Proposed Zoning Code Amendments

Shoreline Master Program (Ordinance 5229)

The sections that have proposed Zoning Code Amendments are highlighted below and are included in this packet (as shown in legislative markups). The other portions of the code that have no proposed changes have been removed from this review. The complete Shoreline Master Program (SMP) can be seen: http://www.ci.bremerton.wa.us/315/Shoreline-Master-Program Please note that **Attachment III** contains professional evaluation of the adopted Shoreline Master Program and the recommended changes.

CHAPTER 1 - INTRODUCTION, AUTHORITY AND PURPOSE:

CHAPTER 2 – INTENT & GOALS

CHAPTER 3 - DEFINITIONS:

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BREMERTON SHORELINE MASTER PROGRAM

Approved Dec. 4, 2013 by Ordinance Number 5229

Approved Amendments on _____, 2016 by Ordinance Number _____

Chapter 4 – Shoreline Maps and Designations

4.010 – Intent
4.020 – Maps
4.030 – Designations
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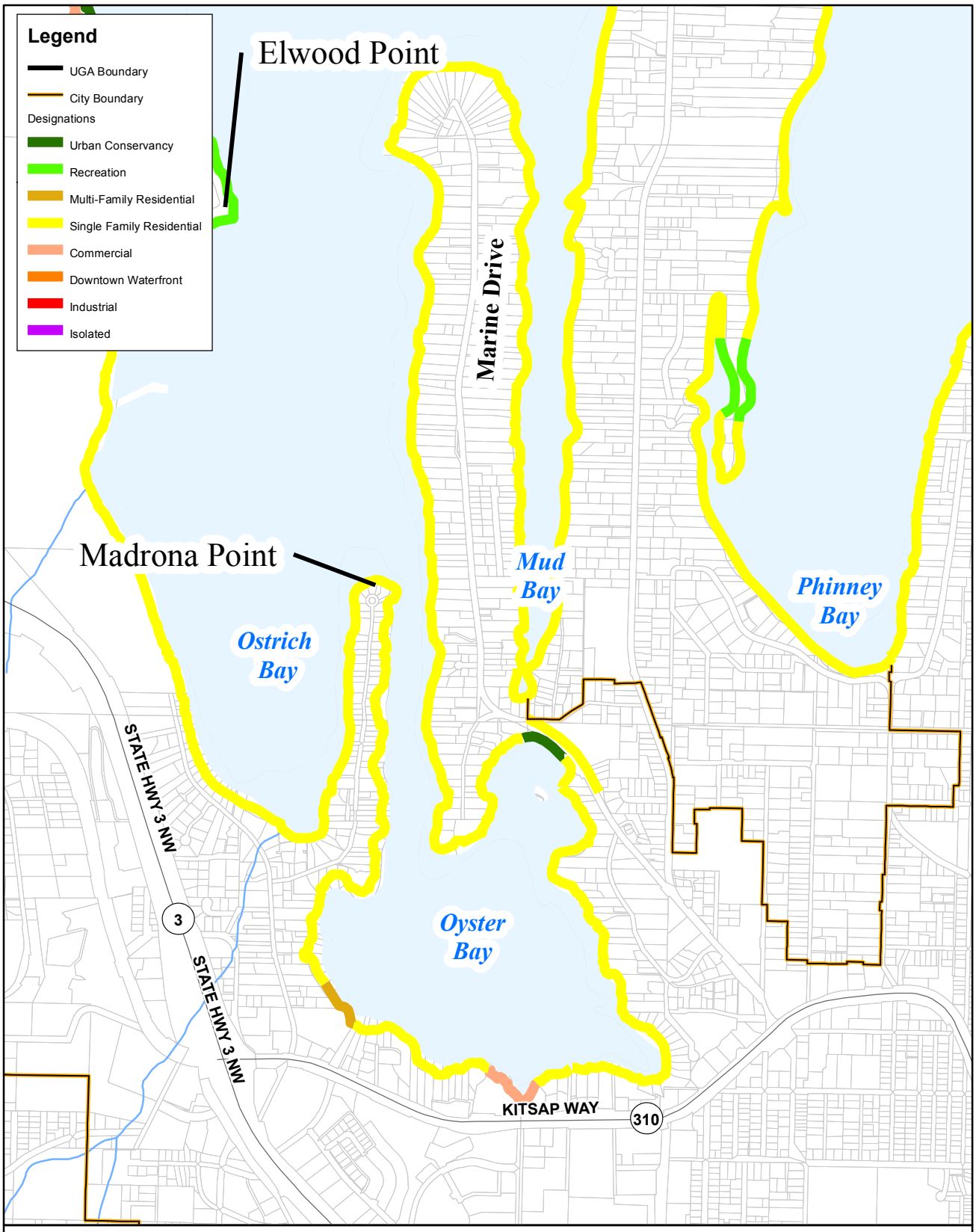
4.020 Maps:

The following maps are the official maps of the Shoreline Master Program. (The maps have been revised for consistency with the Planning Commission recommended Comprehensive Plan Land Use map updates. Specific map changes are proposed only to Maps B and C to include Multifamily Designations in specific areas that are already developed with multifamily structures.)



