18.50.060 Clearing, and grading and vegetation management.

A. All shorelines shall be protected from degradation caused by the modification of the land surface within the shoreline area or the adjacent uplands. Clearing and grading activities are allowed only if: conducted only landward of a required building setback or shoreline buffers from shorelines.
   (1) associated with an approved shoreline development;
   (2) conducted only landward of a required building setback from shorelines; and
   (3) disturbed areas not converted to another use within one year are replanted with native species. Replanted areas shall be maintained so that the vegetation is fully reestablished within three years of planting.

B. Restoration of any shoreline that has been disturbed or degraded shall be done with non-toxic native plant materials with a diversity and type similar to that which originally occurred on site. If commercial nursery stock is used in the restoration of disturbed or degraded shorelines, within three years it shall emulate the previously existing vegetation in size, structure, and diversity.

C. Clearing or and associated grading Development on shorelines that have been identified as unstable or sensitive to erosion in SJCC 18.30.120 is not allowed unless the applicant demonstrates that the development activity is located a sufficient distance from the shoreline to prevent contributing to its instability.

D. Normal nondestructive pruning and trimming of vegetation for maintenance purposes is not subject to these clearing and grading regulations. In addition, clearing by hand-held equipment of invasive non-native shoreline vegetation or plants listed on the state and San Juan County Noxious Weed List is allowed, including unregulated weeds of special concern provided non-toxic native vegetation is promptly reestablished in the disturbed area.

E. Selective pruning of trees and brush to clear a 30 foot fire break around existing buildings is allowed. New construction must be sited on the parcel so that a 30 foot firebreak will not require clearing.

F. Topping of trees is prohibited, unless a safety risk associated with overhead utilities is documented.

G. Tree Vegetation removal permitted in a development approval is exempt from the regulations in this section. However, Where vegetation removal or alteration conducted consistent with or in violation of this section results in adverse impacts to...
shoreline ecological function, additional actions new developments or site alterations shall be required to develop and implement a mitigation plan that ensures no net loss of ecological functions per SJCC 18.50.070, Environmental Protection. Mitigation plans shall be prepared by a qualified professional consistent with the requirements of SJCC 18.30.110, removal permitted in a development approval is exempt from the regulations in this section.

HD. Commercial timber harvest conducted in accordance with an approved forest practices permit is exempt from the regulations in this section. (Ord. 2–1998 Exh. B § 5.4.3) Activities covered under the Washington State Forest Practices Act, except for conversion to other uses and those other forest practice activities over which the County has authority, is exempt from these vegetation management standards. (See SJCC 18.50.240, Forest management)

I. Aquatic weed control shall only occur when native plant communities and associated habitats are threatened or where an existing water dependent use is restricted by the presence of weeds. Aquatic weed control shall occur in compliance with all other applicable laws and standards.

J. The control of aquatic weeds by hand pulling, mechanical harvesting that doesn’t disturb the sea bed, or placement of aqua-screens, if proposed to maintain existing water depth for navigation, shall be considered normal maintenance and repair and therefore exempt from the requirement to obtain a shoreline substantial development permit. (See the exemption procedures in SJCC 18.80.110(F).)

K. The control of aquatic weeds by derooting, rotovating, or other method which disturbs the sea bed bottom sediment or benthos shall be a substantial development unless it will maintain existing water depth for navigation in an area covered by a previous permit for such activity. In that case, it shall be considered normal maintenance and repair.

L. Use of herbicides to control aquatic weeds shall be prohibited except where no reasonable alternative exists and weed control complies with all state rules and regulations. (Ord. 2–1998 Exh. B § 5.4.10)

18.50.130 Vegetation management. (Combined with Clearing and Grading above)
A. All shorelines shall be protected from degradation caused by the modification of the land surface within the shoreline area or the adjacent uplands.
B. Development on shorelines that have been identified as unstable or sensitive to erosion in SJCC 18.30.120 is not allowed unless the applicant demonstrates that the development is located a sufficient distance from the shoreline to prevent contributing to its instability.
C. Restoration of any shoreline that has been disturbed or degraded shall be done with
native plant materials with a diversity and type similar to that which originally occurred on-site.

D. Commercial nursery stock used in the restoration of disturbed or degraded shorelines shall, at maturity, emulate the previously existing vegetation in size, structure, and diversity.

E. Beach enhancement is prohibited:
   1. Within spawning, nesting, or breeding habitat;
   2. Where littoral drift of the enhancement materials will adversely affect adjacent spawning grounds or other areas of biological significance;
   3. If it will interfere with the normal public use of the navigable waters of the state; or
   4. Where the activity is in support of a nonconforming use unless such activities are necessary to maintain shoreline stability and the natural ecology.

F. Aquatic weed control shall only occur when native plant communities and associated habitats are threatened or where an existing water dependent use is restricted by the presence of weeds. Aquatic weed control shall occur in compliance with all other applicable laws and standards.

G. The control of aquatic weeds by hand pulling, mechanical harvesting, or placement of aqua-screens, if proposed to maintain existing water depth for navigation, shall be considered normal maintenance and repair and therefore exempt from the requirement to obtain a shoreline substantial development permit. (See the exemption procedures in SJCC 18.80.110(F).)

H. The control of aquatic weeds by derooting, rotovating, or other method which disturbs the bottom sediment or benthos shall be a substantial development unless it will maintain existing water depth for navigation in an area covered by a previous permit for such activity. In that case, it shall be considered normal maintenance and repair.

I. Use of herbicides to control aquatic weeds shall be prohibited except where no reasonable alternative exists and weed control complies with all state rules and regulations. (Ord. 2–1998 Exh. B § 5.4.10)

18.50.140 View protection.

A. Shoreline uses and activities must be designed and operated to avoid blocking or adversely interfering with visual access from public areas to the water and shorelines except as provided for in SJCC 18.50.130 060 Clearing, Grading and Vegetation Management.

B. The vacation of public road ends and rights-of-way which provide visual access to the water and shoreline may be allowed only in accordance with RCW 36.87.130 and local rules.

C. In providing visual access to the shoreline minor trimming and pruning of the foliage of trees and shrubs is allowed, provided the health of the trees and shrubs is
maintained, trees are not topped, and all vegetation overhanging streams, lakes, wetlands, documented forage fish spawning beaches, and marine waters is retained. In no case shall more than 20% of the foliage of a tree or shrub be removed during one 12 month period. The natural vegetation shall not be excessively removed either by clearing or by topping.

D. In order to limit interference with views to the shoreline from surrounding properties to the shoreline and adjoining waters, development on or over the water shall be constructed only as far sea waterward as necessary for the intended use.

E. Development on or over the water must be constructed of materials that are compatible in color with the surrounding area.

F. Visual shoreline access must be maintained, enhanced, and preserved on public road ends and rights-of-way. (Ord. 2–1998 Exh. B § 5.4.11

18.50.170 Agriculture.

A. General Regulations.

1. Buffers of permanent vegetation or other suitable soil erosion controls shall be established and maintained between tilled or grazed areas and associated water bodies. The type and extent of such vegetation and other control shall be of a width or character sufficient to prevent surface runoff and reduce siltation.

2. Confined animal feeding operations, retention of storage ponds for feedlot wastes, and stockpiles of manure solids shall be located to prevent the pollution of water areas. Control guidelines prepared by the U.S. Environmental Protection Agency and state and local agencies shall be observed.

3. Commercial feedlots shall not be permitted on the shorelines.

4. All agricultural activities performed within watersheds for ground water collection or adjacent to shorelines shall develop a water quality conservation plan with the local USDA representative in line with “best management practices” and with the goal of protecting water quality. Agricultural activities conducted on agricultural resource lands will include the water quality plan as a portion of the five-year plan filed with the County assessor.

4. New agricultural activities in the shoreline jurisdiction shall be located, designed, constructed, and managed to ensure no net loss of ecological functions and values.
B. Regulations by Designation Environment.
1. **Urban.** Agricultural activities shall be permitted in the urban designation environment subject to the policies and regulations contained in this master program.
2. **Rural.** Same as urban.
3. **Rural Residential.** Same as urban.
4. **Rural Farm-Forest.** Same as urban.
5. **Conservancy.** Same as urban.
6. **Natural.** Agricultural activities may be permitted in the natural designation environment as a conditional use; provided, that the resource which is to be protected by the natural designation will not be degraded.
7. **Aquatic.** Agricultural activities shall not be allowed in the aquatic designation. Proposed for the aquatic environment are considered to be aquacultural activities and the policies and regulations of SJCC 18.50.180, Aquaculture, shall govern.
8. **Ports, Marina and Transportation.** Agricultural activities shall be permitted subject to the regulations of this SMP.
9. **Eastsound Urban, Eastsound Residential, Eastsound Marina District and Eastsound Conservancy.** Same as urban.
10. **Eastsound Natural.** Same as natural. (Ord. 2–1998 Exh. B § 5.5.2)
11. **Shaw Rural, Shaw Rural Farm-Forest and Shaw Conservancy.** Same as urban.

18.50.180 Aquaculture.

**Distinguishing between Aquaculture and Science.**

WAC 173-26-020 definitions defines Aquaculture as “means the culture or farming of fish, shellfish, or other aquatic plants and animals. Aquaculture does not include the harvest of wild geoduck associated with the state managed wildstock geoduck fishery.

