corporation, or other legal entity convicted of violating any of the provisions of this Section shall be guilty of a misdemeanor. Each day or portion of a day during which a violation of this Section is committed or continued shall constitute a separate offense. Any development carried out contrary to the provisions of this Section shall constitute a public nuisance and may be enjoined as provided by the statutes of the state of Washington. The Town may levy civil penalties against any person, party, firm, corporation, or other legal entity for violation of any of the provisions of this Section. The civil penalty shall be assessed by the amount set forth in applicable Town regulations.

I. If a development permit is sought for critical area property that is located partly in the Town's shoreline jurisdiction, and partly in unincorporated Whitman County's shoreline jurisdiction, the SMP Administrator or designee shall coordinate the Town's review of the project with the appropriate County officials.

3. Wetlands.

A. Delineation.

The existence of a wetland and the location of its boundary shall be determined by the applicant through the performance of a field investigation applying the methodology of the approved federal wetland delineation manual and applicable regional supplements, in accordance with WAC 173-22-035, as amended. Delineations shall be performed by a qualified professional.

B. Rating.

Wetlands shall be rated according to the Washington State Department of Ecology wetland rating system, as set forth in the Washington State Wetland Rating System for Eastern Washington (Ecology Publication #14-06-030, or as amended and approved by Ecology), which contains the definitions and methods for determining if the criteria below are met: Rating categories shall be applied as the wetland exists at the time of the associated permit application. Wetland rating categories shall not change due to illegal modifications.

1. Category I wetlands are: 1) alkali wetlands; 2) wetlands with high conservation value that are identified by scientists of the Washington Natural Heritage Program/DNR; 3) bogs and calcareous fens; 4) mature and old-growth forested wetlands over ¼ acre with slow-growing trees; 5) forests with stands of aspen; and 6) wetlands that perform many functions very well (scores between 22-27 points). These wetlands are those that 1) represent a unique or rare wetland type; or 2) are more sensitive to disturbance than most wetlands; or 3) are relatively undisturbed and contain ecological attributes that are impossible to replace within a human lifetime; or 4) provide a high level of function.

2. Category II wetlands are: 1) forested wetlands in the floodplains of rivers; 2) mature and old-growth forested wetlands over ¼ acre with fast-growing trees; 3) vernal pools; and 4) wetlands that perform functions well (scores between 19-21 points). These wetlands are difficult, though not impossible, to replace, and provide high levels of some functions. These wetlands occur more commonly than Category I wetlands, but still need a relatively high level of protection.

3. Category III wetlands are wetlands with a moderate level of functions (scores between 16-18 points). Wetlands scoring between 16-18 points generally have been disturbed in some ways and are often less diverse or more isolated from other natural resources in the landscape than Category II wetlands.

4. Category IV: wetlands have the lowest levels of functions (scores fewer than 16 points) and are often heavily disturbed. These are wetlands that should be replaceable, and in some cases may be improved. However, experience has shown that replacement cannot be guaranteed in any specific case. These wetlands may provide some important functions and also need to be protected.

C. Standard Wetland Buffer Widths.

The standard buffer widths in Table B.3-1 have been established in accordance with the most current, accurate, and complete scientific and technical information available. They are based on the category of wetland and the habitat score as determined by a qualified wetland professional using the Washington State Wetland Rating System for Eastern Washington.

1. Vegetative buffers shall be measured from the edge of the wetland. The width of the buffer shall be determined according to the wetland type. The standard buffer widths are provided in Table B.3-1 below.

2. The use of the standard buffer widths requires the implementation of the measures in Table B.3-2, where applicable, to minimize the impacts of the adjacent land uses.

3. If an applicant chooses not to apply the mitigation measures in Table B.3-2, then a 33% increase in the width of all buffers is required. For example, a 75-foot buffer with the mitigation measures would be a 100-foot buffer without them.

4. The adequacy of these standard buffer widths presumes the existence of a relatively intact native vegetative community within the buffer zone that is deemed adequate to protect the identified critical area.

   a. If the vegetation is degraded, then revegetation may be considered with any adjustment to the buffer width.

   b. Where the use is being intensified, a degraded buffer may be revegetated to maintain the standard width.

