

City of Ferndale



SHORELINE MASTER PROGRAM:

June 2021

Commented [HM1]: Note - the City of Ferndale updated its SMP in 2017 without Ecology's review or approval in order to cite the new Critical Areas Ordinance Chapters. To show all changes made in 2017 - the City is using the 2008 SMP to show all changes proposed (from 2017 and 2021) for review and comment.

ADDITIONAL INFORMATION

Commented [HM2]: TOC reformatted to match FMC format. This is being converted from a PDF document to the Ferndale Municipal code with links.

Commented [HM3]: Will cite FMC 16.08 in code. Not a PDF anymore so no need to attach.

APPENDIX Restoration Plan
Public Access Plan

ADDITIONAL INFORMATION Process Overview
Shoreline Jurisdiction Boundary
Assumptions Made
Data Gaps
Risks To Ecological Functions
Cumulative Impact Analysis
Area-By-Area Shoreline Analysis

TITLE 20 SHORELINE MASTER PROGRAM

Commented [HM4]: This is the new TOC that will be formatted into FMC chapters. Each chapter is divided into subsections as shown below.

CHAPTERS:

20.05 GENERAL PROVISIONS
20.10 DEFINITIONS
20.15 ADMINISTRATION
20.20 DESIGNATIONS, MAPS AND BOUNDARIES
20.25 SHORELINE PERMITS AND EXEMPTIONS
20.30 URBAN DESIGNATION
20.35 RESIDENTIAL DESIGNATION
20.40 RURAL DESIGNATION
20.45 CONSERVANCY DESIGNATION
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20.70 GOALS AND POLICIES

Chapter 20.05
GENERAL PROVISIONS

Sections:

20.05.010 Title.

20.05.020 Authority.

20.05.030 Purpose.

20.05.040 Scope.

20.05.050 Adoption of Policy.

20.05.060 Designation of Shorelines of State-Wide Significance.

20.05.070 Establishment of Shoreline Environmental Designations.

20.05.010 Title.

City of Ferndale Shoreline Master Program. This document may be referred to internally as SMP, Master Program, or Program.

20.05.020 Authority.

This Program is adopted pursuant to the State Shoreline Management Act of 1971, Chapter 90.58, RCW.

20.05.030 Purpose.

A. It is the policy of the State of Washington as expressed in the Shoreline Management Act of 1971 and the City of Ferndale as expressed in this Master Program to provide for the management of the shorelines of the State by planning for and fostering all reasonable and appropriate uses, particularly uses directly dependent upon the water; to preserve to the greatest extent feasible consistent with the overall interest of the State, the City, and the people generally, the public's opportunity to enjoy the physical and aesthetic qualities of the shorelines of the City by preserving views and increasing public access to the shorelines; and, to manage the shorelines of the City to minimize, insofar as practical, damage to the shoreline area.

20.05.040 Scope.

A. No development shall be undertaken on the shorelines within the corporate limits of the City of Ferndale except those that are consistent with the policy of the Shoreline Management Act of 1971 and the goals, policies, and regulations of the Master Program. No substantial development shall be undertaken within Shoreline Jurisdiction, without first obtaining a Substantial Development Permit from the City in accordance with procedures in **Chapter 5** of this Program.

B. Except as otherwise provided in this title, no building or structure shall be erected, moved, altered, added to or enlarged, nor shall any land, building or structure or premises be used for any purpose other than a use listed in this Program.

Commented [JB5]: 18.16.050

Commented [HM6]: Remove. The SMP will be codified in the Ferndale Municipal Code.

20.05.060 Applicability and Designation of Shorelines of State-Wide Significance.

1. This Program shall apply to all of the shorelands and waters within the City limits that fall under the jurisdiction of RCW 9.58 as follows:

a. Shorelands shall include those lands extending two hundred (200) feet in all directions as measured on a horizontal plane from the Ordinary High Water Mark (OHWM); floodways and contiguous floodplain areas landward two hundred (200) feet from such floodways; and all wetlands and river deltas associated with the streams, lakes and tidal waters that are subject to the provisions of this Program, as may be amended; the same to be designated as to location by Ecology, as defined by RCW 90.58 only:

i. In accordance with the criteria of RCW 90.58.030(2)(e), the legislature designated the following shorelines of the City of Ferndale, including the associated shorelands, as having state-wide significance:

Nooksack River: That portion of the Nooksack River, including associated shorelands, lying within the boundaries of the City of Ferndale. This area includes those wetland portions of Tennant Lake and Ten Mile Creek within the 100-year floodplain of the Nooksack River.

Commented [JB7]: Have we mapped these areas, especially Tennant Lake and Ten Mile Creek?

ii. The following lakes and streams are also subject to shoreline jurisdiction, in whole or part, and as shown on the City's official shoreline maps:

Commented [HM8R8]: Staff to check with GIS division on this.

- Ten Mile Creek
- Cedar Creek
- Schell Creek
- Silver Creek
- Whiskey Creek
- Tennant Lake

Commented [JB9]: Section added 3/24 to reflect state requirements that water bodies subject to shoreline jurisdiction be listed.

b. On all other shorelines regulated by this Program, shoreline jurisdiction includes those critical areas that are considered to be associated with the Shoreline itself, as well as land necessary for buffers for critical areas that occur within shoreline of the state.

c. In accordance with RCW 35.21.160, where the City is bounded by a river, lake, or other navigable water, the City's shoreline jurisdictions extends to the middle of that river, lake, or navigable water.

d. Up to 200 feet of the 100-year floodplain shall be included within the designated shoreline, when in conjunction with a designated floodway.

Commented [JB10]: remap?

e. Maps indicating the extent of shoreline jurisdiction and shoreline designations are guidance only. They are to be used in conjunction with best available science, field investigations and on-site surveys to accurately establish the location and extent of shoreline jurisdiction when a project is proposed. All areas meeting the definition of a shoreline of the state or a shoreline of statewide significance, whether mapped or not are subject to the provisions of this program.

f. This Program shall apply to every person, individual, firm, partnership, association, organization, corporation, local or state governmental agency, public or municipal corporation, or other non-federal entity that develops, owns, leases, or administers lands, wetlands, or waters that fall under the jurisdiction of the Act; and within the external boundaries of federally owned lands (including but not limited to, private holdings in national wildlife refuges).

g. Non-federal agency actions undertaken on federal lands must comply with this Program and Act.

h. Shoreline development occurring in or over navigable waters may require a shoreline permit in addition to other approvals required from state and federal agencies.

i. Shoreline development occurring in or over navigable waters may require a shoreline permit in addition to other approvals required from state and federal agencies.

j. This Program shall apply whether the proposed development or activity is exempt from a shoreline or not.

k. Native American Tribes' actions on tribal lands and federal agencies' actions on federal lands under exclusive federal jurisdiction are not required, but are encouraged, to comply with the provisions of this Program and the Act. Nothing in this Program shall affect any rights established by treaty to which the United States is a party.

Commented [JB11]: consider tying to .035, above - which keeps both similar things in close together.

20.05.070 Rules of Construction.

Commented [JB12]: Section added. Renumber main masthead.

A. When uncertainty exists as to boundaries of any designation shown on the Official Shoreline Map, the following rules of construction shall apply:

B. Where designation boundaries are indicated as approximately following the center line of streets, alleys or highways and are not otherwise described herein, the actual center line shall be construed to be the boundary.

C. Where designation boundaries are indicated as running approximately parallel to the center line of the street, the boundary line shall be construed to be parallel to the center line of the street.

D. Where designation boundaries are indicated on such map as approximately following the lot or tract lines, the actual lot or tract lines shall be construed to be the boundaries of such designation.

E. Where a designation boundary on such map or maps divides a tract in unsubdivided property, the location of such designation boundary, unless the same is indicated by dimensions thereon, shall be determined by use of the scale appearing on such shoreline area designation map or maps.

F. Designation boundaries following shorelines shall be construed to follow shorelines, and in the event of change in the shorelines shall be construed as moving with the actual shorelines.

G. Boundaries indicated as following railroad lines shall be construed to be the center line of said railroad rights of way.

H. Where a public street or alley is officially vacated or abandoned, the regulations applicable to the abutting property to which the vacated portion shall revert shall apply to such vacated or abandoned street or alley.

I. In case uncertainty exists which cannot be determined by application of the foregoing rules, the Planning Commission shall recommend and the City Council determine, the location of such designation boundaries.

Commented [JB13]: All as per FMC 18.16 – no reason to duplicate.

20.05.070 Establishment of Shoreline Environmental Designations.

Chapter 20.10
DEFINITIONS

Sections:

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20.10.000 Accessory Development.

20.10.000 Act.

20.10.000 Administrator.

20.10.000 Agricultural Practices

20.10.000 Appurtenance.

20.10.000 Aquacultural Activities.

20.10.000 Aquatic Environment Designation.

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20.10.000 Bog.

20.10.000 Buffer.

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20.10.000 Ecology.

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20.10.000 Ecological Functions.

20.10.000 Fair Market Value.

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20.10.000 Fill.

20.10.000 Fish and/or Wildlife Enhancement.

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20.10.000 Forestry.

20.10.000 General Commercial Conservancy Zone.

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20.10.000 Geotechnical Report or Geotechnical Analysis.

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20.10.000 Grade Plane.

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20.10.000 Soft Shoreline Stabalization
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20.10.010 Definitions - Generally.

The terms listed in this Chapter and used throughout this Program shall be defined and interpreted as indicated below. When consistent with the context, words used in the present tense shall include the future; the singular shall include the plural, and the plural the singular.

20.10.000 Accessory Development.

“Accessory Development” means any development incidental to and subordinate to a primary use of a shoreline site and located adjacent thereto.

20.10.000 Act.

“Act” means the Shoreline Management Act of 1971 (RCW 90.58) as amended.

20.10.000 Administrator.

“Administrator” means the Community Development Director acting as Shoreline Administrator.

20.10.000 Agricultural Practices

“Agricultural Practices” are the commercial farming or raising of livestock or crops. New agricultural practices are prohibited within the City of Ferndale.

20.10.000 Appurtenance.

“Appurtenance” means development that is necessarily connected to the use and enjoyment of a single-family residence and is located landward of the OHWM and the perimeter of a wetland. Appurtenances include a garage, deck, driveway, utilities, fences and grading which does not exceed two hundred fifty cubic yards (except to construct a conventional drain field).

20.10.000 Aquacultural Activities.

“Aquacultural Activities” are the commercial culture of feed fish, shell fish, or aquatic plants and animals, including but not limited to propagation, stocking, feeding, disease treatment, waste disposal, water use, development of habitat and structures and native fisheries enhancement projects.

20.10.000 Aquatic Environment Designation.

“Aquatic Environment Designation” is defined as the area waterward of the Ordinary High Water Mark (OHWM) of all streams and rivers, and all lakes, together with their underlying lands and their water column; including, but not limited to: streamways, bedlands, wetlands and shorelands.

Commented [HM14]: Moved below. Changed to Grade Plane and to match the building code definition.

20.10.000 Bankfull Width.

“Bankfull Width” Means the channel width at the most effective channel-forming flood with a recurrence interval seldom greater than the 2-year flood in undisturbed channels. The bankfull discharge may be > than the 2-year flood for incised channels. Bankfull discharge occurs at the maximum product of flow frequency and sediment transport. Bankfull discharge may be exceeded multiple times within a given year. This may occur in a single event, or it might occur in different isolated events.

Commented [HM15]: Ecology definition

20.10.000 Bedlands.

“Bedlands” means those submerged lands below the line of navigability of navigable lakes and rivers.

20.10.000 Boating Facility.

“Boating Facilities” are facilities for vehicular or mechanical launching of boats, including, but not limited to boat ramps, docks, and floats. Docks serving four or fewer single-family residences are not considered Boating Facilities.

20.10.000 Bog.

“Bog” means a wetland depression, or other undrained or poorly drained area containing or covered with usually more than one layer of peat and as defined in Chapter 173-22 WAC. Characteristic vegetation of bogs are sedges, reeds, rushes, or mosses.

20.10.000 Buffer.

“Buffer” is an undeveloped area of natural or landscaped vegetation located on site between a developed area and a road, property line, shoreline or other use or feature which serves to reduce use conflicts and other impacts.

20.10.000 Building.

“Building” means any structure designed for or used for the support, shelter, or enclosure of persons, animals, chattels, or personal property, and which is used for a fixed location on land or water.

20.10.000 Bulkheads.

“Bulkheads” are wall-like structures placed parallel to shore primarily for retaining uplands and fills prone to sliding or sheet erosion, to protect uplands and fills from erosion by wave or current action.

Commented [JB16]: 2nd part eliminated because the definition was making a policy statement. One bulkhead might do one thing, another might do another.

20.10.000 City.

“City” means City of Ferndale.

Commented [JB17]: This definition does not provide any additional context beyond the common use of the term.

20.10.000 Commercial Development.

“Commercial Development” means those uses that are involved in wholesale and/or retail trade or business activities.

20.10.000 Community Dock.

“Community Dock” means a dock used in common by the general public or a private community.

20.10.000 Conditional Use.

“Conditional Use” for the purposes of this Program means a particular type of use or development listed in the regulations as being permitted only as a conditional use.

Commented [JB18]: I guess it could be expanded slightly, but certainly not the lengthy existing definition.

20.10.000 Conservancy Environment Designation.

“Conservancy Environment Designation” is defined as a shoreline area containing natural resources which can be used/managed on a multiple use basis without extensive alteration of topography or banks.

20.10.000 Critical Area Ordinance.

“Critical Area Ordinance (CAO)” means Ordinance #1987 dated March 20, 2017, and any revisions hereto, incorporated herein.

20.10.000 Ecology.

“Ecology” means the state Department of Ecology.

20.10.000 Emergency.

“Emergency,” or emergency situation, means an unanticipated and imminent threat to public health, safety, or the environment that requires immediate action within a time too short to allow full compliance with this chapter.

Commented [JB19]: see about referencing emergency if necessary, or whether it's appropriate to just leave it here. 3/19

Commented [PP20R20]: Is this ok or add to definitions?

Commented [JB21R20]: Yes. Perfect.

20.10.000 Development.

“Development” means any manmade change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving,

excavation or drilling operations or storage of equipment or materials, but not including any open wire fences. For the purposes of this program, "Development" does not include dismantling or removing structures if there is no other associated development or re-development, and provided that such actions may still require Shoreline permits and review.

Commented [HM22]: Revised to match 18.08.490

Commented [JB23]: 3/19/21 Clause added per Ecology checklist.

20.10.000 Dredging.

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

20.10.000 Ecological Functions.

"Ecological Functions" means the work performed or role played by the physical, chemical, and biological processes that contribute to the maintenance of the aquatic and terrestrial environments that constitute the shoreline's natural ecosystem.

Commented [HM24]: WAC 173-26-020

20.10.000 Fair Market Value.

"Fair Market Value" of a development is the open market bid price for conducting the work, using the equipment and facilities, and purchase of the goods, services and materials necessary to accomplish the development. The fair market value of the development shall include the fair market value of any donated, contributed or found labor, equipment or materials.

20.10.000 Feasible.

"Feasible" means, for the purpose of this chapter, that an action, such as a development project, mitigation, or preservation requirement, meets at least one of the following conditions:

The action can be accomplished with technologies and methods that have been used in the past in similar circumstances, or studies or tests have demonstrated in similar circumstances that such approaches are currently available and likely to achieve the intended results;

The action provides a reasonable likelihood of achieving its intended purpose; and

The action does not physically preclude achieving the project's primary intended legal use.

20.10.000 Fill.

"Fill" means the addition of soil, sand, rock, gravel, sediment, earth retaining structure, or other material to an area waterward of the OHWM, in wetlands, or on shorelands in a manner that raises the elevation or creates dry land.

20.10.000 Fish and/or Wildlife Enhancement.

"Fish and/or Wildlife Enhancement" means development or other nonstructural alteration of a shoreline to rehabilitate, maintain, or create fish and/or wildlife habitat, or to enhance the fish and/or wildlife resource available for use by all of the citizens of the state. Fish and/or wildlife

enhancement may include projects described within Watershed Restoration Plans, as defined by this program.

20.10.000 Flood Insurance Rate Map

"Flood insurance rate map (FIRM)" means the official map on which the Federal Insurance Administrator has delineated both the areas of special flood hazards and the risk premium zones applicable to the community

20.10.000 Floodplain.

"Flood Plain" is synonymous with the FEMA one hundred-year floodplain shown on the FIRM Map and means that land area susceptible to inundation with a one percent chance of being equaled or exceeded in any given year.

20.10.000 Floodway.

"Floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood as established by the locally adopted FEMA Flood Insurance Rate Map (FIRM).

Commented [HM25]: Changed to match FMC 15.24

20.10.000 FMC.

"FMC" means the City of Ferndale Municipal Code, as amended.

20.10.000 Forest Practices

"Forest Practices" means activities conducted on or directly pertaining to forest lands, regulated in Chapter 222-16 WAC or Chapter 76.09 RCW, relating to growing, harvesting, or processing timber. This includes but is not limited to: road and trail construction; harvesting, final and intermediate; precommercial thinning; reforestation; fertilization; prevention and suppression of diseases and insects; salvage of trees; and brush control.

20.10.000 General Commercial Conservancy Zone.

~~"General Commercial Conservancy Zone" means a subset of the Conservancy and Urban land use designation. This zone includes a specific area near Tennant Lake within the City that has been identified as having high value wetlands. This designation is intended to alert developers to the increased ecological sensitivity of this area and the likelihood of additional development restrictions.~~

Commented [JB26]: As a policy need to determine whether we want to preserve this or not.

20.10.000 Geologically Hazardous Areas.

~~"Geologically hazardous areas" means areas described in Chapter 16.08.430 FMC that are prone to steep slopes, erosion hazards, earthquake-sensitivity, and volcanic debris flow, and which are therefore subject to the City's Critical Areas Ordinance, requiring additional review to determine their suitability for development.~~

20.10.000 Geologically Unstable Hazardous Areas.

~~"Geologically Unstable Hazardous Areas" means areas that, because of their susceptibility to erosion, sliding, earthquake, or other geological events, pose unacceptable risks to public health and safety and may not be suited to commercial, residential, or industrial development.~~

~~refers to the relative instability of a shoreform or land form for development purposes over the long term or the intended life of any proposed structure.~~

20.10.000 Geotechnial Report or Geotechnical Analysis.

“Geotechnical Report” or “Geotechnical Analysis” means a scientific study or evaluation conducted by a qualified expert for the purpose of determining the adequacy of the site to be developed from a geologic perspective.

Commented [JB27]: The rest of this could be in the application section where it describes the required contents of a geotechnical report.

20.10.000 Grading.

“Grading” means the movement or redistribution of the soil, sand, rock, gravel, sediment, or other material on a site in a manner that alters the natural contour of the land.

20.10.000 Grade Plane.

“Grade Plan” A reference plane representing the average of finished ground level adjoining the building at exterior walls. Where the finished ground level slopes away from the exterior walls, the reference plane shall be established by the lowest points within the area between the building and the lot line or, where the lot line is more than 6 feet (1829 mm) from the building, between the building and a point 6 feet (1829 mm) from the building. .

20.10.000 Hard Shoreline Stabilization

“Hard Shoreline Stabilization” is a technique that hardens and stabilizes the shoreline landward of the structure.

20.10.000 Hazardous Materials.

“Hazardous Materials” means any substance containing such elements or compounds which when discharged in any quantity in shorelines that present an imminent and substantial danger to public health or welfare; including, but not limited to: fish, shellfish, wildlife, water quality, and other shoreline features and property.

20.10.000 Hazardous, Sensitive or Unsuitable Areas.

“Hazardous, Sensitive or Unsuitable Areas” means any Critical Area, as defined in the City's Critical Areas Ordinance, any Flood Hazard Areas, or other any other areas requiring special precautionary measures for development in order to avoid adverse impacts to the environment or safety hazards.

20.10.000 Height of Building.

“Height of building” means the vertical distance from the highest adjoining natural or undisturbed ground surface within a five-foot horizontal distance of the exterior wall of the building to the highest point on the coping of a flat roof or the highest ridge of a pitch or hip roof. When conflicts exist between the height measurement described in this program and the height measurement described in other chapters of the Ferndale Municipal Code that would result in an over-height building, the more-restrictive height limitation shall prevail.

Commented [HM28]: Remove subjective component.

Commented [HM29]: Revised. Use definition in FMC 18.08.810

20.10.000 Industrial Development.

“Industrial Development” means facilities for processing, manufacturing, and storage of finished or semi-finished goods, together with necessary accessory uses such as parking, loading, and waste storage and treatment.

20.10.000 In-Stream Structure.

“In-Stream Structure” means a structure placed by humans within a stream or river waterward of the bank full width that either causes or has the potential to cause water impoundment or the diversion, obstruction, or modification of water flow. In-stream structures may include those for hydroelectric generation, irrigation, water supply, flood control, transportation, utility service transmission, fish habitat enhancement, or other purpose.