N

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Miles

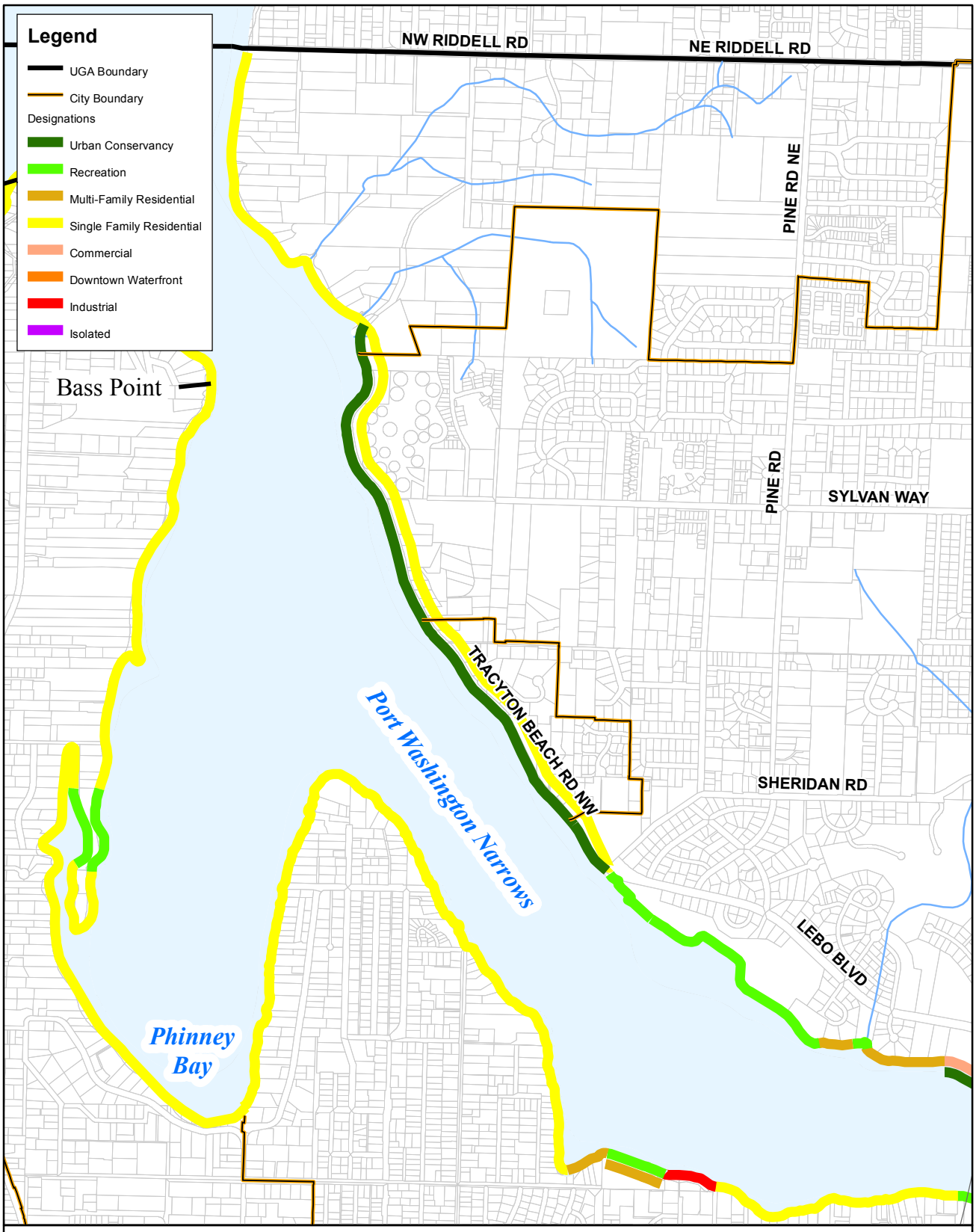
January 25, 2016

Data Sources: Kitsap County, City of Bremerton, Parametrix, Washington Department of Ecology, Washington Department of Natural Resources, Washington Department of Fish and Wildlife (WDFW) National Wetlands Inventory (NWI)

Note: Shoreline jurisdiction boundaries depicted on this map are approximate and are intended for planning purposes only. Additional site-specific evaluation may be needed to confirm/verify information shown on this map.

Bremerton Shoreline Master Program

Map B



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Note: Shoreline jurisdiction boundaries depicted on this map are approximate and are intended for planning purposes only. Additional site-specific evaluation may be needed to confirm/verify information shown on this map.

Bremerton Shoreline Master Program

Map C

Chapter 5 - Permit Administration

5.010 – Applicability
5.020 – Permit Application Types
5.030 – Noticing Requirements
5.040 – Criteria of Approval
5.050 – Appeals
5.060 – Time Periods
5.070– Violations and Penalties
5.080 – Shoreline Moratorium
5.090 – Restoration Project Relocation of OHWM

5.010 Applicability:

(a) **Liberal Construction:** All regulations applied within the shoreline shall be liberally construed to give full effect to the objectives and purposes for which they have been enacted. Shoreline Master Program policies establish intent for the shoreline regulations in addition to RCW 90.58 and Chapter 173 of the Washington Administrative Code 173-26 and 173-27.

(b) **Burden of Proof:** The applicants for any permit shall have the burden of proving that the proposed development is consistent with the criteria as set out in the Shoreline Management Act.

(c) **Development Permit Compliance:**

(1) For all development within shoreline jurisdiction, the responsible official shall not issue a development or construction permit or an exemption for such development until compliance with the Shoreline Master Program has been documented. If a Shoreline Substantial Development Permit is required, no permit shall be issued until all comment and appeal periods have expired. Any development permit for work within the shoreline jurisdiction (200' from the OHWM) shall be subject to the same terms and conditions that apply to the shoreline permit.