SJCC 18.20.010 defines aquaculture as ‘the science or art of cultivating fish, shellfish, or other aquatic animals or plants.’

The current definition of aquaculture does not allow for scientific/restoration activities that may use the same or similar in water structures as commercial fish pen operations. One option is for our code to distinguish between commercial and non-commercial activities, see below.

**Definition:**

Aquaculture is defined as the **commercial or non-commercial** science or art of cultivating fish, shellfish, or other aquatic animals or plants.

i. Commercial activities include the hatching, cultivating, planting, feeding, raising, harvesting, and processing of aquatic plants and animals and the maintenance and construction of necessary equipment, buildings and growing areas. Cultivation methods include but are not limited to fish pens,
fish hatcheries, shellfish rafts, racks and long lines, seaweed floats and nets and the culture of clams and oysters on tidelands and subtidal areas.

ii. Non-commercial activities include harvesting fish, shellfish or other aquatic animals and plants for subsistence, recreational and personal consumption, and scientific research and/or restoration activities.

A. General Regulations.

1. Because all shorelines within the County seaward of the line of extreme low tide have been designated “shorelines of statewide significance,” commercial aquacultural activities proposed in that area shall be subject to, first, the regulations policies referred to in SJCC 18.50.110, Shorelines of statewide significance and second, the general and use-specific regulations contained in this chapter.

2. No structures or facilities which would have a significant adverse impact on the natural, dynamic processes of shoreline formation and change shall be approved or constructed.

3. No aquatic organism shall be introduced into San Juan County salt or fresh waters without prior written approval of the Washington Department of Fish and Wildlife or the appropriate regulatory agency for the specific organism proposed for introduction. The required approval shall be submitted in writing to Community Development and Planning (CD&P) permit center prior to the introduction or the granting of the permit, whichever comes first.

4. The County shall not issue permits for projects that include the introduction of aquatic organisms to salt waters until it has also requested written comment, and provided reasonable opportunity to comment on the proposed introduction, from the director of the University of Washington Friday Harbor Laboratories.

5. Unless otherwise provided in the shoreline permit issued by the County, after a permit is issued the repeated introduction of an approved organism in the same location shall not require subsequent approval by the County. Introduction, for purposes of this section, shall mean the placing of any aquatic organism in any area within the waters of San Juan County regardless of whether it is a native or resident organism within the County and regardless of whether it is being transferred from within or without the waters of San Juan County.

6. Aquacultural activities shall comply with all applicable governmental noise, air pollution, and water quality standards, including those in Chapter 18.60 SJCC. All activities shall be operated and maintained to minimize odor and noise.

7. Aquacultural activities shall be restricted to reasonable hours, subject to tides, and days of operation, when necessary to minimize significant, adverse impacts from noise, light, and glare on nearby residents.

8. Aquacultural structures and equipment, except navigation aids, shall be designed, operated, and maintained to blend into their surroundings through the use of appropriate colors and materials.

9. The County may require of commercial aquacultural permittees evidence of
financial responsibility in an amount commensurate with the risk of injury or
damage to any person, property, or environment as a result of the project.
Evidence of financial responsibility shall not duplicate requirements of other
agencies.

10. Where aquacultural projects are authorized to use public facilities, such as boat
launches or docks, the County shall reserve the right to require the applicant to
pay a portion of the cost of maintenance and any required improvements
commensurate with the applicant’s use.

11. All aquacultural structures and facilities shall be marked in accordance with U.S.
Coast Guard requirements.

12. Aquacultural structures and equipment shall be of sound construction and shall
be maintained properly. Abandoned or unsafe structures and equipment shall be
removed or repaired promptly by the owner. Where any structure might constitute
a potential hazard to the public in the future, the County shall require evidence of
financial responsibility in an amount commensurate with the cost of removal or
repair. The County will abate an abandoned or unsafe structure, following notice
to the owner, if the owner fails to respond in 30 days. The County may take such
action as necessary to enforce the financial responsibility of the applicant.
Evidence of financial responsibility shall not duplicate requirements of other
agencies.

13. Applicants shall include in their applications all information needed to conduct
thorough evaluations of their aquaculture proposals, including the following:
   a. Species to be reared.
   b. Aquaculture method(s).
   c. Anticipated use of any feed, pesticides, herbicides, antibiotics, or other
      substances, and their predicted impacts.
   d. Manpower or employment necessary for the project.
   e. Harvest and processing location, method, and timing.
   f. Location and plans for any shore-side activities, including loading and
      unloading of the product, processing, and any use of freshwater supplies.
   g. Methods of waste disposal and predator control.
   h. Environmental assessment, including best available background information
      on water quality, tidal variations, prevailing storm wind conditions, current
      flows, flushing rates, aquatic and benthic organisms, and probable impacts on
      water quality, macroalgae, biota, currents, littoral drift, and any existing
      shoreline or water uses. Further baseline studies may be required depending
      upon the adequacy of available information, existing conditions, the nature of
      the proposal, and probable adverse environmental impacts. Baseline
      monitoring shall be at the applicant’s expense unless otherwise provided for.
   i. Other pertinent information deemed necessary by the Director administrator.

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

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

16. No processing of any commercial aquacultural product, except for the sorting or culling of the cultured organism and the washing or removal of surface materials or organisms, shall occur in or over the water after harvest, unless specifically approved by permit. All other processing and processing facilities shall be located on land and shall be governed by the policies and regulations of SJCC 18.50.310, Ports and water-related port facilities (this reference will need to change), in addition to the policies and regulations in this section.

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

18. Commercial aquacultural uses and facilities must be located at least 600 feet from any National Wildlife Refuge lands or habitats of special significance for birds or mammals (as identified in recognized reference documents, such as the Washington Department of Ecology publication, “Washington Coastal Areas of Major Biological Significance,” or as determined by the Washington Department of Fish and Wildlife).

19. Commercial fish net-pens and projects involving substantial substrate modification shall be located 1,500 feet or more from such areas; however, lesser distances may be authorized by permit if it is demonstrated by the applicant that the wildlife resource will be protected and if the exception is supported by the reviewing resource agencies. Greater distances also may be required if supported by the reviewing resource agencies.

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

21. Permit applications shall identify all pesticides, herbicides, antibiotics, vaccines, growth stimulants, anti-fouling agents, or other chemicals the applicant anticipates using. No such materials shall be used until approval is obtained from all appropriate state and federal agencies, including the U.S. Food and Drug Administration, the Washington Departments of Ecology, Fish and Wildlife, and Agriculture, as required, and proof of such approvals is submitted to the County. When feasible, the cleaning of nets and other apparatus shall be accomplished by air drying, spray washing, or hand washing.

22. For commercial aquacultural projects using over-water structures, storage
of necessary tools and apparatus seaward of the ordinary high water mark shall be limited to containers of not more than three feet in height, as measured from the surface of the raft or dock. However, in locations where the visual impact of the proposed commercial aquaculture structures will be minimal, the County may authorize storage containers of greater height. In such cases, the burden of proof shall be on the applicant. Materials which are not necessary for the immediate and regular operation of the facility shall not be stored seaward of the ordinary high water mark.

232. Proposals for mechanical clam harvesting or other activities that involve substantial substrate modification through dredging, trenching, digging, or adverse sedimentation shall not be allowed in existing kelp beds or in beds of native eel grass (Zostera marina) containing more than two turions per one-quarter square meter in winter or three turions per one-quarter square meter in summer.

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

254. Fish net-pens shall not occupy more than two surface acres of water area, excluding booming and anchoring requirements.

265. Commercial aquacultural proposals that include net pens or rafts shall not be located closer than one nautical mile to any other commercial aquacultural facility that includes net pens or rafts. However, a lesser distance may be authorized by the County if the applicant can demonstrate to the County’s satisfaction that the ecological, environmental, and aesthetic concerns expressed in this SMP will be protected. If a lesser distance is requested, the burden of proof shall be on the applicant to demonstrate that the structures, storage of necessary tools and apparatus seaward of the ordinary high water mark shall be limited to containers of not more than three feet in height, as measured from the surface of the raft, or that the cumulative impacts of the existing and proposed operations would not be contrary to the policies and regulations of this SMP.

276. Except as provided in subsection (A)(22) of this section, aquacultural developments approved on an experimental basis shall not exceed five acres in area (except anchorage for floating systems) and five years in duration. The County may, however, issue a new permit to continue an experimental project as many times as is deemed necessary and appropriate.

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

298. For commercial floating culture facilities, the County shall reserve the right to require a visual impact analysis consisting of information comparable to that found in the Washington Department of Ecology’s “Aquacultural Siting Study” of
1986.

3029. For all commercial aquacultural development projects that would be likely to affect water quality or quantity affecting a permitted and currently established commercial aquaculture project, a separate administrative review shall be completed prior to issuing any development permit. The Director administrator may request research or analysis, as necessary, by appropriate experts such as hydrologists or marine biologists, to assist in determining that marine water quality impacts will not damage or destroy the established aquaculture use, based on a preponderance of the evidence. No development permit shall be granted if the established aquaculture operation will likely be damaged or destroyed based on a preponderance of the evidence.

