

**CITY OF BELLINGHAM**  
**SHORELINE MANAGEMENT MASTER PROGRAM**

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The preparation of this report was aided by the Washington State Office of Community Development through a federal grant from the U.S. Department of Housing and Urban Development under the provisions of Section 701 of the Housing Act of 1954, as amended, and a State grant from the Washington State Department of Ecology under Section 25 of the Shoreline Management Act of 1971. Contract No. 1020-500.0-37, April 1974.

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**UPDATED**

**1989**

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## MASTER PROGRAM FORMAT

In formulating the Master Program the Shoreline Citizen Committee in 1973 and the Update Task Force in 1988 followed guidelines furnished by the Department of Ecology. General conformance to these guidelines is a factor considered by the Department of Ecology in review of the Program. Flexibility is permitted, however, so that Master Programs can be adjusted to meet local needs.

The initial task in preparing a shoreline master program was to develop goals and objectives for seven elements suggested by the guidelines. The seven elements are:

1. Shoreline Use Element
2. Economic Development Element
3. Public Access Element
4. Circulation Element
5. Recreational Element
6. Conservation Element
7. Historical/Cultural Element

Subsequent to the development of the goals and objectives, policies were developed relating to 21 various use activities which might occur on the shorelines. These policies are designed as a means of obtaining the previously stated goals and objectives and are pursuant thereto.

All the shorelines in the City are different in physical character and existing use. Appropriate future use likewise varies from place to place. To plan and effectively manage shorelines accordingly, therefore, required the designation of various shorelines in environment categories. These designations are based on physical characteristics and existing land use as well as potential for various future uses. The guidelines suggest four environment categories; Natural, Conservancy, Rural and Urban. In order to meet local goals and objectives the four-category system was expanded to eight categories. They include:

1. Natural
2. Conservancy I
3. Conservancy II
4. Conservancy III
5. Rural
6. Urban I

7. Urban Maritime
8. Urban Multi-Use

After defining these environments and stating their purpose and intent, each section of shoreline was assigned an environmental classification. Review of the shoreline inventory, and the goals and objectives preceded decisions on environment designations.

The next step was to develop regulations for the management of each environment consistent with the purpose and intent of the particular environment as well as the previously established goals and objectives. All uses, which are established in a designated environment, must conform to the regulations of that particular environment. The Master Program does, not, in other words, dictate the type of use which may be established in each environment (with the exception of the Urban Maritime and Urban Multi Use environments), but rather how any and all uses permitted by the Land Use Development Ordinance are established in relation to the shoreline.

Additionally it was recognized that there are certain activities which are necessary or desirable, or conversely, undesirable, in several of the eight environments. Therefore, a General Regulations section was developed. The regulations within this section apply to all the shorelines of the City unless otherwise specified therein.

Since various types of uses may have different effects on the shorelines, a third set of regulations was developed. These regulations pertain to the specific use activities for which policies were previously drafted. The regulations reflect, or in some cases are the same as, the policy statements.

In summary, a permit applicant must meet the regulations of the environment in which the development is located, application general regulations, and the regulations pertaining to the type of development to be established.

The Master Program, in its entirety, is a composite of portions of the Shoreline Management Act and local regulations developed by the Shoreline Citizen Committee and update Task Force.



CITY OF BELLINGHAM SHORELINE  
GOALS AND OBJECTIVES

SHORELINE USE ELEMENT

- GOAL: Coordinate the regulation of shoreline uses so as to insure uses which result in long-term over short-term benefit, protect the resources and ecology of the shorelines, increase both visual and physical public access to the shorelines, and accommodate water dependent uses.
- OBJECTIVE: Identify and reserve shoreline and water areas with unique attributes for particular long-term uses, including commercial, industrial, residential, recreational and conservational uses.
- OBJECTIVE: All uses should be developed in a manner which will result in the least modification of the shoreline unless such modification contributes to the attainment of Master Program goals.
- OBJECTIVE: Uses which will provide an opportunity for a substantial number of people to enjoy the shorelines should be permitted.
- OBJECTIVE: Inappropriate shoreline uses should be identified and established as nonconforming uses.

ECONOMIC DEVELOPMENT ELEMENT

- GOAL: Provide for economic activity and development of water dependent uses and permit water enjoyment uses in appropriate locations, consistent with environmental goals.
- GOAL: Recognize the finite quantity of waterfront land and the limits of funds for public acquisition, direct development towards a multi-use concept to provide public access to the shorelines and protect the habitat while enhancing and maintaining the economic viability of the use.
- OBJECTIVE: Where navigability is a viable asset, and in appropriate environments, economic development on the shorelines of the City should be water surface dependent or should provide an opportunity for a substantial number of the general public to enjoy the shorelines.
- OBJECTIVE: Economic activity on shorelines of the City where navigability is not a viable asset, and in appropriate environments, should not interfere with the natural function of the shoreline and water body and should provide open space along the shoreline adequate for potential public access.
- OBJECTIVE: Future appropriate economic development on the shorelines of the City should be compatible with existing appropriate uses.

## PUBLIC ACCESS ELEMENT

- GOAL:** Increase public access to the shorelines of the City and preserve and enhance views of the shoreline and water.
- OBJECTIVE:** Identify public properties adjacent to shorelines as well as public rights-of-way which offer physical and/or visual access to the shoreline.
- OBJECTIVE:** Development of public access should respect and protect private property rights; however, public accessibility to private shorelines should be encouraged where such access will not be deleterious to the property.
- OBJECTIVE:** Shoreline areas, which hold unique value for public enjoyment should be purchased for public use.
- OBJECTIVE:** Existing areas of public access should be developed in a manner to protect public health and safety while at the same time protecting the areas' natural attributes.
- OBJECTIVE:** Access to shorelines should be pedestrian access from upland parking areas (where necessary) and bicycle access.
- OBJECTIVE:** Public agencies should be required to provide public access opportunities at new shoreline facilities and encouraged to provide similar opportunities at existing facilities.
- OBJECTIVE:** The objectives of the City of Bellingham Open Space Plan should be implemented where applicable through shoreline management policies and requirements. To that end the acquisition of land and the construction of bicycle/pedestrian trails along shoreline trail routes as indicated on the Open Space Plan should be pursued. Along proposed trail routes, the City should pursue an ongoing program of shoreline land acquisition, through dedication or the granting of public access easements in shoreline setback areas. The City should explore ways to make shoreline property and easement dedication more attractive to property owners including assistance in solving security, storm water management, and other shoreline protection issues. Where the proposed development is on an Open Space Plan trail route that is not going to be constructed immediately, it may be preferable to require that the property owner sign a waiver not to contest a specified access easement enacted when the trail is built. Dedicated land or access/conservation easements should be sought along both sides of creeks where future bicycle and pedestrian trails are indicated in the Open Space Plan.

## CIRCULATION ELEMENT

- GOAL:** Develop a balanced and efficient water and land transportation system, which will minimize the adverse environmental impact on the shorelines while contributing to the functional and visual enhancement of the system.
- OBJECTIVE:** Land circulation development should be located as far from the land/water interface as feasible and should not interfere with other appropriate shoreline uses.
- OBJECTIVE:** Motorized vehicular circulation development should not be undertaken unless necessary to accommodate appropriate shoreline uses, provided that development necessary to cross the shorelines and facilitate the circulation of the City should be permitted.
- OBJECTIVE:** Existing shoreline circulation should be redesigned to accommodate varied modes of transportation and, where feasible, be utilized as a means of increasing public enjoyment of the shorelines.
- OBJECTIVE:** Maintain existing water transport systems, both commercial and recreational, and, where feasible, improve these systems to enhance the economic and recreational benefits to the public.

## RECREATION ELEMENT

- GOAL:** Increase the amount of shorelines dedicated to public recreation and optimize their potential.
- OBJECTIVE:** Shorelines which provide a locally unique opportunity for public recreation should be obtained for public use as soon as possible.
- OBJECTIVE:** Recreational development where warranted, should be designed to minimize adverse effects on the natural amenities of the shoreline while enhancing its recreational value and protecting the public health and safety.
- OBJECTIVE:** Shorelines, which exist as relatively untouched natural areas, should be recognized as having recreational and educational attributes in their natural state.

## CONSERVATION ELEMENT

- GOAL:** Preserve, protect, and restore shoreline areas to optimize the support of wild, botanic, and aquatic life.
- OBJECTIVE:** identify those areas of unique geological or biological significance and prohibit or severely restrict development in those areas.

OBJECTIVE: Conservation efforts should be aimed at preserving the natural function of the watercourse as well as the aesthetic and ecological qualities of the shoreline.

OBJECTIVE: Some areas, because of unique and/or fragile geological or biological characteristics should be protected from public access.

OBJECTIVE: Areas, which are biologically and aesthetically degraded, should be reclaimed and restored to the greatest extent feasible while maintaining appropriate use of the shoreline.

OBJECTIVE: Standards should be developed for shoreline use, which will insure the optimal harmonious integration of human use of the shorelines with the shorelines' natural system.

OBJECTIVE: The continuous scientific study of Bellingham's shorelines should be encouraged and areas with unique attributes for scientific study should be identified and protected.

Specific areas that should be studied include:

Padden Creek Lagoon. The biological function and value of the Padden Creek Lagoon within the Padden Creek estuarian system should be evaluated prior to the permitting of any modifications to its water quality conditions.

#### HISTORICAL/CULTURAL ELEMENT

GOAL: Identify, preserve, protect and restore shoreline areas having historical and/or cultural significance.

OBJECTIVE: Encourage cooperation among public and private groups in the research and study of historical or cultural sites within the City.

OBJECTIVE: Identified historical or cultural sites should be considered in park and open space planning.

OBJECTIVE: Funds should be sought for the acquisition and/or restoration of sites having historical/cultural significance.

## USE ACTIVITY POLICIES

### Agricultural Practices

Portions of Squalicum Creek and Chuckanut Creek are located in rural sections of the City. Horses and livestock are kept in various locations along both creeks. The basic problems caused by agricultural practices include siltation from tilling, water degradation from the use of pesticides, etc., and water degradation from feed lot wastes and manure stockpiles.

Policy: When land within the shoreline of the City is cleared and/or tilled for agricultural uses, a buffer or natural vegetation should be maintained between the tilled area and the associated water body.

Policy: Confined animal feeding operations, retention and storage ponds for feed lot wastes, and stockpiles of manure solids on shorelines of the City should conform to U.S. Environmental Protection Agency Guidelines.

### Aquaculture

Because of the need for relatively large areas and water quality requirements it is doubtful that aquaculture, or fish farming activities will locate in any of the water bodies associated with shorelines of the City. However, as both aquaculture technology and the quality of our local waters improve, aquaculture may become a viable use within the City.

Policy: Aquaculture activities within the City should be compatible with existing appropriate uses and should not interfere with the navigability of the water body.

Policy: Aquaculture use should not preclude the appropriate use of adjacent shorelines.

Policy: Aquaculture should not locate in areas where it would be detrimental to the visual access to the water body.

Policy: Aquaculture activities should not locate in areas where it would be detrimental to water quality.

### Forest Management Practices

Forest management practices are those methods used for the protection, production and harvesting of timber. Marketable timber on the shorelines of the City is very limited, so limited in fact that it should be considered as locally unique and protected for its aesthetic and ecological benefits.

Policy: Timber harvesting on the shorelines of the City should comply with WAC 90.58.150.

Policy: Cutting of trees of greater than six inches in diameter at the base which is incidental to a Substantial Development Permit should require approval as part of said permit.

### Commercial Development

Commercial developments are those uses, which are involved in manufacturing, production, construction, wholesale and retail trade or business activities.

Policy: Where navigability is a viable asset, and in appropriate environments, commercial development on the shorelines of the City should be water surface dependent or should provide an opportunity for a substantial number of general public to enjoy the shorelines.

Policy: Where navigability is not a viable asset, and in appropriate environments, commercial development on the shorelines of the City should not interfere with the natural function of the shoreline and water body and shall provide open space along the shoreline adequate for potential public access.

Policy: Future appropriate commercial development on the shorelines of the City should be compatible with existing appropriate uses.

