

CHAPTER 8

REGULATIONS FOR ALL SHORELINE USES, ACTIVITIES AND DESIGNATIONS

Introduction

The regulations in this chapter are intended to implement the Shoreline Goals and Policies (See Chapter 6) and the shoreline-designation-specific policies (See Chapter 7).

All shoreline uses and activities, even those that are exempt from the requirement to obtain a shoreline substantial development permit, and regardless of the Shoreline Environment in which they are undertaken, must conform to all of the applicable policies and regulations listed in this SMP. For example, a residential development project that includes docks and roads needs to comply with the policies and regulations related to docks and roads as well as those related to residential development.

Sections

8.01 General Regulations

A. General

8.02 Use and Designation Specific Regulations

A. Accessory Utilities

B. Agriculture

C. Archaeological, Cultural, Educational, Historic and Scientific Resources

D. Aquaculture

E. Boating Facilities

F. Commercial

G. Industrial

H. Mining

I. Municipal uses (includes all local governments)

J. Parking

K. Public Access

L. Utilities

M. Recreation

N. Residential

O. Signage

P. Transportation

8.03 Shoreline Modification Regulations

- A. General**
- B. Clearing and Grading**
- C. Dredging and Dredge Material Disposal**
- D. Fill**
- E. Shoreline Stabilization**
- F. Bulkheads**
- G. Vegetation Conservation**

8.01 General Regulations

The following regulations apply to all shoreline uses and activities in all shoreline designations, unless otherwise noted.

8.02 A. 1. General

8.01 A. 1. Regulation of private property to implement any SMP goals such as public access and protection of ecological functions must be consistent with all relevant constitutional and other legal limitations. These include, but are not limited to, property rights guaranteed by the United States Constitution and the Washington State Constitution, applicable federal and state case law, and state statutes, such as RCW 34.05.328, 43.21C.060, and 82.02.

8.01 A. 2. Rights reserved or otherwise held by Indian Tribes pursuant to Treaties, Executive Orders, or Statutes, including right to hunt, fish, gather, and the right to reserved water, shall not be impaired or limited by any action taken or authorized by the Town under its Shoreline Master Program, and all rights shall be accommodated.

8.01 A. 3. Any development or use activity which occurs within the shoreline areas of therein coming under the jurisdiction of the Act, whether it requires a permit or not, must be consistent (in design, development and operation) with the intent of the Act, current comprehensive plans, all applicable local regulations (including current zoning, floodplain, subdivision, SEPA, critical areas, flood damage prevention or hazard reduction, health, sanitation, and building ordinances or codes), and any applicable state and federal regulations.

8.01 A. 4. Emergency construction may be permitted subject to WAC 173-27-040(2)(d) (“Developments exempt from substantial development permit requirement”), when, as determined by Okanogan County Emergency Services or other formally designated local official in consultation with the Shoreline Administrator, that life and/or property is in danger. Emergency construction must be consistent with the policies of chapter [90.58](#) RCW and this master program and with the regulations for Shoreline Modification (Section 8.03), including Shoreline Stabilization (Section 8.03 E), herein. Prior to emergency construction, the landowner must agree that, upon abatement of the emergency situation any 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 master program, obtained. Mitigation pursuant to consultation with appropriate resource agencies shall be required for any permit issued after an emergency action. Regular flooding or other seasonal events that can be anticipated and may occur but that are not imminent are not an emergency.

8.01 A. 5. The provisions of this Master Program do not require modification of or limitations on agricultural activities legally underway on agricultural lands as of the date of adoption of this SMP.

8.01 A. 6. All shoreline uses and activities shall be located and designed to minimize or prevent the need for shoreline stabilization measures, flood protection works, filling, or substantial site re-grading. The use of car bodies, scraps of building materials, tires, asphalt or concrete from street work, or any discarded pieces of equipment, appliances or other debris for the stabilization of shorelines is prohibited. See Shoreline Modification Regulations (Section 8.03), for specific shoreline stabilization regulations and standards.

8.01 A. 7. The disposal or dumping of solid waste is strictly prohibited in all shoreline areas, except in litter containers, which shall be regularly emptied, with the contents collected for transportation to an approved sanitary landfill or transfer station.

8.01 A. 8. Dumping and/or burning of residential, commercial or municipal yard waste within the Zone 1 Vegetation Buffer of the shoreline setback is prohibited in all shoreline designations.

8.01 A. 9. Where no other feasible alternative exists or the alternative would result in unreasonable and disproportionate cost, bridges, utility lines, and other public utility and transportation structures may be allowed within the channel migration zone or floodway. Where such structures are allowed, mitigation shall address impacted functions and processes throughout the affected water body, including effects upstream and downstream of the project site, and shall be adequate to ensure no net loss of shoreline ecological function. Impacts to views and vistas must also be mitigated.

8.01 A. 10. No development designed for human habitation (e.g. houseboats, floating homes or cantilever type construction) is permitted on or over water.

8.01 A. 11. All shoreline development shall be conducted so as to minimize the effects on water quality from the addition of suspended solids, leaching of contaminants, or disturbances to habitat, and shall be consistent with this Master Program as well as the requirements of applicable regulatory agencies, including but not limited to the Washington departments of Ecology and of Fish and Wildlife and the U. S. Army Corps of Engineers. See following sections for activity specific regulations and standards.

8.01 A. 12. In-stream structures shall provide for the protection and preservation, of ecosystem-wide processes, ecological functions, and cultural resources, including, but not limited to, fish and fish passage, wildlife and water resources, shoreline critical areas, hydrogeological processes, and natural scenic vistas. The location and planning of in-stream structures shall give due consideration to the full range of public interests, watershed functions and processes, and environmental concerns, with special emphasis on protecting and restoring habitats and species.

8.01 A. 13. All uses and activities, including those exempt from the requirement to obtain a shoreline substantial development permit, shall adhere to all required setbacks and other development standards, and shall retain all required buffers, in accordance with the provisions of this master program unless the use or activity is granted a variance.

8.01 A. 14. Lot frontage shall be measured along the OHWM.

8.01 A. 15. Lot coverage is the percentage of the parcel to be covered with impervious surfaces consistent with local zoning regulations.

8.01 A. 16. Setbacks and buffers.

8.01 A. 16. a. Measurement:

8.01 A. 16. a. 1) All setbacks and Zone 1, Vegetation buffers¹ shall be measured on a horizontal plane from the ordinary-high-water-mark (OHWM) or from the side property line as appropriate.

8.01 A. 16. a. 2) Zone 2, Use buffers shall be measured on a horizontal plane from the landward side of the vegetation buffer

8.01 A. 16. a. 3) Wetland buffers shall be measured from the Ordinary High Water Mark or delineated edge-of the wetland.

8.01 A. 16. b. All buffers, lot frontage and lot coverage requirements shall be as set forth in Table 8.01 except as follows:

8.01 A. 16. b. 1) Standard shoreline setbacks and/or Zone 1 or 2 buffers and/or lot coverage may be reduced by up to 25% subject to a critical areas report, mitigation management plan and SEPA document that shows that such a reduction will result in no net loss of shoreline function. Such report and plan must be prepared by a qualified professional and be based on the most current, accurate and complete scientific and technical and site specific conditions and analysis. The reduction may be reduced by administrative review, if in compliance with Administrative Buffer Reduction (Section 8.01 A.15. e.).

8.01 A. 16. c. Shoreline buffers² in shoreline areas shall be comprised of a vegetation and use buffers as follows:

8.01 A. 16. c. 1) Zone 1 -Vegetation Buffer. The area one-half the distance of the setback (setbacks are listed in Table 8.1), in all shoreline areas is designated as a Vegetation Buffer. The vegetation buffer serves as restrictive protection zone for all shoreline functions and values. In these areas, existing native vegetation or vegetation from the recommended list must be maintained and protected, except as provided for in Public Access – View Corridor Provisions (Section 8.02 K. 1. u.) and Shoreline Modification Regulations - General (Section 8.03A), Clearing and Grading (Section 8.03 B) and Vegetation Conservation (Section 8.03 G).

8.01 A. 16. c. 2) Zone 2 - Use Buffer. The area between the Zone 1 Vegetation Buffer and setback line (setbacks are listed in Table 8.1) in all shoreline areas is designated as Zone 2 Use Buffer. In these areas, removal of existing native vegetation shall be limited as provided in Table 8.1 and uses limited to low intensity recreation, agricultural, residential uses and water-dependent and authorized/permitted water-related commercial uses.

8.01 A. 16. d. Buffer Width Averaging. The total required shoreline buffer (Zone 1+ Zone 2) width may be modified by the Administrator for existing lots of record in

1 - Vegetation buffers are required for all shoreline developments in all environments.

2 -Riparian fish and wildlife buffer standards are required for critical areas that meet PH status. Shoreline buffers in this SMP shall serve as PH buffers for CA in shorelines.

place at the time of adoption of this Program, or legally created thereafter, by averaging buffer widths based on a critical areas report, mitigation management plan and SEPA document prepared by a qualified professional and submitted by the applicant. Buffer width averaging shall only be allowed where the applicant demonstrates all of the following:

- 8.01 A. 16. d. 1)** The project site and adjoining area contains variations in sensitivity due to existing physical characteristics or the character of the buffer varies in slope, soils, or vegetation;
- 8.01 A. 16. d. 2)** The width averaging shall not adversely affect the project site and adjoining area and buffer's functional value;
- 8.01 A. 16. d. 3)** The total area contained within the buffer after averaging is no less than that contained within the standard buffer prior to averaging unless a standard reduction is permitted through an administrative reduction as specified in Administrative Buffer Reduction (Section 8.01 A.15. e.).
- 8.01 A. 16. d. 4)** The minimum buffer width at its narrowest point shall not be less than seventy-five (75%) percent of the buffer width established under Table 8.01.
- 8.01 A. 16. d. 5)** Sites which have had buffer widths reduced or modified, by any prior action administered by the local government are only eligible for the provisions of this section if the modification shall not result in reduced buffer area.

8.01 A. 16. e. Administrative Buffer Reduction. The Administrator shall have the authority to reduce buffer widths established in Table 8.1 on a case-by-case basis; provided that the general standards for avoidance and minimization in Section 11.01 B. 3. h. 1) i shall apply, and when the applicant demonstrates to the satisfaction of the Administrator that all of the following criteria have been met:

- 8.01 A. 16. e. 1)** The buffer reduction shall not result in a net loss of functions of the habitat buffer.
- 8.01 A. 16. e. 2)** The maximum buffer width reduction allowed shall not exceed twenty-five (25%) percent total required buffer established in Table 8.1.
- 8.01 A. 16. e. 3)** The buffer width reduction is contingent upon the submittal and approval of a critical areas report, mitigation management plan and SEPA document in conformance with Sections 11.01 B. 3. d., 11.01 B. 3 h.
- 8.01 A. 16. e. 4)** Sites which have had buffer widths reduced or modified, by any prior action administered by the local government are only eligible for the provisions of this section if the modification shall not result in reduced buffer area.
- 8.01 A. 16. e. 5)** In cases where there is less than 25' of existing riparian vegetation, the width of the buffers may be reduced, subject to the buffer Width Averaging and Administrative Buffer Reduction standards established below. To support a claim that the Buffer should be reduced, proof may include, but is not limited to, photographs of existing site conditions, and opinions of qualified professionals.

8.01 A. 16. f. Activities Exempt from Buffers and Setbacks: The following development activities are not subject to buffers and setbacks, provided that they are constructed and maintained in a manner that minimizes adverse impacts on shoreline ecological functions, and provided further that they comply with all the applicable

regulations herein:

8.01 A. 16. f. 1) Water-Oriented Dependent Development: Those portions of approved water-oriented dependent development that requires a location waterward of the ordinary high water mark of streams, rivers, lakes, ponds, associated wetlands, and/or within their associated buffers.

8.01 A. 16. f. 2) Underground Utilities: Underground utilities, including stormwater outfalls and conveyance pipes.

8.01 A. 16. f. 3) Modifications Necessary for Agency Compliance: Modifications to existing development that are necessary to comply with environmental requirements of any agency, when otherwise consistent with the Shoreline Master Program, provided that the reviewing official determines that:

- i.** The facility cannot meet the dimensional standard and accomplish the purpose for which it is intended;
- ii.** The facility is located, designed, and constructed to meet specified dimensional standards to the maximum extent feasible; and
- iii.** The modification is in conformance with the provisions for non-conforming development and uses.

8.01 A. 16. f. 4) Necessary Access: Roads, railways, and other essential public facilities that must cross shorelines and are necessary to access approved water-dependent development subject to development standards in Section E- Use Regulations.

8.01 A. 16. f. 5) Stairs and Walkways: Stairs and walkways not greater than 5 feet in width or 18 inches in height above grade, except for railings.

8.01 A. 16. f. 6) Essential Public Facilities: An essential public facility or public utility where the reviewing official determines that:

- i.** The facility cannot meet the dimensional standard and accomplish the purpose for which it is intended; and
- ii.** The facility is located, designed, and constructed to meet specified dimensional standards to the maximum extent feasible.

8.01 A. 16. f. 7) Flood Storage: Approved compensating flood storage areas.

8.01 A. 16. g Buffer Exemption Criteria: As determined by the Administrator, for development proposed on sites separated from the shoreline by intervening, and lawfully created public roads, railroads, other off-site substantial existing improvements, or an intervening parcel under separate ownership, the requirements of this code for a vegetation buffer may be waived. For the purposes of this section, the intervening lots/parcels, roads, or other substantial improvements shall be found to:

8.01 A. 16. g. 1) Separate the subject upland property from the water body due to their height or width; and

8.01 A. 16. g. 2) Substantially prevent or impair delivery of most ecological functions from the subject upland property to the water body.

8.01 A. 17. All clearing and grading activities shall be limited to the minimum necessary for the allowed or permitted development and shall comply with the provisions of Tables 8.1 and 8.3 and the regulations in Section 8.02 K. 1. u., and Sections 8.03 A, B and G.

8.01 A. 18. The town of Winthrop shall give preference to biological or mechanical means rather than herbicides or insecticides for weed and pest control in shoreline areas. When agricultural chemicals, fertilizers and other spray materials are used, provisions shall be made to minimize their entry into any body of water by following guidance found in Eastern Washington Stormwater manual and seeking guidance provided by WS Dept of Agriculture and **Appendix B**. Spraying over open water is prohibited except to control known risks to public health or as approved by the State for treatment of aquatic weeds. Herbicides and pesticides shall not be applied or allowed to directly enter water bodies or wetlands unless approved for such use by the appropriate agencies.

8.01 A. 19. All shoreline uses and activities shall comply with the Stormwater Management Manual for Eastern Washington (Washington Department of Ecology Publication 04-10-076, as amended). Specific requirements include, but are not limited to:

8.01 A. 19. a Solid and liquid wastes, untreated effluents, oil, chemicals, and other hazardous materials shall not be allowed to enter any body of water or to be discharged onto land. Equipment for the transportation, storage, handling, or application of such materials shall be maintained in a safe and leak-proof condition. If there is evidence of leakage, the further use of such equipment shall be suspended until the deficiency has been satisfactorily corrected.

8.01 A. 19. b All shoreline uses and activities in all shoreline designations, both during construction and for the life of the project, shall use best management practices to minimize any increase in surface water runoff and to control, treat, and release surface water runoff so that receiving water quality and shoreline ecological functions are not adversely affected. Such measures may include but are not limited to low impact development, dikes, catch basins, settling ponds, oil/water separators, grassy swales, interceptor drains, and landscaped buffers. All measures shall be adequately maintained to insure proper functioning over time. The *Stormwater Management Manual for Eastern Washington* (Washington Department of Ecology Publication 04-10-076, as amended) shall provide the preferred guidance for surface water runoff best management practices.

