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DIVISION II

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STATE OF WASHINGTON

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No. 41557-7-II

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

HAL MOORE and MELANIE MOORE; and
LESTER KRUEGER and BETTY KRUEGER,

Appellants,

v.

STEVE'S OUTBOARD SERVICE, and
STEVEN LOVE and MARY LOU LOVE,

Respondents.

APPELLANTS' SUPPLEMENTAL BRIEF

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I. INTRODUCTION

Enactment of the Shoreline Management Act ("SMA") did not eradicate a litigant's right to pursue injunctive relief for operations on the shoreline that constitute a nuisance.[1] The trial court's Amended and Supplemental Findings of Fact and Conclusions of Law ("Findings and Conclusions") establish Appellants are injured in fact by the operation of an illegal engine shop on Hood Canal without required approvals. Yet, the lower court ruled that where government fails to enforce SMA permit requirements, affected persons lack a remedy if they do not seek money damages. This annihilates RCW 7.48.120 and its remedies.

The trial court's ruling also erroneously compared repetitive noise, fumes and odors, smoke and traffic hazards from unpermitted business operations with those that occur occasionally as a result of permitted uses. Instead of focusing properly on the impact on Appellants, the court explored whether others found the operations annoying. This Court should reverse because Appellants established their claims as a matter of law. This Court also should reverse the fee award, which had no proper legal basis. Additionally, the award was inadequately segregated.

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[1] The relief for a nuisance may be either damages or injunction. *Asche v. Bloomquist*, 132 Wn. App. 784, 800, 133 P.3d 475 (2006).

II. SUPPLEMENTAL ASSIGNMENTS OF ERROR[2]

A. The Trial Court erred in its Amended and Supplemental Findings of Fact and Conclusions of Law on October 15, 2012 when it ruled that Plaintiffs are not entitled to injunctive relief and that their common law claims of nuisance *per se* and nuisance in fact should be dismissed when the record supported judgment on these claims. **(SCP 243)**[3]

B. Appellants assign error to the following Findings of Fact as unsupported by substantial evidence when the whole record is considered and/or internally inconsistent and/or an erroneous application of the facts to the law:

> 16. Mr. Love's business has not caused any actual tangible injury to Plaintiffs' properties. (SCP 211)
>
> 20. The outboard is not deafening even up close. (SCP 212)
>
> 22. Mrs. Krueger characterized the frequency of revving motor noise as just periodically when Mr. Love is working on boats. The location where Mrs. Krueger hears the revving of boat motors is outside her home when she is getting her mail and when she is working in her flower gardens on the highway-side of the home in the summer. (SCP 212)
>
> 23. Ms. Moore's testimony on the frequency and volume of the noise produced by Mr. Love's business included that she has to listen to the noise constantly every day; that the noise from Mr. Love's outboard motor repair is so bad that she has to slam her door shut to talk on the telephone outside her home; that she cannot talk on the telephone outside her home; that she and her guests cannot talk outside on her porch; and that she and her guests cannot watch television inside her home. Based upon the factors used by a trier of fact to assess the credibility of a witness and to assess the weight to be given the testimony of each witness, including the reasonableness of the witness' testimony in light of all of the evidence, Ms. Moore's testimony as to the frequency and volume of the noise produced by Mr. Love's business is not credible. (SCP 212-13)

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[2] Appellants' original Assignments of Error are incorporated herein by reference.
[3] Reference is to the Supplemental Designation of Clerk's Papers.

24. Other adjacent neighbors, Mr. David, Mr. Jacobs and Mr. Gordon, have not been bothered by noise from Mr. Love's business. (SCP 213)

25. Mrs. Krueger and Mrs. Moore also complain that they are bothered by the beeping from Mr. Love's tractor when backing up. This noise has not occurred in the last couple years. (SCP 213)

28. The greatest overall volume of noise in the area is from the motor vehicle traffic on the closely adjacent state highway including motorcycles which produce far more noise than the outboard motors. (SCP 214)

32. Mr. Love's business is clean, technologically up-to-date and Mr. Love is environmentally conscious. (SCP 214)

33. Running boat motors create exhaust fumes. As set forth above as to the noise issue, boat motors at Mr. Love's business are run for a very limited amount of time. (SCP 214-15)

37. The other adjacent neighbors, Mr. David, Mr. Jacobs and Mr. Gordon, have not been bothered by smoke, fumes or odors from Mr. Love's business. (SCP 215)

49. Mr. Love's use of the SR 106 shoulder is consistent with normal usage of the highway shoulder for vehicles stopping for short periods of time. (SCP 217)

54. Mr. Love's business has not obstructed SR 106. (SCP 218)

55. Mr. Love's business has not impeded traffic on SR 106. (SCP 218)

66. Mr. Love's business is low volume. (SCP 220)

79. There has been no reduction in Plaintiffs' property values as a result of Mr. Love's business. (SCP 222)

86. .... Mason County mistakenly determined that shoreline permits had been issued for the proposed 30 x 45 foot metal shop building. (These were the two shoreline permit applications that Mr. Love had withdrawn.) Based on the erroneous assumption that shoreline permits were issued for the 30 x 45 foot metal shop building, Mason County approved the carport rebuild determining

that the carport structure was of equal or lesser intensity than the 30 x 45 foot metal shop building. (SCP 223)

88. Citing a lack of evidence to support the alleged land use violation, Mason County determined that no use violation occurred. Mason County further found that the [*sic*] Mr. Love's boat motor repair can continue as an existing cottage industry. (SCP 224)

91. There has been no damage to the property of the Kruegers or the Moores as a result of the operation of Mr. Love's business. (SCP 224)

C. Appellants assign error to other outcome determinative language, mislabeled "Conclusions of Law," as unsupported by substantial evidence when the whole record is considered and/or an erroneous application of the facts to the law, including:

3. Mr. Love's brief and intermittent use of the SR 106 shoulder and highway to receive boats on trailers and/or to move boats on trailers is not inconsistent with overall shoulder or highway use by the motoring or pedestrian public. (SCP 226)

4. Mr. Love's brief and intermittent use of the SR 106 shoulder and highway does not obstruct or encroach upon SR 106. (SCP 226)

5. Mr. Love's brief and intermittent use of the SR 106 shoulder and highway does not interfere with the use of the highway or shoulder. (SCP 226)

10. Mr. Love's brief and intermittent use of the SR 106 shoulder and highway to receive and/or move boats on trailers does not interfere with Plaintiffs' use of SR 106. (SCP 227)

16.2. The boat motor noise from Mr. Love's business is not deafening nor is the noise constant or even frequent. Other sources of noise are found in the neighborhood including the Kruegers' leaf blower(s) and the motors on boats and jet skis using the adjacent waters of Hood Canal. All of the noises are less significant than some motorcycles passing on the adjacent state highway. (SCP 233)

16.4. Although fumes come from the operation of outboard motor, as part of Mr. Love's business, boat motors are run infrequently and for short durations. Mr. Love's business is clean, technologically up-to-date and Mr. Love is environmentally conscious. This area has, at times, other sources of smoke. (SCP 233-34)

16.7. None of the other surrounding homeowners are bothered by noise or fumes from Mr. Love's business at any time of year. (SCP 234)

16.8. The noises and odors from Mr. Love's business that are offensive and disruptive to Plaintiffs are intermittent and short-lived .... (SCP 234)

17.1. The primary situation alleged by Plaintiffs to be causing adverse traffic safety concerns is that Mr. Love stores boats on their trailers on the SR 106 shoulder. This was not found by the court to be occurring. Mr. Love's use of the SR 106 shoulder for his customers to drop off boats and Mr. Love's use of the SR 106 shoulder and, at times, the highway itself to move boats with a tractor onto and out of his carport has not created any adverse traffic safety incidents. The shoulder all along SR 106 is used by others for parking and the Kruegers use the shoulders of SR 106 adjacent to their properties for flower pots in the summer. Deliver trucks coming to Mr. Love's business have not caused any adverse traffic incidents. Others in the area have delivery trucks stop at or near their homes as well. There have been no accidents or even adverse traffic safety events related to Mr. Love's business. (SCP 235)

D. The Trial Court erred in entering the Supplemental Findings of Fact and Conclusions of Law re: Attorney fees on November 13, 2012 when there was no statutory authority or other legal basis for the award, and when it failed to segregate the fees. (SCP 198)

E. The Trial Court erred in entering the Supplemental Findings of Fact and Conclusions of Law re: Attorney fees on November 13, 2012 because it failed to set forth the basis on which under RCW 90.58.140 it exercised discretion to award attorney fees and costs incurred in defending nuisance claims. (SCP 209)

F. Appellants specifically assign error to the following Findings of Fact re: Attorneys fees as unsupported by substantial evidence and/or internally inconsistent and/or an erroneous application of the facts to the law:

4. Defendants were the prevailing party on the claim for damages under the Shoreline Management Act and all other claims. (SCP 198)

5. In opposing the attorney's fees request, Plaintiffs argue that the attorney's fees provision in RCW 90.58.230 is inapplicable; that Plaintiffs "did not present their case at trial as a 'suit for damages' under RCW 90.58.230 and that Plaintiff's did not seek relief under RCW 90.58.230 in either their trial brief or post trial briefs." (SCP 198)

6. Although the primary focus of Plaintiffs' use of the Shorelines Management Act at trial was to allege Defendants' business violated the Shoreline Management Act and was therefore a nuisance *per se*, Plaintiffs requested the court also consider damages under the Shorelines Management Act in their closing argument (citing to Plaintiffs' Closing Argument at page 2, lines 10 through 15). (SCP 199)

8. Plaintiffs assertion that they had abandoned their RCW 90.58.230 cause of action before trial is not supported by the record. (SCP 199)

9. Plaintiffs' Complaint alleged three causes of action against Defendants Love. Plaintiffs argued the additional theory of nuisance *per se* at trial. All the evidence submitted was of a single set of operative facts. Plaintiffs' had overlapping legal theories which involved general nuisance law and provisions of the Shorelines Management Act and associated local government regulatory provisions. The evidence submitted was of a single set of operative facts and several of the legal theories argued by Plaintiffs were so closely intertwined that there is no reasonable means to segregate time among the various claims. (SCP 199-200)

17. Attorneys seeking fees must provide reasonable documentation of work performed to calculate the number of hours worked. Mr. Finlay filed a supplemental declaration setting out dates or short date ranges that he performed work and what work was done based in major part on email communications existing in his records. The supplemental declaration of Mr. Finlay was sufficiently detailed for the court to

assess what was done and what amount of attorney time was expended in doing the work. Mr. Finlay's time in this case was 67.25 hours. (Had this been a case in which segregating work done on claims in which fees are to be awarded from work done on claims where no fees are awarded, more specific information would have been needed.). (SCP 203)

22. The attorney fees and costs as set out above were reasonable, were reasonably incurred in this matter, and should be recovered by Defendants Love. (SCP 205)

G. The Trial Court erred in entering the Court's Amended Order[4] on Attorney's Fees and Costs in the amount of $28,907.44, on December 21, 2012, where there was no statutory authority or other legal basis on which to base such an award. (SCP 206)

H. The Trial Court erred in entering Amended Judgment[5] in favor of Defendants against Plaintiffs in the amount of $28,907.44 on December 21, 2012. (SCP 209)

Issues Related to Supplemental Assignments of Error

1. Is an unpermitted engine repair shop use within the shoreline environment an illegal act within the meaning of RCW 7.48.120, such that injunctive relief pursuant to RCW Ch. 7.48 should be granted? (Assignments of Error A, B and C).

2. Did Plaintiffs establish that the repetitive noise, odors, and fumes resulting from Defendants' engine repair shop are annoying and leave them insecure in the use and enjoyment of their property? (Assignments of Error A, B and C).

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[4] *See* Appendix A-1. A timely Second Amended Appeal of the Amended Order has been filed.

[5] *See* Appendix A-2. A timely Second Amended Appeal of the Amended Judgment has been filed.

3. Did Plaintiffs show by a preponderance of the evidence that Defendants' business is a nuisance *per se* because it is not an approved use of the shoreline, and because other complaints about the business and/or balancing of "rights" are irrelevant? (Assignments of Error A, B and C)

4. Were Plaintiffs required to obtain an "interpretative decision" declaring the illegal unpermitted commercial use improper, and establish injury to and unreasonable interference with enjoyment of their properties to establish a nuisance *per se*? (Assignments of Error A, B and C)

5. Did Plaintiffs show by a preponderance of the evidence that Defendants' business is a nuisance because Defendants violated the terms of their right-of-way permit and obstructed and/or encroached upon the highway in violation of RCW 7.44.140(4) and/or RCW 7.44.010, regardless of any traffic accidents? (Assignments of Error A, B and C)

6. Did Plaintiffs show by a preponderance of the evidence that Defendants' business is a nuisance *per se* because it violates the Mason County Noise Ordinance? (Assignments of Error A, B and C)

7. Did Plaintiffs show by a preponderance of the evidence that Defendants' business is a nuisance in fact because an illegal business is not entitled to the same deference as a permitted or legal nonconforming business? (Assignments of Error A, B and C)

8. Did Plaintiffs show by a preponderance of the evidence that Defendants' business is a nuisance in fact, regardless of proof of property damage? (Assignments of Error A, B and C)

9. Are Plaintiffs entitled to injunctive relief to redress a nuisance resulting from violation of the SMA where money damages under RCW 90.58.230 are abandoned and no evidence of damage to property is presented? (Assignments of Error A, B and C)

10. Did the Trial Court err in considering whether the Defendants' interference with Plaintiffs' enjoyment of their property is "reasonable?" (Assignments of Error A, B and C)

11. Did the Trial Court err in balancing Plaintiffs' rights to use and enjoy their private property against Defendants' desire to operate its business in the shoreline environment and residential zone without required shoreline use permits? (Assignments of Error A, B and C)

12. Does the existence of sources of noise and fumes and traffic associated with single-family residential use and a State highway in the vicinity of Defendants' business justify dismissal of Plaintiffs' nuisance claims? (Assignments of Error A, B and C).

13. Are the Amended and Supplemental Findings of Fact and Conclusions of Law to support dismissal of Plaintiffs' nuisance claims supported by substantial evidence? (Assignments of Error A, B and C)

14. Where Plaintiffs sought relief pursuant to RCW 7.48 to enjoin operations of an unpermitted engine shop and abandoned damages claims, is it proper to award fees to Defendants under RCW 90.58.230? (Assignments of Error D, E, F, G and H)

15. Where Plaintiffs requested only injunctive relief pursuant to RCW Ch. 7.48, is it proper to award fees to Defendants under RCW 90.58.230? (Assignments of Error D, E, F, G and H)

16. Even if the SMA claim was not abandoned, given that Plaintiffs' nuisance claims were reasonable and brought in good faith, was it abuse of discretion to award fees to Defendants? (Assignments of Error D, E, F, G and H)

17. Even if the SMA claim was not abandoned, did the Trial Court abuse its discretion in awarding fees for the defense of nuisance claims without segregating such fees? (Assignments of Error D, E, F, G and H)

III. ARGUMENT

The trial court's decision evidences confusion regarding land use law principles. This Court should correct the errors by correctly applying the appropriate principles and law. The trial court incorrectly emphasized the issuance of a building permit,[6] but such permit only pertains to authority to ***construct*** a structure. *See* RCW 19.27.095; Mason County

[6] Findings of Fact 82, 84, 85, 86.

Code ("MCC") Chapter 14.04, 14.08 and 14.12. The zoning code, overlay zones, and shoreline master program govern permissible uses of all structures. *See* MCC Title 17. Not all uses are allowed in a structure, notwithstanding issuance of a building permit. For example, a single-family home structure cannot be operated as a tavern within the neighborhood residential zone. *See* MCC 17.07.120, .130 and .140.[7]

Respondents were mistakenly allowed to construct a building in the shoreline environment, but were never granted permission to operate an engine shop. The court's findings and conclusions are internally inconsistent, not supported by substantial evidence, and contrary to law.[8] It failed to discern the difference between government's failure to take action and an affirmative decision to issue, condition or deny a land use permit or take enforcement action. The former is not an appealable land use decision. MCC Chapter 15.11. The County never made a "final decision" concerning shoreline permitting for the engine shop, or allowed use of the structure.

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[7] Buildings accessory to a single-family home cannot be used for a boat engine repair shop within the shoreline environment, absent compliance with shoreline use regulations via shoreline permitting, MCC § 17.50.060 (use regulations/commercial development), and without issuance of a shoreline permit. *See* RCW 90.58.140; MCC § 17.50.020 through MCC § 17.50.080.

[8] *Compare* Findings 80 through 86 (shoreline permit applications were withdrawn and never issued) *with* Conclusion 28 (Mason County determined that Mr. Love's outboard motor repair business may continue at its location") and Conclusion 31 ("whether or not Mr. Love is operating in violation of the SMA, other Mason County or Washington State regulations or permits would not change the result"). Government's decision to ignore a nuisance is not a defense. *Tiegs v. Watts*, 135 Wn.2d 1, 14-15, 954 P.2d 877 (1998).

The statements in the Case Activity Report (Ex.7) are – at most- an informal interpretation by staff based upon the mistaken assumption permits had been issued for a "cottage industry" use. The Case Activity Report is not subject to appeal or binding on the Department. *See* MCC Chapter 15.03 and Chapter 15.11.[9] A cottage industry requires a special use permit. It does not encompass services of a retail nature, but rather, creation of a good, *e.g.*, art or crafts, hand-made furniture, etc. Opening Brief, pp.25-26. Local government cannot waive SMA permit requirements. *See Citizens for Rational Shoreline Planning v. Whatcom County*, 155 Wn. App. 937, 943, 230 P.3d 1074 (2012).

The trial court also erred in ruling that an "interpretive decision" must be sought in order to prevail on a nuisance claim.[10] The County already determined that a shoreline permit is needed by Respondents; thus, requiring a subsequent code interpretation serves no purpose.

A. Appellants Established Nuisance *per se*.

The trial court erred when it held that the plaintiffs failed to establish a nuisance *per se*. RCW 7.48.160 states, "nothing done or maintained under the express authority of a statute can be deemed a "nuisance." The converse is also true. Where a plaintiff establishes

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[9] In any event, Appellants were not required to file a Land Use Petition Act appeal. *Grundy v. Thurston County*, 155 Wn.2d 1, 5, 7-8, 117 P.3d 1089 (2005).
[10] *See* Conclusion No. 30.

failure to comply with the law, the defendant is strictly liable. *Tiegs v. Boise Cascade Corp.*, 83 Wn. App. 411, 418, 922 P.2d 115 (1996), *aff'd sub nom Tiegs v. Watts*, 135 Wn.2d 1, 954 P.2d 877 (1998) (citing Thompson on Real Property, Thomas Edition § 67.03(a)(1), at 94-95 (David A. Thomas ed., 1994)).

This Court directed that nuisance *per se* turns on: (1) whether Defendants interfere with the Plaintiffs' use and enjoyment of their property, and/or (2) whether SOS operates lawfully, including its compliance with the SMA, Mason County Code, and any other relevant law. Order at p.2. The answer to (1) is yes and to (2) is no. This Court should reverse and rule that Appellants proved nuisance *per se*.

1. Respondents' Repetitive Annoying Operations Interfere with Use and Enjoyment of Appellants' Property.

RCW 7.48.120 defines nuisance *per se* as an unlawful act which annoys or injures the comfort or repose of another or renders other persons "insecure ... in the use of property."

The term "annoy" means "to disturb or irritate especially by repeated acts." *Merriam-Webster.com*. 2012. http://www.merriam-webster.com (4 December 2012). The term "insecure" is understood as "not confident or sure: uncertain." *Ibid.* The focus must be on the repetitive nature of the annoying events that render Appellants insecure

(afraid of traffic accidents, unsure of whether they will be startled by engine revving noise, and not confident of the ability to carry on conversations or watch television) in their own homes. The precise length of time of Loves' engine revving, maneuvering of trailers in the shoulder and right-of-way, and duration of smoke, fumes and odors from the business is irrelevant.

The trial court's findings and conclusions establish Respondents' engine shop interferes with Appellants' use and enjoyment of the property:

- **Finding of Fact 22**: "The location where Mrs. Krueger hears the revving of boat motors is outside her home when she is getting her mail and when she is working in her flower gardens on the highway-side of her home in the summer."
- **Finding of Fact 23**: "Ms. Moore's testimony on the frequency and volume of the noise produced by Mr. Love's business included that she has to listen to the noise constantly every day; that the noise from Mr. Love's outboard motor repair is so bad that she has to slam her door shut to talk on the telephone inside her home; that she cannot talk on the telephone outside her home; that she and her guests cannot talk outside on her porch; and that she cannot watch television inside her home."
- **Finding of Fact 29**: "The Kruegers have a patio on the highway side of their home. The patio is less than 30 feet from the highway. In the past, Mrs. Krueger would read in this location and would use this location to be outside and out of the wind when the wind was blowing on the waterside of her house. The Kruegers no longer put lawn furniture on this patio and hardly use this patio because of the noise from the Loves' property. Thus affects the Kruegers' use and enjoyment of their property."
- **Finding of Fact 30**: "Mrs. Moore rarely sits on her deck until after 5:00 p.m. due to noise from Mr. Love's business. This affects Mrs. Moore's use and enjoyment of her property."
- **Finding of Fact 35**: "Prevailing winds take smoke and fumes east from the Loves toward the Kruegers. Mrs. Krueger smells fumes

periodically when Mr. Love is working on boats in the spring, summer and fall. The fumes bother Mrs. Krueger."

- **Finding of Fact 36**: "The Moores' home is to the west of the Loves so it is not within the area that smokes or fumes are blown by the prevailing winds. Mrs. Moore smells smoke on summer days when there is little air movement. The fumes bother Mrs. Moore."
- **Conclusion of Law 16.1**: "Noise from Mr. Love's business is offensive to the senses of Mrs. Krueger and Mrs. Moore. Additionally, due to the noise from Mr. Love's business, the Kruegers and Mrs. Moore are unable to enjoy a portion of their respective properties in a normal manner, i.e., use of the Kruegers' highway-side patio is diminished as is use of Mrs. Moore's deck.
- **Conclusion of Law 16.3**: "Fumes from Mr. Love's business are offensive to the senses of Mrs. Moore and Mrs. Krueger. Fumes from Mr. Love's business bother Mrs. Krueger in the spring, summer and fall. The fumes bother Mrs. Moore in the summer."

