

ARTICLE 6 – GENERAL POLICIES AND REGULATIONS

The policies and regulations in this Article apply to all uses and developments in all shoreline environments. The policies and regulations are not listed in order of priority. These policies and regulations:

- Help to implement the Master Program goals in Article 3; and
- Are informed by the governing principles in Article 1; and
- Work in concert with all the other policies and regulations contained in this Program; and
- Are based on the state shoreline guidelines (WAC 173-26).

1. Critical Areas, Shoreline Buffers, and Ecological Protection

You may build a home as close as 35 feet to the OHWM if you can show your plans at your location will cause no harm to the shoreline ecology.

A. Policies

- 1. Jefferson County shall liberally interpret regulations in order to assist property owners to achieve their intended use of the shoreline in a manner that will not adversely affect the ecology.**
- 2. All marine coast shoreline development must be at least 35 feet landward of the OHWM. All requests for development in the shoreline area must either place the structures the 150 feet landward of the OHWM or include an evaluation and management plan from a licensed geotech showing the requested development and its future use has no net current or future impact on shoreline ecology and processes.**
- 3. Single-family residences rising less than 35 feet above grade, and their appurtenant structures are permitted in the shoreline area. In the future, shoreline armoring to protect them from erosion will be permitted if that is the only feasible alternative.**
4. All shoreline use and development should be carried out in a manner that avoids and minimizes adverse impacts on the shoreline environment. Uses and developments that **will** cause the future ecological condition to become worse than current condition should not be allowed.

5. In assessing the potential for new uses and developments to cause adverse impacts, the County shall take into account all of the following:
 - i. Effects on ecological functions and ecosystem processes; and
 - ii. Effects that occur on-site and effects that **will** occur off-site; and
 - iii. Immediate effects and long-term effects; and
 - iv. Direct effects of the project and indirect effects; and
 - ~~v. Individual effects of the project and the incremental or cumulative effects resulting from the project. **added to other past, present, and reasonably foreseeable future actions; and**~~
 - vi. Compensatory mitigation actions that offset adverse impacts of the development action and/or use.
- ~~6. Use and development should be discouraged in areas that are ecologically valuable, hazardous, and/or that possess rare or fragile natural features.~~
7. The County shall work with other local, state, and federal regulatory agencies and resource management agencies to ensure that mitigation actions carried out in support of this Program are successful and achieve beneficial ecological outcomes. This includes assisting applicants/proponents in planning, designing and implementing mitigation efforts ~~and working cooperatively to track and monitor the results of mitigation activities.~~

B. Regulations – No Net Loss and Mitigation

- ~~1. All shoreline use and development, including preferred uses and uses that are exempt from permit requirements, shall be located, designed, constructed, conducted, and maintained in a manner that maintains shoreline ecological processes and functions.~~
2. Uses and developments that cause a net loss of ecological functions and processes shall not be allowed. ~~Any use or development that causes the future ecological condition to become worse than current condition shall be prohibited.~~ **Unless all reasonable measures to mitigate adverse impacts have been taken.**
- ~~3. Proponents of new shoreline use and development, including preferred uses and uses that are exempt from permit requirements, shall employ all reasonable measures to mitigate adverse impacts on shoreline functions and processes.~~
4. Mitigation shall include the following actions in order of priority:
 - i. Avoiding the impact altogether by not taking a certain action or parts of an action;
 - ii. Minimizing impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology or by taking affirmative steps to avoid or reduce impacts;
 - iii. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;