Table B.3-1 Wetland Buffer Requirements

Wetland Category	Buffer width if wetland scores 3-4 habitat points	Additional buffer width if wetland scores 5 habitat points	Additional buffer width if wetland scores 6-7 habitat points	Additional buffer width if wetland scores 8-9 habitat points
Category I: Based on total score	75 ft	Add 15 ft	Add 45 ft	Add 75 ft
Category I: Forested	75 ft	Add 15 ft	Add 45 ft	Add 75 ft
Category I: Bogs and Wetlands of High Conservation Value	190 ft			
Category I: Alkali	150 ft			
Category II: Based on total score	75 ft	Add 15 ft	Add 45 ft	Add 75 ft

Wetland Category	Buffer width if wetland scores 3-4 habitat points	Additional buffer width if wetland scores 5 habitat points	Additional buffer width if wetland scores 6-7 habitat points	Additional buffer width if wetland scores 8-9 habitat points
Category II: Vernal pool	150 ft			
Category II: Forested	75 ft	Add 15 ft	Add 45 ft	Add 75 ft
Category III (all)	60 ft	Add 30 ft	Add 60 ft	Add 140 ft
Category IV (all)	40 ft			

Table B.3-2. Required measures to minimize impacts to wetlands

(Measures are required, where applicable to a specific proposal)

Disturbance	Required Measures to Minimize Impacts
Lights	Direct lights away from wetland
Noise	• Locate activity that generates noise away from wetland • If warranted, enhance existing buffer with native vegetation plantings adjacent to noise source • For activities that generate relatively continuous, potentially disruptive noise, such as certain heavy industry or mining, establish an additional 10' heavily vegetated buffer strip immediately adjacent to the outer wetland buffer
Toxic runoff	• Route all new, untreated runoff away from wetland while ensuring wetland is not dewatered • Establish covenants limiting use of pesticides within 150 ft of wetland • Apply integrated pest management
Stormwater runoff	• Retrofit stormwater detention and treatment for roads and existing adjacent development • Prevent channelized flow from lawns that directly enters the buffer
Change in water regime	Infiltrate or treat, detain, and disperse into buffer new runoff from impervious surfaces and new lawns
Pets and human disturbance	• Use privacy fencing OR plant dense vegetation to delineate buffer edge and to discourage disturbance using vegetation appropriate for the ecoregion. • Place wetland and its buffer in a separate tract or protect with a conservation easement
Dust	Use best management practices to control dust

D. Increased Buffer Widths.

Buffer widths may be increased if the SMP Administrator finds, on a case-by-case basis and based upon the most current, accurate, and complete scientific and technical information available, that at least one of the following applies:

1. A larger buffer is necessary to maintain viable populations of existing species, or
2. The wetlands are used by species proposed or listed by the federal government or the state as endangered, threatened, rare, sensitive or being monitored as habitat for those species or has unusual nesting or resting sites, or
3. The adjacent land is susceptible to severe erosion and erosion control measures will not effectively prevent adverse wetland impacts, or
4. The adjacent land has minimal vegetative cover or slopes greater than 25 percent.

E. Buffer Averaging.

Buffer averaging to improve wetland protection may be permitted when all of the following conditions are met:

1. The wetland has significant differences in characteristics that affect its habitat functions, such as a wetland with a forested component adjacent to a degraded emergent component or a "dual-rated" wetland with a Category I area adjacent to a lower-rated area.

2. The buffer is increased adjacent to the higher-functioning area of habitat or more-sensitive portion of the wetland and decreased adjacent to the lower-functioning or less-sensitive portion as demonstrated by a critical areas report from a qualified wetland professional.

3. The total area of the buffer after averaging is equal to the area required without averaging.

4. The buffer at its narrowest point is never less than either ¾ of the required width or 75 feet for Category I and II, 50 feet for Category III and 25 feet for Category IV, whichever is greater.

F. Measurement of Wetland Buffers.

All buffers shall be measured perpendicular from the wetland boundary as surveyed in the field. The buffer for a wetland created, restored, or enhanced as compensation for approved wetland alterations shall be the same as the buffer required for the category of the created, restored, or enhanced wetland. Only fully vegetated buffers will be considered. Lawns, walkways, driveways, and other mowed or paved areas will not be considered buffers or included in buffer area calculations.

G. Buffers on Mitigation Sites.

All mitigation sites shall have buffers consistent with the buffer requirements of this Chapter. Buffers shall be based on the expected or target category of the proposed wetland mitigation site.

H. Buffer Maintenance.

Except as otherwise specified or allowed in accordance with this Chapter, wetland buffers shall be retained in an undisturbed or enhanced condition. In the case of compensatory mitigation sites, removal of invasive non-native weeds is required for the duration of the monitoring period (Subsection 2.F(4)(d)).

I. Allowed Buffer Uses.

The following uses may be allowed within a wetland buffer in accordance with the review procedures of this Appendix B, provided they are not prohibited by any other applicable law and they are conducted in a manner so as to minimize impacts to the buffer and adjacent wetland:

1. Passive recreation facilities. Passive recreation facilities designed and in accordance with an approved critical area report, including:

   a. Walkways and trails, provided that those pathways are limited to minor crossings having no adverse impact on water quality. They should be generally parallel to the perimeter of the wetland, located only in the outer twenty-five percent (25%) of the wetland buffer area except for spurs to viewing platforms, and located to avoid removal of significant

trees. They should be limited to pervious surfaces no more than five (5) feet in width for pedestrian use only. Raised boardwalks utilizing non-treated pilings may be acceptable.

b. Wildlife-viewing structures.

