

Ordinance No. 01 - 2016

AN ORDINANCE REPEALING SECTIONS 18.50.010 - 18.50.390 OF CHAPTER 18.50 SJCC AND AMENDING OFFICIAL COMPREHENSIVE PLAN LAND USE AND SHORELINE MAPS; ADOPTING NEW SHORELINE MASTER PROGRAM REGULATIONS AND A SHORELINE RESTORATION PLAN; AND AMENDING SECTION B, ELEMENT 3 OF THE COMPREHENSIVE PLAN AND CHAPTERS 18.20 AND 18.80 SJCC

BACKGROUND

- A. San Juan County first adopted a Shoreline Master Program (SMP) in 1976. The County's last comprehensive SMP update was adopted in Ordinance 02-1998.
- B. Revised Code of Washington (RCW) Chapter 90.58 is the Shoreline Management Act (SMA) and RCW 90.58.080 establishes a timetable for local governments to complete a comprehensive update of their SMPs consistent with the state guidelines.
- C. RCW 90.58.080 set the deadline for the completion of the County's SMP update as December 1, 2012.
- D. Washington Administrative Code (WAC) Chapter 173-26 is the State's guidelines for the development of local jurisdictions SMPs.
- E. After interviewing four different applicants, the Watershed Company was identified as the County's SMP consultant.
- F. A series of 20 interviews with 69 people representing 43 different groups, organizations, businesses and other interests were held to discuss the SMP update and to identify areas of concern. The interviews were conducted over a three (3) day period: January 18, 2011 on Lopez Island; January 19, 2011 on Orcas Island; and January 20, 2011 on San Juan Island. Interviewees were provided with a topic guide prior to the interviews. A report summarizing the results of the interviews was published in March 2011.
- G. Following the interviews and first round of public meetings, the County established an email list that grew to include almost 700 email addresses.
- H. A public participation plan for the SMP update was developed and presented to the Council at public meetings where public comments were taken.
- The first public meeting was on January 25, 2011. Following direction from the Council, staff redrafted the public participation plan to include a table of SMP development steps, tentative completion dates, a Gantt chart and a description of the roles and responsibilities of the identified interested parties.
- The redrafted public participation plan was presented to the Council on March 1, 2011 and subsequently adopted by Resolution 10-2011.
- I. The County identified the interested parties to the update and began notifying them of upcoming meetings and requesting their review following the publication of significant documents.

- 1 **J.** The first of three County wide public meetings to present and answer questions on the SMP
2 update process were advertised on February 9, 15, 16, 22, 23, 2011, and were held on
3 March 1, 2 and 3, 2011 on Lopez, Orcas and San Juan Islands. An additional meeting was
4 held during the afternoon of March 2, 2011 on Orcas Island for residents of non-ferry
5 served Islands. Approximately 115 people attended the summits in total, 49 from Lopez
6 Island, 28 on Orcas Island (plus another 4 at the daytime meeting for non-ferry served
7 islands) and 34 on San Juan Island.
- 8 **K.** The County published a request for statements of interest and qualifications for a Technical
9 Advisory Committee (TAC) which would be responsible for reviewing the Shoreline
10 Inventory and Characterization Report (I&C) developed by the Consultants in April, 2011.
11 Members of the County Council interviewed TAC applicants and appointed TAC members
12 in late May and early July, 2011. The TAC was sent copies of the draft I&C immediately.
13 Following the TAC's review, the first draft of the I&C was published online for public
14 review on September 7, 2011. Copies of the I&C were sent to the public libraries on San
15 Juan Island, Orcas Island, Shaw Island and Lopez Island as well as to the Waldron
16 Community Meeting on September 9, 2011. The County published requests for comments
17 in the Journal of the San Juans, The Islands Sounder, The Islands Weekly, on September
18 27, 28, October 4 and 5, 2011 as well as in the online news sources, the San Juan Islander
19 and the Island Guardian over the same period.
- 20 **L.** The County staffed an SMP information booth at San Juan Island, Orcas Island and Lopez
21 Island farmers markets. The booth provided residents and visitors an opportunity to
22 question staff and provide feedback. Advertisements announcing the dates the SMP
23 information would be on a given island were published in local newspapers and online on
24 June 1, 2011. The SMP information booth was at the Lopez Island farmers market on June
25 18, July 23, and August 13, 2011; at the Orcas Island farmers market on June 25, July 30,
26 and August 27, 2011; at the San Juan Island farmers market on June 11, and July 16,
27 2011. In addition, an SMP update information booth was staffed for the entirety of the
28 County Fair, August 19 and 20, 2011. Staff also attended a meeting to discuss the SMP
29 hosted by the Common Sense Alliance, a citizen property rights group, on September 16,
30 2011.
- 31 **M.** The County held a second round of meetings to present the I&C and gather feedback on
32 future visions of the shoreline on San Juan Island, Orcas Island and Lopez Island on
33 September 20, 21 and 22, 2011. To publicize the meetings, the County placed posters on
34 the Washington State Ferries serving the County in August 2011. Advertisements for the
35 second round of meetings in the Island Guardian.com and SanJuanIslander.com and in the
36 Journal of the San Juans, The Islands Sounder and The Islands Weekly began August 10
37 and were advertised prior to the meetings on August 31, September 6, September 7,
38 September 14, and September 21, 2011. On September 9, 2011, the County mailed
39 postcards announcing the dates of the meetings to every address in the County. About 199
40 people attended the meetings. Following the discussion of the I&C, the audience was
41 presented with a visual survey of different types of shoreline development. The survey
42 allowed members of the audience to 'vote' electronically on their preferred types of
43 shoreline development.

- 1 N. Over 300 comments from the TAC and the public regarding the I&C were provided to the
2 consultants and revisions were made to the document. Explicit responses to the public's
3 original comments and questions were included in the 2nd draft of the I&C.
- 4 O. On March 9, 2012, all of the County's taxpayers were sent a letter outlining the ongoing
5 SMP update and adoption process that included links to the revised I&C and additional
6 documents on the County's SMP update webpage as well as contact information for the
7 lead planner.
- 8 P. A second draft of the I&C was published on February 1, 2012. Explicit responses to the
9 public's original comments and questions were included in the second draft of the I&C.
10 Federal, state agencies and Native American nations were informed by email that the report
11 was available. Notices were posted to the email list and advertisements appeared in the
12 Journal of the San Juans, The Islands Sounder and Islands Weekly as well as online at the
13 Sanjuanislander.com and Islandguardian.com; on February 8, 14 and 28, 2012 announcing
14 the availability of the revised I&C report. An initial comment deadline was established as
15 March 15, 2012. This deadline was extended to April 30, 2012. Advertisements in the
16 Journal of the San Juans, Islands Sounder and Islands Weekly announcing the extended
17 deadline were published on March 7, April 3, and April 4, 2012.
- 18 Q. The County received over 100 property descriptions from county property owners that
19 were then mapped and scanned. The property descriptions were added to the I&C as an
20 appendix.
- 21 R. Citizens began questioning the methodologies used to analyze the data presented in the
22 I&C. Of particular concern was accounting for the interaction of shore form and ecological
23 functions. The County organized a public meeting so that data providers, such as
24 Washington Department of Fish and Wildlife, Washington Department of Natural
25 Resources (WDNR), Washington Department of Ecology (WDOE), Department of Parks
26 and Recreation, Native American nations, the Friends of the San Juans and the Technical
27 Advisory Committee could meet with the consultants to discuss the data used and its
28 presentation in the I&C. Meeting invitations were sent to all those who had expressed
29 concerns on April 4, 2012 and a notice announcing an April 27, 2012, workshop was sent
30 to the email listserv on April 12, 2012.
- 31 S. The third draft of the I&C was published on the County's SMP webpage on April 29, 2013.
32 It incorporated property owners' descriptions of their properties and addressed issues raised
33 by the TAC and other interested parties.
- 34 T. On July 9, 2012, a field trip for the public and County Council took place to show how the
35 proposed regulations would apply to two shoreline properties.
- 36 U. The Planning Commission held workshops to identify and discuss broad policy options and
37 provide direction for possible SMP amendments. These workshops were advertised on July
38 12, 2012. They were held on July 20, 2012, and continued to August 17, 2012, September
39 7, 2012, and September 21, 2012, and were video live streamed on the County's website.

- 1 **V.** The Department of Community Development held series of public ‘Open House’ meetings
2 to discuss the preliminary draft of the updated SMP on March 18, 19 and 20, 2013. A
3 meeting notice, detailing locations, times and subjects to be covered was mailed to all
4 property owners in the County (11,000+/- distinct addresses) on March 8, 2013. Advertise-
5 ments were published on March 13, 2013 in the Journal of the San Juans, The Islands
6 Sounder, the Islands Weekly, the San Juan Islander and the Island Guardian. A notice was
7 sent out to the SMP listserv announcing the open houses and availability of the draft SMP
8 on March 8, 2013. A total of 146 people attended the ‘Open Houses.’
- 9 **W.** On April 24, 2013, as required by WAC 173-26-100(5) notice was sent to DOE of the
10 County’s intent to update the existing SMP.
- 11 **X.** A combined public notice and State Environmental Protection Act (SEPA) Determination
12 of Non-significance was published on April 24, 2013. Notice was provided to federal, state
13 and local agencies in accordance with San Juan County Code 18.80.050. A notice was sent
14 to the email listserv on April 24, 2013 announcing the public hearing and providing
15 recipients with direct links to the documents to be considered.
- 16 **Y.** A 60 day notice of intent to amend the County’s Comprehensive Plan was submitted to the
17 Department of Commerce on April 24, 2013.
- 18 **Z.** On May 3, 2013, notice of the May 9, 2013, public hearing with the Planning Commission
19 and the publication of the third draft of the I&C also was sent to the local, state and federal
20 organizations which share shoreline jurisdiction and Native American nations.
- 21 **AA.** On May 9, 2013, the Planning Commission held a duly advertised public hearing on the
22 draft SMP goals and policies, regulations and maps. Eight people provided public
23 comment. The Planning Commission continued the public hearing to May 30, 2013, to
24 allow an additional opportunity for public comment.
- 25 **BB.** On May 30, 2013, the Planning Commission conducted a public hearing on the SMP goals
26 and policies, draft regulations and maps. The Planning Commission continued the public
27 hearing to May 31, 2013, for deliberations only.
- 28 **CC.** On May 31, 2013, the Planning Commission deliberated on the draft SMP and continued
29 the public hearing until June 21, 2013. The June 21, 2013, public hearing was cancelled
30 due to a lack of a Planning Commission quorum.
- 31 **DD.** Another combined hearing notice and SEPA Determination of Nonsignificance was
32 published on June 26, 2013, in the Journal of the San Juans, The Islands Sounder, The
33 Islands Weekly, the San Juan Islander and the Island Guardian. This notice announced the
34 availability of the proposed Shoreline Restoration Plan for public comment and Planning
35 Commission consideration.
- 36 **EE.** On July 19, 2013, the Planning Commission conducted another duly advertised public
37 hearing to hear testimony on the proposed SMP Restoration Plan and to finish
38 deliberations.

1 **FF.** At the July 19, 2013, public hearing the Planning Commission concluded its SMP
2 deliberations and adopted findings and recommendations regarding the proposed
3 Restoration Plan and amendments to the Comprehensive Plan, Unified Development Code
4 and Official Maps.

5 **GG.** On February 27, 2012; June 4, 2012; June 5, 2012; June 17, 2013; September 9, 2013;
6 September 30, 2013; October 14, 2013; November 4, 2013, November 18, 2013;
7 December 2, 2013; December 9, 2013; December 16, 2013; April 7, 2014; February 23,
8 2015; March 2, 2015; March 9, 2015; April 20, 2015; May 11, 2015; May 18, 2015; June 1,
9 2015; June 8, 2015; June 15, 2015; June 29, 2015; August 17, 2015; August 18,
10 2015; August 19, 2015; August 24, 2015; and August 25, 2015 September 14, 2015,
11 October 12, 2015, October 21, 2015, October 28, 2015, and October 29, 2015, and
12 November 9, 2015, the San Juan County Council was briefed as part of their regularly
13 scheduled public meetings.

14
15 **HH.** The San Juan County Council held a duly advertised public hearing on November 30,
16 2015, which was continued to December 2, 3, and 15, 2015, and into 2016.

17
18 **II.** The County Council also advertised and held special meetings on San Juan, Lopez and
19 Orcas Islands on January 12, 13, and 14, 2016. At these meetings, staff provided an
20 overview of and answered questions about the draft SMP.

21
22 **JJ.** The November 30, 2015, hearing was continued through 2016 at meetings on January 11,
23 12, 13, 14, 25 and 26, and February 1, 2, 5, 8, and 22, and March 8 and 15, 2016, in which
24 the County Council considered public comments and deliberated on SMP documents.

25
26 **KK.** On March 29, 2016, County Council held another duly advertised public hearing on the
27 draft SMP that incorporated Council's response to public comments received on the
28 November 2015 public hearing drafts of the proposed Restoration Plan and draft
29 amendments to the Comprehensive Plan, Unified Development Code and Official Maps.

30
31 **LL.** On April 5, 2016, County Council met on Orcas Island and adopted the SMP updates after
32 considering the public comments and additional staff recommendations.

33
34 **MM.** The San Juan County Council makes the following findings:

35
36 I. Shoreline Inventory and Characterization.

37
38 1. The I&C identifies the existing ecological functions and conditions, the degree of
39 environmental sensitivity of reaches, and existing and potential development of the
40 County's shorelines.

41
42 2. The I&C was used to:
43

- 1 (a) Develop a classification system and designation criteria for evaluating and
2 amending shoreline environment designations for each shoreline reach;
- 3
- 4 (b) Draft management policies for the shoreline designation that reflect the
5 ecological conditions, sensitivities and existing land uses;
- 6
- 7 (c) Draft shoreline use and development regulations designed to result in no net
8 loss countywide and protect existing ecological functions; and
- 9
- 10 (d) Identify shoreline areas where existing ecological conditions and functions
11 may benefit from restoration activities.
- 12

13 II. Comprehensive Plan Goals and Policies.

- 14
- 15 1. The GMA's fourteenth goal addresses the policies and goals of the SMA (RCW
16 36.70A.480(1)). This means the goals and policies adopted in the SMP become
17 part of the County's GMA Comprehensive Plan and must be consistent with the
18 Comprehensive Plan.
- 19
- 20 2. Section B, Element 3 of the County's Comprehensive Plan, Shoreline Master
21 Program Goals and Policies (GPPs) is updated consistent with policy goals set
22 forth in RCW 90.58.020 and the requirements of WAC 173-26-176. The update
23 addresses the elements in RCW 90.58.100(2) including designation and
24 management of the shoreline environments and standards for shoreline uses and
25 modifications.
- 26
- 27 3. Per WAC 173-26-231 and 173-26-241, policies for specific shoreline uses and
28 modifications implement the SMA goals that prefer water-dependent and water-
29 related uses, provide public access and recreation opportunities, protect ecological
30 functions, and preserve property rights.
- 31
- 32 4. The GPPs provide the shoreline environment designation criteria and basis for the
33 shoreline regulations that protect the ecological conditions and regulate which
34 uses are prohibited, allowed outright, or require a shoreline permit. Some uses are
35 restricted by scale, scope, location, design, and impact mitigation to be
36 compatible within a particular designation.
- 37
- 38 5. As a whole, the updated GPPs support appropriate types of preferred
39 development; protect and enhance public access as well as recreational
40 opportunities; promote the protection of shoreline ecological functions; promote
41 the voluntary restoration of shoreline ecological functions where it is consistent
42 with private property rights; identify essential public facilities; limit the potential
43 for flood damage; and provide a basis for coordination with other local, state, and
44 federal programs and organizations.
- 45

- 1 6. The GPPs are reorganized to improve accessibility. Sections 3.2 and 3.4
2 pertaining to overall goals and policies were reorganized and amended. Other
3 sections of the GPPs were similarly moved and amended to improve clarity,
4 comprehension and reduce redundancy.
5
- 6 7. GPP sections regarding archaeological and historic resources, clearing and
7 grading, shorelines of statewide significance, and signs are amended and moved
8 to Section 3.2 regarding overall goals and policies because they apply to the
9 entire jurisdiction rather than a specific activity or designation. Other
10 subsections in the general policies section pertaining to environmentally
11 sensitive areas and environmental impacts were either deleted as obsolete or
12 moved to the applicable critical area sections.
13
- 14 8. Economic development policy 5 in Section B, Element 3, Section 3.2.B is
15 updated to prohibit the development of both underwater oil and natural gas
16 pipelines and oil and natural gas refineries within the shoreline jurisdiction. This
17 policy is intended to provide protection of the marine environment and help the
18 County meet the goal of no net loss of shoreline ecological functions.
19
- 20 9. A new Section 3.2.C regarding critical areas replaces Sections 3.4.C and 3.4.D
21 (environmental impacts and environmentally sensitive areas). It includes both
22 general critical area goals and policies for the shoreline jurisdiction and specific
23 goals and policies for each type of critical area. It directs the County to
24 implement regulations to achieve no net loss of shoreline ecological functions.
25
- 26 10. A new section 3.4.E establishes goals and policies for shoreline essential public
27 facilities (EPFs). The County's lack of a direct connection to the mainland
28 requires policies that address the development of water-dependent EPFs. This
29 section identifies the characteristics of shoreline EPFs, provides a list of existing
30 shoreline EPFs and sets forth goals and policies to implement protocols that
31 allow the development of shoreline EPFs.
32
- 33 11. A new Section 3.2.J addresses flood hazard reduction. It distinguishes policies
34 for routine construction practices such as raising the foundation of a structure
35 above the base flood elevation and the creation of dikes or seawalls. It also
36 articulates a preference for nonstructural methods of flood hazard reduction.
37
- 38 12. Section 3.3.H pertaining to subarea environment designations is deleted because
39 the updated shoreline designations do not include different shoreline
40 designations within Eastsound and Shaw Island subarea plans. The updated
41 SMP relies on the 'parent' designations that the subarea shoreline designations
42 were based upon. Where there are distinctions in the subarea plans, any
43 differences are noted in the table of shoreline development, uses, structures and
44 activities by designation in Section 66 of the ordinance.
45

- 1 13. Section 3.4.B, Policy 10 prohibits the introduction of genetically modified
2 organisms. This policy is needed for consistency with Chapter 8.26 SJCC
3 adopted in response to the people's Initiative in Measure 2012-4. The people of
4 the County voted to protect the natural environment, private property rights of
5 our citizens, and the health, safety and welfare by restricting cultivation of
6 genetically modified crops, livestock and other organisms.
7
- 8 14. Section 3.6.B, Bulkheads is deleted. A new Section 3.5.D addresses both soft
9 and hard forms of stabilization measures. The new section is updated to ensure
10 that hard structural stabilization measures are used to protect shoreline
11 structures only after all other options have been evaluated.
12

13 III. Comprehensive Plan Official Maps. 14

15 The County's Comprehensive Plan Official Maps depict the County's shoreline use
16 designations and are components of the updated SMP. The mapping designation
17 system was developed to meet the SMA requirements.
18

- 19 1. The underlying purpose of shoreline designations is to implement the no net
20 loss standard for shoreline ecological functions. This standard is met at the
21 countywide level. It will be accomplished by increasing overall protection
22 measures in all designations through updated regulations and implementation of
23 the critical areas regulations and the no net loss standard.
24
- 25 2. WAC 173-26-211(4)(c) allows the County to develop a shoreline designation
26 system that is different from that recommended in WAC 173-26-211(5)
27 provided the system is consistent with the guidelines. The County's system
28 differs slightly from the recommended one and alternatively provides equal or
29 better implementation of the SMA because it better reflects local conditions
30 specific to the San Juan Islands.
31
- 32 3. The updated SMP classifies each shoreline reach into one of the following types
33 of designations: Urban, Rural, Rural Residential, Rural Farm Forest, Ports,
34 Marina and Transportation (PMT), Conservancy, Natural, and Aquatic.
35 Consistent with WAC 173-26-211(4)(c), each of San Juan County's shoreline
36 designations has a goal statement, designation criteria, policies and associated
37 regulations.
38
- 39 4. Amendments to existing shoreline designations and areas with new designations
40 are based upon the I&C data and an analysis of the ecological function scores,
41 existing and predicted development patterns, and community goals.
42
- 43 5. The PMT designation is a new designation needed to acknowledge and protect
44 the County's essential marine transportation infrastructure in a manner
45 consistent with the conditions identified in the I&C and community vision

1 expressed in Comprehensive Plan. PMT recognizes the importance of
2 waterborne transportation to the islands. San Juan County is the only county in
3 the state that is accessible only by boat or plane. This designation is applied, as
4 appropriate, to existing marine transportation facilities such as public and
5 private boating facilities, barge landing sites, and ramps.
6

- 7
- 8 6. PMT reach designations are based upon an analysis of ecological function
9 scores, community goals and existing and predicted development patterns. For
10 existing development patterns, existing marinas, mooring buoys, boating
11 facilities, docks, boat ramps, ferry and barge landing sites were identified. First,
12 public boating facilities, public marine transportation facilities and public docks
13 were identified, evaluated based upon I&C data and updated for PMT
14 designation where appropriate. Second, private boating facilities, particularly
15 those serving as access points to non-ferry served islands were also identified,
16 analyzed and updated for PMT. Lastly, road ends and locations of previously
17 existing public transportation structures were evaluated and designated.
- 18 7. The County simplified certain designations in the shoreline jurisdiction because
19 they are complex to understand and administer. Currently, there is an upland
20 designation for the area that stretches 200 feet landward from the OHWM. In a
21 few places the strip of tideland between the OHWM and the Extreme Low Tide
22 (ELT) line is designated Natural or Conservancy and beyond the line of ELT,
23 the designation is Aquatic. Where there is no tideland designation, the area
24 waterward of the OHWM is designated Aquatic.
25

26 Triple shoreline designations are eliminated in the update in most cases because
27 the introduction of the critical area regulations, the no net loss standard and
28 other increased protections provide a higher level of environmental protection.
29 In False Bay, the triple designations are retained because the tidelands meet the
30 Natural designation criteria.
31

- 32 8. To simplify the administration of the goals, policies, and regulations, the
33 subarea specific shoreline designations for Eastsound and Shaw Island are
34 eliminated. The update replaces the subarea specific designations with their
35 parent designations. Where consistent with existing development, ecological
36 scores and community goals, Shaw Rural is designated Rural, Shaw Rural Farm
37 Forest is designated considered Rural Farm Forest, Shaw Conservancy is
38 designated Conservancy, Shaw Natural is designated Natural. Eastsound Urban
39 is designated Urban, Eastsound Marina District is designated PMT, Eastsound
40 Conservancy District is designated Conservancy, Eastsound Natural District is
41 designated Natural, and Eastsound Residential is designated Rural Residential.
42
- 43 9. In Section 66, differences between the Eastsound and Shaw subarea specific
44 designations and the general shoreline designations are addressed as notes to the
45 table of shoreline development, uses, structures and activities by designation.

