

Planning Commission Meeting Date: January 17, 2019

Agenda Item: 6a.

PLANNING COMMISSION AGENDA ITEM

CITY OF SHORELINE, WASHINGTON

AGENDA TITLE: Periodic Review of Shoreline Master Program (SMP)

DEPARTMENT: Planning & Community Development

PRESENTED BY: Miranda Redinger, AICP, Senior Planner

Kate Skone, Associate Planner

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| <input type="checkbox"/> Public Hearing | <input checked="" type="checkbox"/> Study Session | <input type="checkbox"/> Recommendation Only |
| <input type="checkbox"/> Discussion | <input type="checkbox"/> Update | <input type="checkbox"/> Other |

INTRODUCTION AND BACKGROUND

The Shoreline Management Act (SMA), chapter 90.58 RCW requires the City to have a shoreline master program setting forth goals, policies, and use regulations for those areas within the jurisdictional boundaries of the SMA. After incorporation, the City relied on King County's 1996 Shoreline Management Master Program for compliance with the SMA.

This changed in 2013 when the City's current Shoreline Master Program (SMP) was adopted on August 5, 2013 via Ordinance No. 668 and became effective on September 2, 2013. The SMP is codified at Division II of SMC Title 20, Chapters SMC 20.200, 20.210, 20.220, and 20.230. Title 20 can be accessed at the following link:
<http://www.codepublishing.com/WA/Shoreline/#!/html/Shoreline20/Shoreline20.html>

After a master program has been approved, RCW 90.58.080(4) requires the City to periodically update its SMP, first no later than June 30, 2019, and then once every eight years thereafter. While the City did have a shoreline master program due to its reliance on King County's, the 2013 SMP represented the City's first development of a shoreline master program and was based on a comprehensive analysis of the shoreline condition. The present action represents a Periodic Review, which is a less prescriptive and intensive process intended to ensure consistency with the SMA and its regulatory guidelines along with the City's GMA-enacted Comprehensive Plan and development regulations.

The Commission held an introductory study session for the SMP Periodic Review on December 6, 2018. The staff report for this meeting is available here:
<http://www.shorelinewa.gov/home/showdocument?id=41429>.

Approved By: Project Manager 

Planning Director 

This staff report will introduce specific proposed changes, which are included in the attachments in legislative format.

DISCUSSION

As discussed on December 6, 2018, proposed changes to the SMP fall primarily into two categories: those required by Ecology to incorporate changes in State guidance since the 2013 SMP, and those recommended by the City, primarily to integrate changes that were adopted through the Critical Areas Ordinance (CAO) in 2015 into the SMP, as well as general housekeeping resulting in various minor amendments.

State Required Updates

This section will outline all potential amendments recommended by Ecology to address legislative updates that could affect the shoreline jurisdiction since the 2013 SMP. Many are not applicable to Shoreline but are included anyway for a comprehensive analysis of all State requirements. Each is listed by the year, order, and title of Ecology's Guidance Checklist and outlined according to the following categories:

- State direction;
- Current SMP language;
- Analysis; and
- Proposed action.

Any proposed revisions are included in legislative format in the appropriate section of the attachments.

2017a. Cost threshold for substantial development

State direction: Revise cost threshold for substantial development to \$7,047.

Current SMP language:

20.210.010 Definitions

Substantial Development. Any development with a total cost or fair market value of \$5,718 or more that requires a Shoreline Substantial Development Permit. The threshold total cost or fair market value of \$5,718 is set by the State Office of Financial Management and may be adjusted in the future pursuant to the SMA requirements, as defined in RCW 90.58.030(3)(e) as now or hereafter amended.

Analysis: The City's current definition does not include updated price structure.

Proposed Action: Update Substantial Development definition to refer to RCW for current cost threshold at the time of application submittal.

2017b. Definition of development

State direction: Update definition to clarify that "development" does not include projects that involve only dismantling or removing structures without any associated development to codify the 1992 Supreme Court holding in *Cowiche Canyon v. Bosley* in WAC 173-27-030(6).

Current SMP language:

20.210.010 Definitions

Development, Shoreline. Development means 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 surface of the waters overlying lands subject to this chapter at any state of water level. RCW 90.58-030 3(d).

Analysis: The City’s current definition does not include clarification.

Proposed Action: Amend the definition of Development, Shoreline to add “Development does not include dismantling or removing structures if there is no other associated development or re-development.”

2017c. Exceptions to local review under the SMA

State direction: Ecology adopted WAC 173-27-044 and modified WAC 173-27-045 to consolidate three separate laws that create special exceptions to applicability of local SMPs. The rule clarifies that requirements to obtain a substantial development permit, conditional use permit, variance, letter of exemption, or other review conducted by a local government to implement the SMA do not apply to:

- Remedial hazardous substance cleanup actions (1994);
- Boatyard improvements to meet NPDES requirements (2012); and
- Certain WSDOT maintenance and safety projects and activities (2015).

Current SMP language: The current SMP does not address this.

Analysis: The exceptions to local review covered under WAC 173-27-044 and -045 apply whether or not they are included in local SMPs. However, to ensure the statutory directives are implemented consistently, Ecology recommends maintaining a section in local SMPs to address these exceptions.

Proposed Action: Create a new section listing these exceptions under SMC 20.220.015 as shown in Attachment C. Do not combine these exceptions directly into the list of exemptions from the requirement for a substantial development permit under WAC 173-27-040. Projects that are listed as “permit-exempt” still need to meet substantive standards of the SMA, whereas for these projects there is no local review.

2017d. Permit filing procedures

State direction: Ecology amended WAC 173-27-130 to incorporate a 2011 law (2011 c 277 §3 (SSB5192)) to RCW 90.58.140 relating to permit filing. These details are important because the date of filing establishes the start of the Shorelines Hearings Board (SHB) appeal period. Changes include:

- “Date of filing” replaces “date of receipt” for shoreline permits sent to Ecology.
- Requires concurrent filing of permits if there are separate Substantial Development, Conditional Use Permits, and/or Variances.
- Ecology will notify local government and the applicant of the date of filing by telephone or electronic means followed by written communication.

The law clarified that local permit decisions shall be submitted to Ecology by return receipt requested mail. This intent is to bring consistency and predictability to the timing of the appeal period. Using return receipt mail allows local governments to calculate when the appeal period starts and ends without contacting Ecology on every permit. This also helps them administer other related authorizations like building permits. Using return receipt mail allows local governments to control the timing of the SHB appeal for Shoreline Substantial Development Permits and creates a record of the transmittal, alleviating the scenario where a submittal is lost or delayed by the mail service.

Current SMP language:

20.220.080 Permit process.

A. **Application Submittal.** Complete applications for a substantial development permit, shoreline variance, and a shoreline conditional use permit are Type B actions. The applications will be processed pursuant to the procedures identified in this subchapter and SMC [20.30.010](#) through [20.30.270](#) and Table 20.30.050.

B. **Decision.** The Director shall provide notice of final decision per SMC [20.30.150](#). Pursuant to RCW [90.58.140](#)(6), the Director shall send the final decision, including findings and conclusions, to the following State agencies:

1. Department of Ecology.
2. Attorney General.

C. **Department of Ecology Review of Permits.**

1. After the Director has approved a shoreline variance or shoreline conditional use permit, the Director shall file the permit with the Department of Ecology for its approval, approval with conditions, or denial.

2. When a substantial development permit, a shoreline variance, or a shoreline conditional use permit are required for a development, the local government's ruling on the permit shall be filed simultaneously with Ecology.

3. The Department of Ecology will issue its decision on a shoreline variance or shoreline conditional use permit within 30 days of filing.

4. Upon receipt of the Department of Ecology's decision, the Director shall notify those interested parties having requested notification of such decision.

20.220.090 Local appeals.

There are no administrative appeals for shoreline permit decisions made by the Director.

20.220.110 Appeals to State Shoreline Hearings Board.

A. Appeals of the final decision of the City with regard to shoreline management shall be governed by the provisions of RCW [90.58.180](#).

B. Appeals to the Shoreline Hearings Board of a decision on a shoreline substantial development permit, shoreline variance or shoreline conditional use permit may be filed by the applicant/proponent or any aggrieved party pursuant to RCW [90.58.180](#).

C. The effective date of the City's decision shall be the date of filing with the Department of Ecology as defined in RCW [90.58.140](#).

Analysis: The amendment to RCW 90.58.140 applied on its effective date – July 22, 2011, regardless of whether permit procedures are specifically outlined in local SMPs.

However, if an SMP describes the permit filing process, Ecology recommends that it should be reviewed for consistency with the 2011 statutory amendments.

Proposed Action: Add a new section under 20.220.080(D) Local Permit Filing Procedures as shown in Attachment C.

2017e. Forestry use regulations

State direction: Ecology amended forestry use regulations to clarify that a forest practice that only involves timber cutting is not considered development under the SMA and does not require permits, but forestry activities other than timber cutting may require a Substantial Development Permit (SDP). Ecology adopted this housekeeping amendment to address a regularly recurring question, which is partly answered in Forest Practices Board laws and rules but not addressed in SMA rules. Forest Practices rule WAC 222-50-020(2) states “A substantial development permit must be obtained prior to conducting forest practices which are ‘substantial developments’ within the ‘shoreline’ area as those terms are defined by the Shoreline Management Act.” The authority for that rule is RCW 76.09.240(6). Timber cutting alone is not development because it does not meet the statutory definition in RCW 90.58.030(3)(e)(a).

Current SMP language: The City’s SMP does not contain language regarding forestry use.

Analysis: Ecology has stated that it is not necessary to amend local SMP forestry regulations to reflect this clarification. However, Ecology notes that it could be helpful for jurisdictions with extensive commercial forestry if questions about applicability of forest practices laws and rules arise frequently. The City does not have commercial forestry uses within the shoreline jurisdiction.

Proposed Action: None.

2017f. Lands under exclusive federal jurisdiction

State direction: Ecology amended WAC 173-22-070, a permit rule that addressed lands within federal boundaries to clarify that areas and uses in those areas that are under exclusive federal jurisdiction as established through federal or state statutes are not subject to the jurisdiction of the SMA.

Current SMP language: The City’s SMP does not contain language regarding lands under exclusive federal jurisdiction.

