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## ***Chapter 6 – Shoreline Development Policies, Use Standards and Regulations***

- 6.1 General Regulations
  - 6.2 Building and Site Standards
  - 6.3 Shoreline Uses
  - 6.4 Shoreline Modifications
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### **6.1 General regulations**

1. Within the Town, all work waterward of the OHWM requires permits or approvals from one or more of the following state and federal agencies: U.S. Army Corps of Engineers, Washington Department of Natural Resources, Washington Department of Fish and Wildlife, or Washington Department of Ecology.
2. Documentation verifying necessary state and federal agency approvals must be submitted to the Town prior to issuance of a building permit, including any shoreline exemption if applicable. All activities within shorelines jurisdiction must comply with all other applicable laws and regulations.
3. Pursuant to Chapter 173-26 WAC, uses and shoreline modifications along the Town’s shoreline shall be designed, located, sized, constructed, and/or maintained to achieve no net loss of shoreline ecological processes and functions.
4. The development policies, standards and use regulations in this chapter constitute the criteria upon which evaluations of, approvals, denials or conditioning of proposed shoreline developments shall be based. Use regulations are to be used in conjunction with the policies for SMP elements and the applicable Shoreline Environment designation.
5. Priority shall be given to “water-dependent,” “water-related,” and “water-enjoyment” uses over other uses. Uses that derive no benefit from a water location (e.g., non-water-oriented uses) should be discouraged, unless there are overriding public interests consistent with the policies of this program and the Shoreline Management Act that are served by accommodating such uses.

### **6.2 Building and site design standards**

1. Water-enjoyment and non-water-oriented uses shall contain the following design features to provide for the ability for the public to enjoy the physical and aesthetic qualities of the shoreline:
  - a. Buildings shall be designed with windows that orient to the shoreline.
  - b. Buildings shall be designed to incorporate outdoor areas such as decks, patios, or viewing platforms that orient toward the shoreline.
  - c. Buildings shall be designed with entrances along the waterfront façade and with connections between the building and required shoreline public access facilities.
  - d. Service areas shall be located away from the shoreline.

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- e. Site planning shall include public access and public use areas along waterfront public access facilities.
  2. Adjustment of setbacks may be allowed upon obtaining a variance permit that can provide relief from the dimensional requirements of this program. A variance may only be granted when all of the criteria listed at WAC 173-27-170 are met. A variance is intended to allow only a minimum degree of variation from setback or other standards, just enough to afford relief and to allow a reasonable use of a property. Based upon the shoreline inventory and characterization, minimum necessary standards must assure no net loss of shoreline ecological functions. Variances may not be used to vary use.
  3. In addition to the dimensional standards in the La Conner Municipal Code, Title 15, the dimensional standards in Table 6-1 apply within the Shoreline Environments.

**Table 6-1 Shoreline Building Height**

Note: the method of measuring building height is set forth in LCMC.

<b>Height standards</b>	<b>(AE) Aquatic</b>	<b>(PUE) Public Use</b>	<b>(RE) Residential</b>	<b>(HCE) Historic Commercial</b>	<b>(CE) Commercial</b>	<b>(IE) Industrial</b>
<b>Max Building Height</b>	30 feet	30 feet	30 feet	30 feet	30 feet	40 feet

**6.2.1 Vegetation Conservation Buffers**

1. Within shorelands, native shoreline vegetation that has not been otherwise disturbed by legal means shall be preserved to the maximum extent feasible. These areas shall constitute vegetation conservation buffers and be designated and preserved consistent with safe construction practices, and other provisions of this chapter.
2. The following minimum standards for shoreline and critical area vegetation conservation shall apply:
  - a. In the event buffers for more than one designated critical area are applicable, the most protective standards for vegetation conservation shall apply;
  - b. No more than 15 percent of the area with native shoreline vegetation shall be cleared within the vegetation conservation area;
  - c. All native trees in the vegetation conservation buffers over 20 inches in diameter at breast height shall be retained. Trees determined by the Town to be hazardous or diseased may be removed. Replacement of non-native vegetation with native species shall be done in a manner that will not leave soil bare or vulnerable to erosion.
  - d. The Shoreline Administrator may allow removal of vegetation exceeding that described above where an applicant agrees to replacement plantings that are demonstrated to provide greater benefit to shoreline ecological functions than

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would be provided by strict application of this section, based upon the findings from the 2012 Shoreline Inventory and Characterization.

### **6.2.2 Environmental Impact Avoidance and Mitigation**

1. All shoreline development and uses shall occur in a manner that results in no net loss of shoreline ecological functions, through the location and design of all allowed development uses. In cases where impacts to shoreline ecological functions from allowed development and uses are unavoidable, those impacts shall be mitigated, according to the provisions of this section, to ensure no net loss of shoreline ecological functions.
2. In order to assure that development activities meet the no-net-loss standard by avoiding, minimizing, and mitigate for adverse impacts, an applicant for any development activity shall be required to complete a mitigation analysis, utilizing the following sequencing guidelines:
  - a. Avoiding the impact altogether by not taking a certain action or parts of an action;
  - b. Minimizing impacts by limiting the degree or magnitude of the action and its implementation using appropriate technology or by taking affirmative steps to avoid or reduce impacts;
  - c. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;
  - d. Reducing or eliminating the impact over time by preservation and maintenance operations;
  - e. Compensating for the impact by replacing, enhancing, or providing substitute resources or environments; and
  - f. Monitoring the impact and compensation projects and taking appropriate corrective measures.
3. To the extent the State Environmental Policy Act of 1971 (SEPA), Chapter 43.21C RCW, is applicable, the analysis of environmental impacts from proposed shoreline uses or developments shall be conducted consistent with the rules implementing SEPA (WAC 197-11).
4. Required mitigation shall not be in excess of that necessary to assure that proposed uses or development will result in no net loss of shoreline ecological functions.
5. All shoreline uses and activities shall be located, designed, constructed and managed to avoid or minimize adverse affects on the following natural features:
  - (a) Fish, shellfish and wildlife habitats, migratory routes and spawning areas;
  - (b) Kelp beds, eelgrass beds, herring spawning areas and smelt spawning areas;
  - (c) Accretion shore forms;
  - (d) Natural scenic vistas or features; and
  - (e) Unstable bluffs.
6. When a development site encompasses environmentally sensitive areas designated pursuant to LCMC 15.65, these features should be left intact and maintained as open

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space or buffers. All development should be set back from these areas to prevent hazardous conditions and property damage, as well as to protect valuable shoreline ecological functions.

7. Land clearing, grading, filling and alteration of natural drainage features and landforms shall be limited to the minimum necessary for development. Surface drainage systems or substantial earth modifications involving greater than 500 cubic yards of material shall be professionally designed to prevent maintenance problems or adverse impacts on shoreline features.
8. All development activities shall be located and designed to minimize or prevent the need for shoreline defense and stabilization measures and flood protection works such as bulkheads, other bank stabilization, landfills, levees, dikes, groins, jetties or substantial site regrades.
9. Herbicides and pesticides shall not be applied or allowed to directly enter water bodies unless approved for such use by appropriate agencies (State Department of Agriculture or Ecology, U.S. Department of Agriculture, Environmental Protection Agency).