1 10. In accordance with WAC 173-26-110, Exhibit D of this ordinance contains the
2 San Juan County Table of Map Designation Changes That Do Not Follow
3 Parcel Lines. This table provides the map designation boundaries in latitude
4 and longitude for designations that do not follow parcel lines.
5

6 IV. Shoreline Permit Procedures.
7

- 8 1. In Section 4, shoreline permit procedures, SJCC 18.80.110 are clarified and
9 amended to include requirements for pre-application meetings for shoreline
10 substantial development, conditional use and variance applications unless the
11 meeting is waived by the director. These meetings are necessary because of the
12 complex nature of permitting. Pre-application meetings are intended to help
13 people become familiar with the applicable development regulations, critical
14 area reports and site plan requirements prior to application submittal.
15 Processing of complete permit applications is less time consuming and
16 frustrating for customers.
17
- 18 2. In Section 4, new vesting provisions are included in SJCC 18.80.110(N)
19 because State law only includes vesting provisions for building permits and
20 subdivisions. The vesting provisions are intended to provide greater certainty to
21 property owners who have plans to develop or redevelop an existing property or
22 have plans for new uses.
23

24 V. Development Regulations.
25

- 26 1. Amended Chapter 18.50 SJCC includes the shoreline regulations designed to
27 comply with the SMA.
28
- 29 2. In Section 14, the nonconforming use and development standards are updated to
30 apply to all types of nonconforming use and development. Existing code
31 provides local regulations for some residential nonconformities but defers to the
32 WAC 173-27-080 for other types.
33
- 34 3. Updated critical area regulations made many existing structures nonconforming.
35 Because the SMP update requires developments and uses to incur no net loss,
36 the updated nonconforming standards allow some development flexibility while
37 still ensuring no net loss of shoreline ecological functions. The updated
38 standards also allow an existing structure to be relocated or replaced in a
39 location that is more conforming than the previously existing location. This
40 amendment may result in better protection of shoreline ecological functions.
41
- 42 4. Section 17 addresses WAC 173-26-186(8)(b) which states that, "Local master
43 programs shall include policies and regulations designed to achieve no net loss
44 of those ecological functions." Because shoreline ecological functions are the
45 same as critical area functions and values, the no net loss standard for shoreline

1 ecological functions is comparable to the no net loss standard under the Growth
2 Management Act (GMA) for critical area functions and values.

- 3
4 5. The SMA and its guidelines also require that local master programs contain
5 provisions for the protection of critical areas pursuant to RCW 90.58.090(4) and
6 WAC 173-26-221(2). In the GMA, RCW 36.70A.480(3)(b) transfers regulatory
7 authority with respect to critical areas protection to the SMA for critical areas
8 within shoreline jurisdiction. The County's critical area regulations in Chapter
9 18.35 SJCC meet the critical area protection requirements and the no net loss
10 standard of the GMA and SMA.
11
12 6. The County's critical area regulations are based upon the Best Available
13 Science Synthesis for San Juan County, May 2011, adopted in Resolution 22-
14 2011.
15
16 7. The County's critical area regulations were challenged before the Growth
17 Management Hearings Board (GMHB), Western Washington Region (Case No
18 13-2-0012c) and in the Court of Appeals of the State of Washington. On
19 August 10, 2015, the Washington State Court of Appeals upheld a superior
20 court decision rejecting the final challenges to the County's critical areas
21 ordinance in Case No. 72235-2-1 (Common Sense Alliance, P.J. Taggares
22 Company, and Friends of the San Juans v. GMHB, Western Washington region
23 and San Juan County).
24
25 8. The BAS Synthesis (Final) dated May 24, 2011, and identified as Bates # 5500-
26 6032 in the GMHB record for the critical area regulations update is incorporated
27 into and included as a part of the SMP record.
28
29 9. Vegetation plays a critical role in sustaining needed habitats and species within
30 an ecosystem. It supports the maintenance of critical area functions and values
31 which are the same as shoreline ecological functions and values. San Juan
32 County Code and the updated SMP provide for vegetation protection and
33 management in a comprehensive manner as highlighted by the following
34 summaries:
35
36 a. Section 16 of the updated SMP regulations addresses clearing, grading,
37 and vegetation management. It requires compliance with SJCC 18.60.060 and
38 18.60.070 and Section 18.
39
40 b. SJCC 18.60.060 requires that grading and clearing be conducted to
41 minimize potential adverse effects on forested lands, surface water quality and
42 quantity, groundwater recharge, wildlife habitat, and scenic resources. Grading
43 plans must include provisions for the maintenance of adequate buffers of
44 undisturbed native vegetation to minimize off-site impacts of surface water
45 runoff, erosion, and sedimentation. Graded surfaces must be designed and

1 constructed to be revegetated to slope gradients. This allows the graded surfaces
2 to hold topsoil and minimize surface runoff, erosion, and sedimentation that can
3 damage water quality and habitats. The upper six to twelve inches of topsoil
4 must be salvaged, stockpiled, and spread over disturbed areas prior to
5 revegetation. Any cleared or graded area that is not covered with gravel or an
6 impervious surface must be seeded immediately upon project completion. If
7 erosion is probable, areas with exposed soil must be protected by temporary
8 means during construction. All disturbances should be revegetated with grasses
9 and forbs and include shrubs and trees as appropriate. The use of plant species
10 native to the County is encouraged. Natural vegetation must be retained to the
11 maximum extent possible in the construction and operation of any use. In
12 addition, clearing and grading activities proposed in, or that would adversely
13 affect critical areas are subject to SJCC Chapter 18.35.
14

15 c. Under SJCC 18.60,070, drainage controls are required for projects. These
16 controls may include landscaping or reestablishment of native vegetation. For
17 effective long term weed control, the regulations recommend coordination with
18 the County weed control board to eradicate nuisance species. Use of best
19 management practices (BMPs) from the County's Stormwater Management
20 Manual is required.
21

22 d. Section 16(C) limits land clearing to areas necessary for driveways,
23 buildings, and view and solar access corridors. It also regulates tree removal
24 and requires consistency with the Tree Protection Zone requirements in SJCC
25 Chapter 18.35. Under Section 16(F) clearing or grading that would adversely
26 impact ecological functions is subject to a mitigation plan.
27

28 e. Section 17 restricts vegetation removal to activities that result in no net
29 loss of shoreline ecological functions.
30

31 f. Section 18 requires land use and development to meet the critical areas
32 protections in SJCC Chapter 18.35 for no net loss or to comply with the
33 mitigation requirements in Sections 19, 20 and 21.
34

35 g. SJCC Chapter 18.35.130 requires consistency with water quality buffers
36 and Tree Protection Zone requirements. In addition, SJCC 18.35.130(2), Table
37 18.35.130-3 (Structures, Uses and Activities Allowed in and over Aquatic
38 FWHCAs and Their Water Quality Buffers) contains vegetation management
39 regulations. Item (a) allows uses and activities that do not modify the land or
40 vegetation and that will not adversely affect functions and values. Item (c)
41 provides for the removal of invasive plants and planting of native plants and
42 vegetation management activities. Item (j) restricts the establishment and
43 expansion of orchards and gardens that are cultivated and managed with
44 appropriate BMPs and without synthetic chemicals.
45

- 1 10. The County designated streams, lakes, marine waters and primary association
2 areas for critical species as critical areas and specifically as fish and wildlife
3 habitat conservation areas (FWHCAs) (Chapter 18.35 SJCC). Shorelines of the
4 State are a subset of the County's streams, lakes and marine waters. FWHCAs
5 regulations are supported by the County's best available science (BAS) as
6 required by RCW 36.70A.172.
7
- 8 11. Section 17 Item (F) prohibits the cultivation of genetically modified crops,
9 livestock and other organisms within the shoreline jurisdiction consistent with
10 GPP policy 3.4.B(10) and Chapter 8.26 SJCC.
11
- 12 12. Section 18 provides clarity about which critical area sections do not apply
13 because more specific requirements are included in the SMP.
14
- 15 13. The update is part of multifaceted approach to environmental preservation that
16 accounts for no net loss of critical area functions and values. Shoreline and
17 critical area regulations are designed to prevent loss of ecological functions at
18 the project level. Other components of the County's regulatory system
19 contribute to environmental protection including storm drainage, clearing and
20 grading, SEPA, and enforcement requirements in SJCC Chapters 18.60, 18.80
21 and 18.100. Non-regulatory programs such as restoration, enhancement,
22 acquisition, open space, education and stewardship opportunities and other
23 programs are used to offset unavoidable cumulative impacts resulting from
24 development that regulations may not fully address at the project level.
25
- 26 14. Sections 19, 20, and 21 update the shoreline mitigation regulations by including
27 thresholds, preferences, protocols and procedures for mitigating potential
28 adverse impacts to shoreline ecological functions to achieve no net loss of
29 shoreline ecological functions on a countywide level.
30
- 31 15. Section 19 does not require mitigation planning if development meets the
32 County's critical area protections because projects that meet critical area
33 requirements are achieving the no net loss standard. A mitigation analysis is
34 required if a development proposal fails to meet the County's critical area
35 protections. Applicants must demonstrate that actions higher in the sequence are
36 infeasible before addressing subsequent options.
37
- 38 16. Section 19 establishes a mitigation sequence analysis with a clear preference for
39 avoiding impacts by refraining from an action or parts of an action. On site
40 mitigation is preferred. If off-site mitigation is necessary, must be performed on
41 the same island.
42
- 43 17. Section 20 is consistent with the County's critical area regulations and
44 establishes mitigation plan characteristics. Mitigation plans must be authored by
45 a qualified professional, address any anticipated adverse impacts, and establish

1 mitigation and monitoring procedures to determine the effectiveness of the plan.
2 Where appropriate, adaptive management plans must address failures of the
3 original program.
4

5 18. Section 21 establishes mitigation plans approval criteria and provides an option
6 for the extension of monitoring periods.
7

8 19. Section 28 updates aquaculture regulations and distinguishes between small
9 scale and other aquaculture operations. If they qualify, small scale regulations
10 are intended to have a simpler permitting process for a shoreline exemption.
11

12 20. Section 28 also prohibits finfish net pen aquaculture consistent with the updated
13 GPPs because existing guidance and information is not adequate and the County
14 does not believe it could be used to create sound regulations that will protect the
15 shoreline environment. WDOE guidance document 11-06-010, Chapter 16 of
16 the Shoreline Master Program Handbook lists three references for net pens
17 which are dated 1986 and 1990. This guidance pre-dates the Endangered
18 Species Act listing of the southern resident killer whale, Puget Sound Chinook
19 and Puget Sound steelhead as endangered species. San Juan County contains
20 critical habitat for the southern resident killer whales, and Puget Sound
21 Chinook. The National Marine Fisheries Service has not proposed to designate
22 the County's waters as critical habitat for the Puget Sound steelhead; however,
23 they are known to use the County's marine shoreline areas.
24

25 21. Chapter 16 of WDOE's Shoreline Master Program Handbook further indicates
26 that the 1986 recommended Interim Guidelines for the Management of Salmon
27 Net Pen Culture in Puget Sound may be used for siting net pens; however, it
28 notes that "Local governments should use caution in relying on other
29 recommendations of the 1986 interim net pen guidelines and related
30 environmental impact statement."
31

32 22. The County Council received public testimony about more recent studies from
33 1986 and 1990 summarizing potential adverse impacts to wild salmon survival,
34 chemical contamination, marine mammals and sea birds that may result from
35 finfish net pens.
36

37 23. There are currently no finfish net pen facilities or pending applications for them
38 in the County. Due to the number of critical saltwater and marine mammal
39 habitats in the County, there are few areas that finfish net pens could be sited
40 consistent with WDOE's guidelines.
41

42 24. Sections 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, and 39 address over-water
43 structures such as marinas, mooring buoys, recreation and mooring floats, joint
44 use or community docks, ramps, and private single family docks. These

1 sections streamline and clarify the multiple subsections of existing SJCC
2 18.50.190.

- 3
- 4 25. Section 29 explicitly establishes clear preferences in over-water structures,
5 emphasizing mooring buoys and public marinas. The general design standards
6 are updated and reference WACs 220-660-140 and 220-660-380, as amended,
7 for consistency with WDFW design standards.
8
- 9 26. Section 30 establishes general regulations for boating facilities that serve five
10 (5) or more residences. These regulations include new standards for facilities
11 that intrude into or over critical areas that are slightly different than the
12 standards that apply to joint use or single family docks to meet WAC 173-26-
13 221(2)(c)(ii) and 173-26-241(3)(c).
14
- 15 27. Section 31 updates standards for the dimension, location, orientation and size of
16 private residential, community joint use docks, and recreational floats. A table
17 includes the construction standards for private or joint use docks and also
18 references applicable sections of WAC 220-660-140 and 220-660-380. This
19 table depicts the allowed dimensions of structural components, required grating
20 standards, and the total square footage allowed for over-water structures.
21
- 22 28. Section 35 updates mooring buoy regulations. It provides requirements for their
23 location, references to the WDNR permitting authority and prohibits impeding
24 access to private property.
25
- 26 29. Section 37 updates the SMP regulations by addressing replacement, repair and
27 expansion of over-water structures. This section clarifies the permit procedures
28 and is amended to addresses the provisions of WAC 173-27-100.
29
- 30 30. Section 38 requires the submission of a demand analysis for proposed private
31 docks, joint use docks, boating facilities, ramps, and floats which is intended to
32 improve the permit review process. The analysis must identify the need for the
33 proposed facility by quantifying the existing moorage and requires that
34 applicants demonstrate that the expansion of existing facilities is not a feasible
35 alternative.
36
- 37 31. Sections 41, 42, 43, 44, 45, 46, 47, 48 are replace SJCC 18.50.210 Bulkheads.
38 The updated regulations address soft shore armoring as well as hard armoring.
39
- 40 32. Section 41 includes a new requirement that new or enlarged structural
41 stabilization measures may only be allowed if a geotechnical report shows that
42 there is an imminent threat to an existing primary structure caused by the action
43 of wind and waves. Consistent with WAC 173-26-231(3)(a)(iii)(B)(I) this more
44 restrictive provision, allows stabilization measures only to protect primary

1 structures, accessory dwelling units, underground utilities and roads or access
2 routes that cannot be relocated.

- 3
- 4 33. Section 42 clearly establishes the County's order of preference for shoreline
5 stabilization measures. Applicants must show that prior alternatives are
6 infeasible before subsequent actions may be approved. These updated
7 regulations emphasize a preference for avoiding the construction of new
8 shoreline stabilization measures.
- 9
- 10 34. Section 43 establishes general design standards for both soft and hard shoreline
11 stabilization measures. Existing code only addresses hard stabilization
12 measures.
- 13
- 14 35. Section 44 establishes updated design standards for hard structural stabilization
15 measures which must achieve the no net loss standard and be consistent with
16 WAC 172-26-231(3)(a)(iii). These updated provisions require avoidance and
17 minimization of long term adverse impacts on shoreline ecological functions
18 through mitigation.
- 19
- 20 36. Section 44 also includes a prohibition on the construction of new hard structural
21 stabilization measures adjacent to documented forage fish spawning areas. This
22 does not include replacements.
- 23
- 24 37. Section 45 establishes new design standards for soft shore stabilization projects
25 and allows for a hard stabilization transitional element to tie into structures on
26 neighboring properties. These updates are consistent with the SMA guidelines
27 and County's preference for soft stabilization measures.
- 28
- 29 38. Section 46 establishes new regulations for the enlargement of hard and soft
30 shoreline stabilization measures. For consistency with WAC 173-26-
31 231(3)(a)(iii)(B)(I), any expansion of an existing shoreline stabilization measure
32 is required to be permitted as an entirely new structure.
- 33
- 34 39. Section 47 regulates replacement and repairs of structural shoreline
35 stabilizations measures. WAC 173-26-231(3)(a)(iii)(C) requires that
36 replacement stabilization measures are considered new stabilization structures
37 and must be reviewed and permitted consistent with the protocols for new
38 stabilization structures. Because the repair or restoration of existing
39 stabilization structures generally entails the replacement of damaged portions of
40 the structure rather than reconstruction, repairs to a structural stabilization
41 measure are considered a replacement only when the repairs or restoration
42 exceed ninety-nine point nine-nine percent (99.99%) of the structure's existing
43 volume.
- 44

- 1 40. Section 48 updates the permit application submittal requirements for shoreline
2 stabilization measures. Consistent with the WAC guidelines, a geotechnical
3 report from a qualified professional is required which stipulates that damage to
4 a primary structure is imminent and addressing upland drainage issues would
5 not alleviate the need for the stabilization.
6
- 7 41. Section 52 updates the industrial development regulations that prohibit only
8 underwater oil pipelines and refineries. The update prohibits the development of
9 both underwater oil and natural gas pipelines and refineries within the shoreline
10 jurisdiction. This update is intended to reduce the risks of contamination from
11 spills and other catastrophes. This is consistent with Section B, Element 3,
12 Section 3.2.B Economic Development, Policy 5 of the County's Comprehensive
13 Plan and the goal of no net loss of shoreline ecological functions.
14
- 15 42. Section 58 updates recreational development regulations consistent with RCW
16 90.58.020 which identifies recreation as a preferred use of Washington's
17 shorelines. The development of parks without overnight camping facilities is
18 consistent with the Rural Farm Forest and Rural Residential shoreline
19 designations because it is consistent with existing development patterns for day
20 use parks and because recreation is a preferred use of the shorelines. The
21 update allows accessory developments to primary recreational uses, such as
22 parking lots only if there is no feasible alternative.
23
- 24 43. Section 59 regulates all types of shoreline land divisions. The current
25 regulations only address residential shoreline land divisions. In addition, the
26 requirement that applicants demonstrate that a proposed land division will not
27 create undevelopable lots is clarified.
28
- 29 44. Section 59 also provides that land divisions that will create five (5) or more
30 parcels must establish community access to the shoreline through an access
31 easement or common area. Land divisions creating fewer than five (5) parcels
32 are not required to create community access. This is a change from existing
33 SJCC 18.50.330(B)(6) which requires common areas in all shoreline land
34 divisions.
35
- 36 45. In accordance with WAC 173-26-231(3)(a)(iii)(A), Section 59 also requires that
37 applicants demonstrate that building setbacks are sufficient to ensure that there
38 will be no need for shoreline stabilization within seventy-five (75) years. The
39 seventy-five year standard was determined by analyzing and averaging the
40 expected lifespan of structural home components such as foundations and roofs.
41 Seventy-five years is intended to be a measurement of the life of the structure.
42
- 43 46. Section 60 regulates residential development and updates SJCC 18.50.330 by
44 moving specific regulations such as nonconforming use and land divisions
45 provisions to separate sections.

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47. Section 60 clarifies the method used to determine a proposal's compliance with a fifty percent (50%) lot width standard.
 48. In Section 60, the allowed height of all shoreline structures is increased to thirty-five feet (35) above average grade regardless of roof pitch consistent with the height allowed by RCW 90.58.320. Under existing code, the height of residential structures is limited to twenty-eight (28) feet unless a roof pitch of six in twelve (6:12) is present. Allowing increased height will aid development on small lots and may reduce impervious surfaces in some designs which can be helpful in managing stormwater runoff.
 49. To be consistent with Chapter 18.35 SJCC, Section 60 includes a requirement in Chapter 18.50 SJCC that coastal geologic buffers be identified on all non-bedrock shorelines. A qualified professional must identify them and demonstrate that proposed structures will be set back sufficiently to ensure that shoreline stabilization measures will not be needed for a minimum of seventy-five (75) years.
 50. Section 60 regulates live aboard vessels in marinas and Section 72 provides a new definition of live aboard. Houseboat regulations are eliminated. The updated regulations are consistent with WAC 332-30-171(1) which does not regulate live aboard vessels on privately owned tidelands. Where marinas are located above state owned tidelands, up to twenty-five percent (25%) of the moorage slips may be used for live aboard vessels if the marina operators follow best management practices, provides for upland disposal of sewage and waste water, and the use will not result in a net loss of shoreline ecological functions. Marinas over privately owned tidelands may use ten percent (10%) of their slips for live aboard vessels.
 51. Section 62 includes a new provision to allow a desalination system as the primary water supply for a new subdivision. The current SMP only allows desalination systems as the primary water source for new development on existing shoreline lots.
 52. The update generally prohibits the construction of desalination systems with intakes of greater than 100,000 gallons per day. The intake limit was identified as the intake to discharge ratio that would produce approximately 30,000 gallons of brine which requires a National Pollutant Discharge Elimination System permit.
 53. Public concerns about the proliferation of desalination systems in areas of poor flushing have been expressed; however, there is no scientific evidence in the record proving that any area in the County suffers from poor flushing.