The first inquiry in the 2-part test for nuisance *per se* asks whether there is interference with normal use and enjoyment of plaintiffs' property. The findings and conclusions set forth above satisfy part one of the test.

There is no balancing or comparison with other property owners or considerations of other sources of sounds, noise, fumes, etc. The lower court erroneously judged the "reasonableness" of Appellants' complaints, and whether the value of property is diminished, which are irrelevant to the query under the law. The decision is clear legal error.[11]

[11] This Court directed: "The court may not consider whether interference with Plaintiffs' enjoyment of their property is "reasonable," or should be balanced against any other factors, when analyzing a nuisance *per se* claim." Order at p. 2.

2. SOS Operates Unlawfully.

The trial court's findings and conclusions also establish SOS does not operate lawfully:[12]

- **Finding of Fact 81**: "Mason County Community Development advised Mr. Love by letter dated April 11, 1994, that he would be required to obtain substantial development and conditional use shoreline permits in order to proceed with his plan to build a new shop building on his property."
- **Finding of Fact 81**: "On May 17, 1994, Mr. Love applied for a shoreline conditional use permit and a substantial development permit for a new 30x45 foot metal shop building (1,350 square feet) to be placed behind the Loves' house."
- **Finding of Fact 83**: "On September 7, 1994, Mr. Love withdrew his applications for shoreline permits for the new 30x45 foot metal shop building."
- **Finding of Fact 86**: "In 2003, after receipt of a complaint regarding operation of a boat motor repair business on the Loves' property, Mason County researched their files regarding applications and actions related to the Loves' real property. Mason County mistakenly determined that shoreline permits had been issued for the proposed 30x45 foot metal shop building.... Based on the erroneous assumption that the shoreline permits were issued for the 30x45 foot metal shop building, Mason County had approved the carport rebuild determining that the carport structure

[12] The trial court failed to address whether Respondents violated the Mason County Noise Ordinance and the WSDOT permit. Appellants incorporate by reference its prior briefing on these issues. The WSDOT permit allows construction of an approach to the business, not use of the SR 106 shoulder for customer parking to support the commercial use. The commercial use of the shoulder hundreds of times per year (and occasionally backing or towing trailers on the traveled portion) is in stark contrast with an occasional parking use by a residential owner who may have overflow parking associated with a family event or gathering of friends. The activity "tends to obstruct" if not outright obstructs" a "... public ... highway." *See* RCW 7.48.120. The term "tends" means "to exhibit an inclination or tendency." *Merriam-Webster.com*. 2012. http://www.merriam-webster.com (29 December 2012). "Obstruct" means "to hinder from passage, action, or operation." *Merriam-Webster.com*. 2012. http://www.merriam-webster.com (29 December 2012). When Love operates his business within the highway's shoulder and right-of-way, an approaching traveling vehicle may either be hindered from driving in their proper lane of traffic on the highway, and/or will be inclined to depart from its lane to pass.

was of equal or lesser intensity than the 30x45 foot metal shop building."

- **Conclusion of Law 31**: "Whether or not Mr. Love is operating in violation of the SMA, other Mason County or Washington State regulations or permits would not change the result. (This does not leave Plaintiffs without a remedy for damages under RCW 90.58.230, if any damages had been proven here).

The second inquiry in the 2-part test for nuisance *per se* asks whether SOS is operating in compliance with the law. Order at p.2. The trial court's findings and conclusions support an answer of "no." Both elements of the 2-part test have been established.

The trial court erred in ruling that Appellants only have a remedy for the Loves' violation of the SMA if they establish damages. Conclusion of Law 31. Enactment of the SMA did not leave litigants without an opportunity to pursue injunctive relief pursuant to other laws, including RCW Chapter 7.48.[13] As observed in *Blanchard v. Golden Age Brewing Co.*, 188 Wash. 396, 63 P.2d 397 (1936), "the Legislature may not abolish a common-law right and its remedy without setting up some reasonable substitute. To attempt to do so is to deny due process of law within the meaning of both the State and Federal Constitutions." *Id.* at 427 (Tolman, J., concurring). Appellants have established a right to a remedy. Reversal is proper.

[13] Moreover, Appellants should not be limited to a claim for damages under the SMA where there is a risk of an award of attorneys' fees to the prevailing party and where – as here – damages are inadequate because they cannot make the complaining party whole.

B. Nuisance in Fact: SOS Unreasonably Interferes with Appellants' Use and Enjoyment of Their Property.

This Court directed the trial court to enter findings and conclusions to address nuisance in fact, which turns on: (1) whether Defendants interfere with the Plaintiffs' use and enjoyment of their property, and (2) whether such interference is reasonable, balancing the rights, interests and convenience of the parties. Order p. 2. RCW 7.48.010 asks whether the action "essentially interfere[s] with the comfortable enjoyment of life and property." *Kitsap County v. Allstate Ins. Co.,* 136 Wn.2d 567, 592, 964 P.2d 1173 (1998). Per RCW 7.48.020, "Such action may be brought by any person whose property is ... injuriously affected or whose ***personal enjoyment*** is lessened by the nuisance." (Emphasis added). Part one of this 2-part test has been established as discussed in the previous section.

Turning to part two, the court erred in balancing any so-called "rights" of the Respondents to operate an illegal engine shop, against the Appellants' foundational rights enjoy their residential properties for nothing other than ordinary home-based uses. There is no authority that holds "impacts" of property uses that are permitted are comparable to those resulting from one that is unpermitted. *E.g., Tiegs*, 135 Wn.2d at 13. Respondents do not enjoy property rights with respect to their engine shop because it lacks required SMA permits. *See* RCW 90.58.140(1), (2). Nor

is it a water dependent or a preferred use under the SMA. The use, thus, should be sited in other locations where it would be legal. There cannot be a "balancing of rights" when considering whether the impact of the illegal business on affected residential properties constitutes a nuisance.

Regarding part one of the nuisance test, the trial court improperly discounted evidence of impacts of the engine shop operations on Appellants based on non-objective testimony of Love and his customers.[14] There was no comparison of the impacts experienced by Appellants to those of other, similarly-situated, full-time residents. *Riblet v. Ideal Cement Co.*, 57 Wn.2d 619, 622, 358 P.2d 975 (1961). Nuisance law requires a determination of whether the personal inconvenience, discomfort and anguish suffered by a plaintiff is of a level to constitute a nuisance. *E.g., Riblet v. Spokane-Portland Etc. Co.*, 45 Wn.2d 346, 355, 174 P.2d 574 (1954) (emphasis added). Thus, when determining whether the impact of loud noises on nearby properties rise to the level of a nuisance, a court must consider specific impacts on the complaining party's property. *Davis v. Taylor*, 132 Wn.App. 515, 132 P.3d 783 (2006).

[14] The trial court compared "apples to oranges" in making the apparent determination that, because part-time residents, customers, and others that live some distance away testified they were not bothered by the business, then the Plaintiffs should not have been. Loves' witnesses testimony cannot form the basis of an objective nuisance test because they are not subject to the same level or duration of noise, smoke, fumes and odors as Appellants and RCW 7.48.020 places the emphasis on the complaining party. *See* Opening Brief, pp.32-33, p.40; Reply Brief, pp.14-15. Mr. Love is hardened to the annoying activity (and economically interested in the outcome of this litigation).

The evidence establishes Defendants' use unreasonably interferes with these plaintiffs' use and enjoyment of their properties. This Court should direct judgment in Plaintiffs' favor on the nuisance in fact claim.

C. Numerous Findings Are Not Supported By Substantial Evidence.

Numerous findings and conclusions are not supportable. The Findings and Conclusions identified in the Assignments of Error are riddled with inconsistencies, contradictions and conclusory statements regarding the impact of the engine repair shop on Appellants,[15] whether the business obstructs SR 106 or impedes traffic,[16] and the Appellants' decision to abandon a claim for damages.[17] The trial court apparently labored to find for Respondents because the engine shop "is Mr. Love's livelihood." Conclusion 16.5. Key findings, however, are not supported by substantial evidence. The court ignored evidence and arguments regarding the Respondents' violation of its right-of-way permit and the Noise Ordinance. None of the findings on the issues of noise impacts, smoke, odors and fumes, and traffic impacts pertain to the essential facts necessary to support the judgment. *See Stevens v. King County*, 36 Wn.2d

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[15] *Compare* Findings 22, 23, 29, 30, 31, 33, 35, 36 *with* Finding 16, and Conclusions 16.1. 16.3 and 16.8 *with* Conclusions 16.2, and 16.4.
[16] *Compare* Findings 47, 48 and 50 *with* Findings 54, 55 and 58, and Conclusions 8, 10 *with* Conclusion 9.
[17] *Compare* Findings 78 and 92 *with* Findings 17, 74, 75, and Conclusions 18.1, 22, 30 and 31 *with* Conclusion 18.2.

738, 745, 220 P.2d 318 (1950). When the preponderance of the evidence is considered, nuisance is demonstrated. Opening Brief, pp.37-38.

Finding No. 16 states that SOS's business has not caused tangible injury to Plaintiffs' properties. To the extent the court required a finding of diminution in property value it erred, because there is injury to Plaintiffs – the distress caused by the annoying activities. Finding No. 20 that an outboard is not deafening up close also is irrelevant: physical injury is not the test.[18] It is the "revving up" that is the concern. The noise is loud enough to startle. *See* Opening Brief, p.31. Finding No. 22, that Mrs. Kruger hears noise from boat motors "periodically" and only outside her home, is inaccurate. The business operates up to 199 days per year or more! **CP 115-16.** Even with windows and doors closed, Mrs. Kruger suffers the impact of the noise inside her home. *See* Opening Brief pp.13-14, pp.40- 41. Finding No. 23 that Mrs. Moore's testimony as to the level of impacts is "not credible" is not supported by substantial evidence when the record as a whole is considered. Mrs. Krueger said the same thing as to noise. Other witnesses testified they heard the noise, and their homes are further away. *See* Opening Brief, p.39; Reply Brief, p.14.

[18] *See also* Conclusions of Law Nos. 16.2 and 16.8.

As to Finding No. 24[19], that other neighbors are not bothered, Mr. Jacobs testified he is "startled" by the engine revving noise. **(RP 141)**

Finding No. 28 and Conclusion No. 16.2, that the "greatest overall volume of noise in the area" is from traffic is speculation and irrelevant. A nuisance claim is not answered by assessing the effect of common sources of noise from permitted uses. The highway noise is "different in kind" from that associated with the boat motors. *See* Opening Brief, p. 13.

Finding No. 33, that the motors create fumes but only for a short period of time is irrelevant; the correct focus is on the repetitive nature of the annoying activity. While other interested neighbors testified they were "not bothered" by the fumes, they conceded that fumes associated with the illegal business are, in fact, present.

Notwithstanding that Respondents have no right to use the shoulder of a State Highway for commercial purposes, Finding Nos. 49, 54-55, and 66[20], to the effect that Love's use of the shoulder of SR 106 is "normal," does not obstruct or impede traffic and "low volume," are not supported by substantial evidence. The use is up to 200 times per year. Residential owners do not routinely park boat trailers on the shoulder, and none do for commercial purposes. It is not duration that is of importance, but the repetitive nature of the practice. Others concede the practice is "kind of

[19] *See also* Conclusion of Law No. 16.7.
[20] *See also* Conclusions of Law Nos. 3-5, 10, and 17.1.

scary." *See* Reply Brief, p.11 (Carr Testimony). It is the high risk of an accident that is of concern. *See* Reply Brief, p.15. Finally, the road and the shoulder are obstructed, since the evidence showed that boat trailers intrude on the road surface and Mr. Love uses the road to move the trailers.[21] Traffic must swerve around the trailers. Opening Brief, p.14, p.31, p.42.

The specified conclusions are not supported by substantial evidence. This Court should reject them. The record demonstrates that Appellants satisfied their evidentiary burden to support their nuisance claims.

D. The Attorney Fee Award Is Without Valid Legal Basis or Constitutes an Abuse of Discretion.

This Court should reverse the fee award. It has no legal basis where the record clearly establishes that Appellants sought only injunctive relief under Chapter 7.48 RCW, not money damages. Further, the amount is not properly segregated.[22]

Respondents defended an injunction lawsuit under Chapter 7.48 RCW, which does not provide for award of fees. The trial court's award under RCW 90.58.230 was not justified. Even the trial court appeared confused by its own reasoning, stating on the one hand that a damages

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[21] *See* N.12, *infra*.

[22] Appellants' prior briefing on attorneys' fees is incorporated herein by this reference. *E.g*, *Loeffelholz v. Citizens for Leaders with Ethics and Accountability Now*, 119 Wn. App. 665, 82 P.3d 1199 (2004). "If attorney fees are recoverable for only some of a party's claims, the award must properly reflect segregation of the time .... ***This is true even if the claims overlap or are interrelated.***" (emphasis added).

claim was not abandoned (Findings 2-8), but then observing that no evidence regarding damages was presented (Findings 74, 75 and 78, Conclusions 18.1 and 22) and that "each of the Plaintiffs that testified denied that they were seeking any monetary damages for the Loves." (Finding 92, Conclusion 22). The record demonstrates that an award under RCW 90.58.230 was improper. This Court should reverse the fee award.

The trial court further erred when it concluded that the nuisance claim for violating the SMA would only be viable if Appellants had pursued a claim for damages. (Conclusion 31). The court insisted an SMA damages claim existed, despite substantial evidence to the contrary.[23]

Even if Appellants ***had*** pursued a claim for damages under the SMA, there is no tenable basis for a discretionary fee award under that statute. Fee awards under that statute are proper where abuses, frivolous claims, or malicious intent are present. That was not shown here, where Plaintiffs' complaints were well-grounded and researched. The trial court articulated no such basis for the award. In the only reported case in which a defendant was awarded fees under the Act, the court determined the award was warranted because of abuse of process/frivolous claims. *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 823-24, 828 P.2d 549 (1992). In *Hunt v. Anderson*, 30 Wn. App. 437, 443, 635 P.2d

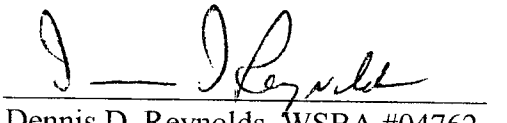
[23] Attorney's comments in Closing Argument are not evidence. *State v. French*, 101 Wn.App. 380, 390, 4 P.3d 857 (2000).

156 (1981), fees under were denied because there was "no malicious intent on the part of the defendant," and an award of fees is not automatic under the statute. Even if SMA damage claims remained, no basis consistent with *Cowiche Canyon* or *Hunt* supports a fee award.

IV. CONCLUSION

This Court should reverse and remand for issuance of an injunction against Respondents. The award of fees should be reversed and vacated.

RESPECTFULLY SUBMITTED this 4th day of January, 2013.

By 

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Counsel for Appellants

FILED
COURT OF APPEALS
DIVISION II

2013 JAN -4 AM 10: 54

STATE OF WASHINGTON
BY _____
DEPUTY

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of January, 2013, I caused the original and one copy of the document to which this certificate is attached to be delivered via legal messenger to:

Clerk of Court
Court of Appeals, Division II
950 Broadway, Suite 300
Tacoma, WA 98402
(253) 593-2970, tel

I further certify that on this 4th day of January, 2013, I caused a copy of the document to which this certificate is attached to be delivered to the following via First-Class mail:

Bruce J. Finlay, WSBA #18799
P.O. Box 3
Shelton, WA 98584-0003
(360) 432-1778, tel
(360) 462-1779, fax
brucef@hctc.com, email

Declared under penalty of perjury under the laws of the State of Washington at Bainbridge Island, Washington this 4th day of January, 2013.

Christy Reynolds
Christy Reynolds
Legal Assistant

APPENDIX

A-1 Second Amended Notice of Appeal to Washington State Court of Appeals, Division II, *Moore and Krueger v. Steve's Outboard Service, et al.*, Mason County Superior Court, No. 06-2-00563-9, Court of Appeals, Div.II, Case No. 41557-7-II.

A-2 Ordinances:

A-2-1: MCC Chapter 14.04, 14.08 and 14.12

A-2-2: MCC Chapter 15.03

A-2-3: MCC Chapter 15.11

A-2-4: MCC § 17.07.120, .130 and .140

A-2-5: MCC § 17.50.020, .030, .040, .050, .060, .070 and .080

APPENDIX A-1

THE HONORABLE TONI A. SHELDON

SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR MASON COUNTY

HAL MOORE and MELANIE MOORE husband and wife; and LESTER KRUEGER and BETTY KRUEGER, husband and wife, Plaintiffs, v. STEVE'S OUTBOARD SERVICE, a sole proprietorship operating in Washington; STEVEN LOVE and MARY LOU LOVE, husband and wife and the marital property they together compose; and MASON COUNTY, Defendants.	No. 06-2-00563-9 (Court of Appeals, Division II, Case No. 41557-7-II) SECOND AMENDED NOTICE OF APPEAL TO WASHINGTON STATE COURT OF APPEALS, DIVISION II

Plaintiffs Hal Moore and Melanie Moore, and Lester Krueger and Betty Krueger seek review by the Washington State Court of Appeals, Division 2, of the decision entitled "Amended Order on Attorney Fees and Costs" entered on December 21, 2012 by Mason County Superior Court Judge Toni Sheldon, and the Amended Judgment entered on the same date.

Copies of the Amended Order on Attorney Fees and Costs entered December 21, 2012 and the Amended Judgment entered December 21, 2012 are attached.

The $290 appeal fee payable to the Mason County Clerk is tendered herewith.

DENNIS D. REYNOLDS LAW OFFICE
200 Winslow Way West, Suite 380
Bainbridge Island, WA 98110
(206) 780-6777
(206) 780-6865 (Facsimile)

DATED this 31st day of December, 2012.

DENNIS D. REYNOLDS LAW OFFICE

By _____
Dennis D. Reynolds, WSBA #04762
Attorneys for Plaintiffs

Counsel for the Defendants:

Bruce Finlay
Attorney at Law
1615 Olympic Hwy N
PO Box 3
Shelton, WA 98584

DENNIS D. REYNOLDS LAW OFFICE
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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify under penalty of perjury under the laws of the State of Washington, that I am now, and have at all times material hereto been, a resident of the State of Washington, over the age of 18 years, not a party to, nor interested in, the above-entitled action, and competent to be a witness herein.

I caused a true and correct copy of the foregoing pleading to be served this date, in the manner indicated, to the parties listed below:

Bruce J. Finlay, WSBA #18799 P.O. Box 3 Shelton, WA 98584-00003 Street Address: 1615 Olympic Highway N. (360) 432-1778, tel (360) 462-1779, fax brucef@hctc.com, email *Attorneys for Defendants*	☐ *Legal Messenger* ☐ *Hand Delivered* ☐ *Facsimile* ☑ *First Class Mail* ☐ *Express Mail, Next Day* ☑ *Email*

DATED at Bainbridge Island, Washington, this 31st day of December, 2012.

Christy A. Reynolds

Christy A. Reynolds
Legal Assistant

DENNIS D. REYNOLDS LAW OFFICE
200 Winslow Way West, Suite 380
Bainbridge Island, WA 98110
(206) 780-6777
(206) 780-6865 (Facsimile)

REC'D & FILED
MASON CO. WA.
2012 DEC 21 P 1: 2
GINGER BROOKS, CO. CLERK
BY _____ DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR MASON COUNTY

HAL MOORE and MELANIE MOORE, Husband and wife; and LESTER KRUEGER and BETTY KRUEGER, husband and wife; Plaintiffs, vs. STEVE'S OUTBOARD SERVICE, a sole proprietorship operating in Washington; STEVE LOVE and MARY LOU LOVE, husband and wife and the marital community they together compose; Defendants.	No. 06-2-00563-9 AMENDED ORDER ON ATTORNEY FEES AND COSTS

THIS MATTER first came on before the Court on the Defendants' Motion for Attorney Fees and Costs dated October 15, 2010 and Defendants' Supplemental Motion for Attorney Fees and Costs dated November 18, 2010. The Court reviewed the pleadings, including Plaintiffs' opposition to both motions, heard argument of counsel, and entered an Order on November 12, 2010 granting Defendants' Motion for Attorney Fees and Costs entitled "Court's Decision After Trial" and a second order on December 20, 2010 granting Defendants' Supplemental Motion for Attorneys Fees and Costs. Pursuant to appellate review and directive embodied in an Order Staying Appeal and Remand dated April 26, 2010 issued by the Court of Appeals, Division II, in Case No.41557-7-II, the Court heard argument on June 25, 2012 and July 2, 2012, and

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considered Defendants' Proposed Supplemental Findings of Fact and Conclusions of Law, Plaintiffs' Objections to Defendant's Proposed Findings of Fact and Conclusions of Law, Plaintiffs' Supplemental Objections to Defendant's Proposed Findings of Fact and Conclusions of Law, Plaintiffs' Briefs on Remand re liability and attorney fees, Plaintiffs' Citation of Additional Authority, and entered Supplemental Findings of Fact and Conclusions of Law Re: Attorneys Fees on November 13, 2012 after entering Supplemental Findings of Fact and Conclusions of Law Re: Liability on October 15, 2012. The Court now enters this Amended Order pursuant to its Supplemental Findings of Fact and Conclusions of Law Re: Attorneys Fees.

IT IS ORDERED that the Defendants are awarded total attorneys fees and costs of $28,907.44. This total amount includes $11,537.75 for attorney fees billed by Eisenhower and Carlson, PLLC and costs of $557.19, plus $16,812.50 billed by Bruce Finlay. The total attorneys fees and costs to be paid by the Plaintiffs is therefore $28,907.44. An Amended Judgment in the stated amount will be presented for entry by this Court in the total amount awarded of $28,907.44.

DONE this 21 day of December, 2012.

