

New language for the New Whatcom Shoreline Designation:

Section 22.03.30 F.

1. Purpose and Intent: no change
2. Management Policies: no change
3. Reaches designated New Whatcom
 - a. Marine 5-7
4. Permitted uses within New Whatcom Water-Oriented Uses sub areas: (dotted shoreline at the Bellingham Shipping Terminal and around the ASB and north side of the Roeder Avenue Landfill.)
 - a. Water-dependent uses.
 - b. Water-related uses.
 - c. Water-enjoyment uses.
 - d. Restoration and enhancement.
 - e. Uses and activities specified in Section 22.08.10 B. 3.
 - f. Accessory uses that directly support a permitted use.
 - g. Stand alone non-water-oriented uses are not permitted.
5. Permitted uses within New Whatcom Shoreline Mixed Use sub-areas: (Solid line in portions of Marine 5, 6 and all of Marine 7)
 - a. Those uses specified in subsection 4. a-f, above.
 - b. Non-water-oriented uses including residential uses within a shoreline mixed use structure subject to the requirements in Section 22.03.30 F. 7. and 8.
 - c. Stand alone non-water-oriented uses are not permitted.
6. Conditional Uses within all of the New Whatcom shoreline designation:
 - a. Public water-enjoyment uses in or over water.
 - b. Change from an existing non-water-oriented use to a different non-water-oriented use.
 - c. Temporary stand alone non-water oriented uses may operate within the two existing warehouses and/or land area within the shoreline jurisdiction at the Bellingham Shipping Terminal AND within existing structures only between the historic log pond and Roeder Avenue subject to the applicable requirements in Section 22.03.30 F. 7. g. – i. and the permit requirements in Section 22.06.40. (CUP's)
7. Development regulations for all sub-areas within the New Whatcom shoreline designation:

- a. Development shall comply with all applicable requirements in Chapter 22.08 and the applicable submittal requirements within the Critical Area Ordinance, APPENDIX E, and Chapters 22.04 and 22.09 of this Title.
- b. Water-oriented uses shall not exceed a height of 35-feet except that, when a water-oriented use greater than 35-feet in height but not more than 50-feet in height is proposed, a view analysis shall be conducted in order to prevent obstruction of identified public view corridors. Heights greater than 50-feet shall be subject to the requirements for a variance in Section 22.06.30.
- c. Accessory uses as specified in subsection 4. f., above, shall not exceed the height of the permitted use.
- d. The total height of a shoreline mixed use structure (one that includes water-oriented uses and non-water-oriented uses) shall not exceed three stories. One bonus story may be granted if all required parking for the subject non-water-oriented uses (with the exception of loading / unloading areas) within the structure are provided within the footprint of the subject structure and/or within a shared parking facility such as a parking garage. In either case (3 or 4 stories) the height shall comply with the height limitations specified in subsection b., above.
- e. All development types (water-oriented and shoreline mixed uses) shall provide public access subject to the public access requirements and criteria in Section 22.08.70.
- f. Stand alone water-enjoyment uses and water-enjoyment uses within a shoreline mixed use structure shall be designed to be oriented towards the shoreline such that the general public has the opportunity to enjoy the aesthetics of a shoreline location and have physical and/or visual access to the shoreline.
- g. Temporary non-water-oriented uses as specified in subsection 6. c., above, may be established and operate subject to a 3-year lease period provided that the initial lease must be executed between the State approval date of the 2007 SMP and the adoption of the NWDP and Development Agreement. A max of two one-year lease extensions may be granted after the 3-year period expires provided there is no expansion of existing structure or use area and there is no increase in intensity of the use. In any case, operation of the subject temporary non-water-oriented use shall be limited to a total of five years within the subject structures and/or land area(s).
- h. A change from one temporary non-water-oriented use to another temporary non-water-oriented use as specified in 6. c., above, is allowed provided, there is no expansion of structure or land area from the previous use AND expiration of the new use is subject to the previous use's expiration date. (In these cases, a new shoreline conditional permit is not required) The intent of this sub-section is to sunset the opportunity for temporary stand alone non-water-oriented uses in the New Whatcom shoreline designation.
- i. Nothing shall prevent temporary non-water-oriented use from being terminated for any reason prior to the expiration date to make way for one of the permitted uses in subsection 4. and 5., above.

