

CITY OF STANWOOD
Stanwood, Washington

ORDINANCE NO. 1322

AN ORDINANCE OF THE CITY OF STANWOOD, WASHINGTON, ADOPTING THE UPDATED SHORELINE MASTER PROGRAM FOR THE CITY OF STANWOOD BY AMENDING THE CITY OF STANWOOD COMPREHENSIVE PLAN TO ADOPT A NEW SECTION TEN, SHORELINE MANAGEMENT ELEMENT, AMENDING STANWOOD MUNICIPAL CODE TITLE 17 ZONING CHAPTER 17.20 CONSTRUCTION OF LANGUAGE- DEFINITIONS, AMENDING SMC TITLE 17 ZONING CHAPTER 17.114 CRITICAL AREAS GENERAL STANDARDS, AMENDING CHAPTER 17.125 CRITICAL AREAS WETLANDS, AMENDING CHAPTER 17.130 FISH AND WILDLIFE HABITAT CONSERVATION AREAS, AMENDING SMC TITLE 17 ZONING CHAPTER 17.150 SHORELINE MANAGEMENT STANDARDS AND AMENDING BY REFERENCE CHAPTER 17.115 CRITICAL AREAS – GEOLOGICALLY HAZARDOUS AREAS – SPECIFIC STANDARDS, CHAPTER 17.135 CRITICAL AREAS – CRITICAL AQUIFER RECHARGE AREAS – SPECIFIC STANDARDS AND CHAPTER 17.120 CRITICAL AREAS – FREQUENTLY FLOODED AREAS – SPECIFIC STANDARDS

WHEREAS, The City of Stanwood recognizes that the shorelines of the state are among the most valuable and fragile of its natural resources and that there is great concern throughout the state relating to their utilization, protection, restoration, and preservation; and

WHEREAS, The City recognizes that that ever increasing pressures of additional uses are being placed on the shorelines necessitating increased coordination in the management and development of the shorelines of the state; and

WHEREAS, The City initiated a Shoreline Master Program work program in 2009 to begin the process of updating its existing shoreline regulations in compliance with the Revised Code of Washington (RCW) Chapter 98.50, and the Washington Administrative Code (WAC) Chapters 173-26 and 173-27; and

WHEREAS, The City received a grant to fund the Shoreline Master Program Update from the Department of Ecology and entered into a Grant Agreement with the Department on July 1st 2009 for Project G1000055; and

WHEREAS, The City issued a Determination of Non-Significance (DNS) May 12, 2012 pursuant to the State Environmental Policy Act (SEPA) for the proposed SMP update; and

WHEREAS, Pursuant to RCW 36.70A.106 a Notice of Proposed Amendment of the SMP was submitted to the state Department of Commerce and circulated to agencies and the public; and

WHEREAS, The SMA states the local government and Ecology shall “not only invite but actively encourage participation” in SMP development; and

WHEREAS, The City has fulfilled this mandate by holding numerous Planning Commission and City Council workshop meetings and hearings as documented in the attached Exhibit A, Findings of Fact and Conclusions; and

WHEREAS, Whereas The Planning Commission held a Public Hearing May 21, 2012 and recommended adoption of the SMP to the City Council; and

WHEREAS, the City Council City Council held an additional Public Hearing August 9, 2012; and

WHEREAS, The Council finds that the process of the update and the content of the SMP fulfills the goals of Washington State Department of Ecology WAC guidance, as applied to the specific conditions in Stanwood, as summarized in 173-26-176(3); and

WHEREAS, Ecology provided comments on various aspects of the SMP update, all of which have been responded to, considered by the Planning Commission and City Council, and incorporated to the extent that they are consistent with City of Stanwood conditions, goals and policies.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF STANWOOD, WASHINGTON, DO HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The Findings of Fact and Conclusions attached hereto as Exhibit A are hereby incorporated by this reference.

SECTION 2. The City of Stanwood Comprehensive Plan is hereby amended to adopt a new Section Ten Shoreline Management Element to read as follows:

SECTION X – SHORELINE MANAGEMENT ELEMENT

Purpose / Introduction

The City of Stanwood recognizes the intent of the voters and the legislature of the state of Washington in adopting the "Shoreline Management Act of 1971" and adopts by reference the finding that the shorelines of the state are among the most valuable and fragile of its natural resources and that there is great concern throughout the state relating to their utilization, protection, restoration, and preservation. In addition it finds that ever increasing pressures of additional uses are being placed on the shorelines necessitating increased coordination in the management and development of the shorelines of the state.

The Act's paramount objectives are to protect and restore the valuable natural resources that shorelines represent and to plan for and foster all "reasonable and appropriate

uses" that are dependent upon a waterfront location or that offer opportunities for the public to enjoy the state's shorelines. With this clear mandate, the provisions of the SMA established a planning and regulatory program, which is initiated at the local level under state guidance.

This cooperative effort balances local and state-wide interests in the management and development of shoreline areas. Local governments are required to plan for shoreline development by developing local shoreline master programs (SMPs). They are also required to regulate such development through a shoreline permit system for substantial development projects.

Local government actions are monitored by the State of Washington Department of Ecology (WDOE), which approves new or amended SMPs, reviews substantial development permits, and approves conditional use permits and variances. The master program is essentially a shoreline comprehensive plan with a distinct orientation toward shoreline areas and customized to local circumstances. Collectively, the local master programs comprise the State Shoreline Master Program.

The City developed and adopted its first shoreline master program with the help of a citizen advisory group in 1976. The Master Program was subsequently amended several times during the intervening years. For the current comprehensive update the City has conducted a comprehensive inventory of the natural characteristics, present land uses, and patterns of ownership along the City's shoreline that provides a substantial information base for understanding ecological functions and other considerations for the development of this Master Program update. The City with the involvement of its local citizens, agencies, and interested parties has developed this Shoreline Master Program to serve as both a planning guide and resource for specific regulations pertaining to development and use of the shorelines in Stanwood. Included is a description of the goals, objectives, policies, environments, use regulations, and provisions for variances and conditional uses.

Shoreline Goals and Policies

Goal: Shoreline Use Element

SH1 Ensure appropriate conservation and development of Stanwood's shorelines by allowing those uses which are water dependent , as well as other development which provides an opportunity for a substantial number of people to enjoy the shorelines. This should be done in a manner which will achieve an orderly balance of shoreline uses that improve the quality of the environment.

Policies

- SH-1.1 Ensure that all uses and developments are as compatible as possible with the site, the surrounding area and the environment, provide restoration and do not result in a net loss of shoreline ecological functions.
- SH-1.2 Water-dependent and associated water-related uses are the highest priority for shorelines unless protection of the existing natural resource values of such areas precludes such uses.
- SH-1.3 Water-related and water-enjoyment uses that are compatible with ecological protection and restoration objectives are the second highest priority.
- SH-1.4 Limit non-water-oriented uses to those locations where access to the water is not provided or where the non-water-oriented use contributes to the objectives of the Act in providing ecological restoration and public access.

- SH-1.5 Reserve the shoreline areas for uses which allow optimal uses for future generations by recognition and of potential long term benefits to the public, and discouragement of short term gain or convenience.
- SH-1.6 Provide site development performance standards and other appropriate criteria to developers indicating minimal acceptable standards to be achieved.
- SH-1.7 Allow multiple use of shoreline areas where integration of compatible uses or activities is feasible.
- SH-1.8 Shoreline land and water areas which are particularly suited for specific and appropriate uses should be reserved for those uses.
- SH-1.9 Control uses not water dependent which permanently alter the shoreline, conflict with, or preempt other shoreline dependent uses.
- SH-1.10 Allow uses, on a specified interim basis, which are not shoreline related, if not permanent and if not requiring permanent modifications of natural shorelines.

Goal Shoreline Economic Development Element

- SH-2 Give priority to those industrial, commercial and recreational developments that are particularly dependent on their location on Stanwood's shoreline. Encourage development that will provide the public an opportunity to enjoy the shorelines. Minimal disruption of the natural environment is envisioned in the implementation of this goal. Permit expansion of existing industrial uses where necessary and feasible.

Policies

- SH-2.1 Modify the adverse effects of new commercial, industrial and recreational development upon the physical environment and natural processes, through careful siting and design.
- SH-2.2 Locate commercial and industrial development as infill in areas already developed as a first priority so long as such areas have not reached their functional capacity.
- SH-2.3 Locate new commercial, industrial and recreational activities in areas with existing public services as a second priority.
- SH-2.4 Provide maximum flood protection for City of Stanwood.

Goal Circulation Element

- SH-3 Develop safe, convenient and diversified shoreline circulation systems to assure efficient movement of goods and people with minimum disruptions to the shoreline environment and minimum conflict between the different users.

Policies

- SH-3.1 Locate and design major circulation systems well away from the shoreline, except for necessary crossings, so that natural shorelines remain substantially unmodified.
- SH-3.2 Encourage corridors for transportation and utilities when they must cross shorelines.
- SH-3.3 Encourage joint uses of any necessary roads.

SH-3.4 Encourage alternate modes of transportation such as pedestrian and bicycle to the shoreline.

Goal Restoration & Conservation Element

SH-4 Assure protection, preservation, and restoration of Stanwood's, fragile and scenic nonrenewable resources, while encouraging the best management practices to assure no net loss of shoreline ecological functions.

Policies

SH-4.1 Existing natural resources should be conserved through regulatory and non-regulatory means that may include:

- Implementation of the Comprehensive Plan, interlocal watershed plans, local development regulations, and state, tribal, and federal programs;
- Regulation of development within the shoreline jurisdiction;
- Ecologically sound design;
- Restoration programs; and
- Education programs.

SH-4.2 Provide for beneficial utilization of shoreline and floodplain related resources without harming other natural systems or the overall quality of the natural environment.

SH-4.3 Require the best management practices for the sustained yield of replenishable resources.

SH-4.4 Effectively manage natural features and resources as well as scenic vistas, parkways and habitats of rare or endangered species.

SH-4.5 Preserve the scenic and aesthetic qualities of shorelines, floodplain and vistas.

SH-4.6 Provide for restoration of degraded ecological functions both through appropriate regulations for non-water-dependent uses and as part of publicly funded restoration efforts.

Goal Public Access Element

SH-5 Ensure safe, convenient and diversified access for the public to the publicly owned shorelines of Stanwood and assure that the intrusions created by public access will recognize the rights of private property owners, and will not adversely affect fragile natural areas.

Policies

SH-5.1 Public access should be provided consistent with the existing character of the shoreline and with consideration of opportunities and constraints for physical and visual access, as well as consideration of ecological functions and public safety.

SH-5.2 Public access to and along the water's edge should be available throughout publicly owned shoreline areas although direct physical access to the water's edge may be restricted to protect shoreline ecological values.

SH-5.3 Future residential, commercial, and industrial developments and redevelopments shall not adversely affect existing public access, and should

provide new opportunities for the public to reach touch and enjoy the water's edge.

- SH-5.4 Respect and protect the enjoyment of private rights in shoreline property when considering public access development.
- SH-5.5 Locate, design and maintain public access development in a manner that enhances the natural environment.
- SH-5.6 Purchase or otherwise make available to the public, shoreline properties including tide land tracts if their value for public use merits such action.
- SH-5.7 Control and regulate public access to ensure that the ecology of shoreline areas shall not be unduly damaged by public use.

Goal Recreational Element

- SH-6 Provide additional opportunities for diverse forms of recreation for the public and improvement of present facilities.

Policies

- SH-6.1 Identify, obtain, preserve and protect areas with high values for recreation.
- SH-6.2 Allow location, design and operation of recreational uses as part of private development where compatible with other uses and activities.
- SH-6.3 Provide a balanced choice of recreational opportunities, including those requirements of the elderly and the physically challenged.
- SH-6.4 Cultivate innovative and cooperative techniques among public agencies and private persons or groups which increase and diversify recreation opportunities.
- SH-6.5 Allow compatible recreational uses including bicycle and foot paths in transportation and utility corridors where feasible.
- SH-6.6 Located, design and operate recreation facilities in a manner consistent with the purpose of the environment designation in which they are located so that no net loss of shoreline ecological functions or ecosystem-wide processes result.
- SH-6.7 Coordinate with local, state, and federal agencies so that shoreline recreational developments are consistent with the city's Comprehensive Plan and Parks Recreation, Open Space and Trails Plan.

Goal Historical / Cultural Element

- SH-7 Protect, preserve and encourage restoration of those sites and areas on the shoreline which have significant historical, cultural, educational or scientific value.

Policies

- SH-7.1 Identify historic, cultural and archaeological resources within the shoreline in cooperation with federal, state, local and tribal agencies.
- SH-7.2 Preserve permanently for their inherent cultural value and for scientific study as well as public enjoyment observation all areas known to contain significant archaeological data.
- SH-7.3 Preserve for the public benefit, with opportunity for appropriate public utilization, significant historic, scientific, and educational areas of the shoreline.

- SH-7.4 Ensure that the review and construction of development permits includes professional assessment of historic, cultural and archaeological resources and that such resources are preserved or conserved in compliance with applicable laws.

Goal Flood Hazard Element

- SH-8 To minimize flood hazards to human life and property while enhancing the ecological processes of the shoreline.

Policies

- SH-8.1 Manage flood protection through implementation of the city's Comprehensive Stormwater Management Plan, Comprehensive Plan, stormwater regulations, and the Snohomish County flood hazard control plans.
- SH-8.2 Protect existing development and restore floodplain and channel migration functions to the extent feasible.
- SH-8.3 Integrate bioengineering and/or soft engineering approaches where feasible into local and regional flood control measures, infrastructure, and related capital improvement projects.
- SH-8.4 Disallow development within the floodplains associated with the city's shorelines that would individually or cumulatively result in an increase to the risk of flood damage.
- SH-8.5 Support measures to increase the natural functions of the Stillaguamish floodplain including flood storage, off-channel habitat, associated wetlands and buffers of native vegetation through levee setbacks and similar programs.

Goal Comprehensive Long Range Planning Element

- SH-9 Support the integration of other City planning and regulatory efforts with shoreline management activities, especially planning and implementation of plans under the Growth Management Act (GMA). This element reflects changes in state legislation which make SMP policies part of the Comprehensive Plan and SMP regulations part of the City development code.

Goal Educational Element

- SH-10 Work with the public to increase awareness of the Shoreline Management Act, and the importance of protecting shorelines.

Goal Implementation

- SH-11 Advance the intent and policy of the Shoreline Management Act of 1971 through a fair, balanced and impartial administration of the shoreline permit process and other legal requirements of the Act.

Policies

- SH-11.1 Base all official actions relating to shoreline permits upon the goals, policies, environmental designations, use allocations and performance standards contained within the Shoreline Management Act, the Shoreline Master Program and Chapter 17 (Zoning/Unified Development Code) in the Stanwood Municipal Code.

- SH-11.2 Employ the performance standards of the Master Program equitably to ensure the highest degree of shoreline and floodplain protection consistent with the proposed development.
- SH-11.3 Process shoreline permits as expeditiously as the law and analysis review will allow.
- SH-11.4 Seek advice and assistance from recognized experts at federal, state, or local levels whenever technically complex issues are involved in permit activities.
- SH-11.5 Grant variances from the provisions of the Master Program only in those limited instances when strict compliance with the provisions of the Master Program would prevent any reasonable use of the property involved. Variances shall be granted in strict compliance with the provisions of the Washington Administrative Code and the Shoreline Management Act.
- SH-11.6 Approve Conditional Uses when they will further the intent of the Master Program, be compatible with their surroundings, and be regulated to minimize undesirable effects on the shoreline of the city. Conditional Uses shall be approved in strict compliance with the provisions of the Washington Administrative Code and the Shoreline Management Act.
- SH-11.7 Comply with the requirements of the State Environmental Policy Act in processing shoreline permits, when applicable, as a means of thoroughly evaluating the impact of a proposed development on the city's shorelines and thus furthering the intent of the Master Program.
- SH-11.8 Provide assistance to the general public as necessary and proper with regard to the provisions and requirements of the Shoreline Management Act of 1971 and Stanwood's Master Program.
- SH-11.9 Provide for an eight (8) year review of shoreline uses and their locations as to appropriateness and compatibility with goals and policies.

SECTION 3. SMC Title 17 Zoning Chapter 17.20 Construction of Language-Definitions Subsection 17.20.020 "A" Definitions is amended to adopt revised definitions of "agriculture" and "aquaculture", and to adopt a new definition of "average grade level" to read as follows:

17.20.020 "A" definitions

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

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

a. The following used in agricultural operations: Equipment; machinery; constructed shelters, buildings, and ponds; fences; upland finfish rearing facilities; water diversion, withdrawal, conveyance, and use equipment and facilities including but not limited to pumps, pipes, tapes, canals, ditches, and drains;

b. Corridors and facilities for transporting personnel, livestock, and equipment to, from, and within agricultural lands;

c. Farm residences and associated equipment, lands, and facilities; and

d. Roadside stands and on-farm markets for marketing fruit or vegetables.

"Aquaculture" means the culture or farming of food fish, shellfish, or other aquatic plants and animals. Potential locations for aquaculture are relatively restricted within the SMP of Pacific due to specific requirements for water quality, temperature, flows, oxygen content, adjacent land uses, wind protection, and commercial navigation. Aquaculture should not be permitted in areas where it would result in a net loss of ecological functions, or significantly conflict with navigation and other water-dependent uses. Aquaculture facilities should be designed and located so as not to cause significant ecological impacts, or significantly impact the scenic qualities of the shoreline. Impacts to ecological functions shall be mitigated according to the mitigation sequence described in WAC 173-26-020.

"Average grade level" means the average of the natural or existing topography of the portion of the lot, parcel, or tract of real property which will be directly under the proposed building or structure. In the case of structures to be built over water, average grade level shall be the elevation of the ordinary high water mark. Calculation of the average grade level shall be made by averaging the ground elevations at the midpoint of all exterior walls of the proposed building or structure;

SECTION 4. SMC Title 17 Zoning Chapter 17.20 Construction of Language-Definitions Subsection 17.20.030 "B" Definitions is amended to adopt revised definitions of "buffer" and "bulkhead", and to adopt a new definition of "bioengineering", "boating facility" and "building height in shoreline jurisdiction area" to read as follows:

17.20.030 "B" definitions.

"Bioengineering" means the use of biological elements, such as the planting of vegetation, often in conjunction with engineered systems, to provide a structural shoreline stabilization measure with minimal negative impact to the shoreline ecology.

"Boating facility" for the purposes of the Shoreline Master Program means any public or private facility for mooring, storing, or transfer of materials from vessels on the water, such as docks and piers, including on-land related facilities such as approaches and ramps and includes any private and publicly accessible launch sites or facilities. A boating facility does not include on-land accessory facilities such as parking or storage.

"Buffer" means an area adjacent to a critical area that functions to avoid loss or diminution of the ecologic functions and values of the critical area. Specifically, a buffer may:

- (a) Preserve the ecologic functions and values of a system, including but not limited to providing microclimate conditions, shading, input of organic material, and sediments, room for variation and changes in natural wetland, river, or stream

characteristics, providing for habitat for lifecycle stages of species normally associated with the resource, and

- (b) Physically isolate a critical area such as a wetland, river, or stream from potential disturbance and harmful intrusion from surrounding uses using distance, height, visual and/or sound barriers, and generally including dense native vegetation, but also may include man-made features such as fences and other barriers;
- (c) Act to minimize risk to the public from loss of life, well-being or property damage resulting from natural disasters such as from landslide or flooding.

"Building height in Shoreline Management Act jurisdiction" only means the vertical distance between average grade and the highest part of the coping of a flat roof, or the deck line of a mansard roof, or the average height of the highest gable of a pitched or hipped roof. The height of a stepped or terraced building is the maximum height of any segment of the building.

"Bulkhead" means a structure of timber, concrete, steel, rock or similar substance erected for erosion control purposes. (Ord. 929 Ch. 5, 1995). Located parallel to the shore, which has as its primary purpose to contain and prevent the loss of soil by erosion, wave, or current action.

SECTION 5. SMC Title 17 Zoning Chapter 17.20 Construction of Language-Definitions Subsection 17.20.040 "C" Definitions is amended to adopt a new definition of "channel migration zone" and "cumulative impacts" to read as follows:

17.20.040 "C" definitions.

"Channel migration zone" means the area along a river within which the channel(s) can be reasonably predicted to migrate over time as a result of natural and normally occurring hydrological and related processes when considered with the characteristics of the river and its surroundings. For the purpose of this code the CMZ excludes areas separated from the active river channel by legally existing artificial structures that are likely to restrain channel migration, including but not limited to flood control facilities, transportation facilities, and structures built above or constructed to remain intact through the one hundred-year flood.

"Cumulative impacts" are the results of incremental actions when added to past, present, and reasonably foreseeable future actions. Cumulative impacts can be deemed substantial and subject to mitigation conditions even though they may be comprised of individual actions having relatively minor impacts.

SECTION 6 SMC Title 17 Zoning Chapter 17.20 Construction of Language- Definitions Subsection 17.20.050 "D" Definitions is amended to adopt new definitions of "dredging" to read as follows:

17.20.050 "D" definitions

"Dredging" means the removal of earth, sand, gravel, silt, or debris from below the OHWM of any river, stream, pond, lake or other water body and beneath the area of seasonal saturation of any wetland.

SECTION 7. SMC Title 17 Zoning Chapter 17.20 Construction of Language-Definitions Subsection 17.20.060 "E" Definitions is amended to adopt revised definitions of "agriculture" and "aquaculture", and to adopt a new definition of "ecological function" to read as follows:

17.20.060 "E" definitions

"Ecological function" means the work performed or role played by the physical, chemical, and biological processes that contribute to the maintenance of the aquatic and terrestrial environments that constitute an element of a natural ecosystem.

SECTION 8. SMC Title 17 Zoning Chapter 17.20 Construction of Language-Definitions Subsection 17.20.070 "F" Definitions is amended to adopt revised definitions of "fill" and "floodway", and to adopt a new definition of "fair market value" and "feasible" to read as follows:

17.20.070 "F" definitions.