Toni A. Sheldon
JUDGE TONI A. SHELDON

Presented by:

Bruce Finlay
Bruce Finlay, WSBA #18799
Attorney for Defendants
PO Box 3
Shelton, WA 98584
(360) 432-1778, tel / (360) 462-1779 fax

Approved for entry:

Approved by email
Dennis D. Reynolds, WSBA #4762

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GINGER BROOKS, CO. CLERK
BY _____ DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR MASON COUNTY

HAL MOORE and MELANIE MOORE, Husband and wife; and LESTER KRUEGER and BETTY KRUEGER, husband and wife; Plaintiffs, vs. STEVE'S OUTBOARD SERVICE, a sole proprietorship operating in Washington; STEVE LOVE and MARY LOU LOVE, husband and wife and the marital community they together compose; Defendants.	No. 06-2-00563-9 AMENDED JUDGMENT

SUMMARY OF AMENDED JUDGMENT

Pursuant to RCW 4.64.030, the following information should be entered into the Clerk's Execution Docket which supersedes that certain Judgment entered in this matter on December 20, 2010.

1. Judgment Creditor: Steven Love and Mary Lou Love

2. Judgment Creditor's Attorney: Bruce Finlay

3. Judgment Debtor:
Hal and Melanie Moore husband and wife;
Lester and Betty Krueger husband and wife.

4. Amount of Amended Judgment: ~~$28,907.44~~ See below

TAS

5. Amount of Interest Owed to Date of Amended Judgment: N/A

TAS 6. Total of Judgment for Attorney Fees: $28,907.44

THIS MATTER was tried by the court, Judge Toni A. Sheldon, without jury, on June 3 and June 4, 2010. The Plaintiffs were present and represented by David Mann; the defendants were present and represented by Bruce Finlay. The court reviewed the file, heard testimony and argument, and found against the Plaintiffs and in favor of the Defendants, awarding $36, 035.69 to the Defendants as reasonable attorney's fees and costs, as set forth in the Defendants' attorneys' fee declarations. The court entered its first order on Defendants' motion for attorney's fees and costs on November 12, 2010 and order on Defendants' supplemental motion for attorney fees and costs on December 20, 2010. A Judgment in the amount of $36,035.69 in favor of Defendants was entered on the same date.

Plaintiffs timely appealed the stated orders and judgment to the Court of Appeals, Division II, Case No. 41557-7-II. Thereafter, on April 26, 2012, the Court of Appeals entered an Order Staying Appeal and Remand, and an additional Order of October 12, 2012, directing entry of Supplemental Findings of Fact and Conclusions of Law on liability and attorney fees and costs. Consistent with its Supplemental Findings of Fact and Conclusions of Law entered on October 15, 2012 and November 13, 2012 in this matter, and its Amended Order on Attorney

TAS Fees and Costs entered on 12-21-2012, the Court enters this amended judgment as follows: $28,907.44 awarded as reasonable attorney's fees against Plaintiffs Hal and Melanie Moore, husband and wife, and Lester and Betty Krueger, for a total of $28,907.44 in favor of and payable to Defendants Steve and Mary Lou Love. This amended judgment shall carry interest of 12% per annum of the reduced fee award from date of entry.

DONE this 21 day of December, 2012

JUDGE TONI A. SHELDON
MASON COUNTY SUPERIOR COURT

Presented by:

Bruce Finlay, WSBA #18799
Attorney for Defendants
PO Box 3
Shelton, WA 98584
(360) 432-1778, tel / (360) 462-1779 fax

Approved for entry:

Approved by email

Dennis D. Reynolds, WSBA #4762
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(206) 780-6777, tel / (206) 780-6865, fax

APPENDIX A-2
ORDINANCES

APPENDIX A-2-1

Chapter 14.04 - STATE AND UNIFORM CODES ADOPTED [8]

Sections:

14.04.010 - Uniform codes adopted.

14.04.010 - Uniform codes adopted.

(a) 2009 International Building Code (IBC), including Sections 101 through 107 and Appendix Chapters C, E, and H; excluding Section H106, published by the International Code Council, and excluding Appendix Chapters A, B, D, F, G, I, J, and K; and adopting the Washington State Building Code WAC 51-50, and the 2009 International Existing Building Code.

(b) 2009 International Residential Code for One- and Two-Family Dwellings (IRC), including Appendix Chapter G, as published by the International Code Council, excluding Part IV Energy, Part VII Plumbing, Part VIII Electrical and Appendix Chapters A, B, C, D, E, F, H, I, J, K, L, M, N, O, P, Q, R, and S; and adopting the Washington State Building Code WAC 51-51.

(c) 2009 International Fire Code, published by the International Code Council, excluding Appendices A, D, and K, and adopting Appendices B, C, E, F, G and adopting the Washington State Building Code WAC 51-54.

(d) 2009 International Mechanical Code, published by the International Code Council and adopting the 2009 International Fuel Gas Code through Section 101.2; adopting the Washington State Building Code WAC 51-52.

(e) 2009 Uniform Plumbing Code, published by the International Association of Plumbing and Mechanical Officials (IAPMO), excluding Section WAC 102.4 and Chapters 12, 15, and 16, Part I, and adopting the Washington State Building Code WAC 51-56 and WAC 51-57.

(f) Uniform Code for the Abatement of Dangerous Buildings, 1997 Edition, published by the International Conference of Building Officials.

(g) The Washington State Energy Code, WAC 51-11.

In the case of conflict among the codes enumerated in the above subsections of this section, the first shall govern over those following, save and except such portions as are hereinafter by this section deleted, modified, or amended, and from the effective date of the ordinance codified in this section the provisions thereof shall be controlling within the unincorporated areas of Mason County.

(Ord. No. 44-10, 5-25-2010)

FOOTNOTE(S):

[8] ***Editor's note***— *Ord. No. 44-10, adopted May 25, 2010, amended Chapter 14.04 in its entirety to read as herein set out. Former Chapter 14.04 pertained to the same subject matter and derived from Ord. 45-99, 1999; Ord. 59-04, 2004; and Ord. 64-07, 2007.* *(Back)*

Chapter 14.08 - BUILDING CODE AMENDMENTS [9]

Sections:

14.08.010 - General.
14.08.030 - IBC/IRC Section 105.1, Permits required.
14.08.035 - Preliminary inspection.
14.08.040 - IBC Section 105.5 and IRC Section R105.5, Expiration.
14.08.050 - Moved buildings.
14.08.100 - IBC 109.6/IRC R108.5, Refunds.
14.08.135 - IBC Section 113 and IRC Section R112, Board of appeal.

14.08.010 - General.

2009 International Building Code (IBC) and 2009 International Residential Code (IRC) are hereby amended. The amended sections shall supersede that section or table as numbered in said Building Code of Mason County. The amended sections are as follows in this chapter.

(Ord. No. 44-10, 5-25-2010)

14.08.030 - IBC/IRC Section 105.1, Permits required.

Section 105.1 is adopted, and supplemented with the following:

(1) Permits shall be required for all docks, piers, and floats, excluding floats which are less than 120 square feet, are detached and chain-anchored. Permits shall also be required for seawalls, bulkheads, or other similar structures, regardless of type of construction, including, but not limited to, rock, rip rap, pilings, wood and concrete block.

(2) Permits shall be required for park trailers, recreational park trailers, manufactured housing, commercial structures, commercial coaches, factory-built housing.

(3) Permits shall be required for the construction of vehicular and/or pedestrian bridges. Submittal documents such as plans, calculations and specifications must be stamped and approved by an engineer licensed in the State of Washington is required.

The Building Official may review and approve small private foot bridges not for vehicular use.

(4) Tenant Review Applications, Commercial (COM) Permits shall be required for commercial use buildings when there is a change in tenant prior to occupancy whether or not construction or alterations are performed or proposed and regardless of the use or occupancy classification. When a building is constructed with future tenant spaces intended to be finished or occupied at a later date, a separate permit is required for each tenant space prior to any tenant occupancy. The permit fee shall be as adopted under the current building permit fee schedule.

(Ord. No. 44-10, 5-25-2010)

14.08.035 - Preliminary inspection.

Before issuing a permit, the building official is authorized to examine, or cause to be examined, buildings, structures and sites for which an application has been filed.

(Ord. No. 44-10. 5-25-2010)

14.08.040 - IBC Section 105.5 and IRC Section R105.5, Expiration.

IBC Section 105.5 and IRC Section R105.5 are adopted and supplemented as follows:

If the permit expires without extensions granted or progress inspections performed, before such work can be recommenced, a permit shall be first obtained to do so, and the fee therefor shall be one-half the amount required for a new permit for such work, provided no changes have been made or will be made in the original plans and specifications for such work, and provided further that such suspension or abandonment has not exceeded one year. In order to renew action on an expired permit exceeding one year, the building official has authority to require a new permit be submitted for the completion of the structure with fees assessed for a new permit or charge a rate equivalent to the total hourly cost to the jurisdiction which shall include supervision overhead, equipment, hourly wages and fringe benefits of the staff involved to renew or reinstate the permit.

(Ord. No. 44-10, 5-25-2010)

14.08.050 - Moved buildings.

No person shall move any building into or within Mason County for the purpose of locating such building in Mason County, unless prior to moving, said building has been inspected for compliance with this code by the building official. The cost of said inspection for moving a building shall be payable in advance and not refundable. The inspection fee shall be based upon the current fee schedule as adopted by the jurisdiction at the time of application. A building permit shall be obtained prior to locating or relocating the structure and for all work necessary to comply with the building code on the new location.

(Ord. No. 44-10, 5-25-2010)

14.08.100 - IBC 109.6/IRC R108.5, Refunds.

The building official may authorize refunding of any fee paid hereunder, which was erroneously paid or collected. The building official may authorize refunding of not more than eighty percent of the permit fee paid when no work has been done under a permit issued in accordance with this code. The building official may authorize refunding of not more than eighty percent of the plan review fee paid when an application for a permit for which a plan review fee has been paid is withdrawn or canceled before any plan reviewing is done. The building official shall not authorize refunding of any fee paid except on written application filed by the original permittee not later than one hundred eighty days after the date of fee paid.

(Ord. No. 44-10, 5-25-2010)

14.08.135 - IBC Section 113 and IRC Section R112, Board of appeal.

Appeals of orders, decisions or determinations made by the building official/fire marshal shall be as set forth in the Mason County Code, Title 15 Mason County Development Code, Section 15.11.010, Appeals of administrative interpretations and decisions.

(Ord. No. 44-10, 5-25-2010)

FOOTNOTE(S):

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[9] ***Editor's note—*** *Ord. No. 44-10, adopted May 25, 2010, amended Chapter 14.08 in its entirety to read as herein set out. Former Chapter 14.08 pertained to the same subject matter and derived from Ord. 45-99, 1999; Ord. 59-04, 2004; and Ord. 64-07, 2007.* *(Back)*

Chapter 14.12 - VIOLATION AND PENALTIES [10]

Sections:

14.12.030 - Violation and penalties.
14.12.035 - Civil infractions.
14.12.040 - IBC Section 115 and IRC Section R114, Stop work order.
14.12.045 - Site investigation fee—Work without a permit.
14.12.048 - Violation permit fee—Work without a permit.
14.12.050 - Occupancy violations.

14.12.030 - Violation and penalties.

Shall be as prescribed in Title 15, Mason County Code.

(Ord. No. 44-10, 5-25-2010)

14.12.035 - Civil infractions.

Shall be as prescribed in Title 15, Mason County Code.

(Ord. No. 44-10, 5-25-2010)

14.12.040 - IBC Section 115 and IRC Section R114, Stop work order.

The posting of a stop work order shall be effective when posted at the location of the violation and shall constitute notice to the owner, owner's agent or person doing the work when posted. The removal, mutilation, destruction or concealment of a stop work order shall be subject to penalties as prescribed by the Mason County Code.

(Ord. No. 44-10, 5-25-2010)

14.12.045 - Site investigation fee—Work without a permit.

Whenever any work for which a permit is required by this code has been commenced without first obtaining said permit and a site investigation has been performed, a site inspection fee shall be assessed in accordance with the fee schedule adopted by the jurisdiction.

(Ord. No. 44-10, 5-25-2010)

14.12.048 - Violation permit fee—Work without a permit.

Whenever any work for which a permit is required by this code has been commenced without first obtaining said permit and a stop work order has been placed, a violation fee, equal to the amount of the permit fee shall be assessed in accordance with the fee schedule as adopted by the jurisdiction whether or not a permit is then or subsequently issued. The unlawful continuance of work without a permit after having been posted with a stop work order shall be subject to double violation fees upon the second posting of a stop work order and other penalties as prescribed for by Title 15, Mason County Code.

(Ord. No. 44-10, 5-25-2010)

14.12.050 - Occupancy violations.

Whenever any building or structure or equipment therein regulated by this code is being used contrary to the provisions of this code, the building official may order such use discontinued and the structure, or portion thereof, vacated by notice served on any person causing such use to be continued. Such person shall discontinue the use within the time prescribed by the building official after receipt of such notice to make the structure, or portion thereof, comply with the requirements of the code. It shall be a misdemeanor to occupy the posted building or structure, or to remove or deface the notice and shall be subject to penalties as prescribed for by Title 15, Mason County Code.

(Ord. No. 44-10, 5-25-2010)

FOOTNOTE(S):

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[10] ***Editor's note—*** *Ord. No. 44-10, adopted May 25, 2010, amended Chapter 14.12 in its entirety to read as herein set out. Former Chapter 14.12 pertained to the same subject matter and derived from Ord. 45-99, 1999; Ord. 59-04, 2004; and Ord. 64-07, 2007.* *(Back)*

APPENDIX A-2-2

Chapter 15.03 - ADMINISTRATION

Sections:

15.03.005 - Purpose and applicability.
15.03.010 - Roles and responsibilities.
15.03.015 - Application types and classification.
15.03.020 - Administrative direction.
15.03.030 - Board of county commissioners.
15.03.040 - Planning advisory commission.
15.03.050 - Hearing examiner.
15.03.060 - Process to remove utility and drainage easements.

15.03.005 - Purpose and applicability.

This title describes enforcement actions and how the county will process applications for development subject to review under the following titles of the Mason County Code and other ordinances and regulations of the county as listed below:

(1) Title 6 (Sanitary Code, enforcement only), including the following Mason County board of health regulations, which may not be codified in Title 6: on-site sewage regulation, Group B water system regulation, solid waste regulation, and water adequacy regulation;
(2) Title 7 (Shoreline Master Program);
(3) Title 8 (Environmental Policy);
(4) Title 8 (Resource Ordinance);
(5) Title 11 (Forest Practices);
(6) Title 13 (Utilities, enforcement only);
(7) Title 14 (Construction);
(8) Title 16 (Subdivision);
(9) Development regulations (Ordinance 82-96, as amended);
(10) Mason County flood damage prevention ordinance (as amended).

(Ord. 31-06, Attach. B (part), 2006: Ord. 50-04, Attach. B (part), 2004: Ord. 179-02, Attach. B (part), 2002; Ord. 142-02, Attach. B (part), 2002: Ord. 88-02, Attach. B (part), 2002: Ord. 116-01, Attach. A (part), 2001: Ord. 129-00, Attach. A § 2 (part), 2000: Res. 79-78 (part), 1998: Res. 136-96 (part), 1996).

15.03.010 - Roles and responsibilities.

(a) The regulation of land development is a cooperative activity including many different elected and appointed boards and county staff. The specific responsibilities of these bodies is set forth below.

(b) A developer is expected to read and understand the county development code and be prepared to fulfill the obligations placed on the developer by the Mason County Code and other ordinances and regulations of the county.

(Ord. 179-02, Attach. B (part), 2002; Ord. 142-02, Attach. B (part), 2002: Ord. 88-02, Attach. B (part), 2002: Ord. 116-01, Attach. A (part), 2001: Ord. 129-00, Attach. A § 2 (part), 2000: Res. 79-78 (part), 1998: Res. 136-96 (part), 1996).

15.03.015 - Application types and classification.

(a) Applications for review pursuant to Title 15 shall be subject to a Type I, Type II, Type III, or Type IV process.

(b) Unless otherwise required, where the county must approve more than one application for a given development, all applications required for the development may be submitted for review at one time. Where more than one application is submitted for a given development, and those applications are subject to different types of procedure, then all of the applications are subject to the highest-number procedure that applies to any of the applications.

(c) The review authority for the application in question shall classify the application as one of the four types of procedures.

(1) The act of classifying an application shall be an administrative interpretation, if written and transmitted to the applicant.

(2) Questions about what procedure is appropriate shall be resolved in favor of the type providing greatest notice and opportunity to participate.

(3) The review authority shall consider the following guidelines when classifying the procedure type for an application:

(A) A Type I (ministerial) process involves an application that is subject to clear, objective and nondiscretionary standards or standards that require an exercise of professional judgment about technical issues.

(B) A Type II (administrative) process involves an application that is subject to objective and subjective standards that require the exercise of limited discretion about nontechnical issues and about which there may be a limited public interest.

(C) A Type III (quasi-judicial) process involves an application for relatively few parcels and ownerships. It is subject to standards that require the exercise of substantial discretion and about which there may be a broad public interest.

(D) A Type IV (legislative) process involves the creation, implementation, or amendment of policy or law by ordinance. The subject of a Type IV process involves a relatively large geographic area containing many property owners, and a Type IV application should follow the format detailed in Section 15.09.060

(d) Type I and Type II Review—Without Notice—Letter of Completeness. Type I and Type II permit reviews, which are categorically exempt from environmental review under Chapter 43.21C RCW, or for which environmental review has been completed in connection with other permits, shall be excluded from the notice of application and notice of decision provisions in this title, except when specifically required for a particular category of project. Also a letter of completeness shall be at the option of the review authority, provided that, if no letter of completeness is prepared, the application is considered complete after twenty-eight days from receiving a date stamped application and within the meaning of Chapter 36.70B RCW.

(Ord. 179-02, Attach. B (part), 2002; Ord. 142-02, Attach. B (part), 2002: Ord. 88-02, Attach. B (part), 2002: Ord. 116-01, Attach. A (part), 2001: Ord. 129-00, Attach. A § 2 (part), 2000: Res. 79-78 (part), 1998: Res. 136-96 (part), 1996).

15.03.020 - Administrative direction.

Each director or authorized official shall review and act on the following:

(1) Review Authority. The director of community development, the director of health services, the fire marshal, and the building official, are responsible for the administration of the respective titles of the Mason County Code and ordinances. The responsibilities of the review authority may be delegated when not contrary to law or ordinance.

(2) Administrative Interpretation. Upon request or as determined necessary, the review authority shall interpret the meaning or application of the provisions of such titles and issue a written administrative interpretation within thirty days. Requests for interpretation shall be written and shall concisely identify the issue and desired interpretation.

(3) Administrative Decisions. Administrative approval, approval with conditions, or denial of permit applications as set forth in Sections 15.09.020, 15.09.030, and 15.09.040

(Ord. 179-02, Attach. B (part), 2002; Ord. 142-02, Attach. B (part), 2002: Ord. 88-02, Attach. B (part), 2002: Ord. 116-01, Attach. A (part), 2001: Ord. 129-00, Attach. A § 2 (part), 2000: Res. 79-78 (part), 1998: Res. 136-96 (part), 1996).

15.03.030 - Board of county commissioners.

The board of county commissioners shall review and act on:

(1) Type IV applications including changes to the Mason County comprehensive plan and land use regulations;

(2) Applications for removal of utility and drainage easements set forth in Section 15.03.060

(Ord. 50-04, Attach. B (part), 2004: Ord. 80-03, Attach. B (part), 2003; Ord. 179-02, Attach. B (part), 2002; Ord. 142-02, Attach. B (part), 2002: Ord. 88-02, Attach. B (part), 2002: Ord. 116-01, Attach. A (part), 2001: Ord. 129-00, Attach. A § 2 (part), 2000: Res. 79-78 (part), 1998: Res. 136-96 (part), 1996).

15.03.040 - Planning advisory commission.

The planning advisory commission shall review and make recommendations on the following applications and subjects:

(1) Amendments to the comprehensive plan and development regulations per RCW 36.70A.030;

(2) Subjects referred by ordinance.

(Ord. 179-02, Attach. B (part), 2002; Ord. 142-02, Attach. B (part), 2002: Ord. 88-02, Attach. B (part), 2002: Ord. 116-01, Attach. A (part), 2001: Ord. 129-00, Attach. A § 2 (part), 2000: Res. 79-78 (part), 1998: Res. 136-96 (part), 1996).

15.03.050 - Hearing examiner.

The hearing examiner shall review and act on the following subjects:

(1) Appeals of decisions of the building official on the interpretation or application of the building code;

(2) Revoking or modifying a permit or approval per Section 15.13.070

(3) Appeals of enforcement actions under the codes, ordinances and regulations listed under Section 15.03.005. Enforcement actions include interpretations and decisions made as part of the enforcement actions under the authority of provisions in Section 15.03.005

(4) Appeals of decisions of the fire marshal on interpretation or application of the fire code;

(5)

Enforcement actions as provided in Chapter 15.13

(6) Applications for preliminary and final plats;

(7) Appeal of administrative decisions by the department of community development as set forth in Sections 15.09.020, 15.09.030, and 15.09.040

(8) Appeal of threshold determination under Title 8 (Environmental Policy);

(9) Granting of variances, except for administrative variances;

(10) Other Type III permit reviews, including: large lot subdivisions involving a public hearing, Mason conditional environmental permits, forest practices moratorium removal, mobile home and recreational park permits, special use permits, reasonable use exceptions, and shoreline substantial development permits and conditional use permits;

(11) Plat vacation or amendments, pursuant to Chapter 58.17 RCW, and for the purpose of removing utility and drainage easements set forth in Section 15.03.060

(Ord. 31-06, Attach. B (part), 2006: Ord. 45-05 § 2 (part), 2005: Ord. 50-04, Attach. B (part), 2004: Ord. 61-03, Attach. B, 2003: Ord. 02-03 § 1, 2003: Ord. 179-02, Attach. B (part), 2002; Ord. 142-02, Attach. B (part), 2002: Ord. 88-02, Attach. B (part), 2002: Ord. 116-01, Attach. A (part), 2001: Ord. 129-00, Attach. A § 2 (part), 2000: Res. 79-78 (part), 1998: Res. 136-96 (part), 1996).

15.03.060 - Process to remove utility and drainage easements.

(a) County Has No Interest in Any Utility and Drainage Easement. The hearing examiner may review and act on applications and plat alterations for removal of utility and drainage easements. The hearing examiner may act on the removal of the easements without a public hearing, provided that all parties entitled to notice under RCW 58.17.080 and 58.17.090 shall be given notice, which provides an opportunity for a hearing, upon request, within fourteen days of the receipt of the notice.