2. Drilling for utilities/utility corridors under a buffer, with entrance/exit portals located completely outside of the wetland buffer boundary, provided that the drilling does not interrupt the ground water connection to the wetland or percolation of surface water down through the soil column. Specific studies by a hydrologist are necessary to determine whether the ground water connection to the wetland or percolation of surface water down through the soil column is disturbed.

3. Enhancement of a wetland buffer through the removal of non-native invasive plant species. Removal of invasive plant species shall be restricted to hand removal. All removed plant material shall be taken away from the site and appropriately disposed of. Plants that appear on the Washington State Noxious Weed Control Board list of noxious weeds must be handled and disposed of according to a noxious weed control plan appropriate to that species. Revegetation with appropriate native species at natural densities is allowed in conjunction with removal of invasive plant species.

4. Stormwater management facilities. Stormwater management facilities are limited to stormwater dispersion outfalls and bioswales. They may be allowed within the outer twenty-five percent (25%) of the buffer of Category III or IV wetlands only, provided that:

   a. No other location is feasible; and

   b. The location of such facilities will not degrade the functions or values of the wetland; and

   c. Stormwater management facilities are not allowed in buffers of Category I or II wetlands.

5. Non-Conforming Uses. Repair and maintenance of non-conforming uses or structures, where legally established within the buffer, provided they do not increase the degree of nonconformity.

6. Shoreline residential access. A private access pathway constructed of pervious materials may be installed, a maximum of four (4) feet wide, through a wetland buffer to the OHWM of a shoreline waterbody. Impervious materials may be used as needed to construct a safe, tiered pathway down a slope. Raised boardwalks may also be constructed through wetland areas to reach the shoreline waterbody consistent with regulations in this article. A railing may be installed on one edge of the pathway, a maximum of 36 inches tall and of open construction. Pathways to the shoreline should take the most direct route feasible consistent with appropriate safety standards.

J. Compensatory Mitigation.

1. Projects that propose compensation for wetland acreage and/or functions are subject to State and/or Federal regulations. Compensatory mitigation for alterations to wetlands shall provide for no net loss of wetland functions and values. Compensatory mitigation for alterations to wetlands shall be used only for impacts that cannot be avoided or minimized and shall achieve equivalent or greater biologic functions. Compensatory mitigation plans shall be consistent with the mitigation plan requirements in Subsection 2.F of this Appendix B and Subsection 4.3(B)(6), as well as Wetland Mitigation in Washington State – Part 2: Developing Mitigation Plans--Version 1, (Ecology Publication #06-06-011b, Olympia, WA, March 2006 or as amended), and Selecting Wetland Mitigation Sites Using a Watershed Approach (Eastern Washington) (Publication #10-06-07, November 2010).

2. Wetland mitigation ratios shall be consistent with Table B.3-3.

Table B.3-3. Wetland Mitigation Ratios

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

3. To more fully protect functions and values, and as an alternative to the mitigation ratios in Table B.3-3, the SMP Administrator may allow mitigation based on the "credit/debit" method developed by the Department of Ecology in "Calculating Credits and Debits for Compensatory Mitigation in Wetlands of Eastern Washington: Final Report" (Ecology Publication #11-06-015, August 2012, or as amended).

4. Impacts to wetland buffers shall be mitigated at a 1:1 ratio. Compensatory buffer mitigation shall replace those buffer functions lost from development.

5. Wetland Mitigation Banks.

   a. Credits from a wetland mitigation bank may be approved for use as compensation for unavoidable impacts to wetlands when:

      i. The bank is certified under RCW Ch. 90.84 or WAC Ch. 173-700,

      ii. The SMP Administrator determines that the wetland mitigation bank can provide appropriate compensation for the authorized impacts, and

      iii. The proposed use of credits is consistent with the terms and conditions of the bank's certification.

   b. Replacement ratios for projects using bank credits shall be consistent with replacement ratios specified in the bank's certification.

   c. Credits from a certified wetland mitigation bank may be used to compensate for impacts located within the service area specified in the bank's certification. In some cases, bank service areas may include portions of more than one adjacent drainage basin for specific wetland functions.

6. Advance Mitigation. Mitigation for projects with pre-identified impacts to wetlands may be constructed in advance of the impacts if the mitigation is implemented according to federal rules, State policy on advance mitigation, and State water quality regulations.