20.10.000 Letter of Exemption.

“Letter of Exemption” means a letter or other official certificate issued by the City to indicate that a proposed development is exempted from the requirement to obtain a shoreline substantial development permit as provided in WAC 173-27-050. Letters of exemption may include conditions or other provisions placed on the proposal in order to ensure consistency with the Shoreline Management Act, its implementing rules, and this master program. Letters of Exemption shall be transmitted to the Washington State Department of Ecology for the purpose of facilitating Ecology’s coordination of local actions pursuant to WAC 173-27-050.

Commented [JB30]: Only reference to lacustrine is in the definitions.

20.10.000 Manufacturing Conservancy Zone.

~~“Manufacturing Conservancy Zone” means a subset of the Conservancy and Urban land use designation. This zone includes a specific area near Tennant Lake within the City that has been identified as having high value wetlands. This designation is intended to alert developers to the increased ecological sensitivity of this area and the likelihood of additional development restrictions.~~

20.10.000 Mining.

“Mining” is the removal of naturally occurring metallic and non-metallic minerals or other materials from the earth for economic use.

20.10.000 Mitigation

“Mitigation or Mitigation Sequencing” means a sequence of steps listed in order of priority designed, together with a monitoring process, to avoid, minimize, rectify, reduce, and compensate for impacts to critical areas and ecological function.

Commented [JB31]: 3/24 Change made to remove potential conflicts with FMC 20.55.330.

20.10.000 Natural or Existing Topography.

“Natural or Existing Topography” means the topography of the lot, parcel, or tract of real property immediately prior to any site preparation or grading, including excavation or filling;

20.10.000 Non Water-Oriented Uses.

"Non Water-Oriented Uses" means those uses that are not water-dependent, water-related, or water-enjoyment.

20.10.000 Nonconforming Use or Development.

"Nonconforming Use or Development" means a shoreline use or development which was lawfully constructed or established prior to the effective date of the Act or the applicable Master Program, or amendments thereto, but which does not conform to present regulations or standards of the Program.

20.10.000 Normal Protective Bulkhead

"Normal protective bulkhead" means a bulkhead constructed at or near the ordinary high water mark, the sole purpose of which is to protect land from erosion, not to create new land.

20.10.000 Official Shoreline Map.

"Official Shoreline Map" means the adopted map or maps, including amendments thereto, showing Shoreline Jurisdiction, the respective Shoreline Environment Designations within, including any notes or text placed on the maps.

20.10.000 Ordinary High-Water Mark (OHWM).

"Ordinary High Water Mark (OHWM)"

Means the mark on all lakes, streams, and tidal water that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation as that condition exists on June 1, 1971, as it may naturally change thereafter, or as it may change thereafter in accordance with permits issued by a local government or the department: PROVIDED, That in any area where the ordinary highwater mark cannot be found, the ordinary high water mark adjoining salt water shall be the line of mean higher high tide and the ordinary high water mark adjoining fresh water shall be the line of mean high water (RCW 90.58.030.C).

20.10.100 Permitted Uses.

"Permitted Uses", as identified in the chart contained in Chapter 9.170 of this Program, are those uses, not determined to be exempt from the substantial development permit process under the provisions in Chapter 3.32 of this Program, that require a Substantial Development Permit in order to be allowed within Shoreline Jurisdiction.

20.10.000 Person.

"Person" means an individual, partnership, corporation, association, organization, cooperative, public or municipal corporation, State agency or local governmental unit, however, designated, or Native American tribe.

20.10.000 Piers, Docks and Floats.

"Piers, Docks and Floats" shall mean all platform structures, fill, or anchored devices in or floating upon water bodies to provide moorage for pleasure craft or landing for water-dependent recreation, including but not limited to mooring buoys, swim floats, float plane moorages,

Commented [JB32]: Update chart and change the referenced numbering.

Commented [JB33R33]: Consider also adding something to the effect of "for the purposes of this Chapter, use descriptions may be general in nature, i.e. "Recreational Uses," "Residential Uses." In these instances, the underlying land use zone codified in Title 18 of the Ferndale Municipal Code shall act as the controlling mechanism to determine the specific nature or restrictions that may be placed on specific development proposals. When a conflict occurs between uses allowed in this chapter and Title 18, the more-restrictive code shall prevail."

covered moorages, and water ski jumps. Excluded are recreational decks, storage facilities, launch ramps, or other appurtenances.

20.10.000 Prohibited Uses.

~~“Prohibited” Uses are those uses that are not allowed within Shoreline Jurisdiction, unless continuing to occur as a Nonconforming Use, governed by the provisions in Chapter 20.30 of this Program or as provided for through the restoration incentives pursuant to the Restoration Plan (Appendix).~~

Commented [DT34]: We need to go through and make sure it's in alphabetical order. This is out of place.

Commented [HM35]: revisit after restoration plan is updated

Commented [JB36]: I'm thinking that we remove the restoration plan. It's outdated and I don't feel comfortable updating the SMP and tying it to an outdated restoration plan.

20.10.000 Primary use.

“Primary use” means the use for which a lot, structure or building, or the major portion thereof, is designed or actually employed.

20.10.000 Priority Habitat.

~~Priority Habitat means a habitat type with unique or significant value to one or more species. An area classified and mapped as priority habitat must have one or more of the following attributes:~~

~~“Priority habitat” means a habitat type with unique or significant value to one or more species. An area classified and mapped as priority habitat must have one or more of the following attributes: comparatively high fish or wildlife density; comparatively high fish or wildlife species diversity; fish spawning habitat; important wildlife habitat; important fish or wildlife seasonal range; important fish or wildlife movement corridor; rearing and foraging habitat; important marine mammal haulout; refuge; limited availability; high vulnerability to habitat alteration; unique or dependent species; or shellfish bed. A priority habitat may be described by a unique vegetation type or by a dominant plant species that is of primary importance to fish and wildlife (such as oak woodlands or eelgrass meadows). A priority habitat may also be described by a successional stage (such as old growth and mature forests). Alternatively, a priority habitat may consist of a specific habitat element (such as a consolidated marine173-26-020(24)).~~

20.10.000 Priority Species

~~Priority species” means wildlife species of concern due to their population status and their sensitivity to habitat alteration, as defined by the Washington Department of Fish and Wildlife.~~

~~“Priority Species” means species requiring protective measures and/or management guidelines to ensure their persistence at genetically viable population levels~~

20.10.000 Prohibited Uses.

~~“Prohibited” Uses are those uses that are not allowed within Shoreline Jurisdiction, unless continuing to occur as a Nonconforming Use, governed by the provisions in Chapter 20.30 of this Program~~

Commented [JB37]: I'm thinking that we remove the restoration plan. It's outdated and I don't feel comfortable updating the SMP and tying it to an outdated restoration plan.

20.10.000 Public Access.

“Public Access” shall mean the public's right to utilize the State's public waters, the water/land interface, and associated shoreline area. It includes physical access that is either lateral (areas paralleling the shore) or perpendicular (an easement or public corridor to the shore), and visual access facilitated by scenic roads and overlooks, viewing towers and other public sites or facilities. However, public access does not grant the public any rights to access privately owned shorelines.

20.10.000 Recreational Development.

“Recreational Development” is the process or result of modification to the natural or existing environment to accommodate recreation. Recreational Development may include land clearing, earth modifications, structures and other facilities such as parks, camps, camping clubs, launch ramps, golf courses, viewpoints, paths, public access facilities, public parks and playfields, wildlife enhancement, and other outdoor recreation areas that have a low intensity of use. Recreational Development shall not include recreational homes and related subdivisions of land, which are considered residential. Resorts, motels, hotels, recreational vehicle parks, intensive commercial outdoor or indoor recreation and other commercial enterprises are considered commercial.

20.10.000 Residential Environment Designation.

“Residential Environment Designation” means an area which is planned for residential development.

20.10.000 Residential Development.

“Residential Development” means buildings, earth modifications, subdivision and use of land primarily for human residence; including, but not limited to: single-family and multi-family dwellings, mobile homes and mobile home parks, together with accessory uses common to normal residential use. Camping sites or clubs, recreational vehicle parks, motels, hotels and other transient housing are not included in this definition. Mixed used development that includes an industrial or commercial component is not included in this definition.

20.10.000 Restoration or Ecological Restoration.

“Restoration or Ecological Restoration” means the significant reestablishment or upgrading of ecological functions through measures such as revegetation, removal of intrusive shoreline structures and removal or treatment of toxic materials. Restoration does not imply returning the shoreline area to aboriginal or pre-European settlement conditions.

20.10.000 Restore.

“Restore” means to significantly reestablish or improve shoreline ecological functions through measures such as revegetation, removal of intrusive shoreline structures, and removal or treatment of toxic sediments. To restore does not necessarily imply returning the shoreline area to aboriginal Native American or pre-European settlement conditions.

20.10.000 Riverine.

“Riverine” means pertaining to a river or stream system, including associated lakes and wetlands.

20.10.000 Roads and Railways.

“Roads and Railways” A road is a linear passageway for motor vehicles, and a railway is a linear passageway with track for train traffic. This definition includes related bridges and culverts, fills, embankments, causeways, parking areas, truck terminals and rail switchyards, sidings, spurs, and air fields; not included are recreational trails, highway rest areas, ship terminals, seaplane moorages, nor logging roads.

20.10.000 Rural Environment Designation.

“Rural Environment Designation” is defined as an area developed at a low overall density or used at a low to moderate intensity; including, but not limited to: residences, agriculture and outdoor recreation developments.

20.10.000 Shoreline Areas.

“Shoreline Areas” mean those areas described and mapped on the official City of Ferndale shorelines map.

20.10.100 Shoreline Conditional Uses.

“Shoreline Conditional Uses”, are those uses that must be processed as Shoreline Conditional Uses, under the provisions in FMC 20.25.030 of this Program.

20.10.000 Shoreline Environment Designations.

“Shoreline Environment Designations”, are distinct environment designations, based on existing use patterns, the biological and physical character of the shoreline, and the goals and aspirations of the community as expressed through the Comprehensive Plan. The City of Ferndale’s shoreline environment designations are as follows:

- A. Urban
- B. Residential
- C. Rural
- D. Conservancy
- E. Aquatic

~~There are two subsets of the Urban and Conservancy designations — General Commercial Conservancy and Manufacturing Conservancy which apply to only two specific areas within the City.~~

20.10.000 Shoreline Modifications.

20.10.000 Shoreline Modifications.

Commented [JB38]: This is really informal and reflects the SMP’s unclear status as a regulatory vs. aspirational/ long-range document. Again, this is where we might want to consider placing the long-range SMP stuff (the aspirational elements) in the comprehensive plan, with the regulatory elements in the FMC. I think that should be discussed with the Planning Commission. And I think that it could help us in terms of the comprehensive plan describing more of the why’s of what we’re doing as well as the background, with the code hitting just the regulatory part – the “how”

“Shoreline Modifications” means those actions that modify the physical configuration or qualities of the shoreline area, usually through the construction of a physical element such as a dike, breakwater, pier, weir, dredged basin, fill, bulkhead, or other shoreline structure. They can include other actions, such as clearing, grading, or application of chemicals. Shoreline Modifications usually accompany a proposed primary use but may occur independently.

20.10.000 Shoreline Jurisdiction.

“Shoreline Jurisdiction, or Shorelands” means those lands as designated on the official City of Ferndale shoreline map.

20.10.000 Shoreline Permit.

“Shoreline Permit” means a shoreline substantial development permit, a shoreline conditional use, or a shoreline variance, or any combination thereof issued by the City pursuant to Chapter 90.58 RCW.

20.10.000 Shorelines.

“Shorelines” means all of the water areas of the State, including but not limited to reservoirs and their associated shorelands, together with lands underlying them; except Shorelines of State-wide Significance, Shorelines on segments of streams upstream of a point where the mean annual flow is 20 cubic feet per second or less and the wetlands associated with such upstream segments, and Shorelines on lakes less than 20 acres in size and wetlands associated with such small lakes. Wetlands within the 100 year floodplain that are associated with the Nooksack River are also subject to Shoreline jurisdiction.

Commented [JB39]: What about wetlands in 100 year floodplain?

20.10.000 Shorelines of the State.

“Shorelines of the State” are the total of all shorelines and shorelines of State-Wide Significance within the State of Washington.

20.10.000 Shorelines of State-Wide Significance.

“Shorelines of State-Wide Significance” means the following shorelines—areas in the City of Ferndale, pursuant to RCW 90.58.030(2)(e):

Commented [JB40]: Ok – I’m a bit confused. The definition of shoreline specifically excludes shorelines of statewide significance. I would think that shorelines would be a broad definition and would include all shorelines.

That portion of the Nooksack River, including associated shorelands, lying within the boundaries of the City of Ferndale. Wetlands within the 100-year floodplain of the Nooksack River include those within Tennant Lake and Ten Mile Creek.

Commented [PP41R41]: Yep, it's confusing but this is how Ecology defines it.

20.10.000 Significant Ecological Impact.

“Significant Ecological Impact” means an effect or consequence of a human-caused action if any of the following apply:

The action degrades or changes an ecological function or ecosystem-wide process to such a degree that the ecosystem can no longer perform the function at levels within its natural range of variability or that the performance of the function falls outside the range needed to maintain

the integrity of other ecological processes in shoreline areas. As used in this definition, the normal range of variability does not include alterations caused by catastrophic events.

Scientific evidence or objective analysis indicates that the action could cause degradation or change to those ecological functions or ecosystem-wide processes described in (a) of this subsection under foreseeable conditions.

Scientific evidence indicates that the action could contribute to degradation or change to ecological functions or ecosystem-wide processes described in (a) of this subsection as part of cumulative impacts, due to similar actions that are occurring or are likely to occur.

Significant ecological impacts do not include impacts that are inconsequential to attaining the objectives of the act or to the protection and restoration of shoreline ecological functions or ecosystem-wide processes.

Commented [JB42]: This could probably be written better.

20.10.000 Significant Vegetation Removal.

“Significant Vegetation Removal” means the removal or alteration of trees, shrubs, and/or ground cover by clearing, grading, cutting, burning, chemical means, or other activity that causes significant ecological impacts to functions provided by such vegetation. The removal of invasive or noxious weeds does not constitute significant vegetation removal. Tree pruning, not including tree topping, where it does not affect ecological functions, does not constitute significant vegetation removal.

20.10.000 Signs.

“Signs” are any placard, billboard, display, message, design, letters, symbol, light, figure, illustration, set of pennants, or other devices intended to identify, inform, advertise, or attract attention to any private or public premises, and placed mainly outdoors so as to be seen from any public or quasi-public place.

Excluded from this definition are official traffic, directional or warning devices, other official public notices, signs required by law, or flag of a government or other noncommercial institution.

20.10.100 Soft Shoreline Stabilization

“Soft Shoreline Stabilization” is the use of environmentally friendly stabilization techniques used to protect property and uses from shoreline erosion.

20.10.000 Solid Waste.

“Solid Waste” is all solid and semi-solid waste including garbage, rubbish, ashes, industrial wastes, swill, demolition and construction wastes, abandoned vehicles and parts, thereof, and any other discarded commodities.

20.10.000 Statement of Exemption.

“Statement of Exemption” means a written statement by the Administrator that a particular development proposal is exempt from the process of obtaining a substantial development permit and is generally consistent with this Program including the policy of the act (RCW 90.58.020).

20.10.000 Stormwater.

“Stormwater” means that portion of precipitation that does not normally percolate into the ground or evaporate but flows via overland flow, interflow, channels, or pipes, generally into a defined surface water channel or constructed infiltration facility.

20.10.000 Stream

“Stream” means a naturally occurring body of periodic or continuously flowing water where the water is contained within a channel.

20.10.000 Streamway.

“Streamway” means the bed and banks of a stream. **means those areas where surface waters produce a defined channel or bed. A defined channel or bed is an area that demonstrates clear evidence of the annual passage of water and includes, but is not limited to, bedrock channels, gravel beds, sand and silt beds, and defined channel swales. The channel or bed need not contain water year-round. This definition includes drainage ditches or other artificial water courses where natural streams existed prior to human alteration, and/or the waterway is used by anadromous or resident salmonid or other fish populations or flows directly into shellfish habitat conservation areas**

20.10.000 Structure.

“Structure” means a combination of materials constructed or erected which has permanent location on the ground or is attached to something having permanent location on the ground, not to include paving or surfacing of areas, **fences** not more than seven feet high, walls not more than six feet high that are **used** as **fences**, or **screening** that is not more than six feet high.

20.10.000 Substantial Development.

“Substantial Development” shall mean any development within Shoreline Jurisdiction, of which the total cost or fair market value exceeds seven thousand and forty-seven dollars or any development which materially interferes with the normal public use of the water or shorelines of the State; except that development determined to be exempt under Chapter 3.30 of this Program.

20.10.000 Upland.

“Upland” shall mean those shoreline areas landward of the OHWM except berms, natural wetlands, and flood plains.

20.10.000 Urban Environmental Designation.

“Urban Environment Designation” is defined as an area of intensive development including but not limited to urban density residential, commercial and industrial uses.

20.10.000 Urban Agriculture

“Urban agriculture” means agricultural activities occupying less than two acres of land, generally divided into smaller garden plots that may be planted and maintained by individuals or a collective, such as a community garden. Urban agricultural practices within the designated shoreline jurisdiction shall not utilize pesticides or other chemicals that are incompatible with sensitive shoreline areas.

Commented [HM43]: Revised to match FMC 18.08.1645

20.10.000 Utilities.

“Utilities” includes but are not limited to facilities for distributing, processing, or storage of water, sewage, solid waste, storm drainage, electrical energy including electronic communications, and their administrative structures, as well as pipelines for oil and gas, and firefighting facilities.

20.10.000 Variance.

“Variance” means a modification of the regulations of this title granted by the [Hearings Examiner](#) after finding that the literal application of the provisions of this title would cause undue and unnecessary hardship in view of certain facts and conditions applying to a specific parcel of property.

20.10.000 Water Dependent Use.

“Water-Dependent Use” means a use or portion of a use which cannot exist in a location that is not adjacent to the water but is dependent on the water by reason of the intrinsic nature of its operations. Examples of water-dependent uses include ship cargo terminal loading areas, fishing, ferry and passenger terminals, barge loading facilities, ship building and dry docking, marinas, aquaculture, float plane facilities, hydroelectric dams, surface water intake, and sewer outfalls.

20.10.000 Water Enjoyment Use.

“Water-Enjoyment Use” means a recreational use or other use that facilitates public access to the shoreline as a primary characteristic of the use; or a use that provides for recreational use or aesthetic enjoyment of the shoreline for a substantial number of people as a general characteristic of the use and which through location, design, and operation ensures the public's ability to enjoy the physical and aesthetic qualities of the shoreline. In order to qualify as a water-enjoyment use, the use must be open to the general public and the shoreline-oriented space within the project must be devoted to the specific aspects of the use that fosters shoreline enjoyment. Primary water-enjoyment uses may include, but are not limited to:

- A. Parks with activities enhanced by proximity to the water;
- B. Other improvements that facilitate public access to shorelines of the state;
- C. Restaurants with water views and public access improvements;
- D. Museums with an orientation to shoreline topics;
- E. Aquariums;
- F. Scientific/ecological reserves;
- G. Resorts with uses open to the public and public access to the shoreline; and any combination of those uses listed above.

20.10.000 Water-Oriented Use.

“Water-Oriented Use” means a use that is water-dependent, water-related, or water-enjoyment, or a combination of such uses. Non-Water-Oriented Uses do not contain a water-oriented use and have no practical relation to the shoreline e.g. mini-storage, gas station, etc.

20.10.000 Water Related Use.

“Water-Related Use” means a use or portion of a use which is not intrinsically dependent on a waterfront location but whose economic viability is dependent upon a waterfront location because:

The use has a functional requirement for a waterfront location such as the arrival or shipment of materials by water or the need for large quantities of water; or

The use provides a necessary service supportive of the water-dependent uses and the proximity of the use to its customers makes its services less expensive and/or more convenient.

20.10.000 Water Restoration Plan.

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

20.10.000 Watershed Restoration Projects

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

- (a) A project that involves less than ten miles of streamreach, in which less than twenty-five cubic yards of sand, gravel, or soil is removed, imported, disturbed, or discharged, and in which no existing vegetation is removed except as minimally necessary to facilitate additional plantings;
- (b) A project for the restoration of an eroded or unstable stream bank that employs the principles of bioengineering, including limited use of rock as a stabilization only at the toe of the bank, and with primary emphasis on using native vegetation to control the erosive forces of flowing water; or
- (c) A project primarily designed to improve fish and wildlife habitat, remove or reduce impediments to migration of fish, or enhance the fishery resource available for use by all of the citizens of the state, provided that any structure other than a bridge or culvert or instream habitat enhancement structure associated with the project is less than two hundred square feet in floor area and is located above the ordinary high water mark of the stream.

20.10.000 Wetlands.

“Wetlands” means areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or

highway. Wetlands may include those artificial wetlands intentionally created from nonwetland areas to mitigate the conversion of wetlands.

Commented [JB44]: Reference CAO?

In addition, the definitions and concepts set forth in RCW 90.58.030, as amended, and implementing rules shall also apply as used herein.