(b) County Has Interest in Any Utility and Drainage Easement. The county commissioners may dispose of any county property interest in the utility and drainage easements when the county commissioners are in possession of a statement from the public works engineer and the utilities director, or the county administrator in their absence, that, in their opinion: the county has no interest in the easements, the easements are not needed, are not likely to be needed, and the easements have no known present or future value to the county. The disposal shall take place as set forth in Chapter 3.40 MCC and any applicable laws and regulations. After a public hearing, the hearing examiner may review and act on the application for the removal of a drainage and utility easements.

(Ord. 52-04, Attach. B, 2004: Ord. 77-03 § 1, 2003).

APPENDIX A-2-3

Chapter 15.11 - APPEALS

Sections:

15.11.010 - Appeal of administrative interpretations and decisions.
15.11.020 - Appeal to the hearing examiner.
15.11.030 - Appeal to state review boards.
15.11.040 - Judicial appeal.

15.11.010 - Appeal of administrative interpretations and decisions.

(a) Administrative interpretations and administrative decisions may be appealed, by applicants or parties of record, to the following hearing body, based upon the relevant code or ordinance as follows:

Hearing Examiner: Title 6 (Sanitary Code) and other regulations listed in Part 1 of Section 15.03.005, Title 7 (Shoreline Master Program), Title 8 (Environmental Policy and Resource), Title 11 (Forest Practices), Title 14 (Construction), Title 16 (Subdivision), and the development regulations, provided that appeals of the building official's notice and order shall be in accordance with Section 401 of the Uniform Code of Abatement (hereafter Section 401) and, shall be to the hearing examiner as specified in this chapter.

(b) The appeal shall be considered and decided within ninety days of receipt of a date stamped application, provided that the parties to an appeal may agree to extend these time periods, and provided that a shorter time period is not specified in the applicable code or regulation.

(Ord. 31-06, Attach. B (part), 2006: Ord. 45-05 § 2 (part), 2005: Ord. 80-03, Attach. B (part), 2003: Ord. 179-02, Attach. B (part), 2002; Ord. 142-02, Attach. B (part), 2002: Ord. 88-02, Attach. B (part), 2002: Ord. 116-01, Attach. A (part), 2001: Ord. 129-00, Attach. A § 2 (part), 2000: Res. 79-78 (part), 1998: Res. 136-96 (part), 1996).

15.11.020 - Appeal to the hearing examiner.

(a) Filing. Every appeal to the hearing examiner shall be filed with the clerk of the board within fourteen days after the date of the decision being appealed. The date of the decision and the date from which appeal periods shall be calculated shall be the date on which the written action was either mailed or transmitted by hand, whichever is done and whichever is earliest, to all parties for which transmittal is required for the action. This appeal period shall replace all other previously adopted appeal periods specified in the applicable ordinances.

(b) Contents. The application of appeal shall contain a concise statement identifying:

(1) The decision being appealed;

(2) The name and address of the appellant and his/her interest(s) in the matter;

(3) The specific reasons why the appellant believes the decision to be wrong. The appellant shall bear the burden of proving the decision was wrong;

(4) The desired outcome or changes to the decision;

(5) The appeals fee as provided for in the applicable ordinance.

(c) Procedure. An appeal before the hearing examiner shall be by procedures established by the

hearing examiner consistent with RCW 36.70B.

(Ord. 80-03, Attach. B (part), 2003: Ord. 179-02, Attach. B (part), 2002; Ord. 142-02, Attach. B (part), 2002: Ord. 88-02, Attach. B (part), 2002: Ord. 116-01, Attach. A (part), 2001: Ord. 129-00, Attach. A § 2 (part), 2000: Res. 79-78 (part), 1998: Res. 136-96 (part), 1996).

15.11.030 - Appeal to state review boards.

The appeal of the final decision of the hearing examiner may be filed to the appropriate state review board and is subject to the appeal processes of the review board (notification, review, hearing, and decision). The State Environmental Hearings Office processes appeals of shoreline permits, conditional uses, and variances; the State Department of Health processes appeals of public health and air-water quality issues.

(Ord. 80-03, Attach. B (part), 2003; Ord. 179-02, Attach. B (part), 2002; Ord. 142-02, Attach. B (part), 2002: Ord. 88-02, Attach. B (part), 2002: Ord. 116-01, Attach. A (part), 2001: Ord. 129-00, Attach. A § 2 (part), 2000: Res. 79-78 (part), 1998: Res. 136-96 (part), 1996).

15.11.040 - Judicial appeal.

(a) Appeals from the final decision of the hearing examiner involving those codes and ordinances to which this title applies, and for which all other appeals specifically authorized have been timely exhausted, shall be made to Mason County superior court within twenty-one days of the date the decision or action became final, unless preempted by state law.

(b) Notice of the appeal and any other pleadings required to be filed with the court shall be served on the clerk of the board of county commissioners and prosecuting attorney within the applicable time period. This requirement is jurisdictional.

(c) The cost of transcribing and preparing all records ordered certified by the court or desired by the appellant for such appeal shall be borne by the appellant.

(Ord. 80-03, Attach. B (part), 2003; Ord. 179-02, Attach. B (part), 2002; Ord. 142-02, Attach. B (part), 2002: Ord. 88-02, Attach. B (part), 2002: Ord. 116-01, Attach. A (part), 2001: Ord. 129-00, Attach. A § 2 (part), 2000: Res. 79-78 (part), 1998: Res. 136-96 (part), 1996).

APPENDIX A-2-4

17.07.120 - Permitted uses.

Permitted uses for the neighborhood residential district are as follows:

A. Single-family dwellings at a density of not less than four units per net residential acre (net residential acre is defined as the total usable area excluding roads, critical areas and easements), except that density requirements shall not apply to lots platted prior to the adoption of the ordinance codified in this chapter.

B. Two duplexes or triplexes shall be allowed per "block" (block is defined as a rectangular piece of land enclosed in a grid of streets), provided the design standards of Section 17.07.900 of this title are satisfied; additional duplexes or triplexes shall require a special use permit as outlined in Chapter 17.05 of this title;

C. Secondary dwelling units, subject to the design requirements of Section 17.07.900 of this title, provided:

1. One secondary dwelling unit shall be allowed per legal building lot as a subordinate use in conjunction with any single-family structure;

D. Multifamily dwelling units developed in accordance with Chapter 17.70, Master Planned Developments of the Mason County Code. "Multifamily" is defined as a building containing separate dwelling units arranged to be occupied by more than three families living independently of one another;

E. Parks, publicly owned and operated;

F. Family Day Care Provider;

G. Accessory uses and buildings including but not limited to the following:

1. Accessory buildings or structures, not including barns or agricultural structures, which are clearly incidental to the residential use of the lot, such as buildings or structures for storage of personal property (including boats, recreational vehicles, etc.), or for the pursuit of avocational interests; or structures designed for and related to recreational needs of the residents of a residential complex. Accessory buildings shall be complementary to the basic architectural character of the main building on the lot, and appropriate to the accessory use;

2. Agricultural uses and structures not involving retail sales on the premises and limited as follows:

a. On lots or parcels of one acre or more, poultry and/or livestock may be kept provided that the number of head of livestock shall not exceed one for each half acre of lot area, and not more than twenty birds or fowl per acre. Barns or other structures for the housing or sheltering thereof shall be set back not less than thirty-five feet from all property lines and not less than fifty feet from any existing residential dwelling unit on adjoining property;

3. Home occupations which comply with all the conditions as set forth in Chapter 17.03 of the Mason County Code;

4. The keeping of common household animals or pets (excluding cats kept indoors) is limited to four. Other small animals kept indoors as household pets in aquariums, terrariums, cages, or similar containers are not limited in number.

(Ord. No. 47-09, Attach. A, 6-2-2009)

17.07.130 - Special uses.

Special uses as listed below require a special use permit as provided in Chapter 17.05 of this title, and subject to applicable conditions as found in that chapter. Special uses include but are not limited to:

A. Bed and breakfast inns;
B. Convalescent centers/care facilities;
C. Group Homes;
D. Cemeteries, including mausoleums;
E. Churches;
F. Community Clubs;
G. Library;
H. Schools, public or private.

(Ord. No. 47-09, Attach. A, 6-2-2009)

17.07.140 - Prohibited uses.

Uses other than those identified or described in Section 17.07.120 or 17.07.130 are prohibited.

(Ord. No. 47-09, Attach. A, 6-2-2009)

APPENDIX A-2-5

17.50.020 - Purpose.

This title is intended to carry out the responsibilities given Mason County by the Shoreline Management Act of 1971 (RCW 90.58). The actual purpose of the use regulations is the same as the purpose of the Act itself and more fully outlined in the Mason County Comprehensive Plan Chapter IX Shoreline Master Program. The master program provides for the management of the shorelines by fostering all reasonable and appropriate uses. These regulations are intended to protect against adverse effects on the public health, on the land and its vegetation and wildlife, and the waters and their aquatic life.

(Ord. No. 108-05, Att. B, 11-29-2005)

17.50.030 - Application of regulations.

These regulations shall apply to all the lands and waters that are designated in WAC 173-18, WAC 173-20, and WAC 173-22 to be under the jurisdiction of the Shoreline Management Act of 1971.

17.50.031 These regulations shall apply to every person, firm, corporation, local and state governmental agencies and other non-federal entities that would develop, use, or own lands, wetlands, or waters under the control of the master program.

17.50.032 Adjacent Lands. The purpose of this subsection is to discuss the coordination of development of lands adjacent to shorelines with the policies of the master program and the Shoreline Management Act. A development undertaken without obtaining the applicable shoreline permits or which is inconsistent with the regulations of the master program, is unlawful. On the other hand, a use or development which is to some extent inconsistent with a policy plan may not be unlawful, but may be denied or conditioned on the basis of its inconsistency with the plan. These principles apply to the regulation of shoreline and adjacent lands:

a. Part of the property is inside the shoreline, part is outside, and all of the development is outside the shoreline. No shoreline permit is required because all of the "development" lies outside the shoreline. However, uses and actions within the shoreline, though they do not constitute "development" must be consistent with the regulations of the Act and shoreline program. Change of use within shoreline jurisdiction may require a conditional use permit.

b. Part of the property is in the shoreline, part is outside, and all or part of the development is proposed within the shoreline. A permit is required for "development" within the shorelines. In addition, uses and other actions within the shorelines must comply with master program regulations. Furthermore, when the development proposal consists of a single, integrated project and a shoreline permit is required due to development within the shorelines, review and approval of development outside the shorelines may be postponed until shoreline permit review is accomplished if the public interest would be served by such a review sequence. Finally, although development conditions may be attached to developments within shorelines, conditions may not be attached, pursuant to the Shoreline Management Act, to aspects of a development lying outside the shorelines.

17.50.033 Developments and Uses Subject to Several Regulatory Sections. Some proposed developments or uses will be subject to more than one regulatory section of this program. For example, a proposed marina may be subject to regulations concerning "dredging, landfilling, marinas", etc. A proposed development must be reviewed for consistency with the regulations of each applicable section.

17.50.034 Unspecified Uses. These regulations and the master program in its entirety do not attempt to identify or foresee all conceivable shoreline uses or types of development. When a use or development is

proposed which is not readily classified within an existing use or development category, the unspecified use must be reviewed as a conditional use and performance standards relating to the most relevant category shall be used.

(Ord. No. 108-05, Att. B, 11-29-2005)

17.50.040 - Definitions.

For the purpose of this title, certain terms and words are defined in this chapter. All defined uses are subject to existing local, state and health regulations.

"Accessory Facilities." A use that is demonstrably subordinate and incidental to the principal use and which functionally supports its activities, including parking. The standards of performance for a development shall apply to an accessory facility unless otherwise indicated.

"Accessory Living Quarters." Separate living quarters attached or detached from the primary residence which contain less habitable area than the primary residence and which are used by guests, employees, or immediate family members of occupant of primary residence; provided no accessory living quarters shall be rented or leased, and are subject to all health department requirements.

"Act (Shoreline Management)." Act adopted by state legislature in 1971 which defines shoreline jurisdiction and authorizes the development of Shoreline Master Programs.

"Administrator." The director, Mason County Department of General Services.

"Advisory Board (Shorelines)." A board, appointed by the board of county commissioners.

"Agricultural Practices." Any activity whether for commercial or recreational use directly pertaining to production of food, fiber or livestock including but not limited to cultivation, harvest, grazing, animal waste storage and disposal, fertilization, suppression or prevention of diseases and insects.

"Agriculture." The farming or raising of livestock, crops, berries, fruit, nursery stock on land, and may require development such as buildings, feed lots, fences, ditches, bridges, ponds, wells, grading, as well as use of native pasture and woodlots.

"Application." A substantial development permit application, variance permit application, conditional use permit application, or exemption application.

"Appurtenant Structure." A structure which is necessarily connected to the use and enjoyment of a single-family residence and is located landward of the ordinary high water mark and the perimeter of a wetland. Normal appurtenant structures include a garage; deck; driveway; utilities; storage shed (one story - less than six hundred square feet), woodshed, pump house, upland retaining wall and grading which does not exceed two hundred fifty cubic yards and which does not involve placement of fill in any wetland or waterward of the ordinary high water mark.

"Aquaculture." Aquaculture involves the culture and farming of food fish, shellfish and other aquatic animals and plants in lakes, streams, inlets, bays and estuaries. Methods of aquaculture include, but are not limited to, fish pens, shellfish rafts, racks and longlines, seaweed floats and the culture of clams and oysters on tidelands and subtidal areas. Excluded from this definition are related commercial or industrial uses such as wholesale and retail sales, or final processing and freezing.

"Aquaculture Practices." Any activity directly pertaining to growing, handling, or harvesting of aquaculture produce including, but not limited to, propagation, stocking, feeding, disease and pest treatment, waste disposal,

water use, development of habitat, maintenance and construction of necessary equipment building and growing areas.

"Average Grade Level." The average of the natural or existing topography of the portion of the lot, parcel, or tract of real property which will be directly under the proposed structure and shall be determined by averaging the ground elevations at the midpoint of all exterior walls of the proposed structure: provided, that in the case of structures to be built over the water, average grade level shall be the elevation of the ordinary high water mark.

"Board." The Board of County Commissioners of Mason County.

"Boat House." Any walled and/or roofed structure built on shore or offshore for storage of watercraft or float planes.

"Boat Ramp." An inclined slab, set of pads, planks, or graded slope used for transferring marine vessels or equipment to or from land or water.

"Bog." A depression or other undrained or poorly drained area containing or covered with usually more than one layer of peat. Characteristic vegetation of bogs are sedges, reeds, rushes, or mosses. In early stages of development, vegetation is herbaceous and the peat is very wet. In middle stages, dominant vegetation is shrubs. In mature stages, trees are dominant and peat near the surface may be comparatively dry. (Bogs represent the final stage of the natural process (eutrophication) by which lakes are very slowly transformed into land; bogs are sometimes mined for peat on a commercial basis; bogs are often an intake for ground water (aquifer recharge area).

"Breakwaters." Offshore structures which may or may not be connected to land. Their primary purpose is to protect harbors, moorages and navigation activity from wave and wind action by creating still water areas. A secondary purpose would be to protect shorelines from wave-caused erosion.

"Bulkhead." Retaining wall-like structures whose primary purpose is to hold or prevent sliding of soil caused by erosion and wave action, and to protect uplands and fills from erosion by wave action.

"Channelization." The straightening, deepening or lining of natural stream channels, including construction of continuous revetments or levees for the purpose of preventing gradual, natural meander progression.

"Commercial Development." The primary use is for retail or wholesale trade or other business activities.

"Community Dock." A dock development providing moorage for pleasure craft and recreational activities for use in common by residents of a certain subdivision or community. Marinas are not considered community docks.

"Commercial Feedlot." An enclosure or facility used or capable of being used for feeding livestock hay, grain, silage, or other livestock feed, but shall not include land for growing crops or vegetation for livestock feeding and/or grazing, nor shall it include normal livestock wintering operations. Said enclosure/facility for commercial livestock.

"Conditional Use." Conditional use means a use, development, or substantial development which is classified as a conditional use or not classified within this master program.

"Conservancy Environment." Conservancy environment means that environment in which the objective is to protect, conserve and manage existing natural resources and valuable historic and cultural areas in order to ensure a continuous flow of recreational benefits to the public and to achieve sustained resource utilization. The conservancy environment is for those areas which are intended to maintain their existing character. The preferred uses are those which are by nature nonconsumptive of the physical and biological resources of the area. Nonconsumptive uses are those uses which can utilize resources on a sustained yield basis while minimally

reducing opportunities for other future uses of the resources in the area. Activities and uses of a nonpermanent nature which do not substantially degrade the existing character of an area are appropriate uses for a conservancy environment. Examples of uses that might be predominant in a conservancy environment include diffuse outdoor recreation activities, timber harvesting on a sustained yield basis, passive agricultural uses such as pasture and range lands and other related uses and activities. Compatible commercial uses are low intensity and low impact activities such as small camping or picnic facilities (less than ten spaces), aquacultural retail booths (less than six hundred square feet) and cottage industries when the operation is entirely contained within the primary residence excluding outbuildings, provided, such commercial activities must not alter the character of the conservancy environment. The designation of conservancy environments should seek to satisfy the needs of the community as to the present and future location of recreational areas proximate to concentrations of population, either existing or projected. The conservancy environment would also be the most suitable designation for those areas which present too severe biophysical limitations to be designated as rural or urban environments. Such limitations would include areas of steep slopes presenting erosion and slide hazards, areas prone to flooding, and areas which cannot provide adequate water supply or sewage disposal.

"Cottage Industry." Small scale commercial or industrial activities on residential properties performed in the residence or building accessory thereto. The principle practitioner must reside on the property. Cottage industries are considered as residential uses and minor commercial development and substantial developments under this master program provided they do not alter the character of the site as a residential property and wholesale and retail trade is minimal. Cottage industries must comply with all applicable county ordinances and require a conditional use permit.

"County." Mason County.

"Covered Moorage." A roofed, floating or fixed offshore structure for moorage of watercraft or float planes.

"Dam." A barrier across a streamway to confine or regulate stream flow or raise water level for purposes such as flood or irrigation water storage, erosion control, power generation, or collection of sediment or debris.

"Department." The Washington State Department of Ecology (WDOE).

"Development." A use consisting of the construction or exterior alteration of structures; dredging; drilling; dumping; filling; removal of any sand, gravel or minerals; bulkheading; driving of piling; placing of obstructions; or any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to the Act at any state of water level.

"Dike." An artificial embankment or revetment normally set back from the bank or channel in the floodplain for the purpose of keeping floodwaters from inundating adjacent land.

"Dock." A structure built over or floating upon the water, used as a landing place for marine transport, or for commercial or recreational purposes.

"Dredging." The removal, displacement, and disposal of unconsolidated earth material such as silt, sand, gravel, or other submerged material from the bottom of water bodies, ditches or biological wetlands; maintenance dredging and other support activities are included in this definition.

"Dredge Spoil." The material removed by dredging.

"Drift Sector." A segment of the shoreline along which littoral along shore movements of sediments occur at noticeable rates. Each drift sector includes a feed source that supplies the sediment, a driftway along which the sediment moves, and an accretion terminal where the drift material is deposited.

"Duplex." A two-family house whether divided vertically or horizontally. A duplex is not exempt from a substantial development permit as is a single-family residence.

"Emergency Repair." Emergency construction necessary to protect property from damage by the elements as per WAC 173-27-040, as amended.

"Environment Designations Map." The official map associated with this master program and adopted by ordinance that shows the jurisdiction of the Act and this program and the boundaries of the environments.

"Exemption." Exempt developments are those set forth in WAC 173-27-040 and RCW 90.58.030(3)(e), 90.58.140(9), 90.58.147, 90.58.355, 90.58.390 and 90.58.515 which are not required to obtain a substantial development permit but which must otherwise comply with applicable provisions of the Act and this master program.

"Extreme Low Tide." The lowest line on the land reached by a receding tide.

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

"Feedlot." An enclosure or facility used or capable of being used for feeding of livestock hay, grain silage, or other livestock feed, but shall not include, land for growing crops or vegetation for livestock feeding and/or grazing, nor shall it include normal livestock wintering operations.

"Fetch." The perpendicular distance across the channel or inlet.

"Floodway." Those portions of the area of a river valley lying streamward from the outer limits of a watercourse upon which floodwaters are carried during periods of flooding that occur with reasonable regularity, although not necessarily annually, said floodway being identified, under normal condition by changes in surface soil conditions or changes in types or quality of vegetative ground cover condition. The floodway shall not include those lands that can reasonable be expected to be protected from floodwaters by flood control devices maintained by or maintained under license from the federal government, the state, or a political subdivision of the state. The limit of the floodway is that which has been established in flood regulation ordinance maps or by a reasonable method that meets the objectives of the Act (WAC 173-22-030(3)).

"Floodplain." One hundred-year floodplain and means that area susceptible to being inundated by stream derived waters with a one percent chance of being equaled or exceeded in any given year.

"Forest Practices." Any activity conducted on or directly pertaining to forest land and related growing, harvesting, or processing of timber including, but not limited to:

(1) Road and trail construction,
(2) Harvesting,
(3) Pre-commercial thinning,
(4) Reforestation,
(5) Fertilization,
(6) Prevention and suppression of diseases and insects,
(7) Salvage of timber,

(8) Brush control, and

(9) Slash and debris disposal.

Excluded from this definition is preparatory work such as tree marking, surveying and removal of incidental vegetation such as berries, greenery, or other natural product whose removal cannot normally be expected to result in damage to shoreline natural features. Log storage away from forestlands is considered under industry.

"Groins." A barrier type of structure extending from the beach or bank into a water body for the purpose of the protection of a shoreline and adjacent uplands by influencing the movement of water or deposition of materials. Generally narrow and of varying lengths, groins may be built in a series along the shore.

"Hearings Board." The state shorelines hearings board established by the Act in RCW 90.58.170.

"Height." Height is measured from average grade level to the highest point of a structure: provided, that television antennas, chimneys, and similar appurtenances shall not be used in calculating height, except where such appurtenances obstruct the view of the shoreline of a substantial number of residences on areas adjoining such shorelines, or this master program specifically requires that such appurtenances be included: provided further, that temporary construction equipment is excluded in this calculation.