B. Regulations by Designation Environment.

1. Urban. Aquacultural activities shall be permitted in the urban designation environment subject to the policies and regulations of this master program.

2. Rural. Aquacultural activities shall be permitted in the rural general use designation environment subject to the policies and regulations of this SMP; provided, that the proposed structures and facilities will not have a significant adverse impact on the aesthetic qualities of the surrounding area.

3. Rural Residential. Aquacultural activities shall be permitted as a shoreline conditional use in the rural residential designation environment subject to the policies and regulations of this SMP; provided, that the proposed structures and facilities will not have a significant adverse impact on the aesthetic qualities and ecological functions and values of the surrounding area. Proposals containing aNet-pen facilities shall be located no closer than 1,500 feet waterward of from the OHWM of this designation environment, unless a lesser distance is determined to be appropriate based upon a visual impact analysis. Other types of floating aquaculture facilities may be located within 1,500 feet of the OHWM but in such cases a visual analysis and an assessment of the activity’s potential impacts on the ecological functions and values shall be mandatory.

4. Rural Farm-Forest. Same as rural.

5. Conservancy. Aquacultural activities shall be permitted in the conservancy designation environment subject to the policies and regulations of this SMP; provided, that the natural ecological functions and values resources and systems of the environment will not be significantly altered; and provided further, that the required structures and facilities, both terrestrial and aquatic, will not have a significant adverse impact on the aesthetic qualities of the surrounding area.

6. Natural. Aquacultural activities that do not require structures or facilities or mechanized harvest practices and that will not result in the alteration of natural systems or features shall be permitted in the natural designation environment subject to the policies and regulations contained in this SMP.

7. Aquatic. Aquacultural activities shall be permitted in the aquatic designation environment provided the activities do not conflict with other established aquatic designation uses including navigation, moorage, sport or commercial fishing, logging, under water utilities, other water dependent activities, subject to the policies and regulations of this SMP and to the regulations by environment.
applicable to the most restrictive abutting shoreline environment, to be determined on a case-by-case basis but to be considered generally as the shoreline environment visible within 1,500 feet of a project site; provided, that the policies and regulations of a less restrictive abutting environment may be substituted if the administrator determines that the public interest would not be compromised by doing so.

8. **Ports, Marinas and Transportation.** Aquacultural activities are incompatible with the goal and uses prevalent in the Ports, Marinas and Transportation designation and are prohibited in this designation.

8. **Eastsound Urban, Eastsound Residential, and Eastsound Marina.** Same as urban.

9. **Eastsound Conservancy.** Same as conservancy.

10. **Eastsound Natural.** Same as natural.

11. **Shaw Rural and Shaw Rural Farm-Forest.** Same as rural.

12. **Shaw Conservancy.** Same as conservancy.

13. **Shaw Natural.** Same as natural. (Ord. 7-2005 § 11 & 12; Ord. 2–1998 Exh. B § 5.5.3

18.50.240 Forest management.

A. General Regulations.

1. Any commercial logging permitted on shorelines shall comply with the regulations contained in the Washington State Forest Practices Act, Chapter 76.09 RCW; rules implementing the Forest Practices Act in WAC 222; and the 1999 Forest and Fish Report; provided, that the following regulations shall also apply to Class IV-General forest practices where shorelines are being converted or are expected to be converted to non-forest uses.

2. Forest practice conversions and other Class IV-General forest practices where there is a likelihood of conversion to non-forest uses shall assure no net loss of shoreline ecological functions; shall maintain the ecological quality of the watershed’s hydrologic system; and shall prevent significant adverse impacts to other shoreline uses, resources and values provided for in RCW 90.58.020 such as navigation, recreation and public access.

32. When a logging project involves drilling, dredging, dumping, filling, removal of sand or gravel, bulkheading, or significant construction, all or part of which would be located within 200 feet of the ordinary high water mark, a substantial development permit is required.

43. A logging project which includes construction of roads, bridges, trails, or loading facilities would potentially require a substantial development permit if it involves any of the activities noted in subsection (A)(2) of this section.

4. No more than 30 percent of merchantable timber may be harvested within 200 feet of the ordinary high water mark within any 10-year period. Harvesting shall not be allowed within 75 feet of the OHWM; provided, that merchantable timber within this protected area may be included in the 30 percent calculation for the shoreline area. Clearcutting on shorelines shall not be permitted unless
specifically allowed by an approved Class IV General forest practices permit.

5. All roads and trails must be fitted to the existing topography so that the need to alter natural features will be minimized. Steep or unstable areas, regulated wetlands, and natural drainageways must be avoided.

6. All road surfaces must be constructed to the minimum width required to accommodate the anticipated use.

7. Unnecessary road construction and drainageway crossings must be minimized by making all possible use of existing roads. Where roads pass through land in another ownership, but would otherwise adequately serve the proposed operation, the applicant must attempt to secure the right to use the existing road before proposing the construction of a new road.

8. Road cuts and fills must be balanced or waste or borrow areas must be located where erosion will not present a problem. Cuts and fills must be constructed at or below the normal angle of repose for the material being cut or used for fill. Fill slopes must not obstruct drainageways and shall be properly compacted.

9. Where culverts must be installed, they shall be adequate in size and design to carry the anticipated peak flow and shall be kept free of obstructions.

10. Road drainage, regardless of the method of collection, must be directed onto the forest or woodlot floor in a manner which will permit the accumulated sediment to settle and be deposited before the water reaches any marine or freshwater body.

11. Drainageways must be cleared of all debris generated during road construction or maintenance which might interfere with normal drainage or adversely affect water quality.

12. Road construction must be undertaken during that portion of the year when soil erosion does not pose a serious problem. When this is not practical, acceptable measures for the prevention of erosion shall be taken. (Items 6-12 have been moved to the roads subsection of transportation section of the smp.)

13. Roads must be maintained sufficiently to ensure the proper functioning of the drainage system throughout the active use of the road. When active use is to be discontinued, the road shall be left in a condition which will provide for adequate drainage and soil stability without continuous active maintenance.

14. Within study areas one through 12 of the San Juan County Inventory of Natural Areas, forest practices not exempted from the Shoreline Management Act under Chapter 76.09 RCW may be permitted only as conditional uses.

15. Soil stabilization and water quality maintenance along seasonal waterways and other significant drainageways must be provided for by leaving buffer strips of ground vegetation and nonmerchantable timber along such watercourses. Where insufficient nonmerchantable timber exists to maintain an effective buffer zone, an adequate fringe of merchantable timber must be left undisturbed. Where it is impractical to leave buffer strips of either merchantable or nonmerchantable timber along watercourses, a plan to reestablish adequate cover must be approved by the County.

16. Logging and log dumping is not permitted on or immediately above feeder
107. Trees shall be felled, bucked, and limbed so that no part of any tree shall be deposited into or across any watercourse. If any timber or debris should enter the watercourse as a result of the logging activity, it shall be removed immediately in a manner which will disturb the watercourse as little as possible.

118. Tractor skids must be located carefully and drained adequately so that sediment will be kept out of watercourses and water bodies. Tractor yarding is prohibited on unstable slopes and on slopes in excess of 30 percent. Cable yarding through watercourses is prohibited.

129. Timber harvesting is prohibited on slopes where significant erosion and sedimentation would be precipitated unless a plan for adequate and prompt erosion control and restoration is approved by the County.

130. All nonorganic waste materials resulting from the logging operations, such as grease and oil containers, and machine parts, must be disposed of in a proper off-site location immediately following termination of the harvesting operations. At no time may such waste materials be disposed of in watercourses or water bodies.

1424. Conversion option harvest plan (COHP) forest practices are not permitted in the shoreline.

1522. Timber harvest in areas of exposed bedrock along shorelines, and in other areas of high visual value and sensitivity, as identified in the Open Space and Conservation Plan or SJCC 18.30.110, shall be avoided where possible.

B. Regulations by Designation Environment.

1. Urban. Forest management practices shall be permitted in the urban environment only as a conditional use.

2. Rural and Rural Residential. Same as urban.

3. Rural Farm-Forest. Forest management practices shall be permitted in the rural environments subject to the policies and regulations contained in this SMP.

4. Conservancy. Same as rural farm-forest.

15. Natural. Forest management practices are permitted as a conditional use in the Natural designation environment only when no other means of control will work to control a fire, halt the spread of disease or damaging insects, or to clean up and restore an area devastated by a natural disaster such as fire, storm, disease, or insect attack. No roads may be constructed except those which are absolutely necessary to cope with the emergency situation.

6. Aquatic. Forest management practices are prohibited in the aquatic environment.

8. Ports, Marinas and Transportation. Forest management practices shall be permitted as a conditional use.

7. Eastsound Urban, Eastsound Residential, Eastsound Marina District and Eastsound Conservancy. Same as urban.

8. Eastsound Natural. Same as natural.

9. Shaw Rural, Shaw Rural Farm-Forest and Shaw Conservancy. Same as rural.
farm-forest unless otherwise specified in the Shaw Island Subarea Plan.