Chapter 20.15
ADMINISTRATION

Sections:

- 20.15.010 Exception**
- 20.15.020 Authority – Administrator**
- 20.15.030 Authority – Hearings Examiner**
- 20.15.040 Authority – Planning Commission**
- 20.15.045 Authority – City Council**
- 20.15.050 State Department of Ecology**
- 20.15.060 Application**
- 20.15.070 Vested Rights**
- 20.15.080 Review and Burden of Proof**
- 20.15.090 Permit Procedure**
- 20.15.100 Permit Revisions**
- 20.15.110 Rescission and Modification**
- 20.15.120 Expiration**
- 20.15.130 Timelimit for Issuance of Decision**
- 20.15.135 Appeals**
- 20.15.140 Other City Regulations**
- 20.15.150 Application Development**

20.15.010 Exception

A. Whenever an application for a permit under the zoning ordinance or for approval under the subdivision ordinance accompanies a shoreline permit application, time requirements and notice provisions for processing those applications shall be preempted by the Shoreline Master Program procedural rules.

20.15.020 Authority - Administrator.

A. The Administrator, as defined in FMC 20.20 of this Program, is hereby vested with:

1. Overall administrative responsibility for this Program, and;

2. ~~Authority to determine if a public hearing by the Hearing Examiner should be held on a shoreline permit application.~~ Authority to interpret and make final determinations on Program processes and procedures, consistent with the adopted Program, and

3. Authority to grant, condition or deny statements of exemption; and

4. Authority to grant, condition or deny substantial development permits not requiring a public hearing; and

5. Authority to serve a ~~cease and desist~~ stop work order pursuant to WAC 173-17-040 upon a person undertaking an activity on shorelines of the state in violation of Chapter 90.58 RCW or this Program; and,

6. Authority to decide whether or not a major development permit is required for a proposed action.

7. Authority to make field inspections as required, and to prepare reports on all proper and complete shoreline permit applications; and

8. Authority to make written recommendations to the Hearing Examiner as appropriate and insofar as possible, assure that all relevant information, testimony, and questions regarding a specific matter are made available during their respective reviews of such matter; and

9. Authority to keep written summaries of all Hearing Examiner public hearings; assure that proper notice is given to interested persons and the public through news media, posting or mailing of notice of such hearings; and transmit findings and decisions of the Hearing Examiner on shoreline permit applications to the Ecology for consideration and final action.

B. The Administrator shall:

1. Establish procedures deemed essential for administration of this Program; and

2. Advise interested persons and prospective applicants as to the administrative procedures and related components of this Program; and

3. Make written interpretations of principles and terms in this Program as required for administration; and

4. Insofar as possible, assure that applications are in proper form and complete prior to acceptance; and
5. Collect fees as set in the City's officially adopted unified fee schedule; and
6. Seek remedies for alleged violations of this Program's regulations, or of the provisions of the Act, or of conditions attached to a shoreline permit or exemption issued by the City of Ferndale; and
7. Propose amendments to the Planning Commission and the City Council as deemed necessary to more effectively or equitably achieve the purposes and goals of this Program.
8. Maintain separate files for all shoreline actions—and assess cumulative impacts to the shoreline as a prerequisite to periodic updates of this Program.

20.105.030 Authority – Hearings Examiner.

A. The Hearings Examiner is hereby vested with authority to:

1. Grant, condition or deny shoreline substantial development permits not in conjunction with a development that requires final council action.
2. Grant, condition or deny variances from this Program, subject to final action by Ecology.
3. Grant, condition or deny conditional uses under this Program, subject to final action by Ecology.
4. Decide on appeals from administrative decisions and shoreline permits issued by the Administrator of this Program, including appeals of shoreline statements of exemption.
5. Hold public hearings and make final decisions on shoreline permits accompanied by an application for a planned unit development or substantial development permit.
6. Decisions of the Hearings Examiner related to Statements of Exemption may be appealed to Whatcom County Superior Court by a party of record within 21 days of the date of the notice of decision in accordance with Chapter 36.70C RCW. Appeals of all other decisions of the Hearings Examiner may be appealed to the Shoreline Hearings Board.

20.105.040 Authority - Planning Commission

The City Planning Commission shall be responsible for hearing and making recommendations for action to the City Council on the following types of matters, as per Chapter 14.09 FMC.

A. Amendments to the Shoreline Master Program. Any of the provisions of this Program may be amended as provided for in WAC 173-26-100 and 173-26-104.

B. Review and adjustments. Periodic review of this Program shall be conducted as required by state law and regulations RCW 90.58.080(4). Adjustments shall be made as necessary to reflect changing local circumstances, new information or improved data, and changes in State statutes and regulations. This review process shall be consistent with WAC 173-26-090 and shall include a local citizen involvement effort and public hearing to obtain the views and comments of the public.

20.150.045 Authority City Council

A. The City Council shall be responsible for making final determinations on amendments to the Shoreline Master Program at the local level. The local plan shall be adopted by ordinance. The Program adopted by the City Council shall be submitted to Ecology for review and adoption. Ecology must approve all master programs before they become effective.

20.150.050 State Department of Ecology

The duties and responsibilities of Ecology shall include, but are not limited to the following:

A. Reviewing and approving Program amendments in a timely manner, when prepared by the City pursuant to WAC 173-26-120 (State Process for Approving/Amending Shoreline Master Programs).

B. Reviewing and petitioning for review of the City's Statement of Exemption and Shoreline Substantial Development Permit decisions.

C. Final approval and authority to condition or deny Shoreline Conditional use Permits and Shoreline Variance Permits filed by the City. Ecology shall make every attempt to identify conditions or expectations for denial as early in the City's process as is practical.

20.15.060 Application.

A. Shoreline permits shall be applied for on application forms provided on the City of Ferndale website.

Commented [HM45]: Remove, this is noted in FMC 14.05.040.J.3

Commented [HM46]: this can be combined somewhere else probably

20.15.070 Vested Rights.

A. All shoreline permit applications, exemptions or other approvals shall be subject to the provisions of this Program and Chapter 14.07.090 FMC that are in effect at the time of complete application.

5.92

20.15.080 Review and Burden of Proof.

A. As required by RCW 90.58.140(7) the burden of providing that the proposed development is generally consistent with the criteria set forth in Chapters 5.170, .180 and .190 of this Program, as applicable, shall be on the applicant.

Commented [HM47]: Cite correct FMC citations near end

20.15.090 Permit Procedures.

A. In granting, revising, or extending a shoreline permit, the Administrator or, Hearings Examiner or City Council, as appropriate, may attach such conditions, modifications, or restrictions thereto regarding the location, character, and other features of the proposed development deemed necessary to assure that the development will be consistent with criteria set forth in Chapters 5.170, .180 and .190 of this Program, and with the policy of RCW 43.21C as applicable. In cases involving unusual circumstances or uncertain effects, a condition may be imposed to allow for future review or reevaluation to assure conformance with the Act and this Program.

B. Development pursuant to a shoreline variance or conditional use permit shall not begin and shall not be authorized until 21 days after the "date of filing" or until all review proceedings initiated within 21days from the date of such filing have terminated.

1. The "date of filing" for a shoreline variance or conditional use permit shall mean the date a decision of the Ecology rendered on the permit is transmitted by the department to the City and the applicant.

2. "Date of filing" of a substantial development permit is the date of actual receipt of the decision by the Ecology.

20.10.100 Permit Revisions.

A. A permit revision is required whenever the applicant proposes substantive changes to the design, terms or conditions of a project from that which is approved in the permit. Changes are substantive if they materially alter the project in a manner that relates to its conformance to the terms and conditions of the permit, this Program or the Shoreline Management Act. Changes that are not substantive in effect do not require approval of a revision.

B. An application for a revision to a shoreline permit shall be submitted to the Administrator, including detailed plans and text describing the proposed changes. The City agency that approved the original permit may approve the revision request upon a finding that the proposed

changes are within the scope and intent of the original permit, and are consistent with this Program and the Shoreline Management Act.

C. "Within the scope and intent of the original permit" means all of the following:

1. No additional over water construction is involved.
2. Ground area coverage and height may be increased a maximum of ten percent over that approved under the original permit.
3. The revised permit does not authorize development to exceed the setback or any other requirements of this Program except as authorized under a variance granted for the original development.
4. Additional or revised landscaping is consistent with any conditions attached to the original permit and with this Program;
5. The use authorized pursuant to the original permit is not changed; and
6. No adverse environmental impact will be caused by the project revision.
7. If the proposed change is a substantial development as defined by this Program then a new permit is required.

D. – The provisions of this ~~paragraph section~~ shall not be used to extend the time requirements or to authorize substantial development beyond the time limits or scope of the original permit. In such cases a new permit shall be required.

E. A new permit shall be required if the proposed revision and any previously approved revisions in combination would constitute development beyond the scope and intent of the original permit.

F. Upon approval of a permit revision, the Hearings Examiner, or Administrator as appropriate, shall file with Ecology, a copy of the revised site plan and a detailed description of the authorized changes to the original permit together with a final ruling and findings supporting the decision based on the requirements of this section. In addition, the Administrator shall notify parties of record of the action.

Commented [HM48]: Chad we do not do this for minor changes. Is this required for all changes or just anything substantial that is listed above?

Commented [JB49R49]: Recommend that as a general (unwritten?) policy, non-substantive changes to the site plan, i.e. minor modification to landscaping species, minor reductions in height, etc. do not need to be sent to Ecology.

G. If the proposed revision is to a development for which a shoreline conditional use or variance was issued, the City shall submit the revision to Ecology for the department's approval, approval with conditions or denial, and shall indicate that the revision is being submitted under the requirements of this paragraph. Under the requirements of WAC 173-27-100(6) the department shall render and transmit to the City and the applicant its final decision within fifteen days of the date of the department's receipt of the submittals from the City. The Administrator shall notify parties of record of the department's final decision. Appeals from a decision of the department shall be filed in accordance with the provisions of WAC 173-27-100(8).

20.15.110 Recession and Modification.

A. Any shoreline permit granted pursuant to this Program may be rescinded or modified upon a finding by the City that the applicant or his/her successors in interest have not complied with conditions attached thereto.

B. The Administrator shall initiate rescission or modification proceedings by serving written notice of noncompliance on the applicant or his/her successors.

C. A public hearing shall be held by the Hearings Examiner no sooner than 15 days following such service of notice. Upon considering written and oral testimony taken at the hearing, the Hearings Examiner shall make a decision in accordance with the above procedure for shoreline permits.

20.15.120 Expiration.

A. The following time requirements shall apply to all substantial development permits and to any development authorized pursuant to a variance, conditional use permit or exemption.

1. Construction shall be commenced or, where no construction is involved, the use or activity shall be commenced within two years of the effective date of a shoreline permit or exemption or the permit shall expire. Provided that the Hearings Examiner or Administrator as appropriate may authorize a single extension for a period of not more than one year based on a showing of good cause ~~i.~~—If a request for extension has been filed with the Administrator before the expiration date of the shoreline permit or exemption and notice of the proposed extension is given to parties of record and Ecology.

2. Authorization to conduct development activities shall terminate five years after the effective date of a shoreline permit or exemption, Provided that the Administrator may authorize a single extension for a period of not more than one year based on a showing of good cause, if a

request for extension has been filed with the Administrator before the expiration date of the shoreline permit or exemption and notice of the proposed extension is given to parties of record and Ecology.

3. The effective date of a shoreline permit or exemption shall be the date of last action required on the shoreline permit or exemption and all other government permits and approvals that authorize the development to proceed, including administrative and legal actions on any such permit or approval. The applicant shall be responsible for informing the City of the pendency of other permit applications filed with agencies other than the City and of any related administrative and legal actions on any permit or approval. If no notice of the pendency of other permits or approvals is given to the City prior to the date of the last action by the City to grant City permits and approvals necessary to authorize the development to proceed, including administrative and legal actions of the City, and actions under other City development regulations, the date of the last action by the City shall be the effective date.

B. Notwithstanding the time limits established in Chapters 5.161(A) and (B), upon a finding of good cause, based on the requirements and circumstances of the proposed project and consistent with the policies and provisions of this Program and the Shoreline Management Act, the ~~Planning Commission~~, Hearings Examiner or Administrator as appropriate may set different time limits for a particular substantial development permit or exemption as part of the action to approve the permit or exemption. The ~~Planning Commission or~~ Hearings Examiner may also set different time limits on specific shoreline conditional use permits or variances subject to approval of the Department of Ecology. The different time limits may be longer or shorter than those established in Chapters 5.161(A) and (B) but shall be appropriate to the shoreline development or use under review. "Good cause based on the requirements and circumstances of the project" shall mean that the time limits established for the project are reasonably related to the time actually necessary to perform the development on the ground and complete the project that is being permitted, and/or are necessary for the protection of shoreline resources.

C. When permit approval is based on conditions, such conditions shall be satisfied prior to occupancy or use of a structure or prior to the commencement of a nonstructural activity, provided that different time limits for compliance may be specified in the conditions of approval as appropriate.

D. Revisions to permits under Chapter 5.140 of this Program may be authorized after the original permit authorization has expired, provided that permit revisions authorized after expiration of the original permit shall not be used to extend the time requirements of the original permit or to authorize substantial development after the time limits of the original permit.

E. The Administrator shall notify Ecology in writing of any change to the effective date of a permit, authorized by Chapters 5.160 through .164 of this Program, with an explanation of the basis for approval of the change. Any change to the time limits of a permit other than those

Commented [HM50]: Cite correctly within new version.

authorized by the sections of this Program previously listed shall require a new permit application.

20.15.130 Time Limit for Issuance of Decision.

A. A decision by the Hearing Examiner or Administrator, as applicable, shall be issued within 10 working days of the public hearing (unless otherwise mutually agreed to by parties).

20.15.135 Appeals

A. Appeals of Administrative Decisions, including Statements of Exemption, shall be made to the Hearing Examiner pursuant to Chapter 14.11.070 FMC.

B. Appeals of Hearing Examiner Decisions related to Statements of Exemption shall be made to Whatcom County Superior Court pursuant to Chapter 14.11.080 FMC.

C. Appeals of amendments to this Program and all decisions of the Hearing Examiner, with the exception of appeals of Statements of Exemption, shall be made to the Shoreline Growth management Hearings Board in accordance with RCW 90.58.190

20.10.140 Other City Regulations.

A. Conditional use permits, or variances applied for or approved under City zoning or subdivision code requirements shall not be construed as shoreline permits or variances under this Program unless specifically stated as such.

B. Nothing in this chapter shall prevent processing Shoreline Permits in conjunction with Conditional Use Permits or variances applied for or approved under City zoning or subdivision code requirements.

20.10.150 Application to Development

A. This Program shall apply to any development or use as defined in FMC 20.10. All development and use of shorelines of the state shall be carried out so as to be consistent with this Program and the policy of the Act as required by RCW 90.58.140(1), whether or not a shoreline permit is required for such action.

B. _____ No substantial development shall be undertaken by any person on shorelines without first obtaining a substantial development permit from the City of Ferndale; PROVIDED that, such a permit shall not be required for the activities listed in Section 3.30.

C. A shoreline permit is not required for substantial development activities located outside of the shoreline jurisdiction line even though a portion of the property may be located within shoreline jurisdiction.

Chapter 20.20
SHORELINE DESIGNATIONS, MAPS, AND BOUNDARIES

Sections:

20.20.010 **Establishment of Shoreline Environmental Designations**

20.20.015 **Characterization of Shorelines in Ferndale**

20.20.020 **General Environmental Designation Policies**

20.20.030 **Shoreline Environment Designation Maps**

20.20.040 **Designation of Boundaries**

20.20.050 **Geographic Distribution**

20.20.010 Establishment of Shoreline Environmental Designations.

In order to classify, segregate and regulate the uses of land, buildings and structures, the shoreline area of the City of Ferndale is divided into five distinct environmental designations, based on existing use patterns, the biological and physical character of the shoreline, and the goals and aspirations of the community as expressed through the Comprehensive Plan. The City of Ferndale's shoreline environmental designations are as identified in FMC Chapters 20.30-20.50.

20.20.015 Characterization of Shorelines in Ferndale

A. Shorelines in Ferndale are ~~characterized primarily focused on and defined~~ by the Nooksack River, a water body that has been designated as a Waterbody of the State of Washington. The Nooksack River is particularly notable as a shoreline as it provides access for salmon and other fish species to spawning grounds to the east. In recent decades, the habitat in the Nooksack River has been significantly degraded as a result of the removal of shade trees along its banks, the use of water resources that have reduced water levels, and climate change, which has resulted in substantial fluctuations in flows. The SMP, as it relates to the Nooksack, is intended primarily to preserve the fish passage characteristics of the river through Ferndale, specifically by providing shade, by moderating peak water flows by preserving flood attenuation capacity (we should verify if that is a need), and by mitigating flood impacts through levees along the west bank of the river, while also providing for the public's continued use, access, and enjoyment of the shoreline. ~~(Also talk about riparian buffers north of the Main Street bridge).~~

B.. Several streams and creeks serve as tributaries to the Nooksack. Some of these water bodies, including Whiskey Creek, Ten Mile Creek, Schell Creek, and Silver Creek, serve as fish bearing streams. Many of these water bodies have been degraded as a result of development and agriculture, and the majority of them no longer provide the year-round water flows that once characterized them. The SMP is intended to protect or re-establish riparian buffers along the banks of these streams.

Commented [JB51]: Anticipate that a revised restoration plan that would follow the adoption of this SMP would focus on restoration efforts/ projects, including the identification of fish passage barriers.

C. Critical areas within the 100-year floodplain that are hydrologically linked to the Nooksack River are also subject to shoreline jurisdiction. Large critical areas between 10 Mile Creek and the Nooksack River, and in the vicinity of Tennant Lake provide significant habitat and ecological benefit. These critical areas have grown over time as the result of beaver dams and the subsequent death of trees due to marshy conditions. The fallen trees have contributed to additional dams which have in turn created marshy conditions or swamps. Historic agricultural use and the resulting irrigation channels established in the late 19th and early 20th century dramatically altered the natural conditions and flows of the area; the cessation of these practices prior to World War Two has resulted in the continued expansion of the Tennant Lake area and surrounding wetlands, whereas the natural flows of these areas had flowed directly to the Nooksack River. The SMP and the City's Critical Areas Ordinance are intended to protect the natural wetland systems, while also allowing for mitigation measures necessary to curtail the expansion of these areas.

20.20.020 General Environmental Designation Policies

A. A Natural designation is not included since no shoreline area in Ferndale conforms to state guideline definitions for the Natural designation.

B These designations are superimposed as an overlay upon existing zoning within shoreline jurisdiction. The regulations of the Master Program shall be in addition to the zoning regulations and requirements. In cases of conflict between the regulations of the City zoning ordinance and the Master Program, the most restrictive shall apply.

C. Undesignated shorelands shall automatically be assigned a ~~CONSERVANCY~~-Conservancy environment designation.

D. New development shall not cause net loss of ecological functions. Environmental cleanup and restoration of the shoreline shall comply with relevant state and federal laws.

20.20.030 Shoreline Environment Designation Maps.

A. The boundaries of the shoreline environment designations referred to in **Section 4.10** shall be determined and defined or redefined from time to time by the adoption of the area designation maps covering the city, showing the geographical area and location of said designations, which map or maps shall be hosted on the City's official website. filed with the City Clerk, and be permanently displayed in that office or such other office as the Mayor shall designate. Each said map or maps shall be, upon its final adoption by the Department, a part of this Master Program and said map, and all notations, references and other information shown thereon, thereafter shall be as much a part of this ordinance as though all matters and information set forth on said map were fully described herein.

B. The Official Shoreline Map shall be the final authority as to the current designation of shorelines in the City. Areas that are not mapped and/or designated are hereby assigned a preliminary "Conservancy" shoreline designation. As these areas are discovered, the City will work to formally designate appropriate shoreline designation for these parcels with assistance from the Department of Ecology.

C. This Program and each and all of its terms is to be read and interpreted in the light of the contents of said map or maps and the text of this ordinance. When conflict is deemed to arise between the map or maps and the text, the text of the Program shall prevail.

D. If changes are made to the Official Shoreline Map, such changes shall be made at the direction of the Mayor promptly after the amendment has been approved by the City Council and adopted by the Department.

E. If lands under shoreline jurisdiction are annexed to the City of Ferndale after the effective date of this Master Program, they shall retain their pre-existing Whatcom County Shoreline Management Program designation until a City of Ferndale Master Program amendment is approved in accordance with **Chapter 11.10** of this Program after the annexation and the Master Program amendment are final.

Commented [JB52]: At the end of the process should do a search for "chapter" in this document and modify the numbering accordingly.

20.20.040 Designation of Boundaries.

A. As per FMC 18.16.040, the boundaries of such designations shown upon any map adopted by this ordinance, or amendments thereto, are hereby adopted and approved and the regulations of this Program governing uses of land, buildings and structures are hereby established and declared to be in effect upon all land included within the boundaries of each designation shown upon the Official Shoreline Map.

20.20.050 Geographic Distribution

A. The provisions of this Program shall apply to all shorelines, all Shorelines of State-wide Significance and shorelands within the City of Ferndale, as defined in Chapter 2 of this

Program. The location and extent of such shorelines are shown on the Official Shoreline Map appended to this document as an integral part of this Program.

