

# Chapter 19.400 General Regulations

## 19.400.100 Existing Development

When discussing lawfully established, existing development the term nonconforming is often used to describe a use or structure that was in compliance with codes at the time it was developed (or was developed before adoption of an applicable code) but no longer meets code requirements because of code updates. Nonconforming is not the same as illegal and is essentially “grandfathered” in relation to this Program. However, the term nonconforming is widely used in Thurston County Code and to maintain consistency “nonconforming” is the term used in this Program. Allowances to maintain nonconforming structures and uses are included in this Program and are described below.

### A. Existing Uses

1. Lawfully established uses occurring as of the effective date of this Program, which do not meet the standards of this Program, shall be considered nonconforming to this Program,
2. All lawfully established uses, both conforming and nonconforming, may continue and may be, maintained, expanded, or modified consistent with the Act and this Program.
3. Any change in use shall conform to the standards of this Program and may require a Conditional Use Permit (CUP) in accordance with the findings in Section 19.500.100(D). A CUP may be granted only if no reasonable alternative use meeting the standards is practical, and the proposed use will be at least as consistent with the policies and provisions of this Program, the Act, and the uses in the area as the pre-existing use. Conditions may be imposed that are necessary to assure compliance with the above findings and with the requirements of this Program and the Act, to assure that the use will not become a nuisance or a hazard, and to assure that the use will not result in a net loss of the ecological function of the shoreline.
4. If a use is discontinued for twelve consecutive months or for twelve months during any two-year period, any subsequent use, if allowed, shall comply with the Act and this Program.

### B. Existing Structures

1. Lawfully constructed structures
  - a. Legally established structures occurring as of the effective date of this Program, which do not meet the standards of this Program, shall be considered nonconforming to this Program, to include appurtenances as defined in 19.100.150.
  - b. All legally established structures may continue and may be, **remodeled**, repaired or maintained in accordance with the Act, this Program, and Chapter 24.50 TCC.
  - c. For structures located partially within the shoreline buffer or setback, alterations shall be limited to the addition of height up to 35 feet above finished grade and landward expansion into areas outside the shoreline setback.
  - d. For structures located entirely within the shoreline buffer or setbacks, alterations shall be allowed for the addition of height up to 35 feet above finished grade or landward

expansion, up to 500 square feet (1,000 square feet total if adding second floor up to 35 feet high), on the upland side of the structure, or both.

e. Interior and exterior remodels and the addition of upper stories are permitted. Except as provided above, such additions shall not extend beyond the existing or approved building footprint.

f. Any expansion of nonconforming structures that further encroach on the buffer or setback towards the Ordinary High Water Mark or expansion on either side of the existing structure shall require a shoreline variance.

eg. In the event that a legally existing structure is damaged or destroyed by fire, explosion or other casualty, it may be reconstructed to configurations existing immediately prior to the time the structure was damaged or destroyed, provided the application is made for the necessary permits within twenty-four months of the date the damage or destruction occurred, and the restoration is completed within two years of permit issuance or the conclusion of any appeal on the permit.

dh. Any legally existing structure that is relocated must be brought in to conformance with the Act and this Program.

2. Existing Appurtenances to Single-Family Residences. Those legally existing appurtenances that are common to existing single-family residences that do not meet the standards of the code shall be considered nonconforming to this Program. Such appurtenances may include garages and sheds, but shall not include bulkheads, overwater structures or other shoreline modifications.
3. Vegetation conservation standards of this Program shall not apply retroactively in a way which requires lawfully existing uses and developments, including residential landscaping and gardens, to be removed, except as required as mitigation for new and expanded development.
4. Structures, improvements, docks, fills or developments lawfully placed in or over water prior to December 4, 1969 shall be considered non-conforming, but may continue in accordance with RCW 90.58.270. New overwater structures are prohibited.

## **C. Existing Lots**

1. An undeveloped lot, tract, parcel, site, or division of land located landward of the OHWM that was created or established in accordance with local and state subdivision requirements prior to the effective date of this Program or the Act, but which does not conform to the present lot size standards, may be developed if permitted by other land use regulations so long as such development conforms to all other requirements of this Program or the Act.
2. This section does not modify the rules regarding the development of plats under RCW 58.17.170 as now or hereafter amended.

## **19.400.105 Proposed Development**

### **A. Location**

1. New development shall be located and designed to avoid or, if that is not possible, to minimize as much as possible the need for new and maintenance dredging.
2. New development shall be located and designed to avoid the need for future shoreline stabilization for the life of the structure. Likewise, any new development which would require shoreline stabilization which causes significant impacts to adjacent or down-current properties shall not be allowed.

3. New development on lots constrained by depth, topography or critical areas shall be located to minimize, to the extent feasible, the need for shoreline stabilization.
4. New development on steep slopes or bluffs shall be set back sufficiently to ensure that shoreline stabilization is unlikely to be necessary during the life of the structure, as demonstrated by a geotechnical analysis.
5. Subdivision shall be planned to avoid the need for shoreline stabilization for newly created lots, utilizing geotechnical analysis where applicable.
6. Non-water-oriented facilities and accessory structures, except for preferred shoreline uses, such as single-family residences and single family residential appurtenances when consistent with buffer provisions in Chapter 19.400 of this program, must be located landward of buffers and adjacent water-oriented uses, or outside shoreline jurisdiction, unless no other location is feasible.

## **B Standards for Work Waterward of OHWM**

1. Water-dependent in-water structures, activities, and uses are not subject to the shoreline buffers established in this Program.
2. Projects involving in-water work must obtain all applicable state and federal permits or approvals, including (but not limited to) those from the U.S. Army Corps of Engineers, Ecology, Washington Department of Fish and Wildlife (WDFW), and/or Washington Department of Natural Resources.
3. Projects involving in-water work must comply with timing restrictions as set forth by state and federal project approvals.
4. Protection of bank and vegetation.
  - a. Alteration or disturbance of the bank and bank vegetation must be limited to that necessary to perform the in-water work.
  - b. All disturbed areas must be restored and protected from erosion using vegetation or other means.
5. If at any time, water quality problems develop as a result of in-water work, immediate notification must be made to any appropriate state or federal agency, e.g., Ecology, WDFW, National Marine Fisheries Service, U.S. Fish and Wildlife Service, etc. Affected tribes shall also be notified.

## **19.400.110 Mitigation**

### **A. Mitigation Sequencing**

1. Permitted uses and developments shall be designed and conducted in a manner that protects the current ecological condition, and prevents or mitigates adverse impacts. Mitigation measures shall be applied in the following sequence of steps, listed in order of priority:
  - a. Avoid the impact altogether by not taking a certain action or parts of an action;
  - b. Minimize 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;

- c. Rectify the impact by repairing, rehabilitating or restoring the affected environment;
  - d. Reduce or eliminate the impact over time by preservation and maintenance operations;
  - e. Compensate for the impact by replacing, enhancing, or providing substitute resources or environments, including utilization of the in-lieu-fee process where appropriate; and
  - f. Monitor the impact and the mitigation projects, and take appropriate corrective measures.
2. Application of the mitigation sequence shall achieve no net loss of ecological functions for each new development and shall not result in required mitigation in excess of that necessary to assure that development will result in no net loss of shoreline ecological functions and not have a significant adverse impact on other functions fostered by the policy of the Act or this Program.