Analysis: Ecology has stated that it is not necessary to amend local SMPs to reflect this clarification, although the City does have lands under exclusive federal jurisdiction within the Shoreline jurisdiction (the railroad corridor per 49 USC 10501(b)). While the federal jurisdiction preempts local regulations regardless of whether or not this is explicitly stated, federal decision-makers are encouraged to consider local regulations.

Proposed Action: None.

2017g. Nonconforming uses and development

State direction: Ecology revised WAC 173-27-080, its rules for nonconforming uses and development. The introductory paragraph of the rule was amended to clarify that unlike

other permit and enforcement rules, this rule is a default rule that only applies if a local government has no provisions in their local SMP addressing nonconforming uses. A primary goal of the revisions was to create separate sections for nonconforming uses, nonconforming structures, and nonconforming lots. Many of the clarifications in this default rule were borrowed from local government innovations developed during the comprehensive SMP updates.

Current SMP language:

20.220.150 Nonconforming use and development.

A. Nonconforming Structures.

1. Structures that were legally established and are used for a conforming use, but which are nonconforming with regard to setbacks, buffers or yards, area, bulk, height, or density, may be maintained and repaired, and may be enlarged or expanded; provided, that said enlargement does not increase the extent of nonconformity by further encroaching upon or extending into areas where construction or use would not be allowed for new development or uses. Such normal appurtenances are by definition located landward of the ordinary high water mark.
2. A structure for which a shoreline variance has been issued shall be considered a legal nonconforming structure, and the requirements of this section shall apply as they apply to preexisting nonconformities.
3. A structure that is being or has been utilized for a nonconforming use may be used for a different nonconforming use only upon the approval of a shoreline conditional use permit. A shoreline conditional use permit may be approved only upon a finding that:
 - a. No reasonable alternative conforming use is practical;
 - b. The proposed use will be at least as consistent with the policies and provisions of the Act and Master Program, and as compatible with the uses in the area, as the preexisting use; and
 - c. Conditions may be attached to the permit as are deemed necessary to assure compliance with the above findings, the requirements of the Master Program and the Shoreline Management Act, and to ensure that the use will not become a nuisance or a hazard.
4. Any structure nonconforming as to height or setback standards that becomes damaged may be repaired or reconstructed; provided, that:
 - a. The extent of the previously existing nonconformance is not increased; and
 - b. The building permit application for repair or reconstruction is submitted within 12 months of the occurrence of damage or destruction.

B. Nonconforming Uses.

1. Uses that were legally established and are nonconforming with regard to the use regulations of the Master Program may continue as legal nonconforming uses. Such uses shall not be enlarged or expanded, without an approved conditional use permit, except that nonconforming single-family residences that are located landward of the ordinary high water mark may be enlarged or expanded in conformance with applicable bulk and dimensional standards by the addition of space to the main structure or by the addition of normal appurtenances as defined in WAC [173-27-040\(2\)\(g\)](#).

2. A use which is listed as a conditional use but existed prior to adoption of the Master Program or any relevant amendment, and for which a conditional use permit has not been obtained, shall be considered a nonconforming use.

3. A use which is listed as a conditional use in Table 20.230.081 but existed prior to the applicability of the Master Program to the site, and for which a shoreline conditional use permit has not been obtained, shall be considered a nonconforming use.

4. If a nonconforming use is abandoned for 12 consecutive months, or for 12 months during any two-year period, the nonconforming rights shall expire and any subsequent use shall be made conforming. A use authorized pursuant to subsection (B)(1) of this section shall be considered a conforming use for purposes of this section.

C. **Nonconforming Lots.** An undeveloped lot, tract, parcel, site, or division of land located landward of the ordinary high water mark which was established in accordance with Chapter [20.30](#) SMC, Subchapter 7, and State subdivision requirements prior to the effective date of the Act or the applicable Master Program that does not conform to the present lot size standards may be developed if permitted by other land use regulations of the local government, as long as such development conforms to all other requirements of the applicable Master Program and the Act. (Ord. 668 § 4 (Exh. 3), 2013).

Analysis: Ecology has stated that for local governments that adopted their own tailored provisions for nonconforming use and development during a prior update, the WAC amendments will have no effect. Shoreline already has SMP regulations for nonconforming uses and development in SMC 20.220.150 (above).

Proposed Action: None

2017h. Periodic reviews

State direction: Ecology adopted rule amendments, WAC 173-26-090, to clarify the scope and process for conducting periodic reviews of SMPs required by RCW 90.58.080(4).

Current SMP language:

20.200.080 Master Program review and update.

This Master Program shall be periodically reviewed as necessary to reflect changing local circumstances, new information or improved data, and changes in State statutes and regulations.

Analysis: Ecology's new rule describes the process local governments must follow when conducting periodic reviews. Given that the statutory and regulatory process for performing periodic reviews applies regardless, it is not necessary to include any of these new provisions in the City's SMP. The City's SMP describes the periodic review scope but does not address procedures. Ecology recommends consistency with the periodic review rule.

Proposed Action: Amend 20.200.080 to add references to the appropriate RCW and WAC.

2017i. Optional SMP amendment process

State direction: WAC 173-26-104 is a new rule that establishes an optional SMP amendment process that allows for a joint local/state public comment and review period for efficiency.

Current SMP language:

20.200.090 Amendments to Master Program.

Any of the provisions of this Master Program may be amended as provided for in RCW [90.58.120](#) and [90.58.200](#) and Chapter [173-26](#) WAC. Amendments to the Master Program do not become effective until approved by the Department of Ecology. Proposals for shoreline environment redesignation, for example amendments to the shoreline maps and descriptions, must demonstrate consistency with the criteria set forth in WAC [173-16-040](#)(4).

Analysis: Ecology has stated that local governments that want to use these provisions should review their SMP amendment procedures to ensure there are no impediments to using this new option. In using this option, a key consideration is coordinating with Ecology on the public comment period, as Ecology needs to send notice to the state interested parties list at the same time as the City's notice. The optional process also requires the City to send a draft of proposed amendments to Ecology for an initial determination before final adoption by the City. Ecology stated that this has been a common practice on an informal basis for many years and can be done without amending the SMP. Shoreline does intend to utilize WAC 173-26-104's optional process for this Periodic Review.

Proposed Action: Amend 20.200.090 to reference the appropriate RCW and WAC.

2017j. Submittal to Ecology of proposed SMP amendments

State direction: Ecology made a few minor amendments to WAC 173-26-110, the rule that describes what local governments provide to Ecology for final review of SMP amendments. The rule clarifies that submittals may be in digital form and deleted the requirement to send two paper copies. It clarified that the submittal should include a summary of amendments made in response to public comments. It also clarified that local governments will submit their final periodic review checklist when taking action on the periodic review.

Current SMP language:

20.200.090 Amendments to Master Program.

Any of the provisions of this Master Program may be amended as provided for in RCW [90.58.120](#) and [90.58.200](#) and Chapter [173-26](#) WAC. Amendments to the Master Program do not become effective until approved by the Department of Ecology. Proposals for shoreline environment redesignation, for example amendments to the shoreline maps and descriptions, must demonstrate consistency with the criteria set forth in WAC [173-16-040](#)(4).

Analysis: If a local SMP includes a description of the SMP submittal process, they should review the amendments for consistency. Shoreline does not include a description of the SMP submittal process, and staff believes that the existing language in 20.200.090 (above) is sufficient.

Proposed Action: None.

2016a. Americans with Disabilities Act permit exemption

State direction: The Legislature created a new shoreline permit exemption in 2016, adding subsection xiii to RCW 90.58.030(3)(e) (2016 c 193, SSHB 2847). Retrofitting an existing structure does not require a Substantial Development Permit if the project is undertaken to comply with the Americans with Disabilities Act or otherwise provide physical access to a structure by individuals with disabilities. The amended law was incorporated into WAC 173-27-040(2)(q).

Current SMP language:

20.220.030 Shoreline exemption.

A. The Director is hereby authorized to approve or deny requests for statements of exemption from the shoreline substantial development permit requirement for uses and developments within shorelines that are specifically listed in RCW [90.58.030](#) and WAC [173-27-040](#). The statement shall be in writing and shall indicate the specific exemption of the Master Program that is being applied to the development, and shall provide a summary of the Director's analysis of the consistency of the project with this Master Program and the Act. WAC [173-27-040](#) delineates exemptions and is included below.

Exempt developments include:

1. Any development of which the total cost or fair market value, whichever is higher, does not exceed \$5,000, if such development does not materially interfere with the normal public use of the water or shorelines of the State. The dollar threshold established in this subsection must be adjusted for inflation by the Office of Financial Management every five years, beginning July 1, 2007, based upon changes in the consumer price index during that time period. "Consumer price index" means, for any calendar year, that year's annual average consumer price index, Seattle, Washington area, for urban wage earners and clerical workers, all items, compiled by the Bureau of Labor and Statistics, United States Department of Labor. The Office of Financial Management must calculate the new dollar threshold and transmit it to the office of the code reviser for publication in the Washington State Register at least one month before the new dollar threshold is to take effect. For purposes of determining whether or not a permit is required, the total cost or fair market value shall be based on the value of development that is occurring on shorelines of the State as defined in RCW [90.58.030](#)(2)(c). The total cost or fair market value of the development shall include the fair market value of any donated, contributed or found labor, equipment or materials.
2. Normal maintenance or repair of existing structures or developments, including damage by accident, fire or elements. "Normal maintenance" includes those usual acts to prevent a decline, lapse, or cessation from a lawfully established condition. "Normal repair" means to restore a development to a state comparable to its original condition, including but not limited to its size, shape, configuration, location and external appearance, within a reasonable period after decay or partial destruction, except where repair causes substantial adverse effects to shoreline resources or

environment. Replacement of a structure or development may be authorized as repair where such replacement is the common method of repair for the type of structure or development and the replacement structure or development is comparable to the original structure or development including but not limited to its size, shape, configuration, location and external appearance and the replacement does not cause substantial adverse effects to shoreline resources or environment.

3. Construction of the normal protective bulkhead common to single-family residences. A “normal protective” bulkhead includes those structural and nonstructural developments installed at or near, and parallel to, the ordinary high water mark for the sole purpose of protecting an existing single-family residence and appurtenant structures from loss or damage by erosion. A normal protective bulkhead is not exempt if constructed for the purpose of creating dry land. When a vertical or near vertical wall is being constructed or reconstructed, not more than one cubic yard of fill per one foot of wall may be used as backfill. When an existing bulkhead is being repaired by construction of a vertical wall fronting the existing wall, it shall be constructed no further waterward of the existing bulkhead than is necessary for construction of new footings. When a bulkhead has deteriorated such that an ordinary high water mark has been established by the presence and action of water landward of the bulkhead, then the replacement bulkhead must be located at or near the actual ordinary high water mark. Beach nourishment and bioengineered erosion control projects may be considered a normal protective bulkhead when any structural elements are consistent with the above requirements and when the project has been approved by the Department of Fish and Wildlife.