8.01 A. 20. All shoreline areas to be disturbed by transportation, utility projects in all shoreline designations shall be restored in compliance with an approved mitigation management plan and be subject to posting a reclamation bond. Vegetation from the recommended list or other species authorized by the Town shall be used. Planting of non-native plant species shall be prohibited in Zone 1 buffer areas. Plants that may compromise shoreline values shall be prohibited. The permit application submittal shall identify the size, location, and species of plants that will be used. The agency or developer maintaining the facility shall also be responsible for maintaining the vegetation until it is established. See Section 8.03 G Vegetation Conservation for specific regulations and standards.

8.01 A. 21. All shoreline areas to be disturbed by residential, commercial or industrial development in all shoreline designations shall be restored in compliance with an approved mitigation management plan (if required) and be subject to posting a reclamation bond. Vegetation from the recommended list or other species authorized by the Town shall be used. Planting of non-native plant species shall be prohibited within Zone 1 buffers. Plants

that may compromise shoreline values shall be prohibited. The permit application submittal shall identify the size, location, and species of plants that will be used. The owner or manager of the use shall also be responsible for maintaining the vegetation until it is established. See Section 8.03 G Vegetation Conservation for specific regulations and standards.

TABLE 8.1 SHORELINE DEVELOPMENT STANDARDS

All uses and activities must comply with all applicable standards for the shoreline designation where the use or activity will occur. All development standards are subject to modification based on a site specific assessment, but in no case shall the standards be reduced greater than 25% of the minimums stated below without the approval of a Shoreline Variance.

Standards	Aquatic	Natural	Shoreline Recreation	Urban Conservancy	Shoreline Residential	High Intensity
Zone 1 + 2 Combined Vegetation and Use Buffer Width and Setback⁷						
Non-Water Dependent or Oriented Uses and Activities	N/A	N/A	80'	100'	50'	30'
Water-Oriented Uses and Activities	N/A	N/A	30'	30'	30'	25'
Water Dependent Uses and Activities ³	N/A	N/A	10'	10'	20'	10'
Zone 1 Vegetative Buffer Width⁴						
Non-Water Dependent or Oriented Uses and Activities	N/A	N/A	40'	50'	25'	15'
Water-Oriented Uses and Activities	N/A	N/A	15'	15'	15'	12.5'
Water Dependent Uses and Activities	N/A	N/A	5'	5'	10'	5'
Zone 1 Vegetation Buffer Allowed Alterations						
% of Vegetation Buffer that may be altered for view corridor	N/A	N/A	20%	10%	25%	30%
Zone 2 Use Buffer Width⁵						
Non-Water Dependent or Oriented Uses and Activities	N/A	N/A	40'	50'	25'	15'
Water-Oriented Uses and Activities	N/A	N/A	15'	15'	15'	12.5'
Water Dependent Uses and Activities	N/A	N/A	5'	5'	10'	5'
Zone 2 Use Buffer Allowed Alterations						
% of Use Buffer that may be altered in total for allowed uses and view corridors	N/A	N/A	40%	20%	50%	60%
Dimensions/Lot Coverage Requirements						
Minimum Lot size (acres) ⁶	N/A	N/A	1	5	5000 sq ft	2,500 sq ft
Minimum Water Frontage ⁷	N/A	N/A	100'	100'	70'	50'
Maximum lot Coverage	N/A	N/A	30%	40%	50%	50%
Side Yard setbacks	N/A	N/A	10	10	10	0 ⁸
Maximum Structure Height						

3 The setback may be reduced to 0' for those water-dependent uses (e.g. aquaculture, marinas, boat launches) that require location adjoining the water, but in all cases such a setback shall be limited to the smallest area possible.

4 The Zone 1 Vegetation Buffer is 50% of the setback.

5 The area between the Vegetation Buffer and Setback intended for low impact uses and activities subject to standards

6 Minimum lot size may be increased based on applicable comprehensive plan and zoning regulations, but in no case shall be reduced without the approval of a variance. In addition minimum lot size only applies to lots or parcels created subsequent to the date of adoption of this SMP, lots existing at the time of adoption shall be considered existing conforming parcels.

7 Minimum water frontage only applies to lots or parcels created subsequent to the date of adoption of this SMP, lots existing at the time of adoption shall be considered existing conforming parcels.

8 COMMUNITY NEEDS TO INDIVIDUALIZE in order to achieve 0 setback, must meet goals.....

Standards	Aquatic	Natural	Shoreline Recreation	Urban Conservancy	Shoreline Residential	High Intensity
Non-Water Oriented Uses and Activities	N/A	N/A	35'	35'	35'	35'
Water-Oriented Uses and Activities	N/A	N/A	25'	25'	25'	35'
Water Dependent Uses and Activities	10'	N/A	20'	20'	20'	35'

8.02 Use and Designation Specific Regulations

8.02 A. Accessory Utilities

8.02 A. 1. Accessory Utilities – General Regulations

Accessory utilities are small-scale distribution facilities connected directly to the uses along the shoreline. Electrical, gas, telephone, cable, water and sewer lines serving a residential development or a commercial establishment are examples of utilities accessory to shoreline uses. Transmission facilities related to a hydropower generating facility are not accessory utilities—they are primary utility facilities.

8.02 A. 1. a. Sites disturbed for utility installation shall be stabilized during and immediately following construction to avoid adverse impacts from erosion.

8.02 A. 1. b. Sites disturbed for utility installation shall be replanted using native species from the recommended list, with a diversity and type similar to or better than that which originally occurred on the site. Questions about appropriate diversity, plant type, and plant species shall be directed to agencies with expertise, such as the departments of Ecology and Fish and Wildlife.

8.02 A. 1. c. Accessory utilities shall be placed landward of the permitted use setback requirements found in Table 8.1. Compliance with local health district standards for the placement of onsite sewer systems shall be indicated on pre-application drawings. If feasible, utility lines shall be placed underground. Where lines must be placed aboveground, consideration shall be given to the maintenance of trees in the vicinity of the lines, and the utility line located to eliminate the need for topping or pruning trees.

8.02 A. 1. d. Except where no other feasible alternative exists, accessory utilities that require continued maintenance (i.e. no growth over septic systems, electrical transmission lines that require removal of undergrowth) shall not be placed in Zone 1 or 2 Buffers (between OHWM and structure setback), and;

8.02 A. 1. e. Accessory Utilities should not result in a net loss of shoreline ecological functions or significant impacts to other shoreline resources and values.

8.02 A. 1. f. Accessory Utilities should not obstruct views or vistas that may alter the visual character of the shoreline environment and its associated water body. Measures to conceal or shield accessory utilities in the shoreline from the water or to protect important viewsheds or vistas from the shoreline may be required as conditions for building and development permits.

8.02 A. 1. g. Aesthetic measures such as material and color selections to mitigate visual impacts including, but not limited to, light pollution, glare, visual obstructions of views and vistas may be required by the administrator.

8.02 A. 1. h. Underground placement shall given preference over overhead or above ground utilities where feasible.

8.02 A. 2. Accessory Utilities Designation Specific Requirements:

8.02 A. 2. a. *Aquatic*

8.02 A. 2. a. 1) Prohibited except those required to serve a permitted water dependent use.

8.02 A. 2. b. *Natural, Urban Conservancy, Shoreline Recreation, Shoreline Residential and High Intensity*

8.02 A. 2. b. 1) Allowed.

8.02 B. Agriculture

8.02 B. 1. Agriculture General Use Regulations

8.02 B. 1. a. New agricultural activities on lands that did not have agricultural activities in place at the time of adoption of this Master Program; conversion of agricultural lands or the development of non-agricultural activities on agricultural lands; and uses in support of agricultural activities are governed by the provisions of this Master Program and subject to the following criteria:

8.02 B. 1. a. 1) Non-Agricultural land⁹ converted to an agricultural use shall preserve pre-existing riparian habitat and will have a buffer strip of native vegetation no less than the Zone 1 Vegetation Buffer setback for the shoreline designation where it is located. Said buffer will be established and maintained along shorelines to protect shoreline ecological functions. Disturbance of ground in Zone 2 of the Use Buffer is subject to Lot Coverage standards.

8.02 B. 1. a. 2) Uses and activities shall be consistent with regulations specific to the shoreline designation in which the site is located, including regulations in the tables of uses and development standards;

8.02 B. 1. a. 3) Uses and activities shall be located and designed to ensure no net loss of ecological functions;

8.02 B. 1. a. 4) Uses and activities shall not have a significant impact on other shoreline ecological function.

8.02 B. 1. b. Discharge of any manure storage facility into ground or surface water is prohibited.

8.02 B. 1. c. New feedlots, AFOS and CAFOS, or any animal feeding operation that is subject to a CAFO permit as defined by Department of Ecology in WAC 173-95A-020 and manure lagoons are prohibited within shoreline jurisdiction.

8.02 B. 1. d. Nothing in this section limits or changes the terms of the current exception to the definition of substantial development. A substantial development permit shall be required for all agricultural development not specifically exempted by the provisions of RCW 90.58.030(3)(a)(vi).

8.02 B. 2. Agriculture - Designation Specific Regulations

8.02 B. 2. a. *Aquatic, Natural*

8.02 B. 2. a. 1) Prohibited

8.02 B. 2. b. *Shoreline Recreation, Shoreline Residential*

8.02 B. 2. b. 1) Preference shall be given to non-commercial, community and/or personal gardens that may be used for personal use or small-scale market gardens

9 - Non-agricultural lands are those lands that have not been subject to agriculture uses as defined in Chapter 2.

8.02 B. 2. b. 2) Conversion of non-agricultural land to an agricultural use - substantial development permit.

8.02 B. 2. c. *Urban Conservancy and High Intensity*

8.02 B. 2. c. 1) Conversion of non-agricultural land to an agricultural use for commercial purposes shall require a conditional use permit.

8.02 C. Aquaculture

8.02 C. 1. Aquaculture - General Use Regulations

8.02 C. 1. a. Aquaculture projects that involve minimal or no substrate modification shall be given preference over those that involve substantial modification. The applicant shall demonstrate that the degree of proposed substrate modification is the minimum necessary for feasible aquaculture operations at the site. The installation of submerged structures and floating structures shall be allowed only when the applicant demonstrates that no alternative method of operation is feasible.

8.02 C. 1. b. Aquaculture projects that involve minimal or no impact on the aesthetic qualities of the shoreline shall be given preference over those that involve substantial impact. The applicant shall demonstrate that the aesthetic impact is the minimum necessary for feasible aquaculture operations at the site.

8.02 C. 1. c. Aquaculture projects that would have a significant adverse impact on natural, dynamic shoreline processes, or that would result in a net loss of shoreline ecological functions (including spreading disease to native aquatic life or establishing new nonnative species that cause significant ecological impacts), shall be prohibited.

8.02 C. 1. d. Aquaculture practices shall be designed to minimize use of artificial substances and shall use chemical compounds that are least persistent and have the least impact on plants, animals and water quality. Herbicides and pesticides shall be used only in conformance with state and federal standard and to the minimum extent needed for the health of the aquaculture activity.

8.02 C. 1. e. Aquaculture projects that would significantly conflict with navigation or with established water-dependent uses shall be prohibited.

8.02 C. 1. f. Applications for aquaculture projects shall include all information necessary to conduct a thorough evaluation of the proposed aquaculture activity, including but not limited to the following:

8.02 C. 1. f. 1) A site plan map including:

- i.** The perimeter of the proposed aquaculture operations area.
- ii.** Existing bathymetry depths based on the Ordinary High Water Mark (OHWM).
- iii.** Adjacent upland use, vegetation, presence of structures, docks, bulkheads and other modifications. If there are shore stabilization structures, provide the beach elevation at the toe of the structure and the top of the structure (OHWM datum).
- iv.** Areas where specific substrate modification will take place or structures will be constructed or installed.
- v.** Access provisions.

- vi. Location of storage or processing structures or facilities.

8.02 C. 1. f. 2) A baseline description of existing conditions, including best available information on:

- i. Water quality
- ii. Prevailing storm wind conditions
- iii. Current flows
- iv. Flushing rates
- v. Areas of differing substrate composition.
- vi. Areas of aquatic, and upland vegetation complexes.
- vii. Existing shoreline or water uses and structures.
- viii. Aquatic and benthic organisms.
- ix. Assessment of aquatic species, and spawning and other lifecycle use of, or adjacent to, the site. Further baseline studies including surveys and sampling may be required depending upon the adequacy of available information, existing conditions, and the nature of the proposal.

8.02 C. 1. f. 3) A detailed description of the project proposal including:

- i. Species to be reared.
- ii. Substrate modification or vegetation removal.
- iii. Planting, harvest and processing location, method and timing, including work proposal and construction techniques proposed (list all hand tools, machinery used (such as track hoes, trucks or barges), type of work, frequency, and duration.
- iv. Anticipated use of any feed, pesticides, herbicides, antibiotics, vaccines, growth stimulants, antifouling agents, or other chemicals, and an assessment of predicted impacts. No such materials shall be used until approval is obtained from all appropriate State and Federal agencies, including but not limited to the U.S. Food and Drug Administration, and the Washington State departments of Ecology, Fish and Wildlife, and Agriculture, as required, and proof thereof is submitted to the local government with jurisdiction. Compounds with the least persistence shall be used. An annual report of antibiotic use shall be submitted to the Okanogan County Health District. The report shall indicate the type and amount of antibiotics used during the previous calendar year. Actual usage data for all chemicals and antibiotics shall be maintained for review by Health District staff at all times.
- v. Number of employees/workers necessary for the project, including average and peak employment.
- vi. Methods of waste disposal and predator control.

- vii.** Methods to address pollutant loading, including biological oxygen demand (BOD).
- viii.** Assessment of potential impacts on shoreline ecological functions and processes addressing the baseline conditions identified in the *Shoreline Characterization*, including but not limited to watershed-level, indirect and cumulative effects.
- ix.** For floating culture facilities or other structures, the local government with jurisdiction may require a visual impact analysis. (See the Department of Ecology's "Aquaculture Siting Study" 1986 for general approach.) Depending on the size and complexity of the proposal, such analysis may be prepared by the applicant without professional assistance, provided that it includes an adequate assessment of impacts.
- x.** Information demonstrating that the site has natural potential for the type(s) of aquaculture proposed, due to necessary substrate or other conditions, as well as water quality suitable for the type(s) of aquaculture proposed.
- xi.** Information demonstrating that the proposed aquaculture activities will not result in a net loss of shoreline ecological functions or processes or adversely affect Critical Areas.
- xii.** Information demonstrating that the proposed aquaculture activities will not substantially and materially conflict with areas devoted to established uses of the aquatic environment. Such uses include but are not limited to navigation, moorage, sport or commercial fishing, underwater utilities, and scientific research. Existing public opportunities for gathering wild stock aquatic resources on public lands shall be addressed in any application for aquaculture on public bedlands. Compensation for loss of public access to public aquatic resources may be required.
- xiii.** Other pertinent information deemed necessary by the Administrator. Applications for aquaculture activities must demonstrate that the proposed activity will be compatible with surrounding existing and planned uses.
- xiv.** Aquaculture activities shall comply with all applicable noise, air, and water quality standards. All projects shall be designed, operated and maintained to minimize odor and noise.
- xv.** Aquaculture activities shall be restricted to reasonable hours and/or days of operation when necessary to minimize substantial, adverse impacts from noise, light, and/or glare on nearby residents, other sensitive uses or critical habitat.
- xvi.** Aquaculture facilities shall not introduce incompatible visual elements or substantially degrade the aesthetic qualities of the shoreline. Aquaculture structures and equipment, except navigation aids, shall be designed, operated and maintained to blend into their surroundings through the use of appropriate colors and materials.