## **B. Mitigation Options**

1. After mitigation sequencing is applied in accordance with Section 19.400.110(A) Appendix B, *Mitigation Options to Achieve No Net Loss for New or Re-Development Activities*, shall be utilized for compensatory mitigation options.
2. Site selection for compensatory mitigation shall consider factors to determine the most ecologically suitable potential mitigation site. References for consideration when determining appropriate site selection may include the *Thurston County In-lieu-fee Program Instrument, Appendix H, Watershed Approach to Mitigation*, Ecology's *Watershed Characterization and Land Use Planning*, and Ecology's *Selecting Mitigation Sites Using a Watershed Approach* (Western Washington), or other current resources informing mitigation decisions.
3. Proposals that use ratios different from those prescribed in this Program, that seek to obtain alternative buffers [Section 19.400.120(C)], or that include larger modifications in a buffer [Section 19.400.120(D)] may be approved if justified in a Shoreline Mitigation Plan consistent with Section 19.700.140. Where applicable, a Shoreline Variance may be required in accordance with Section 19.500.100(E).
4. Activities not listed in Appendix B that result in adverse impacts to shoreline ecological functions shall also be subject to compensatory mitigation requirements.
5. When compensatory mitigation becomes necessary on a site where documented restoration activities have occurred within the previous three years, but after the effective date of this Program, such documented restoration may be utilized as mitigation to offset new development impacts, provided the restoration was voluntary and not required as mitigation for prior development impacts. Mitigation credit for prior restoration activities shall be determined upon application for the impacting project, and shall, at a minimum, be commensurate with the proposed level of impact unless additional compensatory mitigation is provided.

## **C. Mitigation Compliance**

1. Unless otherwise specified, mitigation shall take place prior to final project inspection to provide assurance that it will be completed and to mitigate for temporal loss of shoreline functions.
2. Thurston County shall require monitoring reports on an annual basis, or an agreed upon monitoring schedule, for a minimum of five years and up to ten years, or until mitigation success is demonstrated through meeting all final performance standards for at least two consecutive monitoring reports. The mitigation plan shall provide specific criteria for monitoring the

mitigation project. Results and additional conditions shall be electronically tagged to the parcel for future reference.

3. Mitigation requirements shall run with the parcel, and notice of such requirements shall be recorded as a Notice to Title. Mitigation as conditioned under project approval shall be maintained in perpetuity, except where authorized through review of an alternative mitigation plan.
4. In the event that a subsequent landowner applies for additional permits, the electronic permit database will be queried for past mitigation requirements. If such mitigation is no longer in place or functioning, it shall be reinstalled prior to permit issuance.
5. Mitigation enforcement shall occur under the authority of Chapter 19.500, Permit Provisions, Review and Enforcement, of this Program.

## **19.400.115 Critical Areas**

### **A Incorporation of Title 24 TCC**

The following sections of Title 24 TCC, Critical Areas Ordinance, dated July 24, 2012, are incorporated herein by this reference, and provided in Appendix E for reference purposes only, except as supplemented or modified under Sections 19.400.115(B) - 19.400.115(G):

1. Standards for Existing Development (24.50), as applicable and consistent with Chapter 19.500 of this Master Program
2. Critical Area Tracts and Delineations (24.65.040)
3. Administrative Procedures (24.05)
4. Critical Area Determinations (24.05.070)
5. Critical Aquifer Recharge Areas (24.10)
6. Geologically Hazardous Areas (24.15)
7. Frequently Flooded Areas (24.20)
8. Fish and Wildlife Habitat Conservation Areas (24.25)
9. Wetlands (24.30)
10. Definitions (24.03), except where conflict exists, then the definitions in this Program shall govern.

### **B. Frequently Flooded Areas**

Encroachments, including new construction, substantial improvements, fill and other development, are prohibited within designated floodways, unless otherwise authorized by Chapter 24.20 TCC. Before any development activities are permitted within the floodplain, compliance with Federal Emergency Management Agency (FEMA) National Flood Insurance Program (NFIP) protection standards for critical

habitats for listed species shall be demonstrated through submittal of a Habitat Management Plan prepared by a qualified wildlife biologist.

Table 24.20-1 TCC, identifies the land uses and activities that are allowable in frequently flooded areas (i.e., one-hundred-year floodplains, one-hundred-year flood zone (one percent flood zone), floodways, high ground water hazard areas/restricted development zones, channel migration hazard areas, and coastal flood hazard areas) and one-hundred-year channel migration hazard areas. All land uses and activities not allowed by or not mentioned in Table 24.20-1, except water dependent uses allowed under this Program, are prohibited within the flood hazard and channel migration hazard areas regulated by this section, except as otherwise provided in Chapter 24.01 TCC.

Also see Section 19.400.150 (Flood Hazard Reduction Measures) for additional regulations governing uses and modifications in floodways, floodplains, high groundwater areas and one-hundred-year channel migration hazard area zones.

## **C. Critical Freshwater Habitats**

Critical freshwater habitats includes those portions of streams, rivers, wetlands, lakes and their associated channel migration zones and floodplains that provide habitat for priority species at any stage in their life cycles, and provide critical ecosystem-wide processes, as established in WAC 173-26-221(2)(c)(iv) and 24.25.005 TCC. Specific standards follow.

1. Lakes over 20 acres.
  - a. Vegetation buffers shall be retained for each shoreline environment designation as specified in Section 19.400.120 (Vegetation Conservation Buffers) below.
  - b. Where a lot cannot accommodate required buffers due to size, shape or topography, the Alternatives for New Development [Section 19.400.120(C)(1)] and Alternatives for Existing Development [Section 19.400.120(C)(2)], shall apply.
  - c. The specific Shoreline Use and Modification Development Standards of the Program shall apply (Chapter 19.600).
2. Streams and rivers over 20 cubic feet per second (cfs) mean annual flow as determined by the Department of Ecology.
  - a. A 250-foot vegetation buffer and an additional 15-foot building setback [Section 19.400.120 (B)(4)] shall be maintained from the OHWM of all Type S and Type F (greater than 20 feet in width) streams (24.25.020 TCC). Additional critical area buffers and setbacks may apply where flood hazard areas, geologically hazardous areas, or wetlands are present (see Chapter 24.15.015 and Tables 24.25-1 and 24.30-1 TCC).
  - b. Where a lot cannot accommodate required buffers due to size, shape or topography, the Alternatives for New Development [Section 19.400.120(C)(1)] and Alternatives for Existing Development [Section 19.400.120(C)(2)], shall apply.
  - c. The specific Shoreline Use and Modification Development Standards of the Program shall apply (Chapter 19.600).
3. The subdivision of land shall not be established when it would be reasonably foreseeable that the development or use would require structural flood hazard reduction measures within the channel migration zone or floodway. When evaluating alternate flood control measures or floodplain



restoration opportunities, the removal or relocation of structures in flood-prone areas shall be given consideration.