8. Additional development regulations specific to the New Whatcom shoreline mixed use sub-area:
 - a. Non-water-oriented uses within a shoreline mixed use structure, as specified in 5. b., above, shall be established or developed concurrently with a water-oriented use AND shall provide public access and habitat restoration between the subject development and the adjacent shoreline subject to the requirements in b. – g., below.
 - b. When a shoreline mixed use development is proposed, public access, as required in 8. a., above, shall be provided between the subject development and the adjacent shoreline concurrently and shall be consistent with an adopted master plan and/or public access plan. In cases where said public access cannot be provided due to seasonal constraints, including fish windows, or the timing with other planned / ongoing soil remediation or implementation of a habitat restoration projects does not align, said public access shall be secured with a financial surety totaling 150% of the required access or some other acceptable surety as may be specified by the Director or within the New Whatcom Development Agreement, upon adoption.
 - c. In absence of a master plan or public access plan as specified in b., above, required public access shall be designed and configured on a site-by-site basis consistent with 22.08.70. Said plan shall be reviewed and approved by the Planning and Parks and Recreation Departments.
 - d. When a shoreline mixed use development is proposed, habitat restoration, as required in 8. a., above, shall be provided per an agency approved habitat restoration plan. In absence of said plan, the subject development shall incorporate a minimum of three objectives from the RESTORATION PLAN (Section 4, page 6, a. – j.) In both cases, said restoration plan shall be consistent with 22.09.140.
 - e. Said required habitat restoration shall be completed prior to occupancy of the subject uses. In cases where the required habitat restoration cannot be provided due to seasonal constraints, including fish windows, or the timing with other planned / ongoing soil remediation or implementation of public access projects does not align, said habitat restoration shall be secured with a financial surety totaling 150% of the required restoration project or some other acceptable surety as may be specified by the Director or within the New Whatcom Development Agreement, upon adoption.
 - f. Non-water-oriented uses described in 8. a., above, shall not occupy the portion of the ground floor of a mixed use structure that fronts on or is adjacent to the shoreline. (Parking in the rear of the ground floor of a shoreline mixed use structure is permitted.)
 - g. In no case may residential uses within a shoreline mixed use structure occupy the ground floor.
9. Required **buffer** widths in the following sub-areas within the New Whatcom designation are 25-feet as measured from the OWHM (and as shown with yellow hi-lighting on the Marine Shoreline Reaches 1-8 map in APPENDIX B):
 - a. From the Marine reach #7 / #8 boundary to the north line of vacated Commercial Street, and,

- b. From the north line of vacated East Oak Street to the south line of Roeder Avenue on the south side of the Whatcom Waterway, and,
 - c. From the south line of Roeder Avenue to the west line of C Street, and,
 - d. From the northeast corner of the ASB (foot of G Street) to the Marine #4 / #5 boundary.
 - d. Except that, where there is an existing pier, wharf, sheet pile or other vertical in-water structure or *at the OHWM*, the required 25-foot buffer shall not apply until such time that said feature(s) is removed permanently. (Replacement of said structures for a permitted use would not trigger the 25-foot buffer requirement)
10. Allowed uses/activities within the required 25-foot buffer areas as specified in 9. a. through c., above are as follows:
- a. Those portions of water-dependent and water-related uses that require direct access to the water. (Piers and gangways, boat launch, loading / unloading areas and structures that facilitate same)
 - b. Those uses and activities as specified in Section 22.08.10 B. 3.
11. Vegetation management in these buffer areas shall be managed as specified in Section 22.08.80. (22.08.80 to be revised to include standards for the New Whatcom 25-foot buffer standards)
12. Required **setbacks** from the OHWM for structures and/or land uses within the New Whatcom sub-areas (water-oriented uses and shoreline mixed use sub-areas) are as follows:
- a. Water-dependent land uses and structures: zero feet
 - b. Water-related uses requiring land area only: zero feet where there is no required buffer (as specified in subsection 9. a. - d. above.)
 - c. Water-related uses requiring land area only: 25 feet along shorelines where a vertical feature as specified in subsection 9. d., above is absent.
 - c. Water-related uses within a structure: 50 feet
 - d. Public water-enjoyment uses on land area (park, trail, plaza, pavilion): zero feet.
 - e. Stand alone water-enjoyment uses within a structure: 50 feet.
 - f. Non-water-oriented uses within a shoreline mixed use structure shall be 50 feet for a structure that is 25-feet in height or less.
 - g. Non-water-oriented uses within a shoreline mixed use structure that is greater than 25-feet in height shall be setback 2 feet for every 1 foot in structure height.
 - h. Temporary non-water-oriented uses as specified in 6. c., above: subject to approval of a Conditional Use Permit.

STAFF NOTE #1: Accessory uses that directly support a water-oriented use are those uses that are an element of but are subordinate to the primary use and/or operation.

STAFF NOTE #2: The phrase 'temporary stand-alone non-water-oriented uses' as specified in 6. c., above, is intended to define those singular uses that; are not

established simultaneous with a water-oriented use, that have no dependency on or relationship to a shoreline location but could operate within existing structures and specific identified areas in order to generate revenue until adoption of the NWDP and subsequent development agreement and City infrastructure established. That's why there is a sunset clause on that opportunity in terms of when those uses would be allowed and at what time they would expire or, phased out, after which those existing structures and land areas would then become available again to the uses prescribed in the SMP and preferred by the SMA.

STAFF NOTE #3: Water-enjoyment uses include but are not necessarily limited to those uses that facilitate public access to the shoreline as a primary characteristic of the use. A Water-enjoyment use also provides for recreational use or aesthetic enjoyment of the shoreline for a substantial number of people as a general characteristic of the use and which through the location, design and operation assures the public's ability to enjoy the physical and aesthetic qualities of the shoreline.

In order to qualify as a water-enjoyment use, the use must be open to the general public and the shoreline-oriented space within the project must be devoted to the specific aspects of the use that fosters shoreline enjoyment. Primary water-enjoyment uses may include, but are not limited to; parks, piers, view towers, interpretive centers and other improvements facilitating public access to shorelines of the state. General water-enjoyment uses may include but are not limited to, restaurants, museums, aquariums, scientific/ecological reserves, resorts, convention centers, public markets and educational and research entities, PROVIDED, that such uses conform to the above water-enjoyment specifications and the provisions of the master program.