7. Monitoring. Mitigation monitoring shall be required for a period necessary to establish that performance standards have been met, but not for a period less than five years. If a scrub-shrub or forested vegetation community is proposed, monitoring may be required for ten years or more. The project mitigation plan shall include monitoring elements that ensure certainty of success for the project's natural resource values and functions. If the mitigation goals are not obtained within the initial five-year period, the applicant remains

responsible for restoration of the natural resource values and functions until the mitigation goals agreed to in the mitigation plan are achieved.

4. Critical aquifer recharge areas.

A. Septic Requirements.

In areas within shoreline designation designated as high susceptibility for aquifer contamination, all uses shall be connected to the Town's sewer system, except new uses on a septic system in the aquifer protection areas may be allowed with approval of the Town Council.

B. Disclosure Form.

For uses within shoreline jurisdiction locating within the critical aquifer recharge area and requiring site plan review, a disclosure form indicating activities and hazardous materials that will be used shall be provided for review and approval.

C. General Standards.

1. Impervious surfaces shall be minimized within the critical aquifer recharge area.
2. Best management practices as defined by state and federal regulations shall be followed by commercial and industrial uses located in the critical aquifer recharge areas of shoreline jurisdiction, to ensure that potential contaminants do not reach the aquifer.
3. A spill prevention and emergency response plan shall be prepared and submitted for review and approval by the Town and local fire district.

5. Fish and wildlife habitat conservation areas.

A. Designation

1. All areas within the shoreline jurisdiction of the Town of Malden meeting one or more of the following criteria, regardless of any formal identification, are hereby designated critical areas and are subject to the provisions of this section and shall be managed consistent with the most current, accurate, and complete scientific and technical information available, such as the Washington Department of Fish and Wildlife's Management Recommendations for Priority Habitat and Species. Fish and wildlife habitat conservation areas shall include the following:

   a. Areas with which State or Federally Designated Endangered, Threatened, and Sensitive Species Have a Primary Association.

      i. Federally designated endangered and threatened species are those fish, wildlife and plant species identified by the U.S. Fish and Wildlife Service that are in danger of extinction or threatened to become endangered. The U.S. Fish and Wildlife Service should be consulted as necessary for current listing status.

      ii. State designated endangered, threatened, and sensitive species are those fish and wildlife species native to the state of Washington identified by the state Department of Fish and Wildlife, and those native plant species identified by the Department of Natural Resources, that are in danger of extinction, threatened to become endangered, vulnerable, or declining and are likely to become endangered or threatened in a significant portion of their range within the state without cooperative management or removal of threats. State designated endangered, threatened, and sensitive species are periodically recorded in WAC 232-12-014 (state endangered species), and WAC 232-12-011 (state threatened and sensitive species). The state

Department of Fish and Wildlife maintains the most current listing and should be consulted as necessary for current listing status.

iii. A combined list of federally and state identified species having the potential to exist within shoreline jurisdiction is maintained by the town.

b. State Priority Habitats and Areas Associated with State Priority Species. Priority habitats and species are considered to be priorities for conservation and management. Priority species require protective measures for their perpetuation due to their population status, sensitivity to habitat alteration, and/or recreational, commercial, or tribal importance. Priority habitats are those habitat types or elements with unique or significant value to a diverse assemblage of species. A priority habitat may consist of a unique vegetation type or dominant plant species, a described successional stage, or a specific structural element. Priority habitats and species are identified by the state Department of Fish and Wildlife. A state list of priority habitats is maintained by the town.

c. Habitats and Species of Local Importance. Habitats and species of local importance are those identified by the Town, including those that possess unusual or unique habitat warranting protection because of qualitative species diversity or habitat system health indicators, such as high quality native plant communities, and those with historical or cultural importance.

d. Naturally Occurring Ponds Under 20 Acres. Naturally occurring ponds are those ponds under 20 acres and their submerged aquatic beds that provide fish or wildlife habitat, including those artificial ponds intentionally created from dry areas in order to mitigate impacts to ponds. Naturally occurring ponds do not include ponds deliberately designed and created from dry sites, such as canals, detention facilities, wastewater treatment facilities, farm ponds, temporary construction ponds, and landscape amenities, unless such artificial ponds were intentionally created for mitigation.

e. Waters of the State. Waters of the state includes lakes, rivers, ponds, streams, inland waters, underground waters, salt waters, and all other surface waters and watercourses within the jurisdiction of the state of Washington, as classified in WAC 222-16-031.

f. Lakes, Ponds, Streams, and Rivers Planted with Game Fish by a Governmental or Tribal Entity.

g. State Natural Area Preserves and Natural Resource Conservation Areas. Natural area preserves and natural resource conservation areas are defined, established, and managed by the state Department of Natural Resources.

h. Land Essential for Preserving Connections Between Habitat Blocks and Open Spaces.