4. Emergency construction necessary to protect property from damage by the elements. An “emergency” is an unanticipated and imminent threat to public health, safety, or the environment which requires immediate action within a time too short to allow full compliance with this chapter. Emergency construction does not include development of new permanent protective structures where none previously existed. Where new protective structures are deemed by the Administrator to be the appropriate means to address the emergency situation, upon abatement of the emergency situation the new structure shall be removed or any permit which would have been required, absent an emergency, pursuant to Chapter [90.58](#) RCW, these regulations, or the local Master Program, obtained. All emergency construction shall be consistent with the policies of Chapter [90.58](#) RCW and the local Master Program. As a general matter, flooding or other seasonal events that can be anticipated and may occur but that are not imminent are not an emergency.

5. Construction and practices normal or necessary for farming, irrigation, and ranching activities, including agricultural service roads and utilities on shorelands, construction of a barn or similar agricultural structure, and the construction and maintenance of irrigation structures including but not limited to head gates, pumping facilities, and irrigation channels; provided, that a feedlot of any size, all processing plants, other activities of a commercial nature, or alteration of the contour of the shorelands by leveling or filling other than that which results from normal cultivation

shall not be considered normal or necessary farming or ranching activities. A feedlot shall be an enclosure or facility used or capable of being used for feeding livestock hay, grain, silage, or other livestock feed, but shall not include land for growing crops or vegetation for livestock feeding and/or grazing, nor shall it include normal livestock wintering operations.

6. Construction or modification of navigational aids such as channel markers and anchor buoys.

7. Construction on shorelands by an owner, lessee or contract purchaser of a single-family residence for their own use or for the use of their 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, other than requirements imposed pursuant to Chapter [90.58](#) RCW. "Single-family residence" means a detached dwelling designed for and occupied by one family including those structures and developments within a contiguous ownership which are a normal appurtenance. An "appurtenance" is necessarily connected to the use and enjoyment of a single-family residence and is located landward of the ordinary high water mark and the perimeter of a wetland. On a statewide basis, normal appurtenances include a garage; deck; driveway; utilities; fences; installation of a septic tank and drainfield and grading which does not exceed 250 cubic yards and which does not involve placement of fill in any wetland or waterward of the ordinary high water mark. Local circumstances may dictate additional interpretations of normal appurtenances which shall be set forth and regulated within the applicable Master Program. Construction authorized under this exemption shall be located landward of the ordinary high water mark.

8. Construction of a dock, including a community dock, designed for pleasure craft only, for the private noncommercial use of the owner, lessee, or contract purchaser of single-family and multiple-family residences. A dock is a landing and moorage facility for watercraft and does not include recreational decks, storage facilities or other appurtenances. This exception applies if either:

a. In salt waters, the fair market value of the dock does not exceed \$2,500; or

b. In fresh waters, the fair market value of the dock does not exceed \$10,000, but if subsequent construction having a fair market value exceeding \$2,500 occurs within five years of completion of the prior construction, the subsequent construction shall be considered a substantial development for the purpose of this chapter.

c. For purposes of this section, salt water shall include the tidally influenced marine and estuarine water areas of the State including the Pacific Ocean, Strait of Juan de Fuca, Strait of Georgia and Puget Sound and all bays and inlets associated with any of the above.

9. Operation, maintenance, or construction of canals, waterways, drains, reservoirs, or other facilities that now exist or are hereafter created or developed as a part of an irrigation system for the primary purpose of making use of system

waters, including return flow and artificially stored ground water from the irrigation of lands.

10. The marking of property lines or corners on State-owned lands, when such marking does not significantly interfere with normal public use of the surface of the water.

11. Operation and maintenance of any system of dikes, ditches, drains, or other facilities existing on September 8, 1975, which were created, developed or utilized primarily as a part of an agricultural drainage or diking system.

12. Any project with a certification from the governor pursuant to Chapter [80.50](#) RCW.

13. Site exploration and investigation activities that are prerequisite to preparation of an application for development authorization under this chapter, if:

a. The activity does not interfere with the normal public use of the surface waters;

b. The activity will have no significant adverse impact on the environment including but not limited to fish, wildlife, fish or wildlife habitat, water quality, and aesthetic values;

c. The activity does not involve the installation of any structure, and upon completion of the activity the vegetation and land configuration of the site are restored to conditions existing before the activity;

d. A private entity seeking development authorization under this section first posts a performance bond or provides other evidence of financial responsibility to the local jurisdiction to ensure that the site is restored to preexisting conditions; and

e. The activity is not subject to the permit requirements of RCW [90.58.550](#).

14. The process of removing or controlling aquatic noxious weeds, as defined in RCW [17.26.020](#), through the use of an herbicide or other treatment methods applicable to weed control that are recommended by a final environmental impact statement published by the Department of Agriculture or the Department of Ecology jointly with other State agencies under Chapter [43.21C](#) RCW.

15. Watershed restoration projects as defined herein. Local government shall review the projects for consistency with the Shoreline Master Program in an expeditious manner and shall issue its decision along with any conditions within 45 days of receiving all materials necessary to review the request for exemption from the applicant. No fee may be charged for accepting and processing requests for exemption for watershed restoration projects as used in this section.

“Watershed restoration project” means a public or private project authorized by the sponsor of a watershed restoration plan that implements the plan or a part of the plan and consists of one or more of the following activities:

a. A project that involves less than 10 miles of stream reach, in which less than 25 cubic yards of sand, gravel, or soil are removed, imported, disturbed or discharged, and in which no existing vegetation is removed except as minimally necessary to facilitate additional plantings;

b. A project for the restoration of an eroded or unstable stream bank that employs the principles of bioengineering, including limited use of rock as a stabilization only at the toe of the bank, and with primary emphasis on using native vegetation to control the erosive forces of flowing water; or

c. A project primarily designed to improve fish and wildlife habitat, remove or reduce impediments to migration of fish, or enhance the fishery resource available for use by all of the citizens of the State; provided, that any structure, other than a bridge or culvert or in-stream habitat enhancement structure associated with the project, is less than 200 square feet in floor area and is located above the ordinary high water mark of the stream.

d. "Watershed restoration plan" means a plan, developed or sponsored by the Department of Fish and Wildlife, the Department of Ecology, the Department of Natural Resources, the Department of Transportation, a Federally recognized Indian tribe acting within and pursuant to its authority, a city, a county, or a conservation district that provides a general program and implementation measures or actions for the preservation, restoration, re-creation, or enhancement of the natural resources, character, and ecology of a stream, stream segment, drainage area, or watershed for which agency and public review has been conducted pursuant to Chapter [43.21C](#) RCW, the State Environmental Policy Act.

16. A public or private project that is designed to improve fish or wildlife habitat or fish passage, when all of the following apply:

a. The project has been approved in writing by the Department of Fish and Wildlife;

b. The project has received hydraulic project approval by the Department of Fish and Wildlife pursuant to Chapter [77.55](#) RCW; and

c. The local government has determined that the project is substantially consistent with the local Shoreline Master Program. The local government shall make such determination in a timely manner and provide it by letter to the project proponent.

Fish habitat enhancement projects that conform to the provisions of RCW [77.55.181](#) are determined to be consistent with local shoreline master programs, as follows:

i. In order to receive the permit review and approval process created in this section, a fish habitat enhancement project must meet the criteria under subsections (A)(16)(c)(i)(A) and (B) of this section:

(A) A fish habitat enhancement project must be a project to accomplish one or more of the following tasks:

- Elimination of human-made fish passage barriers, including culvert repair and replacement;
- Restoration of an eroded or unstable streambank employing the principle of bioengineering, including limited use of rock as a stabilization only at the toe of the bank, and with primary emphasis on using native vegetation to control the erosive forces of flowing water; or

- Placement of woody debris or other in-stream structures that benefit naturally reproducing fish stocks.

The Department of Fish and Wildlife shall develop size or scale threshold tests to determine if projects accomplishing any of these tasks should be evaluated under the process created in this section or under other project review and approval processes. A project proposal shall not be reviewed under the process created in this section if the Department determines that the scale of the project raises concerns regarding public health and safety; and

(B) A fish habitat enhancement project must be approved in one of the following ways:

- By the Department of Fish and Wildlife pursuant to Chapter [77.95](#) or [77.100](#) RCW;
- By the sponsor of a watershed restoration plan as provided in Chapter [89.08](#) RCW;
- By the Department as a Department of Fish and Wildlife sponsored fish habitat enhancement or restoration project;
- Through the review and approval process for the jobs for the environment program;
- Through the review and approval process for conservation district sponsored projects, where the project complies with design standards established by the Conservation Commission through interagency agreement with the United States Fish and Wildlife Service and the Natural Resources Conservation Service;
- Through a formal grant program established by the Legislature or the Department of Fish and Wildlife for fish habitat enhancement or restoration; and
- Through other formal review and approval processes established by the Legislature.

ii. Fish habitat enhancement projects meeting the criteria of subsection (A)(16)(c)(i) of this section are expected to result in beneficial impacts to the environment. Decisions pertaining to fish habitat enhancement projects meeting the criteria of subsection (A)(16)(c)(i) of this section and being reviewed and approved according to the provisions of this section are not subject to the requirements of RCW [43.21C.030](#)(2)(c).

(A) A hydraulic project approval permit is required for projects that meet the criteria of subsection (A)(16)(c)(i) of this section and are being reviewed and approved under this section. An applicant shall use a joint aquatic resource permit application form developed by the Office of Regulatory Assistance to apply for approval under this chapter. On the same day, the applicant shall provide copies of the completed application form to the Department of Fish and Wildlife and to each appropriate local government. Local governments shall accept the application as notice of the proposed project. The Department of Fish and Wildlife shall provide a 15-day comment period during which it will receive

comments regarding environmental impacts. Within 45 days, the Department shall either issue a permit, with or without conditions, deny approval, or make a determination that the review and approval process created by this section is not appropriate for the proposed project. The Department shall base this determination on identification during the comment period of adverse impacts that cannot be mitigated by the conditioning of a permit. If the Department determines that the review and approval process created by this section is not appropriate for the proposed project, the Department shall notify the applicant and the appropriate local governments of its determination. The applicant may reapply for approval of the project under other review and approval processes.

