CITY OF NOOKSACK
Grant No. G1000049

CITY OF NOOKSACK
SHORELINE MANAGEMENT MASTER PROGRAM UPDATE

TASK 5.1
Shoreline Goals, Policies and Regulations
March 2014 Draft

This document was funded in part through a cooperative agreement with the National Oceanic and Atmospheric Administration.

The views expressed herein are those of the authors and do not necessarily reflect the views of NOAA or any of its subagencies.

ACKNOWLEDGEMENTS

We would like to thank the following individuals for their assistance in relation to this project: Nooksack City staff, Members of the Nooksack City Council, and Berry Wenger and Chad Yunge from the Department of Ecology.

This project was funded in part by the Washington Department of Ecology with a Coastal Zone Management grant from the National Oceanic and Atmospheric Administration.

CITY OF NOOKSACK
DRAFT SHORELINE MANAGEMENT MASTER PROGRAM

March 2014 DRAFT

Prepared for:

Jim Ackerman, Mayor
City of Nooksack
103 W. Madison Street
Nooksack, WA 98276

Prepared by:

Rollin Harper, Principal
Sehome Planning & Development Services
103 E. Holly Street, Suite 206
Bellingham, WA 98225

CITY OF NOOKSACK
SHORELINE MANAGEMENT MASTER PROGRAM
March 2014 DRAFT

PART ONE: **SHORELINE MANAGEMENT GOALS AND POLICIES**
[An element of the City Comprehensive Plan]

PART TWO: **SHORELINE MANAGEMENT REGULATIONS**
Chapter 16.04
[Part of the City Development Regulations]

MAP: **CITY OF NOOKSACK**
OFFICIAL SHORELINE MAP
[Draft]

CITY of NOOKSACK SHORELINE MASTER PROGRAM

PART ONE

SHORELINE MANAGEMENT GOALS AND POLICIES

[SHORELINE MANAGEMENT ELEMENT OF THE COMPREHENSIVE PLAN]

TABLE OF CONTENTS

1.0 INTRODUCTION 1

1.1 SHORELINE MANAGEMENT PROGRAM 1
1.2 AUTHORITY 1
1.3 PURPOSE 1

2.0 GENERAL ELEMENTS 1

2.1 ECONOMIC DEVELOPMENT 1
2.2 PUBLIC ACCESS 2
2.3 RECREATION 2
2.4 CIRCULATION 2
2.5 SHORELINE USE 2
2.6 CONSERVATION 3
2.7 HISTORICAL/CULTURAL RESOURCES 3
2.8 FLOOD DAMAGE MINIMIZATION 4
2.9 RESTORATION AND ENHANCEMENT 4

3.0 SHORELINES OF STATEWIDE SIGNFICANCE 5

4.0 ECOLOGICAL PROTECTION 5

4.1 NO NET LOSS 5
4.2 EVALUATION OF CUMMULATIVE EFFECTS 5

5.0 SHORELINE JURISDICTION AND ENVIRONMENT DESIGNATIONS 6

5.1 SHORELINE JURISDICTION 6
5.2 SHORELINE JURISDICTION MAP 6
5.3 SHORELINE ENVIRONMENT DESIGNATIONS ESTABLISHED 6
5.4 AQUATIC ENVIRONMENT 7
5.4.1 Purpose 7
5.4.2 Designation Criteria 7
5.4.3 Policies 7
5.5 NATURAL ENVIRONMENT 7
5.5.1 Purpose 7
5.5.2 Designation Criteria 7
5.5.3 Policies 8
5.6 SHORELINE RESIDENTIAL ENVIRONMENT 8
5.6.1 Purpose 8
5.6.2 Designation Criteria 9

5.6.3 Policies 9
5.7 URBAN CONSERVANCY ENVIRONMENT 9
5.7.1 Purpose 9
5.7.2 Designation Criteria 9
5.7.3 Policies 10
5.8 URBAN CONSERVANCY-SLOUGH ENVIRONMENT 10
5.8.1 Purpose 10
5.8.2 Designation Criteria 10
5.8.3 Policies 10

6.0 GENERAL MASTER PROGRAM PROVISIONS 12

6.1 ARCHAEOLOGICAL AREAS AND HISTORIC SITES 12
6.2 CRITICAL AREAS 12
6.2.1 Wetlands 13
6.2.2 Rivers and Streams – Critical Freshwater Habitat 13
6.3 FLOOD DAMAGE MINIMIZATION 14
6.4 PUBLIC ACCESS 14
6.5 VEGETATION CONSERVATION 15
6.6 VIEWS AND AESTHETICS 15
6.7 WATER QUALITY, STORMWATER AND NONPOINT POLLUTION 16

7.0 SHORELINE USE POLICIES 17

7.1 AGRICULTURE 17
7.2 AQUACULTURE 17
7.3 COMMERCIAL DEVELOPMENT 18
7.4 INDUSTRIAL DEVELOPMENT 18
7.5 IN-STREAM STRUCTURES 19
7.6 MINING 19
7.7 RECREATIONAL DEVELOPMENT 19
7.8 RESIDENTIAL DEVELOPMENT 20
7.9 TRANSPORTATION AND PARKING 21
7.10 UTILITIES 21

8.0 SHORELINE MODIFICATION POLICIES 23

8.1 BOAT RAMPS 23
8.2 DOCKS 23
8.3 DREDGING 24
8.4 LANDFILL AND EXCAVATION 24
8.5 OUTDOOR ADVERTISING AND SIGNS 25
8.6 SHORELINE FLOOD PROTECTION 25
8.7 SHORELINE HABITAT AND NATURAL SYSTEMS ENHANCEMENT PROJECTS 25
8.8 SHORELINE STABILIZATION 26
8.9 SOLID WASTE DISPOSAL 26

1.0 INTRODUCTION

1.1 SHORELINE MANAGEMENT PROGRAM

This document contains the policy component of the Nooksack Shoreline Management Master Program. The goals and policies contained herein constitute the Shoreline Management Element of the City of Nooksack Comprehensive Land Use Plan.

1.2 AUTHORITY

The goals, policies and regulations of the Nooksack Shoreline Master Program are established under the authority of the Shoreline Management Act of 1971, now codified as Chapter 90.58 of the Revised Code of Washington (RCW), and the Shoreline Master Program Guidelines, Chapter 173-26 of the Washington Administrative Code (WAC).

1.3 PURPOSE

The purpose of the Nooksack Shoreline Master Program is:

A. To further the goals of the Shoreline Management Act as set forth in RCW 90.58.020; and

B. To promote the public health, safety, and general welfare of the community by providing long range and comprehensive policies and effective and reasonable regulations for development and use of shorelines within the City; and

C. To manage shorelines in a positive, effective, and equitable manner; and

D. To plan for and foster all reasonable and appropriate uses, particularly uses directly dependent upon the water; and

E. To preserve to the greatest extent feasible, consistent with the overall interest of the State, the City and the people generally, the public's opportunity to enjoy the physical and aesthetic qualities of the shorelines of the City by preserving views and increasing public access to the shorelines; and

F. To manage the shorelines of the City to minimize, insofar as practical, damage to the shoreline area, while actively encouraging the restoration and enhancement of degraded shoreline functions and processes.

2.0 GENERAL ELEMENTS

The following general elements are included pursuant to RCW 90.58.100 and are addressed throughout the Nooksack Shoreline Management Master Program:

2.1 ECONOMIC DEVELOPMENT

An element related to the location and design of industries, industrial projects of statewide significance, transportation facilities, tourist facilities, commerce and other developments that are particularly dependent on their location on or use of the shorelines of the state.

GOAL 2.1: Encourage utilization of all economic resources to improve the standard of living for residents of the City of Nooksack while assuring that these economic resources are utilized in a manner that results in the least possible damage to the shoreline resources and surrounding environment.

Policy 2.1A: Economic development should be encouraged that has minimal adverse effects upon shoreline ecological functions and processes.

Policy 2.1B: Economic development policies established in the Nooksack Comprehensive Plan should be implemented in shoreline areas consistent with this Program.

2.2 PUBLIC ACCESS

An element related to making provision for public access to publicly owned shoreline areas and privately owned shoreline areas where the public has been granted a right of use or access.

GOAL 2.2: Assure acquisition and maintenance of an adequate supply of visual and physical access to the shorelines for the residents of the City of Nooksack and a reasonable number of transient users. Wherever possible, encourage utilization of public property for public access purposes.

Policy 2.2A: Public access should be located, designed, managed and maintained in a manner that protects shoreline processes and assures no net loss of ecological functions.

Policy 2.2B: The protection and provision of physical and visual access to publicly owned shorelands should be encouraged.

2.3 RECREATION

An element related to the preservation and enlargement of recreational opportunities, including, but not limited to, parks and recreational areas.

GOAL 2.3: Maintain an adequate supply of shoreline recreational opportunities for the residents of the City of Nooksack and a reasonable number of transient users.

Policy 2.3A: Recreational development should be located, designed, managed and maintained to assure no net loss of shoreline ecological functions or ecosystem-wide processes.

2.4 CIRCULATION

An element related to the general location and extent of existing and proposed major thoroughfares, transportation routes, terminals, and other public utilities and facilities, all correlated with the shoreline use element.

GOAL 2.4: Develop a safe, convenient, and diversified circulation system, consistent with the shoreline use goals, to assure efficient movement of people during their daily activities without significant adverse impact to or disruption of the natural functions of the shoreline environment.

Policy 2.4A: Transportation goals and policies as outlined in the Nooksack Comprehensive Plan shall be implemented within shoreline areas consistent with this Program.

2.5 SHORELINE USE

An element related to the proposed general location, distribution and extent of uses on shorelines and adjacent land areas for housing, business, industry, transportation, agriculture, natural resources, recreation, education, public buildings and grounds, and other categories of public and private uses of the land and water resources.

GOAL 2.5: Establish and implement policies and regulations for shoreline use consistent with the Shoreline Management Act of 1971 and the Nooksack Comprehensive Plan. These policies and regulations should promote a mixture of reasonable and appropriate shoreline uses that enhance the City's character, foster its historic and cultural identity, and protect shoreline resources.

Policy 2.5A: Shoreline and water areas with unique attributes should be identified and reserved for specific long-term uses, including commercial, industrial, residential, recreational, and open space uses.

Policy 2.5B: Activities and facilities shall be located on the shorelines in such a manner as to maintain or improve the ecological functions of the shoreline environment and assure no net loss of ecological functions.

Policy 2.5C: Proposed shoreline uses should be distributed, located and developed in a manner that will maintain or improve the health, safety and welfare of the public when such uses must occupy shoreline areas.

Policy 2.5D: Planning, zoning, and other regulatory and non-regulatory programs governing lands adjacent to shorelines should be consistent with the provisions of this Program.

Policy 2.5E: Preference should be given to water-dependent uses that are consistent with preservation of shoreline ecological functions and processes. Secondary preference should be given to water-related and water-enjoyment uses. Nonwater-oriented uses should be allowed only when substantial public benefit is provided with respect to the goals of the Act for public access and ecological restoration.

2.6 CONSERVATION

An element related to the preservation of natural resources and shoreline ecological functions and processes, including, but not limited to, wetlands, riparian and aquatic habitats, other priority fish and wildlife habitats and species, floodplains, geological features, scenic vistas and aesthetics for fisheries and wildlife protection.

GOAL 2.6: Assure the protection of unique, fragile and scenic elements and non-renewable natural resources within the shorelines of the City of Nooksack, and protect shoreline ecological functions and the processes that sustain them to the maximum extent practicable.

Policy 2.6A: Critical areas should be protected through regulations that provide a level of protection that is at least as protective as the regulations established in Chapter 16.08 NMC.

Policy 2.6B: The protection and preservation of shoreline areas that are ecologically intact and minimally developed or degraded should be encouraged.

Policy 2.6C: Regulations and mitigation standards should be developed and implemented that ensure that new shoreline developments result in no net loss of shoreline ecological functions and processes.

Policy 2.6D: Renewable natural resources should be managed on a sustained yield basis.

Policy 2.6E: Shoreline uses should protect scenic vistas and the aesthetics of the shoreline environment.

2.7 HISTORICAL/CULTURAL RESOURCES

An element related to the protection and restoration of buildings, sites and areas having archaeological, historic, cultural, scientific or educational values within the shorelines of the City of Nooksack.

GOAL 2.7: Preserve, protect and restore areas having archaeological, historic, cultural, educational or scientific values or significance through coordination and consultation with the appropriate local, state, tribal and federal authorities.

Policy 2.7A: Developments within shoreline areas should be encouraged and, where appropriate, required to avoid or minimize impacts to sites having archaeological, historic, cultural, educational or scientific value or significance.

Policy 2.7B: Opportunities for education related to archaeological, historical and cultural features should be encouraged where appropriate and be incorporated into public and private programs and developments.

2.8 FLOOD DAMAGE MINIMIZATION

An element that gives consideration to statewide interests in the prevention and minimization of flood damage.

GOAL 2.8: Establish and implement applicable floodplain management strategies to minimize private property damage, improve ecological function and prevent species and habitat loss in wetlands and streams.

2.9 RESTORATION AND ENHANCEMENT

An element related to the restoration and enhancement of shoreline ecological functions consistent with City restoration planning goals and objectives.

GOAL 2.9: Support the restoration and enhancement of shoreline ecological functions within the City of Nooksack through vegetation conservation and timely restoration and enhancement of impaired shoreline areas to achieve a net gain in shoreline ecological functions over time.

Policy 2.9A: The goals and objectives of the City of Nooksack Shoreline Restoration Plan should be supported and pursued to achieve a net gain in shoreline ecological functions.

Policy 2.9B: Areas of existing native vegetation should be protected and allowed to mature to enhance shoreline functions and ecological processes.

Policy 2.9C: Cooperative restoration programs between local, state, and federal agencies, tribes, non-profit organizations, and landowners should be encouraged to address shorelines with impaired ecological functions and/or processes.

Policy 2.9D: Restoration actions should be prioritized to restore native vegetation in riparian areas, improve water quality, and restore native vegetation and natural hydrologic functions of degraded areas.

Policy 2.9E: Restoration and enhancement efforts should be targeted towards improving habitat requirements of sensitive, priority and/or locally important fish and wildlife species.

Policy 2.9F: Shoreline ecological functions and processes and features should be restored and enhanced through voluntary and incentive-based public and private programs.

3.0 SHORELINES OF STATEWIDE SIGNFICANCE

No shorelines of statewide significance are present within the City of Nooksack.

4.0 ECOLOGICAL PROTECTION

Shorelines of the state are among the most valuable and fragile natural resources and there is great concern relating to their utilization, protection, and restoration.

4.1 NO NET LOSS

As established by WAC 173-26-186(8), this SMP is designed to assure, at minimum, no net loss of ecological functions necessary to sustain shoreline natural resources and to plan for restoration of ecological functions where they have been impaired. This section gives detail to the protection of shorelines as natural resources and applies the principle of “no net loss” to ecological function and ecosystem-wide processes to preserve and protect shorelines.

The concept of “net” recognizes that any development has actual or potential, short-term or long-term impacts and that through application of appropriate development standards and employment of mitigation measures in accordance with the appropriate mitigation sequence, those impacts will be addressed in a manner necessary to assure that the end result will not diminish the shoreline resources and the values as they currently exist.

GOAL 4.1: Assure that development and use within shoreline jurisdiction result in no net loss of ecological functions and ecosystem-wide processes.

> Policy 4.1A: Shoreline uses and development should occur in a manner that assures no net loss of ecological functions and values. Uses shall be designed and conducted to minimize any resultant damage to the ecology and the environment.
>
> Policy 4.1B: Development standards for density, frontage, setbacks, lot coverage, shoreline stabilization, vegetation conservation, buffers, critical areas, and water quality should protect existing shoreline ecological functions and processes.
>
> Policy 4.1C: Critical areas associated with shorelines should be protected and managed in accordance with City of Nooksack critical areas regulations.

4.2 EVALUATION OF CUMMULATIVE EFFECTS

Projects and activities authorized through City shoreline permits and shoreline exemptions have the potential to impact shoreline resources both positively and negatively. It’s important for the City to be able to determine the net impact of such projects on the shoreline environment in order to make appropriate adjustments to shoreline policies and regulations.

GOAL 4.2: Track and periodically evaluate the cumulative effects of all city actions related to review and approval of projects and activities within shoreline areas.

> Policy 4.2A: The City will maintain a database to track all shoreline permits and shoreline exemptions, including but not limited to: date of permit action, site address, project description, pre- and post-project photographs of the subject area, and description of required mitigation or proposed enhancement activities.
>
> Policy 4.2B: Approximately every five years, the city will conduct an informal review of all approved shoreline permits and shoreline exemptions listed in the database to evaluate the cumulative effects of such activities on shoreline functions and resources, including water quality, habitat, shoreline vegetation, and riparian conditions.

5.0 SHORELINE JURISDICTION AND ENVIRONMENT DESIGNATIONS

5.1 SHORELINE JURISDICTION

Consistent with the definitions established in the Shoreline Management Act and implementing regulations, those areas that are within the jurisdiction of the Nooksack Shoreline Management Master Program generally include those areas within the corporate limits of the City of Nooksack as it currently exists, or as subsequently modified through annexation, including:

A. All river and stream segments having a mean annual flow of at least 20 cubic feet per second, including the Sumas River and Breckenridge Creek, plus those adjacent land areas within 200 feet of the ordinary high water mark of all such river and stream segments; and

B. Those wetland areas associated with any of the above aquatic areas, including, but not limited to, the Nooksack Slough; and

C. As a local option, the adjacent land area within fifty (50) feet of the delineated edge of such associated wetlands.

5.2 SHORELINE JURISDICTION MAP

The general locations of those land and water areas subject to the jurisdiction of the Nooksack Shoreline Management Master Program are shown on the City of Nooksack Official Shoreline Map. The map does not necessarily identify or depict the precise, lateral extent of shoreline jurisdiction nor does it identify all associated wetlands. The lateral extent of the shoreline jurisdiction shall be determined on a case-by-case basis based on the location of the ordinary high water mark (OHWM) and presence of associated wetlands.

5.3 SHORELINE ENVIRONMENT DESIGNATIONS ESTABLISHED

RCW 90.58 and WAC 173-26-310(2) require that the City of Nooksack adopt a system of shoreline environment designations to be used for classifying areas falling within shoreline jurisdiction. This classification system is to be based on the existing use pattern, the biological and physical character of the shoreline, and the goals of the community as expressed through the comprehensive plan.

GOAL 5.3: Establish a set of shoreline environment designations that provides a systematic, rational and equitable basis to guide and regulate development within specific shoreline reaches having some degree of geographic unity, but that differ from adjacent reaches in terms of natural features or existing or potential development patterns.

Policy 5.3A: The shoreline environment designations of the City of Nooksack shall include the following designations: Aquatic, Natural, Shoreline Residential, Urban Conservancy and Urban Conservancy-Slough.

Policy 5.3B: Those areas within the City of Nooksack and designated urban growth area that are within shoreline jurisdiction shall be shown on the Official Shoreline Map. This map shall also identify the locations of areas included in each shoreline environment designation.

Policy 5.3C: The purpose, designation criteria, management policies and development regulations applicable to each environment designation shall be established and implemented through this Program.

Policy 5.3D: Those areas within shoreline jurisdiction for which a shoreline environment designation is not shown on the Official Shoreline Map shall be designated the same as the

immediately adjacent shoreline area or, where no such area exists, shall be designated Urban Conservancy.

5.4 AQUATIC ENVIRONMENT

5.4.1 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.

5.4.2 Designation Criteria

Shoreline areas shall be included in the aquatic environment if they include lands waterward of the ordinary high water mark of the Sumas River, Breckenridge Creek and the Nooksack Slough. Areas included in the aquatic designation shall include the underlying lands and water column.

5.4.3 Policies

The following management policies shall apply to areas within the aquatic environment:

Policy 5.4.3A: New over-water structures shall only be allowed for water-dependent uses or public access or ecological restoration.

Policy 5.4.3B: The size of new over-water structures should be limited to the minimum necessary to support the structure's intended use.

Policy 5.4.3C: 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.

Policy 5.4.3D: Uses that adversely impact the ecological functions of critical freshwater habitat should not be allowed except where necessary to support or further other shoreline goals and policies when impacts can be mitigated to the maximum extent possible.

Policy 5.4.3E: Shoreline uses and modifications shall be designed and managed to prevent degradation of water quality and alteration of natural hydrographic conditions.

5.5 NATURAL ENVIRONMENT

5.5.1 Purpose

The purpose of the “natural” environment is to protect those shoreline areas that are relatively free of human influence or that include intact or minimally degraded shoreline functions intolerant of human use. These systems require that only very low intensity uses be allowed to maintain ecological functions and ecosystem-wide processes.

5.5.2 Designation Criteria

Shoreline areas shall be included in the natural environment based on meeting any of the following criteria:

(1) The shoreline is ecologically intact and therefore currently performing an important, irreplaceable function or ecosystem-wide process that would be damaged by human activity; or

(2) The shoreline contains forested areas that generally include native vegetation with diverse plant communities, multiple canopy layers, and the presence of large woody debris available for recruitment to adjacent water bodies; or

(3) The shoreline is considered to represent ecosystems and geologic types that are of particular scientific and educational interest; or

(4) The shoreline contains largely undisturbed areas of wetlands or unstable bluffs; or

(5) The shoreline is unable to support new development or uses without significant ecological impacts to ecological functions or risk to human safety; or

(6) The shoreline is especially sensitive to human disturbance and important for the conservation and recovery of threatened or endangered species.

5.5.3 Policies

The following management policies shall apply to areas within the natural environment:

Policy 5.5.3A: Any use that would substantially degrade the ecological functions or natural character of the shoreline area should be prohibited.

Policy 5.5.3B: The following new uses shall not be allowed in the "natural" environment:

- Commercial uses.
- Industrial uses.
- Non-water-oriented recreation.
- Roads, utility corridors, and parking areas that can be located outside of "natural" designated shorelines.