### **6.2.3 Critical Areas Development and Performance Standards**

1. The Town of La Conner Critical Areas Regulations, LCMC 15.65 adopted on January 24, 2006, through Ordinance 968, shall apply to the use, alteration, or development where critical areas are located within the shoreline jurisdiction.
2. The provisions of LCMC 15.65 set forth below are adopted as development regulations of this Shoreline Master Program and are enforceable under the authority of Chapter 90.58 RCW independent from the authority of Chapter 36.70A RCW.
3. Applicability. This code applies to activities on all lands which have been identified and classified as critical areas pursuant to the comprehensive plan and designated on the Environmentally Sensitive Areas Map as follows:
  - a. Nontidal Wetlands. Known nontidal wetlands are designated on the Environmentally Sensitive Areas Map adopted by the Town of La Conner on October 25, 2005. Provisions of this chapter apply to all nontidal wetlands, which have been determined by a wetland delineation and rated per current Department of Ecology guidelines regardless of map designation.
  - b. Geologically Hazardous Areas. All lands where slopes that average 15 percent or greater over a vertical interval of 10 feet and unstable slopes.
  - c. Fish, shellfish and wildlife habitats, migratory routes and spawning areas;
  - d. Kelp beds, eelgrass beds, herring spawning areas and smelt spawning areas;
4. Prohibited activities. All activities that are not permitted as a right or by permit shall be prohibited. All projects shall be fully bonded against any claim of damage against adjacent properties, including the Town, prior to any wetland or slope work being undertaken if bonding is a condition of the permit.
5. Geologically hazardous areas.
  - a. Development shall be prohibited, restricted, or otherwise controlled in areas designated or adjacent to “known or potential risk.” The applicant shall provide evidence that the proposal would be structurally safe and out of the potential

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- danger of any other surrounding development which may pose such risk to public health and safety in the designated hazardous area. The minimum requirement shall be a report submitted by a licensed engineer of the Town's choice. The applicant shall submit any other information deemed necessary to allow the planning director, with the aid of the director of public works and director of wastewater management, to make an informed recommendation to the hearing examiner as to whether the proposed project should be granted.
- b. The planning director may require a buffer from the top or toe of a slope based on (a) geological and hydrological site constraints, and (b) the impacts of proposed construction methods on the stability of the slope, increased erosion potential, and disruption of existing topography and vegetation. No removal of native vegetation or wildlife habitat shall be permitted within the protected slope and buffer without prior approval of the planning director and approved replacement vegetation.
  - c. Disturbed areas due to development activities shall be revegetated to promote drainage control and prevent erosion after construction. In cases where erosion potential is severe, the planning director may require a revegetation. Revegetation shall consist of trees, shrubs, and ground cover suitable for the location and which does not require permanent irrigation systems for long-term survival.
  - d. When development is proposed on known and potential slide areas or slopes 40 percent or greater, the planning director may restrict development coverage and construction activity areas to the most level, environmentally suitable and naturally stable portion of the site. Grading shall be strictly limited to areas as determined by the planning director. The planning director may consult with other engineering consultants, the cost of which shall be borne by the applicant.
  - e. All drainage associated with the development shall be connected to Town approved drainage control systems. The on-site drainage system shall be designed for a 25-year storm occurrence (2.7 inches in 24 hours).
  - f. The planning director may require additional construction practices and methods including, but not limited to, best management practices and limitations on construction equipment permitted on the site to protect critical areas on-site, on adjacent sites, and within the drainage basin.
6. Adjacent Agricultural Lands  
All activities or uses adjacent to lands classified as agricultural lands of long-term significance shall be regulated in accordance with this code.

## **6.2.4 Water quality**

### **A. Policies**

1. The Town should require reasonable setbacks, buffers or storage basins to achieve the objective of lessening negative impacts on water quality.
2. All measures for controlling erosion or floodwaters should be located, designed, constructed and maintained so that net off-site impacts related to water do not degrade the existing water quality.

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3. All measures for treatment of surface water runoff for the purpose of maintaining and/or enhancing water quality should be conducted onsite before it impacts waters off-site.
  4. Dredging and filling activities should be conducted to minimize the effect on water quality through the addition of suspended solids, leaching of contaminants, or disturbance of habitats and should be consistent with appropriate agency requirements (e.g., the State Department of Fish and Wildlife, U.S. Army Corps of Engineers).

## **B. Regulations**

1. All shoreline development shall comply with the applicable requirements of the stormwater management sections of the Uniform Development Code, including applicable requirements outlined in the most recently adopted Department of Ecology's Stormwater Management Manual for Western Washington.
2. All shoreline development, both during and after construction, shall minimize any increase in surface runoff through control, treatment and release of surface water runoff so that the receiving water quality and shore properties and features are not adversely affected.
3. The use of time-release fertilizer and herbicide shall be preferred over liquid or concentrate application for lawns or landscaped areas grown within the shoreline jurisdiction.
4. Solid and liquid wastes and untreated effluents shall not be allowed to enter any bodies of water or to be discharged onto the land.
5. The release of oil, chemicals, heavy metals or hazardous materials onto or into the water is prohibited. Equipment for the transportation, storage, handling or application of such materials shall be maintained in a safe and leak proof condition. If there is evidence of leakage, further use of such equipment shall be suspended until the deficiency has been satisfactorily corrected.
6. The location, design, construction and management of all shoreline uses and activities shall protect the quality and quantity of surface and ground water adjacent to the site and shall adhere to the guidelines, policies, standards and regulations of applicable water quality management programs and regulatory agencies.
7. All shoreline uses and activities shall utilize effective measures to minimize any increase in surface runoff and to control, treat and release surface water runoff so that receiving water quality and shore properties and features are not adversely affected. Such measures may include but are not limited to dikes, catch basins or settling ponds, installation and required maintenance of oil/water separators, grassy swales, interceptor drains and landscaped buffers.
8. All shoreline uses and activities shall utilize effective measures to minimize any increase in surface runoff and to control, treat and release surface water runoff so that receiving water quality and shore properties and features are not adversely affected. Such measures may include but are not limited to dikes, catch basins or settling ponds, installation and required maintenance of oil/water separators, grassy swales, interceptor drains and landscaped buffers.
9. All shoreline developments and uses shall utilize effective erosion control methods during both project construction and operation.

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## **6.2.5 Clearing and grading**

### **A. Policies**

1. Clearing and grading should be limited to the minimum necessary to accommodate shoreline development.
2. All clearing and grading activities should be designed and conducted to minimize the degradation of water quality, sedimentation, and impacts to wildlife habitat.
3. Cleared and disturbed sites remaining after completion of construction should be promptly replanted with native vegetation or other approved species.
4. All clearing and grading activities should be designed with the objective of maintaining natural diversity in vegetation species, age, and cover density.
5. A clearing and grading plan that addresses vegetation removal, replanting, irrigation, erosion and sedimentation control, and other methods of riparian corridor protection should be required.

### **B. Regulations**

1. All clearing and grading activities shall be limited to the minimum necessary for the intended development, including residential development.
2. Clearing and grading activities may only be permitted landward of required setbacks when associated with a permitted shoreline development; provided, that upon completion of construction remaining cleared areas shall be replanted with native vegetation or other approved species. Replanted areas shall be maintained such that within three years' time the vegetation is fully reestablished. In addition, upon completion of construction remaining cleared areas shall be stabilized and seeded for erosion control purposes as outlined in the most recently adopted Washington Department of Ecology Stormwater Management Manual for Western Washington.
3. Normal nondestructive pruning and trimming of vegetation for maintenance purposes shall not be subject to these clearing and grading regulations. In addition, clearing invasive non-native shoreline vegetation or plants listed on the State Noxious Weed List is permitted in shoreline locations if native vegetation is promptly reestablished in the disturbed area.

## **6.2.6 Historic and Cultural**

### **A. Policies**

1. Promote the vitality of the historic preservation district by encouraging full, active use of land and structures, including multiple or spatially overlapping uses where compatible.
2. Encourage educational projects and programs that foster a greater appreciation of the importance of shoreline management, maritime activities, maritime history and environmental conservation.