(B) Any person aggrieved by the approval, denial, conditioning, or modification of a permit under this section may formally appeal the decision to the hydraulic appeals board pursuant to the provisions of this chapter.

iii. No local government may require permits or charge fees for fish habitat enhancement projects that meet the criteria of subsection (A)(16)(c)(i) of this section and that are reviewed and approved according to the provisions of this section.

17. Before issuing a shoreline exemption, the Director shall review the Master Program to determine if the proposed development requires a shoreline variance and/or a shoreline conditional use permit.

Analysis: This SMA amendment applied on its effective date, regardless of whether the exemption is specifically listed in the SMP. For SMPs that simply cite the RCW list of exemptions, no change is needed. For SMPs that spell out all the statutory exemptions, the new exemption should be added to the list. Shoreline spells out all statutory exemptions in 20.220.030 (above). In so doing, this list becomes outdated when state law is amended.

Proposed Action: Amend 20.220.030 to cite the RCW and WAC list of exemptions, and strike through the list of statutory exemptions, so that this section directly refers to state law and will remain up to date as amendments are made from time to time.

2016b. Wetlands critical areas guidance

State direction: Ecology published a revised *Wetlands Guidance for Critical Areas Ordinance Updates* in 2016. WAC 173-26-221(2)(c)(i)(A) directs local governments to consult Ecology's technical guidance documents on wetlands. The primary changes in the 2016 *Wetlands Guidance* are related to the 2014 Washington state wetland rating system.

Current SMP language: Currently, wetlands are covered under 20.230.030(C) Environmentally Sensitive Areas.

Analysis: The 2015 Critical Areas Ordinance update applicable to areas of the city outside of the shoreline jurisdictional boundaries incorporated Ecology's 2014 Wetland Rating System (SMC 20.80.310(B)), which will also be incorporated into this Periodic Review as a new chapter – SMC 20.240. Legislative format for the deletion of current language and replacement in a new chapter will be included in the packet for the February 7, 2019 Study Session. No additional action is needed.

Proposed Action: Repeal 20.230.030(C) and replace with 20.240.

2015a. 90-day target for local review for WSDOT projects

State direction: In 2015, the Legislature amended RCW 47.01, adopting a 90-day target for local review of Washington State Department of Transportation (WSDOT) projects. The law also amended RCW 90.58.140, allowing WSDOT projects that address safety risks to begin 21 days after the date of filing if the project will achieve no net loss of ecological functions. RCW 90.58.140(5)(c)(i), RCW 47.01.485, and WAC 173-27-125 encompass these changes.

Current SMP language: The City's SMP does not specifically address WSDOT projects.

Analysis: Shoreline does not have any WSDOT property or state highways within the shoreline jurisdiction, but this does not mean there will never be a WSDOT project in the area.

Proposed Action: Amend 20.220.080 to include provision regarding target time for local review and reference RCW 90.58.

2014a. Replacement docks on lakes and rivers

State direction: In 2014, the Legislature revised the cost threshold for requiring a Substantial Development Permit for replacement docks on lakes and rivers when it amended RCW 90.58.030 (2014 c 23, ESHB 1090)

Current SMP language: The City's SMP does not address replacement docks on lakes and rivers.

Analysis: Shoreline does not have any lakes or rivers that are subject to regulation pursuant to the SMA.

Proposed Action: None.

2014b. Floating on-water residences

State direction: In 2014, the Legislature created a new definition and policy for "floating on-water residences (FOWRs)" by amending RCW 90.58.270 (2014 c 56, ESSB 6450). FOWRs that meet the new definition and were legally established before July 1, 2014, shall be considered a conforming use and must be accommodated through SMP regulations that will not effectively preclude maintenance, repair, replacement, and remodeling. With this amendment, the Legislature responded to concerns raised in Seattle regarding preservation of the existing floating home community. Ecology amended WAC 173-26-241(3)(j)(iv) to implement this legislation.

Current SMP language: The City's SMP does not address floating on-water residences.

Analysis: Shoreline does not have any floating on-water residences that were legally established before the deadline set by the Legislature.

Proposed Action: None.

City Recommended Updates

6a. Staff Report - Shoreline Master Plan

The primary intent of revisions to each of the chapters below is to integrate the 2015 Critical Areas Ordinance (CAO), along with subsequent amendments, into the SMP consistent with the SMA's requirements.

Chapter 20.200 Shoreline Master Plan

Proposed revisions include removal of references to 2006 CAO, as well as minor amendments for housekeeping and clarification.

Chapter 20.210 Definitions

Proposed revisions include minor amendments for housekeeping and clarification.

Chapter 20.220 Administrative Procedures

Proposed revisions include minor amendments for housekeeping and clarification.

NEXT STEPS

Staff is currently in the process of contracting Environmental Science Associates (ESA) to develop an addendum to the 2012 Cumulative Impacts Analysis (CIA) and a non-project SEPA checklist. ESA authored the CIA for the 2013 SMP and staff believes that this level of environmental analysis is appropriate for a Periodic Review. This process will push the public hearing from February to March, but by utilizing the joint Ecology public comment and review period, staff anticipates completing the update before the June 30, 2019 deadline.

Due to the volume and complexity of the SMP chapters and proposed amendments, they have been divided into two parts, with the first three chapters to be addressed in this Study Session, and the remaining four chapters to be addressed in a second Study Session on February 7, 2019. The remaining chapters and a brief description of proposed changes are listed below. Note that the length of these chapters is largely due to incorporating the majority of SMC Chapter 20.80, Critical Areas, into the SMP, so Chapter 20.240 is new, but the code language is not.

Another topic that will be included in the February 7 Study Session will be revisions to the Comprehensive Plan that will also be addressed in Ordinance No. 856.

Comprehensive Plan amendments based on adoption of Shoreline Master Programs are one of the few exceptions to the annual docket process. Proposed changes will include moving the SMP from an Appendix to an Element of the Comprehensive Plan, and listing the Goals and Policies currently included in Chapter 20.200 in this Element.

Chapter 20.230 General Policies and Regulations

Proposed revisions include removal of the section addressing environmentally sensitive areas within the shoreline, as the 2015 CAO standards are to be located in a separate chapter, 20.240. Additionally, revisions are proposed to clarify that existing, previously permitted stabilization measures, such as bulkheads, are considered engineered and

abated hazards and shall not be classified as geologic hazard areas. Also, proposed revisions include minor amendments for housekeeping and clarification.

Chapter 20.240 SMP Critical Areas Regulations

This is a new proposed chapter that integrates the 2015 CAO, along with subsequent amendments, into the SMP consistent with the SMA's requirements. For the most part, SMC Chapter 20.80, Critical Areas, has been copied into the new proposed Chapter 20.240. However, note that some of the provisions from 20.80 were excluded from the SMP Critical Areas Regulations due to conflicts with the Shoreline Management Act (SMA). These provisions include reasonable use exceptions, administrative exemptions, and waivers.

Chapter 13.12 Floodplain Management

Proposed revisions include designating the Planning and Community Development Director as the floodplain administrator so that all authority is in one department, rather than dividing the authority with Public Works.

Chapter 20.80 Critical Areas

Proposed revisions include a minor update to the reference to the SMP Critical Areas Regulations to refer to the new proposed Chapter 20.240.

February 7, 2019 - Planning Commission Study Session, Part II- Chapters 20.230, 20.240, 13.12, 20.80, and Comprehensive Plan amendments

March 21, 2019 - Planning Commission Public Hearing (with Open House prior to meeting)

April 15, 2019 - Council Study Session

May 6, 2019 - Council Adopts Ordinance No. 856

RECOMMENDATION

No action is required at this time. This Study Session is an opportunity for the Commission to discuss proposed code language and provide guidance prior to the public hearing.

ATTACHMENTS

Attachment A: Chapter 20.200 Shoreline Master Program

Attachment B: Chapter 20.210 Definitions

Attachment C: Chapter 20.220 Administrative Procedures

Attachment A- Chapter 20.200 Shoreline Master Program

Division II.

Shoreline Master Plan Program

Chapter 20.200

Shoreline Master Plan Program

Sections:

20.200.010 Title.

20.200.020 Authority.

20.200.025 Liberal Construction.

Subchapter 1. Goals and Objectives

20.200.030 Purpose.

20.200.040 Shoreline elements.

Subchapter 2. General Provisions

20.200.050 Purpose.

20.200.060 Administrator.

20.200.070 Applicability.

20.200.080 Master Program review and update.

20.200.090 Amendments to Master Program.

20.200.010 Title.

This ~~chapter~~title shall be known as the City's Shoreline Master Program, hereafter referred to as the Master Program.

20.200.020 Authority.

The Master Program is adopted in accordance with ~~the~~Washington State's Shoreline Management Act, ~~c~~(Chapter 90.58 RCW, hereinafter referred to as the SMA,) and the ~~State~~master program shoreline guidelines adopted by the State in ~~(C~~chapter 173-26 WAC).

Where these regulations require that public access be provided, the requirement shall be construed to be limited to the extent of the lawful and constitutional authority of the City to require public access or to require the easement, fee ownership or interest requested.

20.200.025 Liberal Construction.

As provided in the SMA, this Master Program shall be liberally construed to give full effect to the purposes, goals, objectives, and policies for which the SMA and this Master Program were enacted.

**Subchapter 1.
Goals and Objectives**

20.200.030 Purpose.

The purpose of this Master Program is to:

- Promote the public health, safety, and general welfare of the community;
- Manage shorelines in a positive, effective, and equitable manner;
- Achieve no net loss to the ecological functions of the City's shorelines;
- Assume and carry out the responsibilities established by the Shoreline Management Act (SMA);
- Adopt and foster the policies contained in ~~Chapter 90.58 RCW, the State Shoreline Management Act~~SMA, for shorelines of the State; and
- Assure that proposed regulatory or administrative actions do not unconstitutionally infringe upon private property rights.

20.200.040 Shoreline elements.

The following elements have been considered in the preparation of this Master Program for the City of Shoreline. The goals and objectives established for these elements provide the basis for policies and regulations included under the general use requirements of this Master Program.

ECONOMIC DEVELOPMENT ELEMENT

Goal Provide for economically productive uses that are particularly dependent on their shoreline location or use.