Policy 5.5.3C: Access may be permitted for scientific, historical, cultural, educational, and low-intensity water-oriented recreational purposes, provided that no significant ecological impact on the area will result.

Policy 5.5.3D: Single family residential development is discouraged within this shoreline environment, but may be allowed on existing lots of record through approval of a conditional use permit if the density and intensity of such use is limited as necessary to protect ecological functions and be consistent with the purpose of this environment designation.

Policy 5.5.3E: Agricultural uses of a very low intensity nature may be consistent with the Natural Environment when such use is subject to appropriate limitations or conditions to assure that the use does not expand or alter practices in a manner inconsistent with the purpose of the designation.

Policy 5.5.3F: Development or significant vegetation removal shall not be allowed that would reduce the capability of vegetation to perform normal ecological functions or result in net loss of vegetation.

Policy 5.5.3G: Subdivision of property in a configuration that, to achieve its intended purpose, will require significant vegetation removal or shoreline modification that adversely impacts ecological functions shall not be allowed.

Policy 5.5.3H: The City should utilize grants and other funding sources to purchase those properties located in the Natural environment that contain high-value fish and wildlife habitats or species.

5.6 SHORELINE RESIDENTIAL ENVIRONMENT

5.6.1 Purpose

The purpose of the “shoreline residential” environment is to accommodate residential development and appurtenant structures that are consistent with the goals of RCW 90.58 and this Program. An additional purpose is to provide appropriate public access and recreational uses.

5.6.2 Designation Criteria

Shoreline areas shall be included in the shoreline residential environment if they lie within urban growth areas, as defined in RCW 36.70A.110, incorporated municipalities, “rural areas of more intense development,” or “master planned resorts,” as described in RCW 36.70A.360, if they are predominantly single-family or multifamily residential development or are planned and platted for such development.

5.6.3 Policies

The following management policies shall apply to areas within the shoreline residential environment:

Policy 5.6.3A: Development should be permitted only in those shoreline areas where adequate setbacks or buffers are possible to ensure no net loss of shoreline ecological functions, where there are adequate access, water, sewage disposal, and utilities systems and public services available, and where the environment can support the proposed use in a manner which protects or restores the ecological functions.

Policy 5.6.3B: Densities or minimum frontage width standards in the "shoreline residential" environment shall be established to protect the shoreline ecological functions, taking into account the environmental limitations and sensitivity of the shoreline area, the level of infrastructure and services available, and other comprehensive planning considerations.

Policy 5.6.3C: Development standards for setbacks or buffers, shoreline stabilization, vegetation conservation, critical area protection, and water quality shall be established to ensure no net loss of ecological functions.

Policy 5.6.3D: Multifamily and multi-lot residential and recreational developments should provide community or public access and joint use for community recreational facilities where appropriate.

Policy 5.6.3E: Access, utilities, and public services should be available and adequate to serve existing needs and planned future development.

Policy 5.6.3F: Public or private outdoor recreation facilities should be encouraged if compatible with the character of the area. Preferred uses include water-dependent and water-enjoyment recreation facilities that provide opportunities for substantial numbers of people to access and enjoy the shoreline.

5.7 URBAN CONSERVANCY ENVIRONMENT

5.7.1 Purpose

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

5.7.2 Designation Criteria

Shoreline areas shall be included in the urban conservancy environment based on meeting any of the following criteria:

(1) The area is suitable for a mix of water-related or water-enjoyment uses with other uses that allow a substantial number of people to enjoy the shoreline; or

(2) The area is comprised of open space, critical areas, floodplains, or other areas that should not be more intensively developed; or

(3) The area retains important ecological functions, even though partially developed; or

(4) The area has potential for ecological restoration; or

(5) The area has the potential for development that is compatible with ecological restoration.

5.7.3 Policies

The following management policies shall apply to areas within the urban conservancy environment:

Policy 5.7.3A: Uses that preserve the natural character of the area or promote preservation of open space, critical areas, floodplain, or sensitive lands either directly or over the long term should be the primary allowed uses. Uses that result in restoration of ecological functions should be allowed if found compatible.

Policy 5.7.3B: Standards shall be established for shoreline stabilization measures, vegetation conservation, water quality, and shoreline modifications. These standards shall ensure that new development does not result in a net loss of shoreline ecological function or further degrade other shoreline values.

Policy 5.7.3C: Public access and public recreation objectives should be implemented whenever feasible and significant ecological impacts can be avoided or mitigated.

Policy 5.7.3D: Water-oriented uses should be given priority over non-water-oriented uses.

5.8 URBAN CONSERVANCY-SLOUGH ENVIRONMENT

5.8.1 Purpose

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

5.8.2 Designation Criteria

Shoreline areas shall be included in the urban conservancy environment based on meeting any of the following criteria:

(1) The area is suitable for a mix of water-related or water-enjoyment uses with other uses that allow a substantial number of people to enjoy the shoreline; or

(2) The area is comprised of open space, critical areas, floodplains, or other areas that should not be more intensively developed; or

(3) The area retains important ecological functions, even though partially developed; or

(4) The area has potential for ecological restoration; or

(5) The area has the potential for development that is compatible with ecological restoration.

5.8.3 Policies

The following management policies shall apply to areas within the urban conservancy environment:

Policy 5.8.3A: Uses that preserve the natural character of the area or promote preservation of open space, critical areas, floodplain, or sensitive lands either directly or over the long term should be the primary allowed uses. Uses that result in restoration of ecological functions should be allowed if found compatible.

Policy 5.8.3B: Standards shall be established for shoreline stabilization measures, vegetation conservation, water quality, and shoreline modifications. These standards shall

ensure that new development does not result in a net loss of shoreline ecological function or further degrade other shoreline values.

Policy 5.8.3C: Public access and public recreation objectives should be implemented whenever feasible and significant ecological impacts can be avoided or mitigated.

Policy 5.8.3D: Water-oriented uses should be given priority over non-water-oriented uses.

6.0 GENERAL MASTER PROGRAM PROVISIONS

6.1 ARCHAEOLOGICAL AREAS AND HISTORIC SITES.

Native American and pioneer villages, military forts, old settlers homes, and trails were often located on shorelines because of the proximity of food resources and because water provided a practical means of transportation. These sites are nonrenewable resources and many are in danger of being lost through present day changes in land use and urbanization. Because of their rarity and the educational and cultural links they provide to our past, these locations should be preserved whenever possible.

Policy 6.1A: Sites should be permanently preserved to show respect for their cultural or historic significance and, where appropriate, to provide opportunities for scientific study and public observation.

Policy 6.1B: In areas documented to contain archeological or cultural resources, developers should be required to have the site inspected by a professional archaeologist in consultation with affected Indian tribes prior to permit issuance.

Policy 6.1C: Developers should be required to stop work immediately and notify City officials, affected Indian tribes and the state department of archaeology and historic preservation if sites containing archaeological or cultural resources are uncovered during excavation.

Policy 6.1D: Developers should be required to obtain all legal permits regarding archaeological areas and historic sites.

Policy 6.1E: In accordance with state law, all activities and development within shoreline jurisdiction shall comply with the applicable requirements of RCW 27.44, RCW 27.53 and WAC 25-48-060.

6.2 CRITICAL AREAS

Critical areas, as defined in RCW 36.70A.030 include the following:

(1) *Wetlands;*
(2) *Areas with a critical recharging effect on aquifers used for potable waters;*
(3) *Fish and wildlife habitat conservation areas;*
(4) *Frequently flooded areas; and*
(5) *Geologically hazardous areas.*

Impacts to critical areas can result in significant adverse effects to public health and safety, the land and its vegetation and wildlife, and the waters of the state and their aquatic life.

Policy 6.2A: The public interest should be promoted and enhanced by reducing risks to life and property, by protecting and restoring ecological functions and ecosystem-wide processes and ensuring no net loss of these functions.

Policy 6.2B: In managing and regulating critical areas, scientific and technical information should be utilized as described in WAC 173-26-201(2)(a).

Policy 6.2C: Critical areas should be managed consistent with the minimum guidelines contained in WAC 365-190.

Policy 6.2D: The protection of existing ecological functions and ecosystem-wide processes should be encouraged and, wherever possible, restoration of degraded areas should be supported.

Policy 6.2E: The protection and restoration of critical areas within shoreline jurisdiction should be encouraged through implementation of the full range of planning and regulatory measures.

Policy 6.2F: Development standards for density, frontage, setbacks, lot coverage, shoreline stabilization, vegetation conservation, buffers, critical areas, and water quality should be utilized to protect existing shoreline ecological functions and processes.

Policy 6.2G: Critical area regulations shall adhere to standards established in the following sections of this Program, unless it is demonstrated through scientific and technical information as provided in RCW 90.58.100(1) and as described in WAC 173-26-201(2)(a) that an alternative provides better resource protection.

6.2.1 Wetlands

Wetlands provide many important ecological functions including flood attenuation, reduction of impacts to water quality, ground water recharge, maintenance of base in-stream flows, and provision of habitat for fish and wildlife. Impacts to wetlands can also contribute to adverse impacts on other important resources.

Policy 6.2.1A: Wetlands should be managed to achieve a policy of no net loss of wetland area, functions and values.

Policy 6.2.1B: Wetlands should be categorized to reflect differences in wetland quality and function, and higher quality/functioning wetlands should receive greater protection.

Policy 6.2.1C: Wetland regulations should address all activities and uses to assure no net loss of ecological functions in these critical areas.

Policy 6.2.1D: Buffers around wetlands should be provided that are adequate to ensure that wetland functions are protected and maintained over the long-term.

Policy 6.2.1E: Potential impacts to wetland buffers should also be considered when evaluating development proposals.

Policy 6.2.1F: Wetlands should be managed consistent with the mitigation priority sequence defined in WAC173-26-020, and compensatory mitigation should be allowed only after mitigation sequencing has been applied.

6.2.2 Rivers and Streams – Critical Freshwater Habitat

Many ecological functions associated with rivers and streams are impacted both by activities within the stream corridor and those occurring on adjacent uplands throughout the watershed.

Policy 6.2.2A: River and stream corridors should be protected and restored where necessary to ensure no net loss of ecological functions within shoreline jurisdiction.

Policy 6.2.2B: Damage to riverine shoreline areas that retain their ecological functions should be avoided or mitigated.

Policy 6.2.2C: Degraded riverine shoreline areas should be restored wherever feasible.

Policy 6.2.2D: Incentives should be provided to encourage re-connection of the main river channel with associated water bodies, dry channels, and associated wetlands.

Policy 6.2.2E: Except where necessary to protect life and property, new restrictions to channel movement within the channel migration zone should not be allowed, and natural channel configurations within the channel migration zone should be encouraged over time.

Policy 6.2.2F: Vegetation conservation areas or buffers should be established along all river and stream corridors.

Policy 6.2.2G: Development within the channel migration zone, vegetation conservation area or established buffers should not be allowed unless it can be shown that adverse impacts to natural channel movement, ecological functions and ecosystem-wide processes can be avoided or minimized, and impacts can be appropriately mitigated.

6.3 FLOOD DAMAGE MINIMIZATION

Flood hazard reduction measures consist of both structural and non-structural measures. Structural measures may include construction of dikes, levees, revetments and floodwalls, channel realignment, and elevation of structures consistent with the National Flood Insurance Program. Non-structural measures may include setbacks, land use controls, wetland restoration, dike removal, use relocation, biotechnical measures, and storm water management programs.

Policy 6.3A: Where feasible, non-structural flood hazard reduction measures should be given preference over structural measures.

Policy 6.3B: When available and where consistent with the Shoreline Management Act, flood hazard reduction policies and regulations should be based on applicable watershed management plans, comprehensive flood hazard management plans or other comprehensive planning efforts.

Policy 6.3C: Flood hazard protection measures should not result in a net loss of ecological functions associated with the rivers and streams.

Policy 6.3D: River and stream corridors should be retained in or restored to more natural hydrological conditions, and it should be recognized that seasonal flooding is an essential natural process.

Policy 6.3E: New development should not be allowed that significantly or cumulatively increases flood hazard, nor results in a net loss of ecological function.

Policy 6.3F: New development within the shoreline area, including the subdivision of land, should not be allowed that requires structural flood hazard reduction measures, except where necessary to support water-dependent uses.

Policy 6.3G: Where allowed, structural flood hazard reduction measures should be set back as far as possible from the channel migration zone.

Policy 6.3H: New structural flood hazard reduction measures may be allowed within the channel migration zone if it is determined through a geotechnical analysis that no other alternative to reduce flood hazard to existing development is feasible.

6.4 PUBLIC ACCESS

Public access includes 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.

Policy 6.4A: The amount and diversity of public access to the state's shorelines, including physical and visual access, should be increased, consistent with the natural shoreline character, private property rights, public rights under the Public Trust Doctrine, public safety, and local public access planning.

Policy 6.4B: The public's opportunity to enjoy the physical and aesthetic qualities of the shorelines of the state, including views of the water, should be protected.

Policy 6.4C: The public interest with respect to the public's right to access waters of the state held in public trust should be promoted and enhanced while protecting private property rights and ensuring public safety.

Policy 6.4D: Development within the shoreline area should be regulated, where appropriate, to minimize interference with the public's ability to access the shoreline.

Policy 6.4E: A local public access planning process should be undertaken utilizing input from affected property owners to identify specific public access needs and opportunities within the City shoreline area. This process should result in an integrated plan for development of shoreline public access, including prioritization of projects and locations, and establishment of public access requirements for shoreline permits.

Policy 6.4F: Consistent with local public access planning, all development within the shoreline area should be required to make a proportionate contribution, either material or financial, toward meeting public access goals, either through dedication of land, granting of easements, provision of public access facilities, or other appropriate means.

Policy 6.4G: Public access improvements that have the potential to result in a net loss of ecological functions should be designed to minimize adverse impacts, and such improvements that would likely cause significant ecological impacts that cannot be mitigated should not be allowed.

6.5 VEGETATION CONSERVATION

Vegetation conservation includes activities to protect and restore vegetation along or near shorelines that contribute to ecological functions of shoreline areas. Vegetation conservation provisions include the prevention or restriction of plant clearing and earth grading, vegetation restoration, and the control of invasive weeds and nonnative plant species.

Policy 6.5A: The ecological functions and ecosystem-wide processes performed by vegetation along shorelines should be protected and restored.

Policy 6.5B: Vegetation conservation efforts should be encouraged to protect human safety and property, increase the stability of river banks, reduce the needs for structural stabilization measures, improve the visual and aesthetic qualities of the shoreline, and enhance shoreline uses.

Policy 6.5C: Vegetation conservation and restoration policies and regulations should be implemented as necessary to assure no net loss of ecological functions, to avoid adverse impacts on soil and hydrology, and to reduce the hazard of slope failures or accelerated erosion.

Policy 6.5D: Riparian corridors and significant habitat should be protected and restored.

Policy 6.5E: The importance of shoreline vegetation should be recognized, including: providing shade to maintain cooler water temperature, providing organic input, providing food, stabilizing banks and minimizing erosion, reducing fine sediment through stormwater retention and filtering, providing a source of large woody debris, regulating the microclimate, and providing critical riparian habitat.

6.6 VIEWS AND AESTHETICS

Scenic vistas, views of the water and aesthetic qualities of the shoreline area are important, and the public's ability and opportunity to enjoy shoreline views and aesthetics should be protected.

Policy 6.6A: Areas with scenic vistas, views of the water and high aesthetic value should be identified and protected.

Policy 6.6B: Developments should be designed to minimize adverse impacts on views from public property and views enjoyed by a substantial number of residents.

Policy 6.6C: Policies related to the protection of views and aesthetics should be implemented through site planning, height limitations, setbacks, siting of buildings and accessories, screening, vegetation conservation, architectural controls, sign control regulations, appropriate development siting, screening and architectural standards, designation of view corridors and maintenance of natural vegetative buffers.

6.7 WATER QUALITY, STORMWATER AND NONPOINT POLLUTION

Water quality refers to the physical characteristics of water within shoreline jurisdiction, including water quantity and hydrological, chemical, aesthetic, recreation-related, and biological characteristics. The following policies refer to development and uses affecting water quality and quantity, including the creation of impervious surfaces and the development of storm water management facilities.

Policy 6.7A: New development should be prohibited from causing significant ecological impacts due to alterations in water quality, quantity or flow characteristics.

Policy 6.7B: Policies and regulations related to storm water runoff should maintain or contribute to assuring no net loss of ecological functions, including ground water recharge and hydrological base flow considerations.

Policy 6.7C: Storm water outfalls should not result in a net loss of ecological functions and ecosystem-wide processes.

Policy 6.7D: Storm water facilities and discharges to wetlands within shoreline jurisdiction should only be allowed where impacts to water quality, quantity and flow characteristics have been fully considered and mitigated.

7.0 SHORELINE USE POLICIES

The following activities have been identified as those types of uses that can occur on shorelines of the City of Nooksack. Policy statements have been developed for these various activities in order to insure the proper use of the shoreline.

7.1 AGRICULTURE

Agriculture includes those methods used in vegetation and soil management as defined by WAC 173-26-020. The methods used in the agricultural processes have a great effect on the conditions of shorelines and water quality. These policies shall not apply retroactively to agricultural operations meeting the definition of existing and ongoing agriculture, but shall apply to new agricultural development, including associated clearing and grading in support of new agricultural uses.

Policy 7.1A: Agricultural uses shall generally be located outside of shoreline areas and be designed to assure no net loss of ecological functions or ecosystem-wide processes.

Policy 7.1B: A buffer zone of naturally occurring vegetation should be maintained between all tilled areas and bodies of water within shoreline jurisdiction.

Policy 7.1C: Livestock shelters and animal feeding facilities located within the shoreline area should make provisions to control run-off from feeds, manure, and associated animal wastes.

Policy 7.1D: Agricultural practices shall not use products which can potentially harm aquatic life within the shoreline area, except where used consistent with an approved Integrated Pest Management Plan.

Policy 7.1E: The watering of livestock in associated bodies of water shall not be permitted.

Policy 7.1F: Tilled areas shall meet erosion control best management practices as outlined by the Natural Resource Conservation Service, U.S. Dept. of Agriculture.

Policy 7.1G: The local SMP shall not require modification of or limit ongoing and existing agricultural activities occurring on lands zoned for agriculture and where such agricultural activities are recognized as pre-existing non-conforming uses on lands not zoned for agriculture.

Policy 7.1H: The SMP recognizes the importance of agriculture and supports its continued viability in the community while maintaining shoreline ecological functions and processes.

7.2 AQUACULTURE

Aquaculture is the culture of food fish, shellfish, or other aquatic plants and animals. It is generally recognized that development of aquaculture within the City of Nooksack is unlikely.

Policy 7.2A: Aquaculture should be consistent with the surrounding shoreline environment.

Policy 7.2B: Consideration should be given to protecting visual and physical access to shoreline areas when locating aquaculture uses.

Policy 7.2C: Aquaculture activities should be designed, located and operated in a manner that supports long term beneficial use of the shoreline and protects and maintains shoreline ecological functions and processes. Aquaculture should not be permitted where it would result in a net loss of shoreline ecological functions; adversely affect the quality or extent of habitat for native species; adversely impact habitat for threatened or endangered species; or interfere with water-dependent uses.

Policy 7.2D: Aquaculture should not be permitted in areas where it would result in a net loss of ecological function, and should be designed and located so as not to spread disease to native aquatic life, establish new non-native species which cause significant ecological impacts, or significantly impact the aesthetic qualities of the shoreline.

7.3 COMMERCIAL DEVELOPMENT

Commercial developments are those uses that are involved in wholesale and retail trade or business activities. Because most commercial developments depend on people to support their various activities, these developments lead to concentrations of people and traffic, which in turn have a great effect on the condition of the shoreline. Water-dependent commercial developments require a shoreline location. It is recognized that these types of commercial development are unlikely in Nooksack. If unregulated, non-water-dependent commercial development can have an undesirable impact on the shoreline.

Policy 7.3A: Commercial development should not result in a net loss of ecological functions or have significant adverse impacts to other shoreline uses, resources and values provided in RCW 90.58.020 such as recreation and public access.

Policy 7.3B: Preference should be given first to water-dependent commercial uses over non-water-dependent commercial uses; and second to water-related and then to water-enjoyment commercial uses over non-water-oriented commercial uses.

Policy 7.3C: Although some activities, such as restaurants, do not require a shoreline location, they do increase public enjoyment of the shoreline and should be given consideration for location there.

Policy 7.3D: Commercial developments on shorelines should be encouraged to locate in areas where commercial developments already exist.

Policy 7.3E: Commercial developments requiring parking should locate these facilities on upland areas away from the immediate water's edge to minimize impacts to shoreline activities and resources.

Policy 7.3F: Consideration should be given to the effect on public physical and visual access likely to result from new commercial development.

Policy 7.3G: Commercial developments should provide public access, unless such improvements are demonstrated to be infeasible or present hazards to life or property.

Policy 7.3H: Restoration of impaired shoreline ecological functions and processes should be encouraged as part of commercial development.

7.4 INDUSTRIAL DEVELOPMENT

This category includes those industrial uses engaged in primary production. It is recognized that water-dependent industry is unlikely in the City of Nooksack. Non-water-dependent industrial development can have a very great impact on shoreline areas.

Policy 7.4A: Shoreline priority should first be given to those industries that require a waterfront location for their operations, and second to those industries that are water-related over non-water oriented uses.

Policy 7.4B: Industrial development should not be located or designed in a manner that will result in a net loss of ecological function or that will interfere with other shoreline uses, resources or values.

Policy 7.4C: Where feasible, industrial development should incorporate environmental cleanup and restoration of the shoreline area.

Policy 7.4D: Vegetation removal should be limited to the minimum necessary to accommodate permitted primary structures.

Policy 7.4E: Industrial development should be compatible with the surrounding shoreline area.