(2) Critical Areas in the shoreline jurisdiction are regulated by the Critical Areas Regulations, (Ordinance 4965 2008), codified under BMC 20.14 which is herein incorporated into this SMP however, the following sections of the Critical Area Ordinance do not apply:

(i) BMC 20.14.145(d) Exemptions for Forest Practices;
(ii) BMC 20.14.145(f) Exemptions for activities within improved Right-of-Way; and
(iii) BMC 20.14.155 Reasonable Use Exception.~~;~~
~~(iv) BMC 20.14.200 Definition of "Wetlands".~~
~~(v) BMC 20.14.330(f)(1) Standard Wetland Buffer Widths;~~
~~(vi) BMC 20.14.340(f) & (g) Mitigation Replacement and enhancement Ratios;~~
~~(vii) BMC 20.14.730(d) Table 1: Water Type Buffer Standard.~~

~~(viii) BMC 20.14.730(d)(5) Buffer Reduction;~~
~~(ix)BMC 20.14.730 (d)(8) Habitat Conservation Area Buffers;~~

(d) **Constitutional limitations**: Regulation of private property to implement any Program goals, such as public access and protection of ecological functions, must be consistent with all relevant constitutional and other legal limitations. These include, but are not limited to, property rights guaranteed by the United States Constitution and the Washington State Constitution, applicable federal and state case law, and state statutes, such as RCW 34.05.328 and 43.21C.060.

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

(f) **Compliance with other regulatory requirements**: Compliance with the provisions of this chapter does not constitute compliance with other federal, state, and local regulations and permit requirements that may be required (for example, , Hydraulic Permit Act (HPA) permits, U.S. Army Corps of Engineers Section 404 permits, Washington State Department of Ecology Water Quality Certification (Section 401) National Pollution Discharge Elimination System permits). The applicant is responsible for complying with these requirements, apart from the process established in this chapter. (Ord. 1164 § 4, 2004).

(g) **Permit Revisions**: An application for a permit revision is required whenever the applicant proposes substantive changes to the design, terms, or conditions of a project that has an approved permit. The City may approve a revision, rather than requiring a separate shoreline permit provided the revision is within the scope and intent of the original permit, and is consistent with all applicable standards within the SMP and SMA. Should the revision be found to be within the scope and intent of the original permit the City may approve the revision and submit it to the Department of Ecology. Pursuant to WAC 173-27-100 “Within the scope and intent of the original permit” means all of the following:

(1) No additional overwater construction is involved except that pier, dock or float construction may be increased by five hundred square feet or ten percent (10%) from the provisions of the original permit, whichever is less:

(2) Ground area coverage and height may be increased a maximum of ten percent (10%) from the provisions of the original permit;

(3) The revised permit does not authorize development toe exceed height, lot coverage, setback, or any other requirements of the SMP except as authorized under a variance granted as the original permit or a part thereof;

(4) Additional or revised landscaping is consistent with any conditions attached to the original permit and with the SMP;

(5) The use authorized pursuant to the original permit is not changed; and

(6) No adverse environmental impacts will be caused by the project revision.

(h) **Exemptions**:

A Shoreline Substantial Development Permit shall be required for all proposed use and development within the shoreline jurisdiction unless the proposal is specifically exempt from permit requirements pursuant to WAC 173-27-040. The City issues exemptions for all work that does not meet the threshold for a shoreline permit to be required. The following list of exemptions is an exact copy from the WAC, and is located here as a courtesy to the reader. Any exemptions adopted subsequently by the legislature shall apply without amendment to this program. An exemption from a shoreline permit is not an exemption from compliance with the Act or the Shoreline Master Program, or from any other regulatory requirements. Exemptions shall be construed narrowly. Only those developments that meet the precise terms of one or more of the listed exemptions may be granted exemption from the Shoreline Substantial Development Permit process. Exemptions are as follows:

(1) Any development of which the total cost or fair market value, whichever is higher, does not exceed five thousand dollars, if such development does not materially interfere with the normal public use of the water or shorelines of the state. The dollar threshold established in this subsection must be adjusted for inflation by the office of financial management every five years, beginning July 1, 2007, based upon changes in the consumer price index during that time period. "Consumer price index" means, for any calendar year, that year's annual average consumer price index, Seattle, Washington area, for urban wage earners and clerical workers, all items, compiled by the Bureau of Labor and Statistics, United States Department of Labor. The office of financial management must calculate the new dollar threshold and transmit it to the office of the code reviser for publication in the *Washington State Register* at least one month before the new dollar threshold is to take effect. For purposes of determining whether or not a permit is required, the total cost or fair market value shall be based on the value of development that is occurring on shorelines of the state as defined in RCW 90.58.030 (2)(c). The total cost or fair market value of the development shall include the fair market value of any donated, contributed or found labor, equipment or materials;

(2) Normal maintenance or repair of existing structures or developments, including damage by accident, fire or elements. "Normal maintenance" includes those usual acts to prevent a decline, lapse, or cessation from a lawfully established condition. "Normal repair" means to restore a development to a state comparable to its original condition, including but not limited to its size, shape, configuration, location and external appearance, within a reasonable period after decay or partial destruction, except where repair causes substantial adverse effects to shoreline resource or environment. Replacement of a structure or development may be authorized as repair where such replacement is the common method of repair for the type of structure or development and the replacement structure or development is comparable to the original structure or development, including but not limited to its size, shape, configuration, location and external appearance, and the replacement does not cause substantial adverse effects to shoreline resources or environment;

(3) Construction of the normal protective bulkhead common to single-family residences. A "normal protective" bulkhead includes those structural and nonstructural developments installed at or near, and parallel to, the ordinary high water mark for the sole purpose of protecting an existing single-family residence and appurtenant structures from loss or damage by erosion. A normal protective bulkhead is not exempt if constructed for the purpose of creating dry land. When a vertical or near vertical wall is being constructed or reconstructed, not more than one cubic yard of fill per one foot of wall may be used as backfill. When an existing bulkhead is being repaired by construction of a vertical wall fronting the existing wall, it shall be constructed no further waterward of the existing bulkhead than is necessary for construction of new footings. When a bulkhead has deteriorated such that an ordinary high water mark has been established by the presence and action of water landward of the bulkhead then the replacement bulkhead must be located at or near the actual ordinary high water mark. Beach nourishment and bioengineered erosion control projects may be considered a normal protective bulkhead when any structural elements are consistent with the above requirements and when the project has been approved by the Department of Fish and Wildlife.