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

"Feasible" means that an action, such as a development project, mitigation, or restoration requirement, meets all of the following conditions:

- (a) The action can be accomplished with technologies and methods that have been used in the past in similar circumstances, or studies or tests have demonstrated in similar circumstances that such approaches are currently available and likely to achieve the intended results;
- (b) The action provides a reasonable likelihood of achieving its intended purpose; and
- (c) The action does not physically preclude achieving the project's primary intended legal use.

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

"Fill" means earth or any other substance or material placed in or on the ground, including earth retaining structures, pilings placed in a submerged area. (Ord. 1110 § 3, 2002; Ord. 929 Ch. 5, 1995). "Floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved to discharge the base flood without cumulatively increasing the water surface elevation more than one foot. (Ord. 929 Ch. 5, 1995), that either:

- (a) Has been established in Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps (FIRM) or floodway maps; or

- (b) Consists of those portions of a river valley lying waterward from the outer limits of a watercourse upon which flood waters are carried during periods of flooding that occur with reasonable regularity, although not necessarily annually, said floodway being identified, under normal conditions, by changes in surface soil conditions or changes in types or quality of vegetative ground cover condition, topography, or other indicators of flooding that occurs with reasonable regularity, although not necessarily annually.
- (c) Regardless of the method used to identify the floodway, the floodway shall not include those lands that can reasonably be expected to be protected from flood waters by flood risk reduction devices maintained by or maintained under license from the federal government, the state, or a political subdivision of the state.

SECTION 9. SMC Title 17 Zoning Chapter 17.20 Construction of Language-Definitions Subsection 17.20.080 "G" Definitions is amended to adopt a new definition of "geotechnical report or geotechnical analysis" to read as follows:

17.20.080 "G" definitions.

"Geotechnical report or geotechnical analysis" means a scientific study or evaluation conducted by a qualified expert that includes a description of the ground and surface hydrology and geology, estimates of susceptible to erosion, sliding, earthquake, or other geological events, and the extent of risk to the health and safety of persons and property. Such a report shall include conclusions and recommendations regarding the effect of the proposed development on geologic conditions, the adequacy of the site to be developed, the impacts of the proposed development, alternative approaches to the proposed development, and measures to mitigate potential site-specific and cumulative geological and hydrological impacts of the proposed development, including the potential adverse impacts to adjacent and down-current properties. Geotechnical reports shall conform to accepted technical standards and must be prepared by qualified professional engineers or geologists who have professional expertise about the regional and local geology and processes.

SECTION 10. SMC Title 17 Zoning Chapter 17.20 Construction of Language-Definitions Subsection 17.20.130 "L" Definitions is amended to adopt a new definition of "local utility" to read as follows:

17.20.130 "L" definitions.

"Local utility" means public or private utilities normally servicing a neighborhood or defined subarea in the City, e.g., telephone exchanges; sanitary sewer; stormwater facilities; distribution lines, electrical distribution less than fifty five (55) kV, telephone, cable TV, etc.

SECTION 11. SMC Title 17 Zoning Chapter 17.20 Construction of Language-Definitions Subsection 17.20.140 "M" Definitions is amended to adopt a new definition of "marina", "mining" and "multiple use" to read as follows:

17.20.140 "M" definitions.

“Marina” means any commercial or private facility consisting of docks or piers serving five or more vessels.

“Mining” means the removal of sand, gravel, soil, minerals, and other earth materials for commercial and other uses.

“Multiple use” within an area subject to the jurisdiction of the Shoreline Management Act means a combination of compatible uses within one development, in which water-oriented and non-water-oriented uses are included.

SECTION 12. SMC Title 17 Zoning Chapter 17.20 Construction of Language-Definitions Subsection 17.20.150 “N” Definitions is amended to adopt revised definitions of “nonconforming use”, and to adopt a new definition of “no net loss of ecological functions”, non-water dependent use and non-water oriented use to read as follows:

17.20.150 “N” definitions.

“Nonconforming use, structure or site” means a utilization of land or structures or both, legally established prior to the effective date of this code, which would not be permitted as a new use in the zone in which it is located under the terms of this code or which does not meet current standards for setbacks, buffers, vegetation conservation, landscaping, public access, screening or other regulations in which it is located due to changes in regulations or annexation. (Ord. 929 Ch. 5, 1995).

“No net loss of ecological functions” is the maintenance of existing ecological processes and functions at the level that existed at the time of approval of relevant policies and regulations.

- (a) No net loss of ecological functions on the level of the city means that the ecological processes and functions are maintained within a watershed or other functional catchment area. Regulations may result in localized cumulative impacts or loss of some localized ecological processes and functions, as long as the ecological processes and functions of the system are maintained. Maintenance of system ecological processes and functions may require compensating measures that offset localized degradation.
- (b) On a project basis, no net loss means that permitted use or alteration of a site will not result in on-site or off-site deterioration of the existing condition of ecological functions that existed prior to initiation of use or alterations as a direct or indirect result of the project.
- (c) No net loss is achieved both through avoidance and minimization of adverse impacts as well as compensation for impacts that cannot be avoided. Compensation may include on-site or off-site restoration of ecological functions to compensate for localized degradation.

“Non-Water-Dependent Use” means those uses which are not water-dependent.

“Non-Water-Oriented Use” means those uses which are not water-dependent, water-related, or water-enjoyment.

SECTION 13. SMC Title 17 Zoning Chapter 17.20 Construction of Language-Definitions Subsection 17.20.160 “O” Definitions is amended to adopt revised definitions of “open space” and “ordinary high water mark”, to read as follows:

17.20.160 “O” definitions.

“Open space” means an area that is intended to provide light and air, view, use or passage of persons or animals which is almost entirely unobstructed by buildings, paved areas, or other manmade structures and is designed or preserved for environmental, habitat, scenic or recreational purposes.

“Ordinary high water mark” means the mark on all lakes and streams that will be found by examining the beds and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland and vegetation, as that condition existed on June 1, 1971 for all lands under the jurisdiction of the Shoreline Management Act, or for other lands on the effective date of the relevant provisions of this code, or as it may naturally change thereafter, or as it may change thereafter in accordance with permits issued by the city or other authorized jurisdictions. In any area where the ordinary high water mark cannot be found, it shall be defined in accordance with WAC 173-22-030, generally the line of the mean higher high tide in areas adjoining salt water, and the line of mean high water in areas adjoining freshwater. (Ord. 929 Ch. 5, 1995).

SECTION 14. SMC Title 17 Zoning Chapter 17.20 Construction of Language-Definitions Subsection 17.20.150 “P” Definitions is amended to adopt a new definition of “pier”, and “public access” to read as follows:

17.20.170 “P” definitions.

“Pier” means docks and similar structures consisting of a fixed or floating platform extending from the shore over the water. This definition does not include overwater trails.

“Public access” means physical and/or visual approach to and along the shoreline available to the general public.

SECTION 15. SMC Title 17 Zoning Chapter 17.20 Construction of Language-Definitions Subsection 17.20.190 “R” Definitions is amended to adopt revised definitions of “recreation facilities” , to read as follows:

17.20.190 Recreation areas or facilities.

“Recreation areas or facilities” means any privately or publicly owned passive or active facility that provides for activities undertaken for pleasure or relaxation and for the refreshment of the mind and body that takes place in the outdoors or in a facility dedicated to the use including walking, fishing, photography, viewing, and bird-watching and may include parks, playgrounds, sports fields, paths and trails access easement, beaches, or other recreation areas or facilities. (Ord. 929 Ch. 5, 1995).

SECTION 16. SMC Title 17 Zoning Chapter 17.20 Construction of Language-Definitions Subsection 17.20.200 “S” Definitions is amended to adopt new definitions of “shorelines or shoreland areas” , “shoreline stabilization” and a new definition of “should” applicable to areas subject to the provisions of the Shoreline Management Act RCW 90.58.030; to read as follows:

17.20.200 "S" definitions.

"Shorelands or shoreland areas" means those lands under the jurisdiction of the Shoreline Management Act extending landward for two hundred feet in all directions as measured on a horizontal plane from the ordinary high water mark; floodways and contiguous floodplain areas landward two hundred feet from such floodways; and all wetlands and river deltas associated with the streams, lakes, and tidal waters that are subject to the provisions of the Shoreline Management Act RCW 90.58.030; the same to be designated as to location by the Department of Ecology.

"Shoreline areas" mean all "shorelines of the state" and "shorelands."

"Shoreline Stabilization" means structural and nonstructural methods to address erosion impacts to property and dwellings, businesses, or structures caused by natural processes, such as currents, floods, tides, wind, or wave action.

"Should" means, in areas that are subject to the provisions of the Shoreline Management Act RCW 90.58.030; that a particular action is required unless there is a demonstrated, compelling reason, based on policy of the Shoreline Management Act and this chapter, against taking the action. The Director, in consultation with the DOE, shall make the determination about whether or not an applicant has demonstrated that there is a compelling reason against taking an action.

SECTION 17. SMC Title 17 Zoning Chapter 17.20 Construction of Language-Definitions Subsection 17.20.200 "W" Definitions is amended to amend the definition of "wetlands", and to adopt new definitions of "water dependent use", "water enjoyment use", "water related use" and "wetlands, associated jurisdictional" to read as follows:

17.20.240 "W" definitions.

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

"Water-enjoyment use" means a recreational use or other use that facilitates public access to the shoreline as a primary characteristic of the use; or a use that provides for enjoyment or recreational use of the shoreline for a substantial number of people as a general characteristic of the use and which through location, design, and operation ensures the public's ability to enjoy the visual and physical qualities of the shoreline. In order to qualify as a water-enjoyment use, the use must be open to the general public and the shoreline-oriented space within the project must be devoted to the specific aspects of the use that fosters shoreline enjoyment.

"Water-oriented use" means a use that is water-dependent, water-related, or water-enjoyment, or a combination of such uses.

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

- (a) The use has a functional requirement for a waterfront location such as the arrival or shipment of materials by water or the need for large quantities of water; or

- (b) The use provides a necessary service supportive of the water-dependent uses and the proximity of the use to its customers makes its services less expensive and/or more convenient.

“Wetlands” or “wetland areas” means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas. Wetlands do not include those artificial wetlands intentionally created from non-wetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from nonwetland areas to mitigate the conversion of wetlands. For identifying and delineating a regulated wetland, the methodology specified by the Department of Ecology shall be utilized. ~~local~~ government shall use the Washington State Wetland Identification and Delineation Manual.

“Wetlands, Associated jurisdictional” means those wetlands that are in proximity to and either influence or are influenced by shoreline areas” subject to the Shoreline Management Act.

SECTION 18. SMC Title 17 Zoning Chapter 17.114 Critical Areas General Provisions Subsection 17.114.030 Relationship to other regulations is amended to read as follows:

17.114.030 Relationship to other regulations.

- (1) Any individual critical area adjoined by another type of critical area shall have the buffer and meet the requirements that provide the most protection to the critical areas involved. When any provision of this chapter or other provisions of the zoning code or any existing regulation, easement, covenant, or deed restriction conflicts with this chapter, that which provides more protection to the critical areas shall apply.
- (2) Compliance with the provisions of this chapter does not constitute compliance with other federal, state, and local regulations and permit requirements that may be required (for example, Shoreline Substantial Development Permits, Hydraulic Permit Act (HPA) permits, U.S. Army Corps of Engineers Section 404 permits, National Pollution Discharge Elimination System permits). The applicant is responsible for complying with these requirements, apart from the process established in this chapter. (Ord. 1164 § 4, 2004). The city will coordinate conditions with other agencies to the extent feasible within the requirements of these regulations.

SECTION 19. SMC Title 17 Zoning Chapter 17.114 Critical Areas General Provisions Subsection 17.114.120(3) Exception- public agency and utility is amended to read as follows:

17.114.120 Exception – Public agency and utility.

- (3) Hearing Examiner Review. The hearing examiner shall review the application and planning director’s recommendation, and conduct a public hearing pursuant to

the provisions of Chapter 17.85 SMC. Within the jurisdiction of the Shoreline Management Act the application shall be processed as a Shoreline Conditional Use subject to Ecology concurrence. The hearing examiner shall approve, approve with conditions, or deny the request based on the proposal's ability to comply with all of the public agency and utility exception criteria in subsection (4) of this section.

SECTION 20. SMC Title 17 Zoning Chapter 17.114 Critical Areas General Provisions Subsection 17.114.130 (1) Exception- Reasonable use is amended to read as follows:

17.114.130 Exception – Reasonable use

(1) This section shall not be applied within the jurisdiction of the Shoreline Management Act (RCW 90.58).

SECTION 21. SMC Title 17 Zoning Chapter 17.114 Critical Areas General Provisions Subsection 17.114.150(1) Critical area report- Review process is amended to read as follows:

SMC.114.150 Critical area report – Review process.

(1) Submittal. Prior to the city's consideration of any proposed activity not found to be exempt under SMC 17.114.110 or allowed pursuant to SMC 17.114.140, the applicant shall submit to the planning department a complete critical area identification form provided by the city containing at a minimum the information required in 17.114.160 (a)-(e). The director may require additional information if needed to make the requested determination.

SECTION 22. SMC Title 17 Zoning Chapter 17.114 Critical Areas General Provisions Subsection 17.114.140 (4)(a) (iii) Allowed permitted activities is amended to read as follows:

SMC 17.114.140 Allowed permitted activities.

(4)(a) Permit Requests Subsequent to Previous Critical Area Review. Development permits and approvals that involve both discretionary land use approvals (such as subdivisions, rezones, or conditional use permits), and construction approvals (such as building permits) if all of the following conditions have been met:

(iii) There is no new information available that is applicable to any critical area review of the site or particular critical area and if a wetland delineation was prepared, no more than 5 years has elapsed, or a report confirming the validity of the delineation is submitted;

SECTION 23. SMC Title 17 Zoning Chapter 17.114 Critical Areas General Provisions Subsection 17.114.140 (4) (d) and (4) (e) Allowed permitted activities is amended to read as follows:

SMC 17.114.140 Allowed permitted activities.

(4)(d) Minor Utility Projects.

(iv) Required state or federal permits for work below OHWM have been obtained, or the permit may be issued subject to a condition that permit be obtained before work is initiated.

(4)(e) Public and Private Pedestrian Trails

- (iii) Where feasible trails should be limited to the outer 25% of the buffer, except in cases where the buffer is currently degraded by existing facilities, or where no feasible alternative exists. This provision shall not apply to development of a public access trail on the railroad right-of-way adjacent to the Stillaguamish River;
- (iv) Trails should be located generally parallel the perimeter of wetlands or streams, except for public access to the water's edge and should avoid significant trees;
- (v) Trails within buffers should be no more than 5 feet wide and built of pervious materials for pedestrian use only except where city plans call for multi-use trails to serve multiple non-motorized modes of travel.

SECTION 24. SMC Title 17 Zoning Chapter 17.114 Critical Areas General Provisions Subsection 17.114.150(3)(b)(ii) Critical area report- Review process is amended to read as follows:

SMC 17.114.150 Critical area report – Review process.

(3)(b) Decision on Identification Form.

- (ii) Critical areas present, but no impact waiver. If the director determines that there are critical areas within or adjacent to the project area, but that the information required in 17.114.160 (a)-(e) and evaluation of the project based on best available science shows that the proposed activity is unlikely to degrade the functions or values of the critical area, the planning director may waive the remaining requirements for a critical area report. A waiver may be granted if there is substantial evidence that all of the following requirements will be met:

SECTION 25. SMC Title 17 Zoning Chapter 17.114 Critical Areas General Provisions Subsection 17.114.160(3) Critical area report- requirements is amended to read as follows:

SMC 17.114.160 (3) Critical area report – Requirements.

(3) Minimum Report Contents.

- (a) The name and contact information of the applicant, a description of the proposal, and identification of the permit requested;
- (b) A copy of the site plan for the development proposal including:
 - (i) A map to scale depicting critical areas, buffers, the development proposal, and any areas to be ~~cleared~~ altered (eg. cleared, filled or graded); and
 - (ii) A description of the proposed stormwater management plan for the development and consideration of impacts to drainage alterations;
- (c) The dates, names, and qualifications of the persons preparing the report and documentation of any fieldwork performed on the site.
- (d) Identification and characterization of all critical areas, wetlands, water bodies, and buffers within or adjacent to the proposed project area;(

- (e) A statement specifying the accuracy of the report, and all assumptions made and relied upon;
- (f) An assessment of the probable cumulative impacts to critical areas resulting from development of the site and the proposed development;
- (g) An analysis of site development alternatives including a no development alternative;
- (h) A description of reasonable efforts made to apply mitigation sequencing pursuant to SMC 17.114.180(4), Mitigation Sequencing, to avoid minimize, and mitigate impacts to critical areas;
- (i) Plans for adequate mitigation, as needed, to offset any impacts, in accordance with SMC 17.114.190, Mitigation plan requirements, including, but not limited to:
 - (i) Measures to mitigate ~~the~~ impacts of any proposed development within or adjacent to a critical area or buffer on the critical area; and
 - (ii) Measures to mitigate the impacts of any proposed alteration of a site outside of a critical area or buffer which may lead to impacts on the critical area or buffer such as change in runoff patterns, change in groundwater patterns or adverse proximity impacts on habitat or other functions on the development proposal, other properties and the environment;
- (j) A discussion of the performance standards applicable to the critical area and proposed activity;
- (k) Any additional information required for the critical area as specified in Chapters 17.115 through 17.135 SMC.

SECTION 26 SMC Title 17 Zoning Chapter 17.114 Critical Areas General Provisions Subsection 17.114.160(4) Critical area report- Review process is amended to read as follows:

SMC 17.114.160 Critical area report – Requirements.

- (4) Unless otherwise provided, a critical area report may be supplemented by or composed, in whole or in part, of any reports or studies required by other laws and regulations or previously prepared for and applicable to the development proposal site, that meet the substantive requirements of this part, as approved by the director. (Ord. 1164 § 4, 2004).

SECTION 27. SMC Title 17 Zoning Chapter 17.114 Critical Areas General Provisions Subsection 17.114.170 (1) Critical area report- Modification to requirements is amended to read as follows:

SMC 17.114.170 Critical area report – Modifications to requirements.

- (1) Limitations to Study Area. The director may limit the required geographic area of the critical area report as appropriate if:
 - (a) The applicant, with assistance from the city, cannot obtain permission to access properties adjacent to the project area and there is reasonable evidence that no critical areas exist on the adjacent properties; or

- (b) The proposed activity will affect only a limited part of the subject site and is outside of critical area buffers.

SECTION 28. SMC Title 17 Zoning Chapter 17.114 Critical Areas General Provisions Subsection 17.114.180 (1) through (5) Mitigation requirements is amended to read as follows:

SMC 17.114.180 Mitigation requirements.

- (1) The applicant shall avoid all impacts that degrade the functions and values of a critical area or areas to the maximum extent feasible. Unless otherwise provided in this chapter, if alteration to the critical area is unavoidable, all adverse impacts to critical areas and buffers resulting from a development proposal or alteration shall be mitigated using the best available science in accordance with an approved critical area report and SEPA documents, so as to result in no net loss of critical area functions and values.
- (2) Mitigation shall be in-kind and on-site, when possible, and sufficient to maintain the functions and values of the critical area, and to prevent risk from a hazard posed by a critical area. Off-site or out-of-kind mitigation may be approved only in case where it provides significant ecological benefit based in a watershed or catchment approach.
- (3) Mitigation shall not be implemented until after city approval of a critical area report that includes a mitigation plan, and mitigation shall be in accordance with the provisions of the approved critical area report.
- (4) Mitigation Sequencing. Applicants shall demonstrate that all reasonable efforts have been examined with the intent to avoid and minimize impacts to critical areas. When an alteration to a critical area is proposed, such alteration shall be avoided, minimized, or compensated for in the following sequential order of preference:
 - (a) Avoiding the impact altogether by not taking a certain action or parts of an action;
 - (b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps, such as project redesign, relocation, or timing, to avoid or reduce impacts;
 - (c) Rectifying the impact to critical areas, including wetlands, critical aquifer recharge areas, frequently flooded areas, and habitat conservation areas by repairing, rehabilitating, or restoring the affected environment to the historical conditions or the conditions existing at the time of the initiation of the project;
 - (d) Reducing Minimizing or eliminating the impact over time by preservation and maintenance during the life of the action and where appropriate reduce a hazard by restoring or stabilizing the hazard area through engineered or other methods where preservation would maintain an unacceptable level of risk;
 - (e) Reducing or eliminating the impact or hazard over time by preservation and maintenance operations during the life of the action;

- (e)-(f) Compensating for the impact to wetlands, critical aquifer recharge areas, and habitat conservation areas by replacing, enhancing, or providing substitute resources or environments;
 - (f) (g) Monitoring the impact or hazard and any or other required mitigation and taking remedial or corrective action when necessary; and
 - (g) (h) Mitigation for individual actions may include a combination of the above measures.
- (5) The city may encourage, facilitate, and approve innovative mitigation projects that are based on the best available science. Conducting mitigation as part of a cooperative process does not reduce or eliminate the required replacement ratios. Advance mitigation or approved in-lieu fee mitigation sites, or mitigation banking are examples of alternative mitigation projects allowed under the provisions of this section wherein one or more applicants, or an organization with demonstrated capability, may undertake a mitigation project together if it is demonstrated that all of the following circumstances exist:
- (a) Creation or enhancement of a larger system of critical areas and open space is preferable to the preservation of many individual habitat areas;
 - (b) The group demonstrates the organizational and fiscal capability to act cooperatively;
 - (c) The group demonstrates that long-term management of the habitat area will be provided; and
 - (d) There is a clear potential for success of the proposed mitigation at the identified mitigation site.
 - (e) Any mitigation bank or approved in-lieu fee mitigation site utilized shall be eligible for use approved in accordance with RCW 90.84 as applicable.

SECTION 29. SMC Title 17 Zoning Chapter 17.114 Critical Areas General Provisions Subsection 17.114.190 Mitigation plan requirements the introductory paragraph is amended to read as follows:

SMC 17.114.190 Mitigation plan requirements.