## **D. Critical Saltwater Habitats**

1. Critical saltwater habitats require a higher level of protection due to the important ecological functions they provide. Non-residential docks, bulkheads, bridges, fill, floats, jetties, utility crossings and other human-made structures shall not intrude into or over critical saltwater habitats except in the following circumstances, and only when the applicable use or modification standards are also met (Chapter 19.600).
  - a. The public's need for such an action or structure is clearly demonstrated, and the proposal is consistent with protection of the public trust.
  - b. Avoidance of impacts to critical saltwater habitats by an alternative alignment or location is not feasible or would result in unreasonable and disproportionate cost to accomplish the same general purpose. A cost analysis may be required to assist with the feasibility determination.
  - c. The project, along with any required mitigation, will result in no net loss of ecological functions associated with critical saltwater habitat.
  - d. The project is consistent with the State's interest in resource protection and species recovery.
  - e. Marine riparian habitat zone shall be maintain as described in Section 24.25.050TCC.
2. When a habitat survey (see Section 19.700.145, Biological and Habitat Surveys) is required pursuant to the applicable use or modification section, the *Thurston County Shoreline Master Program Update Inventory and Characterization* report shall be consulted as a basis for existing conditions, along with appropriate field verification. See the applicable sections for specific measures necessary for minimization and mitigation of impacts to critical saltwater habitats.
3. Critical saltwater habitats include (see Chapter 19.150, Definitions, for more detail):
  - a. Kelp beds
  - b. Eelgrass beds
  - c. Spawning and holding areas for forage fish, such as herring, smelt and sand lance
  - d. Shellfish beds (subsistence, commercial and recreational)
  - e. Mudflats
  - f. Intertidal habitats with vascular plants
  - g. Areas with which priority species have a primary association

## **E. Geologically Hazardous Areas**

Channel migration zones shall be classified as landslide hazard areas, and may be either high geologic hazard or low geologic hazard depending on the site characteristics outlined in TCC 24.20. Channel migration zone maps can be found in Appendix D of this Program.

## **F. Wetlands**

1. Consistent with WAC 173-22-035 and TCC 24.30.020, wetlands in shoreline jurisdiction shall be delineated using the procedure outlined in the approved federal wetland delineation manual and applicable regional supplements.,

2. A wetland buffer may not be reduced through averaging more than 25 percent of the standard buffer width applied per TCC 24.30.045. Buffer reduction is allowed only when following the steps described in TCC 24.30.050.
3. The County may require an increase in buffer width, as specified in TCC 24.30.055, as necessary to protect wetland area, their functions, and their buffers.

## **G. Fish and Wildlife Habitat Conservation Areas**

1. All typed waters, defined by WAC 222-16-030 with 20 cubic feet per second (cfs) or over 20 cfs mean annual flow, and their buffers are regulated by this Program and other provisions of Chapter 24.25. TCC. All stream types under 20 cfs mean annual flow are regulated under Chapter 24.25 TCC.
2. Important animal and plant species, their habitats of primary association, and other important habitats protected by this Program are included in Chapter 24.25.065 TCC.

## **19.400.120 Vegetation Conservation Buffers**

### **A General Regulations**

1. Vegetation conservation buffers provide a means to conserve, protect and restore shoreline vegetation in order to provide for ecological and habitat functions as well as human health and safety. Buffers shall consist of a non-clearing area established to protect the integrity, functions and values of the affected critical area or shoreline, but may also be modified and reduced to accommodate allowed uses when consistent with the Act and this Program. The standards below provide a flexible approach to maximize both ecological functions and water-dependent uses.
2. Vegetation conservation standards shall not be applied retroactively in a way which requires lawfully existing uses and developments (as of the effective date of this Program), including residential landscaping and gardens, to be removed, except when required as mitigation for new or expanded development.
3. In order to implement this Program's policies for preservation of native plant communities on marine, river, lake, and wetland shorelines, mitigation sequencing shall be applied during site planning for uses and activities within the shoreline jurisdiction so that the design and location of the structure or development minimizes native vegetation removal. Development or uses that require vegetation clearing shall be designed to avoid the following in the order indicated below, with a. being the most desirable vegetation to retain:
  - a. Native trees,
  - b. Other native vegetation,
  - c. Non-native trees, and
  - d. Other non-native vegetation.

### **B. Buffer Widths**

1. Standard Buffer. Each shoreline environment designation shall have a starting, or standard, buffer as measured landward from the OHWM. This buffer shall be adhered to unless otherwise allowed as described in the Reduced Standard Buffer provisions below or other critical area buffers are required. The Standard Buffers for each environment designation are as follows:



- |                           | <u>Marine</u>                       | <u>Freshwater Lakes</u>             |
|---------------------------|-------------------------------------|-------------------------------------|
| a. Shoreline Residential: | <del>85 feet</del> <u>50 feet</u>   | <del>75 feet</del> <u>50 feet</u>   |
| b. Urban Conservancy:     | <del>250 feet</del> <u>125 feet</u> | <del>100 feet</del> <u>125 feet</u> |
| c. Rural Conservancy:     | <del>250 feet</del> <u>150 feet</u> | <del>125 feet</del> <u>150 feet</u> |
| d. Natural:               | <del>250 feet</del> <u>200 feet</u> | <del>250 feet</del> <u>200 feet</u> |
- e. The Standard Buffer for shoreline jurisdictional freshwater streams and rivers is 250 feet.
- f. Buffer widths for all other streams, including Type F streams less than 20 feet wide and Type Np and Ns streams are in Table 24.25-1 TCC.

2. Reduced Standard Buffer. Utilizing the *Mitigation Options to Achieve No Net Loss for New or Re-Development Activities* table (Appendix B) to achieve no net loss of shoreline ecological functions, the Standard Buffer may be reduced down to the Reduced Standard Buffer as specified below. Mitigation options shall be reviewed and approved by the County for applicability to the project site commensurate with project impacts. The *Shoreline Restoration Plan* (Appendix C) shall serve as an initial review source. The Reduced Standard Buffers for each environment designation are as follows:

- a. Shoreline Residential: ~~60 feet marine~~, 50 feet ~~freshwater~~ (no reduction without Type III variance)
- b. Urban Conservancy: ~~100~~ 90 feet; 75 feet where a net gain in shoreline ecological functions can be achieved. Applications for reductions below 90 feet shall include information documenting: a) mitigation necessary to achieve no net loss of shoreline ecological functions for the reduced 90-foot buffer; b) additional mitigation necessary to achieve no net loss for any reduction below 75 feet; and c) additional actions proposed to achieve a net gain in shoreline ecological functions. Proposed restoration activities shall not include projects previously identified for public funding, except that public-private partnerships may be utilized. A minimum five-year monitoring plan shall be required to demonstrate project success, in accordance with Section 19.400.110(C), Mitigation Compliance.
- c. Rural Conservancy: ~~150 feet marine~~, ~~100 feet freshwater~~ 110 feet
- d. Natural: ~~200~~ 150 feet
- e. Shoreline jurisdictional freshwater streams and rivers: buffers may be reduced pursuant to the standards in Section 19.400.120(C) below.