Objective Plan for economic activity that is water-dependent, water-related, or that provides an opportunity for a substantial number of people to enjoy the shoreline and water.

PUBLIC ACCESS ELEMENT

Goal Increase public access to publicly owned areas of the shoreline.

Objective Provide for public access to publicly owned shoreline areas, except where deemed inappropriate due to safety hazards, inherent security problems, environmental impacts, or conflicts with adjacent uses.

RECREATIONAL ELEMENT

Goal Develop public and private recreation opportunities that are compatible with adjacent uses and that protect the shoreline environments.

Objective Provide for the preservation and enlargement of public and private recreational opportunities and recreational facilities along the shoreline, including but not limited to parks and recreational areas, wherever appropriate.

CIRCULATION ELEMENT

Goal Provide interconnected, efficient, and safe transportation networks to and around the shoreline to accommodate vehicles, transit, pedestrians, and cyclists.

Objective Provide for a safe and adequate circulation system, including existing and proposed major thoroughfares, transportation routes, terminals, and other public utilities and facilities within the shoreline jurisdiction that benefit permitted uses without degrading the environment or aesthetic values of the area.

SHORELINE USE ELEMENT

Goal Regulate land use patterns to locate activity and development in areas of the shoreline that will be compatible with adjacent uses and will be sensitive to existing shoreline environments, habitat, and ecological systems.

Objective Include protections for the natural environment and adjacent uses in the Shoreline Development Code, Point Wells Subarea Plan, Saltwater Park master planning efforts, and other regulatory framework for development along the shoreline.

CONSERVATION ELEMENT

Goal Conserve and protect the natural resources of the shoreline including, but not limited to, scenic vistas, aesthetics, and vital estuarine areas for fisheries and wildlife protection.

Objective Through the use of best available science, develop and implement siting criteria, design standards, and best management practices that promote the long-term enhancement of unique shoreline features, natural resources, and fish and wildlife habitat.

HISTORICAL, CULTURAL, SCIENTIFIC, AND EDUCATIONAL ELEMENT

Goal Identify, preserve, protect, and restore shoreline areas, buildings, and sites having historical, cultural, educational, or scientific values.

Objective Educate citizens on historical, cultural, and scientific significance of shoreline structures, amenities, and functions.

FLOOD HAZARD MANAGEMENT

Goal Protect the City of Shoreline and other property owners from losses and damage created by flooding along the coast and sea-level rise.

Objective Seek regional solutions to flooding problems through coordinated planning with State and Federal agencies, other appropriate interests, and the public.

Objective Develop a plan to mitigate and adapt to potentially altered environmental conditions along the coastline resulting from climate change.

RESTORATION ELEMENT

Goal Improve water quality, reduce the impacts of flooding events; and restore natural areas, vegetation, and habitat functions.

Objective Seek funding for restoration projects within the shoreline jurisdiction and require development proposals to address habitat restoration and water quality.

Objective Engage in discussions with other municipalities that border the Puget Sound and BNSF railroad regarding efforts to benefit fish passage and nutrient transfer.

**Subchapter 2.
General Provisions**

20.200.050 Purpose.

This chapter defines requirements for implementation of the Master Program and sets an orderly process for project review and permitting. The development regulations in the Master Program are intended to make shoreline development responsive to specific design needs and opportunities along the City's shorelines, and to protect the public's interest in the shorelines' recreational and aesthetic values.

20.200.060 Administrator.

The Planning and Community Development Director or designee is the Shoreline Administrator, hereinafter known as the Director, and is vested with authority to:

- Administer the Master Program;
- Approve, approve with conditions, or deny shoreline substantial development permits;
- Grant exemptions from shoreline substantial development permits;
- Determine compliance with Chapter 43.21C RCW, the State Environmental Policy Act; and
- Adopt rules that are necessary and appropriate to carry out the provisions of this chapter.

The Director's duties and responsibilities include:

- Making administrative decisions and interpretations of the policies and regulations of this program and the Shoreline Management Act;
- Developing and proposing amendments to this Master Program to more effectively and equitably achieve its goals and policies;

Seeking remedies for violations of this Master Program, the provisions of the Shoreline Management Act, or the conditions of substantial development permits issued by the City;

- and

Forwarding shoreline permits to Washington State Department of Ecology for ~~Ecology~~

- actionits approval or disapproval.

20.200.070 Applicability.

A. The regulations of this title apply to all areas within the shoreline jurisdiction, including shorelines of the state, shorelines of statewide significance, and their associated wetlands within the City, and to the waters and underlying land of the Puget Sound extending to the middle of Puget Sound adjacent to Kitsap County, between the northern and southern limits of the City, and to shorelands, that area 200 feet landward of the ordinary high water mark (OHWM).

B. These ~~standards~~regulations provide a preference for permit issuance for measures to protect single-family residences occupied prior to January 1, 1992. Nothing in this Master Program shall constitute authority for requiring or ordering the removal of any structures, improvements, docks, fills, or developments placed in navigable waters prior to December 4, 1969, and the consent and authorization of the State of Washington to the impairment of public rights of navigation, and corollary rights incidental thereto, caused by the retention and maintenance of said structures, improvements, docks, fills or developments are hereby granted; provided, that the consent herein given shall not relate to any structures, improvements, docks, fills, or developments placed on tidelands, shorelands, or beds underlying said waters which are in trespass or in violation of State statutes.

C. Regulation of private property to implement ~~program~~Master Program goals, such as public access and protection of ecological functions and processes, must be consistent with all relevant constitutional and other legal limitations. These include, but are not limited to, civil rights guaranteed by the U.S. and State constitutions, ~~recent~~applicable Federal and State case law, and State statutes, such as RCW 34.05.328 and 43.21C.060 and Chapter 82.02 RCW.

D. All proposed uses and development, as defined in this ~~chapter~~title, occurring within the shoreline jurisdiction shall comply with this Master Program and ~~Chapter 90.58 RCW~~the SMA whether or not a shoreline permit is required for such use or development.

E. Uses and development regulated by this Master Program are subject to applicable provisions of the Shoreline Municipal Code (SMC), the Comprehensive Plan, the ~~Washington State Shoreline Management Act (Chapter 90.58 RCW)~~SMA and its implementing regulations, chapters 173-26 and 173-27 WAC, Growth Management Act, ~~(Chapter 36.70 RCW)~~, State Environmental Policy Act, (Chapter 43.21C RCW), ~~and Chapter 197-11 WAC~~, and other applicable local, State and Federal laws. Project proponents are responsible for complying with all applicable laws prior to commencing any use, development, or activity.

F. The Master Program policies and regulations shall apply in addition to other City regulations. Where the regulations of the Master Program conflict with other regulations, the regulations that provide more shoreland and shoreline protection shall apply.

G. Nonconforming uses and improvements within the shoreline jurisdiction shall be subject to this program and SMC 20.220.150.

~~H. The City's critical areas ordinance, Chapter 20.80 SMC, which was passed on February 27, 2006, by Ordinance No. 398, is adopted as a part of the Master Program. The provisions of Chapter 20.80 SMC shall apply to any use, alteration or development within the shoreline jurisdiction whether or not a shoreline permit or written statement of exemption is required.~~

~~I. Uses and developments within the shoreline jurisdiction that meet the reasonable use exception provisions of SMC 20.30.336 require a shoreline variance in accordance with this chapter.~~

JH. All critical areas that are within the shoreline jurisdiction shall be managed and regulated per this Master Program. When a critical area overlaps into the shoreline jurisdiction or is partly within and partly outside of shoreline jurisdiction, only the buffer or setback from the portion of the critical area that is outside of the shoreline jurisdiction is subject to the City's critical area regulations, chapter 20.80 SMC. ~~The exemptions and partial exemptions listed in SMC 20.80.030 and 20.80.040 shall not apply within the shoreline jurisdiction. Such activities may require a shoreline substantial development permit, shoreline variance, or shoreline conditional use permit unless the Master Program and RCW 90.58.030(3)(e) specifically indicate the activity is exempt from the shoreline substantial development permit requirements.~~

20.200.080 Master Program review and update.

This Master Program shall be periodically reviewed and updated as provided in RCW 90.58 and the implementing regulations in WAC 173-26, as amended from time to time, as necessary to reflect changing local circumstances, new information or improved data, and changes in State statutes and regulations.

20.200.090 Amendments to Master Program.

Amendments shall comply with the applicable procedures set forth in RCW 90.58 and the implementing regulations in WAC 173-26, including WAC 173-26-104 Optional Joint Review Process, as amended from time to time.

No amendment shall be effective until approved by the Department of Ecology as provided in RCW 90.58.090(7), as amended from time to time.

~~Any of the provisions of this Master Program may be amended as provided for in RCW 90.58.120 and 90.58.200 and Chapter 173-26 WAC. Amendments to the Master Program do not become effective until approved by the Department of Ecology.~~

~~Proposals for shoreline environment redesignation, for example amendments to the shoreline maps and descriptions, must demonstrate consistency with the criteria set forth in WAC 173-16-040(4).~~

Attachment B- Chapter 20.210 Definitions

**Chapter 20.210
SMP Definitions**

Sections:

20.210.010 Definitions.

20.210.010 Definitions.

For the purpose of the Master Program, the following terms shall have the meaning ascribed to them below. Terms not defined in this section shall be defined as set forth in -shall be implemented according to the definitions contained in Chapter [20.20](#) SMC, Chapter [90.58](#) RCW, and WAC [173-26-020](#), and WAC 173-27-030, with the definitions contained in the RCW and WAC prevailing over the SMC. Where definitions contained in Chapter [20.20](#) SMC conflict or differ from definitions contained in the Shoreline Management Act, the definitions in the RCW and WAC shall prevail.

Accretion. May be either natural or artificial. Natural accretion is the buildup of land, solely by the action of the forces of nature, on a beach by deposition of water- or airborne material. Artificial accretion is a similar buildup of land by reason of an act of man, such as the accretion formed by a groin, breakwater, or beach fill deposited by mechanical means.

Activity. An occurrence associated with a use; the use of energy toward a specific action or pursuit. Examples of shoreline activities include, but are not limited to, fishing, swimming, boating, dredging, fish spawning, or wildlife nesting.