Chapter 20.25
SHORELINE PERMITS AND EXEMPTIONS

Sections:

20.25.010	Substantial Development Permit Criteria
20.25.020	Variance Permit Criteria
20.25.030	Conditional Use Permit Criteria
20.25.035	Developments Not Required to Obtain Shoreline Permits or Other Reviews
20.25.040	Exemptions
20.25.045	Interpretation
20.25.050	Exemptions Listed
20.25.060	Hazardous Substance Remedial Actions
20.25.070	Statement of Exemption
20.25.080	Relationship to Other Laws

20.25.010 Shoreline Substantial Permit Criteria

A. A substantial development permit shall be obtained for all proposed use and development of shorelines unless the proposal is specifically exempt pursuant to Chapter 3.30 of this Program.

B. In order for a substantial development permit to be approved, the Administrator must find that the proposal is consistent with the following criteria:

1. All policies and regulations of this Program appropriate to the shoreline environment designation and the type of shoreline use or shoreline modification activity proposed shall be complied with, except those bulk and dimensional standards that have been modified by approval of a shoreline variance under Chapter 5.180 of this Program.

2. All policies of this Program appropriate to the shoreline environmental designation and the type of shoreline use or shoreline modification activity proposed shall be considered and substantial compliance demonstrated.

3. For projects located on Shorelines of Statewide Significance, the policies of **Chapter 7.0** of this Program shall be also be adhered to.

20.25.020 Variance Permit Criteria

A. The purpose of a variance is to grant relief to specific bulk or dimensional requirements set forth in this Program where there are extraordinary or unique circumstances relating to the property such that the strict implementation of this Program would impose unnecessary hardships on the applicant or thwart the policies set forth in RCW 90.58.020. Use restrictions may not be varied from.

B. Variances may be granted in circumstances where denial would result in a thwarting of the policy enumerated in RCW 90.58.020. In all instances extraordinary circumstances shall be shown, and the public interest shall suffer no substantial detrimental effect.

C. Variances for development that will be located landward of the OHWM and wetlands may be authorized, provided the applicant can demonstrate all of the following:

1. That the strict application of the bulk or dimensional criteria set forth in this Program precludes or significantly interferes with a reasonable permitted use of the property;

2. That the hardship described in Chapter 5.181 of this Program, above is specifically related to the property, and is the result of unique conditions such as irregular lot shape, size, or natural features and the application of this Program, and not, for example, from deed restrictions or the applicant's own actions.

Commented [JB53]: Perhaps reference this as section 20.25.020 C.1?

3. That the design of the project will be compatible with other permitted activities in the area and will not cause adverse effects to adjacent properties or the shoreline environment.

4. That the variance authorized does not constitute a grant of special privilege not enjoyed by the other properties in the area, and will be the minimum necessary to afford relief.

5. That the public interest will suffer no substantial detrimental effect.

6. That there shall be no net loss of ecological function as a result of the proposed activity.

D. Variances for development that will be located waterward of the OHWM or within wetlands may be authorized provided the applicant can demonstrate all of the following:

1. That the strict application of any bulk or dimensional criteria in this Program precludes all reasonable permitted use of the property; and
2. That the proposed variance will satisfy the criteria listed in Chapters 5.183 (2) through (5) above; and
3. That the public rights of navigation and use of the shorelines will not be materially interfered with by the granting of the variance.
4. That the project will Mitigate for Environmental Impacts, utilizing mitigation sequencing, as defined in Chapter 2 of this Program.

E. In the granting of all variances, consideration shall be given to the cumulative environmental impact of additional requests for like actions in the area. For example, if variances were granted to other developments in the area where similar circumstances exist, the total of the variances should also remain consistent with the policies of RCW 90.58.020 and should not produce significant adverse effects to the shoreline environment or other users.

F. Other factors, that may be considered in the review of variance requests, include the conservation of valuable natural features and the protection of views from nearby roads, surrounding properties and public areas; PROVIDED, the criteria of Chapter 5.180 of this Program are first met. In addition, variance requests based on the applicant's desire to enhance the view from the subject development may be granted where there are no likely detrimental effects to existing or future users, other features or shore processes in the vicinity, and where reasonable alternatives of equal or greater consistency with this Program are not available. In platted residential areas, variances shall not be granted which allow a greater height or lesser shore setback than what is typical for the immediate block or area.

Commented [JB54]: This should be discussed with Ecology – views of what? This is an example (perhaps) of the boilerplate language talking about views of the ocean.

20.25.030 Conditional Use Permit Criteria

A. The purpose of a conditional use permit is to allow greater flexibility in administering the use regulations of this Program in a manner consistent with the policies of RCW 90.50.020. In authorizing a conditional use, special conditions may be attached to the permit by the City or the Department of Ecology to control any undesirable effects of the proposed use.

B. Uses specifically classified or set forth in this Program as conditional uses may be authorized provided the applicant can demonstrate all of the following:

1. That the proposed use, when properly conditioned, will be consistent with the policies of RCW 90.58.020 and this Program.

2. That the proposed use, when properly conditioned, will not interfere with normal public use of public shorelines.

3. That the proposed use of the site and design of the project, when properly conditioned, will be compatible with other permitted uses within the area.

4. That the proposed use, when properly conditioned, will cause no significant adverse effects to the shoreline environment in which it is to be located.

5. That the public interest suffers no substantial detrimental effect.

C. Other uses not specifically classified or set forth in this Program, including the expansion of a single-family non-conforming use pursuant to **Chapter 3.50** of this Program, may be authorized as conditional uses provided the applicant can demonstrate that the proposal will satisfy the criteria set forth in Chapter 5.192 of this Program above, and that the use clearly requires a specific site location on the shoreline not provided for under the Program, and extraordinary circumstances preclude reasonable use of the property in a manner consistent with the use regulations of this Program. Conditional Use Permits shall not authorize uses that are prohibited by the provisions of this Program; Provided, existing non-conforming uses may be authorized pursuant to **Section 3.50**.

D. In the granting of all conditional use permits, consideration shall be given to the cumulative environmental impact of additional requests for like actions in the area. For example, if conditional use permits were granted for other developments in the area where similar circumstances exist, the sum of the conditional uses and their impacts should also remain consistent with the policies of RCW 90.58.020 and should not produce a significant adverse effect to the shoreline environment.

20.25.035 Developments Not Required to Obtain Shoreline Permits or Other Reviews

Requirements to obtain a Substantial Development Permit, Conditional Use Permit, Variance, letter of exemption, or other review conducted by the City of Ferndale to implement this Program do not apply to the following. It shall be the responsibility of the applicant to provide documentation to the City necessary to demonstrate compliance.

Commented [JB55]: 3/19 Section added pursuant to Ecology checklist

A. Remedial Actions. Pursuant to RCW 90.58.355, any person conducting a remedial action at a facility pursuant to a consent decree, order, or agreed order issued pursuant to RCW 70.105D, or to Ecology when it conducts a remedial action under RCW 70.105D.

B. Boatyard improvements to meet NPDES permit requirements, pursuant to RCW 90.58.355, including any person installing site improvements for storm water treatment in an existing

boatyard facility to meet requirements of a national pollutant discharge elimination system storm water general permit.

C. WSDOT facility maintenance and safety improvements and activities, pursuant to RCW 90.58.356.

D. Projects consistent with an environmental excellence program agreement pursuant to RCW 90.58.045.

E. Projects authorized through the Energy Facility Site Evaluation Council process, pursuant to RCW 80.50.

20.25.040 Exemptions.

A. Purpose. ~~Any-Certain~~ activities that do not have a significant adverse impact on the environment including but not limited to fish, wildlife, fish or wildlife habitat, water quality and aesthetic values ~~are-may be~~ exempted from the permitting requirements of this Program.

B. The activities in FMC 20.24.040 are also exempt, though they may also have impacts. The City may condition such exempt applications to mitigate potential impacts. The following activities in FMC 20.25.040 are also exempt, though they may also have impacts. The City may condition such exempt applications to mitigate potential impacts.

20.25.045 Interpretation

A. Exemptions shall be construed narrowly. Only those developments that meet the precise terms of one or more of the listed exemptions may be granted exemptions from the substantial development permit process.

B. An exemption from the substantial development permit process is not an exemption from compliance with the State Shoreline Management Act or this Master Program, nor from any other regulatory requirements. To be authorized as an exemption, all uses and developments must be consistent with the policies and provisions of this Master Program and the Shoreline Management Act. A development or use that is listed as a conditional use pursuant to this Master Program or is an unlisted use, must obtain a shoreline conditional use permit even though the development or use does not require a substantial development permit. When a development or use is proposed that does not comply with the bulk, dimensional and performance standards of the Master Program, such development or use can only be authorized by approval of a shoreline variance permit.

C. The burden of proof that a development or use is exempt is on the applicant. If any part of a proposed development is not eligible for exemption, then a substantial development permit is required for the entire proposed development project. The Administrator may attach conditions to the approval of exempted developments and/or uses as necessary to assure consistency of the project with the Act and the local Master Program.

20.25.050 Exemptions Listed

~~A.A.~~—The following activities shall be considered exempt from the requirement to obtain a shoreline substantial development permit. A statement of exemption, as provided for in Chapter

3.34 of this Program may be sought by a proponent for any of the listed categories below, however, such statement shall be required only for those activities listed in Chapter 3.34 (B) and (C).

1. Activities satisfying the requirements of both 20.25.050 a and b, below, may be considered exempt from the requirement to obtain a shoreline substantial development permit.

a4. The activity will have no significant adverse impact on the environment including but not limited to fish, wildlife, fish or wildlife habitat, water quality and aesthetic values;

2b. The activity does not involve the installation of any structure or land disturbance activity, and upon completion of the activity the vegetation and land configuration of the site are restored to conditions existing before the activity;

23. Any development of which the total cost or fair market value, whichever is higher, does not exceed seven thousand forty seven dollars (\$7,047) or as adjusted by the State Office of Financial Management, if such development does not materially interfere with the normal public use of the water or shorelines of the state. For the purpose of determining whether or not a permit is required, the total cost or fair market value shall be based on the value of development that is occurring on shorelines of the state as defined in RCW 90.58.030(2)(c). The total cost or fair market value of the development shall include the fair market value of any donated, contributed, or found labor, equipment, or materials.

Commented [JB56]: 3/19 added in compliance with DOE checklist

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

54. Construction of the normal protective bulkhead common to single-family residences. A "normal protective" bulkhead includes those structural and nonstructural developments installed at or near and parallel to, the ordinary high water mark for the sole purpose of protecting an existing single family residence and appurtenant structures from loss or damage by erosion. A normal protective bulkhead is not exempt if constructed for the purpose of creating dry land. When a vertical or near vertical wall is being constructed or reconstructed, not more than one cubic yard of fill per one foot of wall may be used for backfill. When an existing bulkhead is

being repaired by construction of a vertical wall fronting the existing wall, it shall be constructed no further waterward of the existing bulkhead than is necessary for construction of new footings. When a bulkhead has deteriorated such that an ordinary high water mark has been established by the presence and action of water landward of the bulkhead then the replacement bulkhead must be located at or near the actual ordinary high water mark. Beach nourishment and bioengineering erosion control projects may be considered a normal protective bulkhead when any structural elements are consistent with the above requirements and when the project has been approved by the Department of Fish and Wildlife.

65. Emergency construction necessary to protect property from damage by the elements. ~~An "emergency" is an unanticipated and imminent threat to public health, safety, or the environment that requires immediate action within a time too short to allow full compliance with this chapter.~~ Emergency construction does not include development of new permanent protective structures where none previously existed. Where new protective structures are deemed by the Administrator to be the appropriate means to address the emergency situation, upon abatement of the emergency situation the new structure shall be removed or any permit which would have been required, absent an emergency, pursuant to chapter 90.58 RCW, WAC 173-27, or this Program, obtained. All emergency construction shall be consistent with the policies of 90.58 RCW and this Program. As a general matter, flooding or other seasonal events that can be anticipated and may occur but that are not imminent are not an emergency;

Commented [JB57]: "Emergency" – put in definitions

Commented [JB58]: see about referencing emergency if necessary, or whether it's appropriate to just leave it here. 3/19

Commented [PP59R59]: Is this ok or add to definitions?

Commented [JB60R59]: Yes. Perfect.

76. Construction and practices normal or necessary for farming, irrigation, and ranching activities, including agricultural service roads and utilities, on shorelands, and the construction and maintenance of irrigation structures including but not limited to head gates, pumping facilities, and irrigation channels: PROVIDED, that, a feedlot of any size, all processing plants, other activities of a commercial nature, alteration of the contour of the shorelands by leveling or filling other than that which results from normal cultivation, shall not be considered normal or necessary farming or ranching activities.

Commented [JB61]: 3/19 eliminated as per DOE checklist

87. Construction or modification, by or under the authority of the Coast Guard or a designated port management authority, of navigational aids such as channel markers and anchor buoys;

Commented [JB62]: definitions

Commented [PP63R63]: Add what? There was a lot going on in this paragraph.

98. Construction on shorelands by an owner, lessee, or contract purchaser of a single-family residence for their own use or for the use of their family, which residence does not exceed a height of 35 feet above average grade level and which meets all requirements of the City, other than requirements imposed pursuant to 90.58 RCW. Construction authorized under this exemption shall be located landward of the ordinary high water mark.

109. Construction of a dock, including a community dock, designed for pleasure craft only, for the private non-commercial use of the owner, lessee, or contract purchaser of a single-family and multi-family residences. The private dock exemption applies in fresh waters when the fair market value of the dock does not exceed:

A-B. Twenty-two thousand five hundred dollars (\$22,500) or as adjusted by the State Office of Financial management for docks that are constructed to replace existing docks, are of equal or lesser square footage than the existing dock being replaced; or
B-C. Eleven thousand two hundred dollars (\$11,200) or as adjusted by the State Office of Financial Management for all other docks constructed in fresh waters.

Commented [JB64]: 3/19 edits made per Ecology checklist.

C. If subsequent construction occurs within five years of completion of the prior construction, the subsequent construction shall be considered a substantial development for the purpose of this chapter.

Commented [JB65]: section added 3/18 per DOE checklist

4410. Operation, maintenance, or construction of canals, waterways, drains, reservoirs, low impact development stormwater facilities, or other facilities that now exist or are hereafter created or developed as a part of an irrigation system for the primary purpose of making use of system waters, including return flow and artificially stored ground water for the irrigation of lands;

4421. The marking of property lines or corners on state owned lands, when such marking does not significantly interfere with normal public use of the surface of the water;

443.12 Operation, maintenance, and modifications to of any system of dikes, levees, ditches, drains, or other facilities existing on June 4, 1975 which were created, developed or utilized, primarily as a part of an agricultural drainage or diking system; and

Commented [JB66]: 3/19 question for Ecology: what is the right date? Many other SMP's have 9/8/75

4413. Any project with a certification from the governor pursuant to chapter 80.50 RCW.

4514. Site exploration and investigation activities that are a prerequisite to preparation of an application for development authorization under this Program, if t:
a. The activity does not interfere with the normal public use of surface waters;
b. The activity will have no significant adverse impact on the environment including but not limited to fish, wildlife, fish or wildlife habitat, water quality, and aesthetic values;
c. The activity does not involve the installation of any structure, and upon completion of the activity the vegetation and land configuration of the site are restored to conditions existing before the activity; and
d. A private entity seeking development authorization under this section first posts a performance bond or provides other evidence of financial responsibility to the City to assure that the site is restored to pre-existing conditions.

Commented [JB67]: 3/19 added per DOE checklist; previous exemption provided substantial opportunities to misuse the exemption in the name of site exploration and investigation.

1615. The process of removing or controlling aquatic noxious weeds, as defined in RCW 17.26.020, through the use of an herbicide or other treatment methods applicable to weed control that are recommended by a final environmental impact statement published by the Department of Agriculture or the Department of Ecology jointly with other state agencies under chapter 43.21C RCW.

Commented [JB68]: It seems like this is referring to a specific FEIS. This seems to be too specific a reference to suggest that randomly FEIS' will identify specific herbicide methods.

1716. Watershed restoration projects as defined in RCW 89.08.460. The City shall review the projects for consistency with the Shoreline Master Program in an expeditious manner and shall issue its decision along with any conditions within forty-five days of receiving all materials necessary to review the request for exemption from the applicant. No fee may be charged for accepting and processing requests for exemption for watershed restoration projects as used in this section.

1817. A public or private project, the primary purpose of which is to improve fish or wildlife habitat or fish passage, when all of the following apply:

a. The project has been approved in writing by the Department of Fish and Wildlife as necessary for the improvement of the habitat or passage and appropriately designed and sited to accomplish the intended purpose;

b. The project received Hydraulic Project Approval (HPA) by the Department of Fish and Wildlife pursuant to chapter 77.55 RCW, and

c. The Administrator has determined that the project is consistent with this Program. The Administrator shall make such determination in a timely manner and provide it by letter to the project proponent.

d. Fish habitat enhancement projects that conform to the provisions of RCW 77.55.181 and are determined to be consistent with this Program.

1918. The external or internal retrofitting of an existing structure for the exclusive purpose of compliance with the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.) or to otherwise provide physical access to the structure by individuals with disabilities (RCW 90.58.030).

20.25.060 Hazardous Substance Remedial Actions

Hazardous Substance Remedial Actions shall not require adherence to the procedural requirements of this program, provided that such projects comply with the substantive requirements of Chapter 90.58 RCW, Chapter 173.26 WAC and this Program.

A.25.70 **20.25.070 Statement of Exemption**

A. In accordance with WAC 173-27-040(1), and **Chapter 3.31** of this Program, all exemptions shall be construed narrowly.

B. Whenever the exempt activity also requires a U.S. Corps of Engineers Section 10 permit under the Rivers and Harbors Act of 1899 or a Section 404 permit under the Federal Water Pollution Control Act of 1972, ~~a statement of exemption shall be sent to the applicant and Ecology pursuant to WAC 173-27-050.~~

BC. The Administrator is authorized to grant or deny requests for statements of exemption from the shoreline substantial development permit requirement for activities within shorelines which are specifically listed in Chapter 3.32. Such statements shall be applied for on forms provided by the Administrator. The statement shall be in writing and shall indicate the specific exemption from Chapter 3.32 of this Program that is being applied to the development and provide a summary of the Administrator's analysis of the consistency of the project with this Master Program and the Shoreline Management Act. A denial of an exemption shall be in writing and shall identify the reason(s) for the denial. The Administrator's actions on the issuance of a statement of exemption or a denial are subject to appeal pursuant to ~~Chapter 5.20020.15~~ of this Program ~~and Chapter 14.11 of the Ferndale Municipal Code. Statements of Exemption or Denial shall be transmitted to the applicant as well theas to Ecology.~~

CD. No dredging, stream control works, historic site alteration, landfill or excavation, dock, shore defense works, free standing signs, or any development within an Aquatic, or Conservancy shoreline designation may commence until a statement of exemption has been obtained from the Administrator; PROVIDED that, no statement of exemption is required for emergency development pursuant to WAC 173-27-040(2)(d).

DE. No statement of exemption may be required for other uses or developments nominally exempt pursuant to **Chapter 3.31** unless the Administrator has cause to believe a substantial question exists as to qualifications of the specific use or development for the exemption.

EF. Exemptions shall expire as set forth in FMC 20.15.100.

20.25.080 Relationship to Other Laws

A. Obtaining a shoreline permit or statement of exemption for a development or use does not excuse the applicant from complying with any other Federal, State, or Local laws and regulations applicable to such development or use.

Commented [JB69]: This means that all other exemptions do not need to be sent to Ecology or the applicant, which is probably incorrect.

Commented [DT70R70]: I think it does have to be sent to Ecology; they just don't have approval authority, but confirm with Chad.

Commented [JB71]: Should clearly state here or elsewhere that a shoreline exemption does not automatically exempt the project from the requirements of any other regulation.

Commented [JB72R72]: 3.41 does this

Commented [DT73R72]: Yes, I checked that, too.

Chapter 2030
URBAN DESIGNATION

Sections:

20.30.010	Urban Designation
20.30.020	Purpose and Intent
20.30.030	Permitted Uses
20.30.040	Conditional Uses
20.30.050	Prohibited Uses
20.30.060	Maximum Building Height
20.30.070	Setbacks and Lot Coverage

20.30.010 Urban Designation Defined

A. The Urban environment designation is defined ~~associated with areas~~ as an area of intensive development including but not limited to urban density residential, commercial and industrial uses.

20.30.020 Purpose and Intent

A. The purpose of the Urban environment designation is to integrate higher densities into the Shoreline Jurisdiction area while ensuring that the ecological functions of the area and the area's connection to the shoreline are maintained and enhanced.

20.30.030 Permitted Uses.

- A. Commercial Development
- B. Industrial Development
- C. Recreational Development
- D. Residential Development
- E. Roads and Railways
- F. Signs
- G. Utilities
- H. Grading

20.30.040 Conditional Uses.

- A. Aquaculture
- B. Boating Facilities
- C. In-Stream Structures
- D. Mining
- E. Piers, Docks, and Floats
- F. Dredging
- G. Shoreline Stabilization

20.30.050 Prohibited Uses.

- A. Forestry
- B. Solid Waste, with the exception of solid waste conveyance systems which may transit the area.

