Article I. General Provisions

18.50.010 General.

A. Title. This chapter of the Unified Development Code, together with Element 3 of the Comprehensive Plan, and Sections 18.80.110(I)(3), 18.80.110(J)(4), and 18.80.120(D) of this code, is the Shoreline Master Program for San Juan County, Washington.

B. Short Title. The short title of this chapter and Element 3 of the Comprehensive Plan is the “SJC Shoreline Master Program” or “SMP.”

C. Authority.

1. The provisions of this section are adopted pursuant to RCW 90.58.140(3) and 90.58.200, the Shoreline Management Act of 1971 (“SMA”), Chapters 173-26 and 173-27 WAC, Element 3 of the Comprehensive Plan, and this Chapter 18.50 SJCC, the San Juan County Shoreline Master Program.

2. Liberal Construction. As provided in RCW 90.58.900, the SMA is exempted from the rule of strict construction, and it and the Shoreline Master Program shall be liberally construed to give full effect to the purposes, goals, objectives, and policies for which the SMA and this program were enacted and adopted, respectively.

3. Conflicting Policies or Regulations. The SMA and the Shoreline Master Program comprise the basic state and local law regulating the use of shorelines in the County. Unless specifically provided otherwise, in the event that provisions of the Shoreline Master Program conflict with other applicable state or local policies or regulations, the SMA and Shoreline Master Program shall control. Where the Shoreline Master Program is more restrictive than other applicable state or local policies or regulations, the SMA and Shoreline Master Program shall control. Where other applicable state or local policies or regulations are more restrictive than the SMA and/or Shoreline Master Program, such policies or regulations control.

D. Official Map.

1. A map, known officially as the “San Juan County Comprehensive Plan Land Use And Shoreline Master Program Map Designated Shoreline Environments Map,” (a.k.a., the "map," "official map") is part of the SJC Master Program. The map shows all areas of San Juan County under the jurisdiction of this master program and the official shoreline use designations designated environments as provided by the Shoreline Element of the Comprehensive Plan for all affected lands and waters.

2. There is only one official copy of the map, which is maintained by the San Juan
County planning department. Amendments to the map are promptly recorded on the official copy.

3. At the time of adoption of this master program, one copy of the official map will be filed with the County auditor. In addition, at least once every 12 months following the filing of the initial map with the auditor, the planning department will make an additional copy of the official map and file it, with the initial map, in the auditor's office. If the official map has not been amended during the 12-month period, the planning department may file with the auditor a notice to that effect, signed by the planning director, in lieu of a copy of the official map. The purpose of these annual filings is to create an official record of the changes occurring over time in the designated shoreline environments. At no time will the copies of the map filed with the auditor be altered in any way.

4. No part of the map may be altered or amended without the approval of the Washington Department of Ecology, except those changes provided for in subsection (C)(5) of this section.

5. Where questions arise regarding the precise boundaries of any shoreline use designation designated environment, the administrator Director will make the final determination. Subject to the provisions of SJCC 18.80.140, Appeals. Unofficial copies of the map may be prepared for administrative purposes as needed.

6. Lakes of 20 acres or more are subject to the Shoreline Management Act and the Shoreline Master Program, as provided in RCW 90.58.030(2)(d)(iii). Those lakes that meet this criterion but which are not shown on the official maps, or which are not shown with a shoreline environment designation, shall be considered to be subject to the underlying Comprehensive Plan density designation while shoreline use is subject to the shoreline environment designation matching the Comprehensive Plan land use district designation for the area, until such time as the lakes are assigned specific designations in the County’s Shoreline Master Program. Program. All areas that were inadvertently not mapped in shoreline jurisdiction, but meet the jurisdictional criteria in RCW 90.58.030 (f) and in conformance with WAC 173-26-211, are assigned a Conservancy designation until the shoreline can be re-designated through a SMP Amendment.

E. Responsibilities of Director Administrator, Planning Department, and Planning Commission.

1. Director-Administrator.
   a. Technical and Administrative Assistance. The Director administrator shall make written recommendations to the decision maker regarding shoreline permit applications, provide technical and administrative assistance to the hearing examiner or the BOCC as required, and provide such technical assistance to the planning commission as may be needed; and
   b. Administrative Responsibilities. The Director administrator shall have the overall administrative responsibility for the master program, which includes:
i. Establishing the procedures and preparing the forms deemed essential for the administration of the Shoreline Master Program;

ii. Advising applicants for permits and other interested persons of the policies, regulations, and procedures established by the Shoreline Master Program and the Act;

iii. Making administrative interpretations of the Shoreline Master Program, as necessary;

iv. Collecting required fees;

v. Determining that applications are proper and complete prior to review;

vi. Making field inspections; and

vii. Seeking compliance with the provisions of the Shoreline Master Program and the SMA and of conditions attached to a shoreline permit issued by the County.

2. Planning Department and Planning Commission. The planning department and planning commission have authority to review and recommend revisions to the Shoreline Master Program, and shall monitor shoreline developments to enable effective and comprehensive review of this master program, as provided in SJCC 18.90.040. (Res. 77–2003 § 1; Ord. 13–2002 § 1; Ord. 2–1998 Exh. B § 5.1)

18.50.020 General applicability.

A. Relationship to Comprehensive Plan. This master program provides land use regulations to implement the goals and policies of the Comprehensive Plan Shoreline Element. These regulations apply to all of the land and waters of San Juan County which fall under the jurisdiction of the Shoreline Management Act. These regulations do not apply to development and uses beyond the jurisdictional limits of the Act unless a proposed development involves both jurisdictional and nonjurisdictional land and the upland development is found to adversely affect the shoreline ecological functions and values. If a conflict occurs between this chapter and other sections of this code, this chapter shall prevail.

B. Applicability to Persons. This master program shall apply to every person, individual, firm, partnership, association, organization, corporation, local or state governmental agency, public or municipal corporation, or other nonfederal entity which develops, owns, leases, or administers lands, wetlands, or waters which fall under the jurisdiction of the Shoreline Management Act, except for the right of any person established by treaty to which the United States is a party.

C. Applicability to Federal Agencies.

1. Federal agencies are subject to the SJC Master Program and the Washington State Shoreline Management Act, as provided by the Coastal Zone Management Act (16 U.S.C. 1451 et seq.; WAC 173–27–060(1)).

2. The shoreline permit system applies to nonfederal activities constituting developments or conditional uses undertaken on lands subject to nonfederal ownership, lease, or easement even though such lands may fall within the...
external boundaries of federally owned lands.

3. The shoreline permit system applies to development and uses undertaken on lands not federally owned but under lease, easement, license, or other similar property right of the federal government.

D. Applicability to Development. This master program applies to all “development” and vegetation removal, as defined in Chapter 18.20 SJCC. No substantial shoreline development may be undertaken unless a valid substantial development permit has been issued by the County.

E. Applicability to Substantial Development.

1. This master program applies to all “substantial development” as defined in Chapter 18.20 SJCC.

2. No substantial development may be undertaken unless a valid shoreline substantial development permit is first issued by the County and unless all work proceeds in compliance with the requirements of the Shoreline Management Act, this master program, and other applicable state and local regulations.

EF. Exemptions from Shoreline Substantial Development Permit Requirements.

1. Exemption from the shoreline substantial development permit requirements under subsection (G) of this section does not constitute an exemption from the policies of the Shoreline Management Act, the policies and regulations of this SMP, or other applicable County local, state, or federal permit requirements. Exemption procedures are provided in SJCC 18.80.110(F). Exemptions shall be construed narrowly in accordance with WAC 173–27–040(1)(a). Statements of exemption are required for certain developments; see SJCC 18.80.110. A use classified as a conditional use or a use not named or contemplated in this chapter is allowed only as a conditional use and is ineligible for shoreline permit exemption.

2. The following, as defined in WAC 173–27–040, are not considered to be substantial developments:
   a. Any development of which the total cost or fair market value, whichever is higher, does not exceed the maximum exempt amount allowed by state law, WAC 173–27–040(2)(a), if such development does not materially interfere with the normal public use of the water or shorelines of the state. The total cost or fair market value of the development shall include the fair market value of any donated, contributed or found labor, equipment, or materials.
   b. Normal maintenance or repair of existing structures or developments, including damage by fire, accident, or the elements, subject to WAC 173–27–040(2)(b).
   c. Construction of the normal protective bulkhead common to single-family residences subject to WAC 173–27–040(2)(c). Bulkhead construction is not exempt if it’s constructed for the purpose of creating dry land.
   d. Emergency construction necessary to protect property from damage by the elements, in accordance with WAC 173–27–040(2)(d). As a general matter, flooding or other seasonal events that can be anticipated and may occur but
that are not imminent are not an emergency.

e. Construction and practices normal or necessary for farming, irrigation, and ranching activities, including agricultural service roads and utilities on shorelands, and the construction and maintenance of irrigation structures including but not limited to head gates, pumping facilities, and irrigation channels. However, a feedlot of any size, all processing plants, other activities of a commercial nature, and alteration of the contour of the shorelands by leveling or filling other than that which result from normal cultivation, shall not be considered normal or necessary farming or ranching activities. For the purposes of this chapter, a “feedlot” shall be an enclosure or facility used or capable of being used for feeding livestock hay, grain, silage, or other livestock feed, but shall not include land for livestock feeding and/or grazing, nor shall it include normal livestock wintering operations; or barns or similar agricultural structures on wetlands (WAC 173–27–040(2)(e)).

f. Construction or modification, by or under the authority of the Coast Guard or a designated port management authority, of navigational aids, such as channel markers and anchor buoys. WAC 173–27–040(2)(f).

g. Construction on shorelands by an owner, lessee, or contract purchaser of a single-family residence for his own use or the use of his family, which residence does not exceed a height of 35 feet above average grade level, except as provided in this SMP, and which meets all requirements of the Act and this SMP, as specified in WAC 173–27–040(2)(g). Single family residences include appurtenant structures. Appurtenant structures are within contiguous ownership and are necessarily connected to the use and enjoyment of a single family residence and is located landward of the ordinary high water mark and the perimeter of a wetland.

h. Construction of a dock, including a community dock, designed for pleasure craft only, for the private, noncommercial use of the owners, lessee, or contract purchaser of single- and multiple-family residences, as specified in WAC 173–27–040(2)(h). This exception applies if either:
   i. In salt waters, the fair market value of the dock does not exceed $2,500; or
   ii. In fresh waters, the fair market value of the dock does not exceed $10,000, but if subsequent construction having a fair market value exceeding $2,500 occurs within five years of completion of the prior construction, the subsequent construction shall be considered a substantial development for the purpose of this code.

i. Operation, maintenance, or construction of canals, waterways, drains, reservoirs, or other facilities that now exist or are hereafter created or developed as part of an irrigation system for the primary purpose of making use of the system waters, including return flow and artificially stored ground water from the irrigation of lands (WAC 173–27–040(2)(i)).

j. The marking of property lines or corners on state-owned lands, when such
marking does not significantly interfere with normal public use of the surface of the water (WAC 173–27–040(2)(j)).

k. Operation and maintenance of any system of dikes, ditches, drains, or other facilities existing on September 8, 1975, which were created, developed, or utilized primarily as part of an agricultural drainage or diking system (WAC 173–27–040(2)(k)).

l. Site exploration and investigation activities that are prerequisite to preparation of an application for development authority under this code if:
   i. The activity does not interfere with the normal public use of the surface waters;
   ii. The activity will have no significant adverse impact on the environment including but not limited to fish, wildlife, fish or wildlife habitat, water quality, and aesthetic values;
   iii. The activity does not involve the installation of any structure, and upon completion of the activity the vegetation and land configuration of the site are restored to conditions existing before the activity;
   iv. A private entity seeking development authorization under this section first posts a performance bond or provides other evidence of financial responsibility to the County to ensure that the site is restored to pre-existing condition; and
   v. The activity is not subject to the permit requirements of RCW 90.58.550 (WAC 173–27–040(2)(m)).

m. The process of removing or controlling an aquatic noxious weed, as defined in state law, through the use of an herbicide or other treatment methods applicable to weed control that are recommended by a final environmental impact statement published by the U.S. Department of Agriculture or the department jointly with other state agencies under Chapter 43.21C RCW (WAC 173–27–040(2)(n)).

n. Watershed restoration projects as defined in Chapter 90.58 RCW, in accordance with WAC 173–27–040(2)(o).

o. A public or private project that is designed to improve fish or wildlife habitat or fish passage, as provided in WAC 173–27–040(2)(p), when all of the following apply:
   i. The project has been approved by the Washington Department of Fish and Wildlife (WDFW);
   ii. The project has received hydraulic project approval by the WDFW pursuant to Chapter 75.20 RCW; and
   iii. The County has determined that the project is substantially consistent with this master program.