- 1 54. The most recent study of desalination systems in San Juan County, The Current
2 Status of Desalination Systems in San Juan County, Washington, Executive
3 Summary and Technical Supplement, June 2009, states that "We have access to
4 three separate field measurements that would suggest that the increase of
5 seawater salinity where the effluent water leaves the discharge pipe is less than
6 2 parts per thousand and is undetectable at 10 feet."
7
- 8 55. Potable ground water in San Juan County is a limited resource. The ocean is
9 not as limited. Saltwater intrusion into the County's groundwater is almost
10 impossible to correct. The updated regulations are more protective of the
11 County's limited groundwater.
12

13 VI. Restoration Plan.
14

15 Consistent with WAC 173-26-201(2)(f), the updated SMP includes a Restoration
16 Plan that:
17

- 18 1. Includes goals, policies and actions for the restoration of impaired shoreline
19 ecological functions. The County's shoreline restoration strategy is
20 coordinated with local non-profit and state efforts relating to salmon
21 recovery and conservation.
22
- 23 2. Identifies practical options at both a programmatic and project level to
24 address and correct sources of degradation. It identifies three dormant
25 restoration projects and three ongoing restoration projects. The plan also
26 discusses programmatic actions that can be pursued such as conservation
27 easements or donating land to the land bank to protect and restore shoreline
28 ecological functions.
29

30 **NN. The County Council makes the following conclusions:**
31

- 32 I. The County provided opportunities for early and continuous public participation
33 including communication with state agencies and affected Native American nations
34 as required by WAC 173-26-090 and RCW 36.70A.130. This is documented in the
35 background statements that are incorporated as findings of fact. In addition, early and
36 continuous opportunities for public participation were included in the development of
37 the critical area regulations as documented in San Juan County Ordinance Nos. 26-
38 2012, 27-2012, 28-2012, 29-2012, 2-2014, 16-2014 and 01-2015.
39
- 40 II. The County complied with SEPA for nonproject actions and provided notice to the
41 Washington Department of Commerce regarding the County's intent to adopt an
42 updated SMP including amendments to the Comprehensive Plan and Official Maps,
43 and development regulations.
44

- 1 III. The updated SMP contains the required contents identified in WAC 173-26-
2 191(2)(a). The County prepared an I&C and Restoration Plan, amended its shoreline
3 goals, policies, maps, and updated its development regulations to comply with
4 Chapter 90.58 RCW and Chapter 173-26 WAC.
5
6 IV. The updated SMP is based upon an inventory and analysis including a
7 characterization of shoreline ecosystems, associated ecological functions, and a use
8 analysis.
9
10 V. The regulations address specific shoreline environments, and include general and use
11 or modification specific standards, consistent with legal limitations on the regulation
12 of private property, and administrative provisions directing the review process and
13 standards for approving uses and modification.
14
15 VI. The updated regulatory and administrative provisions do not unconstitutionally
16 infringe upon private property rights.
17
18 VII. Enforcement of shoreline regulations is implemented through Chapter 18.100 SJCC.
19
20 VIII. The updated SMP is consistent with the policies in RCW 90.58.020 and WAC 173-
21 26-176. The updated SMP contains goals, policies and regulations which implement
22 the goals of the SMA.
23
24 IX. The updated SMP is consistent with the San Juan County Comprehensive Plan.
25
26 X. The updated SMP is consistent with the SMA, and WAC guidelines including the no
27 net loss standard for shoreline ecological functions.
28
29 XI. The *Best Available Science Synthesis for San Juan County, May 2011*, adopted in
30 Resolution 22-2011 meets the requirements in RCW 36.70A.172(1), 90.58.100(1) and
31 WAC 173-26-201(2)(a).
32
33 XII. Critical area functions and values protected by Chapter 18.35 SJCC are the same
34 ecological functions identified for shorelines in WAC 173-26-201(3)(d)(i)(C).
35
36 XIII. The updated SMP provides critical area protection equivalent to the County's critical
37 area regulations in compliance with RCW 36.70A.480(4) including buffers required
38 by RCW 36.70A.480(6).
39
40 XIV. The County's critical area regulations in Chapter 18.35 SJCC and the updated SMP
41 fulfill the requirements for critical area protection and no net loss within the County's
42 shoreline jurisdiction.
43
44 XV. The County's critical area regulations and buffers meet the GMA and SMA
45 requirements.

- 1
2 XVI. Critical area buffers are compliant with the GMA and SMA and assure no net loss of
3 ecological functions.
4
- 5 XVII. The County's critical area regulations are designed to meet the GMA and SMA and to
6 provide no net loss of ecological functions. They contain vegetation management
7 requirements upheld by the Growth Board, Superior Court, and Washington State
8 Court of Appeals who recognized that the critical area regulations rely on the
9 County's BAS. Together, SJCC 18.60.060 and 18.60.070, SJCC Chapter 18.35 and
10 the updated SMP provide required vegetation management protections
11
- 12 XVIII. The updated shoreline environment designations are assigned consistent with the
13 provisions in WAC 173-26-211 and the County's I&C. Although the designations are
14 slightly different than those recommended in the WAC, they are better suited and
15 more specific to the County's shorelines and uses.
16
- 17 XIX. Updated shoreline designations with boundaries that do not correspond to parcel lines
18 are described in Exhibit D of this ordinance consistent with WAC 173-26-110(3).
19
- 20 XX. Sections 19, 20, and 21 pertaining to mitigation comply with WAC 173-26-
21 186(8)(b)(i) which states: "Local master programs shall include regulations and
22 mitigation standards ensuring that each permitted development will not cause a net
23 loss of ecological functions in the shoreline."
24
- 25 XXI. The SMP is one component of the County's approach to environmental protection.
26 This approach includes other regulatory components such as storm drainage, clearing
27 and grading, SEPA, and enforcement requirements in SJCC Chapters 18.60, 18.80
28 and 18.100. It also includes nonregulatory components such as restoration,
29 enhancement, acquisition, open space, spill prevention, education and stewardship
30 programs work together protect the environment from cumulative impacts.
31
- 32 XXII. Finfish net pens should be prohibited until such time that the studies and guidance
33 have been updated and demonstrate that finfish net pens will not result in adverse
34 impacts to shoreline ecological functions and wildlife, especially endangered or
35 threatened species. The County should re-evaluate this net pen prohibition as part of
36 the next required SMP update when updated data is available.
37
- 38 XXIII. The County Council bases its findings and conclusions on the entire record of the
39 Planning Commission and County Council including all testimony and exhibits. Any
40 finding which should be deemed a conclusion and any conclusion which should be
41 deemed a finding is hereby adopted as such.
42
43
44
45

1 **NOW, THEREFORE, BE IT ORDAINED** by the County Council of San Juan County, State
2 of Washington, as follows:

3
4 **SECTION 1. Amendments to the Comprehensive Plan:**

5 The San Juan County Comprehensive Plan, Section B, Element 3, Shoreline Master Program,
6 and Ordinance Nos. 13-2001 and 2-1998 are each amended as shown on attached Exhibit A.

7 **SECTION 2. Amendments to the Comprehensive Plan Land Use and Shoreline Master**
8 **Program Maps:**

9 The San Juan County Comprehensive Plan Land Use and Shoreline Master Program maps dated
10 September 9, 2014, are amended to remove all shoreline designations and adopt new shoreline
11 designations as shown on attached Exhibit B.

12 **SECTION 3. Adoption of Shoreline Restoration Plan:**

13 A San Juan County Shoreline Restoration Plan is adopted as shown on attached Exhibit C.

14 **SECTION 4. SJCC 18.80.110 and Ord. 15-2002 § 11; are each amended to read as**
15 **follows:**

16 **18.80.110 Shoreline pre-application meetings, permit and exemption procedures, and**
17 **vesting.**"

18
19 **Pre-application meetings.** Pre-application meetings are required for all shoreline substantial
20 development permits, conditional use permits, and shoreline variances. Pre-application meetings
21 are encouraged for all other project or development permits. Pre-application materials must be
22 submitted to the department a minimum of ten (10) days prior to the scheduled pre-application
23 meeting. Failure to submit the documents will result in postponement of the pre-application
24 meeting. The director may waive this requirement for demonstrated cause.
25

26 **A. Purpose and applicability.**

27 1. This section includes the procedures necessary to ensure that the provisions of the
28 Shoreline Master Program (SMP) (Element 3 of the Comprehensive Plan and Chapter
29 18.50 SJCC) (~~SMP~~) are implemented and enforced, and ~~to ensure~~ that all persons affected
30 by the ~~master program~~ SMP are treated in a fair and equitable manner.

31 2. This section applies to all lands and waters within the jurisdiction of the ~~master~~
32 ~~program~~ SMP and to all persons and agencies as described in Chapter 18.50 SJCC.

33 3. The following are referred to as "shoreline permits" and are subject to SMP ~~this~~
34 ~~review~~ procedures:

35 a. Shoreline substantial development permits;-

36 b. Shoreline conditional use permits; and ~~which include~~;

- ~~i. Uses which are permitted under the provisions of the master program only as conditional uses;~~
- ~~ii. The expansion of nonconforming uses; and~~
- ~~iii. Uses which are unnamed or not contemplated in the master program.~~

c. Shoreline variances.

4. Certificates of exemption from shoreline substantial development permits are also regulated by this Chapter.

B. Notice of application for shoreline permits.

1. ~~A N~~ notice of application and public hearing is required for shoreline permit applications as provided in SJCC 18.80.030 and 18.80.040.

2. ~~The administrator shall submit notice of shoreline permit applications to the appropriate subcommittee (by commissioner district) of the planning commission.~~

23. Applications for shoreline permits shall may be circulated for comment to the director of the University of Washington Friday Harbor Laboratories for comment as a reviewing agency on the same schedule as other reviewing agencies.

C. Administrative responsibilities. The administrator's responsibilities are set forth in SJCC ~~18.50.010(E)~~ Section 8(E) of this ordinance.

D. Consolidated permit processing.

1. ~~For a p~~ Proposals that involves two (2) or more types of project shoreline permits and/or other project permits, such applications shall may be consolidated under the "highest" procedure (i.e., the right-most applicable column in Table 8.1, SJCC 18.80.020) required for such permits, or the applications may be processed individually under each of the procedures identified by this code. The applicant may request the consolidation of hearings with other local, state, regional, federal or other agencies in accordance with ~~RCW36.70B.090 and 36.70B.110.~~ (See also SJCC 18.80.020(B)(2), Consolidated Permit Processing, and SJCC 18.80.140(HG), Consolidated Appeal Hearings.)

2. ~~The decision maker shall provide copies of the findings of facts for all shoreline permits handled in accordance with this section to the board of County commissioners and the planning commission.~~

E. Decision making authority. The Washington Department of Ecology (WDOE) may approve, approve with conditions, or deny a shoreline variance or conditional use permit application approved by the hearing examiner. The hearing examiner has authority to take the following actions:

1. Based upon the criteria in subsection (H) and (J) of this section, hear and issue approve, approve with conditions, or deny shoreline substantial development permits and shoreline conditional use permits following receipt of the recommendations of the director administrator, and to impose conditions of approval on such permits; and

2. Based on the criteria in subsection (I) of this section hear, and approve, approve with conditions, or deny Grant or deny variances from the provisions of the SMP following receipt of the recommendations of the director, master program according to the criteria and procedures provided in subsection (I) of this section.

F. Exemptions from Need for Shoreline substantial development permit exemptions.

1. The director will make an administrative determination as to whether a proposal is exempt from a shoreline substantial development permit. The applicant bears the burden of proving that a proposal is exempt.

~~12. Developments which that are exempt from the need to obtain a shoreline substantial development permit are set forth established in WAC 173-27-040 and SJCC 18.50.020 (F) and (G) Sections 10 and 11 of this Ordinance. In making this determination, the director administrator shall will consider the ultimate scope of a proposal development and the extent to which the development is its consistency with the policies and regulations of the SMP-SMA and master program. The administrator director may request additional information from the applicant and may make site inspections, if necessary. A use classified as a conditional use or a use not named or contemplated in this Chapter is allowed only as a conditional use and is ineligible for shoreline permit exemption.~~

~~2. If a proposal is exempt from the need to obtain a shoreline substantial development permit the administrator shall so note in the development or project permit, if any, approved in conjunction with the proposal. If a development or project permit is not required for the proposal, the administrator may issue an administrative determination so stating.~~

~~3. The administrator may request additional information from the applicant and may make site inspections before determining if a proposal is exempt from the need to obtain a shoreline substantial development permit.~~

If a proposal is exempt from a shoreline substantial development permit, the director will prepare and issue a certificate of exemption when required by WAC 173-27-040, WAC 173-27-050 and Section 11(B) of this ordinance.

~~4. The burden of proving that a proposal is exempt from the need to obtain a shoreline substantial development permit shall be on the person seeking the exemption.~~

~~5. Any person proposing development within the shorelines of the County may request an administrative determination from the administrator as to whether or not the proposal is exempt from the need for a shoreline substantial development permit.~~

~~6. A copy of any approved certificates of exemption such administrative determination shall be mailed to the applicant and to the Washington Department of Ecology (WDOE).~~

5.7. A certificate of exemption An administrative determination shall will be prepared in the format described in WAC 173-27-050 for any proposal which is exempt from shoreline substantial development permit requirements under Chapter 18.50 SJCC whenever:

1 a. A U.S. Army Corps of Engineers (ACOE) Section 10 permit under the Rivers
2 and Harbors Act of 1899 is required (see WAC 173-27-050(1)(a));

3 b. A Section 404 permit is required under the Federal Water Pollution Control
4 Act of 1972 (see WAC 173-27-050(1)(b)).

5 **G. Shoreline permits—administrative actions.**

6 1. The ~~director administrator~~ shall review ~~shoreline permit applications, and~~
7 ~~development and project building~~ permit applications that also require a shoreline permit,
8 for consistency with the ~~policies and regulations of the SMA and SMP, master program,~~
9 ~~make a consistency determination,~~ and report the results of this review and determination
10 to the hearing examiner. ~~In making this determination, the administrator shall consider the~~
11 ~~ultimate scope of a development and the extent to which the development is consistent with~~
12 ~~the policies and regulations of the SMA and master program.~~ The ~~director administrator~~
13 may request additional information from the applicant and may make site inspections, ~~if~~
14 ~~necessary.~~

15 2. The ~~director administrator~~ shall not issue a ~~building development or project~~ permit for
16 ~~development~~ that is subject to shoreline permit requirements until a shoreline permit has
17 been granted. ~~Any building Development or project permits issued for such development~~
18 ~~shall be~~ are subject to the conditions attached to of approval ~~for~~ on the shoreline permit.

19 3. ~~In granting~~ When approving a shoreline permit, the hearing examiner may attach such
20 conditions as ~~deemed necessary~~ to ensure that the development will be consistency t with
21 the SMA, SMP master program and other applicable provisions of this code. The examiner
22 shall also prepare findings of fact and conclusions of law.

23 4. ~~In approving shoreline conditional use permits, the hearing examiner is authorized, on~~
24 ~~a case-by-case basis, to impose any special conditions or standards which are reasonable~~
25 ~~and necessary to enable a proposed conditional use to satisfy the criteria established in~~
26 ~~subsection (J) of this section.~~

27 5. ~~Filing with the Washington Department of Ecology (WDOE).~~ Within eight (8) days
28 of the hearing examiner's final decision, the ~~director administrator~~ will send file with
29 WDOE copies of the permit application and other pertinent materials used ~~in~~ to make the
30 final decision pursuant to either (see Chapters 43.21C or 90.58 RCW), the permit, and any
31 other written evidence of related to the hearing examiner's final decision order of the
32 hearing examiner relative to the application. Filing shall not be complete until the materials
33 have actually been received by the WDOE. The date of filing a shoreline substantial
34 development permit decision is the date WDOE receives the County's decision. WDOE
35 shall issue and transmit their decisions on conditional use and variance permits to the
36 department and applicant within thirty (30) days of department's submittal to them. The
37 date of filing For shoreline conditional use permits or shoreline variances, is the date of
38 filing that WDOE transmits their permit decision to the department and applicant.
39 County's decision shall begin the period for WDOE review and final permit decision as
40 described in subsection (L) of this section.

1 ~~6. If no final action is taken on a shoreline permit application one year from the date of~~
2 ~~filing of the application due to inaction by the applicant, the application shall expire and be~~
3 ~~considered void. A new application and fees shall be required for continuation of the permit~~
4 ~~process.~~

5 ~~5.7. Construction or substantial progress toward construction of a project for which a~~
6 ~~shoreline permit is granted must be undertaken within two (2) years after the WDOE's date~~
7 ~~of filing permit approval. Substantial progress toward construction shall include the~~
8 ~~letting of bids, making of contracts, purchase of materials involved, utility installation and~~
9 ~~site preparation, but shall does not include use or development inconsistent with the master~~
10 ~~program SMP or the terms of permit approval. However, the two (2) year period shall does~~
11 ~~not include time when during which development could not proceed due to reasonable~~
12 ~~related administrative appeals or litigation, nor include time necessary to obtain other~~
13 ~~required permits for the project from state and federal agencies. The hearing examiner may,~~
14 ~~with discretion, extend the two year time period for a reasonable time.~~

15 ~~6.7. Unless specified otherwise in permit conditions, all development authorized by a~~
16 ~~shoreline permit shall be completed within five (5) years of the WDOE date of filing permit~~
17 ~~approval or the permit shall become null and void. A permittee may request a time~~
18 ~~extension before the permit expires by making a written request to the director~~
19 ~~administrator, stating the reasons. The hearing examiner will review the permit, and upon a~~
20 ~~finding of good cause:~~

- 21 a. ~~Extend the permit for a period not to exceed (1) one year; or~~
22 b. ~~Terminate the permit.~~

23 However, nothing in this section shall precludes the hearing examiner from issuing
24 shoreline permits with a fixed termination date of less other than (5) five years based upon
25 a finding of good cause.

26 H. Criteria for approval of shoreline substantial development permits.

27 ~~1. A shoreline substantial development permit shall will be granted by the County only~~
28 ~~when if the applicant meets his burden of proving that demonstrates the proposal is:~~

29 ~~a1. Consistent with the policies of the Shoreline Management Act SMA, Chapter~~
30 ~~90.58 RCW and its implementing regulations, Chapter 90.58 RCW Chapter 173-26~~
31 ~~WAC and Chapter 173-27 WAC, as amended;~~

32 ~~b2. Consistent with the policies and regulations of this e SMP Shoreline Master~~
33 ~~Program in Chapter 18.50 SJCC;~~

34 ~~3. Consistent with this chapter;~~

35 ~~c4. Consistent with the other applicable sections of this code (e.g., Chapter 18.60~~
36 ~~SJCC); and~~

37 ~~d5. Consistent with the goals and policies of the Comprehensive Plan;~~

1 26. All The conditions specified by the hearing examiner to make the proposal consistent
2 with the ~~master program~~ SMP and to mitigate or avoid adverse impacts to shoreline
3 ecological functions are ~~will be~~ attached to the permit.

4 **I. Shoreline variances.**

5 1. ~~General. The purpose of a v~~ Variances is are strictly limited to granting relief from
6 specific bulk, dimensional, or performance standards set forth in ~~this e master program~~
7 SMP. Variances may be approved where there are extraordinary or unique circumstances
8 related to the property ~~such that and~~ the strict implementation of the ~~master program~~ SMP
9 will impose unnecessary hardships on the applicant or thwart the policies set forth in RCW
10 90.58.020.

11 2. ~~Other Local Regulations.~~ Variances or exemptions granted from the provisions of
12 other local regulations shall will not be construed to constitute variances from the
13 provisions of ~~thise SMP Shoreline Master Program.~~

14 3. Criteria for Approval of Shoreline Variances. The location of the proposed project
15 will determine which of the following two (2) sets of variance criteria are to be considered.
16 Variances from the provisions of ~~thise SMP shoreline master program,~~ may be granted
17 when the applicant has ~~proven d~~ that one (1) of the following sets of criteria has been met:

18 a. Variances for development ~~that will be~~ located landward of the ordinary high
19 water mark (OHWM), ~~as defined in RCW 90.58.030(2)(b),~~ except within those areas
20 designated as wetlands pursuant to Chapter 173-22 WAC; may be authorized;
21 ~~provided, if~~ the applicant can demonstrate all of the following:

22 i. That the strict application of the bulk, dimensional, or performance
23 standards set forth in ~~this e applicable master program~~ SMP precludes or
24 significantly interferes with a reasonable use of the property that is not
25 otherwise prohibited by the SMP ~~master program.~~ The fact that a greater profit
26 might result from using the property in a manner contrary to the intent of the
27 Shoreline Master Program is not sufficient reason for granting a variance;

28 ii. That the hardship ~~described in this section~~ is specifically related to the
29 property, ~~and~~ is the result of unique conditions such as irregular lot shape, size,
30 or natural features, ~~and the application of the Shoreline Master program is not,~~
31 for example, from deed restrictions or the applicant's own actions and results
32 from the application of the specific provisions of the SMP shoreline master
33 program;

34 iii. That the design of the project is compatible with other allowed permitted
35 activities in ~~the area~~ the current land use designation and will not cause adverse
36 effects to adjacent properties or ~~the shoreline~~ ecological functions environment;

37 iv. That the requested variance does not constitute a grant of special privilege
38 that cannot be enjoyed by ~~the other propertyies~~ owners in the area, and it is the
39 minimum necessary to afford relief; and

1 v. That the public interest will suffer no substantial detrimental effect.

2 OR

3 b. Variances for development that will be located either waterward of the ~~ordinary~~
4 ~~high water mark (OHWM), as defined in RCW 90.58.030(2)(b);~~ or within wetlands as
5 designated under Chapter 173-22 WAC, may be authorized provided the applicant
6 can demonstrate all of the following:

7 i. Strict application of the bulk, dimensional, or performance standards set
8 forth in the ~~master program~~ SMP precludes all reasonable use of the property
9 not otherwise prohibited by it ~~the master program~~;

10 ii. The P proposal is consistent with ~~the criteria established under subsection~~
11 SJCC 18.80.110(I)(3)(a)(i) through (v) ~~of this section~~; and

12 iii. Public rights of navigation, access and use of the shorelines will not be
13 adversely affected.

14 4. In the granting of shoreline variances, consideration shall be given to ~~the cumulative~~
15 ~~impact of additional requests for like actions will be reviewed in the area.~~ For example, if
16 variances were granted to other developments or uses in the area where similar
17 circumstances exist, the total of the variances shall also remain consistent with the policies
18 of RCW 90.58.020 and shall ~~not produce substantial adverse effects to the~~ result in no net
19 loss of shoreline ecological functions environment.