### Marinas

Marinas are facilities which provide boat launching, storage, supplies and services for commercial and pleasure craft. Two basic types of marinas are the open type construction (floating breakwater and/or open pile work) and solid type construction (bulkhead and landfill). Because the number of pleasure craft is increasing each year, while suitable sites for marinas are limited, a third type of marina should be considered which would consist of shoreline land boat storage together with launching cranes, ramps, etc. This type of marina lessens or entirely eliminates the need for breakwater protection and might allow such use in areas where prevailing weather would normally make the cost of marina construction prohibitive.

Policy: Marinas should be designed to minimize the adverse effects on the water habitat.

Policy: Marinas should be designed to be aesthetically compatible with the shoreline area.

Policy: Viewpoints should be provided which would allow the general public to view marina activity.

Policy: Marinas should be designed in conformance with federal, state, and local regulations.

Policy: Upland parking areas for boat launch facilities should be designed to provide adequate parking for the size of the facility.

## Mining

Mining on the shorelines of the City would likely consist only of the removal of sand and gravel. Such removal often can result in erosion and siltation unless it is property controlled.

Policy: No mining should occur immediately adjacent to any water body or in any location which will adversely affect the natural function of the water body.

Policy: Where mining does occur within the shoreline area, provision should be made to insure that silt and other sediments are not introduced into the water body.

Policy: Proposals for reclamation of mined areas should be approved prior to the issuance of a Substantial Development Permit.

Policy: Mining Operations within the shoreline area should post a bond to reclaim disturbed surfaces.

## Signs

Signs serve varied purposes including advertising, information and instruction. The basic problems with signs relative to shorelines are that because of design they may detract from the visual quality of the shoreline and because of size they may obstruct the view of the shorelines and water. The City's Land Use Development Ordinance contains sign regulations that restrict size depending on the designation in which the sign is to be located. These regulations have no direct correlation to the City's shorelines.

Policy: Billboards on the shorelines of the City and on upland routes, which offer visual access to the shorelines and water, should be prohibited.

Policy: Identifying signs accessory to shoreline uses should be constructed against existing buildings.

Policy: Free standing informational and/or directional signs should be permitted provided they are no larger than 32 square feet in area on any one face of such sign. A maximum of one sign per development is permitted. The sign may be two sided to be seen from two directions. Freestanding signs should not extend more than 12 feet above the ground or above the road line elevation of the primary structure located on the lot, which ever is higher.

Policy: Signs advertising real estate for sale or lease should be permitted provided they do not exceed 12 square feet in area, and provided further that they are removed within seven days following the sale or lease of the property.

## Parking

Policy: Parking as a primary use shall not be permitted on the shorelines of the City. Parking which is accessory to permitted uses may be permitted subject to the standards and requirements of the Shoreline Master Program and other applicable ordinances and regulations.

## Residential Development

Policy: Residential development on the shorelines of the City should be designed in a manner which would provide equal shoreline access to all residents of the subdivision.

Policy: Residential development over water should be prohibited.

Policy: Where feasible, residential development on the shorelines of the City and on upland routes which offer a view of the shorelines and water should not obstruct such view for the general public or for adjacent residents.

Policy: The maximum height for residential development on the shorelines of the City should be 35 feet except in the Urban Multi-Use environmental designation (see Section 24 (c) (6)).

## Utilities

Utilities are necessary to serve shoreline uses with electricity, gas, sewer, water and communications and, if properly installed, protect the shoreline and water from contamination.

Policy: Provisions should be made for the protection of the shoreline during utility installation. Following installation/maintenance projects, project areas must be returned to pre-project configuration and adequate vegetation installed to prevent erosion.

Policy: Utilities on the shorelines should be installed underground.

Policy: Utility corridors should be utilized as pedestrian access ways where practical.

Policy: Undergrounding of existing facilities should be encouraged.

## Ports

Ports are centers for water-borne traffic and as such are gravitational points for industrial/manufacturing firms. A large majority of the shoreline of Bellingham Bay, while not entirely owned by the Port of Bellingham, should be considered under port activity.

Policy: Where navigability is a viable asset, and in appropriate environments, port and industrial development should be water surface dependent or provide an opportunity for a substantial number of the general public to enjoy the shorelines.

Policy: The Port of Bellingham should provide public access opportunities at new shoreline facilities consistent with the protection of the public health and safety and Port property.

### Bulkheads

Bulkheads or seawalls are structures erected parallel to and near the high water mark for the purpose of protecting adjacent uplands from the action of waves or currents. While bulkheads protect adjacent upland areas from erosion, if improperly placed they may increase erosion damage to banks and uplands downstream due to changes in sediment transport, reflective and refractive action.

Policy: Prior to the granting of a permit for bulkhead construction, the effect of the bulkhead on downstream or adjacent properties should be determined by the Planning and Economic Development Department and the disposition of the permit should reflect such determination.

Policy: Construction of bulkheads for the indirect purpose of creating land by filling behind the bulkhead should be prohibited unless such landfill is permitted by the Master Program.

Policy: Bulkheads should be prohibited which adversely affect public access to publicly owned shorelines.

Policy: Bulkheads should be designed so as not to detract from the aesthetic qualities of the shoreline.

### Breakwaters

Breakwaters are protective structures usually built offshore to protect beaches, bluffs, dunes or harbor areas from wave action. The breakwaters, which enclose Squalicum Boat Harbor, are the only local examples of these structures.

The two types of breakwaters are the solid type, usually constructed of rip-rap or rock, and floating breakwaters. While floating breakwaters allow freer movement of sand, water, and fish habitat, designs have not yet been found to withstand severe wave action such as is found in Bellingham Bay. Floating breakwater design is continuously improving.

Policy: Where feasible, floating breakwaters should be used instead of solid breakwaters.

Policy: Breakwaters should not interfere with water surfaces commonly used for navigation unless the benefit to the general public of such breakwater outweighs the interference to navigation.

Policy: Prior to the granting of a permit for breakwater construction the effect of the breakwater on the shoreline should be determined by the City of Bellingham Planning and Economic Development Department and the disposition of the permit shall reflect such determination.

### Jetties and Groins

Jetties and groins are structures designed to modify or control sand movement. Jetties are generally used to prevent the buildup of sand bars at the inlets of navigable channels. Groins are built directly on the beach for the purpose of entrapping sand, which is moved by wave action, and thus creating a sandy beach on one side of the groin. The beach on the downdrift side of a groin is, therefore, lacking its natural sand supply and is soon sandless.

Due to the character of the City's shorelines it is doubtful that jetties or groins will be constructed upon them.

Policy: Prior to the granting of a permit for jetty or groin construction, the effect of the jetty or groin on adjacent shorelines should be determined by the Planning and Economic Development Department and the disposition of the permit should reflect such determination.

Policy: Jetties and groins should not interfere with the public access to publicly owned properties or where public access has been established on private property.

### Landfill

Landfill is the creation of dry upland area by the filling or depositing of sand, soil, gravel or other material into a water body or upland shoreline. Bellingham has a long history of shoreline filling. Nearly the entire shoreline of Bellingham Bay from Post Point to the northern city limits is composed of various fill materials. The adverse effects of landfill vary from the direct destruction of wetland habitat to the degradation of water quality caused by leaching of toxic substances from the fill material. Additionally, landfills, because they need bulkheads to remain in place, usually inhibit access to the water.

If property constructed, however, landfills can create usable shoreline lands where none are currently available, with minimum adverse effect on the environment.

Increasing concern for water quality control has increased the usage of landfill for dredge spoil areas. The construction of an impermeable bulkhead is very important in such operations.

Landfilling is also an important issue along Bellingham's creeks where it is used to increase buildable land or provide flood protection. Such land filling can be detrimental to stream ecology, fish runs, wildlife habitat, environmental quality and storm water management objectives.

Policy: Landfill on the shorelines of the City should contribute to the attainment of Master Program goals.

Policy: All landfills should be provided with vegetation, retaining walls, and/or other mechanisms as are necessary for erosion prevention.

Policy: Landfills, which result in water surface reduction, should only be permitted to accommodate water surface dependent and/or public uses.

Policy: Fill materials should be used which do not pose a potential threat to water quality.

Policy: Landfills should blend with existing topography in order to not interfere with the visual and/or physical shoreline access of the public or adjacent residents.

### Solid Waste Disposal

The disposal of solid waste is an ever-present problem, the solution of which is the subject of much study. Sanitary landfills are often times not sanitary and when located near a shoreline are detrimental to water quality and destroy any aesthetic quality of the shoreline. Incineration, shredding and recycling are other methods of solid waste disposal, which have been developed and are continuously undergoing improvement.

Standards for control of sanitary landfills are also increasing, but water quality problems may still accompany such an operation.

Policy: The disposal of untreated, unreduced solid waste on the shorelines of the City should be prohibited.

Policy: The disposal of treated and reduced wastes should not occur adjacent to any water body.

Policy: Solid waste disposal should conform to Washington State Department of Ecology Regulation Relating to Minimum Functional Standards for Solid Waste Handling.

## Dredging

Dredging is the removal of material from the bottom of a stream, river, lake, bay or other water body for the purposes of deepening a navigational channel or to obtain use of the bottom materials for landfill. Maintenance dredging of Whatcom Waterway, "I" and "J" Street Waterway, and Squaticum Waterway is necessary due to siltation from the Nooksack River and from the creeks associated with the waterway. Additionally, silting may occur in the City's creeks due to upland development resulting in decreased carrying capacity of the channels. Dredging of certain areas may in the long-term, be beneficial to water quality.

Policy: Maintenance dredging of navigable channels should be permitted provided that such dredging is done in such a way so as to minimize the adverse effects on marine habitat.

Policy: Applicants should be responsible for proving that water quality degradation will not occur.

Policy: Dredging should be permitted which contributes to the attainment of Master Program goals.

## Shoreline Protection

Flood protection and streamway modifications are those activities occurring within the streamway and upland areas which are designed to reduce overbank flow of high waters and stabilize eroding stream banks. It is recognized that improper flood control upstream results in increased flood damage downstream. Flood plain management as a means of flood control has advantages of maintaining the natural characteristics of the shoreline while protecting adjacent property without amplifying potential flood damage downstream.

Policy: Where protection from flooding is necessary it should be obtained by means of flood plain management including the prohibition of construction of incompatible structures and fills.

Policy: Bank stabilization for the purposes of protecting property from erosion should conform to the policies contained herein relating to bulkheads.

## Road and Railroad Design and Construction

Road and railroad construction on the shorelines can inhibit or preclude the use of those shorelines for other activities. Transportation is, however, a necessary prerequisite to many appropriate shoreline uses and if properly planned and constructed can contribute to the access to the shorelines by the general public.

Policy: Road and railroad development should be located as far from the land/water interface as feasible and should not interfere with other appropriate shoreline uses.

Policy: Road and railroad development should not be undertaken unless necessary to accommodate appropriate shoreline uses, provided that development necessary to span the shorelines to facilitate the circulation of the City should be permitted.

Policy: Road construction or reconstruction should be designed to accommodate varied modes of transportation and, where feasible, be utilized as a means of increasing public enjoyment of the shorelines.

### Piers

A pier, dock or float is a structure built over or floating upon the water, used as a landing place for marine transport or for recreational purposes. Construction of dock, designed for pleasure craft only, for the private noncommercial use of the owner, lessee or contract purchaser of a single family residence, the cost of which does not exceed \$2,500 is exempted from the provisions of the Shoreline Act.

Policy: The cooperative use of piers, docks and floats should be encouraged.

Policy: Piers, docks or floats should be constructed so as to cause minimum interference with the public use of the water surface and shoreline.

Policy: Prior to the granting of a permit for a pier, dock or float, the effect of that structure upon adjacent shorelines should be determined by the Department of Planning and Economic Development and the disposition of the permit shall reflect such determination.

Policy: Preservative treated wood should not be placed in direct contact with the water in the Lake Whatcom watershed. All treated wood and other materials used for over-water construction on Lake Whatcom shall conform to E.P.A. standards applying to the protection of drinking water.