3. Additional Standards for Applying the Reduced Standard Buffer, in a through e above, within the Rural Conservancy and Natural designations and shorelines of statewide significance. Buffers may be reduced for single-family residences and water-oriented uses in the Rural Conservancy designation, Natural designation, and shorelines of statewide significance only under the following circumstances with appropriate mitigation:

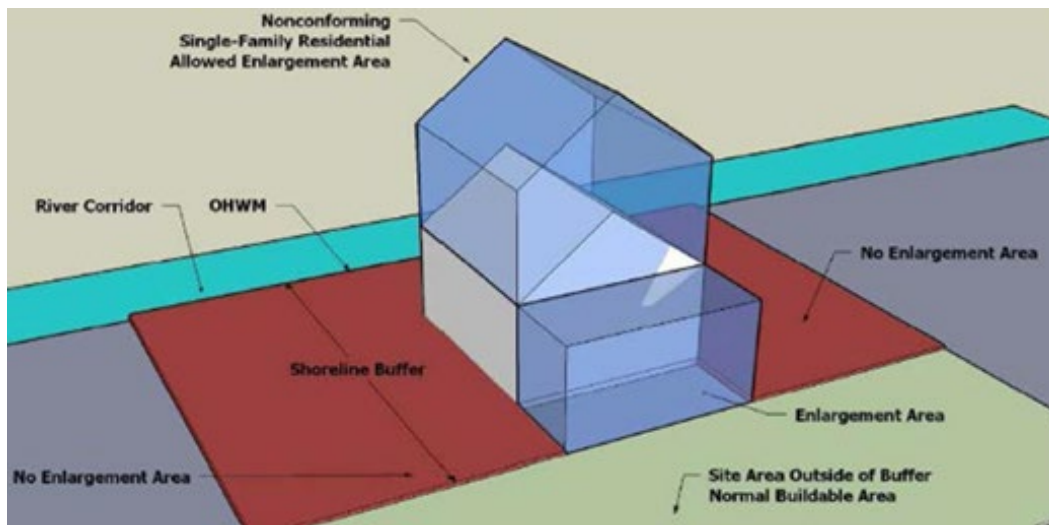
- a. The lot is physically constrained by slopes, wetlands or other natural features such that the Standard Buffer cannot be met; or
- b. The lot is legally constrained by its size or shape, such that it would not support a home and garage with a footprint of at least 1,200 square feet if placed at or above the Standard Buffer.

4. An additional 15-foot building setback shall be maintained beyond the outer boundary of the buffer. This building setback may be reduced provided that the resulting setback is protective of existing vegetation within the buffer. The building setback is to protect the buffer during construction and is no longer required after construction is completed.

5. Buffer widths may be increased in situations where steep slopes, the presence of important habitat or species, landslide hazard areas, marine bluffs, areas of inadequate vegetation to protect water quality, or other hazards are identified during project review.

## C. Constrained Lot and Infill Provisions

1. Alternatives for New Development. New single-family and water-dependent development may qualify for an alternative buffer if the following apply:
  - a. Infill Provision. For new construction on a vacant parcel adjoined by existing homes on both sides, the Reduced Standard Buffer may be administratively reduced by up to 10% in compliance with Section 19.400.135 (View Blockage). This shall be a Type I administrative review process. The *Mitigation Options to Achieve No Net Loss for New or Re-Development Activities* table (Appendix B) shall apply to such reductions.
  - b. Constrained Lot Provisions.
    - i. Legally platted lots with a depth that would not allow for compliance with the Reduced Standard Buffer. Proposals to reduce the buffer below the Reduced Standard Buffer shall require a Shoreline Mitigation Plan (Section 19.700.140), starting with review of existing conditions as presented in the *Thurston County Shoreline Master Program Update Inventory and Characterization* report and supplemented with appropriate field verification.
    - ii. If the development requires less than a 25% reduction of the Reduced Standard Buffer, or any amount of buffer reduction within the Shoreline Residential designation, a Type II Administrative Variance shall be required. If the development is not within the Shoreline Residential designation and requires greater than a 25% reduction of the Reduced Standard Buffer, a Type III Variance shall be required.
  - c. Water-dependent development. Buffers may be modified and reduced to accommodate water-dependent uses when consistent with the Act and this Master Program, and when conducted so that no net loss of critical areas or shoreline ecological functions occurs. Any loss of critical areas or shoreline ecological functions will require mitigation pursuant to the *Mitigation Options to Achieve No Net Loss for New or Re-Development Activities* table (Appendix B)
2. Alternatives for Existing Development.
  - a. Expansion of development outside of the Standard Buffer width. Expansion of existing development landward, outside the Standard Buffer shall be permitted, provided all other applicable provisions are met.
  - b. Expansion of development within the Standard Buffer width. Structures in existence on the effective date of this Program that do not meet the setback or buffer requirements of this Program may be remodeled or reconstructed provided that the new construction or related activity does not exceed the standard height limit of 35 feet, remains in the existing footprint and does not further intrude into the Standard Buffer.
  - c. Expansion of development below the Standard Buffer width. Expansion of existing development below the Standard Buffer shall not occur further waterward of the existing structure. Any expansion below the Standard Buffer shall require a Shoreline Mitigation Plan (see Section 19.700.140). Expansion within the Standard Buffer shall require a Type II Administrative Variance. Expansion within the Reduced Standard Buffer shall require a Type III Variance.



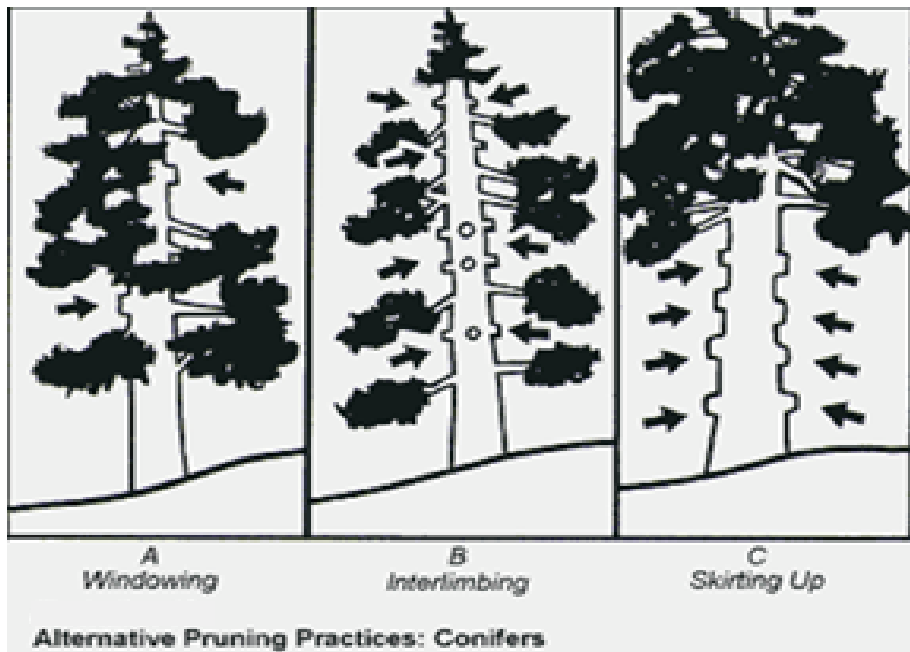
**Figure 19.400.120 (C)(1) Allowed Expansion of Nonconforming Structures.**

## **D. Other Uses and Modifications in Buffers**

1. In order to accommodate water-enjoyment uses and development within the buffer, the following standards shall apply:
  - a. Trails. Trails shall be limited to four feet in width, except where demonstrated necessary for a water-dependent use. Disturbance to soil, hydrological character, trees, shrubs, snags and important wildlife habitat shall be minimized. Pervious surfaces shall be utilized except where determined infeasible. Refer to Chapters 24.25.267 & 24.25.270 TCC for specifics on trail location, design, construction, and maintenance.
    - i. Trails should be kept outside of all critical area buffers. If allowed, trails should only be located in the outer 25% of the buffer and follow mitigation sequencing in accordance with Section 19.400.110(A).
    - ii. Trails that meet the definition of water-oriented use may be located within shoreline buffers when it can be demonstrated that buffer impacts are limited through mitigation sequencing in accordance with Section 19.400.110(A). Compensatory mitigation for unavoidable impacts will be required.
  - b. Decks and Viewing Platforms. Decks and viewing platforms may be permitted, but shall be limited to one hundred square feet in size, unless demonstrated that a larger structure will not result in a net loss of shoreline ecological function through submittal of a Shoreline Mitigation Plan (Section 19.700.140). The structure shall be no closer than 25 feet from the ordinary high water mark (OHMW). Viewing platforms shall not have roofs, except where otherwise permitted through the view blockage standards (Section 19.400.135) and be no higher than 3 feet above grade. Creosote and pentachlorophenol should not be utilized in construction materials for decks, viewing platforms or boardwalks.