G. Exemptions from Substantial Development Permit Requirements – Residential Appurtenances. Normal appurtenances to a single-family residence are included in
the permit exemption provided in subsection (F)(2)(g) of this section. "Normal appurtenance" means a structure that is necessarily connected to the use and enjoyment of a single-family residence and includes one garage, one accessory dwelling unit, driveway attached a decks, a driveway, utilities, fences, septic tank, antennas, satellite dishes less than one meter in diameter, and solar arrays serving one single-family residence. For the "normal appurtenance" exemption to apply, the applicant must submit a certificate that the structure will be constructed by an owner, lessee or contract purchaser of a single-family residence for his or her own use or the use of his or her family or a person providing health care to the owner or the owner’s family. Normal appurtenances also include:

1. Grading of less than 250 cubic yards or removal of native vegetation that is not within 50 feet of the OHWM or the top of the bank, whichever is greater, when associated with the construction or modification of a single-family residence.

2. Construction or renovation of structures with fair market value of less than the maximum value allowed by Chapter 90.58 RCW and WAC 173–27–040(2)(a).

3. Beach–Shoreline access structures; provided, that a written statement of exemption is obtained; and provided, that all of the following criteria are met:
   a. The total cost or fair market value of the improvements does not exceed the maximum allowed by state law.
   b. No roofs or roof covering materials such as awnings are permitted.
   c. All materials must be finished in subdued natural earth colors.
   d. No construction or placement seaward or below the ordinary high water mark (OHWM) is permitted unless the stairs or ramp are connected to an exempt or permitted dock.
   e. Stairs or ramps are allowed when no other beach access exists or is reasonably feasible.
   f. The maximum vertical height of the structure is 15 feet and the maximum width of the structure is three feet. One intermediate landing or platform with a maximum size of three feet by three feet is allowed. Stairways that are proposed for exposed areas of the shoreline shall not be located on rock faces or bluffs in excess of 172 percent average slope (i.e., a maximum 60-degree angle).
   g. The bank stability requirements of SJCC 18.50.330(B)(2) shall be complied with.
   h. All disturbed areas shall be immediately replanted with naturally occurring non-toxic vegetation. Deep-rooted plants as recommended by the Natural Resources Conservation Service or the WSU Cooperative Extension Service shall be planted on the face and top of the bank to help stabilize the soil. All planting shall be completed prior to the end of the growing season which immediately follows construction. All construction debris shall be immediately removed from the site.
   i. All stairs or ramps proposed for property associated with or located within subdivisions that contain shoreline common areas, as defined in SJCC
18.50.330(F)(2), must be located within the common area or the access easements to the shoreline common area.

H. Coordination with Element 3 of the Comprehensive Plan and UDC Regulations.

1. All shoreline use and development proposals must be consistent with the goals, policies, and regulations of this SMP, Element 3 of the Comprehensive Plan, and other applicable policies and regulations.

2. When a conditional use permit or variance is required by Chapter 18.30 SJCC for development also within the jurisdiction of this SMP, the hearing examiner, with the advice of the Director of the UDC, will attach such conditions to the permit or variance approval as are necessary to ensure the development is consistent with this SMP.

3. When any proposed subdivision of land or other development is subject to the jurisdiction of this SMP, the entire proposal will be reviewed as a single project. The application will be reviewed for consistency with the provisions of the Comprehensive Plan, this code, and this SMP; however, the specific use regulations of this SMP will apply only to those areas subject to shoreline management jurisdiction. (Ord. 21–2002 § 6; Res. 145–1998; Ord. 2–1998 Exh. B § 5.2)

18.50.030 Definitions.
The definitions for all terms used in this document have the meanings specified in Chapter 18.20 SJCC. (Ord. 2–1998 Exh. B § 5.3)

Article II. General Regulations

18.50.040 Administration.
Administrative policies in Element 3 of the Comprehensive Plan and The regulations in this chapter are applicable to all uses and activities regardless of SMP shoreline use environment designation or eligibility for shoreline permit exemption that may occur within SMP jurisdiction. The following general regulations are in addition to use-specific regulations.

A. All shoreline uses and shoreline modification activities and vegetation removal, including those that do not require a shoreline substantial development permit, must conform to the policies and regulations of this SMP.

B. All shoreline modification activities, developments and vegetation removal are prohibited unless they are in support of an allowable shoreline use which conforms to the provisions of this SMP.

C. Shoreline uses, modification activities, and conditions listed as “prohibited” are not eligible for consideration as a shoreline variance or shoreline conditional use permit.

D. The policies listed in Element 3 of the Comprehensive Plan provide guidance and direction and will be used by the County in applying the regulations.

DE. Where provisions of this SMP conflict, the more restrictive of the provisions...
applies unless specifically stated otherwise. (Res. 77–2003 § 2; Ord 13–2002 § 2; Ord. 2–1998 Exh. B § 5.4.1)

18.50.050 Archaeological and historic resources.

A. When an application for a development permit is received for an area known to be archaeologically significant, the County will not take action on the application and the applicant will not initiate any excavation or development activity until the site has been inspected by a qualified archaeologist in coordination with the affected tribes. No application will be delayed more than 10 working days for such an inspection. Prior to the issuance of a permit in areas known to contain archaeological artifacts and data, the County requires that the developer provide for a site inspection and written evaluation by an archaeologist. Significant archaeological data or artifacts must be recovered before work begins or resumes on a project. If the application is approved by the County, conditions will be attached reflecting the recommendations of the archaeologist regarding preservation or protection of the site.

B. All development permits will contain a special provision advising the permit holder that if during excavation or development of the site an area of potential archaeological significance is uncovered, all activity in the immediate vicinity of the find must be halted immediately, and the following must be notified at once:
   i. the Director;
   ii. the state office of archaeology and historic preservation; and
   iii. the affected native tribes.

The Administrator must be notified at once. Activities authorized by the permit will not be delayed more than five working days for a finding of significance by the Director administrator, following the Director’s administrator’s receipt of notification, unless the permit holder agrees to an extension of that time period.

C. All development proposed for location adjacent to sites which are included in the state or national registers of historic places, or are determined to be eligible for listing, must be located so as to complement the historic site. Development which degrades or destroys the historical character of such sites is not permitted.

D. Prior to the issuance of a permit in areas known to contain archaeological artifacts and data, the County requires that the developer provide for a site inspection and written evaluation by an archaeologist. Significant archaeological data or artifacts must be recovered before work begins or resumes on a project.

E. In the event that unforeseen factors constituting an emergency as defined in WAC 173-27-040 (2)(d) RCW 90.58.030 necessitate rapid action to retrieve or preserve archaeological artifacts or data, the project may be exempted from the permit requirements of these regulations. The County shall notify the Washington Department of Ecology, the State Attorney General’s Office, and the Washington Office of Archaeology and Historic Preservation of such a waiver in a timely manner.

F. Archaeological sites located both in and outside the shoreline jurisdiction are subject to Chapter 27.44 RCW (Indian Graves and Records) and Chapter 27.53 RCW
(Archaeological Sites and Records) and must comply with Chapter 25–48 WAC (Archaeological Excavation and Removal Permit) as well as the provisions of this code.

G. Archaeological excavations are allowed subject to the provisions of this master program and applicable state laws.

H. Identified historical or archaeological resources must be considered in park, open space, public access, and site planning, with access to such areas designed and managed so as to give maximum protection to the resource. (Ord. 2–1998 Exh. B § 5.4.2)

18.50.070 Environmental Protection impacts.

A. The location, design, construction, and management of all shoreline uses and activities must protect the quality and quantity of surface and ground water adjacent to the site and must adhere to the storm water control policies, standards, and regulations of SJCC 18.60.070 and the Critical Areas protection regulations of SJCC 18.30.110 and other applicable water quality management programs and related regulatory agencies.

B. Solid waste disposal and liquid waste treatment facilities are prohibited on shorelines. Development that creates 5,000 square feet or fewer of new impervious surface shall comply with SJCC 18.60.070 (c). Development that creates more than 5,000 square feet of new impervious surface shall comply with the minimum standards set forth in SJCC 18.60.070 (D). Solid and liquid wastes, biosolids, and untreated effluents shall not be allowed to enter any bodies of water or to be discharged onto land.

C. The release of oil, chemicals or hazardous materials onto land or into the water contrary to state or federal law is prohibited. Equipment for the transportation, storage, handling, or application of such materials in association with a lawful shoreline use must be maintained in a safe and leak-proof condition. If there is evidence of leakage, the further use of such equipment shall be suspended until the deficiency has been satisfactorily corrected.

D. All shoreline uses and activities shall be located, designed, constructed, and managed in a manner that minimizes adverse impacts to surrounding land and water uses and must be aesthetically compatible with the affected area.

E. All shoreline uses and activities must utilize effective erosion control methods during construction and operation. Proposed methods must be included in the project description submitted with any permit application.

F. All shoreline uses and activities must be located, designed, constructed, and managed to avoid disturbance of and minimize adverse impacts to fish and wildlife resources, including spawning, nesting, rearing and habitat areas, and migratory routes.

EG. All shoreline uses and activities must be located, designed, constructed, and managed to avoid, and if not possible minimize interference with natural shoreline
processes such as water circulation, sand and gravel movement, erosion, and accretion.

FH. Land clearing, grading, filling, and alteration of natural drainage features and land forms must be designed to prevent maintenance problems or adverse impacts to adjacent properties or shoreline features.

GI. All shoreline developments must be located, constructed, and operated so as not to be a hazard to public health and safety.