Policy: Over water construction on piers, docks or floats should be reserved for water oriented uses and where feasible should provide public access.

### Archeological Areas and Historic Sites

Archeological areas and historical sites are rare resources and are generally in danger of being lost through present day changes in land use and urbanization. Some historic sites, which are not currently recognized, may have renewal potential.

Policy: Cooperation should be encouraged among public and private groups in the research and study of archeological and historical/cultural sites within the City.

Policy: Identified historical or cultural sites should be considered in park and open space planning.

### Recreation

There is a tremendous variety of recreational activities which should be provided for in Master Programs, from boating and fishing to passive enjoyment of the shoreline environment, be it natural or otherwise.

Policy: The procurement, for public use, of shorelines, which provide a locally unique opportunity for public recreation should be encouraged.

Policy: Recreational development should be designed to minimize adverse effects on the natural amenities of the shoreline while enhancing its recreational value and protecting the public health and safety.

Policy: The recreational and educational benefits of natural shorelines should be considered in recreational planning.

Policy: Recreational planning and development should recognize the wide variety of recreational needs and desires.

Policy: The applicable objectives stated and actions recommended in the City of Bellingham Open Space Plan should be pursued through Shoreline Master Program requirements and by the ongoing acquisition of property and development of public access along shoreline trail routes identified in the Open Space Plan.

Section 1: TITLE: This ordinance shall be known and may be cited as the “City of Bellingham Shoreline Management Master Program.”

Section 2: AUTHORITY: This ordinance is adopted pursuant to RCW 90.58, the Shoreline Management Act of 1971.

Section 3: SCOPE: The regulations of this ordinance shall apply to all shorelines within the corporate limits of the City of Bellingham.

Section 4: DEFINITIONS: As used in this ordinance, unless the context otherwise requires the following definitions and concepts apply:

Accessory Use – A use that is demonstrably subordinate and incidental to the principle use and which functionally supports its activity.

Act – The Shoreline Management Act of 1971.

Aquaculture – The culture of farming of food fish, shellfish, or other aquatic plants and animals.

Board – The Board of Adjustment of the City of Bellingham

Breakwater – A structure, either rigid or floating, constructed offshore to protect beaches, bluffs, dunes or harbor areas from wave action.

Bulkhead – Structures or rip-rapping erected parallel to or near the high water mark for the purpose of protecting adjacent uplands from the action of waves or currents.

(Department) Department of Ecology – The State of Washington Department of Ecology.

City – The City of Bellingham, Washington

Development – A use consisting of the construction or exterior alteration of structures; dredging; drilling; dumping; filling; removal of any sand, gravel or minerals; bulkheading; driving of piling; placing of obstructions; or any project of a permanent or temporary nature which interferes with the normal public use of the water’s overlying lands subject to this Master Program at any state of water level.

Dike – An embankment usually placed within or near the edge of a floodplain to protect adjacent lowlands from flooding.

Estuary – That portion of a coastal stream influenced by the tide of the marine waters into which it flows and within which the sea water is measurably diluted with freshwater derived from land drainage.

Feasible – Physically capable of being accomplished or brought about.

Flood plain – The one hundred-year flood plain. The land area susceptible to being inundated by stream derived waters with a 1% chance of being equaled or exceeded in any given year. The limit of the area is based upon the definition in Bellingham Municipal Ordinance Chapter 17.76.

Floodway – Those portions of the area of a river valley lying streamward from the outer limits of a watercourse upon which flood waters are carried during the periods of flooding that occur with reasonable regularity, although not necessarily annually, said floodway being identified, under normal condition, by changes in surface soil conditions or changes in types or quality of vegetative ground cover condition. The floodway shall not include those lands that can be reasonably be expected to be protected from flood waters by flood control devices maintained by or maintained under a license from the federal government, the state, or a political subdivision of the state.

Groin – A barrier-type structure extending from the backshore seaward across the beach.

Hearings Board – The Shorelines Hearings Board established by The Shoreline Management Act of 1971.

Jetty – A barrier-type structure generally employed at inlets to control sand movement for the purpose of navigation improvement.

Landfill – The creation of dry upland areas by the filling or depositing of sand, soil or gravel into a water body or wetland area.

Master Program – The City of Bellingham Shoreline Management Master Program.

Non-Water-Oriented – Upland uses which have little or no relationship to the shoreline. All uses, which do not meet the definition of water-dependent, water-related, or water-enjoyment are classified as non-water-oriented uses. Adding public access features to a non-water-oriented use does not automatically change the inherent use to a water-enjoyment use. Examples may include but are not limited to, professional offices, automotive sales or repair shops, mini-storage facilities, multi-family residential development, convenience stores, and gas stations.

Normal Maintenance and Repair – Construction necessary for the upkeep of existing structure and development which will not result in enlargement of the structure or development.

Ordinary High Water Mark – That mark that will be found by examining the bed and banks of lakes, streams, or tidal water and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation as that condition exists on the effective date of this Master Program or as it may naturally change thereafter; provided, that in any area where the ordinary high water mark cannot be found, the ordinary high water mark adjoining saltwater shall be the line or mean higher high tide and the ordinary high water mark adjoining freshwater shall be the line of mean high water.

Over-Water Construction – Structures built over open water or streams including piers, docks, jetties, breakwaters, and fill that extends into the water.

Permit – A Shorelines Management Substantial Development Permit, Conditional Use Permit, Variance Permit, Permit revision or combination thereof.

Person – An individual, partnership, corporation, association, organization, cooperative, public or municipal corporation, or agency of the state or local governmental unit however designated.

Planning and Economic Development Department (PEDD) – The City of Bellingham Planning and Economic Development Department.

Rip-Rap – A loose assemblage of broken rock erected in or near water for protection from wave and current action or for foundation; the broken rock used for this.

Shorelines – All of the water areas of the state, including reservoirs, and their associated wetlands, together with the lands underlying them, except (1) shorelines of statewide significance; (2) shorelines on segments of streams upstream of a point where the mean annual flow is 20 cubic feet per second or less, and the wetlands associated with such upstream segments; and (3) shorelines on lakes of less than 20 acres in size and wetlands associated with such small lakes.

Shorelines of the State – All areas included in shorelines and shorelines of statewide significance.

Shorelines of Statewide Significance – Those shorelines designated as such by the Shoreline Management Act of 1971 including those lakes, whether natural, artificial or a combination thereof, with a surface acreage of 1,000 acres or more measured at the ordinary high water mark and those natural rivers, or segments thereof, west of the crest of the Cascade Range downstream of a point where mean annual flow is measured at 1,000 cubic feet per second or more and those marine areas seaward of extreme low tide.

Statement of Exemption – A written statement by the Planning and Economic Development Department stating that a proposed development is exempt from the substantial development permit requirements of the Master Program.

Structure – That which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner.

Substantial Development – Any development of which the total cost or fair market value exceeds \$2500, or any development which materially interferes with the normal public use of the water or shorelines of the state, except that the following shall not be considered substantial developments for the purpose of the Master Program in accordance with WAC 173-14-040.

1. Normal maintenance or repair of existing structures or developments, including damage by accident, fire or elements;
2. Construction of the normal protective bulkhead common to single family residences;
3. Emergency construction necessary to protect property from damage by the elements;
4. Construction of a barn or similar agricultural structure on wetlands;
5. Construction or modification of navigational aids such as channel markers and anchor buoys;
6. Construction on wetlands by an owner, lessee or contract purchaser of a single family residence for his or her own use or for the use of his or her family, which residence does not exceed a height of 35 feet above average grade level and which meets all requirements of the state agency or local government having jurisdiction thereof;
7. Construction of a dock, designed for pleasure craft only, for the private noncommercial use of the owner, lessee or contract purchaser of a single-family residence, the cost of which does not exceed \$2,500.

Water-Dependent Use – A use or portion of a use which cannot exist in any other location and is dependent on the water by reason of the intrinsic nature of its operations. Examples of water-dependent uses may include but are not limited to:

1. Public or private terminal and transfer facilities which handle general commerce.
2. Ferry and passenger terminals.
3. Ship construction and repair facilities.
4. Marinas and mooring areas.
5. Tug and barge companies.
6. Pulp and paper mills, which require water transport.

7. Lumber and plywood mills, which require water transport.
8. Fish processing plants which require water transport.
9. Sand and gravel companies, which require water transport.
10. Petroleum handling and processing plants which require water transport.
11. Float plane facilities.
12. Aquaculture.
13. Log booming.
14. Sewer outfalls.

Water-Enjoyment Use – A recreational use such as a park, pier, or other use facilitating public access is a primary character of the use; or, a use that provided for passive and active interaction of a large number of people with the shoreline for leisure and enjoyment as a general character of the use and which, through location, design and operation assure the public's ability to interact with the shoreline. In order to qualify as a water-enjoyment use, the use must be open to the public and most, if not all, of the shoreline oriented space in the facility must be devoted to the specific aspects of the use that foster shoreline interaction.

Water-enjoyment uses include but are not limited to:

1. Public ecological and scientific reserves.
2. Public waterfront parks
3. Public use beaches.
4. Aquariums available to the public.
5. Restaurants available to the public.
6. Resorts and convention center with entertainment or dining facilities available to the public.
7. Retail businesses and mixed commercial development housed in structures designed to take advantage of a waterfront location through expanse to view of water, displays oriented to pedestrian flow, enhancement of pedestrian amenities or other similar design features.

Water-Oriented Use – Any one or a combination of water-dependent, water-related, or water-enjoyment uses.

Wetlands or Wetland Areas – Those lands extending landward for 200 feet in all directions as measured on a horizontal plane from the ordinary high water mark; and all marshes, bogs, swamps, floodways, river deltas and flood plains associated with the streams, lakes and tidal waters which are subject to the provisions of Chapter 90.58 RCW. "Associated wetland" means those wetlands, which are strongly influenced by and in close proximity to any stream, river, lake, or tidal water, or combination thereof, subject to Chapter 90.58 RCW.

Section 5: No development shall be undertaken on the shorelines of the City except those that are consistent with the policy of the Shoreline Management Act of 1971 and the goals, policies and regulations of the City of Bellingham Shoreline Master Program.

Section 6: No substantial development shall be undertaken on the shorelines of the City without first obtaining a permit from the City of Bellingham.

Section 7: No development shall be undertaken on the shorelines of the City which requires a variance or conditional use permit without first obtaining said permit from the City of Bellingham.

Section 8: Applicants for permits under Sections 6 and 7 shall have the burden of proving that a proposed development is consistent with the criteria which must be met before a permit is granted.

Section 9: Substantial progress toward completion of a permitted activity must be undertaken within two years after the approval of the permit by the City of Bellingham. Substantial progress shall include all of the following where applicable: the making of contracts; signing of notice to proceed; completion of grading and excavation; and the laying of major utilities; or, where no construction is involved, commencement of the activity. The City of Bellingham may authorize a single extension before the end of the time limit, with prior notice to parties of record and the Department of Ecology for up to one year based on reasonable factors. If such progress has not been made a new permit will be necessary.

Section 10: Permit authorization shall terminate within five years after the approval of the permit by the City of Bellingham; provided that local government may authorize a single extension before the end of the time limit, with prior notice to parties of record and the department, for up to one year based on reasonable factors.

Section 11: Developments which are exempt from the permit requirement of the Master Program shall obtain a "Statement of Exemption" from the City of Bellingham Planning and Economic Development Department prior to commencement of such development.

Section 12: PERMIT PROCEDURE:

A. Applicant shall obtain Shoreline Permit applications from the City of Bellingham Planning and Economic Development Department.

B. Upon receipt of a proper application, the Planning and Economic Development Department shall instruct the applicant to publish notices thereof at least once a week on the same day of the week for two consecutive weeks in the Bellingham Herald. An affidavit of publication shall be transmitted by the applicant to the Planning and Economic Development Department and affixed to the application. Within 30 days of the final publication of notice, any interested person may submit views upon the application in writing to the Planning and Economic Development Department or notify the Department of a desire to receive a copy of the action taken upon the application. All persons who so submit their views, and all others who so notify the Planning and Economic Development Department within 30 days of the last date of publication of the notice shall be entitled to receive a copy of the action taken on the application.