When mitigation is required, the applicant shall submit for approval by the city a mitigation plan as part of the critical area report. The mitigation plan shall be consistent with the Washington Department of Ecology Guidelines Wetland Mitigation in Washington State – Part 2: Developing Mitigation Plans--Version 1, (Ecology Publication #06-06-011b, Olympia, WA, March 2006 or as revised and include:

SECTION 30 SMC Title 17 Zoning Chapter 17.114 Critical Areas General Provisions Subsection 17.114.190 (4) Mitigation Plan requirements is amended to read as follows:

SMC 17.114.190 Mitigation plan requirements.

- (4) Monitoring Program. The mitigation plan shall include a program for monitoring construction of the compensation project and for assessing a completed project. A protocol shall be included outlining the schedule for site monitoring ~~(for example, monitoring shall occur in years one, three, five, and seven after site~~

construction); and how the monitoring data will be evaluated to determine if the performance standards are being met. A monitoring report shall be submitted as needed to document milestones, successes, problems, and contingency actions of the compensation project. The compensation project shall be monitored for a period necessary to establish that performance standards have been met, but not for a period less than five years.

(a) Compensatory mitigation projects shall be monitored for a minimum of five years with monitoring plans submitted for years 0, 1, 2, 3 and 5.

(b) Compensatory mitigation projects planting shrubs and trees shall be monitored for a minimum of 10 years with monitoring plans submitted for years 0, 1, 2, 3, 5, and 10.

SECTION 31. SMC Title 17 Zoning Chapter 17.114 Critical Areas General Provisions Subsection 17.114.230 (2) Notice on title is amended to read as follows:

SMC17.114.230 Notice on title.

(2) This notice on title shall not be required for a development proposal by a public agency ~~or public or private utility.~~

SECTION 32. SMC Title 17 Zoning Chapter 17.114 Critical Areas General Provisions Subsection 17.114.240(1) Native growth protection areas or tracts is amended - to read as follows:

SMC 17.114.240 Native growth protection areas or tracts.

(1) Unless otherwise required in this chapter, native growth protection areas (NGPA) shall be used in development proposals for subdivisions, short subdivisions, planned unit developments, and binding site plans and shall be established by filing of an easement instrument including a legal description and site plan on building permits not involving a plat or similar approval. Said NGPA shall ~~to~~ delineate and protect those contiguous critical areas and buffers listed below:

(a) All landslide hazard areas and buffers;

(b) All wetlands and buffers;

(c) All habitat conservation areas

(d) All other lands to be protected from alterations as conditioned by project approval.

SECTION 33. SMC Title 17 Zoning Chapter 17.125 Critical Areas Wetlands- Specific Standards Subsection 17.125.040 wetland designations is amended to read as follows:

SMC 17.125.040 Wetland designation.

Wetlands are those areas delineated in accordance with the methodology adopted by the Washington Department of Ecology department pursuant to RCW 90.58.380, the Washington State Wetland Identification and Delineation Manual (Department of Ecology Publication #96-94), that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation adapted for life in saturated soil conditions. All areas within the city of Stanwood that meet the wetland designation criteria ~~in the Identification and Delineation Manual,~~ regardless

of any formal identification, are hereby designated critical areas and are subject to the provisions of this chapter. (Ord. 1164 § 4, 2004).

SECTION 34. SMC Title 17 Zoning Chapter 17.125 Critical Areas Wetlands- Specific Standards Subsection 17.125.060 Standard buffer width requirements is amended to read as follows:

SMC 17.125.060 Standard buffer width requirements.

Buffers shall be required for all wetlands regulated by this chapter. Required wetland buffer widths are as stated in this section.

(1) Required widths for wetland buffers are as follows:

(a) For Category I wetlands:

Category I Type	Buffer Width
Natural Heritage Wetlands	215 feet
Bog	215 feet
Estuarine	475 <u>150</u> feet
Coastal Lagoon	475 <u>150</u> feet
Habitat score from 30 <u>29</u> to 36 points	225 feet
Habitat score from 260 to 298 points	165 <u>150</u> -feet
<u>Habitat score from 21 to 25 points</u>	<u>105 feet</u>
Category I not meeting any of the descriptions above	425 <u>75</u> feet

(b) For Category II wetlands:

Category II Type	Buffer Width
Estuarine	135 feet
Habitat score from 30 <u>29</u> to 36 points	225 <u>200</u> feet
Habitat score from 260 to 298 points	165 <u>125</u> feet
<u>Habitat score from 21 to 25 points</u>	<u>105 feet</u>
Category II not meeting any of the descriptions above	400 <u>75</u> feet

(c) For Category III wetlands:

Category III Type	Buffer Width
Habitat score from 260 to 298 points	170 <u>125</u> feet
<u>Habitat score from 21 to 25 points</u>	<u>105 feet</u>
Category III not meeting any of the descriptions above	60 <u>75</u> feet

(d) For Category IV wetlands: 40~~50~~-feet.

SECTION 35. SMC Title 17 Zoning Chapter 17.125 Critical Areas Wetlands- Specific Standards Subsection 17.125.040(4)(b) is amended to read as follows.

~~(b) Buffer Width Reduction. Buffer widths for all categories of wetlands may be reduced by 25 feet if the following mitigation measures are applied:~~

(5) Site development standards for lands adjacent to buffers shall be implemented as provided below to reduce proximity impacts. If mitigation site development standards are not implemented an increase in the width of buffers or other equivalent buffer enhancement is required. All buffers not characterized by a mature native plant community appropriate for the ecoregion shall be planted to create the appropriate plant community.

Disturbance	Activities That May Cause Disturbance	Measures to Minimize Impacts
Lights	Parking lots, warehouses, manufacturing, <u>commercial, high-density residential</u>	Direct lights away from wetland
Noise	Manufacturing, <u>commercial, high-density residential</u>	Place activity that generates noise away from wetland <u>Activities that generate relatively continuous disruptive noise above 65 dBA shall establish a noise barrier at the edge of the buffer capable of reducing noise levels as close as feasible to background levels</u>
Toxic Runoff	Parking lots, roads, manufacturing, residential areas, application of agricultural pesticides, landscaping	Route all new untreated runoff away from wetland; <u>Establish or covenants or other agreements limiting use of pesticides within 150 feet of wetland;</u> <u>or Implement integrated pest management program</u>
Change in Water Regime	Any impermeable surface, lawns, tilling	Infiltrate or treat, detain and disperse runoff from impervious surfaces <u>and lawn. Buffer areas may be utilized where substantial alteration of plant communities and other functions is avoided.</u>
Pets and Humans	Residential areas	<u>Install Privacy fencing or plant dense vegetation landscaping and install</u>

		<u>educational signage</u> to delineate buffer edge and to discourage disturbance of wildlife by humans and pets; and educational signage.
Dust	Tilled fields	Best management practices for dust control
Degraded Buffer	Existing degraded buffer condition	Non-native plants to be removed and replaced with native vegetation per an approved planting plan; and restoration to be bonded and monitored per SMC 17.114.190.250
Other as further defined by DOE wetlands guidance documents	Other as further defined by DOE wetlands guidance documents	<u>Other as further defined by DOE wetlands guidance documents</u>

(6) Buffer Exclusion

An area within the standard buffers may be excluded if the area is functionally and effectively disconnected from the wetland by a road, railroad or other substantially developed surface of sufficient width and with use characteristics such that buffer functions are not provided. The equivalent of the area excluded shall be provided elsewhere adjacent to the wetland through buffer averaging provisions not subject to the limit on area or width. Where the entire area excluded cannot feasibly be provided, other mitigation may be approved to provide equivalent function. This provision shall not apply to such a facility within a development proposal or contiguous ownership that can be feasibly relocated to accommodate standard buffers.

(7) Reach Based Alternative buffer width requirements

Within Shoreline Management Act Jurisdiction the director may implement the reach based alternative buffer standards in SMC 17.130.60(6) without a variance:

SECTION 36. SMC Title 17 Zoning Chapter 17.125.080 Critical Areas Report-Specific requirements for wetlands introductory sentence and (1) are amended to read as follows:

17.125.080 Critical area report – Specific requirements for wetlands.

A critical area report is required for any development activity allowed under this section and SMC 17.125.100. In addition to the general requirements of SMC 17.114.160, the following are required as part of the critical areas study

(1) A map drawn to scale or survey showing the following information:

(a) The edge of the wetland based on methods described in the current federal delineation manual and applicable regional supplement as specified by the Washington State Department of Ecology; ~~Wetlands Identification and~~

Delineation Manual as required by RCW 36.70A.175 (Ecology Publication #06-94);

SECTION 37. SMC Title 17 Zoning Chapter 17.125 .080 Critical Areas Report- Specific requirements for wetlands (3) is amended to read as follows:

- (3) A description and illustration of proposed development activities allowed under this section and SMC 17.125.100 within the wetlands or buffers and the features incorporated into adjacent development that reduces impacts;

SECTION 38. SMC Title 17 Zoning Chapter 17.125 .080 Critical Areas Report- Specific requirements for wetlands (6) and (7) are amended to read as follows:

- (6) A proposed classification of the wetlands categories based Ecology's current wetland rating system for Western Washington including the wetland rating forms and required figures, based on SMC 17.125.050 and an explanation or rationale for the proposed rating;
- (7) A mitigation plan consistent with the Washington Department of Ecology Guidelines Wetland Mitigation in Washington State – Part 2: Developing Mitigation Plans--Version 1, (Ecology Publication #06-06-011b, Olympia, WA, March 2006 or as revised, which meets the requirements of SMC 17.125.090;

SECTION 39. SMC Title 17 Zoning Chapter 17.125 Subsection 17.125.090 (1)(a) Critical Areas Report- mitigation plan requirements is amended to read as follows:

17.125.090 Mitigation plan requirements

- (1)(a) Wetland acreage shall be replaced at the following ratios when proposed on-site or off-site within the same subdrainage basin ("Stillaguamish floodplain"):
 - (i) Six to one (6:1) for category I wetlands;
 - (ii) Three to one (3:1) for category II wetlands;
 - (iii) Two to one (2:1) for category III wetlands; and
 - (iv) One and one half to one (1.5:1) for category IV wetlands.

<u>Wetland Category</u>	<u>Wetland Mitigation Type and Replacement Ratio*</u>			
	<u>Creation</u>	<u>Re-establishment</u>	<u>Re-habilitation</u>	<u>Enhancement Only</u>
<u>Category IV</u>	<u>1.5:1</u>	<u>1.5:1</u>	<u>3:1</u>	<u>6:1</u>
<u>Category III</u>	<u>2:1</u>	<u>2:1</u>	<u>4:1</u>	<u>8:1</u>
<u>Category II</u>	<u>3:1</u>	<u>3:1</u>	<u>6:1</u>	<u>12:1</u>
<u>Category I</u>	<u>6:1</u>	<u>12:1</u>	<u>24:1</u>	<u>Not allowed</u>

* Ratio is the replacement area: impact area.

SECTION 40. SMC Title 17 Zoning Chapter 17.125 Subsection 17.12.090(2) Mitigation plan requirements is amended to read as follows:

- (2) The mitigation plan shall:

- (a) Include a baseline study that analyzes the existing functional values of the wetlands and buffer, functional values that will be lost, and the system's functional values after mitigation. The applicant may choose to use Calculating Credits and Debits for Compensatory Mitigation in Western Washington - Operational Draft, or as amended, for the assessment of mitigation functional replacement.

SECTION 41 SMC Title 17 Zoning Chapter 17.130 Fish and Wildlife Habitat Conservation Areas- Specific Standards Subsection 17.130.050 Classification of streams is amended to read as follows:

17.130.050 Classification of streams

- (1) ~~Type 1 Stream. All streams, within their ordinary high water mark, as inventoried as "shorelines of the state" under Chapter 90.58 RCW and the rules promulgated pursuant to Chapter 90.58 RCW, but not including those waters' associated wetlands as defined in Chapter 90.58 RCW.~~
- (2) ~~Type 2 Stream. Segments of natural streams that are not classified as Type 1 Streams and have a high fish and wildlife use. These are segments of natural streams and periodically inundated areas of their associated wetlands, which:~~
 - (a) ~~Are used by fish for spawning, rearing or migration. Stream segments having a defined channel 20 feet or greater within the average bankfull width and having a gradient of less than four percent are presumed to have highly significant fish populations;~~
 - (b) ~~Are used by fish for off-channel habitat. These areas are critical to the maintenance of optimum survival of fish. This habitat shall be identified based on the following criteria:~~
 - (i) ~~The site must be connected to a fish-bearing stream and be accessible during some period of the year; and~~
 - (ii) ~~The off-channel water must be accessible to fish through a drainage with less than a five percent gradient.~~
- (3) ~~Type 3 Stream. Segments of natural streams that are not classified as Type 1 or 2 Streams and have a moderate to slight fish and wildlife use. These are segments of natural streams and periodically inundated areas of their associated wetlands which are used by fish for spawning, rearing or migration. The requirements for determining fish use are described in the State Forest Practices Board Manual, Section 13. If fish use has not been determined, streams having the following characteristics are presumed to have fish use:~~
 - (a) ~~Stream segments having a defined channel of two feet or greater within the average bankfull width, and having a gradient of 16 percent or less; and~~
 - (b) ~~Stream segments having a defined channel of two feet or greater within the average bankfull width, a gradient greater than 16 percent and less than or equal to 20 percent, and a contributing basin size based on hydrographic boundaries greater than 50 acres.~~
- (4) ~~Type 4 Stream. All segments of natural streams within the average bankfull width of defined channels that are perennial nonfishhabitat streams. Perennial streams~~

are streams that do not go dry any time during a year of normal rainfall. If the uppermost point of perennial flow cannot be identified with simple, nontechnical observations (see State Forest Practices Board Manual, Section 23), then Type 4 Streams begin at a point along the channel where the contributing basin area is at least 52 acres.

- (5) Type 5 Stream. All segments of natural streams within the average bankfull width of the defined channels that are not Type 1, 2, 3, or 4 Streams. These are seasonal, nonfish-habitat streams in which surface flow is not present for at least some portion of the year. (Ord. 1164 § 4, 2004).

The stream typing system as provided in WAC 222-16-030k as hereafter amended, shall be utilized for stream classification. The Department of Natural Resources stream classification maps shall be used to determine classification, unless the critical areas report provides a basis for reclassification. The director may consult with the Department of Natural Resources and Washington Department of Fish and Wildlife to gain concurrence on any change in classification.

- (1) "Type S Water" means all waters, within their bankfull width, as inventoried as "shorelines of the state" under chapter 90.58 RCW and the rules promulgated pursuant to chapter 90.58 RCW including periodically inundated areas of their associated wetlands.
- (2) "Type F Water" means segments of natural waters other than Type S Waters, which are within the bankfull widths of defined channels and periodically inundated areas of their associated wetlands, or within lakes, ponds, or impoundments having a surface area of 0.5 acre or greater at seasonal low water and which in any case contain fish habitat or are described by one of the following four categories:
- (a) Waters, which are diverted for domestic use by more than 10 residential or camping units or by a public accommodation facility licensed to serve more than 10 persons, where such diversion is determined by the department to be a valid appropriation of water and the only practical water source for such users. Such waters shall be considered to be Type F Water upstream from the point of such diversion for 1,500 feet or until the drainage area is reduced by 50 percent, whichever is less;
- (b) Waters, which are diverted for use by federal, state, tribal or private fish hatcheries. Such waters shall be considered Type F Water upstream from the point of diversion for 1,500 feet, including tributaries if highly significant for protection of downstream water quality. The department may allow additional harvest beyond the requirements of Type F Water designation provided the department determines after a landowner-requested on-site assessment by the department of fish and wildlife, department of ecology, the affected tribes and interested parties that:
- (i) The management practices proposed by the landowner will adequately protect water quality for the fish hatchery; and
- (ii) Such additional harvest meets the requirements of the water type designation that would apply in the absence of the hatchery;

- (c) Waters, which are within a federal, state, local, or private campground having more than 10 camping units: Provided, That the water shall not be considered to enter a campground until it reaches the boundary of the park lands available for public use and comes within 100 feet of a camping unit, trail or other park improvement;
- (d) Riverine ponds, wall-based channels, and other channel features that are used by fish for off-channel habitat. These areas are critical to the maintenance of optimum survival of fish. This habitat shall be identified based on the following criteria:
 - (i) The site must be connected to a fish habitat stream and accessible during some period of the year; and
 - (ii) The off-channel water must be accessible to fish.
- (3) "Type Np Water" means all segments of natural waters within the bankfull width of defined channels that are perennial nonfish habitat streams. Perennial streams are flowing waters that do not go dry any time of a year of normal rainfall and include the intermittent dry portions of the perennial channel below the uppermost point of perennial flow.
- (4) "Type Ns Water" means all segments of natural waters within the bankfull width of the defined channels that are not Type S, F, or Np Waters. These are seasonal, nonfish habitat streams in which surface flow is not present for at least some portion of a year of normal rainfall and are not located downstream from any stream reach that is a Type Np Water. Ns Waters must be physically connected by an above-ground channel system to Type S, F, or Np Waters.

SECTION 42 SMC Title 17 Zoning Chapter 17.130 Fish and Wildlife Habitat Conservation Areas- Specific Standards Subsection 17.130.060 Standard buffer width requirements is amended to add new section (5) Buffer Exclusion and (6) Reach Based Alternative Buffer width requirements to read as follows:

(5) Buffer Exclusion

An area within the standard buffers may be excluded if the area is functionally and effectively disconnected from the wetland by a road, railroad or other substantially developed surface of sufficient width and with use characteristics such that buffer functions are not provided. The equivalent of the area excluded shall be provided elsewhere adjacent to the wetland through buffer averaging provisions not subject to the limit on area or width. Where the entire area excluded cannot feasibly be provided, other mitigation may be approved to provide equivalent function. This provision shall not apply to such a facility within a development proposal or contiguous ownership that can be feasibly relocated to accommodate standard buffers.

(6) Reach Based Alternative buffer width requirements

Within Shoreline Management Act Jurisdiction the director may follow the following buffer width requirements without a variance:

Stillaguamish River Reach A from the SR 532 Bridge to, but not including, the "Railroad Parcel" shall be subject to standard buffers without modification

Stillaguamish River Reach B east of Twin City Foods, the buffer shall extend 40 feet from the OHWM.

Stillaguamish River Reach C on the Twin City Food site, if the site is redeveloped in the future such that building modification or replacement takes place, the buffer shall extend 40 feet from the OHWM.

Stillaguamish River Reach D from Twin City Foods to Irvine Slough the city owned parcel is subject to a native vegetation buffer over the parcel consistent with its primary function of providing public access

Stillaguamish River Reach E east of Irvine Slough to the city limits is subject to a buffer extending 40 feet from the OHWM on the Stillaguamish River and 35 feet on Irvine Slough up to 25 percent of the lot area.

Stillaguamish River Reach F consisting of the sewage treatment facility public is not subject to buffers beyond existing vegetation buffers as an Essential Public Facility.

Church Creek Reach A from the city limits to Pioneer Highway is subject to Critical Area buffer requirements, including both stream and steep slope buffers.

Church Creek Reach B north of Pioneer Highway is subject to Critical Area buffer requirements, including both stream and steep slope buffers.

SECTION 43 SMC Title 17 Zoning Chapter 17.130 Fish and Wildlife Habitat Conservation Areas- Specific Standards Subsection 17.130.080(6)(c)(iv) and (7) are renumbered to read as follows.

17.130.080 Allowed permitted activities in streams and buffers

~~(7)(6)(e)(iv)~~ All actions must comply with the appropriate state and federal guidelines and obtain any required state and federal permits.

~~(8)(7)~~ Modification of Existing Structures

No existing structure may be modified to increase impervious surface in the stream or stream buffer

SECTION 44 SMC Title 17 Zoning Chapter 17.130 Fish and Wildlife Habitat Conservation Areas- Specific Standards Subsection 17.130.090 (6) is amended to read as follows.

(6) A summary of the methodology used to conduct the study, including establishment of the Ordinary High Water Mark (OHWM);

SECTION 45 SMC Title 17 Zoning Chapter 17.150 Shoreline Management Standards is amended to read as follows:

17.150 Shoreline Management Standards

Sections: 17.150.010 Shoreline Master Program

~~17.150.10 Shoreline Master Program~~

~~Development within the shoreline jurisdiction is regulated by the city's Shoreline Master Program. Please refer to the document for regulations.~~

17.150.010 Purpose

- 1) The city adopts the goals and principles of the Shoreline Management Act as provided in RCW 90.58.020 and as particularly relevant to Stanwood.
- 2) The shoreline is one of the most valuable and fragile of the city's natural resources.
- 3) There is a clear and urgent demand for a planned, rational, and concerted effort, jointly performed by federal, state, and local governments, to prevent the inherent harm in an uncoordinated and piecemeal development of the city's shoreline jurisdiction.
- 4) The city's shoreline policies are intended to protect against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life, while protecting generally public rights of navigation and corollary rights incidental thereto.
- 5) In the implementation of the Shoreline Master Program, the public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines shall be preserved to the greatest extent feasible consistent with the overall best interest of the state, the county, and the people generally. To this end, uses shall be preferred which are consistent with control of pollution and prevention of damage to the natural environment or are unique to or dependent upon use of the state's shoreline.

17.150.11 Shoreline Master Program Elements

The Shoreline Master Program consists of the following elements which are subject to review and approval by the Washington State Department of Ecology pursuant to RCW 90.58.090:

- 1) Comprehensive Plan Policies Shoreline Element
- 2) Regulations in Stanwood Municipal Code (SMC) Chapter 17.150 Shoreline Management Regulations
- 3) Critical Area Regulations in SMC Title 17.114 through 17.134 (dated xxxx.xx.xxx, Ordinance #1322).
- 4) The Shoreline Restoration Element of the Shoreline Master Plan, of which one printed copy in book form has is on file in the office of the City Clerk and made available for examination by the general public, shall not be considered to contain regulations but shall be utilized as a guideline for capital improvements planning by the city and other jurisdictions undertaking ecological restoration activities within Shoreline Management Act jurisdiction.
- 5) The Shoreline Environment Overlay Map, of which one printed copy has heretofore been filed and is on file in the office of the City Clerk and made available for examination by the general public, and another printed copy of which is available at the Community Development Department. An electronic copy may also be posted online at the city's website.