8.02 C. 1. g. If uncertainty exists regarding potential impacts of a proposed aquaculture activity, and for all experimental aquaculture activities, unless otherwise provided for, the local government with jurisdiction shall require baseline and periodic operational monitoring by a consultant approved by said government, at the applicant's expense, which continue until adequate information is available to determine the success of the project and the magnitude of any probable significant adverse environmental impacts. Permits for such activities shall include specific performance measures and provisions for adjustment or termination of the project at any time if monitoring indicates significant, adverse environmental impacts that cannot be adequately mitigated.

8.02 C. 1. h. All aquaculture projects shall be submitted for review to local, state and federal agencies with expertise, including the Washington departments of Ecology and of Fish and Wildlife, and to the operators of affected FERC licensed hydro-projects. The local government with jurisdiction shall make available to those agencies the *Shoreline Inventory and Characterization* and maps developed as part of this SMP and shall request technical assistance in establishing any conditions that should be required of a project and in assessing the monitoring plan.

8.02 C. 1. i. New aquatic species that have not previously been cultivated in Washington State shall not be introduced without prior written approval of the Director of the Washington State Department of Fish and Wildlife and the Director of the Washington Department of Health.

8.02 C. 1. j. Except for the sorting or culling of the cultured organism after harvest and the washing or removal of surface materials or organisms prior to or after harvest, no processing of any aquaculture product shall occur in or over the water unless specifically approved by permit. All other processing and processing facilities shall be located landward of the ordinary high water mark.

8.02 C. 1. k. Aquaculture wastes shall be disposed of in a manner that will ensure strict compliance with all applicable waste disposal standards, including but not limited to the Federal Clean Water Act, Section 401, and the Washington State Water Pollution Control Act, RCW Chapter 90.48. No garbage, wastes or debris shall be allowed to accumulate at the site of any aquaculture operation.

8.02 C. 1. l. Predator control shall not involve killing or harassment of birds or mammals. Approved controls include, but are not limited to, overhead netting for birds. The use of other non-lethal, non-abusive predator control measures shall be contingent upon receipt of written approval from the National Marine Fisheries Service or the U.S. Fish and Wildlife Service, as required.

8.02 C. 1. m. In the event of a significant fish kill at the site of a net pen facility, the aquaculture operator shall immediately report to the Okanogan County Health District stating the cause of death and shall detail remedial action(s) to be implemented to prevent reoccurrence. Permits shall include provisions for adjustment or termination of the project at any time if such an event cannot be remediated to the satisfaction of the Health District may be required.

8.02 C. 1. n. All floating and submerged aquaculture structures and facilities in navigable waters shall be marked in accordance with U.S. Coast Guard requirements.

8.02 C. 1. o. The rights of treaty tribes to aquatic resources within their usual and accustomed areas shall be addressed through direct coordination between the applicant and the affected tribe(s) as part of the permit review process.

8.02 C. 1. p. Aquaculture structures and equipment shall be of sound construction and shall be so maintained. Abandoned or unsafe structures and equipment shall be removed or repaired promptly by the owner. Where any structure might constitute a potential hazard to the public in the future, the local government with jurisdiction shall require the posting of a bond commensurate with the cost of removal or repair. Said government may abate an abandoned or unsafe structure pursuant to the provisions of [cite local code or administrative provisions of this SMP].

8.02 C. 2. Aquaculture - Designation Specific Requirements

8.02 C. 2. a. Aquatic

8.02 C. 2. a. 1) Conditional use permit

8.02 C. 2. b. Shoreline Recreation, Shoreline Residential, High Intensity

8.02 C. 2. b. 1) All aquaculture located upland of the aquatic zone shall be permitted through a SDP only if in compliance with the other applicable sections of this SMP.

8.02 C. 2. c. Urban Conservancy

8.02 C. 2. c. 1) Prohibited

8.02 D. Archaeological, Cultural, Educational, Historic and Scientific Resources

8.02 D. 1. Archaeological, Cultural, Educational, Historic and Scientific Resources - General Use Regulations

The following regulations apply to all shoreline uses and activities in all shoreline designations and on all sites within shoreline jurisdiction having archaeological, cultural, or historic resources that are recorded at the Washington Department of Archaeology and Historic Preservation (DAHP) and/or with local jurisdictions, including the town of Winthrop, Okanogan County, the Colville Confederated Tribes (CCT), the Yakama Indian Nation (YIN) and affected Indian tribes and bands; or that have been or may be inadvertently uncovered.

8.02 D. 1. a. Archaeological sites are subject to the National Historic Preservation Act, as amended (16USC470), RCW 27.44 (Indian Graves and Records), RCW 27.53 (Archaeological Sites and Resources), and WAC 25-48 (Archaeological Excavation and Removal Permit).

8.02 D. 1. b. All Shorelines of the State and any other sites identified by the DAHP and/or the CCT or YIN as having a high probability of containing significant archaeological and historic resources shall be considered suspected historic, cultural, or archaeological resources.

8.02 D. 1. c. Known or suspected historic, cultural, and archaeological sites:

8.02 D. 1. c. 1) Notification of DAHP, or CCT and/or YIN and, if required, preparation of an evaluation and a report meeting the minimum reporting standards of the DAHP or Colville and/or Yakama Tribes (as appropriate). Such a report shall be prepared by a cultural resource management professional who meets the qualification standards promulgated by the National Park Service and published in 36 CFR Part 61, shall be required before the start of any ground disturbance work in any area known to contain archaeological, cultural, or historic resources, regardless of whether a shoreline permit or exemption is required.

8.02 D. 1. c. 2) Upon receipt of application for a shoreline permit or request for a statement of exemption for development on properties within 500 feet of a site known to contain an historic, cultural or archaeological resource(s), the local government with jurisdiction shall require an evaluation and a report meeting the minimum reporting standards of the DAHP, Colville and/or Yakama Tribes (as appropriate), prepared by a cultural resource management professional who meets the qualification standards promulgated by the National Park Service and published in 36 CFR Part 61; provided that, the provisions of this section may be waived if the Administrator determines that the proposed development activities do not include any ground disturbing activities and will not impact a known historic, cultural or archaeological site.

i. The fee for the services of the cultural resource management professional shall be paid by the applicant. The applicant shall submit a minimum of five (5) copies of the site assessment to the Administrator for distribution to the applicable parties for review.

ii. If the evaluation identifies the presence of significant historic, cultural, or archaeological resources, a Cultural Resource Management Plan (CRMP) shall be prepared by a cultural resource management professional who meets the qualification standards promulgated by the National Park Service and published in 36 CFR Part 61. The fee for the services of the cultural resource management professional shall be paid by the applicant. In the preparation of such plans, the cultural resource management professional shall solicit comments from the DAHP, the History and Archeology Department of the CCT, and any Indian or First Nations tribes or bands known to be affected. Comments received shall be incorporated into the conclusions and recommended conditions of the CRMP to the maximum extent practicable. The applicant shall submit a minimum of five (5) copies of the CRMP to the Administrator for distribution to the applicable parties for review.

iii. The recommendations and conclusions of the CRMP shall be used to assist the Administrator in making final administrative decisions concerning the presence and extent of historic, cultural, and archaeological resources and appropriate mitigating measures. The Administrator shall consult with the DAHP, the History and Archeology Department of the CCT, and any affected Indian or First Nations tribes or bands prior to approval of the CRMP.

iv. The Administrator may reject or request revision of the conclusions reached in a CRMP when the Administrator can demonstrate that the assessment is inaccurate or does not fully address the historic, cultural, and archaeological resource management concerns involved.

8.02 D. 1. c. 3) Upon receipt of a complete development permit application in an area of known or suspected historic, cultural, or archaeological resources, the local government with jurisdiction shall notify and request a recommendation from appropriate agencies, including the DAHP, the CCT, and any Indian or First Nations tribes or bands known to be affected. Recommendations of such agencies and other affected persons shall be duly considered and adhered to whenever feasible. Notification shall include the following information:

- i.** The date of application, the date of notice of completion of the application, and the date of the notification;
- ii.** A site map including the street address, tax parcel number, township, range, and section of the proposed project area;
- iii.** A description of the proposed project action and a list of the project permits included in the application, and, if applicable, a list of any studies requested by the local government with jurisdiction;

- iv.** The identification of other permits not included in the application, to the extent known by the local government with jurisdiction;
- v.** The identification of existing environmental documents that evaluate the proposed project and, if not otherwise stated on the document providing notice of application, the location where the application and any studies can be reviewed;
- vi.** Any other information determined appropriate by the local government with jurisdiction;
- vii.** A statement indicating those development regulations that will be used for project mitigation or a determination of consistency, if they have been identified at the time of notice;
- viii.** A statement of the limits of the comment period and the right of each agency to comment on the application within a thirty (30) day time period, request a copy of the decision once made, and appeal a decision when allowed by law.

8.02 D. 1. c. 4) In granting shoreline permits or statements of exemption for development on properties within 500 feet of a site known to contain an historic, cultural or archaeological resource(s), the local government with jurisdiction may attach conditions to provide sufficient time and/or conditions for consultation with the DAHP, the CCT, and any affected Indian or First Nations tribes or bands, and to ensure that historic, cultural, and archaeological resources are properly protected, or for appropriate agencies to contact property owners regarding purchase or other long-term arrangements. Provision for the protection and preservation of historic, cultural, and archaeological sites shall be incorporated to the maximum extent practicable. Permit or other requirements administered by the DAHP pursuant to RCW 27.44 and RCW 27.53 may apply in addition to the provisions of this SMP.

8.02 D. 1. d. Inadvertent Discovery

8.02 D. 1. d. 1) All shoreline permits shall contain provisions requiring that, whenever historic, cultural or archaeological sites or artifacts are discovered in the process of development in shoreline areas, work on that portion of the development site shall be stopped immediately, the site secured, and the find reported as soon as possible to the Administrator.

8.02 D. 1. d. 2) Upon notification of such find, the property owner shall notify the DAHP, the History and Archaeology Department of the CCT, and any Indian or First Nations tribes or bands known to be affected. Notification to agencies shall include the information specified for notification under the heading “Known or suspected historic, cultural, and archaeological sites” above.

8.02 D. 1. d. 3) Upon notification of such find, the Administrator shall conduct a site investigation to determine the significance of the discovery. Based upon the findings of the site investigation and consultation with the parties listed above, the Administrator may require that an immediate evaluation be conducted or may allow stopped work to resume. The evaluation shall meet the minimum reporting standards of the DAHP and shall be conducted by a cultural resource management professional who meets the qualification standards promulgated by the National Park Service and published in 36 CFR Part 61, to determine the presence of significant historic, cultural, or archaeological resources. The fee for the services of the cultural resource management professional shall be paid by the landowner or responsible party. The applicant shall submit a minimum of five (5) copies of the evaluation and accompanying report to the Administrator for distribution to the applicable parties for review.

8.02 D. 1. d. 4) If an evaluation is required, the area of inadvertent discovery shall be stabilized, contained or otherwise protected until the evaluation is completed. The evaluation shall be distributed to the DAHP, the History and Archaeology Department of the CCT, and any Indian or First Nations tribes or bands known to be affected for a thirty (30) day review period or, in the case of inadvertent discovery of human remains, a thirty (30) day review period to determine the significance of the discovery. If the above listed agencies or governments have determined that the site is not significant, or if the above listed agencies or governments have failed to respond within the applicable review period following receipt of the site assessment, stopped work may resume.

8.02 D. 1. d. 5) Upon receipt of a positive determination of a site's significance, the Administrator may invoke the provisions for known sites, above, for a Cultural Resource Management Plan.

8.02 D. 1. e. The requirements of this section shall not apply where an applicant has obtained an approved Archeological Excavation and Removal permit from the DAHP pursuant to WAC 25-48-060, provided that the applicant must adhere to the requirements of said approved permit.

8.02 D. 2. Archaeological, Cultural, Educational, Historic and Scientific Uses - Designation specific requirements

8.02 D. 2. a. *Aquatic, Natural, Urban Conservancy, Shoreline Recreation, Shoreline Residential, High Intensity*

8.02 D. 2. a. 1) Exempt.

8.02 E. Boating Facilities

8.02 E. 1. a. Boating Facilities - General Regulations When establishing regulation of motorized vs non-motorized uses, hours and other limitations on boating use of waters in the town of Winthrop, the regulations shall be based, in part, on protection of shoreline functions and values.

8.02 E. 1. b. Mitigation for any adverse development impacts of boating facilities shall be required. On-site mitigation shall be preferred; however, in cases in which meaningful on-site mitigation is not feasible, off-site mitigation may be allowed. In such instances a mitigation management plan shall be required, and shall specify a suitable mitigation site. Adverse development impacts to adjacent properties shall not be allowed.

8.02 E. 1. c. New boating facilities shall be consistent with the applicable local comprehensive and recreation plans. When new sites are considered, sufficient evidence must be presented to show that existing public and commercial marinas, docks, and boat launches are inadequate and cannot be expanded to meet regional demand.

8.02 E. 1. d. For commercial and public boating facilities, the perimeter of parking and storage areas shall be landscaped to provide a visual and noise buffer between adjoining dissimilar uses or scenic areas, using primarily native, self-sustaining vegetation from the recommended list). Landscaping along the waterward side shall also be required. The permit application submittal shall identify the size, location, and species of plants that will be used.

8.02 E. 1. e. Boating facilities shall be located where no or minimal shoreline stabilization will be necessary and where water depths are adequate to eliminate or minimize the need for offshore or foreshore channel construction dredging, maintenance dredging, spoil disposal, filling, beach enhancement, and other maintenance activities.

8.02 E. 1. f. When plastics and other non-biodegradable materials are used in boating facilities, precautions shall be taken to ensure their containment.

8.02 E. 1. g. Boating facility design shall minimize interference with geohydraulic processes and disruption of existing shore forms.

8.02 E. 1. h. Parking facilities serving a boating facility shall be located outside shoreline jurisdiction, or, if that is not feasible, shall be located landward of the Zone 2 - Use Buffer (Table 8.1).

8.02 E. 1. i. Boating facilities, including boat lifts, and navigation aids shall be positioned so as not to be a hazard to navigation.

8.02 E. 1. j. Boating facilities shall provide public access in accordance with Section 8.02 K Public Access.

8.02 E. 1. k. Boating facilities shall be located and designed so their structures and operations will be aesthetically compatible with the area visually affected and will not unreasonably impair shoreline views. Use of natural non-reflective materials is encouraged.

8.02 E. 1. l. The local government with jurisdiction shall request technical assistance from agencies with jurisdiction and/or knowledge, including but not limited to the Washington departments of Ecology, of Fish and Wildlife, and of Health; and shall make available to those agencies the *Shoreline Inventory and Characterization* and maps developed as part of this master program. The local government with jurisdiction shall consider the comments received from those agencies before making a decision on whether or not to approve the permit, and any conditions or modifications required.