20.30.060 Maximum Building Height.

- A. The maximum building height shall ~~be 45 feet for properties located within 200 feet of the OHWM of the Nooksack River, otherwise the maximum heights in all other Urban Designation areas as~~ shall comply with the height regulations in the underlying zone.

Commented [HM74]: Policy decision to discuss with the Planning Commission.

20.30.070 Setbacks and Lot Coverage.

- A. There shall be a minimum setback of 25 feet from the line of OHWM for structures, surfacing and parking.
- B. All other building setbacks shall comply with the underlying zoning.
- C. Lot coverage shall ~~comply with the underlying zoning be limited to a maximum of 85%.~~

20.30.080 Orientation to the Nooksack River.

- A. Site, Structure, and landscape design shall be oriented towards the Nooksack River.
 - 1. Wherever a public right of way, such as the Centennial Riverwalk, is located adjacent to a site within the Urban environmental designation, projects shall seek to include at least one pedestrian entrance to the Riverwalk.
 - 2. Patios, porches, doorways, and other elements shall be established to face the shoreline wherever practicable.
 - 3. Development along the shoreline within the Urban environmental designation is intended to provide a distinctive skyline for the City of Ferndale; applicants shall be required to describe the manner in which the proposed development contributes to this goal.

Chapter 20.35
RESIDENTIAL DESIGNATION

Sections:

20.35.010	Residential Designation Defined
20.35.020	Purpose and Intent
20.35.030	Permitted Uses
20.35.040	Conditional Uses
20.35.050	Prohibited Uses
20.35.060	Maximum Building Height
20.35.070	Setbacks and Lot Coverage

20.35.010 Residential Designation Defined.

A. The Residential environment designation is defined as an area which is planned for residential uses.

20.35.020 Purpose and Intent.

A. The purpose and intent of the Residential environment designation is to accommodate residential development and appurtenant structures that are consistent with this Program and are of a type and general design consistent with the underlying zoning of the area, while providing appropriate public access and recreational uses.

20.35.030 Permitted Uses.

- A. Recreational Development
- B. Residential Development
- C. Roads and Railways
- F. Signs
- G. Utilities
- H. Grading

20.35.040 Conditional Uses.

- A. Aquaculture
- B. Boating Facilities
- C. Commercial Development
- D. In-Stream Structures
- D. Mining
- E. Piers, Docks, and Floats
- F. Dredging
- G. Shoreline Stabilization

Commented [HM75]: Permitted outright if the commercial use proposed is allowed in the underlying zone?

20.35.050 Prohibited Uses.

- A. Forestry
- B. Industrial Development
- C. Solid Waste, with the exception of solid waste conveyance systems which may transit the area.

20.35.060 Maximum Building Height.

- A. The maximum building height shall ~~be 45 feet for properties located within 200 feet of the OHWM of the Nooksack River, otherwise the maximum heights in all other Urban Designation areas as shall~~ comply with the height regulations in the underlying zone.

Commented [HM76]: Policy decision to discuss with the Planning Commission.

Commented [HM77R77]: Note, this will not apply to nearly ALL of the properties located in the Residential Designation because the developable areas are located further away from the OHWM.

Commented [HM78]: Or 25, like in the Urban Zone?

20.35.070 Setbacks and Lot Coverage.

- A. There shall be a minimum setback of 50 feet from the line of OHWM for Structures, Surfacing and Parking.
- B. All other building setbacks shall comply with the underlying zoning.
- C. Lot coverage shall ~~comply with the underlying zoning be limited to a maximum of 75%.~~

Chapter 20.40
RURAL DESIGNATION

Sections:

20.40.010	Rural Designation Defined
20.40.020	Purpose and Intent
20.40.030	Permitted Uses
20.40.040	Conditional Uses
20.40.050	Prohibited Uses
20.40.060	Maximum Building Height
20.40.070	Setbacks and Lot Coverage

20.40.010 Rural Designation Defined.

A. The Rural environment designation is defined as an area developed at a low overall density or used at a low to moderate intensity; including, but not limited to: residences, and outdoor recreation developments.

20.40.020 Purpose and Intent.

A. The purpose of the Rural environment designation is to ensure that uses are compatible with area physical capabilities and limitations, natural resources and other appropriate low-density development. Within the City of Ferndale, the Rural environment designation applies to lands in close proximity to the Nooksack River that are immediately adjacent to the Floodway of the Nooksack River and have not been further protected by a levee system.

20.40.030 Permitted Uses.

A. ~~None.~~ Outdoor Recreation Development

B. Residential Development, not to exceed one unit per five acres

20.40.040 Conditional Uses.

A. Aquaculture

B. Boating Facilities

D. In-Stream Structures

- D. Mining
- E. Piers, Docks, and Floats
- F. Dredging
- G. Grading
- H. Shoreline Stabilization

20.40.050 Prohibited Uses.

- A. Commercial Development
- A. Forestry
- B. Industrial Development
- C. Indoor Recreational Development
- D. Residential Development exceeding one unit per five acres, and all multifamily residential development
- E. Solid Waste, with the exception of solid waste conveyance systems which may transit the area..

20.40.060 Maximum Building Height.

- A. The maximum building height shall be 45 feet for properties located within 200 feet of the OHWM of the Nooksack River, otherwise the maximum heights in all other Urban Designation areas as shall comply with the height regulations in the underlying zone.

20.40.070 Setbacks and Lot Coverage.

- A. There shall be a minimum setback of 50 feet from the line of OHWM for Structures, Surfacing and Parking.
- B. All other building setbacks shall comply with the underlying zoning.
- C. Lot coverage shall comply with the underlying zoning be limited to a maximum of 45%.

Chapter 20.50
CONSERVANCY DESIGNATION

Sections:

20.45.010	Conservancy Designation Defined
20.45.020	Purpose and Intent
20.45.030	Permitted Uses
20.45.040	Conditional Uses
20.45.050	Prohibited Uses
20.45.060	Maximum Building Height
20.45.070	Setbacks and Lot Coverage

=

20.45.010 Conservancy Designation Defined.

A. The Conservancy environment designation is defined as a shoreline area containing natural resources which can be used/managed on a multiple use basis without extensive alteration of topography or banks; including but not limited to forest, agricultural and mineral lands, outdoor recreation sites, fish and wildlife habitat, watersheds for public supplies, and areas of outstanding scenic quality; and/or a shoreline area containing hazardous natural conditions or sensitive natural or cultural features which require more than normal restrictions on development and use of such areas; including, but not limited to: eroding shores, geologically unstable areas, steep slopes, floodways, critical flood storage areas, and valuable natural wetlands or historic sites.

20.45.020 Purpose and Intent

A. The purpose of the Conservancy designation is to prevent forms of development which would be unsafe or incompatible with more appropriate uses. This policy should be furthered by keeping overall intensity of development or use low, and by maintaining most of the area's natural character.

20.45.030 Permitted Uses.

- A. Recreational Development
- B. Residential Development
- C. Signs
- D. Utilities
- E. Grading

20.45.040 Conditional Uses.

- A. Aquaculture
- B. Boating Facilities
- C. Commercial Development
- D. Forestry
- E. In-Stream Structures
- F. Mining
- G. Piers, Docks, and Floats
- H. Roads and Railways
- I. Dredging
- J. Shoreline Stabilization

H. Offsite vegetation retention and enhancement receiving areas

20.45.050 Prohibited Uses.

- A. Industrial Development
- B. Solid Waste, with the exception of solid waste conveyance systems which may transit the area..

20.45.060 Maximum Building Height.

- A. The maximum building height shall ~~be 45 feet for properties located within 200 feet of the OHWM of the Nooksack River, otherwise the maximum heights in all other Urban Designation areas as shall~~ comply with the height regulations in the underlying zone.

20.45.070 Setbacks and Lot Coverage.

- A. There shall be a minimum setback of 50 feet from the line of OHWM for Structures, Surfacing and Parking.
- B. All other building setbacks shall comply with the underlying zoning.
- C. Lot coverage shall ~~comply with the underlying zoning.~~ 1. Urban: 85% lot coverage
2. Residential: 75% lot coverage

3. Rural: 45% lot coverage be limited to a maximum of 10%.

4. Conservancy: 10% lot coverage

20.45.080 Vegetation Retention and Enhancement.

A. For the purpose of retaining and enhancing the natural character of the Conservancy Zone, development activities must demonstrate the ability to retain at least sixty percent of the natural vegetation of the gross property area.

1. This requirement may be satisfied by preserving sixty percent of the area in its natural state, by establishing planted protected buffer area(s) that will consolidate vegetation equivalent to sixty percent of the natural (pre-existing) vegetation in one or more areas, or by establishing an equivalent amount of vegetation offsite, within another Shoreline Conservation area within the City of Ferndale, subject to approval by the Shoreline Administrator.

Chapter 20.50
AQUATIC DESIGNATION

Sections:

20.50.010	Aquatic Designation Defined
20.50.020	Purpose and Intent
20.50.030	Permitted Uses
20.50.040	Conditional Uses
20.50.050	Prohibited Uses
20.50.060	Maximum Building Height
20.50.070	Setbacks and Lot Coverage

20.50.010 Aquatic Designation Defined

A. The Aquatic environment designation is defined as the area waterward of the Ordinary High - Water Mark (OHWM) of all streams and rivers, and all lakes, together with their underlying lands and their water column; including, but not limited to: streamways, bedlands, wetlands and shorelands.

20.50.020 Purpose and Intent.

A. The purpose of the Aquatic designation is to protect, restore, and manage the unique characteristics and resources of the areas waterward of the ordinary high water mark (OHWM).

20.50.030 Permitted Uses.

A. None.

20.50.040 Conditional Uses.

- A. Aquaculture
- B. Boating Facilities
- C. In-Stream Structures
- D. Mining
- E. Piers, Docks, and Floats

- F. Roads and Railways
- G. Signs
- H. Utilities
- I. Dredging
- J. Grading
- K. Shoreline Stabilization

20.50.050 Prohibited Uses.

- A. Commercial Development
- B. Industrial Development
- C. Residential Development
- D. Solid Waste, with the exception of solid waste conveyance systems that may transit the area.
- E. Mining
- ~~F. Uses listed in A-C may be permitted as a Conditional Use if it is tied to incentives for Restoration and Public Access.~~

20.50.060 Maximum Building Height.

- A. The maximum building height shall be the minimum necessary to meet the engineering or statutory requirements of the use, although no height limit for bridges is established by this Program, for the purpose of preserving the ability to construct architecturally significant bridge structures across the Nooksack River. 45 feet for properties located within 200 feet of the OHWM of the Nooksack River, otherwise the maximum heights in all other Urban Designation areas as shall comply with the heigh regulations in the underlying zone.

20.50.070 Setbacks and Lot Coverage.

- ~~A. There shall be a minimum setback of 50 feet from the line of OHWM for Structures, Surfacing and Parking.~~
- ~~B. All other building setbacks shall comply with the underlying zoning.~~
- ~~C. Lot coverage shall comply with the underlying zoning. Setbacks and lot coverage are generally not applicable to this section; when applicable, uses shall endeavor to establish the minimum practical footprint over the Nooksack River that is necessary to achieve their intended purpose while complying with statutory and engineering design requirements.~~

**CHAPTER 20.55
GENERAL AND SPECIAL REGULATIONS – ALL DESIGNATIONS**

Sections:

20.55.005	General Policies and Regulations
20.55.010	Use Conflicts
20.55.020	Hazardous, Sensitive or Unsuitable Areas
20.55.030	Geo-Hydraulics
20.55.040	Water Quality
20.55.050	Hazardous & Toxic Materials
20.55.060	Fish and Wildlife
20.55.070	Views and Aesthetics
20.55.080	Maintenance
20.55.090	Paths and Trails
20.55.100	Archeological Areas & Historic Sites
20.55.110	Water-Dependent & Water-Related Uses
20.55.120	Parking & Circulation
20.55.130	Shoreline Habitat & Natural Systems Enhancement Projects
20.55.135	Forest Practices
20.55.140	Wetlands & Fish and Wildlife Habitat
20.55.150	Public Access
20.55.160	Agricultural Practices
20.55.170	Aquacultural Activities
20.55.190	Commercial Development
20.55.200	Forestry
20.55.210	Industrial Development
20.55.220	In-Stream Structures
20.55.230	Mining
20.55.240	Piers, Docks and Floats
20.55.250	Recreational Development
20.55.260	Residential Development
20.55.270	Roads and Railways
20.55.280	Utilities and Solid Waste
20.55.290	Applicability- General Shoreline Modification Principles
20.55.300	General Shoreline Modification Principles
20.55.310	Shoreline Stabilization
20.55.320	Grading
20.55.330	Dredging and Dredge Material Disposal
20.55.340	Vegetation Conservation
20.55.350	Flood Hazard Reduction

Commented [HM79]: This may be broken into more chapters if its too much in one section.

20.55.360 Rules of Construction

*General Code Writer's Note: the City of Ferndale intends to relocate long-range Shoreline Master Program Goals and Policies to the Ferndale Comprehensive Plan as part of the scheduled 2025 Comprehensive Plan Update; provided that these goals and policies are not substantively modified, no additional Shoreline Master Program Update shall be required as part of this relocation.

20.55.005 General Policies and Regulations

A. All use and development activities on shorelines shall be subject to the following general policies and regulations in addition to those applicable under the appropriate Shoreline Use and Shoreline Modification Chapters (**Chapters 9 and 10 of this Program.**)

B. The following policies and regulations apply to the categories of use activities listed by the state in the Shoreline Management Act Guidelines (WAC 173-26-240). These policies and regulations are intended to guide or regulate the uses which are allowed within the Shoreline.

C. The Shoreline Administrator is empowered to seek mitigation measures or design modifications necessary to achieve any and all of the policies and regulations associated with this Program, and to recommend denial of any project which fails to meet any requirement.

1. Development shall be located, designed, constructed and maintained to prevent hazardous conditions and to substantially protect hazardous, sensitive, or unsuitable areas.

2. Development shall not result in a net loss of shoreline ecological functions nor create a non-mitigatable significant adverse impact on other shoreline uses.

ADD GENERAL POLICIES AND REGULATIONS FROM THIS CHAPTER UP HERE AND DELETE IN SECTIONS BELOW.

20.55.010 Use Conflicts

A. Policies

a. 1. Developments should be located, designed, constructed and managed to minimize adverse effects on other appropriate shoreline uses, whether existing or planned, and to provide safe, healthy conditions.

2. Unavoidable impacts or use conflicts should be minimized through the use of appropriate mitigation measures.

B. Regulations

Commented [HM80]: I recommend we pull out any repeat goals/policies in each section below and put here in the "Global Policies/Regulations section" then you can go to each section below and only provide goals and polices that relate to each element.

Commented [PP81]: This section needs to be addressed/finished. Page 160 has the original wording. Should we tie in the attachments (page 212 and 213) to this section?

1. ~~Necessary buffers between developed areas and the shoreline areas~~ shall be planted with native or locally compatible species or maintained in a natural condition except where foot or bicycle traffic may require surfacing. Such areas may not be used for vehicle parking, ~~exposed stormwater facilities, non-low impact stormwater facilities, nor or~~ open storage. ~~The width and physical nature of such buffers shall be determined by the Administrator with based upon the proposed intensity of use, the ecological functions of the area, and the overall character of the local area and adjacent uses.~~

2. ~~Development shall not result in a net loss of shoreline ecological functions nor create a non-mitigatable significant adverse impact on other shoreline uses.~~

20.55.020 Hazardous, Sensitive or Unsuitable Areas

A. Policies.

1. Natural features or conditions associated with shorelines are often environmentally sensitive or potentially hazardous to development and may be unsuitable for intensive use or development. Such areas may be maintained in a natural condition, or where that is not feasible, appropriate mitigation shall be achieved. ~~Within the City of Ferndale's Shoreline Jurisdiction, the primary areas that may be considered hazardous, sensitive, or unsuitable are those areas that, should they be developed or altered, would have the greatest potential to modify the flow of the Nooksack River, or to change the flooding characteristics of the river.~~

B. Regulations.

1. ~~Development shall be located, designed, constructed and maintained to prevent hazardous conditions and to substantially protect hazardous, sensitive, or unsuitable areas.~~

2. The Administrator may require modifications to the design of the development in order to protect shore features and other users and to ensure such development is not subject to nor creates hazardous conditions unsuitable to development.

3. ~~Pursuant to Chapter 15.24.190 FMC, land use actions with the potential to reduce the effective flood storage volume of the regulatory floodplain and/or creating a net increase in flood level shall be required to analyze the impact of a proposed land use in various flood scenarios. Should there be a determination that the proposed activity cannot mitigate or avoid such impacts, modifications to the design of the development shall be required.~~

20.55.030 Geo-Hydraulics

A. Policies

~~1. Development should be located, designed, constructed and maintained so that natural erosion, sediment transport, and water circulation and accretion processes are not significantly disrupted.~~

B.A. Regulations

1. The physical integrity of the shore process corridor shall be maintained in its natural state to the greatest extent feasible, except for the purpose of establishing, protecting, or modifying levee or flood embankments as may be authorized by the Army Corps of Engineers or other qualified agencies.

a.2. When maintenance of the physical integrity of the shore process corridor is not feasible, disturbances from construction, heavy equipment use or other such activity shall be kept to a minimum, consistent with this Program.

20.55.040 Water Quality.

A. Policies

1. The location, construction, operation, and maintenance of all shoreline uses and development activities should maintain or enhance the quality of surface and ground water.

B. Regulations

1. Compliance with City of Ferndale Stormwater Regulations shall be required for the purpose of limiting stormwater runoff during construction and subsequent use of the property, limiting impervious surfaces, and treating and detaining water.

20.55.050 Hazardous and Toxic Materials.

A. Policies

1. When chemical fertilizers, pesticides or other toxic materials are used in shoreline areas, extreme caution should be observed to prevent contamination of water and soils and adverse effects on valuable plant, fish and animal life.

B. Regulations

1. There shall be no spraying over water bodies or application on land where direct runoff of chemical-laden water to water bodies or aquifer recharge areas will occur.

2. A chemical free buffer strip of appropriate width shall be maintained along the OHWM of all wetlands, streams and water bodies.

3. Facilities and procedures utilizing advanced available systems and technology for handling, disposal or prompt spill clean-up of oil, fuel and/or hazardous materials shall be required wherever such materials are to be handled in any significant quantity. All private, public and commercial boat fueling facilities shall be designed and operated to prevent spillage or contamination of ground and surface waters and soils in shoreline areas.

4. Regulations and guidelines on chemical use adopted by other agencies shall be adhered to in all shoreline areas including, but not limited to, the State Department of Agriculture and Ecology.

5. Wood or pilings treated with creosote, pentachlorophenol or other similarly toxic substances shall not be used below the OHWM of streams, lakes or wetlands.

20.55.060 Fish and Wildlife

A. Policies

1. All shoreline use and development activities should be located and operated so as to provide long term protection of fish and wildlife resources, and their various habitats.

B. Regulations

1. Alternative locations or designs for development shall be utilized if potential adverse impacts to fish and wildlife resources are identified.

2. Shorelines having banks, beaches and beds critical to fish and wildlife resources shall be maintained or restored to a productive natural condition to the extent where feasible. The City may consider such a practice to be infeasible if the project proponent does have legal control of property(s) on which such maintenance or restoration could take place, and no reasonable alternative options for maintenance or restoration are available.

Commented [JB82]: This should be explained: maintained or restored by the private development, as a condition of the development? This seems to be forcing a development that would be landward of the OHWM to incur additional expense and regulations by forcing them to expand into the water channel itself to do work. I don't know if this is practical or legal.

Commented [HM83R83]: Question for Dannon? Again, the where feasible part probably allows for flexibility for applicants here.

3. Development in critical wildlife habitat areas identified by the Department of Fish and Wildlife shall not be permitted unless adequate mitigation of impacts can be provided.

4. Development shall be subject to the provisions of the application provisions of the Critical Areas Ordinance in FMC 16.08.

20.55.070 Views and Aesthetics.

A. Policies

1. Development should not detract from shoreline scenic and aesthetic qualities which are derived from natural or cultural features.

B. Regulations

1. Natural or cultural features shall be conserved or enhanced by development and utilized for open space, fish and wildlife habitat, public access or recreation purposes.

2. Over water construction shall be minimized.

3. Site restoration shall be required to the extent feasible after construction.

4. ~~Obstruction of scenic views shall be minimized.~~ The protection of the public's legal access to and view of the shoreline from public properties shall be preserved and enhanced.

Commented [HM84]: Question for the Planning Commission. Are there scenic views (if any) to be minimized?

5. ~~Where impacts to scenic views are unavoidable, development may be approved where significant public access areas, facilities, or other means of enhancing the area are provided.~~ The City shall consider reductions in vegetation retention requirements when provisions for public

access to the shoreline and shoreline views are proposed on private property, provided that the ecological functions of the site and surrounding area are preserved through the reduction of vegetation.