"Home Occupation." A business conducted within a dwelling which is the residence of the principal practitioner. A home occupation may be reviewed as a residential use provided it complies with all applicable county ordinances and no alteration is made to the exterior of the residence or site which would alter the character of the site as residential property including parking and signs. Home occupations, which require more than two thousand five hundred dollars in exterior development costs, require a substantial development permit.

"Industrial Development." Facilities for processing, manufacturing, and storage of finished or semifinished products, together with necessary accessory uses such as parking, loading, and waste storage and treatment.

"Jetties." Structures generally perpendicular to shore extending through or past the intertidal zone. They are built singly or in pairs at harbor entrances or river mouths mainly to prevent shoaling or accretion from littoral drift. Jetties also serve to protect channels and inlets from storm waves or cross currents.

"Joint-Use Private Dock." A dock or float for pleasure craft moorage or water sports for exclusive use by two or more waterfront lot owners, excluding marinas.

"Landfill." The creation of or addition to a dry upland area by depositing materials. Depositing topsoil in a dry upland area for normal landscaping purposes is not considered a landfill.

"Littoral Drift (or transport)." The natural movement of sediment, particularly sand and gravel, along shorelines by wave action in response to prevailing winds or by stream currents. (See Drift Sector.)

"Marina." A commercial moorage with or without dry storage facility for over ten pleasure or commercial craft excluding canoes, kayaks and rowboats. Goods or services related to boating may be sold commercially. Uses associated with marinas shall conform to the regulations for these uses.

"Marine Waters." All bodies of water having a connection with the open sea and which are tidally influenced, together with adjoining transitional and estuarine areas where average ocean derived salts exceed five parts per thousand.

"Master Program." Mason County program for regulation and management of the shorelines of the state including goals and policies, use regulations, maps, diagrams, charts and any other text included in the program. The enforceable provisions of the master program are embodied in this ordinance [chapter].

"Mean Higher High Tide." The elevation determined by averaging each day's highest tide in a particular saltwater shoreline area over a period of eighteen and six-tenths years.

"Mining." The removal of sand, gravel, minerals or other naturally occurring materials from the earth.

"Multifamily Dwelling." A building designed or used for a residence by three or more household units, including, but not limited to, apartments, condominium complexes, and townhouses.

"Natural Environment." The natural environment is intended to preserve and restore those natural resource systems existing relatively free of human influence. Local policies to achieve this objective should aim to regulate all potential developments degrading or changing the natural characteristics that make these areas unique and valuable. The main emphasis of regulation in these areas should be on natural systems and resources, which require severe restrictions of intensities and types of uses to maintain them in a natural state. Therefore, activities which may degrade the actual or potential value of this environment, should be strictly regulated. Any activity that would bring about a change in the existing situation would be desirable only if such a change would contribute to the preservation of the existing character. The primary determinant for designating an area as a natural environment is the actual presence of some unique natural or cultural features considered valuable in their natural or original condition which are relatively intolerant of intensive human use.

"Nonconforming Development." A shoreline use, structure or lot which was lawfully constructed or established prior to the effective date of the Act, or the master program, or amendments thereto, but which does not conform to present regulations or standards of the program or policies of the Act.

"Normal Maintenance." Those usual acts to prevent a decline, lapse or cessation from a lawfully established condition.

"Normal Repair." To restore a development to a state comparable to its original condition, including, but not limited to, its size, shape, configuration, location and external appearance, within a reasonable period after decay or partial destruction except where repair involves total replacement which is not common practice or causes substantial adverse effects to the shoreline resource or environment (WAC 173-27-040, as amended). A reasonable period of time for repair shall be up to one year after decay or partial destruction, except for bulkhead replacement which shall be allowed up to five years. Total replacement that is common practice includes, but is not limited to, floats, bulkheads and structures damaged by accident, fire and the elements.

"Normal Protective Bulkhead" (also referred to as "erosion control bulkhead"). A retaining wall-like structure constructed at or near ordinary high water mark to protect a single-family residence or lot upon which a single-family residence is being constructed and is for protecting land from erosion, not for the purpose of creating land.

"Ordinary High Water Mark (OHWM)." On all lakes, streams, and tidal water is that mark that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation as that condition exists on June 1, 1971, or as it may naturally change thereafter or as it may change thereafter in accordance with permits issued by local government or the department provided that in any area where the ordinary high water mark cannot be found, the ordinary high water mark adjoining salt water shall be the line of mean higher high tide and the ordinary high water mark adjoining fresh water shall be the line of mean high water. (WAC 173-22-030 as amended.)

"Permit." A shoreline substantial development permit, conditional use permit, or variance permit, any combination thereof, or their revisions, issued by Mason County Pursuant to RCW 90.58.

"Person." An individual, partnership, corporation, association, organization, cooperative, public or municipal corporation, or agency of the state or local governmental unit however designated.

"Pier." An open pile structure generally built from the shore extending out over the water to provide moorage for private recreation, commercial or industrial watercraft and/or float planes.

"Plot Plan." An area drawing to scale of proposed project showing existing structures and improvements including wells, septic tanks and drainfields, proposed structures and other improvements and the line of ordinary high water.

"Port Development." Public or private facilities for transfer of cargo or passengers from water-borne craft to land and vice versa; including, but not limited to, piers, wharves, sea islands, commercial float plane moorages, off-shore loading or unloading buoys, ferry terminals, and required dredged waterways, moorage basins and equipment for transferring cargo or passengers between land and water modes. Excluded from this definition and dealt with elsewhere are marinas, boat ramps or docks used primarily for recreation, cargo storage and parking areas not essential for port operations, boat building or repair. The latter group are considered as industrial or accessory to other uses.

"Recreational Development." Recreational development includes facilities such as campgrounds, recreational vehicle parks, day use parks, etc.

"Residential Development." The development of land or construction or placement of dwelling units for residential occupancy.

"Revetment." A sloped wall constructed of rip rap or other suitable material placed on stream banks or other shorelines to retard bank erosion from high velocity currents or waves respectively.

"Rip Rap." Dense, hard, angular rock used to armor revetments or other flood control works.

"Road and Railway Development." Includes also related bridges and culverts, fills, embankments, causeways, parking areas, truck terminals and rail switchyards, sidings and spurs. These are addressed under "recreation and forest practices."

"Rural Environment." The rural environment is intended to protect agricultural land from urban expansion, restrict intensive development along undeveloped shorelines, function as a buffer between urban areas, and maintain open spaces and opportunities for recreational uses compatible with agricultural activities. The rural environment is intended for those areas characterized by intensive agricultural and recreational development. Hence, those areas that are already used for agricultural purposes, or which have agricultural potential should be maintained for present and future agricultural needs. Designation of rural environments should also seek to alleviate pressures or urban expansion on prime farming areas. New developments in a rural environment are to reflect the character of the surrounding area by limiting residential density, providing permanent open space and maintaining adequate building setbacks from the water to prevent shoreline resources from being destroyed for other rural types of uses. Public recreation facilities for public use, which can be located and designed to minimize conflicts with agricultural activities, are recommended for the rural environment. Linear water access which will prevent overcrowding in any one area, trail systems for safe nonmotorized traffic along scenic corridors and provisions for recreational viewing of water areas illustrate some of the ways to ensure maximum enjoyment of recreational opportunities along shorelines without conflicting with agricultural uses. In a similar fashion, agricultural activities should be conducted in a manner that will enhance the opportunities for shoreline recreation. Farm management practices that prevent erosion and subsequent siltation of water bodies and minimize the flow of waste material into watercourses are to be encouraged by the master program for rural environments.

"Shorelands." Those lands extending landward for two hundred feet in all directions, as measured on a horizontal plane from the ordinary high water mark, floodways and contiguous floodplain areas landward two hundred feet from such floodways, and all wetlands and river deltas associated with the streams, lakes and tidal waters which are subject to the provisions of the Act and this master program.

"Shorelines." All of the water areas of the state, including reservoirs, and their associated shorelands, together with the lands underlying them; except:

(1) Shorelines of statewide significance;
(2) Shorelines on segments of streams upstream of a point where the mean annual flow is twenty cubic feet per second or less and the wetlands associated with such upstream segments; and
(3) Shorelines on lakes less than twenty acres in size and wetlands associated with such small lakes.

"Shorelines of Statewide Significance." Those shoreline areas as defined in RCW 90.58-030(2)(e), and, specifically the following bodies and associated shorelands in Mason County: Hood Canal, Lake Cushman, the Skokomish River from the confluence of the North Fork of the Skokomish River and the South Fork of the Skokomish River, downstream to the Great Bend of Hood Canal (excluding that portion within the Skokomish Indian Reservation), and all saltwater bodies below the line of extreme low tide.

"Shorelines of the State." The total of all "shorelines" and shorelines of "state-wide significance".

"Shoreline Permit." One or more of the following permits: substantial development permit, conditional use permit, or variance.

"Single-family Residence." A detached dwelling designed for and occupied by one family, including those structures and developments within a contiguous ownership that are normal appurtenance.

"Structure." A building or edifice of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner.

"Subdivision." The division or redivision of land for purposes of sale, lease or transfer of ownership into five or more lots, any one of which is smaller than five acres or one one-hundred-twenty-eighth of a section of land.

"Substantial Development." Any development of which the total cost or fair market value exceeds five thousand dollars, or any development which materially interferes with normal public use of the water or shorelines of the state; except that those developments defined above as an "exemption" do not require a substantial development permit but may require a variance or conditional use permit.

"Tideland." The land on the shore of marine water bodies between OHWM or MHHW and the line of extreme low tide which is submerged daily by tides.

"Upland." Those shoreline areas landward of OHWM except berms, backshores, natural wetlands, and floodplains.

"Urban Environment." Those shorelines designated for urban uses provided that industrial development is prohibited in all categories except the urban industrial designation. The urban area is an area of high intensity land use including residential, commercial, and industrial development. The environment does not necessarily include all shorelines within an incorporated city, but is particularly suitable to those areas presently subjected to extremely intensive use pressure, as well as areas planned to accommodate urban expansion. Shorelines planned for urban expansion should present few biophysical limitations for urban activities and not have a high priority for designation as an alternative environment. Because shorelines suitable for urban industrial uses are a limited resource, emphasis should be given to development within already developed areas and do not have a high priority for designation as an alternative environment.

"Urban Industrial." The objective of the urban industrial environment is to ensure optimum utilization of shorelines within urbanized areas by managing industrial development. The urban industrial environment is an area of high intensity industrial land use. The environment does not necessarily include all shorelines within an unincorporated city, but is particularly suitable to those areas presently subjected to extremely intensive use

pressure, as well as areas planned to accommodate industrial expansion. Shorelines planned for future industrial expansion should not have a high priority for designation as an alternative environment. Because shorelines suitable for urban industrial uses are a limited resource, emphasis should be given to development within already developed areas and particularly to water-dependent industrial uses requiring frontage on navigable waters. Industrial development is prohibited in all categories but urban industrial environment.

"Urban Commercial." The objective of the urban commercial environment is to ensure optimum utilization of shoreline within urbanized areas by managing commercial development. The urban commercial environment is an area of high intensity commercial land use. The environment does not necessarily include all shorelines within an unincorporated city, but is particularly suitable to those areas presently subjected to extremely intensive use pressure, as well as areas planned to accommodate commercial expansion. Shorelines planned for future commercial expansion should not have a high priority for designation as an alternative environment. Because shorelines suitable for urban commercial uses are a limited resource, emphasis should be given to development within already developed areas and particularly to water-dependent commercial uses requiring frontage on navigable waters.

"Urban Residential." The objective of the urban residential environment is to ensure optimum utilization of shorelines for residential development. The urban residential environment is an area of high intensity residential land use. Shorelines planned for future residential expansion should have few geographic limitations and not have a high priority for designation as an alternative environment.

"Variance." An adjustment in the application of this program's regulations to a particular site pursuant to Chapter 7.28, to grant relief from a specific bulk, dimensional or performance standards set forth in the applicable master program and not a means to vary the use of a shoreline.

"Vector." An organism that carries and transports disease (i.e., rat, fly).

"Water Dependent Use." A use that cannot exist in other than a waterfront location and is dependent on the water by reason of the intrinsic nature of its operation. Examples include, but are not limited to, cargo terminal loading areas, barge loading, ship building, repair, servicing and dry docking, aquaculture and log booming.

"Water-oriented Use." A use that provides the opportunity for a substantial number of the general public to enjoy the shoreline without causing significant adverse impacts upon other uses and shore features. Examples include, but are not limited to, restaurants, parks, recreation areas, marine or freshwater educational facilities, fresh seafood only retail sales. The use must be consistent with at least one of the following:

(1) Offer a view of waterfront activities;
(2) Make use of a unique characteristic of the site; and
(3) Support other proximate water dependent, water-related or water-oriented activities.

"Water-related Use." A use that is not intrinsically dependent on a waterfront location but whose operation cannot occur economically and functionally without a shoreline location. Examples include, but are not limited to, warehousing of goods transported by water, seafood processing, oil refineries, paper and wood mills (if materials or products are water transported) and ships' parts and equipment fabrication.

"Wetlands." Areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from non-wetland sites including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, waste water treatment facilities, farm ponds, and landscape amenities. However, wetlands may include those artificial wetlands intentionally created from non-wetland areas created to mitigate conversion of wetlands, if permitted by the county.

(Ord. No. 108-05, Att. B, 11-29-2005)

17.50.050 - Project classifications.

Development proposals that propose to locate along the shoreline are categorized within each shoreline designation as "permitted", "conditional uses", or "prohibited". This priority system determines the proposal's administrative requirements and encourages activities that are compatible with each shoreline designation.

During application review, the basic element or intent of a proposed development will guide in the determination of the proposal's particular use activity. When a proposal contains two or more use activities, including accessory uses, the most restrictive category will be applied to the entire proposal.

DEFINITIONS:

"Permitted." Those uses that are preferable and meet the policies of the particular shoreline designation, but because of their dollar value require a substantial development permit or any development that materially interferes with the normal public use of the water or shorelines of the state.

"Conditional Use." A conditional use permit is intended to allow for flexibility and the exercise of judgment in the application of regulations in a manner consistent with the policies of the Shoreline Management Act and the master program. While not prohibited, these uses are an exception to the general rule. Criteria used for judging conditional uses are outlined in Chapter 7.28 of the shoreline management program.

"Prohibited." Some developments and uses are viewed as inconsistent with the definition, policies or intent of the shoreline environmental designation. For the purposes of this program, these uses are not considered appropriate and are not allowed, including by conditional use or variance.

PROJECT CLASSIFICATION TABLE

Environment Designation	Urban	Rural	Conservancy	Natural
Agriculture	P	P	P	C
Commercial feedlots	X	C	X	X
Aquaculture				
Non-floating	P	P	P	C
Floating	C	C	C	C
Gravel enhancement projects > 1,000 c.y.	C	C	C	C
Forest practices	P/X	P	P	C
Commercial				
Water dependent	P	C	C[2]	X[1]
Non-water dependent with waterfront	C	C	C[2]	X
Non-water dependent without waterfront	P	C	C[2]	X
Marinas	C	C	C[1]	X[1]
Mining	C	C	C	X
Outdoor advertising	P	P	P	X
Residential single-family	E	E	E	X
Duplex	P	P	C	X
Multifamily	C	C	X	X
Nonconforming development	E/V	E/V	E/V	X
Accessory living quarters	P	P	P	X
Ports				
Water dependent	P	C	C	X[1]
Non-water dependent	C	C	C	X
Bulkheads	P	P	P	X
Breakwaters, jetties, groins	C	C	C	X[1]

Shore defense works (flood protection and stabilization)	P	P	C	C
Diking	C	C	C	C
Landfill				
Water dependent-upland	P	P	C	X
Water dependent-beyond OHWM	C	C	X	X
Non-water dependent-upland	C	C	C	X
Non-water dependent-beyond OHWM	X	X	X	X
sanitary landfill/ solid waste disposal site	X	X	X	X
Dredging				
Water dependent	P	P	C	X[1]
Non-water dependent	C	C	C	X[1]
Transportation	P	P	C	C
Piers and docks	P	P	C	X
Marine rails/boat ramps	P	P	C	X
Mooring buoys	E	E	E	E
Boat house on land	P	P	P	X
Boat house over water/ *Covered moorage	C	C	X	X
Archaeological/ historic sites	P	P	P	C
Recreation				
Campgrounds	C	C	C	C
Parks	P	P	C	C
P = Permitted				
C = Conditional Use				
X = Prohibited				
E = Substantial Development Permit Exempt				
*Permitted only in marinas.				

NOTE: This matrix is a guide only. The classifications can be found in the appropriate section.

[1]Prohibited when upland is designed Conservancy, Natural or in biological wetlands

[2] See Conservancy definition

(Ord. No. 108-05, Att. B, 11-29-2005)

17.50.060 - Use regulations.

Agriculture

Definition. The cultivation of soil, production of crops or raising of livestock. Agricultural practices include any activity whether for commercial or recreational use directly pertaining to production of food, fiber or livestock including, but not limited to, cultivation, harvest, grazing, animal waste storage and disposal, fertilization, suppression or prevention of diseases and insects. Excluded from this definition are transportation of products, related commercial or industrial uses such as wholesale and retail sales or final processing.

1. The use of tanks and troughs for animal watering is encouraged; allowing animals direct, unrestricted access to surface water is not permitted.
2. Surface water drainage and runoff shall be diverted away from animal confinement and waste storage sites.
3. Animal confinement areas shall be graded to slope away from surface water.

4. Gutters and downspouts shall be installed on roofs to prevent excess water from entering animal confinement areas. The roof water will be transported by county approved methods to appropriate streams.
5. Perennial wetlands shall not be used as animal containment sites.
6. Confinement areas shall be located away from perennial and intermittently flowing streams. A fenced buffer of permanent vegetation at least one hundred feet in width shall be maintained between such areas and waterbodies.
7. Waste storage sites with the exception of manure lagoons shall be covered and contained with impermeable material. Manure lagoons shall be set back two hundred feet from all surface water and diked to withstand the 100-year base flood with three feet of overboard.
8. Tillage patterns which allow runoff directly into adjacent waters shall not be allowed. A buffer of permanent vegetation at least twenty-five feet in width shall be maintained between tilled areas and water bodies to retard surface runoff.
9. Commercial feedlots where permitted within the shoreline jurisdiction shall require a conditional use permit and shall be set back a minimum of one hundred feet from ordinary high water mark.

Aquaculture

Definition. Aquaculture involves the culture and farming of food fish, shellfish, and other aquatic animals and plants in lakes, streams, inlets, bays and estuaries. Methods of aquaculture include, but are not limited to, fish pens, shellfish rafts, racks and longlines, seaweed floats and the culture of clams and oysters on tidelands and subtidal areas. Excluded from this definition are related commercial or industrial uses such as wholesale and retail sales, or final process and freezing.

1. Shoreline developments adjacent to areas especially suitable for aquaculture shall practice strict pollution control procedures.
2. Proposed residential subdivisions and other developments which may impact aquaculture operations shall install storm drainage and water disposal facilities to prevent any adverse water quality impacts to such operations.
3. Site preparation in the vicinity of aquaculture operations shall not result in off-site erosion, siltation, or other reductions in water quality.
4. Aquacultural practices shall be located and conducted so as to provide reasonable navigational access to waterfront property owners and along the shoreline.
5. Aquaculture development shall not cause extensive erosion or accretion along adjacent shorelines.
6. Aquaculture structures and activities that are not shoreline dependent shall be located to minimize the detrimental impact to the shoreline.
7. Proposed aquaculture processing plants shall provide adequate buffers to screen operations from adjacent residential uses.
8. Aquaculture structures and fisheries enhancement activities shall, to the greatest extent feasible with regard to the economic viability of the operation and protection of the environment be located, designed and operated so that native plant and animal populations, their respective habitats and the local ecological balance are maintained. Disease and pest control may be authorized.
9. Floating aquaculture structures shall not unduly detract from the aesthetic qualities of the surrounding area.
10. Aquacultural structures shall be placed in such a manner, and be suitably marked, so as to minimize interference with navigation.
11. Aquaculture development shall be designed and constructed to harmonize as far as possible with the local shoreline environment and shall be maintained in a neat and orderly manner.
12.

Proposed aquacultural developments shall make adequate provisions to control nuisance factors such as excessive noise and odor and excessive lighting.

13. Aquacultural discards shall be disposed of in a manner that will not degrade associated uplands, wetlands, shorelines, or water environments. Discards shall not be disposed of in a manner which results in offensive odors or increases the vector population.
14. Equipment, structures and materials shall not be abandoned in the shoreline or wetland area.
15. Special precautionary measures shall be taken to minimize the risk of oil or other toxic materials from entering the water or shoreline area. Precautionary measures are subject to approval by the County Environmental Health Specialist.
16. Landfills are prohibited waterward of the ordinary high water mark or on biological wetlands, except that they may be permitted for aquacultural practices and water dependent uses where no upland or structural alternative is possible.

Forest Management Practices

Definition. Any activity conducted on or directly pertaining to forest land and relating to growing, harvesting, or processing of timber including, but not limited to: (1) Road and trail construction; (2) Harvesting; (3) Pre-commercial thinning; (4) Forestation; (5) Fertilization; (6) Prevention and suppression of disease and insects; (7) Salvage of timber; (8) Brush control; and (9) Slash and debris disposal.

Excluded from this definition is preparatory work such as tree marking, surveying and removal of incidental vegetation such as berries, greenery, or other natural products whose removal cannot normally be expected to result in damage to shoreline natural features. Log storage away from forest lands is considered under industry.

1. Cutting practices on shorelines of statewide significance shall be governed by the Act.
2. Herbicides, insecticides, or other forest chemical applications are to be used in accordance with the Washington Pesticide Application Act (RCW 17.21) and the Washington Pesticide Act (RCW 15.47).
3. Forest management practices are not permitted in an urban industrial or urban commercial environment.
4. Urban residential, rural, and conservancy environments:
   a. Notification of logging operations which do not require a substantial development permit shall be made by letter, telephone, DNR cutting permit, or other means acceptable to the administrator.
   b. No logs shall be yarded through streams or rivers.
   c. No slash or debris shall be intentionally allowed to enter the stream. Accidentally injected slash shall be removed.
   d. All trees located within fifty feet of the stream or river shall be felled away from the water's edge.
   e. No equipment shall be abandoned in the area of jurisdiction.
   f. All slash shall be cleaned up or burned in areas where the buffer strip is not sufficient to trap the debris from reaching the stream in a heavy storm or wind.
   g. The accumulation of slash and other debris in waterways covered by this Act is not permitted.
5. In addition to the above, the following shall apply in rural and conservancy environments:
   a. Vegetation along the water's edge shall be left with minimum disturbance except for construction of bridges and large culverts.
   b. Reforestation shall occur within eighteen months after completion of harvesting unless land is intended for other use. Density of planting shall be three hundred fifty trees per acre of a commercial species.
6.