### **B. Regulations**

1. All shoreline permits shall contain provisions that require developers to immediately stop work and notify the Town if any phenomena of possible archaeological interest

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are uncovered during excavations. In such cases, the developer shall provide for a site inspection and evaluation by a professional archaeologist to ensure that all possible valuable archaeological data is properly salvaged.

2. Permits issued in areas with known potential to contain archaeological artifacts and data shall include a requirement that the developer provide for a site inspection and evaluation by an archaeologist. The developer shall provide resultant findings to the Town which shall, in conjunction with affected parties, review the project for probable adverse impacts before any work on the site begins. Significant archaeological data or artifacts shall be recovered before work resumes or begins on a project.
3. Significant archaeological and historic resources shall be permanently preserved for scientific study, education and public observation. When the Town determines that a site has significant archaeological, natural scientific or historical value, a substantial development permit shall not be issued which would pose a threat to the site. The Town and the state may require that development be postponed for a reasonable period of time in such areas to allow investigations of public acquisition potential and/or retrieval and preservation of significant artifacts.
4. In the event that unforeseen factors constituting an emergency as defined in RCW 90.58.030 necessitate rapid action to retrieve or preserve artifacts or data identified above, the project may be exempted from the permit requirement of these regulations. The Town shall notify appropriate agencies, such as the Swinomish Tribe, the State Department of Ecology, the State Attorney General's Office and the State Department of Archeology and Historic Preservation of such a waiver in a timely manner.
5. Archaeological sites located both in and outside the shoreline jurisdiction are subject to Chapter 27.44 RCW (Indian Graves and Records) and Chapter 27.53 RCW (Archaeological Sites and Records) and shall comply with Chapter 25-48 WAC as well as the provisions of this master program.
6. Archaeological excavations may be permitted subject to the provisions of this program.
7. Identified historical or archaeological resources shall be considered in park, open space, public access, and site planning with access to such areas designed and managed so as to give maximum protection to the resource and surrounding environment.

### **6.1.8 Public Access**

#### **A. Policies**

1. Consider appropriate and reasonable provisions for public access during the review process of all shoreline substantial development and conditional use permits.
2. Consider the importance of site design and clear signage in providing security and privacy when private spaces are in close proximity to public access.

#### **B. Regulations**

1. Where these regulations require that public access be provided, the requirement shall be construed to be limited to the extent of the lawful and constitutional authority of

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- the Town to require public access, or to require the easement, fee ownership or interest requested.
2. Reasonable and appropriate public access requirements shall be attached to any substantial development or conditional use permit that authorizes a use or activity that:
    - a. Will block or discourage use of an existing public access way.
    - b. Will interfere with a public use of waters or lands subject to the public trust doctrine.
    - c. Proposes to allow uses or activities that are not consistent with the policies of this program concerning preference for water-oriented uses, unless such uses are included in a development that qualifies as a water-enjoyment use by providing an opportunity for a significant number of people to enjoy the shorelines of the Town.
    - d. Will increase demand for public access to the shorelines of the Town.
    - e. The impact, required public access conditions, and how the conditions address the impact shall be kept in the applicable shoreline permit file.
  3. Public access need not be provided where the applicant can demonstrate one or more of the following conditions:
    - a. Unavoidable health or safety hazards to the public exist which cannot be prevented by any practical means;
    - b. Inherent security requirements of the use cannot be satisfied through the application of alternative design features or other solutions;
    - c. The cost of providing the access, easement or an alternative amenity is unreasonably disproportionate to the long-term cost of the proposed development;
    - d. Unacceptable environmental harm will result from the public access which cannot be mitigated; or
    - e. Significant undue and unavoidable conflict between any access provisions and the proposed use and/or adjacent uses would occur and cannot be mitigated. Provided that the applicant has first demonstrated and the Town has determined in its findings that all reasonable alternatives have been exhausted, including but not limited to:
      - (i) Regulating access by such means as maintaining a gate and/or limiting hours of use;
      - (ii) Designing separation of uses and activities (e.g., fences, landscaping, etc.); and
      - (iii) Developing provisions for access at a site geographically separated from the proposal such as a street end, vista or trail system.
  4. Development uses and activities shall be designed and operated to avoid blocking, reducing, or adversely interfering with the public's physical and visual access to the water and shorelines where required.
  5. Public access provided by shoreline street ends, public utilities and rights-of-way shall not be diminished.
  6. Public access sites shall be connected directly to the nearest public street and shall include provisions for barrier-free access where feasible.

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7. Required public access sites shall be fully developed and available for public use at the time of occupancy of the use or activity.
  8. Public access easements and permit conditions shall be recorded on the deed of title and/or on the face of a plat or short plat as a condition running contemporaneous with the authorized land use, at a minimum. Said recording with the county auditor's office shall occur at the time of permit approval.
  9. Width of public access easements shall be five feet or greater, unless the Town's hearing examiner determines that undue hardship would result. In such cases, easement width may be reduced only to the minimum extent necessary to relieve the hardship.
  10. The standard state approved logo or other approved signs that indicate the public's right of access and hours of access shall be constructed, installed and maintained by the applicant in conspicuous locations at public access sites. Signs may control or restrict public access as a condition of permit approval.
  11. Future actions by the applicant successors in interest or other parties shall not diminish the usefulness or value of the public access provided.
  12. Any new development or redevelopment of properties adjacent to the shoreline shall comply with the policies and performance standards of this shoreline master program and the guidance in the Washington State Department of Ecology Shorelines and Coastal Zone Management Program Shoreline Public Access Handbook. It shall also be consistent with the Town's parks plan relating to visual and pedestrian access along the Channel. In furtherance of these policies, public access along the Channel shall be accomplished by enhancing and improving existing public areas or establishing new areas to create a series of public access viewpoints and pathways.

## **6.2.8 View protection**

### **A. Policies**

1. Map local and territorial views that provide orientation, convey the Town's regional context, and contribute to the Town's "sense of place."
2. Identify key vantage points, corridors and outlooks for protection and possible interpretation.
3. Recognize the open space value and potential benefits of views of the Swinomish Channel across surface parking areas.

### **B. Regulations**

1. Shoreline uses and activities shall be designed and operated to provide visual access to the water and shorelines.
2. Public lands such as street ends, rights-of-way and utilities shall provide visual access to the water and shoreline in accordance with RCW 35.79.035 and 36.87.130.
3. Development on or over the water shall be constructed as far landward as possible to avoid interference with views from surrounding properties to the shoreline and adjoining waters.

4. Development on the water shall be constructed with non-reflective surface treatments to minimize glare (flat or matte finish) that are compatible in terms of color and texture with the surrounding area.
5. Visual access shall be maintained, enhanced and preserved on shoreline street ends, public utilities and rights-of-way and within the following identified “view corridors”: Sherman Street end, Caledonia Street end, Commercial Street end, Calhoun Street end, Benton Street end, Washington Street end, Morris Street end, Jordan Street end, between First and Second Streets – the stairway at Benton Street, and Calhoun Street end on the south side of the Civic Garden Club.

## 6.3 Shoreline Uses

**6.3.1 Shoreline Priority Uses.** Priority shall be given to “water-dependent,” “water-related,” and “water-enjoyment” uses over other uses. Uses that derive no benefit from a water location (e.g., non-water-oriented uses) should be discouraged, unless there are overriding public interests consistent with the policies of this program and the Shoreline Management Act that are served by accommodating such uses.