20 5. Requests for to varying the use to which of a shoreline area is to be put are not
21 ~~requests for variances, but rather requests for shoreline conditional uses. Such requests~~
22 ~~shall be evaluated using the criteria set forth in subsection (J) of this section.~~ Variances
23 from the use regulations are prohibited.

24 6. Filing of variances with and review by the WDOE ~~Washington Department of~~
25 ~~Ecology~~ are described in subsection ~~(L)~~ G)(5) of this section.

26 7. Shoreline variance applications must include adequate information to demonstrate
27 compliance with the variance criteria. Applications must include at least the following
28 information as applicable:

29 a. The items listed in SJCC 18.80.020(C) along with photos of the site and a
30 detailed site plan showing:

31 i. The location of frequently flooded areas and FIRM panel numbers within
32 the proposed development area;

33 ii. Geologically hazardous areas in or within two hundred (200) feet of the
34 proposed development area;

35 iii. The field located OHWM on the site, and wetlands areas in or within three
36 hundred (300) feet of the proposed development area and fish and wildlife
37 habitat conservation areas in or within two hundred (200) feet of the proposed
38 development area;

1 iv. The location of any golden eagle nests in or within one thousand (1,000)
2 feet of the proposed development area; and

3 v. The location of any peregrine falcon or great blue heron nests in or within
4 one quarter (¼) mile of the proposed development area;

5 b. Any related project documents such as applications to other agencies or
6 environmental documents prepared pursuant to the State Environmental Policy Act
7 (SEPA);

8 c. Required critical area reports, delineations, and the Best Available Science
9 (BAS) documents supporting the proposal;

10 d. A copy of proposed or approved storm water and erosion control plans as
11 required by SJCC 18.60.060 and 18.60.070;

12 e. A narrative describing anticipated adverse impacts to the shoreline ecological
13 functions and critical areas, based on best available science, and that explains how the
14 proposal meets the shoreline variance approval criteria;

15 f. If necessary, mitigation, monitoring and adaptive management plans meeting
16 the requirements of Sections 19, 20 and 21 of this ordinance for mitigating any
17 adverse impacts or harm, and demonstrating how the proposal results in no net loss of
18 shoreline ecological functions.

19 g. A cost estimate prepared by a qualified professional, for implementing
20 mitigation and monitoring plans; and

21 h. A financial guarantee equal to the cost of implementing the mitigation and
22 monitoring plus an additional fifteen percent (15%). This guarantee and the
23 associated agreement must meet the requirements of SJCC 18.80.200.

24 **J. Shoreline conditional use permits.**

25 1. ~~General. The purpose of a Shoreline conditional use permits is to allow greater~~
26 ~~flexibility in application of the use regulations of the SMP Shoreline Master Program in a~~
27 ~~manner consistent with the policies of RCW 90.58.020. Shoreline conditional use permits~~
28 ~~should may also be granted in circumstances where denial of the permit would thwart the~~
29 ~~policy enumerated in RCW 90.58.020. By providing for the control of undesirable impacts~~
30 ~~through the application of special conditions, the scope of uses within each of the shoreline~~
31 ~~designations environments of the master program can be expanded to include many~~
32 ~~additional uses. Activities classified as shoreline conditional uses shall will therefore be~~
33 ~~permitted allowed only when the applicant also demonstrates that the proposed use will be~~
34 ~~compatible with permitted allowed uses within the same area.~~

35 ~~Shoreline conditional uses include the following:~~

36 ~~a. Uses which are permitted under the provisions of the shoreline master program~~
37 ~~only as conditional uses;~~

38 ~~b. The expansion of nonconforming uses; and~~

1 ~~e. Uses which are unnamed or not contemplated in the SJC SMP shoreline master~~
2 ~~program.~~

3 2. Uses which that are specifically prohibited by the SMP Shoreline Master Program
4 ~~shall~~ may not be authorized through a conditional use permit or variance.

5 3. ~~Other Local Regulations.~~ Conditional use permits granted under other sections of this
6 code ~~shall~~ are not be construed to constitute approval of a shoreline conditional use.

7 4. ~~Criteria for Approval of Shoreline Conditional Uses.~~ Uses which that are classified ~~or~~
8 ~~set forth~~ in the shoreline master program SMP as conditional uses may be authorized by the
9 County ~~provided~~ if the applicant can demonstrate all of the following:

10 a. The proposed use is consistent with the policies of RCW 90.58.020 and the
11 ~~policies of this~~ SMP Shoreline Master Program;

12 b. The proposed use will not interfere with the normal public use of public
13 shorelines;

14 c. The proposed use of the site and ~~design of the project~~ design ~~is~~ are compatible
15 with other allowed ~~permitted~~ uses within the area;

16 d. The proposed use will ~~cause no unreasonably adverse effects to the shoreline~~
17 ~~environment~~ result in no net loss of shoreline ecological functions in the shoreline
18 designation in which it is to be located;

19 e. The cumulative impacts of additional requests for like actions in the area, or for
20 other locations where similar circumstances exist, ~~shall not~~ will result in no net loss
21 of produce substantial adverse effects to the shoreline ecological functions
22 environment, (e.g., the total of the conditional uses shall remain consistent with the
23 ~~policies of RCW 90.58.020 and the~~ SMP shoreline master program); and

24 f. The public interest will suffer no substantial detrimental effect.

25 5. ~~Other Uses that which~~ are not classified as a conditional use ~~or set forth in this e-SJC~~
26 ~~SMP shoreline master program~~ may be authorized by conditional use permit, as conditional
27 uses ~~provided that the applicant can demonstrate consistency with the criteria set forth in~~
28 WAC 173-27-160(1), and the SMP ~~this subsection.~~

29 6. ~~Filing of shoreline conditional use permits with and review by the Washington~~
30 ~~Department of Ecology are described in subsection of this section.~~

31 **K. ~~Nonconforming Uses.~~** Any ~~nonconforming structure or use under the jurisdiction of the~~
32 ~~Shoreline Master Program (Chapter 18.50 SJCC) shall be subject to the nonconforming use~~
33 ~~provisions in WAC 173-27-080, and the applicable procedures of Chapter 18.50 SJCC and this~~
34 ~~section. (See also SJCC 18.40.310 and 18.80.120.)~~

35 **L. ~~Washington Department of Ecology review.~~** As required by state law (RCW 90.58.140(10)),
36 ~~shoreline variances and shoreline conditional use permits are subject to review by the~~
37 ~~Washington Department of Ecology for its approval, or disapproval. Upon approval or denial of~~
38 ~~shoreline variances or conditional use permits by the hearing examiner or board of County~~

1 ~~commissioners, a copy of the final order and application shall be mailed to the Washington~~
2 ~~Department of Ecology within five days of such action. Construction pursuant to the permit shall~~
3 ~~not begin and is not authorized until 21 days from the date of filing as defined in RCW~~
4 ~~90.58.140(6) and WAC 173-27-130 or until all review proceedings initiated days from the date~~
5 ~~of such filing have been terminated; except as provided in RCW 90.58.140.~~

6 **KM. Procedures for revisions to shoreline permits.**

7 1. When an applicant seeks to revise a shoreline permit, an application in a form
8 prescribed by the ~~director~~ ~~administrator~~ together with detailed plans and text describing the
9 proposed changes shall must be filed with the ~~director~~ ~~administrator~~. Following receipt of
10 this information, the ~~administrator~~ shall schedule a public hearing on the request. ~~The~~
11 director will determine whether the proposed changes are within the scope and intent of the
12 original permit and are consistent with the SMP and the SMA.

13 Proposed revisions are within the scope and intent of the original permit if all the following
14 conditions are met:

15 a. No additional over-water construction is involved, except that pier, dock, or
16 float construction may be increased by five hundred (500) square feet or ten percent
17 (10%) more than the provisions of the original permit, whichever is less;

18 b. The building footprint and height are not increased by more than a maximum of
19 ten percent (10%) from the provisions of the original permit;

20 c. The permit revision does not exceed height, lot coverage, setback, or any other
21 requirements of the SMP (unless a variance to specific development standards was
22 approved as part of the original permit);

23 d. Additional or revised landscaping complies with any conditions attached to the
24 original permit and with the applicable regulations;

25 e. The use authorized in the original permit is not changed; and

26 f. No increase in adverse impacts to shoreline ecological functions will be caused
27 by the project revision.

28 ~~1.2. The administrator shall ensure that notice of the hearing is published in a newspaper~~
29 ~~of general circulation within the County prior to the hearing. The administrator shall submit~~
30 ~~to the hearing examiner all of the written documents referred to above. At the beginning of~~
31 ~~the hearing, the recommendation of the administrator shall be read into the record. If the~~
32 ~~revisions meet the above criteria for administrative approval, a notice of application will be~~
33 ~~published per SJCC 18.80.030.~~

34 3. If the proposed revision cannot meet any one (1) of the criteria in subsection (1)
35 above, a public hearing with the hearing examiner will be scheduled and advertised
36 according to the public notice provisions of SJCC 18.80.030.

1 a 2. If the hearing examiner determines that the proposed changes are within the
2 scope and intent of the original permit, as defined by WAC 173-27-100(2), the
3 revision shall will be granted.

4 ~~3. If the hearing examiner determines that the proposed changes are not within the~~
5 ~~scope and intent of the original permit, then the applicant must apply for a new~~
6 ~~shoreline permit.~~

7 b 4. Any permit revision approved by the hearing examiner shall will become
8 effective immediately unless the original permit involves a conditional use or a
9 variance. Within eight days of the Following the hearing examiner's action, the
10 locally approved revision shall will be submitted to the WDOE Washington
11 Department of Ecology. In addition, the director shall submit a copy of the
12 examiner's decision to all parties of record to the original permit action.

13 If the revision to the original permit involves a conditional use or a variance, the
14 WDOE may approve, approve with conditions or deny the revision. In addition, the
15 director administrator shall submit a copy of the examiner's decision to all parties of
16 record to the original permit action. (See Section (4)(G)(4) of this ordinance.)

17 c 5. Appeals shall be submitted and processed in accordance with WAC 173-27-
18 220 and SJCC 18.80.140.

19 **LN. Rescission of shoreline permits.** Any shoreline permit may be rescinded by the hearing
20 ~~examiner~~ issuing authority pursuant to RCW 90.58.140(8) upon the finding that the permittee
21 has failed to comply with the permit terms and conditions thereof. In the event that the permittee
22 is denied a required sewage disposal, building, or other permit necessary for the project in
23 question, the shoreline permit may be rescinded by the hearing examiner. ~~If in the event a~~
24 shoreline permit is rescinded by the hearing examiner, the permittee shall be notified by certified
25 mail. Copies of the examiner's final action shall will be filed with the ~~Washington Department of~~
26 ~~Ecology~~ WDOE.

27 **MO. Appeals.**

28
29 1. ~~The BOCC has authority to hear and decide appeals from decisions of the hearing~~
30 ~~examiner on shoreline permit applications as provided in SJCC 18.80.140. Aggrieved~~
31 ~~parties have twenty-one (21) days from the date of filing to file appeals to the shoreline~~
32 ~~hearings board.~~

33 2. ~~Any person aggrieved by a BOCC action granting, denying, or rescinding a permit for~~
34 ~~a use or development on the shorelines of the state pursuant to RCW 90.58.140 may seek~~
35 ~~review as provided by law.~~

36 **N. Vesting.**

37
38 1. Complete applications for a development or project permit, to be processed under
39 Titles 15, 16 and 18 SJCC and subject to Chapter 18.50 SJCC that were filed prior to the
40 effective date of this ordinance vest to the laws and regulations in effect when the complete

1 application was filed with the department and all required permit fees were paid except as
2 provided in subsections (4), (5) and (6) of this section.

3
4 2. An application for a development or project permit, to be processed under Titles 15,
5 16 and 18 SJCC and subject to Chapter 18.50 SJCC that is filed after the effective date of
6 this ordinance vests to the laws and regulations in effect when the complete application was
7 filed with the department and all required permit fees were paid except as provided in
8 subsections (4), (5) and (6) of this section.

9
10 3. A vested permit application that contemplates one (1) or more future uses or permits
11 on the property that are subject to that permit approval, then:

12
13 a. If that permit approval contains a detailed description of the uses and
14 improvements and a detailed site plan consistent with all laws and regulations in effect
15 at the time the original application vested, then subsequent permit applications filed
16 for those future use(s) are vested to the laws and regulations in effect at the time
17 original permit application vested.

18
19 b. A detailed description means a detailed site plan drawn to scale, specifying the
20 location of all buildings and improvements to be constructed in conjunction with the
21 use(s). The detailed description must address density, building setbacks, critical area
22 buffers, lot coverage, lot width requirements, and bulk (length, height and width),
23 driveways, stormwater features, water and sewer infrastructure and other
24 improvements necessary for the development.

25
26 c. If the development approval does not contain the information in (3)(a) and (b)
27 above, applications for future use(s) are subject to all later enacted laws and
28 regulations in effect at the time the complete application for the future use(s) vests.

29
30 4. The County may impose conditions based on development permits pursuant to the
31 State Environmental Policy Act, Chapter 43.21C RCW, Chapter 197-11 WAC and SJCC
32 18.80.050 to mitigate potentially adverse environmental impacts.

33
34 5. The County may impose new regulations such as requirements of the building, health,
35 and fire codes on vested development permits when necessary to protect the public health
36 and safety.

37
38 6. Applications for comprehensive plan amendments processed under Chapter 18.90
39 SJCC are not subject to the vesting rules in this section.

40
41 **P. — Effects on Property Values.** ~~As provided for in RCW 90.58.290, the restrictions imposed~~
42 ~~upon the use of real property through the implementation of the policies and regulations of the~~
43 ~~SMA and the master program shall be duly considered by the County assessor and the County~~
44 ~~board of equalization in establishing the fair market value of such properties.~~

1 SECTION 5. SJCC 18.80.120 and Ord. 15-2002 § 12 are each amended to read as follows:

2
3 **18.80.120 Procedures for nonconforming uses and structures.**

4
5 **A.** Legally established land uses and structures that have subsequently become
6 nonconforming because of changes to County land use regulations continue to be legal. SJCC
7 18.40.310 provides standards governing such for legally nonconforming structures and uses.
8 are located in SJCC 18.40.310. Nonconforming uses, structures and activities under the
9 jurisdiction of the SMP are subject to the provisions of Section 14 of this ordinance.

10
11 **B.** No project permit or development permit shall will be approved for any nonconforming
12 use or structure that has been abandoned as per SJCC 18.40.310(J). Nonconforming uses or
13 structures may be relocated on the same site parcel.

14 **C.** When evaluating proposals for the alteration, relocation, modification, or expansion of
15 nonconforming uses or structures, the decision-maker shall consider the total impact of the
16 nonconforming use or structure, as well as the added impact of the incremental changes being
17 proposed, and the consistency of the changes with the applicable land use designation.

18 ~~**D.** Shoreline Nonconforming Uses and Structures. Any nonconforming structure, or use,~~
19 ~~under the jurisdiction of the Shoreline Master Program (Element 3 of the Comprehensive Plan~~
20 ~~and Chapter 18.50 SJCC) shall be subject to the nonconforming use provisions in WAC 173-27-~~
21 ~~080, and the applicable procedures of Chapter 18.50 SJCC and SJCC 18.80.110.E.~~

22 ~~**ED.** Procedures for Nonconforming Use or Structure not subject to the Shoreline Master~~
23 ~~Program SMP.~~

24 1. The procedures for provisional uses in (SJCC 18.80.0780) shall apply to the
25 actions and activities described in SJCC 18.40.310(B) through (D), as limited by SJCC
26 18.40.310 (G)(H) through (J).

27 2. The procedures for conditional uses in (SJCC 18.80.100) shall apply to the
28 actions and activities described in SJCC 18.40.310(F), as limited by SJCC
29 18.40.310(G)(H) through (J).

30 ~~**FE.** Illegal Use.~~ Any use, structure, or other site improvement not established in compliance
31 with this code and other applicable codes and regulations in effect at the time of establishment is
32 not nonconforming; rather, it is illegal and subject to enforcement provisions of Chapter 18.100
33 SJCC.

34 **REAPLER. SECTION 6. The following sections of Chapter 18.50 SJCC and the**
35 **following ordinances and resolutions or sections of each are repealed:**

- 36
37 (1) SJCC 18.50.010 (General) and Res. 77-2003 § 1, Ord. 13-2002 § 1, Ord. 2-1998 Exh.
38 B § 5.1 are each repealed;
39 (2) SJCC 18.50.020 (General applicability) and Ord. 21-2002 § 6, Res. 145-1998, Ord. 2-
40 1998 Exh. B § 5.2;
41 (3) SJCC 18.50.030 (Definitions) and Ord. 2-1998 Exh. B § 5;

- 1 (4) SJCC 18.50.040 (Administration) Res. 77-2003 § 2; Ord. 13-2002 § 2; Ord. 2-1998
2 Exh. B § 5.4.1;
- 3 (5) SJCC 18.50.050 (Archaeological and historic resources) and Ord. 2-1998 Exh. B §
4 5.4.2;
- 5 (6) SJCC 18.50.060 (Clearing and grading) and Ord. 2-1998 Exh. B § 5.4.3;
- 6 (7) SJCC 18.50.070 (Environmental impacts) and Ord. 12-1998 § 5.4.4;
- 7 (8) SJCC 18.50.080 (Environmentally sensitive areas) and Ord. 2-1998 Exh. B § 5.4.5;
- 8 (9) SJCC 18.50.090 (Parking) and Ord. 2-1998 Exh. B § 5.4.6;
- 9 (10) SJCC 18.50.100 (Public access) and Res. 145-1998, Ord. 2-1998 Exh. B § 5.4.7;
- 10 (11) SJCC 18.50.110 (Shorelines of statewide significance) and Ord. 2-1998 Exh. B §
11 5.4.8;
- 12 (12) SJCC 18.50.120 (Signs) and Ord. 2-1998 Exh. B § 5.4.9;
- 13 (13) SJCC 18.50.130 (Vegetation management) and Ord. 2-1998 Exh. B § 5.4.10;
- 14 (14) SJCC 18.50.140 (View protection) and Ord. 2-1998 Exh. B § 5.4.11;
- 15 (15) SJCC 18.50.150 (Water quality) and Ord. 2-1998 Exh. B § 5.4.12;
- 16 (16) SJCC 18.50.160 (General) and Ord. 2-1998 Exh. B § 5.5.1;
- 17 (17) SJCC 18.50.170 (Agriculture) and Ord. 2-1998 Exh. B § 5.5.2;
- 18 (18) SJCC 18.50.180 (Aquaculture) and Ord. 7-2005 §§ 11, 12, and Ord. 2-1998 Exh. B §
19 5.5.3;
- 20 (19) SJCC 18.50.190 (Boating facilities (including docks, piers, and recreational floats))
21 and Ord. 7-2005 § 13, Ord. 12-2000 § 2; Res. 145-1998, Ord. 2-1998 Exh. B § 5.5.4;
- 22 (20) SJCC 18.50.200 (Breakwaters, jetties, and groins) and Ord. 2-1998 Exh. B § 5.5.5;
- 23 (21) SJCC 18.50.210 (Bulkheads) and Ord. 2-1998 Exh. B § 5.5.6;
- 24 (22) SJCC 18.50.220 (Commercial development) and Ord. 21-2002 § 6, Ord. 2-1998
25 Exh. B § 5.5.7;
- 26 (23) SJCC 18.50.230 (Dredging) and Ord. 2-1998 Exh. B § 5.5.8;
- 27 (24) SJCC 18.50.240 (Forest management) and Ord. 7-2005 § 14, Ord. 2-1998 Exh. B §
28 5.5.9;
- 29 (25) SJCC 18.50.250 (Industrial development) and Ord. 2-1998 Exh. B § 5.5.10;
- 30 (26) SJCC 18.50.260 (Institutional development) and Ord. 2-1998 Exh. B § 5.5.11;
- 31 (27) SJCC 18.50.270 (Landfills and solid waste disposal) and Ord. 2-1998 Exh. B §
32 5.5.12;
- 33 (28) SJCC 18.50.280 (Log transfer sites and facilities and log storage) and Ord. 2-1998
34 Exh. B § 5.5.13;
- 35 (29) SJCC 18.50.290 (Mineral extraction) and Ord. 2-1998 Exh. B § 5.5.14;
- 36 (30) SJCC 18.50.300 (Pedestrian beach access structures) and Ord. 2-1998 Exh. B §
37 5.5.15;
- 38 (31) SJCC 18.50.310 (Ports and water-related port facilities) and Ord. 2-1998 Exh. B §
39 5.5.16;
- 40 (32) SJCC 18.50.320 (Recreation) and Ord. 2-1998 Exh. B § 5.5.17;

- 1 (33) SJCC 18.50.330 (Residential development) and Ord. 7-2005 §§ 15, 16, Ord. 21-2002
2 § 6, Res. 5-2002 §§ 2, 3, Ord. 12-2000 § 2, Res. 145-1998, Ord. 2-1998 Exh. B §
3 5.5.18;
- 4 (34) SJCC 18.50.340 (Transportation facilities) and Res. 64-2001, Ord. 10-2000, Ord. 2-
5 1998 Exh. B § 5.5.19;
- 6 (35) SJCC 18.50.350 (Utilities) and Ord. 2-1998 Exh. B § 5.5.20;
- 7 (36) SJCC 18.50.360 (General shoreline modification activities) and Ord. 2-1998 Exh. B
8 § 5.6.1;
- 9 (37) SJCC 18.50.370 (Shoreline restoration and beach enhancement) and Ord. 2-1998
10 Exh. B § 5.6.2;
- 11 (38) SJCC 18.50.380 (Severability) and Ord. 2-1998 Exh. B § 5.7; and
- 12 (39) SJCC 18.50.390 (Effective date) and Ord. 2-1998 Exh. B § 5.8.

