

Oct. 21, 2009  
To: Erika Conkling  
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For your information.

# Marysville Shoreline Master Program

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## October 2006

(Effective Date: October 31, 2006)

*Prepared for the City of Marysville by:*

**MAKERS architecture and urban design**

w/DLH 10/21/09  
make-ups

- All developments and activities using navigable waters or their beds should be located and designed to minimize interference with surface navigation, to minimize adverse visual impacts, and to allow for the safe, unobstructed passage of fish and animals, particularly those whose life cycles are dependent on such migration.
- Development of underwater pipelines and cables on first- and second-class tidelands should include adequate provisions to ensure against substantial or irrevocable damage to the environment.
- Abandoned and neglected structures that cause adverse visual impacts or are a hazard to public health, safety, and welfare should be removed or restored to a usable condition consistent with the provision of this program.

## 2. High-Intensity Environment

### a. Purpose

The purpose of the High-Intensity Environment is to provide for high-intensity water-oriented commercial, transportation, and industrial uses while protecting existing ecological functions and restoring ecological function in those areas that have been previously degraded.

### b. Designation Criteria

A High-Intensity Environment designation will be assigned to shorelands within City jurisdiction if they currently support or are suitable and planned for high-intensity water-dependent uses related to commerce, transportation, or navigation, or if they support the City of Marysville Comprehensive Plan goals and environmental management goals.

The following shorelands landward of the OHWM are designated High-Intensity:

- All shorelands landward of the OHWM on the north side of Ebey Slough from the eastern boundary of the Marysville Waste Water Treatment Plant to the western city boundary.
- All shorelands in the public right-of-way, state and local, and railroad properties existing in public or railroad ownership at the time of adoption of this SMP to the south of Ebey Slough.
- Land located east of SR 529, north of Steamboat Slough, south and west of Ebey Slough (aka TP #300533-002-002-00) and in the northwest and southwest quarters of Section 33, Township 30N, Range 5E, W.M. (the concrete plant).
- Public rights-of-way (streets and utilities) crossing or near Quilceda Creek.

### c. Management Policies

- In regulating uses in the High-Intensity Environment, first priority should be given to water-dependent uses. Second priority should be given to water-related and water-enjoyment uses. Non-water-oriented uses should be discouraged except as part of mixed-use developments or existing developed areas supporting water-dependent uses and/or shoreline restoration. Non-water-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 if shoreline restoration is included as part of development.

- New development should protect and, where feasible, restore shoreline ecological functions, with particular emphasis on habitat for priority species. Where applicable, new development shall include environmental cleanup and restoration of the shoreline in accordance with state and federal requirements.
- Visual and physical public access should be required as provided for in SMP Section 4.B.7, except as noted in that section.
- Aesthetic objectives should be actively implemented by means such as sign control regulations, appropriate development siting, screening and architectural standards, and maintenance of natural vegetative buffers. These objectives may be implemented either through this master program or other City ordinances.
- Development in the High-Intensity Environment 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, water-enjoyment uses and public access.
- In order to make maximum use of the available shoreline resource and to accommodate future water-oriented uses, the redevelopment and renewal of substandard, degraded, obsolete urban shoreline areas should be encouraged.

### 3. Urban Conservancy Environment

#### a. Purpose

The purpose of the Urban Conservancy Environment is to protect and restore ecological functions in urban and developed settings, while allowing limited water-oriented uses.

#### b. Designation Criteria

An Urban Conservancy Environment designation will be assigned to shorelands appropriate and planned for development that are not generally suitable for water-dependent uses and that lie in incorporated municipalities, urban growth areas, or commercial or industrial rural areas of more intense development with any of the following characteristics:

- They are suitable for water-related or water-enjoyment uses;
- They are flood plains, steep slopes, or other areas that should not be more intensively developed;
- They have potential for ecological restoration;
- They retain important ecological functions, even though partially developed; or

The following shorelands are designated Urban Conservancy:

- All shorelands southward of Ebey Slough, except those noted as High-Intensity in the immediately preceding section.
- All shorelands bordering on Quilceda Creek (except public rights-of-way (street and utility crossings)).
- All lands lying within the 100-year floodplain north of Ebey Slough between the eastern boundary of the Waste Water Treatment Plant (WWTP) and the eastern city boundary, except for residential lots less than 6,000 square feet in area and those areas designated High-Intensity in the previous section.
- All shorelands not otherwise designated in this Master Program.

## C. Shoreline Use and Modification Matrices

The following matrices indicate the allowable uses and shoreline modifications and some of the standards applicable to those uses and modifications. Where there is a conflict between the chart and the written provisions in Chapters 4, 5, or 6 of this master program, the written provisions shall apply.

The charts are coded according to the following legend. Where a hyphen is used (e.g., P-X), see “Notes to Matrices” following the charts for an explanation.

- P = May be permitted
- C = May be permitted as a conditional use only
- X = Prohibited; the use is not eligible for a variance or conditional use permit
- N/A= Not applicable

SHORELINE USE	High-Intensity	Urban Conservancy	Shoreline Residential	Aquatic
Agriculture	P	P	X	X
Aquaculture	X	X	X	X
Boating facilities (including marinas)	P	C <sup>3</sup>	X	P <sup>1</sup>
Commercial:				
Water-dependent	P	X	X	P <sup>1</sup>
Water-related, water-enjoyment	P <sup>2</sup>	X	X	X <sup>15</sup>
Non-water-oriented	C <sup>2</sup>	X	X	X
Flood hazard management	P	P <sup>3</sup>	P	X
Forest practices	X	X	X	X
Industrial:				
Water-dependent	P	X	X	P <sup>1</sup>
Water-related, water-enjoyment	P <sup>2</sup>	X	X	X <sup>15</sup>
Non-water-oriented	C <sup>2</sup>	X	X	X
Mining	X	X	X	X
Parking (accessory)	P	P <sup>3</sup>	P	X
Parking (primary, including paid)	X	X	X	X
Recreation:				
Water-dependent	P	P <sup>3</sup>	P	P
Water-enjoyment	P	P <sup>3</sup>	P	X
Non-water-oriented	C <sup>2</sup>	X	P	X
Single-family residential	X	X-P <sup>9</sup>	P	X

<b>SHORELINE USE</b>	<b>High-Intensity</b>	<b>Urban Conservancy</b>	<b>Shoreline Residential</b>	<b>Aquatic</b>
Multifamily residential	P <sup>2</sup>	X	P	X
Land division (See Section 6.B.7.)	P	X	P	X
Signs:				
On premises	P	X	X	X
Off premise	X	X	X	X
Public, highway	P	P	X	X
Solid waste disposal	X	X	X	X
Transportation:				
Water-dependent	P	P	C	P
Non-water-oriented	P <sup>4</sup>	C <sup>4</sup>	C <sup>4</sup>	C <sup>4</sup>
Roads, railroads	P <sup>4</sup>	C <sup>4</sup>	P <sup>4</sup>	C <sup>4</sup>
Utilities (primary)	P <sup>4</sup>	C <sup>4</sup>	P <sup>4</sup>	C <sup>4</sup>

<b>SHORELINE MODIFICATIONS</b>	<b>High-Intensity</b>	<b>Urban Conservancy</b>	<b>Shoreline Residential</b>	<b>Aquatic</b>
Shoreline stabilization <sup>13</sup> :				
Beach restoration/enhancement	P	P <sup>5</sup>	P	P <sup>5</sup>
Bioengineering	P	P <sup>5</sup>	P	C <sup>5</sup>
Revetments	P	C <sup>5</sup>	P	C <sup>5</sup>
Bulkheads	P	C <sup>5</sup>	P	X
Breakwaters/jetties/rock weirs/groins	P	C <sup>5</sup>	P	C <sup>5</sup>
Dikes, levees	P	C <sup>5</sup>	P	X
Dredging	N/A	N/A	N/A	C <sup>6</sup>
Hazardous waste cleanup	P	P	P	P
Fill <sup>14</sup>	P	C <sup>5</sup>	P	C <sup>5</sup>
Piers, docks, buoys, floats	P	P <sup>7</sup>	X	P <sup>1</sup>

DEVELOPMENT STANDARDS <sup>12</sup>	High-Intensity	Urban Conservancy	Shoreline Residential	Aquatic
<b>Boating Facilities</b>				
Water-dependent setback	0	0	0	N/A
Water-related Building setback	25'	50'	N/A	N/A
<b>Commercial, Recreational, and Industrial Development</b>				
Water-dependent setback	0	N/A	N/A	N/A
Water-related, water-enjoyment setback	70' <sup>8</sup>	N/A	N/A	N/A
Non-water-oriented setback	70' <sup>8</sup>	N/A	N/A	N/A
Building height limit	65'	N/A	N/A	N/A
<b>Parking (Accessory)</b>				
Setback	70' <sup>8</sup>	N/A	20'	N/A
<b>Residential Development</b>				
Setbacks for all dwelling units	70' <sup>8</sup>	N/A <sup>10</sup>	20' <sup>11</sup>	N/A
Height limit	85'	25'	40'	N/A

**Notes to Matrices:**

1. *The use or shoreline modification may be allowed in the Aquatic Environment if, and only if, permitted in the adjacent upland environment.*
2. *Public access, as approved by the City, is a condition of non-water-dependent development.*
3. *The use may be allowed provided it does not cause significant ecological impacts.*
4. *The use may be allowed providing there is no other feasible route or location.*
5. *The shoreline modification may be allowed for environmental restoration or if the City determines that there will be a net increase in desired shoreline ecological functions.*
6. *Dredging may be allowed only in support of a water-dependent use when the City finds that the need is demonstrated.*
7. *Piers or docks may be allowed only for public access or hand-held vessels and only if significant adverse ecological impacts are avoided.*
8. *The setback space shall include a 50-foot minimum strip of shoreline restoration measures and/or native vegetation plantings as approved by the City plus a 20-foot-wide public access easement running parallel with the shoreline. (See General Provisions, Vegetation Conservation, Section 4.B.11.)*

*The City may reduce the required setback to 40 feet for mixed-use development as part of master planned marinas or water-dependent recreation facilities, provided public access to the*

*shoreline is provided in some other way and the vegetation enhancement is provided in the 40-foot setback.*

- 9. New residential development is not allowed in the Urban Conservancy Environment except along the Quilceda Creek shoreline. For shoreline lots existing prior to the adoption of this shoreline master program along the Quilceda Creek shoreline, new residential development is allowed provided it meets the provisions of this master program and the City of Marysville Critical Area Ordinance.*
- 10. Note that new residential development is prohibited in the Urban Conservancy Environment except for lots fronting Quilceda Creek created prior to the adoption of this shoreline master program. All new and redeveloped lots must meet the buffer requirements listed in the Critical Areas section of the SMP. See also regulations related to Residential Development and Nonconforming Use within the SMP.*
- 11. Note that this designation pertains primarily to lots that are not within shoreline jurisdiction at the present time and will enter shoreline jurisdiction if the Qwuloolt basis is inundated. The intent is to ensure that existing single-family lots and homes are not restricted by new regulations resulting from the restoration of Qwuloolt site.*
- 12. See also Section 3, "Critical Areas" and Section 4.B.11, "Vegetation Conservation."*
- 13. See also setback requirements in Chapter 5, Section B.2.c.3.*
- 14. Fill in the floodway requires a conditional use permit. See Chapter 5, Section B.4.c.4.*
- 15. Except for some mixed-use development. See Chapter 5, Section B.3.c.3.*
- 16. The High-Intensity designations along Quilceda Creek must meet the buffer requirements listed in the Critical Areas section of the SMP.*

## CHAPTER 5

# Shoreline Modification Provisions

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## A. Introduction and Applicability

Shoreline modifications are structures or actions which permanently change the physical configuration or quality of the shoreline, particularly at the point where land and water meet. Shoreline modification activities include, but are not limited to, structures such as revetments, bulkheads, levees, breakwaters, docks, and floats. Actions such as clearing, grading, landfilling, and dredging are also considered shoreline modifications.