10. **Shaw Natural.** Same as natural.  (Ord. 7-2005 § 14; Ord. 2-1998 Exh. B § 5.5.9)

### 18.50.270 Fill and Excavation Landfills and solid waste disposal.

1. Landfills may be permitted only as conditional uses.

**A.** All fills and excavations shall be located, designed and constructed to protect shoreline ecological functions and ecosystem-wide processes.

**B.** Fill and excavation shall be minimized to the maximum extent practicable and necessary to accommodate approved shoreline uses and development activities that are consistent with this SMP. When fill or excavation causes adverse impacts to ecological functions, a mitigation plan must be prepared and implemented consistent with SJCC 18.30.110.

**C.** Fill and excavation within wetlands or waterward of the OHWM shall only be permitted in limited instances for the following purposes and when other required state or federal permits have been obtained and with consideration given to specific site conditions.

1. Water-dependent uses, public access, and cleanup and disposal of contaminated sediments as part of an interagency environmental clean-up plan;

2. Disposal of dredged material considered suitable under, and conducted in accordance with, the Dredged Material Management Program of the Department of Natural Resources and/or the Dredged Material Management Office of the U.S. Army Corps of Engineers (see SJCC 18.50.230, Dredging);

3. Expansion or alteration of transportation facilities of statewide significance currently located on the shoreline where alternatives to fill are infeasible;

4. Ecological restoration or enhancement, including, but not limited to, beach nourishment, habitat creation, culvert upgrades to improve fish and flow passage, or bank restoration when consistent with the restoration plan approved as part of this SMP; or

5. Protection of cultural or historic resources when fill is the most feasible method to avoid continued degradation, disturbance or erosion of a site. Such fills must be coordinated with any affected tribes and comply with applicable provisions of SJCC 18.50.050, Archaeological and Historic Resources.

**D.** All fills and excavation waterward of the OHWM not associated with ecological restoration shall require a shoreline conditional use permit.

**E.** All other upland fills are permitted provided they are conducted outside required buffers or setbacks and are part of an approved shoreline use or modification or are necessary to provide protection to cultural or historic resources, are the minimum necessary to implement the approved use or modification, do not significantly change the topography of the landscape in a manner that affects the hydrology or
increases the risk of slope failure, and are consistent with applicable provisions of SJCC 18.30.110 through 18.30.160.

F. Fills or excavation shall not be located where shoreline stabilization will be necessary to protect materials placed or removed, except when part of an approved plan for protection of cultural resources.

G. Fills, beach nourishment and excavation shall be designed to blend physically and visually with existing topography whenever possible, so as not to interfere with water dependent uses, lawful access and enjoyment of scenery.

H. A temporary erosion and sediment control (TESC) plan, including BMPs, consistent with the 2005/2012 (current) Stormwater Management Manual for Western Washington shall be provided for all proposed fill and excavation activities, and approved by the County prior to commencement of activity. Disturbed areas shall be immediately protected from erosion using weed-free straw, mulches, hydorseed, or similar methods and revegetated as applicable.

2. The perimeters of all landfills shall include some means to control erosion and contain sediment, such as vegetation or retaining walls.

3. Shoreline areas shall not be considered for sanitary landfills or for the disposal of solid waste.

I. Applications for substantial development permits which include landfilling shall include at least the following information:

1a. Source of landfill material;

2b. Physical characteristics of landfill material;

3c. Proposed methods of placement and compaction;

4d. Proposed surfacing material;

5e. Proposed method(s) of perimeter erosion control; and

6f. Proposed use of filled area.

B. Regulations by Designation Environment.

1. Urban, Rural, Rural Residential and Rural Farm-Forest. Landfills shall be allowed in these environments subject to the policies and regulations of this SMP; provided, that landfills shall not be permitted below the OHWM; and provided further, landfills shall not be permitted for the sole purpose of creating additional land area.

2. Conservancy. Same as urban; provided, that landfills shall not be permitted on natural (as opposed to manmade, privately owned) lakes; and provided further, that retaining walls shall not be used as an erosion control device on permitted landfills.

3. Natural. Landfills are prohibited in the natural designation environment.
4. **Aquatic.** Landfills shall be permitted in the aquatic designation environment subject to the policies and regulations of this SMP and subject to the regulations by designation environment for the abutting shoreline designation environment. Where a proposed landfill site abuts more than one shoreline designation environment the provisions of the more restrictive designation environment shall govern.

5. **Eastsound Urban, Eastsound Residential, and Eastsound Marina District.** Same as urban.

6. **Eastsound Conservancy and Eastsound Natural.** Landfills are prohibited in these environments.

7. **Shaw Rural and Shaw Rural Farm-Forest.** Same as urban.

8. **Shaw Conservancy and Shaw Natural.** Landfills are prohibited in these environments. (Ord. 2—1998 Exh. B § 5.5.12)

18.50.280 Log transfer facilities, sites and facilities and log storage.

A. Regulations.

1. Dry land log storage shall be preferred over water storage unless the applicant demonstrates that in-water storage will be less detrimental to the natural environment.

2. Unpaved areas which have seasonal high water tables (less than three feet below ground surface) or poor surface drainage shall not be used for log storage during the wet season unless specifically authorized by the Administrator following investigation of the site.

3. Log storage is not permitted in public waters where state and federal quality standards cannot be met at all times, nor where such storage would constitute a significant hindrance to other legitimate water uses such as small craft navigation.

4. In conformance with Washington Department of Natural Resources (WDNR) established policy, log rafting, transfer, and storage areas on leased public tidelands shall be used cooperatively and jointly by loggers and not exclusively by the leaseholder.

5. In conformance with WDNR established policy, (“Special Provisions for Booming and Rafting Leases,” 17–2–72) easy-let-down devices shall be preferred over the free dumping of logs into the water. However, in no event shall the free-fall dumping of logs be permitted in a manner which would do unnecessary damage to the shoreline ecological functions and values life forms.

6. Effective bark and wood debris controls and collection and disposal methods must be employed at log storage and raft construction areas for both floating and sinking particles.

7. Drainage and surface runoff from log storage areas must be controlled so that pollutants, including bark and other wood debris, will not be carried into water bodies.

8. Dikes, drains, vegetated buffer strips, or other means shall be used to ensure that surface runoff is collected and discharged from the storage area at one
point. It must be demonstrated that state water quality standards or criteria will not be violated by such runoff discharge under any conditions of flow in nearby water courses. If such demonstration is not possible, treatment facilities for runoff shall be provided meeting state and federal standards.

9. Where water depths will permit the floating of bundled logs, they must be secured in bundles on land before being placed in the water. Bundles shall not be broken again except on land or at mill-sites.

10. Log transfer facilities will not be approved until:
   a. It can be shown by the applicant that existing facilities are not adequate or feasible for use;
   b. Alternative access is not adequate or feasible;
   c. The feasibility and determination of demand for a multiple-user facility has been thoroughly investigated; and
   d. The applicant has the burden of providing the information requested for subsections (A)(10)(a) through (c) of this section, and must provide this information in a manner prescribed by the Director administrator.

11. The development of a facility for log transfer, or the use of an unimproved shoreline area for a log transfer site, shall be subject to conditional use.

12. Proposals for commercial timber harvest on islands not served by Washington State Ferries shall identify all sites that are proposed for the transfer of logs off of the islands. A shoreline conditional use permit is required for each log transfer site; however, the ongoing use of a legally operating, single transfer site on a given non-ferry-served island shall not require a separate shoreline permit for each user.

B. Regulations by Designation Environment.

1. Urban. Log handling and storage facilities and log transfer sites and facilities shall be permitted in the urban designation environment subject to the policies and regulations of this SMP.

2. Rural and Rural Residential. Log handling and storage facilities and log transfer sites and facilities shall be allowed only on non-ferry-served islands and if the site will serve multiple users on the island affected, subject to the policies and regulations of this SMP.

3. Rural Farm-Forest. Same as urban.

4. Conservancy. Log handling, dry storage, and wet storage facilities may be allowed in the conservancy designation environment only on non-ferry-served islands and if the site will serve multiple users on the island affected, and the applicant demonstrates that conservancy shoreline resources will not be materially harmed.

5. Natural. Log handling, dry storage, and wet storage facilities, and log transfer sites and facilities, shall be prohibited in the natural designation environment.

6. Aquatic. Wet storage and log transfer sites and facilities shall be allowed in the aquatic designation environment subject to the policies and regulations of this SMP and to the regulations by designation environment for the abutting shoreline.
designation environment. If a proposed site or facility would abut more than one abutting-shoreline designation environment, the more restrictive regulations shall govern.

7. **All Eastsound Environments.** Same as natural.

8. **Shaw Rural and Shaw Rural Farm-Forest.** Same as urban.

9. **Shaw Conservancy.** Same as conservancy.

10. **Shaw Natural.** Same as natural. (Ord. 2-1998 Exh. B § 5.5.13)

### 18.50.290 Mineral extraction.

#### A. General Regulations.

1. All mineral extraction projects are subject to the mitigation sequencing analysis set out in SJCC 18.50.070 N.

2. Applications for substantial development permits for mineral extraction must be accompanied by a report prepared by a ‘qualified professional’ (see SJCC 18.20.170) competent professional geologist which must include at least the following information:
   - Types of materials present on the site;
   - Quantity and quality of each material;
   - Lateral extent of mineral deposit(s);
   - Depth of mineral deposit(s); and
   - Depth of overburden.