17.150.12 Shoreline Overlay Districts

- 1) Shoreline Overlay District Maps
 - a. Shoreline Overlay Map
 - b. Shoreline Overlay Detail A
 - c. Shoreline Overlay Detail B
 - d. Shoreline Overlay Detail C

17.150.13 High Intensity Environment

- 1) **Purpose** The High Intensity overlay is an area of high-intensity land-use including commercial and industrial development. The purpose of this environment is to ensure optimum utilization of shorelines which, are either presently or are planned for high-intensity commercial, transportation, and industrial uses. Development should be managed so that it enhances and maintains the shorelines for a variety of urban uses with priority given to water-dependent, water-related and water-enjoyment uses while protecting existing ecological functions and restoring ecological functions in areas that have been previously degraded.
- 2) **Designation Criteria** The primary determinant for designating an area in the High Intensity Environment is to ensure optimum utilization of shorelines within urbanized areas by providing for intensive public use and by managing development so that it enhances and maintains shorelines for a multiplicity of urban uses.

Criteria for designation are:

- a) Areas of high density commercial and industrial use.
- b) Incorporated areas having intensive shoreline waterfront development.
- c) Areas of low to medium density development contiguous in the Urban Growth Area (UGA) designated for high density urban development and/or annexation.

The location of the High Intensity overlay is Reaches A through D extending from the SR 532 bridge to the City Limits east of Irvine Slough and encompassing lands zoned General Commercial and General Industrial.

3) Management Policies

- a) First priority should be given to water-dependent uses. Second priority should be given to water-related and water-enjoyment uses. Nonwater-oriented uses should not be allowed except as part of mixed use developments. Nonwater-oriented uses may also be allowed in limited situations where they do not conflict with or limit opportunities for water-oriented uses or on sites where there is no direct access to the shoreline and/or where public benefit in the form of public access and/or ecological restoration is provided.
- b) Priority should be given to developing visual and pedestrian access to publicly owned shorelines and tidelands in the urban environment.
- c) Where practical, public access points should be linked with non-motorized transportation routes.
- d) Encourage redevelopment and/or renewal of blighted areas or abandoned structures in order that complete utilization may be made of shoreline resources in an Urban Environment.
- e) Promote aesthetic considerations by means of sign control regulations and architectural standards.
- f) Development should be encouraged to provide management plans which protect the quality of the environment.

- g) Encourage maximum multiple use of urban shoreline areas.
- h) Shoreline dependent commercial and industrial uses should be encouraged to fully utilize those existing urban shoreline areas before expansion is allowed into undeveloped areas.

17.150.14 Shoreline Residential

- 1) **Purpose** The purpose of the "Shoreline Residential designation is for areas which are primarily residential or intended for single-family or multi-family residential use. These areas are to maintain existing character and be consistent with that character in terms of open space, bulk, scale, and intensity of use within the guidelines of current zoning. An additional purpose is to provide appropriate public access and recreational uses.
- 2) **Designation Criteria** The Shoreline Single-Family Residential environment designation is appropriate for those areas of the city's shorelines that are designated in the Comprehensive Plan and characterized predominantly by single-family residential development or are planned for platted for single-family residential development.

The location of the Shoreline Residential overlay is as a parallel designation on Church Creek landward of the Urban Conservancy Designation described below.

- 3) **Management Policies** The following management policies should apply to all shorelines in the Shoreline Residential Environment:
 - a) Standards for density or minimum frontage width, setbacks, lot coverage limitations, buffers, shoreline stabilization, vegetation conservation, critical area protection, and water quality shall be set to maintain no net loss of shoreline ecological functions.
 - b) New residential developments should provide public access and joint use community recreational facilities where appropriate.
 - c) Access, utilities, and public services should be available and adequate to serve existing needs and/or planned future development.

17.150.15 Urban Conservancy

- 1) **Purpose** The purpose of the Urban Conservancy designation is to protect and restore ecological functions of open space, floodplain and other sensitive lands where they exist in urban and developed settings, while allowing a variety of compatible uses consistent with the Comprehensive Plan. These include areas that are currently or intended for recreational use and for areas identified as having biological or physical limitations or other unique or hazardous characteristics that are incompatible with intense development. Activities permitted in these areas are intended to have minimal adverse impacts upon the shoreline.
- 2) **Designation Criteria** The Urban Conservancy environment designation is appropriate for those areas planned for development that are compatible with maintaining or restoring of the ecological functions of the area, and that are not generally suitable for intensive water dependent uses.

The location of the Urban Conservancy overlay is as a parallel designation on Church Creek extending landward from the Ordinary High Water Mark to the maximum extent of critical area buffers including Fish and Wildlife Conservation Area buffers in SMC

17.130, wetland buffers in SMC 17.125 and Geologically Hazard Area buffers in SMC 17.115.

3) **Management Policies**

The following management polices apply to all shorelines in the Urban Conservancy Environment:

- a) Primary allowed uses and their associated development standards should preserve the natural character of the area or promote preservation of open space, floodplain or sensitive lands where they exist in urban and developed settings, either directly or over the long term. Uses that result in restoration of ecological functions should be allowed if the use is otherwise compatible with the purpose of the environment and the setting.
- b) Standards should be established for shoreline stabilization measures, vegetation conservation, water quality, and shoreline modifications within the "urban conservancy" designation. These standards should ensure that new development does not result in a net loss of shoreline ecological functions or further degrade other shoreline values.
- c) Public access and public recreation objectives should be implemented whenever feasible and significant ecological impacts can be mitigated.

17.150.16 Shoreline Essential Public Facility

1) **Purpose** The purpose of the "Shoreline Essential Public Facility designation is to recognize the existing Stanwood Sewage Treatment system, which is partially located within Shoreline Management Act jurisdiction as an Essential Public Facility as defined by RCW 36.70A.200 and WAC 365-195-340 and to provide for continued operation of the facility, and potential upgrading to meet the future needs of the community.

2) **Designation Criteria** The existing Stanwood Sewage Treatment system is designated as a Shoreline Essential Public Facility.

The location of the Shoreline Essential Public Facility overlay is along the Stillaguamish River at the southeast corner of the city sewage treatment lagoons.

3) **Management Policies** The following management policies should apply to the Shoreline Essential Public Facility.

- a) Standards for density or minimum frontage width, setbacks, lot coverage limitations, buffers, shoreline stabilization, vegetation conservation, critical area protection, and water quality shall maintain the function of the existing system.
- b) Any future expansion of the system should be analyzed to maintain no net loss of shoreline ecological functions and shall include as a first priority expansion outside of SMA jurisdiction.
- c) If the existing lagoon system is replaced in the future by a system requiring less extensive area, planning for public access and ecological restoration shall take place at the time of development of such alternatives.

17.150.17 Shoreline Isolated

1) **Purpose** The purpose of the "Shoreline Isolated Lands" overlay is to provide appropriate regulations for areas that are within shoreline jurisdiction but are effectively isolated from the water by intervening elements of the built environment

including railroads and roads or intervening private parcels. In most cases, these areas function as parallel designations with other designations applied to the area adjacent to the water.

- 2) **Designation Criteria** The Shoreline Isolated Lands overlay should be applied to areas within shoreline jurisdiction that are effectively isolated from the water by intervening elements of the built environment that are of such a scale and location that they effectively preclude this area from affecting shoreline ecological processes or shoreline economic, recreation or other activities. The elements that isolate these lands include large scale railroads and roads or intervening private parcels that are located and constructed such that the upland with this area cannot inherently affect the shoreline.

Shoreline Isolated overlay lands are proposed in Reach A extending landward of the railroad spur over parcels addressed as 10602 Saratoga Drive and 10520 Saratoga Drive.

Management Policies These areas are subject to upland zoning requirements and are not subject to Shoreline Master Program Provisions

17.150.18 Aquatic

1) **Purpose:**

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

2) **Designation Criteria**

The Aquatic overlay is defined as the area waterward of the ordinary high water mark of all streams and rivers, and other water bodies constituting shorelines of the state together with their underlying lands and their water column; but do not include associated wetlands and other shorelands shoreward of the ordinary high water mark. This designation is not found on the Shoreline Environment Map, but shall be assigned based on the description above.

3) **Management Policies**

- a) Water-dependent uses and a limited range of water-oriented uses are allowed in the Aquatic Overlay, subject to provision of shoreline ecological enhancement and public access.
- b) New over-water structures are allowed only for water-dependent uses, public access, or ecological restoration and should be limited to the minimum necessary to support the structure's intended use.
- c) Transportation and utility facilities and Essential Public Facilities may be allowed for which no alternative location is feasible.
- d) Ecological enhancement is an allowed and preferred use.

17.150.20 General Standards and Use Regulations

This section shall apply to all use and development activities within the shoreline.

17.150.21 Shorelines of State-Wide Significance

- 1) **Applicability:** The Shoreline Management Act of 1971 designated certain shoreline areas as shorelines of state-wide significance. Within this City's jurisdiction are

shorelines of state-wide significance. Shorelines thus designated are important to the entire state. Because these shorelines are major resources from which all people in the state derive benefit, this jurisdiction gives preference to uses which favor long-range goals and support the overall public interest.

- 2) Decision Criteria: Every project located on a Shoreline of Statewide Significance, which includes the Stillaguamish River, shall address the following in all permit review, in addition to other criteria provided by this program:
 - (a) Recognize and protect the state-wide interest.
 - (i) Solicit comments and opinions from groups and individuals representing state-wide interests by circulating the master program, and any amendments there of affecting shorelines of state-wide significance, to state agencies, adjacent jurisdictions, citizen's advisory committees and local officials and state-wide interest groups.
 - (ii) Recognize and take into account state agencies' policies, programs and recommendations in developing and administering use regulations and in approving shoreline permits.
 - (iii) Solicit comments, opinions and advice from individuals with expertise in ecology, geology, limnology, aquaculture and other scientific fields pertinent to shoreline management.
 - (b) Preserve the natural character of the shoreline.
 - (i) Designate and administer shoreline environments and use regulations to minimize damage to the ecology and environment of the shoreline as a result of man-made intrusions on shorelines.
 - (ii) Upgrade and redevelop those areas where intensive development already exists in order to reduce adverse impact on the environment and to accommodate future growth rather than allowing high intensity uses to extend into low-intensity use or underdeveloped areas.
 - (iii) Protect and preserve existing diversity of vegetation and habitat values, wetlands and riparian corridors associated with shoreline areas.
 - (c) Result in long-term over short-term benefit.
 - (i) Evaluate the short-term economic gain or convenience of developments relative to the long-term and potentially costly impairments to the natural shoreline.
 - (ii) In general, preserve resources and values of shorelines of state-wide significance for future generations and restrict or prohibit development that would irretrievably damage shoreline resources.
 - (iii) Actively promote aesthetic considerations when contemplating new development, redevelopment of existing facilities or general enhancement of shoreline areas.
 - (d) Protect the resources and ecology of the shoreline.
 - (i) Minimize development activity that will interfere with the natural functioning of the shoreline ecosystem, including, but not limited to: stability, drainage, aesthetic values and water quality.

- (ii) All shoreline development should be located, designed, constructed and managed to avoid disturbance of and minimize adverse impacts to wildlife resources, including spawning, nesting, rearing and habitat areas and migratory routes.
- (iii) Restrict or prohibit public access onto areas which cannot be maintained in a natural condition under human use.
- (iv) Shoreline materials including, but not limited to, bank substrate, soils, beach sands and gravel bars should be left undisturbed by shoreline development. Gravel mining should be severely limited in shoreline areas.
- (v) Preserve environmentally sensitive wetlands for use as open space or buffers and encourage restoration of presently degraded wetland areas.
- (e) Increase public access to publicly owned areas of the shoreline.
 - (i) Give priority to developing paths and trails to shoreline areas, linear access along the shorelines and to developed upland parking.
 - (ii) Locate development landward of the ordinary high water mark so that access is enhanced.
- (f) Increase recreational opportunities for the public on the shoreline.
 - (i) Plan for and encourage development of facilities for recreational use of the shoreline.
 - (ii) Reserve areas for lodging and related facilities on uplands well away from the shorelines with provisions for nonmotorized access to the shoreline.

17.150.22 No Net Loss of Ecological Functions

- 1) Shoreline land uses and activities that may have adverse impacts on the environment should be minimized during all phases of development (e.g. design, construction, management and use) to ensure no net loss of ecological functions and processes. Permitted uses are designed and conducted to minimize, in so far as practical, any resultant damage to the ecology and environment (RCW 90.58.020). Shoreline ecological functions that shall be protected include, but are not limited to, fish and wildlife habitat, food chain support, and water temperature maintenance. Shoreline processes that shall be protected include, but are not limited to, water flow; erosion and accretion; infiltration; ground water recharge and discharge; sediment delivery, transport, and storage; large woody debris recruitment; organic matter input; nutrient and pathogen removal; and stream channel formation/maintenance.
- 2) An application for any permit or approval shall demonstrate all reasonable efforts have been taken to provide sufficient mitigation such that the activity does not result in net loss of ecological functions. Mitigation shall occur in the following prioritized order:
 - a) Avoiding the adverse impact altogether by not taking a certain action or parts of an action, or moving the action.
 - b) Minimizing adverse impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology and engineering, or by taking affirmative steps to avoid or reduce adverse impacts.
 - c) Rectifying the adverse impact by repairing, rehabilitating, or restoring the affected environment.

- d) Reducing or eliminating the adverse impact over time by preservation and maintenance operations during the life of the action.
 - e) Compensating for the adverse impact by replacing, enhancing, or providing similar substitute resources or environments. Preference shall be given to measures that replace the impacted functions on-site or in the immediate vicinity of the impact. However, alternative compensatory mitigation within the watershed that addresses limiting factors or identified critical needs for shoreline resource conservation based on watershed or comprehensive resource management plans may be authorized.
 - f) Monitoring the adverse impact and taking appropriate corrective measures.
- 3) Applicants for permits have the burden of proving that the proposed development is consistent with the criteria set forth in the Shoreline Master Program and the Act, including demonstrating all reasonable efforts have been taken to provide sufficient mitigation such that the activity does not result in net loss of ecological functions.
- 4) Guidelines for ecological preservation and restoration shall include the following:

Stillaguamish River Reach A from the SR 532 Bridge to the "Railroad Parcel" priorities for ecological preservation and restoration include preservation of the wetland on the water side of the railroad and preservation and enhancement of the wetlands on the land side of the railroad including restoring connections to the tidally influenced river. Standard critical area buffers apply to the wetlands.

Stillaguamish River Reach B is subject to critical area buffer of native vegetation extending 40 feet from the OHWM. The existing configuration of the shoreline shall be regraded to provide a shoreline profile more typical on natural conditions that will accommodate native vegetation.

Stillaguamish River Reach C on the Twin City Food site contains an existing non-conforming use important to the economic base of the city. As long as the use continues, no requirements for Critical Area buffers apply. If the site is redeveloped in the future such that building modification or replacement takes place, water frontage is subject to a critical area buffer of native vegetation extending 40 feet from the OHWM.

Stillaguamish River Reach D from Twin City Foods to Irvine Slough the city owned parcel is subject to bank modification and native vegetation restoration consistent with its primary function of providing public access. The private parcels separated from the water by the intervening city-owned parcel may accommodate water oriented use in conjunction with the city-owned parcel, although they meet the criteria for non-water-dependent use of being isolated from the shoreline by an intervening parcel under separate ownership.

Stillaguamish River Reach E east of Irvine Slough to the city limits is subject to critical area buffer of native vegetation extending 40 feet from the OHWM on the Stillaguamish River and 35 feet on Irvine Slough up to 25 percent of the lot area. Any reduction to achieve the 25 percent of land area should be on Irvine Slough buffers. The existing deteriorated bulkhead shall be removed and replaced with a regraded shoreline more typical on natural conditions that will accommodate native vegetation. The existing smokestack may be maintained in the buffer as a visual landmark.

Stillaguamish River Reach F consisting of the sewage treatment facility public is not subject to ecological preservation and restoration, beyond existing vegetation buffers as an Essential Public Facility.

Church Creek Reach A from the city limits to Pioneer Highway is subject to Critical Area buffer requirements, including both stream and steep slope buffers.

Church Creek Reach B north of Pioneer Highway is subject to Critical Area buffer requirements, including stream, wetland and steep slope buffers.

17.150.23 Critical Areas within Shoreline Jurisdiction

The following critical areas shall be regulated in accordance with the following provisions of SMC Title 17 (dated 16 December 2004, ordinance #1164), as amended by Sections 18 through 44 of this Ordinance.

- 1) 17.114 Critical Areas – General Provisions
- 2) 17.115 Critical Areas – Geologically Hazardous Areas – Specific Standards
- 3) 17.120 Critical Areas – Frequently Flooded Areas – Specific Standards
- 4) 17.125 Critical Areas – Wetlands – Specific Standards
- 5) 17.130 Critical Areas – Fish and Wildlife Habitat Conservation Areas – Specific Standards
- 6) 17.135 Critical Areas – Critical Aquifer Recharge Areas – Specific Standards

17.150.24 Shoreline Vegetation Conservation

In addition to the Critical Areas standards of SMC Chapter 17.114 through 17.135, the following shall apply to development on the shoreline:

- (1) A vegetation management plan shall be required for all Critical Area buffer areas within SMA jurisdiction to include:
 - (a) Maintaining adequate cover of native vegetation including trees and understory. If a portion of the buffer has been cleared, or if tree cover is substantially less than a native climax mixed evergreen and deciduous planting, supplemental plantings shall be required.
 - (b) Providing a dense screen of native evergreen trees at the perimeter of the buffer to provide and protect ecological functions. Except at locations of water-dependent facilities or designated public physical or visual access, if existing vegetation is not sufficient to prevent viewing adjacent development from within the buffer, planting shall be required equivalent to two rows of 3' high stock of native evergreens at a triangular spacing of 15 feet, or three rows of gallon containers at a triangular spacing of 8 feet. Fencing may be required if needed to block headlights or other sources of light or to provide an immediate effective visual screen.
 - (c) Providing a plan for control of invasive weeds, and removing existing invasive species.
 - (d) Providing for a monitoring and maintenance plan for a period of at least five (5) years. This provision may be waived for single family residential lots.

- (2) In cases where approved development results in unavoidable adverse impacts to existing shoreline vegetation, mitigation shall be required to ensure that there will be no net loss in the ecological functions performed. Mitigation shall take place on-site to the maximum extent feasible. Mitigation plans shall be completed before initiation of other permitted activities, unless a phased or concurrent schedule that assures completion prior to occupancy has been approved by the director.
- (3) Lawns and other non-native vegetation maintained within shoreline jurisdiction shall minimize use of chemical fertilizers, pesticides, herbicides, or other similar substances. Such chemical treatments shall not be applied within 10 feet of the OHWM. Applications in solid time release form shall be preferred over liquid or concentrate application. Best Management Practices (BMPs) shall be implemented in all chemical applications.
- (4) Aquatic weed management should stress prevention first. Where active removal or destruction is necessary, it should be the minimum to allow water-dependent activities to continue, minimize negative impacts to native plant communities, and include appropriate handling or disposal of weed materials.
 - (a) Aquatic weed control shall only occur when native plant communities and associated habitats are threatened or where an existing water dependent use is restricted by the presence of weeds. Aquatic weed control shall occur in compliance with all other applicable laws and standards.
 - (b) The control of aquatic weeds by derooting, rotovating or other method, which disturbs the bottom sediment or benthos, shall be considered development for which a shoreline permit is required, unless it will maintain existing water depth for navigation in an area covered by a previous permit for such activity, in which case it shall be considered normal maintenance and repair and therefore exempt from the requirement to obtain a shoreline permit.
 - (c) Use of herbicides to control aquatic weeds shall be prohibited except where no reasonable alternative exists and weed control is demonstrated to be in the public's interest. A conditional use permit, and compliance with applicable federal and state laws, shall be required in such case.

17.150.24 Public Access

- (1) Physical public access shall be provided for the following development in the shoreline area, subject to the following criteria:
 - (a) Any development or use that creates increased demand for public access to the shoreline, use shall provide public access to mitigate this impact.
 - (b) Any development or use that interferes with an existing public access way, shall provide public access to mitigate this impact. Developments may not interfere with accesses on their development site by blocking access or by discouraging use of existing on-site or nearby accesses.
 - (c) Uses and developments that utilize public harbor lands or aquatic lands, or that are developed with public funding or other public resources.
 - (d) A use that is not a priority use under the Act, and all non-water-dependent development and uses.
 - (e) Developments of any non-single family development or use, or more than four (4) single-family residential lots or single-family or multi-family dwelling units including subdivision, within a proposal or a contiguously owned parcel.

- (f) Any use of public aquatic lands, except as related to single-family residential use of the shoreline.
- (g) Publicly financed or subsidized flood control or shoreline stabilization measures.
- (2) The City shall maintain in the shoreline permit file a description of the impact that triggered the required public access conditions, and how the conditions address the impact.
- (3) Public access afforded by shoreline street ends, public utilities and rights-of-way shall be preserved, maintained and enhanced. (RCW 36.87.130).
- (4) Development layout, design, uses and activities shall avoid adversely interfering with the public's physical and visual access to the water and shorelines.
- (5) Development layout, design, use and activities shall preserve and enhance public views from the shoreline upland areas. Enhancement of views shall not be construed to mean excessive removal of vegetation that partially impairs views.
- (6) Design Criteria for Public Access Public access shall incorporate the following location and design criteria:
 - (a) The public access area shall be designed to be a comfortable and safe place to visit.
 - (b) Proximity to Water's Edge: Public access shall be provided as close as possible to the water's edge to provide the general public with opportunity to reach, touch, view, and enjoy the water's edge and shall be as close horizontally and vertically to the shoreline's edge as feasible, provided that public access does not adversely affect sensitive ecological features or lead to an unmitigated reduction in ecological functions.
 - (c) Walkways or Trails Required in Vegetated Buffers: Public access on sites where vegetated open space is provided along the shoreline shall consist of a public pedestrian walkway roughly parallel to the ordinary high water mark of the property. The walkway shall be buffered from sensitive ecological features, may be set back from the water's edge, and may provide limited and controlled access to sensitive features and the water's edge where appropriate. Fencing may be provided to control damage to plants and other sensitive ecological features and where appropriate. Trails shall be constructed of permeable materials and limited to 4 to 6 feet in width to reduce impacts to ecologically sensitive resources.
 - (d) Access Requirements for Sites Without Vegetated Buffers: Public access on sites or portions of sites not including vegetated open space, such as water dependent uses, shall include not less than ten (10) percent of the developed area within shoreline jurisdiction or three thousand (3,000) square feet, whichever is greater, on developments including non-water-dependent uses. For water-dependent uses, the amount and location may be varied in accordance with the criteria in Subsection 21.20.04. Public access facilities shall extend along the entire water frontage, unless such facilities interfere with the functions of water-dependent uses. The minimum width of public access facilities shall be 10 feet and shall be constructed of materials consistent with the design of the development. Facilities addressed in the city Transportation Plan shall be developed in accordance with the standards of that plan.