HJ. All shoreline uses and activities must be located and designed to minimize or prevent the need for shoreline defense and stabilization measures and flood protection works, such as bulkheads, other bank stabilization, landfills, levees, dikes, groins, jetties, or substantial site regrades.

IK. Herbicides and pesticides may not be applied to or allowed to directly enter water bodies or wetlands unless approved for such use by the appropriate agencies. (Ord. 2-1998 Exh. B § 5.4.4)

J. Uses and developments on County shorelines must be designed, located, sized, constructed and maintained to achieve no net loss of shoreline ecological functions and must not have a significant adverse impact on other shoreline functions fostered by this SMP.

K. When Mitigation Sequencing Analysis Required.
   1. If a proposed shoreline use or modification is entirely addressed by specific, objective standards (such as setback distances, pier dimensions, or materials requirements) contained in this Chapter, then the mitigation sequencing analysis described in SJCC 18.50.070(N.) is not required.
   2. In the following circumstances, the applicant must provide a mitigation sequencing analysis as described in 18.50.070(N.):
      a. If a proposed shoreline use or modification is addressed in any part by discretionary standards (such as standards requiring a particular action if feasible or requiring the minimization of development size) contained in this Chapter, then the mitigation sequencing analysis is required for the discretionary standard(s); or
      b. When an action requires a Shoreline Conditional Use Permit or Shoreline Variance Permit;
      c. When specifically required by regulations contained in this Chapter.

L. Mitigation Sequencing Analysis. In order to ensure that development activities contribute to meeting the no net loss provisions by avoiding, minimizing, and mitigating for adverse impacts to ecological functions or ecosystem-wide processes, an applicant required to complete a mitigation analysis pursuant to SJCC 18.50.070(M.) must describe how the proposal will follow the below mitigation sequencing guidelines, which appear in order of preference, during the design, construction, and/or operation of the proposal:
   1. Avoiding the impact altogether by not taking a certain action or parts of an action;
   2. Minimizing impacts by limiting the degree or magnitude of the action and its
implementation by using appropriate technology or by taking affirmative steps to avoid or reduce impacts;

3. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;

4. Reducing or eliminating the impact over time by preservation and maintenance operations;

5. Compensating for the impact by replacing or providing substitute resources or environments; and

6. Monitoring the impact and the compensation projects and taking appropriate corrective measures.

M. Mitigation Plan. Mitigation is required for all projects within shoreline jurisdiction, including those waterward of the OHWM, having negative impacts on shoreline ecological functions. When impacts are identified, the applicant must develop and implement a mitigation plan prepared by a qualified professional. Mitigation in excess of that necessary to ensure that development will result in no net loss of ecological functions will not be required by the County, but may be voluntarily performed by an applicant.

1. Mitigation, monitoring, and adaptive management plans are reviewed and approved by the decision maker for the underlying permit or approval (director or hearing examiner, depending on type of permit/approval).

2. Preparation of mitigation, monitoring, and adaptive management plans, and their review by the County, which may include referral to independent qualified professionals, shall be at the applicant’s expense. If review by a third party is necessary because of the complexity of the plans or apparent errors, the Department may require advance payment of fees for this review based on the estimated review time. As an alternative to third party review, the applicant and the director may jointly select the qualified professional who will complete the plans.

3. Mitigation options include the use of certified mitigation banks and approved in-lieu fee mitigation sites.

4. Removal of illegal modifications cannot be used to mitigate new adverse impacts to ecological functions and values when those modifications were made by the owner of the property that is the subject of the application.

5. Mitigation plans must be appropriate for the scale and scope of the project, and include adequate information for the decision maker to determine that the project and application are in conformance with approval criteria. Potential components of an application include the following:
   a. For both the proposed development area and the proposed mitigation site, the applicable items listed in SJCC Section 18.80.020.C (Project Permit
Applications-Forms) as well as photos of both the development and mitigation sites, and a detailed site plan showing the location of all critical areas within 300 feet of mitigation sites;

b. Any related project documents such as applications to other agencies or environmental documents prepared pursuant to the State Environmental Policy Act;

c. For both the proposed development area, and the proposed mitigation site, applicable scientific studies supporting the proposal.

d. For both the development area and the mitigation site, copies of any proposed or approved storm water and erosion control plan required by SJCC 18.60.

e. A narrative describing anticipated adverse impacts to shoreline ecological functions and values, the mitigation proposal (including the goals of the proposal, performance standards that will be used to gauge the effectiveness of the proposal, construction methods, and the sequence and timing of actions), and explaining how the proposal meets the plan approval criteria. Assessment of adverse impacts to the shoreline ecological functions and values and the expected effectiveness of the proposed mitigation shall be based on readily available scientific information.

f. For offsite mitigation actions, an explanation of why on-site mitigation was not feasible, along with the site selection criteria employed.

g. Grading and excavation details. If grading or excavation is proposed, pre- and post-construction contour plans are required at a scale that is suitable for the site.

h. A planting plan (if planting is proposed) identifying plant species, quantities, sizes, locations, spacing, and density, along with proposed measures to protect and maintain the plants until they are established.

i. Any other drawings necessary to illustrate the proposal.

j. Monitoring and adaptive management plans appropriate for the scale and scope of the project. These plans must describe measurable data that will be collected to assess the effectiveness of the project, must include a monitoring schedule (monitoring is required at least once each year, with a report submitted to the Department by November 1), and must explain corrective actions that will be taken to deal with any problems. The project shall be monitored for three (3) years or until the director determines that it is successful, functioning as designed, and that established performance standards have been met.

k. For mitigation of adverse impacts to wetlands, the plan, including associated wetland replacement ratios, must be consistent with the guidance provided in Wetland Mitigation in Washington State - Part 1: Agency Policies and Guidance, Ecology publication 06-06-011a; and Wetland Mitigation in Washington State - Part 2, publication 06-06-011b. As an alternative, mitigation actions may follow the procedures described in Ecology Publication No. 10-06-011, Calculating Credits and Debits for Compensatory Mitigation in Wetlands of Western Washington or another mitigation approach or publication approved by Ecology.
l. A description of the report author’s education and experience relevant to implementing the proposed actions.

m. A cost estimate, prepared by a qualified professional, for implementing the mitigation plan and monitoring the site for a period of three (3) years or until the project is anticipated to be fully completed and functional as determined by the qualified professional and approved by the decision maker (director or hearing examiner, depending on type of underlying permit).

n. Financial Guarantee. Unless exempt under RCW 36.32.590, a financial guarantee and associated agreement covering 115% of the cost of implementing the mitigation and monitoring plans. This guarantee and the associated agreement must meet the requirements of SJCC 18.80, and for mitigation of adverse impacts to critical saltwater habitats must initially be established to cover a time period of three (3) years or until the project is anticipated to be fully completed and functional as determined by the qualified professional and approved by the decision maker (director or hearing examiner, depending on type of underlying permit). Note: The maximum cost to the property owner is the original cost for implementing and monitoring the project, plus 115% of that cost.

o. A statement, signed by the property owner, agreeing to periodic inspections as established in the monitoring plan. The purpose of inspections is to determine compliance with approved plans, and inspections can be performed by either a qualified professional hired by the property owner, or a County representative. If a County representative conducts the inspection(s), they shall be by appointment or following advance written notice.

6. Mitigation Plan Approval Criteria. Approval of mitigation plans shall be based on conformance with the following criteria:
   a. The application includes the applicable items listed in SJCC 18.30.110.F.7.
   b. Mitigation is authorized or required by this code.
   d. Proposed development is designed and located in such a way as to avoid adversely impacting the shoreline ecological functions and values. If adverse impacts cannot be avoided, then they must be mitigated so that there will be no net loss of shoreline ecological functions and values.

7. Recording of Approved Plan and Notice to Title. The County shall record a copy of the approved mitigation plan, along with a Notice to Title referencing the plan, with the cost of recordation included in the application fee.

8. If the goals, objectives and performance standards of the mitigation plan are not met, the decision maker (director, hearing examiner, shoreline hearings board, depending on type of underlying permit or approval) may require additional actions or additional monitoring. To allow for successful completion of the mitigation project, the monitoring period, financial guarantee and associated agreement may be extended.
N. Alternative Mitigation. To provide for flexibility in the administration of the ecological protection provisions of this SMP, alternative mitigation approaches may be approved within shoreline jurisdiction where such approaches provide increased protection of shoreline ecological functions and processes over the standard provisions of this SMP and are scientifically supported.

18.50.090 Parking.
A. Parking is prohibited on structures located over water.
B. Parking facilities must be designed and landscaped to minimize adverse impacts upon adjacent shoreline and abutting properties. Landscaping must consist of native vegetation and be planted before completion of the parking area in such a manner that plantings provide effective screening within three years of project completion and through the maturity of the species.
C. Parking facilities serving individual buildings on the shoreline must be located landward from the principal building being served, except when the parking facility is within or beneath the structure and adequately screened or where an alternative location would result in a lesser environmental impact on the shoreline.
D. Parking facilities for shoreline activities must provide safe and convenient pedestrian circulation within the parking area and access to the shoreline.
E. Parking facilities shall be designed to prevent contamination of water bodies from surface water runoff. Parking facilities must be provided with the best available technologies and include a maintenance program that will assure proper functioning of all drainage facilities to prevent degradation of surface water quality. (Ord. 2–1998 Exh. B § 5.4.6)
18.50.100 Public access.

A. Except as provided in subsections (B) and (C) of this section, shoreline substantial development permits or conditional uses shall provide public access where any of the following conditions are present:

1. Where a development or use will create increased demand for public access to the shoreline, the development or use shall provide public access to mitigate this impact;

2. Where a development or use will interfere with an existing public access way, the development or use shall provide public access to mitigate this impact. Developments may interfere with access on their development site by blocking access or by discouraging use of existing on-site or nearby accesses;

3. Where uses which are not a priority shoreline use under the Shoreline Management Act will locate on the shoreline of the state, the use or development shall provide public access to mitigate this impact; or

4. Where a use or development will interfere with a public use of lands or waters subject to the public trust doctrine, the development shall provide public access to mitigate this impact.

5. Where a development is proposed by a public entity; or

6. New multi-unit residential development, including land divisions creating five or more lots or dwelling units.

Whenever public access is required, the permit file shall describe the impact, the required public access conditions, and how the conditions address the impact.

B. An applicant need not provide public access where one or more of the following conditions apply:

1. Unavoidable health or safety hazards to the public exist which cannot be prevented by practical means;

2. Inherent security requirements of the use cannot be satisfied through the application of alternative design features or other solutions;

3. The cost of providing the access, easement or alternative amenity is unreasonably disproportionate to the long-term cost of the proposed development;

4. Unacceptable environmental harm will result from the public access which cannot be mitigated; or

5. Significant undue and unavoidable conflict between any access provision and/or adjacent uses would occur and cannot be mitigated.

6. A public access planning process has been carried out by the County that provides more effective public access than single projects.

C. In order to meet any of the conditions in subsections (B)(1) through (B)(5) of this section, the applicant must first demonstrate and the County determine in its findings that all reasonable alternatives have been exhausted, including but not limited to:

1. Regulating access by means such as maintaining a gate and/or limiting hours of
2. Designing separation of uses and activities (e.g., fences, terracing, use of one-way glazings, hedges, landscaping, etc.); and

3. Developing provisions for access at a site geographically separated from the proposal such as a street end, vista or trail system.