**6.3.2 Permitted Uses in Shoreline Environments.** Table 6-2 lists SMP permitted uses within each shoreline environment designation. In the case of inconsistencies between the table and the policies included in Chapters 3 and 5 and the regulations in this chapter shall govern.

**Table 6-2 Permitted Use Table  
SHORELINE ENVIRONMENTS**

SHORELINE USE	(AE) Aquatic	(PUE) Public Use	(RE) Residential	(HCE) Historic Commercial	(CE) Commercial	(IE) Industrial
<b>Agriculture</b>	X	X	X	X	X	X
<b>Boating Facility</b>						
<b>Public Marina</b>	P	CU	X	P	P	P
<b>Private Marina</b>	P	CU	X	P	P	P
<b>Commercial:</b>						
<b>Water-dependent</b>	CU	X	X	P	P	P
<b>Water-related</b>	CU	X	X	P	P	P
<b>Water-enjoyment</b>	CU	X	X	P	P	P
<b>Non-water-oriented</b>	X	X	X	P*	P*	CU*
<b>Industrial</b>	X	X	X	X	CU	P
<b>Parking</b>						
<b>Accessory to use</b>	X	P	P	P	P	P
<b>Primary parking</b>	X	X	X	X	CU	CU
<b>Recreation:</b>						
<b>Water-dependent</b>	P	P	CU	P	P	P
<b>Water-enjoyment</b>	P	P	CU	P	P	P
<b>Non-water-oriented</b>	X	X	X	CU	CU	CU
<b>Signs</b>						

<b>On-site business</b>	P	P	CU	P	P	P
<b>Informational signs</b>	P	P	P	P	P	P
<b>Residential</b>						
<b>Single-family</b>	X	X	P	CU	CU	X
<b>Multi-family</b>	X	X	P	CU	CU	X
<b>Liveaboards</b>	CU	X	X	X	X	X
<b>Solid Waste Disposal</b>	X	X	X	X	X	X
<b>Utilities (Accessory)</b>	CU	P	P	P	P	P
<b>Transportation</b>						
<b>Accessory to a permitted use</b>	CU	P	P	P	P	P
<b>As a primary use</b>	CU	CU	CU	CU	CU	CU

**P= Permitted use subject to the policies and regulations of this SMP**

**CU = Conditional Use subject to the policies and regulations of this SMP**

**X = Prohibited; the use is not eligible for a variance or a conditional use permit**

**\* = non water-oriented uses are permitted within a mixed use building or complex.**

**Non-water-dependent commercial uses over water are prohibited except in existing structures, and where necessary to support water-dependent uses.**

### 6.3.3 Residential development

#### A. Policies

1. Residential development should be permitted only where there are adequate provisions for utilities, drainage, and transportation access and circulation.
2. The overall density of development, lot coverage and height of structures should be appropriate to the physical capabilities of the site and as set forth in Chapter 15 of LCMC.

#### B. Regulations

1. No residential lots or sites shall be created for which shoreline protection structures, such as bulkheads will be required. Development on existing lots shall be sited so that no shoreline protection structures will be required.
2. All residential structures, accessory uses and facilities shall be arranged and designed so as to reasonably preserve views and vistas to and from shorelines and water bodies and be compatible with the aesthetic character of the area.
3. Storm drainage and treatment facilities shall be required by the Town for proposals involving any dwelling. Drainage facilities shall be separate from sewage disposal transport facilities and include provisions to prevent uncontrolled and untreated direct entry of surface water runoff into receiving waters.
4. Prior to issuance of a building permit, short plat or shoreline development approval, the developer shall submit adequate plans for preservation of shore vegetation and for erosion control during and after construction that would result in permanent shoreline stabilization. Such plans shall be a part of the shoreline permit.

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5. Prior to issuance of a building permit, short plat or shoreline development approval, the developer shall submit adequate plans to provide for community and/or public access in conformance to local public access plans.
  6. The shoreline setback for new multifamily residential development shall be a minimum of 25 feet landward of the OHWM.
  7. Public access easements shall be a minimum of 12 feet in width and shall be in compliance with public access requirements and standards contained in LCMC.
  8. Accessory uses that are not appurtenances shall be reasonable in size and purpose, and be compatible with on-site and adjacent structures, uses and natural features.
  9. Liveaboard vessels may be moored in the Town waterfront subject to rent/lease agreements with owners/lessees of adjacent property and consistent with all applicable local and state regulations, including health regulations pertaining to water supply and sewage disposal and the Department of Natural Resource's lease requirements. When connection to existing sewage disposal facilities is not practicable, the routine use of off-site pump-out facilities shall be required and subject to written verification. Under no circumstances shall sewage effluent from such uses be discharged into the waters of the Swinomish Channel.
  10. New residential development is prohibited in the industrial environment.
  11. Floating homes and houseboats are prohibited.

### **6.3.4 Commercial uses and activities**

#### **A. Policies**

1. Commercial development in shoreline areas should be encouraged in descending order of preference as follows:
  - a. Water-dependent uses;
  - b. Water-related uses; and
  - c. Water-enjoyment uses.
  - d. Non-water-oriented development that is not accessory to a water-oriented use should be allowed only as a conditional use.
2. Commercial development should be prohibited over water unless the use is water-dependent.
3. Encourage new commercial development along the shoreline to locate in those areas with existing consistent commercial uses.
4. Encourage commercial development to utilize existing transportation corridors and minimize the number of access/egress points which should be designed to minimize potential conflicts.

#### **B. Regulations**

The following provisions shall apply to commercial uses (those uses which are involved in wholesale, retail, service, and/or business trade). They shall not apply to residential, boating facility or other uses existing or allowed in commercial areas.

1. The Town shall require and utilize the following information in its review of commercial development proposals:

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- a. Nature of the commercial activity (e.g. water-dependent, water-related, water-enjoyment, non-water-oriented) including a breakdown of specific components;
  - b. Need for shoreline location;
  - c. Special considerations for enhancing the relationship of the activity to the shoreline;
  - d. Provisions for public visual and physical access to the shoreline; and
  - e. Provisions to ensure that the development will not cause adverse negative environmental impacts.
2. Commercial developments that are water-oriented may be permitted provided the development meets all the criteria of this shoreline master program and related zoning ordinances. Non-water-dependent commercial developments may be allowed by conditional use permit where it can be demonstrated that:
    - a. A water-oriented use is not reasonably expected to locate on the proposed site.
    - b. The proposed use 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 use will be of appreciable public benefit by increasing public use, enjoyment or access to the shoreline.
    - d. Commercial development within the shoreline jurisdiction but not adjacent to the waterfront shall provide for water-enjoyment uses and satisfy public access policies by employing design elements such as walkways parallel to sidewalks, landscaping and benches.
    - e. Commercial development on the landward side of First Street, or on land which does not abut the water, which is not water-dependent or water-related shall be subject to the following requirements:
      - (i) On-site parking shall not be located waterward of buildings, and adequate street access shall be provided.
      - (ii) A landscaping plan shall be submitted with shoreline permit applications.
  3. Commercial development shall be designed and maintained in a neat, orderly and environmentally compatible manner, consistent with the character and features of the surrounding area. Setbacks, height restrictions, landscaping, screening, parking, and applicable sections of the Uniform Development Code shall apply.
  4. Public sidewalks and adjoining private areas open to the public should be designed to create a physically and visually continuous pedestrian route along the First Street shoreline.
  5. Light industrial uses shall be allowed if approved under the provisions of LCMC 15.36.030, Transitional Commercial Zone conditional uses.