- (e) Access Requirements for Overwater Structures: Public access on over-water structures on public aquatic lands shall be provided and may include common use of walkway areas.
- (f) Connections: Public access shall be located adjacent to other public areas, accesses, and connecting trails where feasible and connected directly to the nearest public street and shall include provisions for handicapped and physically impaired persons, where feasible.
- (g) Parking Requirements: Where public access is within 400 feet of a public street, on-street public parking shall be provided where feasible. For private developments required to provide more than 20 parking spaces, public parking may be required in addition to the required parking for the development at a ratio of one (1) space per 1,000 square feet of public access area up to three (3) spaces and at one space per 5,000 square feet of public access area for more than three (3) spaces. Parking for public access shall include the parking spaces nearest to the public access area and may include handicapped parking if the public access area is handicapped accessible.
- (h) Planned Trails: Where public trails are indicated on the city's transportation, park, or other plans, trails shall be provided within shoreline and non-shoreline areas of a site.
- (i) Privacy: Public access shall be designed to provide for public safety and to minimize potential impacts to private property and individual privacy by avoiding locations adjacent to residential windows and/or outdoor private residential open spaces or by screening or providing a physical separation or other means of clearly delineating public and private space in order to avoid unnecessary user conflict.
- (j) Public Access Required for Occupancy: Required public access sites shall be fully developed and available for public use at the time of occupancy of the use or activity or in accordance with other provisions for guaranteeing installation through a monetary performance assurance.
- (k) Easement Recorded: Public access permit conditions on private land shall run with the land and shall be recorded via a legal instrument such as an easement, on the deed of title and/or a dedication on the face of a plat or short plat as a condition running contemporaneous with the authorized land use, at a minimum. Said recording with the County Auditor's Office shall occur prior to building occupancy or filing of a final plat, whichever comes first.
- (l) Maintenance Responsibility: Maintenance of the public access facility shall be the responsibility of the owner unless otherwise accepted by a public or non-profit agency through a formal recorded agreement. Public access facilities shall be maintained over the life of the use or development. Future actions by successors in interest or other parties shall not diminish the usefulness or value of required public access areas and associated improvements.
- (m) Hours of Access: Public access facilities shall be available to the public 24 hours per day unless an alternate arrangement is granted through the initial shoreline permitting process for the project. Changes in access hours proposed after initial permit approval shall be processed as a shoreline conditional use.
- (n) Signage Required: The standard state-approved logo or other approved signs that indicate the public's right of access and hours of access shall be installed and maintained by the owner in conspicuous locations at public access sites

Such signs shall be posted in conspicuous locations on public access sites and at the nearest connection to an off-site public right of way.

- (o) Development uses and activities shall be designed and operated to avoid adversely interfering with the public's physical and visual access to the water and shorelines.
- (7) Public Access Guidelines by Reach. Public access for new and substantially altered development shall incorporate the following location and design criteria:
 - (a) Stillaguamish River Reaches A and B from the SR 532 Bridge to, but not including Twin City Foods. A public access shall be in the form of a trail parallel to the shoreline. Where the railroad spur is located, the public access should be located to ensure rail and pedestrian safety. Trails should be set-back from the water's edge with provision for viewing platforms at the water's edge to provide direct access. The public access shall be connected with Saratoga Dr and 269th Place NW. If the rail spur should be abandoned, the city should acquire the right of way and develop for public access.
 - (b) Stillaguamish River Reach C on the Twin City Food site public access shall be implemented if the non-conforming building is substantially altered in the future to accommodate a trail parallel to the shoreline connecting at each end to SR 532.
 - (c) Stillaguamish River Reach D from Twin City Foods to Irvine Slough public access shall be developed on the city owned parcel consisting of a trail parallel to the shoreline. Trails should be set-back from the water's edge with provision for viewing platforms at the water's edge to provide direct access.
 - (d) Stillaguamish River Reach E east of Irvine Slough to the city limits public access shall be developed on the city owned parcel consisting of a trail parallel to the shoreline river shoreline and connecting along Irvine Slough to 98th Drive NW and at the east end of the property to 98th Dr NW. Trails should be set-back from the water's edge with provision for a viewing area near the water's edge to provide direct access in the area of the existing smokestack, which should be maintained, if structurally sound, as a visual landmark.
 - (e) Stillaguamish River Reach F consisting of the sewage treatment facility public access shall not be required unless the facility redevelops in the future.
- (8) Church Creek Reach A from the city limits to Pioneer Highway public access shall be a public trail parallel to the shoreline generally outside the Critical Area buffer.
- (9) Church Creek Reach B north of Pioneer Highway public access shall be continue the existing trail at the north side of Twin City Elementary School to Pioneer Highway at the top of the bluff above the creek.
- (10) The requirements for public access may be modified as a shoreline conditional use for any application in which the following criteria are demonstrated to be met. In cases where a Substantial Development Permit is not required, use of this waiver or modification may take place only through a shoreline variance. As a condition of waiver or modification of access requirements, contribution to off-site public access shall be required.
 - (a) Modification of public access requirements may be approved only when:
 - (i) Unavoidable health or safety hazards to the public will occur;

- (ii) Inherent security requirements of the use cannot be satisfied through the application of alternative design features or other solutions;
 - (iii) The cost of providing the access, or mitigating the impacts of the access, is unreasonably disproportionate to the total long-term development and operational cost over the life-span of the proposed development;
 - (iv) Unacceptable environmental harm will result from the public access which cannot be mitigated; or
 - (v) Significant undue and unavoidable conflict between any access provisions and the proposed use and/or adjacent uses would occur and cannot be mitigated.
- (b) Prior to determining that public access is not required, the applicant must first demonstrate and the City determine in its findings that all reasonable alternatives have been exhausted, including but not limited to:
- (i) Regulating access by such means as maintaining a gate and/or limiting hours of use;
 - (ii) Designing separation of uses and activities (e.g. fences, terracing, use of one-way glazings, hedges, landscaping, etc.); and
 - (iii) Developing provisions for access at a site geographically separated from the proposal such as a street end, vista or trail system.

17.150.25 Signage

- (1) All signs shall be located and designed to be compatible with the aesthetic quality of the existing shoreline and adjacent land and water uses. Signs shall minimize interference with vistas, viewpoints and visual access to the shoreline.
- (2) Signs placed in SMA jurisdiction should be limited to public information signs directly relating to a shoreline use or activity, water navigational signs, and legally required highway and railroad signs necessary for operation, safety and direction except where no feasible location outside of SMA jurisdiction is available..
- (3) Over-water signs or signs on floats or pilings shall be allowed only when serving a related to water-dependent uses and only when the primary users of the facility approach by water and would not be served by land-mounted signs.
- (4) Lighted signs shall be hooded, shaded, or aimed so that direct light will not result in glare when viewed from public access facilities or watercourses.
- (5) Conceptual sign plans and design guidelines shall be submitted for review and approval at the time of shoreline permit approval and shall be utilized in future review of sign permits for the property.

17.150.26 Archaeological and Historic Resources

- (1) If historical, cultural, or archaeological sites or artifacts are discovered in the process of development, work on that portion of the site shall be stopped immediately, the site secured, and the find reported as soon as possible to the planning director. The property owner also shall notify the Washington State Department of Archaeology and Historic Preservation and affected tribes. The planning director may provide for a site investigation by a qualified professional and may provide for avoidance, or conservation of the resources, in coordination with appropriate agencies. All shoreline permits shall contain a special provision notifying permittees of this requirement. Failure to comply with this requirement

shall be considered a violation of the shoreline permit and shall subject the permittee to legal action as specified in the SMC Chapter 17.60.

- (2) Prior to approval of development in an area of known or probable cultural resources, the city shall require a site assessment by a qualified professional archaeologist or historic preservation professional and ensure review by qualified parties. Conditions of approval may require preservation or conservation of cultural resources as provided by applicable federal, state and local statutes. All permits issued for development in areas known to be archaeologically significant shall provide for monitoring of any development activity for previously unidentified cultural resources.
- (3) All developments proposed for location adjacent to historical sites, which are registered on the local state, or national historic register shall be located and designed so as to be complimentary to the historic site. Development, which is detrimental to the historic character of such sites shall not be permitted.
- (4) Owners of property containing identified or probable historical, cultural, or archaeological sites are encouraged to coordinate well in advance of application for development to assure that appropriate agencies such as the Washington State Department of Archaeology and Historic Preservation, affected tribes, and historic preservation groups have ample time to assess the site and identify the potential for cultural resources.

17.150.27 Water Quality

- (1) All shoreline development shall comply with the applicable requirements of the city's Comprehensive Stormwater Plan, Comprehensive Plan, Stormwater Management Performance Standards and the current edition of the *Puget Sound Stormwater Quality Technical Manual for the Puget Sound Basin* to prevent impacts to water quality and storm water quantity that would result in a net loss of shoreline ecological functions, or a significant impact to aesthetic qualities, or recreational opportunities.
- (2) Stormwater management structures including ponds, basins, and vaults shall be located outside of SMA jurisdiction where possible and as far from the water's edge as feasible and shall minimize disturbance of vegetation conservation buffers. Low impact development (LID) facilities that do not substantially change the character of the shoreline, such as vegetation filter strips, grassed lined swales, vegetated bioretention and infiltration facilities, are encouraged for development allowed in SMA jurisdiction.
- (3) Use of pesticides, herbicides, and fertilizers in or near the land/water interface shall be restricted by employing native vegetation where feasible and by strict control of application. Aerial application within SMA jurisdiction is prohibited unless as part of a public agency program for control of noxious species, or specific pests for quarantine or public health purposes or for a crisis exemption'.

17.150.28 Permitted Use Table

- (1) The following table determines which and shoreline uses are allowed or prohibited in each shoreline environment.
- (2) Except for the land uses prohibited in this table, land uses allowed in the underlying zoning are allowed subject to the preference for water-oriented uses and subject to specific criteria for uses included in these regulations.

- (3) The Shoreline Isolated Environment uses are determined entirely by the underlying zoning district.
- (4) Uses allowed in the Aquatic Environment are those allowed in the adjacent upland environment, limited to water dependent use, ecological enhancement, and those transportation and utility facilities and Essential Public Facilities for which no alternative location is feasible.
- (5) Land uses in the underlying zoning that require a conditional use permit in the underlying zoning, require a shoreline conditional use permit.
- (6) If a use is prohibited in the underlying zoning district, it is also prohibited in the shoreline.
- (7) KEY: X= Prohibited, P= Permitted, CU= Conditional Use Permit, U = Governed by Underlying Zoning

<u>Use</u>	<u>Shoreline High Intensity</u>	<u>Shoreline Residential</u>	<u>Urban Conservanc y</u>	<u>Essential Public Facility</u>
<u>Low Intensity Scientific, Cultural, Historic, or Educational Use</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>
<u>Fish and Wildlife Resource Enhancement</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>
<u>Accessory Dwelling Units</u>	<u>U</u>	<u>U²³</u>	<u>X</u>	<u>X</u>
<u>Adult Day Care I</u>	<u>U</u>	<u>U²</u>	<u>X</u>	<u>X</u>
<u>Adult Family Home</u>	<u>U</u>	<u>U²</u>	<u>X</u>	<u>X</u>
<u>Agriculture</u>	<u>X</u>	<u>P⁶</u>	<u>P⁶</u>	<u>P⁶</u>
<u>Aquaculture and Fish Hatcheries</u>	<u>CU</u>	<u>X</u>	<u>CU</u>	<u>CU</u>
<u>Boat Launches</u>	<u>P</u>	<u>X</u>	<u>P</u>	<u>X</u>
<u>Commercial Retail Uses</u>	<u>U</u>	<u>X</u>	<u>X</u>	<u>X</u>
<u>Community and Cultural Services</u>	<u>CU</u>	<u>CU</u>	<u>CU</u>	<u>X</u>
<u>Dwellings, Single Family Detached</u>	<u>U</u>	<u>U</u>	<u>X</u>	<u>X</u>
<u>Dwellings, Multi-Family</u>	<u>U</u>	<u>X</u>	<u>X</u>	<u>X</u>
<u>Eating and Drinking Uses</u>	<u>U</u>	<u>X</u>	<u>X</u>	<u>X</u>
<u>Educational Facilities</u>	<u>CU</u>	<u>CU</u>	<u>X</u>	<u>X</u>
<u>Essential Public Facilities</u>	<u>CU</u>	<u>CU</u>	<u>CU</u>	<u>CU</u>
<u>Golf Courses</u>	<u>X</u>	<u>CU¹</u>	<u>X</u>	<u>X</u>
<u>Group Homes</u>	<u>U</u>	<u>U²</u>	<u>X</u>	<u>X</u>
<u>Health Services</u>	<u>U</u>	<u>X</u>	<u>X</u>	<u>X</u>
<u>Home Occupations</u>	<u>U</u>	<u>P</u>	<u>P⁴</u>	<u>X</u>
<u>Industrial Use</u>	<u>U</u>	<u>X</u>	<u>X</u>	<u>X</u>
<u>Lodging</u>	<u>U</u>	<u>X</u>	<u>X</u>	<u>X</u>
<u>Mining</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>
<u>Office Uses</u>	<u>U</u>	<u>X</u>	<u>X</u>	<u>X</u>
<u>Parking areas serving primary use within the shoreline</u>	<u>P³</u>	<u>P³</u>	<u>P³</u>	<u>P³</u>
<u>Parking areas not serving primary use within the shoreline</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>
<u>Parks</u>	<u>P⁷</u>	<u>CU^{1,2}</u>	<u>CU^{1,2}</u>	<u>CU^{1,2}</u>
<u>Passive Recreation</u>	<u>P⁷</u>	<u>P¹</u>	<u>P¹</u>	<u>P¹</u>
<u>Recreation Facilities in Buildings</u>	<u>CU^{1,2}</u>	<u>X</u>	<u>X</u>	<u>X</u>
<u>Marinas</u>	<u>CU</u>	<u>X</u>	<u>X</u>	<u>X</u>
<u>Motor vehicles and related equipment sales/rental/repair and services</u>	<u>U²</u>	<u>X</u>	<u>X</u>	<u>X</u>
<u>Structures for Floodway Management, including drainage or storage and pumping facilities</u>	<u>P⁵</u>	<u>P⁵</u>	<u>P⁵</u>	<u>P⁵</u>
<u>Transportation facilities – vehicular - serving uses within the shoreline</u>	<u>P³</u>	<u>P³</u>	<u>CU</u>	<u>CU</u>
<u>Transportation facilities – vehicular - serving uses outside the shoreline</u>	<u>CU</u>	<u>CU</u>	<u>CU</u>	<u>CU</u>
<u>Trails, public pedestrian and bicycle not including overwater trails</u>	<u>P⁵</u>	<u>P⁵</u>	<u>P⁵</u>	<u>P⁵</u>

Trails, Overwater	CU	CU	CU	CU
Utilities that serve uses within the shoreline	P ³	P ³	P ³	P ³
Utilities that serve uses outside the shoreline	CU	CU	CU	CU
USES NOT SPECIFIED	CU	CU	CU	CU

Table Notes

1. Provided that the use does not degrade the ecological functions or natural character of the shoreline area.
2. Use may be permitted, but new structures shall not be placed within the shoreline jurisdiction unless no feasible alternative location is available
3. Allowed only to serve approved or conditional uses, but should be located outside of shoreline jurisdiction if feasible.
4. Limited to existing structures on existing lots.
5. Subject to criteria for establishment and design of use, including assessment of the need for a shoreline location and analysis of non-shoreline configurations.
6. Existing use is permitted, but new use is subject to a shoreline conditional use permit.
7. Only allowed if the use is water-dependent.

17.150.29 Shoreline Bulk Standard

The following table determines bulk standards in each shoreline environment.

	<u>Shoreline High Intensity</u>	<u>Shoreline Residential</u>	<u>Urban Conservancy</u>	<u>Essential Public Facility</u>
<u>Structure Setback from Ordinary High Water Mark (OHWM)- Minimum</u>				
<u>Water-Dependent Use</u>	None ¹	None ¹	None ¹	None ¹
<u>Water-Related or Water Enjoyment Use</u>	Equal to the Critical Area Buffer plus 10 feet ²			
<u>Non-Water Oriented Use</u>	Equal to the Critical Area Buffer plus 10 feet ²			
<u>Front Yard, Side Yard, and Rear Yard Setbacks</u>	Governed by the underlying zoning			
<u>Impervious Area within 100 feet of OHWM- Maximum ^{3,5}</u>	50%	30%	10%	10% ⁴
<u>Lot Coverage for Buildings ^{5,6}</u>	70%	50%	10%	30%
<u>Maximum Building Height ⁷</u>	35 ft.	30 ft.	30 ft.	30 ft.

1. Setback shall be the maximum determined by the specific needs of the Water-Dependent Use and shall not apply to a structure housing any other use.
2. Water-Oriented Uses may be established closer to the OHWM only in cases where the Critical Areas Buffer is varied in accordance with 17.150.23.

3. Up to 5% additional impervious surface is allowed in buffers for private access to the shoreline on a pathway up to 4 feet wide.
4. Additional impervious area may be allowed by conditional use permit if essential to the function of an Essential Public Facility
5. No building coverage is allowed in Critical Area buffers.
6. Applies only to the portion of a parcel within SMA jurisdiction
7. Additional height may be allowed by conditional use permit if essential to the function of a water-dependent use.

17.150.40 Shoreline Modification Regulations

17.150.41 Shoreline Stabilization (bulkheads and revetments)

- (1) New development, including subdivision, shall be located and designed to avoid the need for future shoreline stabilization to the extent feasible. New lots created by subdivision shall not require shoreline stabilization in order for reasonable development to occur. New development on steep slopes shall be set back sufficiently to ensure that shoreline stabilization is unlikely to be necessary during the life of the structure. New development that would require shoreline stabilization which causes significant impacts to adjacent or down-current properties and shoreline areas shall not be allowed. In all cases, compliance with this criteria shall be documented by geotechnical analysis by qualified professionals. [Reference: WAC 231(3)(a)]
- (2) Shoreline stabilization shall be designed and constructed to avoid stream channel direction modification, realignment and straightening or result in increased channelization of normal stream flows.
- (3) When any structural shoreline stabilization measures are demonstrated to be necessary, the size and extent of modification of natural conditions and processes shall be limited to the minimum necessary. "Soft" approaches shall be preferred. "Hard" structural stabilization measures shall be avoided. The preferred sequence of implementation of shoreline stabilization evaluated for every permit shall be:
 - (a) Allow continuation of natural processes with design of development to accommodate such processes
 - (b) Vegetation enhancement;
 - (c) Upland drainage control;
 - (d) Biotechnical measures;
 - (e) Beach enhancement;
 - (f) Anchor trees;
 - (g) Gravel placement;
 - (h) Rock revetments;
 - (i) Gabions;
 - (j) Concrete groins;
 - (k) Retaining walls without bank modification
 - (l) Bulkheads; [Reference: WAC 231(3)(a)]
- (4) New or enlarged structural stabilization measures shall not be allowed to protect existing primary structures, including residences, unless there is conclusive evidence, documented by a geotechnical analysis, that
 - (a) The structure is in danger from shoreline erosion caused by tidal action, currents, or waves. Normal sloughing, erosion of steep bluffs, or shoreline erosion itself, without a scientific or geotechnical analysis, is not demonstration of need.
 - (b) The geotechnical analysis should evaluate on-site drainage issues and address drainage problems away from the shoreline edge before considering structural shoreline stabilization.
 - (c) The erosion control structure will not result in a net loss of shoreline ecological functions.