Policy 7.4F: Cooperative use of parking and storage facilities by industry should be encouraged.

Policy 7.4G: Wherever possible, industrial development should not interfere with public visual and physical access to the shoreline.

Policy 7.4H: Industrial development should be encouraged to provide public access, except where such access would pose a threat to public health or safety or to private property.

Policy 7.4I: Industrial development on publicly owned lands should be required to provide public access.

Policy 7.4J: Restoration of impaired shoreline ecological functions and processes should be encouraged as part of industrial development.

Policy 7.4K: The heights of buildings should be limited to that height necessary to perform the primary function.

7.5 IN-STREAM STRUCTURES

An in-stream structure is waterward of the ordinary high water mark and either causes or has the potential to cause water impoundment or the diversion, obstruction, or modification of water flow.

Policy 7.5A: In-stream structures should serve to protect and preserve ecosystem-wide processes, ecological functions, and cultural resources, including fish and fish passage, wildlife and water resources, shoreline critical areas, hydrogeological processes, and natural scenic vistas.

Policy 7.5B: The location and planning of in-stream structures shall 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.

Policy 7.5C: Failing, harmful, unnecessary, or ineffective in-stream structures should be removed and, where appropriate, replaced. Where feasible, shoreline ecological functions and processes should be restored.

7.6 MINING

Mining is the removal of sand, gravel, soil, minerals, and other earth materials from the earth for economic use. Mining alters the natural character, resources and ecology of shorelines and may adversely affect critical shoreline resources.

Policy 7.6A: Mining should be prohibited within shoreline jurisdiction.

7.7 RECREATIONAL DEVELOPMENT

Recreation is the refreshment of body and mind outdoors or indoors through forms of play, sports, amusement or relaxation. Water-related recreation accounts for a very high proportion of all recreational activity in the Pacific Northwest. The recreational experience may be an active one involving boating, swimming, fishing or hunting or the experience may be passive such as enjoying the natural beauty of a shoreline, nature study, or picnicking.

Policy 7.7A: Shoreline recreational development should provide an adequate supply of commercial and public facilities for active and passive recreational uses without causing significant ecological impacts.

Policy 7.7B: Where possible, shoreline recreational facilities should be linked to other recreational attractions by pedestrian and bicycle trails.

Policy 7.7C: Only those recreational activities that are compatible with the shoreline environment in which they are located should be encouraged, and these uses should be developed to insure that no net loss of shoreline ecological functions or ecosystem-wide processes results.

Policy 7.7D: First priority should be given to water-dependent recreational uses and second priority should be given to water-enjoyment and water-related recreational uses over non-water oriented uses.

Policy 7.7E: Priority should be given to recreational developments that provide opportunities for public access to the shoreline area.

Policy 7.7F: Private investment in recreation facilities should be encouraged.

Policy 7.7G: Recreational development requiring extensive structures, utilities and roads and/or substantial modifications of topography or vegetation removal should not be located or expanded in areas where damage to persons, property, and/or shoreline functions and processes is likely to occur.

Policy 7.7H: Trail links between shoreline parks and public access points should be encouraged for walking, bicycle riding and other non-motorized vehicle access where appropriate.

Policy 7.7I: Where appropriate, recreation facilities should incorporate public education regarding shoreline ecological functions and processes, the role of human actions on the environment and the importance of public involvement in shoreline management.

7.8 RESIDENTIAL DEVELOPMENT

Residential development includes single-family and multifamily development, camping clubs, mobile home parks, or the creation of new residential lots through subdivision or conversion from another use. All residential development, including residential development exempt from the shoreline permit requirements, should be consistent with the following policies.

Policy 7.8A: Residential subdivisions proposed for the shoreline area should incorporate clustering of dwelling units to reduce physical and visual impacts on shorelines and to reduce utility and road costs. Where appropriate, such developments should include public or private open space and recreation facilities.

Policy 7.8B: Residential development should not result in a net loss of ecological functions. The following measures should be incorporated into applicable regulations: setbacks, buffers, density allowances, vegetation conservation requirements and limitations on shoreline armoring.

Policy 7.8C: Residential development that at a size and location that will cause significant ecological impacts should not be permitted.

Policy 7.8D: Subdivisions and conversions from non-residential uses should be required to create lots of sufficient size and configuration to allow residences to be constructed without causing significant ecological impacts.

Policy 7.8E: Subdivisions should be encouraged not to locate any structure within close proximity of the immediate water's edge, and instead use this area as open space.

Policy 7.8F: Vegetation removal should be limited to the minimum necessary to accommodate permitted primary residential structures.

Policy 7.8G: Subdivisions should be encouraged to provide community or public physical and/or visual access to shorelines.

Policy 7.8H: Erosion and sedimentation control measures should be included as part of the development plans.

Policy 7.8I: Residential development should be planned and built to minimize the need for shoreline stabilization and flood hazard reduction measures.

Policy 7.8J: Single-family residences are identified as a priority use when developed in a manner consistent with control of pollution and prevention of damage to the natural environment.

7.9 TRANSPORTATION AND PARKING

A road is a linear passageway for motor vehicles, and a railroad is a linear passageway with tracks for train traffic. The construction of linear transportation facilities and parking associated with allowed uses can both support and limit access to shorelines. Such development can also impair the visual qualities of water-oriented vistas, expose soils to erosion, increase storm water runoff, and accelerate or retard development along shorelines.

Policy 7.9A: Whenever feasible, major highways and railroads should be located away from shorelines.

Policy 7.9B: Safe, reasonable and adequate circulation systems to, and through or over, shorelines should be provided and maintained.

Policy 7.9C: The impact on the natural shoreline environment should be considered when designing, locating and constructing transportation facilities and parking in the shoreline area. Impacts to shoreline ecological functions and processes should be mitigated to the maximum extent practicable.

Policy 7.9D: Parking facilities shall only be allowed as necessary to support an authorized use and should be located in upland areas away from the water's edge unless no practicable alternative exists.

Policy 7.9E: Road and transportation planning should make provisions for public transportation, pedestrian and bicycle access to shoreline areas, where appropriate.

Policy 7.9F: Provisions should be made in highway and road design for compatible multiple uses, such as utility lines, pedestrian shore access, scenic pull-outs and view points.

Policy 7.9G: Railroad construction should be limited to maintenance of existing facilities.

Policy 7.9H: Transportation facilities should be located and designed to avoid impacts to public recreation and public access areas and to significant natural, historic, archaeological or cultural sites.

7.10 UTILITIES

Utilities are systems, services or facilities that produce, convey, store, or process various items including electricity, oil, gas, communications, sewage, water and the like. The installation of this apparatus necessarily disturbs the landscape, but can be planned to have minimal visual and physical effect on the environment.

Policy 7.10A: Utility facilities should be designed and located to assure no net loss of shoreline ecological functions, preserve the natural landscape, and minimize conflicts with present and planned uses.

Policy 7.10B: Utility production and processing facilities, such as power plants and sewage treatment plants, or parts of those facilities, that are non-water-oriented should not be allowed within shoreline areas, unless it can be demonstrated that no other feasible option is available.

Policy 7.10C: Multiple use corridors should be used as much as possible when locating utilities.

Policy 7.10D: After a utility installation/maintenance project has been completed, the affected area should be replanted with native vegetation.

Policy 7.10E: The location of utilities should be chosen so as not to obstruct scenic views.

Policy 7.10F: Where possible, utilities should be placed underground to minimize impacts to the aesthetic qualities of the area.

Policy 7.10G: Utilities should be located in existing rights-of-way and utility corridors when available.

Policy 7.10H: Utilities should be located and designed to avoid impacts to public recreation and public access areas and to significant natural, historic, archaeological or cultural sites.

8.0 SHORELINE MODIFICATION POLICIES

Shoreline modifications are related to construction of a physical element such as a dike, bulkhead, or fill. They can also include such activities as clearing and grading, or significant vegetation removal.

8.1 BOAT RAMPS

Boat ramps are permanent structures for launching watercraft. It is recognized that development of boat ramps in the City of Nooksack is unlikely.

Policy 8.1A: Boat ramps are water-dependent uses and should be given priority for shoreline location.

Policy 8.1B: Boat ramps should be sited, designed and constructed to minimize adverse effects on the shoreline and shoreline resources.

Policy 8.1C: New boat ramps should only be allowed for water-dependent uses or public access.

Policy 8.1D: Land disturbance associated with boat ramp construction should be limited to the minimum necessary to accommodate the proposed use.

Policy 8.1E: New construction should be allowed only when it has been shown that a specific need exists to support the proposed use.

Policy 8.1F: Boat ramps should be designed and constructed to avoid or minimize impacts to critical habitat and should result in no net loss of ecological function, while contributing to public physical and visual access to and enjoyment of waters of the state.

8.2 DOCKS

A dock is a structure built over or floating upon the water, used as a landing place for marine transport or for recreational purposes. A concentration of docks along the shore can interfere with or prevent public use of the water surface.

Policy 8.2A: New docks should be allowed only for water-dependent uses or public access.

Policy 8.2B: Docks associated with a single family residence is considered a water-dependent use, provided that it is designed and used as a facility to access watercraft and other moorage facilities are not available or feasible. Moorage for water-related and water-enjoyment uses or shared moorage for multifamily use should be allowed as part of a mixed-use development or where they provide public access.

Policy 8.2C: Dock construction should be limited to the minimum necessary to accommodate the proposed use.

Policy 8.2D: New construction should be allowed only when it has been shown that a specific need exists to support the proposed use.

Policy 8.2E: Docks should be designed and constructed to avoid or minimize impacts to critical habitat and sediment transport and should result in no net loss of ecological function, while contributing to public physical and visual access to and enjoyment of waters of the state.

Policy 8.2F: Docks should be constructed of materials that will not adversely affect water quality or aquatic plants and animals in the long term.

8.3 DREDGING

Dredging is the removal of unconsolidated material (gravel, sand, and silt) or other earthen materials from the bottom of a water body, for navigational purposes, underwater crossings, obtaining fill material, or construction projects. If not adequately regulated, dredging has the potential to cause significant environmental harm.

Policy 8.3A: Dredging and dredging disposal should only be done in a manner that avoids significant ecological impacts.

Policy 8.3B: Dredging other than for flood control, channel maintenance, and habitat creation/enhancement purposes should not be permitted.

Policy 8.3C: Dredging should be prohibited unless all appropriate feasibility studies have been completed and reviewed.

Policy 8.3D: In those instances where dredging is permitted, the shoreline area should not be used as a disposal site for dredge spoils, unless such use would create or enhance habitat value.

Policy 8.3E: All proposals for dredging operations should be coordinated and consistent with plans, policies, guidelines, and regulations of federal, state, and/or local agencies.

8.4 LANDFILL AND EXCAVATION

This category includes those activities that re-shape or change the character of the surface of the land. Activities covered by this section include land clearing, landscaping, excavation and grading or other earth moving projects.

Policy 8.4A: Landfill and excavation should only be permitted to the minimum extent necessary to accommodate an approved shoreline use or development.

Policy 8.4B: Landfill and excavation activities should be located, designed, and constructed to protect shoreline resources and to assure no net loss of ecological functions and ecosystem-wide processes.

Policy 8.4C: Fills waterward of the ordinary high water mark should be allowed only when necessary to support: water-dependent uses, public access, ecological restoration, and other uses as outlined by WAC 173-26-231(3)(c). Unavoidable impacts should be mitigated to the maximum extent practicable.

Policy 8.4D: Landfill should be permitted in limited instances to restore uplands where recent erosion has rapidly reduced upland area, to build beaches and protective berms for shore stabilization or recreation, to restore or enhance degraded shoreline ecological functions and processes, or to moderately elevate low uplands to make such uplands more suitable for purposes consistent with this Program.

Policy 8.4E: Fill and excavation activities should have appropriate feasibility studies completed and reviewed prior to authorization. Factors such as total water surface reduction, impediment to water flow and circulation, reduction of water quality, and destruction of habitat should be considered before granting a permit.

Policy 8.4F: Fill should not be allowed where shore stabilization works would be required to maintain the materials placed.

Policy 8.4G: Erosion control best management practices should be utilized during construction. The perimeters of landfills and excavations should be landscaped or otherwise stabilized to retard soil erosion.

Policy 8.4H: Fill material should be of a quality that will not result in adverse impacts to water quality.

8.5 OUTDOOR ADVERTISING AND SIGNS

Signs are publicly displayed boards whose purpose is to provide information, direction or advertising. Signs and billboards, because they are intended to be very visible, can have a great effect on the aesthetics of an area.

Policy 8.5A: In general, signs should be constructed to minimize interference with visual access to the shoreline. Where such locations are available, signs should be constructed against existing buildings to minimize visual obstructions of the shoreline and water bodies.

Policy 8.5B: Size, height, density and lighting of signs should be compatible with adjacent shoreline uses.

Policy 8.5C: Signs should be designed mainly to identify the premises and nature of enterprise without unduly distracting uninterested passers-by.

Policy 8.5D: No off-premise advertising signs or billboards should be permitted within the shoreline area.

Policy 8.5E: Moving or flashing signs and neon lighting for signs within the shoreline area should be prohibited.

Policy 8.5F: Interpretive signage should be allowed and, where appropriate, encouraged within the shoreline area.

8.6 SHORELINE FLOOD PROTECTION

Shoreline flood protection refers to flood control structures along streamways and includes rip-rapping, and construction of levees and dikes, but excludes other shoreline stabilization work such as bulkheads and groins.

Policy 8.6A: The design, location and construction of shoreline flood protection features should be undertaken only if it minimizes alteration of the natural shoreline.

Policy 8.6B: Shoreline flood protection should minimize any intrusion on areas below the ordinary high water mark.

Policy 8.6C: Wherever possible, construction of shoreline flood protection structures should provide for protection, preservation and restoration of ecological functions and ecosystem-wide processes.

Policy 8.6D: Wherever possible, construction of shoreline flood protection facilities should provide opportunities for public access to the shoreline.

Policy 8.6E: New construction should be located and designed to avoid the need for new shoreline flood protection in the future.

8.7 SHORELINE HABITAT AND NATURAL SYSTEMS ENHANCEMENT PROJECTS

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.

Policy 8.7A: Shoreline habitat and natural systems enhancement projects shall be encouraged where consistent with the City's restoration plan.

Policy 8.7B: Projects including modification of vegetation, removal of nonnative or invasive plants, shoreline stabilization, dredging, and filling, shall also be encouraged, provided that the primary purpose of such actions is clearly restoration of the natural character and ecological functions of the shoreline.

8.8 SHORELINE STABILIZATION

Shoreline stabilization includes actions taken to address erosion impacts to property, housing, businesses, or structures caused by natural processes. These can include both non-structural and structural methods of stabilization. Non-structural methods include setbacks, relocation of structures, ground water management, and planning and regulatory measures. Structural methods include shore defense works such as rip-rap, bulkheads and groins. Bulkheads are wall-like structures erected at bank edge, the purpose of which is to protect uplands or fills from erosion by moving water. Groins are wall-like structures extending from the bank, the purpose of which is to divert the natural longshore movement of materials and cause a beach to build on the drift side of the groin.

Policy 8.8A: Wherever possible, construction of shoreline stabilization should result in no net loss of ecological functions and ecosystem-wide processes. Mitigation should be provided if necessary to insure no net loss of shoreline functions and processes.

Policy 8.8B: Shoreline stabilization should be constructed in a manner that will minimize alteration of the natural shoreline.

Policy 8.8C: New development should be located and designed to avoid the need for future shoreline stabilization to the extent feasible.

Policy 8.8D: New stabilization measures should not be allowed except when necessity is demonstrated and should only be allowed for the purpose of protecting existing upland areas and not for the purpose of creating new uplands.

Policy 8.8E: New or expanded structural shore stabilization should only be allowed when non-structural measures, vegetation planting, or on-site drainage improvements would be insufficient to achieve the identified objectives.

Policy 8.8F: Shore stabilization should not be permitted to unnecessarily interfere with public access to public shorelines, nor with other appropriate shoreline uses including, but not limited to, navigation, or private recreation.

Policy 8.8G: Wherever feasible, opportunities for public access should be incorporated into the design and construction of shoreline stabilization projects.

Policy 8.8H: The use of natural-appearing rock and other natural materials should be encouraged in construction of shoreline stabilization.

Policy 8.8I: Failing, harmful, unnecessary, or ineffective structures should be removed and, where appropriate, replaced. Where feasible, shoreline ecological functions and processes should be restored using non-structural methods or less harmful long-term stabilization measures.

Policy 8.8J: Before locating groins, the effect of these structures on the movement of water and drift materials, on fish and wildlife, and on the aesthetic quality of the shoreline should be considered.

Policy 8.8K: Groins should only be allowed where necessary to support public access, shoreline stabilization or other public purpose.

8.9 SOLID WASTE DISPOSAL

Solid waste disposal includes collection, transport and disposal of all discarded or spent materials other than liquids such as sewage or wastewater. The shoreline is a particularly sensitive area and consequently especially susceptible to the environmental impacts that often accompany the operation of solid waste disposal facilities.

Policy 8.9A: Solid waste disposal facilities should not be permitted in the shoreline area.

Policy 8.9B: Solid waste transfer stations should only be allowed by conditional use within shoreline areas where no other feasible location exists.

NOOKSACK SHORELINE MANAGEMENT MASTER PROGRAM

PART TWO
SHORELINE MANAGEMENT REGULATIONS

CHAPTER 16.04 – SHORELINE MANAGEMENT
[PART OF NOOKSACK DEVELOPMENT REGULATIONS]

TABLE OF CONTENTS

SECTION ONE: AUTHORITY AND PURPOSE 1
16.04.010 Authority. 1
16.04.020 Purpose. 1

SECTION TWO: DEFINITIONS 2
16.04.030 Definitions. 2
16.04.040 Tense and Number. 10
16.04.050 Interpretation. 10

SECTION THREE: APPLICABILITY 11
16.04.060 Geographic Jurisdiction. 11
16.04.070 Application to Persons. 11
16.04.080 Application to Development, Use and Modification. 11
16.04.090 Exempt Activities. 11
16.04.100 Statement of Exemption. 15
16.04.110 Relationship to Other Local Regulations. 15
16.04.120 Relationship to Other State and Federal Laws. 16
16.04.130 Liberal Construction. 16
16.04.140 Nonconforming Development. 16
16.04.150 Property Rights. 17

SECTION FOUR: SHORELINE PERMITS 18
16.04.160 Permit Procedure. 18
16.04.170 Substantial Development Permit Criteria. 19
16.04.180 Conditional Use Permit Criteria. 19
16.04.190 Variance Permit Criteria. 20
16.04.200 Permit Conditions, Expiration, Rescission and Revision. 21
16.04.210 Appeals. 22
16.04.215 Enforcement. 23

SECTION FIVE: SHORELINE ENVIRONMENT DESIGNATIONS 25
16.04.220 Shoreline Environment Designations Established. 25
16.04.230 Official Shoreline Map. 25
16.04.240 Interpretation. 25
16.04.250 Aquatic Environment - Purpose. 26

16.04.260 Aquatic Environment - Permitted Uses. 26
16.04.270 Aquatic Environment - Conditional Uses. 26
16.04.275 Aquatic Environment - Prohibited Uses. 26
16.04.280 Aquatic Environment - Site and Construction Standards. 27
16.04.290 Natural Environment - Purpose. 27
16.04.300 Natural Environment - Permitted Uses. 27
16.04.310 Natural Environment - Conditional Uses. 27
16.04.315 Natural Environment - Prohibited Uses. 28
16.04.320 Natural Environment - Site and Construction Standards. 28
16.04.330 Shoreline Residential Environment - Purpose. 28
16.04.340 Shoreline Residential Environment - Permitted Uses. 28
16.04.350 Shoreline Residential Environment - Conditional Uses. 29
16.04.355 Shoreline Residential Environment - Prohibited Uses. 29
16.04.360 Shoreline Residential Environment - Site and Construction Standards. 29
16.04.370 Urban Conservancy Environment - Purpose. 29
16.04.380 Urban Conservancy Environment - Permitted Uses. 29
16.04.390 Urban Conservancy Environment - Conditional Uses. 30
16.04.395 Urban Conservancy Environment - Prohibited Uses. 30
16.04.400 Urban Conservancy Environment - Site and Construction Standards. 30
16.04.410 Urban Conservancy-Slough Environment - Purpose. 30
16.04.420 Urban Conservancy-Slough Environment - Permitted Uses. 30
16.04.430 Urban Conservancy-Slough Environment - Conditional Uses. 31
16.04.435 Urban Conservancy-Slough Environment - Prohibited Uses. 31
16.04.440 Urban Conservancy-Slough Environment - Site and Construction Standards. 31

SECTION SIX: GENERAL REQUIREMENTS 32
16.04.450 Applicability of Title 19 NMC. 32
16.04.460 Archeological Areas and Historic Sites. 32
16.04.470 Critical Areas. 33
A. Generally. 33
B. Wetlands. 33
C. Floodplains. 33
D. Rivers and streams – Critical Freshwater Habitat. 34
E. Steep Slopes. 34
16.04.480 Ecological Protection. 34
16.04.490 Public Access. 35
16.04.500 Vegetation Conservation. 36
16.04.510 Views and Aesthetics. 36
16.04.520 Water Quality and Stormwater. 37

SECTION SEVEN: SHORELINE USE REGULATIONS 38
16.04.530 Specific Shoreline Use Regulations 38
A. Agriculture. 38
B. Aquaculture. 39
C. Commercial Development. 39
D. Industrial Development. 41
E. In-Stream Structures. 41
F. Mining. 42
G. Recreational Development. 42
H. Residential Development. 42
I. Transportation – Roads and Parking. 44
J. Utilities. 45

SECTION EIGHT: SHORELINE MODIFICATION REGULATIONS 46
16.04.540 Specific Shoreline Modification Regulations 46
A. Boat Ramps. 46
B. Docks. 46
C. Dredging. 47
D. Landfill and Excavation. 48
E. Outdoor Advertising and Signs. 50
F. Shoreline Flood Protection. 50
G. Shoreline Habitat and Natural Systems Enhancement Projects. 51
H. Shoreline Stabilization. 51
I. Solid Waste Disposal. 53

This page intentionally left blank.