Generally, shoreline modification activities are undertaken for the following reasons:

1. To prepare a site for a shoreline use
2. To provide shoreline stabilization or shoreline protection
3. To support an upland use

The policies and regulations in this chapter are intended to prevent or mitigate the adverse environmental impacts of shoreline modifications. General provisions, which apply to all shoreline modification activities, are followed by provisions tailored to specific shoreline modification activities. This chapter provides policies and regulations for shoreline modification features including shoreline stabilization measures and docks and floats.

## B. Policies and Regulations

### 1. General Policies and Regulations

#### a. Applicability

The following provisions apply to all shoreline modification activities whether such proposals address a single property or multiple properties.

#### b. Policies

1. Structural shoreline modifications should be allowed only where they are demonstrated to be necessary to support or protect an allowed primary structure or a legally existing shoreline use that is in danger of loss or substantial damage or are necessary for reconfiguration of the shoreline for mitigation or enhancement purposes.
2. The adverse effects of shoreline modifications should be reduced and, as much as possible, shoreline modifications be limited in number and extent.

3. Allowed shoreline modifications should be appropriate to the specific type of shoreline and environmental conditions for which they are proposed.
4. The City should take steps to assure that shoreline modifications individually and cumulatively do not result in a net loss of ecological functions. This is to be achieved by giving preference to those types of shoreline modifications that have a lesser impact on ecological functions and requiring mitigation of identified impacts resulting from shoreline modifications.
5. Where applicable, the City will base provisions on “best available science,” scientific and technical information, and a comprehensive analysis of site-specific conditions for river and stream systems.
6. Impaired ecological functions should be enhanced and/or restored where feasible and appropriate while accommodating permitted uses. As shoreline modifications occur, the City will incorporate all feasible measures to protect ecological shoreline functions and ecosystem-wide processes.
7. In reviewing shoreline permits, the City should require steps to reduce significant ecological impacts according to the mitigation sequence in WAC 173-26- 201(2)(e).
8. When shoreline modifications are necessary, they should be as compatible as possible with ecological shoreline processes and functions.

**c. Regulations**

1. All shoreline modification activities must be in support of a permitted shoreline use. Shoreline modification activities which do not support a permitted shoreline use are considered “speculative” and are prohibited by this master program; unless it can be demonstrated that such activities are necessary and in the public interest for the maintenance of shoreline environmental resource values.
2. Structural shoreline modification measures shall be permitted only if nonstructural measures are unable to achieve the same purpose. Nonstructural measures considered shall include alternative site designs, increased setbacks, drainage improvements, relocation, and vegetation enhancement.
3. Stream channel modification (i.e., realignment) shall be prohibited as a means of shoreline stabilization or shoreline protection, unless it is the only feasible alternative.
4. All new shoreline development shall be located and designed to prevent or minimize the need for shoreline modification activities.
5. Proponents of shoreline modification projects shall obtain all applicable federal and state permits and shall meet all permit requirements.
6. In addition to the permit information required by WAC 173-27-190, the City shall require and consider the following information when reviewing shoreline modification proposals:
  - a. Construction materials and methods.

- b. Project location relative to the ordinary high water mark (OHWM).
  - c. General direction and speed of prevailing winds.
  - d. Profile rendition of beach and uplands.
  - e. Beach and upland soil type, slope and material.
  - f. Physical or geologic stability of uplands.
  - g. Potential impact to natural shoreline processes, adjacent properties, and upland stability.
7. Shoreline modification materials shall be only those approved by applicable state agencies. No toxic (e.g.: creosote) or quickly degradable materials (e.g., plastic or fiberglass that deteriorates under ultraviolet exposure) shall be used.

## 2. Shoreline Stabilization (Including Bulkheads)

### a. Applicability

Shoreline stabilization includes actions taken to address erosion impacts to property, dwellings, or essential structures caused by natural processes, such as current, flood, tides, wind, or wave action. These include structural and nonstructural methods.

Nonstructural methods include building setbacks, relocation of the structure to be protected, ground water management, planning and regulatory measures to avoid the need for structural stabilization.

“Hard” structural stabilization measures refer to those with solid, hard surfaces, such as concrete bulkheads, while “soft” structural measures rely on softer materials, such as biotechnical vegetation measures or beach enhancement.

Generally, the harder the construction measure, the greater the impact on shoreline processes, including sediment transport, geomorphology, and biological functions.

WAC 173-27-040(2)(b) defines normal replacement and repair of existing structures and notes that normal maintenance and repair actions are not exempt from substantial development permits if they “cause substantial adverse effects to shoreline resources or the environment.”

Additions to or increases in size of existing shoreline stabilization measures shall be considered new structures.

### b. Policies

1. “Soft” shoreline stabilization of natural materials such as protective berms, beach enhancement or vegetation stabilization are strongly preferred over structural shoreline stabilization made of materials such as steel, wood, or concrete. Nonstructural or “soft” measures have less adverse and cumulative impacts on shore features and habitats. Proposals for structural solutions

including bulkheads should demonstrate that natural methods are unworkable.

2. Bulkheads and other structural stabilizations should be located, designed, and constructed primarily to prevent damage to existing development and minimize adverse impacts to ecological functions. New development requiring bulkheads and/or similar protection should not be allowed. Shoreline uses should be located in a manner so that bulkheading and other structural stabilization are not likely to become necessary in the future.

### c. Regulations

1. **New** stabilization measures are not allowed except to protect or support an existing or approved development, for the restoration of ecological functions, or for hazardous substance remediation pursuant to Chapter 70.105D RCW.
2. New development shall, where feasible, be located and designed to eliminate the need for concurrent or future shoreline stabilization. New development that would require shoreline stabilization that would cause significant adverse impacts to adjacent or down-current properties is prohibited.
3. **New or replacement** structural shoreline stabilization measures are allowed in the High-Intensity Environment if set back at least 50 feet from the OHWM and a 50-foot strip of native vegetation, including trees and shrubs, is installed between the shoreline stabilization measure and the shoreline. A landscape plan indicating types, sizes, and location of plant materials must be submitted to the City for approval.

Exception: The City may permit shoreline stabilization measures that may be necessary to protect private property as a result of shoreline restoration/inundation of the Qwuloolt site. New or replacement shoreline stabilization measures may be allowed closer to the OHWM if the City determines that it is necessary to protect existing development or new water-dependent uses from aggressive erosion. In these cases, the City will determine the depth of the setback from the OHWM.

4. New development shall, where feasible, be located and designed to not require structural shoreline stabilization or flood hazard protection. New development, including single-family residences, that includes structural shoreline stabilization will not be allowed unless all of the conditions below apply:
  - The need to protect the development from destruction due to erosion caused by natural processes, such as tidal action, currents, and waves, is demonstrated through a geotechnical report.
  - The erosion is not being caused by upland conditions, such as loss of vegetation and drainage.
  - 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.
  - The structure will not cause significant ecological impacts to priority species.

5. New development on steep slopes or bluffs shall be set back, as required in the City's Critical Area Ordinance, sufficiently to ensure that shoreline stabilization will not be needed during the life of the structure, as demonstrated by a geotechnical analysis by a licensed geotechnical engineer or related licensed professional.
6. New or enlarged structural shoreline stabilization measures for an existing development or residences shall not be allowed unless there is conclusive evidence, documented by a geotechnical analysis, that 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 by a licensed geotechnical engineer or related licensed professional, is not demonstration of need. The geotechnical report must include estimates of erosion rates and damage within three years and must evaluate on-site drainage issues and address drainage problems away from the shoreline edge before considering structural shoreline stabilization. The project design and analysis must also evaluate vegetation enhancement as a means of reducing undesirable erosion.
7. An ~~existing~~ shoreline stabilization structure shall not be replaced with a similar structure unless there is need to protect primary structures from erosion caused by currents, tidal action, or waves. At the discretion of the City Engineer, the demonstration of need does not necessarily require a geotechnical report by a licensed geotechnical engineer or related licensed professional. The replacement structure shall be designed, located, sized, and constructed to minimize harm to ecological functions. Replacement walls or bulkheads shall not encroach waterward of the OHWM or existing structures unless the residence was occupied prior to January 1, 1992, and there are overriding safety or environmental concerns. In such cases, the replacement structure shall abut the existing shoreline stabilization structure. Where significant ecological impacts to critical saltwater habitats would occur by leaving the existing structure, remove it as part of the replacement measure. Soft shoreline stabilization that restores ecological functions may be permitted waterward of the OHWM.
8. Where structural shoreline stabilization measures are demonstrated to be necessary, as in the above provisions, the size of stabilization measures shall be limited to the minimum necessary. The City may require that the proposed structure be altered in size or design. Impacts to sediment transport shall be avoided or minimized.
9. The City will require mitigation of adverse impacts to shoreline functions in accordance with the mitigation sequence defined in Section 4.B.4 of the General Provisions. The City may require the inclusion of vegetation conservation, as described in Section 4.B.11, as part of shoreline stabilization, where feasible.
10. Shoreline modification activities, with the exception of shoreline restoration or enhancement efforts, are prohibited in wetlands and in salmon and trout

5. New development on steep slopes or bluffs shall be set back, as required in the City's Critical Area Ordinance, sufficiently to ensure that shoreline stabilization will not be needed during the life of the structure, as demonstrated by a geotechnical analysis by a licensed geotechnical engineer or related licensed professional.
6. New or enlarged structural shoreline stabilization measures for an existing development or residences shall not be allowed unless there is conclusive evidence, documented by a geotechnical analysis, that 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 by a licensed geotechnical engineer or related licensed professional, is not demonstration of need. The geotechnical report must include estimates of erosion rates and damage within three years and must evaluate on-site drainage issues and address drainage problems away from the shoreline edge before considering structural shoreline stabilization. The project design and analysis must also evaluate vegetation enhancement as a means of reducing undesirable erosion.
7. An existing shoreline stabilization structure shall not be replaced with a similar structure unless there is need to protect primary structures from erosion caused by currents, tidal action, or waves. At the discretion of the City Engineer, the demonstration of need does not necessarily require a geotechnical report by a licensed geotechnical engineer or related licensed professional. The replacement structure shall be designed, located, sized, and constructed to minimize harm to ecological functions. Replacement walls or bulkheads shall not encroach waterward of the OHWM or existing structures unless the residence was occupied prior to January 1, 1992, and there are overriding safety or environmental concerns. In such cases, the replacement structure shall abut the existing shoreline stabilization structure. Where significant ecological impacts to critical saltwater habitats would occur by leaving the existing structure, remove it as part of the replacement measure. Soft shoreline stabilization that restores ecological functions may be permitted waterward of the OHWM.
8. Where structural shoreline stabilization measures are demonstrated to be necessary, as in the above provisions, the size of stabilization measures shall be limited to the minimum necessary. The City may require that the proposed structure be altered in size or design. Impacts to sediment transport shall be avoided or minimized.
9. The City will require mitigation of adverse impacts to shoreline functions in accordance with the mitigation sequence defined in Section 4.B.4 of the General Provisions. The City may require the inclusion of vegetation conservation, as described in Section 4.B.11, as part of shoreline stabilization, where feasible.
10. Shoreline modification activities, with the exception of shoreline restoration or enhancement efforts, are prohibited in wetlands and in salmon and trout

spawning waters. Shoreline stabilization and shoreline protection shall be located landward of the floodway and all associated wetlands.