8.02 E. 10. Commercial and Public Boat Launch Ramps - Designation Specific Requirements

8.02 E. 10. a. *Aquatic*: allowed or prohibited based on the regulation for the adjoining upland shoreline designation.

8.02 E. 10. a. 1) Commercial: prohibited

8.02 E. 10. a. 2) Public: Conditional use permit

8.02 E. 10. b. *Natural, Urban Conservancy, Shoreline Residential*

8.02 E. 10. b. 1) Commercial: prohibited

8.02 E. 10. b. 2) Public: Conditional use permit

8.02 E. 10. c. *High Intensity, Shoreline Recreation*

8.02 E. 10. c. 1) Commercial: Substantial development permit.

8.02 E. 10. c. 2) Public: Substantial development permit.

8.02 E. 11. Private Boat Launch Ramps - Designation Specific Requirements

8.02 E. 11. a. *Aquatic, Natural, Shoreline Recreation, Urban Conservancy, Shoreline Residential and High Intensity*

8.02 E. 11. a. 1) Conditional use permit.

8.02 F. Commercial Uses and Activities

8.02 F. 1. Commercial Uses and Activities – General Regulations

8.02 F. 1. a. Commercial developments permitted in shoreline areas are, in descending order of preference:

- 8.02 F. 1. a. 1)** Water-dependent uses;
- 8.02 F. 1. a. 2)** Water-related uses;
- 8.02 F. 1. a. 3)** Water-enjoyment uses; and
- 8.02 F. 1. a. 4)** Non-water-oriented uses

8.02 F. 1. b. The Administrator shall require and use the following information in his or her review of commercial development proposals:

- 8.02 F. 1. b. 1)** Consistency with local comprehensive plan and zoning;
- 8.02 F. 1. b. 2)** Specific nature of the commercial activity;
- 8.02 F. 1. b. 3)** Need for shoreline frontage; determination if use qualifies as water-dependent, water-related or water-enjoyment
- 8.02 F. 1. b. 4)** Provisions for public visual and/or physical access to the shoreline;
- 8.02 F. 1. b. 5)** Provisions to ensure that the development will not result in loss of shoreline functions including conditions for ecological restoration;
- 8.02 F. 1. b. 6)** Measures for enhancing the relationship of the use to the shoreline, including aesthetics and landscaping; and
- 8.02 F. 1. b. 7)** The *Shoreline Inventory and Characterization* and accompanying maps.

8.02 F. 1. c. Nonwater-oriented commercial uses are prohibited in all shoreline designations unless they meet the following criteria:

- 8.02 F. 1. c. 1)** The subject property is designated and zoned for commercial development in the Town's Comprehensive Plan and Zoning Code.
- 8.02 F. 1. c. 2)** The use is part of a mixed-use project that includes water-dependent uses and provides a significant public benefit with respect to the Shoreline Management Act's objectives such as providing public access and ecological restoration; or
- 8.02 F. 1. c. 3)** Navigability is severely limited at the proposed site; and the commercial use provides a significant public benefit with respect to the Shoreline Management Act's objectives such as providing public access and ecological restoration.

8.02 F. 1. c. 4) Nonwater-dependent commercial uses should 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.

8.02 F. 1. c. 5) The use serves a function supportive of water oriented or water dependent uses or is otherwise consistent with approved community planning.

8.02 F. 1. d. Commercial development shall be designed and maintained in a neat, orderly, and environmentally-compatible manner, consistent with the character and features of the surrounding area. To that end, the Administrator may, following a public hearing, adjust the project dimensions and alter required setbacks established in Table 8.1 and/or prescribe screening conditions. Need and special considerations for landscaping and buffer areas shall also be subject to review and approval.

8.02 F. 1. d. 1) All commercial loading and service areas shall be located on the upland (landward) side of the commercial structure to the maximum extent practical or provisions shall be made to separate and screen the loading and service areas from the shoreline.

8.02 F. 1. d. 2) Commercial developments where landscaping is proposed shall be landscaped to visually enhance the shoreline area and contribute to shoreline functions and values, using primarily native, self-sustaining vegetation. Plants from the recommended list are preferred. The permit application submittal shall identify the size, location, and species of plants that will be used.

8.02 E. 1. Commercial Uses and Activities - Designation Specific Requirements:

8.02 F. 2. a. *Aquatic*

8.02 F. 2. a. 1) Commercial development shall be limited to water-dependent uses that require an over-the-water location and are allowed in the landward shoreline designation.

8.02 F. 2. a. 2) Conditional use permit.

8.02 F. 2. b. *Natural, Urban Conservancy*

8.02 F. 2. b. 1) Prohibited.

8.02 F. 2. c. *Shoreline Recreation, Shoreline Residential and High Intensity*

8.02 F. 2. c. 1) Commercial development is allowed with a substantial development permit provided such development is consistent with local zoning regulations or directly related to an existing conforming or permitted agricultural, recreational or residential use and be subject to the development standards set forth in Table 8.1 as follows:

- i.** Commercial development shall be water-oriented, except as allowed in 8.02 F.1. c.
- ii.** Commercial development shall be consistent with local comprehensive plan provisions and zoning regulations.

8.02 G. Industrial Uses and Activities

8.02 G. 1. Industrial Uses and Activities – General Regulations

8.02 G. 1. a. Industrial developments permitted in shoreline areas are, in descending order of preference:

- 8.02 G. 1. a. 1)** Water-dependent uses;
- 8.02 G. 1. a. 2)** Water-related uses;
- 8.02 G. 1. a. 3)** Water-enjoyment uses; and
- 8.02 G. 1. a. 4)** Non-water-oriented uses

8.02 G. 1. b. New nonwater-related industrial development shall be prohibited in all shoreline designations except when:

- 8.02 G. 1. b. 1)** The use is part of a mixed-use project that includes water-dependent uses and provides a significant public benefit with respect to the Shoreline Management Act's objectives such as providing public access and ecological restoration; or
- 8.02 G. 1. b. 2)** Navigability is severely limited at the proposed site; and the industrial use provides a significant public benefit with respect to the Shoreline Management Act's objectives such as providing public access and ecological restoration.
- 8.02 G. 1. b. 3)** In areas designated or zoned for industrial use, nonwater-oriented industrial uses may be allowed if the site is physically separated from the shoreline by another property or public right of way.

8.02 G. 1. c. The Administrator shall require and use the following information in his or her review of industrial development proposals:

- 8.02 G. 1. c. 1)** Consistency with local comprehensive plans and zoning;
- 8.02 G. 1. c. 2)** Specific nature of the industrial activity;
- 8.02 G. 1. c. 3)** Need for shoreline frontage;
- 8.02 G. 1. c. 4)** Provisions for public visual and/or physical access to the shoreline;
- 8.02 G. 1. c. 5)** Provisions to ensure that the development will not result in loss of shoreline functions or reduction in shoreline values;
- 8.02 G. 1. c. 6)** Measures for enhancing the relationship of the use to the shoreline, including aesthetics and landscaping; and
- 8.02 G. 1. c. 7)** The *Shoreline Inventory and Characterization* and accompanying maps.

8.02 G. 1. d. Industrial development shall consider incorporating public access as mitigation for impacts to shoreline resources and values unless public access cannot be provided in a manner that does not result in significant interference with operations or hazards to life or property, as provided in WAC [173-26-221\(4\)](#).

8.02 G. 1. e. Industrial development and redevelopment are encouraged to locate where environmental cleanup and restoration of the shoreline area can be incorporated.

8.02 G. 1. f. Where industrial development is allowed, it shall be located, designed, or constructed in a manner that assures no net loss of shoreline ecological functions and such that it does not have significant adverse impacts to other shoreline resources and values.

8.02 G. 1. g. Industrial development shall be designed and maintained in a neat, orderly, and environmentally-compatible manner, consistent with the character and features of the surrounding area. To that end, the Administrator may, following a public hearing, adjust the project dimensions and increase required setbacks established in Table 8.1 and/or prescribe reasonable use-intensity and screening conditions. Need and special considerations for landscaping and buffer areas shall also be subject to review and approval.

8.02 G. 1. h. New over-water construction for industrial uses is prohibited unless it can be shown to be essential to a water-dependent industrial use.

8.02 G. 1. i. All loading and service areas shall be located on the upland (landward) side of the industrial facility or provisions shall be made to separate and screen the loading and service areas from the shoreline, unless such provisions are infeasible due to the specific nature of the water-dependent industrial use or the proposed circulation poses a safety hazard to existing traffic patterns.

8.02 G. 1. j. Industrial development on private and public lands shall consider incorporating public access as mitigation for impacts to shoreline resources and values unless public access cannot be provided in a manner that does not result in significant interference with operations or hazards to life or property, as provided in WAC [173-26-221\(4\)](#).

8.02 G. 1. k. Industrial developments shall be landscaped to visually enhance the shoreline area and contribute to shoreline functions and values, using primarily native, self-sustaining vegetation. Plants from the recommended list (see Chapter 14) are preferred. Plants that may compromise shoreline values shall be prohibited. The permit application submittal shall identify the size, location, and species of plants that will be used.

8.02 G. 1. l. Drainage and surface runoff from industrial developments shall be controlled so that pollutants will not be carried into water bodies.

8.02 G. 2. Industrial Uses - Designation Specific Requirements:

8.02 G. 2. a. *Aquatic, Natural*

8.02 G. 2. a. 1) Industrial development shall be limited to water-dependent uses that require an over-the-water location and are allowed in the landward shoreline designation.

8.02 G. 2. a. 2) All such uses shall require a conditional use permit and be subject to the development standards set forth in Table 8.1.

8.02 G. 2. b. *Shoreline Recreation, Urban Conservancy, Shoreline Residential*

8.02 G. 2. b. 1) New industrial development shall be prohibited.

8.02 G. 2. b. 2) Expansion of pre-existing water-dependent industrial uses in these zones shall be permitted through a conditional use permit.

8.02 G. 2. b. 3) Expansion of pre-existing industrial uses shall not alter the visual character of the zone and be subject to mitigations measures that will enhance the natural character of the shoreline.

8.02 G. 2. c. *High Intensity*

8.02 G. 2. c. 1) Industrial development is allowed with a substantial development permit provided such development is conforming to the underlying land use zone or associated with a permitted agricultural or industrial use and be subject to the development standards set forth in Table 8.1.

8.02 G. 2. c. 2) Industrial development shall be water dependent, water related or water-oriented or be physically separated from the shoreline by another property under separate ownership, a flood control structure, or public right of way.

8.02 G. 2. c. 3) In no case shall non-water dependent new industrial development warrant to construction of flood protection structures or shoreline stabilization.

8.02 H. Mining Uses and Activities

8.02 H. 1. Mining Uses and Activities – General Regulations

8.02 H. 1. a. Mineral prospecting and placer mining are allowed subject to compliance with the current edition of the Washington State Department of Fish and Wildlife’s Gold and Fish pamphlet, all other prospecting and placer mining activities at different times or locations, or with different equipment than allowed in WDFW Gold and Fish shall require a Conditional Use Permit. This provision does not apply to mining that meets the definition of a substantial development (See Chapter 2 – Definitions).

8.02 H. 1. b. All surface mining shall be conducted in strict conformance with the Washington State Surface Mining Reclamation Act, Chapter 78.44 RCW. Surface mining permits shall be coordinated with state and federal permits.

8.02 H. 1. c. Mining not meeting the definition of mineral prospecting or placer mining shall require a conditional use permit.

8.02 H. 1. d. In all shoreline designations, mining shall only be allowed by Conditional Use Permit and only when the proposed mine site has been identified as a mineral land of long term commercial significance.

8.02 H. 1. e. Mining waterward of the ordinary high-water mark:

8.02 H. 1. e. 1) Mining waterward of the ordinary high-water mark) of a river shall not be permitted unless:

- i.** Removal of specified quantities of sand and gravel or other materials at specific locations will not adversely affect the natural processes of gravel transportation for the river system as a whole; and
- ii.** The mining and any associated permitted activities will not have significant adverse impacts to habitat for priority species nor cause a net loss of ecological functions of the shoreline.

8.02 H. 1. e. 2) The determinations required by Section 8.02 H.1. a., above, shall be made consistent with RCW 90.58.100(1) and WAC [173-26-201](#) (2)(a) and shall be integrated with required SEPA review.

8.02 H. 1. e. 3) In considering renewal, extension or reauthorization of gravel bar and other in-channel mining operations in locations where they have previously been conducted, local government shall require compliance with the provisions of 8.02.H.1.f and 8.02 H. 1. g. to the extent that no such review has previously been conducted. Where there has been prior review, local government shall review previous determinations comparable to the requirements of this section to assure compliance with the provisions of Section 8.02 H. 1. g. and 8.02 H. 1 g.

8.02 H. 1. e. 4) The provisions of this section do not apply to dredging of authorized navigation channels when conducted in accordance with WAC [173-26-231](#) (3)(f).

8.02 H. 1. f. The Administrator shall require and use the following information in his or her review of mining proposals (except mineral prospecting and placer mining):

- 8.02 H. 1. f. 1)** Materials to be mined;
- 8.02 H. 1. f. 2)** Need for those materials;
- 8.02 H. 1. f. 3)** Need for shoreline location;
- 8.02 H. 1. f. 4)** Quantity of materials to be mined, by type;
- 8.02 H. 1. f. 5)** Quality of materials to be mined, by type. For certain minerals, an evaluation by a geologist licensed under the provisions of RCW 18.220 may be required;
- 8.02 H. 1. f. 6)** Mining technique and equipment to be used;
- 8.02 H. 1. f. 7)** Depth of overburden and proposed depth of mining;
- 8.02 H. 1. f. 8)** Lateral extent and depth of total mineral deposit;
- 8.02 H. 1. f. 9)** Cross section diagrams indicating present and proposed elevations and/or extraction levels;
- 8.02 H. 1. f. 10)** Existing drainage patterns, seasonal or continuous, and proposed alterations thereof including transport and deposition of sediment and channel changes that may result;
- 8.02 H. 1. f. 11)** Proposed means of controlling surface runoff and preventing or minimizing erosion and sedimentation including impacts to banks on both sides of the excavation;
- 8.02 H. 1. f. 12)** The location and sensitivity of any affected critical areas;
- 8.02 H. 1. f. 13)** Subsurface water resources and aquifer recharge areas, including origin, depth, and extent;
- 8.02 H. 1. f. 14)** Quality analysis of overburden, excavation materials, and tailings, with plans for storage, use, or disposition;
- 8.02 H. 1. f. 15)** Mining plan and scheduling, including seasonal, phasing, and daily operation schedules;
- 8.02 H. 1. f. 16)** Reclamation plan that meets the requirements of this master program and Chapter 78.44 RCW (for surface mining operations only);
- 8.02 H. 1. f. 17)** Screening, earthen berm buffering, and/or fencing plans; and
- 8.02 H. 1. f. 18)** Impacts to aquatic and shoreline habitat.

8.02 H. 1. g. Mining operations (except mineral prospecting and placer mining) shall be sited, designed, conducted, and completed (including reclamation) to ensure no net loss of shoreline ecological functions, including watershed-scale functions and cumulative impacts. A reclamation plan prepared by a qualified professional and providing for restoration of slope stability, water conditions, safety conditions, and, where relevant, vegetative cover shall be required for any new mining and associated activities. Meeting the “no net loss” standard shall include avoidance and mitigation of adverse impacts during the course of mining and reclamation, and shall be based on an evaluation of the final reclamation required for the site. Preference shall be given to mining proposals that result in the creation, restoration, or enhancement of habitat for priority species. The proposed subsequent use of mined property must be consistent with the provisions of the environment designation in which the property is located. Performance security requirements are as follows:

8.02 H. 1. g. 1) Surface mining operations must comply with the relevant performance security requirements of RCW 78.44.

8.02 H. 1. g. 2) A public or governmental agency shall not be required to post performance security.

8.02 H. 1. g. 3) All other approved mining operations shall be required to post performance security in an amount adequate to complete reclamation, based on an approved reclamation plan.

8.02 H. 1. h. Mining operations shall comply with all local, state, and federal water quality standards and pollution control laws. Operations shall use effective techniques to prevent or minimize surface water runoff, erosion and sedimentation; prevent reduction of natural flows; protect all shoreline areas from acidic or toxic materials; and maintain the natural drainage courses of all streams. Surface water runoff shall be impounded as necessary to prevent accelerated runoff and erosion.