D. Developing uses and activities shall be designed and operated to avoid blocking, reducing or interfering with the public’s physical accesses to the water and shorelines.

E. Public access provided by shoreline street ends, public utilities, and rights-of-way may not be diminished (RCW 35.79.035 and RCW 36.87.130).

F. Public access sites shall be connected directly to the nearest public street and shall include provisions for handicapped and physically impaired persons, where feasible.

G. Required public access sites shall be fully developed and available for public use at the time of the occupancy of the use or activity.

H. Public access easements and permit conditions shall be recorded on the deed of title and/or on the face of a plat for a subdivision or short subdivision as a condition running contemporaneously with the authorized land use. Said recordings shall occur at the time of permit approval (RCW 58.17.110).

I. The standard state-approved logo or other approved signs that indicate the public’s right of access and hours of access shall be constructed, installed and maintained by the applicant in conspicuous locations at public access sites. Signs may control or restrict public access as a condition of permit approval.

J. Future actions by the permit holder shall not diminish the usefulness or value of the public access provided.

K. A public access plan for Eastsound, consistent with the Eastsound Subarea Plan (Chapter 16.55 SJCC), has been developed by the County (Resolution 29-1996) in cooperation with waterfront property owners and adopted as part of this master program for the village commercial waterfront. (Res. 145–1998; Ord. 2–1998 Exh. B § 5.4.7)

18.50.120 Signs.
In addition to the standards in SJCC 18.40.370 through 18.40.400, the following apply:

A. Regulations.

1. Plans and designs for nonexempt signs must be submitted for review at the time of shoreline permit application.

2. All signs must be located and designed to minimize interference with vistas, viewpoints, and visual access to the shoreline. Signs located outside of activity centers shall not be facing or directed towards the water, except as provided in subsection (A)(3) of this section.

3. Over-water signs or signs on floats or pilings are allowed only if directly related to the operations of a water-dependent use.
4. Light sources for externally lighted signs shall be energy-efficient and shielded or recessed so that direct glare and reflections are contained within the boundaries of the parcel. Exterior lighting shall be directed downward and away from adjoining properties and public rights-of-way. No lighting shall blink, flash, or be of unusually high intensity or brightness. Exterior lighting fixtures must be shielded and the light must be directed downward and away from wetlands and wetland buffers, as well as lakes, ponds, the marine shoreline, and habitat of specific animals protected as fish and wildlife habitat conservation areas, must be hooded, shaded, or aimed so that direct light will not result in glare when viewed from surrounding properties or watercourses. Internally lighted signs are prohibited.

5. Signs related to specific on-site uses or activities must not exceed the maximum size limits specified in SJCC 18.40.370 through 18.40.400. On-site freestanding signs must not exceed six feet in height except on-site free standing signs on public property may be eight feet in height. When feasible, signs must be mounted flush against a building.

6. **Allowable Signs.** The following types of signs may be allowed in all shoreline designations:
   
   a. Water navigational signs and water way and roadway safety and directional signs.
   
   b. On-premises public information signs directly relating to an allowed shoreline use or activity.
   
   c. Off-premises, freestanding signs for community identification, information, or directional purposes, if consistent with this section and SJCC 18.40.370 through 18.40.400.
   
   d. National, state and institutional flags or temporary decorations customary for special holidays and similar events of a public nature.
   
   e. Temporary directional signs to public or quasi-public events if removed within the 10 days following the event.
   
   f. No-trespassing signs and no-hunting signs, not to exceed two square feet.
   
   g. Political signs.

7. Signs mounted flush to the wall of a building must not extend above the highest point on the wall to which they are mounted. Signs mounted at right angles to the wall of a building and freestanding signs must not be more than 15 feet above grade, measured from the top of the sign.

**B. Additional Regulations by Designation Environment.**

1. In rural, and rural residential, Eastsound marina and Eastsound residential environments, freestanding signs shall not be more than five feet above grade, measured from the top of the sign, except as otherwise provided in this code.

2. In the conservancy designation environment, outdoor advertising signs shall be allowed only if they are mounted flush to the wall of an approved structure and relate directly to that structure or use.
3. In natural and aquatic designations environments, signs shall be prohibited except for traffic signs, official warning signs, signs identifying public facilities, and other signs required by law; provided, that outdoor advertising signs may be allowed in the aquatic designation environment only if they are mounted flush to the wall of an allowed over-water structure and only if they could not as effectively be located on land.

C. Prohibited Signs. The following types of signs are prohibited:

1. Signs which significantly impair visual access to the shoreline.
2. Off-premises outdoor ‘a-frame’ commercial advertising signs.
3. Spinners, streamers, pennants, flashing lights, internally lit signs, and other animated signs used for commercial purposes.
4. Signs placed on trees or other natural features.
5. Signs not in conformance with performance standards in SJCC 18.40.370 through 18.40.400. (Ord. 2–1998 Exh. B § 5.4.9)

18.50.220 Commercial development.

A. General Regulations.

1. Applications for commercial development shall include a detailed statement explaining the nature and intensity of the water dependency or orientation of the proposed activity. Such statement shall include at least the following:

   a. Nature of the commercial activity;
   b. Need for shoreline frontage;
   c. Proposed measures to enhance the relationship of the activity to the shoreline; and
   d. Proposed provision for public visual or physical access to the shoreline.

2. Commercial resorts and campgrounds shall provide adequate access to water areas for their patrons and adequate on-site recreation facilities so that such resorts and campgrounds will not be dependent on nor place undue burdens on public recreational facilities.

3. The draining or filling of water bodies or natural wetlands for commercial developments shall not be permitted except as a conditional use associated with a water-dependent use.

4. Only those commercial uses which are water-dependent, such as boat fueling stations, shall be permitted to be located over the water.

5. All structures shall be set back a safe distance behind the tops of feeder bluffs.

6. Parking areas associated with commercial developments shall be subject to the policies and regulations of SJCC 18.60.120, 20.090, Parking, and 18.50.340, Transportation facilities.

7. Commercial uses, including Pports and marinas, with the potential to release toxic substances into the aquatic designation shall be equipped to contain and clean up oil, gasoline, and other polluting spills.
8. Drainage and surface runoff from commercial areas shall be controlled so that pollutants will not be carried into water bodies.

79. Signs associated with commercial developments shall comply with the policies and general regulations of SJCC 18.40.370 through 18.40.400 and SJCC 18.50.120.

840. The Director shall determine whether the processing of agricultural or aquacultural products for sale constitutes commercial or industrial development on the basis of intensity of offsite impacts. The processing of agricultural and aquacultural products for sale constitutes commercial or industrial development, as determined by the administrator. Provisions for the sale of such processed aquacultural or agricultural products constitutes commercial development.

944. Where a commercial use is proposed to be located on land in public ownership, public access shall be required.

104. Commercial development shall not result in a net loss of shoreline ecological functions or adversely impact other shoreline uses, resources and values such as navigation, recreation and public access. Impacts to shoreline resources and values by commercial development or uses must be mitigated by public access and ecological restoration unless such improvements are demonstrated to be infeasible or inappropriate.

112. Nonwater-oriented commercial uses on the shoreline are prohibited unless they meet the following criteria:
   a. The use provides a benefit with respect to the objectives of the Shoreline Management Act such as providing public access and ecological restoration, and
   b. The use is part of a mixed-use project, or
   c. Navigability is severely limited at the site.

B. Regulations by Designation Environment.

1. Urban. Commercial development shall be permitted in the urban designation environment subject to the policies and regulations of this SMP. Except as provided for in subsection (A)(4) of this section, commercial structures and facilities shall be set back at least 50 feet from the OHWM unless otherwise provided for by conditional use.

2. Rural. Commercial development which will not significantly alter the character of the area shall be permitted in the rural designation environment only by conditional use and subject to the policies and regulations contained in this SMP. Such development would include, but not necessarily be limited to, farm produce sales, activities directly related to the commercial fishing industry, small campgrounds, and other low intensity recreational facilities. All other commercial development shall be permitted by conditional use only. Except as provided for in subsection (A)(4) of this section, all commercial structures and facilities shall be set back at least 100 feet from the OHWM unless otherwise provided for by conditional use.
3. **Rural Residential and Rural Farm-Forest.** Commercial development is prohibited, except that the alteration, modification or expansion of small resorts, camps or commercial facilities associated with a commercial marina, lawfully existing prior to the effective date of the 2013 SMP this code, may be allowed subject to the policies and regulations of this SMP.

4. **Conservancy.**
   a. Commercial development which is of a low intensity, recreational nature and which will not significantly alter the character of the area shall be permitted in the conservancy designation environment subject to the policies and regulations contained in this master program. Other low intensity commercial uses may be permitted as conditional uses.
   b. Any commercial structure permitted in a conservancy designation environment shall be set back at least 100 feet from the OHWM; provided, that structures which are shoreline dependent may be exempted from this provision.

5. **Natural.** Commercial development shall not be permitted in the natural designation environment.

6. **Aquatic.** Commercial development of a shoreline dependent nature shall be permitted in the aquatic designation environment subject to the policies and regulations of this code and to the regulations by designation environment applicable SMP to the abutting upland area. Where the proposed commercial development site abuts more than one upland designation environment the policies and regulations of the most restrictive abutting designation environment shall govern.

7. **Ports, Marinas and Transportation.** New commercial developments shall be water dependent or water related. All projects must, where appropriate, provide a form of public access to the shoreline.

8. **Eastsound Urban.** Same as urban, except as provided for in the Eastsound Waterfront Access Plan (EWAP), (Resolution 29–1996) Figure 130–6, commercial structures and facilities shall adhere to the setbacks and building envelopes provided for in the waterfront access plan. All existing uses and structures subject to the EWAP are deemed conforming development because of the physical and visual access provided through the EWAP, pursuant to SJCC 18.50.100. All allowable uses listed in the village commercial designation of the Eastsound Subarea Plan are permitted within this designation, in accordance with the terms of the EWAP.

9. **Eastsound Residential.** The only commercial uses allowed within the Eastsound residential shoreline environment shall be limited to those uses listed as allowable uses in the Eastsound residential one-half and two acre district, SJCC 16.55.240(2), subject to the policies and regulations of this SMP. Other commercial uses shall be prohibited.

9. **Eastsound Marina District.** Same as urban; provided, that new commercial uses which are not water-dependent or water-related should plan for appropriate
public access to the shoreline. Otherwise allowable uses are not required to
grant public access as a condition of any permit approval.

10. **Eastsound Conservancy.** Same as conservancy; provided, that the use(s)
proposed are also allowable uses under the adjoining upland designation(s)
established in the Eastsound Subarea Plan, Chapter 16.55 SJCC.

11. **Eastsound Natural.** Same as natural.

12. **Shaw Rural.** The following uses shall be prohibited: commercial recreational
facilities; commercial transient accommodations by themselves or in combination
with any other commercial use; food service facilities; and transient moorage
facilities.