C. During the 30 days following the date of the last publication of the notice, the Shoreline Committee of the Planning and Development Commission shall review the application. If the Shoreline Committee finds that the application raises substantial questions of fact or policy concerning its consistency with the Shoreline Management Act, or the goals, policies or regulations of the City of Bellingham, it shall order a public hearing to receive testimony on the issues raised. Notice of such hearing shall be published no less than 10 days prior to the date of the hearing.

D. Following review of the application, or following a necessary public hearing, the Shoreline Committee shall make a recommendation to the Planning and Economic Development Director that the application be approved or denied.

E. Within five days following the approval or denial of a permit the Planning and Economic Development Director shall forward the application to the Department of Ecology and State Attorney General's Office for a 30 day review period.

F. Following the expiration of the thirty-day review period, unless an appeal has been filed within that 30-day period, the Planning and Economic Development Department shall notify the applicant that construction pursuant to the permit may commence.

Section 13: CONDITIONAL USES:

A. The purpose of the Conditional Use provision is to provide more control and flexibility for implementing the regulations of the Master Program. It is realized that many activities, if properly designed and controlled, can exist on the shorelines without detriment to the shoreline area.

B. All applications for conditional uses shall comply with the provisions of the Washington Administrative Code 173-14-140.

C. An applicant for a Substantial Development Permit, which requires a Conditional Use Permit shall submit applications for both permits simultaneously.

D. Conditional Use Permit applications shall be considered by the Board of Adjustment at a public hearing, except for over-water, water-enjoyment uses proposed in the Urban Multi-Use Environment, in accordance with Section 25 (C) 4c, which shall be considered by the City Council. In addition to the notice requirement in RCW 90-58.140, notice of such public hearing shall be published no less than ten days prior to the date of the hearing.

E. Prior to the granting of a Conditional Use Permit, the Board, or City Council where applicable, must find that:

1. The conditions spelled out in the Master Program have been met.
2. The use will cause no unreasonable adverse effects on the environment or other uses.
3. The use will not interfere with the public use of public shorelines.
4. Design of the site will be compatible with the surroundings.
5. The proposed use will not be contrary to the purpose and intent of the environment designation in which it is located and the general intent of the Master Program.

The Board, or City Council where applicable, may require additional conditions as are necessary to insure proper compliance with the intent and purpose of the environment designation and Master Program or to insure protection of the surrounding environment and uses.

F. Any Conditional Use Permit granted by the City must be forwarded to the Department of Ecology for its approval or approval with conditions or denial.

## Section 14: VARIANCES

A. The purpose of a variance permit is strictly limited to granting relief from specific dimensional or performance standards set forth in the master program where there are extraordinary or unique circumstances relating to the property such that the strict implementation of the master program will impose unnecessary hardships on the applicant or thwart the policies set forth in RCW 90.58.020.

B. Variance permits should be granted in a circumstance where denial of the permit would result in a thwarting of the spirit and intent of the master program or the policy enumerated in RCW 90.58.020. In all instances extraordinary circumstances shall be shown and the public interest shall suffer no substantial detrimental effect.

C. Variance permits for development that will be located landward of the ordinary high water mark (OHWM) except within those areas designated by the Department of Ecology marshes, bogs, or swamps pursuant to chapter 173-22 WAC, may be authorized provided the applicant can demonstrate all of the following:

1. That the strict application of the dimensional or performance standards set forth in the applicable master program precludes or significantly interferes with a reasonable use of the property not otherwise prohibited by the master program;
2. That the hardship described in (C) above is specifically related to the property, and is the result of unique conditions such as irregular lot shape, size, or natural features and the application of the master program, and not, for example, from deed restrictions or the applicant's own actions;
3. That the design of the project is compatible with other permitted activities in the area and will not cause adverse effects to adjacent properties or the shoreline environment;
4. That the requested variance does not constitute a grant of special privilege not enjoyed by the other properties in the area, and is the minimum necessary to afford relief; and
5. That the public interest will suffer no substantial detrimental effect.

D. Variance permits for development that will be located either waterward of the ordinary high water mark (OHWM) or within marshes, bogs, or swamps as designated by the Department of Ecology under chapter 173-22 WAC, may be authorized provided the applicant can demonstrate all of the following:

1. That the strict application of the dimensional or performance standards set forth in the master program precludes a reasonable use of the property not otherwise prohibited by the master program;

2. That the proposal is consistent with the criteria established under (C) (2) through (5) of this section; and
3. That the public rights of navigation and use of the shorelines will not be adversely affected.

E. In the granting of all variance permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example if variances were granted to other developments in the area where similar circumstances exist the total of the variances shall also remain consistent with the policies of the master program and Shoreline Management Act and shall not produce substantial adverse effects to the shoreline environment.

F. Requests for varying the use to which a shoreline area is to be put are not requests for variances, but rather requests for conditional uses.

G. Any variance granted by the City must be forwarded to the Department of Ecology for approval or denial.

Section 15: APPEALS FROM GRANTING, DENYING OR RESCINDING A PERMIT

A. Any person aggrieved by the granting, or denying of a permit on the shorelines of the City may seek review from the Shorelines Hearings Board by filing a request for the same within 30 days of receipt of the final order. Concurrently, with the filing of any request for review with the Hearing Board as provided in this section pertaining to a final order of the City of Bellingham the requestor shall file a copy of the request with the Department of Ecology and the Attorney General's Office. If it appears to said department or the Attorney General that the requestor has valid reasons to seek review, either the department or the Attorney General may certify the request within 30 days after its receipt to the Shorelines Hearings Board following which said Board shall then, but not otherwise, review the matter covered by the requestor: Provided, that the failure to obtain such certification shall not preclude the requestor from obtaining review in the Superior Court under any right to review otherwise available to the requestor. The Department of Ecology and the Attorney General may intervene to protect the public interest and insure that the provisions of the Shoreline Management Act are complied with at any time within fifteen days from the date of the filing of said copies by the requestor.

B. The Department of Ecology or the Attorney General may obtain review of any final order granting a permit, or granting or denying an application for a permit issued by the City of Bellingham by filing a written request with the Shorelines Appeals Board and the City of Bellingham within 30 days from the date the final order was filed as provided in Subsection (5) of RCW 90.58.140.

C. The review proceedings authorized by Subsection (A) and (B) of this section are subject to the provisions of Chapter 34.04 RCW pertaining to procedures in contested cases. Judicial review of such proceedings of the Shorelines Hearings Board may be had as provided in Chapter 34.04 RCW.

Section 16: NONCONFORMING DEVELOPMENT:

A. "Nonconforming development" means a shoreline use or structure which was lawfully constructed or established prior to the effective date of the act or the master program, or amendments thereto, but which does not conform to present regulations or standards of the program or policies of the act;

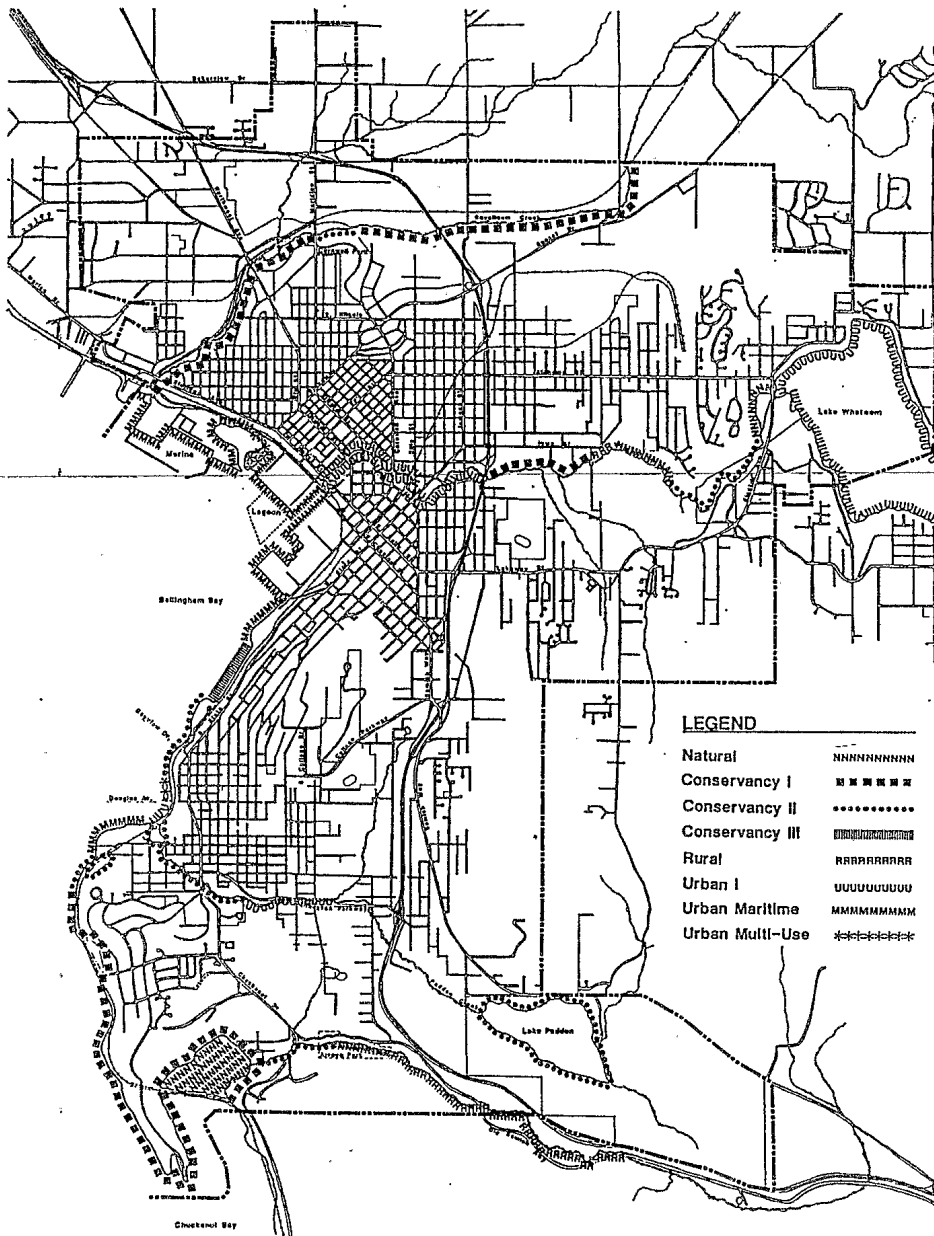
B. Nonconforming development may be continued provided that it is not enlarged, intensified, increased, or altered in any way which increases its nonconformity;

C. A nonconforming development which is moved any distance must be brought into conformance with the applicable master program and the act;

D. If a nonconforming development is damaged to an extent not exceeding fifty percent replacement cost of the original structure, it may be reconstructed to those configurations existing immediately prior to the time the structure was damaged, so long as restoration is completed within one year of the date of damage;

E. If a nonconforming use is discontinued for 12 consecutive months or for 12 months during any two-year period, any subsequent use shall be conforming. It shall be necessary to show that the owner of the property intends to abandon such nonconforming use in order for the nonconforming rights to expire;

F. A nonconforming use shall not be changed to another nonconforming use, regardless of the conforming or nonconforming status of the building or structure in which it is housed.



**LEGEND**

- Natural NNNNNNNNN
- Conservancy I ■■■■■■■■■■
- Conservancy II ●●●●●●●●
- Conservancy III ■■■■■■■■■■
- Rural RRRRRRRRR
- Urban I UUUUUUUUU
- Urban Maritime MMMMMMMMM
- Urban Multi-Use \*-\*-\*-\*-\*

Bellingham Shoreline Management Master Program



Scale: 1" = 1000'

# Shoreline Designations

Note: This chart is for quick reference only. Refer to Master Program Provisions for exact regulations.