In a conservancy environment, for streams of less than fifteen feet in width, no more than twenty-five percent of the lineal stream frontage of any single ownership may be clear cut in any calendar year. No clear cut shall be longer than one thousand five hundred stream feet.

Commercial Development

Definition. Uses and facilities that are involved in wholesale or retail trade or business activities. Water dependent commercial uses are those commercial activities that cannot exist in other than a waterfront location and are dependent on the water by reason of the intrinsic nature of its operation.

1. Home Occupation. A business conducted within a dwelling that is the residence of the principal practitioner. A home occupation may be reviewed as a residential use provided it complies with all applicable county ordinances and no alteration is made to the exterior of the residence or site which would alter the character of the site as a residential property including parking and signs. Home occupations which require more than two thousand five hundred dollars in exterior development costs require a substantial development permit.
2. Cottage Industry. Small-scale commercial or industrial activities on residential properties performed in the residence or building accessory thereto. The principal practitioner must reside on the property. Cottage industries are considered as residential use and minor commercial development and are substantial development under this master program, provided they do not alter the character of the site as a residential property and wholesale and retail trade are minimal. Cottage industries must comply with all applicable county ordinances and require a conditional use permit.

1. The county shall utilize the following information in its review of commercial development proposals:
   - nature of the activity;
   - need for shore frontage;
   - special considerations for enhancing the relationship of the activity to the shoreline;
   - provisions for public visual or physical access to the shoreline;
   - provisions to ensure that the development will not cause severe adverse environmental impacts;
   - provisions to mitigate any significant noise impacts;
   - provisions to mitigate light or glare impacts.
2. Commercial development may be permitted on the shoreline in the following descending order of priority: water dependent, water related and water oriented. Non-water related, non-water dependent and non-water oriented developments in an urban and rural environment may be permitted by substantial development permit when:
   - The parcel of land to be developed is a minimum of one hundred feet from OHWM and is located on the upland side of a public roadway, railroad right-of-way or government controlled property.
3. Parking and loading areas shall be located well away from the immediate waters' edge and beaches, unless there is no other practical location for parking. Perimeters of parking areas shall be landscaped to minimize visual impacts to the shorelines, roadways and adjacent properties subject to approval by public works and/or department of transportation. Permit application shall identify the size, general type and location of landscaping. Design of parking and loading areas shall ensure that surface runoff does not pollute adjacent waters or cause soil or beach erosion. Design shall provide for stormwater retention. Parking plans shall be reviewed by Mason County Department of Public Works for compliance with all applicable county ordinances. Creation of parking areas by landfilling beyond OHW mark or in biological wetlands is prohibited.
4. Those portions of a commercial development which are not water dependent are prohibited over the water.
5. Water supply and waste facilities shall comply with the strictest established guidelines, standards and regulations.
6.

New commercial developments shall be located adjacent to existing commercial developments whenever possible.

7. New or expanded structures shall not extend more than thirty-five feet in height above average grade level.
8. Commercial developments adjacent to aquaculture operations shall practice strict pollution control procedures.
9. Commercial developments shall be located and designed to minimize noise impacts on adjacent properties.

COMMERCIAL DEVELOPMENT

	Urban	Rural	Conservancy	Natural
Shore setbacks from the OHWM Primary Structures:				
Water dependent	15'	50'	50'	X
Non-water dependent	50'	75'	100'	X
* Water dependent commercial structures may be constructed over the water if this is a functional requirement. No variance from setback is required.				
Accessory uses (including parking)	50'	100'	150'	X
* Water dependent commercial structures may be constructed over the water if this is a functional requirement. No variance from setback is required.				
Side yard setbacks[1]	5–25'	15–25'	20–30'	X
Site coverage by structures, roads, parking and primary uses	70%	50%	20%	X
Height limit	35'	35'	35'	X

;b0;;adv=1p;X = Prohibited Use

[1] Side yard setbacks will be increased depending upon the height of the building. Buildings shall have a setback of five feet plus five feet for every ten feet or fraction thereof in height over fifteen feet.

Marinas

Definition. A commercial moorage with or without dry storage facility for over ten pleasure or commercial craft excluding canoes, kayaks and rowboats. Goods or services related to boating may be sold commercially. Uses associated with marinas shall conform to the regulations for these uses.

1. Marinas that provide overnight or long-term moorage shall not be located in areas with commercial aquacultural harvest.
2. Marinas shall be compatible with the general aesthetic quality of the shoreline area where they are located.
3. Marinas and their accessory facilities shall be located, designed, constructed and operated to minimize adverse effects on fish, shellfish, wildlife and other biological resources, water quality, and existing geo-hydraulic shoreline processes.
4. Marinas shall be located, designed, constructed and operated so as to not substantially or unnecessarily interfere with the rights of adjacent property owners, nor interfere with adjacent water uses.
5. Parking and loading areas shall be located well away from the immediate waters' edge and beaches, unless there is no other practical location for parking. Perimeters of parking areas shall be landscaped to minimize visual impacts to the shorelines, roadways and adjacent properties subject to approval by public works and/or department of transportation. Permit application shall identify the size, general type and location of landscaping. Design of parking and loading areas shall ensure that surface runoff does not pollute adjacent waters or cause soil or beach erosion. Design shall provide

for stormwater retention, shall comply with the Mason County Parking Ordinance, and shall be reviewed by Mason County Department of Public Works for compliance with all applicable county ordinances. Creation of parking areas by landfilling beyond OHW mark or in biological wetlands is prohibited.

6. Provisions shall be made to facilitate the orderly circulation of vehicles and pedestrians in the vicinity of the marina.
7. Provisions shall be made to facilitate the orderly launching, retrieval and storage of boats.
8. New marinas, or expansion of existing saltwater marinas which provide moorage for more than ten boats, shall be required to be equipped with easily accessible vessel pump-out and shall provide on-shore sewage and waste disposal facilities. Each marina shall predominately display signs stating that sanitary discharge of wastes is prohibited. Deviation from pump-out requirements on saltwater shall require a variance.
9. In sensitive areas, such as near certified shellfish spawning areas, the applicant shall be required to demonstrate that the maximum protection of shore features, water quality and existing uses will be provided.
10. Adequate illumination shall be required. Illumination shall be designed and constructed to minimize off-site light and glare.
11. Physical and/or visual public access opportunities shall be provided unless the proponent can demonstrate that such access is physically unfeasible.
12. Rest room facilities shall be provided for public use.
13. Associated uses shall be limited to those found necessary to marina operation or which provide visual or physical access to the shoreline to substantial numbers of the public. Associated uses shall conform to the regulations for those uses.
14. Marina facilities shall project waterward the minimum distance necessary to provide service to vessels, without creating a hazard to navigation.
15. Marina and launching facilities shall be located to minimize the need for initial and maintenance dredging, filling, beach feeding and other channel maintenance activities.
16. Expansion of existing marinas shall be required to meet the standards set forth for new development.
17. Covered moorage is only permitted in a marina. Covered moorage shall be designed and located in order to minimize adverse impacts caused by lighting and view blockage.

Mining

Definition. Mining means the extraction or removal of sand, gravel, minerals or other naturally occurring materials from the earth.

1. Accessory Facilities. Accessory facilities essential to mining operations may be permitted provided that they adhere to all applicable master program policies and use activity regulations. Piers, floats, docks and dolphins may be permitted accessories to mining uses according to the following conditions.
   a. Length. Pier, float, or dock accessories to mining uses should not exceed two hundred feet in total length as measured from the ordinary high water mark to the furthest waterward extension of the pier. Loading or accessory facilities or structures, including, but not limited to, walkways, gangways, slips, troughs, and conveyors may extend beyond this length.
   b. Width. The width of the pier, float, or dock should not exceed a maximum of thirty feet.
   c. Height:
      (1) The surface of the pier, float or dock should not exceed a maximum of thirty feet.
      (2) Loading or accessory facilities or structures located on the dock should be no higher than fifty feet above mean higher high tide.

2. Mining activities shall not be allowed that will permanently impede, or retard the flow or the direction of flow of any stream or river. Surface runoff from the site carrying excessive sedimentation and siltation shall not be allowed to enter any shoreline waters.
3. Mining activities shall utilize visual and aural screening, buffers and berms around the operation to minimize aesthetic and noise impact.
4. Restoration of the site after completion of the mining activity shall be provided. Plans shall detail reclamation of all disturbed areas to a biologically productive and useful condition, and shall ensure compatibility between the project site and adjacent existing land, shoreline and water uses.
5. Setbacks and Buffers. Mining operations (including accessory facilities) in shoreline areas shall utilize screening and buffering to minimize visual and auditory impacts to the shoreline environment. The screening and buffering shall be at sufficient height and width to be effective and shall be in place before the mining activity begins.
6. Erosion Control. Mining operations shall employ measures to minimize surface runoff, erosion, and sediment generation from entering shoreline waters. All preventive techniques shall be maintained in good effective condition.
7. Rivers and Streams. Mining river bars is permitted provided that no operations shall be allowed which permanently impede or retard the flow of any river or stream.
8. Marine Beaches and Lake Shores. The mining of sand, gravel, cobbles, or rock from any marine beaches or lake shores below the ordinary high water mark shall not be permitted. Routine aquacultural uses and maintenance are not considered mining activities.
9. Related Activities. The reduction, treatment, batching, or processing of the mined materials for on-site manufacturing purposes shall adhere to the policies and regulations applicable to ports and water-related industry (Refer to Shoreline Master Plan, Chapter 7.16.100.).
10. Water Quality. Mining operations shall comply with all local, state, and federal water quality standards and pollution control laws.
11. Standing Water. Mining operations shall be conducted so as not to result in open pits or excavations being left which collect and hold stagnant, toxic, or noxious standing waters.
12. Interim Reclamation Measures. The amount of excavated area at any time shall be set by permit condition: provided that no more than ten acres shall lie disturbed, unused, or unreclaimed at any one time.
13. Reclamation. Mining in Washington is controlled by the Surface Mining Act of 1970 (RCW 78.44) and is administered by the State Department of Natural Resources. The provisions of this legislation shall be followed in all cases. To ensure the future use and visibility of shoreline areas after the completion of mining activities, the following provisions for land reclamations and utilization shall be adhered to:
    a. All reclamation shall be completed within two years after discontinuance of mining operation. A reclamation plan shall be submitted as part of any shoreline permit application.
    b. All equipment, machinery, building, and structures shall be removed from the site upon discontinuance or abandonment of mining operations.
    c. Backfill material used in site reclamation shall be natural materials. Combustible, flammable, noxious, toxic, or solid waste materials are not permitted as backfill or for on-site disposal, and shall be removed and disposed of away from the shoreline area.
    d. The site shall be rehabilitated so as to prevent future erosion and sedimentation. Suitable drainage systems shall be installed and maintained if natural gradual drainage is not possible. Topography of the site shall be restored to contour compatible with the surrounding land and shoreline area.
    e. All slopes and exposed areas shall be seeded or surfaced with soil to at least the depth necessary to support revegetation. Revegetation shall utilize compatible native, self-sustaining

trees, shrubs, legumes, or grass and shall be planted so as to blend with the surrounding land and shoreline area.

f. No stagnant or standing water shall be allowed to collect and remain on the site except as a transient part of a sedimentation collection and removal system specified in the reclamation plan.

14. Permit Application. Applications for mining projects shall provide the following information for permit review:

a. Description of the materials to be mined, quantity and quality by type, the total deposit, lateral extent and depth, depth of overburden and amount of materials to be mined.

b. Description of mining technique and list of equipment to be utilized.

c. Cross section plans which indicate present and proposed elevation and/or extraction levels and show the maximum mining depth.

d. Site plans which show existing drainage patterns and all proposed alterations of topography, proposed means of handling surface runoff, and preventive controls for erosion and sedimentation.

e. A mining plan showing scheduling (seasonal, phasing and daily operations); storage, usage and deposition of overburden, excavation material and tailings; location and dimensions of stockpiling areas; screening, buffers and fencing; locations of building, equipment, machinery, and structures.

f. A reclamation plan.

15. Mining Operations. All phases and activities of mining operations shall be carried out in a manner so that the operator shall not significantly affect adjacent shoreline areas.

16. Public Access. Some form of public access to the shoreline for private non-commercial recreational purposes shall be afforded in a manner compatible with mining and accessory facilities and uses. Such public access may be restricted and shall be consistent with the protection of the health, safety, and welfare of the public.

17. Subject to the performance standards, mining is a conditional use in urban, rural and conservancy environments.

18. Mining is a prohibited use in a natural environment.

Outdoor Advertising, Signs and Billboards.

1. In an Urban (Industrial, Commercial and Residential) or Rural Environment:

a. Outdoor advertising, signs and billboards shall be on premises.

b. Sign supports shall be durable. Sign design and support shall be compatible with the environment. Flashing lights shall be prohibited. Lighted signs shall be permitted for public services remaining open after sundown. Such lighting shall be hooded or shaded so that direct light of lamps will not result in glare when viewed from the surrounding property or rights-of-way.

c. Temporary or obsolete outdoor advertising, signs and billboards shall be removed within ten days of elections, closures of business or termination of any other intended function.

2. Conservancy Environment:

a. Outdoor advertising and signs shall be on-premises. Billboards are prohibited. Highway signs giving directions to scenic routes, trails, picnic areas, boat launching sites, scenic sites and unique points of interest shall also be permitted.

b. Signs and outdoor advertising shall not exceed fifteen square feet in size and shall not project more than six feet above road level. Sign design and support shall be compatible with the environment. Illuminated signs shall not be permitted unless warranted by safety factors. Flashing signs are prohibited.

c. Temporary or obsolete outdoor advertising, signs and billboards shall be removed within ten days of elections, closures of business or termination of any other intended function.

3. Natural Environment:

a. Only temporary, on-premises, advertising signs are permitted. Billboards are prohibited.

b. Directional signs to viewpoints or for trails and signs describing unique points of interest shall be permitted.

c. Permitted signs shall not exceed four square feet in size and shall not project more than six feet above road level. Sign design and support shall be compatible with the environment. Lighted signs are prohibited unless warranted by safety factors.

d. Where feasible, permitted signs shall be located on the upland side of transportation routes parallel or adjacent to shoreline and water areas. Placement of signs shall not degrade or obstruct view areas.

e. Temporary or obsolete outdoor advertising, signs and billboards shall be removed within ten days of elections, closures of business or termination of any other intended function.

Residential Development

Definition. The development of land or construction or placement of dwelling units for the purpose of residential occupancy. This section shall apply to all single-family and multifamily dwellings, and any other accessory structure, including decks, garages and fences. Although a substantial development permit is not required for construction on wetlands by an owner, lessee or contract purchaser of a single-family residence for his own use or the use of his family, such construction and all normal appurtenant structures must otherwise conform to this master program. Construction greater than thirty-five feet high requires a substantial development permit.

1. Residential development over the water is prohibited.

2. "Submerged lands" (biological wetlands and those lands waterward of the ordinary high water) within the boundaries of any waterfront parcel shall not be used to compute required lot area, lot dimensions and required yards. Portions of land lying within marshes, bogs and swamps may be included as open space.

3. Subdivision proposals shall identify areas of natural vegetation, stormwater retention and erosion control measures.

4. Landfill for residential development which results in the creation of new dry land waterward of OHWM or in biological wetlands is prohibited. Fill necessary for a normal erosion control bulkhead is exempt. Land fill in biological wetlands (excluding bogs, marshes, swamps, marine and estuarine shore) may be permitted. Such filling may be considered as a conditional use provided the applicant can demonstrate the following: (1) Extraordinary or unique circumstances relating to the property exist which require the proposed shoreline location; and (2) No viable alternative using a different method or structural solution exists.

5. Landfilling in flood hazard areas other than a floodway is allowed only for flood protection of a structure(s).

6. Storm 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. Storm drainage facilities shall include, but not be restricted to vegetated swales, retention ponds and artificial and natural wetlands provided no adverse impacts to the receiving wetlands would occur and shall be subject to Mason County approval.

7. Subdivision developments and planned unit developments shall provide areas sufficient to ensure usable access to and along the shoreline area for all residents of the development except where the shoreline topography does not permit the same.

8. In order to preserve aesthetic characteristics, no fence or wall shall be erected, placed or altered nearer to the water than the building setback line, unless it is under thirty inches in height.

9. Each shoreline environment has a setback requirement for structures from the ordinary high water mark. (See chart at end of this section.) Uncovered porches, decks or steps may project into the required setback area, provided such structures are no higher than thirty inches above average grade excluding railings required for reasons of public safety. The setback in each environment may be increased or decreased by the administrator in the following ways:
   a. Increased Setback Requirements. The setbacks may be increased if the building area or setback area has a slope greater than forty percent, severe instability, or the average setback of the two adjacent residences is greater than the setback requirement for that environment. In such cases, the setback shall be determined by drawing an imaginary line between the roof lines of adjacent residences; provided the minimum distance required by reason of slope or instability shall be required. If there is no residence on an adjacent lot, the next lot with a residence will be considered, up to one hundred fifty feet away. If there is no adjacent residence within one hundred fifty feet, the minimum default setback shall be assumed on that side of the proposed residence. In the urban environment, a residence setback over one hundred twenty feet from the line of ordinary high water will not be considered in determining the setback and the default setback will be used at fifteen feet.

In cases of a pronounced curved shoreline or point, the setback shall be established by determining proportionate setback distances from the OHWM of adjacent residences.

Setback for any structure greater than thirty inches above average grade shall be behind this common line (see figure).

   b. Decreased Setback Requirements. The setback may be relaxed provided that at least one existing residence adjacent (within fifty feet) to the proposed structure infringes on the setback. In such cases, the setback shall be determined in the same manner described under "increased setback requirement" where applicable. This shall not be construed to allow residential development over water or to allow a reduction of the default setback in cases of pronounced cove or indented shoreline. Setback relaxation is subject to approval by the shoreline administrator (see illustration).

Further deviation from setback requirements shall require a variance.

10. Clustering of residential dwellings in all environments except Natural is allowed. The number of clustered lots or residential units in the shoreline area shall not exceed the number of units which results from multiplying the total acres (minus submerged lands) in the shoreline area by the density allowed in the specific environment.
11. Proposed residential developments adjacent to a water body supporting aquaculture operations shall install drainage and stormwater treatment measures facilities to prevent any adverse impact to aquaculture operations. Such measures shall include, but not be restricted to, vegetated swales, retention ponds and use of artificial or natural wetlands provided no adverse impacts to the receiving wetlands would occur. Measures utilized shall be subject to Mason County approval.
12. Multifamily residences are permitted in the urban environment, subject to a maximum projected output of one thousand five hundred seventy gallons of sewage per acre per day.
13. If marshes, bogs, swamps or other fragile features are located on a development site, clustering of residential units shall be required in order to avoid any development in such areas.
14. Storm drainage facilities shall be required by the county for residential development projects excluding a single-family residence. Facilities shall include but not be restricted to vegetated swales, retention ponds and use of artificial or natural wetlands provided no adverse impacts to the receiving wetlands would occur and are subject to Mason County approval.
15. Lots created prior to the adoption of this ordinance [chapter] which do not meet the minimum lot size may be used for a single-family residence when all of the following criteria can be met:
    (a)

A permit for an on-site disposal system which meets all current codes for setbacks and sizing, has been granted by the environmental health section.

(b) All side yard and shore yard setbacks can be met.

Exceptions from these criteria would require a variance permit.

16. Only one dock or pier is permitted in a new subdivision, planned unit development, or short plat, when lot frontages on the shoreline do not exceed an average of one hundred fifty feet. Prior to plat approval, a usable area with access shall be set aside for the pier or dock, unless no suitable area exists.
17. Construction of new dwellings shall be required to comply with current sewage system setback and design standards as per WAC 248-96.
18. Expansion of existing dwellings shall require strict compliance with current sewage system setback and design standards as per WAC 248-96.
19. Normal maintenance and repair of nonconforming structures shall be allowed, provided no material expansion is involved.
20. Residential development is prohibited within a floodway.
21. Residential developers and individuals shall be required to control erosion during construction. Removal of vegetation should be minimized and any areas disturbed should be restored to prevent erosion and other environmental impacts.
22. Waste materials from construction shall not be left on or adjacent to shorelines.
23. Kokanee area only - No building on slopes greater than twenty percent will be allowed.

Accessory Living Quarters

Definition. Separate living quarters, attached or detached from the primary residence which contain less habitable area than the primary residence.

Accessory living quarters may be allowed subject to meeting the following criteria:

1. Only one accessory living quarter per lot. In an urban environment, a lot must be one and one-half the size required for a single-family residence which totals eighteen thousand seven hundred fifty square feet.
2. Strict compliance with current sewage setback and design standards as per WAC 248-76-090.
3. Minimal impact on surrounding properties from view blockage, traffic, parking and drainage.
4. Compliance with setback criteria set forth in the table titled "Recreational Development", item 21.
5. Accessory living quarters shall require a substantial development and shall not exceed one thousand square feet.