(4) Emergency construction necessary to protect property from damage by the elements. An "emergency" is an unanticipated and imminent threat to public health, safety, or the environment which requires immediate action within a time too short to allow full compliance with this chapter. Emergency construction does not include development of new permanent protective structures where none previously existed. Where new protective structures are deemed by the administrator to be the appropriate means to address the emergency situation, upon abatement of the emergency situation the new structure shall be removed or any permit which would have been required, absent an emergency, pursuant to chapter 90.58 RCW, these regulations, or the local master program, obtained. All emergency construction shall be consistent with the policies of chapter 90.58 RCW and the local master program. As a general matter, flooding or other seasonal events that can be anticipated and may occur but that are not imminent are not an emergency;

(5) Construction and practices normal or necessary for farming, irrigation, and ranching activities, including agricultural service roads and utilities on shorelands, construction of a barn or similar agricultural structure, and the construction and maintenance of irrigation structures including but not limited to head gates, pumping facilities, and irrigation channels: Provided, That a feedlot of any size, all processing plants, other activities of a commercial nature, alteration of the contour of the shorelands by leveling or filling other than that which results from normal cultivation, shall not be considered normal or necessary farming or ranching activities. A feedlot shall be an enclosure or facility used or capable of being used for feeding livestock hay, grain, silage, or other livestock feed, but shall not include land for growing crops or vegetation for livestock feeding and/or grazing, nor shall it include normal livestock wintering operations;

(6) Construction or modification of navigational aids such as channel markers and anchor buoys;

(7) Construction on shorelands by an owner, lessee or contract purchaser of a single-family residence for their own use or for the use of their family, which residence does not exceed a height of thirty-five feet above average grade level and which meets all requirements of the state agency or local government having jurisdiction thereof, other than requirements imposed pursuant to chapter 90.58 RCW. "Single-family residence" means a detached dwelling designed for and occupied by one family including those structures and developments within a contiguous ownership which are a normal appurtenance. An "appurtenance" is necessarily connected to the use and enjoyment of a single-family residence and is located landward of the ordinary high water mark and the perimeter of a wetland. On a statewide basis, normal appurtenances include a garage; deck; driveway; utilities; fences; installation of a septic tank and drainfield 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. Local circumstances may dictate additional interpretations of normal appurtenances which shall be set forth and regulated within the applicable master program. Construction authorized under this exemption shall be located landward of the ordinary high water mark;

(8) Construction of a dock, including a community dock, designed for pleasure craft only, for the private noncommercial use of the owner, lessee, or contract purchaser of single-family and multiple-family residences. A dock is a landing and moorage facility for watercraft and does not include recreational decks, storage facilities or other appurtenances. This exception applies if either:

(i) In salt waters, the fair market value of the dock does not exceed two thousand five hundred dollars; or

(ii) In fresh waters the fair market value of the dock does not exceed ten thousand dollars, but if subsequent construction having a fair market value exceeding two thousand five hundred dollars occurs within five years of completion of the prior construction, the subsequent construction shall be considered a Substantial Development for the purpose of this chapter.

(iii) For purposes of this section salt water shall include the tidally influenced marine and estuarine water areas of the state including the Pacific Ocean, Strait of Juan de Fuca, Strait of Georgia and Puget Sound and all bays and inlets associated with any of the above;

(9) Operation, maintenance, or construction of canals, waterways, drains, reservoirs, or other facilities that now exist or are hereafter created or developed as a part of an irrigation system for the primary purpose of making use of system waters, including return flow and artificially stored groundwater from the irrigation of lands;

(10) The marking of property lines or corners on state-owned lands, when such marking does not significantly interfere with normal public use of the surface of the water;

(11) Operation and maintenance of any system of dikes, ditches, drains, or other facilities existing on September 8, 1975, which were created, developed or utilized primarily as a part of an agricultural drainage or diking system;

(12) Any project with a certification from the governor pursuant to chapter 80.50 RCW;

(13) Site exploration and investigation activities that are prerequisite to preparation of an application for development authorization under this chapter, if:

(i) The activity does not interfere with the normal public use of the surface waters;

(ii) The activity will have no significant adverse impact on the environment including but not limited to fish, wildlife, fish or wildlife habitat, water quality, and aesthetic values;

(iii) The activity does not involve the installation of any structure, and upon completion of the activity the vegetation and land configuration of the site are restored to conditions existing before the activity;

(iv) A private entity seeking development authorization under this section first posts a performance bond or provides other evidence of financial responsibility to the local jurisdiction to ensure that the site is restored to preexisting conditions; and(v) The activity is not subject to the permit requirements of RCW 90.58.550;

(14) The process of removing or controlling aquatic noxious weeds, as defined in RCW 17.26.020, through the use of an herbicide or other treatment methods applicable to weed control that are recommended by a final environmental impact statement published by the department of agriculture or Ecology jointly with other state agencies under chapter 43.21C RCW;

(15) Watershed restoration projects as defined herein. Local government shall review the projects for consistency with the shoreline master program in an expeditious manner and shall issue its decision along with any conditions within forty-five days of receiving all materials necessary to review the request for exemption from the applicant. No fee may be charged for accepting and processing requests for exemption for watershed restoration projects as used in this section.