6. In some cases the public's access or view of the shoreline may be created or enhanced by providing public access to overlooks, balconies, patios, courtyards, rooftops, and other such features that may be included in a development proposal.

7. Any proposed structure greater than thirty-five feet in height shall be required to complete a view analysis documenting any existing views of the shoreline that may be impeded or obscured as a result of the proposed construction. For the purposes of this view analysis, existing views of the shoreline shall mean existing views of the stream or river channel itself, and existing views to the far shore of the stream or river as viewed from nearby properties. The analysis shall not be required to determine whether potential views from undeveloped or under-developed properties may be impeded or obstructed.

a. The Shoreline Administrator may, in writing, waive the required view analysis if they determine that no views of the shoreline have the potential to exist from the parcel on which development is proposed.

20.55.080 Maintenance.

A. Policy

1. All structures and development should be kept in good repair and in a hazard-free condition or should be removed from shorelines.

B. Regulations

1. The Administrator may require the repair or removal of structures or development that are found to be hazardous, damaging to shore resources or other properties, abandoned, or otherwise creating a public nuisance.

2. Repair, removal or replacement of damaged, derelict or abandoned structures or those which are a hazard to navigation or other users should be completed as soon as possible after the condition is identified.

20.55.090 Paths and Trails.

A. Policies

1. Construction of paths and stairs for private or public access to shorelines should not be allowed to create hazards or cause adverse effects to shore features, aesthetic quality or other users, especially in hazardous or sensitive areas.

B. Regulations

1. Stairs and walkways not attached to a permanent structure or serving essentially as an independent facility from the primary structure and located within the shoreline setback area shall be a minimum four feet in width ~~and no nor shall any~~ portion of the structure ~~shall~~ project more than eight feet out from the existing slope.

2. In hazardous or sensitive areas, the Administrator may deny construction of paths and stairs or require special design to ensure compliance with the above.

20.55.100 Archeological Areas and Historic Sites

A. Policies

1. The Coast Salish peoples utilized rivers, shores, and shoreline areas for settlement, travel, and fishing. European settlers also utilized the shoreline for initial settlements. As a result, the shoreline is known as a primary location for archaeological, cultural and historic sites. Such sites should be assessed by a qualified cultural resource specialist and, based on recommendations from the specialist and relevant Native American tribes and the State Department of Archaeology and Historic Preservation, should be ~~avoided~~, preserved, studied, or otherwise mitigated as a condition of development.

B. Regulations

1. Property owners shall notify local governments if any cultural resources are uncovered during excavations. In the event such resources are uncovered, construction shall cease until an appropriate cultural resource management plan has been prepared.

2. All developments shall comply with the National Historic Preservation Act of 1966 and other applicable state and local regulations.

20.55.110 ~~Water-Dependent & Water-Related Uses~~

~~A. Policies~~

~~1. Preference should first be given to development activities in the following order: water-dependent, water-related, water-enjoyment, other activities which do not adversely affect the shoreline environment.~~

~~B. Regulations~~

~~1. Proposals for shoreline development shall demonstrate that they are consistent with one of the above priority uses.~~

Commented [JB85]: This section could be deleted - the section had previously said that no development within shoreline jurisdiction could be allowed unless it met all of the criteria, which is inconsistent with other sections. I have changed it to state that no development can be allowed waterward of the OHWM. Still subsection C remains inconsistent, as that refers to development that is not waterward of the OHWM.

Commented [DT86R86]: I agree with the change.

2. ~~Non-water uses shall be prohibited unless all of the following criteria are met:~~

- ~~a. The use is part of a mixed-use project that includes a water-orientated use and provides a significant public benefit such as public access and ecological restoration or~~
- ~~b. Navigability is severely limited at the proposed site and the use provides a significant public benefit such as public access and ecological restoration.~~
- ~~c. Non-water uses may be allowed if the site is physically separated from the shoreline by another property in separate ownership or public right-of-way~~
- ~~d. Nonwater-dependent uses shall not be allowed over water except in existing structures or in the limited instances where they are auxiliary to and necessary in support of water-dependent uses.~~

20.55.120 Parking & Circulation

A. Policies

1. Parking areas shall be located so as to minimize impacts to the shoreline environment.

B. Regulations

~~1. Parking areas shall be enclosed within a building or oriented away from the shoreline area wherever practical. Parking areas shall be designed so as to minimize erosion and impacts caused from stormwater runoff.~~

Commented [HM87]: Add general statement about BMP's /Stormwater compliance at the beginning and remove redundancy throughout?

Commented [JB88R88]: I changed it to provide some direction about parking lot locations in order to minimize impacts. I also sent (5/7) an email to DOE asking if the various references to stormwater are dated and could be removed.

20.55.130 Shoreline Habitat & Natural Systems Enhancement Projects

A. Policies

1. Shoreline habitat and natural systems enhancement or restoration projects should be encouraged.

B. Regulations

1. Any shoreline habitat or natural systems enhancement project shall clearly demonstrate through Best Available Science that the project will enhance or restore critical shoreline habitat or natural systems.

2. Shoreline **m**Modifications—that would otherwise be restricted may be approved when enhancement or restoration of habitat or natural systems can be demonstrated.

20.55.135 Forest Practices

1. Commercial harvest of timber undertaken on shorelines shall comply with the applicable policies and provisions of the Forests and Fish Report (U.S. Fish and Wildlife Service, et al., 1999) and the Forest Practices Act, RCW 76.09 as amended, and any regulations adopted pursuant thereto (WAC 222), as administered by the Department of Natural Resources.

2. When timberland is to be converted to another use, such conversion shall be clearly indicated on the Forest Practices application. Failure to indicate the intent to convert the timberland to another use on the application will result in subsequent conversion proposals being reviewed pursuant to Conversion Option Harvest Plan. Failure to declare the intent to convert on the application shall provide adequate grounds for denial of subsequent conversion proposals for a period of six years from the date of the Forest Practices application approval per RCW 7.09.060 (3)(d), (e) and (f), RCW 76.09.460, and RCW 76.09.470.

3. With respect to timber situated within two hundred (200) feet landward of the OHWM within shorelines of statewide significance, Ecology or the City shall only allow selective commercial timber cutting, so that no more than thirty percent (30%) of the merchantable trees may be harvested in any ten (10) year period of time; provided that other timber harvesting methods may be permitted in those limited instances where the topography, soil conditions, or silviculture practices necessary for regeneration render selective logging ecologically detrimental; and provided further, that clear cutting of timber which is solely incidental to the preparation of land for other uses authorized by this chapter may be permitted. Exceptions to this standard shall be allowed by conditional use only.

4. For the purposes of this Program, preparatory work associated with the conversion of land to non-forestry uses and/or developments shall not be considered forest practices and shall be reviewed in accordance with the provisions for the proposed non-forestry use, and the general provisions of this Program, including vegetation conservation.

5. Forest practices only involving timber cutting are not considered to be “development” within the context of this program, and do not require Shoreline Development Permits or Shoreline Exemptions, per WAC 173-26-241 (3)(e).

20.55.140 Wetlands & Fish and Wildlife Habitat

A. All wetlands and Fish and Wildlife Habitat areas within shoreline jurisdiction are protected.

Commented [JB89]: 3/22/21 New section added; previous SMP did not include Forest Practices section. Additionally, subsection 5 added in compliance with Ecology checklist

B. Critical Areas include wetlands, fish and wildlife habitat conservation areas, geologically hazardous areas, aquifer recharge areas and flood hazard areas. All critical areas within shoreline jurisdiction are protected pursuant to the City's Critical Areas Ordinance (Chapter 16.08 FMC), consistent with the Washington State Growth Management Act, unless or until Ecology approves a Shoreline Master Plan or Master Plan amendment specifically establishing different regulations for critical areas within the jurisdiction of this Program. All critical areas within shoreline areas shall be regulated by the Critical Areas Ordinance Ferndale Municipal Code Chapter 16.08 Critical Areas with exception to the following sections:

1. 16.08.020 Authority
2. 16.08.030 Interpretation
3. 16.08.130 Variances
4. 16.08.160 Enforcement
5. 16.08.170 Offense and Penalty

C. Variances from the requirements of the CAO shall follow the provisions of Chapter 5.180 of this program.

D. Enforcement of the requirements of the CAO shall follow provisions of Chapter 11.10 of this program.

20.55.150 Public Access

In the review of all shoreline substantial development or conditional use permits, public access shall be considered. Provisions for adequate public access shall be incorporated into a shoreline development proposal for each shoreline substantial development or conditional use permit (including land division) unless the applicant demonstrates one or more of the following provisions apply:

1. Unavoidable health or safety hazards to the public exist which cannot be prevented by any practical means;
2. Inherent security requirements of the use cannot be satisfied through the application of alternative design features or other solutions;
3. The cost of providing the access, easement, or an alternative amenity is unreasonably disproportionate to the total long-term cost of the proposed development;
4. Unacceptable environmental harm will result from the public access which cannot be mitigated;
5. Significant undue and unavoidable conflict between any access provisions and the proposed use and/or adjacent uses would occur and cannot be mitigated.

Commented [JB90]: 3/24 Section added. Documents relationship between GMA and SMP re: Critical Areas consistent with Ecology checklist.

6. Public access shall generally not be required for the following except as determined on a case-by-case basis in conjunction with the provisions of this Section:

- a. Dredging
- b. Forest Practices
- c. Landfill and Excavation
- d. Mining
- e. Private Docks
- f. Stream Control Works

g. Low Density Residential Development, unless specifically included in the City's Parks, Recreation, and Trails Master Plan as a location for parks, recreational facilities, or trails.

7. The subject site is in an area or at a location where public access to the shoreline is not feasible or desirable, in the judgment of the Shoreline Administrator, consistent with this program and the Parks, Recreation, and Trails Master Plan.

~~78.~~ Prior to ~~deciding~~ determining if public access is not required pursuant to (1) through ~~(75)~~ above, the City must determine that all reasonable alternatives have been exhausted; including, but not limited to:

- a. Regulating access by such means as maintaining a gate and/or limiting hours of use;
- b. Designing separation of uses and activities (e.g. fences, terracing, use of one-way glazings, hedges, landscaping, etc.); and
- c. Provisions for access at a site geographically separated from the proposal such as a street end, vista, tideland or trail system.
- d. Public access areas and/or facilities shall be of the kind, quality and scope so as to reasonably offset any specific adverse impacts to existing public access of the proposed shoreline use or development activity.

~~98.~~ Alternate off-site improvements in public access to shorelines may be used upon agreement, as a means of offsetting identifiable on-site impacts.

~~910.~~ Incentives for public access improvements such as density or bulk and dimensional bonuses, shall also be considered through applicable provisions of this program and other zoning and subdivision regulations.

~~101.~~ Development uses and activities shall be designed and operated to avoid blocking, reducing, or adversely interfering with the public's physical access to the water and shorelines.

~~142.~~ Public access provided by shoreline street ends, public utilities and rights-of-way shall not be diminished (RCW 35.797.035 and RCW 36.87.130).

~~123.~~ Where reasonably feasible, public access sites shall (1) be connected directly to the nearest public street; and (2) include provisions for disabled persons.

134. Required public access sites shall be fully developed and available for public use at the time of occupancy of the use or activity.

145. Public access easements and permit conditions shall be recorded on the deed of title and on the face of a plat or short plat as early as practical in the process. Said recording with the County Auditor's Office shall occur at the time of building permit approval (RCW 58.17.110) or plat recordation, whichever comes first.

156. The minimum width of public access easements shall be ten feet, unless the administrator determines that undue hardship would result. In such cases, easement width may be reduced only to the minimum extent necessary to relieve the hardship.

176. The standard State approved logo or other approved signs that indicate the public's right of access and hours of access shall be constructed and installed by the applicant, and maintained by the applicant or the City, as determined by the City in conspicuous locations at public access sites. In accordance with regulation (c)(1), signs may control or restrict public access as a condition of permit approval.

187. Future actions by the applicant successors in interest or other parties shall not be permitted to diminish the usefulness or value of the public access provided.

20.55.160 Agricultural Practices.

A. Policies

1. Agricultural Practices shall ensure shoreline protection through means of adequate buffers, pollution prevention measures, and proper location of structures and activities.

B. Regulations:

1. A 25-foot-wide buffer zone of naturally occurring vegetation shall be maintained between all new cultivated and pasture areas and adjacent water bodies.

2. Livestock feeding operations must, through the use of retention tanks, holding ponds or other acceptable methods prevent runoff containing manure, feed, wastage, or other possible water pollutants from entering the adjacent water body.

3. Pesticides, herbicides, and other chemical products which would contaminate the water are not to be used where they would leach into the water body.

20.55.170 Aquacultural Activities

A. Policies

1. Aquacultural activities should be placed in locations compatible with the surrounding shoreline environment and which allow both visual and physical access to the shoreline.

B. Regulations.

1. ~~Public~~ Where practical, access to the shoreline shall be incorporated into the design of aquacultural facilities.

2. Overwater structures associated with aquacultural activity shall be designed to minimize interference with fish habitat.

20.55.180 Commercial Development

A. Policies.

1. ~~Except for water-dependent uses, no commercial development should occur waterward of the floodway line.~~

2. ~~Commercial Development should be designed and constructed so as to minimize the impact to the shoreline environment.~~ Commercial development should have an orientation towards the shoreline.

f

B. Regulations.

1. ~~Activities such as restaurants, which increase public enjoyment of the shoreline should be given consideration for shoreline location.~~

9.70—INDUSTRIAL DEVELOPMENT—

9.71—Definition:

~~Industrial Development means facilities for processing, manufacturing, and storage of finished or semi-finished goods, together with necessary accessory uses such as parking, loading, and waste storage and treatment.~~

9.72—Policies:

~~1. Preference should first be given to development activities in the following order: water-dependent, water-related, water-enjoyment, other activities which do not adversely affect the shoreline environment.~~

~~2. Industrial Development should be designed and constructed so as to minimize the impact to the shoreline environment and to ensure that there is no net loss of shoreline ecological function.~~

9.73—Regulations:

~~1. Where feasible, shoreline industrial developments will be encouraged to locate in areas where industrial developments already exists.~~

Commented [JB91]: This is a zoning function. meaningless here.

~~2. Industrial development shall not be allowed in shoreline areas with severe environmental limitations; such as critical areas.~~

~~3. Non-water-orientated uses shall be prohibited unless the following criteria are met:~~

~~* The use is part of a mixed-use project that includes a water-orientated use and provides a significant public benefit such as public access and ecological restoration or~~

~~* Navigability is severely limited at the proposed site and the use provides a significant public benefit such as public access and ecological restoration.~~

~~4. Non-water-orientated uses may be allowed if the site is physically separated from the shoreline by another property in separate ownership or public right-of-way~~

20.55.200 In-Stream Structures.

A. Policies.

1. Assure that in-stream structures provide for the protection of ecological functions and give consideration to the full range of public interests.

B. Regulations.

1. In-stream structures shall be located as to prevent hazardous conditions.

2. Agencies having special expertise in the aquatic shoreline environment shall be notified of proposed in-stream structures to assure compliance with all applicable laws and regulations governing such.

20.55.190 Piers, Docks and Floats

A. Policies.

1. Piers, Docks and Floats should be restricted to those areas where they do not interfere with physical or visual shoreline access.

B. Regulations.

1. Where feasible, community or cooperative piers, docks or floats, rather than private, single-user facilities, shall be encouraged.

2. Such structures shall not obstruct navigable waters or reduce public use of the water surface.

3. Piers, docks, and floats shall be limited to the minimum size necessary to meet the needs of the proposed use.

20.55.200 Recreational Development

A. Policies.

1. Encourage those recreational development activities that are compatible with the shoreline environment, and that benefit from shoreline location.

2. Provide adequate shoreline access and space for public viewing, walking, and general shoreline enjoyment for all citizens.

3. Planned recreational development within Shoreline Jurisdiction should be consistent with, and reflected by, the Parks, Recreation, and Trails Master Plan.

~~3. Encourage redevelopment and improvements to the Riverplace property (see Section REVISION).~~

Commented [JB92]: That section needs to be amended

B. Regulations

1. Recreational developments shall not interfere with normal public use of the shorelines by all citizens.

20.55.210 Residential Development

A. Policies

1. Higher intensity residential development is preferred ~~over~~ in the Rresidential and Uurban ~~residential~~ shoreline designations.

2. Use of environmentally sensitive designs should be encouraged.

3. Residential development should preserve and create public access and views to the shoreline where practical.

4. Residential development should have an orientation towards the shoreline.

B. Regulations

1. Applicants shall make provisions for regulated visual and physical public access to and along the shoreline within subdivisions.

2. Open space shall be located along the water's edge whenever feasible; where feasible, such open space shall provide public access to the shore.

3. Where feasible, Planned Unit Developments shall be utilized rather than standard subdivisions to provide more areas of contiguous open space.

4. New over water residences and floating homes are prohibited.

9

20.55.220 Roads and Railways

A. Policies

1. Major new construction of highways and railways should be located away from the shoreline area to the greatest extent possible.

2. Obstructions to physical and visual access should be minimized.

B. Regulations

1. Roads in wetland areas shall be designed and maintained to prevent erosion and to permit a natural movement of ground water.

2. Highway and road designs shall make provisions in their rights-of-way for ~~pedestrian-non-motorized~~ traffic and visual access to the waterfront.

3. All bridges and other water-crossing structures shall be designed ~~not to impede floodwaters~~~~not to impede the normal annual high water~~. Bridge approaches and side slopes shall be planted with a suitable ground cover.

Commented [JB93]: Unclear what the intent here is. Is the intent to have the bridge structure above the 100-year flood Base Flood Elevation?

3. Multi-use corridors shall be used whenever feasible.

20.55.230 Signs.

A. Regulations

1. ~~Off premise signs and b~~Billboards are prohibited in the shoreline area.

Commented [JB94]: Illegal to have content-based sign regulations (offsite vs. onsite)

2. ~~Advertising signs must be constructed flush against the structure that they are advertising.~~

3. In order to protect open space and views, free-standing pole signs are prohibited ~~between buildings and OHWM, and waterward of a line drawn from the nearest point of the building parallel to the shoreline;within shoreline jurisdiction~~; PROVIDED that, if a road or path used by the public separates ~~said building~~the proposed location of such a sign from ~~the~~ OHWM, then free-standing signs are permitted between the road or path and said building~~location~~. Multi-tenant development shall be required to develop a comprehensive sign program.

20.55.240 Utilities and Solid Waste.

A. Policies

1. Utilities and solid waste facilities should be located so as to minimize environmental and visual impacts.

B. Regulations

1. ~~Multiple use corridors shall be used as much as possible when locating utilities. Wherever practical, utilities shall be placed underground.~~

Commented [JB95]: Unclear why. What do they think a multiple use corridor is?

2. After installation/maintenance projects on shorelines, disturbed areas shall be replanted with native vegetation.

Commented [HM96]: Move to a general requirement section?

3. Where ~~practicable~~practical, utilities shall be placed underground so as to not degrade the aesthetic qualities of the shoreline.

4. Solid Waste facilities are prohibited within the City's shoreline jurisdiction except for local recycling and solid waste collection containers.

20.55.250 General Shoreline Modifications Applicability

A. ~~Shoreline Modifications should be clearly distinguished from shoreline land uses, in that they are not usually Shoreline land uses themselves, but rather projects that are undertaken in support of or preparation for a land use authorized under this Program. For example, Shoreline Modifications may include projects to grade or fill portions of the shoreline, bank restoration, erosion control, replanting the riparian habitat area, removal of invasive species, and more. Shoreline Modifications should be clearly distinguished from shoreline uses, in that they are not usually Shoreline Use activities in themselves, rather activities that are undertaken in support of~~

or preparation for a Shoreline Use Activity. ~~Shoreline Modifications include activities such as the construction of a dike, dredging, grading, or filling.~~

~~B. Unless clearly and convincingly demonstrated to the contrary by the proponent, a Substantial Development Permit or Shoreline Conditional Use Permit must be approved for the primary land use before any Shoreline Modification activities can take place.~~

~~1. The application should also describe the scope of any proposed Shoreline Modification in order for the City and any other reviewing agencies, and the general public, to fully understand the extent and methods to be used during the Shoreline Modification.~~

~~B. Unless clearly and convincingly demonstrated to the contrary by the proponent, a Substantial Development Permit or Shoreline Conditional Use Permit must be approved for the principal Shoreline Use Activity before any Shoreline Modification activities can take place.~~

~~1. The Shoreline Use Activity should also describe the scope of any proposed Shoreline Modification in order to fully understand the extent and methods to be used during Shoreline Modification activities.~~

C. In the infrequent event that a Shoreline Modification is proposed to be independent of a primary Shoreline Use Activity, such Shoreline Modification shall require a Shoreline Conditional Use Permit.

20.55.260 General Shoreline Modifications Principles

A. When considering proposals that include shoreline modifications, the City shall seek to make decisions based upon the following principles:

1. Allow structural shoreline modifications only where they are demonstrated to be necessary to support or protect an allowed principal structure or an existing shoreline use that is in danger of loss or substantial damage.

2. Reduce the adverse effects of shoreline modifications and, as much as possible, limit shoreline modifications in number and extent.