SECTION ONE: AUTHORITY AND PURPOSE

16.04.010 Authority.

This Chapter contains the Shoreline Management Program regulations of the City of Nooksack as adopted pursuant to and under the authority of the Shoreline Management Act, Chapter 90.58 RCW and WAC 173-26 (Part IV).

16.04.020 Purpose.

The purposes for which this Chapter has been developed include the following:

A. To further the goals of the Shoreline Management Act.

B. To implement a cooperative program of shoreline management between local and state government.

C. To provide a framework of development regulations to implement the goals and policies of the Shoreline Management Element of the Nooksack Comprehensive Plan.

D. To comply with the mandate established in the Shoreline Management Act that local governments develop and adopt local master programs to guide and regulate development on shorelines of the state.

SECTION TWO: DEFINITIONS

16.04.030 Definitions.

As used in this Chapter, unless the context requires otherwise, the following definitions and concepts shall apply. Word or phrases used in this Chapter that are not specifically defined below shall be interpreted to give them the meaning they have in common usage and to give this Chapter its most reasonable application.

ACT - Means the Shoreline Management Act of 1971, Chapter 90.58 RCW, as amended.

ADMINISTRATOR - Means the City of Nooksack Public Works Director or designee. The Administrator is responsible for reviewing Shoreline Permit Applications, inspecting project sites, and making recommendations to the Nooksack City Council.

AGRICULTURAL ACTIVITIES - Means agricultural uses and practices including, but not limited to: producing, breeding, or increasing agricultural products; rotating and changing 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 agricultural lands under production or cultivation.

AGRICULTURAL EQUIPMENT AND AGRICULTURAL FACILITIES – Include, but are 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 LANDS - Means those specific land areas on which agricultural activities are conducted as of the adoption date of a local shoreline master program pursuant to WAC 173-26 as evidenced by aerial photography or other documentation. After the effective date of the this master program, land converted to agricultural use is subject to compliance with the requirements of the this master program.

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

AQUACULTURE - Means the culture or farming of food fish, shellfish or other aquatic plants and animals for human consumption. Aquaculture does not include the harvest of free-swimming fish or the harvest of shellfish not artificially planted or maintained.

ARCHAEOLOGIST - Means a person who has designed and executed an archaeological course of study and has been awarded an advanced degree in archaeology, anthropology, or history or other germane discipline with a specialization in archaeology, and who has at least two (2) years of experience, including at least one (1) year of supervised field experience.

ASSOCIATED WETLAND - Means wetlands that are in proximity to tidal waters, lakes, rivers or streams that are subject to the Shoreline Management Act and either influence or are influenced by any such water body. Factors used to determine proximity and influence include but are not limited to: location contiguous to a shoreline water body, formation by tidally influenced geo-hydraulic processes, presence of a surface connection including through a culvert or tide gate, location in part or whole within the 100 year floodplain of a shoreline, periodic inundation, and/or hydraulic continuity.

AVERAGE GRADE - Means the average of the natural or existing topography of the portion of the lot, parcel, or a tract of real property which will be directly under the proposed building or structure: PROVIDED, that in the case of structures to be built over the water, average grade shall be the elevation of the ordinary high water mark. Calculation of the average grade shall be made by averaging the elevations at the center of all exterior walls of the proposed building or structure.

BUFFER - Means an upland land area adjacent to a shoreline, river, stream, wetland or critical area that protects the water feature or area from human disturbance by providing separation between the area and the adjacent land uses. A buffer shall be measured horizontally from the wetland edge or ordinary high water mark where appropriate.

CHANNEL MIGRATION ZONE (CMZ) - Means 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 in relation to the characteristics of the river and surrounding features.

CITY - Means the City of Nooksack.

CLEARING - Means the destruction or removal of vegetation ground cover, shrubs and trees including, but not limited to, root material removal and/or topsoil removal.

CONDITIONAL USE - Means a use, development, or substantial development which is classified as a conditional use or which is not classified within the applicable Master Program.

CRITICAL AREAS - Means the following areas and ecosystems (a) wetlands; (b) areas with 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.

DEPARTMENT - Means the Washington State Department of Ecology.

DEVELOPED SHORELINES - Means those shoreline areas that are characterized by existing development or structures located within shoreline jurisdiction.

DEVELOPMENT - Means a use consisting of the construction or exterior alteration of structures; dredging; drilling; dumping; filling; removal of any sand, gravel, or minerals; placing of obstructions; or any project of a permanent or temporary nature which interferes with the normal public use, at any state of water level, of the surface of the waters overlying lands subject to Chapter 90.58 RCW.

DEVELOPMENT REGULATIONS - Means the controls placed on development or land use by a county or city, including, but not limited to, zoning ordinances, critical areas ordinances, all portions of a shoreline master program other than goals and policies approved or adopted under chapter 90.58 RCW, planned unit development ordinances, subdivision ordinances, and binding site plan ordinances together with any amendments thereto.

DIKE - Means an embankment, usually placed within or near the edge of a flood plain, to protect adjacent lowlands from flooding.

DISPOSAL FACILITIES - Means the location and facilities where any final treatment, utilization, processing, or depository of solid waste occurs.

ECOLOGICAL FUNCTIONS - Means the work performed or role played by the physical, chemical, and biological processes that contribute to the maintenance of the aquatic and terrestrial environments that constitute the shoreline's natural ecosystem.

ECOSYSTEM-WIDE PROCESSES - Means 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.

EMERGENCY ACTIVITIES - Means those activities that require immediate action within a time too short to allow full compliance with this program due to an unanticipated and imminent threat to public health, safety or the environment. Emergency construction does not include development of new permanent protective structures where none previously existed.

ENVIRONMENT, SHORELINE - Means a geographic area identified and governed by these regulations as shown on the Official Shoreline Map.

EXEMPT DEVELOPMENT - Means a use or development activity that is not a substantial development and that is specifically listed as exempt from the substantial development permit requirement in WAC 173-27-040, but which must otherwise comply with applicable provisions of the act and this master program.

EXISTING AND ONGOING AGRICULTURE - Means agricultural activities in existence and ongoing as of the effective date of this Ordinance.

FAIR MARKET VALUE - Means the open market bid price for conducting the work, using the equipment and facilities, and purchase of goods, services and materials necessary to accomplish a development. This would normally equate to the cost of hiring a contractor to undertake the development from start to finish, including the coast 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 - Means, for the purpose of this chapter, that an action, such as a development project, mitigation, or preservation requirements, meets all of the conditions outlined in WAC 173-26-020(15).

FILL - Means 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 elevation or creates dry land.

FLOOD PLAIN - Is synonymous with the one-hundred year flood plain 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 ordinances regulation maps or a reasonable method which meets the objectives of the act.

FLOODWAY, SHORELINE - Means those portions of a floodplain upon which flood waters are carried during periods of flooding that occur with reasonable regularity, said floodways being identified under normal circumstances by changes in soil or vegetation; PROVIDED that, floodways shall not include areas protected from flooding by flood control devices maintained or licensed by a government agency.

GEOTECHNICAL REPORT OR GEOTECHNICAL ANALYSIS - Means 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.

GRADING - Means the movement or redistribution of the soil, sand, rock, gravel, sediment, or other material on a site in a manner that alters the natural contour of the land.

GUIDELINES - Means those standards adopted by the department 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 shall also provide criteria for local governments and the department in developing and amending master programs.

HEIGHT - Means the distance as measured from the average grade level to the highest point of a structure excluding appurtenance such as chimneys and antennas and similar appurtenances, except where such appurtenances obstruct the view of the shoreline of a substantial number of residences on areas adjoining such shorelines.

HEARINGS BOARD - Means the State Shoreline Hearings Board established by RCW 90.58.

MITIGATION PLAN - Means a detailed plan indicating actions necessary to mitigate adverse impacts to critical areas.

MIXED USE DEVELOPMENT - Means a combination of uses within the same building or site as a part of an integrated development project with functional interrelationships and coherent physical design.

NATIVE VEGETATION - Means plant species that are indigenous to Whatcom County and the local area.

NATURAL OR EXISTING TOPOGRAPHY - Means the topography of the lot, parcel, or tract of real property immediately prior to any site preparation or grading, including excavation or landfill.

NONWATER-ORIENTED USES - Means those uses that are not water-dependent, water-related, or water-enjoyment.

NON-CONFORMING USE, DEVELOPMENT OR STRUCTURE - Means a shoreline use, development or structure which was lawfully constructed or established prior to the effective date of the act or this program or amendments thereto, but which does not conform to present regulations or standards of the program or policies of the act.

ORDINARY HIGH WATER MARK (OHWM) - Means that mark on all lakes, streams, and tidal water that will be found by examining the bed and banks and ascertaining where the presence

and action of waters are so common and usual, and so long continued in all ordinary years, 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 approved development; provided that, in any area where the OHWM cannot be found, the OHWM adjoining saltwater shall be the line of mean higher high tide and the OHWM adjoining fresh water shall be the line of mean high water.

PARTY OF RECORD - Means all persons, agencies or organizations who have submitted written comments in response to a notice of application; made oral comments in a formal public hearing conducted on the application; or notified local government of their desire to receive a copy of the final decision on a permit and who have provided an address for delivery of such notice by mail.

PERMIT - Means any substantial development permit, conditional use permit, variance permit, or revision authorized under chapter 90.58 R.C.W.

PERSON - Means an individual, partnership, corporation, association, organization, cooperative, public or municipal corporation, or agency of the state or local government unit however designated, or Indian Nation or tribe.

PRIMARY ASSOCIATION - Means the use of a habitat area by a listed or priority species for breading/spawning, rearing young, resting, roosting, feeding, foraging, and/or migrating on a frequent and/or regular basis during the appropriate season(s) as well as habitats that are used less frequently/regularly but which provide for essential life cycle functions such as breeding/nesting/spawning.

PRIORITY HABITAT - Means a habitat type with unique or significant value to one or more species. An area classified and mapped as priority habitat must have one or more of the following attributes:

1. Comparatively high fish or wildlife density;
2. Comparatively high species diversity;
3. Fish spawning habitat;
4. Important wildlife habitat;
5. Important fish or wildlife seasonal range;
6. Important fish or wildlife movement corridor;
7. Rearing and foraging habitat;
8. Refugia habitat;
9. Limited availability;
10. High vulnerability to habitat alteration; or
11. Unique or dependent species.

A priority habitat may be described by a unique vegetation type or by a dominant plant species that is of primary importance to fish and wildlife. A priority habitat may also be described by a successional stage. Alternatively, it may also consist of a specific habitat element of key value to fish and wildlife. A priority habitat may contain priority and/or non-priority fish and wildlife species.

PRIORITY SPECIES - Means species requiring protective measure and/or management guidelines to ensure their persistence at genetically viable population levels. Priority species are those that meet any of the listed criteria below, consistent with WAC 173-26-020(29).

1. State-listed or state proposed species.
2. Vulnerable aggregations.
3. Species of recreation, commercial, and/or tribal importance.

4. Species listed under the federal Endangered Species Act (ESA) as either proposed, threatened, or endangered.

PUBLIC INTERST - Means 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 such as an effect on public property or on health, safety, or general welfare resulting from a use or development.

QUALIFIED PROFESSIONAL OR CONSULTANT - Means a person with experience and training with expertise appropriate for the relevant critical area subject in accordance with WAC 365-195-905(4). A qualified professional must have obtained a B.S. or B.A. or equivalent degree in biology, soil science, engineering, environmental studies, fisheries, geology, geomorphology or related field, and related work experience.

REGULATED ACTIVITY - Means:

1. The removal, excavation, grading or dredging of soil, sand, gravel, minerals, organic matter or material of any kind;
2. The dumping, discharging or filling with any material;
3. The draining, flooding or disturbing of the water level or water table;
4. The driving of pilings;
5. The placing of obstructions;
6. The construction, reconstruction, demolition or expansion of any structure;
7. The destruction or alteration of vegetation through clearing, harvesting, shading, intentional burning or planting of vegetation that would alter the character of a wetland, river or stream; provided, that these activities are not part of a forest practice governed under Chapter 76.09 RCW and its rules; or
8. Any activity that results in a change of water temperature, a change of physical or chemical characteristics of wetland water sources, including quantity, or the introduction of pollutants.

RESTORE, RESTORATION, OR ECOLOGICAL RESTORATION - Means the reestablishment or upgrading of impaired ecological shoreline processes or functions. This may be accomplished through measures including but not limited to re-vegetation, 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.

RIP RAP - Means dense, hard, angular rock free from cracks or other defects conductive to weathering used for revetments, bulkheads or other flood control works.

RIPARIAN CORRIDOR OR AREA - Means the area adjacent to a water body (stream, lake or marine water) that contains vegetation that influences the aquatic ecosystem, nearshore area and/or and fish and wildlife habitat by providing shade, fine or large woody material, nutrients, organic debris, sediment filtration, and terrestrial insects (prey production).

SHALL - Means a mandate; the action must be done.

SHORELANDS - Means those lands extending landward for 200 feet in all directions, measured on a horizontal plane, from the ordinary high water mark of the Sumas River or Breckenridge Creek and those land areas extending fifty feet from the delineated edge of the Nooksack Slough and those wetlands associated with any of these water bodies.

SHORELINE MASTER PROGRAM OR MASTER PROGRAM - Means the Shoreline Management Master Program of the City of Nooksack. The Nooksack Shoreline Master Program is comprised of two parts: the Shoreline Management Element of the Nooksack Comprehensive Plan and the regulations contained or referenced in this Chapter.

SHORELINE MODIFICATIONS - Means 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, fill, bulkhead, or other shoreline structure. They can include other actions, such as clearing, grading, or application of chemicals.

SHORELINES OF THE STATE - Means all of the water areas of the state as defined in RCW 90.58.030, and their associated shorelands, together with the lands underlying them except:

1. Shorelines of statewide significance;
2. Shorelines on segments of streams upstream of a point where the mean annual flow is twenty cubic feet per second (20 c.f.s.) or less and the wetlands associated with such upstream segments; and
3. Shorelines on lakes less than twenty (20) acres in size and wetlands associated with such small lakes.

SHORELINES, SHORELINE AREAS, or SHORELINE JURISDICTION - Means all of the water areas within the City of Nooksack identified as shorelines of the state, including the Sumas River, Breckenridge Creek and the Nooksack Slough, and their associated shorelands.

SHORELINES OF STATEWIDE SIGNIFICANCE - Means shorelines of the state defined as shorelines of statewide significance pursuant to RCW 90.58.030(2)(f).

SHOULD - Means the particular action is required unless there is a demonstrated, compelling reason, based on the policy of the Shoreline Management Act and this master program, against taking the action.

SIGNIFICANT VEGETATION REMOVAL - Means the removal or alteration of vegetation by clearing, grading, cutting, burning, chemical means, or other activity that causes significant ecological impacts to functions provided by vegetation. The removal of invasive or noxious weeds and tree pruning not affecting ecological functions do not constitute significant vegetation removal.

SOLID WASTE - Means all putrescible and non-putrescible solid and semisolid wastes including, but not limited to, garbage, rubbish, ashes, industrial wastes, swill demolition and construction wastes, abandoned vehicles or parts thereof, and discarded commodities.

STATEMENT OF EXEMPTION - Means a written statement by the Administrator that a particular development proposal is exempt from the substantial development permit requirement and is generally consistent with this Program and the policy of the Act.

STREAMWAY - Means a river or stream's central runoff corridor including all wet and dry channels, together with adjacent point-bars, channel-bars, and islands which are wetted or surrounded by stream flow at bank full stage. The streamway is measured from outside bank edge to outside bank edge.

STRUCTURE - Means a permanent or temporary edifice or building, or any piece of work artificially built or composed of parts joined together in some definite manner, whether installed on, above or below the surface of the ground or water, except for vessels.

SUBSTANTIAL DEVELOPMENT - Means any development of which the total cost or fair market value exceeds $5,000.00 or as this amount is hereafter adjusted for inflation pursuant to RCW 90.58.030(3)(e), or any development which materially interferes with normal public use of the water or shorelines of the state; EXCEPT that the classes of development listed under Section 16.04.090(A) (1) through (14) shall not be considered substantial developments.

SUBSTANTIALLY DEGRADE - Means to cause significant ecological impact.

SWAMP - Means a tract of low-lying land saturated with moisture and usually overgrown with vegetation.

THREATENED OR ENDANGERED SPECIES - Means those native species that are listed as threatened or endangered species under the federal Endangered Species Act, or that are listed in rule by the Washington State Department of Fish and Wildlife as threatened or endangered.

UPLAND - Means dry lands landward of the OHWM or delineated wetland edge.

VARIANCE - Means an adjustment in the application of this Program's regulations to a particular site to grant relief from the specific bulk, dimensional, or performance standards set forth in this Program.

VEGETATION CONSERVATION AREA - Means areas adjacent to the shoreline where native vegetation is to be protected or restored to support the habitat of priority species and threatened and endangered species. Except where otherwise designated on the Official Shoreline Map, the vegetation conservation area shall include those areas within the Natural Shoreline Environment and areas within applicable river, stream and wetland buffers.

VESSEL - Means 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.

VIEW - Means a confined view such as may occur by looking through a window, tunnel, or framed by vegetation and/or structures.

WATER-DEPENDENT USE - Means 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 - Means a recreational use or other use that facilitates public access to, or enjoyment of, 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 - Refers to any combination of water-dependent, water-related, and/or water-enjoyment uses and serves as an all encompassing definition for priority uses established under the Act.

WATER QUALITY - Means the physical characteristics of water within shoreline jurisdiction, including water quantity, hydrological, physical, chemical, aesthetic, recreation-related, and biological characteristics.

WATER-RELATED USE - Means a use or a portion of a use which is not intrinsically dependent on a waterfront location but whose economic viability is dependent on a waterfront location because: (a) the use has a functional requirement for a waterfront location such as the arrival or shipment of materials by water or the need for large quantities of water; or (b) the use provides a necessary service supportive of the water-dependent uses and the proximity of the use to its customers makes its services less expensive and/or more convenient.

WETLANDS - Means areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those

artificial wetlands intentionally created from non-wetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from non-wetland areas to mitigate the conversion of wetlands.

16.04.040 Tense and Number.

When consistent with the context, words used in the present tense shall include the future; the singular shall include the plural and the plural the singular.

16.04.050 Interpretation.

As used in this Chapter, the words “shall” and “must” are mandatory and the words ”should” and “may” are permissive.

SECTION THREE: APPLICABILITY

16.04.060 Geographic Jurisdiction.

The provisions of this Program shall apply to all shoreline areas within the corporate limits of the City of Nooksack. The location and extent of known shoreline jurisdiction are shown on the Official Shoreline Map. Shoreline jurisdiction includes the water areas of the Sumas River and Breckenridge Creek, together with the lands underlying them, plus those lands within 200 feet of the ordinary high water mark of the above water bodies, plus those wetlands associated with any of the above water bodies, including, but not limited to, the Nooksack Slough. As a local option, the adjacent land area within fifty (50) feet of the delineated edge of such associated wetlands is also included in shoreline jurisdiction.

16.04.070 Application to Persons.

This program shall apply to every person as defined in Section 16.04.030 NMC.

16.04.080 Application to Development, Use and Modification.

A. This program shall apply to any development as defined in Section 16.04.030 NMC and to any use or modification of areas within shoreline jurisdiction. All proposed uses, modifications and development occurring within shoreline jurisdiction must conform to and be consistent with this master program, and Chapter 90.58 RCW, the Shoreline Management Act, whether or not a permit is required.

B. No substantial development as defined in Section 16.04.030 NMC shall be undertaken by any person on shorelines without first obtaining a shoreline permit from the City of Nooksack; PROVIDED that, such a permit shall not be required for the activities identified under Section 16.04.090 NMC.

C. No authorization to undertake use or development on shorelines of the state shall be granted unless upon review, the use or development is determined to be consistent with the policy and provisions of the Shoreline Management Act and this master program.

16.04.090 Exempt Activities.

A. A substantial development permit shall not be required for the following activities. Those activities identified under Subsections (1) through (16) are specifically exempted from the substantial development permit requirement pursuant to RCW 90.58.030(3)(9e) and WAC 173-27-040.