- (d) The preferred sequence of implementation in item (3) above has been evaluated and implemented. [Reference: WAC 231(3)(a)]
- (5) All shoreline stabilization must be in support of an allowable shoreline use that is in conformance with the provisions of this Master Program. All shoreline modification activities not in support of a conforming allowable use are prohibited, unless it can be demonstrated that such activities are necessary and in the public interest for the maintenance of shoreline environmental resource values. New or enlarge structural stabilization measures in support of water-dependent or other allowed development shall demonstrate:
- (a) There is a need for the shoreline stabilization structure based on existing erosion hazard or as part of shoreline ecological restoration. Stabilization measures shall not be allowed to enhance the developable portion of a site.
- (b) The need to protect primary structures from damage is due to erosion caused by natural processes, such as tidal action, currents, and waves and is not being caused by upland conditions, such as the loss of vegetation and drainage.
- (c) Nonstructural measures, such as placing the development further from the shoreline, planting vegetation, or installing on-site drainage improvements, are not feasible or not sufficient.
- (d) The stabilization measures will not result in a net loss of shoreline ecological functions. [Reference: WAC 231(3)(a)]
- (6) To protect projects for the restoration of ecological functions or hazardous substance remediation projects pursuant to RCW 70.105D
- (a) Nonstructural measures, planting vegetation, or installing on-site drainage improvements, are not feasible or not sufficient.
- (b) The erosion control structure will not result in a net loss of shoreline ecological functions. [Reference: WAC 231(3)(a)]
- (7) An existing shoreline stabilization structure may be replaced with a similar structure if there is a demonstrated need to protect principal uses or structures from erosion caused by currents, tidal action, or waves, provided that
- (a) The replacement structure is evaluated in compliance with the standards of item (3) above
- (b) The structure is designed, located, sized, and constructed to assure no net loss of ecological functions.
- (c) Replacement walls or bulkheads shall not encroach waterward of the ordinary high-water mark or existing structure except to protect a residence occupied prior to January 1, 1992, and there are overriding safety or environmental concerns. In such cases, the replacement structure shall abut the existing shoreline stabilization structure.
- (d) Where a net loss of ecological functions associated with critical saltwater habitats would occur by leaving the existing structure, it shall be removed as part of the replacement measure.
- (e) Soft shoreline stabilization measures that provide restoration of shoreline ecological functions may be permitted waterward of the ordinary high-water mark. [Reference: WAC 231(3)(a)]
- (8) Geotechnical reports pursuant to this section that address the need to prevent potential damage to a primary structure shall be prepared by a qualified professional. Analysis shall address the necessity for shoreline stabilization by estimating time frames and rates of

erosion and report on the urgency associated with the specific situation. As a general matter, hard armoring solutions should not be authorized except when a report confirms that there is a significant possibility that such a structure will be damaged within three years as a result of shoreline erosion in the absence of such hard armoring measures, or where waiting until the need is that immediate, would foreclose the opportunity to use measures that avoid impacts on ecological functions. Thus, where the geotechnical report confirms a need to prevent potential damage to a primary structure, but the need is not as immediate as the three years, that report shall provide the basis for approval of soft measures to protect against erosion. [Reference: WAC 231(3)(a)]

- (9) The design of stabilization or protection works should provide for the long term multiple use of streamway resources and public access to public shorelines. Publicly financed or subsidized works should provide public pedestrian access to shorelines for low-intensity outdoor recreation except where such access is determined to be infeasible as provided in Section 17.150.25(8).
- (10) Use of car bodies, scrap building materials, asphalt from street work, or any discarded pieces of equipment or appliances for the stabilization of shorelines shall be prohibited.

17.150.42 Flood Hazard Management

- (1) New or substantially altered structural flood hazard reduction measures, such as dikes, levees, berms and similar flood control structures, shall be consistent with basin-wide flood control strategies in the Stillaguamish River Comprehensive Flood Hazard Management Plan. [Reference: WAC 221(3)(c)]
- (2) New flood hazard reduction projects may be authorized only if it is determined that no other alternative to reduce flood hazard to existing development is feasible. The need for, and analysis of feasible alternatives to, structural improvements shall be documented through a geotechnical analysis. REFERENCE: WAC 221(3)(c)
- (3) Locate, design and construct flood protection measures so as to protect and restore the natural character of the streamway, avoid the disruption of channel integrity and provide the maximum opportunity for natural floodway functions to take place, including placement of all flood protection measures such as dikes and levees landward of the streamway, including levee setbacks to allow for more natural function of channel migration zones, off channel habitat and associated wetlands directly interrelated and interdependence with the stream proper. REFERENCE: WAC 221(3)(c)
- (4) Dikes, levees, berms and similar flood control structures shall be shaped and planted with vegetation that is as close as feasible to native natural grasses, shrubs and/or trees characteristic of natural riparian vegetation, while maintaining the integrity of flood control facilities.
- (5) All flood protection measures shall be designed and constructed so that downstream flooding will not be increased and the integrity of downstream ecological functions will not be adversely effected, including disruption of natural drainage flows and stormwater runoff.
- (6) Removal of materials from the river channel for flood management purposes may be allowed only as part of an adopted integrated flood control management program that demonstrates that other flood hazard reduction strategies would not be effective in the absence of gravel removal. [Reference: WAC 221(3)(c)]
- (7) Public access shall be dedicated and improved in all publicly financed or subsidized flood hazard reduction programs unless the criteria of SMC 17.150.25 for Modification of Public Access Requirements are met. [Reference: WAC 221(3)(c)]

- (8) New or expanding development or uses in the shoreline, including subdivision of land, that would likely require new structural flood control works within an active stream, channel migration zone, or floodway are prohibited. [Reference: WAC 221(3)(c)]
- (9) All flood control and flood-proofing measures on shall conform with SMC Chapter 17.120 Critical Areas, Frequently Flooded Areas.
- (10) All applications for shoreline stabilization and flood protection measures shall include the following (at a minimum):
 - (a) Purpose of project;
 - (b) Existing shoreline stabilization and flood protection devices within one-eighth mile on each side of proposed project;
 - (c) Construction material and methods.
 - (d) Consistency with adopted Flood Hazard Reduction Plans
 - (e) Consistency with all criteria above.

17.150.43 Clearing and Grading

- (1) Clearing and grading activities in shoreline areas shall be allowed only in association with an permitted shoreline development and be limited to the minimum necessary to accommodate shoreline development.
- (2) Clearing and grading activities shall conform to the standards of SMC 17.140 Stormwater Management Performance Standards, SMC 17.114, SMC 17.114 through 130 Critical Areas and applicable criteria of this Chapter to minimize impacts to wildlife habitat, sedimentation of creeks, streams, ponds, lakes, wetlands and other water bodies and degradation of water quality.

17.150.44 Dredging and Dredge Material Disposal

- (1) Dredging shall only be permitted for the following purposes and only when other alternatives are impractical:
 - (a) To improve water quality or aquatic habitat;
 - (b) To maintain and improve navigability and water flow;
 - (c) To mitigate conditions which could endanger public safety;
 - (d) To create or improve public recreational opportunities.
- (2) New development should be sited and designed to avoid or, if that is not possible, to minimize the need for new and maintenance dredging. Dredging for the purpose of establishing, expanding, or relocating or reconfiguring navigation channels and basins should be allowed where necessary for assuring safe and efficient accommodation of existing navigational uses and then only when significant ecological impacts are minimized and when mitigation is provided. Maintenance dredging of established navigation channels and basins should be restricted to maintaining previously dredged and/or existing authorized location, depth, and width.
- (3) Dredging waterward of the ordinary high-water mark for the primary purpose of obtaining fill material shall not be allowed, except when the material is necessary for the restoration of ecological functions. When allowed, the site where the fill is to be placed must be located waterward of the ordinary high-water mark. The project must be either associated with a MTCA or CERCLA habitat restoration project or, if approved through a shoreline conditional use permit, any other significant habitat enhancement project.
- (4) Applications for dredging permits shall include the following information (at a minimum):

- (a) Physical analysis of material to be dredged: material composition and amount, grain size, organic materials present, source of material, etc.;
 - (b) Chemical analysis of material to be dredged: volatile solids, chemical oxygen demand, (COD), grease and oil content, mercury, lead and zinc content, etc.;
 - (c) Biological analysis of material to be dredged;
 - (d) Information on stability of bedlands adjacent to proposed dredging and spoils disposal;
 - (e) Dredging procedure: time of dredging, volume to be dredged, method of dredging and spoils disposal;
 - (f) Spoil disposal area for current project and subsequent maintenance dredging (when appropriate) including: location, size, capacity and physical characteristics.
- (5) Dredge spoils shall be deposited at sites which are consistent with the landfill section of this program.
- (a) Prior to commencement of disposal operations, the disposal site's dikes shall be improved such that no spoils bearing discharge water may escape. The site's dikes shall be kept in this condition throughout any disposal operations;
 - (b) The settling area within the dikes shall be maintained sufficiently large so that return water carries a minimum of suspended sediment. The outlet pipe shall be moved from time to time as may be necessary to comply with this requirement;
 - (c) After approval of the shoreline permit, notice shall be given to the City of Stanwood, in writing, at least two weeks prior to the commencement of any disposal operations.

17.150.45 Instream Structures

- (1) Instream structures may be allowed only when the public benefits of such facilities clearly outweighs any loss of ecological processes and functions and only when an analysis of alternatives demonstrates that the proposed location and design would result in less adverse impact than alternative locations and designs.
- (2) Breakwaters, jetties, groins, and weirs located waterward of the ordinary high-water mark shall be allowed only where necessary to support water-dependent uses, public access, shoreline stabilization, or other specific public purpose. Breakwaters, jetties, groins, weirs, and similar structures shall require a conditional use permit, except for those structures installed to protect or restore ecological functions, such as woody debris installed in streams.
- (3) Instream structures and associated facilities should provide for the protection and preservation of natural and cultural resources including, but not limited to, fish, wildlife and water resources, sensitive areas such as wetlands, sensitive geologic and geohydraulic areas and waterfalls, erosion and accretion shoreforms and natural scenic vistas.
- (4) Careful consideration should be given to avoiding or minimizing land and water use conflicts to properties in shoreline jurisdiction and to properties both adjacent to, upstream and downstream of the proposed site.
- (5) All instream structures should be designed to permit natural transport of bed load materials.
- (6) Instream structures and their support facilities should be designed to minimize removal of riparian vegetation and the necessity for shoreline stabilization structures.
- (7) Mitigation shall be required for loss of fisheries and wildlife resources, natural systems including wetlands and sensitive areas. No net loss in function or value of acreage should occur as a result of instream structures. When required, mitigation measures should be properly planned and monitored to ensure their effectiveness.

- (8) Instream structures and associated facilities shall be located and designed so they do not interfere with public navigation of the water course including commercial and recreational navigation. Such uses include barging, rafting, sailboarding, kayaking and canoeing.
- (9) Instream structures and associated facilities should not be located where they will adversely impact publicly owned lands or waters used extensively for recreation. Impacts that should be avoided include the visual impact of the structure or facilities, the intrusion of roads or utility corridors into undeveloped area used for recreation, reduced water noise and significant visual impacts from reduced water flows.
- (10) Instream structures shall be designed and constructed to insure public access to and along the shoreline, in accordance with the public access policies and regulations contained in this SMP. Existing public access and recreational opportunities should be retained, enhanced or replaced.

17.150.46 Landfill

- (1) The creation of dry upland area by the filling or depositing of sand, soil or gravel into a wetland or floodplain area above the OHWM shall be allowed only when necessary To support:
 - (a) Water-dependent use, public access,
 - (b) Cleanup and disposal of contaminated sediments as part of an interagency environmental clean-up plan,
 - (c) Expansion or alteration of transportation facilities of statewide significance currently located on the shoreline and then only upon a demonstration that alternatives to fill are not feasible,
 - (d)
 - (e) Within a floodplain as part of flood-proofing in accordance with SMC Chapter 17.120.
- (2) Structures or fills shall not be permitted if they restrict the passage of flood flows or increase flood heights or velocities to an extent which would cause significant flood damage to existing development. Structures and fills that do not create the above conditions may be permitted in the flood plain provided they are flood-proofed to ensure the safety of the structure and inhabitants during a flood.
- (3) Fills waterward of the ordinary high-water mark for any use except ecological restoration shall require a conditional use permit. [WAC 173-26-231(3)(c)]
- (4) Beach enhancement is prohibited:
 - (a) Within spawning, nesting or breeding habitat;
 - (b) Where littoral drift of the enhancement materials will adversely affect adjacent spawning grounds or other areas of biological significance;
 - (c) If it will interfere with the normal long term public use of the navigable waters of the state; and/or
 - (d) Where the activity is in support of a nonconforming use unless such activities are necessary to maintain shoreline stability and the natural ecology.
- (5) Applications which include landfilling shall include the following information:
 - (a) Physical, chemical and biological character of landfill material;
 - (b) Source of landfill material;
 - (c) Method of placement and compaction;

- (d) Type of proposed surfacing;
- (e) Method of perimeter erosion control;
- (f) Proposed use of filled area.

17.150.47 Boating Facilities - Piers, Docks, Floats and Buoys

- (1) Because of the dynamic nature of the Stillaguamish River, variable seasonal flows and the extensive floodplain, boating facilities, including docks and other moorage and boat ramps or other launching facilities, are limited to water-dependent commercial and industrial uses and public access and recreation only.
- (2) All boating facilities shall be located and designed to:
 - (a) Avoid areas of the river that are subject to deposition such that maintenance dredging of the facility is required.
 - (b) Avoid critical saltwater, estuarine and freshwater habitat, including wetlands as well as important spawning, feeding, or rearing areas for aquatic species;
 - (c) Avoid obstructing Navigation or recreational boating;
 - (d) Limit width and the extension of facilities beyond OHWM to the minimum needed to serve a water dependent or recreational use.
 - (e) Provide parking and other support facilities, excepting direct access to the facility, located outside Critical Area buffers;
 - (f) Employ permanent facilities that will not obstruct high flows or catch debris and form impediments to flow during high flow events. The preferred design is to limit permanent features to the shore with all facilities in and over the water limited to floats and access ramps. Floats and related facilities shall be removed during potential high flow periods, generally September through May.
- (3) Size
 - (a) Length: Maximum length of a pier or dock shall be the minimum necessary to accomplish moorage for the intended boating use and shall be only so long as to obtain a depth of 4 feet of water as measured at mean low water in marine waters or as measured at ordinary low water in fresh water shorelines at the landward limit of the moorage slip or as demonstrated as needed to provide the depth to serve a specific vessel or class of vessels essential to a specific water dependent use.
 - (b) Width: Maximum width of the walkway shall not exceed 4 feet or as demonstrated as essential to serve a specific water dependent use.
 - (c) For community piers and docks, maximum width and length will be as determined by the City on a case-by-case basis.
 - (d) Docks shall not exceed 3 feet in height above OHWM on the landward side and shall extend above the water surface a maximum of one 1 foot at all other locations or as demonstrated as essential to serve a specific water dependent use.
- (4) Side yard Setbacks: Docks shall be setback a minimum of 10 feet from side property lines, EXCEPT when mutually agreed to by contract/covenant with the owners of the adjacent property, a copy of which must be recorded with the County Auditor and filed with the application for permit.
- (5) Development of a public boat launching ramps is encouraged in the Stanwood vicinity, and shall be located and designed to:

- (a) Avoid areas of the river that are subject to erosion or deposition such that shoreline stabilization or maintenance dredging of the facility is required.
- (b) Avoid critical saltwater and freshwater habitat, including wetlands as well as important spawning, feeding, or rearing areas for aquatic species.
- (c) Avoid obstructing navigation or recreational boating;
- (d) Provide parking and other support facilities, excepting driveways and ramps providing direct access to the water, located outside critical area buffers;
- (e) Provide adequate parking supply to prevent parking spillover to public streets in residential areas;
- (f) Provide a design that is aesthetically compatible with, or enhances, existing shoreline features and uses, and meets all applicable landscape buffer and parking lot landscaping requirements; and
- (g) Provide adequate facilities for the efficient handling of sewage and litter.

17.150.50 Chapter 5 - Shoreline Use Policies and Regulations

17.150.51 Aquaculture

- (1) Locate aquaculture enterprises in areas where the navigational access of upland owners and commercial waterborne traffic is not significantly restricted. The location of floating and submerged aquaculture structures shall not unduly restrict navigation to or along the shoreline or interfere with general navigation lanes and traffic or "usual and accustomed fishing locations". Floating structures shall remain shoreward of principal navigation channels. Other restrictions on the scale of aquaculture activities in order to protect navigational access may be necessary based on the size and shape of the affected water body.
- (2) Consider the possible detrimental impact aquacultural development might have on view from upland property and on the general aesthetic quality of the shoreline area.
- (3) Encourage development of underwater aquaculture structures which do not interfere with navigation or seriously degrade the aesthetic quality of city shorelines.
- (4) Minimize the detrimental impact aquacultural projects might have on agricultural practices, recreation, and other economic activities located along city shorelines.
- (5) Ecological balance should be considered when introducing non-native fish or shellfish, plant or animal life.
- (6) Aquaculture structures and activities that are not water-dependent (e.g., warehouses for storage of products, parking lots) shall, be located inland of Critical Area buffers upland of water dependent portions of the project and shall minimize detrimental impacts to the shoreline.
- (7) Aquaculture structures and equipment shall be of sound construction and shall be so maintained. Abandoned or unsafe structures and equipment shall be removed or repaired promptly by the owner. Where any structure might constitute a potential hazard to the public in the future, the City shall require the posting of a bond commensurate with the cost of removal or repair. The City may abate an abandoned or unsafe structure, following notice to the owner, if the owner fails to respond in thirty days and may impose a lien on the related shoreline property or other assets in an amount equal to the cost of the abatement. Bonding requirements shall not duplicate requirements of other agencies.
- (8) Legally established aquacultural enterprises, including authorized experimental projects, shall be protected from incompatible uses that may seek to locate nearby. Demonstration

of a high probability that such an adjacent use would result in damage to, or destruction of, such an aquacultural enterprise shall be grounds for the denial of that use.

- (9) No processing of aquacultural product, except for the sorting or culling of the cultured organisms and the washing or removal of surface materials or organisms, shall occur in or over the water after harvest, unless specifically approved by permit. All other processing and processing facilities shall be located on land and, in addition to these provisions shall be governed by the policies and regulations of other applicable sections of this master program, in particular provisions addressing commercial and industrial uses.
- (10) Applicants shall include in their applications all information needed to conduct thorough evaluations of their aquaculture proposals, including but not limited to the following:
 - (a) Species to be reared;
 - (b) Aquaculture method(s);
 - (c) Anticipated use of any feed, pesticides, herbicides, antibiotics or other substances and their predicted impacts;
 - (d) Manpower/employment necessary for the project;
 - (e) Harvest and processing location, method and timing;
 - (f) Location and plans for any shoreside activities, including loading and unloading of the product and processing;
 - (g) Method of waste management and disposal;
 - (h) Existing environmental conditions, including best available background information on water quality, tidal variations, prevailing storm wind conditions, current flows, flushing rates, aquatic and benthic organisms and probable impacts on water quality, biota, currents, littoral drift and any existing shoreline or water uses. Further baseline studies may be required depending upon the adequacy of available information, existing conditions, the nature of the proposal and probable adverse environmental impacts. Baseline monitoring shall be at the applicant's expense unless otherwise provided for;
 - (i) Method(s) of predator control;
 - (j) Use of lights and noise generating equipment over water that minimizes interference with surrounding uses; and
 - (k) Other pertinent information deemed necessary by the City.

17.150.52 Commercial Development

- (1) New commercial uses are limited to the Shoreline High Intensity Environment and are limited to uses allowed by underlying zoning with the use preferences and restrictions in this program.
- (2) New commercial and community services developments are subject to the following use preference:
 - (a) Water-Dependent Uses: Water-dependent commercial uses shall be given preference over water-related and water-enjoyment commercial and community services uses. Prior to approval of water-dependent uses, the city shall review a proposal for design, layout, and operation of the use and shall make specific findings that the use qualifies as a water-dependent use. Water-dependent commercial and community services uses shall provide public access in a manner that will not interfere with the water-dependent aspects of the use. The portion of a site not required for water-dependent use may include multiple use, approved non-water-oriented uses, ecological restoration, and public access.

- (b) Water-Related Uses: Water-related commercial uses shall not be approved if they displace existing water-dependent uses. Prior to approval of a water-related commercial or community services use, review of the design, layout, and operation of the use shall confirm that the use has a functional requirement for a waterfront location, or the use provides a necessary service supportive of water-dependent uses, and/or the proximity of the use to its customers makes its services less expensive and/or more convenient. Multiple use development within 100 feet of the OHWM that incorporates water-dependent use generally should reserve the ground level for water-dependent use.
- (c) Water-Enjoyment Uses: Water-enjoyment commercial uses shall not be approved if they displace existing water-dependent or water-related uses or if they occupy space designated for water-dependent or water-related use identified in a substantial development permit or other approval. Prior to approval of water-enjoyment uses, review of the design, layout, and operation of the use shall confirm that the use facilitates public access to the shoreline, or the use provides for aesthetic enjoyment of the shoreline for substantial number of people as a primary characteristic of the use. In order to qualify as a water-enjoyment use, the use must be open to the general public and the shoreline-oriented space within the project must be devoted to the specific aspects of the use that fosters shoreline enjoyment.
- (d) Non-Water Oriented Uses: Non-water oriented commercial and community services uses may be permitted where:
 - (i) Located on a site physically separated from the shoreline by another private property in separate ownership or a public right-of-way such that access for water-oriented use is precluded, provided that such conditions were lawfully established prior to the effective date of the Shoreline Master Program, or established with the approval of the city.
 - (ii) On a site where navigability is severely limited such that water dependent use is not feasible.
 - (iii) Where the use is part of a multiple use project that provides significant public benefit with respect to the objectives of the Act
- (3) All non-water dependent uses shall provide significant public benefit with respect to the objectives of the Act by:
 - (a) Restoring ecological functions both in aquatic and upland environments that will provide native vegetation buffers according to the provisions of SMC 17.150.22, 23 and 24 and the Restoration Element of this plan and other plans and policies including the WRIA 10 Salmon Restoration Plans; and
 - (b) Providing as public access the balance of the water frontage not devoted to ecological restoration and associated buffers as provided in SMC 17.150.25.
- (4) Over-water structures, or other structures waterward of the OHWM, are allowed only for those portions of water-dependent commercial uses that require over-water facilities as an essential feature of their function or for public recreation and public access facilities. Design of over-water structures or structures beyond the OHWM shall demonstrate that they will not interfere with normal stream geomorphic processes or require shoreline stabilization.
- (5) All new or expanded commercial uses shall take into consideration the scenic and aesthetic qualities of the shoreline and compatibility with adjacent uses. They shall make adequate provisions such as location of structures, parking and other facilities, and landscape screening, fences and other measures to protect the privacy and enjoyment of adjacent land uses and open space areas.

- (6) Accessory development or use that does not require a shoreline location such as parking, service buildings or areas, access roads, utilities, signs, and storage of materials shall be located outside of SMA jurisdiction wherever feasible. Siting within SMA jurisdiction should be limited to facilities required to serve approved water-oriented uses and/or developments and should be located inland away from the land/water interface and landward of water-oriented developments.
- (7) Signs for all development and uses shall comply with the City of Stanwood Sign Code and this program.