Adjacent Lands. Lands adjacent to the lands within the shoreline jurisdiction. ~~The SMA directs local governments to develop land use controls (i.e., zoning, comprehensive planning) for such lands consistent with the policies of the SMA, related rules and the local shoreline master program (refer to RCW [90.58.340](#)).~~

Agricultural Uses.

A. "Agricultural activities" means agricultural uses and practices including, but not limited to: producing, breeding, or increasing agricultural products; rotating and changing agricultural crops; allowing land used for agricultural activities to lie fallow in which it is plowed and tilled but left unseeded; allowing land used for agricultural activities to lie dormant as a result of adverse agricultural market conditions; allowing land used for agricultural activities to lie dormant

because the land is enrolled in a local, State, or Federal conservation program, or the land is subject to a conservation easement; conducting agricultural operations; maintaining, repairing, and replacing agricultural equipment; maintaining, repairing, and replacing agricultural facilities; provided, that the replacement facility is no closer to the shoreline than the original facility; and maintaining agricultural lands under production or cultivation;

B. "Agricultural products" includes but is not limited to horticultural, viticultural, floricultural, vegetable, fruit, berry, grain, hops, hay, straw, turf, sod, seed, and apiary products; feed or forage for livestock; Christmas trees; hybrid cottonwood and similar hardwood trees grown as crops and harvested within 20 years of planting; and livestock including both the animals themselves and animal products including but not limited to meat, upland finfish, poultry and poultry products, and dairy products;

C. "Agricultural equipment" and "agricultural facilities" include, but are not limited to:

1. The following used in agricultural operations: equipment; machinery; constructed shelters, buildings, and ponds; fences; upland finfish rearing facilities; water diversion, withdrawal, conveyance, and use equipment and facilities including but not limited to pumps, pipes, tapes, canals, ditches, and drains;
2. Corridors and facilities for transporting personnel, livestock, and equipment to, from, and within agricultural lands;
3. Farm residences and associated equipment, lands, and facilities; and
4. Roadside stands and on-farm markets for marketing fruit or vegetables; and

D. "Agricultural land" means those specific land areas on which agriculture activities are conducted as of the date of adoption of a local master program pursuant to these guidelines this Master Program as evidenced by aerial photography or other documentation. ~~After the effective date of the master program land converted to agricultural use is subject to compliance with the requirements of the master program.~~

Anadromous Fish. Fish born in fresh water, which spend most of their lives in the sea and return to fresh water to spawn. Salmon, smelt, shad, striped bass, and sturgeon are common examples.

Aquaculture. The culture or farming of fish, shellfish, or other aquatic plants and animals. Aquaculture does not include the harvest of wild geoduck associated with the State managed wildstock geoduck fishery and upland finfish.

Aquaculture Activity. Actions directly pertaining to growing, handling, or harvesting of aquaculture produce including, but not limited to, propagation, stocking, feeding, disease treatment, waste disposal, water use, development of habitat and structures. Excluded from this definition are related upland commercial or industrial uses such as wholesale and retail sales, sorting, staging, hatcheries, tank farms, and final processing and freezing.

Associated Wetlands. Those wetlands that are in proximity to and either influence, or are influenced by, tidal waters or a lake or stream subject to the Shoreline Management Act. ~~Refer to WAC [173-22-030\(1\)](#).~~

Backfill. The placement of earth material or other approved material behind a retaining wall or structure.

Boat Launch or Ramp. Graded slopes, slabs, pads, planks, or rails used for launching boats by means of a trailer, hand, or mechanical device.

Breakwaters. Structures constructed on coasts as part of coastal defense to protect an anchorage from the effects of weather and longshore drift.

Building Setback. The required linear distance between the structure/building and the shoreline or critical area. The building setback shall be equal to the depth of the required native vegetation conservation area.

Bulkheads. A vertical or nearly vertical structure placed parallel to the shoreline at or near the ordinary high water mark (OHWM) for the purpose of armoring the shoreline and protecting structures from the effects of erosion caused by wind or waves. Bulkheads generally consist of concrete, timber, steel, rock, or other material resistant to erosion. Bulkheads are used to protect banks by retaining soil at the toe of the slope, or by protecting the toe of the bank from erosion and undercutting.

Community Boat Launching Ramp. An inclined slab, set of pads, rails, planks, or graded slope used for launching boats with trailers or by hand for use in common by shoreline residents of a certain subdivision or community within shoreline jurisdiction.

Community Pier or Dock. Moorage for pleasure craft and/or landing for water sports for use in common by four or more residential units of a certain subdivision or community within the shoreline jurisdiction.

Conditional Use, Shoreline. A use, development, or substantial development that is classified as a conditional use or is not classified within the Master Program. ~~Refer to WAC [173-27-030\(4\)](#).~~

Department of Ecology or Ecology. The state agency created under chapter 43.21A RCW responsible for the administration of the Shoreline Management Act, chapter 90.58 RCW.

Development, Shoreline. “Development” means 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 surface of the waters overlying lands subject to this chapter at any state of water level. ~~RCW [90.58.030\(3\)\(d\)](#).~~ Development does not include dismantling or removing structures if there is no other associated development or re-development.

Dredge Spoil. The material removed by dredging.

Dredge Spoil Disposal. The depositing of dredged materials on land or into water bodies for the purpose of either creating new or additional lands or for disposing of the material in an acceptable manner.

Dredging. The removal or displacement of earth such as gravel, sand, mud, or silt from lands covered by water. Lands covered by water include stream beds and wetlands. Dredging is normally done for specific purposes or uses such as maintaining navigation channels, constructing bridge footings, or laying submarine pipelines or cable.

Ecological Functions, Shoreline or Shoreline Functions. The work performed or the role played by the physical, chemical, and biological processes that contribute to the maintenance of the aquatic and terrestrial environments that constitute the shoreline’s natural ecosystem. ~~See WAC [173-26-201\(e\)](#).~~

Enhancement. Alteration of an existing resource to improve or increase its characteristics and processes without degrading other existing functions. Enhancements are to be distinguished from resource creation or restoration projects.

Exemption. ~~Certain specific developments as listed in WAC [173-27-040](#) are exempt from the definition of substantial developments, and are therefore exempt from the substantial development permit process of the SMA.~~

Fair Market Value. The open market bid price for conducting the work, using the equipment and facilities, and purchase of the goods, services and materials necessary to accomplish a development. This would normally equate to the cost of hiring a contractor to undertake the development from start to finish, including the cost of labor, materials, equipment and facility usage, transportation and contractor overhead and profit. The fair market value of the development shall include the fair market value of any donated, contributed or found labor, equipment, or materials.

Feasible. An action, such as a development project, mitigation, or preservation requirement, ~~shall meet all of the~~that meets all of the following conditions:

- A. The action can be accomplished with technologies and methods that have been used in the past in similar circumstances, or studies or tests have demonstrated in similar circumstances that such approaches are currently available and likely to achieve the intended results;
- B. The action provides a reasonable likelihood of achieving its intended purpose; and
- C. The action does not physically preclude achieving the project's primary intended legal use.

~~In cases where these guidelines require certain actions unless they are infeasible, the burden of proving infeasibility is on the applicant. In determining an action's infeasibility, the reviewing agency may weigh the action's relative public costs and public benefits, considered in the short- and long-term time frames.~~

Flood Control. Any undertaking for the conveyance, control, and dispersal of floodwaters caused by abnormally high direct precipitation or stream overflow.

Gabions. Cages, cylinders, or boxes filled with soil or sand that are used in civil engineering, road building, and military applications, primarily for erosion control and building dams and retaining walls.

Geotechnical Report or Analysis. A scientific study or evaluation conducted by a qualified expert that includes a description of the ground and surface hydrology and geology, the affected landform and its susceptibility to mass wasting, erosion, and other geologic hazards or processes, conclusions and recommendations regarding the effect of the proposed

development on geologic conditions, the adequacy of the site to be developed, the impacts of the proposed development, alternative approaches to the proposed development, and measures to mitigate potential site-specific and cumulative geological and hydrological impacts of the proposed development, including the potential adverse impacts to adjacent and down-current properties. ~~Geotechnical reports shall conform to accepted technical standards and must be prepared by qualified professional engineers or geologists who have professional expertise about the regional and local shoreline geology and processes.~~

Grading. The movement or redistribution of the soil, sand, rock, gravel, sediment, or other material on a site in a manner that alters the natural contour of the land.

Groin. A rigid structure built out from a shore to protect the shore from erosion, to trap sand, or to direct a current for scouring a channel.

Ground Water Recharge. A hydrologic process where water moves downward from surface water to ground water. Recharge occurs both naturally (through the water cycle) and anthropologically (i.e., “artificial ground water recharge”), where rainwater and/or reclaimed water is routed to the subsurface.

Hydric Soil. Soil that formed under conditions of saturation, flooding, or ponding long enough during the growing season to develop anaerobic conditions in the upper soil horizon(s).

Jetty. Any of a variety of structures used in river, dock, and maritime works that are generally carried out in pairs from river banks, or in continuation of river channels at their outlets into deep water; or out into docks, and outside their entrances; or for forming basins along the sea-coast for ports in tideless seas.

Joint Use. Moorage for pleasure craft and/or landing for water sports for use in common by two or more residential units of a certain subdivision or community within shoreline jurisdiction.

Land Disturbing Activities. Any activity resulting in a movement of earth, or a change in the existing soil cover, both vegetative and nonvegetative, or the existing topography excluding the addition of soil, sand, rock, gravel, sediment, earth retaining structure, or other material to an area waterward of the OHWM, in wetlands, or on shorelands in a manner that raises the elevation or creates dry land. Land disturbing activities include, but are not limited to, clearing, grading, filling, excavation, or addition of new or the replacement of impervious surface. Compaction, excluding hot asphalt mix, which is associated with stabilization of structures and road construction, shall also be considered a land disturbing activity.

Landfilling. The addition of soil, sand, rock, gravel, sediment, earth retaining structure, or other material to an area waterward of the OHWM, in wetlands, or on shorelands in a manner that creates dry land.

Native Vegetation. Vegetation comprised of plant species, other than noxious weeds, that are indigenous to the coastal region of the Pacific Northwest and which reasonably could have been expected to naturally occur on the site. Examples include trees such as madrona, Douglas fir, western hemlock, western red cedar, alder, big-leaf maple, and vine maple; shrubs such as willow, elderberry, salmonberry, and salal; and herbaceous plants such as sword fern, foam flower, and fireweed.

Native Vegetation Conservation Area. Vegetated area between the native vegetation setback line and the ordinary high water mark.