(i) "Watershed restoration project" means a public or private project authorized by the sponsor of a watershed restoration plan that implements the plan or a part of the plan and consists of one or more of the following activities:

(A) A project that involves less than ten miles of stream reach, in which less than twenty-five cubic yards of sand, gravel, or soil is removed, imported, disturbed or discharged, and in which no existing vegetation is removed except as minimally necessary to facilitate additional plantings;

(B) A project for the restoration of an eroded or unstable stream bank that employs the principles of bioengineering, including limited use of rock as a stabilization only at the toe of the bank, and with primary emphasis on using native vegetation to control the erosive forces of flowing water; or

(C) A project primarily designed to improve fish and wildlife habitat, remove or reduce impediments to migration of fish, or enhance the fishery resource available for use by all of the citizens of the state, provided that any structure, other than a bridge or culvert or in-stream habitat enhancement structure associated with

the project, is less than two hundred square feet in floor area and is located above the ordinary high water mark of the stream.

(ii) "Watershed restoration plan" means a plan, developed or sponsored by the Department of Fish and Wildlife, Ecology, the department of natural resources, the department of transportation, a federally recognized Indian tribe acting within and pursuant to its authority, a city, a county, or a conservation district that provides a general program and implementation measures or actions for the preservation, restoration, re-creation, or enhancement of the natural resources, character, and ecology of a stream, stream segment, drainage area, or watershed for which agency and public review has been conducted pursuant to chapter 43.21C RCW, the State Environmental Policy Act;

(16) A public or private project that is designed to improve fish or wildlife habitat or fish passage, when all of the following apply:

(i) The project has been approved in writing by the Department of Fish and Wildlife;

(ii) The project has received hydraulic project approval by the Department of Fish and Wildlife pursuant to chapter 77.55 RCW; and

(iii) The local government has determined that the project is substantially consistent with the local shoreline master program. The local government shall make such determination in a timely manner and provide it by letter to the project proponent.

(iv) Fish habitat enhancement projects that conform to the provisions of RCW 77.55.181 are determined to be consistent with local shoreline master programs, as follows:

(A) In order to receive the permit review and approval process created in this section, a fish habitat enhancement project must meet the following and (II) of this subsection:

(I) A fish habitat enhancement project must be a project to accomplish one or more of the following tasks: Elimination of human-made fish passage barriers, including culvert repair and replacement; or restoration of an eroded or unstable stream bank employing the principle of bioengineering, including limited use of rock as a stabilization only at the toe of the bank, and with primary emphasis on using native vegetation to control the erosive forces of flowing water; or Placement of woody debris or other in-stream structures that benefit naturally reproducing fish stocks.

The Department of Fish and Wildlife shall develop size or scale threshold tests to determine if projects accomplishing any of these tasks should be evaluated under the process created in this section or under other project review and approval processes. A project proposal shall not be reviewed under the process created in this section if the department determines that the scale of the project raises concerns regarding public health and safety; and

(II) A fish habitat enhancement project must be approved in one of the following ways: By the Department of Fish and Wildlife pursuant to chapter 77.95 or 77.100 RCW; or By the sponsor of a watershed restoration plan as provided in chapter 89.08 RCW; or

- By the department as a Department of Fish and Wildlife-sponsored fish habitat enhancement or restoration project;
- Through the review and approval process for the jobs for the environment program;
- Through the review and approval process for conservation district-sponsored projects, where the project complies with design standards established by the conservation commission through interagency agreement with the United States Fish and Wildlife Service and the natural resource conservation service;
- Through a formal grant program established by the legislature or the Department of Fish and Wildlife for fish habitat enhancement or restoration; and
- Through other formal review and approval processes established by the legislature.

(B) Fish habitat enhancement projects meeting the criteria of (p)(iii)(A) of this subsection are expected to result in beneficial impacts to the environment. Decisions pertaining to fish habitat enhancement projects meeting the criteria of (p)(iii)(A) of this subsection and being reviewed and approved according to the provisions of this section are not subject to the requirements of RCW 43.21C.030 (2)(c).

(C)(I) A hydraulic project approval permit is required for projects that meet the criteria of (p)(iii)(A) of this subsection and are being reviewed and approved under this section. An applicant shall use a joint aquatic resource permit application form developed by the Office of Regulatory Assistance to apply for approval. On the same day, the applicant shall provide copies of the completed application form to the Department of Fish and Wildlife and to each appropriate local government. Local governments shall accept the application as notice of the proposed project. The Department of Fish and Wildlife shall provide a fifteen-day comment period during which it will receive comments regarding environmental impacts. Within forty-five days, the department shall either, issue a permit, with or without conditions, deny approval, or make a determination that the review and approval process created by this section is not appropriate for the proposed project. The department shall base this determination on identification during the comment period of adverse impacts that cannot be mitigated by the conditioning of a permit. If the department determines that the review and approval process created by this section is not appropriate for the proposed project, the department shall notify the applicant and the appropriate local governments of its determination. The applicant may reapply for approval of the project under other review and approval processes.

(C)(II) Any person aggrieved by the approval, denial, conditioning, or modification of a permit under this section may formally appeal the decision to the hydraulic appeals board pursuant to the provisions of this chapter.