The County park is not a commercial use. Any expansion, modification, or
intensification of the County park shall be subject to the applicable provisions and
permit requirements of this SMP and the Shaw Island Subarea Plan.

Commercial development not otherwise prohibited shall be permitted subject to
the policies and regulations of this SMP and the Shaw Island Subarea Plan,
unless otherwise provided for by conditional use. Only allowable water-
dependent uses may be located within 200 feet of the OHWM unless otherwise
authorized by conditional use.

13. **Shaw Rural Farm-Forest.** Same as Shaw rural.

14. **Shaw Conservancy.** Same as Shaw rural farm-forest, except that commercial
structures and facilities shall be set back at least 100 feet from the OHWM
except as provided for in subsection (A)(4) of this section, or unless otherwise
provided for by conditional use.

15. **Shaw Natural.** Commercial development shall not be permitted in the Shaw
natural environment. (Ord. 21–2002 § 6; Ord. 2–1998 Exh. B § 5.5.7)

18.50.250 Industrial development.

A. General Regulations.

1. New non-water-oriented industry is prohibited in all shoreline designations
environments.

2. Proposed industrial developments must be consistent with any applicable
comprehensive waterfront or subarea plans.

3. Only water-dependent and water-related industries are permitted within the
shoreline jurisdiction. They must be consistent with or compatible with existing
use of neighboring shoreline areas.

4. Accessory development which does not require a shoreline location must be
located upland of the water-dependent portions of the development and setback
from the OHWM. This category of development includes parking, warehousing,
open air storage, waste storage and treatment, storm water runoff control
facilities, utilities, and land transportation.

5. Existing industrial development on shorelines which is neither water-dependent
nor water-related may be permitted as a conditional use to expand inland from
existing structures but not parallel to or waterward of the OHWM. Waterward expansion of existing non-water-oriented industry is prohibited.

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

7. Storage or disposal of industrial wastes is prohibited within the shoreline jurisdiction.

8. At new or expanded industrial developments, the best available facilities practices and procedures must be employed for the safe handling of fuels and toxic or hazardous materials to prevent them from entering the water. Optimum means must be employed for prompt and effective clean-up of any spills that occur.

9. All exterior lighting must be designed and operated to minimize glare impacts to shall be energy-efficient and shielded or recessed so that direct glare and reflections are contained within the boundaries of the parcel. Exterior lighting shall be directed downward and away from adjoining properties and public rights-of-way. No lighting shall blink, flash, or be of unusually high intensity or brightness. nearby properties and local traffic.

10. The use of County shorelines for the processing of oil or for the handling of oil and oil products for other than local consumption shall be prohibited.

11. The installation of underwater cross-sound oil pipelines and over-water facilities for the refining of oil shall be prohibited.

12. All industrial uses and activities in shoreline jurisdictions shall be located, designed, constructed, and managed to ensure no net loss of shoreline ecological functions and processes.

13. Where an industrial use is proposed on public lands, public access to the waterfront must be provided.

B. Regulations by Designation Environment.

1. Urban. Water-dependent and water-related industrial uses may be permitted in the urban designation environment, subject to the policies and regulations contained in this SMP.

2. Rural. Water-dependent and water-related industrial uses may be permitted as conditional uses in the rural designation environment, subject to the policies and regulations contained in this SMP.

3. Rural Residential, Conservancy and Natural. Industrial uses are prohibited in these designations environments.

4. Rural Farm-Forest. Industrial uses other than water-dependent and water related uses directly related to the commercial fishing industry are prohibited in the rural farm-forest designation environment.

5. Aquatic. Industrial uses are prohibited in the aquatic designation environment except those uses that are water-dependent, subject to the policies and regulations of this SMP and to the regulations by designation environment.
applicable to the abutting shoreline area. Where the proposed development
would abut more than one shoreline designation environment, the policies and
regulations of the most restrictive abutting designation environment shall govern.

6. **Ports, Marinas and Transportation.** Marine fueling facilities and sewage pump
out facilities may be allowed. Any use with the potential for the release of toxic
substances into marine waters shall have adequate response equipment on site.

6. **Eastsound Urban.** Industrial uses are prohibited in the Eastsound urban
environment.

7. **Eastsound Residential, Eastsound Conservancy, and Eastsound Natural.**
Industrial uses are prohibited in these environments.

8. **Eastsound Marina District.** Marine fueling facilities and sewage pump-out
facilities may be allowed. All other industrial uses are prohibited.

9. **Shaw Rural and Shaw Rural Farm-Forest.** Industrial uses shall be allowed
subject to the policies and regulations of this SMP and to the provisions of the
Shaw Island Subarea Plan.

10. **Shaw Conservancy and Shaw Natural.** Industrial uses shall be prohibited in
these environments. (Ord. 2–1998 Exh. B § 5.5.10)

18.50.260 Institutional development.

A. **General Regulations.**

1. Applications for institutional development must include a detailed statement
explaining the nature and intensity of the water dependency or orientation of the
proposed activity. Such statement shall include at least the following:
   a. Nature of the institutional activity;
   b. Need for shoreline frontage;
   c. Proposed measures to enhance the relationship of the activity to the
      shoreline; and
   d. Proposed provision for public visual or physical access to the shoreline.

2. Proposed institutional developments shall be consistent with any applicable
comprehensive waterfront or subarea plans.

3. Only water-dependent and water-related institutional development shall be
permitted within shoreline jurisdiction. They shall be consistent or compatible with
existing use of neighboring shoreline areas.

4. Accessory development which does not require a shoreline location must be
located upland of the water-dependent portions of the development and setback
from the OHWM. This category includes parking, storage, waste storage and
treatment, storm runoff control facilities, utilities and land transportation.

5. Existing institutional development on shorelines which is neither water-dependent
nor water-related may be permitted as a conditional use to expand inland from
existing structures but not parallel to or waterward of the OHWM. Waterward
expansion of existing non-water-oriented institutions is prohibited.

B. **Regulations by Designation Environment.**
1. **Urban.** Institutional uses shall be allowed in the urban designation environment, subject to the policies and regulations contained in this SMP.

2. **Rural.** Institutional uses shall be allowed in the rural designation environment, subject to the policies and regulations contained in this SMP.

3. **Rural Residential.** Institutional uses are prohibited in the rural residential designation environment.

4. **Rural Farm-Forest.** Institutional uses are prohibited in the rural farm-forest designation environment.

5. **Conservancy.** Institutional uses shall be allowed as conditional uses in the conservancy designation environment, subject to the policies and regulations contained in this SMP.

6. **Natural.** Institutional uses are prohibited in the natural designation environment.

7. **Aquatic.** Institutional uses are prohibited in the aquatic designation environment, unless the use is water-dependent.

8. **Ports, Marinas and Transportation.** Institutional uses are subject to a shoreline conditional use permit if allowed in the adjoining uplands. All institutional uses are subject to the policies and regulations of the SMP.

9. **All Eastsound Environments.** Institutional uses are prohibited in all Eastsound environments unless the use in question is listed as an allowable use for the adjoining uplands. Uses so allowed are subject to the policies and regulations contained in this SMP.

10. **Shaw Rural and Shaw Rural Farm-Forest.** Institutional uses are allowed in these environments subject to the policies and regulations of this SMP and the provisions of the Shaw Island Subarea Plan.

18.50.320 Recreation.

A. General Regulations.

1. Recreational areas shall be designed to take optimum advantage of and to enhance the natural character of the shoreline area.

2. Recreational uses and facilities located within shoreline jurisdiction must include features that relate to access, enjoyment and use of the water and shorelines of the state. Accessory uses, such as restrooms, commercial services, access roads, and parking lots, must be located according to the following preferences:
   a. outside of shoreline jurisdiction, where feasible; or
   b. landward of water-oriented uses unless it can be shown that such facilities are essentially shoreline dependent.

3. Parking areas associated with shoreline recreational areas must be (a) located inland away from the water and beaches, (b) designed to control surface runoff, (bc) prevent the pollution of water bodies, and (cd) subject to the provisions of SJCC 18.50.090, Parking, and SJCC 18.50.340, Transportation facilities. Safe
access from parking areas to recreational areas shall be provided by means of walkways or other suitable facilities.

43. Land vehicles are prohibited on beaches, dunes, or fragile shoreline areas except as necessary for official maintenance activities for the protection of the public health or safety, or for the launching of boats at permitted marine railways and boat launches.

54. Intensive recreational development, including overnight camping areas and recreational vehicle or trailer parks, shall be permitted only where water supply, sewage, and solid waste disposal can be provided to meet public health regulations without adversely affecting the natural resources and features of the area.

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

76. Recreational facilities which normally require the use of large quantities of chemical fertilizers and herbicides, such as golf courses and playing fields, shall not be located on shoreline areas unless adequate provisions can be made for the protection of water areas from drainage and surface runoff.

87. Structures shall be set back a safe distance behind the tops of feeder bluffs. All recreational development in shoreline jurisdiction shall be located, designed, constructed, and managed to ensure no net loss of shoreline ecological functions and processes.

9. The location, design and operation of recreational facilities shall be consistent with the purpose of shoreline use designations in which they are allowed.

B. Regulations by Designation Environment.

1. **Urban.** Recreational uses shall be permitted in the urban designation environment, subject to the policies and regulations contained in this SMP.

2. **Rural.** Same as urban.

3. **Rural Residential and Rural Farm-Forest.** Recreational uses shall be permitted in these designations environments, subject to the policies and regulations contained in this master program and, except for public parks, only if the use is designed to serve a residential subdivision or multifamily development.

4. **Conservancy.** Recreational uses of a nature and intensity consistent with the objectives of the conservancy designation environment shall be permitted in that designation environment, subject to the policies and regulations contained in this SMP.

5. **Natural.** Recreational uses of a nature and intensity consistent with the objectives of the natural designation environment are permitted as a conditional use in this that designation environment, subject to the policies and regulations contained in this SMP. Such uses might include viewpoints and pedestrian trails. However, roads, camping areas, parking areas, restrooms, and similar facilities shall not be located within the shoreline. Golf courses, playing fields, and similar
large area uses shall not be permitted. The use of chemical fertilizers, pesticides, and herbicides shall be prohibited. Landscaping, where permitted, shall consist solely of non-toxic native vegetation.

6. **Aquatic.** Recreational uses shall be permitted in the aquatic designation environment, subject to the policies and regulations of this master program and to the regulations by designation environment applicable to the abutting shoreline area. Where the proposed recreational use would abut more than one shoreline designation environment, the policies and regulations of the most restrictive abutting designation environment shall govern.

7. **Ports, Marinas and Transportation.** Recreational use and development will not include facilities for overnight camping.

7. **Eastsound Urban, Eastsound Residential, Eastsound Conservancy, and Eastsound Natural.** Recreational use and development is limited to outdoor parks for public, passive recreational use and water access, without facilities for overnight camping.

8. **Eastsound Marina District.** Recreational use and development shall not include facilities for overnight camping.

9. **All Shaw Island Environments.** Recreational use and development shall be limited to outdoor parks for public, passive recreational use and water access, without commercial facilities for overnight camping. (Ord. 2–1998 Exh. B § 5.5.17)

18.50.340 Transportation facilities.

A. Regulations – General.

1. Transportation facilities located in shoreline areas must be designed and maintained to prevent erosion and to permit the natural movement of surface water.