3. Allow only shoreline modifications that are appropriate to the specific type of shoreline and environmental conditions for which they are proposed.

4. Give preference to those types of shoreline modifications that have a lesser impact on ecological functions, or shoreline modifications that are intended to repair or enhance the natural shoreline. For example, in normal circumstances, preference should be given to pile-supported piers, which allow normal water flow, rather than to piers constructed with fill, which alter the normal flow of water. Restoration of the riparian buffer, planting or protection of native

species, erosion control, and habitat protection are other examples of prioritized shoreline modifications.

5. Shoreline modification principles shall be based on scientific and technical information and a comprehensive analysis of reach conditions for riverine systems.

6. Enhance ecological functions while accommodating existing legally permitted uses. As shoreline modifications occur, incorporate all feasible measures to protect and restore ecological functions and ecosystem-wide processes. Apply conditions to development authorizations so that structural shoreline modifications for nonwater-dependent uses on degraded sites contribute to the restoration of ecological functions.

7. Avoid and reduce significant ecological impacts according to the mitigation sequence, as defined in Chapter 16.08 FMC and this chapter (Mitigation), and more-fully described in the Adverse Impacts and Mitigation section of this Program.

Commented [JB97]: May replace this with the section number when it is known.

8. Shoreline habitat and natural systems enhancement projects should be encouraged and be reviewed for their long-term benefit.

20.55.270 Shoreline Stabilization

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

BA. A range of shoreline stabilization techniques ranging from soft to hard include, but are not limited to: erosion control, planting or protection of native vegetation, vegetation enhancement, restoration of the riparian buffer, upland drainage control, biotechnical measures, beach enhancement, anchor trees, gravel placement, rock revetments, concrete groins, retaining walls and, bulkheads

C. Policies

1. Protect, retain, and restore vegetation needed to sustain the ecological functions and ecosystem-wide process of the shoreline.

2. Avoid or mitigate adverse impacts to ecological functions where shoreline alterations are necessary to protect an allowed principal structure from active shoreline erosion.

3. Protect and enhance the levee system on the west bank of the Nooksack River, including modifications to the levee system intended to moderate flooding impacts within Downtown Ferndale and developed areas.

D. Regulations

1. New structural stabilization measures shall not be allowed except to protect or support an existing or approved use or an existing or approved development or for the restoration of ecological functions or for hazardous substance remediation.

2. New structural stabilization measures shall not adversely impact the natural or human shoreline environment, including property values.

3. New development shall be located and designed to ~~eliminate~~ minimize the need for future shoreline stabilization.

4. New nonwater-dependent development, including single-family residences, that ~~includes require stabilization of the shoreline to support the proposed development structural shoreline stabilization~~ shall be prohibited.

5. ~~Do not allow the~~ The subdivision of land into parcels, or the creation of new lots, that will require shoreline stabilization for development to occur shall be prohibited.

6. New development on steep slopes or bluffs shall be set back sufficiently to ensure that hard shoreline stabilization measures will not be needed during the life of the structure, as demonstrated by a geotechnical analysis.

7. New or enlarged structural shoreline stabilization measures for an existing principal structure or use, including residences, should not be allowed unless there is conclusive evidence, documented by a geotechnical analysis, that the structure is in danger from shoreline erosion

8. An existing shoreline stabilization structure may be replaced with a similar structure if there is a demonstrated need to protect principal uses or structures from erosion caused by currents, tidal action, or waves. In this case, demonstration of need does not necessarily require a geotechnical report.

9. Replacement walls or bulkheads shall not encroach waterward of the ordinary high-water mark or existing structure unless the residence was occupied prior to January 1, 1992. No such features are known to exist within the City of Ferndale, but proponents or property owners may provide evidence of such existence when necessary.

10. Soft shoreline stabilization that restores ecological functions may be permitted waterward of the ordinary high-water mark.

11. Where structural shoreline stabilization measures are necessary, ~~limit the size of such~~ stabilization measures shall be limited to the minimum necessary to achieve the required result, and shall utilize measures designed to minimize harm to ecological functions.

12. New development that would require shoreline stabilization which causes significant impacts to adjacent or down-current properties and shoreline areas is prohibited.

13. Public access is required as part of publicly financed shoreline erosion control measures, unless deemed to be impractical at the proposed location by the Shoreline Administrator.

14. Impacts to sediment transport -shall be avoided or minimized.

20.55.280 Grading

A. Policies

1. Grading should be planned so that water quality, normal hydrologic functions, fish and wildlife habitat, and other environmentally sensitive areas are protected.

2. Grading should be designed to blend physically and visually with existing topography whenever possible, so as not to interfere with long term appropriate uses including lawful access and enjoyment of scenery.

B. Regulations

1. Disturbed areas shall be immediately re-vegetated with native plant species where applicable.

2. As an alternative to irreversible fills in the shore process corridor, open pile or pier supports are preferred whenever the shore area to be filled is of significant value to the region in a natural state.

3. Retaining walls or revetments near the shoreline which do not qualify as shore defense or stream control works should be kept to a minimum and constructed of flexible natural materials.

4. Shore Protection

a. Shore-side perimeters of grading sites should be sloped and protected to minimize upland erosion.

b. Vegetative stabilization, protective berms, or other flexible, methods to protect natural character ~~means~~ are preferred over rigid, artificial character works.

- c. Material for proposed fills should be selected and placed so as to prevent water quality problems and degradation of other shore resources including scenic values.
- d. Erosion control and stormwater **Best Management Practicess** shall be utilized in grading activities.
- e. Landfill shall not be permitted for development of sewage disposal drain fields in floodways or within 100 feet of OHWM, whichever is farther landward.
- f. Necessary retaining walls or revetments which are at least ten feet landward of OHWM and not more than two feet in height are permitted by exemption or permit as appropriate, if otherwise consistent with this Program. Higher walls or revetments are subject to permit requirements and to all other policies and regulations in this Program. Walls or revetment closer than ten feet to OHWM shall be considered bulkheads, as defined in **Chapter 2** of this Program.

5. Fill waterward of the OHWM is allowed only by shoreline conditional use permit, for:

- a. Water-dependent use,
- b. Public access,
- c. Cleanup and disposal of contaminated sediments as part of an interagency environmental cleanup plan,
- e. Expansion or alteration of transportation facilities of statewide significance currently located on the shoreline (if alternatives to fill are shown not feasible),
- f. Mitigation action, environmental restoration, beach nourishment or enhancement project.

Commented [JB98]: 3/18 change made consistent with periodic checklist

20.55.290 Dredging and Dredge Material Disposal.

A. Policies

1. Dredging and dredge material disposal should be completed in a manner which avoids or minimizes significant ecological impacts.

B. Regulations.

1. Dredging, except for navigational and flood control purposes or restoration of ecological functions, is prohibited.

2. Dredging shall be scheduled so as not to interfere with migratory movements of anadromous fish.

3. Polluted spoils shall be deposited at approved upland sites and measures taken to contain runoff from the site.
4. Deposition of dredge material waterward of the OHWM shall only be allowed where it benefits the shoreline ecology.
5. New development siting and design shall avoid the need for new and maintenance dredging.

20.55.300 Vegetation Conservation

A. Policies

1. ~~It is the policy of the City of Ferndale to~~The stability of river banks shall be maintained or increased for the purpose of protecting ~~maintain or increase the stability of river banks and to protect~~ animal species and their habitats within the riparian buffer zone and similar areas. Within the jurisdiction of this Plan, vegetation clearing should be limited to the minimum necessary to accommodate approved shoreline development.

2. To provide for vegetation conservation along the shoreline that would assure no net loss of ecological function. Removal of noxious weeds, invasive species and non-native vegetation should be allowed to facilitate the establishment of a stable community of native plants. Clearing, thinning, and or limbing for limited view corridors should be allowed where it does not compromise ecological function.

B. Regulations

1. Shoreline developments shall comply with the vegetation conservation policies contained in the City's Critical Areas Ordinance.

2. Vegetation clearing should be limited to the minimum necessary to accommodate approved shoreline development.

3. Removal of noxious weeds and/or invasive non-native species shall be conducted in an environmentally sensitive manner to facilitate the establishment of a stable community of native plants.

a. Requests to remove noxious weeds shall be made in writing to the Shoreline Administrator and shall generally describe the method(s) that will be utilized for their removal, including the location and timing of the removal, and (if applicable) re-vegetation and slope stabilization provisions. The Shoreline Administrator may approve such requests in writing, and may consider permanent general approvals for public agencies. The City of Ferndale, Washington State, Whatcom County, and Army Corps of Engineers have been pre-authorized to undertake noxious weed removal activities without prior permission from the Shoreline Administrator.

20.55.310 Flood Hazard Reduction

A. Policies

1. Where feasible, give preference to nonstructural flood hazard reduction measures over structural measures. Structural flood control works should be allowed in the shoreline when it can be demonstrated by engineering evaluations that they are necessary to protect proposed and existing development, and that non-structural flood hazard reduction measures are infeasible or cost prohibitive.

2. Assure that flood hazard protection measures do not result in a net loss of ecological functions associated with rivers and streams. In Ferndale, ~~with where~~ the primary ecological function of the Nooksack River is flood attenuation and fish habitat, ~~and~~ flood hazard reduction measures (structural and non-structural) should be allowed if flood modeling reflects “no net rise” and the control measures will not cause significant damage to other properties or fish habitat.

3. Flood control works should be designed whenever possible to incorporate native vegetation. Such features may include vegetated berms, vegetative stabilization including brush matting and buffer strips, and retention of existing vegetation. Flood control works that serve to remove existing vegetation should include steps to replace the vegetation with native species.

4. Design of flood control works should provide access to public shorelines whenever practical, unless it is demonstrated that public access would cause public health and safety hazards, security problems, significant ecological impacts, conflicts with proposed uses, or unreasonable cost.

B. Regulations

1. Flood control works shall be permitted when it is demonstrated that they are necessary to protect existing and proposed development and when non-structural flood hazard reduction measures are infeasible or cost prohibitive.

1. Flood control works shall be located and operated so that no net loss of ecological function is demonstrated.

2. Dikes and levees, including levee repair and expansion (if not already exempt from permit requirements) will be allowed within the floodway through a conditional use permit when substantial need to the community is demonstrated.

3. Cut-and-fill slopes shall be stabilized with brush matting, ~~and~~ buffer strips, and/or other temporary and permanent erosion control methods such as silt fences so that there is no net loss of shoreline ecological function.

4. Natural features such as snags, uprooted trees, or stumps may be removed by qualified agencies or professionals acting on behalf of such agencies if they are causing bank erosion or higher flood stages.

20.55.320 Rules of Construction.

~~A. When uncertainty exists as to boundaries of any designation shown on the Official Shoreline Map, the following rules of construction shall apply:~~

~~B. Where designation boundaries are indicated as approximately following the center line of streets, alleys or highways and are not otherwise described herein, the actual center line shall be construed to be the boundary.~~

~~C. Where designation boundaries are indicated as running approximately parallel to the center line of the street, the boundary line shall be construed to be parallel to the center line of the street.~~

~~D. Where designation boundaries are indicated on such map as approximately following the lot or tract lines, the actual lot or tract lines shall be construed to be the boundaries of such designation.~~

~~E. Where a designation boundary on such map or maps divides a tract in unsubdivided property, the location of such designation boundary, unless the same is indicated by dimensions thereon, shall be determined by use of the scale appearing on such shoreline area designation map or maps.~~

~~F. Designation boundaries following shorelines shall be construed to follow shorelines, and in the event of change in the shorelines shall be construed as moving with the actual shorelines.~~

~~G. Boundaries indicated as following railroad lines shall be construed to be the center line of said railroad rights of way.~~

~~H. Where a public street or alley is officially vacated or abandoned, the regulations applicable to the abutting property to which the vacated portion shall revert shall apply to such vacated or abandoned street or alley.~~

~~I. In case uncertainty exists which cannot be determined by application of the foregoing rules, the Planning Commission shall recommend and the City Council determine, the location of such designation boundaries.~~

Commented [JB99]: All as per FMC 18.16 – no reason to duplicate.

20.55.330 Adverse Impacts and Mitigation

A. The applicant shall demonstrate all reasonable efforts have been taken to avoid, and where unavoidable, to minimize and mitigate impacts such that no net loss of critical area and shoreline ecological function is achieved. Mitigation shall occur in the following order of priority:

1. Avoiding the impact altogether by not taking a certain action or parts of an action. This may necessitate a redesign of the proposal.
 2. Minimizing unavoidable impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology or by taking affirmative steps to avoid or reduce impacts. The applicant shall seek to minimize fragmentation of the resource to the greatest extent possible.
 3. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;
 4. Reducing or eliminating the impact over time by preservation and maintenance operations;
 5. Compensating for the impact by replacing, enhancing, or providing substitute resources or environments. The compensatory mitigation shall be designed to achieve the affected functions as soon as practicable.
 6. Monitoring the impact and the compensation projects and taking appropriate corrective measures.
- B. In addition to compensatory mitigation, unavoidable adverse impacts may be addressed through voluntary restoration efforts.
- C. In-water work shall be scheduled to protect biological productivity (including but not limited to fish runs, spawning, and benthic productivity). In-water work shall not occur in areas used for commercial fishing during a fishing season unless specifically addressed and mitigated for in the permit.
- D. The effect of proposed in-stream structures on bank margin habitat, channel migration, and floodplain processes should be evaluated during the permit review.
- E. On land within Urban Growth Areas as defined in RCW 36.70A.030 that is brought under shoreline jurisdiction due to a shoreline restoration project creating a landward shift in the ordinary high water mark (RCW 90.58.580(3)).

Chapter 20.60
NONCONFORMING USES

20.60.010 Nonconforming Use and Development **20.60.020 Lawful Permit Applications Prior to Shoreline Regulation Changes**

20.60.010 Nonconforming Use and Development.

A. Legally Nonconforming Structures. Structures that were legally established and are used for a conforming use but which are nonconforming with regard to setbacks, buffers or yards; area; bulk; height or density may be maintained and repaired and may be enlarged or expanded provided that said enlargement does not increase the extent of nonconformity by further encroaching upon or extending into areas where construction or use would not be allowed for new development or uses.

1. Legally established residences and appurtenant structures located landward of the OHWM which are used for a conforming use, but do not meet the standards of the Program are considered conforming structures, subject to RCW 90.58.620.

B. Legally Nonconforming Uses and Developments. Uses and developments that were legally established and are nonconforming with regard to the use regulations of the Master Program may continue as legal nonconforming uses. Such uses shall not be enlarged or expanded, except that nonconforming single-family residences that are located landward of the ordinary high water mark may be enlarged or expanded in conformance with applicable bulk and dimensional standards by the addition of space to the main structure or by the addition of normal appurtenances as defined in WAC 173-27-040 (2)(g) upon approval of a conditional use permit. Such single-family residences may not be expanded toward the shoreline but may be expanded landward of the existing structure, on either side of the existing structure provided such expansion is secondary to the existing structure, or vertically expanded.

C. Legally Nonconforming Conditional Uses. A use which is listed as a conditional use but which existed prior to adoption of the Master Program or any relevant amendment and for which a conditional use permit has not been obtained shall be considered a nonconforming use. A use

Commented [JB100]: Added 3/24 pursuant to Ecology checklist

which is listed as a conditional use but which existed prior to the applicability of the Master Program to the site and for which a conditional use permit has not been obtained shall be considered a nonconforming use.

D. Variances. A structure for which a variance has been issued shall be considered a legal nonconforming structure and the requirements of this section shall apply as they apply to preexisting nonconformities.

E. Change of Use. A structure which is being or has been used for a nonconforming use may be used for a different nonconforming use only upon the approval of a conditional use permit. A conditional use permit may be approved only upon a finding that:

1. No reasonable alternative conforming use is practical; **and**
2. The proposed use will be at least as consistent with the policies and provisions of the Act and the Master Program and as compatible with the uses in the area as the preexisting use; **and**

F-3. In addition such conditions may be attached to the permit as are deemed necessary to assure compliance with the above findings, the requirements of the Master Program and the Shoreline Management Act and to assure that the use will not become a nuisance or a hazard.

GF. Movement or Relocation of Non-Conforming Structures. A nonconforming structure which is moved any distance must be brought into conformance with the applicable Master Program and the Act.

HG. Damage or Destruction of Non-Conforming Development. If a nonconforming development is damaged to an extent not exceeding seventy-five percent of the replacement cost of the original development, it may be reconstructed to those configurations existing immediately prior to the time the development was damaged, provided that application is made for the permits necessary to restore the development within ~~six months~~ **one year** of the date the damage occurred, all permits are obtained and the restoration is completed within two years of permit issuance.

I. If a nonconforming use is discontinued for twelve consecutive months or for twelve months during any two-year period, the nonconforming rights shall expire and any subsequent use shall be conforming.

J. An undeveloped lot, tract, parcel, site, or division of land located landward of the ordinary high water mark which was established in accordance with local and state subdivision requirements prior to the effective date of the Act or the applicable Master Program but which does not conform to the present lot size standards may be developed if permitted by other land use regulations of the ~~local government~~ **City of Ferndale** and so long as such development conforms to all other requirements of the applicable Master Program and the Act.

20.60.020 Lawful Permit Applications Prior to Shoreline Regulation Changes

~~A. To avoid undue hardship and to give effect to vested rights, no shoreline regulation change adopted by this title or by future amendments thereto shall require a change in the plans, construction or designated use of a building or land for which either a, shoreline substantial~~

Commented [JB101]: Changes made to be consistent with FMC 18.84 (non-conforming uses). Additionally, FEMA requires a not to exceed 50% threshold within the floodplain, which includes the majority of the shoreline. Is it the intent of the SMP/Ecology to be more restrictive?

~~development, shoreline variance permit or shoreline conditional use permit application has been made prior to the regulation changes if:~~

~~**B.** The application, together with any minor supplemental information requested, is consistent with the zoning regulations, building code regulations, subdivision regulations, shoreline policies and regulations and other applicable regulations in force at the time of application for the permit; and~~

~~**C.** The permit thereafter granted is issued in accordance with zoning regulations, building code regulations, subdivision regulations, shoreline policies and regulations and all other applicable laws in force at the time of application for the permit; and~~

~~**D.** The permit issued does not thereafter become null and void through expiration, cancellation or otherwise under the provisions applicable thereto in force at the time of application for the permit.~~

~~**E.** This section shall not prevent such building and/or use from being a non-conforming building and/or use subject to the provisions of this title. A. Applications submitted prior to Shoreline Regulation Changes shall be processed and considered consistent with the regulations established per Chapter 14.07.090 (Vesting of Applications).~~

CHAPTER 20.65
Enforcement

20.65.010	Violations and Penalties
20.65.020	Remedies
20.65.030	Abatement
20.65.040	Severability
20.65.050	Effective Date
20.65.060	Amended Program
20.65.070	References to Plans, Regulations an Information Sources
20.65.080	Property Rights

20.65.010 Violations and Penalties

A. Any permit may be the subject of a ~~cease-and-desist~~stop work order by the City in accordance with the procedure specified in Chapter 5 of this Program and Chapter 1.12 FMC.

B. Any permit may be rescinded by the City in accordance with the procedure specified in Chapter 5.150 of this Program and Chapter 1.12 FMC.

C. Enforcement procedures and the penalties resulting from violations of this chapter shall be administered pursuant to Chapter 1.12 FMC.

C. In addition to its enforcement authority under Chapter 1.12 FMC, ~~t~~The City of Ferndale shall have the right to bring such injunctive, declaratory, or other actions as are necessary to insure that no uses are made of the shorelines of the state in conflict with the provisions of this Program and of the Shoreline Management Act, and to otherwise enforce their provisions.

D. In addition to incurring civil liability under Chapter 11.25 of this Program, any person found to have willfully engaged in activities on the shorelines in violation of the provision of the Shoreline Management Act or Master Program shall be guilty of a gross misdemeanor and shall be punished in accordance with RCW 90.58.220.

E. Any person subject to the regulatory program of the Shoreline Management Act or this Master Program who violates any provision of the Act or this Master Program or permit issued pursuant thereto shall be liable for all damage to public or private property arising from such violation, including the cost of restoring the affected area to its condition prior to violation. The State Attorney General or City Attorney shall bring suit for damages under this section on their behalf and on behalf of all persons similarly situated. Private persons shall have the right to bring suit for damages under this section on their behalf and on the behalf of all persons similarly situated. If liability has been established for the cost of restoring an area affected by a violation, the court shall make provisions to assure that restoration will be accomplished within a reasonable time at the expense of the violator. In addition to such relief, including money damages, the court in its discretion may award attorney's fees and costs of the suit to the prevailing party.

20.65.020 Remedies

A. In addition to the enforcement authority granted by Chapter 1.12 FMC, the City Attorney, or Administrator, where authorized, shall have the right to bring such injunctive, declaratory, or other actions as are necessary to insure that no uses are made of the shorelines of the state located within the City of Ferndale in conflict with the provisions of this Program, the Act, or other regulations adopted pursuant thereto, and to otherwise enforce the provisions of this Program.