3. All mineral extraction must be performed in full compliance with the Washington State Surface Mining Act (Chapter 78.44 RCW), except where such compliance would, in the opinion of the Director administrator, result in adverse impacts on the shoreline ecological functions and values as well as the shore process corridor and its operating systems.

4. The extraction of minerals from any marine beach or feeder bluff or any lake beach for any commercial or industrial purpose is not permitted.

5. The extraction of minerals from any marine or lake beach for noncommercial, nonindustrial purposes is strongly discouraged and must be prohibited if necessary to protect natural resources or ecological systems.

6. Topsoil or other overburden having value for agriculture or other beneficial uses must not be removed or disposed of in a manner which will reduce its value or prevent its future use.

7. All mineral extraction operations must employ buffer zones, erosion and sedimentation control measures, and other suitable precautionary measures to protect the shoreline ecological functions and values from adverse impacts resulting from the operations.

8. Each application for a substantial development permit for mineral extraction must be accompanied by a detailed reclamation plan. The plan must indicate the approximate dates on which the reclamation effort is to be initiated and completed and must show that the site is to be reclaimed for a use which is permitted by this master program on the subject site. The plan must indicate the
mitigation efforts to be undertaken to assure that there is no net loss of ecological functions and values. In all cases the reclamation program will be initiated within 60 days following the completion of the extraction operations.

The extraction of minerals in or under San Juan County waters shall be undertaken only with the approval of the appropriate state and federal regulatory agencies and, where applicable, only in compliance with the provisions of this SMP.

B. Regulations by Designation Environment.

1. **Urban.** Mineral extraction may not be permitted in the urban designation environment subject to the policies and regulations contained in this SMP if potential adverse impacts on the human environment can be adequately controlled or mitigated.

2. **Rural.** Mineral extraction is permitted in the rural designation environment subject to the policies and regulations contained in this section. A 50-foot buffer of undisturbed soil and vegetation must be maintained between the extraction site (including all accessory developments) and adjacent properties, water bodies, and wetlands.

3. **Rural Residential.** Mineral extraction is prohibited in the rural residential designation environment.

4. **Rural Farm-Forest.** Mineral extraction is prohibited in the rural farm-forest designation environment.

5. **Conservancy.** Mineral extraction is prohibited in the conservancy designation environment.

6. **Natural.** Mineral extraction is prohibited in the natural designation environment.

7. **Aquatic.** Mineral extraction shall not be permitted in the aquatic designation environment.

8. **Ports, Marinas and Transportation.** Mineral extraction is prohibited in the Ports, Marinas and Transportation designation.

9. **All Eastsound Environments.** Mineral extraction is prohibited in all Eastsound environments.

10. **Shaw Rural.** Same as rural.

11. **Shaw Rural Farm-Forest.** Same as rural farm-forest.

12. **Shaw Conservancy and Shaw Natural.** Mineral extraction is prohibited in these environments. (Ord. 2–1998 Exh. B § 5.5.14)

18.50.330 Residential development.

**Definition:** Top of Bank is the first major change in the slope of the incline from the ordinary high water level of a water body. A major change is a change of ten degrees or more. If there is no major change within a distance of 50 ft. from the ordinary high water mark, then the top of bank will be the elevation 2 ft. above the ordinary high water mark.

**A. Exemptions.** The SMA specifically exempts from the substantial development
permit requirements the construction of a single-family residence by an owner, contract purchaser or lessee for his or her own use, or the use of his or her family. Such construction and normal appurtenant structures must otherwise conform to this master program including any shoreline variance or conditional use permit requirements of this section. Exempt residential appurtenances are specified in SJCC 18.50.020(G).

AB. Regulations – Location and Design.

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

24. Residential development is only permitted landward of the extreme ordinary high water mark, except as specifically allowed for houseboats and liveaboards, below.

32. If there is evidence that a shoreline area proposed for residential development may be unstable, as indicated by the “Coastal Zone Atlas of Washington” or similar reasonable evidence, the applicant may be required to submit a geotechnical report geological or geohydrological report attesting to the stability of the building site, a plan for stabilizing the area, and a plan for controlling erosion during and following construction activities. Any such plan shall be prepared by a qualified, licensed professional geotechnical engineer.

   i. Geotechnical reports shall be prepared, stamped and signed by a qualified professional. These reports must:

      a. Be appropriate for the scale and scope of the project;
      b. Include all geologically hazardous areas and all potentially affected areas in and within 200 feet of the proposed development area. If the affected area extends beyond the subject property, the geotechnical analysis may utilize existing data sources pertaining to that area;
      c. Clearly state that the proposed project will not decrease slope stability or pose an unreasonable threat to persons or property either on or off site;
      d. On feeder bluffs and other erodible areas, the report will clearly state that there will be no need for shoreline stabilization within 75 years.
      e. Be adequate to determine compliance with this code;
      f. Generally follow the guidelines set forth in the Washington State Department of Licensing Guidelines for Preparing Engineering Geology Reports in Washington (2006). In some cases a full report may not be necessary to determine compliance with this code, and in those cases a letter or abbreviated report may be provided; and
ii. The Director will review geotechnical reports for completeness and compliance with this code.

iii. A geotechnical report does not expire unless there are changes in proposed land uses or site conditions.

4. However, residential structures which will require bulkheads or other shoreline fortifications at the time of construction or within 75 years of construction in the foreseeable future are prohibited. Evidence that bulkheads or other hard shoreline stabilization measures such fortifications will be necessary to protect all or part of the development shall be grounds for denial of all or part of the proposed development.

3. Mobile home courts and parks, and subdivisions for mobile homes, shall not be permitted on shorelines unless all structures can be thoroughly screened from view from both the water and the land by means of natural cover (such as trees and shrubs).

54. Utility lines installed within subdivisions and nonexempt developments shall be placed underground and shall comply with applicable provisions of SJCC 18.50.130 and 18.50.350.

5. Drainage and surface runoff from residential areas shall be controlled so that pollutants will not be carried into water bodies.

6. Land divisions creating 4 or fewer lots are not required to provide public access to the shoreline as provided in WAC 173-26-221 (4).

7. In all new land divisions and multiple-unit and multifamily developments that result in five (5) or more lots, an easement shall be established providing all parcels usable physical access to the shoreline, subject to the public access regulations of this SMP. one of the following standards shall be met:

a. A common area of 75 feet measured landward from the ordinary high water mark shall be established along the entire waterfront of the property to be developed, and all other common area requirements of subsection (F)(2) of this section shall also be met. A minimum of one and one-quarter acres within shoreline jurisdiction shall be provided for each unit to be located within the shoreline jurisdiction. This is not a minimum lot size, however, and shall not preclude clustering of units within the shoreline jurisdiction; or

b. At least 20 percent of the area within the shoreline jurisdiction shall be designated as common area, and all other common area requirements shall also be met. A minimum of two acres within the shoreline jurisdiction shall be provided for each unit to be located within the shoreline jurisdiction. This is not a minimum lot size, however, and shall not preclude clustering of units within the shoreline jurisdiction.

8. In all proposed land divisions and multiple-unit and multifamily developments on shorelines the terrain, access, potential building sites areas appropriate for access easements (subject to the public access provisions of this SMP) or common ownership, as well as and special features of the site shall be
considered in the design of the development. All subdivisions and plate must meet the following standards: shall be designed, configured and developed in a manner that prevents the need for shoreline stabilization or flood hazard reduction measures that impact other properties or public improvements and ensures no net loss of ecological functions and values results from the subdivision at full build-out of all lots.

Allowable densities are maximum densities and are not guaranteed. The approved density shall be determined on a case-by-case basis and shall be based on considerations of topography, protection of natural resources and systems, and the intent and policies of the Shoreline Management Act, the State Environmental Policy Act, the Comprehensive Plan, this code, and this Shoreline Master Program.

The allowed density may be reduced below the maximum if a SEPA analysis or other evaluation of the site or area-wide conditions demonstrates that adverse effects of development at the maximum density can be mitigated or avoided by a reduction to the approved density, and no appropriate alternative means of mitigation is available.

98. Land clearing, grading, filling, or alteration of wetlands, natural drainage, and topography for residential construction shall be limited to the area necessary for driveways, buildings, and view and shall take place in conformance with critical area project requirements or setbacks required by this SMP, and solar access corridors. Cleared surfaces not to be covered with gravel or impervious surfaces shall be replanted promptly with non-toxic native or compatible plants (i.e., groundcovers or other plant materials adapted to site conditions which will protect against soil erosion). This applies to individual construction and shoreline subdivisions.

Existing vegetation shall be used to visually buffer structures as viewed from the shoreline, public roads, and adjoining properties. All applications for new construction and subdivisions shall indicate any trees to be removed. If trees are to be removed beyond those required to construct a single-family residence, then a tree removal plan shall also be submitted. The plan shall:

a. Identify the proposed building areas and driveways and view and solar access corridors; and

b. Demonstrate how existing natural screening will be retained while providing for construction, views, and sunlight.