The SMP Administrator shall be responsible for making final habitat conservation area designations in shoreline jurisdiction within the Town.

2. Mapping. The approximate location and extent of habitat conservation areas are shown on the following maps, which are hereby adopted to provide geographic information about known or suspected habitat conservation areas:

a. Department of Fish and Wildlife Priority Habitat and Species Maps;

b. resident salmonid distribution maps contained in studies conducted by the local watershed planning unit or in the Habitat Limiting Factors Reports published by the Washington Conservation Commission;

c. Department of Natural Resources State Natural Area Preserves and Natural Resource Conservation Area Maps; and

d. Town of Malden habitat maps.

These maps are to be used as a guide for the Town, project applicants, and property owners, and will be periodically updated as new information becomes available. They are a reference and do not provide a final critical area designation.

B. Critical Area Report - Additional Requirements.

In addition to the general critical area report requirements, the following elements must be met:

1. Preparation by a Qualified Professional. A critical areas report for a habitat conservation area shall be prepared by a qualified professional who is a biologist with experience preparing reports for the relevant type of habitat.

2. Areas Addressed in Report. The following areas shall be addressed in a critical area report for habitat conservation areas:

   a. The project area of the proposed activity;
   b. All habitat conservation areas and recommended buffers within 200 feet of the project area; and
   c. All shoreline areas, floodplains, and other critical areas, and related buffers within 200 feet of the project area.

3. Habitat Assessment. An investigation of the project area to evaluate the potential presence or absence of designated critical fish or wildlife species or habitat. An assessment of habitats shall include, at a minimum, the following information:

   a. A detailed description of vegetation on and adjacent to the project area;
   b. Identification of any species of local importance, priority species, or endangered, threatened, sensitive or candidate species that have a primary association with habitat on or adjacent to the project area, and assessment of potential project impacts to the use of the site by the species;
   c. A discussion of any federal, state, or local special management recommendations, including Washington Department of Fish and Wildlife habitat management recommendations, that have been developed for species or habitats located on or adjacent to the project area;
   d. A discussion of measures, including avoidance, minimization, and mitigation, proposed to preserve existing habitats and restore any habitat that was degraded prior to the current proposed land use activity and to be conducted in accordance with Subsection 2.F of this Appendix B; and
   e. A discussion of ongoing management practices that will protect habitat after the project site has been developed, including proposed monitoring and maintenance programs.

4. Additional Information. When appropriate due to the type of habitat or species present or the project area conditions, the SMP Administrator may also require the critical area report to include:

   a. An evaluation by the Washington Department of Fish and Wildlife or qualified expert regarding the applicant's analysis and the effectiveness of any proposed mitigating measures or programs, to include any recommendations as appropriate; and
   b. Detailed surface and subsurface hydrologic features both on and adjacent to the site.

5. Waiver. The SMP Administrator may waive the requirement to provide a formal delineation of a stream’s ordinary high water mark if compliance with these regulations can be demonstrated without that information, or if the applicant can clearly demonstrate that the proposed activity is outside of the stream buffer.

C. General Requirements Pertaining to Habitat Conservation Areas.

1. Alterations Shall Not Degrade the Functions and Values of Habitat. A habitat conservation area may be altered only if the proposed activity, including associated mitigation measures, does not degrade the quantitative and qualitative functions and values of the habitat and other critical areas.

2. Non-indigenous Species Shall Not Be Introduced. No plant, wildlife, or fish species not indigenous to the region shall be introduced into a habitat conservation area unless authorized by a local, state, or federal permit or approval.

3. Mitigation Shall Result in Contiguous Corridors. Mitigation sites shall be located to achieve contiguous wildlife habitat corridors in accordance with a mitigation plan that is part of the critical area report to minimize the isolating effects of development on habitat areas, so long as mitigation of aquatic habitat is located within the same aquatic ecosystem as the area disturbed.

4. Approvals of Activities May be Conditioned. The SMP Administrator shall condition approvals of activities allowed within or adjacent to a habitat conservation area or its buffers, as necessary to minimize or mitigate any potential adverse impacts. Conditions may include, but are not limited to, the following:

   a. Establishment of buffer zones;
   b. Preservation of critically important vegetation;
   c. Limitation of access to the habitat area, including fencing to deter unauthorized access;
   d. Seasonal restriction of construction activities;
   e. Establishment of a duration and timetable for periodic review of mitigation activities; and
   f. Requirement of a financial guarantee, when necessary, to ensure completion and success of proposed mitigation.

5. Mitigation Shall Achieve Equivalent or Greater Biological Functions. Mitigation of alterations to habitat conservation areas shall achieve equivalent or greater biologic functions and shall include mitigation for adverse impacts upstream or downstream of the development proposal site. Mitigation shall address each function affected by the alteration to achieve functional equivalency or improvement on a per function basis.