11. Shoreline stabilization measures along the shoreline that incorporate ecological restoration through the placement of rocks, gravel or sand, and native shoreline vegetation may be allowed.
12. **Repair** of existing shoreline stabilization measures is allowed. Replacement of existing shoreline stabilization measures, as defined in the Applicability statement above, is allowed if it conforms to Regulations 3 and 5 above or if the residence on the site was occupied prior to January 1, 1992 and the City determines that replacement is necessary to prevent damage to residences, appurtenant structures, or the shoreline ecology from shoreline erosion; and impacts to the natural environment are minimized. When an existing bulkhead is being repaired or replaced by construction of a vertical wall fronting the existing wall, it shall be constructed no further waterward of the existing bulkhead than is necessary for construction of new footings. When a bulkhead has deteriorated such that an OHWM has been established by the presence and action of water landward of the bulkhead, then the replacement bulkhead must be located at or near the actual OHWM.
13. Stream channel modification (i.e., realignment) shall be prohibited as a means of shoreline stabilization or shoreline protection, unless it is the only feasible alternative or if the City determines that it would improve shoreline ecological functions.
14. Bulkhead design and development shall conform to all other applicable City and state agency policies and regulations including the Department of Fisheries criteria governing the design of bulkheads.
15. Gabions (wire mesh filled with concrete or rocks) are prohibited.
16. The construction of a bulkhead for the primary purpose of retaining or creating dry land that is not specifically authorized as a part of the permit shall be prohibited.
17. Use of a bulkhead to protect a platted lot where no structure presently exists is prohibited unless the City determines that it is part of the residence construction and is the only feasible way to protect the otherwise lawful structure.
18. Bulkheads shall be designed with the minimum dimensions necessary to adequately protect the development for the expected life of the development.
19. Stairs, boat ramps or other permitted structures may be built as integral to a bulkhead but shall not extend waterward of it.
20. Bulkheads shall be designed to permit the passage of surface or ground water without causing ponding or over-saturation of retained soil/materials of lands above the OHWM.

21. Adequate toe protection consisting of proper footings, a fine retention mesh, etc., shall be provided to ensure bulkhead stability without relying on additional riprap.
22. Materials and dimensional standards:
  - a. New bulkheads and other shoreline stabilization structures shall not be constructed higher than 24 inches (twenty-four inches) above the OHWM or, if the bulkhead is set back from the shoreline, 24 inches above grade at the base of the bulkhead or structure. On steep slopes, new bulkheads may be built taller than 24 inches high if necessary to meet the existing slope. Replacement bulkheads may be built to the height of the original bulkhead. Exception: The City may waive this provision for flood hazard minimization measures conforming to this master program.
  - b. The following materials are examples of acceptable materials for shoreline stabilization structures:
    - Cast-in-place reinforced concrete.
    - Stacked masonry units (e.g., interlocking cinder block wall units).
    - Large stones, with vegetation planted in the gaps. Stones should not be stacked in a wall greater than 2 horizontal to 1 vertical slope.
    - Timbers or logs. Note the prohibition against toxic wood treatments.
  - c. The following materials are not acceptable for shoreline stabilization structures:
    - Degradable plastics and other nonpermanent synthetic materials.
    - Sheet materials, including metal, plywood, fiberglass, or plastic.
    - Broken concrete, asphalt, or rubble.
    - Car bodies, tires or discarded equipment.
23. Following completion of shoreline modification activities, disturbed shoreline areas shall be restored to pre-project conditions to the greatest extent possible. Plantings shall consist of native grasses, shrubs, and/or trees in keeping with preexisting bank vegetation. If native species are not available and vegetation is needed for shoreline stabilization purposes, the City will determine acceptable plant substitutes.
24. Fill behind bulkheads shall be limited to an average of 1 cubic yard per running foot of bulkhead. Any filling in excess of this amount shall be considered landfill and shall be subject to the provisions for landfill and the requirement for obtaining a shoreline substantial development permit.
25. The City may require and utilize the following information, in addition to the standard permit information required by WAC 173-27, in its review of all bioengineering projects:
  - a. Proposed construction timing.
  - b. Hydrologic analysis, including predicted flood flows.
  - c. Site vegetation, soil types, and slope stability analysis.

6. Agricultural practices shall prevent and control erosion of soils and bank materials within shoreline areas and minimize siltation, turbidity, pollution, and other environmental degradation of watercourses and wetlands.
7. The application of agricultural chemicals shall prevent the direct runoff of chemical-laden waters into water bodies or aquifer recharge areas. Adequate provision shall be made to minimize their entry into any body of water.
8. All shoreline development must conform to the General Provisions (see Chapter 4), the Shoreline Modification Provisions (see Chapter 5), and the Environment Designation Provisions (see Chapter 3) stated in the master plan.

### 3. Boating Facilities

#### a. Applicability

Boating facilities include marinas, both backshore and foreshore, dry storage and wet-moorage types; boat launch ramps; covered moorage; boat houses; mooring buoys; and marine travel lifts. See also “Piers and Docks” in Chapter 5, “Shoreline Modification Provisions,” for non-marina-associated boating facility provisions.

A marina is a water-dependent use that consists of a system of piers, buoys, or floats to provide moorage for ten or more boats. There are two common types of backshore marinas, one with wet-moorage that is dredged out of the land to artificially create a basin; and the other a dry moorage which has upland storage with a hoist, marine travel lift, or ramp for water access. Foreshore marinas are located in the intertidal or offshore zone and may require breakwaters of open-type construction (floating breakwater and/or open pile work) and/or solid-type construction (bulkhead and landfill), depending on the location.

Accessory uses found in marinas may include fuel docks and storage, boating equipment sales and rental, wash-down facilities, fish cleaning stations, repair services, public launching, bait and tackle shops, potable water, waste disposal, administration, parking, groceries, and dry goods.

There are uses and activities associated with boating facilities but that are identified in this section as separate uses (e.g., Commercial Development and Industrial Development, including ship and boat building, repair yards, utilities, and transportation facilities) or as separate shoreline modifications (e.g., piers, docks, bulkheads, breakwaters, jetties and groins, dredging, and fill). These uses are subject to the regulations established for those uses and modifications in addition to the standards for boating facilities established in this section.

#### b. Policies

1. Boating facilities should be located, designed, and operated to provide maximum feasible protection and restoration of ecological processes and functions and all forms of aquatic, littoral, or terrestrial life—including animals, fish, shellfish, birds, and plants—and their habitats and migratory

circulation and access conflicts. Backing of trailers on public roads shall be prohibited.

24. All pipes, plumbing, wires and cables at a marina site shall be placed at or below ground and dock levels.
25. Adequate fire protection shall be provided as required by the Washington State Fire Code.

#### Residential Uses

26. Moorage of floating homes is prohibited.
27. No more than ten percent of total moorage slips in a marina shall accommodate liveaboard vessels and houseboats. Where permitted, each liveaboard or houseboat mooring slip shall be connected to utilities that provide potable water and wastewater conveyance to an approved disposal facility.

#### Boat Launches

28. Launch ramps may be permitted on marine or riverine accretion shoreforms, provided any necessary grading is not harmful to affected resources and any accessory facilities are located out of the floodway.
29. Launch ramps shall be permitted only on stable, non-erosional banks, where no or a minimum number of current deflectors or other stabilization structures will be necessary.
30. Ramps shall be placed and kept near flush with the foreshore slope to minimize the interruption of hydrologic processes.

#### Covered Moorage

31. New covered moorage is prohibited.

## 4. Commercial Development

### **a. Applicability**

Commercial development means those uses that are involved in wholesale, retail, service, and business trade. Examples include hotels, motels, grocery markets, shopping centers, restaurants, shops, offices, and private or public indoor recreation facilities.

Uses and activities associated with commercial development that are identified as separate uses in this program include Mining, Industry, Boating Facilities, Transportation Facilities, Utilities (accessory), and Solid Waste Disposal. Piers and docks, bulkheads, shoreline stabilization, flood protection, and other shoreline modifications are sometimes associated with commercial development and are subject to those shoreline modification regulations in addition to the standards for commercial development established herein.

## **b. Policies**

1. Multi-use commercial projects that include some combination of ecological restoration, public access, open space, and recreation should be encouraged in the High-Intensity Environment consistent with the City's Comprehensive Plan.

## **c. Regulations**

### General

1. The City shall require and utilize the following information in its review of commercial development proposals:
  - a. Nature of the commercial activity (e.g., water-dependent, water-related, water-enjoyment, non-water-oriented, mixed-use), including a breakdown of specific shoreline use components.
  - b. The reason(s) why the project needs a shoreline location.
  - c. Design measures to take advantage of the shoreline location.
  - d. Provisions for ecological restoration and for public visual and physical access to the shoreline.
  - e. Provisions to ensure that the development will not cause significant ecological impacts or adverse environmental impacts.
  - f. Layout, size, height, and general appearance of all proposed structures.
  - g. Pedestrian and vehicular circulation, public access features, pavements, landscaping, and view corridors.
  - h. For mixed-use proposals, the mix of water-oriented and non-water-oriented uses and activities, structure locations, site designs and bulk considerations, enhancements for physical and visual public access to the shoreline (both public and private space), and other design measures that address the goals and policies of the master program.
2. Water-oriented commercial developments may be permitted as indicated in Chapter 3, Section C, "Shoreline Use and Shoreline Modification Matrices." In accordance with said matrix and other provisions of this master program, non-water-oriented commercial developments may be permitted by CUP only where all three of the following can be demonstrated:
  - a. A water-oriented use is not reasonably expected to locate on the proposed site due to topography, incompatible surrounding land uses, physical features, or the site's separation from the water.
  - b. The proposed development does not usurp or displace land currently occupied by a water-oriented use and will not interfere with adjacent water-oriented uses.
  - c. The proposed development will be of appreciable public benefit by increasing ecological functions together with public use of or access to the shoreline.

3. Commercial development shall be designed to avoid or minimize ecological impacts, to protect human health and safety, and to avoid significant adverse impacts to surrounding uses and the area's visual qualities. To this end, the City may adjust the project dimensions and setbacks (so long as they are not relaxed below minimum standards without a shoreline variance permit) and/or prescribe operation intensity and screening standards as deemed appropriate. Need and special considerations for landscaping and buffer areas shall also be subject to review.
4. All new commercial development proposals will be reviewed by the City for ecological restoration and public access opportunities. When restoration and/or public access plans indicate opportunities exist, the City may require that those opportunities are either implemented as part of the development project or that the project design be altered so that those opportunities are not diminished.

All new water-related and water-enjoyment development shall be conditioned with the requirement for ecological restoration and public access unless those activities are demonstrated to be not feasible. (See definition of "feasible.")

All new non-water-oriented development, where allowed, shall be conditioned with the requirement to provide ecological restoration and public access.

The City shall consult the Environmental Restoration Plan and the Ebey Waterfront Trail Plan and determine the applicability and extent of ecological restoration and/or public access required.

5. All commercial loading and service areas shall be located on the upland side of the commercial activities, or provisions must be made to set back and screen the loading and service area from the shoreline and water body.
6. Commercial development and accessory uses must conform to the setback and height standards established in Chapter 3, "Environment Designations."