Removal of trees smaller than three inches in diameter, as measured four feet above grade, shall not be restricted unless there is evidence that the shoreline is unstable. The removal of smaller trees, brush, and groundcover may be restricted in unstable shorelines.

9. All subdivisions and nonexempt residential developments shall have water supplies adequate so that groundwater quality and quantity are not endangered by over-pumping.

10. All new waterfront shoreline subdivisions and multifamily residential developments shall prohibit moorage facilities other than mooring buoys, but allow property owners to seek approval of joint-use moorage facilities to serve the entire

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subdivision or development.

11. Any parcel which constituted a legal building site prior to the adoption of this master program shall continue to constitute a legal building site regardless of the density requirements imposed by this master program. All parcels are subject to all other applicable state and County regulations.

12. Construction of a single-family residence for the use of the owner and their family is exempt from substantial development permit requirements in accordance with WAC 173–27–040(2)(g) and SJCC 18.50.020(F). Any other single-family residential construction is subject to shoreline permit requirements. For the purposes of this SMP, the beneficial owner is an individual who is a member of a family corporation, trust, or partnership, and who is related by blood, adoption, marriage or domestic partnership to all other members of the corporation, trust or partnership. In no case shall construction of more than one single-family residence on a single parcel owned by a family be exempt from shoreline permit requirements.

13. Developments on waterfront shoreline parcels shall cover no more than 50 percent of the width of the parcel as measured across the seaward most point of face of each building site from side lot line to side lot line. However, on lots less than 80 feet wide at the building line, structures may cover an area up to 40 feet wide as long as a minimum setback of 10 feet from side property boundaries is maintained.

14. The maximum permitted height for residential structures is 28 feet. Residential structures are permitted to exceed this height only when the roof has a minimum 6-in-12 pitch which does not extend beyond a maximum height of 35 feet above the existing grade at the base of the structure. Any residential structure which exceeds a height of 35 feet above existing grade, as measured along a plumb line at any point, shall be permitted only as a conditional use. The applicant must demonstrate that the structure will not result in significant adverse visual impacts, nor interfere with normal, public, visual access to the water. The applicant must also demonstrate that there are compensating factors which make a taller structure desirable from the standpoint of the public interest. Artificially created grades to gain height advantages are prohibited.
Staff Note:
The measurement of the height of structures in the county is problematic. Currently the code allows for 4 methods for measuring the height of a structure. San Juan County’s methods for measuring the height of a structure are set out below.

The first two methods can be found in SJCC 18.20.080:
1. Height of building” means the vertical distance above a reference datum measured to the highest point of the coping of a flat roof, to the deck line of a mansard roof, or to the average height of the highest gable of a pitched or hip roof. The reference datum shall be selected by either of the following, whichever yields a greater height of building:
   1. The elevation of the highest adjoining sidewalk or ground surface within a five-foot horizontal distance of the exterior wall of the building when such sidewalk or ground surface is not more than 10 feet above lowest grade; or
   2. An elevation 10 feet higher than the lowest grade when the sidewalk or ground surface described in subsection (1), above, is more than 10 feet above lowest grade.

The height of a stepped or terraced building is the maximum height of any segment of the building (cf. Uniform Building Code).

And

2. “Height, shoreline” means the height of shoreline structures, measured from average grade level to the highest point of a structure; provided, that television antennas, chimneys, and similar appurtenances shall not be used in calculating height, except where they obstruct the view of the shoreline of a substantial number of residences on areas adjoining such shorelines, excluding temporary construction equipment (WAC 173-27-030).
Recently, with the adoption of the Wireless Facilities ordinance, the County introduced the third definition of height and the implicit method for measuring it.

3. “Height means the vertical distance measured from the average existing grade beneath a structure or object along a plumb line to the highest point of a structure or object.

In addition there is the height measurement methodology used in Deer Harbor, Orcas Village and Country Corner. This method is similar to the most recently adopted in the wireless regulations above except it minimizes the potential for increasing the seaward height of a building constructed on a slope.

**Building Height Measurement.** No structure shall exceed X feet above grade, measured as described in the illustration below.

Structure height limit measurement methods are as follows:
1. Where the natural grade remains unchanged the structure height shall be measured by a plumb line from every point on the roof to the natural grade (NG). Natural grade shall mean the existing grade prior to any human modification. See Figure A, below.
2. Where the natural grade has been cut at any point around the structure footprint, the structure height shall be measured as by a plumb line from every point on the roof to the altered grade elevation (AGE). See Figure B, below.
3. Where fill material has been added to the natural grade, the structure height shall be measured as by a plumb line from every point on the roof to the natural grade, regardless of the height of fill. See Figure C, below.

Figure A

![Figure A](image1.png)

Figure B

![Figure B](image2.png)

Figure C

![Figure C](image3.png)

The SMA puts a maximum height on shoreline structures of 35ft (RCW 90.58.320) however, the height limit only applies to structures that “will obstruct the view of a substantial number of residences on areas adjoining such shorelines” provided that it’s not prohibited and ‘overriding considerations of the public interest will be served.’

There are two questions;
1. Does the Planning Commission wish to recommend a different maximum height for buildings in the County’s Shorelines?
2. Does the Planning Commission wish to recommend the selection of just one of the above methods to measure structure height?
15. One garage building and/or one accessory dwelling unit, each of which covers no
is more than 1,000 square feet of land floor area and is no taller than 16 feet
above existing grade as measured along a plumb line at any point; or a
combination of these uses in a single structure no larger than 2,000 square feet
which is no taller than 16 feet above existing grade as measured along a plumb
line at any point; or a combination of these uses in a single structure no larger
than 1,000 square feet on each floor and no taller than 28 feet above existing
grade.

16. Division of land that would exceed maximum density standards may be allowed
by conditional use if the following circumstances are also demonstrated by the
owners:
   a. The property is not located within a natural shoreline environment
designation.
   b. The property is occupied by existing, individually owned single-family dwelling
      units that exceed currently allowable maximum residential density standards
      and all such units are documented to have existed on the property before
      May 28, 1976.
   c. All the dwelling units have been maintained on the site consistent with
      nonconforming use standards in WAC 173-14-055, as amended, and have
      not been abandoned or removed from the property since May 28, 1976.
   d. There is no history of use or occupancy other than for residential or vacation
      residential purposes for the owners’ personal use and that of their nonpaying
      guests.
   e. There is evidence of an adequate approved water supply for each unit
      accepted in writing by the County sanitarian.
   f. There is an approved septic system for each unit or there is documentation
      that a functioning septic system exists to serve each unit and that adequate
      drainfield reserve area exists.
   g. The proposal is designed to allow the simultaneous transfer or division of
      each ownership interest in the property.

17. Any conditional use permit granted to allow transfers of individual ownerships in
property owned and developed as described in subsection (B)(16) of this section
shall include the following conditions, at a minimum:
   a. Conditional use permit approval shall not itself constitute a legal division or
      transfer of land ownership. The property owners must simultaneously effect a
      legal division or segregation of property attached to each residential unit,
      under all applicable state and County laws before any transfer of individual
      units may occur. Such division or segregation must be initiated within two
      years of the effective date of the conditional use permit.
   b. Residential density on the property shall not exceed that expressly provided
      for in subsection (B)(16) of this section.
   c. Residential use and development shall be restricted to single-family units and
      residential accessories only.
The entire parcel owned in common shall be restricted to prohibit a residential density in excess of that made legally nonconforming on May 28, 1976.

149. **Miscellaneous Exceptions.** The lot coverage and setback requirements of subsections (A) (12) (B)(13) and (D) of this section shall not apply to all those parcels except those which meet all the following criteria:

a. are less than 0.3 acres in size;

b. where the parcel boundaries were approved in a division of land before December 31, 1990, and

c. are surrounded on all sides by property preserved as permanent open space.

If the lot document approving a division of land establishes different coverage and setback standards from those in subsections (B)(13) and (D) of this section, the standards on the document approving the division of land shall control.

20. Lot coverage and setback standards of this section may be waived by the decisionmaking body if necessary to accommodate actual development legally established on the affected property. Land division must occur according to the subdivision or short subdivision standards in the County code or by condominium standards under state law.

C. **Prohibited Uses and Activities.**

1. New residential structures and accessory structures are prohibited over water or floating on the water, except as specifically allowed in this chapter.

2. Subdivisions and nonexempt residential structures, including accessory uses, which will result in a net loss of shoreline ecological functions and values exceed the physical capabilities of the proposed site to absorb the resulting impacts shall not be approved.

3. Residential development within critical areas and critical saltwater habitats floodways, wetlands, and other hazardous, (such as steep slopes and areas with unstable soils or geologic conditions), or environmentally sensitive areas shall only be allowed subject to the critical areas regulations in this SMP. regulations of the environmentally sensitive areas overlay district as specified in this code (SJCC 18.30.110 through 18.30.160).

4. The filling of creation of landfills in water bodies or their associated wetlands for the purpose of residential development is prohibited.