6. Approvals shall be supported by the most current, accurate, and complete scientific and technical information available. Any approval of alterations or impacts to a habitat conservation area shall be supported by the most current, accurate, and complete scientific and technical information available.

7. Buffers.

   a. Establishment of Buffers. The SMP Administrator shall require the establishment of buffer areas for activities in, or adjacent to, habitat conservation areas in shoreline jurisdiction, when needed to protect habitat conservation areas. Buffers shall consist of an undisturbed area of native vegetation, or areas identified for restoration, established to protect the integrity, functions, and values of the affected habitat. Required buffer widths shall reflect the sensitivity of the habitat and the type and intensity of human activity proposed to be conducted nearby, and shall be consistent with the management recommendations issued by the Washington Department of Fish and Wildlife. Specific buffers for streams are established in Subsection 5.D(3)(d) below.

   b. Increased habitat buffers. The SMP Administrator may require increased buffer widths in accordance with recommendations of a qualified professional biologist and the most

current, accurate, and complete scientific and technical information available when it is determined that a larger buffer is necessary to protect habitat area functions and values due to site specific characteristics.

c. Habitat buffer averaging. The SMP Administrator may allow the recommended habitat area buffer width to be reduced in accordance with a critical area report, the most current, accurate, and complete scientific and technical information available, and the management recommendations issued by the Washington Department of Fish and Wildlife, only if:

   i. It will not reduce habitat functions;

   ii. It will provide additional natural resource protection, such as buffer enhancement;

   iii. The total area contained in the buffer area after averaging is no less than that which would be contained within the standard buffer; and

   iv. The buffer area width is not reduced by more than twenty-five percent (25%) in any location.

d. Seasonal Restrictions. When a species is more susceptible to adverse impacts during specific periods of the year, seasonal restrictions may apply. Larger buffers may be required and activities may be further restricted during the specified season.

8. Signs and Fencing of Habitat Conservation Areas.

a. Temporary Markers. The outer perimeter of the habitat conservation area or buffer and the limits of those areas to be disturbed pursuant to a development permit shall be marked in the field in such a way as to ensure that no unauthorized intrusion will occur, and verified by the SMP Administrator prior to the commencement of permitted activities. This temporary marking shall be maintained throughout construction, and shall not be removed until permanent signs, if required, are in place.

b. Permanent Signs. As a condition of any development permit issued pursuant to this Chapter, the SMP Administrator may require the applicant to install permanent signs along the boundary of a habitat conservation area or buffer. If required, permanent signs shall be made of a metal face and attached to a metal post, or another material of equal durability. Signs must be posted at an interval of one per lot or every 50 linear feet, whichever yields the greater amount of signs, and must be maintained by the property owner in perpetuity. The sign shall be worded as follows or with alternative language approved by the director:

"Habitat Conservation Area Do Not Disturb
Contact Town of Malden Regarding Uses and Restrictions"

c. Fencing.

   i. As a condition of any development permit, the SMP Administrator may require the applicant to install a permanent fence at the edge of the habitat conservation area or buffer when fencing will prevent future impacts to the habitat conservation area.

   ii. The applicant shall be required to install a permanent fence around the habitat conservation area or buffer when domestic grazing animals are present or may be introduced on site.

   iii. Fencing installed as part of a proposed activity or as required in this Paragraph shall be designed so as to not interfere with species migration, including fish runs, and shall be constructed in a manner that minimizes habitat impacts.

9. Subdivisions. The subdivision and short subdivision of land in habitat conservation areas and associated buffers in shoreline jurisdiction is subject to the following:

a. Land that is located wholly within a habitat conservation area or its buffer may not be subdivided.

b. Land that is located partially within a habitat conservation area or its buffer may be divided provided that an accessible and contiguous portion of each new lot:

i. Is located outside of the habitat conservation area and its buffer; and

ii. Meets the minimum lot size requirements of the Town's zoning code.

c. Access roads and utilities serving a proposed subdivision or other property may be permitted within the habitat conservation area and associated buffers only if the SMP Administrator determines that no other feasible alternative exists and these facilities are otherwise established consistent with the provisions of this Appendix B.