### **6.3.5 Industrial uses and activities**

#### **A. Policies**

1. Industrial and related office use which is neither water-dependent nor water-related should be authorized only when such use incorporates features in the site design that assure it will comply with the definition of water-enjoyment use by providing an opportunity for a substantial number of people to enjoy the shorelines of the Town.

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2. Joint use of piers, cargo handling, storage, parking and other accessory facilities among private or public entities should be strongly encouraged in waterfront industrial areas.
  3. Diversity of uses shall be encouraged in the industrial area except for residential.
  4. Uses and activities located in the industrial area shall contribute to the economic diversity and social health of the community and in a broader local economy.

## **B. Regulations**

1. Industrial uses may incorporate wholesale/retail outlets or showrooms for sales of products manufactured, assembled, or produced on and warehoused on the premises provided that they occupy no more than 49 percent of the gross floor area of the industrial space.
2. Accessory industrial development that does not require a shoreline location shall be located upland of the water-dependent portions of the development where feasible.
3. New/existing public access shall be required/maintained where safe and practical in accordance with LCMC 10.10.210 et seq.
4. Existing industrial development on shorelines that is neither water-dependent nor water-related may be permitted as a conditional use provided that: (a) it is part of a mixed use building or complex and (b) it expands inland from existing structures. Waterward expansion of existing non-water-oriented industry is prohibited.
5. The developer must comply with all state laws which apply to environmental impacts.
6. Water-dependent industry shall be located and designed to minimize the need for initial and/or continual dredging, filling, spoil disposal and other harbor and channel maintenance activities.
7. Piers, moorages, slips, floats and launching facilities may be permitted accessory to industrial development, provided:
  - a. The facility will serve an existing or approved water-dependent or water-related use; and
  - b. The facility does not constitute a hazard to navigation.
8. The developer must provide a plan for storage and disposal of industrial waste. The Town may require a performance bond in an amount that reflects a reasonable estimate of the anticipated cleanup effort.
9. At new or expanded port and/or industrial developments, the best available facilities practices and procedures shall be employed for the safe handling of fuels and toxic or hazardous materials to prevent them from entering the water and optimum means shall be employed for prompt and effective cleanup of those spills that do occur.
10. Port authorities and industries are encouraged to recycle dredged material when feasible in areas suitable for disposal of such materials for agricultural, forestry storage-stockpiling or beautification purposes, with the intent of restoring natural vegetation or transfer for agricultural, forestry or landscaping purposes. Such materials may be spread on existing resource lands or may be used to create new agricultural resource land only if dredge spoils are not contaminated with heavy metals or other toxins and such use complies with local, state and federal requirements.
11. All new or expanded upland industrial development shall be set back and buffered from adjacent shoreline properties that are used for non-industrial purposes. Buffers

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shall be of adequate width, height, and plant and soil composition to protect shorelines and such other properties from visual or noise intrusion, minimize erosion and protect water quality. New or expanded industrial development shall be set back and buffered from the shoreline per Town ordinances, except those water-dependent portions of the development that require direct access to the water or shoreline and any adverse impacts are minimized.

12. Display and other exterior lighting shall be designed, shielded, and operated to minimize glare, avoid illuminating nearby properties and prevent hazards for public traffic.
13. Stormwater best management practices as adopted by the Town shall be followed.
14. Ship and boat building and repair yards shall employ best management practices (BMPs) found in the Washington Department of Ecology Stormwater Management Manual for Western Washington as adopted by the Town.
15. Unless such a requirement would interfere with operations or create hazards to life or property public access to the shoreline shall be a required permit condition of all industrial development.

### **6.3.6 Recreation Facilities**

#### **A. Policies**

1. Insure that recreation developments and plans recognize the primacy of preserving natural character, resources and ecological functions of the shoreline.
2. Recreational developments should be located, designed and operated to be compatible with and minimize adverse impacts on shoreline ecological functions, environmental quality and valuable natural features as well as on adjacent and surrounding land and water uses.

#### **B. Regulations**

1. The Town shall consult with state and county health agencies regarding regulations which apply to recreation facilities within the shorelines of the Town.
2. Substantial accessory use facilities, such as restrooms, commercial services, access roads and parking areas shall be setback from the OHWM, to the extent feasible, unless it can be shown that such facilities are dependent upon a location next to the OHWM. These areas may be linked to the shoreline by walkways.
3. In approving shoreline commercial and public recreational developments, the Town shall ensure that the development will maintain, enhance or restore desirable shoreline features including unique and fragile areas, scenic views and aesthetic values. Project dimensions, location, intensity of use, parking, setbacks, screening, landscaping, and other requirements as outlined in the Uniform Development Code shall be met.
4. No recreational buildings or structures shall be built over water, except water-dependent and/or public access structures such as piers, docks, bridges, or viewing platforms may be permitted. Commercial recreation, water-oriented structures may be allowed over water in existing structures or in limited instances where they are auxiliary to a water-dependent use.

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5. Recreational developments shall make adequate provisions, where feasible, for:
    - a. Vehicular and pedestrian access;
    - b. Proper water, solid waste, and sewage disposal methods;
    - c. Security and fire protection;
    - d. The prevention of overflow and trespass onto adjacent properties, including but not limited to landscaping, fencing and posting of property; and
    - e. Buffering of such development from adjacent private property.

### **6.3.7 Transportation Facilities**

#### **A. Policies**

1. Promote provisions for various modes of travel with some freedom of choice and multiple use corridors where compatible.
2. Provide safe, reasonable and adequate circulation systems to shorelines where routes will have the least possible adverse effect on unique or fragile shoreline features and existing ecological systems, while contributing to the functional and visual enhancement of the shoreline.

#### **B. Regulations**

1. Transportation facilities and services shall utilize existing transportation corridors whenever possible, provided that facility additions and modifications will not adversely impact shoreline resources and are otherwise consistent with this program.
2. Joint use of transportation corridors within shoreline jurisdiction for roads, utilities, and non-motorized forms of transportation shall be required.
3. The following regulation applies to shoreline street and road ends: RCW 37.79.035 and 35.87.130 prohibits the Town from vacating any Town street or road which abuts a body of salt or fresh water unless the street or road is not currently used or suitable for boat moorage or launching site or for a park, viewpoint, recreation, education or other public purposes.
4. New transportation facilities shall be located and designed to prevent or minimize the need for shoreline protective measures such as riprap or other bank stabilization, landfill, bulkheads, groins, jetties or substantial site grading.
5. Shoreline transportation facilities shall be sited and designed to avoid steep or unstable areas and fit the existing topography in order to minimize cuts and fills. If cuts and fills are necessary they shall be designed at the normal angle of repose or less.
6. Cut, fill and sidecast slopes shall be protected from erosion by mulching, seeding, compacting, rip-rapping, benching or other suitable means.
7. All transportation facilities shall be designed, constructed and maintained to contain and control all debris, overburden, runoff, erosion and sediment generated from the affected areas.
8. All new roads shall be adequately set back from water bodies and shall provide buffer areas of compatible, self-sustaining vegetation where feasible.

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### **6.3.8 Parking Facilities**

#### **A. Policies**

1. Provide parking should be allowed as an accessory use to a permitted shoreline use only where it will have the least possible adverse affect on natural shoreline resources.
2. Surface parking in excess of required minimums may be appropriate if the location and configuration results in useable open space and view corridors to the Swinomish Channel.
3. Off-street parking facilities sufficient for the proposed activity should be required. In those cases where parking is not available, such as South First Street, alternate parking areas should be encouraged in upland areas.
4. Cooperative use of parking facilities should be encouraged, such as between businesses whose peak hours do not coincide.