8.02 H. 1. i. Overburden, mining debris, and tailings shall not be placed in water bodies or floodways and shall be stored and protected so as to prevent or minimize erosion or seepage to surface and ground waters.

8.02 H. 1. j. Precautions shall be taken to insure that stagnant or standing water especially that of a toxic or noxious nature does not develop.

8.02 H. 1. k. In no case shall mining operations impair lateral support and thereby result in earth movements extending beyond the boundaries of the site.

8.02 H. 1. l. If substantial evidence indicates that mining operations are causing, or continued operation would cause, significant and adverse impacts to water quality, habitat, or any shoreline ecological function, the Administrator shall terminate the shoreline permit for mining or impose further conditions on the mining operation to ensure no net loss of shoreline ecological functions.

8.02 H. 2. Mining - Designation Specific Requirements:

8.02 H. 2. a. *Aquatic*

8.02 H. 2. a. 1) Mining shall be allowed or prohibited based on the regulation for the adjoining shoreline designation landward of the OHWM.

8.02 H. 2. a. 2) Mineral prospecting and placer mining are allowed subject to the provisions of Section 8.02 H. 1. a.

8.02 H. 2. b. *Natural, Shoreline Recreation, Urban Conservancy, Shoreline Residential and High Intensity*

8.02 H. 2. b. 1) Mining is prohibited, unless the subject property has been designated as mineral lands of long-term commercial significance which shall require a conditional use permit.

8.02 H. 2. b. 2) Mineral prospecting and placer mining are allowed subject to the provisions of this section, above.

8.02 I. Municipal (includes all local governments)

Municipal uses are those in support of local government functions and services (e.g. public schools, city hall, maintenance facilities, hospitals, etc...). For the purposes of this SMP, recreational uses and utility facilities are excluded and shall comply with applicable sections.

8.02 I. 1. Municipal – General Regulations

8.02 I. 1. a. Non-water-oriented municipal uses will be permitted in shoreline areas only when no other feasible location is available, and only in compliance with bulk and dimensional standards established in Table 8.1 and shall be in compliance with the clearing and grading ordinance section.

8.02 I. 1. b. The Administrator shall require and use the following information in his or her review of municipal use proposals:

- 8.02 I. 2. b. 1)** Specific nature of the proposed activity;
- 8.02 I. 2. b. 2)** Need for shoreline location; including minimizing portion of use within shoreline jurisdictions.
- 8.02 I. 2. b. 3)** Other locations considered and the reasons for choosing a shoreline site;
- 8.02 I. 2. b. 4)** Provisions for public visual and/or physical access to the shoreline;
- 8.02 I. 2. b. 5)** Provisions to ensure that the development will not result in loss of shoreline functions or reduction in shoreline values;
- 8.02 I. 2. b. 6)** Measures for enhancing the relationship of the use to the shoreline, including aesthetics and landscaping; and
- 8.02 I. 2. b. 7)** The *Shoreline Inventory and Characterization* and maps developed as part of this SMP.

8.02 I. 1. c. Municipal uses shall be designed and maintained in a neat, orderly, and environmentally-compatible manner, consistent with the character and features of the surrounding area and result in no net loss of shoreline function. To that end, the Administrator may, following a public hearing, adjust the project dimensions and increase required setbacks established in Table 8.1 and screening conditions. Need and special considerations for landscaping and buffer areas shall also be subject to review and approval.

8.02 I. 1. d. All loading and service areas shall be located on the upland (landward) side of the principal structure or provisions shall be made to separate and screen the loading and service areas from the shoreline.

8.02 I. 1. e. Municipal uses shall be landscaped to visually enhance the shoreline area and contribute to shoreline functions and values, using primarily native, self-sustaining vegetation. Plants from the recommended list (see Chapter 14) are preferred. Plants that may compromise shoreline values shall be prohibited. The permit application submittal shall include a landscape plan identifying the size, location, and species of plants that will be used.

8.02 I. 1. f. Drainage and surface runoff from municipal uses shall be controlled so that pollutants will not be carried into water bodies complying with the Eastern Washington Stormwater Manual.

8.02 I. 1. g. Public access facilities must be provided, dedicated, improved, and maintained as part of any shoreline municipal use.

8.02 I. 2. Municipal - Designation Specific Requirements:

8.02 I. 2. a. *Aquatic and Natural*

8.02 I. 2. a. 1) Non-water related and water-oriented uses and activities require a conditional use permit.

8.02 I. 2. a. 2) Water-dependent uses and activities required a substantial development permit.

8.02 I. 2. b. *Shoreline Recreation, Urban Conservancy, Shoreline Residential and High Intensity*

8.02 I. 2. b. 1) Non-water related uses and activities require a conditional use permit.

8.02 I. 2. b. 2) Water-oriented and water-dependent uses require a substantial development permit

8.02 J. Parking

8.02 J. 1. Parking – General Regulations

8.02 J. 1. a. Any new and expanded parking area in a shoreline area shall directly serve an existing (legal at the time of adoption of this SMP) shoreline use.

8.02 J. 1. b. All parking shall be prohibited over water.

8.02 J. 1. c. Parking facilities shall prevent surface water runoff from contaminating water bodies, using the best available technology and best management practices, including complying with applicable Eastern Washington Storm Water Manual, and a maintenance program to assure proper functioning over time of any stormwater facilities required to comply with this regulation.

8.02 J. 1. d. New commercial and industrial parking facilities, necessary to support an authorized use, in shoreline areas shall be sited in compliance with bulk and dimensional standards of Table 8.1, comply with Clearing and Grading Standards and designed to minimize visual, pedestrian, and other transportation network impacts as well as to minimize environmental impact on shoreline resources.

8.02 J. 1. e. Commercial parking facilities shall be adequately screened and landscaped along the waterward side with plants from the recommended list. Where a flood levee exists, it shall be considered screening.

8.02 J. 1. f. Parking facilities that will serve more than one use, such as recreational use on weekends and commercial use on weekdays shall be allowed and preferred to single use parking facilities.

8.02 J. 2. Parking - Designation Specific Regulations

8.02 J. 2. a. *Aquatic, Natural, Shoreline Recreation, Urban Conservancy, Shoreline Residential and High Intensity*

8.02 J. 2. a. 1) Parking as a primary use - prohibited.

8.02 K. Public Access

8.02 K. 1. Public Access – General Regulations

8.02 K. 1. a. For the purpose of this SMP, the town of Winthrop comprehensive plan shall be considered the official public access plans.

8.02 K. 1. b. Development, uses, and activities shall be designed and operated to avoid unnecessarily impairing or detracting from the public's physical or visual access to the water and shorelines.

8.02 K. 1. c. Public access sites shall be dedicated to a public or non-profit entity unless a formal homeowners association or other legal entity exists or will be established to ensure the long term viability of the access.

8.02 K. 1. d. The Signage regulations in Section 8.02 O Signage of this chapter and the Shoreline Development Standards in Table 8.1 have been established in part to prevent impairment of or detracting from visual public access.

8.02 K. 1. e. Provisions for public or community access to the shoreline shall be incorporated into the shoreline development proposal for any action requiring such access unless the applicant demonstrates that such access is infeasible because at least one of the following provisions applies:

8.02 K. 1. a. 1) Unavoidable health or safety hazards to the public exist which cannot be prevented by any practicable means;

8.02 K. 1. a. 2) Inherent security requirements of the use cannot be satisfied through the application of alternative design features or other solutions;

8.02 K. 1. a. 3) Unacceptable environmental harm will result from the public access which cannot be mitigated;

8.02 K. 1. a. 4) Significant undue and unavoidable conflict between the proposed access and adjacent uses would occur and cannot be mitigated;

8.02 K. 1. a. 5) The cost of providing the access or alternative water oriented amenity is disproportionate to the cost of the proposed development.

8.02 K. 1. a. 6) All reasonable alternatives have been evaluated, including but not limited to:

- i.** Regulating access by such means as limiting hours of use to daylight hours;
- ii.** Designing separation of uses and activities, i.e., fences, terracing, hedges, landscaping, signage, etc;
- iii.** Provision of an access at a site physically separated from the proposal such as a nearby street end, an off-site view point or trail system.

8.02 K. 1. f. Dedication and improvement of physical public access shall be required as part of all shoreline development by public entities, including local governments, port districts, state agencies, and public utility districts, with the following exceptions:

8.02 K. 1. f. 1) Where an approved public access plan developed as part of a regulatory licensing process is submitted. Said public access plan must provide adequate public access to the shoreline, based on a needs analysis. Said public access facilities shall be developed, improved, and maintained as part of an approved Shoreline Recreational Plan and installed in a timely manner in coordination with the approved shoreline development.

8.02 K. 1. f. 2) Where more effective public access to the shoreline can be achieved through implementation of the adopted recreation plan of the local government with jurisdiction, the public entity proposing the development may contribute proportionally to implementation of the recreation plan in lieu of providing public access on site.

8.02 K. 1. f. 3) Where the community makes a finding that no additional public access is required consistent with local comprehensive plans.

8.02 K. 1. g. Dedication and improvement of public physical access shall be required in all shoreline areas as follows:

8.02 K. 1. g. 1) As part of all marina development;

8.02 K. 1. g. 2) As part of boating facilities designed to serve the public or located on and adjoining on publically owned uplands.

8.02 K. 1. g. 3) As part of all new non-water-dependent commercial and industrial development, when consistent with local comprehensive plans, provided the intended use does not pose a safety threat to the general public.

8.02 K. 1. g. 4) As part of all primary utility development on public land. The requirement may be waived where an approved public access plan has been adopted as part of a regulatory licensing process. Said public access plan must provide adequate public access, based on a needs analysis.

8.02 K. 1. g. 5) As part of all subdivisions of land into more than four parcels if consistent with local comprehensive plans.

8.02 K. 1. g. 6) As part of new structural public flood hazard reduction measures, such as dikes and levees.

8.02 K. 1. h. Adjoining short plats totaling more than four parcels and submitted within 5 years of each other by the same applicant shall be subject to public access dedications.

8.02 K. 1. i. The scope and scale of public access shall be commensurate with the scale of the proposed land use action and the need for public physical and visual access opportunities in the vicinity of the proposed action.

8.02 K. 1. j. In all cases, the minimum width of shoreline public access easements shall be ten feet (10'), unless the Administrator determines that undue hardship would result. In such cases, easement or right-of-way widths may be reduced only to the extent necessary to relieve the demonstrated hardship.

8.02 K. 1. k. Where there is an irreconcilable conflict between water-dependant shoreline uses or physical public access and maintenance of views from adjacent properties, the water-dependant uses and physical public access shall have priority, unless there is a compelling reason to the contrary.

8.02 K. 1. l. Rights of navigation shall be protected in conformance with the provisions of this Master Program.

8.02 K. 1. m. Public access sites and facilities shall be designed, constructed, operated, and maintained to result in no net loss of shoreline ecological functions.

8.02 K. 1. n. Public access sites shall be connected directly to the best-suited public street by way of a right of way or easement dedicated, improved, and maintained for public use. This requirement may be modified if the cost would be disproportionate to the scale of the proposed land use action.

8.02 K. 1. o. Any vacation of right-of-way within the shoreline must comply with RCW 35.79.035, "Limitations on vacations of streets abutting bodies of water — Procedure."

8.02 K. 1. p. Where feasible, and in accordance with the Americans with Disabilities Act (ADA), public access sites shall be made barrier-free for people with disabilities.

8.02 K. 1. q. Required public access sites shall be developed and available for public use at the time of occupancy of the use or activity; or in accordance with other provisions for guaranteeing installation through a monetary performance assurance.

8.02 K. 1. r. Public access facilities shall be maintained over the life of the use or development. Future actions by successors in interest or other parties shall not diminish the usefulness or value of required public access areas and associated improvements.

8.02 K. 1. s. Public access easements shall be recorded on the deed of title and/or on the face of the plat or short plat as conditions running in perpetuity. Said recording with the Okanogan County Auditor's Office shall occur at the time of permit approval. Future actions by the applicant, successors in interest, or other parties shall not diminish the usefulness or value of the public access provided.

8.02 K. 1. t. The standard State-approved logo or other approved signs that indicate the public's right of access and hours of access shall be installed and maintained by the owner. Such signs shall be posted in conspicuous locations at public access sites.

8.02 K. 1. u. View Corridor Provisions.

8.02 K. 1. i. 1) View corridors shall comply with provisions for vegetation management and buffer requirements for the shoreline designation for the project site.

- 8.02 K. 1. i. 2)** View corridors may be allowed, subject to the provisions of this section, to provide the general public and property owners with opportunities for visual access to water bodies associated with shoreline lots.
- 8.02 K. 1. i. 3)** Vegetation removal that would be likely to result in significant soil erosion or the need for structural shoreline stabilization measures is prohibited.
- 8.02 K. 1. i. 4)** Prior to removing vegetation for a view corridor, the owner of the shoreline parcel on which vegetation alterations are proposed must submit:
- i.** A signed application;
 - ii.** A scaled graphic which demonstrates the areal extent of the view corridor (width and depth), showing existing vegetation and proposed alterations; and
 - iii.** A graphic and/or site photos for the entire shoreline frontage, which demonstrates that the building site and proposed or existing structure does not, or will not when constructed, have a view of the water body, taking into account site topography and the location of shoreline vegetation on the parcel.
- 8.02 K. 1. i. 5)** In creating a view corridor, removal of vegetation shall be limited to the minimum necessary to preserve or enhance views. In no case shall the view corridor exceed the provisions found in Table 8.1.
- i.** The following standards apply:
 - (1)** View corridors are not allowed in the Natural and Urban Conservancy designations unless associated with an existing use.
 - (2)** Pruning of native trees shall not exceed 30% of a tree's limbs.
 - (3)** Shrubs shall not be pruned to a height of less than six feet (6').
 - (4)** Removal or pruning of vegetation waterward of the ordinary high water mark is prohibited.
 - (5)** Once a view corridor or other shoreline access corridor has been established, no additional vegetation pruning for the view corridor is authorized except as may be permitted to maintain the approved view corridor from the re-growth of pruned limbs.
 - (6)** On any site on which a buffer has been reduced or modified, a view corridor will be allowed only when a critical areas report can clearly establish that fragmentation of fish and wildlife habitat will not occur, and that there will be no net loss of shoreline ecological functions.
 - ii.** The following exceptions apply:
 - (1)** Plants that represent a hazard to safety, security, or shoreline ecological functions may be replaced with plants from the recommended list, provided a mitigation plan is submitted and approved. The mitigation plan must meet the standards of the local government with jurisdiction for a mitigation plan for Critical Fish and Wildlife Habitat.

(2) Non-native or invasive species may be replaced with plants from the recommended list, provided a mitigation management plan is submitted and approved. The mitigation plan must meet the standards of the local government with jurisdiction for a mitigation plan for Critical Fish and Wildlife Habitat.

8.02 K. 1. i. 6) Topping of trees and removal of trees to provide or enhance visual access shall be limited to the requirements found in Table 8.01.

8.02 K. 1. i. 7) Removal of diseased, damaged or stressed trees for the purpose of forest stewardship and conservation, property protection, or fire safety are subject to approval through a shoreline exemption

8.02 L. Utilities

Utilities are transmission, collection, production, or treatment facilities that are generally regional or area wide in scope and provide the primary service to a large area and may or may not be connected directly to the uses along the shoreline. Utilities include primary transmission facilities related to a hydropower and communications, and distribution or collection systems for water, sewer mains, gas and oil pipelines, and wastewater and water treatment plants. On-site utility features serving a shoreline property, such as water, sewer or gas line connections to a residence, are "accessory utilities" and shall be considered a part of the primary use and are subject to the regulations contained in Section 8.02 A Accessory Utilities.