Native Vegetation Setback Line. Unless otherwise indicated within this Master Program, the line that establishes the limits of all buildings, fencing and impervious surfaces along the shoreline.

Nonconforming Development or Nonconforming Structure. An existing structure that was lawfully constructed at the time it was built but is no longer full consistent with present regulations such as setbacks, buffers, area, bulk, height, or density standards due to subsequent changes to this Master Program.

Nonconforming Lot. An existing lot that met dimensional requirements of this Master Program at the time of its establishment but now contains less than the required width, depth, or area due to subsequent changes to this Master Program.

Nonconforming Use and Development. An existing shoreline use or development that was lawfully constructed or established prior to the effective date of the Act or the applicable this Master Program, or amendments thereto, but which does not conform to present regulations or standards of the program.

Non-Water-Oriented Uses. Those uses that are not water-dependent, water-related, or water-enjoyment.

Normal Maintenance. Usual acts to prevent a decline, lapse, or cessation from a lawfully established condition.

Normal Repair. To restore a development to a state comparable to its original condition, including but not limited to its size, shape, configuration, location and external appearance, within a reasonable period after decay or partial destruction, except where repair causes substantial adverse effects to shoreline resource or environment. ~~Replacement of a structure or development may be authorized as repair where such replacement is the common method of repair for the type of structure or development and the replacement structure or development is comparable to the original structure or development including but not limited to its size, shape, configuration, location and external appearance and the replacement does not cause substantial adverse effects to shoreline resources or environment.~~

Ordinary High Water Mark (OHWM). OHWM on all lakes, streams, and tidal water is that mark that will be found by examining the bed and banks 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 June 1, 1971, as it may naturally change thereafter, or as it may change thereafter in accordance with permits issued by a local government or the ~~Department~~ the City, King County, or the Department of Ecology; provided, that in any area where the ordinary high water mark cannot be found, the ordinary high water mark adjoining salt water shall be the line of mean higher high tide and the ordinary high water mark adjoining fresh water shall be the line of mean high water.

Public Access. Public access is the ability of the general public to reach, touch, and enjoy the water's edge, to travel on the waters of the State, and to view the water and the shoreline from adjacent locations. ~~Refer to WAC [173-26-221\(4\)](#).~~

Public Boat Launching Ramp. An inclined slab, set of pads, rails, planks, or graded slope used for launching boats with trailers or by hand for use by the general public.

Public Pier or Dock. Moorage for pleasure craft and/or landing for water sports for use by the general public.

Restoration. The reestablishment or upgrading of impaired ecological processes or functions. This may be accomplished through measures including but not limited to revegetation, removal of intrusive structures, toxic materials, or invasive or nonnative plants. Restoration does not imply a requirement for returning the area to pre-European settlement conditions.

Revetment. A sloped wall constructed of riprap or other suitable material placed on stream banks or other shorelines to retard bank erosion and minimize lateral stream movement. A revetment typically slopes away from the water and has a rough or jagged face. These features differentiate it from a bulkhead, which is a vertical structure. Revetments are a facing of stone, concrete, etc., built to protect a scarp, embankment, or shore structure against erosion by waves or currents. The principal features of a revetment are: (A) heavy armor layer, (B) filter layer, and (C) toe protection.

Riparian. The characteristic of relating to or living or located on the bank of a natural watercourse (as a river) or sometimes of a lake or a tidewater.

Sediment. The fine-grained material deposited by water or wind.

Shorelands or Shoreland Areas. Those lands extending landward for 200 feet in all directions as measured on a horizontal plane from the ordinary high water mark; contiguous floodplain areas landward 200 feet; and all wetlands and deltas associated with the streams, lakes, and tidal waters that are subject to the provisions of ~~this chapter~~ this Master Program; the same to be designated as to location by the Department of Ecology.

Shoreline Jurisdiction. All “shorelines of the State” and “shorelands” as defined in RCW [90.58.030](#).

Shoreline Management Act (SMA). The Shoreline Management Act of 1971, as adopted in chapter 90.58 RCW.

Shoreline Master Program or Master Program. The comprehensive plan for the use of a described area, and the regulations for use of the area including maps, diagrams, charts, or other descriptive material and text, a statement of desired goals, and standards developed in accordance with the policies enunciated in RCW [90.58.020](#). ~~As provided in RCW [36.70A.480](#), the goals and policies of a shoreline master program for a county or city approved under Chapter [90.58](#) RCW shall be considered an element of the county or city’s comprehensive plan. All other portions of the shoreline master program for a county or city adopted under Chapter [90.58](#) RCW, including use regulations, shall be considered a part of the county or city’s development regulations.~~

Shoreline Modifications. Those actions that modify the physical configuration or qualities of the shoreline area, usually through the construction of a physical element such as a dike,

breakwater, pier, weir, dredged basin, fill, bulkhead, or other shoreline structure. They can include other actions, such as clearing, grading, or application of chemicals.

Shorelines. All of the water areas of the State, including reservoirs, and their associated shorelands, together with the lands underlying them; except (A) shorelines of statewide significance; and (B) shorelines on lakes less than 20 acres in size and wetlands associated with such small lakes.

Shorelines of Statewide Significance. “Shorelines of the State” that meet the criteria for “shorelines of statewide significance” contained in RCW 90.58.030(2)(f). As it applies to the City of Shoreline, shorelines of statewide significance include those areas of Puget Sound and adjacent salt waters between the ordinary high water mark and the line of extreme low tide.

Shorelines of the State. This term includes both “shorelines” and “shorelines of statewide significance.”

Substantial Development. ~~Any development with a total cost or fair market value of \$5,718 or more that requires a shoreline substantial development permit. The threshold total cost or fair market value of \$5,718 is set by the State Office of Financial Management and may be adjusted in the future pursuant to the SMA requirements, as defined in RCW 90.58.030(3)(e) as now or hereafter amended.~~ Any development of which the total cost or fair market value exceeds the amount set forth by the Washington State Office of Financial Management pursuant to RCW 90.58.030(3)(e) at the time of application submittal or any development which materially interferes with the normal public use of the water or shorelines of the state.

Water-Dependent Use. A use or portion of a use which cannot exist in a location that is not adjacent to the water, but is dependent on the water by reason of the intrinsic nature of its operations.

Water Enjoyment Use. A recreational or other use that facilitates public access to the shoreline as a primary characteristic of the use; or a use that provides for recreational use or aesthetic enjoyment of the shoreline for a substantial number of people as a general characteristic of the use and which through location, design, and operation ensures the public’s ability to enjoy the physical and aesthetic qualities of the shoreline. In order to qualify as a water enjoyment use, the use must be open to the general public and the shoreline-oriented space within the project must be devoted to the specific aspects of the use that fosters shoreline enjoyment.

Water-Oriented Use. A use that is water-dependent, water-related, or water enjoyment, or a combination of such uses.

Water Quality. The physical characteristics of water within shoreline jurisdiction, including water quantity, hydrological, physical, chemical, aesthetic, recreation-related, and biological characteristics.

Water Quantity. ~~Where used in this chapter, the term “water quantity” r~~Refers only to development and uses regulated under ~~this chapter~~this Master Program and affecting water quantity, such as impermeable surfaces and stormwater handling practices. Water quantity, for purposes of ~~this chapter~~this Master Program, does not mean the withdrawal of ground water or diversion of surface water pursuant to RCW [90.03.250](#) through [90.03.340](#).

Water-Related Use. A use or portion of a use that is not intrinsically dependent on a waterfront location, but whose economic viability is dependent upon a waterfront location because: (A) the use has a functional requirement for a waterfront location such as the arrival or shipment of materials by water or the need for large quantities of water; or (B) the use provides a necessary service supportive of the water-dependent uses and the proximity of the use to its customers makes its services less expensive and/or more convenient.

Wave Return. A structure added on top of, or part of, an existing bulkhead or hard armoring which redirects wave action back waterward and helps prevent water from splashing landward, thereby protecting the armoring itself, and landward items such as natural ecology and other structures.

Weir. A dam in a watercourse, usually a stream or river, to raise the water level or divert its flow.

Wetland Delineation. A technical procedure performed by a wetland specialist pursuant to the manual adopted by the Department of Ecology pursuant to RCW 90.58.380 to determine the area of a wetland, ascertaining the wetland’s classification, function, and value, and to define the boundary between a wetland and adjacent uplands. ~~Identification of wetlands and delineation of their boundaries pursuant to this chapter shall be done in accordance with the approved Federal wetland delineation manual and applicable regional supplements. All areas within the City meeting the wetland designation criteria in that procedure are hereby designated critical areas and are subject to the provisions of this program.~~

Wetlands. Areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a

prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from nonwetland areas to mitigate the conversion of wetlands.

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Attachment C- Chapter 20.220 Administrative Procedures

**Chapter 20.220
SMP Administrative Procedures**

Sections:

Subchapter 1. Permits

- 20.220.010 Permit requirements – General.**
- 20.220.015 Developments not required to obtain shoreline permits or local reviews.**
- 20.220.020 Substantial development permit.**
- 20.220.030 Shoreline exemption.**
- 20.220.040 Shoreline variance.**
- 20.220.050 Shoreline conditional use permit.**

Subchapter 2. SMP Permit Procedures

- 20.220.060 General.**
- 20.220.070 Application review.**
- 20.220.080 Permit process.**
- 20.220.090 Local appeals.**
- 20.220.110 Appeals to State Shoreline Hearings Board.**
- 20.220.120 Initiation of development.**
- 20.220.130 Expiration of permits.**
- 20.220.140 Revision to permits.**
- 20.220.150 Nonconforming use and development.**
- 20.220.160 Enforcement.**

**Subchapter 1.
Permits**

- 20.220.010 Permit requirements – General.**

- A. Based on the provisions of this Master Program, the Director shall determine if a substantial development permit, a shoreline conditional use permit and/or a shoreline variance is required.
- B. A permit is required for substantial development as defined in SMC 20.210.010 and RCW 90.58.030(3)(e) within the shoreline jurisdiction.
- C. A substantial development permit is not required for exempt development. An exempt development requires a statement of exemption pursuant to SMC 20.220.030 and may require a shoreline variance from Master Program provisions and/or a shoreline conditional use permit.
- D. All uses and development shall be carried out in a manner consistent with the SMC and the Master Program regardless of whether a substantial development permit, statement of exemption, shoreline variance, or shoreline conditional use permit is required.
- E. When a development or use is proposed that does not comply with the bulk, dimensional and/or performance standards of this program, such development or use may only be authorized by approval of a shoreline variance, even if the development or use does not require a substantial development permit.
- F. A development or use listed as a shoreline conditional use pursuant to this chapter, or any unlisted use, must obtain a shoreline conditional use permit even if the development or use does not require a substantial development permit.
- G. Issuance of a statement of exemption, shoreline substantial development permit, shoreline variance, or shoreline conditional use permit does not constitute approval of any other City, State, or Federal laws or regulations.
- H. All shoreline permits or statements of exemption issued for development or use within the shoreline jurisdiction shall include written findings prepared by the Director, documenting compliance with bulk and dimensional policies and regulations of the Master Program. The Director may attach conditions to the approval as necessary to assure consistency with the Master Program and Chapter 90.58 RCW. The conditions may include a requirement to post a performance financial guarantee assuring compliance with permit requirements, terms and conditions.