1. Any development of which the total cost or fair market value, whichever is higher, does not exceed six thousand four hundred and sixteen dollars or as this dollar value is adjusted for inflation pursuant to RCW 90.58.030(3)(e), if such development does not materially interfere with the normal public use of the water or shorelines of the state. For the purposes of determining whether or not a shoreline substantial development 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 and this master program. The total cost or fair market value of the development shall include the fair market value of any donated, contributed or found labor, equipment or materials;

2. Normal maintenance or repair of existing structures or developments, including damage by accident, fire or elements. "Normal maintenance" includes those usual acts to prevent a decline, lapse, or cessation from a lawfully established condition. "Normal repair" means to restore a development to a state comparable to its original

condition, including but not limited to its size, shape, configuration, location and external appearance, within a reasonable period after decay or partial destruction, except where repair causes substantial adverse effects to shoreline resource or environment. Replacement of a structure or development may be authorized as 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;

3. Construction of the normal protective bulkhead common to single-family residences. A "normal protective" bulkhead includes those structural and nonstructural developments installed at or near, and parallel to, the ordinary high water mark for the sole purpose of protecting an existing single-family residence and appurtenant structures from loss or damage by erosion. A normal protective bulkhead is not exempt if constructed for the purpose of creating dry land. When a vertical or near vertical wall is being constructed or reconstructed, not more than one cubic yard of fill per one foot of wall may be used as backfill. When an existing bulkhead is being repaired by construction of a vertical wall fronting the existing wall, it shall be constructed no further waterward of the existing bulkhead than is necessary for construction of new footings. When a bulkhead has deteriorated such that an ordinary high water mark has been established by the presence and action of water landward of the bulkhead then the replacement bulkhead must be located at or near the actual ordinary high water mark. Beach nourishment and bioengineered erosion control projects may be considered a normal protective bulkhead when any structural elements are consistent with the above requirements and when the project has been approved by the department of fish and wildlife;

4. Emergency construction necessary to protect property from damage by the elements. An "emergency" is an unanticipated and imminent threat to public health, safety, or the environment which requires immediate action within a time too short to allow full compliance with this chapter. Emergency construction does not include development of new permanent protective structures where none previously existed. Where new protective structures are deemed by the administrator to be the appropriate means to address the emergency situation, upon abatement of the emergency situation the new structure shall be removed or any permit which would have been required, absent an emergency, pursuant to chapter 90.58 RCW, these regulations, or the local master program, obtained. All emergency construction shall be consistent with the policies of chapter 90.58 RCW and the local master program. As a general matter, flooding or other seasonal events that can be anticipated and may occur but that are not imminent are not an emergency;

5. Construction and practices normal or necessary for farming, irrigation, and ranching activities, including agricultural service roads and utilities on shorelands, construction of a barn or similar agricultural structure, and the construction and maintenance of irrigation structures including but not limited to head gates, pumping facilities, and irrigation channels: Provided, That a feedlot of any size, all processing plants, other activities of a commercial nature, alteration of the contour of the shorelands by leveling or filling other than that which results from normal cultivation, shall not be considered normal or necessary farming or ranching activities. A feedlot shall be an enclosure or facility used or capable of being used for feeding livestock hay, grain, silage, or other livestock feed, but shall not include land for growing crops or

vegetation for livestock feeding and/or grazing, nor shall it include normal livestock wintering operations;

6. Construction or modification, by or under the authority of the Coast Guard or a designated port management authority, of navigational aids such as channel markers and anchor buoys;
7. Construction on shorelands by an owner, lessee, or contract purchaser of a single-family residence for his own use or for the use of his family, which residence does not exceed a height of thirty-five feet above average grade level and which meets all requirements of the state agency or local government having jurisdiction thereof, other than requirements imposed pursuant to RCW 90.58. “Single-family residence” means a detached dwelling designed for and occupied by one family including those structures and developments within a contiguous ownership which are a normal appurtenance. An “appurtenance” is necessarily connected to the use and enjoyment of a single-family residence and is located landward of the ordinary high water mark and the perimeter of a wetland. Normal appurtenances include a garage; deck; driveway; utilities; fences; and grading which does not exceed two hundred fifty cubic yards (except to construct a conventional drainfield);
8. Construction of a dock, including a community dock, designed for pleasure craft only, for the private noncommercial use of the owner, lessee, or contract purchaser of single and multiple family residences. A dock is a landing and moorage facility for watercraft and does not include recreational decks, storage facilities or other appurtenances. This exception applies if the fair market value of the dock does not exceed ten thousand dollars. However, if subsequent construction having a fair market value exceeding two thousand five hundred dollars occurs within five years of the completion of the prior construction, the subsequent construction shall be considered a substantial development;
9. Operation, maintenance, or construction of canals, waterways, drains, reservoirs, or other facilities that now exist or are hereafter created or developed as a part of an irrigation system for the primary purpose of making use of system waters, including return flow and artificially stored ground water for the irrigation of lands;
10. The marking of property lines or corners on state owned lands, when such marking does not significantly interfere with normal public use of the surface of the water;
11. Operation and maintenance of any system of dikes, ditches, drains, or other facilities existing on September 8, 1975, which were created, developed or utilized primarily as a part of an agricultural drainage or diking system;
12. Any project with a certification from the governor pursuant to RCW 80.50;
13. Site exploration and investigation activities that are prerequisite to preparation of an application for development authorization under this Program, if:
    a. The activity does not interfere with the normal public use of the surface waters;
    b. The activity will have no significant adverse impact on the environment including, but not limited to, fish, wildlife, fish or wildlife habitat, water quality, and aesthetic values;
    c. The activity does not involve the installation of a structure, and upon completion of the activity the vegetation and land configuration of the site are restored to conditions existing before the activity;
    d. A private entity seeking development authorization under this section first posts a

performance bond or provides other evidence of financial responsibility to ensure that the site is restored to preexisting conditions; and

e. The activity is not subject to the permit requirements of section 90.58.550 RCW.

14. The process of removing or controlling aquatic noxious weeds, as defined in RCW 17.26.020, through the use of an herbicide or other treatment methods applicable to weed control that are recommended by a final environmental impact statement published by the department of agriculture or the department of ecology jointly with other state agencies under chapter 43.21C RCW;

15. Watershed restoration projects as defined herein;

    i. "Watershed restoration project" means 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:

        A. A project that involves less than ten miles of streamreach, 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;

        B. 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

        C. 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, 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 ordinary high water mark of the stream;

    ii. "Watershed restoration plan" means a plan, developed or sponsored by the department of fish and wildlife, the department of ecology, the department of natural resources, the department of transportation, a federally recognized Indian tribe acting within and pursuant to its 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;

16. A public or private project that is designed to improve fish or wildlife habitat or fish passage, when all of the following apply:

    (i) The project has been approved in writing by the department of fish and wildlife;

    (ii) The project has received hydraulic project approval by the department of fish and wildlife pursuant to chapter 77.55 RCW; and

    (iii) The local government has determined that the project is substantially consistent with the local shoreline master program. The local government shall make such determination in a timely manner and provide it by letter to the project proponent.

B. Exemptions shall be construed narrowly. Only those developments that meet the precise terms of one or more of the listed exemptions may be granted exempt from the substantial development permit process.

C. An exemption from the substantial development permit requirements shall not be construed as an exemption from any other requirement of this program or the Act including, if applicable, the requirement for a shoreline variance or conditional use permit or to comply with any other applicable regulation. To be authorized as an exempt activity, the proposed use, development or modification must be consistent with the policies and regulatory provisions of this Program and the Act.

D. The burden of proving that a development or use is exempt is on the applicant or proponent of the proposed action.

E. If any part of a proposed development is not eligible for exemption, then a substantial development permit shall be required for the entire project.

16.04.100 Statement of Exemption.

A. The Administrator is hereby authorized to issue statements of exemption, upon request, for developments and activities which qualify under one or more of the exemptions in Section 16.04.090 NMC or which are otherwise found to be exempt from the permit requirements of this program. The statement shall be in writing and shall indicate the specific exemption of this Program that is being applied to the development, and shall provide a summary of the Administrator's analysis of the consistency of the project with this Program and the Act. As appropriate, such statements of exemption shall contain conditions and/or mitigating measures of approval to achieve consistency and compliance with the provisions of the Program and Act. A denial of an exemption shall be in writing and shall identify the reason(s) for the denial. The Administrator's actions on the issuance of a statement of exemption or a denial are subject to appeal pursuant to Section 16.04.210 of this Chapter.

B. No statement of exemption from the substantial development permit process is required for developments normally exempt by Section 16.04.090 NMC unless specifically required elsewhere in this program; PROVIDED however, that a statement of exemption shall be obtained from the Administrator prior to beginning development on shorelines under the jurisdiction of this program if the development includes construction or expansion of a structure or clearing or grading activities, or if the Administrator determines that uncertainty exists about the exemption status of the development.

C. Whenever an exempt activity also requires a permit from the U.S. Army Corps of Engineers, a statement of exemption shall be sent to the applicant and the Department of Ecology pursuant to WAC 173-27-150.

16.04.110 Relationship to Other Local Regulations.

A. Obtaining a shoreline permit or statement of exemption for a development or use does not excuse the applicant from complying with any other local statutes or regulations applicable to such development or use.

B. Where both are applicable, a building permit shall not be issued until a shoreline permit is granted; provided that, any such permit issued by the Building Official shall be subject to the same terms and conditions which apply to the shoreline permit.

C. Where other local permits or approvals are required, such as for zoning conditional uses, variances or subdivisions, the Administrator of those permits or approvals shall attach

conditions to such permits or approvals as are required to ensure that the developments are consistent with this Program.

16.04.120 Relationship to Other State and Federal Laws.

Obtaining a shoreline permit or statement of exemption for a development or use shall not excuse the applicant from complying with any other state, regional, or federal statutes or regulations applicable to such development or use.

16.04.130 Liberal Construction.

As provided for in RCW 90.58.900, the Shoreline Management Act is exempt 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, respectively.

16.04.140 Nonconforming Development.

The following provisions shall apply to lawfully established uses, buildings and/or structures that do not meet the specific standards of this Program.

A. Nonconforming developments may be continued. If the nonconforming use of a conforming or nonconforming building or structure is discontinued for twelve consecutive months or for twelve months during any two-year period, the nonconforming use right shall expire and any subsequent use shall be conforming; provided, that a subsequent conforming use of a nonconforming building or structure shall only be allowed as a conditional use.

B. A nonconforming use housed in a nonconforming building or structure shall not be changed to another nonconforming use. The change of a nonconforming use housed in a conforming building or structure to a different nonconforming use may be allowed as a conditional use; provided, that the conforming status of the building or structure is not affected by the change of use, and only upon a finding that:

   i. No reasonable alternative conforming use is practical; and

   ii. 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.

   Conditions may be attached to the permit as are deemed necessary to assure compliance with the above findings, the requirements of the this master program and the act and to assure that the sue will not become a nuisance or a hazard.

C. Non-conforming structures may be maintained, repaired, renovated, or remodeled to the extent that non-conformance with the standards and regulations of this Program is not increased; provided, that nonconforming development, which is moved any distance, must be brought into conformance with the requirements of this Program.

D. The expansion of a nonconforming use may be permitted as a conditional use; provided, that the expansion does not result in new structures that are nonconforming or result in an increase in the nonconformity of existing structures.

E. The expansion of a nonconforming building or structure that contains a conforming use may be permitted as a conditional use, provided that the enlargement does not increase the extent of non-conformity by further encroaching upon or extending into areas where construction or use would not be allowed for new development or uses.

F. A nonconforming single family residence damaged by any means, other than by a

purposeful act of demolition by the owner or his agent, may be reconstructed to those configurations existing immediately prior to the time the structure was damaged, so long as restoration is completed within one year of the date of final resolution of all legal actions ensuing from the damage. Non-conforming structures other than single family residences which are damaged to an extent not exceeding seventy-five percent replacement cost of the original structure may be reconstructed in the same manner as set forth above for single family residences provided the restoration is completed within one year of the date of final resolution of all legal actions ensuing from the damage.

G. 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.

H. 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 conditional use permit.

16.04.150 Property Rights.

A. This Program shall not be construed as altering existing law on access to or trespass on private property.

B. This Program shall not be construed as granting the general public any right to enter private property without permission of the owner.

C. The permit procedures and enforcement provisions of the Shoreline Master Program shall be implemented in a manner consistent with relevant constitutional limitations on the regulation of private property.

SECTION FOUR: SHORELINE PERMITS

16.04.160 Permit Procedure.

A. The City Council of the City of Nooksack is vested with the authority to hold public hearings, make final decisions on permit applications and establish permit conditions related to shoreline management within the City of Nooksack pursuant to this Program.

B. The Public Works Director of the City of Nooksack, or his or her designee, shall be the Administrator of rules and regulations pertaining to shoreline management contained in or referenced in this Chapter and may prepare and require the use of such forms as are essential to its administration.

C. A shoreline permit, including substantial development, conditional use or variance permit, shall be applied for on forms provided by the Administrator. At a minimum, such applications shall include the following information:

1. The name, address and phone number of the applicant;
2. The name, address and phone number of the applicant's representative;
3. The name, address and phone number of the property owner, if different than the applicant;
4. The address, location and legal description of the property that is the subject of the proposed development;
5. The name of the shoreline (water body) that the site of the proposed development is associated with;
6. A general description of the subject property as it now exists including its use, physical and ecological characteristics, improvements and structures;
7. A general description of the vicinity of the proposed project including identification of the adjacent uses, structures and improvements, intensity of development and physical and ecological characteristics;
8. A vicinity map showing the relationship of the property and proposed development or use to roads, utilities, existing developments and uses on adjacent properties;
9. A description of the proposed development, including detailed descriptions of all project components;
10. A statement indicating the proposed development's fair market value,
11. A description of the proposed development's anticipated impacts to on-site vegetation, topography and natural systems and processes;
12. A site plan or plans showing the existing and proposed conditions of the property, including showing the locations of the property boundary, the ordinary high water mark, any critical areas, existing and proposed development, existing vegetation, proposed vegetation alterations and landscaping, existing and proposed site contours, and existing and proposed structures; provided that, the ordinary high water mark may be an approximate location provided, that for any development where a determination of consistency with the applicable regulations requires a precise location of the ordinary high water mark the mark shall be located precisely and the biological and hydrological basis for the location as indicated on the plans shall be included in the development plan; and provided further that where the ordinary high water mark is neither adjacent to or within the boundary of the project, the plan shall indicate the distance and direction to the nearest ordinary high water mark of a shoreline;
13. A statement describing the anticipated impacts of the proposed development on views, critical areas, and shoreline functions and processes;

14. A statement explaining how the proposed development is consistent with the policies of the Shoreline Management Act, the goals and policies of the Shoreline Management Element of the Nooksack Comprehensive Plan, and the Shoreline Regulations contained or referenced in this Chapter; and
15. The signature of the applicant and the property owner if different than the applicant.

D. The applicant shall complete the application form, return the application to the City along with the following:

1. A listing of the names and addresses of owners of property within three hundred feet from the proposed development;
2. A completed SEPA environmental checklist, if required; and
3. Payment of the appropriate fees.

E. Upon receipt of a properly completed application, the Administrator shall provide for permit processing and notification consistent with WAC 173-27-110 pursuant to the permit administration procedures contained in Chapter 16.01 NMC, except as modified by this chapter.

F. At a minimum, a thirty (30) day comment period shall be provided following notification prior to consideration of the matter and final action by the City Council.

G. Notice of the final action on a permit application, whether it is an approval, a denial or a revision, shall be provided to the applicant and all parties of record and shall be filed with the Department of Ecology in the manner set forth in WAC 173-27-130. Filing with the Department shall include submittal of a completed Permit Data Sheet and Transmittal Letter substantially in the form set forth in WAC 173-27-990 (Appendix A).

H. The final decision regarding a substantial development permit application shall be made by the Administrator. The final decision regarding a shoreline conditional use or variance permit application shall be made by the Department following receipt of the City's decision.

16.04.170 Substantial Development Permit Criteria.

A. A Shoreline Substantial Development Permit shall be granted only if the development is consistent with the Shoreline Management Act and all regulations and policies of this Program appropriate to the type of use and the designated shoreline environment in which it is located.

B. Consistency with this Shoreline Management Master Program shall include consistency with the applicable goals and policies contained in the Shoreline Management Element of the Nooksack Comprehensive Plan AND compliance with all applicable provisions of this Chapter, including the Shoreline Environment Designation Requirements contained in Sections 16.04.220 through .440, the General Requirements contained in Sections 16.04.450 through .520, and the Specific Use and Modification Regulations contained in Sections 16.04.530 and 16.04.540. Applicants for permits under this section have the burden of proving that a proposed substantial development is consistent with the applicable criteria before a permit is granted.

16.04.180 Conditional Use Permit Criteria.

A. The purpose of a conditional use permit is to allow greater flexibility in the application of the use regulations of this program in a manner consistent with the policies of RCW 90.58.020; PROVIDED that, conditional use permits may also be granted for a use not included in the enumerated permitted and conditional uses in a circumstance where denial of the permit would result in a thwarting of the policy enumerated in RCW

90.58.020. In authorizing a conditional use, special conditions may be attached by the City or the Department of Ecology to prevent undesirable effects of the proposed use and/or to ensure consistency of the project with the Act and this master program.

B. Uses which are classified or set forth in this program as conditional uses may be authorized provided the applicant can demonstrate all of the following:

1. That the proposed use is consistent with the policies of RCW 90.58.020 and the provisions of this program;
2. That the proposed use will not interfere with the normal public use of public shorelines;
3. That the proposed use of the site and design of the project is compatible with other permitted uses within the area;
4. That the proposed use will cause no significant adverse effects to the shoreline environment in which it is to be located; and
5. That the public interest suffers no substantial detrimental effect.

C. Other uses which are not classified or set forth in this program may be authorized as conditional uses provided the applicant can demonstrate consistency with the requirements of this section and the requirements for conditional uses contained in the this master program and that extraordinary circumstances preclude reasonable use of the property in a manner consistent with the use regulations of the master program.

D. Uses which are specifically prohibited and named by this program may not be authorized.

E. In the granting of all conditional use permits, consideration shall be given to the cumulative impact of additional requests for like action in the area such that if conditional use permits were granted for other developments in the area where similar circumstances exist, the total of the conditional uses shall remain consistent with the policies of RCW 90.58.020 and shall not produce substantial adverse effects to the shoreline environment.

16.04.190 Variance Permit Criteria.

A. The purpose of a variance permit is strictly limited to granting relief from specific bulk, dimensional or performance standards set forth in this program where there are extraordinary or unique circumstances relating to the physical character or configuration of the property such that the strict implementation of this program will impose unnecessary hardships on the applicant or thwart the policies set forth in RCW 90.58.020.

B. Variance permits shall be granted in a circumstance where denial of the permit will result in a thwarting of the policy enumerated in RCW 90.58.020, and in all such instances extraordinary circumstances shall be shown and the public interest shall suffer no substantial detrimental effect.

C. Variance permits may be authorized provided the applicant demonstrates all of the following:

<u>For developments and/or uses located landward of the OHWM or outside of a wetland</u>

1. That the strict application of the bulk, dimensional or performance standards set forth in this program precludes or significantly interferes with a reasonable use of the property not otherwise specifically prohibited by this program;

For developments and/or uses located waterward of the OHWM or within a wetland

2. That the strict application of the bulk, dimensional or performance standards set forth in this program precludes all reasonable use of the property not otherwise specifically prohibited by this program;

For all developments and/or uses

3. That the hardship addressed in this section is specifically related to the property, and is the result of unique conditions such as irregular lot shape, size, or natural features and the application of this program, and not from deed restrictions, the actions of the applicant or other similar circumstance;
4. That the design of the project is compatible with other permitted activities in the area and will not cause adverse impacts to adjacent properties or the shoreline environment;
5. That the requested variance permit does not constitute a grant of special privilege not enjoyed by other properties in the area, and is the minimum necessary to afford relief;
6. That the public rights of navigation and use of the shorelines will not be adversely affected, and
7. That the public interest will suffer no substantial detrimental effect.

D. In the granting of all variance permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area such that if variances were granted to other developments in the area where similar circumstances exist the total of the variances shall remain consistent with the policies of RCW 90.58.020 and shall not produce substantial adverse effects on the shoreline environment.

E. Requests for varying the use to which a shoreline area is to be put are not requests for variances, but rather requests for conditional uses. Such requests shall be evaluated using the criteria set forth in Section 16.04.180 of this program.

F. Variances from the specific use regulations set forth in this program are prohibited.

16.04.200 Permit Conditions, Expiration, Rescission and Revision.

A. In granting, revising or extending a shoreline permit, the City may attach such conditions, modifications, or restrictions thereto regarding the location, character, and other features of the proposed development deemed necessary to assure that the development will be consistent with the permit criteria set forth in Sections 16.04.170, .180 and .190 of this Program and with the provisions of the State Environmental Policy Act, RCW 43.21C.

B. Development pursuant to a shoreline permit of any type shall not be authorized nor commenced until 21 days from the “date of filing” as defined in RCW 90.58.140(6) or until all review proceedings initiated within the 21 days from the date of such filing have terminated.

C. Construction authorized pursuant to a shoreline permit of any type shall be commenced or, where no construction is involved, the use or activity shall be commenced within two years from the effective date of the permit as defined in WAC 173-27-090(4) and shall be completed within five years from the effective date; PROVIDED, the City Council may authorize a one-year extension to either or both of these timing requirements based on reasonable factors.

D. Date of Filing. The Date of Filing is defined as the following:

1. The date the Department receives the City's final decision on the permit application; or
2. With respect to applications for conditional use or variance that have been approved by the City, the date the decision by the Department is transmitted by the Department to the City.

E. Permit Rescission. Any permit may, after a hearing with adequate notice to the permittee and the public, be rescinded by the issuing authority upon the finding that the permittee has not complied with conditions of the permit.

F. Permit Revisions. Requests for revisions to substantial development, conditional use and variance permits shall be submitted and reviewed consistent with this section and WAC 173-27-100. A permit revision is required whenever the applicant proposes substantive changes to the design, terms or conditions of a project from that which was approved in the permit. Changes are substantive if they materially alter the project in a manner that relates to its conformance to the terms and conditions of the permit, this master program and/or the policies and provisions of the Act.

1. An applicant seeking to revise a permit shall submit a description of the proposed revision along with accompanying plans and any other information demonstrating that the proposed revision is consistent with the requirements set forth in this subsection.
2. If the Administrator determines that the proposed changes are within the scope and intent of the original permit, as defined under WAC 173-27-100(2), and are consistent with this program and the Act, the Administrator may approve the revision.
3. If the Administrator determines that the sum of the proposed revision and all previously approved revisions is not consistent with the requirements in subsection (2), the Administrator shall require that the applicant apply for a new permit.
4. For each approved permit revision, the Administrator shall transit said revised permit to the Department and notify parties of record consistent with the provisions set forth under subsection 16.04.160(H) of this program.
5. If the original permit involved a conditional use or variance, the Administrator shall submit the revision to the Department for final approval, approval with conditions, or denial, and said revision shall state that it is being submitted to the Department for final action. The Department shall render and transmit to the City and the applicant its final decision within fifteen days of the date of its receipt of the submittal from the City. The Administrator shall notify parties of record of the department's final decision.
6. The effective date of a revised permit for substantial development shall be the date of final decision by the Administrator. The effective date for a revised conditional use or variance permit shall be the date of final action by the Department.
7. Appeals regarding final decisions on permit revisions shall be filed consistent with section 16.04.210 of this program.