D. Development Standards for Specific Species or Habitats.

1. Endangered, Threatened, and Sensitive Species.

a. No development shall be allowed within a habitat conservation area or buffer with which state or federally endangered, threatened, or sensitive species have a primary association.

b. Whenever activities are proposed adjacent to a habitat conservation area with which state or federally endangered, threatened, or sensitive species have a primary association, such area shall be protected through the application of protection measures in accordance with a critical area report prepared by a qualified professional and submitted to the SMP Administrator. Approval for alteration of land adjacent to the habitat conservation area or its buffer shall not occur prior to consultation with the Washington Department of Fish and Wildlife and the appropriate federal agency.

c. Bald eagle habitat shall be protected pursuant to the Washington State Bald Eagle Protection Rules (WAC 232-12-292). Whenever activities are proposed adjacent to a verified nest territory or communal roost, a habitat management plan shall be developed by a qualified professional. Activities are adjacent to bald eagle sites when they are within 800 feet, or within one-quarter mile (1,320 feet) and in a shoreline foraging area. The SMP Administrator shall verify the location of eagle management areas for each proposed activity. Approval of the activity shall not occur prior to approval of the habitat management plan by the U.S. Fish and Wildlife Service.

2. Wetland Habitats. All proposed activities within or adjacent to habitat conservation areas containing wetlands shall, at a minimum, conform to the wetland standards set forth in Section 3 of this Appendix B, in addition to meeting the habitat conservation area standards in this Section of Appendix B.

3. Streams and Stream Buffers.

a. Activities Shall Not Degrade the Functions and Values of Streams and Stream Buffers. Unless otherwise allowed in this Appendix B, all structures and activities shall be located outside of the stream and stream buffer. A proposed activity may only be permitted in a stream or stream buffer if the applicant can show that the activity, including associated mitigation measures, will not degrade the functions and values of the stream and other critical areas.

b. Establishment of stream buffers. Stream buffers shall be established for habitats that include aquatic and terrestrial ecosystems that mutually benefit each other and that are located adjacent to rivers, perennial or intermittent streams, seeps, springs, and lakes.

c. Classification. Streams are classified using the Permanent Water Typing System described in WAC 222-16-030, and as follows:

i. Type S- Type S waters are shorelines of the state

ii. Type F- Type F waters are perennial or seasonal, fish-bearing waters

iii. Type Np- Type Np waters are nonfish-bearing perennial waters

iv. Type Ns- Type Ns waters are nonfish-bearing seasonal waters

d. Standard Stream Buffers.

i. Standard stream buffer widths for waters in shoreline jurisdiction are shown in Table B.5-1. A stream shall have the required buffer width, unless a greater width is required pursuant to Subsection 5.D(3)(e) of this Appendix B, or a lesser width is allowed pursuant to Subsection 5.D(3)(f) of this Appendix B.

ii. Widths shall be measured outward, on the horizontal plane, from the ordinary high water mark or from the top of bank if the ordinary high water mark cannot be identified. The SMP Administrator may waive the requirement to provide a formal delineation of a stream's ordinary high water mark if compliance with these regulations can be demonstrated without that information, or if the applicant can clearly demonstrate that the proposed activity is outside of the stream buffer.

Table B.5-1 Stream Buffers

Pine Creek Buffer[1]	Pine Creek Tributaries Buffer[2]
For water-dependent developments, no buffer. Apply mitigation sequencing to avoid and minimize adverse impacts during development siting.	
The lesser of 100 feet or the waterward edge of an improved road	50 feet or the waterward edge of an improved road

[1] Shoreline (Type S) stream buffers are based on existing conditions

[2] Non-shoreline waters are subject to the buffers and other critical area protections herein only when passing through shoreline jurisdiction

e. Increased Stream Buffer Width. The buffer width shall be increased, as follows:

i. When the SMP Administrator determines that the standard width is insufficient to prevent habitat degradation and to protect the structure and functions of the habitat area; or

ii. When the SMP Administrator determines that the standard width is insufficient to protect human life and development from frequently flooded areas, geologically hazardous areas, or channel migration zones.

f. Buffer width averaging. The SMP Administrator may allow the buffer width of a stream to be reduced in accordance with a critical area report only if:

i. The width reduction will not reduce stream habitat functions, including those of non-fish habitat;

ii. The width reduction will not degrade the habitat;

iii. The proposal will provide additional habitat protection;

iv. The total buffer area of each stream on the development proposal site is not decreased;

v. The buffer width is not reduced by more than 25% in any one location;

vi. The buffer width reduction will not be located within another critical area or associated buffer; and

vii. The reduced buffer width is supported by the most current, accurate, and complete scientific and technical information available.

g. Stream and Buffer Mitigation. Mitigation of adverse impacts to streams and stream buffers shall result in equivalent functions and values on a per function basis, be located as near the alteration as feasible, and be located in the same sub-drainage basin as the habitat impacted.

h. Alternative Mitigation for Streams and Stream Buffers. The requirements set forth in this Section may be modified at the SMP Administrator's discretion if the applicant

demonstrates that greater habitat functions, on a per function basis, can be obtained in the affected sub-drainage basin as a result of alternative mitigation measures.