13
14 **NEW SECTION 7. A new section is added to Chapter 18.50 SJCC to read as follows:**

15
16 **Purpose of the Shoreline Master Program (SMP).**

17
18
19 **A.** The state Shoreline Management Act (SMA) was developed and adopted to protect “the
20 most valuable and fragile of [the state’s] natural resources” from the “inherent harm in
21 uncoordinated and piecemeal development of the state’s shorelines.” The SMA in Chapter 90.58
22 RCW contains three (3) distinct but related priorities:

- 23
24 1. The promotion of shoreline uses that are both water-oriented and appropriate for the
25 broader environmental context. Developments such as recreational areas, water-dependent
26 businesses such as marinas, and single family residences are considered priority uses
27 provided they are constructed in a manner consistent with shoreline ecology.
- 28 2. The SMA requires local governments to take an active role in protecting the shoreline
29 ecology: the water, the land, the vegetation and the wildlife. The state guidelines are explicit;
30 “Local master programs shall include regulations and mitigation standards ensuring that each
31 permitted development will not cause a net loss of ecological functions of the shoreline.”
32 (WAC 173-26-186(8)(b)(i)).
- 33 3. The SMA also promotes public access to the shoreline by requiring protection of existing
34 public access features and requiring certain types of new development to include public
35 access.

36 **B.** The SMP regulations apply to individual projects and impacts of shoreline development are
37 evaluated on a project by project basis. However, the SMP goals and policies, shoreline
38 designations, regulations and the Restoration Plan are comprehensively structured to achieve no
39 net loss of shoreline ecological functions as a whole in San Juan County.

1 **NEW SECTION 8. A new section is added to Chapter 18.50 SJCC to read as follows:**

2
3 **General.**

4
5 **A. Title.** This Chapter of the San Juan County Unified Development Code (UDC), together
6 with Element 3 of the Comprehensive Plan, and SJCC 16.55.040, 16.55.210(E)(2)(d), figures
7 130-7, 130-6 Eastsound Waterfront Access Plan, and SJCC 18.80.110 is the Shoreline Master
8 Program (SMP) for San Juan County, Washington.

9
10 **B. Short Title.** The short title of this Chapter and Element 3 of the Comprehensive Plan is the
11 “SMP.”

12
13 **C. Authority.**

14
15 1. The provisions of this Chapter are adopted pursuant to RCW 90.58.140(1-3) and
16 90.58.200, the SMA, Chapters 173-26 and 173-27 WAC, and Element 3 of the
17 Comprehensive Plan. Except when specifically exempted by statute, all proposed uses and
18 development occurring within shoreline jurisdiction must conform to Chapter 90.58 RCW,
19 the SMA, and this SMP.

20
21 2. As provided in RCW 90.58.900, the SMA is exempt from the rule of strict
22 construction. The SMA and the SMP is liberally construed to give full effect to the
23 purposes, goals, objectives, and policies for which the SMA and this SMP were enacted
24 and adopted.

25 3. The SMA and the SMP comprise the basic state and local law regulating the use of
26 shorelines in the County. Unless specifically provided otherwise, if the provisions of the
27 SMP conflict with other applicable state or local policies, subarea plans, or other
28 regulations, the most restrictive regulation controls.

29 **D. Official map.**

30 1. A map, known officially as the “San Juan County Comprehensive Plan Land Use and
31 Shoreline Master Program Map,” (a.k.a., the “map” or “official map”) is part of the SMP.
32 The map shows all areas of the County under the jurisdiction of the SMP and the official
33 shoreline designations established by Element 3 of the Comprehensive Plan for all affected
34 lands and waters.

35 2. There are four (4) official copies of the map. Two (2) are maintained by the
36 department, one (1) is archived by the San Juan County Auditor, and one (1) is submitted
37 to the Washington Department of Ecology (WDOE). Amendments to the map are promptly
38 recorded on the official copies.

39 3. No part of the map may be altered or amended without the approval of the WDOE,
40 except those changes provided for in subsection (D)(4) of this section.

41 4. Where questions arise regarding the precise boundaries of any shoreline designation,

1 the director will make the final determination, subject to the provisions of SJCC 18.80.140.
2 Unofficial copies of the map may be prepared for administrative purposes as needed.

3 5. All areas that are not mapped in shoreline jurisdiction, but meet the jurisdictional
4 criteria in RCW 90.58.030(f) per WAC 173-26-211(2)(e), are assigned a conservancy
5 designation until the shoreline can be re-designated through an SMP amendment.

6 **E. Responsibilities of department director and planning commission.**

7 1. Director.

8 a. The director makes written recommendations to the decision-maker regarding
9 shoreline permit applications, provides technical and administrative assistance to the
10 hearing examiner as required, and provides such technical assistance to the planning
11 commission and County Council as may be needed; and

12 b. The director has the overall administrative responsibility for the SMP including:

13 i. Establishing the procedures and preparing the forms deemed essential for
14 the administration of the SMP;

15 ii. Advising applicants for permits and other interested persons of the
16 policies, regulations, and procedures established by the SMP and the
17 SMA;

18 iii. Making administrative interpretations of the SMP, as necessary;

19 iv. Collecting required fees;

20 v. Determining that applications are proper and complete prior to review;

21 vi. Making field inspections; and

22 vii. Seeking compliance with the provisions of the SMP and the SMA and
23 with conditions attached to a shoreline permit issued by the County.

24 2. The department and planning commission have authority to review and recommend
25 revisions to the SMP.

26 **NEW SECTION 9. A new section is added to Chapter 18.50 SJCC to read as follows:**

27
28 **General applicability.**

29
30 **A. Relationship to comprehensive plan.**

31 This SMP provides land use regulations to implement the goals and policies of the
32 Comprehensive Plan Element 3, SMP. These regulations apply to all of the land and waters of
33 the County that fall under the jurisdiction of the SMA. These regulations do not apply to
34 development and uses beyond the jurisdictional limits of the SMA unless a proposed
35 development involves both jurisdictional and non-jurisdictional land and the upslope land
36 development is likely to adversely affect shoreline ecological functions.

1 **B. Applicability to persons.**

2 This SMP applies to every person, individual, firm, partnership, association, organization,
3 corporation, local or state governmental agency, public or municipal corporation, or other
4 nonfederal entity that develops, owns, leases, or manages lands, wetlands, or waters that fall
5 under the jurisdiction of the SMA, except for the right of any person established by treaty to
6 which the United States is a party.

7 **C. Applicability to federal agencies.**

8 1. Federal agencies are subject to this SMP and the SMA, as provided by the Coastal
9 Zone Management Act (16 U.S.C. 1451 *et seq.*; WAC 173-27-060(1)).

10 2. The shoreline permit system applies to nonfederal activities constituting
11 developments or conditional uses undertaken on lands subject to nonfederal ownership,
12 lease, or easement even though such lands may fall within the external boundaries of
13 federally owned lands.

14 3. The shoreline permit system applies to development and uses undertaken on lands not
15 federally owned but under lease, easement, license, or other similar property right of the
16 federal government.

17 **D. Applicability to developments, uses, structures, and activities.**

18 This SMP applies to all developments, uses, and structures, as well as activities regulated by
19 Chapter 18.35 SJCC. Unless otherwise authorized, shoreline development without a project
20 permit, shoreline substantial development permit, shoreline conditional use permit, shoreline
21 variance, or certificate of exemption is prohibited.

22 **NEW SECTION 10. A new section is added to Chapter 18.50 SJCC to read as follows:**

23 **Exemptions from shoreline substantial development permit requirements.**

24 **General requirements.**

25
26
27
28 **A.** Exemption from the shoreline substantial development permit requirements under this
29 section does not constitute an exemption from the policies of the SMA, the regulations of this
30 SMP, or other applicable County, state, or federal permit requirements.

31 **B.** Exemption procedures are provided in SJCC 18.80.110(F). Exemptions are construed
32 narrowly in accordance with WAC 173-27-040(1)(a). If any part of a project is not eligible for
33 an exemption, a shoreline substantial development permit is required for the entire project.

34 **C.** Certificates of exemption are required for certain developments under subsection (B) of
35 Section 11 of this ordinance. A use classified as a conditional use, or a use not named or
36 contemplated in this Chapter is allowed subject to a conditional use permit and is ineligible for a
37 shoreline substantial development permit exemption.

38 **D.** The following developments, as defined in WAC 173-27-040, are not shoreline substantial
39 developments and may require a certificate of exemption:

- 1 1. With the exception of docks, any development, use, structure or activity whose total
2 cost or fair market value, whichever is higher, does not exceed the maximum exempt
3 amount allowed by state law (\$6,416 as of October 2012) in accordance with WAC 173-
4 27-040(2)(a), if such development does not materially interfere with the normal public use
5 of the water or shorelines of the state. The total cost or fair market value of the
6 development includes the fair market value of any donated, contributed or found labor,
7 equipment, or materials.
- 8 2. Normal maintenance or repair of existing structures or developments including those
9 damaged by fire, accident, or the elements in accordance with WAC 173-27-040(2)(b).
- 10 3. Construction of a protective structural shoreline stabilization measure associated with
11 existing single-family residences in accordance with WAC 173-27-040(2)(c).
- 12 4. Emergency construction necessary to protect property from damage by the elements,
13 in accordance with WAC 173-27-040(2)(d). Flooding or other seasonal events that can be
14 anticipated and may occur but are not immediately imminent are not an emergency.
- 15 5. Construction and practices necessary for farming, irrigation, and ranching activities,
16 including agricultural service roads and utilities on shorelands, construction and
17 maintenance of a barn or similar agricultural structure and the construction and
18 maintenance of irrigation structures such as head gates, pumping facilities, and irrigation
19 channels in accordance with WAC 173-27-040(2)(e) provided that a feedlot of any size, all
20 processing plants, other activities of a commercial nature, and alteration of the contour of
21 the shorelands by leveling or filling (other than that which results from normal
22 cultivation), are not considered normal or necessary farming or ranching activities.
- 23 6. Construction or modification of navigational aids such as channel markers and anchor
24 buoys in accordance with WAC 173-27-040(2)(f).
- 25 7. Construction of a single-family residence, including normal residential
26 appurtenances, for the use of the beneficial owner and their family is exempt from
27 shoreline substantial development permit requirements. For the purposes of this SMP, the
28 beneficial owner is an individual who may be a land owner, lessee, contract purchaser, or a
29 member of a family corporation, trust, or partnership, and who is related by blood,
30 adoption, marriage or domestic partnership to all other members of the corporation, trust or
31 partnership. For the construction of more than one single-family residence, a shoreline
32 substantial development permit is required in accordance with WAC 173-27-040(2)(g).
33 Exempt normal residential appurtenances are defined in SJCC 18.20.140 regulated by
34 Section 11 of this ordinance.
- 35 8. Construction of a dock, including a community dock, designed for pleasure craft
36 only, for the private, noncommercial use of the owners, lessee, or contract purchaser of
37 single- and multiple-family residences in accordance with WAC 173-27-040(2)(h). This
38 exception applies if either:
 - 39 a. In salt waters, the fair market value of the dock does not exceed twenty-five
40 hundred dollars (\$2,500); or

1 b. In fresh waters, the fair market value of the dock does not exceed ten thousand
2 dollars (\$10,000), but if subsequent construction having a fair market value exceeding
3 twenty-five hundred dollars (\$2,500) occurs within five (5) years of completion of the
4 prior construction, the subsequent construction is considered a substantial
5 development.

6 9. Operation, maintenance, or construction of canals, waterways, drains, reservoirs, or
7 other facilities that now exist or are hereafter created or developed as part of an irrigation
8 system for the primary purpose of making use of the system waters, including return flow
9 and artificially stored ground water from the irrigation of lands in accordance with WAC
10 173-27-040(2)(i).

11 10. The marking of property lines or corners on state-owned lands, when such marking
12 does not significantly interfere with normal public use of the surface of the water in
13 accordance with WAC 173-27-040(2)(j).

14 11. Operation and maintenance of any system of dikes, ditches, drains, or other facilities
15 existing on September 8, 1975, that were created, developed, or utilized primarily as part of
16 an agricultural drainage or diking system in accordance with WAC 173-27-040(2)(k).

17 12. Site exploration and investigation activities that are prerequisite to preparation of an
18 application for development authorization under this SMP in accordance with WAC 173-
19 27-040(2)(m) if:

- 20 a. The activity does not interfere with the normal public use of the surface waters;
- 21 b. The activity will have no significant adverse impact on the environment such as
22 fish, wildlife, fish or wildlife habitat, water quality, and aesthetic values;
- 23 c. The activity does not involve the installation of any structure, and upon
24 completion of the activity the vegetation and land configuration of the site are
25 restored to conditions existing before the activity;
- 26 d. A private entity seeking development authorization under this section first posts
27 a financial guarantee or provides other evidence of financial responsibility to the
28 County to ensure that the site is restored to pre-existing condition; and
- 29 e. The activity is not subject to the permit requirements of RCW 90.58.550.

30 13. The process of removing or controlling an aquatic noxious weed, as defined in state
31 law, through the use of herbicides or other treatment methods that are recommended in a
32 final environmental impact statement published by the U.S. Department of Agriculture or
33 the WDOE jointly with other state agencies under Chapter 43.21C RCW in accordance
34 with WAC 173-27-040(2)(n). In order to qualify as exempt, noxious weed control must
35 meet the following County requirements:

- 36 a. Aquatic weed control must only occur when native plant communities and
37 associated habitats are threatened or where a water-dependent use is restricted by the
38 presence of weeds. Aquatic weed control must occur in compliance with all other
39 applicable laws and standards.

1 b. Aquatic weeds will be controlled by hand pulling or mechanical harvesting that
2 does not disturb the sea bed, or entail placement of aqua-screens. If the action is
3 being proposed for the retention of existing water depth for navigation, it is
4 considered normal maintenance and repair.

5 c. The control of aquatic weeds by derooting, rotovating, or other methods that
6 disturb the sea bed or benthos in order to maintain the pre-existing water depth for
7 navigation in an area covered by a previous permit is considered normal
8 maintenance and repair. The control of aquatic weeds by similar methods in any
9 other circumstance requires a shoreline substantial development permit.

10 d. Use of herbicides to control aquatic weeds is prohibited except where no
11 feasible alternative exists and weed control complies with all state rules and
12 regulations.

13 14. Watershed restoration projects in accordance with WAC 173-27-040(2)(o).

14 15. A public or private project that is designed to improve fish or wildlife habitat or fish
15 passage in accordance with WAC 173-27-040(2)(p), when all of the following apply:

16 a. The project has been approved by the Washington Department of Fish and
17 Wildlife (WDFW);

18 b. The project has received hydraulic project approval by the WDFW pursuant to
19 Chapter 77.55 RCW; and

20 c. The County has determined that the project is substantially consistent with this
21 SMP.

22 **NEW SECTION 11. A new section is added to Chapter 18.50 SJCC to read as follows:**

23
24 **Exemptions from substantial development permit requirements – Normal residential**
25 **appurtenances.**

26
27 **A.** Normal residential appurtenances are structures or development that are necessarily
28 connected to the use and enjoyment of a single-family residence and that are expressly defined in
29 Chapter 18.20.140 SJCC. Hard structural shoreline stabilization measures and other shoreline
30 modifications or over-water structures are not considered normal appurtenant structures. Normal
31 residential appurtenance exemptions also include:

32
33 1. Construction or renovation of structures with fair market value of less than the
34 maximum value allowed by WAC 173-27-040(2)(a) (\$6,416 in October 2012).

35 2. Private pedestrian pathways, stairways and ramps, provided that a written certificate
36 of exemption is obtained, and all of the following criteria are met:

37 a. The total cost or fair market value of the improvements does not exceed the
38 maximum allowed by WAC 173-27-040(2)(a);

39 b. Roofs or roof covering materials such as awnings are not allowed for purposes

1 of this exemption;

2 c. All materials must be finished in subdued natural earth colors;

3 d. No construction or placement seaward or below the OHWM is allowed unless
4 the stairways or ramp are connected to an exempt or permitted dock;

5 e. No other shoreline access exists or is feasible;

6 f. The maximum vertical height of the stairway is fifteen (15) feet and the
7 maximum width of the structure is five (5) feet. One intermediate landing or platform
8 with a maximum size of five (5) feet by five (5) feet is allowed. Stairways proposed
9 for exposed areas of the shoreline are not allowed on rock faces or bluffs that exceed
10 a sixty (60) degree angle; and

11 g. The project complies with the bank stability and geologically hazardous area
12 requirements of Section 18 of this ordinance and Chapter 18.35 SJCC.

13 **B. Certificates of exemption.**

14 1. The director may approve or deny applications for an exemption from a shoreline
15 substantial development permit for uses and developments listed in Section 10 and Section
16 11(A) of this ordinance. Approved certificates must describe the specific exemption that is
17 being applied to the development and indicate that a proposal is consistent with the SMP
18 and the SMA. The certificate of exemption may contain conditions or mitigation measures
19 required for consistency with the SMP and SMA. The denial of an exemption must include
20 written findings. The director's approval or denial of a certificate of exemption may be
21 appealed under SJCC 18.80.140.

22 2. A certificate of exemption is required for:

23 a. Dredging;

24 b. Flood hazard control structures;

25 c. Archaeological or historic site alteration;

26 d. Clearing, grading, fill, excavation and vegetation removal (when not part of an
27 approved project permit);

28 f. Dock construction, repair, replacement, or enlargement;

29 g. Structural shoreline stabilization, repair, replacement, or enlargement;

30 h. Any residential, commercial or industrial development project within the natural
31 and aquatic designations (when not part of an approved project permit);

32 i. Small scale shellfish aquaculture consistent with the provisions of Section 28(B)
33 of this ordinance;

34 j. Temporary barge landing sites; and

35 k. Private pedestrian pathways, stairways and ramps.

1 3. Whenever an exempt activity also requires an ACOE Section 10 permit under the
2 Rivers and Harbors Act of 1899, or a Section 404 permit under the Federal Water Pollution
3 Control Act of 1972, a copy of the certificate of exemption is sent to the applicant and the
4 WDOE in accordance with WAC 173-27-050.

5 4. A certificate of exemption is not required for residential development, including
6 normal residential appurtenant structures, when a building permit application is required. In
7 addition to the conditional use permit required by Section 60(D)(2) of this ordinance,
8 normal residential appurtenances that are not considered as part of original development
9 permit are required to obtain a certificate of exemption.

10 5. A certificate of exemption is not required prior to emergency actions taken pursuant
11 to WAC 173-27-040(2)(d). Post emergency applications must be submitted in accordance
12 with SJCC 18.35.030(A).

13 **NEW SECTION 12. A new section is added to Chapter 18.50 SJCC to read as follows:**

14
15 **Definitions.**

16
17 The definitions for all terms used in this document have the meanings specified in Chapter 18.20
18 SJCC. If there is a conflict in interpretation, the terms used in Chapter 90.58 RCW, WAC 173-
19 26-020 and WAC 173-27-030 control.

20
21 **NEW SECTION 13. A new section is added to Chapter 18.50 SJCC to read as follows:**

22
23 **Administration.**

24
25 **A.** All existing shoreline uses and activities, including those that do not require a shoreline
26 substantial development permit, must conform to the SMA and the general and use-specific
27 regulations of this SMP.

28
29 **B.** All shoreline modification activities, developments and vegetation removal are prohibited
30 unless they support an allowable shoreline use that conforms to the provisions of this SMP.

31 **C.** Prohibited shoreline uses and modification activities are not eligible for shoreline variances
32 or conditional use permits.

33
34 **NEW SECTION 14. A new section is added to Chapter 18.50 SJCC to read as follows:**

35
36 **Nonconforming structures, uses, and activities.**

37
38 **A.** Except for structural shoreline stabilization measures (addressed in Section 47 of this
39 ordinance) and boating facilities, docks, piers, mooring and recreational floats (addressed in
40 Section 37 of this ordinance), any use or structure legally located within shoreline jurisdiction
41 that was established before the effective date of this ordinance may be moved, replaced,
42 redeveloped, expanded, or otherwise modified on the same parcel provided this work is
43 consistent with the provisions of this section.

1 **B.** Movement, replacement, redevelopment, expansion or modification of structures may be
2 allowed if the applicant demonstrates that the proposed action will not:

- 3
- 4 1. Result in a net loss of shoreline ecological functions;
- 5
- 6 2. Increase adverse impacts on shoreline critical areas;
- 7
- 8 3. Create a new nonconformance or increase the degree of inconsistency with the
9 provisions of this SMP; or
- 10
- 11 4. Result in a hazard to people or property.
- 12

13 See Figure X below.

14

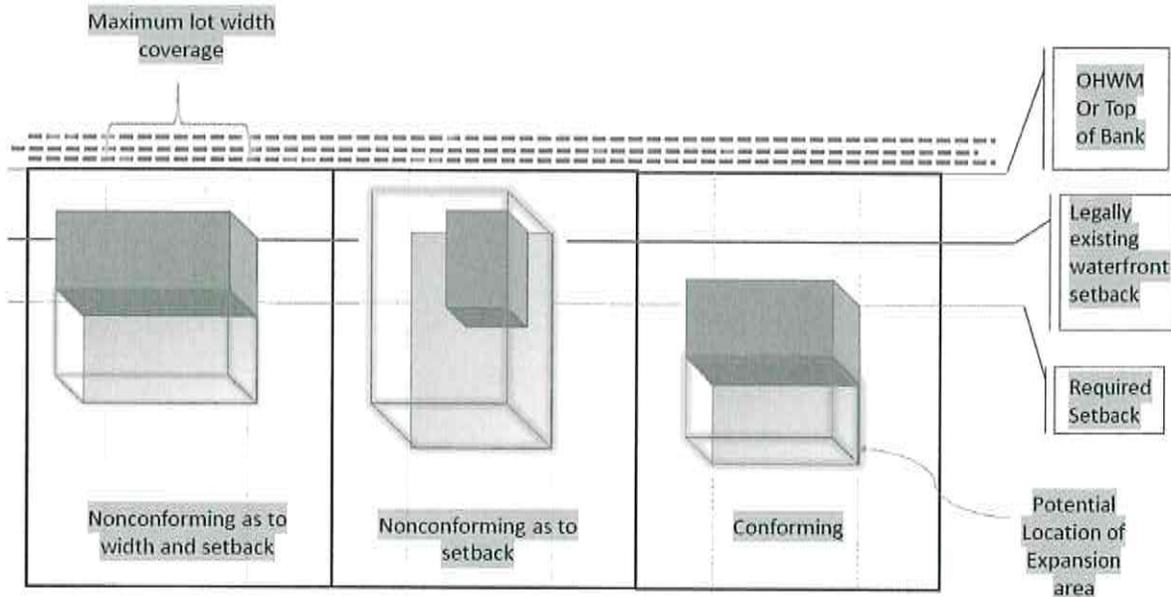
15 **C.** The applicant must demonstrate no net loss of shoreline ecological functions based upon an
16 analysis that addresses any:

- 17
- 18 1. Increase in the quantity of pollutants from the site;
- 19
- 20 2. Increase in the quantity of surface runoff from the site;
- 21
- 22 3. Decrease in trees and other vegetation within buffers and tree protection zones;
- 23
- 24 4. Decrease in the stability of the site and other properties; and
- 25
- 26 5. Changes to the transport of sediment to and within nearshore areas.