16.04.210 Appeals.

A. Any person aggrieved by the granting, denying or rescinding by the City of Nooksack of a Shoreline Substantial Development Permit, Shoreline Conditional Use Permit or Shoreline Variance Permit may appeal the action of the City to the State Shoreline

Hearings Board by filing a request for review within twenty-one (21) days of the date of filing of the permit. The procedure for filing a request for review is set forth in RCW 90.58.180.

B. Appeals of decisions and determinations made by the Administrator in the administration of this Program shall be filed and processed consistent with the procedures established under Section 16.01.160 of the Nooksack Municipal Code.

16.04.215 Enforcement.

A. Enforcement action by City may be taken whenever a person has violated any provision of this master program, the Act or other regulation promulgated under the Act. The choice of enforcement action and the severity of any penalty shall 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..

B. Cease and Desist Order.

1. Where a person is found to be undertaking an activity on lands within shoreline jurisdiction that is in violation of this master program or the Act, the City shall have the authority to serve upon said person a cease and desist order.
2. A cease and desist order shall set forth and contain:
   (a) A description of the specific nature, extent, and time of violation and the damage or potential damage; and
   (b) A notice that the violation or the potential violation cease and desist or, in appropriate cases, the specific corrective action to be taken within a given time. A civil penalty under subsection (C) of this section may be issued with the order.
3. A cease and desist order once issued shall become effective immediately upon receipt by the person to whom it is directed.
4. Failure to comply with the terms of a cease and desist order can result in enforcement actions including, but not limited to, the issuance of a civil penalty.

C. Civil Penalty.

1. A person who fails to conform to the terms of a substantial development permit, conditional use permit or variance issued under this master program, who undertakes a development or use on shorelines of the state without first obtaining a permit, or who fails to comply with a cease and desist order issued under subsection 16.04.215(B) of this program may be subject to a civil penalty imposed by the City.
2. Amount of penalty. The penalty shall not exceed one thousand dollars for each violation. Each day of violation shall constitute a separate violation.
3. Any person who, through an act of commission or omission procures, aids or abets in the violation shall be considered to have committed a violation for the purposes of the civil penalty.
4. A civil penalty shall be imposed by a notice in writing, either by certified mail with return receipt requested or by personal service, to the person incurring the same from the City, or jointly from the City and the department. The notice shall describe the violation, approximate the date(s) of violation, and shall order the acts constituting the violation to cease and desist, or, in appropriate cases, require necessary corrective action within a specific time.

D. Appeal of Civil Penalty.

1. Persons incurring a penalty imposed by the City alone may appeal the same to the City Council pursuant to Section 15.04.210 of this program. Persons incurring a penalty imposed by the department or imposed jointly by the department and local government may appeal the same to the shorelines hearings board. Appeals to the shorelines hearings board are adjudicatory proceedings subject to the provisions of chapter 34.05 RCW.
2. Appeals shall be filed within thirty days of the date of receipt of the penalty. The term "date of receipt" has the same meaning as provided in RCW 43.21B.001.
3. Penalties imposed under this section shall become due and payable thirty days after receipt of notice imposing the same unless application for remission or mitigation is made or an appeal is filed. Whenever an application for remission or mitigation is made, penalties shall become due and payable thirty days after receipt of local government's and/or the department's decision regarding the remission or mitigation. Whenever an appeal of a penalty is filed, the penalty shall become due and payable upon completion of all review proceedings and upon the issuance of a final decision confirming the penalty in whole or in part. If the amount of a penalty owed the City is not paid within thirty days after it becomes due and payable, the City may take actions necessary to recover such penalty.
4. Penalties recovered by the City shall be paid to the City treasury. Penalties recovered jointly by the department and City shall be divided equally between the department and the City unless otherwise stipulated in the order.

E. Criminal Penalty. The procedures for criminal penalties shall be governed by RCW 90.58.220.

.

SECTION FIVE: SHORELINE ENVIRONMENT DESIGNATIONS

16.04.220 Shoreline Environment Designations Established.

In order to classify, segregate and regulate the uses of land, water, buildings and structures, there is hereby established a set of designations for areas within shoreline jurisdiction called Shoreline Environment Designations. The purpose of these designations is to provide a systematic, rational and equitable basis upon which to guide and regulate development within specific shoreline reaches having some degree of geographic unity, but which differ from adjacent shoreline reaches and other areas in terms of natural features and development or potential development patterns. Shoreline Environment designations in the City of Nooksack shall include the Aquatic, Natural, Shoreline Residential, Urban Conservancy, and Urban Conservancy-Slough designations as described in WAC 173-26-191(1)(d).

16.04.230 Official Shoreline Map.

A. The Official Shoreline Map shall indicate the Shoreline Environment designation assigned to those parcels within shoreline jurisdiction. The Official Shoreline Map shall be kept on file at the office of the City Clerk.

B. Upon annexation into the City of Nooksack, annexed areas shall, for the purposes of shoreline management, be designated based on the shoreline environment designations for such areas included on the Official Shoreline Map at the time of adoption of the Nooksack Shoreline Management Master Program.

C. Areas not identified as being included in any specific environment designation, either through oversight or intention, shall be deemed to be included in the Urban Conservancy environment, unless inclusion in an immediately adjacent designation is consistent with the designation criteria contained in this Program and provides for a more regular pattern of designation.

D. Wetland areas not identified on the Official Shoreline Map shall be deemed to be included in the Urban Conservancy-Slough environment.

16.04.240 Interpretation.

In making interpretations regarding the jurisdictional boundaries of this Program or the boundaries between specific Environment Designations, the Administrator shall utilize the standards set forth in this Section. In those instances where disputes arise regarding these boundaries, the Administrator shall consult with the Department's shoreline local program representative.

A. If disagreement develops as to the exact location of a shoreline management jurisdiction boundary line, the official jurisdiction maps as approved by the Department of Ecology together with the definitions contained in Section 16.04.030 of this Chapter shall prevail.

B. If disagreement develops as to the exact location of a Shoreline Environment boundary line, the following rules apply.

   1. Boundaries indicated as approximately following lot, tract, or section lines shall be so construed;

   2. Boundaries indicated as approximately following roads or railways shall be respectively construed to follow their centerlines;

   3. Boundaries indicated as approximately parallel to or extensions of features indicated in subsection (1) and (2) above shall be so construed;

4. Boundaries indicated as approximately occurring at definite changes in topography, shoreforms, geology, soils, or vegetative cover shall be so construed.

C. Whenever existing physical features are at variance with boundaries on the Official Shoreline Map, the Administrator shall interpret the boundaries. The Administrator's decision may be appealed to the City Council pursuant to Section 16.04.210 of this Program.

16.04.250 Aquatic Environment - 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.

16.04.260 Aquatic Environment - Permitted Uses.

Permitted uses in the Aquatic Environment include the following:

A. Agriculture, limited to ongoing agricultural activities consistent with state regulations.

B. Shoreline habitat and natural systems enhancement projects.

16.04.270 Aquatic Environment - Conditional Uses.

The following conditional uses may be permitted within the Aquatic Environment by the City Council upon application and in accordance with Section 16.04.180 of this Chapter:

A. Aquaculture.

B. Boat ramps.

C. Docks.

D. Dredging.

E. In-stream structures.

F. Landfill and excavation.

G. Water dependent Recreational development.

H. Shoreline flood protection.

I. Shoreline stabilization.

J. Water dependent Transportation development, or when no other alternative location is feasible.

K. Utilities where no other alternative location is feasible.

16.04.275 Aquatic Environment - Prohibited Uses.

The following uses are prohibited within the Aquatic Environment:

A. Agriculture, new.

B. Commercial development.

C. Industrial development.

D. Mining.

E. Outdoor advertising and signs.

F. Residential development.

G. Solid waste disposal.

H. Non-water-dependent uses.

16.04.280 Aquatic Environment - Site and Construction Standards.

A. Unless otherwise specified, the construction standards of the underlying zoning district shall apply.

B. Maximum building height. The maximum building height allowed within the Aquatic Environment is twenty-five (25) feet. The maximum building height for lands adjacent to an aquatic environment designation shall be determined by the respective height stipulations in that designation.

C. Shoreline setback. Not applicable.

D. Location and design of all developments and uses shall minimize interference with surface navigation and impacts to public views, and allow for the safe, unobstructed passage of fish and wildlife, particularly those species dependent on migration.

E. Developments within the Aquatic Environment shall be located and designed to prevent water quality degradation and alteration of natural hydrographic conditions.

16.04.290 Natural Environment - Purpose.

The purpose of the “natural” environment is to protect those shoreline areas that are relatively free of human influence or that include intact or minimally degraded shoreline functions intolerant of human use. These systems require that only very low intensity uses be allowed to maintain ecological functions and ecosystem-wide processes.

16.04.300 Natural Environment - Permitted Uses.

Permitted uses in the Natural Environment include the following:

A. Agriculture, limited to ongoing agricultural activities consistent with state regulations.

B. Outdoor advertising and signs, limited to interpretive signage, including trail marking, hazard warnings, or for scientific or educational purposes.

C. Low intensity, water-oriented Recreational development, limited to unimproved pedestrian trails, where ecological impacts are avoided.

D. Shoreline habitat and natural systems enhancement projects.

16.04.310 Natural Environment - Conditional Uses.

The following conditional uses may be permitted within the Natural Environment by the City Council upon application and in accordance with Section 16.04.180 of this Chapter:

A. Docks.

B. Landfill and excavation.

C. Low intensity, water-oriented Recreational development, limited to improved trails and designated public access.

D. Shoreline flood protection.

E. Shoreline stabilization.

F. Single-family residential on existing lots of record when no significant ecological impact on the area will result.

16.04.315 Natural Environment - Prohibited Uses.

The following uses are prohibited within the Natural Environment:

A. Agriculture, new.

B. Aquaculture.

C. Boat ramps.

D. Commercial development.

E. Industrial development.

F. Mining.

G. Non-water oriented Recreational development.

H. Solid waste disposal.

I. Uses that would substantially degrade ecological functions or the natural character of the shoreline.

J. Transportation development including, but not limited to, roads and parking areas.

K. Utility development.

L. Subdivision of property in a configuration that would require significant vegetation removal or shoreline modification that adversely impacts ecological functions.

16.04.320 Natural Environment - Site and Construction Standards.

A. Unless otherwise specified, the construction standards of the underlying zoning district shall apply.

B. Maximum building height. The maximum building height in the Natural environment is 28 feet.

C. Shoreline setback. Where development is authorized through this master program, the minimum shoreline setback in the Natural environment is 30 feet.

16.04.330 Shoreline Residential Environment - Purpose.

The purpose of the “shoreline residential” environment is to accommodate residential development and appurtenant developments that are consistent with the goals of RCW 90.58 and this Program. An additional purpose is to provide appropriate public access and recreational uses.

16.04.340 Shoreline Residential Environment - Permitted Uses.

Permitted uses in the Shoreline Residential Environment include the following:

A. Agriculture.

B. Boat ramps.

C. Docks.

D. Landfill and excavation.

E. Outdoor advertising and signs.

F. Recreational development.

G. Residential development.

H. Shoreline habitat and natural systems enhancement projects.

I. Transportation.

J. Utilities.

16.04.350 Shoreline Residential Environment - Conditional Uses.

The following conditional uses may be permitted within the Shoreline Residential Environment by the City Council upon application and in accordance with Section 16.04.180 of this Chapter:

A. Aquaculture.

B. Water-oriented Commercial development.

C. Shoreline flood protection.

D. Shoreline stabilization.

E. Solid waste disposal, limited to transfer stations.

16.04.355 Shoreline Residential Environment - Prohibited Uses.

The following uses are prohibited within the Shoreline Residential Environment:

A. Non-water oriented Commercial development.

B. Industrial development.

C. Mining.

D. Solid waste disposal facilities.

16.04.360 Shoreline Residential Environment - Site and Construction Standards.

A. Unless otherwise specified, the construction standards of the underlying zoning district shall apply.

B. Maximum building height. The maximum building height in the Shoreline Residential environment is 30 feet.

C. Minimum shoreline setback. The minimum shoreline setback in all areas shall be 150 feet from the ordinary high water mark of the Sumas River and Breckenridge Creek; provided, that this setback may be reduced to 100 feet based on significant enhancement of the setback area through planting of native vegetation. Provided further, that in no case shall the setback be less than 10 feet from the landward edge of a Natural Environment designation.

16.04.370 Urban Conservancy Environment - Purpose.

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

16.04.380 Urban Conservancy Environment - Permitted Uses.

Permitted uses in the Urban Conservancy Environment include the following:

A. Agriculture.

B. Landfill and excavation.

C. Outdoor advertising and signs.

D. Recreational development.

E. Residential development.

F. Shoreline habitat and natural systems enhancement projects.

G. Transportation.

H. Utilities.

16.04.390 Urban Conservancy Environment - Conditional Uses.

The following conditional uses may be permitted within the Urban Conservancy Environment by the City Council upon application and in accordance with Section 16.04.180 of this Chapter:

A. Aquaculture.

B. Boat ramps.

C. Commercial development.

D. Docks.

E. Industrial development.

F. Shoreline flood protection.

G. Shoreline stabilization.

H. Solid waste disposal, limited to transfer stations.

16.04.395 Urban Conservancy Environment - Prohibited Uses.

The following uses are prohibited within the Urban Conservancy Environment:

A. Mining.

B. Solid waste disposal facilities.

16.04.400 Urban Conservancy Environment - Site and Construction Standards.

A. Unless otherwise specified, the size and construction standards of the underlying zoning district shall apply.

B. Maximum building height. The maximum building height in the Urban Conservancy environment is 30 feet.

C. Minimum shoreline setback. The minimum shoreline setback in all areas shall be 150 feet from the ordinary high water mark of the Sumas River and Breckenridge Creek; provided, that this setback may be reduced to 100 feet based on significant enhancement of the setback area through planting of native vegetation. Provided further, that in no case shall the setback be less than 10 feet from the landward edge of a Natural Environment designation.

16.04.410 Urban Conservancy-Slough Environment - Purpose.

The purpose of the “urban conservancy-slough” environment is to protect and restore ecological functions of open space, floodplain, and other sensitive lands where they exist in urban and developed settings adjacent to the Nooksack Slough, while allowing for a variety of compatible uses.

16.04.420 Urban Conservancy-Slough Environment - Permitted Uses.

Permitted uses in the Urban Conservancy-Slough Environment include the following:

A. Agriculture, limited to ongoing agricultural activities consistent with state regulations.

B. Outdoor advertising and signs, limited to interpretive signage, including trail marking, hazard warnings, or for scientific or educational purposes.

C. Residential development.

D. Shoreline habitat and natural systems enhancement projects.

E. Transportation.

F. Utilities.

16.04.430 Urban Conservancy-Slough Environment - Conditional Uses.

The following conditional uses may be permitted within the Urban Conservancy-Slough Environment by the City Council upon application and in accordance with Section 16.04.180 of this Chapter:

A. Commercial development.

B. Docks.

C. Industrial development.

D. In-stream structures.

E. Landfill and excavation in association with approved development.

F. Recreational development on existing lots of record where measures have been taken to avoid, minimize and mitigate impacts to wetlands and where the development results in no net loss of shoreline ecological functions and processes.

G. Shoreline flood protection.

H. Shoreline Stabilization.

I. Solid waste disposal, limited to transfer stations.

16.04.435 Urban Conservancy-Slough Environment - Prohibited Uses.

The following uses are prohibited within the Urban Conservancy-Slough Environment:

A. Agriculture, new.

B. Aquaculture.

C. Boat ramps.

D. Mining.

E. Solid waste disposal facilities.

16.04.440 Urban Conservancy-Slough Environment - Site and Construction Standards.

A. Unless otherwise specified, the size and construction standards of the underlying zoning district shall apply.

B. Maximum building height. The maximum building height in the Urban Conservancy environment is 30 feet; provided, that building heights up to 45 feet may be authorized through approval of a shoreline conditional use permit.

C. Minimum shoreline setback. The minimum shoreline setback in all areas shall be equivalent to the wetland buffer established pursuant to Subsection 16.04.470(B).

SECTION SIX: GENERAL REQUIREMENTS

16.04.450 Applicability of Title 19 NMC.

With respect to all matters related to management of shorelines within the City of Nooksack, this Master Program shall take precedence over other City regulations. When not directly related to the management of shorelines within the City, this Program shall defer to Title 19 NMC (Zoning) to establish general requirements for development, such as maximum development density, minimum lot sizes, minimum yard setbacks, and other related requirements.

16.04.460 Archeological Areas and Historic Sites.

A. The National Historic Preservation Act of 1966 and Chapter 27.53 RCW provide for the protection, rehabilitation, restoration and reconstruction of areas and structures in American and Washington State history. The regulations in these acts shall be followed.

B. Following application and prior to issuance of a permit or statement of exemption for a site located within 500 feet of an area known to contain archaeological, cultural or historic resources, the City shall require the proponent to provide a cultural or historic resource site assessment and evaluation by a professional archaeologist or historic preservation professional. Said assessment shall be prepared in consultation with affected tribes and the Washington State Department of Archaeology and Historic Preservation. The cost of any such assessment shall be paid by the proponent. All such evaluations shall be completed to the satisfaction of the City, and the proposed use or development properly conditioned, prior to issuance of a permit and prior to beginning ground-disturbing activities. This requirement may be waived by the Administrator upon a finding that the proposed use or activity does not include any ground-disturbing activities and will not impact a known historic, cultural or archaeological site.

C. If the cultural resource site assessment identifies the potential presence of significant archaeological, cultural or historic resources, a Cultural Resource Management Plan (CRMP) shall be prepared by a professional archaeologist or historic preservation professional, as applicable. The cost of preparing any such CRMP shall be paid by the proponent. The CRMP shall be prepared in consultation with affected tribes and the State Department of Archaeology and Historic Preservation. The recommendations and conclusions of the CRMP shall be used to assist the Administrator in making final administrative decisions concerning the presence and extent of historic/archaeological resources and appropriate mitigating measures. The Administrator may request revision of a CRMP when the Administrator can demonstrate that the assessment is inaccurate or does not fully address the historic/archaeological resource management concerns involved.

D. All shoreline permits shall contain provisions which require developers to stop work immediately and secure the affected area and notify the City, affected tribes and the State Department of Archaeology and Historic Preservation if any archaeological, cultural or historic resources or human remains are uncovered during excavation or construction. Upon notification of any such inadvertent discovery, the Administrator shall conduct a site visit and shall consult with the above agencies and appropriate law enforcement authorities to determine the potential significance of the site, whether or not a site assessment and/or Cultural Resource Management Plan is required and whether any additional conditions are necessary to ensure the protection of said resources. Work in the affected area shall not resume until the proponent receives written authorization from the Administrator.

16.04.470 Critical Areas.

A. Generally.

Critical Areas include wetlands, fish and wildlife habitat conservation areas, frequently flooded areas, aquifer recharge areas and geologically hazardous areas. Where not specifically addressed within this Chapter, either directly or through reference, regulation of critical areas within shoreline jurisdiction shall be pursuant to applicable provisions codified in Chapter 16.08 NMC adopted by Ordinance Nos. 346 in 1991, 441 in 1996, 538 in 2001, 595 in 2005 and 607 in 2006; provided, that projects that would otherwise require approval of a reasonable use exceptions pursuant to Section 16.08.087 shall be processed as and require approval of a shoreline variance pursuant to Section 15.04.190 of this chapter.

B. Wetlands.

Development within wetlands that are also within shoreline jurisdiction shall be as follows:

1. The regulation of wetlands within shoreline jurisdiction shall be pursuant to Chapter 16.08 NMC, adopted pursuant to the ordinances referenced above, which are incorporated by reference as a part of the Nooksack Shoreline Management Master Program, except as provided in subsections (B)(2) and (B)(3), below.
2. Wetlands shall be identified and delineated according to the Corps of Engineers Wetlands Delineation Manual (Environmental Laboratory 1987) and the Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Western Mountains, Valleys, and Coast Region (Version 2.0, 2010 or as revised).
3. In addition to the requirements set forth in Chapter 16.08 NMC, mitigation for impacts to wetlands shall include compensation for lost time when the wetland is unavailable to perform its function.

C. Floodplains.

Development within portions of the 100-year floodplain that are also within shoreline jurisdiction shall be as follows:

1. Development on shorelands within the floodplain shall comply with the provisions of this Program as well as those codified in Chapter 15.10 NMC, National Flood Insurance Program, adopted through Ordinance Nos. 224 in 1982, 259 in 1982, 288 in 1987, 309 in 1988, 315 in 1989, 441 in 1996, 570 in 2003, 611 in 2007, and 650 in 2011, which are incorporated as part of this Program by reference; PROVIDED that, in the event of conflict between the provisions contained in each, the more restrictive provision shall apply.
2. Development on shorelands within the floodplain shall comply with a comprehensive flood hazard management plan developed pursuant to Chapter 86.12 RCW.
3. Development of hazardous waste treatment and storage facilities shall comply with the provisions of this master program, Chapter 15.10 NMC, which is incorporated as part of this Program by reference, and the requirements of the State Dangerous Waste Regulations, WAC 173-303; PROVIDED that, in the event of conflict between the provisions contained in each, the more restrictive provision shall apply.
4. New structural flood hazard reduction measures are allowed within shoreline jurisdiction only when it can be demonstrated by a scientific and engineering analysis that they are necessary.