2. The filling of wetlands for the construction of transportation facilities is not permitted unless it can be clearly shown that no feasible alternative exists and mitigation will ensure that there is no net loss of ecological functions and values.

3. All overburden, debris, and other waste material resulting from the construction of transportation facilities shall be disposed of in a fashion which will prevent their entry into any water body.

4. Excess construction materials shall be removed from the shoreline immediately following completion of the construction project.

5. Where appropriate, provisions for pedestrian access to or along the water shall be included in the plans for all new public transportation facilities.

6. Commercial watercraft and seaplane operations at public access points require a substantial development permit.

7. All transportation uses and activities in shoreline jurisdiction shall be located, designed, constructed, and managed to ensure no net loss of shoreline ecological functions and processes.
8. All transportation uses and activities in the shoreline jurisdiction shall not adversely impact existing or planned water-dependent uses.

B. Regulations – Roads (Public and Private).
1. Primary roads shall not be constructed in shoreline areas where an alternative upland alignment is feasible and practicable.
2. Primary roads which must be constructed through shoreline areas shall follow the shortest, most direct route possible, consistent with protection of the physical environment and the shore process corridor and its operating systems. New primary roads built in the shoreline shall be required to ensure there is no net loss of ecological functions and values.
3. Road alignments shall be designed to fit the topography so that alterations of the natural site conditions will be minimized.
4. Cut and fill slopes shall be stabilized and, where appropriate, planted with native vegetation.
5. Roadside brush shall be controlled by mechanical rather than chemical means.
6. Roads shall not be constructed on or seaward of a beach berm.
7. Roads shall be set back a safe distance behind the tops of feeder bluffs.
8. Drainage and surface runoff from roads and road construction or maintenance areas shall be controlled so that pollutants will not be carried into water bodies.

C. Regulations – Parking.
1. Parking areas shall not be located on shorelines unless it can be shown that the parking area is an essential accessory to a permitted use and that it could not feasibly be located on the upland site, and that it can be constructed ensuring no net loss of ecological functions and values. Innovative low impact storm water control and treatment techniques such as pervious pavements and rain gardens shall be considered as part of the application process. Parking areas designed to serve ferry terminals shall be permitted on the shorelines.
2. Parking facilities and accessory uses, such as restrooms, commercial services, and access roads must be located according to the following preferences:
   a. outside of shoreline jurisdiction, where feasible; or
   b. landward of water-oriented uses unless it can be shown that such facilities are essentially shoreline dependent.
3. Parking areas permitted on shorelines shall be located landward of the uses they are designed to serve, unless an alternative orientation would reduce the adverse impacts. Landscaping must consist of non-toxic native vegetation and be planted before completion of the parking area in such a manner that plantings provide effective screening within three years of project completion and through the lifespan maturity of the species. They shall be no larger than is absolutely necessary and, where appropriate, shall be screened from view.
4. Upland parking areas serving shoreline uses shall be linked to those uses by safe, pedestrian accesses.
54. Parking is prohibited over water.
5. Parking facilities shall be designed and landscaped to minimize adverse impacts to adjacent shorelines and properties. Landscaping shall consist of non-toxic native vegetation or species contained in an approved landscape plan. Vegetation shall be planted in the planting season prior to completion of the parking area. Plantings must provide effective screening within three years of project completion and through maturity of the species.
6. Parking facilities for shoreline activities must provide safe and convenient pedestrian circulation within the parking area and access to the shoreline.
7. Parking facilities are prohibited in the natural shoreline use designation.

D. Regulations – Airports, Airfields and Airstrips. Airports, airfields and airstrips are prohibited within the shoreline jurisdiction.

E. Regulations – Ferry Terminals.
1. Ferry terminals and their related parking areas shall be located, designed, and constructed to ensure there is no net loss of ecological functions and values minimize their impacts on shoreline natural resources and systems.
2. Subsection (B) of this section applies to ferry terminals.

F. Regulations – County Docks.
1. County docks shall be located only on islands served by County roads.
2. Overnight moorage shall not be allowed at County docks.
3. County docks shall be designed and located to ensure there is no net loss of ecological functions and values minimize impacts on the shoreline environment.

G. Regulations – Float Plane Facilities. (See the definition of “float plane” in Chapter 18.20 SJCC.)
1. Use of docks for scheduled commercial float plane service shall be allowed only in public or private marinas or established port areas and shall be subject to conditional use permit for float plane use.
2. Use of docks for regular float plane access or moorage shall be allowed only at public or private marinas or private community docks and shall be subject to a shoreline conditional use permit for float plane use.
3. Any shoreline conditional use permit for float plane use shall specify:
   a. Taxiing patterns to be used by float planes that will minimize noise impacts on area residents and wildlife and minimize interference with navigation and moorage;
   b. Fuel spill and oil spill clean-up materials and fire-fighting equipment commensurate with the size of the facility and use by float planes; and
   c. Hours of the day in which float plane access is allowed.
34. Float plane access shall be prohibited at County road ends, County parks, and at freshwater shorelines at the point where public shoreline access exists.

H. Regulations – Barge Landing Sites and Facilities.
1. Barge landing sites and facilities shall 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 shall have the burden of providing the information requested for subsections (A), (B), and (C) of this section, and shall provide this information in a manner prescribed by the administrator.

2. Barge landing sites and facilities shall be located, designed, constructed, and maintained in a manner which ensures no net loss of ecological functions and values in provides the least adverse impacts to the shoreline environment and which maximizes the opportunity to serve multiple users on a given island.

3. The development of a facility for barge landing, or the use of an unimproved shoreline area for a barge landing site, shall be subject to conditional use.

4. As part of the permit, consideration shall be given to barge landing schedules to minimize negative offsite impacts.

I. Regulations by Designation Environment.

1. Urban. Transportation facilities shall be permitted in the urban designation environment, subject to the policies and regulations contained in this master program.

2. Rural. Same as urban; provided, that barge landing sites and facilities shall only be allowed as a conditional use only on non-ferry-served islands if the site will serve multiple users on the island affected, subject to the policies and regulations of this SMP.

3. Rural Residential. Pedestrian trails shall be permitted in the rural residential. Roads shall be permitted where no feasible alternative exists. Barge landing sites and facilities are prohibited.

4. Rural Farm-Forest. Same as conservancy.

5. Conservancy. Pedestrian trails shall be permitted in the conservancy designation environment. Roads and parking areas serving permitted uses shall be permitted where no feasible alternative exists; ferry terminals may be permitted as conditional uses where it can be shown that no feasible alternative exists and that the public interest clearly would be better served by construction of the facility. Barge landing sites and facilities may be allowed in the conservancy designation environment only on non-ferry-served islands if the site will serve multiple users on the island affected, and the applicant demonstrates that conservancy shoreline ecological functions and values resources will not be materially harmed. Parking lots and other transportation facilities shall not be permitted.

6. Natural. Transportation facilities shall not be permitted in the natural designation environment; provided, that pedestrian or fire trails may be permitted if they would not significantly degrade the values which warrant the designation of the
7. **Aquatic.** Transportation facilities in the aquatic designation environment shall be limited to terminals serving waterborne traffic and essential crossings of shorelines by land-based facilities.

8. **Ports, Marinas and Transportation.** Public ports, docks, boat launch ramps, barge landing sites, parking areas and private marinas allowed subject to the provisions of this SMP and applicable state and federal requirements.

9. **All Eastsound Environments.** Public streets, driveways, and pedestrian paths shall be allowed in accordance with the Eastsound Subarea Plan. Parking areas serving other uses allowed in this environment shall be allowed, subject to the policies and regulations of this master program. Other transportation facilities are allowed by conditional use.

9. **Shaw Rural.** Same as rural.

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

11. **Shaw Conservancy.** Same as conservancy.

12. **Shaw Natural.** Same as natural. (Res. 64–2001; Ord. 10–2000; Ord. 2–1998 Exh. B § 5.5.19)

18.50.350 Utilities.

A. Regulations – General.

1. In shoreline areas, utility transmission lines, pipelines, and cables must be placed underground unless demonstrated to be infeasible. Further, such lines must utilize existing rights-of-way whenever possible. Proposals for new corridors in shoreline areas involving water crossings must fully substantiate the infeasibility of existing routes.

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

3. Sites disturbed for utility installation must be stabilized during and following construction to avoid adverse impacts from erosion.

4. Immediately following the completion of utilities installation or maintenance projects on shorelines, disturbed areas must be restored to project configurations, replanted with native non-toxic local vegetation, and the vegetation maintained until it is firmly established.

5. Utility lines, pipes, stations, plants, and other apparatus shall not be installed in shoreline areas unless there is no feasible alternative.

6. Utility lines shall be installed underground. Desalination intake and discharge lines shall be located underground wherever feasible, except for that portion located underneath or along any docks, piers, walkways, stairs, or other shoreline improvements located on the site.
7. Underwater cables which must cross shorelines shall be installed underground from the water line to the tree line, unless otherwise authorized by the County. The County shall authorize variances from this regulation only for good cause.

8. Where installation of utility lines, pipes, or other apparatus in shoreline areas is approved, clearing shall be confined to that which is absolutely necessary to permit the installation and to prevent interference by vegetation once the system is in operation.

9. Where utility lines, pipes, or other apparatus must cross shoreline areas, they shall do so by the route which will cause the least damage to the shoreline aesthetics and ecological functions and values, both physically and visually.

10. Drainage and surface runoff from utility installation areas shall be controlled so that pollutants will not be carried into water bodies.

11. Applications for outfalls and underwater pipelines that transport substances harmful or potentially harmful to aquatic life or water quality shall not be approved unless the applicant has demonstrated that no significant adverse impacts will result. Desalination and reverse osmosis brine discharge is not considered to be potentially harmful to aquatic life or water quality provided all required County, state and federal requirements are met.

12. All utilities, uses and activities in shoreline jurisdiction shall be located, designed, constructed, and managed to ensure no net loss of shoreline ecological functions and processes.

B. Regulations – Desalination.

1. Desalination lines must be located along existing paths, trails, or connected to existing docks and beach access structures wherever feasible.

2. Desalination and reverse osmosis systems on shorelines that are known or demonstrated to be eroding bluffs, unstable bluffs, eroding beaches, or exposed cliffs, will require design and engineering that which will assure there is no net loss of ecological functions and values as well as no significant visual or environmental impacts will be created and that effects on the natural shoreline conditions will be minimized.

3. All desalination and reverse osmosis production equipment and necessary pumping equipment, utility connections, and pipelines must be located and designed to blend in with the natural surroundings to the extent feasible to reduce visual impacts. Existing vegetation and terrain features must be used whenever possible for screening.

4. Desalination and reverse osmosis facilities must not impede public access to public tidelands or materially interfere with normal public use of public waters.

5. Desalination and reverse osmosis systems are will not be allowed for the purposes of providing the primary water supply within new subdivisions and short subdivisions. Such facilities may be allowed for the purpose of supplying water for an established community water system.

6. Desalination intake and discharge lines shall be located underground wherever feasible, except for that portion located underneath or along any docks, piers,
walkways, stairs, or other shoreline improvements located on the site.