#### **B. Regulations**

1. Parking within the shoreline jurisdiction shall directly serve a permitted or conditional shoreline use.
2. Parking facilities shall be designed and landscaped to minimize adverse impacts upon adjacent shoreline and abutting properties.
3. Parking facilities serving new development on the shoreline shall not be located waterward from the principal building being served, except when the parking facility is within or beneath the structure and adequately screened, or in cases when an alternate orientation would have less adverse impact on the shoreline.
4. Parking facilities for shoreline activities shall provide safe and convenient identified pedestrian circulation within the parking area and to the shorelines.
5. Parking facilities shall provide adequate facilities to control surface water runoff to avoid contaminating water bodies using the best available technologies and maintenance programs to assure proper functioning of such facilities over time.
6. Parking facilities shall be located and designed to minimize adverse impacts including those related to stormwater run-off, water quality, visual qualities, public access, and vegetation and habitat maintenance.

### **6.3.9 Utilities**

Accessory utilities are small distribution systems connected directly to the uses along the shoreline, for example, power, telephone, cable, stormwater drainage, water and sewer lines. Accessory utilities do not include primary utilities that produce, transmit, carry, store, process or dispose of electric power, gas, water, sewage, communications, and similar services. "Primary utilities" refers to such activities as solid waste handling facility, sewage treatment plants and, power generating (except generators that are needed for emergency purposes) or transfer facilities or high-tension utility lines.

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## **A. Policies**

1. Primary utilities should be discouraged from locating along the Swinomish Channel and its marine shoreline.
2. Utilities needed to serve shoreline uses should be properly installed and maintained to protect the marine shoreline from contamination and degradation.
3. Utility production and processing facilities and transmission facilities are required to be located outside of SMA jurisdiction, unless no other feasible option exists.

## **B. Regulations**

1. Along marine shorelines, utility transmission lines, pipelines and cable shall be placed underground unless demonstrated to be infeasible. Further, such lines shall utilize existing rights-of-way, corridors and/or bridge crossings whenever possible and provide for compatible multiple uses.
2. Primary utilities are prohibited along the Town's marine shoreline provided that outfalls requiring shoreline location may be allowed as conditional uses.

### **6.3.10 Boating Facilities**

#### **A. Policies**

1. Encourage joint or cooperative use of boating facilities, including marinas, wet and dry moorages, boat launch ramps, floats, and related accessory uses to avoid cumulative adverse effects on the waterway, such as overcrowding and pollution.
2. Provide quality docks, floats, and boat launches for public use.
3. Encourage safe access to boating facilities.
4. Ensure boating facilities do not pose a hazard to navigation.
5. Require best management practices to control runoff and prevent pollution into the channel that may affect fisheries resources and adversely impact the waterway.
6. Boating facilities should be located, designed and operated to minimize adverse effects upon and provide maximum feasible protection and enhancement of all forms of aquatic, littoral or terrestrial life including animals, fish, shellfish, birds and plants, their habitats and their migratory routes.
7. The use of marinas, docks or floats for other than water-dependent, water-related or emergency uses should be discouraged.
8. The use of boat launching ramps and dry storage of recreational boats or other new technologies should be encouraged as favorable alternatives to sheltered, year-round wet moorage of watercraft.
9. Boating facilities should be located and designed so their structures and operations will not unreasonably impair shoreline views.
10. New marina facilities should be designed to accommodate public access and enjoyment of the shoreline including provisions for walkways, view points, restroom facilities and other recreational uses according to the scale of the facility.

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11. Foreshore marinas, wherever possible, should use open-type construction (floating breakwater and/or open pile work) to prevent degradation of fish and/or shellfish resources and habitat.
  12. Installation and maintenance of sewage disposal (pump out) facilities should be required and available in convenient locations to all users of marina facilities.
  13. Oil collection sites should be available in convenient locations to all users of marina facilities.

## **B. Regulations - *General***

1. Boating facility development and/or renovations shall comply with all applicable local, state, and federal agency policies and regulations.
2. The Town shall require and utilize the following information in its review of marina proposals or any overwater structure:
  - a. Existing natural shoreline and backshore features and uses, bathymetric contours (one-foot increments);
  - b. Geohydraulic processes and flushing characteristics, volume, rates, and frequencies;
  - c. Biological resources and habitats for areas waterward of the OHWM.
  - d. Area of surface waters appropriated, and leased areas;
  - e. Site orientation; exposure to wind, waves, flooding or tidal/storm surges; type and extent of shore defense works or shoreline stabilization and flood protection necessary;
  - f. Impact upon existing and created demand for shoreline and water uses including public access and recreation and views;
  - g. The regional need for additional facilities; and
  - h. Facility design, including sewage disposal, water quality controls, provisions for the prevention and control of fuel spillage and a landscaping plan.
  - i. An analysis of the shade impact of any new overwater structures. If the results of the shade analysis show that the project will cause in a net increase in shade, the proposal shall also contain a mitigation plan.
3. Accessory uses at marinas or public launch ramps shall be limited to those necessary for marina operations or which provide physical or visual shoreline access to substantial numbers of the general public. Accessory uses shall be consistent in scale and intensity with the marina and/or launch ramp and surrounding uses.
4. Shoreline permits for marinas shall be conditioned to require boater education addressing boater impacts on water quality and other shoreline resources as well as boater safety.
5. Storm drainage and treatment facilities shall be required. Drainage facilities shall be separate from sewage disposal transport facilities and include provisions to prevent uncontrolled and untreated direct entry of surface water runoff into receiving waters.

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## **B.1 Boating facilities – Location**

1. Deteriorated urban waterfront areas in need of restoration and where channel depths are such that commercial activity is no longer feasible shall be given priority consideration for potential marina sites.
2. Marinas and public launch ramps shall locate on stable shorelines where water depths are adequate to eliminate or minimize the need for offshore or foreshore channel construction dredging, maintenance dredging, spoil disposal, filling, or other harbor and channel maintenance activities.
3. When new sites are considered, sufficient evidence must be presented to show that existing marinas are inadequate and cannot be expanded to meet regional demand.
4. When located in designated Port of Skagit County marine port areas, marinas shall not extend waterward of the outer harbor line.
5. Boating facilities shall be sited to prevent any adverse impacts on existing aquatic resources and environments. Criteria to be considered for facility siting should include, but not be limited to, size and depth of the water body, tidal flushing action in the project area, critical areas in the project area, size of the facility and projected intensity of use, fuel handling, pump-out or sewer hookups, expected changes in adjacent land uses that could result in additional water quality impacts.

## **B.2 Boating facilities – Design/ renovation/expansion**

1. Marina design shall provide thorough flushing of all enclosed water areas and shall not restrict the movement of aquatic life requiring shallow water.
2. Marina design shall minimize interference with geo-hydraulic processes and disruption of existing shore forms and navigation.
3. Boating facilities shall be designed so their structures, other features and operations will be aesthetically compatible with or will enhance existing shoreline features and uses. Boating facilities shall mitigate for adverse development impacts on site and to adjacent properties.
4. Marina design shall incorporate maximum public access and water-oriented uses.
5. Location of fueling stations on docks, floats and/or shore shall be considered on an individual basis and recommendations will be made as to their location by the appropriate regulatory agencies.
6. Approval of general construction methods and timing, etc., must be obtained from the appropriate state or federal regulatory agency.
7. All signs shall comply with local, state, and federal policies and regulations for signs. Signs incorporating pump-out logos shall be provided identifying the location of waste disposal facilities, if available.
8. Public access, both visual and physical, shall be an integral part of all marina development and design commensurate with the particular proposal and must include the following:

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- a. Marinas and public launch ramps shall be designed so that existing or potential public access along beaches is not unnecessarily blocked nor made dangerous and public use of waters below the OHWM is not unduly impaired.
  - b. Covered moorage in marinas shall not be constructed where visual access from public access and/or significant numbers of residences is blocked.