8.02 L. 1. Utilities – General Regulations

8.02 L. 1. a. Utility development shall be located within public rights-of-ways or existing infrastructure corridors whenever possible and be coordinated with government agencies to provide for compatible multiple uses.

8.02 L. 1. b. Utilities shall be located and designed to avoid damage or degradation to shoreline ecological function including wetlands, marshes, bogs and other swamps; important wildlife areas; and other unique and fragile areas.

8.02 L. 1. c. Underwater pipelines which transport material intrinsically harmful to aquatic life or potentially injurious to water quality, including sewer lines, shall be provided with automatic shut off valves at each end of the underwater segments.

8.02 L. 1. d. Sites disturbed for utility installation shall be stabilized during and immediately following construction to avoid adverse impacts from erosion and shoreline ecological function, including protection of water quality using Best Management Practices. .

8.02 L. 1. e. Sites disturbed for utility installation shall be replanted using native species from the recommended list, with a diversity and type similar to or better than that which originally occurred on the site. Questions about appropriate diversity, plant type, and plant species shall be directed to agencies with expertise, such as the departments of Ecology and Fish and Wildlife.

8.02 L. 1. f. The placing of utility lines shall not obstruct or hinder physical or visual access to shoreline areas from public right-of-ways or public use areas. Utilities shall be placed landward of the primary structural setback requirements found in Table 8.1. Compliance with local health district standards for the placement of onsite sewer systems shall be indicated on pre-application drawings. If feasible, utility lines shall be placed underground. Where lines must be placed aboveground, consideration shall be given to the maintenance of trees in the vicinity of the lines, and the utility line located to eliminate the need for topping or pruning trees.

8.02 L. 1. g. Except where no other feasible alternative exists, utilities that require continued maintenance and therefore disrupt ecological processes (i.e. electrical transmission lines that require removal of undergrowth) shall not be placed in Vegetation Conservation areas (between OHWM and structure setback).

8.02 L. 2. Utilities - Designation Specific Regulations

8.02 L. 2. a. *Aquatic, Natural, Shoreline Recreation, Urban Conservancy, Shoreline Residential and High Intensity*

8.02 L. 2. a. 1) Conditional use permit.

8.02 M. Recreation

8.02 M. 1. Recreation – General Regulations

8.02 M. 1. a. Shoreline recreational development is given priority and shall be primarily related to access to, enjoyment and use of the water and shorelines of the state.

8.02 M. 1. b. State-owned shorelines are particularly adapted to providing ecological study areas and other recreational uses for the public and shall be given special consideration when developing recreational uses in shoreline areas.

8.02 M. 1. c. The location, design and operation of shoreline recreational developments shall be primarily related to access, enjoyment and use of the water and shorelines of the state, consistent with the comprehensive plan and recreation plan of the local government with jurisdiction. All such uses shall not result in a net loss of shoreline function.

8.02 M. 1. d. Commercial recreational development shall comply with the provisions for commercial development Section 8.02 F Commercial.

8.02 M. 1. e. Substantial accessory use facilities, such as rest rooms, recreation halls and gymnasiums, commercial services, access roads, and parking areas shall be set back from the ordinary high water mark as specified in the Development Standards Table (Table 8.1), unless it can be shown that such facilities are water dependent and the planned location will not adversely affect shoreline functions. Such facilities may be linked to the shoreline by walkways.

8.02 M. 1. f. Shoreline recreational developments shall maintain, and, when feasible, enhance or restore desirable shoreline features including those that contribute to shoreline ecological functions and processes, scenic vistas, and aesthetic values. Removal of healthy native vegetation to enhance views shall be allowed only in compliance under Section 8.02 LK. 1. i. 1).

8.02 M. 1. g. Recreational uses shall be designed to complement their environment and surrounding land and water uses.

8.02 M. 1. h. No recreational buildings or structures shall be built over water, other than water-dependent and/or public access structures such as piers, docks, bridges, boardwalks, or viewing platforms.

8.02 M. 1. i. Each development proposal shall include a landscape plan that uses native, or native compatible self-sustaining vegetation. Removal of on-site native vegetation shall be limited to the minimum necessary for the permitted development or structures.

8.02 M. 1. j. For recreational uses such as golf courses or parklands that require the use of fertilizers, pesticides, or other chemicals, the applicant shall specify the methods that will be used to ensure that the use complies with all provisions of this master program, including preventing the chemicals from entering adjacent water bodies or wetlands. Chemical-free buffer strips may be required at the discretion of the Administrator.

8.02 M. 1. k. Recreational uses shall provide facilities for non-motorized access to the shoreline, such as pedestrian and bicycle paths, where those facilities will not result in loss of shoreline ecological functions.

8.02 M. 1. l. Recreational uses shall include adequate provisions for water supply, sewage, garbage disposal, and fire protection.

8.02 M. 1. m. Recreational development shall include adequate provisions, such as screening, buffer strips, fences, and signs, to buffer adjacent private property and natural areas and protect the value and enjoyment of those sites.

8.02 M. 1. n. Trails and paths on steep slopes shall be located, designed, and maintained to protect bank stability.

8.02 M. 1. o. Recreational uses shall be consistent with local comprehensive plan provisions and zoning regulations.

8.02 M. 1. p. No recreational uses are allowed that require fill.

8.02 J. 2. Recreation - Designation Specific Requirements:

8.02 M. 2. a. *Aquatic, Natural*

8.02 M. 2. a. 1) Recreation development shall be limited to water-dependent uses that require an over-the-water location and are allowed in the landward shoreline designation – conditional use permit.

8.02 M. 2. b. *Urban Conservancy*

8.02 M. 2. b. 1) High intensity recreation development - Conditional Use Permit.

8.02 M. 2. b. 2) Low intensity recreation development - substantial development permit.

8.02 M. 2. c. *Shoreline Recreation, Shoreline Residential and High Intensity*

8.02 M. 2. c. 1) Substantial development permit.

8.02 N. Residential Development

8.02 N. 1. Residential Development – General Regulations

8.02 N. 1. a. No lot for residential use shall be created that would not accommodate a buildable area, based on the zoning district, comprehensive plan designation and critical areas regulations, that meets the minimum building setback and other standards for the shoreline designation in which the lot is located.

8.02 N. 1. b. No lots or plats will be approved that do not meet the minimum requirements of this SMP.

8.02 N. 1. c. Plats and subdivisions shall not rely upon new shoreline stabilization or flood hazard reduction measures that would cause significant impacts to other properties or public improvements or a net loss of shoreline ecological functions.

8.02 N. 1. d. In its review of proposals for multi-lot and or multi-unit subdivisions and/or planned developments and other large developments, the city or town with jurisdiction shall require and use information about the impacts of the proposed development on shoreline ecological functions, including the cumulative impacts of exempt uses and activities within the development over time, and ensure there will be no net loss of shoreline function.

8.02 I. 2. Residential Development - Designation Specific Regulations

8.02 N. 2. a. *Aquatic*

8.02 N. 2. a. 1) Prohibited.

8.02 N. 2. b. *Natural, Urban Conservancy*

8.02 N. 2. b. 1) Subdivisions (both short and long) shall be subject to a conditional use permit and require the division to be processed as a planned development under local zoning and platting regulations.

8.02 N. 2. c. *Shoreline Recreation, Shoreline Residential and High Intensity*

8.02 N. 2. c. 1) Substantial development permit.

8.02 O. Signage

8.02 O. 1. Signage – General Regulations

The following provisions apply to any commercial or advertising sign directing attention to a business, professional service, community, site, facility, or entertainment; and to temporary and interpretive signs. Highway, public information, and temporary signs are addressed in the Use Chart.

8.02 O. 1. a. All signs shall comply with applicable regulations of the city or town in which the sign is located and any other applicable regulations (e.g., Scenic Vistas Act).

8.02 O. 1. b. Signs shall be designed and placed so that they are compatible with the aesthetic quality of the existing shoreline and adjacent land and water uses. Except as necessary for safe navigation, moorage, or public safety signs shall be located landward of the required building setback.

8.02 O. 1. c. All signs shall be located and designed to minimize interference with vistas, viewpoints, and visual access to the shoreline.

8.02 O. 1. d. No signs shall be placed on trees or other natural features that will permanently damage or kill tree or feature.

8.02 O. 1. e. Off premises and non-appurtenant signs shall not be permitted, with the following exception: temporary signs and interpretive signs related to shoreline uses and ecological functions shall be allowed where they comply with the other policies of this SMP and, in the case of temporary signs, where adequate provisions are made for timely removal.

8.02 O. 1. f. No sign shall have a surface area larger than 36 square feet.

8.02 O. 1. g. Lighting of signs shall be prohibited unless the sign is necessary for safe navigation, moorage, or public safety. On-demand lighting shall be used whenever feasible.

8.02 O. 2. Signage - Designation Specific Regulations

8.02 O. 2. a. *Aquatic and Natural*

8.02 O. 2. a. 1) All outdoor advertising, signs and billboards shall be prohibited.

8.02 O. 2. b. *Shoreline Residential and Urban Conservancy*

8.02 O. 2. b. 1) All outdoor advertising, signs and billboards shall be prohibited except:

i. Those signs necessary to protect the health, safety, and welfare of the public.

ii. Those necessary to give direction or identify and/or interpret a natural or cultural feature.

- iii. Permitted signs shall not exceed 6 square feet in surface area.
- iv. Permitted signs shall not exceed 6 feet in height.
- v. Outdoor lighting of signs in the Urban Conservancy designation shall be prohibited

8.02 O. 2. c. *Shoreline Recreation and High Intensity*

8.02 O. 2. c. 1) Outdoor advertising, signs and billboards are allowed subject to a substantial development permit and shall not exceed sq footage.

8.02 P. Transportation

8.02 P. 1. Transportation – General Regulations

Transportation development serving non-water dependent uses should avoid the shoreline area where possible to avert damage to shoreline ecological function. Transportation development serving water oriented and water related uses shall be considered as part of that use and subject to the following provisions:

8.02 P. 1. a. Plan, locate, and design proposed transportation and parking facilities where routes will have the least possible adverse effect on unique or fragile shoreline features, will not result in a net loss of shoreline ecological functions or adversely impact existing or planned water-dependent uses.

8.02 P. 1. a. 1) New roads or road expansions should not be built within shoreline jurisdiction, unless other options are unavailable and infeasible. Design of roadways through shoreline areas should occupy the least narrow horizontal profile possible to convey traffic in a safe manner measured from ditch to ditch or shoulder to shoulder (whichever is largest) to minimize the footprint of roadway.

8.02 P. 1. a. 2) Stormwater runoff from roadways should be contained using Best Management Practices

8.02 P. 1. a. 3) De-icing, salting, and graveling of roads should be conducted in accordance with Best Management Practices.

8.02 P. 1. a. 4) Surfacing materials should not input or erode sediment into waterways.

8.02 P. 1. b. Transportation and parking plans and projects shall be consistent with the master program public access policies, public access plan, and environmental protection provisions.

8.02 P. 1. c. Circulation system planning shall include integrated corridors for pedestrian, bicycle, and public transportation where appropriate. Circulation planning and projects should support existing and proposed shoreline uses that are consistent with the master program.

TABLE 8.2 SHORELINE USE & ACTIVITY TABLE

All uses and activities must comply with all applicable provisions of this Shoreline Master Program (SMP), including the General, Shoreline Modification, Use-Specific, and Shoreline Designation-Specific regulations in this Chapter. Uses and activities not listed in the Shoreline Use and Activity Chart may be allowed (with a shoreline exemption, substantial development permit, or conditional use permit), subject to approval by the Administrator, if they comply with the standards in this section and with any regulations that apply to similar uses. All shoreline permits and exemptions are subject to conditions providing for maintenance, enhancement, and/or restoration of shoreline functions.

A = Allowed – requires exemption¹⁰; or, Substantial Development or Conditional Use Permit, depending on fair market value and/or intensity of use or activity, or designation-specific requirements

SDP = Shoreline Substantial Development Permit required.

CUP = Shoreline Conditional Use Permit required.

X = Prohibited use

S = Same as in adjacent shoreline designation landward of the OHWM (applicable to areas designated Aquatic only)

N/A = Not Applicable

(–) = Subject to limitations.

(+) = Subject to conditions.

(*) = Subject to exceptions.

(a) In the event that there is a conflict between the use(s) identified in Table 8.2 and the policies or regulations in Chapters 6, 7, or 8, the policies and regulations shall apply.

(b) Aquatic: Water-dependent use only, subject to the use and development regulations of the abutting upland shoreline area designation.

¹⁰ - exempt uses and activities are defined by statute, see definitions in Chapter 2.

Table 8.2 Use and Activity Chart^(a)

Uses and Activities	Aquatic ^(b)	Natural	Shoreline Recreation	Urban Conservancy	Shoreline Residential	High Intensity
Utilities						
Primary (Section 8.02 L)	CUP	CUP	CUP	CUP	SDP	SDP
Accessory (Section 8.02 A)	X ¹¹	SDP	A	A	A	A
Agriculture (Section 8.02 B)						
Grazing/Cultivation/Orchards	X		A	A	A	A
Agricultural Buildings	X		A	A	A	A
Feedlots (CAFOS/AFOS)	X		X	X	X	X
Conversion from non-agricultural land to agricultural use	X		SDP	SDP	SDP	SDP
Archaeological Areas, Scientific, Educational and Historic Sites (Section 8.02 C)						
Archaeological Areas, Scientific, Educational and Historic Sites	A	A	A	A	A	A
Aquaculture (Section 8.02 D)						
Floating Net Pen type & Accessory structures	CUP		X	SDP	X	SDP
On shore, confined types of facilities & Accessory structures	CUP		X	SDP	SDP ¹²	SDP
Boating Facilities (Section 8.02 E)						
Boat Launch Ramps						
Commercial	A		SDP	X	X	SDP
Public	A		SDP	SDP	SDP	SDP
Private	S		CUP	CUP	CUP	SDP

11 Accessory utilities shall be prohibited except those required to serve a permitted water dependent use, which shall require a conditional use permit.