## 5. Industry

### a. Applicability

Industrial developments and uses are facilities for processing, manufacturing, and storing of finished or semi finished goods. Included in industry are such activities as container ship terminals, log storage, log rafting, petroleum storage, hazardous waste generation, transport and storage, ship building, concrete and asphalt batching, construction, manufacturing, warehousing, lumber mills, and tug and barge operations. Excluded from this category and covered under other sections of the master program are boating facilities, piers and docks, mining (including on-site processing of raw materials), utilities, solid waste disposal, and transportation facilities.

Shoreline modifications and other uses associated with port and industrial development are described separately in this master program. These include dredging, fill, transportation facilities, utilities piers and docks, bulkheads,

submit plans demonstrating the methods to be used to prevent these applications and resultant leachate from entering adjacent water bodies. Buffer strips and, if practical, shade trees shall be included in the development. The City shall determine the maximum width necessary for buffer strips, but in no case shall the buffer strip be less than 50 feet. The proponent shall also be required to leave a chemical-free swath at least 100 feet in width next to water bodies and wetlands.

6. Snags and living trees (i.e., large cottonwoods) shall not be removed within the 50-foot setback unless a professional forester or horticulturalist determines them to be extreme hazards and likely to fall into a park use area. Snags and living trees within the setback which do not present an extreme hazard shall be retained.

## 8. Residential Development

### a. Applicability

Residential development means one or more buildings, structures, lots, parcels or portions thereof which are designed for and used or intended to be used to provide a place of abode for human beings, including single-family residences, duplexes, other detached dwellings, floating homes, multi-family residences, apartments, townhouses, mobile home parks, other similar group housing, condominiums, subdivisions and short subdivisions, together with accessory uses and structures normally applicable to residential uses including but not limited to garages, sheds, tennis courts, swimming pools, parking areas, fences, cabanas, saunas and guest cottages. Residential development does not include hotels, motels or any other type of overnight or transient housing, recreational vehicle parks, or camping facilities.

The Shoreline Management Act identifies single-family residences as a priority use when (and only when) developed in a manner consistent with the control of pollution and prevention of damage to the natural environment. Although some owner-occupied single-family residences are exempt from the substantial development permit process, they still must comply with all of the provisions of this section and of the master program. Subdivisions and short subdivisions must also comply with all of the provisions of this section and the master program. All development is subject to the variance and conditional use requirements and permit processes, when indicated.

Uses and facilities associated with residential development which are identified as separate use activities or shoreline modifications in this program, such as Boating Facilities, Piers, Shoreline Stabilization and Flood Protection, Utilities, Landfill and Clearing and Grading, are subject to the regulations established for those modifications in addition to any special conditions relating to residential areas established in this section.

## **b. Policies**

1. Recognizing the single-purpose, irreversible, and space-consumptive nature of shoreline residential development, new development should provide adequate setbacks and natural buffers from the water and ample open space between structures to provide space for outdoor recreation, to protect and restore ecological functions and ecosystem-wide processes, to preserve views, and to minimize use conflicts.
2. New residential development should be designed so as to not cause significant ecological impacts or significant adverse impacts to shoreline esthetic characteristics, views, and improve public use of the shoreline and the water.
3. New residential development should be located and designed so as to minimize conflicts or incompatibilities with water-oriented uses. Residential development should not be allowed where occupants would be exposed to noise, bright lights, or other necessary impacts of water development uses, such as water-dependent-industrial activities.

## **c. Regulations**

1. In accordance with the SMA, Chapter 90.58 RCW, the following categories of development on single-family residential properties do not require a shoreline substantial development permit.
  - Construction in shoreline jurisdiction by an owner, lessee, or contract purchaser of a single-family residence for his own use or for the use of his family that does not exceed a height of 35 feet above average grade level and meets all of the requirements of this master program and other applicable local, state, and federal laws.
  - “Appurtenances” to single-family residences located landward of the OHWM and the perimeter of a wetland, including such structures as garages, decks, driveways, utilities, fences, installation of a septic tank and drainfield, and grading that does not exceed 250 cubic yards and that does not involve placement of fill in any wetland or waterward of the OHWM.
  - The construction of shoreline stabilization, including vegetation enhancement, beach enhancement, upland drainage control, revetments, bulkheads, and seawalls.

HOWEVER, all of the development described above shall meet the provisions of this master program. In order to implement the objectives of the Shoreline Management Act, RCW 90.58.020, the City shall review development proposals for such actions. Persons intending to carry out the types of single-family development described above shall apply for a “letter of exemption.” Piers, docks and mooring floats accessory to single family residences are not allowed.

2. Residential development, including appurtenances and accessory uses, shall be prohibited within floodways, channel migration zones, wetlands, critical wildlife habitats, and other hazardous areas, such as steep slopes and areas with unstable soils or geologic conditions.

3. New residential development is not allowed in the Urban Conservancy Environment. Existing residential development constructed and occupied prior to the adoption of this master program may be allowed to be altered or expanded, provided the new development does not increase the nonconformance and meets the requirements of the City's Critical Area Ordinance, adopted May 2, 2005, and this master program.

New residential development may be allowed on lots along Quilceda Creek existing prior to the adoption of this SMP, provided the proposal meets the Marysville Critical Area Ordinance and the "Critical Areas" section of this SMP.

4. Appurtenances, as defined in this master program consistent with Chapter 173-27 WAC (or in the definitions; see also Regulation 2 above), shall be subject to the same conditions as primary residences, except that for the protection of human health and safety and ecological functions further restrictions may apply.
5. Accessory uses that are not appurtenant structures shall be reasonable in size and purpose and compatible with on-site and adjacent structures, uses, and natural features.

Accessory structures that are not water-dependent are prohibited waterward of the principal residence.

6. The creation of new lots shall be prohibited unless all of the following can be demonstrated.
  - a. A primary residence can be build on each new lot without any of the following being necessary:
    - New structural shoreline stabilization.
    - New development or clearing and grading within 50 feet of the OHWM.
    - New structures in the required shoreline setback, 100-year floodplain, geohazardous areas, wetland, required wetland buffer, critical habitat, or critical habitat buffer.
    - Causing significant erosion or reduction in slope stability.
    - Causing increased flood hazard or erosion in the new development or to other properties.
  - b. Adequate sewer, water, access, and utilities can be provided.
  - c. The intensity and type of development is consistent with the City comprehensive plan and development regulations.
  - d. Potential significant adverse environmental impacts (including significant ecological impacts) can be avoided or mitigated to achieve no net loss of ecological functions, taking into consideration temporal loss due to development and potential adverse impacts to the environment.
7. Over-water residences and floating homes are prohibited.
8. Multiunit development, including the subdivision of land into more than four parcels, shall be required to provide public access according to Section 4.B.7, "Public Access," and the Ebey Waterfront Trail Program.

The City will determine whether or not a proposed development meets the above conditions.

## 9. Transportation and Parking

### a. Applicability

Transportation facilities are those structures and developments that aid in land and water surface movement of people, goods, and services. They include roads and highways, bridges and causeways, bikeways, trails, railroad facilities, ferry terminals, float plane terminals, airports, heliports, and other related facilities.

The various transport facilities that can impact the shoreline cut across all environmental designations and all specific use categories. The policies and regulations identified in this section pertain to any project, within any environment, that is effecting some change in present transportation facilities.

### b. Policies

1. Circulation system planning to and on shorelands should include systems for pedestrian, bicycle, and public transportation where appropriate. Circulation planning and projects should support existing and proposed shoreline uses that are consistent with the master program.
- 2.
3. Trail and bicycle paths should be encouraged along shorelines and should be constructed in a manner compatible with the natural character, resources, and ecology of the shoreline. P.77,9b.4: Trail and bicycle paths should be encouraged along shorelines and should be constructed in a manner that does not reduce or substantially impact shoreline resources or ecological functions.
4. When existing transportation corridors are abandoned, they should be reused for water-dependent use or public access.
5. Abandoned or unused road or railroad rights-of-way that offer opportunities for public access to the water should be acquired and/or retained for such use.

### c. Regulations

#### General

1. Applications for new or expanded transportation facilities development in shoreline jurisdiction shall include the following information:
  - Demonstration of the need for the facility.
  - An analysis of alternative alignments or routes, including where feasible, alignments or routes outside shoreline jurisdiction.
  - An analysis of potential impacts complying with the State Environmental Policy Act, including an analysis of comparative impacts of feasible alternative routes. (See the definition of “feasible” in Chapter 7.)
  - Description of construction, including location, construction type, and materials.
  - If needed, description of mitigation and restoration measures.

**HALINEN LAW OFFICES, P.S.**  
*A Professional Service Corporation*

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October 30, 2009

**VIA EMAIL AND FIRST CLASS MAIL**

City of Renton Department of Community and Economic Development  
1055 S. Grady Way, Sixth Floor  
Renton, Washington 98057

Attn: C. E. ("Chip") Vincent, Planning Director

Re: Renton's July 22, 2009 draft proposed SMP  
**Follow-up concerning my October 21, 2009 submittal to you and your departmental colleagues of Marysville's SMP for its illustration of SMP provisions of interest to my client AnMarCo that Ecology has approved**

Dear Chip:

On October 15, 2009, you, Alex Pietsch, and Suzanne Dale Estey met with me at City Hall (with my client Don Merlino of AnMarCo participating via speakerphone because he was out of town) to discuss AnMarCo's concerns over the July 22, 2009 draft SMP and AnMarCo's requests for revisions to it. As you will recall, the four main substantive draft SMP topics we discussed were:

- (1) The draft SMP's broad requirements for removal of existing bulkheads (overbroad requirements that AnMarCo contends are unwise, inappropriate, and unlawful);
- (2) The draft SMP's "vegetation conservation buffer" and setback requirements (requirements that AnMarCo contends are also unwise, inappropriate, and unlawful as set forth in the current draft because they fail to provide for reduction in the type of circumstances documented to exist on the Old Stoneway Site and that may exist on other shoreline sites as well);
- (3) The draft SMP's building height limitations in the High Intensity Overlay along the north side of Cedar River Reach C where the underlying zoning is COR (height limitations that AnMarCo contends are arbitrarily, unreasonably, and unlawfully low for COR-zoned sites that have 125-foot zoning height limits, especially considering (a) the subject stretch of shoreline is located between two immense hills extending roughly 200 feet

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high on opposite sides of the river (a circumstance where allowance of taller buildings in the valley between is especially appropriate), (b) no views of the river from any residences would be blocked, and (c) the historical context of the application of the COR zone to the Old Stoneway Site, a zoning application that was intended to be and was in fact a material inducement to AnMarCo to agree to the very expensive effort to remove the long-operating concrete batch plant from the Old Stoneway Site and replace it with a new plant on a different site within Renton that the Merlins had to purchase); and

- (4) The draft SMP's lack of allowance within the "High Intensity Overlay" of the land uses permitted in the underlying COR zone along the Cedar River.

Near the conclusion of that October 15, 2009 meeting, you suggested to me that it would be helpful to you and your colleagues in regard to your consideration of AnMarCo's requested revisions for me to submit to you an example of another city's SMP (an SMP that sets forth the type of provisions AnMarCo is requesting that Renton adopt), an example for which both of the following are true:

- (1) The SMP has already been updated under the State of Washington Department of Ecology's current SMP Guidelines (i.e., the guidelines that became effective on January 17, 2004 and are codified under Chapter 173-26 WAC); and
- (2) The SMP has already been approved by Ecology.