17.150.53 Industry

- (1) New industrial uses are limited to the Shoreline High Intensity Environment and are limited to uses allowed by underlying zoning with the use preferences and restrictions in this program.
- (2) New industrial and community services developments are subject to the following use preference:
 - (a) Water-Dependent Uses: Water-dependent industrial uses shall be given preference over water-related and water-enjoyment industrial services uses. Prior to approval of water-dependent uses, the city shall review a proposal for design, layout, and operation of the use and shall make specific findings that the use qualifies as a water-dependent use. Water-dependent industrial uses shall provide public access in a manner that will not interfere with the water-dependent aspects of the use. The portion of a site not required for water-oriented use may include multiple use, approved non-water-oriented uses, ecological restoration, and public access.
 - (b) Water-Related Uses: Water-related industrial uses shall not be approved if they displace existing water-dependent uses. Prior to approval of a water-related industrial use, review of the design, layout, and operation of the use shall confirm that the use has a functional requirement for a waterfront location, or the use provides a necessary service supportive of the water-dependent uses, and/or the proximity of the use to its customers makes its services less expensive and/or more convenient. Multiple use development within 100 feet of the OHWM that incorporates water-dependent use may not include non-water oriented uses at the ground level except as consistent with a Master Site Plan approved prior to the adoption of this section.
 - (c) Water-Enjoyment Uses: Water-enjoyment industrial uses shall not be approved if they displace existing water-dependent or water-related uses or if they occupy space designated for water-dependent or water-related use identified in a substantial development permit or other approval. Prior to approval of water-enjoyment uses, review of the design, layout, and operation of the use shall confirm that the use facilitates public access to the shoreline, or the use provides for aesthetic enjoyment of the shoreline for substantial number of people as a primary characteristic of the use. In order to qualify as a water-enjoyment use, the use must be open to the general public and the shoreline-oriented space within the project must be devoted to the specific aspects of the use that fosters shoreline enjoyment.
 - (d) Non-Water Oriented Uses: Non-water oriented industrial uses may be permitted where:
 - (i) Located on a site physically separated from the shoreline by another private property in separate ownership or a public right-of-way such that access for water-oriented use is precluded, provided that such conditions were lawfully established prior to the effective date of the Shoreline Master Program, or established with the approval of the city.

- (ii) On a site where navigability is severely limited such that water dependent use is not feasible.
 - (iii) Where the use is part of a multiple use project that provides significant public benefit with respect to the objectives of the Act
- (3) All non-water dependent uses shall provide significant public benefit with respect to the objectives of the Act by:
- (i) Restoring ecological functions both in aquatic and upland environments that will provide native vegetation buffers according to the provisions of SMC 17.150.22, 23 and 24 and the Restoration Element of this plan and other plans and policies including the WRIA 10 Salmon Restoration Plans; and
 - (ii) Providing as public access the balance of the water frontage not devoted to ecological restoration and associated buffers as provided in SMC 17.150.25.
- (4) Over-water structures, or other structures waterward of the OHWM, are allowed only for those portions of water-dependent industrial uses that require over-water facilities as an essential feature of their function or for public recreation and public access facilities. Design of over-water structures or structures beyond the OHWM shall demonstrate that they will not interfere with normal stream geomorphic processes or require shoreline stabilization.
- (5) All new or expanded industrial developments shall take into consideration the scenic and aesthetic qualities of the shoreline and compatibility with adjacent uses. They shall make adequate provisions such as location of structures, parking and other facilities, and landscape screening, fences and other measures to protect the privacy and enjoyment of adjacent land uses and open space areas.
- (6) Accessory development or use that does not require a shoreline location such as parking, service buildings or areas, access roads, utilities, signs, and storage of materials shall be located outside of SMA jurisdiction wherever feasible. Siting within SMA jurisdiction should be limited to facilities required to serve approved water-oriented uses and/or developments and should be located inland away from the land/water interface and landward of water-oriented developments.
- (7) Signs for all development and uses must comply with the City of Stanwood Sign Code and this program.
- (8) Guidelines for industrial use shall include the following:
- Stillaguamish River Reaches A and B** include the easterly portion of the reach zoned industrial and includes lands cut off from the river by the railroad spur with no requirement for water-oriented development. Land with water frontage is subject to the preference for water dependent and water oriented use.
- Stillaguamish River Reach C** on the Twin City Food site contains an existing non-conforming use important to the economic base of the city. As long as the use continues, no requirements for water oriented use are applicable. If the use is redeveloped in the future, provisions for the preference for water dependent and water oriented use will be applied.
- Stillaguamish River Reach D** from Twin City Foods to Irvine Slough: Private parcels facing SR 532 have no access to the river because of the intervening city owned parcel along the river. There is no requirement for water-oriented development. Development which takes advantage of visual access to the river is encouraged, in coordination with the public access and enhancement features of the city-owned parcel.

Stillaguamish River Reach E east of Irvine Slough to the city limits is subject to the preference for water dependent and water oriented use.

Stillaguamish River Reach F consisting of the sewage treatment facility public is not subject to other use preferences as an Essential Public Facility.

17.150.54 Recreational Development

- (1) Recreation facilities within SMA jurisdiction are preferred that are water-oriented or provide public access to the water.
- (2) Recreation facilities should prevent concentration of use pressure at a few points by encouraging the development of a combination of areas and linear access (parking areas and easements for example), when providing public access as provided in SMC 17.150.25.
- (3) Accessory use facilities such as restrooms and parking areas shall be set back from Critical Area buffers and shall be outside SMA jurisdiction if feasible.
- (4) A zone of native vegetation shall be provided adjacent to the edge of the water of the maximum practical extent consistent with provisions for public access and water oriented facilities.
- (5) Recreation areas should include chemical-free management except spot spraying for weed control of sufficient width to assure that fertilizers, pesticides, herbicides and other chemicals are not discharged into the water. Management of native vegetation is preferred in this area.
- (6) Recreational development shall provide non-motorized access to the shoreline such as pedestrian and bicycle paths and shall provide signs indicating the public's right of access to shoreline areas. Motorized vehicular access is prohibited except as essential for water dependent uses such as boat launch ramps and maintenance.
- (7) Recreational facilities shall provide adequate parking to prevent parking overflow to adjacent private land or public streets in residential neighborhoods.
- (8) Recreational facilities shall make adequate provisions, such as landscape screening, fences and other measures to protect the privacy and enjoyment of adjacent land uses and open space areas.

17.150.55 Residential Development

- (1) Residential development should be permitted only where there are adequate provisions for utilities, circulation and access.
- (2) Any new residential subdivision or other residential development shall meet all policies and regulations of this program, the zoning code, the subdivision code and other applicable policies and regulations.
- (3) Any new residential subdivision or other residential development shall demonstrate that a primary residence can be built and maintained on each new lot that:
 - (a) Does not require new structural shoreline stabilization;
 - (b) Does not require a variance or modification of any standard within the SMP;
 - (c) Does not require modification of Critical Area buffers;
 - (d) Does not cause foreseeable risk from geological conditions during the life of the development

- (e) Does not require new flood hazard control measures not currently incorporated in the applicable Flood Hazard Management Plan or result in increased flood hazard to other property; and
- (f) Does not result in an unmitigated net loss of ecological functions.
- (4) Transportation and utility facilities to serve new residential subdivision or other residential development should be located outside of SMP jurisdiction if feasible and as far from the water's edge as feasible.
- (5) Any new residential subdivision or other residential development should be clustered if feasible to provide the maximum possible area of natural or restored native vegetation adjacent to the shoreline.
- (6) Residential development including over-water structures is prohibited.
- (7) Public access to and along the affected shoreline shall be provided in compliance with SMC 17.150.25
- (8) Boating facilities are prohibited in or adjacent to new residential development. Residents shall be served by public facilities and marinas and other moorage serving regional needs.

17.150.56 Transportation Facilities

- (1) Where other options are available and feasible, new roads or road expansions and rail and rail expansions should not be built within shoreline jurisdiction.
- (2) Plan, locate, and design transportation facilities where routes will minimize alteration of Critical Areas and buffers, will have the least possible adverse effect on unique or fragile shoreline features, will not result in a net loss of shoreline ecological functions or adversely impact existing or planned water-dependent uses.
- (3) Roads and railroads shall cross shoreline areas by the shortest, most direct route feasible, unless such route would cause significant environmental damage.
- (4) Design and maintain roads to minimize erosion and permit a natural movement of groundwater.
- (5) New or expanded roads shall provide Public Access in accordance with SMC17.150.24 and where they afford scenic vistas, pedestrian viewpoints will be provided, particularly provision of viewpoints, rest areas and picnic facilities.
- (6) Encourage creation of trail systems adjacent to new and existing roads and railroads where feasible. Promote the use of abandoned railroad right-of-way for trail systems, especially where they would provide public access to or enjoyment of the shorelines.

17.150.57 Parking

- (1) Parking facilities in shorelines are not a preferred use and shall be allowed only as necessary to support an authorized use. Parking facilities shall be located outside shoreline jurisdiction where possible. Parking in shoreline jurisdiction shall directly serve a permitted shoreline use and shall be located outside of Critical Area buffers and as far from the water/land interface as possible.
- (2) Parking facilities serving individual buildings on the shoreline shall be located landward from the principal building being served. The only exceptions to this would be when the parking facility is within or beneath the structure and adequately screened, or in cases when an alternate location would have less environmental impact on the shoreline and in all cases is prohibited over the water.

- (3) Parking facilities shall be designed and landscaped to minimize adverse impacts upon adjacent shoreline and abutting properties. Landscaping shall comply with SMC 17.145 and in addition landscaping between parking areas and public access shall provide effective screening within three years of project completion.

17.150.58 Utilities

- (1) Local utility services needed to serve water-dependent and other permitted uses in the shoreline are subject to standards for ecological protection and visual compatibility.
- (2) Utility systems designed to primarily serve utility demand of the larger region shall be located outside of SMA jurisdiction, to the extent feasible, except for crossings of water bodies and other elements of shorelands by linear facilities which shall cross in a perpendicular alignment minimizing disturbance.
- (3) Linear facilities consisting of pipelines, sewers, cables and other facilities roughly parallel to the shoreline shall be discouraged except where no other feasible alternative exists. When permitted, design shall assure that maintenance of the facilities does not result in a net loss of shoreline ecological functions or significant impacts to other shoreline resources and values. At the time of replacement of such facilities that are close to their lifespan, or when such facilities are expanded, consideration shall be given to relocating outside of the shoreline as if they were new facilities.
- (4) Utility crossings of water bodies shall be attached to bridges or located in other existing facilities, if reasonably feasible. If new installations are required to cross water bodies or wetlands they should avoid disturbing banks and streambeds and shall be designed to avoid the need for shoreline stabilization. Crossings shall be tunneled or bored where reasonably feasible. Installations shall be deep enough to avoid failures or need for protection due to exposure resulting from stream bed mobilization, aggregation, or lateral migration. Underwater utilities shall be placed in a sleeve if reasonably feasible to avoid the need for excavation in the event of the need for maintenance or replacement.
- (5) New electrical distribution lines within the shoreline shall be placed underground. Distribution lines that cross water or other critical areas may be allowed to be placed above ground if:
 - (a) There is no feasible alternative route or
 - (b) Underground installation would substantially disrupt ecological functions and processes of water bodies and wetlands as horizontal drilling or similar technology that does not disturb the surface is not feasible; and
 - (c) Visual impacts are minimized to the extent feasible; and
 - (d) If overhead facilities require that native trees and other vegetation in a Critical Areas buffer cannot be maintained in a natural condition, compensatory mitigation is provided on or off-site.
- (6) Utility transmission lines shall be underground or underwater when economically feasible and where not significantly detrimental to the environment. Underground utility lines shall be bored where feasible and placed at an appropriate depth under the river bed in all river or stream crossings except where such lines are permanently affixed to a bridge structure.
- (7) Utility rights of way shall be managed for compatible multiple uses such as shore access, trails, and recreation whenever possible. Utility right of way acquisition should be coordinated with transportation and recreation planning. New utility corridors, or expansion of facilities on existing corridors, shall provide public access in accordance with SMC 17.150.25 Utilities shall be encouraged to provide pedestrian public access on existing utility corridors.

- (8) Stormwater management facilities, including detention / retention / treatment ponds, vaults, media filtration facilities, and lagoons or infiltration basins, may be permitted within SMA jurisdiction if:
- (a) The facility does not displace vegetation or otherwise adversely impact a Critical Area buffer, or is located in a portion of a buffer previously disturbed; or
 - (b) The facility replaces an existing facility within SMP jurisdiction and results in a net reduction of impacts.
- (9) Stormwater, wastewater, or water supply pump stations; and stormwater discharge facilities such as dispersion trenches, level spreaders, and outfalls, may be located in the shoreline jurisdiction if:
- (a) Due to topographic or other physical constraints there are no feasible locations for these facilities outside the shoreline;
 - (b) The facility minimizes and compensates for impacts to Critical Area buffers; and
 - (c) Any discharge facility is designed and maintained to prevent erosion or other adverse impacts.

17.150.60 Shoreline Administration

17.150.61 Procedure

All shoreline permits shall be processed in accordance with SMC 17.80.130 Table of Land Use Procedures.

The city will coordinate on issues relating to ecological conditions, functions and processes and on wetland and ordinary high water delineations with the Department of Ecology, the Department of Natural Resources and the Department of Fish and Wildlife as well as other agencies with permit authority over a project to the extent that agencies are timely in their response and coordination does not interfere with meeting timelines for permit review in SMC 17.80.031.

17.150.62 Development Compliance:

- (1) All uses and developments within the jurisdiction of the Shoreline Management Act shall be planned and carried out in a manner that is consistent with the Shoreline Master Program and the policies of the Act as required by RCW 90.58.140(1), regardless of whether a shoreline permit, statement of exemption, shoreline variance, or shoreline conditional use permit is required. The city shall assure compliance with the provisions of the Shoreline Master Program for all permits and approvals processed by the city.
- (2) Regulation of private property to implement any Program goals such as public access and protection of ecological functions must be consistent with all relevant constitutional and other legal limitations. These include, but are not limited to, property rights guaranteed by the United States Constitution and the Washington State Constitution, applicable federal and state case law, and state statutes, such as RCW 34.05.328 and 43.21C.060.
- (3) Compliance with the provisions of this chapter does not constitute compliance with other federal, state, and local regulations and permit requirements that may be required (for example, , Hydraulic Permit Act (HPA) permits, U.S. Army Corps of Engineers Section 404 permits, Washington State Department of Ecology Water Quality Certification (Section 401) National Pollution Discharge Elimination System permits). The applicant is responsible for complying with these requirements, apart from the process established in this chapter.

17.150.63 Shoreline Overlay:

Shoreline regulations shall apply as an overlay and in addition to development regulations, including but not limited to zoning, environmental regulations, development standards, subdivision regulations, and other regulations established by the city.

- (1) Allowed uses shall be limited by the general polices and specific regulations regarding use preferences for water-dependent and water-oriented uses. Allowed uses may be specified and limited in specific shoreline permits. In the case of non-conforming development, the use provisions of this code shall be applied to any change of use, including occupancy permits.
- (2) In the event of any conflict between Shoreline policies and regulations and any other regulations of the city, Shoreline policies and regulations shall prevail unless other regulations provide greater protection of the shoreline natural environment and aquatic habitat.
- (3) All regulations applied within the shoreline shall be liberally construed to give full effect to the objectives and purposes for which they have been enacted. Shoreline Master Program policies, found in the city's Comprehensive Plan, establish intent for the shoreline regulations in addition to RCW 90.58 and Chapter 173 of the Washington Administrative Code 173-26 and 173-27.

17.150.64 Non-Conforming Situations

In addition to the Provisions of Chapter 17.25.170(3), the following provisions shall apply within SMA jurisdiction:

Within Shoreline Management Act jurisdiction, a variance from the buffer or setback must be processed as a shoreline variance.

17.150.65 Extension or enlargement of nonconforming situations

In addition to the Provisions of Chapter 17.25.180, the following provisions shall apply within SMA jurisdiction:

- (1) The expansion or enlargement may not increase its degree of nonconformity in relation to the provisions of the Shoreline Master Program
- (2) The expansion or enlargement may not result in enlargement of the building footprint or impervious area in a Critical Area buffer that extends further toward the water unless necessary to meet minimum standards of life-safety codes; or
- (3) The expansion or enlargement may not result in a net loss of ecological functions;

17.150.66 Change in use of property where a nonconforming situation exists

In addition to the Provisions of Chapter 17.25.200, the following provisions shall apply within SMA jurisdiction:

The change in use may not increase its degree of nonconformity in relation to the use provisions of the Shoreline Master Program.

- (1) The change in use may not result in a net loss of ecological functions;

17.150.67 Exemption from Substantial Development Permit:

A substantial development permit shall be required for all proposed use and development of shorelines unless the proposal is specifically exempt pursuant to RCW 90.58.140(1). The following shall not be considered substantial developments for the purpose of this Master Program and are exempt from obtaining a Shoreline Substantial Development Permit (SSDP), provided that any additional exemptions established by legislative amendment of the statute shall constitute exemptions without amendment to this code. An exemption from an SSDP is

not an exemption from compliance with the Act or the Shoreline Master Program, or from any other regulatory requirements.

- (1) Governor's Certification: Any project with a certification from the Governor pursuant to chapter 80.50 RCW.
- (2) Projects Valued at \$5,000 or less: Any development of which the total cost or fair market value does not exceed five thousand dollars (\$5,000.00), if such development does not materially interfere with the normal public use of the water or shorelines of the state. The \$5,000 level is subject to adjustment for inflation by the office of financial management every five years.
- (3) Maintenance and Repair: Normal maintenance or repair of existing structures or developments, including damage by accident, fire or elements.
 - (a) "Normal maintenance" includes those usual acts to prevent a decline, lapse, or cessation from a lawfully established condition.
 - (b) Normal repair" means to restore a development to a state comparable to its original condition, including but not limited to its size, shape, configuration, location and external appearance, within a reasonable period after decay or partial destruction, except where repair causes substantial adverse effects to the shoreline resource or environment.
 - (c) Replacement of a structure or development may be authorized as repair where such replacement is the common method of repair for the type of structure or development and the replacement structure or development is comparable to the original structure or development including, but not limited to, its size, shape, configuration, location and external appearance and the replacement does not cause substantial adverse effects to shoreline resources or environment.
- (4) Emergency Construction: Emergency construction necessary to protect property from damage by the elements.
 - (a) An "emergency" is an unanticipated and imminent threat to public health, safety, or the environment which requires immediate action within a time too short to allow for full compliance with the Shoreline Master Program.
 - (b) Emergency construction does not include development of new permanent protective structures where none previously existed. Where new protective structures are deemed to be the appropriate means to address the emergency situation, upon abatement of the emergency situation, the new structure shall be removed or any permit which would have been required, absent an emergency, pursuant to chapter 90.58 RCW, chapter 173 -27 WAC or this Shoreline Program shall be obtained.
 - (c) All emergency construction shall be consistent with the policies of chapter 90.58 RCW and the Shoreline Master Program.
 - (d) In general, flooding or other seasonal events that can be anticipated and may occur, but that are not imminent, are not an emergency.
- (5) Agricultural Construction or Practices: 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. A feedlot of any size, all processing plants, other activities of a commercial nature, alteration of the contour of the shorelands by leveling or filling, other than that which results from normal cultivation, shall not be considered normal or necessary farming or ranching activities. A feedlot shall be an enclosure or facility used or capable of being used for feeding livestock hay, grain, silage,

or other livestock feed, but shall not include land for growing crops or vegetation for livestock feeding and/or grazing, nor shall it include normal livestock wintering operations.

- (6) Construction of Single-Family Residence and Accessory Buildings: Construction on shorelands by an owner, lessee or contract purchaser of a single family residence for his own use or for the use of his family, which residence does not exceed a height of 35 feet above average grade level as defined in WAC 173-27-030, and which meets all requirements of the State agency or local government having jurisdiction thereof, other than requirements imposed pursuant to this Section.
 - (a) “Single family” residence means a detached dwelling designed for and occupied by one (1) family including those structures and developments within a contiguous ownership which are a normal appurtenance. An “appurtenance” is necessarily connected to the use and enjoyment of a single family residence and is located landward of the OHWM and the perimeter of a wetland.
 - (b) Construction authorized under this exemption shall be located landward of the OHWM.
- (7) Construction of Non-Commercial Docks: Construction of a dock, including a community dock designed for pleasure craft only, for the private noncommercial use of the owner, lessee, or contract purchaser of single and multi-family residences.