- c. Beach Stairs. Beach stairs are permitted, subject to the exemption provisions in Section 19.500.100(C)(3). Beach stairs placed below the OHWM will normally require a shoreline permit from Thurston County, and Hydraulic Project Approval (HPA) from WDFW. Beach stairs with stair towers shall require an SDP where exemption provisions are not met. A joint-use beach stair structure used by more than one property owner is encouraged.
  - d. Boat Launches and Railways. Boat launches and marine railways, when consistent with requirements in Section 19.600.160(C)(6) of this program, may be permitted, provided all applicable provisions are met to avoid net loss of shoreline functions.
  - e. Water-Oriented Storage Structure. One water-oriented storage structure to house boats and related equipment may be allowed within the buffer provided:
    - i. The structure is no closer than 25 feet from ordinary high water mark as determined by the Department;
    - ii. Mitigation will be required for buffer impacts due to placement of the storage structure within the buffer area;
    - iii. The structure's width shall be no greater than 25 feet or 25% of the lot width, whichever is less;
    - iv. Side yard setbacks shall be 10 feet for docks and storage structure.
    - v. The highest point of the structure shall not be greater than 12 feet above grade, and shall also comply with the View Blockage provisions of this program;
    - vi. The overall size shall not exceed 200 square feet.
    - vii. Allowance of a storage structure within a buffer shall not justify the need for shoreline armoring to protect the structure.
    - viii. Storage structures shall be prohibited in the Natural environment.
  - f. In no case shall non-water-oriented uses and activities be allowed below the Standard Buffer width. This includes swimming pools, sport courts, or fields.
2. Hand removal or spot-spraying of invasive or noxious weeds is permitted within Vegetation Conservation Buffers.
3. Standards for View Thinning
- a. View thinning activities shall be limited to 30% of the total buffer length in the Shoreline Residential designation, and shall retain a minimum of 50% of the live crown;
  - b. View thinning activities shall be limited to 25% of the total buffer length in the Urban Conservancy and Rural Conservancy designations, and shall retain a minimum of 50% of the live crown;
  - c. No tree removal is allowed in the Natural designation for view enhancement; however, limited tree limbing may be allowed upon review and approval by the Department.
  - d. View thinning within the limited areas specified above shall generally be limited to tree limbing (see below, Figure 19.400.120(D)(1)). Where tree removal is demonstrated to be necessary, replanting of native trees shall occur at a 3:1 ratio (planted: removed) within the buffer area. Monitoring and maintenance of the plantings may be required by the Department.
  - e. Topping of trees is prohibited, except where demonstrated necessary for safety.

- f. See the Forest Practices/Timber Harvest standards (Section 19.600.145) for hazard tree removal requirements.
- g. An advance site visit may be required by the Department of ~~Resource Stewardship~~ Community Development and Economic Development in order to confirm the proposed thinning is consistent with this section and critical area protection standards. Site visit request applications may be obtained on-line or in person at Thurston County's permit assistance center. The County may also utilize site photographs in lieu of a site visit where sufficient detail is available to make a determination on consistency with thinning standards.



**Figure 19.400.120 (D)(1) Alternative Pruning Techniques: Conifers**

## **19.400.125 Water Quality and Quantity**

New development shall provide stormwater management facilities designed, constructed and maintained in accordance with the current stormwater management standards, including but not limited to the following:

- a. Chapter 2 of Volume I of the Thurston County Drainage Design and Erosion Control Manual (DDECM, dated December 31, 2016, or as amended) to determine which of the 11 Core Requirements apply to projects,
- b. Chapter 3 of Volume I to determine what submittals will be required, what submittals shall contain and what site investigations, studies, and mapping will be required,
- c. Chapter 4 of Volume I to determine what Best Management Practices (BMP's) should be applied to meet the requirements for on-site low impact development (LID) measures, flow control, and runoff treatment,

- d. Guidance material in Volume II of the DDECM to prepare a Construction Stormwater Pollution Prevention Plan (Temporary Erosion and Sediment Control Plan) for the proposed project,
- e. Information in Volume III that provides guidance on hydrologic modeling, conveyance system design, and establishing design infiltration rates for infiltration ponds,
- f. And Volume V of the DDECM to site and design appropriate BMP's, paying particular attention to minimum required setbacks.

## **19.400.130 Historic, Archeological, Cultural, Scientific and Educational Resources (HASCE)**

### **A. Applicability and Other Regulations**

1. This section applies to archaeological and historic resources either recorded by the Department of Archaeology and Historic Preservation (DAHP), Thurston County Historic Commission (per Section 2.106.010 TCC), local jurisdictions or applicable tribal data bases or predictive models.
2. HASCE sites shall comply with the Governor's Executive Order 05-05, Section 2.106 TCC (Historic Commission), Chapter 25-48 WAC (Archaeological Excavation and Removal Permit), Chapter 27.44 RCW (Indian graves and records), and Chapter 27.53 RCW (Archaeological sites and resources).

### **B. Known or Potential HASCE Sites**

1. Tribal Historic Preservation Officers (THPOs) for tribes with jurisdiction will be provided the opportunity to review and comment on all development proposals in the Thurston County shoreline jurisdiction, both terrestrial and aquatic, in order to ensure all known or potential archaeological sites, Traditional Cultural Properties and Traditional Cultural Landscapes are acknowledged, properly surveyed and adequately protected.
2. If archaeological resources are known in advance, developers and property owners must notify Thurston County, the Department of Archaeology and Historic Preservation, and applicable tribes.
3. Sites with known or potential archaeological resources, as determined pursuant to the resources listed at the beginning of this section, shall require a site inspection by a professional archaeologist in coordination with the affected tribe(s). The THPO shall be provided the opportunity to evaluate and comment on cultural resources evaluations conducted by the professional archaeologist.
4. Work on sites with identified archaeological resources shall not start until authorized by the Department of Archaeology and Historic Preservation through an Archaeological Excavation and Removal Permit, which may condition development permits.

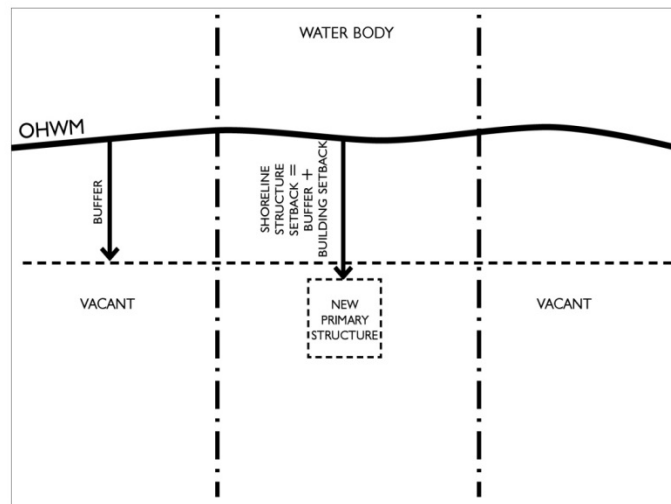


## C. Discovered HASCE sites

1. If archaeological resources are uncovered during excavation, developers and property owners must immediately stop work and notify Thurston County, the Office of Archaeology and Historic Preservation and affected Indian tribes.
2. Uncovered sites shall require a site inspection by a professional archaeologist in coordination with the affected tribe(s). Tribal Historic Preservation Officers shall be provided the opportunity to evaluate and comment on cultural resources evaluations conducted by the professional archaeologist.
3. Work shall not re-commence until authorized by the Office of Archaeology and Historic Preservation through an Archaeological Excavation and Removal Permit, which may condition development permits.