i. Uses and modifications allowed in stream buffers. The following uses are allowed in stream buffers provided that mitigation sequencing is demonstrated, and any adverse impacts to ecological functions are mitigated.

   i. Accessories to water-dependent uses. Uses, developments and activities accessory to water-dependent uses should be located outside any applicable standard or reduced buffer unless at least one of the following is met:

      a) Proximity of the proposed accessory to the water-dependent project elements is critical to the successful implementation of the facility's purpose and the elements are supportive of the water-dependent use and have no other utility;

      b) The proposed accessory would be located in a park or on other public lands where high-intensity, water-oriented recreational development is already legally established and the accessory would not conflict with or limit opportunities for other water-oriented uses;

      c) The accessory use, development or activity can be located upland of the water-dependent use; or

      d) The applicant's lot/site has topographical constraints where no other location of the development is feasible (e.g., the water-dependent use or activity is located on a parcel entirely or substantially encumbered by the required buffer).

   In these circumstances, uses and modifications accessory to water-dependent uses must be designed and located to minimize intrusion into the buffer. All other accessory uses, developments and activities proposed to be located in a shoreline buffer must obtain a Shoreline Variance unless otherwise allowed by other regulations in this section or in this SMP.

   ii. Water-oriented public access and recreation facilities. New development and redevelopment of water-oriented public access and recreation structures are allowed in shoreline buffers provided the applicant can demonstrate that the design applies mitigation sequencing and appropriate mitigation is provided to ensure no net loss of ecological functions. Applicants shall submit a management plan that specifically addresses compliance with Sections 4.3 (Environmental Protection), 4.4 (Shoreline Vegetation Conservation), 4.5 (Water Quality, Stormwater and Nonpoint Pollution), and Appendix B (Shoreline Critical Areas Policies and Regulations). The Town may review and condition the project to fully implement the policies of the Shoreline Management Act and this Master Program.

   iii. Temporary agricultural equipment and facilities. New agricultural equipment and facilities, excluding buildings, may be placed in a buffer if the following conditions are satisfied:

      a) Placement of the equipment and facilities must support an existing agricultural use.

      b) The equipment and facilities may only be in the buffer on a temporary or seasonal basis, a maximum of eight (8) months in a running 12-month period.

      c) Placement outside of a buffer is not feasible because it would be located on a property owned by another landowner or it would interfere with another agricultural or authorized use.

      d) The location of the proposed equipment and facilities is on an already altered site, and would not result in harm to or removal of native vegetation.

      e) Best management practices are utilized to prevent adverse impacts to water quality or other ecological functions.

iv. Shoreline residential access. A private access pathway constructed of pervious materials may be installed, a maximum of four (4) feet wide, through the shoreline buffer to the OHWM. Impervious materials may be used as needed to construct a safe, tiered pathway down a slope. Raised boardwalks may also be constructed through wetland areas to reach the shoreline waterbody consistent with regulations in this Article. A railing may be installed on one edge of the pathway, a maximum of 36 inches tall and of open construction. Pathways to the shoreline should take the most direct route feasible consistent with appropriate safety standards.

6. Frequently flooded areas.

Applicants for development within frequently flooded areas shall comply with provisions of the Town's flood damage prevention ordinance or other applicable local regulations.

7. Geologically hazardous areas.

A. Buffers.

1. A minimum 25-foot buffer shall be established from the top, toe or sides of an identified geological hazard in shoreline jurisdiction (as identified by the U.S. Geological Survey and the Department of Natural Resources), including landslide hazard areas, seismic hazard areas, mine hazard areas, landfills or steep slope areas (40 percent or greater), except as specified below. The buffer may be increased if necessary to protect public health, safety and welfare, based on information contained in the geotechnical report prepared by a qualified professional engineer.

2. Buffer zones may be decreased in size provided the geotechnical report substantiates the following findings:

   a. The proposed development will not create a hazard to the subject property, surrounding properties or rights-of-way, erosion or sedimentation to off-site properties or bodies of water.

   b. The proposal uses construction techniques that minimize destruction of existing topography and natural vegetation.

   c. The proposal mitigates all impacts identified in the geotechnical report.

B. Allowed activities.

The following activities are allowed in seismic and mine hazard areas:

1. Construction of new buildings with less than 2,500 square feet of floor area or roof area, whichever is greater, and which are not residential structures or used as places of employment or public assembly,

2. Additions to existing single-story residences that are 250 square feet or less,

3. Installation of fences.

C. In any geologically hazardous area, new development and creation of new lots that would cause foreseeable risk from geological conditions after application of Subsections (A)(1) and (2) during the life of the development is prohibited.

APPENDIX C
SHORELINE ENVIRONMENT DESIGNATION MAP