27 **D.** Upon submittal of a written request for administrative determination, the director may
28 approve minor changes to the prior footprint in order to further protect natural or verified cultural
29 and historic resources after making written findings.

30 **E.** Complete application(s) for project or development permits for replacement structures must
31 be submitted within forty-eight (48) months of removal or destruction of the original structure.
32 The director may extend this time period for good cause after the property owner submits a letter
33 declaring their intent to rebuild the structure in the future. To retain the right to rebuild, a letter
34 of intent must be submitted to the department every forty eight (48) months.

Figure X. Examples of nonconformity



NEW SECTION 15. A new section is added to Chapter 18.50 SJCC to read as follows:

Archaeological and historic resources.

A. When an application for a development permit is received for an area known to be archaeologically significant, the applicant must submit a cultural resources report with the permit application. The department will forward this report to the Native American nations and Washington State Department of Archaeology and Historic Preservation (DAHP) with a request for comments within ten (10) working days. The County will not take final action on the application until the comment period has ended. If the application is approved by the County, conditions may be attached reflecting the recommendations of the archaeologist regarding preservation or protection of the site.

B. All development permits will contain a provision advising the permit holder that if during excavation or development of the site an area of potential archaeological significance is uncovered, all activity in the immediate vicinity of the find must be halted immediately, and the director, the DAHP and affected Native American nations must be notified at once.

C. Additional regulations to protect archaeological and historic resources are established in SJCC 18.60.210.

D. Structural shoreline stabilization measures may be allowed with a shoreline substantial development permit where wind, rain, storms, or waves expose verified archaeological and historic resources. Prior to issuing the permit, the authenticity of the cultural and historic resources must be verified by the DAHP in coordination with the affected Native American

1 nations.

2
3 **NEW SECTION 16. A new section is added to Chapter 18.50 SJCC to read as follows:**

4
5 **Clearing, grading, fill, excavation and vegetation management.**

6
7 **A.** All clearing, grading, fill and excavation must comply with SJCC 18.60.060, 18.60.070 and
8 Section 18 of this ordinance.

9
10 **B.** All shorelines must be protected from degradation caused by the modification of the land
11 surface within the shoreline area or the adjacent lands. Land clearing, grading, fill and alteration
12 of natural drainage features and land forms must be designed to prevent adverse impacts to
13 adjacent properties or shoreline ecological functions. Unless specifically allowed by this
14 Chapter, vegetation clearing and land surface grading and filling is prohibited.

15
16 **C.** The following requirements apply to land clearing, grading, filling, or alteration of
17 wetlands, natural drainage, and topography for residential construction:

18
19 1. Land clearing, grading, filling, or alteration of wetlands, natural drainage, and
20 topography shall be limited to the area necessary for driveways, buildings, and view and
21 solar access corridors. Cleared surfaces not to be covered with gravel or impervious
22 surfaces shall be replanted promptly with native or compatible plants (i.e., groundcovers or
23 other plant materials adapted to site conditions which will protect against soil erosion).
24 This applies to individual construction and shoreline subdivisions. Existing vegetation
25 shall be used to visually buffer structures as viewed from the shoreline, public roads, and
26 adjoining properties. All applications for new construction and subdivisions shall identify
27 trees that are proposed to be removed. If trees are to be removed beyond those required to
28 construct a single-family residence, then a tree removal plan shall also be submitted. The
29 plan shall:

30
31 a. Identify the proposed building areas, driveways, and view and solar access
32 corridors; and

33
34 b. Demonstrate how existing natural screening will be retained while providing
35 for construction, views, and sunlight.

36
37 2. Removal of trees smaller than three (3) inches in diameter, as measured four (4) feet
38 above grade, shall not be restricted unless there is evidence that the shoreline is unstable.
39 The removal of smaller trees, brush, and groundcover may be restricted in unstable
40 shorelines.

41
42 **D.** All building permit applications for new nonresidential construction, uses, structures or
43 activities must show all trees on the site plan and identify any trees proposed to be removed. If
44 trees are to be removed at other times, a tree removal plan must be submitted to the department
45 for review and approval. Site and tree removal plans must:

- 1 1. Identify the proposed and existing building areas, driveways, and view and solar
2 access corridors;
- 3 2. Demonstrate how natural screening will be retained while providing for construction,
4 views, and sunlight;
- 5 3. Demonstrate how the tree protection requirements in critical area buffers and tree
6 protection zones in Chapter 18.35 SJCC will be met; and
- 7 4. Include a report by a certified arborist for hazard tree removal.
8

9 **E.** Fill in flood hazard areas identified on the Flood Insurance Rate Maps (FIRMs) is not
10 allowed unless the director finds that no feasible alternative exists. Land clearing, grading,
11 filling, and altering of wetlands, natural drainage features and topography is limited to the
12 minimum area necessary for driveways, buildings, and views, and must conform with critical
13 area requirements and SMP setbacks. It is the property owner's responsibility to obtain required
14 state and federal authorizations for work in wetlands, streams or shoreline waters. Fill and
15 excavation within wetlands or waterward of the OHWM will only be allowed for the following
16 purposes:

- 17 1. Interagency environmental restoration or clean-up projects to dispose of contaminated
18 sediment;
- 19 2. Disposal of dredged material evaluated and conducted in accordance with, the
20 Dredged Material Management Program of the WDNR or the Dredged Material
21 Management Office of the ACOE (see Section 50 of this ordinance);
- 22 3. Expansion or alteration of transportation facilities of statewide significance currently
23 located on the shoreline where alternatives to fill are infeasible;
- 24 4. Ecological restoration or enhancement projects, such as beach nourishment, habitat
25 creation, culvert upgrades to improve fish and flow passage, or bank restoration when
26 consistent with a Restoration Plan approved as part of this SMP; and
27
- 28 5. Protection of archaeological, cultural or historic resources when fill is the most
29 feasible method to avoid continued degradation, disturbance or erosion of a site. Such fill
30 must be coordinated with any affected Native American nations and comply with
31 applicable provisions of SJCC 18.60.210.

32 **F.** When clearing, grading, filling or excavating will cause adverse impacts to ecological
33 functions, a mitigation plan must be prepared and implemented in accordance with Sections 19,
34 20, and 21 of this ordinance.

35 **G.** Fill landward of the OHWM is allowed provided it:

- 36 1. Is conducted outside required buffers and setbacks as part of an approved shoreline
37 use;
- 38 2. Is the minimum needed to implement the approved shoreline use;

1 3. Does not significantly change the topography of the landscape in a manner that
2 affects the runoff characteristics; and

3 4. Does not increase the risk of slope failure.

4 **H.** All fill and excavation waterward of the OHWM not associated with ecological restoration
5 requires a shoreline conditional use permit.

6 **I.** All debris and other waste material resulting from construction are to be managed or
7 disposed of in a fashion that prevents entry into any water body or wetland.

8 **J.** Clearing, grading, filling or excavating are not allowed where shoreline stabilization will
9 be necessary to protect materials placed or removed, except when they are part of an approved
10 plan to protect cultural resources including archaeological artifacts.

11 **K.** Fill, beach nourishment and excavation are to be designed to blend physically and visually
12 with the topography existing on the date of application whenever possible, so as not to interfere
13 with water-dependent uses, lawful access and enjoyment of scenery.

14 **L.** Fill is not allowed for the sole purpose of expanding the developable area of a lot.

15 **M.** Applications for substantial development permits proposing fill must include the following
16 information:

17 1. Source of fill material;

18 2. Physical characteristics of fill material;

19 3. Proposed methods of placement and compaction;

20 4. Proposed surfacing material;

21 5. Proposed quantity of fill;

22 6. Proposed method(s) of erosion control; and

23 7. Proposed use of filled area.

24 **N** On natural (as opposed to manmade, privately owned) lakes; retaining walls are not to be
25 used as erosion control devices on allowed fill.

26 **O.** Regulations by designation.

27 1. Conservancy. Fill is prohibited within this designation.

28 2. Aquatic. Fill may be allowed in this designation subject to a conditional use permit.

29 3. Fill is prohibited within the Eastsound subarea.

30
31
32
33
34

1 **NEW SECTION 17. A new section is added to Chapter 18.50 SJCC to read as follows:**

2
3 **General environmental protection.**

4
5 **A.** Land uses and developments that include vegetation removal, fill, excavation or grading on
6 County shorelines must be designed, located, sized, constructed and maintained to result in no
7 net loss of shoreline ecological functions.

8
9 **B.** Land use and development project proposals that do not meet the critical area requirements
10 for no net loss in Section 18 of this ordinance must include a mitigation sequence analysis that
11 considers avoiding actions, minimizing the scale and scope of the project and possible mitigation
12 actions. Where a project may cause or increase the intensity of unavoidable adverse impacts on
13 shoreline ecological functions, mitigation to offset the impacts is required and must be consistent
14 with the mitigation sequence and mitigation planning process in Sections 19, 20, and 21 of this
15 ordinance.

16 Where land use or development projects meet or exceed the protections required by the critical
17 area regulations in Section 18 of this ordinance, mitigation is not required. All new uses,
18 developments and ancillary activities that do not comply with Section 18 of this ordinance
19 requires mitigation of adverse impacts consistent with the provisions of Sections 19, 20, and 21
20 of this ordinance.

21 **C.** All shoreline uses, structures, and activities are to be located, designed, constructed, and
22 managed in a manner that is aesthetically compatible with the affected area.

23 **D.** All new shoreline structures must be located and designed to prevent the need for shoreline
24 stabilization and flood protection measures for the life of the structure (minimum seventy-five
25 years (75) as determined by a qualified professional.

26 **E.** Herbicides and pesticides shall not to be applied to, or allowed to directly enter water
27 bodies or wetlands unless approved for such use by the appropriate agencies.

28 **F.** The cultivation of genetically modified crops, livestock and other organisms are prohibited
29 in the shoreline jurisdiction under Chapter 8.26 SJCC.

30 **NEW SECTION 18. A new section is added to Chapter 18.50 SJCC to read as follows:**

31
32 **Critical areas.**

33
34 **A.** The San Juan County critical area regulations codified in Chapter 18.35 SJCC are
35 incorporated into this SMP except as noted in subsection (B) below. These regulations were
36 adopted by the County in Ordinance 52-2008 on November 18, 2008; Ordinances 26-, 27-, 28-,
37 and 29- 2012, on December 3, 2012; Ordinance 2-2014 on March 5, 2014, Ordinance 16-2014
38 on November 4, 2014, and Ordinance 1-2015 on January 27, 2015.

39
40 **B.** Provisions of the critical area regulations that are not consistent with Chapter 90.58 RCW
41 (the Shoreline Management Act) and its supporting WACs do not apply in the shoreline

1 jurisdiction including the:

- 2
- 3 1. Critical area applicability provisions do not apply in the shoreline jurisdiction.
4 Specifically SJCC 18.35.025 does not apply.
- 5 2. Critical area reasonable use exceptions do not apply in the shoreline jurisdiction.
6 Specifically SJCC 18.35.035 does not apply.
- 7 3. Critical area mitigation requirements do not apply in the shoreline jurisdiction.
8 Specifically SJCC 18.35.040 does not apply.
- 9 4. Critical area existing legally established structures, uses and activities do not apply in
10 the shoreline jurisdiction. Specifically SJCC 18.35.045 does not apply.
- 11 5. Critical area nonconforming structures, uses and activities do not apply in the
12 shoreline jurisdiction. Specifically, SJCC 18.35.050 does not apply.
- 13 6. Critical area reduced provisions for reduced water quality buffers and tree protection
14 zones when views of the water are blocked by existing houses on adjoining waterfront
15 parcels, do not apply in shoreline jurisdiction. Specifically SJCC 18.35.130(F) does not
16 apply.
- 17 7. Critical area standards and requirements for shoreline modifications do not apply in
18 the shoreline jurisdiction. Specifically SJCC 18.35.130(G) does not apply.
- 19 8. Critical area standards and requirements for aquaculture activities and uses allowed in
20 and over aquatic fish and wildlife habitat conservation areas do not apply in shoreline
21 jurisdiction. Specifically, items (f) and (g) in SJCC Table 18.35.130-3 do not apply.

22 **NEW SECTION 19. A new section is added to Chapter 18.50 SJCC to read as follows:**

23
24 **Mitigation of adverse impacts to shoreline ecological functions.**

25
26 **A.** Shoreline development, land uses, structures and activities must meet the no net loss
27 requirement of WAC 173-26-186(8)(b). If project proposals do not comply with the critical area
28 protections in Chapter 18.35 SJCC, applicants must submit a mitigation sequence analysis to the
29 department.

30
31 **B.** Mitigation measures must be applied in the following sequence. The applicant must
32 demonstrate that each mitigation action is not feasible or applicable before proceeding to the next
33 option or action:

- 34 1. Avoiding the impact altogether by not taking a certain action or parts of an action;
- 35 2. Minimizing impacts by limiting the degree or magnitude of the action and its
36 implementation by using appropriate technology or by taking affirmative steps to avoid or
37 reduce impacts;
- 38 3. Rectifying the impact by repairing, rehabilitating, or restoring the affected
39 environment;

1 4. Reducing or eliminating the impact over time by preservation and maintenance
2 operations; and

3 5. Compensating for the impact by replacing or providing substitute resources or
4 environments; and monitoring the impact and compensation projects, and taking
5 appropriate corrective measures

6 6. Monitoring the impact and the compensation projects and taking appropriate
7 corrective measures.

8 C. When feasible, adverse impacts are to be mitigated on site. If off site mitigation is
9 proposed, the mitigation site must be located on the same island, as close as feasible to the
10 development site.

11 **NEW SECTION 20. A new section is added to Chapter 18.50 SJCC to read as follows:**

12
13 **Mitigation plans.**

14
15 A. If a mitigation sequence analysis demonstrates that adverse impacts on shoreline ecological
16 functions are unavoidable, mitigation, monitoring and adaptive management plans to offset the
17 adverse impacts must be developed by a qualified professional.

18
19 B. Where the proposal will have an adverse impact on wetland ecological functions,
20 mitigation plans, including associated wetland replacement ratios, must be consistent with the
21 guidance provided in *Wetland Mitigation in Washington State - Part 1: Agency Policies and*
22 *Guidance, Ecology publication 06-06-011a (as amended)*; and *Wetland Mitigation in*
23 *Washington State - Part 2, publication 06-06-011b (as amended)*. As an alternative, mitigation
24 actions may follow the procedures described in Ecology Publication No. 10-06-011, *Calculating*
25 *Credits and Debits for Compensatory Mitigation in Wetlands of Western Washington (as*
26 *amended)* or another mitigation approach or publication approved by WDOE.

27
28 C. Mitigation options may include the use of certified mitigation banks and approved in lieu
29 fee mitigation sites when they are identified and approved by the County Council.

30
31 D. Removal of shoreline modifications constructed in violation of this code cannot be used to
32 mitigate new adverse impacts to shoreline ecological functions and critical area functions if those
33 modifications were made by the owner of the property, or if they are located on the property that
34 is the subject of the application.

35
36 E. Mitigation, monitoring, and adaptive management plans are reviewed and approved by the
37 decision-maker for the underlying permit or approval (director or hearing examiner, depending
38 on type of permit or approval).

39
40 F. Mitigation plans must address the scale and scope of the project, and document compliance
41 with the mitigation approval criteria. Mitigation plans must include at least the following
42 information, as applicable:

- 1 1. For both the area proposed for development or vegetation removal, and the proposed
2 mitigation site, the applicable items listed in SJCC 18.80.020(C);
3
- 4 2. Photographs of both the development and mitigation sites;
5
- 6 3. The field located OHHM;
7
- 8 4. A mitigation sequencing analysis;
9
- 10 5. Any related project documents such as applications to other agencies or
11 environmental documents prepared pursuant to the SEPA;
12
- 13 6. For both the area proposed for development or vegetation removal, and the proposed
14 mitigation site, applicable critical area reports, tree removal plans, and BAS documents
15 supporting the proposal;
16
- 17 7. For both the area proposed for development or vegetation removal, and the proposed
18 mitigation site, copies of any proposed or approved stormwater and erosion control plan
19 required by Chapter 18.60 SJCC;
20
- 21 8. A narrative describing anticipated unavoidable adverse impacts to critical area
22 functions, the mitigation proposal (including the goals of the proposal; performance
23 standards that will be used to gauge the effectiveness of the proposal, construction
24 methods, and the sequence and timing of actions), and explaining how the proposal meets
25 the plan approval criteria. Assessment of adverse impacts to critical area functions and of
26 the effectiveness of proposed mitigation must be based on the BAS;
27
- 28 9. For off site mitigation actions, an explanation of why on site mitigation was not
29 feasible, along with the site selection criteria employed, including a watershed approach for
30 the selection of mitigation sites;
31
- 32 10. If grading, fill or excavation is proposed, pre- and post-construction contour plans
33 are required at a scale suitable for the site;
34
- 35 11. A planting plan (if planting is proposed) identifying plant species, quantities, sizes,
36 locations, spacing, and density, along with proposed measures to protect and maintain the
37 plants until they are established;
38
- 39 12. Any other drawings necessary to illustrate the proposal;
40
- 41 13. A description of the report author's education and experience relevant to designing
42 and implementing the proposed actions;
43
- 44 14. A monitoring and adaptive management plan appropriate for the scale and scope of
45 the project. The monitoring and adaptive management plan must include:

- a. A description of measureable indicator data to be collected. The description will demonstrate the validity of the collected data to assess the effectiveness of the project;
- b. A monitoring schedule. Data collection must occur at least once each calendar year. The minimum monitoring schedule is three (3) years unless the director makes a written determination that the mitigation plan is successful, functioning as designed and the established performance standards have been met. If the plan is unsuccessful, the director may extend the monitoring requirements; and
- c. A report submitted to the department by November 1st of each calendar year explaining corrective actions that will be taken to address unforeseen adverse impacts.

15. A cost estimate prepared by a qualified professional for implementing the mitigation plan and monitoring the site for a period of three (3) years, or until the qualified professional anticipates the plan to be fully completed and functional. The plan must be approved by the decision-maker (director or hearing examiner, depending on type of underlying permit);

16. Unless exempt under RCW 36.32.590, a financial guarantee and associated agreement equal to a minimum of one hundred and fifteen percent (115%) of the projected cost of implementing the mitigation and monitoring plans (i.e. cost plus fifteen percent (15%)). The maximum cost to the property owner is the original cost for implementing and monitoring the project, plus fifteen percent (15%) of that cost;

17. The financial guarantee and the associated agreement must meet the requirements of SJCC 18.80.200. For mitigation of adverse impacts to wetlands and fish and wildlife habitat conservation areas, it must initially be established to cover a time period of three (3) years or until the project is anticipated to be completed and functional as determined by the qualified professional and approved by the decision-maker; and

18. A statement, signed by the property owner, agreeing to the periodic inspections established in the monitoring plan. The purpose of inspections is to determine compliance with approved plans. Inspections can be performed by either a qualified professional hired by the property owner, or a County representative. If a County representative conducts the inspection(s), they will be by appointment or following advance written notice.

G. If the County's review of a mitigation plan requires a referral to independent qualified professionals, the review will be conducted at the applicant's expense. If review by a third party is necessary because of the complexity of the plans or apparent errors, the department may require advance payment of fees for this review based on the estimated review time. As an alternative to third party review, the applicant and the director may jointly select the qualified professional who will complete the plans.

1 **NEW SECTION 21. A new section is added to Chapter 18.50 SJCC to read as follows:**

2
3 **Mitigation plan approval criteria.**

4
5 **A.** Approval of mitigation plans will be based on conformance with the following criteria:

6
7 1. The applications and projects are consistent with the mitigation sequence in Section
8 19(B) of this ordinance; and

9
10 2. The mitigation has been developed consistent with the published mitigation standards
11 for the applicable critical area, including a description of monitoring methods and
12 frequency and measurable performance standards.

13
14 **B.** The County will record a copy of the approved mitigation plan and mitigation monitoring
15 agreement.

16 **C.** If the goals, objectives and performance standards of the mitigation plan are not met, the
17 decision-maker may require additional actions and may extend the monitoring period, financial
18 guarantee and associated agreement.

19 **NEW SECTION 22. A new section is added to Chapter 18.50 SJCC to read as follows:**

20
21 **Flood hazard reduction.**

22
23 **A. Applicability.**

24
25 This section regulates the construction of structural flood hazard reduction measures such as:

- 26
27 1. Dikes;
28 2. Levees;
29 3. Revetments;
30 4. Floodwalls; and
31 5. Channel realignments.

32 Small scale structural flood hazard reduction measures such as raising a building above the base
33 flood elevation, or the creation of underfloor spaces meeting the requirements of FEMA/FIA
34 Technical Bulletin (TB) 11-1 (as amended) are not subject to the regulations in this section.

35 **B. General regulations.**

- 36 1. Where feasible, nonstructural flood hazard reduction measures such as setbacks,
37 wetlands restoration, stormwater management programs and structural relocation, are
38 preferred over structural solutions.