RESIDENTIAL DEVELOPMENT

Regulation	Urban	Rural	Conservancy	Natural
1. Shore setbacks, in feet (from OHWM or front of bulkhead. Side yard setbacks shall apply to sides.)				
a. Single-family, duplex	15	25	50	X
b. Multifamily strucutres less than 35' high	30	50	N/A	X
c. Multifamily structures over 35' high	50	100	N/A	X
2. Side yard setbacks (in feet)				
a. Single-family, duplex	5	10	25	X
b. Multifamily structures less than 35' high	20	20	X	X
c. Multifamily structures more than 35' high	30	30	X	X
3. Height limits in feet				
a. 0–49 feet from OHWM	35	30	25	X
b. 50–100 feet from OHWM	45	40	30	X

4. Site coverage - for*				
a. Single-family, duplex	60%	50%	15%	X
b. Multifamily strucutes	40%	40%	15%	X
** Site coverage shall include all impermeable surfaces.*				
5. Minimum lot size, per residential unit	12,500 sf	20,000 sf	5 acres **	X
Primary residence and accessory structure, one per lot maximum	18,750 sf	20,000 sf	5 acres **	X
Duplex	1,570***	785***	5 acres	X
Multifamily	1,570***	785***	N/A	N/A
*** One residential unit is allowed per 200 lineal feet in the shoreline jurisdiction area.*				
**** Maximum gallons of sewage per acre*				
6. Minimum lot width, measures at OHWM and at building setback	50'	100'	200'	

;b1;X = Prohibited

Utilities

1. Discharges from sewage treatment plants shall not be allowed into Totten Inlet regardless of the environmental designation.
2. Any excavation for a utility line must be restored to pre-project configuration, replanted with native species and provided with maintenance care until the newly planted area is established.

Ports and Water-Related Industry

Definition. Ports are centers for water-borne traffic and as such have become gravitational points for industrial/manufacturing firms. Heavy industry may not specifically require a waterfront location, but is attracted to port areas because of the variety of transportation available.

1. Industry shall be responsible for any water pollution it creates.
2. Ports and water-related industries are prohibited in all environments except the Urban Industrial Environment.

Shoreline Modification Activities: Bulkheads

Definition. Bulkheads are retaining wall-like structures whose primary purpose is to hold or prevent sliding of soil caused by erosion and wave action and to protect uplands and fills from erosion and wave action.

Exemptions. The Shoreline Management Act exempts the construction of a normal protective bulkhead common to single-family residences from the substantial development permit requirement. "Normal protective bulkhead" is constructed at or near the ordinary high water mark to protect a single-family residence or lot upon which a single-family residence is being constructed and is for protecting land from erosion, not for the purpose of creating land. "However, these structures are required to comply with all the provisions of the master program and development standards of this section." A conditional use permit or variance may be required.

1. Bulkheads shall be permitted only where they provide protection to upland areas or facilities, not for the indirect purpose of creating land by filling behind the bulkhead. Nothing in this section shall be construed to prohibit construction of a normal protective bulkhead or maintenance of an existing bulkhead, where there is a demonstrated need, to protect a fill which occurred prior to the shoreline management act, and is the site of a single-family residence or other improvements which are currently in use.
2. Bulkheads may be allowed to reestablish a shoreline boundary that has eroded away within the past two years. The burden of proof shall be on the applicant. Reestablishment of all other historical shoreline boundaries is prohibited when it does not meet the criteria of this chapter.

3. Bulkheads on lake shores subject to erosion shall be located within one foot of the toe of the bank, or the line of ordinary high water mark whichever is furthest landward and shall generally parallel the natural shoreline.
4. Bulkheads on saltwater shores subject to erosion shall be located only as far seaward as is necessary to excavate for footings and shall in no case be located more than six feet beyond OHWM. Any distance further than this shall be considered landfill and shall be evaluated as such. Except if such fill can be demonstrated to meet regulation Number 2., above and meet the other provisions of this section.
5. Bulkheads shall be sited and designed consistent with appropriate engineering principles. Professional geologic site studies or design may be required for any proposed bulkhead for which a building permit is required if the Administrator determines sufficient uncertainties exist. Grounds for such determination shall be inadequate information on local physical features or potential damage to other shoreline properties and features.
6. The use of solid waste, junk, abandoned automobiles or asphalt or building demolition debris is prohibited in the construction or maintenance of bulkheads.
7. Beach materials shall not be used for fill material behind bulkheads.
8. When an existing bulkhead is being repaired, construction shall occur no further waterward of the existing bulkhead than is necessary for construction of the new footing. Replacement of a failed bulkhead shall be permitted in the same location as the original bulkhead, if such replacement is commenced within five years of failure. The burden of proof of location of the original bulkhead shall be on the applicant.
9. Stairways shall be located landward of bulkheads except where proven infeasible (see Section 7.16.200 of the Shoreline Management Program).

Shoreline Modification Activities: Breakwaters, Jetties and Groins

Definitions.

Breakwaters. Protective structures usually built off shore to protect harbor areas, moorage, navigation, beaches and bluffs from wave action. Breakwaters may be fixed, open pile, or floating.

Jetties. Structures generally built singly or in pairs perpendicular to the shore at harbor entrances or river mouths to prevent the shoaling or accretion of littoral drift. Jetties also protect channels and inlets from storm waves and cross currents.

Groins. A barrier type of structure extending from the beach or bank into a water body for the purpose of the protection of shoreline and adjacent uplands by influencing the movement of water or deposition of materials. Generally narrow and of varying lengths, groins may be built in a series along the shore.

1. The county shall require and utilize the following information during its review of proposals for breakwaters, jetties and groins (all drawings shall be drawn to scale):
   a. Purpose of the structure;
   b. Construction of project relative to toe and crest of uplands;
   c. Adjacent land contours and high water elevations including, but not limited to, the following: Extreme high tide, OHWM, MLLW and tidal elevation at the end point.
   d. Seasonal direction and speed of prevailing winds; with wind rose and duration graphs.
   e. Net direction of littoral drift, tidal currents.

The following additional information is required for groins:

   f. Profile of uplands;
   g. Beach type, slope and materials;
   h. Uplands type, slope and materials;
   i. Soil type;

j. Physical or geological stability of uplands and;

k. Predicted impact on area shore processes, adjacent properties and upland stability.

2. Breakwaters shall only be permitted for navigational purposes, aquacultural activities, industrial activities and marinas as an integral component of a harbor, marina or port, where water dependent uses are located waterward of the existing shoreline and where protection from strong wave action is essential.

3. Jetties and marine groins shall only be permitted for navigational purposes, industrial activity, marinas and public beach management as integral components of an overall development plan.

4. Breakwaters, jetties and groins shall be located and designed so as to minimize impacts on fish and wildlife resources and habitat.

5. Groins on rivers, streams and lakes may be considered as a conditional use provided the applicant can demonstrate the appropriateness of the designed structure for the site and that alternative shore protection measures would prove more detrimental to the geohydraulics and natural resources within the waterbody.

Landfill

Definition. The creation of or addition to a dry upland area by depositing materials. Depositing topsoil for normal landscaping purposes is not considered a landfill.

1. Landfills are prohibited waterward of the ordinary high water mark or on biological wetlands, except that they may be permitted as a conditional use for aquacultural practices and water dependent uses where no upland or structural alternative is possible. Fill necessary for erosion control bulkheads shall not be considered under landfill. Landfill in biological wetlands (excluding bogs, marshes, swamps, marine and estuarine shore) for non-water dependent uses may be permitted. Such fill may be considered as a conditional use provided the applicant can demonstrate the following: (1) Extraordinary or unique circumstances relating to the property exist which require the proposed shoreline location; (2) No viable alternative using a different method or structural solution exists.

2. Landfills are not permitted on estuaries, tidelands, marshes, ponds or swamps, except that they may be allowed for water dependent uses as a conditional use.

3. Landfills are not permitted in floodplains unless it can be clearly demonstrated that the geohydraulic and floodplain storage capacity will not be altered to increase flood hazard or other damage to life or property.

4. Landfills shall not disrupt normal surface water drainage.

5. Permitted fills shall be appropriately sloped and planted with vegetation to prevent erosion.

6. Applications for landfill projects shall include the following information (at a minimum):

a. Character and source of fill material;

b. Method of placement and compaction;

c. Type of surfacing proposed, if any;

d. Method of perimeter erosion control;

e. Proposed use of fill area;

f. Location of fill relative to natural or existing drainage patterns;

g. Proposed revegetation and/or landscaping.

7. Perimeters of fills shall be provided with vegetation, retaining walls, or other mechanisms for erosion prevention. Any fill on or adjacent to a tideland or shoreline shall be designed to prevent erosion.

8. Fill materials shall be of such quality that they will not cause degradation of water quality.

9. Sanitary landfills and solid waste disposal sites are prohibited uses within the shoreline jurisdiction.

Dredging

Definition. The removal, displacement, and disposal of unconsolidated earth material such as silt, sand, gravel, or other submerged material from the bottom of water bodies, ditches or natural wetlands: maintenance dredging and other supportive activities are included in this definition.

1. Urban Industrial and Urban Water Environments. Dredging shall be permitted:
   a. If it is necessary to deepen or widen navigation channels.
   b. If it is necessary to deepen or widen commercial moorage.
   c. If it is necessary to create settling lagoons.
   d. If it is necessary in conjunction with flood control measures.
   e. If it is necessary in creating solid foundations for placement of concrete, riprap, and other building materials.
   f. If it is necessary in containing peat and peat moss.
   g. If it is necessary to facilitate channel clearance and improvement.
   h. If it is necessary to remove roots, logs, brush, grasses, and other material to create access from the shore to navigable water.
   i. If it is necessary to remove siltation and other debris from lagoons, ponds and other areas used by industry.
   j. If it is necessary when industrial expansion requires landfill over present lagoons or ponds and they must be relocated.
   k. If it is necessary to facilitate movement of floating materials.
2. Urban Residential and Urban Commercial Environments. Dredging shall be permitted:
   a. If it is necessary to deepen or widen navigation channels.
   b. If it is necessary to deepen or widen commercial moorage.
   c. If it is necessary to create settling lagoons.
   d. If it is necessary in conjunction with flood control measures.
   e. If it is necessary in creating solid foundations for placement of concrete, riprap, and other building materials.
   f. If it is necessary in containing peat and peat moss.
   g. If it is necessary to facilitate channel clearance and improvement.
   h. If it is necessary to remove roots, logs, brush, grasses, and other material to create access from the shore to navigable water.
   i. If it is necessary in certain shellfish farming, harvesting, and protection operations.
3. Rural and Conservancy Environments. Dredging shall be permitted:
   a. If it is necessary to deepen or widen navigation channels.
   b. If it is necessary to deepen or widen commercial moorage.
   c. If it is necessary to create settling lagoons.
   d. If it is necessary in conjunction with flood control measures.
   e. If it is necessary in creating solid foundations for placement of concrete, riprap, and other building materials.
   f. If it is necessary in containing peat and peat moss.
   g. If it is necessary to facilitate channel clearance and improvement.
   h. If it is necessary to remove roots, logs, brush, grasses, and other material to create access from the shore to navigable water.
   i. If it is necessary to facilitate movement of floating materials.
   j. If it is necessary in certain shellfish farming, harvesting, and protection operations.

k. If it is necessary to create or maintain drainage channels in lowland areas for agricultural purposes.

4. Natural Environment. Dredging shall be permitted: If it is necessary in conjunction with flood control measures.

5. For all Environments. Dredging restrictions are as follows:

a. Dredging operations shall not cause damage to adjacent shorelines or marine developments.

b. Dredging operations shall be self-monitored to control to a feasible minimum any leaks or spillage of dredged materials from pipes, machinery, dikes, or bulkheads.

c. Dredging machinery or vessels shall use reasonable precautionary measures to prevent petroleum from entering the water.

d. Dredged material, if deposited within shoreline boundaries, shall be contained by bulkheading, diking, or other acceptable methods, to prevent undesirable erosion or shifting after operations and related monitoring are needed.

e. Dredged material, when not deposited on land, shall be placed in spoils deposit sites in water areas to be identified by the county. Depositing of dredge material in water areas shall be allowed only for habitat improvement, to correct problems of material distribution affecting adversely fish and shellfish resources or where the alternatives of depositing material on land are more detrimental to shoreline resources than depositing in water areas.

Flood Protection and Shoreline Stabilization

1. The county shall require and utilize the following information during its review of shoreline stabilization and flood protection procedures:

• River channel hydraulics and floodway characteristics up and downstream from the project area;

• Existing shoreline stabilization and flood protection works within the area;

• Physical, geological and soil characteristics of the area; and

• Predicted impact upon area shore and hydraulic processes, adjacent properties and shoreline and water uses.

2. Conditions of hydraulic project approval, issued by Washington State Department of Fisheries, may be incorporated into permits issued for flood protection and shoreline stabilization.

3. The county shall require professional design of shoreline stabilization and flood protection works where such projects may cause interference with normal river geohydraulic processes, leading to erosion of other upstream and downstream shoreline properties, or adverse effects to shoreline resources and uses.

4. Groins on rivers, streams and lakes may be considered as a conditional use provided the applicant can demonstrate the appropriateness of the designed structure and that alternative shore protection measures would prove more detrimental to the geohydraulics and natural resource within the water body.

5. Diking may be permitted as a conditional use provided:

a. Diking is set back to the edge of the floodway;

b. Timing and construction shall be coordinated with WDF and WDW;

c. Diking shall be designed and constructed to meet soil conservation service technical manual standards and shall, at a minimum include (1) layered compaction, (2) removal of debris (i.e., tree stumps, tires, etc.), and (3) revegetation and maintenance until ground cover is established.

6. Flood protection measures shall be planned and constructed based on a state approved flood control management plan, when available, and in accordance with the National Flood Insurance Program.

Transportation Facilities

1. Application for roads and railroads must adequately address the following:

• Need must be shown for a shoreline location and that no reasonable upland alternative exists.

• The construction is designed to protect the adjacent shoreline against erosion, uncontrolled or polluting drainage and other factors detrimental to the environment both during and after construction.

• That the project will be planned to fit the existing topography as much as possible, thus minimizing alterations to the natural environment.

• That all debris, overburden and other waste materials from construction will be disposed of in such a way as to prevent their entry by erosion from drainage into any water body.

2. Bridge construction shall conform to the following:

• Excavation for and placement of the sills or abutments and outside placement of stringers or girders shall be accomplished from above the ordinary high water mark, as a conditional use.

• Bridge approach fills shall not encroach in the floodway of any stream or river.

• All bridges shall be high enough (minimum of three feet above 100-year flood elevation) to pass all expected debris and anticipated high water flows from a 100-year flood.

3. Foot or vehicular bridges crossing rivers or streams for the private use of individual land owners shall be evaluated for need and design. They shall meet the same standards for water quality protection and erosion control as all other bridges.

4. Private road construction and maintenance shall conform to the following standards:

• Road subgrade widths shall be the minimum commensurate with the intended use, generally not more than twenty feet for single lane roads.

• Roads shall follow natural contours where possible. Natural benches, ridge tops and flat slopes are preferred locations.

• Erodible cuts and filled slopes shall be protected by planting or seeding with appropriate ground cover or by matting immediately following construction.

5. Requirements for culvert installation in streams used by anadromous fish are defined by the Washington State Department of Fisheries and culvert installation may require a hydraulic permit.

6. Excess construction materials shall be removed from the shoreline area.

7. Filling of bottom lands, tidelands, and biological wetlands for road or railroad rights-of-way shall be prohibited. Such filling may be considered a conditional use provided the applicant can demonstrate all of the following:

   a. Extraordinary or unique circumstances relating to the property exist which require the proposed shoreline location.

   b. No viable alternative using a different method or structural solution exists.

8. All excavation materials and soils exposed to erosion by all phases of road, bridge and culvert work shall be stabilized and protected by seeding, mulching or other effective means, both during and after construction.

9. Where permitted to parallel shorelines, roads or railroads shall be set back a sufficient distance from the ordinary high water mark to leave a usable shoreline area for shoreline recreation or access.

10. Stormwater runoff shall be controlled to reduce suspended solids and other pollutants before entering any surface water body.

Piers and Docks

Definition. A structure built over or floating upon the water, used as a landing place for marine transport or for commercial or recreational purposes. Structures regulated by this section include piers and docks, floats, stairways, marine railways, mooring buoys and boat ramps.

1.

The location and design of docks and piers, as well as the subsequent use, shall minimize adverse effects on fish, shellfish, wildlife and water quality.

2. Docks and piers shall be located, designed and operated to not significantly impact or unnecessarily interfere with the rights of adjacent property owners, or adjacent water uses. Structures shall be located a minimum of five feet from side property lines. Community use or joint use facilities may be located on the property line.
3. If the location of side property lines on a cove cannot be officially established without a survey, the administrator may require a survey by a registered land surveyor before a permit is issued.
4. No pier, dock, or float or similar device shall have a residential structure constructed upon it.
5. Prior to final project approval of a residential subdivision or short plat, a usable area shall be set aside for a community pier or dock, unless no suitable area exists. Only one pier or dock is permitted in a new residential subdivision or short plat where each lot frontage does not exceed one hundred fifty feet on the shoreline.
6. There is no maximum length, width or height for commercial or industrial piers and docks. The proponent must show the size of the proposal is the minimum necessary to allow the intended use. Mining associated piers and docks are regulated under Section 7.16.060 of this master program.
7. Maximum overall length of a recreational pier or dock facility including float shall be only so long as to obtain a depth of three feet of water as measured at mean lower low water on salt water or a depth of five feet as measured from ordinary low water on lakes. The length of any pier or dock facility shall not exceed the lesser of fifteen percent of the fetch or one hundred feet from OHWM on salt water and fifty feet on fresh water shorelines. Joint or community use facilities may be an additional fifteen feet in length, and shall not exceed a depth of minus five feet. When sufficient depth to serve a vessel is not found at these lengths, a recreational float, with one boat slip, may be located at a depth sufficient to serve the vessel, but not exceeding minus eight feet as measured from mean lower low water, on marine shores, and ordinary low water on lake shores.
8. Only one dock is allowed per lot.
9. The width of recreational piers and docks shall not exceed eight feet.
10. At the end of a dock or pier, a float may be attached. These floats may either be parallel to the dock or pier, or form a "T" or "L". In tidal water, the float shall not exceed four hundred gross square feet without a boat slip (seven hundred square feet for two joint use owners), or six hundred gross square feet with a boat slip (one thousand square feet for two joint use owners). In fresh water, the float area shall not exceed two hundred fifty square feet without a boat slip (four hundred square feet for two joint use owners), or four hundred square feet with a boat slip (seven hundred square feet for two joint use owners).

Joint or community use facilities shall be allowed the above float areas for the first two lot owners plus an additional twenty percent size increase on the base float area per each lot owner up to a maximum of nine lot owners (see chart).

11. On lakes throughout the county a float may be attached in either an "L" or "T" formation. When the "L" or "T" shaped design is used, on lakes, the portion parallel to the shoreline shall not exceed sixteen feet in width.
12. Unattached recreation floats shall not exceed four hundred gross square feet in tidal water, or two hundred fifty square feet in fresh water. There shall be no more than one per residence. Unattached recreational floats shall be chain anchored.
13. Recreational piers shall be no higher than eleven feet above mean higher high water. Piers and docks shall have at least an eight-foot span between pilings.
14. The surface of floating structures shall be a minimum of eight inches above the surface of the water.
15.

All floating structures shall include intermittent supports to keep structures off the tidelands at low tide.

16. All facilities shall be constructed and maintained in a safe and sound condition. Abandoned or unsafe docks and piers shall be removed or repaired promptly by the owner. Where any such structure constitutes a hazard to the public, the county may, following notice to the owner, abate the structure if the owner fails to do so within a reasonable time, and may impose a lien on the related shoreline property in an amount equal to the cost of the abatement.
17. Recreational mooring buoys are exempt from the substantial development permit process.
18. There is no maximum length or width for commercial industrial or community use marine railways or boat ramps, however, the proponent must show the size proposed is the minimum necessary to allow the use proposed.
19. Marine railways and concrete boat ramps may be permitted. Ramps shall be placed at beach grade, and not elevated on fill.
20. Design standards for boat ramps and marine railways are as follows:

• Ramps and railways shall not exceed twelve feet in width.

• Ramps and railways shall not exceed fifty feet in length, as measured from the line of ordinary high water. Marine railways shall not extend beyond MLLW (0.0).

• Ramps and railways shall not exceed eighteen inches in height at the line of ordinary high water, or the toe of the bulkhead.

21. Stairways less than two thousand five hundred dollars in value located landward of mean higher high water and less than ten feet waterward of the toe of the bank do not require a substantial development permit. Stairways exceeding two thousand five hundred dollars in value located landward of mean higher high water and less than ten feet waterward of the toe of the bank require a substantial development permit. Stairways located waterward of mean higher high water, exceeding two thousand five hundred dollars in value shall require a conditional use permit. Stairways shall not be located more than ten feet waterward of the toe of the bank. Stairways located waterward of mean higher high water but less than two thousand five hundred dollars in value shall require a conditional use permit.
22. Stairways shall be located landward of bulkheads except where proven infeasible.
23. Covered moorage and over the water boat houses are prohibited except in marinas.

Boat houses on land shall be subject to a maximum size of six hundred square feet and shall meet all setback requirements and require a substantial development permit.

	Tidal Water with Boat Slip	Tidal Water without Boat Slip	Fresh Water with Boat Slip	Fresh Water without Boat Slip
Single owner	600	400	400	250
Joint use (2 owners)	1,000	700	700	400
Community Use or Joint Use*				
3 owners	1,120	780	780	450
4 owners	1,240	860	860	500
5 owners	1,360	940	940	550
6 owners	1,480	1,020	1,020	600
7 owners	1,600	1,100	1,100	650
8 owners	1,720	1,180	1,180	700
9 owners	1,840	1,260	1,260	750
**Maximum bonus allowed*				

Mean High Tide (MHT) for the following locations:

Union - Hood Canal: 10.80 feet

Allyn - Case Inlet: 13.21 feet

Arcadia - Pickering Passage: 13.40 feet

Shelton - Oakland Bay: 13.20 feet

Vaughn - Case Inlet: 13.20 feet

Walker's Landing - Pickering Passage: 13.30 feet

Mean Higher High Tide (MHHT) for the following locations:

Union - Hood Canal: 11.80 feet

Allyn - Case Inlet: 14.13 feet

Arcadia - Pickering Passage: 14.40 feet

Shelton - Oakland Bay: 14.20 feet

Vaughn - Case Inlet: 14.10 feet

Walker's Landing - Pickering Passage: 14.30 feet

Archaeological Areas and Historic Sites

According to anthropological data, human habitation of the shoreline areas of Mason County spans hundreds, most likely thousands, of years. Due to climate, vegetation and the effects of population changes, visible evidence of such habitation is primarily that of the last fifty years. Frequently, sites are discovered during construction of buildings, transportation routes (including trails), bridges, ditching, drilling and the like. Because of their rarity and the education link they provide to our past, these locations should be preserved. Because of their delicate nature, the utmost care and caution must be used in any development of these areas. Thus, these guidelines should be closely adhered to in all areas, whether urban, rural, conservancy or natural.