You explained that such a submittal of another city's SMP would be helpful because it would illustrate to the City of Renton that Ecology has already set a precedent for approving such provisions.

**My Submittal to You of My Marked-Up Excerpts from  
the Ecology-Approved Marysville SMP**

In follow-up to your suggestion, I obtained from the Web and reviewed the October 2006 City of Marysville SMP. Note on page 2 of the enclosed copy of Ecology's two-page Shoreline Management Web site that Marysville's SMP is listed as one of the "Master programs updated in accordance with the SMP Guidelines that took effect on January 17, 2004." I also phoned and spoke to Marysville Planning Manager Cheryl Dungan, who told me that she was Marysville's lead planner for development of the Marysville SMP and that the Marysville SMP was in fact (a) updated in accordance with the SMP Guidelines that took effect on January 17, 2004 and (b) approved by Ecology.

As you know, I color-marked-up numerous excerpted pages from Marysville’s SMP and, while at City Hall for the October 21, 2009 Planning Commission public hearing on the draft SMP, gave you, Erika Conkling, and City SMP consultant David Sherrard each a color set of copies of those excerpted and marked-up pages. (I also gave Planning Commission Clerk Judith Subia a set of those copies for her to give to Alex Pietsch and a set of those copies for her to give to Suzanne Dale Estey.) That set of pages (which I presume you still have and can make reference to) illustrates the following things that I hereby request you and your colleagues specifically consider in relation to my client AnMarCo’s requests for revisions to Renton’s draft SMP:

- (1) The shoreline use matrix (pages 16 and 17 of the Marysville SMP), the shoreline modification matrix (page 17 of the Marysville SMP), and the development standards matrix (page 18 of the Marysville SMP) collectively provide the following (among other things) within the Marysville SMP’s “High-Intensity” environment:
  - (a) Non-water-oriented commercial<sup>1</sup> and multifamily residential uses are permitted shoreline uses (as conditional uses, with “[p]ublic access, as approved by the City [being] a condition of non-water-dependent development”);
  - (b) “Bulkheads” and “fill” are permitted shoreline modifications;
  - (c) Commercial, non-water-oriented uses and residential development require only a 70-foot-wide setback from OHWM (with “[t]he setback space [to] include a 50-foot minimum strip of shoreline restoration measures and/or native vegetation plantings as approved by the City plus a 20-foot-wide public access easement running parallel with the shoreline”); and
  - (d) The building height limit throughout the High-Intensity Environment is 65 feet for commercial, recreational and industrial development and 85 feet for residential development;
- (2) In contrast to Renton’s current draft SMP, in Marysville’s Ecology-approved SMP (a) there is no general mandate for removal of existing

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<sup>1</sup> The first paragraph of Section 4.a on page 68 of the Marysville SMP describes commercial development in this straightforward way:

“Commercial development means those uses that are involved in wholesale, retail, service and business trade. Examples include hotels, motels, grocery markets, shopping centers, restaurants, shops, offices and private or public indoor recreation facilities.”

bulkheads in conjunction with development or redevelopment of shorelands<sup>2</sup> and (b) *repair* of existing bulkheads is specifically allowed, including repair of an existing bulkhead by means of “construction of a vertical wall fronting the existing wall”<sup>3</sup>; and

- (3) The Marysville SMP (a) allows existing shoreline stabilization structures to be *replaced with a similar structure* (including walls or bulkheads) where “there is need to protect primary structures from erosion caused by currents, tidal action, or waves, and (b) provides that “[a]t the discretion of the City Engineer, the demonstration of need does not necessarily require

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<sup>2</sup> The focus of the Marysville SMP’s Shoreline Modification Provisions chapter (Chapter 5) is on *proposed* shoreline modifications. In the first two paragraphs of Chapter 5’s Section A (Introduction and Applicability), shoreline modifications are defined and commented upon as follows:

Shoreline modifications are structures or actions which permanently change the physical configuration or quality of the shoreline, particularly at the point where land and water meet. Shoreline *modification activities* include, but are not limited to, structures such as revetments, **bulkheads**, levees, breakwaters, docks, and floats. Actions such as clearing, grading, landfilling, and dredging are also considered shoreline modifications.

Generally, shoreline *modification activities* are undertaken for the following reasons:

1. To prepare a site for a shoreline use
2. To provide shoreline stabilization or shoreline protection
3. To support an upland use

(Emphasis added.)

<sup>3</sup> Regulation 12 of subsection c (Regulations) in Section 2 [Shoreline Stabilization (Including Bulkheads)] on page 49 of the Marysville SMP states:

**Repair of existing shoreline stabilization measures is allowed.** Replacement of existing shoreline stabilization measures, as defined in the Applicability statement above, is allowed if it conforms to Regulations 3 and 5 above or if the residence on the site was occupied prior to January 1, 1992 and the City determines that replacement is necessary to prevent damage to residences, appurtenant structures, or the shoreline ecology from shoreline erosion; and impacts to the natural environment are minimized. **When an existing bulkhead is being repaired or replaced by construction of a vertical wall fronting the existing wall, it shall be constructed no further waterward of the existing bulkhead than is necessary for construction of new footings.** When a bulkhead has deteriorated such that an OHWM has been established by the presence and action of water landward of the bulkhead, then the replacement bulkhead must be located at or near the actual OHWM.

(Emphasis added.)

a geotechnical report by a licensed geotechnical engineer or related licensed professional.”<sup>4</sup>

**My Comments Concerning the Building  
Height Limits in the Marysville SMP**

While the above-noted points concerning the Marysville SMP are generally self-explanatory, I have some comments in regard to the above-referenced building height limits within the Marysville SMP’s High-Intensity environment. Please note that those height limits are essentially the full “base height” limits of Marysville’s “Downtown Commercial (DC)” and “General Industrial (GI)” zones. Those zones are the Marysville High-Intensity environment’s two underlying zones.

To demonstrate that those two zones are the underlying zones, I am enclosing with this letter both (a) a ledger-size color copy of Figure 1 (Shoreline environment designations for City of Marysville—Ebey Slough and associated shorelands), which is an enlargement of page 14 of the Marysville SMP and which depicts Marysville SMP’s High-Intensity environment areas, and (b) a color copy of the Marysville Zoning Map on which I have had my legal assistant outline the limits of Marysville SMP’s High-Intensity environment areas so that you can readily see that DC and GI zones are the underlying zones.<sup>5</sup>

I have also enclosed a three-page excerpt from the Marysville Zoning Code that I have color highlighted to readily indicate for you (a) the zoning designations and map symbols for the Downtown Commercial and General Industrial zones, (b) the 85-foot maximum base height in the Downtown Commercial zone (a zone in which multi-family residential use is allowed), and

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<sup>4</sup> Regulation 7 of subsection c (Regulations) in Section 2 [Shoreline Stabilization (Including Bulkheads)] on page 48 of the Marysville SMP states:

**An existing shoreline stabilization structure shall not be replaced with a similar structure unless there is need to protect primary structures from erosion caused by currents, tidal action, or waves. At the discretion of the City Engineer, the demonstration of need does not necessarily require a geotechnical report by a licensed geotechnical engineer or related licensed professional.** The replacement structure shall be designed, located, sized, and constructed to minimize harm to ecological functions. **Replacement walls or bulkheads shall not encroach waterward of the OHWM or existing structures** unless the residence was occupied prior to January 1, 1992, and there are overriding safety or environmental concerns. In such cases, the replacement structure shall abut the existing shoreline stabilization structure. Where significant ecological impacts to critical saltwater habitats would occur by leaving the existing structure, remove it as part of the replacement measure. Soft shoreline stabilization that restores ecological functions may be permitted waterward of the OHWM.

(Emphasis added.)

<sup>5</sup> Note that the portion of the High Intensity environment shaded in white on the enclosed Marysville zoning map is of an area lying outside of the City limits (an area that apparently does not have City of Marysville zoning).

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Attn: C. E. ("Chip") Vincent, Planning Director  
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the 65-foot maximum base height in the General Industrial zone (a zone in which multi-family residential use is not allowed).

Note that the reasons I am making the above points about building height limits within Marysville's High-Intensity environment are as follows:

- (1) The City of Marysville generally did not reduce the height limit within its High Intensity environment down below the base height limits of the underlying zones. (The only reduction was its limitation of the height of *standalone* commercial uses to 65 feet in the High Intensity environment. In the underlying Downtown Commercial zone, standalone commercial uses have a base height limit of 85 feet. With a multifamily residential component, commercial developments in the High Intensity environment have a height limit of 85 feet.)
- (2) The height limits in Marysville's High Intensity environment are much higher than the draft Renton SMP's very restrictive 35-foot height limit at the edge of the building setback for the High Intensity environment along Cedar River Reach 3.

Thank you for your anticipated consideration of the above in regard to AnMarCo's SMP revision requests. Should you have any questions or comments concerning the above, please let me know as soon as possible.

Note that as I explained to you during the visit that you and Erika Conkling paid to the Old Stoneway Site this Wednesday with me, Don Merlino, and Michael Merlino, I plan to submit on behalf of AnMarCo (before the November 5, 2009 close of the record before the Planning Commission concerning the draft SMP) an additional set of proposed revisions to the draft SMP along with other related materials.

Sincerely,

HALINEN LAW OFFICES, P.S.

  
David L. Halinen

Enclosures: (1) a copy of a printout of Ecology's two-page Shoreline Management Web site, (2) a copy of Figure 1 (Shoreline environment designations for City of Marysville—Ebey Slough and associated shorelands), which is an enlargement of page 14 of the Marysville SMP, (3) a copy of the Marysville Zoning Map on which my legal

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assistant has outlined the limits of Marysville SMP's High-Intensity environment areas, and (4) a three-page excerpt from the Marysville Zoning Code that I have color highlighted )

cc: AnMarCo  
Attn: Don Merlino (via email and first class mail, with copies of above-noted enclosures)  
Attn: Gary Merlino (via email and first class mail, with copies of above-noted enclosures)

Denis Law, Mayor, City of Renton (via first class mail, with copies of above-noted enclosures and a set of copies of my October 21, 2009 mark-up of excerpted pages from the Marysville SMP)

Alex Pietsch, Administrator, City of Renton Department of Community and Economic Development (via email and first class mail, with copies of above-noted enclosures)

Suzanne Dale Estey, Economic Development Director, City of Renton Department of Community and Economic Development (via email and first class mail, with copies of above-noted enclosures)

Erika Conkling, Senior Planner, City of Renton Department of Community and Economic Development (via email and first class mail, with copies of above-noted enclosures)

Gregg Zimmerman, P.E., Administrator, City of Renton Department of Public Works (via email and first class mail, with copies of above-noted enclosures and a set of copies of my October 21, 2009 mark-up of excerpted pages from the Marysville SMP)

Andrew C. Kindig, PhD, AC Kindig & Company (via email and first class mail, with copies of above-noted enclosures)

Carl G. Hadley, Cedarock Consultants, Inc. (via email and first class mail, with copies of above-noted enclosures)



[SEA Program Home](#) > Shoreline Management Home

## Shoreline Management Home

Washington's **Shoreline Management Act** (SMA) was adopted by the public in a 1972 referendum "to prevent the inherent harm in an uncoordinated and piecemeal development of the state's shorelines." The SMA has three broad policies:



- **Encourage water-dependent uses:** "uses shall be preferred which are consistent with control of pollution and prevention of damage to the natural environment, or are unique to or dependent upon use of the states' shorelines..."
- **Protect shoreline natural resources,** including "...the land and its vegetation and wildlife, and the water of the state and their aquatic life..."
- **Promote public access:** "the public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the state shall be preserved to the greatest extent feasible consistent with the overall best interest of the state and the people generally."