- 1 2. New structural flood control works are only allowed in the shoreline jurisdiction if it
2 is demonstrated by an engineering analysis that:
- 3 a. They are necessary to protect existing development or to mitigate or resolve
4 existing stormwater problems;
- 5 b. Impacts to critical areas can be successfully mitigated to result in no net loss
6 of shoreline ecological functions;
- 7 c. Appropriate vegetation conservation actions will be undertaken; and
- 8 d. Nonstructural flood hazard reduction measures are infeasible.
- 9 3. All development or uses in areas of special flood hazard area designated by the
10 County's FIRMs and Flood Hazard Boundary Maps (FHBMs) are subject to the provisions
11 of Chapter 15.12 SJCC and SJCC 18.35.075.
- 12 4. New structural flood hazard reduction measures must be placed landward of
13 associated wetlands and wetland habitat buffers, except for measures that increase
14 shoreline ecological functions, such as wetland restoration.
- 15 5. The removal of substrate for flood management purposes is prohibited.
- 16 6. The applicant must provide the following information:
- 17 a. Flood hazard area characteristics adjacent to the project area;
- 18 b. Physical, geological and soil characteristics of the area;
- 19 c. An analysis of alternative flood protection measures, both structural and
20 nonstructural;
- 21 d. Shoreline stabilization measures and flood protection works within the area
22 existing at the time of application;
- 23 e. Predicted impact upon area shore and hydraulic processes, adjacent properties,
24 and shoreline and water uses; and
- 25 f. Biological resources and predicted impact to fish, vegetation and animal habitat
26 associated with shoreline ecological systems.

27 **NEW SECTION 23. A new section is added to Chapter 18.50 SJCC to read as follows:**

28 **Public access.**

29 **A.** Except as provided in subsections (B) and (C) of this section, a development, use, structure
30 or activity that requires a shoreline substantial development or conditional use permit shall
31 provide public access or community access consistent with RCW 90.58.020 as mitigation, if one
32 of the following applies:
33
34

- 35
- 36 1. Where it will create increased demand for public access to the shoreline;
 - 37 2. Where it will interfere with a public access way existing on the date of application;

- 1 3. Where developments, uses, structures or activities that are not a priority shoreline use
2 under the SMA will locate on the shoreline of the state;
- 3 4. Where it will interfere with a public use of lands or waters subject to the Public Trust
4 Doctrine;
- 5 5. If land is proposed to be divided to create five (5) or more lots; or
- 6 6. If it is a project proposed by a public entity. The project application shall describe the
7 impacts of the proposal on public access, the required public access conditions, and how
8 the conditions address the impact.

9 **B.** An applicant need not provide public access if one or more of the following applies:

- 10 1. Land is divided creating no more than four (4) lots;
- 11 2. Unavoidable health or safety hazards to the public exist that cannot be prevented by
12 practical means; and
- 13 3. Inherent security requirements of the use cannot be satisfied through the application
14 of alternative design features or other solutions;
- 15 4. The cost of providing the access, easement or alternative amenity is unreasonably
16 disproportionate to the long term cost of the proposed development;
- 17 5. Environmental harm will result from the public access that cannot be mitigated;
- 18 6. Significant undue and unavoidable conflict between any access provision or adjacent
19 uses would occur and cannot be mitigated;
- 20 7. The County conducted a Countywide public access planning process that provides
21 more effective public access than the single project access requirements; or
- 22 8. Other legal limitations apply.

23 **C.** In order to meet any one of the conditions in subsection (B)(2) through (8) above, the
24 applicant must demonstrate, and the County must determine in written findings that all feasible
25 alternatives have been exhausted such as:

- 26 1. Regulating access by maintaining a gate, limiting hours of use, or other means;
- 27 2. Separating uses and activities (e.g., with fencing, terracing, one-way glazing,
28 landscaping, etc.); and
- 29 3. Developing provisions for access at a site geographically separated from the proposal
30 such as a road end, vista or trail system.

31 **D.** Development, structures, uses and activities shall be designed, constructed, operated and
32 maintained to avoid blocking, reducing or interfering with the public's physical accesses to the
33 water and shorelines.

34 **E.** Public access provided by shoreline road ends, public utilities, and rights-of-way may not
35 be diminished. Existing road ends and other shoreline access points are allowed in all shoreline

1 designations.

2 **F.** Where feasible, public access sites shall be connected directly to the nearest public road
3 and shall include provisions for handicapped and physically impaired persons.

4 **G.** Required public access sites shall be fully developed and available for public use at the
5 time of the occupancy of the permitted development, use, structure or activity. Where
6 applicable, public access sites shall be fully developed prior to final approval of a land division.

7 **H.** Public access easements, common areas and related conditions shall be recorded on the
8 deed of title or on the face of a land division plat.

9 **I.** The standard state-approved logo or other approved signs that indicate the public's right of
10 access and hours of access shall be constructed, installed and maintained by the applicant in
11 conspicuous locations at public access sites. Signs may control or restrict public access as a
12 condition of permit approval.

13 **J.** Future actions by the property owner may not diminish the usefulness or value of the
14 required public access.

15 **K.** Compliance with the public access plan for Eastsound, consistent with the Eastsound
16 Subarea Plan adopted as part of the SMP for the Village Commercial waterfront is required.

17 **NEW SECTION 24. A new section is added to Chapter 18.50 SJCC to read as follows:**

18
19 **Signs.**

20
21 In addition to the standards in Chapter 18.40 SJCC, the following requirements apply:

22
23 **A. Regulations.**

24
25 1. Plans and designs for nonexempt signs must be submitted for review at the time of
26 shoreline permit application.

27
28 2. All signs must be located and designed to minimize interference with vistas,
29 viewpoints, and visual access to the shoreline. Signs shall not face or be directed toward
30 the water except for cable crossing signs, ferry signs, and signs located outside of hamlets,
31 villages, UGAs and activity centers. Within hamlets, villages, UGAs and activity centers,
32 directional and identification signs of water-dependent and water-related businesses may
33 face the water.

34
35 3. Except for over-water signs or signs on floats or pilings directly related to the
36 operations of a water-dependent use, over-water signs are prohibited. The highest point of
37 allowed over-water signs may not exceed twelve (12) feet above the OHWM.

38
39 4. Light sources for externally lit signs shall be shielded or recessed. Light sources must
40 be consistent with the standards in Section 25 of this ordinance.

1 5. Signs related to specific on site uses or activities must not exceed the maximum size
2 limits specified in Chapter 18.40 SJCC. Where allowed, the following standards apply to
3 on site free standing signs as measured from the highest point to average grade:
4

5 a. On site freestanding signs on public property shall not exceed nine (9) feet in
6 height; or
7

8 b. On site freestanding signs on private property shall not exceed six (6) feet in
9 height; or
10

11 c. Within Eastsound, on site free standing signs on private property shall not exceed
12 five (5) feet in height.
13

14 6. Where feasible, signs must be mounted flush against a structure except as allowed by
15 subsection B(2) below. Signs mounted flush to a structure must not extend above the
16 highest point of the structure on which they are attached. Signs mounted at right angles to
17 the side of a structure are measured from the top of the sign and may be two and a half
18 (2.5) square feet per face.
19

20 7. The following types of signs are allowed in all shoreline designations:
21

22 a. Water navigational, cable crossing, water way and roadway safety, and directional
23 signs;
24

25 b. On site public information signs directly relating to an allowed shoreline use or
26 activity;
27

28 c. Off-premise, freestanding signs for community identification, information, or
29 directional purposes, if consistent with this section and Chapter 18.40 SJCC;
30

31 d. National, state and institutional flags or temporary decorations customary for
32 holidays and similar events of a public nature;
33

34 e. Temporary directional signs to public or quasi-public events if removed within
35 seventy-two (72) hours following the event; and
36

37 f. No-trespassing signs and no-hunting signs that do not exceed two (2) square feet.
38

39 8. The following types of signs are prohibited in all shoreline designations:
40

41 a. Signs that significantly impair visual access to the shoreline;
42

43 b. Off-premises outdoor 'A-frame' signs;
44

45 c. Spinners, streamers, pennants, flashing lights, internally lit signs, and other
46 animated signs except as required by local, state or federal law for navigation and
47 safety; and
48

49 d. Signs placed on trees or other natural features.
50

1 **B. Additional regulations by designation.**

2 1. Rural, Rural Residential, and Ports, Marinas and Marine Transportation.
3 Freestanding signs in these designations shall not be more than six (6) feet in height,
4 measured from the top of the sign to average grade.

5 2. Conservancy. Signs are allowed only if they are mounted flush to the wall of a
6 structure or are free standing signs used for federal, state, or County purposes.

7 3. Natural and Aquatic. Signs are prohibited in these designations except for traffic
8 signs, official warning signs, signs identifying public facilities, and other signs required by
9 law; provided, other signs are allowed in the aquatic designation if they are mounted flush
10 to the side of a structure and only if they could not as effectively be located on land.

11 **NEW SECTION 25. A new section is added to Chapter 18.50 SJCC to read as follows:**

12
13 **Lighting.**

14
15 **A.** Except as necessary to meet federal, state, and local safety or navigation standards, all
16 external lighting fixtures must be shielded, recessed and dark sky rated. Light must be directed
17 downward and away from:

- 18
19 1. Wetlands;
20
21 2. Wetland buffers;
22
23 3. Fish and wildlife habitat conservation areas and associated buffers;
24
25 4. Adjoining properties; and
26
27 5. Public roads or rights-of-way.
28

29 **B.** All glare and reflections from external light sources must be contained within lot
30 boundaries.

31 **C.** Flashing or blinking lights are prohibited.
32

33 **NEW SECTION 26. A new section is added to Chapter 18.50 SJCC to read as follows:**

34
35 **General regulations.**

36
37 The SMP regulations directly support the adopted goals and policies for each shoreline
38 designation and development, use, activity or structure. They reflect and are intended to
39 preserve the special character of each designation. Each designation contains general regulations
40 for allowed uses. Additional regulations including shoreline permitting requirements for
41 developments, uses, structures and activities by designation are addressed in Table X in Section
42 66 of this ordinance.

1 **A.** Shoreline uses not specifically identified in this SMP and for which regulations have not
2 been developed will be evaluated on a case-by-case basis. They may be allowed subject to a
3 conditional use permit. Such proposals must be consistent with the policies of the SMA, and the
4 goals and general policies of this SMP including the character and management policies of the
5 shoreline designation in which they are to be located.

6 **B.** In addition to the general regulations of Article II, this Article identifies:

- 7 1. Specific uses;
- 8 2. General development standards for named uses; and
- 9 3. Development standards that apply to the different shoreline designations where
10 appropriate.

11 **C.** Shoreline development, uses, structures and activities shall not result in a net loss of
12 shoreline ecological functions or adversely impact other shoreline uses, resources and activities
13 such as navigation, recreation and public access. Where critical area regulations are not met,
14 adverse impacts to shoreline ecological functions must be mitigated consistent with Sections 19,
15 20, and 21 of this ordinance.

16 **NEW SECTION 27. A new section is added to Chapter 18.50 SJCC to read as follows:**

17
18 **Agriculture.**

19
20 **A. General regulations.**

- 21
22 1. In accordance with Chapter 18.35 SJCC, buffers of permanent vegetation or other
23 suitable soil erosion controls shall be established and maintained between tilled or grazed
24 areas and associated water bodies and wetlands. The type and extent of such vegetation
25 and other controls shall be of a width or character sufficient to capture sediments and other
26 compounds.
- 27
28 2. Confined animal feeding operations, retention or storage ponds for feedlot wastes,
29 and stockpiles of manure solids shall be located to prevent water contamination consistent
30 with guidelines prepared by the U.S. Environmental Protection Agency and the
31 requirements of state and local agencies.
- 32
33 3. Commercial feedlots are prohibited.
- 34
35 4. New agricultural activities in the shoreline jurisdiction shall be located, designed,
36 constructed and managed in a manner that will result in no net loss of shoreline ecological
37 functions.

38 **B. Regulations by designation.**

Natural. Agricultural activities may be allowed in this designation subject to a conditional
use permit provided that the resource to be protected by the natural designation will not be
degraded.

1 **NEW SECTION 28. A new section is added to Chapter 18.50 SJCC to read as follows:**

2
3 **Aquaculture.**

4
5 **A. General regulations.**

6
7 Except as restricted in subsection B below, the following regulations apply to all aquaculture.

8
9 1. Shorelines within the County that are located seaward of the line of extreme low tide
10 have been designated "shorelines of statewide significance."

11 2. Structures or facilities that would have a significant adverse impact on shoreline
12 ecological functions are prohibited.

13 3. Private, noncommercial aquaculture activities that do not include development are not
14 subject to this section.

15 4. No aquatic organism shall be introduced into County waters without prior written
16 approval of the WDFW, WDNR, the County's Noxious Weed Control Board, or the
17 appropriate regulatory agency for the specific organism proposed for introduction. Such
18 approvals shall be submitted in writing to the department prior to the introduction of the
19 organism or the granting of the permit decision, whichever comes first. Introduction, for
20 purposes of this section, means the placement of any aquatic organism in any area within
21 the waters of the County regardless of whether it is a native or resident organism within the
22 County and regardless of whether it is being transferred from within or beyond County
23 waters.

24 5. Unless required by the shoreline permit issued by the department, after a permit is
25 issued for a specific organism, the repeated introduction of an approved organism in the
26 same location does not require subsequent approval by the department.

27 6. Aquaculture shall comply with all applicable noise, light, glare, air pollution, and water
28 quality standards including those in Chapter 18.60 SJCC. Aquaculture operations shall
29 minimize adverse impacts to nearby residents. Some impacts from odor, noise and light
30 may be unavoidable and will not be considered sufficient cause to deny a project
31 application.

32 7. Aquaculture structures and equipment, except navigation aids, shall be designed,
33 operated, and maintained to blend into their surroundings through the use of appropriate
34 colors and materials. They shall not adversely impact the aesthetic qualities of the
35 surrounding area.

36 8. The department may require commercial aquaculture applicants to provide a financial
37 guarantee in an amount commensurate with the risk of injury or damage to any person,
38 property, or shoreline ecological functions as a result of the project. Financial guarantees
39 shall not duplicate the requirements of other agencies.

1 9. All aquaculture structures and facilities shall be marked in accordance with U.S. Coast
2 Guard requirements.

3 10. Aquaculture structures and equipment shall be properly constructed and maintained.
4 Abandoned or unsafe structures and equipment shall be removed or repaired promptly by
5 the owner. The department requires a financial guarantee in an amount commensurate with
6 the cost of their removal or repair if any structure might constitute a potential hazard to the
7 public in the future. The department may abate an abandoned or unsafe structure in
8 accordance with Chapter 7.48 RCW and may take action necessary to enforce the financial
9 guarantee of the applicant. Evidence of the County's financial guarantee shall be
10 considered independently of the requirements of other agencies.

11 11. Applications shall include adequate information to demonstrate that the proposed
12 operation complies with this SMP. Applications shall include at least the following
13 information, when applicable:

- 14 a. Species to be reared;
- 15 b. Aquaculture method(s) including the identification of all pesticides, herbicides,
16 antibiotics, vaccines, growth stimulants, anti-fouling agents, feed or other chemicals
17 the applicant anticipates using;
- 18 c. Number of employees;
- 19 d. Harvest and processing location, method, and timing;
- 20 e. Location and plans for any shore-side activities, including loading and
21 unloading of the product, processing, and any use of freshwater supplies;
- 22 f. Methods of waste disposal and predator control;
- 23 g. An environmental assessment that includes the best available information on
24 water quality, tidal variations, prevailing storm wind conditions, current flows,
25 flushing rates, aquatic and benthic organisms, and probable impacts on water quality,
26 macroalgae, biota, currents, littoral drift, and any shoreline or water uses existing on
27 the date of application. Further baseline studies may be required depending upon the
28 adequacy of available information, conditions existing on the date of the application,
29 the nature of the proposal, and probable adverse environmental impacts. Applicants
30 may submit documents previously submitted to other agencies. Baseline monitoring
31 shall be at the applicant's expense unless otherwise provided for;
- 32 h. For floating aquaculture facilities, the department may require a visual impact
33 analysis consisting of information comparable to that found in the WDOE's
34 "Aquacultural Siting Study" of 1986; and
- 35 i. Other pertinent information deemed necessary by the director.

36 12. No pesticides, herbicides, antibiotics, vaccines, growth stimulants, anti-fouling
37 agents, feed, chemicals or other such materials shall be used until approval is obtained from
38 all appropriate state and federal agencies, including the U.S. Food and Drug

1 Administration, the Washington Department of Agriculture, Washington Department of
2 Health (WDOH), WDOE, and WDFW, and proof of such approvals has been submitted to
3 the department.

4 13. Legally established aquaculture enterprises including authorized experimental
5 projects shall be protected from incompatible uses that are proposed to locate nearby.
6 Demonstration of a probability that such use would result in damage to or destruction of an
7 aquaculture enterprise are grounds for the denial of that use.

8 14. Operational monitoring of commercial aquaculture facilities may be required to the
9 extent necessary to determine, ensure, or confirm compliance with predicted or required
10 performance. Monitoring shall be consistent with local, state and federal requirements.
11 Monitoring requirements shall be established as a condition of the permit and shall be
12 conducted at the applicant's or operator's expense.

13 15. No processing of any commercial aquaculture product, except for the sorting or
14 culling of the cultured organism and the washing or removal of surface materials or
15 organisms, shall occur in or over the water after harvest, unless specifically approved by
16 permit. All other processing facilities shall be located on land and are also governed by the
17 commercial development regulations.

18 16. Aquaculture waste must be disposed of in a manner that complies with all applicable
19 waste disposal standards. No garbage, waste, or debris are allowed to accumulate at an
20 aquaculture operation.

21 17. Projects involving substantial substrate modification shall be located fifteen hundred
22 (1,500) feet or more from areas identified in National Wildlife Refuge lands, marine
23 protected areas and state or County parks. Lesser distances may be authorized by permit if
24 the applicant demonstrates that the wildlife resource will be protected and the exception is
25 supported by the reviewing resource agencies. Greater distances also may be required if
26 recommended by the reviewing resource agencies.

27 18. Aquaculture uses and facilities may intrude into or over critical saltwater habitats
28 where the public's need for such an action is clearly demonstrated and the proposal is
29 consistent with the protection of the public trust; the project is consistent with the state's
30 interest in resource protection and species recovery; an alternative alignment or location is
31 not feasible; and potential adverse impacts are identified and mitigated to result in no net
32 loss of shoreline ecological functions consistent with the requirements of Section 19 of this
33 ordinance.

34 19. Predator control shall not involve the intentional killing or abusive harassment of
35 birds or mammals. Approved controls include but are not limited to double netting for
36 seals, overhead netting for birds, and three (3) foot-high fencing or netting for otters. The
37 use of other nonlethal and nonabusive predator control measures requires the submittal of
38 written approval from the National Marine Fisheries Service or U.S. Fish and Wildlife
39 Service.

40

1 20. When feasible, the cleaning of nets and other apparatus shall be accomplished by air
2 drying, spray washing, or hand washing.

3 21. For commercial aquaculture projects using over-water structures, the storage of
4 necessary tools and apparatus seaward of the OHWM is limited to containers not more than
5 three (3) feet in height as measured from the surface of the floating aquaculture facility or
6 dock. However, in locations where the visual impact of the proposed commercial
7 aquaculture structures will be minimal, storage containers of greater height may be
8 authorized by the decision-maker. In such cases, the burden of proof is on the applicant.

9 22. Materials that are not necessary for the immediate and regular operation of the facility
10 shall not be stored seaward of the OHWM.

11 23. Mechanical clam harvesting or other actions that involve substrate modification
12 through dredging, trenching or digging are prohibited in all eelgrass beds.

13 24. Commercial finfish net pens are prohibited.

14 25. Commercial aquaculture proposals that include floating aquaculture facilities shall
15 not be located closer than one (1) nautical mile to any other commercial floating
16 aquaculture facility. A lesser distance may be authorized by the decision-maker if the
17 applicant can demonstrate that the ecological and aesthetic protection requirements of this
18 SMP will be met. If a lesser distance is requested, the applicant must demonstrate that the
19 cumulative impacts of the existing and proposed operations will not be contrary to the
20 regulations of this SMP.

21 26. Experimental and noncommercial aquaculture developments shall not exceed five (5)
22 acres in area (except anchorage for floating aquaculture systems and restoration projects) and
23 five (5) years in duration. The decision-maker may, however, issue a new permit to
24 continue an experimental project as many times as is necessary and appropriate.

25 27. When it is necessary to preserve the integrity of collectible research data, commercial
26 aquaculture project applications will be reviewed for potential adverse impacts on
27 experimental and noncommercial aquaculture developments existing at the time of
28 application. If there is evidence that an additional project would likely jeopardize a
29 noncommercial or experimental aquaculture project, the commercial project will not be
30 allowed within the same bay, harbor, or cove, or within one (1) mile of such a development
31 if the water body is larger than one (1) square mile in area, until after the experimental
32 project is granted non-experimental status or terminated.

33 28. If it is determined that proposed new commercial aquaculture projects are likely to
34 affect water quality and pose potential adverse impacts to an allowed and currently
35 established aquaculture operation, a separate administrative review will be completed prior
36 to issuing any project permit(s). The director may request research or an analysis to be
37 prepared by appropriate experts to assist the department in determining marine water
38 quality impacts. No project permit will be granted for a new project if it is likely to
39 damage or destroy the established aquaculture operation.

40

1 29. A conditional use permit is required for commercial geoduck aquaculture.
2 Subsequent cycles of planting and harvesting do not require a new conditional use permit.
3 A single conditional use permit may be submitted for multiple sites within an inlet, bay or
4 other defined feature, provided the sites are all under the control of the same applicant.

5 **B. Small scale shellfish aquaculture.**

6 1. Shellfish aquaculture and supplemental wildstock seeding that does not adversely
7 impact shoreline ecological functions or aesthetic qualities is allowed in the nearshore
8 waters with a certificate of exemption provided that it does not:

9 a. Intrude into critical saltwater habitats on shorelines of statewide significance unless
10 there is no feasible alternative, and

11 b. Exceed the shoreline substantial development permit exemption criteria in Section
12 10 of this ordinance.

13 2. Applications for shellfish aquaculture and supplemental wild stock seeding operations
14 shall demonstrate compliance with all state and federal requirements including:

15 a. Hydraulic Project Approval or Joint Aquatic Resources Permit Application from the
16 WDNR;

17 b. Certification and license from the WDOH; and

18 c. Shellfish Import or Shellfish Transfer permits from WDFW.