Environment	Purpose	Setback	Uses								
			Conservation	Public recreation	Public access	Water-dependent	Water-enjoyment	Non-water-dep Residential			
Natural	Preserve areas w/ important ecosystems		■								
Conservancy I	Protect areas with erosion or flooding conditions		■	■	■	■	■	■	■	■	■
Conservancy II	Preserve areas that offer unique opportunity for public enjoyment		■	■	■	■	■	■	■	■	■
Conservancy III	Preserve areas that offer unique opportunity for public enjoyment		■	■	■	■	■	■	■	■	■
Rural	Optimize quality of shoreline by regulatory development		■	■	■	■	■	■	■	■	■
Urban I	Allow intense development and enhance shoreline		■	■	■	■	■	■	■	○	●
Urban Maritime	Reserve land for activities that require access to navigable water			■	■	■	■	■	■	■	■
Urban Multi-Use	Provide a variety of development and water enjoyment opportunities		■	■	■	■	■	■	■	■	■

**Key:**

■ Permitted on land

□ Conditional on land

● Permitted over water

▽ Subject to environment specific standards

○ Residential docks allowed on waterfront

Section 17: OFFICIAL ENVIRONMENT DESIGNATION MAP:

A. There is hereby made a part of the Master Program a map which shall officially be known as the "Shoreline Environment Designation Map" together with a written description of the boundaries of the environment designations.

B. Boundary Description:

Bellingham Bay

Chuckanut Bay northerly of the Burlington Northern Railroad between the ordinary high water mark and the line of extreme low tide, together with the saltwater marsh northeasterly of the bay and the estuary of Chuckanut Creek ---- NATURAL.

From the south city limits north to the southerly line of Cowgill Avenue extended westerly -- -- CONSERVANCY I.

From the southerly line of Cowgill Avenue extended westerly, northerly to the northerly line of Port of Bellingham Marine Park ---- CONSERVANCY II.

From the northerly line of Port of Bellingham Marine Park to a line 120 feet west of the westerly right-of-way of 6<sup>th</sup> Street ---- URBAN MARITIME.

From a line 120 feet west of the westerly right-of-way line of 6<sup>th</sup> Street around to mudflats at the mouth of Padden Creek to the eastern end of the Burlington Northern Railroad trestle which crosses near the mouth of Padden Creek ---- CONSERVANCY II.

From the eastern end of the above described railroad trestle northerly to the south right-of-way line to Douglas Avenue extended ---- URBAN I.

From the south right-of-way line of Douglas Avenue extended to the north right-of-way of Bennett Avenue extended ---- URBAN MULTI-USE.

From the north right-of-way line of Bennett Avenue northeasterly to the north right-of-way line of vacated Darwin Avenue ---- CONSERVANCY II.

From the north right-of-way line of vacated Darwin Avenue to the extended south line of Lot 1, Block 115, Bellingham Bay Land Company's Second Addition to Bellingham ---- CONSERVANCY III.

From the extended south line of Lot 1, Block 115, Bellingham Bay Land Company's Second Addition to Bellingham northeasterly to and including the southeast shoreline of the I and J Waterway ---- URBAN MARITIME.

From the southeast shoreline of the I and J Waterway to the western line of the Roeder and Whatcom Addition to Whatcom ---- URBAN MULTI-USE.

From the western line of the Roeder and Whatcom Addition to Whatcom northerly to the north city limits ---- URBAN MARITIME.

### Lake Whatcom

From the City limits on the west side of Lake Whatcom northwesterly to Electric Avenue, thence southerly to the south line of Lot 16, Block 1, Eldridge's Park Addition to Bellingham ---- URBAN I.

From the intersection of the westerly right-of-way of Electric Avenue and the southerly right-of-way line of Texas Street westerly and southerly to the extended southerly boundary of Lot 16, Block 1, Eldridge's Park Addition to Bellingham, together with the associated marsh to the west ---- NATURAL.

From the north end of the Electric Avenue Bridge over Lake Whatcom, around the lake to the City limits on the east side of the lake ---- URBAN I.

### Lake Padden

All the shorelines of Lake Padden ---- CONSERVANCY II.

### Chuckanut Creek

From the south city limits westerly to the east right-of-way line of 32<sup>nd</sup> Street --- RURAL.

From the east right-of-way line of 32<sup>nd</sup> Street westerly to the easterly section line of Section 13, Township 37 North, Range 2 East ---- NATURAL.

From the easterly section line of Section 13, Township 37 North, Range 2 East westerly to the Chuckanut Creek estuary ---- CONSERVANCY II.

### Padden Creek

From the confluence of a drainage ditch from the north approximately 625 feet easterly of the east right-of-way line of 24<sup>th</sup> Street, westerly to the exit of the creek from a culvert beneath Valley Parkway located approximately due south of the right-of-way of 17<sup>th</sup> Street ---- URBAN I.

From the above described culvert westerly and northwesterly to Harris Avenue ---- CONSERVANCY II.

### Whatcom Creek

From the Lake Whatcom control dam southerly and westerly to the extended easterly right-of-way of Erie Street ---- CONSERVANCY II.

From the extended easterly right-of-way line of Erie Street westerly to the west line of Section 28, Township 38 North, Range 3 East ---- NATURAL.

From the west line of Section 28, Township 38 North, Range 3 East to the easterly right-of-way line of Valencia Street ---- RURAL.

From the easterly right-of-way line of Valencia to easterly right-of-way line of SR5 ---- CONSERVANCY I.

From the easterly right-of-way line of SR5 to Roeder Avenue ---- URBAN I.

Squalicum Creek

From Roeder Avenue to Meridian Street ---- CONSERVANCY I.

From Meridian Street to the east line of the South West  $\frac{1}{4}$  of the South West  $\frac{1}{4}$  of Section 18, Township 38 North, Range 3 East ---- CONSERVANCY II.

From the east line of the South West  $\frac{1}{4}$  of the South West  $\frac{1}{4}$  of Section 18, Township 38 North, Range 3 East easterly to the City limits ---- CONSERVANCY I.

## Section 18: NATURAL ENVIRONMENT

A. DEFINITION: Areas that are locally unique because of their natural condition and should be preserved because of their scenic qualities or their regional importance for the preservation of wildlife.

B. PURPOSE AND INTENT: The purpose of the Natural Environment is to preserve the area through the application of maximum conservation practices. Areas designated under the Natural Environment are those areas where the benefits to future generations of Bellingham citizens from preservation exceed those from any level of development over the long run. Additionally, the Natural Environment encompasses those areas which are rare ecosystems and of importance to wildlife such as migratory birds or anadromous fish.

C. REGULATIONS: Development, including but not limited to recreation and public access development shall not be permitted in the natural environment. No clearing within 50 feet of the ordinary high water mark shall occur unless provided for in Section 26 of this ordinance.

D. CONDITIONAL USES: Limited development may be permitted where it can be demonstrated that such development is necessary to alleviate a factor which is damaging to the Natural Environment, i.e., a developed trail system where indiscriminate pedestrian access has proven damaging.

Section 19: CONSERVANCY ENVIRONMENT I (Amended Resolution 102-1983):

A. DEFINITION: Areas where physical limitations would make intense development detrimental to the function of the water body or the aesthetic quality of the shoreline.

B. PURPOSE AND INTENT: The purpose of the Conservancy Environment I is to protect those areas, which are intolerant of intense modification due to flooding and/or sliding and erosion or environmental problems. Structural modifications on the shoreline proper in a Conservancy Environment I which are not sensitive to these problems would significantly interfere with shoreline process causing detriment to other areas. Regulated use of the shoreline is allowed which recognizes the physical limitations and environmental sensitivity of the shoreline area.

C. REGULATIONS: No clearing within 50 feet of the ordinary high water mark shall occur unless provided for in Section 26 of this ordinance. No fills, hard surfacing, permanent structures, or storage shall be located within 100 feet of the ordinary high water mark or clearing within 50 feet of the ordinary high water mark, unless permitted by Section 26 of this ordinance or the following:

1. Development may be permitted within 100 feet of the ordinary high water mark under the following regulations:
  - a. Such development may not be undertaken on a slope of greater than 15% and;
  - b. Such development must be located above the level of the 100-year flood.
2. In the Whatcom Creek Flood Improvement Project area (Whatcom Creek between Interstate 5 and Racine Street) the following regulations apply:
  - a. Development shall be permitted between 50 feet and 100 feet from the ordinary high water mark if such development is on a slope of less than 15% percent.
  - b. Landfill shall be permitted within 50 feet of the ordinary high water mark except that where berms have been constructed landfill may extend up to the top of the berm, within the setback. Hard surfacing, permanent structures and storage in this flood plain modification area shall be set back to the outside top edge of any flood protection berm or 50 feet from the ordinary high water mark whichever is greater.

D. CONDITIONAL USE:

Storage may be permitted within setbacks provided:

1. No storage shall be located within 50 feet of the ordinary high water mark.
2. Such storage shall be screened with vegetation, which will attain a minimum height of eight feet after two growing seasons. (Bonding to assure compliance will be required.)
3. Storage of materials, which could be readily introduced into the water body by flooding or erosion and/or cause toxic or polluting effects, shall be prohibited.
4. The use shall not conflict with City flood plain regulations or functioning of flood prevention works.

Section 20: CONSERVANCY ENVIRONMENT II:

A. DEFINITION: Areas which offer unique opportunity for the citizens of Bellingham to enjoy physical access to the shorelines and water.

B. PURPOSE AND INTENT: The purpose of the Conservancy Environment II is to preserve those area which do not have physical limitations and are not uniquely natural, but offer opportunities for the general public to enjoy the shorelines of the City, whether said shorelines be natural or intensively developed.

C. REGULATIONS: No clearing within 50 feet of the ordinary high water mark. No fills, hard surfacing, permanent structures or storage shall be located within 100 feet of the ordinary high water mark or clearing within 50 feet of the ordinary high water mark, unless permitted by Section 26 of this ordinance or the following:

D. CONDITIONAL USES: Setback may be reduced to 50 feet if the proposed development is of the nature and design that it takes advantage of and enhances the physical access to the shorelines for the general public.

Section 21: CONSERVANCY ENVIRONMENT III:

A. DEFINITION: Areas which offer unique opportunity for the citizens of Bellingham to enjoy visual access to the shorelines and water.

B. PURPOSE AND INTENT: The purpose of the Conservancy Environment III is to preserve those areas which do not have physical limitations and are not uniquely natural, but which offer views of the water from public property and/or substantial numbers of residential properties.

C. REGULATIONS: No fills, hard surfacing, permanent structures, or storage shall be located within 25 feet of the ordinary high water mark, unless permitted by Section 26 of this ordinance.

Any development undertaken on the shorelines of a Conservancy III Environment shall be designed so that the highest point of any structure will be no higher than the level of the nearest adjacent upland public street right-of-way which is relatively parallel to the shoreline.

Section 22: RURAL ENVIRONMENT:

A. DEFINITIONS: Areas without severe physical limitations but where intense land use would be detrimental to the aesthetic quality of the shoreline and incompatible with the current low density of existing uses.

B. PURPOSE AND INTENT: The purpose of the Rural Environment is to maintain and optimize the attributes of the shoreline and water body for appropriate shoreline uses by regulating the intensity and location of those uses.

C. REGULATIONS: No fills, hard surfacing, permanent structures or storage shall be located within 25 feet of the ordinary high water mark, unless permitted by Section 25 of this ordinance.

No more than 25% of the area of the land between 25 feet and 100 feet of the ordinary high water mark may be covered by buildings, hard surfacing, or storage.

No more than 50% of the area of the land between 100 feet and 200 feet of the ordinary high water mark may be covered with buildings or hard surfacing.

A variance may be granted to allow development which may occupy up to 50% of the total area of the site provided: (1) no fills, hard surfacing, permanent structures or storage is permitted within 50 feet of the ordinary high water mark, (2) that the development is properly screened and landscaped to maintain the aesthetic quality of the shoreline and (3) that the site possesses unusual characteristics that meet the normal criteria for variances.

Section 23: URBAN ENVIRONMENT I:

A. DEFINITION: Areas, which are currently developed to an Urban density of where intense development would be consistent with the Master Program.