## 19.400.135 View Blockage

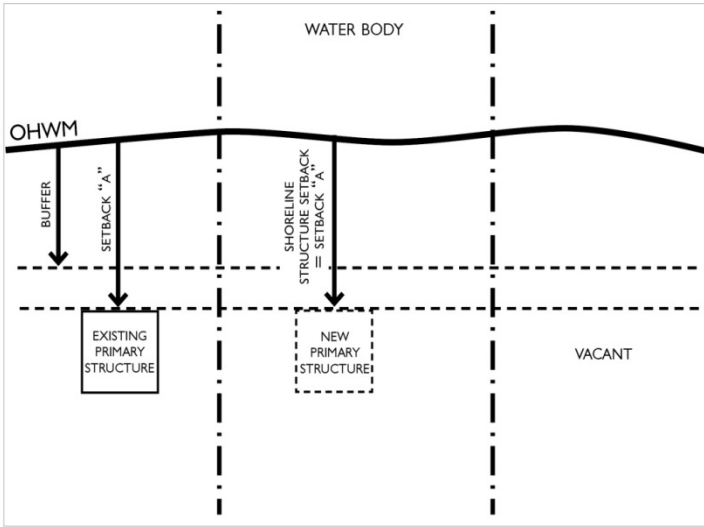
- A. In order to protect water views, all principal buildings shall be so located as to maintain the minimum shoreline structure setback line. The shoreline structure setback line shall be determined as follows. Variances for reduced buffers may be needed along with mitigation per Section 19.400.120:
1. No Adjacent Principal Buildings. Where there are no adjacent principal buildings, the shoreline structure setback line shall be the buffer and setback specified elsewhere in this Program. See Figure 19.400.135(A)(1).



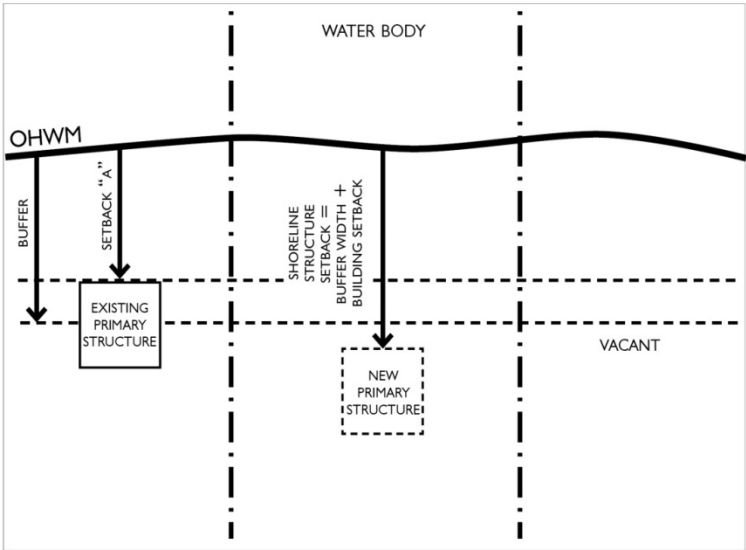
**Figure 19.400.135 (A)(1) Buffer and shoreline structure setback with no adjacent primary structure.** (Note that in all figures the “square” includes all patios, decks, etc. – see principle building definition in Chapter 100)

2. Adjacent Principal Building on One Side. Where there is an adjacent principal building on one side, the shoreline structure setback line shall be a distance no less than that of the adjacent principal building to the shoreline or the buffer and setback specified elsewhere

in this Program, whichever is greater. See Figures 19.400.135(A)(2)(a) and 19.400.135.(A)(2)(b).



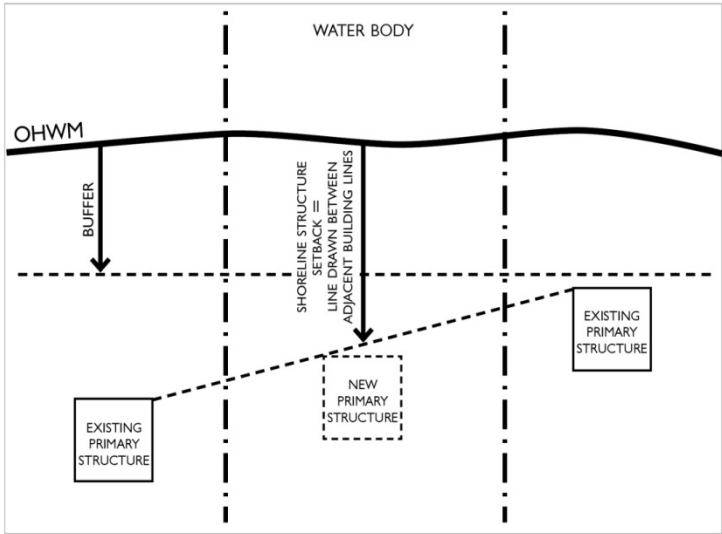
**Figure 19.400.135(A)(2)(a) Buffer and shoreline structure setback with adjacent primary structure landward of buffer on one side.**



**Figure 19.400.135(A)(2)(b) Buffer and shoreline structure setback with adjacent non-conforming primary structure within buffer on one side.**

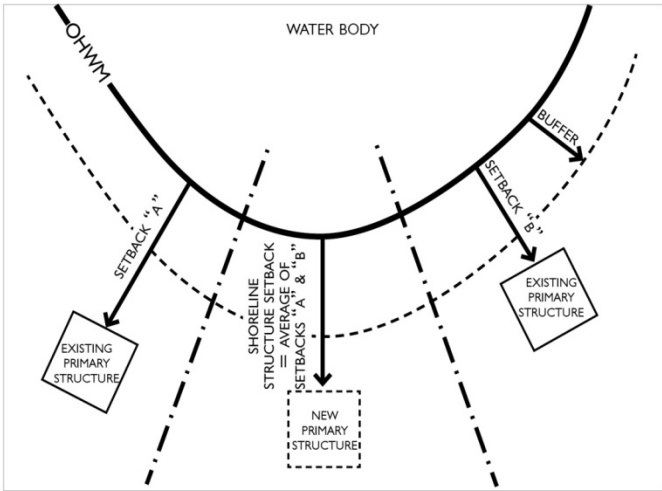
3. Adjacent Principal Buildings on Both Sides on a Regular Shoreline. Where there are adjacent principal buildings on both sides of the proposed structure on a regular

shoreline, the shoreline structure setback line shall be determined by a line drawn between the building line of the adjacent principal buildings or the buffer and setback specified elsewhere in this Program, whichever is greater. See Figure 19.400.135(A)(3).



**Figure 19.400.135(A)(3) Buffer and shoreline structure setback on a regular shoreline with adjacent primary structures on both sides.**

4. Adjacent Principal Buildings on Both Sides on an Irregular Shoreline. Where there are two adjacent principal structures on a shoreline which forms a cove or peninsula, the shoreline structure setback line shall be determined by averaging the setback lines of the two adjacent principal buildings or the buffer and setback specified elsewhere in this Program, whichever is greater. See Figure 19.400.135(A)(4).