This exception applies if

 - (a) the fair market value of the dock does not exceed ten thousand dollars (\$10,000.00); however, if subsequent construction having a fair market value exceeding two thousand five hundred dollars (\$2,500.00) occurs within five (5) years of completion of the prior construction, the subsequent construction shall require a substantial development permit; and
 - (b) A dock is a landing and moorage facility for watercraft and does not include recreational decks, storage facilities, or other appurtenances.
 - (c) The dock meets all requirements of this code. A private dock generally is prohibited.
- (8) Construction Authorized by the Coast Guard: 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.
- (9) Operation, Maintenance, or Construction Related to Irrigation: 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 system waters, including return flow and artificially stored groundwater for the irrigation of lands.
- (10) Marking of Property Lines on State-Owned Lands: The marking of property lines or corners on State-owned lands when such marking does not interfere with the normal public use of the surface of the water.
- (11) Operation and Maintenance of Agricultural Drainage or Dikes: Operation and maintenance of any system of dikes, ditches, drains, or other facilities existing on September 8, 1975 which were created, developed, or utilized primarily as a part of an agricultural drainage or diking system.
- (12) Activities Necessary for Permit Application: Site exploration and investigation activities that are prerequisites to preparation of an application for development authorization under the Shoreline Master Program, if:
 - (a) the activity does not interfere with the normal public use of the surface waters;

- (b) the activity will have no significant adverse impact on the environment including, but not limited to, fish, wildlife, fish or wildlife habitat, water quality, and aesthetic values;
 - (c) the activity does not involve the installation of a structure, and upon completion of the activity the vegetation and land configuration of the site are restored to conditions existing before the activity;
 - (d) a private entity seeking development authorization under the Shoreline Master Program first posts a performance bond or provides other evidence of financial responsibility to the director to ensure that the site is restored to pre-existing conditions; and
 - (e) the activity is not subject to the permit requirements of RCW 90.58.550.
- (13) Removal or Control of noxious Weeds: The process of removing or controlling an aquatic noxious weed, as defined in RCW 17.26.020, through the use of an herbicide or other treatment methods applicable to weed control that are recommended by a final environmental impact statement published by the Department of Agriculture or the Department of Ecology jointly with other State agencies under chapter 43.21C RCW.
- (14) Watershed Restoration Projects: Watershed restoration projects as defined below:
- (a) "Watershed restoration project" means a public or private project authorized by the sponsor of a watershed restoration plan that implements the plan or a part of the plan and consists of one or more of the following activities:
 - (i) A project that involves less than ten (10) miles of stream reach, in which less than twenty five (25) cubic yards of sand, gravel, or soil is removed, imported, disturbed, or discharged, and in which no existing vegetation is removed except as minimally necessary to facilitate additional plantings.
 - (ii) A project for the restoration of an eroded or unstable stream bank that employs the principles of bioengineering, including limited use of rock as a stabilization only at the toe of the bank, and with primary emphasis on using native vegetation to control the erosive forces of flowing water.
 - (iii) A project primarily designed to improve fish and wildlife habitat, remove or reduce impediments to migration of fish, or enhance the fishery resource available for use by all of the citizens of the State, provided that any structure other than a bridge or culvert or in-stream habitat enhancement structure associated with the project is less than two hundred (200) square feet in floor area and is located above the OHWM of the stream.
 - (b) "Watershed restoration plan" means a plan developed or sponsored by a state department, a federally recognized Indian Tribe, a city, a county, or a conservation district, for which agency and public review has been conducted pursuant to chapter 43.21C RCW, the State Environmental Policy Act. The watershed restoration plan generally contains a general program and implementation measures or actions for the preservation, restoration, re-creation, or enhancement of the natural resources, character, and ecology of a stream, stream segment, drainage area, or watershed.
- (15) Projects to Improve Fish and Wildlife Passage or Habitat: A public or private project, the primary purpose of which is to improve fish or wildlife habitat or fish passage, when all of the following apply:
- (a) The project has been approved in writing by the Department of Fish and Wildlife as necessary for the improvement of the habitat or passage and appropriately designed and sited to accomplish the intended purpose.
 - (b) The project has received hydraulic project approval by the Department of Fish and Wildlife pursuant to chapter 75.20 RCW.

- (c) The director has determined that the project is consistent with this Master Program.
- (16) Hazardous Substance Remediation: Hazardous substance remedial actions pursuant to WAC 173-27-040(3).
- (17) Projects on Lands Not Subject to Shoreline Jurisdiction Prior to Restoration: Actions on land that otherwise would not be under the jurisdiction of the Shoreline Management Act except for a change in the location of OHWM or other criteria due to a shoreline restoration project creating a landward shift in the ordinary high water mark that brings the land under the jurisdiction of the Act approved in accordance with SMC 17.150.73
- (18) All of the above exemptions are subject to the following regulations:
 - (a) Exemptions shall be construed narrowly. Only those developments that meet the precise terms of one or more of the listed exemptions may be granted exemptions from the substantial development permit process.
 - (b) The burden of proof that a development or use is exempt is on the applicant/proponent of the exempt development action.
 - (c) If any part of a proposed development is not eligible for exemption, then a substantial development permit is required for the entire project.

17.150.68 Exemption Certification Procedures

- (1) Any person claiming exemption from the permit requirements of this Master Program as a result of the exemptions specified in this Section shall make application for an exemption certificate to the director in the manner prescribed by the city.
- (2) Any development which occurs within the regulated shorelines of the state, whether it requires a permit or not, must be consistent with the intent of the state law.
- (3) The city may attach conditions to the approval of exempted developments and/or uses as necessary to assure consistency of the project with the Shoreline Management Act and the Shoreline Master Program.
- (4) If any part of a proposed development is not eligible for exemption, then a shoreline permit is required for the entire proposed development project.

17.150.69 Land Division:

Prior to approval of any land division, such as short subdivisions, long plats, and boundary line adjustments within shoreline jurisdiction, the city shall document compliance with bulk and dimensional standards as well as policies and regulations of the Shoreline Master Program and attach appropriate conditions and/or mitigating measures to such approvals to ensure the design, development activities, and future use associated with such lands are consistent with the Shoreline Master Program.

17.150.70 Approval Criteria

In order to approve any development within SMP jurisdiction, the city must find that a proposal is consistent with the following criteria:

- (1) All regulations of the Shoreline Master Program appropriate to the shoreline designation and the type of use or development proposed shall be met, except those bulk and dimensional standards that have been modified by approval of a shoreline variance.
- (2) All policies of the Shoreline Master Program appropriate to the shoreline area designation and the type of use or development activity proposed shall be considered and substantial compliance demonstrated, except those bulk and dimensional standards that have been modified by approval of a shoreline variance. A reasonable proposal that cannot fully

conform to these policies may be permitted, provided it is demonstrated to the Reviewing Official that the proposal is clearly consistent with the overall goals, objectives and intent of the Shoreline Master Program.

17.150.71 Written Findings Required

All permits or statements of exemption issued for development or use within shoreline jurisdiction shall include written findings prepared by the Reviewing Official, including compliance with bulk and dimensional standards and policies and regulations of the Shoreline Master Program. The Reviewing Official may attach conditions to the approval of exempt developments and/or uses as necessary to assure consistency of the project with the Act and the Program.

17.150.72 Building Permit Compliance:

For all development within shoreline jurisdiction, the Building Official shall not issue a building permit for such development until compliance with the Shoreline Master Program has been documented. If a shoreline substantial development permit is required, no permit shall be issued until all comment and appeal periods have expired. Any permit issued by the Building Official for such development shall be subject to the same terms and conditions that apply to the shoreline permit.

17.150.73 Restoration Project Relocation of OHWM

The city may grant relief from Shoreline Master Program development standards and use regulations when the following apply:

- (1) A shoreline restoration project causes, or would cause, a landward shift in the ordinary high water mark, resulting in the following:
 - (a) Land that had not been regulated under this chapter prior to construction of the restoration project is brought under shoreline jurisdiction; or
 - (b) Additional regulatory requirements apply due to a landward shift in required shoreline buffers or other regulations of the applicable Shoreline Master Program; and
 - (c) Application of Shoreline Master Program regulations would preclude or interfere with use of the property permitted by local development regulations, thus presenting a hardship to the project proponent.
- (2) The proposed relief meets all of the following criteria:
 - (a) The proposed relief is the minimum necessary to relieve the hardship.
 - (b) After granting the proposed relief, there is net environmental benefit from the restoration project.
 - (c) Granting the proposed relief is consistent with the objectives of the shoreline restoration project and consistent with the Shoreline Master Program.
 - (d) Where a shoreline restoration project is created as mitigation to obtain a development permit, the project proponent required to perform the mitigation is not eligible for relief under this section.
- (3) The application for relief must be submitted to the Department of Ecology for written approval or disapproval. This review must occur during the Ecology's normal review of a shoreline substantial development permit, conditional use permit, or variance. If no such permit is required, then Ecology shall conduct its review when the local government provides a copy of a complete application and all supporting information necessary to conduct the review.

- (a) Except as otherwise provided in Subsection D of this section, the Department of Ecology shall provide at least 20-days notice to parties that have indicated interest to Ecology in reviewing applications for relief under this section, and post the notice on to their website.
- (b) The Department of Ecology shall act within 30 calendar days of close of the public notice period, or within 30 days of receipt of the proposal from the local government if additional public notice is not required.
- (4) The public notice requirements of Subsection C of this section do not apply if the relevant shoreline restoration project was included in a Shoreline Master Program or shoreline restoration plan as defined in WAC 173-26-201, as follows:
 - (a) The restoration plan has been approved by the Ecology under applicable Shoreline Master Program guidelines; and
 - (b) the shoreline restoration project is specifically identified in the Shoreline Master Program or restoration plan or is located along a shoreline reach identified in the Shoreline Master Program or restoration plan as appropriate for granting relief from shoreline regulations; and
 - (c) the Shoreline Master Program or restoration plan includes policies addressing the nature of the relief and why, when, and how it would be applied.

17.150.74 Shoreline Permit Application Procedures

- (1) Public Notice: Three (3) copies of a notice of development application shall be posted prominently on the property concerned and in conspicuous public places within three hundred (300) feet thereof. The notice of development application shall also be mailed to property owners within three hundred (300) feet of the boundaries of the subject property.
- (2) Standard Public Comment Time: Each notice of development application shall include a statement that persons desiring to present their views with regard to said application may submit their views in writing or notify the city in writing of their interest within fourteen (14) days from the date of the notice of application.
- (3) Special Public Comment Time: Notice of development application for a substantial development permit regarding a limited utility extension as defined in RCW 90.58.140 (11)(b) or for the construction of a bulkhead or other measures to protect a single family residence and its appurtenant structures from shoreline erosion shall include a fourteen (14) day comment period. Such notification or submission of views to the director shall entitle those persons to a copy of the action taken on the application.

17.150.75 Conditional Approval

Should the applicable reviewer find that any application does not substantially comply with criteria imposed by the Master Program and the Shoreline Management Act of 1971, he/she may deny such application or attach any terms or condition which he/she deems suitable and reasonable to effect the purpose and objective of this Master Program.

17.150.76 Surety Devices

The director may require the applicant to post a surety device in favor of the city to assure full compliance with any terms and conditions imposed on any shoreline permit. Said surety device shall be in an amount to reasonably assure the city that any deferred improvement will be carried out within the time stipulated and in accordance with approved plans.

17.150.77 Conditional Use

The objective of a conditional use provision is to provide more control and flexibility for implementing the regulations of the Master Program. With provisions to control undesirable effects, the scope of allowed uses can be expanded.

Decision Criteria: Uses classified as conditional uses can be permitted only after consideration and by meeting such performance standards that make the use compatible with other permitted uses within that area. A conditional use permit may be granted subject to the Hearing Examiner determining compliance with each of the following conditions:

- (1) The use must be compatible with other permitted uses within that area.
- (2) The use will not interfere with the public use of public shorelines.
- (3) Design of the site will be compatible with the surroundings and the city's Master Program.
- (4) The use shall be in harmony with the general purpose and intent of the city's Master Program.
- (5) The use meets the conditional use criteria in WAC 173-27-160.

17.150.78 Variances:

A development may be granted which is at variance with the criteria established in the SMP where, owing to special conditions pertaining to the specific piece of property, the literal interpretation and strict application of the criteria established in the SMP would cause undue and unnecessary hardship or practical difficulties. A variance may be required for a use that does not require a substantial development permit but which may not be approved because it does not comply with the provisions of the SMP.

Decision Criteria: The fact that the applicant might make a greater profit by using his property in a manner contrary to the intent of the Master Program is not, by itself, sufficient reason for a variance. The Hearing Examiner must find each of the following:

- (1) Exceptional or extraordinary circumstances or conditions applying to the subject property, or to the intended use thereof, that do not apply generally to other properties on shorelines in the same vicinity.
- (2) The variance permit is necessary for the preservation and enjoyment of a substantial property right of the applicant possessed by the owners of other properties on shorelines in the same vicinity.
- (3) The variance permit will not be materially detrimental to the public welfare or injurious to property on the shorelines in the same vicinity.
- (4) The variance granted will be in harmony with the general purpose and intent of this Master Program.
- (5) The public welfare and interest will be preserved. If more harm will be done to the area by granting the variance than would be done to the applicant by denying it, the variance shall be denied, but each property owner shall be entitled to the reasonable use and development of his lands as long as such use and development is in harmony with the general purpose and intent of the Shoreline Management Act of 1971, and the provisions of this Master Program.
- (6) The proposal meets the variance criteria in WAC 173-27-170.

17.150.79 Time Requirements for Shoreline Permits

- (1) The time requirements of this Section shall apply to all substantial development permits and to any development authorized pursuant to a variance or conditional use permit authorized under the Shoreline Master Program.

- (2) No construction pursuant to such permit shall begin or be authorized and no building, grading or other construction permits or use permits shall be issued by the city until 21 days from the date a substantial development permit was filed with the Department of Ecology and the Attorney General, or until all review proceedings are completed as were initiated within the twenty one (21) days of the date of filing. Filing shall occur in accordance with RCW 90.58.140(6) and WAC 173-27-130.
- (3) No permits and construction pursuant to a conditional use permit or variance shall begin or be authorized until 21 days from the date of notification of approval by the Department of Ecology, or until all review proceedings are completed as were initiated within the twenty one (21) days of the date of filing. Filing shall occur in accordance with RCW 90.58.140(6) and WAC 173-27-130.
- (4) Unless a different time period is specified in the shoreline permit as authorized by RCW 90.58.143, construction activities, or a use or activity for which a permit has been granted pursuant to this Master Program, must be commenced within two (2) years of the effective date of a shoreline permit, or the shoreline permit shall terminate and a new permit shall be necessary. However, the director may authorize a single extension for a period not to exceed one year based on reasonable factors if a request for extension has been filed with the city before the expiration date and notice of the proposed extension is given to parties of record and the Department of Ecology. Construction activities or commencement of construction means that construction applications must be submitted, permits must be issued, and foundation inspections must be approved and completed.
- (5) A permit authorizing construction shall extend for a term of no more than five (5) years after the effective date of a shoreline permit, unless a longer period has been specified pursuant to RCW 90.58.143 and Subsection F of this Section. If an applicant files a request for an extension prior to expiration of the shoreline permit, the director shall review the permit and upon a showing of good cause may authorize a single extension of the shoreline permit for a period of up to one year. Otherwise said permit shall terminate. Notice of the proposed permit extension shall be given to parties of record and the Department of Ecology. To maintain the validity of a shoreline permit, it is the applicant's responsibility to maintain valid construction permits in accordance with adopted Building Codes.
- (6) If it is determined that standard time requirements of Subsections D and E should not be applied, the Hearing Examiner, upon a finding of good cause, may establish shorter time limits, provided that as a part of action on a conditional use or variance permit the approval of the Department of Ecology shall be required. "Good cause" means that the time limits established are reasonably related to the time actually necessary to perform the development on the ground and complete the project that is being permitted.
- (7) For purposes of determining the life of a shoreline permit, the effective date of a substantial development permit, shoreline conditional use permit, or shoreline variance permit shall be the date of filing as provided in RCW 90.58.140(6). The permit time periods do not include the time during which a use or activity was not actually pursued due to the pendency of appeals or legal actions, or due to the need to obtain any other government permits and approvals for the development that authorize the development to proceed.
- (8) It is the responsibility of the applicant to inform the director of the pendency of other permit applications filed with agencies other than the city, and of any related administrative or legal actions on any permit or approval. If no notice of the pendency of other permits or approvals is given to the city prior to the expiration date established by the shoreline permit or the provisions of this Section, the expiration of a permit shall be based on the effective date of the shoreline permit.
- (9) If the granting of a shoreline permit by the city is appealed to the Shoreline Hearings Board, and the Shoreline Hearings Board has approved the granting of the permit, and an appeal

for judicial review of the Shoreline Hearings Board decision is filed, construction authorization may occur subject to the conditions, time periods, and other provisions of RCW 90.58.140(5)(b).

17.150.80 Rulings to State

Any ruling on an application for a substantial development permit under authority of this Master Program, whether it is an approval or denial, shall, with the transmittal of the ruling to the applicant, be filed concurrently with the Department of Ecology and the Attorney General by the director. Filing shall occur in accordance with RCW 90.58.140(6) and WAC 173-27-130.

17.150.81 Appeals

Any person aggrieved by the granting, denying, or rescinding of a permit on shorelines of the state pursuant to RCW 90.58.140 may seek review from the shorelines hearings board by filing a petition for review within twenty-one days of the date of receipt of the decision as provided for in RCW 90.58.140(6).

17.150.82 Enforcement

All provisions of this Master Program shall be enforced by the director. For such purposes, the director or his duly authorized representative shall have the power of a police officer.

17.150.83 Rescission of Permits

- (1) Any shoreline permit issued under the terms of this Master Program may be rescinded or suspended upon a finding that a permittee has not complied with conditions of the permit.
- (2) Such rescission and/or modification of an issued permit shall be initiated by serving written notice of noncompliance on the permittee, which shall be sent by registered or certified mail, return receipt requested, to the address listed on the application or to such other address as the applicant or permittee may have advised the city; or such notice may be served on the applicant or permittee in person or his agent in the same manner as service of summons as provided by law.
- (3) Before any such permit can be rescinded, a public hearing shall be held by the Hearing Examiner. Notice of the public hearing shall be made in accordance with SMC 17.85. The decision of the Hearing Examiner shall be the final decision of the city on all rescinded applications. A written decision shall be transmitted to the Department of Ecology, the Attorney General's office, the applicant, and such other departments or boards of the city as are affected thereby and the legislative body of the city.
- (4) The Department of Ecology may petition the Shoreline Hearings Board for a rescission of the permit if Ecology is of the opinion that the noncompliance continues to exist thirty days after the date of the notice, and the local government has taken no action to rescind the permit, as provided by RCW 90.58.140(8).

17.150.84 Violations and Penalties

- (5) Every person violating any of the provisions of this Master Program or the Shoreline Management Act of 1971 shall be punishable under conviction by a fine not exceeding one thousand dollars (\$1,000.00), or by imprisonment not exceeding 90 days, or by both such fine and imprisonment, and each day's violation shall constitute a separate punishable offense.
- (6) The City Attorney may bring such injunctive, declaratory, or other actions as are necessary to insure that no uses are made of the Shorelines of the State within the city's jurisdiction which are in conflict with the provisions and programs of this Master Program or the Shoreline Management Act of 1971, and to otherwise enforce provisions of this Section and the Shoreline Management Act of 1971.

- (7) Any person subject to the regulatory program of this Master Program who violates any provision of this Master Program or the provisions of a permit issued pursuant thereto shall be liable for all damages to public or private property arising from such violation, including the cost of restoring the affected area to its condition prior to such violation. The City Attorney shall bring suit for damages under this subsection on behalf of the city. Private persons shall have the right to bring suit for damages under this subsection on their own behalf and on behalf of all persons similarly situated. If liability has been established for the cost of restoring an area affected by violation, the Court shall make provision to assure that restoration will be accomplished within a reasonable time at the expense of the violator. In addition to such relief, including monetary damages, the Court in its discretion may award attorney's fees and costs of the suit to the prevailing party.

17.150.85 Shoreline Moratorium

- (1) The City Council may adopt moratoria or other interim official controls as necessary and appropriate to implement the provisions of the Shoreline Management Act.
- (2) Prior to adopting such moratorium or other interim official controls, the City Council shall:
- (a) Hold a public hearing on the moratorium or control within 60 days of adoption;
 - (b) Adopt detailed findings of fact that include, but are not limited to, justifications for the proposed or adopted actions and explanations of the desired and likely outcomes; and
 - (c) Notify the Department of Ecology of the moratorium or control immediately after its adoption. The notification must specify the time, place, and date of any public hearing held.
- (3) Said moratorium or other official control shall provide that all lawfully existing uses, structures, or other development shall continue to be deemed lawful conforming uses and may continue to be maintained, repaired, and redeveloped, so long as the use is not expanded, under the terms of the land use and shoreline rules and regulations in place at the time of the moratorium.
- (4) Said moratorium or control adopted under this section may be effective for up to six months if a detailed work plan for remedying the issues and circumstances necessitating the moratorium or control is developed and made available for public review. A moratorium or control may be renewed for two six-month periods if the City Council complies with Subsection H. before each renewal.
- (5) If a moratorium or control is in effect on the date a proposed Master Program or amendment is submitted to the Department of Ecology, the moratorium or control must remain in effect until the Department's final action under RCW 90.58.090; however, the moratorium expires six months after the date of submittal if Ecology has not taken final action.

17.150.86 Administration rules promulgation.

The director is authorized to adopt such rules as are necessary and appropriate to implement this chapter. The director may prepare and require the use of such forms as are necessary to its administration.

17.150.87 Amendments authorized.

The provisions of the Shoreline Master Program Use Regulations or the Shoreline Environment Map may be amended as provided for in RCW 90.58.120 and 90.58.200 and Chapter 173-26 WAC.

17.150.88 Amendments adopted City Council.

Adoption of an amendment to the official controls shall be adopted by the city council by ordinance after a public hearing and report by the planning commission in accordance with the procedural requirements of SMC 17.155.

17.150.89 Initiation of amendments

The Shoreline Use Regulations or Map amendments thereto may be initiated by:

- (2) The adoption of a motion by the City Council requesting the planning commission to set a matter for hearing and recommendation.
- (3) The adoption of a motion by the planning commission.
- (4) Application of one or more owners of property affected by the proposal.
- (5) A department or agency of the city or governmental entity.

17.150.90 Burden of proof

Proponents for Shoreline Environment Map redesignations (i.e., amendments to the Shoreline Environment Designation Map) shall bear the burden of proof for demonstrating consistency with the shoreline environment criteria of the master program, Chapter 173-26 WAC, and the goals and policies of the City of Stanwood Comprehensive Plan.

17.150.91 Transmittal to the Department of Ecology

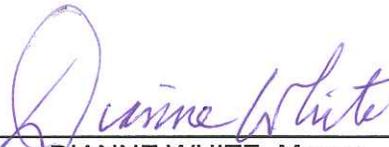
Subsequent to final action by the council adopting or amending the Shoreline Master Program or official control, said Master Program, official control, or amendment thereto shall be submitted to the Department of Ecology for approval. No such Master Program, official control, or amendment thereto shall become effective until approval by the Department of Ecology is obtained pursuant to RCW 90.58.90.

SECTION 46. If any section, sentence, clause, or phrase of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause, or phrase of this Ordinance.

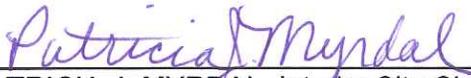
SECTION 47. This ordinance shall take effect and be in force five (5) days after its passage, approval and publication as provided by law.

PASSED by the City Council and signed by the Mayor this 25th day of October, 2012.

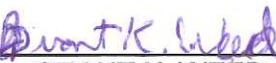
CITY OF STANWOOD

By 
DIANNE WHITE, Mayor

ATTEST:

By 
PATRICIA J. MYRDAL, Interim City Clerk

Approved as to form:

By 
GRANT K. WEED, City Attorney

Date of Publication: October 30, 2012