12 Requires minimum parcel size of 2 acres.

Okanogan County Regional Shoreline Master Program
Town of Winthrop SMP
Chapter 8 - Regulations for All Shoreline Uses, Activities and Designations
May 2010 DRAFT

Uses and Activities	Aquatic ^(b)	Natural	Shoreline Recreation	Urban Conservancy	Shoreline Residential	High Intensity
Commercial Development (Section 8.02 F)						
Water-dependent	CUP	X	SDP	SDP	SDP	A
Water-related/water-enjoyment	X	X	SDP	SDP	SDP	A
Non-water Oriented	X	X	X	X	X	A
Industry (Section 8.02 G)						
Water-dependent	CUP	X	X	X	X	SDP
Water-related	X	X	X	X	X	X
Nonwater Oriented	X	X	X	X	X	X
Mining (Section 8.02 H)						
Surface Mining	S		X	X	X	X
Other Mining	S		X	X	X	X
Mineral Prospecting and Placer Mining ¹³	A		A	A	A	A
Municipal Uses (Section 8.02 I)						
Water-dependent	CUP	X	A	A	A	A
Water-related/water-enjoyment	X	X	SDP	SDP	A	A
Non-water Oriented	X	X	CUP	CUP	SDP	SDP
Parking (Section 8.02 J)						
Parking appurtenant to existing permitted use	X	X	SDP	CUP	SDP	A
Commercial parking	X	X	X	X	X	X
Public Access (Section 8.02 K)						
High impact	S	X	SDP	X	X	SDP
Medium impact	S	X	SDP	X	X	SDP

¹³ If performed in compliance with WDFW Gold and Fish Pamphlet, all others CUP

Okanogan County Regional Shoreline Master Program
Town of Winthrop SMP
Chapter 8 - Regulations for All Shoreline Uses, Activities and Designations
May 2010 DRAFT

Uses and Activities	Aquatic^(b)	Natural	Shoreline Recreation	Urban Conservancy	Shoreline Residential	High Intensity
Low impact	S	SDP	SDP	SDP	SDP	SDP
<i>Recreation (Section 8.02 M)</i>						
High Intensity	S	CUP	SDP	SDP	SDP	SDP
Low Intensity / Passive	S	SDP	SDP	SDP	SDP	SDP
<i>Residential (Section 8.02 N)</i>						
Exempt single family dwellings ¹⁴	X	X	A	A	A	A
Non-exempt single family dwellings (e.g. seasonal or year round rentals)	X	SDP	SDP	X	SDP	SDP
Multi-family	X	X	SDP	X	SDP	SDP
Subdivision	A	A	A	A	A	A
<i>Signage (Section 8.02 O)</i>						
Commercial Signs – on site advertising ¹⁵	X	X	SDP	X	SDP	SDP
Commercial Signs- off-site advertising	X	X	X	X	X	X
Public Highway, Safety, Directional and Informational Signs	CUP	CUP	SDP	SDP	SDP	SDP
<i>Transportation (Section 8.02 P)</i>						
Roads and Railroads	S	CUP	SDP	SDP	SDP	SDP
<i>Shoreline Modifications (Section 8.03)</i>						
Dikes/levees (8.03 E)	CUP	CUP	CUP	CUP	CUP	CUP
Breakwaters, groins and jetties (8.03 F)	CUP	CUP	CUP	CUP	CUP	CUP
Dredging and Material Disposal ¹⁶ (8.03 C)	CUP	CUP	CUP	CUP	CUP	CUP

14 RCW 90.58.030(3)(e)(vi) Construction on shorelands by an owner, lessee, or contract purchaser of a single family residence (inclusive of accessory utilities) for his own use or for the use of his or her family, which residence does not exceed a height of thirty-five feet above average grade level and which meets all requirements of the state agency or local government having jurisdiction thereof, other than requirements imposed pursuant to this chapter (SEE WAC 173-26-211(5)(a)(ii)(C))

15 SDP requirement is only applicable to signs over the dollar threshold for an exemption.

16 All dredging shall be the minimum required to support an existing permitted or proposed allowed use and shall be subject to a conditional use permit.

Okanogan County Regional Shoreline Master Program
 Town of Winthrop SMP
 Chapter 8 - Regulations for All Shoreline Uses, Activities and Designations
 May 2010 DRAFT

Uses and Activities	Aquatic^(b)	Natural	Shoreline Recreation	Urban Conservancy	Shoreline Residential	High Intensity
Filling ¹⁷ (8.03 D)	CUP	CUP	SDP	SDP	SDP	SDP
Clearing and Grading ¹⁸ (8.03 B)	X	X	CUP	CUP	CUP	CUP
Bulkheads and revetments (8.03 F)	X	X	CUP	X	CUP	CUP
Shoreline Restoration and Enhancement ¹⁹ (8.03 A)	S	SDP	SDP	SDP	SDP	SDP
<i>Shoreline Stabilization (8.03E)</i>						
Hardening, Structural approaches	CUP	CUP	CUP	CUP	CUP	CUP
Bioengineering approaches	CUP	CUP	SDP	SDP	SDP	SDP
Shoreline Restoration and Enhancement ¹⁸	S	SDP	SDP	SDP	SDP	SDP

17 All fill is limited to the minimum amount required for existing permitted or proposed allowed uses.

18 Clearing and grading that is not part of an allowed and permitted shoreline use shall require a conditional use permit except on properties physically separated from the shoreline by another property or public right of way.

19 Restoration and enhancement projects may be exempted if part of an approved recovery plan.

8.03 Shoreline Modification Activities

Shoreline modifications are generally related to construction of a physical element such as a dike, breakwater, dredged basin, or fill, but they can include other actions such as clearing, grading, application of chemicals, or significant vegetation removal. Shoreline modifications are usually undertaken in support of or in preparation for a shoreline use; for example, dredging (shoreline modification) to allow for a marina (boating facility use).

8.03 A. General (applicable in all shoreline designations)

8.03 A. 1. All shoreline modification activities not in support of an existing conforming use or other allowed use are prohibited, unless it can be demonstrated, that such activities are necessary to protect primary structures and in the public interest or are for the maintenance, restoration or enhancement of shoreline ecological functions.

8.03 A. 2. Shoreline modifications shall result in no net loss of shoreline ecological functions. The number and extent of shoreline modifications shall be limited to the minimum required.

8.03 A. 3. Only shoreline modifications that are appropriate to the specific type of shoreline and environmental conditions shall be allowed. Preference shall be given to those types of shoreline modifications that have a lesser impact on ecological functions. For example, planting vegetation that will stabilize the shoreline is preferred rather than a concrete bulkhead.

8.03 A. 4. Ecological impacts of shoreline modifications shall be mitigated in conformance with **Critical Areas Regulation Appendix XX or SMP Section X.02.XXX.**

8.03 A. 5. All shoreline modification activities must conform to Section 8.01 General Regulations and the provisions for the appropriate shoreline designation.

8.03 B. Clearing and Grading

8.03 B. 1. Clearing and grading shall be addressed and identified in the permit or exemption application for the shoreline use or activity with which it is associated.

8.03 B. 2. Clearing or grading within required Zone 1 Vegetation and Zone 2 Use buffers and/or wetland buffers shall comply with the requirements of Section 8.01 A. 15. and Table 8.1.

8.03 B. 3. No clearing or grading shall be initiated before the permit, exemption or variance is issued.

8.03 B. 4. Existing native riparian vegetation shall be retained whenever possible.

8.03 B. 5. Grading permits:

8.03 B. 5. a. A grading permit issued by the local government with jurisdiction shall be required in the following situations:

8.03 B. 5. b. Where more than 50 cubic yards of material will be moved within a shoreline area; or

8.03 B. 5. c. Any clearing or grading within building setbacks or buffers.

8.03 B. 5. d. Where clearing and grading will modify a percentage of a site’s shoreline area landward of the building setback that is greater than the percentage or square footage (whichever is greater) specified in the following table

8.03 B. 5. e. A reduction of 25% may be permitted through the submittal of a critical areas report and mitigation plan that demonstrates the grading and clearing will not impact the shoreline ecological function or value.

Table 8.3 Shoreline Designation Specific Clearing and Grading Standards²⁰

Shoreline Designation	Percent of site located within shoreline jurisdiction that may be cleared and/or graded ²¹
High Intensity	50%
Shoreline Residential	50%
Urban Conservancy	15%
Shoreline Recreation	50%
Natural	5%
Aquatic	N/A

8.03 B. 6. In its review of clearing and grading proposals, the local government with jurisdiction shall require and utilize a clearing and grading plan that addresses species removal, replanting, irrigation, erosion and sedimentation control, and plans for protecting shoreline resources from harm.

8.03 B. 7. Grading of a development site shall not alter natural drainage patterns in manner that would increase the rate or quantity of surface run-off.

8.03 B. 8. Immediately upon completion of the construction or maintenance activity, remaining cleared areas shall be restored to a naturalistic condition using compatible, self-sustaining vegetation in accordance with Section 8.03 G Vegetation Conservation.

8.03 B. 9. Clearing by hand-held equipment of invasive non-native vegetation on the State Noxious Weed List is permitted in shoreline areas provided the disturbed area is promptly replanted with vegetation from the recommended list or if the site will fully re-vegetate with plants that will support healthy shoreline function on its own within three

20 - The standards in the table provide for the maximum percentage that may be cleared outside of Vegetation and Use Buffers.

21 - The percentages represent the maximum allowable with an increase of up to 25% permitted subject to a critical areas report and mitigation management plan that considers present ecological function, cumulative impacts of the development and restoration opportunities, both on and off-site, DOES NOT INCLUDE CLEARING WITHIN THE ZONE 1 or ZONE 2 BUFFERS.

growing seasons.

8.03 B. 10. All shoreline development and activity shall use applicable BMPs from Eastern Washington Stormwater Management to minimize increases in surface water runoff that may result from clearing and grading activity.

8.03 B. 11. Soil stabilization associated with clearing and grading shall, whenever feasible, use bioengineering or other soft stabilization techniques.

8.03 B. 12. Any significant placement of materials from off of the site, or substantial creation or raising of dry upland, shall be considered filling and shall comply with the fill provisions of Section 8.03 D Fill.

8.03 B. 13. Clearing and grading that is not part of an allowed and permitted shoreline use shall require a conditional use permit except on properties physically separated from the shoreline by another property or public right of way.

8.03 C. Dredging and Dredge Material Disposal

8.03 C. 1. The Town shall require and use the following information in its review of shoreline dredging and dredge material disposal proposals:

8.03 C. 1. a. Dredging volumes, methods, schedules, frequency, hours of operation, and procedures.

8.03 C. 1. b. Analysis of material to be dredged in compliance with Model Toxics Control Act.

8.03 C. 1. c. Method of disposal, including the location, size, capacity, and physical characteristics of the disposal site, transportation methods and routes, hours of operation, and schedule.

8.03 C. 1. d. Stability of bedlands adjacent to the proposed dredging site.

8.03 C. 1. e. Stability of geologically hazardous areas in the vicinity of the proposed dredging site.

8.03 C. 1. f. Assessment of water quality impacts.

8.03 C. 1. g. Habitat assessment meeting the standards prescribed for Fish and Wildlife Habitat Conservation Areas in Critical Areas regulations of the local government with jurisdiction, including migratory, seasonal, and spawning use areas.

8.03 C. 2. In evaluating permit applications for any dredging project, the Administrator and/or appropriate hearing or review body shall consider the need for and adverse effects of the initial dredging, subsequent maintenance dredging, and dredge disposal. Dredging and dredge material disposal shall only be permitted where it is demonstrated that the proposed actions will not:

8.03 C. 2. a. Result in significant and/or on-going damage to water quality, fish, or other biological elements;

8.03 C. 2. b. Adversely alter natural drainage and circulation patterns, or significantly reduce flood storage capacities;

8.03 C. 2. c. Affect slope stability; or

8.03 C. 2. d. Otherwise damage shoreline or aquatic resources.

8.03 C. 3. Proposals for dredging and dredge disposal shall include all feasible mitigation measures to protect fish and wildlife habitat and minimize adverse impacts such as turbidity; release of nutrients, heavy metals, sulfides, organic materials, or toxic substances; dissolved oxygen depletion; or disruption of food chains.

8.03 C. 4. Dredging and dredge material disposal shall not occur in wetlands except as authorized by Conditional Use Permit with conditions providing that valuable functions of the wetland, such as wildlife habitat and natural drainage, will not be diminished.

8.03 C. 5. Dredging waterward of the ordinary high water mark shall be allowed by conditional use permit only when:

8.03 C. 5. a. It has been proven that the development cannot be sited elsewhere and has been designed to avoid and minimize new and maintenance dredging (WAC 173-26-231(3)(f))

8.03 C. 5. b. For navigation or existing navigational access;

8.03 C. 5. c. In conjunction with a conforming allowed water-dependent use of water bodies or adjacent shorelands;

8.03 C. 5. d. As part of a habitat management plan that has been approved by the County, City or Town or other entity with jurisdiction, and has been accepted by the Washington Department of Fish and Wildlife or other agency with jurisdiction;

8.03 C. 5. e. To improve water quality;

8.03 C. 5. f. For mining, mineral extraction, mineral prospecting and placer mining as provided in Section 8.03 H Mining;

8.03 C. 5. g. In conjunction with a bridge or a navigational channel, basin, or structure for which there is a documented public need and where other feasible sites or routes do not exist; or

8.03 C. 5. h. To improve water flow and/or manage flooding only when consistent with an approved flood and/or stormwater comprehensive management plan in conjunction with a habitat mitigation management plan.

8.03 C. 6. Any impacts of dredging that cannot be avoided shall be mitigated in a manner that assures no net loss of shoreline ecological functions.

8.03 C. 7. Dredging shall use techniques that cause the minimum dispersal and broadcast of bottom material.

8.03 C. 8. Dredging for the primary purpose of obtaining material for fill is prohibited, except when the material is necessary for the restoration of ecological functions. The fill must be associated with a significant habitat enhancement project that is listed as part of a regional or watershed-scale plan, MTCA or CERCLA habitat restoration project. When allowed, the site where the fill is to be placed must be located

waterward of the OHWM (WAC 173-26-231(3)(f)) and conducted in accordance with the dredged material management program of the department of natural resources.

8.03 C. 9. Dredging to construct canals or basins for boat moorage or launching, water ski landings, swimming holes, and similar uses shall only be permitted as a conditional use and shall include a habitat enhancement/mitigation plan.

8.03 C. 10. Disposal of dredged materials shall be accomplished at approved contained upland sites in compliance with all Federal, State and local regulations.

8.03 C. 11. Depositing dredge materials in water areas shall be allowed only by Conditional Use Permit, for one or more of the following reasons:

8.03 C. 11. a. For wildlife habitat improvement.

8.03 C. 11. b. To correct problems of material distribution adversely affecting fish resources.

8.03 C. 11. c. For permitted enhancement of beaches that provide public access, where it has been conclusively demonstrated that no net loss of shoreline ecological functions will result or for public safety.

8.03 C. 12. Use of dredged material for beach enhancement shall be conducted so that:

8.03 C. 12. a. Erosion from the disposal site is minimized. Erosion of the dredged material shall not smother emergent vegetation or other shallow productive areas.

8.03 C. 12. b. To the extent possible, the volume of dredged material and frequency of disposal maintain a stable beach profile. Dredged material shall be graded as a uniform slope and contoured to reduce cove and peninsula formation and to preclude stranding of juvenile fish.

8.03 C. 13. Land disposal sites shall be replanted as soon as feasible, and in no case later than the next planting season, in order to retard wind and water erosion and to restore the wildlife habitat value of the site. Vegetation from the recommended list or other species authorized by the County, City, or Town with jurisdiction shall be used. Native plants are preferred. Plants that may compromise shoreline values are prohibited. The permit application submittal shall identify the size, location, and species of plants that will be used. The agency or developer responsible for the land disposal shall also be responsible for maintaining the vegetation as established in the approved mitigation management plan.

8.03 C. 14. Proposals for disposal in the channel migration zone is discouraged and only allowed by Conditional Use Permit (WAC 17-26-231(3)(f)). Disposal in other shoreline areas must show that the site will ultimately be suitable for a use permitted by this master program.

8.03 C. 15. Designation specific regulations.

8.03 C. 15. a. *Aquatic, Natural, , Shoreline Recreation, Urban Conservancy, Shoreline Residential and High Intensity*

8.03 C. 15. a. 1) All dredging shall be the minimum required to support an existing permitted or proposed allowed use and shall be subject to a conditional use permit.

8.03 D. Fill

8.03 D. 1. The Town shall require and use the following information in its review of fill proposals and the applicant shall submit the following on their permit or exemption application:

8.03 D. 1. a. Proposed use of the fill area.

8.03 D. 1. b. Physical characteristics, such as chemical and biological composition if appropriate, depending on where it is to be placed or will be subject to inundation.