D. Rivers and streams – Critical Freshwater Habitat.

Development, use or modification within or adjacent to rivers or streams shall be as follows:

1. The regulation of rivers and streams within shoreline jurisdiction shall be pursuant to Chapter 16.08 NMC, adopted by the ordinances referenced above, which are incorporated by reference as a part of the Nooksack Shoreline Management Master Program.
2. Water-oriented uses. Development of water-oriented uses shall be allowed within shoreline jurisdiction, on the condition that the development provides for no net loss of ecological function.
3. Non-water-oriented uses within vegetation conservation areas. Where a Natural Environment Designation area has been identified on the Official Shoreline Map, no disturbance of land or vegetation shall be permitted within the area, unless part of a low-impact use, such as a pedestrian trail or an environmental restoration or enhancement project, that does not significantly decrease ecological functions and ecosystem-wide processes, and results in no net loss of ecological functions.
4. Non-water-oriented uses not within Natural designated areas. For non-water-oriented uses not within a Natural Designation area, an undisturbed buffer shall be required from the ordinary high watermark of the Sumas River and Breckenridge Creek of 150 feet, unless a larger buffer is required elsewhere in this master program; provided, that this buffer may be reduced to 100 feet if the buffer area is enhanced through the planting of native vegetation and the area is protected through recording of a conservation easement reviewed and approved by the City.

E. Steep Slopes.

A steep slope can be defined as a slope exceeding 40 percent and a minimum of 20 feet in height. The following regulations shall apply to all uses and developments potentially affecting shoreline bluffs and steep slopes.

1. All development shall comply with the applicable provisions set forth in Chapter 16.08 NMC adopted by the ordinances referenced above.
2. Steep slopes shall be left in their natural state.
3. Development within the shoreline area below or above a steep slope shall be prohibited except where an adequate soils study indicates no adverse effect. Such development shall be a shoreline conditional use.

16.04.480 Ecological Protection.

A. Unless specifically authorized through this Chapter, all developments and activities proposed or undertaken within the shoreline jurisdiction of the City of Nooksack shall result in no net loss of ecological functions. In addition to the requirements set forth in this Chapter, the Administrator shall determine the extent to which supplemental information prepared by a qualified consultant is necessary to ensure that specific development proposals and activities will not result in a net loss of ecological functions.

B. Mitigation Sequence. Mitigation, where required, shall include avoiding, minimizing and/or compensating for adverse impacts to shoreline ecological functions through the following, and in the following order of priority:

1. Avoiding the impact altogether by not taking a certain action;

2. Minimizing the impacts by limiting the degree or magnitude of an action or by otherwise adjusting the action so as to reduce or avoid impacts;
3. Rectifying the impact by repairing, rehabilitating or restoring the affected area;
4. Reducing or eliminating the impact over time through preservation and/or maintenance through the course of the action; and
5. Compensating for the adverse impact by replacing, enhancing, or providing similar substitute resources or environments and monitoring the adverse impact and the mitigation project and taking appropriate corrective measures;

16.04.490 Public Access.

A. Public access requirements, as specified below, shall only apply to developments meeting any of the following criteria:

1. Development on properties including or abutting the water's edge or ordinary high water mark; or
2. Development on properties within 200 feet of the ordinary high water mark of the Sumas River or Johnson Creek or within fifty (50) feet of the Nooksack Slough.

B. All subdivisions of more than 4 lots or units shall provide public access to the shoreline unless found to be infeasible or incompatible with the specific development location and if alternative opportunities for public access are available or can be provided.

C. The City Council shall approve proposed public access improvements, where required, for each application. Public access requirements shall be based on both the proportionate amount of linear shoreline included in the property proposed for development and the public access potential of the site.

D. Proposed public access improvements shall be consistent with and shall further the goals of the City's shoreline public access plan. Public access improvements may be provided either on- or off-site as approved by the City Council.

E. Where public access is required, the City shall require granting of easements or dedication of land to ensure long-term access by the public. In such cases, the City shall provide property owners with appropriate indemnification as allowed by law.

F. Commercial developments shall be required to provide either physical or visual public access to the shoreline through inclusion of a publicly accessible trail.

G. Industrial developments shall be required to provide physical or visual public access to the shoreline through inclusion of a publicly accessible walkway or trail; provided that, no such public access shall be required in situations where such access would pose a threat to public health or safety or to private property.

H. Residential developments that involve development of four or more units or lots shall be required to provide public access to the shoreline through inclusion of a walkway or trail.

I. The City shall encourage all other uses to provide community or public access to the shoreline consistent with the City's public access plan.

J. Shoreline development by public entities, including the City, port district, state agencies, and public utility district, shall include public access measures as part of each development project, unless such access is shown to be incompatible due to reasons of safety, security, or impact to the shoreline environment. Such public access measures can be provided off-site where consistent with the City's public access plan.

16.04.500 Vegetation Conservation.

A. The Administrator shall ensure that the vegetation conservation goals and policies of the Nooksack Shoreline Management Master Program are implemented through the protective measures associated with the Natural shoreline environment designation and river, stream and wetland buffers applicable throughout the City. All developments and activities within or adjacent to an area designated Natural or within applicable buffers shall conform to the applicable vegetation conservation requirements set forth in this Chapter.

B. Except where specifically authorized through this Master Program, the clearing of vegetation within designated vegetation conservation areas is prohibited.

C. Where authorized through this Program, the clearing of vegetation shall be limited to the minimum necessary to accommodate approved shoreline development.

D. Removal of noxious weeds and/or invasive species shall be allowed when incorporated into a vegetation management plan designed to facilitate establishment of a stable community of native plants.

E. Vegetation conservation requirements shall not apply to the removal of hazard trees, provided that any authorized removal of hazard trees shall include a condition that mitigation will be provided to ensure no net loss of shoreline ecological functions. The Administrator shall review requests for removal of hazard trees and, where deemed necessary, may require the Applicant to submit: 1) a review by a qualified arborist to determine the level of hazard and the minimum removal necessary to reduce the risk to within acceptable levels; and/or 2) a site assessment / mitigation plan addressing mitigation necessary to ensure no net loss of ecological function.

F. The clearing of vegetation within a vegetation conservation area to establish a view corridor shall require approval of a conditional use permit.

16.04.510 Views and Aesthetics.

A. Opportunities for providing and maintaining views of the shoreline shall be provided consistent with the public access provisions set forth in Section 16.04.490 of this Chapter.

B. Developments that substantially interfere with the public's opportunity to enjoy views of the shoreline are prohibited.

C. The following guidelines shall be used by the Administrator in reviewing developments potentially affecting views and aesthetics.

1. Where commercial, industrial, mixed use, multi family and/or multi lot developments are proposed, primary structures should provide for reasonable view corridors between buildings.
2. Buildings should incorporate architectural and design features that reduce scale such as setbacks, pitched roofs, offsets, angled facets, and recesses.
3. Building surfaces on or adjacent to the water should employ materials that minimize reflected light and that do not detract from the surrounding area.
4. Building mechanical equipment should be incorporated into building architectural features to the maximum extent possible. Where mechanical equipment cannot be incorporated into architectural features, a visual screen shall be provided consistent with building exterior materials that obstructs views of such equipment.

D. The creation or maintenance of views and view corridors shall not result in a net loss of shoreline ecological function. The Administrator may require the Applicant to submit a site assessment / mitigation plan addressing proposed clearing of vegetation to ensure no net loss of shoreline ecological function.

16.04.520 Water Quality and Stormwater.

A. All development within shoreline jurisdiction that includes the creation of new impervious surface or that has the potential to impact the water quality of adjacent shoreline areas, and/or the quantity or timing of stormwater shall demonstrate the following:

1. The proposed development is consistent with the Nooksack Stormwater Management Plan, once adopted;
2. The proposed development is consistent with the Department of Ecology 2012 Stormwater Management Manual for Western Washington or most recent updated version once adopted; and
3. The proposed development does not significantly alter the quality, quantity or timing of stormwater runoff.

B. Consistency with the above requirements shall be provided through submittal of appropriate engineering studies, plans and reports.

C. Shoreline development shall include measures to protect and maintain surface and ground water flow and quality in accordance with all applicable laws.

D. Best management practices (BMPs) shall be implemented for all development within shoreline jurisdiction for the control of erosion and sedimentation.

E. Low impact development techniques, consistent with the Ecology Stormwater Manual referenced in subsection (A)(2), above, shall be incorporated into all developments where feasible.

SECTION SEVEN: SHORELINE USE REGULATIONS

16.04.530 Specific Shoreline Use Regulations

The following activities have been determined to have the potential for significant impacts to shorelines of the City. Therefore, specific requirements have been developed to ensure minimal impact on the shoreline. The applicable requirements shall apply to the following land use activities regardless of the Shoreline Environment Designations of the proposed locations. In the event of a conflict between the provisions of this Section and any other provisions of this Program, the more restrictive provisions shall apply.

A. Agriculture.

1. Agriculture includes those methods used in vegetation and soil management. The methods used in agricultural processes often have a significant effect on the conditions of our shoreline and water quality.
2. These regulations shall not be applied retroactively to agricultural activities meeting the definition of existing and ongoing agriculture, but shall apply to new agricultural activities, including associated clearing and grading.
3. Use Regulations:
    a. A buffer zone of naturally occurring vegetation shall be maintained between all cultivated and pasture areas and adjacent water bodies, including wetlands. This buffer zone shall be 150 feet in width.
    b. Retention tanks, holding ponds or other acceptable methods shall be employed as necessary to prevent runoff containing manure, feed, wastage, or other possible pollutants from entering the adjacent water body.
    c. Manure lagoons shall be set back 200 feet from the ordinary high water mark of all shoreline-designated streams, 100 feet from all shoreline-associated wetlands, and 25 feet from the landward edge of a Natural-designated shoreline area, whichever is greater.
    d. The use of pesticides, herbicides and other chemicals that are potentially harmful to aquatic life should not be used within the shoreline area, unless part of an integrated pest management plan approved by the City or the USDA, Natural Resource Conservation Service.
    e. Watering of livestock in streams and wetlands within shoreline jurisdiction is prohibited.
    f. Grazing of livestock within seasonal streams and wetlands shall only be allowed when the area does not contain water and no later than the first day of September of any given year.
    g. Tilled areas must incorporate permanent erosion control measures approved by the USDA, Natural Resource Conservation Service.
    h. New feedlots and new manure lagoons are prohibited within shoreline jurisdiction.
    i. Discharge of any manure storage facility into ground or surface water is prohibited.

j. Conversion of agricultural land to non-agricultural uses shall be consistent with the applicable environment designation, general, and use regulations.

B. Aquaculture.

1. Aquaculture is the culture of food fish, shellfish, or other aquatic plants and animals for commercial purposes.
2. Use Regulations:
   a. Aquaculture development may be permitted as a conditional use in order to insure that the merits of each application are reviewed carefully.
   b. Public access to and navigation on the surface of the water shall not be impaired, and existing opportunities for public access shall not be reduced.
   c. Structures associated with aquacultural activities shall blend as much as possible with the surrounding environment.
   d. Structures associated with aquacultural activity shall be restricted to one story, 20 feet in height, so as not to interfere with visual access to the shoreline.
   e. No processing of any aquaculture product shall occur in or over the water unless specifically approved by permit. Shore-based structures and parking associated with aquaculture shall be regulated in the same manner as water-related industry.
   f. Aquaculture shall only be permitted when the applicant provides information regarding design and location that supports the finding that such a development will not significantly degrade ecological function over the long-term, will not spread disease to native aquatic life, will not result in the establishment of new non-native species which cause significant ecological impacts, and will not significantly impact the aesthetic quality of the shoreline.
   g. Aquaculture activities which would have a significant adverse impact on natural, dynamic shoreline processes or which would result in a net loss of shoreline ecological functions shall be prohibited.
   h. Aquaculture practices shall be designed to minimize use of artificial substances and shall use chemical compounds that are least persistent and have the least impact on plants and animals.
   i. Aquaculture wastes shall be disposed of in a manner that will ensure strict compliance with all applicable governmental waste disposal standards. No garbage, wastes or debris shall be allowed to accumulate at the site of any aquaculture operation.
   j. Applications for aquaculture development or uses shall include in their applications all information necessary to conduct a thorough evaluation of the proposed aquaculture activity.
   k. Aquaculture activities shall comply with all applicable noise, air, and water quality standards. All projects shall be designed, operated and maintained to minimize odor and noise.

C. Commercial Development.

1. Commercial development includes those uses that are involved in wholesale and retail trade or business activities, but does not include industrial or light

manufacturing uses. Because most commercial developments depend on people to support their certain activities, these developments lead to concentrations of people and traffic, which in turn can have a great effect on the condition of the shoreline.

2. The following commercial uses are allowed in order of preference:
   a. Water-dependent uses, which shall be given preference over water-related and water-enjoyment uses when a conflict exists.
   b. Water-related uses.
   c. Water-enjoyment uses.
   d. Non water-oriented uses, where part of a mixed use project that includes a water-oriented use and where the use provides significant public benefit with respect to the objective of the Act, such as public access and shoreline restoration. When a conflict exists, water-related and water-enjoyment uses shall be given preference over non-water-oriented uses.
3. Use Regulations:
   a. New non-water-oriented commercial uses should be prohibited unless they are part of a mixed-use project that includes water dependent uses and the use provides a significant public benefit with respect to SMA objectives, such as public access or shoreline restoration.
   b. Non-water-oriented commercial uses that are not part of a mixed-use development may be allowed where adjacent to water areas where navigability is severely limited or where the site is physically separated from the shoreline by another property or a public right-of-way; provided that the use provides a significant public benefit with respect to SMA objectives.
   c. Proposed commercial developments shall incorporate permanent public access into their designs consistent with Section 16.04.490 NMC.
   d. Commercial developments shall result in no net loss of shoreline ecological functions and processes.
   e. Wherever feasible, commercial developments shall be required to incorporate environmental cleanup and restoration of the shoreline area in design plans.
   f. Commercial developments, accessory structures and associated parking shall be set back consistent with the building setbacks established for the applicable environment designation.
   g. Commercial developments shall not block scenic views and shall be limited to 30 feet in height.
   h. Associated parking shall be set back from the ordinary high water mark at least 100 feet.
   i. Commercial developments which have the potential of providing views and scenic vistas to the shoreline will have priority and shall allow public access within the development and/or to public or private trails and walkways.
   j. Non-water-dependent commercial uses over water are prohibited except where necessary to support a water-dependent use.

D. Industrial Development.

1. This category includes industrial uses such as manufacturing, warehousing, intermodal freight transfer, and power generation.
2. Use Regulations:
   a. Industrial uses shall be allowed in the following order of preference: water-dependent uses, water-oriented uses, and finally non-water-oriented uses.
   b. Water-related industry is restricted to areas where water-related industries already exist.
   c. Industrial development shall provide public access pursuant to Section 16.04.490 NMC.
   d. Industrial development, accessory structures and associated parking shall be set back consistent with the building setbacks established for the applicable environment designation.
   e. Industrial developments shall mitigate impacts to wetlands through wetland replacement, enhancement or equivalent mitigation.
   f. Industrial developments should be designed and constructed to avoid, minimize or mitigate adverse impacts to the shoreline environment and to result in no net loss of shoreline ecological functions.
   g. Wherever feasible, industrial development shall be required to incorporate environmental cleanup and restoration of the shoreline area in design plans.
   h. Wherever feasible, industrial development shall be required to minimize the total amount of impervious surfaces on-site by cooperative use of parking and storage facilities by other industries.
   i. New non-water-oriented industrial uses should be prohibited unless they are part of a mixed-use project that includes water dependent uses and the use provides a significant public benefit with respect to SMA objectives, such as public access or shoreline restoration.
   j. Non-water-oriented industrial uses that are not part of a mixed-use development may be allowed where adjacent to water areas where navigability is severely limited or where the site is physically separated from the shoreline by another property or a public right-of-way; provided that the use provides a significant public benefit with respect to SMA objectives.

E. In-Stream Structures.

1. An in-stream structure is waterward of the ordinary high water mark and either causes or has the potential to cause water impoundment or the diversion, obstruction, or modification of water flow.
2. Use Regulations:
   a. In-stream structures proposed for fish habitat enhancement or shoreline restoration shall demonstrate the overall net benefit to the shoreline environment.
   b. New or replacement in-stream structures proposed for all purposes other than fish habitat enhancement and shoreline restoration shall only be allowed where it is demonstrated through the appropriate studies that adverse impacts to

shoreline functions and resources are mitigated to the maximum extent practicable and no other feasible alternative exists.

c. Removal of failing, harmful, unnecessary or ineffective in-stream structures shall not adversely affect the shoreline environment over the long term and shall restore shoreline functions where possible.

F. Mining.

1. Mining is the removal of naturally occurring metallic minerals and non-metallic minerals from the earth for economic use. The incidental sale of spoils generated by dredging pursuant to Section 16.04.540(C) does not constitute mining. Mining within shoreline areas can lead to many adverse effects.
2. Use Regulations:
   a. Mining is prohibited.

G. Recreational Development.

1. Recreational development includes development of active and passive recreation opportunities such as boating, swimming or simply viewing the shoreline.
2. Use Regulations, including for both commercial and public recreational developments:
   a. Priority shall be given to recreational developments that provide public access to the shoreline area.
   b. Water-dependent recreational uses will have first priority and second priority shall be given to water-related and water-enjoyment recreational uses.
   c. Recreational developments should be designed and constructed to avoid, minimize or mitigate adverse impacts to the shoreline environment to ensure no net loss of shoreline ecological functions and ecosystem-wide processes.
   d. Where feasible, shoreline recreational facilities shall be required to link to other recreational attractions via pedestrian and bicycle trails.
   e. Recreation areas or facilities within shoreline jurisdiction shall provide public physical or visual access to the shoreline and shall provide public access to publicly owned shoreline areas.
   f. Associated parking is prohibited in the shoreline area, with the exception of scenic pull-outs, view points, and trailheads; provided, that designated parking areas for public parks shall be allowed, but shall be set back at least 100 feet from the ordinary high water mark.
   g. Overnight camping facilities shall be prohibited in the shoreline area.
   h. Recreation facilities shall not unduly burden or create conflict with adjacent shoreline uses.

H. Residential Development.

1. Residential development includes housing subdivisions or tract housing built by a person for resale, single family residences, townhouses, apartment houses, condominiums, camping clubs, or mobile home parks.

2. All residential development including residential development exempt from the shoreline permit requirement pursuant to Section 16.04.090 of this program shall comply with the following use regulations.
3. Use Regulations:
    a. All residential structures, including accessory structures, located in the floodplain shall be constructed in conformance with this Program and Chapter 15.10, National Flood Insurance Program. Roadways, utilities and other development associated with residential development shall comply with the standards of this Program pertaining to those types of development.
    b. Approved erosion and sedimentation control measures shall be employed during and as needed after construction. The Administrator shall review and approve the proposed erosion control method prior to the commencement of construction.
    c. When feasible, residential development shall provide public or community access to the shoreline pursuant to Section 16.04.490 NMC.
    d. Residential development shall mitigate impacts to wetlands through wetland replacement, enhancement or equivalent mitigation.
    e. Residential subdivisions and conversions from non-residential uses shall be designed to avoid, minimize and mitigate adverse impacts to the shoreline environment to ensure no net loss of shoreline ecological functions and ecosystem-wide processes.
    f. Residential subdivisions shall be designed to create lots of sufficient size and configuration to allow residences to be constructed without encroaching on required shoreline setbacks, designated vegetation conservation areas and areas with an environment designation of “Natural.”
    g. Where authorized through City development regulations, new residential development shall be developed as planned unit developments and shall cluster dwelling units to reduce physical and visual impacts on shorelines.
    h. New multi-unit residential development, including subdivision of land into four or more parcels, shall provide public access to publicly owned shorelines or public water bodies.
    i. Residential development shall be consistent with the shoreline setbacks established for the applicable environment designation.
    j. Wherever possible, the area within 200 feet of the ordinary high water mark should be used as open space to meet the subdivision regulation requirements.
    k. Height limits shall be 30 feet.
    l. All new subdivisions shall provide for vegetation conservation to mitigate cumulative impacts of intensification of use within or adjacent to the shoreline that shall include compliance with vegetation conservation requirements of Section 16.04.500 NMC, together with replanting and control of invasive species within required buffers and open space to assure establishment and continuation of a vegetation community characteristic of a native climax community.
    m. New over-water residential development and floating homes are prohibited.

I. Transportation – Roads and Parking.

1. A road is a linear passageway for motor vehicles, and a railroad is a linear passageway with tracks for train traffic. The construction of linear transportation facilities and parking associated with allowed uses can both provide and limit access to shorelines, impair the visual qualities of water-oriented vistas, expose soils to erosion and retard the runoff of floodwaters, and accelerate or retard development.
2. Use Regulations:
   a. Wherever feasible, transportation and parking shall be located outside the shoreline area.
   b. Development of new railroad facilities is prohibited, except where such development includes construction of rail spurs to serve planned industrial development or is part of a regional expansion plan. Any such development shall require approval of a conditional use permit.
   c. Roads and parking within shoreline jurisdiction shall be designed, constructed and maintained to prevent sediments and pollutants from entering adjacent water bodies and wetlands.
   d. New transportation facilities within shoreline jurisdiction shall be designed to follow natural topography to minimize cuts and/or fills.
   e. Roads shall be located on stable sites whenever feasible to avoid placing structures near eroding banks and shifting channel elements.
   f. All bridges and other water crossing structures shall be designed not to impede the normal annual high water. Bridge approaches and side slopes shall be planted with a suitable cover.
   g. There shall be no side casting of excess road building material within shorelands.
   h. New roads shall make provisions for pedestrian and bicycle access.
   i. Major arterials shall be prohibited in shoreline areas except where necessary to cross a body of water.
   j. Permitted roadways shall be low speed and designed to conform to existing topography, thus minimizing cut and fill.
   k. Transportation facilities shall be constructed of materials which will not adversely affect water quality or aquatic plants and animals over the long term. Elements within or over water shall be constructed of materials approved by applicable state agencies for use in water for both submerged portions and other components to avoid discharge of pollutants from splash, rain or runoff. Wood or pilings treated with creosote, pentachlorophenol or other similarly toxic materials is prohibited. Preferred materials are concrete and steel.
   l. Parking facilities are not a water-dependent use and shall only be permitted in the shoreline area to support an authorized use where it can be demonstrated that there is no feasible alternative location away from the shoreline. Parking facilities shall be set back from the waters' edge and screened from less intense adjacent land uses by vegetation, undeveloped space, or structures developed for the authorized primary use.

m. Parking areas shall be developed utilizing low impact development techniques whenever possible including but not limited to the use of permeable surfacing materials.

n. RCW 36.87.130 prohibits the City from vacating any public road right-of-way which abuts a body of saltwater or freshwater except for port, recreational, educational or industrial purposes. Therefore, vacation, development, abandonment, or alteration of undeveloped City road ends within shoreline jurisdiction is prohibited unless approved in accordance with this Program and where consistent with state law and City street vacation ordinances.