### State-local partnership

The SMA is administered through a cooperative program between local governments and Ecology:

- [Cities and counties](#) develop [shoreline master programs](#) that [regulate development](#) along larger [streams, lakes, and marine waters](#).
- Ecology provides [technical assistance](#), and reviews and approves local master programs and permit decisions.

The Act places a strong emphasis on [public participation](#) in developing local shoreline programs and in the [local permit process](#).

### Shoreline Master Programs

Ecology's adoption of [new shoreline master program \(SMP\) guidelines](#) in 2003 initiated a new generation of shoreline planning in

### News

#### October 2009

**NEW!** Chapter 6, Public Participation, of the SMP Handbook, is now available. [Download Chapter 6](#) (pdf)

[Frequently Asked Questions](#)

[SMP Grants To Date](#) (pdf)

#### September 2009

Ecology seeking public review on Spokane County's revised shoreline regulations. [Read more](#)

#### August 2009

Chapter 7, Shoreline Inventory and Characterization, of the Shoreline Master Program Handbook is now available. This is the first chapter of the revised SMP Handbook to be posted to our website. When it's completed, the SMP Handbook will cover all aspects of the SMP update process. [Download Chapter 7](#) (pdf)

#### July 1, 2009

City of Bellingham releases 2009 draft Shoreline Management Plan. [Read more](#) (external link)

#### June 29, 2009

Ecology/Commerce Guidance on Futurewise

Washington. The guidelines were developed as part of a year-long negotiated settlement that also led to adoption of shoreline legislation (*effective July 2003*) that established a new [schedule for updating](#) SMPs, and a biennial appropriation of \$2 million to fund local SMP development.

**NEW!** Ecology has developed a set of "[frequently asked questions](#)" about shoreline master programs. We will be adding more information to our list to answer issues and other questions as local governments and Ecology move through the update process.

Ecology administers an [SMP Grants Program](#) that provides funding for local jurisdictions to undertake comprehensive SMP updates. The next grant cycle will open in the spring of 2009.

- **[Introduction to the Shoreline Management Act.](#)**
- **[SMP Register](#)** (PDF) - a list of all Ecology-approved shoreline master programs and amendments since 1971.
- Master programs updated in accordance with the SMP Guidelines that took effect on January 17, 2004:
  - [City of Chewelah](#) (PDF, 1.6 MB)
    - [Environmental Designation Map](#) (pdf, 360 KB)
  - [Town of Coupeville](#) (PDF, 476 KB)
  - [Town of Darrington](#) (PDF, 751 KB)
  - [Douglas County](#) (No maps, PDF, 3.72 MB)
    - [Chapter 9 - Shoreline Designation Maps](#) (PDF, 52 MB)
    - [Appendix F - Shoreline Inventory Maps](#) (PDF, 38 MB)
    - [Appendix G - Shoreline Reach Maps](#) (PDF, 2.12 MB)
  - [City of Monroe](#) (PDF, 46 MB)
  - [City of Marysville](#) (PDF, 655 KB)
  - [City of Orting](#) (PDF, 913 KB)
    - [Environmental Designation Map](#) (PDF, 650 KB)
    - [Public Access Map](#) (PDF, 830 KB)
  - [Port Townsend](#) (PDF, 7.3 KB)
  - [City of Sultan](#) (PDF, 6 KB)
  - [Whatcom County](#) (PDF, 2.1 KB)
- **[Lists of streams and other 'water bodies' regulated by county and city shoreline master programs.](#)** (PDF, 126 KB)

et al v. Western Washington Growth Management Hearings Board and City of Anacortes et al addressing shorelines and critical areas. [Read more](#)

**June 1, 2009**  
[2009 Amendments to the SMA and GMA](#)

**May 15, 2009**  
Press Release: Legal decision bolsters state, local efforts to update shoreline rules. [Read more](#)

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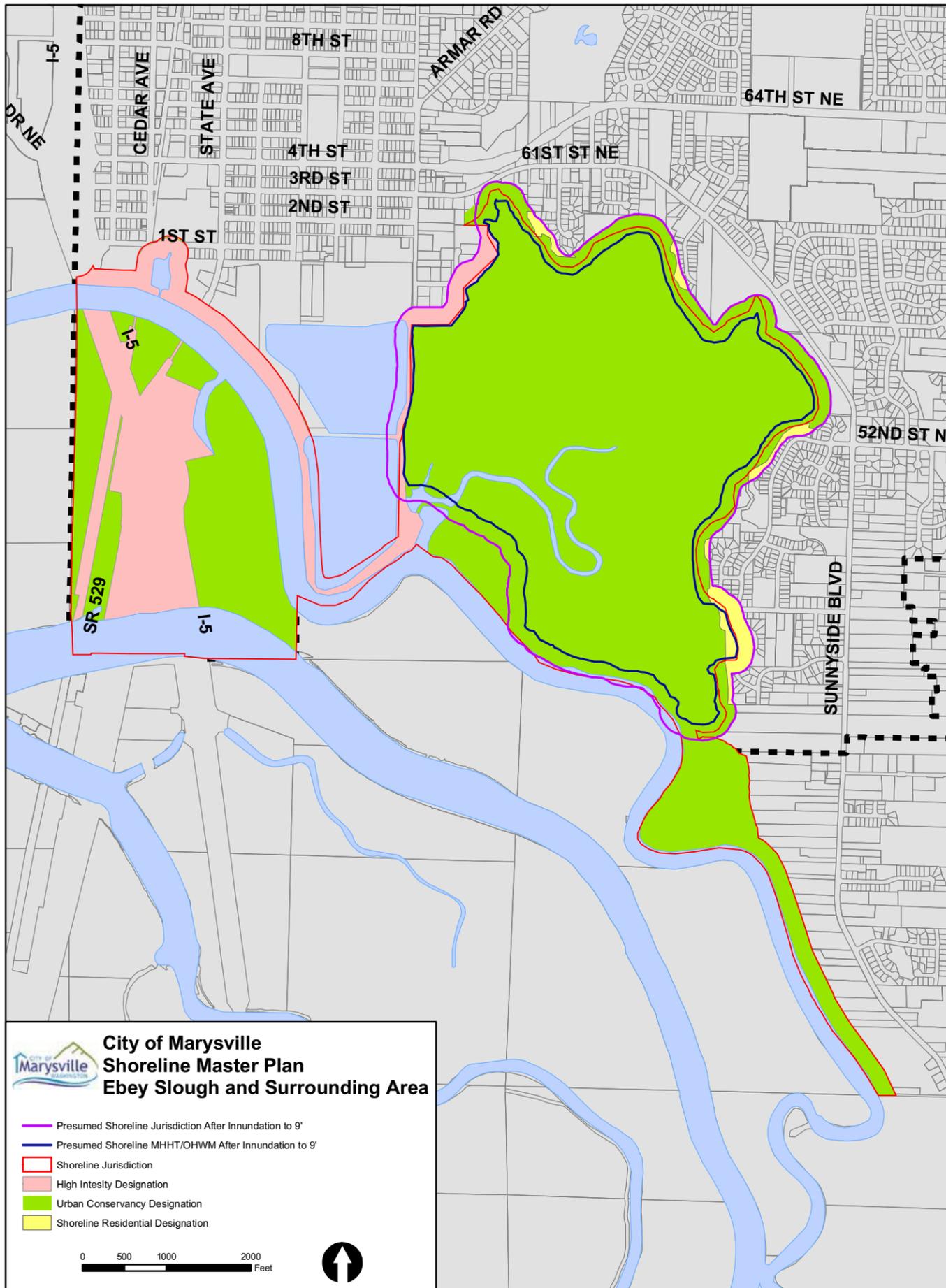


Figure 1. Shoreline environment designations for City of Marysville - Ebey Shough and associated shorelands.

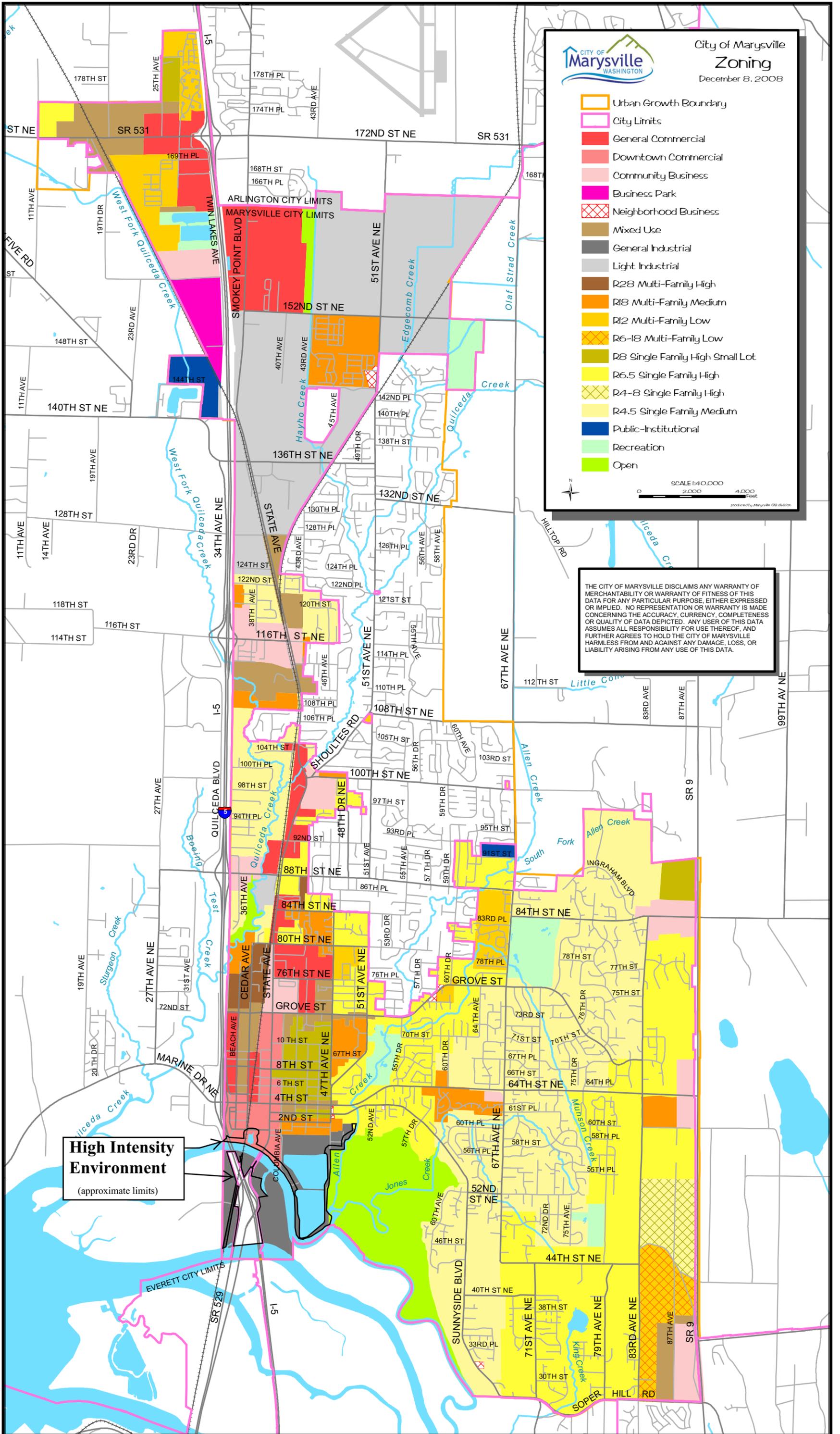
Figure1. Shoreline environment designations for City of Marysville—Ebey Slough and associated shorelands.