8.03 D. 1. c. Source of the fill material.

8.03 D. 1. d. Method of placement and compaction.

8.03 D. 1. e. Location of fill relative to existing drainage patterns and wetlands.

8.03 D. 1. f. Location of the fill perimeter relative to the ordinary high water mark.

8.03 D. 1. g. Perimeter erosion control or stabilization measures.

8.03 D. 1. h. Type of surfacing and runoff control devices.

8.03 D. 2. Fill waterward of the ordinary high water mark or in wetlands shall only be permitted as a conditional use in all shoreline designations, and only for one of the following purposes:

8.03 D. 2. a. water-dependent use,

8.03 D. 2. b. public access,

8.03 D. 2. c. cleanup and disposal of contaminated sediments as part of an interagency environmental clean-up plan,

8.03 D. 2. d. disposal of dredged material considered suitable under, and conducted in accordance with the dredged material management program of the department of natural resources,

8.03 D. 2. e. expansion or alteration of transportation facilities of statewide significance currently located on the shoreline and then only upon a demonstration that alternatives to fill are not feasible, mitigation action, environmental restoration, beach nourishment or enhancement project.

8.03 D. 2. f. Fill in wetlands must comply with the wetlands provisions of the Critical Areas regulations of the town of Winthrop Critical Areas Ordinance and shall result in no net loss of wetland area in functions including lost time when the wetland does not perform the function and is subject to mitigation in this SMP.

8.03 D. 3. Pier or pile support shall be utilized whenever feasible in preference to filling. Fills for approved road, bridge or navigational structure development in

floodways or wetlands shall be permitted only if pile or pier supports are proven infeasible.

8.03 D. 4. Fills are prohibited in floodplains except where it can be clearly demonstrated that the geo-hydraulic characteristics and floodplain storage capacity will not be altered to cause increased flood hazard or other damage to life or property in excess of accepted standards provided by state and/or federal agencies.

8.03 D. 5. Fills are prohibited in floodways, and channel migration zone areas (See **CMZ Map D**) except when approved by conditional use permit and where required in conjunction with a proposed water-dependent or other use, as specified in Section 8.03 D 2 above, and where permitted by the local jurisdiction's Critical Areas regulations and any other relevant regulations or plan (e.g., flood hazard prevention regulations or Comprehensive Flood Hazard Management Plan).

8.03 D. 6. Fills shall be permitted only when it is demonstrated that the proposed action will not:

8.03 D. 6. a. Result in significant damage to water quality or fish and wildlife habitat;

8.03 D. 6. b. Adversely affect natural drainage and circulation patterns or significantly reduce flood water capacities;

8.03 D. 6. c. Affect slope stability; or

8.03 D. 6. d. Otherwise damage shoreline or aquatic resources.

8.03 D. 7. Placing fill in water bodies or wetlands to create usable land for shoreline development is prohibited and shall not be used to calculate parcel size proposed for subdivision.

8.03 D. 8. Fills shall be designed, constructed, and maintained to prevent, minimize, and control all material movement, erosion, and sedimentation from the affected area. Perimeters of permitted fill projects shall be designed and constructed with silt curtains, vegetated buffer areas, or other methods, and shall be adequately sloped to prevent erosion and sedimentation both during initial fill activities and afterwards. Such containment practices shall occur during the first growing season following completion of the fill and shall be maintained until self-sustaining. The design shall incorporate natural-appearing and self-sustaining control methods unless they can be demonstrated to be infeasible due to existing environmental conditions such as currents and weather.

8.03 D. 9. Fill materials shall be sand, gravel, rock, soil, or similar materials. Use of polluted dredge spoils, solid waste, and sanitary landfill materials is prohibited.

8.03 D. 10. Fills shall be designed to allow surface water penetration into ground water supplies where such conditions existed prior to fill. Fills shall not be permitted in aquifer recharge areas if they would have the effect of preventing percolation of the water.

8.03 D. 11. The timing of fill construction shall be regulated to result in no net loss of shoreline ecological functions, including water quality and aquatic life.

8.03 D. 12. Fill on dry land shall not result in substantial changes to patterns of surface water drainage from the project site and onto adjacent properties; within shoreline areas; into aquatic areas; or onto steep slopes or other erosion hazard areas.

8.03 D. 13. Designation specific regulations.

8.03 D. 13. a. *Aquatic, Natural, Shoreline Recreation, Urban Conservancy, Shoreline Residential and High Intensity*

8.03 D. 13. a. 1) All fill is prohibited except the minimum amount required for existing permitted or proposed allowed uses.

8.03 D. 13. a. 2) All permitted fill shall require a conditional use permit.

8.03 E. Shoreline Stabilization (See WAC 173-26-231(3)(a)(iii))

8.03 E. 1. New development shall be located and designed to avoid the need for future shoreline stabilization to the extent feasible. Subdivisions shall be reviewed to assure that the lots created will not require shoreline stabilization in order for reasonable development to occur. Such review shall require using geotechnical analysis of the site and shoreline characteristics when development is to occur in known or suspected geologically hazardous areas. 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. New development that would require shoreline stabilization which causes significant impacts to adjacent or down-current properties and shoreline areas shall not be allowed.

8.03 E. 2. New structural stabilization measures shall not be allowed²² except to protect an existing primary structure when all of the conditions below apply:

8.03 E. 2. a. New or enlarged structural shoreline stabilization measures for an existing primary structure, 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 caused by tidal action, currents, or waves. Normal sloughing, erosion of steep bluffs, or shoreline erosion itself, without a scientific or geotechnical analysis, is not demonstration of need. The geotechnical analysis should evaluate on-site drainage issues and address drainage problems away from the shoreline edge before considering structural shoreline stabilization.

8.03 E. 2. b. The erosion control structure will not result in a net loss of shoreline ecological functions.

8.03 E. 3. New shoreline stabilization for water-dependent development shall not be allowed except when all of the conditions below apply:

8.03 E. 3. a. The erosion is not being caused by upland conditions, such as the loss of vegetation and drainage.

8.03 E. 3. b. Nonstructural measures, such as placing the development further from the shoreline, planting vegetation, or installing on-site drainage improvements, are

²² Except for approved habitat restoration or enhancement projects

not feasible or not sufficient.

8.03 E. 3. c. The need to protect primary structures from damage due to erosion is demonstrated through a geotechnical report.

8.03 E. 3. d. The erosion control structure will not result in a net loss of shoreline ecological functions.

8.03 E. 4. New structural stabilization measures shall not be allowed for the restoration of ecological functions or hazardous substance remediation projects pursuant to chapter 70.105D RCW except when all of the conditions below apply:

8.03 E. 4. a. Nonstructural measures, planting vegetation or installing on-site drainage improvements are not feasible or not sufficient;

8.03 E. 4. b. The erosion control structure will not result in a net loss of shoreline ecological functions.

8.03 E. 5. Use of shoreline stabilization measures to create new land is prohibited including creation of new lots that will require shoreline stabilization in order to allow development.

8.03 E. 6. New non-water-dependent development, including exempt and non-exempt single-family residences, that include structural shoreline stabilization shall not be allowed unless all of the following conditions apply:

8.03 E. 6. a. The need for shoreline stabilization is to protect the development from destruction due to erosion caused by natural processes, such as currents and waves, is demonstrated through a geotechnical report;

8.03 E. 6. b. The erosion is not being caused by upland conditions, such as drainage and the loss of vegetation;

8.03 E. 6. c. Non-structural measures (such as placing the development farther from the shoreline), vegetative methods, or installing on-site drainage, are not feasible or not sufficient; and

8.03 E. 6. d. The stabilization will not cause a net loss of shoreline ecological functions.

8.03 E. 7. An existing shoreline stabilization structure may be replaced with a similar structure²³ if there is a demonstrated need to protect principal uses or structures from erosion caused by currents or waves.

8.03 E. 7. g. The replacement structure should be designed, located, sized, and constructed to assure no net loss of ecological functions.

8.03 E. 7. h. 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, and there are overriding safety or environmental concerns.

²³ Said replacement structure shall be engineered and designed to address the issues of the failure of the existing structure

In such cases, the replacement structure shall abut the existing shoreline stabilization structure.

8.03 E. 7. i. Soft shoreline stabilization measures that provide restoration of shoreline ecological functions may be permitted waterward of the ordinary high-water mark.

8.03 E. 7. j. For purposes of this section standards on shoreline stabilization measures, "replacement" means the construction of a new structure to perform a shoreline stabilization function of an existing structure which can no longer adequately serve its purpose. Additions to or increases in size of existing shoreline stabilization measures shall be considered new structures.

8.03 E. 8. A geotechnical report prepared to address the need to prevent potential damage to a primary structure shall address a local jurisdiction's standards for a critical areas report for geologically hazardous areas.

8.03 E. 9. Geotechnical reports that address the need to prevent potential damage to a primary structure shall address the necessity for shoreline stabilization by estimating time frames and rates of erosion and report on the urgency associated with the specific situation.

8.03 E. 10. Hard armoring solutions shall not be authorized except when a geotechnical report confirms that there is a significant possibility that the primary structure will be damaged within three years as a result of shoreline erosion in the absence of hard armoring measures, or where waiting until the need is that immediate, would foreclose the opportunity to use measures that avoid impacts on ecological functions. Where the geotechnical report confirms a need to prevent potential damage to a primary structure, but the need is not as immediate as the three years, the report may still be used to justify more immediate authorization to protect against erosion using soft measures.

8.03 E. 11. Shoreline stabilization shall not be allowed for new uses if it would cause a net loss of shoreline ecological functions on the site, or within the watershed; or if it would cause significant ecological impacts to adjacent properties or shoreline areas. Those impacts include accelerated erosion of adjacent properties caused by the stabilization measures.

8.03 E. 12. New uses, including exempt uses, in areas above unstable slopes and moderately unstable slopes shall be set back sufficiently to ensure that shoreline stabilization will not be needed during the life of the structure, as demonstrated by a geotechnical analysis.

8.03 E. 13. Where structural shoreline stabilization measures are shown to be necessary, the extent of the stabilization measures shall be limited to the minimum necessary.

8.03 E. 14. Stabilization measures shall be designed to minimize harm to and as much as possible restore ecological functions. Lost functions shall be mitigated to ensure no net loss of shoreline ecological functions. Soft approaches shall be used unless demonstrated to be insufficient to protect the primary structure or structures.

8.03 E. 15. Where stabilization is necessary to alleviate erosion caused by removal of vegetation, vegetative stabilization measures shall be the only stabilization measures allowed, except where a report by a qualified professional is submitted. See Section 8.03 G Vegetation Conservation.

8.03 E. 16. Where feasible, ecological restoration and public access improvements shall be incorporated into public projects. Publicly financed or subsidized shoreline erosion control measures shall 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.

8.03 E. 17. All applicable federal, state, and local permits shall be obtained and complied with in the construction of shoreline stabilization measures. All permits must be issued before any stabilization work takes place.

8.03 E. 18. Designation specific regulations.

8.03 E. 18. a. *Natural*

8.03 E. 18. a. 1) Dikes/levees, breakwaters, groins and jetties are prohibited.

8.03 E. 18. b. *Aquatic, Shoreline Recreation, Shoreline Residential and High Intensity*

8.03 E. 18. b. 1) Dikes/levees, breakwaters, groins and jetties shall require a conditional use permit.

8.03 E. 18. c. *Aquatic, Natural, Urban Conservancy, Shoreline Recreation, Shoreline Residential and High Intensity*

8.03 E. 18. c. 1) Bioengineering approaches shall require a substantial development permit.

8.03 F. Bulkheads

8.03 F. 1. All bulkheads are also subject to the provisions of Sections 8.01 A and 8.03 A, 8.03 E and 8.03 G.

8.03 F. 2. New or enlarged bulkheads for an existing principal structure or use, including residences and accessory structures, shall not be allowed unless there is conclusive evidence, documented by a geotechnical report prepared according to the local jurisdiction's standards for a critical areas report for geologically hazardous areas, that the principal structure is in danger from shoreline erosion caused by currents or waves. Normal sloughing, or shoreline erosion itself, without a scientific or geotechnical analysis, is not demonstration of need. The geotechnical analysis shall evaluate on-site drainage issues and address drainage in a manner that does not degrade shoreline function before considering structural shoreline stabilization. The project design and analysis shall also evaluate vegetation enhancement as a means of reducing undesirable erosion. The geotechnical analysis shall demonstrate that the stabilization measure chosen is the least intrusive means that will be sufficient to achieve stabilization. The geotechnical analysis shall evaluate impacts that could pose stabilization problems to neighboring properties.

8.03 F. 3. An existing bulkhead may be replaced with a similar structure if there is a demonstrated need to protect principal uses or structures from erosion caused by currents or waves. In this case, demonstration of need does not necessarily require a geotechnical report; need must, however, be demonstrated using documentable information sources. The replacement structure shall be designed, located, sized, and constructed to ensure no net loss of ecological functions. Replacement bulkheads shall not encroach waterward of the ordinary high water mark or existing structure unless the residence was occupied prior to the date of adoption of this SMP, and there are overriding safety or environmental concerns. In such cases, the replacement structure shall abut the existing stabilization structure. The Administrator may permit vegetative stabilization that restores ecological functions waterward of the ordinary high water mark.

8.03 F. 4. A bulkhead-type structure used to stabilize a dock may be permitted, but the size shall be limited to the minimum necessary for the dock. The stabilization structure shall not exceed 1' wider than the gangplank or pier structure on each side nor shall it exceed 6' landward in total width along the shoreline.

8.03 F. 5. Designation specific regulations

8.03 F. 5. a. *Aquatic, Natural*

8.03 F. 5. a. 1) Bulkheads shall be prohibited.

8.03 F. 5. b. *Urban Conservancy, Shoreline Recreation, Shoreline Residential and High Intensity*

8.03 F. 5. b. 1) Bulkheads shall require a conditional use permit.

8.03 G. Vegetation Conservation

8.03 G. 1. Restoration or enhancement of any shoreline area that has been disturbed or degraded shall use plant materials from the recommended list or other species approved by agencies or organizations operating within the jurisdiction, such as the departments of Ecology, County Extension, Fish and Wildlife or the Native Plant Society.

8.03 G. 2. Stabilization of erosion-prone surfaces along shorelines shall primarily use vegetative, non-structural means and shall comply with the provisions of Section 8.03 E. More intensive measures may be permitted providing the project will result in no net loss in shoreline function.

8.03 G. 3. Vegetation removal that would be likely to result in significant soil erosion or the need for structural shoreline stabilization measures is prohibited. This does not preclude the removal of noxious weeds, provided a mitigation management plan is submitted and approved.

8.03 G. 4. Weed abatement shall comply with all provisions of this SMP.

8.03 G. 5. Non-destructive pruning and trimming of vegetation for maintenance purposes shall be permitted in compliance with View Corridor provisions of Section 8.02 K. 1. u.

8.03 G. 6. Permits issued for projects in ecologically degraded areas shall include a condition that appropriate shoreline vegetation shall be planted or enhanced, to contribute to the restoration of ecological processes and functions.

8.03 G. 7. If weather does not permit immediate restoration of disturbed areas, replanting shall be completed during the next planting season, and the soil shall be protected until replanting is complete.

8.03 G. 8. Vegetation from the recommended list or other species authorized by the local government with jurisdiction shall be used. Native plants are preferred. Plants that may compromise shoreline values shall be prohibited. If necessary, a temporary sterile cover crop (e.g., a sterile non-persistent member of the grass family such as sterile Triticale, barley, or oats) shall be planted to prevent erosion during the establishment period; said cover crop shall be maintained until the permanent vegetation is sufficiently established to prevent erosion.

8.03 G. 9. Replanted areas shall be maintained until desired vegetation is well established (a minimum of three years). In the case of transportation, utility, or other capital facility construction, the agency or developer constructing the facility shall also be responsible for maintaining the vegetation until it is established.