- iv. Reducing or eliminating the impact over time by preservation and maintenance operations;
 - v. Compensating for the impact by replacing, enhancing, or providing substitute resources or environments;
 - vi. Monitoring the impact and the compensation projects and taking appropriate corrective measures.
- 5. Mitigation actions shall not have a significant adverse impact on other shoreline uses fostered by the policies of the Shoreline Management Act.
- 6. When compensatory mitigation measures are required pursuant to the mitigation sequence described in 6.1.B.4 above, all of the following shall apply:
 - i. The quality and quantity of the replaced, enhanced, or substituted resources shall be the same or better than the affected resources; and
 - ii. The mitigation site and associated vegetative planting shall be nurtured and maintained such that healthy native plant communities grow and mature over time; and
 - iii. The mitigation shall be informed by pertinent scientific and technical studies, including but not limited to the Shoreline Inventory and Characterization Report, the Shoreline Restoration Plan and other background studies prepared in support of this Program; and
 - iv. The mitigation shall replace the functions as quickly as possible following the impacts to ensure no net loss; and
 - v. The mitigation activity shall be monitored and maintained to ensure that it achieves its intended functions and values. The monitoring timeframes shall be consistent with JCC 18.22.350 (3)(h).
 - vi. The County shall require the applicant/proponent to post a bond or provide other financial surety equal to the estimated cost of the mitigation in order to ensure the mitigation is carried out successfully. The bond/surety shall be refunded to the applicant/proponent upon completion of the mitigation activity ~~and any required monitoring.~~
- 7. To encourage shoreline property owners to remove bulkheads and perform other beneficial shoreline restoration actions in advance of shoreline development or redevelopment, the County may give mitigation credit to any beneficial restoration action that occurred within 5 years of the proposed development/redevelopment activity provided that:
 - i. The applicant/property owner can provide conclusive evidence of the pre- and post-restoration conditions using photographs, reports, plans, affidavits, or similar evidence; and

- ii. The County can confirm via site inspection, photographs, affidavits or other evidence that the restoration actions have improved shoreline conditions.
 - iii. The applicant/property owner provides assurances that the restoration area will be maintained in perpetuity. The assurance can be in the form of a notice on title, conservation easement, or similar mechanism.
- 8. Compensatory mitigation measures shall occur in the vicinity of the impact or at an alternative location within the same watershed or appropriate section of marine shoreline (e.g., reach or drift cell) that provides greater and more sustainable ecological benefits. When determining whether offsite mitigation provides greater and more sustainable benefits, the County shall consider limiting factors, critical habitat needs, and other factors identified by the locally adopted shoreline restoration plan **[insert date of adoption or resolution number]**, or an approved watershed or comprehensive resource management plan. The County may also approve use of alternative mitigation practices such as in-lieu fee programs, mitigation banks, and other similar approaches provided they have been approved and sanctioned by the Department of Ecology, the Puget Sound Partnership, the Department of Fish and Wildlife or the Army Corps of Engineers.
- 9. Land that is **wholly** constrained by critical areas and/or buffers shall not be subdivided to create parcels that are only buildable through a shoreline variance. ~~Lands that are partially constrained by critical areas and/or buffers may be subdivided provided that the resulting lots contain sufficient unconstrained area so as not to require a shoreline variance for new development.~~

C. Regulations – Cumulative Impacts

- 1. The County shall consider the cumulative impacts of individual uses and developments, **except single family residences and appurtenant structures but** including preferred uses and uses that are exempt from permit requirements, when determining whether a proposed use or development could cause a net loss of ecological functions.
- 2. The County shall have the authority to require the applicant/proponent to prepare special studies, assessments and analyses as necessary to identify and address cumulative impacts including, but not limited to, impacts on fish and wildlife habitat, public access/use, aesthetics, and other shoreline attributes.
- 3. Proponents of shoreline use and development shall take the following factors into account when assessing cumulative impacts:
 - i. Current ecological functions and human factors influencing shoreline natural processes; and
 - ii. Reasonably foreseeable future use and development of the shoreline; and

- iii. Beneficial effects of any established regulatory programs under other local, state, and federal laws.
 - iv. Mitigation measures implemented in conjunction with the proposed project to avoid, reduce and/or compensate for adverse impacts.
4. The County shall prohibit any use or development that will result in ~~unmitigated~~ cumulative impacts **that are not able to be mitigated in the future.**