1. Excavation of archaeological sites shall be directed by archaeologists approved by the Society for American Archaeology and/or a University Department of Anthropology.
2. Cooperation and permission of groups or individuals concerned with the site, such as tribal governments and private property owners, shall be obtained before excavation begins.
3. Excavated sites shall be restored upon completion of research. Information signs may be placed on the sites. If possible, educational display units shall be constructed on the sites.
4. Copies of archaeological and anthropological reports on excavations shall be made available to county libraries and concerned groups or individuals.
5. These rules apply in each division, i.e., urban, rural, conservancy, and natural.

Recreational Development

Definition. Recreational development includes facilities such as campgrounds, recreational vehicle parks, day-use parks, etc.

This section applies to both publicly and privately owned shoreline facilities intended for use by the public or private club, individual group or association. Uses and activities associated with recreational development which are identified as separate use activities in this program, such as boating facilities, piers and docks, residential and commercial development are subject to the regulations established for those uses in addition to the standards established in this section.

1. All proposed recreational developments shall be analyzed for their potential effect on environmental quality and natural resources.
2. Recreational developments shall comply at all times with the updated local and state health regulations and such compliance made a condition of the permit.
3.

Priority shall be given to developments which provide recreational uses and which facilitate public access to shorelines.

4. Parking areas shall be located inland, away from the immediate edge of the water and recreational beaches, unless there is no area available. Provisions shall be made for adequate vehicular parking and safe pedestrian crossings. Design of parking areas shall ensure that surface runoff does not pollute adjacent waters. Design shall provide for stormwater retention and shall be reviewed by Mason County Department of Public Works.
5. Vehicular traffic is prohibited on beaches, bars, spits and streambeds, except for boat launching and maintenance activities. Perimeters of parking areas shall be landscaped to minimize visual impacts to the shorelines, roadways and adjacent properties.
6. Trail access shall be provided from upland facilities to the beach area.
7. Public access points on lakes and marine waters must provide parking space appropriate for the intended use.
8. Events and temporary uses in the public interest may be approved by the administrator in any environment, provided that such uses will not damage the shoreline environment.
9. Recreational developments must provide facilities for nonmotorized access, such as pedestrian or bicycle paths to link the recreation area to the shoreline.
10. The following regulations shall apply to artificial aquatic life habitats:

• Habitats shall not interfere with surface navigation;

• Habitats shall be constructed and moored so as to remain in their original location, even under adverse current or wave action;

• Conditions of the state departments of fisheries and wildlife hydraulic project approval may be incorporated into any permit issued.

11. Trailer spaces, camping sites and similar facilities shall not be located on beaches and tidelands.
12. Recreational facilities shall make adequate provisions for water supply, sewage disposal and garbage collection.
13. Recreational facilities shall make adequate provisions, such as screening, buffer strips, fences and signs, to prevent overflow and to protect the value and enjoyment of adjacent or nearby private properties.
14. Signs associated with recreational facilities shall be kept to a minimum in number and size and shall be erected as informational or directional aids only.
15. To protect natural features and adjacent properties, park and recreational facilities shall prohibit the use of all-terrain vehicles in the shoreline area.
16. All permanent recreational structures and facilities shall be located outside officially mapped floodways except the county may grant exceptions for non-intensive accessory uses (e.g., picnic tables, etc.).
17. Accessory facilities, such as restrooms, recreation halls, commercial services, access roads and parking areas shall be located inland from shoreline areas unless it can be shown that such facilities are shoreline dependent. These areas shall be linked to the shoreline by walkways.
18. For recreation developments that will require the use of fertilizers, pesticides or other toxic chemicals, such as golf courses and playfields, the applicant shall submit plans demonstrating the methods to be used to prevent leachate from entering adjacent water bodies. Buffer strips shall be included in the plan. The county shall determine the maximum width necessary for buffer strips, but in no case shall the buffer strip be less than twenty-five feet.
19. In approving shoreline recreational developments, the county shall ensure that the development will maintain, enhance or restore desirable shoreline features including unique and fragile areas, scenic views and aesthetic values. To this end, the county may condition project dimensions, location of

project components on the site, intensity of use, screening, parking requirements and setbacks, as deemed appropriate to achieve this end.

20. No recreation building or structure, except piers or docks, or bridges shall be built over the water.

21. Proposals for recreational development shall include plans for sewage disposal. Where treatment facilities are not available, the county shall limit the intensity of development to meet strict county and state on-site sewage disposal requirements.

Recreational Development

	Shoreline Area			
Regulation	Urban	Rural	Conservancy	Natural
1. Shore setbacks (in feet) from OHWM for:				
a. Campfires, picnic facilities and related facilities	25	50	100	C
b. Access roads, restrooms	50	100	100	X
c. Accessory uses, structures, parking, commercial services	75	100	150	X
2. Sideyard setbacks (in feet) for:				
a. Roads, campsites, restrooms	10	50	75	C
b. Accessory uses structures, parking, commercial services	20	75	100	X
3. Height limit (in feet)				
a. 0–100 feet from OHWM	25	20	15	X
b. 101–200 feet from OHWM	35	25	25	X
4. Site coverage	60%	40%	20%	5%
C = Conditional X = Prohibited				

(Ord. No. 108-05, Att. B, 11-29-2005)

17.50.070 - Environment designations.

17.50.071 Shorelines of Statewide Significance. The Shorelines Management Act of 1971 has designated the following shoreline areas of Mason County as Shorelines of Statewide Significance:

1. Hood Canal.
2. Lake Cushman.
3. Skokomish River (downstream from the confluence of its North and South Forks).

The Act further states, concerning Shorelines of Statewide Significance: "The Legislature declares that the interest of all of the people shall be paramount in the management of shorelines of statewide significance." The department, in adopting guidelines for shorelines of statewide significance, shall give preference to uses in the following order of preference which:

1. Recognize and protect the statewide interest over local interest;
2. Preserve the natural character of the shoreline;
3. Result in long term over short term benefit;
4. Protect the resources and ecology of the shoreline;
5. Increase public access to publicly owned areas of the shoreline;
6. Increase recreational opportunities for the public in the shoreline;
7. Provide for any other element as defined in RCW 90.58.100 deemed appropriate or necessary.

In the implementation of this policy the public's opportunity to enjoy the physical and aesthetic qualities of the natural shorelines of the state be preserved to the greatest extent possible consistent with the overall best interest of the state and the people generally. To this end uses shall be preferred which are consistent with control of pollution and prevention of damage to the natural environment or are unique to or dependent upon use of the state's shoreline. Alterations of the natural condition of the shorelines of the state in those limited instances when authorized, shall be given priority for single-family residences, ports, shoreline recreational uses including, but not limited to, parks, marinas, piers, and other improvements facilitating public access to shorelines of the state, industrial and commercial developments which are particularly dependent on their location on or use of the shorelines of the state and other development that will provide an opportunity for substantial numbers of people to enjoy the shorelines of the state.

17.50.070 Lakes.

ANDERSON - Urban residential

BENNETTSEN - Conservancy

BENSON - Urban residential

CRANBERRY - All that portion in Section 29, Township 21 North, Range 3 West, is natural and all that portion in Section 28, Township 21 North, Range 3 West, is rural.

CUSHMAN (Res.) - Natural from the northern tip of the lake on the east side to the east section line of Section 12, Township 23 North, Range 5 West. Urban residential in all of Sections 7 and 18, Township 23 North, Range 4 West. All of Lake Cushman State Park is conservancy. Urban residential from Lake Cushman State Park south to the North Fork of the Skokomish River. Conservancy from the North Fork of the Skokomish River to the Upper Dam. Rural from the northern tip of the lake on the west.

CUSHMAN #2 (KOKANEE) - Natural, except the platted portion of the east side, extending from Lake Cushman Dam #2 on the south to the north property line of Lake Cushman Division 18, Section 5, Township 22 North, Range 4 West, which is urban residential. No building on slopes greater than twenty percent is allowed.

DEVEREAUX - Conservancy, except for the platted portion in Section 7.

FAWN - Urban residential

FORBES - Urban residential

HANKS - Rural

HAVEN - Urban residential

ISABELLA - Conservancy, except that part in Section 6, Township 19 North, Range 3 West, which is urban residential, and that portion parallel to County Road 1075 in Section 31, Township 20 North, Range 3 West, which is urban residential.

ISLAND - Urban residential

LIMERICK - Urban residential

LOST - Urban residential

MAGGIE - Urban residential

MASON - Urban residential, except Simpson Recreation Center is conservancy.

MELBOURNE - Conservancy

NAHWATZEL - Rural, except Sections 4, 8 and 9, Township 20 North, Range 5 West, which are urban residential.

PANTHER - Urban residential

PHILLIPS - Urban residential

PRICE - Natural

PRICKETT - Urban residential

SIMPSON - Urban residential

SPENCER - Urban residential

STAR - Urban residential

STUMP - Natural

TEE - Urban residential

TIGER - Urban residential

TIMBER - Urban residential

WOOTEN - Urban residential

17.50.073 Creeks and Rivers

BAKER CREEK - Conservancy

BINGHAM CREEK - Conservancy, except that portion in the Southwest Quarter of Section 2, Township 19 North, Range 6 West, which is rural.

CANYON RIVER - Conservancy

CLOQUALLUM CREEK - Conservancy

COULTER CREEK - Conservancy

CRANBERRY CREEK- Conservancy

DECKER CREEK - That portion in Section 18, Township 20 North, Range 6 West is natural. The remainder is conservancy with the exception of that platted portion in Section 30, Township 19 North, Range 6 West, which is urban residential.

DEER CREEK - Conservancy, except that portion in Section 36, Township 21 North, Range 3 West, which is rural.

DEWATTO RIVER - Conservancy

DRY BED CREEK - Conservancy

DRY CREEK - Conservancy, except all of Section 10, Township 20 North, Range 6 West, which is rural.

DRY RUN CREEK - Conservancy

GOLDSBOROUGH CREEK SOUTH FORK - Conservancy from the beginning downstream to where it enters Section 24, Township 20 North, Range 4 West. The remainder, downstream to Oakland Bay, is urban residential.

GOLDSBOROUGH CREEK NORTH FORK - Rural, except that portion in Section 19, Township 20 North, Range 4 West, which is conservancy.

GOSNELL CREEK - Rural

HAMMA HAMMA RIVER - Conservancy, except that portion in Section 27, Township 24 North, Range 3 West, which is rural.

JEFFERSON CREEK - Conservancy

JOHNS CREEK - Rural, except that portion in Section 3, Township 20 North, Range 3 West, which is urban residential.

KENNEDY CREEK - Conservancy

LILLIWAUP CREEK - Conservancy, except that portion in Section 19, Township 23 North, Range 3 West, which is urban residential.

LILLIWAUP SWAMP - Natural

McTAGGERT CREEK - Conservancy

MILL CREEK - Rural

MISSION CREEK - Conservancy to the mid-section line of Section 25, Township 23 North, Range 2 West, with the remainder in urban residential.

RENDSLAND CREEK - Conservancy

SATSOP RIVER EAST FORK - Conservancy

SATSOP RIVER MIDDLE FORK - Conservancy

SHUMOCHER CREEK - Conservancy

SKOKOMISH RIVER - Rural

SKOKOMISH RIVER NORTH FORK - Conservancy

SKOKOMISH RIVER SOUTH FORK - That portion in Section 15 and 23, Township 22 North, Range 5 West is conservancy. That portion in Sections 25, 35, 36, Township 22 North, Range 5 West is natural. That portion in Section 2, Township 21 North, Range 5 West is natural. The remainder is conservancy.

SKOOKUM CREEK - Conservancy from the beginning downstream to Highway 101. The remainder is rural.

TAHUYA RIVER - Conservancy from the beginning at the Kitsap County line downstream to the south Section 32, Township 23 North, Range 2 West. The remainder is urban residential.

UNION RIVER - Rural

UNNAMED CREEK (4-20-5) - Rural

VANCE CREEK - Conservancy

SHERWOOD CREEK - Conservancy, except that portion in Sections 29 and 30, Township 22 North, Range 1 West, which is rural.

17.50.074 Marine Waters Shorelines.

1. Marine waters of Mason County are contained in two natural systems: Southern Hood Canal, and the South Puget Sound area. These areas are further subdivided into the shoreline segments listed below, with the appropriate environment designations. Those designations shall apply in a given shoreline area, subject to the following provisions:

Provided: that, for the purpose of evaluating applications for substantial development within two hundred feet, on either side, of a perennial stream's entrance into marine waters, such shoreline shall be considered as being a conservancy environment, when the administrator and/or the shorelines advisory board, determines said estuarine shoreline to be undeveloped or substantially undeveloped. In such cases, the associated wetlands and marshes, if any, of the perennial stream estuary in question shall also be considered as a conservancy environment.

Provided: that those areas of the marine shorelines where the average width of the land area between the line or mean higher high tide and the right-of-way line of an adjacent public highway is thirty feet or less shall be considered conservancy when, in the judgment of the administrator or the advisory board, said shoreline areas are undeveloped or substantially undeveloped.

Provided: that all existing, active, commercial log storage and booming grounds on marine waters shorelines shall be considered urban industrial.

The above, special environment designations for undeveloped or substantially undeveloped estuarine highway-intruded shorelines, and for log storage grounds shall supersede the environment designations on the following marine shorelines, where applicable:

a. West Shore of Hood Canal - Urban residential, with the following exceptions: the south half of Section 12, Township 24 North, Range 3 West, which is conservancy; the shoreline within two hundred feet on either side of the entrance of Eagle Creek into Hood Canal, which is conservancy; from the mid-section line of Section 20, Township 23 North, Range 3 West, south to the Lilliwaup Bridge, which is conservancy; from the mid-section line of Section 20, Township 23 North, Range 3 West, south to the Lilliwaup Bridge, which is conservancy. In addition, all the Hamma Hamma River estuary east of Highway 101 is a conservancy environment. This conservancy environment is bounded on the north by line projected easterly from the intersection of Lon Webb Road and Highway 101 to Hood Canal; and bounded on the south by a line projected easterly from the east-west midsection line of Section 27, Township 24 North, Range 3 West to Hood Canal. A rural environment extends from the midsection line

of Section 26, Township 24 North, Range 3 West, south to the southerly line of NE ¼ of the NE ¼ of Section 34, Township 24 North, Range 3 West. Urban commercial environments are in Lilliwaup, from the Post Office along State Highway 101 to the Lilliwaup Bridge, both ends inclusive and in Hoodsport from ITT Rayonier to the Sunrise Motel, both ends inclusive.

b. East Shore of Hood Canal - Rural from Kitsap County line to Rendsland Creek, except for Sections 5 and 6, Township 23 North, Range 3 West, which is conservancy.

c. North Shore of Hood Canal - Urban residential from rendsland creek to the west boundary of Belfair State Park. From the west boundary of Belfair State Park through Section 31, Township 23 North, Range 1 West in conservancy.

d. South Shore of Hood Canal - Urban residential from the north section line of Section 6, Township 22 North, Range 1 West, to the south section line of Section 31, Township 22 North, Range 3 West, with the following exceptions: the Twanoh State Park shoreline is conservancy; there is an urban commercial environment in Union from Buachel's Garage to the Post Office, both ends inclusive, and there is an urban commercial environment from Alderbrook Inn to the Robin Hood complex, both ends inclusive.

e. Case Inlet, Pickering Passage, Hammersley Inlet, Oakland Bay, Totten and Skookum Inlets.

(1) Urban residential from the Pierce County line to the midsection line of Section 16, Township 22 North, Range 1 West, with the remainder of Section 16 in rural. That portion in Sections 8 and 9, Township 22 North, Range 1 West is conservancy. Rural form the north section line of Section 17, Township 22 North, Range 1 West to the midsection line of Section 17, Township 22 North, Range 1 West.

(2) Urban residential from the midsection line of Section 17, Township 22 North, Range 1 West to the east-west midsection line of Section 21, Township 20 North, Range 2 West, with the following exception: in Allyn, from Sherwood Creek to the forks on Highway 3 is urban commercial.

(3) Rural from the east-west midsection line of Section 21, Township 20 North, Range 2 West to the west section line of Section 19, Township 20 North, Range 2 West. Urban residential from the west section line of Section 19, Township 20 North, Range 2 West to Chapman Cove. Chapman Cove to County Road 2369 is rural. Urban residential from County Road 2369 to the north section line of Section 2, Township 20 North, Range 3 West. That portion in Sections 35 and 36, Township 21 North, Range 3 West is conservancy.

(4) Urban residential from the north section line of Section 2, Township 20 North, Range 3 West to Mill Creek, with the following exception: the City of Shelton industrial area fronting on Oakland Bay and reaching to the Outer Harbor Line is urban industrial. From Mill Creek to the midsection line of Section 20, Township 20 North, Range 2 West is rural. Conservancy from the midsection line of Section 20, Township 20 North, Range 2 West to the plat of Arkada Park. Urban residential from the plat of Arkada Park to midsection line of Section 11, Township 19 North, Range 3 West. All of Skookum Inlet from this point to the midsection line of Section 11, Township 19 North, Range 3 West is rural. Urban Residential from this point to the south section line of Section 11, Township 19 North, Range 3 West. Rural from the north section line of Section 14, Township 19 North, Range 3 West to the east-west midsection line of Section 21, Township 19 North, Range 3 West. The remainder is conservancy.

17.50.075 Marine Waters.

1. Marine waters of Mason County lying immediately adjacent to the shorelands shall have the environment designation of the shorelands themselves, subject to the following provisions:

Provided: that marine waters adjacent to urban residential environments, rural environments, conservancy environments, and natural environments, between one fathom and ten fathoms in depth shall be considered a conservancy environment.

Provided: that marine waters adjacent to shorelands of any environment designation which are ten fathoms or more in depth shall be considered a natural environment.

2. Urban Industrial. Marine waters of Mason County which lie immediately adjacent to shorelands designated as urban industrial environment shall be considered as urban industrial environment from the line of mean higher tide to a depth of ten fathoms, as determined by the USGS, except that the Shelton Urban Industrial Environment shall extend only to the Outer Harbor Line. In addition, all existing, floating, active log storage and booming areas shall be considered urban industrial, and shall supersede any other environment designation where they exist.
3. Urban Commercial. Marine waters of Mason County which lie immediately adjacent to shorelands designated as an urban commercial environment shall be considered as urban commercial environment from the line of mean higher high tide to a depth of ten fathoms, as determined by the USGS.
4. Urban Residential. Marine waters of Mason County which lie immediately adjacent to shorelands designated as an urban residential environment shall be considered as rural environment from the line of mean higher high tide to a depth of one fathom, as determined by the USGS.
5. Rural Environment. Marine waters lying immediately adjacent to shorelands designated as rural environment shall be considered as rural environment from the line of mean higher high tide to a depth of one fathom, as determined by the USGS.
6. Conservancy Environment. Marine waters lying adjacent to shorelands designated as conservancy environment shall be considered as conservancy environment from the line of mean higher high tide to a depth of one fathom, as determined by the USGS.
7. Natural Environment. Marine waters lying adjacent to shorelands designated as natural environment shall be considered as natural environment from the line of mean higher high tide to a depth of one fathom, as determined by the USGS.

17.50.076 Fresh Waters.

1. Those freshwater bodies having a single, uniform environment designation for the adjacent shorelands shall be considered as having the same environment designation as said adjacent shorelands.
2. The environment designations for those freshwater bodies having more than a single, uniform environment designation for the adjacent shorelands shall be as follows:

All freshwater areas fronting on shorelands of any specific environment designation shall be considered as conservancy environment, with the following exception: freshwater areas fronting on shorelands designated as urban commercial environment for a distance of one hundred fifty feet out from the line of ordinary high water, measured horizontally, and perpendicular to the line of ordinary high water.

3. All existing, floating, active, commercial log storage and booming areas shall be considered urban industrial, and shall supersede any other designation where they exist.

17.50.077 Islands.

HOPE ISLAND - Conservancy

McMICKEN ISLAND - Conservancy

STRETCH ISLAND - Urban residential

REACH ISLAND - Urban residential

HARTSTENE ISLAND - Rural except the west half of Section 26, Township 21 North, Range 2 West and that portion from the south line of Section 36, Township 21 North, Range 2 West, north of County Road 3600 which is conservancy.

All existing active, commercial log storage and booming grounds shall be considered urban industrial, and shall supersede any other designations where they exist.

17.50.078 Environment Designations Map. The Mason County environmental designations map (herein referred to as "map") is hereby made a part of this Title. The map shall include all shoreline areas of the county designated in this ordinance [chapter], clearly indicating, by color code, the particular environment designation for all shoreline areas.

(Ord. No. 108-05, Att. B, 11-29-2005)

17.50.080 - Conditional uses.

The purpose of a conditional use permit is to allow greater flexibility in varying the new application of the use regulations of the master program. Conditional use permits should also be granted in circumstances where denial of the permit would result in a thwarting of the policy enumerated in RCW 90.58. In authorizing a conditional use, special conditions may be attached to the permit by local government or the department to prevent undesirable effects of the proposed use.

Uses which are classified or set forth in the master program as conditional uses may be authorized provided the applicant can demonstrate all of the following:

- That the proposed use will be consistent with the policies of RCW 90.58 and the policies of the master program;
- That the proposed use will not interfere with the normal public use of the shorelines;
- That the proposed use of the site and design of the project will be compatible with other permitted uses within the area;
- That the proposed use will cause no unreasonable adverse effects to the shoreline environment in which it is to be located;
- That the public interest suffers no substantial detrimental effect.

Other uses which are not classified or set forth in the master program may be authorized as conditional uses provided that the applicant can demonstrate, in addition to the criteria set forth above, that extraordinary circumstances preclude reasonable use of the property in a manner consistent with the use regulations of the master program.

Uses which are specifically prohibited by the master program may not be authorized.

In the granting of all conditional use permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if conditional use permits were granted for other developments in the area where similar circumstances exist, the total of the conditional uses should remain consistent with the policies of the master program and should not produce substantial adverse effects to the shoreline environment.

(Ord. No. 108-05, Att. B. 11-29-2005)