- Urban Growth Boundary
- City Limits
- General Commercial
- Downtown Commercial
- Community Business
- Business Park
- Neighborhood Business
- Mixed Use
- General Industrial
- Light Industrial
- R28 Multi-Family High
- R18 Multi-Family Medium
- R12 Multi-Family Low
- R6-18 Multi-Family Low
- R8 Single Family High Small Lot
- R6.5 Single Family High
- R4-8 Single Family High
- R4.5 Single Family Medium
- Public-Institutional
- Recreation
- Open



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**High Intensity Environment**  
(approximate limits)

**MARYSVILLE MUNICIPAL CODE**

**Title 19  
ZONING**

**19.04.020 Zones and map designations established.**

In order to accomplish the purposes of this title, the following zoning designations and zoning map symbols are established:

<b>ZONING DESIGNATIONS</b>	<b>MAP SYMBOL</b>
Rural Use	RU (2.3-acre)
Residential	R (base density in dwellings per acre)
Neighborhood Business	NB
Community Business	CB
General Commercial	GC
<b>Downtown Commercial</b>	<b>DC</b>
Mixed Use	MU
Light Industrial	LI
<b>General Industrial</b>	<b>GI</b>
Business Park	BP
Recreation	REC
Public/Institutional Zone	P/I
Waterfront Overlay	-WF (suffix to zone's map symbol)
Small Farms Overlay	-SF (suffix to zone's map symbol)
Property-specific development standards	-P (suffix to zone's map symbol)

(Ord. 2631 § 1, 2006; Ord. 2266 § 1, 1999; Ord. 2131, 1997).

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**19.12.040 Resource and commercial/industrial zones.**

(1) Densities and Dimensions.

Standards	NB	CB	GC	DC	MU (15)	BP	LI	GI	REC	P/I	WR-MU (18)	WR-CB (18)
Base density: Dwelling unit/acre	(8)	12	12	12	28 (1)	–	–	–	–	–	12	–
Maximum density: Dwelling unit/acre	–	None (16)	None (16)	None	34 (2)	–	–	–	–	–	18 (16)	–
Minimum street setback (4)	20 ft.	None (10)	None (10)	None (10)	None (10, 11)	None (10)	None (10)	None (10)	20 ft.	None (10, 11)	None (10, 11, 17)	None (10, 17)
Minimum interior setback	10 ft. side, 20 ft. rear	None (6)	None (6)	None (6)	5 ft. (12)	–	None (6) 50 ft (7)	None (6) 50 ft (7)	None (6)	None (6)	5 ft. (12, 19, 20)	None (6)
Base height (9)	25 ft.	55 ft.	35 ft.	85 ft.	45 ft., 65 ft. (13)	45 ft.	65 ft.	65 ft.	35 ft.	45 ft.	45 ft.	55 ft.
Maximum impervious surface: Percentage	75%	85%	85%	85%	85%, 75% (14)	75%	85%	85%	35%	75%	85%, 75% (21)	85%

(2) Development Conditions.

1. These densities are allowed only through the application of mixed use development standards.
2. These densities may only be achieved in the downtown portion of Planning Area 1 through the application of residential density incentives. See Chapter [19.26](#) MMC.
3. (Reserved).
4. Gas station pump islands shall be placed no closer than 25 feet to street front lines. Pump island canopies shall be placed no closer than 15 feet to street front lines.
5. (Reserved).
6. A 25-foot setback is required on property lines adjoining residentially designated property.

7. A 50-foot setback only required on property lines adjoining residentially designated property for industrial uses established by conditional use permits, otherwise no specific interior setback requirement.
8. Residential units are permitted if located above a ground-level commercial use.
9. Height limits may be increased when portions of the structure building which exceed the base height limit provide one additional foot of street and interior setback beyond the required setback for each foot above the base height limit.
10. Subject to sight distance review at driveways and street intersections.
11. A 20-foot setback is required for multiple-family structures outside of the downtown portion of Planning Area 1.
12. A 15-foot setback is required for (a) commercial or multiple-family structures on property lines adjoining single-family residentially designated property, and (b) a rear yard of a multi-story residential structure otherwise no specific interior setback requirement. Interior setbacks may be reduced where features such as critical area(s) and buffer(s), public/private right-of-way or access easements, or other conditions provide a comparable setback or separation from adjoining uses.
13. The 65-foot base height applies only to the downtown portion of Planning Area 1. The 45-foot base height applies to the southeast sector of the downtown vision plan area, as incorporated into the city of Marysville comprehensive plan.
14. The 85 percent impervious surface percentage applies to commercial developments, and the 75 percent rate applies to multiple-family developments.
15. Reduced building setbacks and height requirements may be approved on a case-by-case basis to provide flexibility for innovative development plans; provided, that variance requests which are greater than 10 percent of the required setback shall be considered by the hearing examiner.
16. Subject to the application of the residential density incentive requirements of Chapter [19.26](#) MMC.
17. Required landscaping setbacks for developments on the north side of Soper Hill Road are 25 feet from the edge of sidewalk.
18. Projects with split zoning (two or more distinct land use zones) may propose a site plan to density average or adjust the zone boundaries using topography, access, critical areas, or other site characteristics in order to provide a more effective transition.
19. Townhome setbacks are reduced to zero on an interior side yard setback where the units have a common wall for zero lot line developments.
20. Townhome setbacks are reduced to five feet on side yard setbacks provided the buildings meet a 10-foot separation between structures.
21. Eighty-five percent impervious surface percentage applies to commercial development area, and the 75 percent coverage applies to multiple-family development area. (Ord. 2728 § 2, 2007; Ord. 2696 § 5, 2007; Ord. 2631 § 8, 2006; Ord. 2575 § 1, 2005; Ord. 2266 § 5, 1999; Ord. 2151 §§ 7, 8, 1997; Ord. 2131, 1997).

#### 4-3-090. G.4 Shoreline Stabilization

- a. **Principles:** Natural shorelines are dynamic with interdependent geologic and biological relationships. Erosion and accretion are natural processes that provide ecological functions and thereby contribute to sustaining the natural resource and ecology of the shoreline. Alteration of this dynamic system has substantial adverse impacts on geologic and hydraulic mechanisms important to the function of the water body and can disrupt elements of the food chain. Human use of the shoreline has typically led to hardening of the shoreline for various reasons including reduction of erosion or providing useful space at the shore or providing access to docks and piers. The impacts of hardening any one property may be minimal but cumulatively the impact of this shoreline modification may be significant. In some instances, shoreline stabilization is necessary to protect existing development or planned redevelopment from severe erosion due to hydraulic energy during normal or flood conditions or both. Severe erosion above river reaches contained within levees can reduce floodflow capacity and contribute to urban flooding. Shoreline stabilization should emulate and allow natural shoreline functions to the extent feasible and where needed utilize bioengineering or other methods with the least impact on ecological functions in conjunction with structural measures where needed to guarantee shoreline protection.
- b. The need for future new shoreline stabilization shall be avoided in new development to the extent feasible. (For purposes of section 4-3-090.G.4, “new” shoreline stabilization does not include replacement shoreline stabilization structures.) New development should be located and designed to avoid the need for future new shoreline stabilization. Subdivision of land must be regulated to assure that the lots created will not require new shoreline stabilization in order for reasonable development to occur using geotechnical analysis of the site and shoreline characteristics. New development on steep slopes or bluffs shall be set back sufficiently to ensure that new shoreline stabilization is unlikely to be necessary during the life of the structure, as demonstrated by a geotechnical analysis. The need for new shoreline stabilization shall be considered in the determination of whether to approve new water-dependent uses. New development that would require new shoreline stabilization which causes significant impacts to adjacent or down-current properties and shoreline areas should not be allowed.
- c. New Sstructural shoreline stabilization measures should be used only when more natural, flexible, nonstructural methods such as vegetative stabilization, beach nourishment and bioengineering have been determined infeasible. Alternatives for new shoreline stabilization should be based on the following hierarchy of preference:
- i. No action (allow the shoreline to retreat naturally), increase building setbacks, and relocate structures.
  - ii. Flexible defense works constructed of natural materials including soft shore protection, bioengineering, including beach nourishment, protective berms, or vegetative stabilization.
  - iii. Rigid works constructed of artificial materials such as riprap or concrete.
- d. Shoreline stabilization measures shall be designed by a qualified professional. Certification by the design professional may be required to ensure that installation meets all design parameters.
- e. New structural stabilization measures shall not be allowed except when necessity is demonstrated in the following manner:
- i. To protect existing primary structures:

- (a) New or enlarged structural shoreline stabilization measures for an existing primary structure, including residences, should not be allowed unless there is conclusive evidence, documented by a geotechnical analysis, that the structure is in danger from shoreline erosion caused by currents, or waves. Normal sloughing, erosion of steep bluffs, or shoreline erosion itself, without a scientific or geotechnical analysis, is not demonstration of need. The geotechnical analysis should evaluate on-site drainage issues and address drainage problems away from the shoreline edge before considering structural shoreline stabilization.
  - (b) The erosion control structure meets the criteria in Subsection c above.
  - (c) The erosion control structure will not result in a net loss of shoreline ecological functions.
- ii. In support of new non-water-dependent development, and single-family residences, when all of the conditions below apply and are documented by a geotechnical analysis:
  - (a) The erosion is not being caused by upland conditions, such as the loss of vegetation and drainage.
  - (b) 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.
  - (c) The need to protect primary structures from damage due to erosion is demonstrated through a geotechnical report. The damage must be caused by natural processes, such as currents, and waves.
  - (d) The erosion control structure meets the criteria in Subsection c, above.
  - (e) The erosion control structure will not result in a net loss of shoreline ecological functions.
- iii. In support of water-dependent development when all of the conditions below apply and are documented by a geotechnical analysis:
  - (a) The erosion is not being caused by upland conditions, such as the loss of vegetation and drainage.
  - (b) Nonstructural measures, planting vegetation, or installing on-site drainage improvements, are not feasible or not sufficient.
  - (c) The need to protect primary structures from damage due to erosion is demonstrated through a geotechnical report.
  - (d) The erosion control structure meets the criteria in Subsection B, above.
  - (e) The erosion control structure will not result in a net loss of shoreline ecological functions.
- iv. To protect projects for the restoration of ecological functions or hazardous substance remediation projects pursuant to chapter 70.105D RCW when all of the conditions below apply and are documented by a geotechnical analysis:

- (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.
- (c) The erosion control structure meets the criteria in Subsection c, above.

f. Repair of an existing shoreline stabilization structure is allowed. An existing shoreline stabilization structure may be replaced with a similar structure if there is a demonstrated need documented by a geotechnical analysis to protect principal uses or structures from erosion caused by currents or waves and a structure meeting the standards of Subsection c, above will not perform adequately. For purpose of this section, "replacement" means the construction of a new structure to perform a shoreline stabilization function of an existing legally established structure which can no longer adequately serve its purpose. ~~A structure established to serve a use that has been discontinued or substantially altered or enlarged may not be replaced or substantially altered except by a structure that meets standards for a new structure.~~ Additions to or increases in size of existing shoreline stabilization measures shall be considered new structures.