### **B.3 Boating facilities – Construction and materials**

1. Dredging in channel waters for boating facilities shall be limited to the minimum necessary for new entrance channels to reach basins dredged out of dry land areas; for deepening water as necessary in existing and proposed berthing areas; and for maintenance dredging.
2. Landfill in water bodies or wetlands to create usable land space for accessory marina uses is prohibited.
3. Shoreline embankments of all boating facilities shall be stabilized both landward and waterward of the OHWM both during and after construction.

### **B.4 Boating facilities – Parking and storage**

1. Overwater and primary parking facilities are prohibited in the shoreline jurisdiction.
2. Short-term loading areas may be located at ramps or near berthing areas. Long-term parking, paved storage and dry moorage areas shall be located away from berthing areas and at a minimum of 50 feet from the OHWM.
3. To the maximum extent possible, marinas and accessory uses shall share parking facilities, with marina usage given preference.
4. The parking requirements for boat moorage, slip, or storage (public, private or pleasure) is one-half space per slip, excluding transient moorage.

### **B.5 Boating facilities – Circulation**

1. Marinas and launch ramps shall be located where access streets are adequate to handle the traffic load generated by the facility and shall be designed to minimize other circulation and access conflicts.
2. Collector roads between marinas and arterial routes shall have all-weather surfacing, and meet standards for width, safety, alignment, sign distance, grade and intersection controls.
3. Ingress-egress, as well as the use and enjoyment of the water on adjoining property, shall not be unduly restricted or impaired.

### **B.6 Boating facilities – Utilities**

1. Where moorage is offered in new, expanded or renovated existing marinas, pump-out, holding and/or treatment facilities shall be provided for sewage contained on boats and/or vessels. Such facilities shall be located so as to be conveniently available to all boats. The responsibility for the adequate collection and dumping

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- of marina originating sewage, solid waste and petroleum waste is that of the marina operator.
2. All marinas shall provide restrooms. They shall be kept clean and be located within 200 feet from a dock or pier; there shall be one toilet and hand washing facility for each sex per 50 moorage sites; signs shall be posted so that the restrooms are easily identifiable to the public.
  3. All pipes, plumbing, wires and cables at a marina site shall be placed at or below ground and dock levels where feasible.

### **B.7 Boating facilities – Management and Operations**

1. Marinas shall have adequate facilities and establish posted operational procedures for fuel handling and storage in order to prevent and minimize accidental spillage and for the containment, recovery and mitigation of spilled petroleum, sewage, and toxic products.
2. Marina operators shall post the following signs where they are readily visible to all marina users:
  - a. Regulations pertaining to handling and disposal of waste, sewage and toxic materials;
  - b. Regulations prohibiting the use of marine toilets while moored unless these toilets are self-contained or have an approved treatment device; and
  - c. Regulations prohibiting the disposal of fish and shellfish cleaning wastes, scrap fish, viscera or unused bait in or near the marina waters.
3. Garbage or litter receptacles shall be provided and maintained by the marina operator at several locations convenient to users in sufficient numbers to properly store all solid waste generated on site. This should include separate receptacles for waste oil and other potentially hazardous or toxic waste.
4. The dock facilities shall be equipped with adequate lifesaving equipment such as life rings, hooks and ropes.
5. At least 10 percent of total slips shall be provided for “transient moorage” (less than two-week stay) when the marina is owned, operated, or franchised by a governmental agency.
6. The discharge of sewage and/or toxic material from boats and/or shore installations shall be prohibited. Toxic material, herein defined as any material damaging marine life, includes but is not limited to paints, varnishes, non-biodegradable detergents, and petroleum.
7. No commercial and/or shellfish processing discharge or discarding of unused bait, scrap fish, or viscera will be permitted within any marina.
8. Washington State Water Quality Standards (WAC 173-201A) shall be strictly adhered to at all times.
9. Owners and operators of marinas shall make all reasonable efforts to protect marine life and habitat during construction and/or operation of any marina.

### **B.8 Boating facilities – Covered moorage**

1. Marina developers shall provide a detailed plan for covered moorage development before permits are granted. Such a plan must indicate:
  - a. Covered moorage location, size and general design;

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- b. Impact on shoreline views in the marina and from adjacent private and public properties; and
  - c. That the structures will be built to conform to the Town building code, withstand stresses from storms and weather or damage by fire, and that exterior wall and roof coverings shall be of noncombustible or fire-retardant treated material and so certified or labeled.
2. The maximum height for covered moorage is 25 feet above the extreme high tide level.

## **6.4 Shoreline Modification**

### **6.4.1 Shoreline protection structures**

#### **A. Policies**

1. Natural solutions such as protective berms, beach enhancement or vegetative stabilization are strongly preferred over structural defense works or materials such as steel, wood, or concrete, because the former have less adverse and cumulative impacts on shore features and habitats.
2. The use of armored structural revetments (riprap) and bulkheads should be limited to situations where it can be demonstrated that nonstructural solutions, such as bioengineering, setbacks and buffers or any combination thereof, will not provide sufficient shoreline stabilization.
3. Shoreline protection structures should be located, designed, and constructed primarily to prevent damage to existing development. New development requiring bulkheads and/or similar protection should be discouraged.
4. Affected property owners and public agencies should be encouraged to coordinate bulkhead or riprap development for an entire drift sector or homogeneous reach in order to avoid exacerbating erosion on adjacent properties.
5. Bulkheads/revetments should not be approved as a solution to geophysical problems such as mass slope failure, sloughing, landslides, etc., caused by factors other than bank erosion.
6. Shoreline protection structures should be designed, improved and maintained to provide public access whenever possible.
7. The construction and maintenance of shoreline protection structures should avoid loss or reduction of shoreline environmental resource values. If a loss or reduction cannot be avoided, mitigation should be provided.

#### **B. Regulations**

1. Applicability. Uses and activities related to shoreline protection structures which are identified as separate use activities in this program, such as flood control management, residential development, commercial development and industry, are subject to the regulations for those uses in addition to the standards for bulkheads and revetments (riprap) established in this section.

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2. Exemptions. The Shoreline Management Act only exempts the construction of a normal protective bulkhead common to an existing single-family residence from the substantial development permit requirement. However, these structures are required to comply with all the policies, prohibitions and development standards of this master program and of this section. To qualify for the exemption from the shoreline substantial development permit requirement, and to assure that such bulkheads will be consistent with this program, a statement of exemption shall be obtained from the Town before commencing construction of any bulkhead. WAC-173-27-040(2) (c) states that “A normal protective bulkhead is not exempt if it is constructed for the purpose of creating dry land.”
  3. Bulkheads shall be permitted only where local physical conditions such as foundation bearing material, surface and subsurface drainage are suitable for such alterations.
  4. On all shorelines, bulkheads shall be located generally parallel to the natural shoreline. In addition:
  5. For sloping or bluff shores, bulkheads shall be placed as far landward as is feasible;
  6. On bank shorelines where no other bulkheads are adjacent, the construction of a bulkhead shall be as close to the bank as possible;
  7. Bulkheads may tie in flush with existing bulkheads on adjoining properties.
  8. Replacement bulkheads/revetments may be located immediately in front of and abutting (sharing a common surface) an existing bulkhead/revetment on the same property provided that replacement bulkheads/revetments shall not be authorized abutting an abandoned or neglected bulkhead/revetment or a bulkhead/revetment in serious disrepair.
  9. When an existing bulkhead is being repaired by construction of a vertical wall fronting an existing wall, it shall be constructed no further waterward of the existing bulkhead than is necessary for construction of new footings.
  10. 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. A bulkhead may be replaced at the prior OHWM if the relocation of the revetment would jeopardize the integrity of existing structures above or landward of the revetment.
  11. Bulkheads/revetments shall be sited and designed consistent with appropriate engineering principles.
  12. When a bulkhead/revetment is required at a public access site, provision for safe access to the water shall be incorporated into bulkhead/revetment design.
  13. Bulkheads/revetments shall be designed for the minimum dimensions necessary to adequately protect the development.
  14. Stairs or other permitted structures may be built into a bulkhead/revetment but shall not extend waterward of it.
  15. Bulkheads shall be designed to permit the passage of surface or groundwater without causing ponding or saturation of retained soil/materials.
  16. Fill behind bulkheads/revetments shall be limited to an average of one cubic yard per running foot of wall. Any filling in excess of this amount shall be considered