B. PURPOSE AND INTENT: The purpose of the Urban Environment I is to allow for intense shoreline development while at the same time enhancing the shoreline and recognizing its aesthetic attributes.

C. REGULATIONS: Unless permitted by Section 26 of this ordinance, no fills, hard surfacing, permanent structures or storage shall be located within 25 feet of the ordinary high water mark.

Permanent structures shall be set back from the ordinary high water mark 25 feet or one foot for each foot of building height, whichever is greater. This required setback shall not exceed 50 feet.

## Section 24 – URBAN MARITIME ENVIRONMENT:

A. DEFINITION: Areas proximate to navigable waters and are suitable for water borne commerce or other water dependent use.

B. PURPOSE AND INTENT: The purpose of the Urban Maritime Environment is to reserve areas of land use activities that require proximity to navigable waters.

### C. REGULATIONS

1. Permitted uses must be:

a. Water-dependent, or

b. Publicly owned waterfront recreational uses, which make use of a unique shoreline resource such as a waterfront park, view, tower, public pathway, public maritime interpretive display, or aquarium.

c. Required public access features. The above uses are permitted on over-water construction.

2. Non-water dependent uses, excluding residences, may be permitted as accessory uses provided they functionally support a permitted use. Accessory uses must be vacated if the primary use they support is vacated. Uses permitted as accessory uses shall not be built on over-water construction in the Urban Maritime Environment.

3. Conditional Uses: Water enjoyment uses may be permitted as conditional uses on land above the ordinary high water mark in the Urban Maritime Environment provided they meet all other ordinances, codes and regulations and provided they meet the following conditions:

a. The proposed development provides continuous public access at the water's edge.

b. The proposed use does not interfere or restrict existing or permitted water-dependent uses. Water-dependent commercial and industrial uses have primary over water-enjoyment uses in the Urban Maritime Environment.

c. Other conditions as set by the Direction of the Planning and Economic Development. Water enjoyment uses except for publicly owned waterfront recreational uses may not be built on over-water construction in the Urban Maritime Environment.

Section 25 – URBAN MULTI-USE ENVIRONMENT:

- A. DEFINITION: Areas which have one or more of the following characteristics:
1. Offer unique opportunities for development.
  2. Offer significant opportunities to the public to enjoy the shoreline.
  3. Do not offer suitable conditions for waterborne commerce or other water-dependent or water-related uses.
- B. PURPOSE AND INTENT: The purpose of the Urban Multi-Use Environment is to provide the opportunity to develop a variety of commercial uses that increase the economic utilization of waterfront and the public's ability to enjoy the shoreline.
- C. REGULATIONS:
1. Uses – permitted uses on land above the ordinary high water mark must be:
    - a. Water-dependent uses.
    - b. Water-enjoyment uses.
    - c. Public access.
  2. In the Urban Multi-Use environment between Douglas and Bennett Avenues, non-water oriented uses including multi-family residences may be permitted landward of the ordinary high water mark providing:
    - a. A site plan for the entire environment area indicating the location of water oriented and non-water oriented uses is reviewed by the Shoreline Committee and approved by the Director of Planning and Economic Development. The plan shall include a public access element indicating the location of trails and other areas open to the public. The plan shall minimize view disruption by providing view corridors and varying walls and rooflines. The plan shall provide the public with physical access to the shore consistent with the goals and policies of this Program. A trail connection running parallel to the shore between the development and the shoreline shall be provided.
    - b. Non-water oriented uses shall be permitted only in conjunction with other permitted uses. Non-water oriented uses shall not be occupied prior to occupancy of water oriented uses.

3. In the Urban Multi-Family environment in the Squaticum Harbor area north of the I and J Waterway, non-water depended uses may be permitted landward of the ordinary high water mark as part of a convention center development which contains water oriented uses open to the public providing:
  - a. Non-water oriented uses are recognized as being necessary to achieve the development of a hotel/convention center on the site.
  - b. Non-water oriented uses when at ground level, shall not cover more than 15% of the total area within the development site. Private residences shall not be occupied prior to the hotel/convention center obtaining a temporary occupancy permit.
  - c. The uses must not impair public access to the water.
  - d. Developments with non-water oriented and residential uses must provide continuous public access between the use and the shoreline.
4. The following uses are permitted on over-water construction in the Urban Multi-Use Environment:
  - a. Water dependent uses
  - b. Public access
  - c. Water-enjoyment uses, provided that public access, a minimum of 12 feet wide is provided continuously around the perimeter of the pier or other over-water structures and provided that a minimum of 20% of the surface area of the pier or over-water structure whichever is greater, excluding interior walkways or courtyards be devoted to public access, provided that the waterward and adjacent sides of the stores above the ground floor level be committed to uses which enhance visual access to the water for the general public.
5. Public Access – Public access in accordance with Section 26 and as approved by the City of Bellingham shall be required for all developments in the Urban Multi-Use Environment except where such access is determined to be unfeasible with the operations of a proposed water-dependent use by the City Council.
6. Maximum Height for Over-Water Structures – The maximum height for any structure built on over-water construction shall be 37' as measured vertically from the mean higher high tide to the highest point on the coping of a flat roof or the average elevation of the highest gable of a pitch or hip roof.

Section 26: GENERAL REGULATIONS:

A. The following activities are allowed within the setbacks required in Section 18 through 25 of this ordinance or in any water body, EXCEPT in a Natural Environment.

1. Road, railroad, and utility construction necessary to span the shorelines to facilitate the circulation or utility network of the City.
2. Development necessary to facilitate public access subject to the following:
  - a. Structures necessary to facilitate public access shall be designed so as not to impair the function of the water body.
  - b. Public access development within a required setback shall be limited to pedestrian or bicycle access.
  - c. Public access development shall consider and protect adjacent private properties.
3. Bulkheads necessary to protect property from erosion; must conform to regulations pertaining to bulkheads contained herein.
4. Landscaping:
  - a. Contour alterations resulting from site preparation shall not be substantially different from existing contours.
  - b. Landscaping materials shall be used which will prevent soil erosion.
  - c. Existing natural vegetation shall be used when feasible.
  - d. Land, which is cleared of natural vegetation, shall be replanted as soon as possible. The landscaping plantings shall emphasize the plant species on the State of Washington Department of Wildlife and Department of Fisheries list of recommended plants.
5. Minor channel improvements necessary to maintain the carrying capacity of the waterway. Alteration of channel route is prohibited except in connection with road or railroad construction necessary to span the shoreline.
  - a. Dredging and bulkheading activities shall conform to pertinent regulations contained herein.
  - b. Removal of incompatible debris and/or structures is permitted.

- c. When brush and bramble vegetation is removed it shall be replaced by grasses, shrubbery, and/or trees.
  - d. Dead trees or trees which are presently in danger of falling due to erosion may be removed provided such trees are cut at or near ground level and the roots are allowed to remain.
6. Materials may be placed within the water body for the purpose of enhancing fish production or migration. Such activity must be approved by the State Departments of Fisheries or Wildlife.
  7. Over-water construction including: Piers docks, floats, breakwaters, jetties and groins are permitted within Urban I, Urban Maritime and Urban Multi-Use Environments and those areas of Conservancy I designation located from the north section line of Section 14 Township 37 north, Range 2 east northerly to the south right-of-way line of Willow Road and from the extended north line of Lot 7, Block 3, Division No. 2 northerly to the southerly line of Cowgill Avenue extended westerly subject to pertinent provisions contained herein.

B. PARKING: No primary use parking shall be permitted on the shorelines of the City; provided parking may be allowed, except in the Natural environment, accessory to authorized uses when (1) there exists no feasible alternative to the proposed parking on the shorelines, (2) no parking is located within any required setback, and (3) adequate screening or landscaping is installed.

Parking accessory to publicly owned recreational uses and public access is permitted within the provisions set by (1), (2) and (3) above.

The requirement for screening may be waived by the Director of the Bellingham Planning and Economic Development Department where screening would obstruct a significant view from public property. "Adequate screening or landscaping" for parking lots shall consist of one or more of the following:

1. A landscaped earth berm three feet high.
2. A strip of land 15 feet wide landscaped with trees, shrubs, and groundcover.
3. A building or enclosed structure.
4. A strip of land not less than five feet in width which is occupied by a continuous wall, or fence plant material, or combination of both; which shall be at least six feet (6') in height at time of installation. The plant material shall be evergreen and spaced not more than three feet (3') on center if pyramidal in shape, or not more than five feet (5') if wider in branching habit. If the plant material is used in conjunction with a wall or fence meeting the minimum height requirements, than said material can be of any kind and spacing.

C. Outside dumping or storage of refuse, garbage, scrap materials, auto bodies, or other similar materials shall be prohibited on the shorelines of the City; provided that reusable scrap material incidental to the existing use may be stored if screened from the water body. Such screening must be approved by the Director of the Bellingham Planning and Economic Development Department.

D. No street rights-of-way or utility easements which offer potential physical or visual access to the shorelines or water body shall be vacated unless in exchange for properties which offer equal or better public access.

E. No dams or similar water retention structures shall be constructed within the water bodies of the City.

F. Clearing of Natural Vegetation – The clearing of vegetation is prohibited in the natural environment except as necessary to alleviate a condition damaging to the natural environment.

The clearing of vegetation is prohibited within 50 feet of the shoreline in the Conservancy I and Conservancy II environments except in the following situations:

1. Vegetation may be cut where necessary to provide public access.
2. Vegetation may be cut in the 50-foot setback to alleviate a factor that is damaging to the natural environment or preventing normal water flow.
3. Vegetation may be cut in the 50 foot setback where maintaining the natural condition would prohibit the effective use of the property as permitted by other requirements of this Shoreline Master Program and other applicable ordinances.
4. Vegetation may be cut on residential properties if such cutting is not detrimental to fish habitat or stream ecology.
5. Vegetation may be removed as part of a city-approved program to enhance wildlife habitat or ecological conditions.

G. PUBLIC ACCESS: Public access shall be encouraged wherever possible. The Bellingham Open Space Plan shall be used as a guideline for where access is most desirable.

1. No development shall block or interfere with the normal public use of or public access to publicly owned shorelines and water bodies.
2. All developments shall be designed to protect and enhance views and visual access to the water and shorelines.

3. All developments, including recreational, multi-family residential, commercial or industrial, located along public shorelines or unique shoreline areas shall be required to provide view corridors, public accessways, trail easements or other amenities upon a determination by the City that the action would enhance public enjoyment of the shoreline, not unduly conflict with the proposed use, adjacent uses or public safety nor adversely impact the shoreline environment and is consistent with the City of Bellingham Open Space Plan.
4. Any required public access easement shall be of a size and design appropriate to the site, size, and general nature of the proposed development. Such easements shall be recorded on a property deed or face of a plat as a condition running in perpetuity with the land.
5. Signs which indicate the public's right of access shall be installed as required by the Director of Planning and Economic Development Department.
6. Public use on private property which is a condition of a shoreline permit may be limited to daylight hours or otherwise restricted to prevent use conflicts.
7. Where possible, public access sites shall have direct and easy access from the street.
8. Public access may be considered unfeasible and not be required where;
  - a. Unavoidable hazards to the public in gaining access exist.
  - b. Inherent security requirements of the use cannot be satisfied.
  - c. Unavoidable interference with the use would occur.
  - d. The cost of providing the access is unreasonably disproportionate to the total cost of the proposed development.
  - e. Where damage to the natural ecology of the area would result and could not be mitigated.
  - f. In the above, the applicant shall first demonstrate and the City shall determine that all reasonable alternatives have been exhausted, including but not limited to 1) maintaining a gate and limiting hours of use, or modifying operations and scheduling 2) designed separation of uses and activities, i.e. fences, terracing, use of one-way glazings, hedges, landscaping, etc. 3) provision of or contribution to an access at a site geographically separated from the proposal.