The following provisions apply to replacement shoreline stabilization structures:-

- i. ~~The erosion control structure meets the criteria in Subsection c, above.~~
- ii.—The replacement structure should be designed, located, sized, and constructed to assure no net loss of ecological functions.
- iii. Replacement walls or bulkheads, if allowed, shall not encroach waterward of the ordinary high-water mark or existing structure unless the residence was occupied or the non-residential use was commenced 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.
- iiii. Where a net loss of ecological functions associated with critical habitats would occur by leaving the existing structure, it shall be removed as part of the replacement measure.
- iv. Soft shoreline stabilization measures that provide restoration of shoreline ecological functions may be permitted waterward of the ordinary high-water mark. Replenishment of substrate materials to maintain the specifications of the permitted design may be allowed as maintenance.

g. Geotechnical analysis pursuant to this section that addresses the need to prevent potential damage to a principal use or primary structure shall address the necessity for shoreline stabilization by estimating time frames and rates of erosion (where such time frames and rates of erosion can reasonably be estimated) and report on the urgency associated with the specific situation. As a general matter, new hard armoring solutions should not be authorized except when an analysis confirms that there is a significant possibility that such a principal use or structure faces significant risk of substantial damage 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 analysis confirms a need to prevent potential damage to a primary structure, but the need is not as immediate as the three years, that report may still be used to justify more immediate authorization to protect against erosion using soft measures.~~

- h. When any new structural shoreline stabilization measures are demonstrated to be necessary, pursuant to above provisions design shall:
  - i. Limit the size of stabilization measures to the minimum necessary. Use measures designed to assure no net loss of shoreline ecological functions. Soft approaches shall be used unless demonstrated not to be sufficient to protect principal uses and primary structures, dwellings, and businesses.
  - ii. Ensure that publicly financed or subsidized shoreline erosion control measures do not restrict appropriate public access to the shoreline except where such access is determined to be infeasible because of incompatible uses, safety, security, or harm to ecological functions. See public access provisions; WAC 173-26-221(4). Where feasible, incorporate ecological restoration and public access improvements into the project.
- i. New Sshoreline stabilization should not be permitted to unnecessarily interfere with public access to public shorelines, nor with other appropriate shoreline uses including, but not limited to, navigation, public or private recreation and Indian treaty rights.
- j. Where possible, new shoreline stabilization measures shall be designed so as not to detract from the aesthetic qualities of the shoreline.
- k. Provisions for multiple use, restoration, and/or public shore access should be incorporated into the location, design and maintenance of new shoreline stabilization for public or quasi-public developments whenever safely compatible with the primary purpose. New Shoreshoreline stabilization on publicly owned shorelines should not be allowed to decrease long term public use of the shoreline.
- l. ShoreNew shoreline stabilization should be developed in a coordinated manner among affected property owners and public agencies for a whole drift sector (net shore-drift cell) or reach where feasible, particularly those that cross jurisdictional boundaries, to address ecological and geo-hydraulic processes, sediment conveyance and beach management issues. Where beach erosion threatens existing development, a comprehensive program for shoreline management should be established.
- m. In addition to conformance with the regulations in this section, non-regulatory methods to protect, enhance, and restore shoreline ecological functions and other shoreline resources should be encouraged for shoreline stabilization. Non-regulatory methods may include public facility and resource planning, technical assistance, education, voluntary enhancement and restoration projects, or other incentive programs.
- n. New Sshoreline stabilization on streams should assure that such structures do not unduly interfere with natural stream processes. The reviewing official shall review the proposed design for consistency with state guidelines for stream bank protection as it relates to local physical conditions and meet all criteria of this Program, subject to the following:
  - i. A geotechnical analysis of stream geomorphology both upstream and downstream shall be performed to assess the physical character and hydraulic energy potential of the specific stream reach and adjacent reaches upstream or down, and assure that the physical integrity of the stream corridor is maintained, that stream processes are not adversely affected, and that the revetment will not cause significant damage to other properties or valuable shoreline resources.

- ii. Revetments or similar hard structures are prohibited on point and channel bars, and in salmon and trout spawning areas, except for the purpose of fish or wildlife habitat enhancement or restoration.
- iii. Revetments or similar hard structures shall be placed landward of associated wetlands unless it can be demonstrated that placement waterward of such features would not adversely affect ecological functions.
- iv. Revetments or similar structures shall not be developed on the inside bend channel banks in a stream except to protect public works, railways and existing structures.
- v. Where revetments or similar structures are proposed, analysis shall assure that localized shoreline stabilization will be effective, as compared to more extensive cooperative measures to address reach scale processes. Revetments shall be setback at convex (inside) bends to allow streams to maintain point bars and associated aquatic habitat through normal accretion. Where revetments or similar structures have already cut off point bars from the stream, consideration should be given to their relocation.
- vi. Revetments shall be designed in accordance with WDFW streambank protection guidelines.
- vii. Groins, weirs and other in-water structures may be authorized only by Shoreline Conditional Use Permit, except for those structures installed to protect or restore ecological functions, such as woody debris installed in streams. A geotechnical analysis of stream geomorphology both upstream and downstream shall document that alternatives to in-water structures are not feasible. Documentation shall establish impacts on ecological functions that must be mitigated to achieve no net loss.

Notwithstanding the above, due to the need to resist the high level of hydraulic energy that the Cedar River exerts during periods of high flows at the outside of the riverbend located at the old Stoneway Concrete plant site (an existing industrial site located along the north edge of the Cedar River in Cedar River Reach C), the existing bulkhead along that site's river frontage shall be entitled to remain and be used for shoreline stabilization in support of existing and future uses of that site and to avoid the risk of channel migration that might otherwise threaten the Maple Valley Highway or the Cedar River Park, important public facilities that abut that site.

#### **4-10-095 Shoreline Master Program, Nonconforming Uses, Activities, Structures, and Sites**

A shoreline use or development which was lawfully constructed or established prior to the effective date of the applicable Shoreline Master Program, or amendments thereto, but which does not conform to present regulations or standards of the program, may be continued provided that:

**4-10-095. A. Nonconforming Structures:** Nonconforming structures shall be governed by RMC 4-10-050.

**4-10-095. B. Nonconforming Uses.** Nonconforming uses shall be governed by RMC 4-10-060.

**4-10-095. C. Nonconforming Site:** A lot which does not conform to development regulations on a site not related to the characteristics of a structure including, but not limited to, the vegetation conservation, shoreline stabilization, landscaping, parking, fence, driveway, street opening, pedestrian amenity, screening and other regulations of the district in which it is located due to changes in Code requirements, condemnation or annexation.

**4-10-095. D. Pre-Existing Legal Lot:** Reserved.

**4-10-095. E. Continuation of Use:** The continuation of existing use and activities does not require prior review or approval. Operation, maintenance, or repair of existing legally established structures, infrastructure improvements, utilities, public or private roads, or drainage systems, that do not require construction permits, if the activity does not modify the character, scope, or size of the original structure or facility or increase the impact to, or encroach further within, the sensitive area or buffer and there is no increased risk to life or property as a result of the proposed operation, maintenance, or repair. Operation and maintenance includes vegetation management performed in accordance with best management practices that is part of ongoing maintenance of structures, infrastructure, or utilities, provided that such management actions are part of regular and ongoing maintenance, do not expand further into the sensitive area, are not the result of an expansion of the structure or utility, and do not directly impact an endangered or threatened species;

#### **4-10-095. F. Partial and Full Compliance, Alteration of Nonconforming Structure or Site**

The following provisions shall apply to lawfully established uses, buildings and/or structures and related site development that do not meet the specific standards of this Program. Alteration or expansion of existing structures may take place with partial compliance with the standards of this code, as provided below, provided that the proposed alteration or expansion will result in no net loss of shoreline ecological function.

#### **4-10-095. F.1. The following provisions shall apply to all development except single family:**

- a. Minor alteration or renovation shall be defined as alteration or renovation of any structure, or making other improvements, that result in any of the following over a cumulative period of three years:
  - i. Expansion of building footprint area by up to 10 percent, whichever is less; provided that said expansion shall not extend either further waterward than the existing structure, and shall comply with all other dimensional standards, or
  - ii. Expansion of impervious surface by up to 10 percent, whichever is less; provided that said expansion shall not extend either further waterward than the existing structure, and shall comply with all other dimensional standards, or ~~e.~~
  - ~~ii.~~iii. Remodeling or renovation that equals less than 30 percent of the replacement value of the existing structures or improvements, excluding plumbing, electrical and mechanical systems

and normal repair and maintenance.

- b. Minor alteration shall require partial compliance with performance standards, in particular including:
  - i. Partial compliance with Vegetation Management provisions of Subsection 4-3-090.G.1 consisting of revegetation to a native vegetation community of the lesser of (a) at least 50 percent of the distance area between an existing building and the water's edge or (b) at least 15 feet between an existing building and the water's edge.
  - ii. Any over-water structures that do not serve a permitted water dependent or public access use shall be removed.
- c. Moderate alteration or renovation shall be defined as the alteration or renovation of any structure, or making other improvements, that result in any of the following:
  - i. Expansion of building footprint area by 500 square feet or more, or by more than 10 percent but no more than 25 percent, whichever is less; provided that said expansion shall not extend either further waterward than the existing structure, and shall comply with all other dimensional standards;
  - ii. Expansion of impervious surface by more than 1,000 square feet, or by more than 10 percent but less than 25 percent, whichever is less; provided that said expansion shall not extend either further waterward than the existing structure, and shall comply with all other dimensional standards; or
  - iii. Remodeling or renovation equal to or greater than 30 percent but less than 50 percent of the value of the existing structures or improvements, excluding plumbing, electrical and mechanical systems.
- d. Moderate alteration shall require partial compliance with performance standards, in particular including:
  - i. Partial compliance with Vegetation Management provisions of Subsection 4-3-090.G.1 consisting of revegetation to a native vegetation community of the lesser of (a) at least 80 percent of the distance area between an existing building and the water's edge or (b) at least 15 feet between an existing building and the water's edge.
  - ii. Any over-water structures that do not serve a permitted water dependent or public access use shall be removed, and any over-water structure that does not meet dimensional standards of this program shall be altered to conform to the standards for new facilities.
  - iii. Bulkheads not conforming to the provisions of this code shall be replaced with conforming bulkheads in accordance with standards for new bulkheads (except the existing bulkhead along the north bank of the Cedar River at the old Stoneway Concrete plant site referred to in Section 4-3-090.G.4.n, which bulkhead, as noted therein, shall be entitled to remain).
- e. Substantial alteration or redevelopment shall be defined as alteration or renovation of any structure, or making other improvements, that result in any of the following:
  - i. Expansion of building footprint area by 25 percent or more, or the expansion of impervious

surface by 25 percent or more; or

- ii. Remodeling or renovation equal to or exceeding 50 percent of the value of the existing structures or improvements, excluding plumbing and mechanical systems.
- f. Such substantial reconstruction shall be considered the same as new construction and shall fully comply with the provisions of this code for all features of the use and site including, but not limited to, primary and accessory structures, docks and bulkheads, ~~which~~ shall meet standards for new facilities (except the existing bulkhead along the north bank of the Cedar River at the old Stoneway Concrete plant site referred to in Section 4-3-090.G.4.n, which bulkhead, as noted therein, shall be entitled to remain).