(D) No local government may require permits or charge fees for fish habitat enhancement projects that meet the criteria of (p)(iii)(A) of this subsection and that are reviewed and approved according to the provisions of this section.

Chapter 7 - GENERAL STANDARDS AND REGULATIONS

7.010 – Buffers and Setbacks
7.20 – Vegetation Conservation
7.030 – Mitigation Sequencing for No Net Loss of Habitat Function
7.040 – Public Access
7.050 – Water Quality, Stormwater, and Non-Point Pollution
7.060 – Archaeologically Sensitive Areas
7.070 – Lighting Requirements
7.080 – Parking Requirements
7.090 – Use Matrix and Height Table

7.010 Buffers and Setbacks:

Upland areas adjacent to the shoreline perform essential functions necessary to sustain habitat and ecological processes. It is for this reason that development must be set back from the water's edge and that natural buffers must be created and or preserved. The City currently regulates such areas through the Critical Areas Ordinance (Ordinance 4965 codified in BMC 20.14), however in areas regulated by this document within the shoreline jurisdiction, the following policies and regulations will supersede those within the Critical Area Regulations:

Policies:

(a) The critical areas that are within the shoreline jurisdiction are to be protected and managed in such a manner that the result of any use, activity, or development is no net loss of shoreline ecological functions.

(b) The City should protect critical areas and their existing shoreline ecological functions so they continue to contribute to existing ecosystem wide processes.

(c) The City should promote uses and values that are compatible with other objectives of this section, such as public access and native vegetation management, provided there is no significant adverse impact to shoreline ecological functions.

Regulations:

(a) **Critical Area Ordinance Applicability:** Critical Areas that are within the shoreline jurisdiction are regulated by the Critical Areas Regulations, (Ordinance 4965 2008), codified under BMC 20.14 which is herein incorporated into this SMP however, the following sections of the Critical Area Ordinance do not apply:

- BMC 20.14.145(d) Exemptions for Forest Practices;
- BMC 20.14.145(f) Exemptions for activities within improved Right-of-Way;
- BMC 20.14.155 Reasonable Use Exception;
- ~~BMC 20.14.200 Definition of "Wetlands".~~
- ~~BMC 20.14.330(f)(1) Standard Wetland Buffer Widths;~~
- ~~BMC 20.14.340(f) & (g) Mitigation Replacement and enhancement Ratios;~~
- ~~BMC 20.14.730(d) Table 1: Water Type Buffer Standard.~~

- ~~BMC 20.14.730(d)(5) Buffer Reduction;~~
- ~~BMC 20.14.730 (d)(8) Habitat Conservation Area Buffers;~~

~~(b) **Wetland Buffers:** For wetlands within the shoreline jurisdiction the following provisions supersede those established within the Critical Areas Ordinance specifically relating to buffers as follows:~~

~~Wetland Category~~	~~Standard Buffer Width~~	~~Moderate Wildlife Function (21-25 Points)~~	~~Moderate-High Wildlife Function (26-29 points)~~	~~High Function (30-36 wildlife points)~~
~~Category I: Based on Score~~	~~75'~~	~~105'~~	~~165'~~	~~225'~~
~~Category I: Coastal Lagoons~~	~~150'~~	~~N/A~~	~~165'~~	~~225'~~
~~Category I: Forested~~	~~75'~~	~~105'~~	~~165'~~	~~225'~~
~~Category I: Estuarine~~	~~150'~~	~~N/A~~	~~N/A~~	~~N/A~~
~~Category II: All~~	~~75'~~	~~105'~~	~~165'~~	~~225'~~
~~Category III: All~~	~~60'~~	~~105'~~	~~165'~~	~~N/A~~
~~Category IV: All~~	~~40'~~	~~N/A~~	~~N/A~~	~~N/A~~

~~(c) **Wetland Mitigation:** For wetlands within the Shoreline Jurisdiction the following mitigation standards shall supersede those established in the Critical Area Ordinance (BMC 20.14.340(f & g)):~~

	~~Wetland Mitigation Type and Replacement Ratio*~~			
~~Wetland Category~~	~~Creation~~	~~Re-establishment~~	~~Rehabilitation~~	~~Enhancement Only~~
~~Category I~~	~~6:1~~	~~6:1~~	~~12:1~~	~~Not allowed~~
~~Category II~~	~~3:1~~	~~3.1~~	~~6:1~~	~~12:1~~
~~Category III~~	~~2:1~~	~~2.1~~	~~4:1~~	~~8:1~~
~~Category IV~~	~~1.5:1~~	~~1.5:1~~	~~3:1~~	~~6:1~~

~~(1) Wetland Mitigation Ratios: These apply to creation or restoration that is in kind, is onsite, is the same category, is timed prior to or concurrent with alteration, and has a high probability of success. These ratios do not apply to remedial actions resulting from unauthorized alterations; greater rations will apply in those cases. These ratios do not apply to the use or credits from state certified wetland mitigation banks. When credits from a certified bank are used, replacement ratios should be consistent with the requirements of the bank's certification.~~

~~(2) Within the shoreline jurisdiction, compensation for wetland buffer impacts shall occur at a minimum 1:1 ratio. Compensatory mitigation for buffer impacts shall include enhancement of degraded buffers by planting native species, removing structures and impervious surfaces within buffers.~~

~~(d)~~(b) **Shoreline Buffers and Setbacks:**

(1) The following table defines required buffers and setbacks for Type S waters. Buffers and setbacks for all other non-shoreline waters (Type F, Type Np, and Type Ns) are defined in BMC 20.14.730(d), Table 1.~~supersedes the buffers and setbacks established for Fish and Wildlife Habitat Conservation Areas in (BMC 20.14.730(d)) as follows:~~