**Figure 19.400.135(A)(4) Buffer and shoreline structure setback on an irregular shoreline with adjacent primary structures on both sides.**

5. Consideration of existing mitigating circumstances. The shoreline structure setback line may be administratively waived where an elevation survey demonstrates that due to a difference in topography or a vegetation survey demonstrates that due to the presence of significant view blocking vegetation on or adjacent to the common border of the two parcels, the proposed principle building will not result in any view blockage to adjacent principle buildings. In such cases, the buffer and setback specified elsewhere in this Program shall apply.
- B. Accessory structures. Accessory structures as defined for the purposes of view blockage may be sited within the shoreline structure setback area provided that they do not substantially obstruct the view of adjacent principal buildings and comply with applicable buffer provisions.
- C. Appeal procedure. Determinations of shoreline structure setback lines are classified as Type I decisions under Title 20.TCC and may be subject to appeal as provided therein.
- D. Variance (administrative) procedure.
  1. An applicant aggrieved by the strict application of this chapter may seek a conditional waiver from the director. Such a waiver shall be a Type II administrative decision. A conditional waiver may be granted after the applicant demonstrates the following:
    - a. The hardship which serves as the basis for granting the conditional waiver is specifically related to the property of the applicant and does not apply generally to other property in the vicinity;
    - b. The hardship which serves as the basis for granting the conditional waiver is specifically related to the property of the applicant and does not apply generally to other property in the vicinity;
    - c. The hardship which results from the application of the requirements of this chapter is not a result of the applicant's own actions;
    - d. The conditional waiver, if granted, will be in harmony with the general purpose and intent of the Act and this Program in preserving the views of the adjacent shoreline residences; and
    - e. In balancing the interest of the applicant with adjacent neighbors, if more harm will be done by granting the conditional waiver than would be done by denying it, the conditional waiver shall be denied.
  2. The applicant seeking a conditional waiver of the strict application of this chapter may file an application with the Department accompanied by an application fee per the Thurston County Land Use Fee Schedule.

## **19.400.140 Bulk and Dimension Standards**

- A. The standards in Table 19.400.140 (A) below shall apply to all shoreline use and development activities except where specifically modified in this Master Program.

**Table 19.400.140(A) Development Standards**

Standard	Mining	Shoreline Residential	Urban Conservancy	Rural Conservancy	Natural	Aquatic
Lot Width (feet)	40-60 <sup>1</sup>	40-80 <sup>2</sup>	60	100	140	Not Applicable
Shoreline Buffers	See Section 19.400.120(B) of this Master Program					
Side Setbacks (feet)	5	5 <sup>3</sup>	5 <sup>3</sup>	5 <sup>3</sup>	5 <sup>3</sup>	5 <sup>3</sup>
Maximum Hard Surface Area (percentage of lot area)	4	4	4	4	4	Not Applicable
Maximum Building Height (feet) <sup>5</sup>	35	35	35	35	35	35

Notes:

1. 40-foot lot width for single-family residential uses. 60-foot lot width for multifamily and non-residential uses.
2. 40-foot lot width for lots in Limited Areas of Intensive Rural Development or Urban Growth Areas. 80-foot lot width for all other Shoreline Residential lots.
3. Buildings housing animals, a minimum 35 foot side yard and 35 foot rear yard setback shall apply in accordance with TCC 20.07.
4. Hard Surface thresholds for Shoreline Environmental Designations: See Section 19.400.125
5. Does not include boathouses as described above in Section 19.400.100(B)(4)

- B. The maximum allowable height of structures in shoreline jurisdiction is 35 feet above finished average grade. Building heights above 35 feet, but consistent with underlying zoning allowances, require authorization via a Shoreline Variance pursuant to Section 19.500.100(E) of this Master Program.
- C. No new lots shall be created that are non-conforming. All new subdivided shoreline lots shall be, at a minimum, a 1:2 width to depth ratio. Exceptions may be granted in cases where such ratio would negatively impact critical areas or their buffers.

## 19.400.145 Public Access

- A. All recreational and public access facilities shall be designed, located and operated in a manner consistent with the purpose of the environment designation in which they are located.
- B. Except as provided in Regulations E and F below, substantial developments or conditional uses shall provide public access where any of the following conditions are present:
  1. A development or use will create increased demand for public access to the shoreline.
  2. A development or use will interfere with an existing public access way.
  3. New non-water-oriented uses are proposed.
  4. A use or activity will interfere with public use of lands or waters subject to the Public Trust Doctrine.
- C. Shoreline development by public entities, port districts, state agencies, and public utility districts shall include public access measures as part of each shoreline development project, unless such access is shown to be incompatible due to reasons of safety, security, or impact to the shoreline environment.
- D. Ensure that publicly financed or subsidized shoreline erosion control measures do not restrict appropriate public access to the shoreline except where such access is determined to be infeasible because of incompatible uses, safety, security, or harm to ecological functions. See public access provisions of WAC 173-26-221 (4). Where feasible, incorporate ecological restoration and public access improvements into the project.

- E. Off-site public access may be allowed where it results in an equal or greater public benefit than on-site public access, or when on-site limitations relating to security, environment, use conflict, intervening improvements, or feasibility are present. Sites on the same waterbody, or secondarily within the same watershed, are preferred. Where feasible, off-site public access should include both visual and physical elements. Off-site public access may include, but is not limited to, enhancing an adjacent public property (e.g., existing public or recreation access site, road, street, or alley abutting a body of water, or similar) in accordance with County standards; providing, improving or enhancing public access on another property under the control of the applicant/proponent; or another equivalent measure.
- F. Public access shall not be required for single-family residential development of four (4) or fewer lots.
- G. Public access shall not be required if an applicant/proponent demonstrates to the satisfaction of the County that one or more of the following conditions apply:
1. Unavoidable health or safety hazards to the public exist and cannot be prevented by any practical means;
  2. Constitutional or other legal limitations apply;
  3. Inherent security requirements of the use cannot be satisfied through the application of alternative design features or other solutions;
  4. The cost of providing the access, easement or alternative amenity is unreasonably disproportionate to the total long-term cost of the proposed development;
  5. Adverse environmental impacts to shoreline ecological processes and functions that cannot be mitigated will result from the public access;
  6. Significant undue and unavoidable conflict between any access provisions and the proposed use and/or adjacent uses would occur and cannot be mitigated; or
  7. Adequate public access already exists within a mile along the subject shoreline, and there are no gaps or enhancements required to be addressed by the individual shoreline development.
- H. When provisions for public access are required as a condition of project approval, the Director shall prepare written findings demonstrating consistency with constitutional and legal practices regarding private property and the principles of nexus and proportionality.
- I. Required public access sites shall be fully developed and available for public use at the time of occupancy of the shoreline development.
- J. Public access provisions shall run with the land and be recorded via a legal instrument such as an easement, or as a dedication on the face of a plat or short plat. Such legal instruments shall be recorded with the County Auditor's Office prior to the time of building permit approval, occupancy or plat approval, whichever comes first (RCW 58.17.110). Future actions by the applicant's successors in interest or other parties shall not diminish the usefulness or value of required public access areas and associated improvements.
- K. Maintenance of the public access facility over the life of the use or development shall be the responsibility of the owner unless otherwise accepted by a public or non-profit agency through a formal agreement recorded with the County Auditor's Office.