J. Utilities.

1. Utilities are systems which distribute or transport various items including electricity, oil, gas, communications, sewage and water. The installation of this apparatus necessarily disturbs the landscape, but can be planned to have minimal visual and physical effect on the environment.

2. Use Regulations:

   a. Construction of utilities is permitted; provided, that there is appropriate documentation that the facility cannot be feasibly located outside of shoreline jurisdiction due to uses served or the need to cross shorelands to connect specific end points.

   b. With the exception of sewage treatment plants, all utilities shall be located underground wherever feasible. New overhead utilities shall only be located on shorelines when no reasonable alternative is available.

   c. Major utility facilities shall only be permitted as conditional uses.

   d. Utility facilities shall be designed, located and constructed to minimize harm to ecosystem-wide processes and other ecological functions.

   e. Upon the completion of installation or maintenance projects on shorelands, the area affected shall be restored to pre-project configuration, replanted with native species wherever practicable or with pre-existing species, and provided with maintenance care until the newly planted vegetation is established.

   f. Wherever feasible, existing rights-of-way, utility easements and other utility corridors shall be used to locate new utility development on shorelands.

   g. Non-water-oriented utility production and processing facilities should only be permitted within shoreline jurisdiction if it can be shown that no other feasible option is available and that it will result in no net loss of ecological functions.

   h. Sewage treatment plants shall be located where they do not interfere with and are compatible with recreational, residential, or other public uses of the water and shorelines.

SECTION EIGHT: SHORELINE MODIFICATION REGULATIONS

16.04.540 Specific Shoreline Modification Regulations

The following activities have been determined to have the potential for significant impacts to shorelines of the City. Therefore, specific requirements have been developed to ensure minimal impact on the shoreline. The applicable requirements shall apply to the following land use activities regardless of the Shoreline Environment Designations of the proposed locations. In the event of a conflict between the provisions of this Section and any other provisions of this Program, the more restrictive provisions shall apply.

A. Boat Ramps.

1. Boat ramps are permanent structures for launching watercraft. Development of boat ramps within the City's shoreline jurisdictional area is unlikely.
2. Regulations:
   a. Boat ramps shall only be permitted in conjunction with water-dependent uses or public access.
   b. Applications for boat ramps shall address the specific need that supports the development, as well as the design features and construction measures to be incorporated into the proposal to protect critical habitat and result in no net loss of ecological function.
   c. Boat ramps shall be limited in size based on the minimum necessary to accommodate the proposed use.
   d. New boat ramps shall be approved only if they provide public access to public waters, which are not adequately served by existing access facilities, or if use of existing facilities is documented to exceed the designed capacity.
   e. Boat ramps shall be designed and constructed to safeguard the health, safety, and welfare of the community.
   f. Review and approval of applications for boat ramps shall ensure that they are located at sites with suitable environmental conditions, shoreline configuration, and access, and where they do not create conflicts with neighboring uses.
   g. Boat ramps shall be required to meet applicable public health, safety and welfare requirements; to avoid, or if that is not possible, to mitigate aesthetic impacts; and to protect the rights of navigation.
   h. Boat ramps shall not permit associated moorage on waters of the state or boaters living on their vessels.

B. Docks.

1. Docks provide physical and visual access to the shoreline, but their construction can cause significant adverse impacts to the shoreline environment. Development of docks within the City's shoreline jurisdictional area is unlikely.
2. Regulations:
   a. New docks shall only be permitted in conjunction with water-dependent uses or public access.

b. Applications for docks shall address the specific need that supports the development, as well as the design features and construction measures to be incorporated into the proposal to protect critical habitat and result in no net loss of ecological function.

c. Docks shall be limited in size based on the minimum necessary to accommodate the proposed use.

d. Docks shall not significantly reduce use of the water surface and shall protect the rights of navigation.

e. Docks shall be constructed of materials which will not adversely affect water quality or aquatic plants and animals over the long term. Use of wood or pilings treated with creosote, pentachlorophenol or other similarly toxic materials is prohibited.

f. New residential development of two or more dwellings shall include a development limitation whereby joint use or community dock facilities are allowed, when feasible, rather than individual docks for each residence.

g. Docks serving more than four single-family dwellings, which may be considered boating facilities under state guidelines, are prohibited.

C. Dredging.

1. Dredging is the removal of unconsolidated material (gravel, sand, silt) from the bottom of a river, stream or other water body for purposes of deepening a navigable channel; deepening or removing sediments from a stream for drainage improvement; or enhancement or creation of habitat. Dredging has the potential to significantly impact the shoreline environment.

2. Dredging is permitted as a conditional use for the purpose of habitat creation or enhancement and/or maintenance of the drainage and flood carrying capacity of the streamway.

3. Regulations:

   a. Dredging activities shall be prohibited unless approved by state and federal agencies and shall be undertaken in a manner that has been demonstrated to not significantly impact ecological functions. Impacts that cannot be avoided shall be mitigated.

   b. Dredging for the single purpose of obtaining landfill or construction materials is prohibited, except for emergency shoreline stabilization and flood protection measures, or projects associated with MTCA or CERCLA habitat restoration, or any other significant restoration effort approved by a shoreline Conditional Use Permit.

   c. Dredging and/or disposal of dredge spoils within the shoreline area shall only be permitted as a conditional use.

   d. No dredging shall be conducted without the responsible person having obtained a shoreline conditional use permit or statement of exemption as appropriate, and where required, a Hydraulic Project Approval permit from the State and all other permits required by state and federal agencies.

   e. Maintenance dredging shall be allowed only within the boundaries of the originally approved dredge area.

f. Applications for dredging activities shall include the following information:

i. An analysis and physical description of the material to be dredged;

ii. Time schedule for dredging;

iii. Methods of dredging and disposal of spoils;

iv. Location, size, stability, and biological characteristics of the bedlands at and adjacent to the site; and

v. Chemical analysis of the spoil material if it is deemed necessary because of suspected pollution.

g. Applications for dredging activities shall include the following studies:

i. A hydrogeological study, conducted by a qualified professional and approved by appropriate state agencies, which demonstrates that removal of specific quantities at specific locations will not significantly alter the natural processes of gravel transportation for the river system as a whole; and

ii. A biological study, conducted by a qualified professional and approved by appropriate state agencies, which demonstrates that removal will not significantly degrade habitat values for priority species or damage other ecological functions.

h. Review of dredging and spoil disposal proposals shall assess:

i. The value of the dredge and disposal sites in their existing condition versus the proposed shoreline use to be created, relative to improved public access, economic, and environmental factors;

ii. The potential for the proposal to locate at a site where dredging and disposal are not required, and whether the proposed development could be redesigned to avoid the need for new and on-going maintenance dredging; and

iii. The potential for use of suitable dredge material to benefit shoreline resources.

D. Landfill and Excavation.

1. Landfill is 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 elevation or creates dry land. Landfill can destroy the natural character of the shoreline and may contribute to increased erosion and siltation problems while reducing the existing water surface. Excavation is the surface removal or clearing of land. Such activities can also destroy the character of the shoreline and have adverse effects on shoreline ecological functions.

2. Regulations:

a. Landfill shall be permitted for the following purposes only:

i. Shoreline development in the floodplain for the purpose of elevating structures (including parking areas, roadways and railways) and buildings to comply with the City National Flood Insurance Program ordinance, where other means of compliance with the ordinance are not economically feasible.

ii. Development within a wetland consistent with the wetland management requirements of Section 16.04.470(B) NMC.

iii. Shore feature enhancement such as bank restoration, or insignificant raising of upland grades including landscaping.

iv. Biological habitat development when consistent with state Department of Fish and Wildlife policies.

v. The construction of dikes, levees and other flood control works consistent with the National Flood Insurance Program ordinance and with the shoreline protection standards of this program.

b. Landfill and excavation shall be designed to minimize damage to the shoreline environment and shall be located, designed and constructed to assure no net loss to shoreline ecological functions, and not to impede natural channel migration or movement of sediment materials.

c. Fill shall not be permitted which alters existing surface runoff patterns or storm peak flows and floods to the extent that other properties or valuable shore features or habitat will likely be adversely impacted.

d. Fill shall not be allowed where new shoreline stabilization structures would be required to maintain the materials placed.

e. The predicted economic benefits of proposed landfill and excavation shall be weighed against long-term cumulative impacts on shoreline processes and functions.

f. Fill materials shall have a specific gravity greater than 1.0 and shall be placed in such a manner so as not to adversely affect the water quality of adjacent water bodies.

g. In order to assure consistency with this program and with the Act, no landfill or excavation shall be undertaken within the shoreline unless the responsible person has first obtained either a shoreline permit or a shoreline statement of exemption as appropriate; provided, that the placement of fill waterward of the ordinary high water mark, except where directly associated with ecological restoration, shall require approval of a conditional use permit.

h. All landfill and excavation activities shall incorporate appropriate erosion and sedimentation control best management practices.

i. When no protective structure is required or proposed, the shoreline shall be maintained in or restored to its natural contours, slopes, and appearance.

j. No landfill or excavation activities that would interfere with the passage of stream waters or flood waters shall be permitted.

k. Fill and excavation activities shall only be done in conjunction with an approved new use or development or in conjunction with an existing use. No debris shall be placed within the streamway, or within 200 feet of the ordinary high water mark. All material shall be burned or otherwise removed from shorelands, except that earth, rocks, and the like shall be graded back to the original contour.

l. Proposals that require that power equipment or machinery be used in the Aquatic or Natural Environments must be authorized by the city.

m. The placement of fill waterward of the ordinary high water mark is prohibited except where necessary to support:

i. Water-dependent use;

ii. Public access;

iii. Cleanup and disposal of contaminated sediments as part of an interagency environmental clean-up plan;

iv. Disposal of dredged material considered suitable under, and conducted in accordance with the dredged material management program of the department of natural resources;

v. Expansion or alteration of transportation facilities of statewide significance currently located on the shoreline and then only upon a demonstration that alternatives to fill are not feasible;

vi. Mitigation action; or

vii. Environmental restoration.

E. Outdoor Advertising and Signs.

1. Signs are publicly displayed boards whose purpose is to provide information, direction or advertising. Advertising and signs, because they are intended to be very visible, can have a great effect on the aesthetics of an area.

2. Regulations:

   a. Off-premise signs and billboards are prohibited.

   b. Size, height, density and lighting of signs shall be consistent with applicable City regulations.

   c. In general, signs shall be constructed against buildings to minimize visual obstruction of the shoreline.

   d. Communities and/or neighborhoods shall have no more than one sign at each street gateway that will be limited to the name of the community.

   e. Signs are prohibited in the area between buildings and the ordinary high water mark to protect views of the water.

F. Shoreline Flood Protection.

1. Shoreline flood protection refers to flood protection along streamways and includes rip-rapping and dikes but excludes other shoreline stabilization measures pursuant to subsection 16.04.540(H).

2. Regulations:

   a. Shoreline flood protection measures shall be located, designed and constructed so as to protect the natural character of the shoreline and minimize alteration of the shoreline environment.

   b. Where flood protection measures such as dikes are planned, they shall be placed landward of the shoreline, including associated swamps and marshes and other wetlands directly interrelated and interdependent with the water body.

   c. Flood protection measures which result in extensive modification or channelization of the streamway or shoreline are prohibited.

   d. Shoreline flood protection measures shall be planned to maintain or restore as nearly as possible the natural condition of the shoreline.

e. Proposed shoreline flood protection projects which could alter wetlands as a result of landfill or other shoreline activity shall be assessed relative to impacts upon the area's physical and biological characteristics. Impacts identified with a proposed action shall be avoided or mitigated consistent with applicable City requirements, and recommendations from state, federal and tribal agencies.

f. Where consistent with public access goals and objectives, public shoreline protection projects shall provide opportunities for public access to the shoreline.

g. New structural flood hazard reduction measures shall only be allowed when it can be demonstrated by a scientific and engineering analysis that such measures are necessary to protect existing development, that nonstructural measures are not feasible, that impacts on ecological functions and priority species and habitats can be successfully mitigated so as to assure no net loss, and that appropriate vegetation conservation actions are undertaken.

h. Removal of gravel for flood management purposes shall only be allowed where consistent with an adopted flood hazard reduction plan and after a biological and geomorphological study shows that extraction will have 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

G. Shoreline Habitat and Natural Systems Enhancement Projects.

1. 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.

2. Regulations:

   a. Applications for shoreline habitat and natural systems enhancement projects shall demonstrate a net benefit to the shoreline environment and shall be reviewed for consistency with the City's Shoreline Restoration Plan.

   b. Wherever possible, shoreline habitat and natural system enhancement projects shall be authorized through issuance of a shoreline exemption, unless otherwise required pursuant to this Program.

H. Shoreline Stabilization.

1. Shoreline stabilization includes actions taken to address erosion impacts to property, housing, businesses, or structures caused by natural processes. These can include both structural and non-structural methods of stabilization. New stabilization measures include enlargement of existing structures.

2. Regulations:

   a. New development should be located and designed to avoid the need for future shoreline stabilization to the extent feasible. Subdivision of land shall assure that the lots created will not require shoreline stabilization in order for reasonable development to occur using geotechnical analysis of the site and shoreline characteristics.

   b. Shoreline stabilization measures shall be located, designed and constructed so as to minimize alteration of the natural character of the shoreline.

   c. Shoreline stabilization measures which result in the extensive modification of the shoreline environment shall not be permitted.

d. Shoreline stabilization structures and facilities shall be designed and constructed based on approved plans prepared by a licensed professional engineer.

e. Streamway features such as snags, uprooted trees, or stumps shall be left in place unless causing significant bank erosion or higher flood stages. Existing stream bank vegetation shall be preserved.

f. Wherever possible, construction of shoreline stabilization structures and facilities shall incorporate opportunities for public access and shall provide for protection and restoration of ecological functions and ecosystem-wide processes.

g. New or expanded structural shore stabilization for existing primary structures, including residences, roads, railroads, public facilities, etc. is prohibited unless there is conclusive evidence, documented by a geotechnical analysis, that the structure is in danger from shoreline erosion caused by stream processes, and significant adverse impacts are mitigated to ensure no net loss of shoreline ecological functions and/or processes. Normal sloughing or erosion of streambanks by itself, without a geotechnical analysis, is not a demonstration of need.

h. New shore stabilization for new development is prohibited unless it can be demonstrated that the proposed use cannot be developed without shore stabilization, and a geotechnical analysis documents that alternative solutions are not feasible or do not provide sufficient protection. The need for shore stabilization shall be considered in the determination of whether to approve new water-dependent uses. Proposed designs for new or expanded shore stabilization shall be designed in accordance with Department of Ecology and Department of Fish and Wildlife guidelines and certified by a qualified professional.

i. New shore stabilization for new, non-water-oriented development is prohibited.

j. Replacement of existing stabilization structures is based on need demonstrated by geotechnical analysis. Waterward encroachment of replacement structures is only allowed for residences occupied prior to January 1, 1992, or for soft shoreline stabilization measures that provide restoration of ecological functions.

k. Geotechnical reports prepared to demonstrate need, including those for ecological restoration/toxic clean-up remediation projects, shall include estimates of rate of erosion and urgency associated with the specific situation. Hard armoring solutions should not be permitted unless the geotechnical report confirms that there is a significant possibility that a primary structure will be damaged within three years as a result of the shoreline erosion. Where the geotechnical report confirms a need to prevent potential damage to a primary structure, but the need is not as immediate as the three years, the report may still be used to justify more immediate shoreline stabilization using soft measures.

l. Bulkheads should only be used where other more natural appearing methods of shoreline stabilization are not feasible. Where possible, open type construction of bulkheads should be used. Where shoreline stabilization is allowed, it shall consist of “soft,” “flexible, and/or natural materials or other bioengineered approaches unless a geotechnical analysis demonstrates that such measures are not feasible.

m. The effects of proposed shoreline stabilization on the movement of water and drift materials, on fish and wildlife, on public access, and on the aesthetic quality of the shoreline shall be evaluated prior to permitting. Adverse impacts shall be avoided wherever possible.

n. Publicly financed or publicly subsidized shoreline erosion control measures shall not restrict appropriate pubic access to the shoreline except where such access is determined to be infeasible because of incompatible uses, safety, security, or harm to ecological functions. Where feasible, ecological restoration and public access improvements shall be incorporated into such projects.

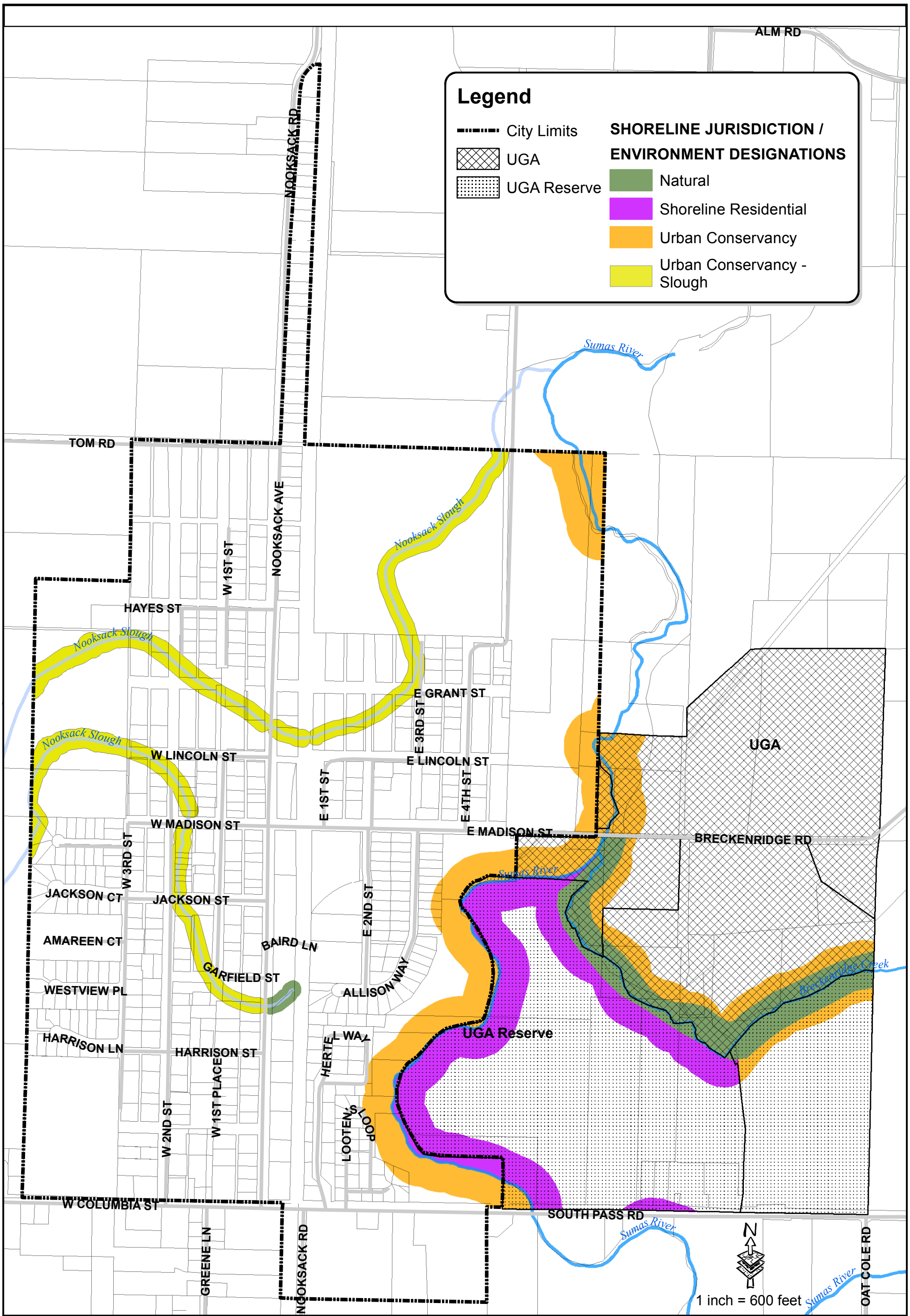
I. Solid Waste Disposal.

1. Solid waste disposal includes collection, transport and disposal of all discarded or spent materials other than liquids such as sewage or wastewater.

2. Regulations:

   a. Solid waste disposal sites (as defined in section 70.95.030 RCW) shall not be permitted on shorelands.

   b. Facilities for the collection, transfer, or reload of recyclable materials and municipal solid waste are permitted as a conditional use.



Wilson SURVEY/ENGINEERING

WILSON ENGINEERING, LLC
805 DUPONT STREET
BELLINGHAM, WA 98225
(360) 733-6100 FAX (360) 647-9061
www.wilsonengineering.com

Coordinate System:
State Plane Washington North
North American Datum 1983

Data Source:
City of Nooksack,
Whatcom County Planning & Assessor

CITY OF NOOKSACK SHORELINE MASTER PROGRAM

WHATCOM COUNTY — WASHINGTON

OFFICIAL SHORELINE MAP

DATE	SHEET
July 21, 2014	1
SCALE 1:7,200	OF 1
JOB NUMBER 2010-030	