D. **Regulations – Setback Standards.**

1. All structures shall be set back from water bodies and associated wetlands sufficiently to ensure no net loss of ecological functions and values protect natural resources and systems from degradation.

a. All structures shall be set back a safe distance behind the tops of feeder bluffs, as determined by a qualified professional, sufficient to ensure there will be no need for shoreline stabilization within 75 years of construction. licensed geotechnical engineer.

b. Every residential structure built at a beach site shall be located landward of
the berm or bank, as dictated by the topography, to assure protection of the beach site.

2. Residential structures shall be located no closer to the ordinary high water mark or top of bank, whichever is greater than the upland edge of any critical areas buffers established in SJCC 18.30.110 through 18.30.160. behind the treeline and set back a minimum of 50 feet from the OHWM, top of bank or berm, whichever is greater. Where there are no critical areas present waterward or immediately landward of the OHWM, residential structures are also subject to the following shoreline setbacks:

a. If the shoreline is vegetated with trees within 50 feet of the ordinary high water mark then residential structures shall be located behind the treeline and set back a minimum of 50 feet upland of the OHWM or top of bank, whichever is greater. Setbacks from wetlands associated with shorelines (Chapter 173–22 WAC) shall be measured from the natural edge of these features.

b. If there is no natural and adequate screening or if the shoreline area is cleared so as to preclude natural adequate screening before a building permit application is approved, then residential structures shall be located a minimum setback of 100 feet from upland of the OHWM or from the top of bank or berm, whichever is greater, will apply regardless of the environment designation.

c. A setback less than the minimums specified above may be authorized by the administrator only if it will result in a lesser environmental or visual impact.

d. If existing houses on adjoining waterfront shoreline lots are closer than the specified minimum setback, a lesser setback may be authorized by the Director administrator. This setback may be equal to the average setback of existing houses on adjacent lots, if the minimum setback would cause obstruction of views from the building site due to the location of existing houses. All lots eligible for setback averaging are subject to the critical areas regulations and buffers of this SMP, and if consistent with other applicable regulations in this master program.
**An Alternative to Setback Averaging.**

There is no WAC requirement to retain or remove the setback averaging option. The purpose of the setback averaging set out above is aesthetic. The location of buildings however, regardless of the setback requirements, will be subject to Critical Area buffer requirements where appropriate.

Staff suggests that the PC consider adopting a provision similar to that found within the CAO wherein provisions are made to guarantee homebuilders a view.

For example; If existing houses on adjoining waterfront lots are closer to the water than what is specified in this section, a reduced buffer to allow a 90 degree view, equivalent to the average setback from the OHWM to the most seaward face of the adjoining structures plus one-half the distance between the existing structures, may be authorized if adverse impacts to marine functions and values are identified and mitigated in accordance with the requirements of SJCC 18.30.110. (e.g. If the average setback of the adjoining structures is 20 feet from OHWM, and the distance between the structures is 130 feet, the buffer could be reduced to 85 feet, which would allow for a 90° view of the water (20 ft. + (130 ft./2) = 85 ft.).)
E. Nonconforming Structures and Uses. *(PC may consider moving this to the General Section)*

Definition: Floor Area shall include all areas enclosed within the walls of the house and all attached decks and porches.

1. Nonconforming use or development means a shoreline use or structure which was lawfully constructed or established prior to the effective date of this SMP but which does not conform to present regulations and standards.

   i. Nonconforming single-family residential development made nonconforming by the above setback regulation in 1991, shall be subject to the standards contained in Chapter 173–27 WAC (Permits for Development on Shorelines of the State); provided, that: may be modified, replaced, relocated, or expanded subject to the provisions of this code, provided:
      a) the degree of nonconformity is not increased;
      b) any required building, project, or development permits are obtained;
      c) there are no additional adverse impacts to water quality or the functions and values of critical areas; and
      d) complete application(s) for any required project, or development permits for replacement structures are submitted within 48 months of removal, or destruction of the original structure, unless the Director extends this time period for good cause, or the property owner provides a letter declaring their intent to rebuild the structure in the future. To retain the right to rebuild, a letter of intent must be submitted every 48 months.

   ii. Nonconforming uses and activities, including use of buffer areas, may be continued, replaced with other uses or activities, or relocated, provided:
        a. the degree of nonconformity is not increased;
        b. any required building, project, or development permits are obtained,
        c. there are no additional adverse impacts to water quality or the functions and values of critical areas.

   Relocation of a nonconforming use or activity shall be reviewed as a provisional use.

   iii. A structure for which a shoreline variance to SMP requirements has been issued in accordance with SJCC chapter 18.80 shall be considered a legal nonconforming structure.

   iv. A nonconforming residence may be expanded provided:

        a. A nonconforming residence with of 2,000 square feet of floor area or less smaller may be expanded by an amount equal to the existing floor area of the residence as long as the resulting total floor area does not exceed 2,000 square feet, or the existing floor area may be increased
by an amount not to exceed 25 percent, whichever is larger.

b. A nonconforming residence with an existing floor area in excess of 2,000 square feet may be expanded by no more than 25 percent of the total existing floor area up to a maximum of 5,000 square feet in floor area. In no case shall any portion of the expansion be located seaward of the most seaward point of the existing residence. For the purposes of this computation, floor area shall include all areas enclosed within the walls of the house and all attached decks and porches.

c. Additions to nonconforming residences shall conform to all other applicable shoreline regulations as well as to other applicable County and state regulations.

d. A nonconforming residence may be expanded incrementally if the ultimate expansion does not exceed the maximum allowable increase in floor area over that existing on the effective date of this regulation. Each incremental expansion must obtain a distinct permit and the application must include a complete list and description including floor area of previous expansions.

e. For purposes of this section, “residence” shall mean the primary residential structure on the property. Accessory dwelling units and other accessory residential structures are not included.

v. Abandonment of Nonconforming Uses and Activities. Nonconforming uses and activities shall be considered abandoned if the use or activity ceases to operate or is discontinued for 48 consecutive months unless the director extends this time period for good cause, or the property owner provides a letter declaring their intent to continue the use or activity in the future. To retain the right to continue a ceased or discontinued nonconforming use or activity, a letter of intent must be submitted every 48 months.
3. Building setbacks or buffers from shorelines must be established as conditions of preliminary plat approval in all new waterfront shoreline subdivisions and short subdivisions. A plat restriction must specify the required setbacks or buffers and all building setbacks or buffers must be shown on the face of the plat. Once a building setback line is determined, removal of trees seaward of the setback line shall be expressly limited in plat restrictions. Tree removal restrictions in subsection (B)(8) of this section will also apply.

FE. Regulations – Accessory Use.

1. Accessory structures which are not water-dependent shall not be permitted seaward of the most landward extent of the residence. If this regulation would result in greater adverse impacts on shoreline features or resources or would conflict with other applicable regulations of this master program, the Director administrator may authorize by written findings and determination an alternative location without requiring a shoreline variance permit.

2. The following accessory uses and developments, when associated with an exempt single-family residence, are defined as “normal appurtenances” and are therefore exempt as provided in SJCC 18.50.020(F)(2)(g):

Another Approach to ‘Non-conformity’ to be Considered.

SSB 5451 allows the County the option of declaring all residential structures including appurtenant ones to be considered conforming. This comes with the caveat that any expansion or alteration will be done in such a way that ensures no net loss of ecological functions and values.

A. Lawfully established uses occurring as of the effective date of this Program shall be considered conforming, with the exception of existing over-water residences and non-water-oriented commercial or industrial uses, which shall be considered nonconforming.

B. All lawfully established uses, both conforming and nonconforming may continue, and may be repaired, maintained, expanded or modified consistent with the Act and this Program.

C. Any change in use shall conform to the standards of this Program or require a Conditional Use Permit (CUP). A CUP may only be granted if no reasonable alternative use meeting the standards is practical and the proposed use will be at least as consistent with the policies and provisions of this Program and the Act and as compatible with the uses in the area as the preexisting use. Conditions may be imposed that are necessary to assure compliance with the above findings and with the requirements of this Program and the Act, to assure that the use will not become a nuisance or a hazard, and to assure that the use will not result in a net loss of the ecological function of the shoreline.

D. If a use is discontinued for twelve consecutive months or for twelve months during any two-year period, any subsequent use, if allowed, shall be water-oriented and comply with the Act and this Program.
Either:

a. Two (2) distinct appurtenant structures with footprints no larger than 1,000 square feet each, and a maximum height of 16 feet. Adu’s are subject to the provisions of SJCC 18.40.240.

Or:

b. One (1) single appurtenant structure with a footprint no larger than 2,000 square feet and a maximum height of 16 feet. Adu’s are subject to the provision of SJCC 18.40.240.

Or:

c. One (1) single appurtenant structure with a footprint no larger than 1,000 square feet and a maximum height of 28 feet. Adu’s are subject to the provisions of SJCC 18.40.240

d. One garage building and/or one accessory dwelling unit each of which covers no more than 1,000 square feet of land area and is no taller than 16 feet above existing grade as measured along a plumb line at any point; or a combination of these uses in a single structure no larger than 2,000 square feet which is no taller than 16 feet above existing grade as measured along a plumb line at any point; or a combination of these uses in a single no larger than 1,000 square feet on each floor and no taller than 28 feet above existing grade. In no case shall an accessory dwelling unit exceed 1,000 square feet.

ee. No more than two separate outbuildings no larger than 200 square feet each (tool sheds etc.), no taller than 16 feet above average grade level, and not used for human habitation; provided, that in addition, one outbuilding for any other residential purpose may be substituted for an accessory dwelling unit or garage if the structures do not exceed size limits specified in subsection (FE)(2)(a-c) of this section; and

f. Grading (excavation and fill) of up to the maximum cubic yardage allowed by state law (see WAC 173–27–040(g)) for foundations and a driveway, plus any additional grading necessary for an individual on-site sewage disposal system.