D. Regulations – Critical Areas and Shoreline Buffers

1. Subject to the exceptions listed below, the Critical Areas provisions of JCC Chapter 18.22, dated March 17, 2008, Ordinance #03-0317-08, are incorporated by reference, except that permit, nonconforming use, appeal, and enforcement decisions within shoreline jurisdiction shall be governed by this Program and not JCC Chapter 18.22.
2. In the event development or performance standards in JCC Chapter 18.22 are inconsistent with standards and requirements in this Program, this Program shall govern.
3. ~~Unless otherwise stated, no development shall be constructed, located, extended, modified, converted, or altered, or land divided without full compliance with JCC Chapter 18.22 and this Program.~~
4. Development applications that are processed according to the Reasonable Economic Use Variance provisions of JCC Chapter 18.22.090 shall be processed as a shoreline variance according to the provisions of this Program and WAC 173-27.
5. Unless otherwise specified in this Program, a buffer zone shall be established landward of all shorelines of the state to protect and maintain ecological functions and processes and to minimize risks to human health and safety. All buffers shall be maintained in a predominantly natural, undisturbed, undeveloped, and vegetated condition.
6. **Standard Buffers and Building Setback:** As established in JCC Chapter 18.22, all new uses and developments, including preferred uses and uses exempt from shoreline permit requirements, shall be located landward of the standard buffer plus a ~~10~~ **5** -foot-wide building setback unless otherwise specified in this Program. The standard buffer shall be measured landward in all horizontal directions from the ordinary high water mark (OHWM) of the shoreline water body as follows (distances shown in feet):

	Natural	Conservancy	Shoreline Residential	High Intensity
Marine (1)	150	100	50	35
Lake	100	100	50	35
Stream	150	150	50	35

- (1) In no case shall the reduced buffer width be less than a distance equal to the sum of the bluff erosion rate over at least 75 years plus 20-feet from the crest; or ten-feet from the sides and the toe of a marine bluff.

~~Marine shores. A minimum buffer of 150 feet shall be maintained in all shoreline environments.~~

~~i. Lake shores. A minimum buffer of 100 feet shall be maintained in all shoreline environments.~~

~~ii. Stream/River shores. A minimum buffer of 150 feet shall be maintained in all shoreline environments.~~

7. **Multiple Buffers:** In the event that buffers for any shorelines and/or critical areas are contiguous or overlapping, the landward-most edge of all such buffers and setbacks shall apply.
8. **Buffer Condition:** At least eighty (80) percent of the required shoreline buffer area shall be maintained in a well-vegetated and predominantly natural condition to ensure that it provides the desired ecological buffer functions. Up to twenty (20) percent of the buffer area, or at least 15 linear feet of the water frontage, whichever is greater, may be retained for 'active use' and for shoreline access, provided that such areas are located to avoid areas of greater sensitivity and habitat value. This requirement shall not apply to retroactively existing uses.
9. **Buffer Reduction and Averaging:** Proposals that request a reduction of the standard shoreline buffer in 6.1.D.6 of this Program shall not require a shoreline variance if all of the approval criteria in Chapter 18.22.270(6) and (7) are met. All other shoreline buffer reduction or shoreline buffer averaging proposals shall require a shoreline variance.
10. **Increased Buffers:** The Administrator may increase the required buffer widths when a larger buffer width is necessary to protect the structure, function and/or character of the shoreline. The buffer may be increased or other protections required when necessary to prevent adverse environmental impacts or address hazards associated with the site or the proposed land use or development activity. Increased buffers may be required when:
 - i. Soil and geologic conditions make the site susceptible to severe erosion and erosion control measures will not effectively prevent adverse impacts to the shoreline; or
 - ii. There is evidence of a migrating stream or river channel and increased protection will be necessary; or
 - iii. There are potential flooding risks, including risks associated with sea level rise; or
 - iv. The land adjacent to the ordinary high water mark is steeply sloped (25 percent slope or greater).
11. **Alternative Protection via Critical Areas Stewardship Plans (CASPs):** If a proponent of a shoreline use or development proposes to modify the buffer width of an SMA-regulated waterbody using the CASP standards described in Article IX of JCC Chapter 18.22, such buffer modification shall

require a shoreline variance. If the proposed CASP buffer modification is for a wetland or habitat conservation area that is physically separated from the SMA-regulated waterbody, no shoreline variance shall be required.