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- landfill and shall be subject to the provisions for landfill and the requirement for obtaining a shoreline substantial development permit.
17. Bulkhead/revetment design shall include and provide improved access to public shorelines whenever possible and appropriate.
  18. When permitted, the siting and design of revetments shall be performed using appropriate engineering principles, including guidelines of the U.S. Natural Resources Conservation Service and the U.S. Army Corps of Engineers.
  19. If an armored revetment is employed, the following design criteria shall be met:
    - a. The size and quantity of the material shall be limited to only that necessary to withstand the estimated energy intensity of the hydraulic system.
    - b. Filter cloth must be used to aid drainage and help prevent settling.
    - c. The toe reinforcement or protection must be adequate to prevent a collapse of the system from channel scouring or wave action for the anticipated life of the project.
    - d. The bulkhead/revetment area shall be restored as nearly as possible to pre-project condition including replanting with native species and maintenance until the newly planted vegetation is established.

## 6.4.2 Shoreline Modifications Table

Specific modification of Shoreline environments are permitted, prohibited, or allowed with a conditional use permit as shown in Table 6-3.

**Table 6-3 Shoreline Modification Table**

### SHORELINE ENVIRONMENTS

<b>SHORELINE MODIFICATIONS</b>	<b>(AE) Aquatic</b>	<b>(PUE) Public Use</b>	<b>(RE) Residential</b>	<b>(HCE) Historic Commercial</b>	<b>(CE) Commercial</b>	<b>(IE) Industrial</b>
<b>Shoreline Stabilization</b>						
<b>Beach restoration or enhancement</b>	P	P	NA	P	P	P
<b>Revetments</b>	CU	CU	NA	CU	CU	P
<b>Bulkheads</b>	P	P	NA	P	P	P
<b>Jetties and Groins</b>	X	X	NA	X	X	X
<b>Breakwater</b>	X**	X	NA	X	X	CU
<b>Dredging</b>	CU	X	NA	X	X	X
<b>Hazardous Waste Cleanup</b>	P	P	NA*	P	P	P
<b>Fill</b>	CU	CU	NA*	CU	CU	CU
<b>Piers and Docks</b>	P	CU	NA	CU	CU	CU
<b>Land Clearing and Grading</b>	X	P	NA*	P	P	P

\*\*Allowed through a conditional use permit when upland environment is designated Industrial.

P= Permitted modification subject to the policies and regulations of this SMP

CU = Modification requiring a Conditional Use permit subject to the policies and regulations of this SMP

X = Prohibited; the modification is not eligible for a variance or a conditional use permit

\*The Residential Environment drains away from the Swinomish Channel.

## 6.4.3 Shoreline Structures Regulations

1. Bulkheads and revetments may be allowed only when evidence is presented which conclusively demonstrates that one of the following conditions exists:

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- a. Serious wave erosion threatens an established use or existing building(s) on upland property;
  - b. Bulkheads/revetments are necessary to the operation and location of water-dependent and water-related activities consistent with this master program; provided, that all alternatives have proven infeasible (i.e., use relocation, use design, nonstructural shore stabilization options) and that such bulkheads meet other policies and regulations of this chapter; or
  - c. Use of natural materials and processes and nonstructural solutions to bank stabilization are unworkable in protecting existing development.
2. Shoreline protection structure design and development shall conform to all other applicable state and federal agency policies and regulations including the State Department of Fish and Wildlife criteria governing the design of bulkheads and revetments.
  3. Natural materials and processes such as protective berms, stone containment barriers, beach replenishment, segmented sills, coir fiber logs, drift logs, brush and/or vegetative stabilization shall be utilized to the maximum extent possible.
  4. Shoreline protection structure proposals must ensure passage of surface and/or groundwater.
  5. Gabions (wire mesh filled with concrete or rocks) shall not be used in bulkhead construction where alternatives more consistent with this program are feasible, because of their limited durability and the potential hazard to shore users and the shoreline environment.
  6. Shoreline protection structures must be in support of an allowable shoreline use that is in conformance with the provisions of this master program unless it can be demonstrated that such structures are necessary and in the public interest for the maintenance of shoreline environmental resources.
  7. Shoreline protection structures are prohibited for any purpose if they will cause significant adverse erosion or beach starvation.
  8. Riprap material shall consist of clean, quarried rock, free of loose dirt and any pollutants, and shall be of sufficient size and weight to prevent movement by wave or current action. Tires, automobile bodies, scrap metal, paper products, and scrap concrete and other inappropriate solid waste materials, shall not be used for riprap.
  9. Where on-site environmental conditions allow, vegetation shall be integrated into the riprap design to reduce erosion, provide cover, shade and habitat and improve the natural appearance of the shoreline.
  10. All forms of shoreline protection structures shall be constructed and maintained in a manner that does not reduce water quality and/or fisheries habitat.
  11. Dredging and filling activities shall be conducted with minimum impact on marine habitat in the Swinomish Channel and during those times authorized by appropriate agencies.
  12. Uses in the aquatic environment shall not block navigation channels or restrict access to sections of the shoreline.

#### **6.4.4 Flood control management**

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**A. Policies**

1. Flood management planning should be undertaken to protect wildlife, human life, health and property from damage due to flooding.
2. in a coordinated manner among affected property owners and public agencies and should consider the entire floodplain system. Off-site erosion, accretion or flood damage that might occur as a result of stabilization or protection structures or activities should be considered.
3. Flood hazard management planning should fully consider nonstructural approaches to minimizing flood damage.

**B. Regulations**

1. Town shall require and utilize the following information during its review of shoreline flood management projects and programs:
  - a. Existing shoreline stabilization and flood protection works within the area;
  - b. Physical, geological, and hydrological soil characteristics of the area;
  - c. Biological resources and predicted impact to fish, vegetation and animal habitat associated with shoreline ecological systems;
  - d. Predicted impact upon area shore and hydraulic processes, adjacent properties and shoreline and water uses;
  - e. Analysis of alternative flood protection measures both structural and nonstructural.
2. The Town shall require professional design of flood protection works where such projects may cause interference with normal channel geohydraulic processes, leading to erosion of other upstream and downstream shoreline properties, or adverse effects to shoreline resources and uses.
3. Diking, floodwalls and similar structures may be permitted subject to applicable agency standards.
4. Flood protection measures shall be planned and constructed based on a state-approved flood control management plan and in accordance with the National Flood Insurance Program.
5. Development and redevelopment within the shoreline jurisdiction shall comply with the applicable requirements of the Town's stormwater management program.