7. Desalination and reverse osmosis brine discharge is not considered to be potentially harmful to aquatic life or water quality provided all required state and federal requirements are met.

7. Desalination facilities producing more than 33,000 gallons of potable water per day shall not be permitted unless a detailed assessment of the conditions of the site and an analysis of the potential impacts of the project are completed. The study must show how the project will ensure that there is no net loss of shoreline ecological functions and values.

8. As part of the permit application, new desalination facilities applications must show the number, capacity and location of current desalination facilities within a half mile radius. In areas with poor mixing, such as embayments, the applicant must show that the development will not result in a net loss of shoreline ecological values.

9. All desalination and reverse osmosis installations shall comply with the following regulations:
   a. The intake and discharge lines must be trenched, run, or located together except where necessary to provide adequate separation between intake and discharged water.
   b. The intake and discharge lines must be engineered so as to not materially interfere with normal public use of public tidelands or navigation. The intake point shall not float on the surface.
   c. Intake and discharge lines must not be placed through or over any known or discovered archaeological resources, unless the location is approved by the Washington Office of Archaeology and Historic Preservation.
   d. The use of existing wells with salt water contamination or intrusion as the intake source for desalination or reverse osmosis systems is prohibited unless specifically authorized by the County department of health and community services.
   e. The use of pre-filtration beach wells located landward of the line of mean lower low water is prohibited, allowed provided all state and federal requirements are met.
   f. When the construction is completed shoreline must be replanted with non-toxic native species.

10. All desalination projects in shoreline jurisdiction shall be located, designed, constructed, and managed to ensure no net loss of shoreline ecological functions and processes.

C. Regulation by Designation Environment.
   1. Urban. Utility facilities shall be permitted in the urban designation environment subject to the policies and regulations contained in this master program.
   2. Rural, Rural Residential, and Rural Farm-Forest. Same as urban.
3. **Conservancy.** Utility transmission, distribution, or collection facilities are permitted in the conservancy designation environment subject to the policies and regulations contained in this master program; provided, that the applicant can demonstrate that no feasible alternative exists, and that the utility line shall follow a route which will minimize the adverse impacts on the physical and visual resources of the area. Desalination and reverse osmosis systems shall be permitted in the conservancy designation environment subject to the policies and general regulations contained in this master program.

4. **Natural.** Utility facilities shall not be permitted in the natural designation environment; provided, that facilities which must cross the shoreline in order to cross a water body may be installed, subject to the policies and regulations contained in this master program, if no feasible alternative location exists and if the facility is installed underground. Desalination and reverse osmosis systems shall be permitted as a conditional use in the natural designation environment only for a single-family residence, subject to the policies and general regulations contained in this master program and only if serving a use allowed in the natural designation environment.

5. **Aquatic.** Utility transmission and collection facilities shall be permitted in the aquatic designation environment subject to the policies and regulations contained in this master program; provided, that no feasible alternative exists. Desalination and reverse osmosis systems shall be permitted in the aquatic designation environment subject to the policies and general regulations contained in this master program.

6. **Ports, Marinas and Transportation.** Utility development necessary to serve other uses allowed in the designation shall be allowed.

6. **Eastsound Urban.** Utility service offices and distribution facilities shall be allowed only on nonwaterfront parcels. Commercial radio, television, and telecommunications broadcast and relay towers are prohibited. No other utility development is allowed except as necessary to provide utilities to other uses allowed in this environment. Desalination and reverse osmosis systems shall be permitted in the Eastsound urban environment.

7. **Eastsound Residential, Eastsound Marina, Eastsound Conservancy, and Eastsound Natural.** Utility development necessary to serve other uses allowed in these environments shall be allowed. Other utility development shall be prohibited. Desalination and reverse osmosis systems shall be permitted in these environments.

8. **Shaw Rural.** Same as rural.

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

10. **Shaw Conservancy.** Same as conservancy.

11. **Shaw Natural.** Same as natural. (Ord. 2–1998 Exh. B § 5.5.20)
18.80.110 Shoreline permit and exemption procedures.

A. Purpose and Applicability.

1. This section includes the procedures necessary to ensure that the provisions of the Shoreline Master Program (Element 3 of the Comprehensive Plan and Chapter 18.50 SJCC) are implemented and enforced, and to ensure that all persons affected by the master program are treated in a fair and equitable manner.

2. This section applies to all lands and waters within the jurisdiction of the master program and to all persons and agencies as described in Chapter 18.50 SJCC.

3. The following are referred to as “shoreline permits” and are subject to this review process:

   a. Shoreline substantial development permits.

   b. Shoreline conditional use permits, which include:

      i. Uses which are permitted under the provisions of the master program only as conditional uses;

      ii. The expansion of nonconforming uses; and

      iii. Uses which are unnamed or not contemplated in the master program.

   c. Shoreline variances.

B. Notice of Application for Shoreline Permit.

1. Notice of application and public hearing is required for shoreline permit applications as provided in SJCC 18.80.030 and 18.30.040.

2. The Director administrator shall submit notice of shoreline permit applications to the appropriate subcommittee (by commissioner district) of the planning commission.

3. Applications for shoreline permits shall be circulated to the director of the University of Washington Friday Harbor Laboratories for comment as a reviewing agency.

C. Administrative Responsibilities. The Director administrator’s responsibilities are set forth in SJCC 18.50.010(E).
D. Consolidated Permit Processing.

1. For a proposal that involves two or more shoreline permits and/or other project permits, such applications shall be consolidated under the “highest” procedure (i.e., the right-most applicable column in Table 8.1) required for such permits or processed individually under each of the procedures identified by this code. The applicant may request the consolidation of hearings with other local, state, regional, federal or other agencies in accordance with RCW 36.70B.090 and 36.70B.110. (See also SJCC 18.80.020(B)(2), Consolidated Permit Processing, and SJCC 18.80.140(H), Consolidated Appeal Hearings.)

2. The decisionmaker shall provide copies of the findings of facts for all shoreline permits handled in accordance with this section to the County Commissioners and the planning commission.

E. Decisionmaking Authority. The hearing examiner has authority to take the following actions:

1. Based upon the criteria in subsection (H) of this section, hear and issue or deny shoreline permits following receipt of the recommendations of the Director administrator, and to impose conditions of approval on such permits; and

2. Grant or deny variances from the provisions of the master program according to the criteria and procedures provided in subsection (I) of this section.

F. Exemptions from Need for Shoreline Substantial Development Permit.

1. Any person proposing development within the shorelines of the County shall request an administrative determination from the Director administrator as to whether or not the proposal is exempt from the need for a shoreline substantial development permit. The burden of proving that a proposal is exempt from the need to obtain a shoreline substantial development permit shall be on the person seeking the exemption.

2. Developments that which are exempt from the need to obtain a shoreline substantial development permit are set forth in WAC 173–27–040 and SJCC 18.50.020(F) and (G). In making this determination, the Director administrator shall consider the ultimate scope of a development and the extent to which the development is consistent with the policies and regulations of the SMA and master program. The Director administrator may request additional information from the applicant and may make site inspections, if necessary. A use classified as a conditional use or a use not named or contemplated in this chapter is allowed only as a conditional use and is ineligible for shoreline permit exemption.

3. If a proposal is exempt from the need to obtain a shoreline substantial development permit the Director administrator shall so note in the development or project permit, if any, approved in conjunction with the proposal. If a
development or project permit is not required for the proposal, the Director administrator may issue an administrative determination so stating.

4. The Director administrator may request additional information from the applicant and may make site inspections before determining if a proposal is exempt from the need to obtain a shoreline substantial development permit.

4. The burden of proving that a proposal is exempt from the need to obtain a shoreline substantial development permit shall be on the person seeking the exemption.

5. Any person proposing development within the shorelines of the County may request an administrative determination from the Director administrator as to whether or not the proposal is exempt from the need for a shoreline substantial development permit.

5. A copy of the any such administrative determination shall be mailed to the applicant and to the Washington Department of Ecology.

6. An administrative determination shall be prepared in the format described in WAC 173–27–050 for a proposal which is exempt from shoreline substantial development permit requirements under Chapter 18.50 SJCC whenever:

   a. A U.S. Army Corps of Engineers Section 10 permit under the Rivers and Harbors Act of 1899 is required for the project (see WAC 173–27–050(1)(a));

   b. A section 404 permit is required under the Federal Water Pollution Control Act of 1972 (see WAC 173–27–050(1)(b)).

G. Shoreline Permits—Administrative Actions.

1. The Director administrator shall review shoreline permit applications, and building permit applications that also require a shoreline permit, for consistency with the policies and regulations of the master program, and report the results of this review and determination to the hearing examiner. In making this determination, the Director administrator shall consider the ultimate scope of a development and the extent to which the development is consistent with the policies and regulations of the SMA and master program. The Director administrator may request additional information from the applicant and may make site inspections, if necessary.

2. The Director administrator shall not issue a building permit for development that is subject to shoreline permit requirements until a shoreline permit has been granted. Any building permit issued for such development shall be subject to the conditions attached to approval for the shoreline permit.
3. In granting a shoreline permit, the hearing examiner may attach such conditions as deemed necessary to ensure that the development will be consistent with the master program and other applicable provisions of this code. The examiner shall also prepare findings of fact and conclusions of law.

4. In approving shoreline conditional use permits, the hearing examiner is authorized, on a case-by-case basis, to impose any special conditions or standards which are reasonable and necessary to enable a proposed conditional use to satisfy the criteria established in subsection (J) of this section.

5. Filing with the Washington Department of Ecology (WDOE). Within eight days of the final decision, the Director administrator will file with WDOE copies of the permit application and other pertinent materials used in the final decision pursuant to either Chapters 43.21C or 90.58 RCW, the permit, and any other written evidence of the final order of the hearing examiner relative to the application. Filing shall not be complete until the materials have actually been received by the WDOE. For shoreline conditional use permits or shoreline variances, the date of filing of the County decision shall begin the period for WDOE review and final permit decision as described in subsection (L) of this section.

6. If no final action is taken on a shoreline permit application one year from the date of filing of the application due to inaction by the applicant, the application shall expire and be considered void. A new application and fees shall be required for continuation of the permit process.

7. Construction or substantial progress toward construction of a project for which a shoreline permit is granted must be undertaken within two years after the permit approval. Substantial progress toward construction shall include the letting of bids, making of contracts, purchase of materials involved, utility installation and site preparation, but shall not include use or development inconsistent with the master program or the terms of permit approval. However, the two-year period shall not include time during which development could not proceed due to reasonable related administrative appeals or litigation, nor include time necessary to obtain other required permits for the project from state and federal agencies. The hearing examiner may, with discretion, extend the two-year time period for a reasonable time.

8. Unless specified otherwise in permit conditions, all development authorized by a shoreline permit shall be completed within five years of the date of permit approval or the permit shall become null and void. A permittee may request a
time extension before the permit expires by making a written request to the Director administrator, stating the reasons. The hearing examiner will review the permit, and upon a finding of good cause:

   a. Extend the permit for one year; or
   b. Terminate the permit.

However, nothing in this section shall preclude the hearing examiner from issuing shoreline permits with a fixed termination date of less than five years.