- L. The removal of on-site native vegetation shall be limited to the minimum necessary for the recreational or public access development area, such as picnic areas, campsites, selected views, or other permitted structures or facilities.
- M. Preference shall be given to activities that are consistent with approved state and local park plans for water-oriented recreational development, including but not limited to the Thurston County Comprehensive Plan, Thurston County Parks Plan, Washington State Parks CAMP plans, Thurston County Non-Motorized Plan, and other agency plans.
- N. Vehicular traffic is prohibited on beaches, bars, spits and streambeds, except for permitted construction and boat launching, or in areas where it can be demonstrated that a historical use has been established.
- O. Public road-ends, tax-title lands and right-of-ways adjacent to shorelines of the state shall be preserved, maintained and enhanced consistent with RCW 36.87.130. The Thurston County "Right of Way Use Permit" process in TCC) shall be utilized to open shoreline road-ends, as now or hereafter amended. Such process shall include notification of abutting property owners, and may include a neighborhood meeting or community council outreach effort in order to solicit and resolve community concerns with regard to specific proposals. The public interest in shoreline access shall be given appropriate consideration during the review process, consistent with the Act. Decisions to approve or deny opening of road-ends may be appealed in accordance with Chapter 13.80 TCC.
- P. Trail access shall be provided to link upland facilities to the beach area where feasible and where impacts to ecological functions can be adequately mitigated.
- Q. When applicable, recreational and public access development shall make adequate provisions for the following. These requirements may be waived for opening of public road ends, tax title lands, and right-of-ways as described in N above, except where determined necessary through the public review process:
1. Vehicular parking and pedestrian access;
  2. Proper wastewater and solid waste disposal methods;
  3. Security and fire protection;
  4. The prevention of overflow and trespass onto adjacent properties, including, but not limited to, landscaping, fencing, and posting of property; and
  5. Screening of such development from adjacent private property to prevent noise and light impacts.
  6. Compliance with the Americans with Disabilities Act (ADA), including being barrier-free and accessible for physically disabled uses where feasible.
- R. Shoreline trails and pathways shall be located, designed, and constructed to avoid and minimize bank instability.
- S. Project-specific public access standards are contained in the following Shoreline Use and Modification Development Standards sections (Chapter 19.600):
1. Barrier Structures and other In-Stream Structures (Section 19.600.120)
  2. Boating Facilities (Section 19.600.125)
  3. Commercial Development (Section 19.600.130)
  4. Fill (Section 19.600.140)

5. Industrial Development (Section 19.600.150)
6. Residential Development (Section 19.600.170)
7. Shoreline Stabilization (Section 19.600.175)

## **19.400.150 Flood Hazard Reduction Measures**

### **A. Environment Designations Permit Requirements**

CUP is required for installation of flood hazard reduction measures in all environment designations.

### **B. Development Standards**

1. Development in floodplains shall not significantly or cumulatively increase flood hazard and shall follow the criteria in Chapter 14.38 TCC.
2. New structural flood hazard reduction measures in shoreline jurisdiction are allowed only when a scientific and engineering analysis documents all of the following:
  - a. They are necessary to protect existing development;
  - b. Nonstructural measures are not feasible;
  - c. Impacts on ecological functions and priority species and habitats can be successfully mitigated so as to assure no net loss; and
  - d. Appropriate vegetation conservation actions are followed.
3. The following uses and activities may be appropriate and/or necessary within the channel migration zone (see Appendix D, Channel Migration Zone Maps) or floodway, provided that they provide appropriate protection of ecological functions and do not exacerbate flood risk onsite or in nearby areas:
  - a. Actions that protect or restore the ecosystem-wide processes or ecological functions.
  - b. Forest practices in compliance with the Washington State Forest Practices Act and its implementing rules.
  - c. Existing and ongoing agricultural practices, provided that no new restrictions to channel movement occur.
  - d. Mining when conducted in a manner consistent with WAC 173-26-241(3)(h) and this Program.
  - e. Bridges, utility lines, and other public utility and transportation structures where no other feasible alternative exists or the alternative would result in unreasonable and disproportionate cost. Where such structures are allowed, mitigation shall address impacted functions and processes in the affected section of watershed or drift cell.
  - f. Repair and maintenance of an existing legal use.
  - g. Modifications or additions to an existing legal use, provided that channel migration is not further limited.
  - h. Development in designated UGAs where existing structures prevent active channel movement and flooding.
  - i. Measures to reduce shoreline erosion, provided that it is demonstrated that the erosion rate exceeds that which would normally occur in a natural condition, that the measure does not interfere with fluvial hydrological and geomorphological processes normally

acting in natural conditions, and that the measure includes appropriate mitigation of impacts to ecological functions associated with the river or stream.

- j. Development with the primary purpose of protecting or restoring ecological functions and ecosystem-wide processes.

Applicants for shoreline development or modification may submit a site-specific channel migration zone study if they do not agree with the mapping in Appendix D.

4. Structural flood hazard reduction measures shall be consistent with the County's adopted Hazard Mitigation Plan that evaluates cumulative impacts to the watershed system.
5. New structural flood hazard reduction measures shall be situated landward of associated wetlands and designated vegetation conservation areas, unless actions are intended to increase ecological functions or if it is determined through a geotechnical analysis that no other alternative to reduce flood hazard to existing development is feasible. Mitigation may be required for impacts to critical areas.
6. New structural flood hazard reduction measures on public lands or funded by the public shall provide or improve public access pathways unless such improvements would cause unavoidable health or safety hazards, significant ecological impacts, unavoidable conflict with the proposed use, or a cost that is disproportionate and unreasonable to the total long-term cost of the development.
7. The removal of gravel for flood management purposes may be permitted only if a biological and geomorphological study shows that extraction:
  - a. Has a long-term benefit to flood hazard reduction,
  - b. Results in not net loss of ecological functions, and
  - c. Is part of a comprehensive flood management solution.

## **19.400.155 Restoration and Enhancement**

### **A. Environment Designations Permit Requirements**

Restoration and enhancement uses and developments are permitted as an SDP, or may be exempt from an SDP if criteria in Section 19.500.100(C) are met, for all environment designations, provided the project's primary purpose is the restoration of the natural character and ecological functions of the shoreline, as determined by the Department.

### **B. Development Standards**

1. Restoration and enhancement shall be carried out in accordance with an approved shoreline restoration plan that uses the best available scientific and technical information, and implemented using best management practices (BMPs).
2. All shoreline restoration and enhancement projects shall protect the integrity of adjacent natural resources, including aquatic habitats and water quality, and shall not result in significant adverse changes to sediment transport, ecological processes, properties, or habitat.
3. Long-term maintenance and monitoring shall be arranged by the project applicant and included in restoration or enhancement proposals. Monitoring shall occur for a minimum of five years,

except the term may be reduced if all final performance standards have been met for at least two consecutive monitoring reports, demonstrating project success.

4. Shoreline restoration and enhancement shall not significantly interfere with the normal public use of the navigable waters of the state or tribal resources without appropriate mitigation. For projects on state-owned aquatic lands, prior to the solicitation of permits from regulatory agencies, project proponents must coordinate with the Washington Department of Natural Resources to ensure the project will be appropriately located. Affected tribes shall also be notified.

5 Applicants in the County's UGAs seeking to perform restoration projects that may shift the OHWM landward of the pre-project location, are advised to work with the County to assess whether and how the non-restoration-related elements of the project may be allowed relief under RCW 90.58.580.

DRAFT