B. The Administrator shall have the authority to serve upon a person a ~~cease and desist~~stop work order if an activity being undertaken on shorelines of the state is in violation of Chapter 90.58 RCW or this Program, or of any permit issued pursuant thereto. The Administrator shall follow the procedure set forth in WAC 173-27-270 in issuing a ~~cease and desist~~ stop work order.

C. A person who fails to conform to the terms of a substantial development permit, conditional use permit or variance issued under 90.58.140, who undertakes a development or use on shorelines of the state without first obtaining a permit, or who fails to comply with a ~~cease and desist~~stop work order may be subject to a civil penalty. The penalty shall be imposed pursuant to the procedure set forth in WAC 173-27-280 and become due and recovered as set forth in WAC 173-27-290(3) and (4). Persons incurring a penalty may appeal the same to the City Council pursuant to WAC 173-27-290(1) and (2).

20.65.030 Abatement

A. Structures or development on shorelines considered by the Administrator to present a hazard or other public nuisance to persons, properties or natural features may be abated by the City

Commented [JB102]: The WAC provides for appeals to the legislative authority (Council); however the Council has generally delegated the review of appeals to the Hearing Examiner. Is the WAC to be interpreted as allowing this further delegation, or should it be read as written - where these need to go to Council?

under the provisions of the ~~Uniform Code for the Abatement of Dangerous Buildings~~ ~~International Property Maintenance Code~~ or by other appropriate means.

Commented [JB103]: International Property Maintenance Code. But – this is something that might also be implied anyway.

20.65.040 Severability

A. If any section, subsection, or provision of this Program, or its application to any person or circumstances is held invalid, the remainder of this Program, or the application of the provision to other persons or circumstances shall not be affected.

20.65.050 Effective Date.

A. This Program and all amendments thereto shall become effective immediately upon final approval by the Department of Ecology.

20.65.060 Amended Program.

The amendment and renumbering of this Program into the Ferndale Municipal Code shall not release any person from full compliance with the terms and conditions of any permit or approval previously granted by the City. Where pre-existing permit conditions specify compliance with certain provisions of the Program, the equivalent provisions of the revised Program shall apply. The Administrator shall determine which sections apply where interpretation is necessary.

20.65.070 References to Plans, Regulations, Information Sources

~~A.A.~~ Where this Program makes reference to any RCW, WAC, or other state, local, or federal law or regulation, or to any source of information, the most recent amendment or current edition shall apply.

B. The City reserves the right to reformat this Program for the purpose of incorporating the goals and long-range policies of this program into the Ferndale Comprehensive Plan at a date to be determined. Provided that the nature of the goals and long-range policies are not substantively modified or made inconsistent with WAC 173-27, such changes shall not be considered an amendment to this Program. The City may also modify the format of such goals and policies by incorporating additional illustrations and discussion, which also shall not be considered an amendment to this Program.

20.65.080 Property Rights.

B. The City of Ferndale adopts the recommended process for evaluating constitutional principles when undertaking landuse planning and permitting activities as outlined in the State of Washington “December 2003, Advisory Memorandum: Avoiding Unconstitutional Takings of Private Property”.

CHAPTER 20.70
GOALS AND POLICIES

NOTE: THIS SECTION MAY BE MOVED ENTIRELY TO THE COMPREHENSIVE PLAN

- 20.70.010 General Goals and Objectives**
- 20.70.020 Adoption of Policy**
- 20.70.030 Classification Criteria and Policies – Urban Designation**
- 20.70.040 Classification Criteria and Policies – Residential Designation**
- 20.70.050 Classification Criteria and Policies – Rural Designation**
- 20.70.060 Classification Criteria and Policies – Conservancy Designation**
- 20.70.070 Classification Criteria and Management Policies – Aquatic Designation**
- 20.70.080 Economic Development**
- 20.70.090 Public Access**
- 20.70.100 Recreation**
- 20.70.110 Circulation**
- 20.70.120 Conservation**
- 20.70.130 Historic, Cultural, Scientific, And Educational**

20.70.010 General Goals, Objectives, and Policies

The citizens of the City of Ferndale, realizing that their shorelines are a unique and finite State resource, set forth the following goals and objectives as a general guide for the development of use regulations. These goals and objectives serve as guideposts to the proper and orderly use of the Shorelines of the State within the City of Ferndale. Seven general categories (elements) have been developed within which the various use activities can be applied. These general goals and objectives provide a basis for consistent development and application of policies and regulations for the various shoreline uses, shoreline modifications, and general policies and regulations.

20.70.020 Adoption of Policy.

In accordance with RCW 90.58.020, the following management and administrative policies are hereby adopted for all Shorelines of State-wide Significance in the City of Ferndale, as defined in RCW 90.58.030(2)(e) and identified in this Section. The Act requires that the City's Shoreline Master Program give preference to uses that generally are consistent with the state-wide public

Commented [HM104]: Here is my idea, we remove all polices from section 20.55 and stick here and combined similar policies? that way all sections in 20.55 are regulations only. lets revisit between March and April.

Commented [JB105R105]: I'm ok with that. Not much time though. Perhaps this would be something for Tim or Patti to do once we have the contents firmed up. I do like this idea, where separating out the goals and policies makes sense.

interest in such shorelines. Uses shall be given preference which are consistent with the policies contained in RCW 90.58.020 as follows:

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

Uses which are not generally consistent with these policies should not be permitted on such shorelines.

20.70.030 Classification Criteria and Management Policies - Urban Designation

A. The following are classification criteria for Urban environment designations:

1. Areas with potential for a type of urban development which would be consistent with this Program and other public plans; or
2. Areas which do not contain natural limitations to urban use, and which have adequate utilities and access; or
3. Areas where present urban development is scattered and where in-filling with new development would be consistent with this Program as well as preferable to further scattering of development.

B. The following policies are adopted for Urban environment designation areas:

1. New urban development should be directed toward already developed or developing areas where compatible.
2. Physical and visual access to shorelines for the public should be strongly encouraged and planned for.
3. Multiple use of shorelines should be sought and encouraged.
4. Planned Unit Developments should be encouraged to preserve open space and public access to shorelines, while allowing development to be concentrated.

20.70.040 Classification Criteria and Management Policies - Residential Designation

A. The following is the classification criteria for the Residential environment designation:

Areas consisting of predominantly single-family or multifamily residential development or are planned and platted for residential development.

B. The following policies are adopted for Residential environment designation areas:

1. Development should be permitted only in those shoreline areas where adequate setbacks or buffers are possible to protect ecological functions, there are adequate access, water, sewage disposal, and utilities systems, and public services available and the environment can be adequately protected.

2. Densities or minimum lot width standards in the Residential environment should be designed to protect the shoreline ecological functions.

3. Setbacks or buffers, shoreline stabilization, vegetation conservation, critical area protection, and water quality measures should be designed to protect ecological functions.

4. Multifamily residential and recreational developments should provide public access and joint use for community recreational facilities, where feasible.

5. Access, utilities, and public services should be available and adequate to serve existing needs and/or planned future development.

20.70.050 Classification Criteria and Management Policies - Rural Designation

A. The following are classification criteria for the Rural environment designation:

1. Areas of low-density development where natural vegetative cover and topography have been altered; or

2. Areas now used or potentially usable for agriculture including lowland tree farms; or

3. Areas where residential development is or should be of low density in order to be compatible with other uses, or, because of limitations by physical features, utility capabilities or access; or

4. Areas where a low intensity of outdoor recreation use or development would be appropriate and compatible with other uses and the physical environment; or

5. Areas which would be of high benefit to the region as a low density buffer between other designations for the purpose of minimizing conflicts among uses.

B. The following policies are adopted for Rural environment designation areas:

1. Intensive, urban character development should be sharply limited and permitted only if substantial open space and/or public access to shorelines is provided.

2. Public or private outdoor recreation facilities should be encouraged if compatible with agriculture or other appropriate uses.
3. New large scale industrial or commercial development should be discouraged except in areas so designated in the City Comprehensive Plan.

20.70.060 Classification Criteria and Management Policies - Conservancy Designation

A. The following are classification criteria for the Conservancy environment designation:

1. The area contains valuable or sensitive natural or cultural features whose optimum use precludes more than a low overall density of residents, recreationists, structures, or livestock, as well as extensive alterations to topography or banks; or
2. The area is inherently hazardous for moderate to high density development or use in terms of public health, safety and property damage potential; or
3. The area has recreational or esthetic qualities of high value to the region which would likely be diminished by moderate to intense development.

B. The following policies are adopted for Conservancy Areas:

1. Multiple uses of the shoreline should be strongly encouraged and maintained if such uses are compatible with each other and conservation of shoreline resources.
2. Area resources and natural shorelines should be protected whenever necessary from harmful concentrations of people or building structures. Uses which require substantial alterations to the area's natural character, especially its topography and land-water edge, should be directed to Urban or Rural Areas.
3. Development of hazardous areas should be designed and/or located so as to reduce potential danger to people and property.
4. Outstanding recreational or scenic values should be preserved and protected from incompatible development.
5. The Riverside golf course is recognized as an area of special interest, with significant potential for improvement of this recreational facility. Such improvement would probably involve redesign of the golf course, and reconstruction and expansion of the existing clubhouse complex. The city believes that such redevelopment would result in economic benefit to the city, as well as provide an opportunity for enhancement of the shorelines natural features, and improvement of public access. The non-conforming provisions of this Master Program are not intended to preclude redevelopment of this area of special interest, provided such development is accomplished in a manner that recognizes and provides for flood protection, protects water quality, enhances the shoreline environment, and improves public access.
6. Public access and recreation should be required where feasible and ecological impacts are mitigated.

20.70.070 Classification Criteria and Management Policies - Aquatic Designation

A. The following is the classification criteria for the Aquatic designation:

1. Lakes and streamways of rivers and streams within jurisdiction of this Program waterward of the OHWM.

B. The following policies are adopted for Aquatic Areas:

1. Development should be sharply limited to those uses which are compatible with conservation of area resources including water, fish and wildlife, and recreation areas, as well as with other appropriate uses and the area's unique natural character. Development in conflict with these objectives should be directed to an on shore location.

2. Almost all lake, and river surfaces, water column and bedlands are public property and as such their openness and extent must be protected from unnecessary obstruction or encroachment. Offshore development should be limited to those uses which are truly water-surface dependent, or which provide broad and substantial compensating benefits to the community or region.

3. Multiple use of water surfaces and structures in the Aquatic environment designation must be protected and encouraged whenever compatible with resource conservation and other appropriate uses. The need for a specific shoreline development to be multiple-purpose increases as its impact on the shoreline increases.

4. As with Conservancy, multiple use and sustained yield are the two overriding policies for management of Aquatic environment designations. Development in substantial conflict with these policies should not be permitted due to the public property nature of this area and its natural features.

20.70.080 Economic Development

A. The economic development element provides for the locations and design of industries, transportation facilities, port facilities, tourist facilities, commerce and other developments that are particularly dependent on their location on, or use of, the shorelines of the state.

B. The goal for the economic development element is to assure full utilization of all economic resources to increase the standard of living of the residents of the City of Ferndale, while also utilizing economic resources in a manner compatible with the natural and human environment.

C. The following objectives apply to the economic development element:

1. Allow only those activities with low flood damage potential to locate within shoreline areas.

2. Promote economic development that enhances the quality of life for the residents of Ferndale and minimizes adverse effects upon existing economic and social activities of value to the community.

3. Encourage economic development that minimizes adverse effects upon the physical environment.

4. Encourage new economic development that is either water-dependent or **water-related**.

Commented [JB106]: Maybe have a discussion somewhere (including in the characterization of the shoreline in Ferndale) stating that the nature of our shorelines is such that there are few developments that are likely to be water dependent (ports, marinas, etc.), with the possible exception of our treatment plants.

5. Encourage new economic development to locate in areas that have already been developed.

6. Discourage the expansion of existing development if it is clearly incompatible with this Program and the local area.

20.70.090 Public Access

A. The public access element makes provisions for public access to publicly owned areas, such as the Nooksack River.

B. The goal for the public access element is to assure an adequate visual and physical access to Ferndale’s shorelines.

C. The following objectives apply to the public access element:

1. Retain existing public access and encourage the development of additional access **consistent with the Parks, Recreation, and Trails Master Plan**.

2. Encourage the private sector to provide public access in developments where such access will not create hazards or security problems **and consistent with the City’s Parks, Recreation, and Trails Master Plan**.

Commented [JB107]: What about “where identified by the City’s long-range plans?” And again, what is “access?” views, or physical access?

3. Locate, design, and maintain access from development so as to protect the natural environment and natural processes.

4. Public entities are required to incorporate public access measures as part of each development project, unless access is incompatible with safety, security, or environmental protection.

20.70.100 Recreation

A. The recreational element is provided for the preservation and expansion of recreational opportunities, including but not limited to parks, shorelines, recreational areas, viewpoints, and other recreational amenities.

B. The goal of the recreation element is to provide ample recreational opportunities within the shoreline jurisdiction, where feasible, for the residents of the City of Ferndale and visitors consistent with the Parks, Recreation, and Trails Master Plan.

C. The following objectives apply to the recreation element:

1. Encourage recreational activities that are compatible with the shoreline environment.
2. Manage the development and the location of recreational areas with provisions to provide adequate conservation of affected natural resources.
3. Provide a balanced choice of recreational opportunities.
4. Encourage innovative and cooperative techniques among public agencies and private persons to increase and diversify recreational opportunities.
5. Locate, design, and operate recreational development to minimize adverse effects on other social, recreational, or economic activities.

6. Encourage improvement and redevelopment of the former Riverside Golf Course (see Section 4.54.5).

20.70.110 Circulation.

A. The Circulation element consists of the general location and extent of existing and proposed major thoroughfares, transportation routes, terminals, and other public utilities and facilities.

B. The goal of the circulation element is to develop a convenient and diversified transportation and utilities system to efficiently move people and products with minimal disruption to the shoreline environment.

C. The following objectives apply to the circulation element:

1. Encourage shoreline circulation development that provides for ~~alternate~~ alternative modes of travel and multiple-use corridors where compatible, consistent with the Transportation Element of the Comprehensive Plan.
2. Encourage circulation systems that are located and designed in harmony with other economic and social activities, both present and future.
3. Locate and design circulation systems so that the shoreline environment is minimally impacted.

Commented [JB108]: This could stay in, sort of – perhaps be re-worded. Also a note: I noticed that I hadn't really been thinking of other opportunities so much as correcting what I saw was not spelled out.

Generally, I think that the Parks, Recreation, and Trails Master Plan would identify these opportunities and that the SMP should probably refer to that document instead of creating a whole new document, in that regard. BUT – we should relook at the parks plan to see whether there are shoreline opportunities being missed.

-I also think that it is important for the other elements here for us to be thinking about whether our other plans address these things in a shoreline context. So for example, for Economic Development – are there ways that we can be intentional with specific areas of the shoreline for economic development? I think that maybe the Riverwalk could be an example? Are there other shoreline areas as well? Did the WWU study reveal anything?

4. Protect and enhance physical and visual public access through public transportation development in shoreline areas.

20.70.120 Conservation

A. The conservation element provides for the preservation of natural resources, including but not limited to scenic vistas, aesthetics, and vital areas for fisheries and wildlife protection.

B. The goal of the conservation element is to assure protection of fragile non-renewable resources within the City of Ferndale and make provisions for the proper use of renewable resources.

C. The following objectives apply to the conservation element:

1. Where feasible, restore damaged features or ecosystems to provide a higher function than may currently exist.

2. Protect and preserve the integrity of significant ecological and natural resources and processes from unnecessary degradation or interference.

3. Promote the design and operation of all types of shoreline uses to incorporate appropriate conservation measures for significantly affected resources.

20.70.130 Historic, Cultural, Scientific, and Educational

A. The historical/cultural element provides for the protection and restoration of buildings, sites, and areas having historic, cultural, scientific, or educational values.

B. The goal of the historic, cultural, scientific, and educational element is to protect and restore areas having historic, cultural, educational or scientific values within the shorelines of the City of Ferndale.

C. The following objectives apply to the historic, cultural, scientific, and educational element

1. Give historical/cultural sites the same concern for protection as fragile ecosystems.

2. Design and manage access to such sites so as to protect the resource.

3. Recognize the need to provide clear interpretation of historical and cultural features and natural areas, where appropriate.

~~STAFF NOTE: WITH EXCEPTION TO A FEW AREAS SHOWN IN BLACK BELOW (THAT NEED TO BE MOVED SOON) ALL TEXT CROSSED OUT BELOW HAS BEEN CUT AND PASTED ABOVE INTO THE NEW FORMATTING. AFTER THE FEW~~

REMAINING AREAS IN BLACK ARE MOVED, THIS SECTION WILL BE DELETED TO
CONDENSE THE CODE CHANGE.

).

~~CHAPTER 8 GENERAL AND SPECIAL POLICIES AND REGULATIONS~~

~~Sections: —~~

~~8.20 HAZARDOUS, SENSITIVE OR UNSUITABLE AREAS~~

~~8.30 GEO-HYDRAULICS~~

~~8.40 WATER QUALITY~~

~~8.50 HAZARDOUS/TOXIC MATERIALS~~

~~8.60 FISH AND WILDLIFE~~

~~8.70 VIEWS AND AESTHETICS~~

~~8.80 MAINTENANCE~~

~~8.90 PATHS AND STAIRS~~

~~8.100 ARCHEOLOGICAL AREAS AND HISTORIC SITES~~

~~8.110 WATER DEPENDENT/WATER RELATED USES~~

~~8.120 PARKING AND CIRCULATION~~

~~8.130 SHORELINE HABITAT AND NATURAL SYSTEMS ENHANCEMENT
PROJECTS~~

~~8.140 WETLANDS~~

~~8.150 PUBLIC ACCESS~~

~~No overwater uses or activities are allowed except for boat ramps, marinas, docks, piers, floats, roads, railroads, and utilities and except under those circumstances and conditions specified in this SMP.~~

Commented [HM109]: double check to see if this is in general polices already. If it is, delete

~~In the event that required critical areas or riparian habitat buffers are larger than the required setbacks, This setback in addition to the buffer is required so as to ensure construction/maintenance/repair/emergency access from encroaching into the buffer in the future. In circumstances where a conflict arises between the provisions of this Program and other city ordinances, the provisions that are most protective of the shoreline resources shall apply.~~

Commented [JB110]: Why? I think we would only require an additional setback if the structural setback is determined to have the effect of compromising the buffer. But otherwise this is just a setback onto a setback. I guess I'm ok keeping it in because it does give us a clear number to work off of.

~~* Setback does not apply to activities related to the improvement or maintenance of dikes.~~

Commented [HM111R111]: i have not formally deleted anything in BLACK here. If you want to incorporate it into the designation chapters (under setbacks) we can.

~~** Non-habitable structures for agricultural use may exceed this limitation.~~

Commented [JB112]: Is there an instance where we'll put in a barn in the shoreline?

~~NOTE: See Appendix (Restoration Plan and Public Access Plan) which includes some flexibility from the above bulk standards provided restoration and/or public access, together with no net loss of ecological functions.~~

Commented [JB113]: Maybe keep maybe not. Need to review that.

Use Areas.

9

Sections:

10.10 APPLICABILITY

10.10 APPLICABILITY

1. Shoreline Modifications should be clearly distinguished from shoreline uses, in that they are not usually Shoreline Use activities in themselves, rather activities that are undertaken in support of or preparation for a Shoreline Use Activity. Shoreline Modifications include activities such as the construction of a dike, dredging, grading, or filling.

2. The following Policies and Regulations apply to the categories of Shoreline Modifications defined by the state in the Shoreline Management Act Guidelines (WAC 173-26-230), and are intended to guide or regulate Shoreline Modification activities that are allowed within shoreline jurisdiction.

3. Unless clearly and convincingly demonstrated to the contrary by the proponent, a Substantial Development Permit or Shoreline Conditional Use Permit must be approved for the principal Shoreline Use Activity before any Shoreline Modification activities can take place.

4. In the infrequent event that a Shoreline Modification is proposed to be independent of a primary Shoreline Use Activity, such Shoreline Modification shall require a Shoreline Conditional Use Permit.

Commented [HM114]: This section (anything shown in black should be moved somewhere still if we want to keep it).

Commented [JB115]: But do they include such things as repair of existing levees or dikes, bank restoration, erosion control, replanting of riparian area, removal of invasives? We should talk about those things, and ideally we would be able to create a subset of activities that are desirable, where we minimize the red tape to get to approval. And then there would be another set of shoreline modifications where you need to go through the whole process.

Commented [JB116]: Here's where I think we need to identify those modifications that we think should be prioritized/ made easy, vs. the ones that don't. Because I think the ones that are easy/ that should be prioritized should be given an exemption if possible.

10 ATTACHMENT 2

Floodplain Management Regulations

FMC 15.24

ATTACHMENT 3

City of Ferndale Development Standards

Chapter 13

Commented [HM117]: Relevant Sections of the CAO, Floodplain Regulations and Development Standards will be cross cited/linked to the SMP.

Commented [HM118]: cite in code above.

Commented [HM119R119]: Need to cite in code still. Maybe in general policies section?

Commented [HM120]: Need to cite in code still. Maybe in general policies section?