**H. Criteria for Approval of Substantial Development Permits.** A shoreline substantial development permit shall be granted by the County only when the applicant meets his burden of proving that the proposal is:

1. Consistent with the policies of the Shoreline Management Act and its implementing regulations, Chapter 90.58 RCW and Chapter 173–27 WAC, as amended;
2. Consistent with the policies and regulations of the Shoreline Master Program in Chapter 18.50 SJCC;
3. Consistent with this chapter;
4. Consistent with the applicable sections of this code (e.g., Chapter 18.60 SJCC);
5. Consistent with the goals and policies of the Comprehensive Plan; and

All conditions specified by the hearing examiner to make the proposal consistent with the master program and to mitigate or avoid adverse impacts to shoreline ecological functions and values are attached to the permit.

**I. Shoreline Variances.**

1. **General.** The purpose of a variance is strictly limited to granting relief from specific bulk, dimensional, or performance standards set forth in the master program where there are extraordinary or unique circumstances related to the property such that the strict implementation of the master program will impose unnecessary hardships on the applicant or thwart the policies set forth in RCW 90.58.020.

2. **Other Local Regulations.** Variances or exemptions granted from the provisions of other local regulations shall not be construed to constitute variances from the provisions of the Shoreline Master Program.
3. **Criteria for Approval of Shoreline Variances.** Variances from the provisions of the Shoreline Master Program may be granted when the applicant has proved that the following criteria have been met:

a. Variances for development that will be located landward of the ordinary high water mark (OHWM), as defined in RCW 90.58.030(2)(b), except within those areas designated as wetlands pursuant to Chapter 173–22 WAC, may be authorized; provided, the applicant can demonstrate all of the following:

i. That the strict application of the bulk, dimensional, or performance standards set forth in the applicable master program precludes or significantly interferes with a reasonable use of the property not otherwise prohibited by the master program. The fact that a greater profit might result from using the property in a manner contrary to the intent of the Shoreline Master Program is not sufficient reason for granting a variance;

ii. That the hardship described in this section is specifically related to the property and is the result of unique conditions such as irregular lot shape, size, or natural features, and the application of the Shoreline Master Program, and not, for example, from deed restrictions or the applicant’s own actions;

iii. That the design of the project is compatible with other permitted activities in the area and will not cause adverse effects to adjacent properties or the shoreline ecological functions and values environment;

iv. That the requested variance does not constitute a grant of special privilege not enjoyed by the other properties in the area, and is the minimum necessary to afford relief; and

v. That the public interest will suffer no substantial detrimental effect.

b. Variances for development that will be located either waterward of the ordinary high water mark (OHWM), as defined in RCW 90.58.030(2)(b), or within wetlands as designated under Chapter 173–22 WAC, may be authorized provided the applicant can demonstrate all of the following:

i. Strict application of the bulk, dimensional, or performance standards set forth in the master program precludes a reasonable use of the property not otherwise prohibited by the master program;

ii. Proposal is consistent with the criteria established under subsection (I)(3)(a)(ii) through (v) of this section; and
iii. Public rights of navigation and use of the shorelines will not be adversely affected.

c. In the granting of shoreline variances, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if variances were granted to other developments in the area where similar circumstances exist, the total of the variances shall also remain consistent with the policies of RCW 90.58.020 and shall not produce substantial adverse effects to the shoreline ecological functions and values environment.

d. Requests for varying the use to which a shoreline area is to be put are not requests for variances, but rather requests for conditional uses. Such requests shall be evaluated using the criteria set forth in subsection (J) of this section. Variances from the use regulations are prohibited.

e. Filing of variances with and review by the Washington Department of Ecology are described in subsection (L) of this section.

J. Shoreline Conditional Use Permits.

1. General. The purpose of a shoreline conditional use permit is to allow greater flexibility in application of the use regulations of the Shoreline Master Program in a manner consistent with the policies of RCW 90.58.020. Shoreline conditional use permits should also be granted in circumstances where denial of the permit would thwart the policy enumerated in RCW 90.58.020. By providing for the control of undesirable impacts through the application of special conditions, the scope of uses within each of the designations of the master program can be expanded to include many additional uses. Activities classified as shoreline conditional uses shall therefore be permitted only when the applicant also demonstrates that the proposed use will be compatible with the goals and policies of the SMP and the permitted uses within the same area.

Shoreline conditional uses include the following:

a. Uses which are permitted under the provisions of the Shoreline Master Program only as conditional uses;

b. The expansion of nonconforming uses; and

c. Uses which are unnamed or not contemplated in the Shoreline Master Program.
2. Uses which are specifically prohibited by the Shoreline Master Program shall not be authorized through a conditional use permit.

3. **Other Local Regulations.** Conditional use permits granted under other sections of this code shall not be construed to constitute approval of a shoreline conditional use.

4. **Criteria for Approval of Shoreline Conditional Uses.** Uses which are classified or set forth in the Shoreline Master Program as conditional uses may be authorized by the County provided the applicant can demonstrate all of the following:
   a. The proposed use is consistent with the policies of RCW 90.58.020 and the policies of the Shoreline Master Program;
   b. The proposed use will not interfere with the normal public use of public shorelines;
   c. The proposed use of the site and design of the project is compatible with other permitted uses within the area;
   d. The proposed use will cause no unreasonably adverse effects to the shoreline designation environment in which it is to be located;
   e. The cumulative impacts of additional requests for like actions in the area, or for other locations where similar circumstances exist, shall not produce substantial adverse effects to the shoreline ecological functions and values environment, e.g., the total of the conditional uses shall remain consistent with the policies of RCW 90.58.020 and the Shoreline Master Program; and
   f. The public interest will suffer no substantial detrimental effect.

5. Other uses which are not classified or set forth in the Shoreline Master Program may be authorized as conditional uses provided the applicant can demonstrate consistency with the criteria set forth in WAC 173–27–160(1), and this subsection.

6. Filing of shoreline conditional use permits with and review by the Washington Department of Ecology are described in subsection (L) of this section.

**K. Nonconforming Uses.** Any nonconforming structure or use under the jurisdiction of the Shoreline Master Program (Chapter 18.50 SJCC) shall be subject to the
nonconforming use provisions in WAC 173–27–080, and the applicable procedures of Chapter 18.50 SJCC and this section. (See also SJCC 18.40.310 and 18.80.120.)

L. Washington Department of Ecology Review. As required by state law (RCW 90.58.140(10), shoreline variances and shoreline conditional use permits are subject to review by the Washington Department of Ecology for its approval or disapproval. Upon approval or denial of shoreline variances or conditional use permits by the hearing examiner or board of County Council commissioners, a copy of the final order and application shall be mailed to the Washington Department of Ecology within five days of such action. Construction pursuant to the permit shall not begin and is not authorized until 21 days from the date of filing as defined in RCW 90.58.140(6) and WAC 173–27–130 or until all review proceedings initiated within 21 days from the date of such filing have been terminated; except as provided in RCW 90.58.140.

M. Procedures for Revisions to Shoreline Permits. When an applicant seeks to revise a shoreline permit, an application in a form prescribed by the Director together with detailed plans and text describing the proposed changes shall be filed with the Director. The Director will determine whether the proposed changes are within the scope and intent of the original permit and are consistent with the San Juan County SMP and the SMA.

Proposed revisions are within the scope and intent of the original if all the following conditions are met:

(a) No additional over water construction is involved except that pier, dock, or float construction may be increased by five hundred square feet or ten percent from the provisions of the original permit, whichever is less;
(b) Ground area coverage and height may be increased a maximum of ten percent from the provisions of the original permit;
(c) The revised permit does not authorize development to exceed height, lot coverage, setback, or any other requirements of the applicable master program except as authorized under a variance granted as the original permit or a part thereof;
(d) Additional or revised landscaping is consistent with any conditions attached to the original permit and with the applicable master program;
(e) The use authorized pursuant to the original permit is not changed; and
(f) No adverse environmental impact will be caused by the project revision.

If the proposed revision cannot meet any one of the above criteria, the Director shall schedule a public hearing on the request.
1. The Director administrator shall ensure that notice of the hearing is published in a newspaper of general circulation within the County prior to the hearing. The Director administrator shall submit to the hearing examiner all of the written documents referred to above. At the beginning of the hearing, the recommendation of the Director administrator shall be read into the record.

2. If the hearing examiner determines that the proposed changes are within the scope and intent of the original permit, as defined by WAC 173–27–100(2), the revision shall be granted.

3. If the hearing examiner determines that the proposed changes are not within the scope and intent of the original permit, then the applicant must apply for a new shoreline permit.

4. Any permit revision approved by the hearing examiner shall become effective immediately. Within eight days of the hearing examiner's action, the approved revision shall be submitted to the Washington Department of Ecology. In addition, the Director administrator shall submit a copy of the examiner's decision to all parties of record to the original permit action.

5. Appeals shall be in accordance with WAC 173–27–220 and SJCC 18.80.140.

N. Rescission of Shoreline Permits. Any shoreline permit may be rescinded by the hearing examiner pursuant to RCW 90.58.140(8) upon the finding that the permittee has failed to comply with the terms and conditions thereof. In the event that the permittee is denied a required sewage disposal, building, or other permit necessary for the project in question, the shoreline permit may be rescinded by the hearing examiner. In the event a shoreline permit is rescinded by the hearing examiner, the permittee shall be notified by certified mail. Copies of the examiner's final action shall be filed with the Washington Department of Ecology.

Q. Appeals.

1. The BOCC has authority to hear and decide appeals from decisions of the hearing examiner on shoreline permit applications as provided in SJCC 18.80.140.

2. Any person aggrieved by a BOCC action granting, denying, or rescinding a permit for a use or development on the shorelines of the state pursuant to RCW 90.58.140 may seek review as provided by law.
**OP. Effects on Property Values.** As provided for in RCW 90.58.290, the restrictions imposed upon the use of real property through the implementation of the policies and regulations of the SMA and the master program shall be duly considered by the County assessor and the County board of equalization in establishing the fair market value of such properties. (Ord. 15–2002 § 11; Ord. 4–2001 § 4; Ord. 2–1998 Exh. B § 8.11)
### Use and Modifications Matrix

The chart is coded according to the following legend.

- **SD/E** = Permitted, may be subject to Shoreline Substantial Development Permit or shoreline exemption requirements
- **C** = Conditional Use Permit
- **No** = Prohibited; the use is not eligible for a Variance or Conditional Use Permit
- **UPLD** = Same as adjacent upland designation
- **--** = Not applicable
- ***** = See appropriate text

<table>
<thead>
<tr>
<th>Natural</th>
<th>Conservancy</th>
<th>Rural</th>
<th>Rural Farm-Forest</th>
<th>Rural Residential</th>
<th>Urban</th>
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#### Agriculture

- General aquaculture
- Non-commercial freshwater hatcheries
- Net-pens
- Commercial geoduck aquaculture

#### Aquaculture

- Marina
- Community or public dock
- Single-family or joint-use dock
- Recreation float
- Community, commercial or public boat launch
- Private residential boat launch (motorized, paved)
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Planning Commission SMP Regulation Workshop #1
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