DESIGNATION	**Minimum Building Setback**	**Buffer Width Standard**
URBAN CONSERVANCY	15 feet beyond buffer	175 feet
SINGLE FAMILY & MULTI FAMILY RESIDENTIAL		
Lot depth less than 125’	5 feet beyond buffer	20% of lot depth
Lot depth 125’ to 199’[2]	10 feet beyond buffer	20% of lot depth
Lot depth greater than 200’	15 feet beyond buffer	30% of lot depth (Maximum of 100’)
RECREATIONAL	15 feet beyond buffer	100 feet
COMMERCIAL / INDUSTRIAL / DOWNTOWN WATERFRONT	15 feet beyond buffer	50 feet
ISOLATED	None	None

1. Please note: For all designations, setbacks and buffers listed above the following shall apply:
   a. Where lot depth is less than 150 feet on Commercial or Recreational lots, the buffers listed above may be reduced to 20% of the lot depth.
   b. In no case shall a buffer be less than 10’ or greater than 100’ in the Shoreline Residential Designation.
   c. Buffers are measured from the Ordinary High Water Mark.

(2) **Buffers and Associated Building Setback Areas**: The distance of the buffer shall be measured from the Ordinary High Water Mark (OHWM). Buffers shall remain undisturbed natural beach or vegetation areas except where the buffer can be enhanced to improve its functional attributes, as approved by the Department. Buffers shall be maintained along the perimeter of Fish and Wildlife Habitat Conservation Areas, as outlined in the table above. Refuse, garbage, or debris shall not be placed in the buffers or on the beach.

(3) **Determining Lot Depth**: Areas inundated with water are not included in the calculation for lot depth, therefore the measurement may be taken from the OHWM. For lots with varying lot depth, the average depth may be used.

(4) **Habitat Management Plans:** The provisions of the Critical Area Ordinance (BMC 20.14.740) relating to Habitat Management Plans may reduce the width of a shoreline buffer to no less than ten (10) feet provided enhancement features are installed that will provide a greater habitat function than the prescribed buffer would.

(5) **Setback and Buffer Averaging:** The Director may grant modifications to the Fish and Wildlife Habitat Conservation Area buffer and setbacks required provided:

(i) Sixty (60%) percent or more of like structures along the shoreline within the same numbered block as the subject property are setback less than the required buffer/setback required by the SMP. The average of the like structures may be used as a modified buffer for the proposal; and

(ii) In addition to the buffer, a minimum of a 5' setback shall be required for the structure; and

(iii) No new structure may have a buffer of less than ten (10') feet.

(6) **Fences:** Fences are allowed to be erected in the side yard abutting the fish and wildlife conservation area buffer, but are prohibited within the buffer. Fences may also be erected upland of the buffer including within the shoreline setback area. General development standards for fences are located in BMC 20.44.020. Guardrails may be erected in association with pedestrian access areas provided they do not function as a fence and comply with the International Building Code.

~~(e) **Stormwater:** The provisions of the Critical Area Ordinance (BMC 20.14.730(d)(6)) relating to Stormwater Management shall apply within shoreline jurisdiction only to buffers of 100 feet or greater width.~~

(d) **Exemptions:** The following development activities are not subject to fish and wildlife habitat area buffers and setbacks, provided they are constructed and maintained in a manner that minimizes adverse impacts on shoreline ecological functions, and further provided that they comply with all the applicable regulations in BMC Title 20 and this Program:

(1) Those portions of an approved water-oriented development that require a location waterward of the ordinary high water mark, and/or within their associated buffers and setbacks;

(2) Development activities on lots that are physically and functionally separated from shoreline by an improved paved public or private road or railroad or similar facility and/or by one or more existing developed lots under separate ownership such that the ecological functions provided by buffers do not occur. This provision shall not apply to such a facility within a development proposal or contiguous ownership that can be feasibly relocated to accommodate buffers.

(3) Underground utilities;

(4) Modifications to existing development that are necessary to comply with environmental requirements of any agency when otherwise consistent with this Program, provided that the City determines that:
  (i) The facility cannot meet the dimensional standard and accomplish the purpose for which it is intended; and
  (ii) The facility is located, designed, and constructed to meet specified dimensional standards to the maximum extent feasible; and
  (iii) The modification is in conformance with the provisions for non-conforming development and uses.
(5) Roads, railways, and other essential public facilities that must cross shorelines and are necessary to access approved water-dependent development uses are subject to development standards in Chapter 8, section 090.
(6) Stairs, ADA ramps, and walkways not greater than 5 feet in width or 18 inches in height above grade, not including railings.
(7) Shared moorages shall not be subject to side yard setbacks when located on or adjacent to a property line shared in common by the project proponents and where appropriate easements or other legal instruments have been executed providing for ingress and egress to the facility

7.090 Use Matrix and Height Table:

(a) Use Matrix: The table determines which shoreline modifications and shoreline uses are allowed or prohibited in each Shoreline Designation.

(1) Except for the land uses prohibited in this table, land uses allowed in the underlying zoning are allowed in the Master Program, subject to the preference for water-oriented uses and subject to specific criteria for uses included in these regulations. This chart is not exhaustive of all uses addressed in the zoning code. When referring to unlisted uses, the code is referring neither to uses listed here nor in the zoning code. If a use is prohibited in the underlying zoning district, it is also prohibited within the shoreline.