19 3. A conditional use permit is required if projects conflict with public access, navigation,
20 or adversely impact critical saltwater or freshwater habitats.

21 4. Applications for certificates of exemption for shellfish aquaculture shall include the
22 information required under subsection (A)(11) above, as applicable.

23 **C. Regulations by designation.**

24 1. Rural Residential. Floating aquaculture facilities may be allowed within fifteen
25 hundred (1,500) feet of the OHWM if a visual impact analysis is submitted with the
26 application and approved.

27 2 Conservancy. Aquaculture activities are allowed in this designation provided that
28 natural resources and ecological functions will not be significantly altered; and proposed
29 structures and facilities, both terrestrial and aquatic, will not have a significant adverse
30 impact on the aesthetic qualities of the surrounding area.

31 3. Natural. Aquaculture activities that do not require structures, facilities or mechanized
32 harvest practices and will result in no net loss of shoreline ecological functions are allowed.

33 4. Aquatic. Aquaculture activities are allowed in this designation subject to the
34 regulations of the most restrictive abutting shoreline designation. This is determined on a
35 case-by-case basis but is generally the shoreline designation visible within fifteen hundred
36 feet (1,500) feet directly landward of the center of the project site. The regulations of a less
37 restrictive abutting designation may be substituted if the director determines that the public

1 interest would not be compromised.

2 **NEW SECTION 29. A new section is added to Chapter 18.50 SJCC to read as follows:**

3
4 **Over-water structures including boating facilities, docks, piers, mooring buoys, and**
5 **mooring and recreational floats.**

6
7 **A. General regulations.**

8
9 1. All over-water structures including boating facilities, docks, piers, mooring buoys, and
10 mooring and recreational floats must be designed to avoid or minimize adverse impacts on
11 marine and aquatic life, and the shore process corridor and its operating systems. Over-
12 water structures are restricted to the minimum size necessary to meet the requirements of
13 the proposed water-dependent use.

14 2. All over-water structures must be sited and designed to avoid or minimize the need for
15 new and maintenance dredging.

16 3. The construction of all over-water structures including new, modifications or
17 replacements of existing facilities must meet the applicable design criteria established by
18 the WDFW in WAC 220-660-140 and 220-660-380 relative to materials, siting, disruption
19 of currents, restrictions of tidal prisms, flushing characteristics, and fish passage to the
20 extent that those criteria are consistent with protection of the shore process corridor and its
21 operating systems.

22 4. At least one (1) safety ladder must be placed on the long side of all new or enlarged
23 main floats at sixty (60) lineal feet intervals.

24 5. In general, only one (1) form of moorage or other structure for boat access to the water
25 is allowed on a single lot. A mooring buoy may be allowed to serve single lots, and areas
26 with community use docks, boat ramps and railways. In addition, multiple forms of
27 moorage or structures for boat access to the water may be allowed on a single lot if:

28 a. Each form of boat access to water serves a public or commercial recreational use,
29 provides public access, is a part of a marina facility, or serves an historic camp or
30 resort; or

31 b. The location proposed for multiple boat access structures is common area owned by
32 or dedicated by easement to the joint use of the owners of at least ten (10) shoreline
33 lots.

34 6. Provided the structure will result in no net loss of shoreline ecological functions,
35 storage structures are allowed on private docks, floats, and piers. Except as provided in
36 Section 33 of this ordinance, structures on private docks, floats and piers may be up to
37 three (3) feet in height and twenty-four (24) square feet in size. The height of buildings
38 providing waiting areas on public docks used for marine transportation may be up to ten
39 (10) feet in height. Storage buildings on publically owned over-water structures and
40 marinas are allowed where no feasible alternative exists, provided that they are no larger

1 than one hundred (100) square feet and six (6) feet tall. In all cases, height is measured
2 from the deck surface to the highest point of the structure.

3 7. Public access and ecological restoration shall be incorporated into publicly financed
4 projects when feasible.

5 8. Multiple use and expansion of existing over-water structures are preferred over
6 construction of new over-water structures.

7 9. The order of preference for over-water structures is:

- 8 a. Mooring buoys;
- 9 b. Existing marinas;
- 10 c. Moorage and recreational floats unattached to a pier or floating dock;
- 11 d. Boating facilities, docks and ramps serving five (5) or more residences;
- 12 e. Joint use or community docks; and
- 13 f. Single use docks.

14 10. Applicants for a shoreline substantial development permit for boating facilities, joint
15 use community docks, private docks, piers, moorage floats and buoys shall demonstrate
16 how the proposed development will be designed, constructed and maintained to minimize
17 adverse impacts. Impacts must be mitigated in accordance with Sections 19, 20, and 21 of
18 this ordinance. At a minimum, potential impacts to the following shall be evaluated:

- 19 a. Littoral drift;
- 20 b. Sand movement;
- 21 c. Water circulation and quality;
- 22 d. Fish and wildlife;
- 23 e. Navigation;
- 24 f. Scenic views; and
- 25 g. Public access to the shoreline.

26 11. Boating facilities that are expected to interfere with the normal erosion-accretion
27 process associated with feeder bluffs are prohibited.

28 12. Abandoned or unsafe over-water structures shall be removed or repaired promptly by
29 the owner. The department may abate an abandoned or unsafe structure in accordance with
30 Chapter 7.48 RCW.

31 13. Boats moored at residential boating facilities shall not be used for commercial
32 overnight accommodations.

33

1 **B. Regulations – general design and construction standards.**

2 1. Non-toxic materials should be used in construction. Use of treated wood containing
3 toxic compounds should be minimized and may only be used where non-toxic materials are
4 deemed infeasible and as allowed by this subsection as follows:

5 a. Piers, docks and floats shall be constructed of materials that comply with
6 requirements of federal and state regulations.

7 b. Wood products treated with creosote or pentachlorophenol are prohibited on all
8 new structures or repair projects that come in contact with or could leach into water.

9 c. No treated wood may be used for the decking on the over-water structures.

10 d. Treated wood can be used for all structural elements of the over-water
11 structure.

12 e. Treated wood materials may be utilized on pilings in repair projects for timber
13 structures.

14 f. All treated wood used in the aquatic environment shall be restricted to those that
15 have met or exceed the industry BMP Manual standards found in *Best Management*
16 *Practices for the Use of Treated Wood in Aquatic Environments: USA Version* as
17 revised (Western Wood Preservers Institute, Vancouver, WA).

18 g. Instead of wood, technologies such as EZ Dock or fiber optic lighting may be
19 allowed consistent with the recommendations of state and federal agencies and with
20 the approval of the director.

21 2. Pilings employed in piers or any other structure shall have a minimum vertical
22 clearance of one (1) foot above the extreme high water of marine shorelines or OHWM of
23 lakes.

24 3. All floats shall have stops that serve to keep the bottom of the float off tidelands at
25 low tide or off the substrate in lakes.

26 4. Non-biodegradable materials used in float, pier, or dock construction shall be
27 shielded and enclosed to prevent disintegration.

28 5. Overhead wiring and plumbing are prohibited on boating facilities, joint use and
29 private docks, and piers.

30 6. New or relocated boathouses and covered moorages are prohibited on boating
31 facilities except as allowed for railway systems in Section 34 E of this ordinance.

32 7. Dock lighting shall shine downward, be of a low wattage, and not exceed a height of
33 three (3) feet above the dock surface. All lighting must be consistent with Section 25 of
34 this ordinance.

35 8. All construction-related debris shall be disposed of properly and legally. Any debris
36 that enters the water shall be removed promptly. Where feasible, floats shall be secured
37 with anchored cables in place of pilings. The cabling must have a mid-line float or similar

1 mechanism to keep the cable from dragging and disturbing the bottom substrates,
2 vegetation and aquatic life.

3 9. Over-water structures must be marked with reflectors, or otherwise identified to
4 prevent unnecessarily hazardous conditions for water surface users during the day or night.
5 In general, the exterior finish of all structures shall be non-reflective and a color that will
6 visually blend with the background.

7 **NEW SECTION 30. A new section is added to Chapter 18.50 SJCC to read as follows:**

8
9 **Regulations – boating facilities - general.**

10
11 **A.** Boating facilities must not intrude into or over shoreline critical areas unless all of the
12 following criteria are met:

- 13 1. The public need for an intrusion is demonstrated and the proposal protects the public
14 trust, as embodied in RCW 90.58.020. To demonstrate how the project protects the public
15 trust, the applicant shall submit a narrative demonstrating that the proposal:
- 16 a. Is consistent with the goals and policies and regulations of this SMP;
 - 17 b. Benefits the public by providing physical or visual access to the shoreline; and
 - 18 c. Will not have an adverse impact on the navigability of adjacent waters.
- 19 2. No feasible alternative exists.
- 20 3. The project and any required mitigation will result in no net loss of shoreline
21 ecological functions associated with critical fresh and saltwater habitat.
- 22 4. The project is consistent with the State's interest in resource protection and species
23 recovery.

24 **B.** The location, construction, management, and if necessary, mitigation of adverse impacts of
25 new and expanded boating facilities and associated accessory uses must conform with Sections
26 19, 20, and 21 of this ordinance and result in no net loss of shoreline ecological functions.

27 **C.** Boating facilities must be the minimum size needed to accommodate the intended use as
28 demonstrated by the demand analysis required in Section 38 of this ordinance.

29 **D.** Private boating facilities designs may not accommodate more than one (1) boat per
30 residential unit except that one (1) additional space for every ten (10) residential units served is
31 allowed to accommodate guests.

32 **E.** Boating facilities shall be set back at least ten (10) feet from side property lines. However,
33 a boating facility may be located adjacent to or upon a side property line when mutually agreed
34 to by contract or by covenant with the owners of the adjacent property. A copy of such contract
35 or covenant must be recorded with the County auditor in a format approved by the department to
36 run with each parcel's titles.

37

1 **NEW SECTION 31. A new section is added to Chapter 18.50 SJCC to read as follows:**

2
3 **Regulations - single family and community joint use docks, and moorage and recreational**
4 **floats.**

5
6 **A.** Joint use community docks are required when docks are proposed as part of new land
7 divisions.

8 **B.** Single family and community joint use docks, moorage and recreational floats serving four (4)
9 or fewer residential units may not intrude into or over shoreline critical areas unless the following
10 criteria are met:

11 1. Avoidance of impacts to critical salt and fresh water habitats by an alternative
12 alignment or location is not feasible; and

13 2. The project including required mitigation will result in no net loss of shoreline
14 ecological functions associated with critical fresh and saltwater habitat.

15 **C.** Applications for single family and joint use docks, moorage and recreational floats four (4)
16 or fewer residential units may not be approved unless the applicant demonstrates that:

17 1. The facilities existing at the time of application are not adequate or feasible for use;
18 and

19 2. Alternative moorage such as mooring buoys, mooring floats, boating facilities and
20 joint use facilities, is not adequate or feasible.

21 **D.** The size and dimensions of single family and joint use docks, moorage and recreational
22 floats are provided in Table X.

23 1. These regulations apply to single family and community joint use docks, and
24 moorage and recreational floats serving four (4) or fewer residential units.

25 2. Deviations from the dimensional standards are subject to a shoreline variance.

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1 **Table X Single family and community joint use docks, and moorage and recreational floats serving**
2 **four (4) or fewer residential units**

Moorage Element	Marine and Lake
Number	No more than one (1) dock, moorage float, or mooring buoy is generally is allowed per residential shoreline lot.
Type	Docks must be fixed pile or combination of fixed-pile and floating.
Width	Single family and joint use community docks. <ul style="list-style-type: none"> • Pier: six (6) feet • Float: eight (8) feet • Ramp: cannot exceed five (5) feet
Length	<ul style="list-style-type: none"> • Pier and ramp: length as needed to extend float to position where moorage can occur with rise and fall of tides without resulting in either float or vessel grounding or adversely affecting the substrate. • A pier shall not extend offshore farther than fifty (50) feet beyond the extreme low tide contour in marine waters. • Single family and joint use community docks float length: thirty (30) feet for single-use, sixty (60) feet for joint use or deviations may be allowed, applicants must demonstrate the alternative is the minimum necessary to achieve purpose and will minimize expected adverse impacts.
Area	<ul style="list-style-type: none"> • Moorage floats unconnected to the land: Two hundred and fifty (250) square feet. • Recreational floats unconnected to the land: One hundred and fifty (150) square feet. • Single family dock: Seven hundred (700) square feet including ramp, pier and float. • Joint use dock (two (2) users): Fourteen hundred (1,400) square feet including ramp, pier and float. • Joint use dock (three (3) to four (4) users): Two thousand (2,000) square feet including ramp, pier and float.
Height	The bottom of any piers or the landward edge of any ramp must be the maximum height feasible, but not less than one and one half (1.5) feet above the OHWM. The freeboard height on all floats must be at least ten (10) inches.
Decking	<ul style="list-style-type: none"> • Pier: effective grating is not required if width is four (4) feet or less, otherwise decking and effective grating must cover a minimum of thirty percent (30%) of the deck surface. • Single-family float: Decking and effective grating must cover thirty percent (30%) of the deck surface if the float is six (6) feet wide or less. Floats greater than six (6) feet wide require decking and effective grating that covers fifty percent (50%) of the deck surface. • Joint use floats must have decking and effective grating that covers fifty percent (50%) of the float surface. • Ramps must be fully grated.
Orientation	As close to North/South as feasible to minimize shadows. Also see the WDFW guidelines in WAC 220-660-380 and 220-660-140 as amended.
Safety Ladders	Every sixty (60) lineal feet each long side of main floats.
Boat and watercraft lifts	Prohibited
Covered moorage watercraft lift canopies	Prohibited

1 **NEW SECTION 32. A new section is added to Chapter 18.50 SJCC to read as follows:**

2
3 **Regulations – commercial/industrial docks and piers.**

4
5 **A.** Substantial development permits for new docks or piers serving a commercial or industrial
6 enterprise will not be approved unless the permit application contains information from nearby
7 commercial and industrial enterprises regarding their water access needs and plans. Where more
8 than one (1) enterprise needs and could use a single moorage facility, permits for individual
9 facilities will not be granted.

10
11 **B.** Bulk fuel storage (retail or wholesale) for gasoline, oil, and other petroleum products for
12 any use or purpose is prohibited on piers and docks.

13
14 **C.** Spill containment and clean-up equipment shall be available for prompt response and
15 application at all piers and docks involved in the transfer of gas, petroleum, oil and hazardous
16 products.

17
18 **NEW SECTION 33. A new section is added to Chapter 18.50 SJCC to read as follows:**

19
20 **Regulations – marinas.**

21
22 **A.** Over-water structures in marinas shall not be wider than eight (8) feet, except that the
23 director may approve larger widths based upon the submittal of documentation consistent with
24 Section 38 of this ordinance.

25
26 **B.** Over-water structures in marinas must be no longer than needed to achieve the intended
27 use, as demonstrated by the demand analysis requirement in Section 38 of this ordinance.

28
29 **C.** Dredging or filling of wetlands for the sole purpose of constructing a marina is prohibited.

30
31 **D.** No new marina will be approved for construction within one-half (1/2) mile of any outfall
32 of a domestic or industrial sewage treatment facility except as a conditional use.

33
34 **E.** All service facilities within or associated with a marina must maintain a spill prevention
35 plan and equipment to prevent pollutants from entering the water.

36
37 **F.** Commercial covered moorages may be allowed only where vessel construction or repair
38 work is the primary activity and covered work areas are necessary over-water.

39
40 **G.** Marina-related structures or uses that are not water-dependent shall not be located over-
41 water.

42
43 **H.** Marinas shall be sited to prevent restrictions in the use of commercial and recreational
44 shellfish beds and comply with the WDOH “Environmental Health Guidelines for Marina
45 Development and Operation.”

1 I. Public access facilities are required in marinas subject to Section 23 of this ordinance.

2
3 J. Marinas shall be designed to minimize adverse effects on the scenic qualities of the
4 shoreline.

5
6 K. Surface runoff from marina areas shall be controlled to prevent pollutants from entering
7 water bodies.

8 L. Marinas are not allowed on Class I beaches or where their presence would interrupt
9 driftways feeding Class I beaches.

10 M. Where fill is allowed, it shall be only used for the necessary water-dependent portions of
11 the facility and be consistent with Section 16 of this ordinance. Fill is prohibited for the creation
12 of parking lots and land for future development.

13 N. Parking lots associated with marinas shall comply with Section 61 of this ordinance.

14 O. Live aboard vessels are regulated by Section 60(E) of this ordinance.

15 P. Marina applicants that propose live aboard moorage must demonstrate that the location of
16 the live aboard slips will result in no net loss of shoreline ecological functions.

17 **NEW SECTION 34. A new section is added to Chapter 18.50 SJCC to read as follows:**

18
19 **Regulations – ramps (including marine railways).**

20
21 A. Ramps and marine railways shall be designed to not obstruct littoral drift.

22 B. Ramps may be allowed for residences where the upland slope within twenty-five (25) feet
23 of the OHWM does not exceed twenty-five percent (25%) and where cutting, grading, or filling
24 exceeding two hundred and fifty (250) cubic yards, or retaining walls and structural shoreline
25 stabilization measures are not necessary.

26 C. Ramps, appurtenant buildings, and haul out facilities shall be designed in character and
27 scale with the surrounding shoreline.

28 D. Ramps and marine railways are prohibited on Class I beaches, pocket beaches or where
29 their presence would interrupt driftways from feeding Class I beaches.

30 E. Marine railways shall be located on unaltered grade where feasible. They shall not obstruct
31 public access to and along the shoreline or across publicly-owned tidelands. A boathouse is
32 allowed at the landward end of a marine railway above the OHWM if it meets the required
33 buffers or setbacks.

1 **NEW SECTION 35. A new section is added to Chapter 18.50 SJCC to read as follows:**

2 **Regulations – mooring buoys.**
3

4 **A.** Mooring buoys shall not interfere with navigation or access to the shoreline. They shall be
5 visible in daylight one hundred (100) yards away.

6 **B.** Mooring buoys shall be placed as specified by state and federal agencies.

7 **C.** Unless there is no feasible alternative, mooring buoys shall be located to avoid eelgrass
8 beds and other critical saltwater habitats.

9 **D.** Mooring buoys individually or cumulatively shall not:

10 1. Impede the ability of other landowners to access their private property;

11 2. Pose a hazard to or obstruct navigation or fishing;

12 3. Contribute to the degradation of water quality or habitat; or

13 4. Pose a threat to a commercial shellfish growing area classification or reduce the
14 potential for an existing area to be upgraded to a new commercial shellfish growing area
15 classification.

16 **E.** Residential mooring buoys shall not be used for live aboard vessels or commercial
17 purposes.

18 **F.** Mooring buoys shall use neutral buoyancy rope, mid-line float, helical anchors, or other
19 state-approved designs to minimize adverse effects on aquatic ecosystems and fish.

20 **G.** Mooring buoys shall be clearly marked and labeled with the owner's name and contact
21 information and WDNR permit number(s).

22 **H.** Unless otherwise permitted by WDNR, the capacity of each mooring buoy shall not exceed
23 one (1) boat and its shore access craft.

24 **NEW SECTION 36. A new section is added to Chapter 18.50 SJCC to read as follows:**
25

26 **Regulations – Private recreational floats.**
27

28 **A.** Private recreational floats shall be placed offshore no farther than two hundred (200) feet
29 beyond extreme low tide or the line of navigability, whichever is closest to shore.

30 **B.** Private recreational floats shall not provide boat moorage.

31 **C.** Private recreational floats shall not exceed one hundred fifty (150) square feet.

32 **D.** Private recreational floats shall be located at least ten (10) feet from side property lines,
33 unless they are designated as joint use structures serving two (2) or more adjoining shoreline
34 properties.

35 **E.** Only one (1) private recreational float may be approved per shoreline parcel.
36

1 **NEW SECTION 37. A new section is added to Chapter 18.50 SJCC to read as follows:**

2 **Replacement, repair, and expansion of boating facilities, docks, piers, floats and ramps.**

3 **A.** The director may approve a design different than the one for a boating facility, dock, pier,
4 float, or ramp that is being replaced without a shoreline variance if the following criteria are met:

- 5
6 1. Any adverse impacts on shoreline ecological functions are mitigated; and
7 2. The new structure does not exceed the thresholds for substantive change set forth in
8 WAC 173-27-100.

9 **B.** Proposals involving the replacement, repair and expansion of boating facilities, private and
10 joint use docks, piers, floats and ramps that exceed the thresholds for substantive change in
11 WAC 173-27-100 will be reviewed and permitted as new structures. They must comply with the
12 following criteria:

- 13 1. The enlargement is necessary due to safety concerns, inadequate depth of water,
14 increased or changed use or demand;
15 2. Applicable design and mitigation standards; and
16 3. The proposal results in no net loss of shoreline ecological functions.

17 **C.** Replacement of more than thirty-three percent (33%) or two hundred fifty (250) square feet
18 of decking or the replacement of decking substructure requires installation of functional grating
19 in the replaced section only.

20 **D.** The boating facility, docks, pier, float or ramp must have been usable at the site within the
21 past twelve (12) months prior to the time of application to be considered a replacement structure.
22 Usable means no major deterioration or section loss in critical structural components is present.

23 **NEW SECTION 38. A new section is added to Chapter 18.50 SJCC to read as follows:**

24
25 **Boating facilities, docks, piers, floats, and ramps - submittal requirements.**

26
27 **A.** For all new or expanded boating facilities, docks, piers, floats, and ramps, applicants must
28 provide a demand analysis demonstrating the need for the proposal that addresses at least the
29 following criteria:

- 30
31 1. The total amount of moorage proposed (except for ramps);
32 2. The total number of commercial moorage spaces on the island of the proposed
33 facility, including vacancies or waiting lists at facilities existing on the date of the
34 application;
35 3. The expected service population and boat ownership characteristics of the population,
36 if necessary for specific design elements related to facility length or necessary water depth;
37 4. Approved facilities, or pending applications, within the service range of the proposed
38 new facility.