E. Regulations – Exceptions to Critical Area and Shoreline Buffer Standards

1. **Nonconforming Lots - Development Allowed without a Variance:** New single-family development on any legal lot in shoreline jurisdiction that is nonconforming with respect to the required buffer standards may be allowed without a shoreline variance when:

- i. The depth of the lot (distance from the ordinary high water mark to the inside edge of the frontage setback) is equal to or less than the standard shoreline buffer as indicated in 6.1.D.6; and
- ii. The building area lying landward of the shoreline buffer and interior to required sideyard setbacks is not more than twenty five hundred (2,500) square feet and the driveway is not more than eleven hundred (1,100) square feet. The building area means the entire area that will be disturbed to construct the home, normal appurtenances (except drainfields), and landscaping; and
- iii. Consideration shall be given to view impacts and all single family residences approved under this section shall not extend waterward of the common-line setback as measured in accordance with 6.7.B.; and.
- iv. The nonconforming lot was created prior to August 27, 1976.
- v. Appropriate measures are taken to mitigate all adverse impacts, including using low impact development measures such as pervious pavement for driveways and other hard surfaces; and
- vi. Opportunities to vary the sideyard and/or frontage setbacks are implemented to reduce the nonconformity when doing so will not create a hazardous condition or a condition that is inconsistent with this Program and JCC 18.30; and.
- vii. The residence is located in the least environmentally damaging location relative to the shoreline and any critical areas; and
- viii. There is no opportunity to consolidate lots under common ownership that will alleviate the nonconformity; and
- ix. The lot is not subject to geologic hazards; and
- x. All structures are as far landward as possible and not closer than thirty (30) feet from the ordinary high water mark; and
- xi. At least eighty (80) percent of the buffer area between the structures and the shoreline and/or critical area is maintained in a naturally vegetated condition.

2. **Nonconforming Lots - Development Requiring a Variance.**
Development on non-conforming lots with a building area of more than 2,500 square feet available for a single family residence and normal appurtenances and unrestricted by setbacks or buffers from shorelines or critical areas shall comply with the provisions of this Program.
3. **Water-oriented Uses/Development:** When otherwise consistent with this Program and JCC Chapter 18.22, the following water-oriented uses/developments may be permitted within a shoreline buffer without a shoreline variance. The amount and extent of buffer modification shall be the minimum needed to accommodate the allowed use/development. This allowance for water-oriented uses/developments within shoreline buffers without a shoreline variance may apply to the primary use and/or to the following accessory uses/structures:
 - i. Primary uses and structures that meet the definition of a water-dependent or water-related use/development as defined in Article 2.
 - ii. Boating facilities accessory to a single-family residential development including rails, docks, piers and floats;
 - iii. Boathouses accessory to a single-family residential development provided that all of the following are met:
 - a. The boathouse is used to store watercraft and shall not be used as or converted to a dwelling unit. The County shall require a notice on title indicating such; and
 - b. The boathouse has a maximum footprint of 300 square feet and a maximum height of 15 feet above average grade; and
 - c. The primary doorway/entryway faces the water; and
 - d. The structure is located entirely landward of the ordinary high water mark.
 - iv. Pedestrian beach access structures; and
 - v. Public access structures, including but not limited to docks, piers, floats or pedestrian beach access structures accessory to commercial, industrial, port or other allowed uses/developments; and
 - vi. Certain utilities and essential public facilities as specified in Article 8, Section 11.