(2) Aquatic Uses are determined by the adjacent Designation and are limited to water-dependent uses and public access.

(3) Land uses in the underlying zoning that require a Conditional Use Permit, require a Shoreline Conditional Use Permit.

(4) Land uses are defined in BMC 20.42 the definitions section of the zoning code. Shoreline activities are defined in the definitions section of this code.

(5) A use located within the “Isolated” designation shall not be governed by the performance standards within SMP Chapter 7, General Standards and Regulations; Chapter 8, Shoreline Use Regulations, or Chapter 9 Shoreline Modifications, however the Director may determine the proposed development or use is clearly contrary to the intent of this program, and relevant elements of this program may be applied. Development and land use within this designation shall be governed by all other regulations of BMC Title 20 Land Use. The mandatory permit and procedural requirements of this program contained in Chapter 5, Permit Administration, shall apply to said development or uses.

KEY: X= Prohibited P= Permitted CU= Conditional Use	Urban Conservancy	Single Family Residential	Multi-Family Residential	Recreation	Commercial	Downtown Waterfront	Industrial
Unlisted Uses:	CU	CU	CU	CU	CU	CU	CU
UPLAND USES							
Boat Sales, Storage and Repair	X	X	X	CU	P	P	P
Commercial uses such as but not limited to: general retail, general office, clinics, restaurants, drinking places, personal services, athletic fields, restaurants, community facilities, and entertainment uses. (See Zoning Code for specific allowed uses by zone)	X	X	X	X	P	P	P
Community, Cultural, Educational Facilities	CU	P	P	P	P	P	X
Golf Courses	X	CU	CU	X	X	X	X
Hotels and Lodging	X	X	X	X	P	P	X
Industrial	X	X	X	X	X	X	P
Worship and Religious Facilities	X	CU	P	CU	P	P	X
PARKING & UTILITIES							
Parking Serving Primary Use Within the Shoreline Jurisdiction	P	P	P	P	P	P	P
Parking Not Serving Primary Use Within the Shoreline Jurisdiction	X	X	X	X	CU	CU	CU
Transportation facilities that serve uses within the shoreline	P	P	P	P	P	P	P
Utilities that serve uses within the shoreline	P	P	P	P	P	P	P
RESIDENTIAL							
Adult Family Homes, Daycare, & Bed and Breakfasts	CU	P	P	X	P	P	X
Commercial/Residential mixed	X	X	X	X	P	P	X
Multi-Family Residential	X	X	P	X	P	P	X
Single Family Residential	P	P	P	~~X~~P	~~X~~P	P	X
SHORELINE MODIFICATIONS (All uses must meet applicable code criteria see Ch. 9)							
Boat Launch	CU	CU	CU	CU	CU	CU	CU
Aquaculture (including commercial, non-commercial, and geoduck)	CU	X	X	CU	CU	CU	CU
Ecological Restoration / Enhancement	P	P	P	P	P	P	P
Docks, Piers and Other In-Water Structures	P	P	P	P	P	P	P
Dredging	P	P	P	P	P	P	P

KEY: X= Prohibited P= Permitted CU= Conditional Use	Urban Conservancy	Single Family Residential	Multi-Family Residential	Recreation	Commercial	Downtown Waterfront	Industrial
Flood Hazard Reduction	P	P	P	P	P	P	P
Mooring Buoys	P	P	P	P	P	P	P
Marinas	CU	CU	CU	CU	CU	CU	CU
Stabilization - New and Replacement	P	P	P	P	P	P	P
Stormwater Management Facilities	P	P	P	P	P	P	P
RECREATION AND PUBLIC ACCESS							
Recreation, Non-Water-Oriented	CU	CU	CU	CU	CU	CU	CU
Recreation, Water-Oriented	P	P	P	P	P	P	P
Trails, public pedestrian and bicycle not including overwater trails	P	P	P	P	P	P	P
OUTRIGHTLY PROHIBITED USES							
Adult Entertainment	X	X	X	X	X	X	X
Agriculture	X	X	X	X	X	X	X
Automobile Sales Service & Repair	X	X	X	X	X	X	X

Figure 7.090 (b) Height Restrictions:

Table 7.090(b)	
ENVIRONMENT DESIGNATION	HEIGHT
Commercial	35 feet
Downtown Waterfront	175 feet
Industrial	35 feet
Multi-Family Residential	40 feet
Over-Water Structures (All Designations)	15 feet
Recreation	35 feet
Single Family Residential	30 -35’ feet
Urban Conservancy	25 feet
Table Notes: The height limit is restricted to that portion of the building physically located within the shoreline jurisdiction.	

This table establishes the allowable height in each designation based on the type of use. All the applicable City standards still apply. In the event the provisions of this Program conflict with provisions of other regulations, the more restrictive shall prevail. Height measurement is defined in Chapter 3.

(a) Heights in the commercial & industrial districts may be increased to the zoning district height limit through a Conditional Use Permit provided:

(1) The increase does not substantially block views from upland residential properties;

(2) Greater height is demonstrated to be needed for an essential element of an allowed use.

(3) The project may be required to include compensating elements that substantially enhance the visual and physical public access to the shoreline.

(4) It is demonstrated that No Net Loss of habitat function will be achieved.

(b) Single Family Residential heights may be increased to 35’ with the employment of a pitched roof when:

(1) The pitch of the roof is not less than 6:12

(2) The pitched roof is oriented perpendicular to the shoreline. Minor gables or other roof features parallel to the shoreline may be permitted on a case by case basis provided such features do not extend past the pitched roof where views are intended to be preserved.

(3) The pitched roof covers the entire structure.

Attachment I