9. Public access to the shoreline shall be required on all public property, except as indicated above or as follows:
  - a. In harbor areas completely occupied by water-dependent uses.
  - b. In street ends or waterways occupied by water-dependent uses under permit or lease.
10. On property where public access is infeasible, the applicant may be permitted to provide off-site public access in the form of view platform, interpretive display or other public access enhancement consistent with the Open Space Plan in lieu of on-site access.
11. Required public access sites shall be fully developed and available for public use at the time of occupancy of the development unless the required public access site is on an undeveloped segment of a trail route designated in the Bellingham Open Space Plan. In this case, the required public access shall be fully developed and available for use when the trail segment is developed.
12. Where public access is not required on-site due to one of the factors cited in 8 or 9 above, a payment in lieu may be required prior to permit approval to provide a similar or equivalent amenity.
13. "Required public access" shall include not less than a pedestrian bicycle pathway of suitable surfacing and standards to meet the intended purpose, adequate signage to inform the public of the public access, design features and landscaping to make the facility in harmony with the shoreline setting, and where appropriate, facilities which are designed to meet the anticipated use including use by disabled persons.

Where required public access is located on a trail route indicated in the City of Bellingham Open Space Plan, the accessway shall connect to adjoining trail sections including access points and vistas, either existing or planned. If the required access does not connect to a continuous public trail, the required access shall connect to a public right-of-way.
14. Future actions by the applicant shall not diminish the usefulness or value of the public access site.

H. Drain pipes from adjacent properties and other drainage structures shall not extend into a required setback. Surface storm water run-off shall be collected in grass lined swales except where land topography makes this infeasible, where erosion would occur or where the City determines that another means of site drainage is preferable.

I. Use of Treated Wood on Lake Whatcom: Piles, floats or other members in direct contact with the water on Lake Whatcom shall not be treated or coated with paint, pentachlorophenol, arsenate compounds, creosote or other preservative treatment. Wooden members situated above the water may be constructed of factory applied copper arsenate provided it is approved by the U.S. Environmental Protection Agency (EPA) for that purpose, and the EPA regulations for its use are adhered to. No field application of pain preservative treatment or other chemical is permitted over the water of Lake Whatcom or in a location where water run-off could enter the lake.

Section 27: USE ACTIVITY REGULATIONS: The following regulations shall apply respectively to all developments established consistent with Sections 17 through 25 of this ordinance.

A. AGRICULTURE:

1. When land is cleared or tilled for agricultural uses, a buffer of natural vegetation of no less than 50 feet in width from the ordinary high water mark shall be maintained between the tilled area and the associate water body.
2. Livestock shall not be permitted within 100 feet of the ordinary high water mark.
3. The handling of livestock wastes shall be done in accordance with the "Guidelines for Handling Livestock Wastes for Western Washington," distributed by the Washington State Department of Ecology in conjunction with the United States Environmental Protection Agency for the Cooperative Extension Service.

B. ARCHEOLOGICAL AREAS AND HISTORICAL SITES: The following regulations shall apply to all identified archeological and historical sites on the shorelines of the City.

1. Identified archeological and historical sites shall be preserved and should be considered in park and open space planning.

C. AQUACULTURE: The following regulations shall apply to all aquaculture activities on the shorelines of the City.

1. Aquaculture activities within the City shall not unduly interfere with the navigability of the water body, or locate in areas where it would be detrimental to the natural function or quality of the water body.
2. Aquaculture shall not preclude the appropriate use of adjacent shorelines or be detrimental to visual access to the water body.

D. BREAKWATERS: The following regulations shall apply to the construction of breakwaters within any water body in the City of Bellingham.

1. Where feasible, floating breakwaters shall be used instead of solid breakwaters.
2. Prior to granting of a permit for breakwater construction, the effect of the breakwater on the shoreline shall be determined by the Planning and Economic Development Department and the disposition of the permit shall reflect such determination. An application for a permit to construct a breakwater shall provide the configuration of the shorelines and consistency of the shoreline within 300 feet in both

directions of the proposed breakwater, as well as the predominant direction of wave and current action.

3. The surface of any breakwater shall be kept free of any protruding wire, cable, etc. Broken concrete or asphalt or scrap metals shall not be permitted on the surface of any breakwater.
4. Breakwaters shall not interfere with water surfaces commonly used for navigation unless the benefit to the general public of such breakwater outweighs the interference to navigation.
5. Breakwater construction for the sole purpose of preventing shoreline erosion is prohibited.

E. **BULKHEADS:** The following regulations apply to the construction of bulkheads and seawalls and the placement of rip-rap.

1. Prior to the granting of a permit, the effect of the bulkhead on downstream or adjacent properties shall be determined by the Department of Planning and Economic Development and the disposition of the permit shall reflect such determination. The applicant for a permit to construct a bulkhead shall supply information as to the configuration of the shoreline and consistency of bank materials for properties within 300 feet in both directions from the proposed bulkhead.
2. Construction of bulkheads for the indirect purpose of creating land by filling behind the bulkhead shall be prohibited unless such landfill is permitted by the Master Program.
3. Bulkheads shall be prohibited which adversely affect public access to publicly owned shorelines.
4. The surface of any bulkhead shall be kept free of protruding wires, cables, metal straps, etc. Broken concrete or asphalt, or scrap metal materials shall not be used on the surface of any bulkhead.
5. The placement of rip-rap and other bank protection materials shall be done in conformance with Department of Fisheries and Department of Wildlife regulations.
6. The top of any bulkhead or rip-rap installation shall be no higher than the adjacent upland shoreline. Bulkhead materials shall not be placed landward so as to prevent the reestablishment of shoreline vegetation.
7. Bulkheading for the sole purpose of channelization or channel stabilization is prohibited.

F. COMMERCIAL DEVELOPMENT: The following regulations shall apply to wholesale and/or retail trade establishments, offices, manufacturing and warehousing facilities, public or quasi public uses, private clubs and lodges and similar uses, unless such use is located in an Urban Maritime environment.

1. The area between any commercial development and the adjacent water body shall be established and maintained in a slightly condition. This requirement includes the elimination of debris and brambles, and may require the installation of suitable landscaping. This requirement shall be the continuing obligation of the property owner.
2. When a commercial development on the shorelines is designed such that freight loading facilities, solid waste pick up stations or incinerators or material storage exist between the development and the water body, screening and/or landscaping shall be installed to screen such facilities from the water body. Such screening should be located as near to the facility as feasible and in no case shall it be located within the required shoreline setback. Such screening requires the approval of the Planning and Economic Development Department.
3. No hazardous waste materials shall be stored on its shorelines of the City.
4. Oil separation devices shall be used for the disposal of storm water from parking lots. Said devices shall be regularly maintained.

G. DREDGING: The following regulations shall apply to all dredging operations within any water body of the City.

1. Maintenance dredging of navigable channels and established boat basins shall be permitted provided such dredging is done in a manner, which will minimize adverse effects on marine habitat.
2. Dredging shall be permitted which is essential to the establishment of appropriate shoreline development.
3. Dredging necessary to maintain the carrying capacity of streamways shall be permitted provided such activity gains approval of the State of Washington Department of Fisheries and Department of Wildlife.
4. Dredge spoils shall not be stockpiled or disposed on any shorelines of the City, provided dredge spoils may be disposed as landfill. Such landfill disposal shall meet the regulations pertaining to landfills contained herein.
5. The applicant shall provide information from a qualified expert indicating that dredging activity will not affect water quality by the disruption of contaminated bottom sediments.

H. FOREST MANAGEMENT PRACTICES: The following regulations shall apply to the cutting of marketable timber and the cutting of trees necessary to accommodate appropriate shoreline uses.

1. Harvesting of commercial timber shall be selective cutting, so that no more than 30% of the merchantable trees may be harvested in any ten year period; provided that other timber harvesting methods may be permitted in those limited instances where the topography, soil conditions or silviculture practices necessary for regeneration render selective logging ecologically detrimental.
2. Cutting of trees of greater than six inches in diameter at the base which is incidental to a Substantial Development Permit shall require approval as part of said permit.

I. JETTIES AND GROINS: The following regulations shall apply to the construction of all jetties and groins on the shorelines of the City.

1. Prior to the granting of a permit for jetty or groin construction, the effect of the jetty or groin on adjacent shorelines shall be determined by the Department of Planning and Economic Development and the disposition of the permit shall reflect such determination. An applicant for permit to construct a jetty or groin shall provide information on the configuration and consistency of the shoreline within 300 feet on both sides of the proposed jetty or groin, as well as the predominant direction of wave and current action.
2. The construction of a jetty or groin for the sole purpose of entrapping sand is prohibited.
3. Jetties and groins shall not interfere with the public access to publicly owned properties or where public access has been established on private property.

J. LANDFILL: The following regulations shall apply to all landfill operations on the shorelines of the City.

1. Landfills, which result in water surface reduction, shall only be permitted to accommodate water dependent and/or public uses.
2. All landfills shall be provided with vegetation, retaining walls and/or other mechanisms as are necessary for erosion prevention. Retaining walls or bank protection shall conform to regulations pertaining to bulkheads.
3. Fill materials shall be used which do not pose a potential threat to water quality. When dredge spoils are used for fill materials, the fill must be placed behind an impermeable dike or bulkhead.

4. Landfills shall blend with existing topography in order to not interfere with the visual and/or physical shoreline access of the public or adjacent residents.
5. Landfill within 200 feet of the point of entrance of a freshwater stream into marine waters shall not interfere with or endanger the migration of anadromous fish species nor reduce the area of estuarine mudflats which are exposed at mean low tide.

K. MARINAS: The following regulations shall apply to all marina activities including wet moorage, dry storage and launch ramps.

1. The placement of breakwaters, jetties, groins, bulkheads, landfills, and dredging activities associated with marina construction shall comply with regulations contained herein pertaining to those activities.
2. Marinas shall be designed to allow sufficient circulation and flushing action of the marina enclosure.
3. Discharge of solid waste or sewage into the water body is prohibited. Marinas shall be supplied with adequate restroom and solid waste receptacles to accommodate marina users.
4. Disposal or discarding of fish or shellfish cleaning wastes, scrapfish, viscera, or unused bait in or near a marina is prohibited.
5. Facilities and procedures for receiving, storing, dispensing, and disposing of oil and other toxic products shall be designed to insure that such oil and other toxic products are not introduced into the water body. Additionally marinas shall have facilities and established procedures for the containment and recovery of spilled products.
6. All new marinas shall provide adequate space and utility capability for pump-out, holding and/or treatment facilities for sewage contained on boats or vessels.
7. Launch ramps, which are not directly associated with wet moorage or dry storage facilities, shall have a minimum of 25,000 square feet of adjacent upland area. More parking may be required depending on the capacity of the launch. Such area shall include spaces for the temporary parking and storage for no less than 30 cars and trailers per launch ramp, which shall be located as far upland of the shore/water interface as feasible. Additionally, such launching ramp area shall contribute to public access to the shoreline.
8. Marinas shall provide viewpoints, which will allow the general public to view marina activity.

9. Covered moorage is permitted only in the “old marina” portion of Squalicum Harbor between and including slip gates #1 and #5 as shown on the Port of Bellingham Squalicum Harbor Plan.
10. All covered moorages or boathouses shall be of similar and/or compatible design, color, length and height and shall be constructed in contiguous groups or modules except where a different design is an improvement upon existing design or is required to accommodate a different type of boat such as a sail boat.
11. Covered moorage shall be located in areas so as not to interfere with nor detract from established points of visual access of the marina.
12. All applications for marinas shall be reviewed by the Bellingham Arts Commission and the Interdisciplinary Advisory Committee.

L. MINING: The following regulations shall apply to any mining activity on the shorelines of the City, including the removal or excavation of sand, gravel or other soil.

1. No mining shall occur immediately adjacent to any water body or in any location, which will adversely affect or alter the natural function or quality of the water body.
2. Practices and procedures shall be utilized which will minimize dust, noise or other public nuisances resulting from mining activity.
3. Mining, stockpiling of spoils, disposal of washings and construction of water holding basins shall not be permitted within any water body or any required setback.
4. Proposals for reclamation of mined areas must be approved prior to the issuance of a Substantial Development Permit.
5. A bond for one and one half times the amount of reclamation shall be posted by the issuance of permits.

M. SIGNS: The following regulations shall apply to all outdoor advertising signs and billboards on the shoreline of the City.