3. A shoreline substantial development permit shall be required for construction of any nonexempt accessory development on a single parcel within 200 feet of the ordinary high water mark. Construction of an accessory dwelling unit that will be used for vacation rental (short-term) or long-term rental is not exempt. Any grading in excess of the amount exempt under SJCC 18.50.020(F)(2)(g) shall be subject to substantial development permit requirements.

4. Accessory structures which are not specified in SJCC 18.50.020 (G) this section as normal appurtenances to a residential use shall be permitted only as conditional uses.

5. Vacation rental or transient occupancy of a single-family residence or an accessory dwelling unit is subject to the applicable provisions of this section, the performance standards in SJCC 18.40.270 and the permit requirements specified in UDC Tables 3.1 and 3.2 in SJCC 18.30.030 and 18.30.040.

6. Every accessory dwelling unit in the shoreline must be located in a way that
maintains the single-family appearance and shall also meet the performance standards for accessory dwelling units set forth in SJCC 18.40.240.


1. Opportunities for physical and visual public access to the shoreline shall be considered in review of residential subdivisions and nonexempt developments. Physical public access shall be based on an adopted County public access plan.

2. Land divisions and multiple-unit or multifamily unit developments that yield five (5) or more lots shall provide a usable shoreline easement common area of reasonable size for the number of dwelling units in the development to ensure the public has usable access to the shoreline subject to the provisions in SJCC 18.50.100. In addition to the designated common area(s), there shall be appropriate easements dedicated to provide land access to the common area(s) to all property owners within the development. In all new subdivisions, standards for care and maintenance of shoreline easements common areas shall appear on the face of the plat and shall be consistent with the provisions of this SMP.

   a. If tidelands are privately owned, the area between ordinary high tide and the line of extreme low tide shall be dedicated to all property owners in the development as a part of the shoreline access easement common area.

   b. In locations where, as a result of topography or sensitive features of the site, such as natural marshes, swamps, or unstable, eroding bluffs, the application of this provision would not be feasible or would create a potential hazard, the Director of Planning and Building Services may authorize the designation of a different waterfront shoreline access easement common area.

HG. Houseboats.

1. Location. Houseboats are prohibited on state-owned aquatic land and shall be allowed only within a portion of a marina located within the shoreline jurisdiction of an activity center which has been granted shoreline substantial development permit approval for houseboat moorages. Houseboat moorage spaces shall be limited to those areas within a marina specifically identified on approved project plans for this use and the allotted area shall not exceed 10 percent of overall moorage space. The maximum square footage and height of any houseboat unit shall be specified in the project approval and shall minimize adverse impacts on the scenic qualities of the shoreline. Individual houseboat moorages and new houseboat communities are prohibited.

2. Standards. Houseboat moorage proposals shall demonstrate that:

   a. Houseboat units will be connected to an approved sanitary sewer or other approved upland waste disposal system with demonstrated capacity to serve the number of units proposed, and that greywater will also be discharged to such a system;

   b. Houseboat units will be connected to an approved potable water supply with demonstrated capacity to serve the number of units proposed;

   c. Materials used in the maintenance of houseboats moored at the marina will not result in contaminants or debris entering the water; and

   d. Location of the houseboat area shall ensure that at least six feet of water
depth shall be maintained at low water and that grounding at low tides will be prevented.

*(Liveaboards shall be addressed within the Boating Facilities section.)*

**IH. Regulations by Designation Environment.**

1. **Urban.** Residential development shall be permitted in the urban designation environment subject to the policies and regulations of this SMP.

2. **Rural.** Residential development shall be permitted in the rural designation environment subject to the policies and regulations of this SMP.

3. **Rural Residential.** Same as rural.

4. **Rural Farm-Forest.** Same as rural.

5. **Conservancy.** Residential development shall be permitted in the conservancy designation environment subject to the policies and regulations contained in this master program. No residential land division or other form of multiple-unit residential development shall be allowed unless conservancy values are fully recognized and protected.

6. **Natural.** Residential development shall not be permitted in the natural designation environment; provided, that the owner of an existing parcel of record may construct a single-family residence and appurtenant structures for his or her own use subject to a conditional use permit and only if the density and intensity of such use is limited as necessary to protect ecological functions and is consistent with the purpose of the natural designation. Vacation (short-term) rental of a single-family residence or accessory dwelling unit is prohibited. Land division is prohibited. Alteration of natural topography and vegetation shall be restricted to that which is absolutely necessary for the construction of the structure(s) and access to them. Alteration of the land-water interface is prohibited.

7. **Aquatic.** Residential development, except for permitted houseboats, is prohibited in the aquatic designation environment.

8. **Ports, Marinas and Transportation.** Houseboats permitted subject to the regulations of this SMP.

8. **Eastsound Urban.** Same as urban. Multifamily developments shall include provisions for public shoreline access.

9. **Eastsound Residential District.** Residential development is allowed subject to this master program and the applicable provisions of the Eastsound Subarea Plan. Multifamily developments shall include provision for public shoreline access.

10. **Eastsound Marina District.** Residential development is allowed in accordance with the marina district section of the Eastsound Subarea Plan.

11. **Eastsound Conservancy.** Same as conservancy.

12. **Eastsound Natural.** Same as natural.

13. **Shaw Rural.** Same as rural, except that residential transient accommodations...
(vacation rental of a residence or ADU) by themselves or in combination with any commercial use shall be prohibited.

14. **Shaw Rural Farm-Forest.** Same as rural farm-forest, except that residential transient accommodations (vacation rental of a residence or ADU) by themselves or in combination with any commercial use shall be prohibited.

15. **Shaw Conservancy.** Same as conservancy, except that residential transient accommodations (vacation rental of a residence or ADU) by themselves or in combination with any commercial use shall be prohibited.

16. **Shaw Natural.** Same as natural. (Ord. 7-2005 § 15 & 16; Ord. 21-2002 § 6; Res. 5-2002 §§ 2, 3; Ord. 12-2000 § 2; Res. 145-1998; Ord. 2-1998 Exh. B § 5.5.18)

**18.50.300 Pedestrian beach shoreline access structures.**

A “beach shoreline access structure” is a set of steps or stairs or a ramp used to provide pedestrian access to the water’s edge. A beach shoreline access structure is a normal appurtenance to single-family residence in San Juan County. Beach Shoreline access structures are only defined as an exempt development under limited circumstances, pursuant to SJCC 18.50.020(G)(3). All nonexempt beach shoreline access structures require a shoreline substantial development permit and must meet all of the general regulations for beach shoreline access structures found in SJCC 18.50.020(G)(3)(b-i).

**A. Regulations.**

A1. All nonexempt shoreline access structures require a shoreline substantial development permit and must meet all of the general regulations for shoreline access structures found in SJCC 18.50.020(G)(3)(b-i), except that the access structure widths and landing areas may be increased based on the expected use of the structure, but may be no wider than 6 feet with landings or platforms no larger than 6 feet by 6 feet.

B. Every application for a substantial development permit for a nonexempt beach shoreline access structure shall be evaluated on the basis of multiple considerations, including but not necessarily limited to the potential impacts on bank stability, the extent of vegetation removal, visual impacts, and structural stability, and achievement of no net loss of ecological functions.

C2. Beach Shoreline access structures which can reasonably be expected to interfere with the normal erosion accretion process associated with feeder bluffs shall not be permitted. All beach access structures must comply with the bank stability requirements of SJCC 18.50.330(B)(2).

3. Beach Shoreline access structures shall not be located below the ordinary high water mark (OHWM) unless connected to an exempt or permitted structure.

**B. Regulations by Environment.**

1. **Urban.** Beach access structures shall be permitted in the urban environment subject to the policies and general regulations contained in this master program.

2. **Rural and Rural Residential.** Same as urban.

3. **Rural Farm-Forest.** Same as urban.
4. **Conservancy.** Same as urban.

5. **Natural.** Beach access structures shall not be permitted in the natural environment.

6. **Aquatic.** Beach access structures shall not be permitted in the aquatic environment.

1. **Port, Marinas and Transportation.** Pedestrian shoreline access structures shall be allowed in accordance with the provisions this SMP.

7. **Eastsound Urban.** Beach access structures shall be allowed only in accordance with public beach access or moorage facility provisions specified in an adopted public access plan for this environment. Until such a plan is adopted, the regulations for the urban environment shall apply.

8. **Eastsound Residential, Eastsound Conservancy and Eastsound Marina District.** Same as urban.

9. **Eastsound Natural District.** Same as natural.

10. **Shaw Rural, Shaw Rural Farm-Forest and Shaw Conservancy.** Same as urban.

11. **Shaw Natural.** Same as natural. (Ord. 2–1998 Exh. B § 5.5.15)