1. Billboards are prohibited on the shorelines of the City and on upland routes, which offer visual access to the shorelines.
2. Identifying signs accessory to shoreline uses shall be constructed flush with existing buildings and shall not extend above the roofline.
3. One free standing informational and/or directions signs shall be permitted per development provided they are no larger than 32 square feet in area on any one face of such sign. Such signs shall contain no commercial advertising.

4. Signs advertising real estate for sale or lease shall be permitted provided they do not exceed 12 square feet in area, and provided further that they are removed within seven days following the sale or lease of the property.

N. PIERS: The following regulations shall apply to the installation of all piers, docks, and floats on the shorelines of the City.

1. Piers, docks or floats shall be constructed so as to cause minimum interference with the public use of the water surface and shoreline, and so as to cause no undue harm to adjacent properties.
2. Prior to the granting of a permit for a pier, dock or float, the effect of that structure upon adjacent shorelines shall be determined by the Director of the Bellingham Planning and Economic Development Department and the disposition of the permit shall reflect such determination.
3. Where feasible pile or floating piers and docks shall be used instead of rip-rapped or bulkheaded supports.
4. Piers, docks, or floats within 200 feet of the point of entrance of a freshwater stream into marine waters shall not interfere with or endanger the migration of anadromous fish species nor be constructed over estuarine mudflats which are exposed at mean lower low tide.
5. No covered moorage or boathouses shall be constructed on the shorelines except in an authorized marina.
6. Use of treated wood on Lake Whatcom: Piles, floats or other members in direct contact with the water on Lake Whatcom shall not be treated or coated with paint, pentachlorophenol, arsenate compounds, creosote or other preservative treatment. Wooden members situated above the water may be constructed of factory applies copper arsenate providing it is approved by the U.S. Environmental Protection Agency (EPA) for the purpose and the EPA regulations for its use are adhered to. No field application of paint, preservative treatment or other chemical is permitted over the water of Lake Whatcom or in a location where water run-off could enter the lake.

O. PORTS AND WATER RELATED INDUSTRY: The following regulations shall apply to all port facilities and industries which, including accessory uses, require a waterfront location:

1. The Port of Bellingham shall provide public access opportunities at new shoreline facilities, consistent with the protection of public health and safety and Port property.

2. Where feasible, the Port of Bellingham shall coordinate the cooperative and multiple use of piers, docks, and parking facilities.

P. RECREATION: The following regulations shall apply to the development of all recreational facilities on the shorelines of the City.

1. Recreational development shall be designed to minimize adverse effects on the natural amenities of the shoreline while enhancing its recreational value and protecting the public health and safety.
2. Public recreational development shall recognize the wide variety of recreational needs and desires.
3. Commercial recreational development shall conform to regulations contained herein relating to commercial development.

Q. RESIDENTIAL DEVELOPMENT: The following regulations shall apply to all residential development on the shorelines of the City.

1. Residential development over water is prohibited.
2. Residential development including single family subdivisions shall be designed to provide a common water-front area in an manner which will offer equal access for all residents of the subdivision to all properties within the subdivision abutting a water body.
3. Residential development on the shorelines shall not exceed 35 feet in height except in the Urban Multi-Use Environment.

R. ROAD AND RAILROAD DEVELOPMENT: The following regulations shall conform to all road and railroad construction on the shorelines of the City.

1. Road and railroad development shall be located as far from the land/water interface as feasible and shall not interfere with other appropriate shoreline uses.
2. Road construction or reconstruction shall be designed to accommodate varied modes of transportation and, where feasible, be utilized as a means of increasing public access to the shorelines.
3. The placement of rip-rap or other materials for the purpose of erosion prevention shall be done on the bank of the road or railroad bed. No broken concrete, asphalt, or scrap metal materials shall be used on the surface of any bank protection materials. Bank protection materials shall be placed from the bank. There shall be no dumping of bank protection material directly from a truck bed onto the bank face.

4. Bridges and trestles shall be designed to cause minimum interference with the natural function of the water body.

S. SHORELINE PROTECTION:

1. Diking for the purpose of protection from flooding shall not be permitted within any required setback.
2. Dikes shall be planted with suitable vegetation to prevent erosion.
3. Bank stabilization for the purpose of protecting property from erosion shall conform to the regulations contained herein relating to bulkheads.

T. SOLID WASTE DISPOSAL: The following regulations shall apply to all solid waste disposal operations on the shorelines of the City.

1. The disposal of untreated, unreduced solid waste on the shorelines of the City shall be prohibited.
2. The disposal of treated and reduced wastes shall not occur adjacent to any water body; provided, when used as fill material, the treated and reduced solid wastes shall be placed behind an impermeable dike or bulkhead.
3. Solid waste disposal shall conform to Washington State Department of Ecology Regulations Relating to Minimum Functional Standards for Solid Waste Handling.

U. UTILITIES: The following regulations shall apply to the installation of electrical, gas, oil, telephone, television, sanitary and storm sewer and water utilities on the shorelines of the City.

1. All utilities shall be placed underground where feasible. Following installation/maintenance projects, project areas shall be returned to pre-project configuration and shall be planted with shrubs, grasses and trees of similar types and concentration as exists in the general vicinity of the project, PROVIDED, the requirement for vegetative installation may be waived or altered if, in the opinion of the Planning and Economic Development Department the utility easement may be utilized for public access and such access is consistent with the protection of private property.
2. Electrical, television and telephone lines may be permitted to cross a water body by overhead suspension. However, when gas, oil, water, sanitary or storm sewer lines must necessarily cross a water body, such crossing shall be done underground or shall be integrated with road or railway bridges or dams. Undergrounding of utilities across a

water body must gain the approval of the State of Washington Departments of Fisheries and Wildlife.

3. Where feasible, storm water drainage facilities for shoreline development shall be connected to existing storm water facilities. New storm drainage outfalls shall be designed to be aesthetically compatible with the shoreline area (i.e., placement of rock rip-rap as an energy dissipater and streambed armor, designed and constructed to resemble a natural drainage stream.)

Section 28: VIOLATION AND PENALTY:

CIVIL PENALTY

A. ACTION: The City Attorney for the City of Bellingham shall have concurrent authority with the State Attorney General to bring such injunctive, declaratory, or other actions as are necessary to insure that no uses are made of the shorelines of the City in conflict with the provisions of the Act and/or of this Master Program, and to otherwise enforce the provisions of both.

B. NON-COMPLIANCE: Any person who fails to conform to the terms of a permit issued under this Master Program or who undertakes a development or use on the shores of the City without first obtaining a permit required under this Master Program or who fails to comply with a cease and desist order issued under these regulations shall in addition to criminal and other penalties provided by state law also be subject to a civil penalty not to exceed \$1,000 of each violation. Each permit violation and/or each day for continued use or development without a required permit shall constitute a separate violation.

C. AIDING OR ABETTING: Any person who, through an act of commission or omission procures, aids or abets in the violation shall be considered to have committed a violation for the purpose of the civil penalty.

D. NOTICE OF PENALTY: The penalty provided for in this chapter shall be imposed by a notice in writing, either by certified mail with return receipt requested or by personal service, to the person incurring the same from the City of Bellingham. The notice shall include the "content of order" specified in Section 27(G) Regulatory Order.

E. REMISSION: Within 30 days after the notice is received, the person incurring the civil penalty may apply in writing to the City of Bellingham for remission or mitigation of such penalty. Upon receipt of the application, the City of Bellingham may remit or mitigate the civil penalty only upon a demonstration of extraordinary circumstances, such as the presence of information or factors not considered in setting the original penalty. Any civil penalty imposed pursuant to this chapter by the City of Bellingham shall be subject to review by the Bellingham City Council

F. JOINT ORDER WITH DEPARTMENT OF ECOLOGY: In accordance with RCW 90.58.050 and RCW 90.58.210(4), any disputed civil penalty jointly imposed by the department and City and shall be appealed to the Shorelines Hearings Board. When a civil penalty is imposed jointly by the department and City of Bellingham, it may be remitted or mitigated only upon such terms as both the department and City agree.

G. REGULATORY ORDER:

1. Content of Order – The order shall set forth and contain:

a. A description of the specific nature, location, extent and time of violation and the damage or potential damage; and

- b. A notice that the violation or the potential violation cease and desist or, in appropriate cases, the specific corrective action to be taken within a given time. A civil penalty under this chapter may be issued within the order and same shall specify a date certain or schedule by which payment will be complete.
2. Effective Date – The cease and desist order issued under this section shall become effective immediately upon receipt by the person to whom the order is directed.
3. Compliance – Failure to comply with the terms of a cease and desist order can result in enforcement actions including, but not limited to, the issuance of a civil penalty.

H. DELINQUENT PERMIT PENALTY – A person applying for a permit after commencement of the use or activity may, at the discretion of the City of Bellingham, be required, in addition, to pay a delinquent permit penalty not to exceed three times the appropriate permit fee: Provided, that a person who caused, aided, or abetted a violation within two years after the issuance of a regulatory order, notice of violation or penalty by the department or the City of Bellingham against said person may be subject to a delinquent permit penalty not to exceed ten times the appropriate permit fee. Delinquent permit penalties shall be paid in full prior to resuming the use or activity.

I. PROPERTY LIEN: If any person fails to pay the prescribed civil penalty as authorized in this chapter said person shall be subject to a lien on the affected property until such time as the civil penalty is paid in full. The City of Bellingham City Attorney shall file said lien against the affected property at the office of the County Assessor.

J. MANDATORY CIVIL PENALTIES: Issuance of civil penalties is mandatory in the following instances:

1. The violator has ignored the issuance of an order or notice of violation.
2. The violation causes or contributes to significant environmental damage to shorelines of the state or as determined by the City of Bellingham.
3. A person causes, aids or abets in a violation within two years after issuance of a similar regulatory order, notice of violation or penalty by the department or City of Bellingham against said person.

K. MIMIMUM PENALTY LEVELS:

1. Regarding all violations that are mandatory penalties, the minimum penalty is \$250.
2. For all other penalties, the minimum penalty is \$100.

L. GENERAL CRIMINAL PENALTY: Criminal penalties for violation of this Master Program are those provided by state law.

M. VIOLATOR'S LIABILITY: Damages, Attorney's Fees/Costs – Any person subject to the Act or this Master Program who violates any provision thereof or permit issued pursuant thereto shall be liable for all damage to public or private property arising from such violation, including the cost of restoring the affected area to its condition prior to violation. The City Attorney shall bring suit for damages under this section on behalf of the City of Bellingham. Private persons shall have the right to bring suit for damages.

Section 29: AMENDMENTS AND CHANGES OF ENVIRONMENT DESIGNATION:

A. The City Council may, upon its own motion and after review and recommendation of the Planning and Development Commission, amend, supplement, change or repeal by ordinance any of the provisions, Environment Designation boundaries or Environment Designation classifications herein established.

B. An amendment or change in Environment Designation may be initiated by the Planning and Development Commission upon its own motion, or by any person upon proper petition, or by the motion of the City Council whose action shall be referred to the Commission for recommendation.

C. The Planning and Development Commission shall hold at least one public hearing on any proposed amendment or change in Environment Designation prior to taking action on the matter. The hearing shall be held not less than ten days nor more than 30 days following the filing of the petition or the receipt of the City Council motion initiating the action.

The Director of Planning and Economic Development Department or an authorized representative, shall make an investigation and a written recommendation on each proposed amendment or change in Environment Designation to the Commission. Such recommendation shall become part of the official record.

The Planning and Development Commission shall make its findings, decision and recommendation on each proposed amendment or change in environment designation within 30 days following termination of the public hearing. In the event the Planning and Development Commission does not reply within the specified time limit, it shall be deemed that the Commission has approved the proposed amendment or change in Environment Designation. The decision of the Planning and Development Commission shall be transmitted to the City Council within ten days following the date of such action.

D. After holding a public hearing to consider the findings and recommendations of the Planning and Development Commission, the City Council shall have the authority to confirm, alter or modify any of the Commission's recommendations or decisions.

E. All amendments or changes in Environment Designations must be submitted to the Department of Ecology for approval or disapproval.