20.220.015 Developments not required to obtain shoreline permits or local reviews.

Requirements to obtain a substantial development permit, conditional use permit, variance, letter of exemption, or other review to implement the Shoreline Management Act do not apply to the following:

A. Remedial actions. Pursuant to RCW 90.58.355, any person conducting a remedial action at a facility pursuant to a consent decree, order, or agreed order issued pursuant to Chapter 70.105D RCW, or to the Department of Ecology when it conducts a remedial action under Chapter 70.105D RCW.

B. Boatyard improvements to meet NPDES permit requirements. Pursuant to RCW 90.58.355, any person installing site improvements for storm water treatment in an existing boatyard facility to meet requirements of a national pollutant discharge elimination system storm water general permit.

C. WSDOT facility maintenance and safety improvements. Pursuant to RCW 90.58.356, Washington State Department of Transportation projects and activities meeting the conditions of RCW 90.58.356 are not required to obtain a substantial development permit, conditional use permit, variance, letter of exemption, or other local review.

D. Projects consistent with an environmental excellence program agreement pursuant to RCW 90.58.045.

E. Projects authorized through the Energy Facility Site Evaluation Council process, pursuant to Chapter 80.50 RCW.

20.220.020 Substantial development permit.

A. Substantial development as defined by ~~RCW 90.58.030~~ shall not be undertaken by any person on the shorelines of the State without first obtaining a substantial development permit from the Director, unless the use or development is specifically identified as exempt.

B. A substantial development permit shall only be granted by the Director when the development proposed is consistent with the policies and procedures of Chapter 90.58 RCW; the provisions of Chapter 173-27 WAC; and this Master Program.

~~C. An exemption from the substantial development permit requirements does not constitute an exemption from the policies and use regulations of the Shoreline Management Act, the provisions of this Master Program or other applicable City, State, or Federal requirements. A formal statement of shoreline exemption is required pursuant to SMC 20.220.030.~~

20.220.030 Development exempt from substantial development permit requirement~~Shoreline exemption.~~

A. Exemptions – In general.

1. The development activities listed in RCW 90.58.030 and WAC 173-27-040, as amended from time to time, shall not require substantial development permits.
2. Exemptions are construed narrowly. Only those developments that meet the precise terms of one or more of the listed exemptions may be granted exemption from the substantial development permit process.
3. An exemption from the substantial development permit process does not constitute an exemption from compliance with the SMA, this Master Program, or any other applicable city, state, or federal regulations.
4. If any part of a proposed development of use is not eligible for exemption, then a substantial development permit is required for the entire proposed development project.
5. The burden of proof that a development or use is exempt from the permit process is on the applicant.

B. Letter of Exemption.

1. The Director is hereby authorized to approve or deny requests for ~~statements~~letters of exemption from the shoreline substantial development permit requirement for uses and developments within shorelines that are specifically listed in RCW 90.58.030 and WAC 173-27-040.
2. Before issuing a shoreline exemption, the Director shall review the Master Program to determine if the proposed development requires a shoreline variance and/or a shoreline conditional use permit.
3. The ~~statement~~letter of exemption shall be in writing and shall indicate the specific exemption of the Master Program that is being applied to the development, and shall provide a summary of the Director's analysis of the consistency of the project with this Master Program and the ActSMA. ~~WAC 173-27-040 delineates exemptions and is included below.~~

4. The Director may attach conditions to the exempted development and/or use as necessary to assure consistency of the project with the SMA and this Master Program.

Exempt developments include:

1. Any development of which the total cost or fair market value, whichever is higher, does not exceed \$5,000, if such development does not materially interfere with the normal public use of the water or shorelines of the State. The dollar threshold established in this subsection must be adjusted for inflation by the Office of Financial Management every five years, beginning July 1, 2007, based upon changes in the consumer price index during that time period. "Consumer price index" means, for any calendar year, that year's annual average consumer price index, Seattle, Washington area, for urban wage earners and clerical workers, all items, compiled by the Bureau of Labor and Statistics, United States Department of Labor. The Office of Financial Management must calculate the new dollar threshold and transmit it to the office of the code reviser for publication in the Washington State Register at least one month before the new dollar threshold is to take effect. For purposes of determining whether or not a permit is required, the total cost or fair market value shall be based on the value of development that is occurring on shorelines of the State as defined in RCW 90.58.030(2)(c). The total cost or fair market value of the development shall include the fair market value of any donated, contributed or found labor, equipment or materials.

2. Normal maintenance or repair of existing structures or developments, including damage by accident, fire or elements. "Normal maintenance" includes those usual acts to prevent a decline, lapse, or cessation from a lawfully established condition. "Normal repair" means to restore a development to a state comparable to its original condition, including but not limited to its size, shape, configuration, location and external appearance, within a reasonable period after decay or partial destruction, except where repair causes substantial adverse effects to shoreline resources or environment. Replacement of a structure or development may be authorized as repair where such replacement is the common method of repair for the type of structure or development and the replacement structure or development is comparable to the original structure or development including but not limited to its size, shape, configuration, location and external appearance and the replacement does not cause substantial adverse effects to shoreline resources or environment.

~~3.— Construction of the normal protective bulkhead common to single-family residences. A “normal protective” bulkhead includes those structural and nonstructural developments installed at or near, and parallel to, the ordinary high water mark for the sole purpose of protecting an existing single-family residence and appurtenant structures from loss or damage by erosion. A normal protective bulkhead is not exempt if constructed for the purpose of creating dry land. When a vertical or near vertical wall is being constructed or reconstructed, not more than one cubic yard of fill per one foot of wall may be used as backfill. When an existing bulkhead is being repaired by construction of a vertical wall fronting the existing wall, it shall be constructed no further waterward of the existing bulkhead than is necessary for construction of new footings. When a bulkhead has deteriorated such that an ordinary high water mark has been established by the presence and action of water landward of the bulkhead, then the replacement bulkhead must be located at or near the actual ordinary high water mark. Beach nourishment and bioengineered erosion control projects may be considered a normal protective bulkhead when any structural elements are consistent with the above requirements and when the project has been approved by the Department of Fish and Wildlife.~~

~~4.— Emergency construction necessary to protect property from damage by the elements. An “emergency” is an unanticipated and imminent threat to public health, safety, or the environment which requires immediate action within a time too short to allow full compliance with this chapter. Emergency construction does not include development of new permanent protective structures where none previously existed. Where new protective structures are deemed by the Administrator to be the appropriate means to address the emergency situation, upon abatement of the emergency situation the new structure shall be removed or any permit which would have been required, absent an emergency, pursuant to Chapter 90.58 RCW, these regulations, or the local Master Program, obtained. All emergency construction shall be consistent with the policies of Chapter 90.58 RCW and the local Master Program. As a general matter, flooding or other seasonal events that can be anticipated and may occur but that are not imminent are not an emergency.~~

~~5.— Construction and practices normal or necessary for farming, irrigation, and ranching activities, including agricultural service roads and utilities on shorelands, construction of a barn or similar agricultural structure, and the construction and maintenance of irrigation structures including but not limited to head gates, pumping facilities, and irrigation~~

channels; provided, that a feedlot of any size, all processing plants, other activities of a commercial nature, or alteration of the contour of the shorelands by leveling or filling other than that which results from normal cultivation shall not be considered normal or necessary farming or ranching activities. A feedlot shall be an enclosure or facility used or capable of being used for feeding livestock hay, grain, silage, or other livestock feed, but shall not include land for growing crops or vegetation for livestock feeding and/or grazing, nor shall it include normal livestock wintering operations.

6.— Construction or modification of navigational aids such as channel markers and anchor buoys.

7.— Construction on shorelands by an owner, lessee or contract purchaser of a single-family residence for their own use or for the use of their 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, other than requirements imposed pursuant to Chapter 90.58 RCW. "Single-family residence" means a detached dwelling designed for and occupied by one family including those structures and developments within a contiguous ownership which are a normal appurtenance. An "appurtenance" is necessarily connected to the use and enjoyment of a single-family residence and is located landward of the ordinary high water mark and the perimeter of a wetland. On a statewide basis, normal appurtenances include a garage; deck; driveway; utilities; fences; installation of a septic tank and drainfield and grading which does not exceed 250 cubic yards and which does not involve placement of fill in any wetland or waterward of the ordinary high water mark. Local circumstances may dictate additional interpretations of normal appurtenances which shall be set forth and regulated within the applicable Master Program. Construction authorized under this exemption shall be located landward of the ordinary high water mark.

8.— Construction of a dock, including a community dock, designed for pleasure craft only, for the private noncommercial use of the owner, lessee, or contract purchaser of single-family and multiple-family residences. A dock is a landing and moorage facility for watercraft and does not include recreational decks, storage facilities or other appurtenances. This exception applies if either:

a.— In salt waters, the fair market value of the dock does not exceed \$2,500; or

b. ~~In fresh waters, the fair market value of the dock does not exceed \$10,000, but if subsequent construction having a fair market value exceeding \$2,500 occurs within five years of completion of the prior construction, the subsequent construction shall be considered a substantial development for the purpose of this chapter.~~

c. ~~For purposes of this section, salt water shall include the tidally influenced marine and estuarine water areas of the State including the Pacific Ocean, Strait of Juan de Fuca, Strait of Georgia and Puget Sound and all bays and inlets associated with any of the above.~~

9. ~~Operation, maintenance, or construction of canals, waterways, drains, reservoirs, or other facilities that now exist or are hereafter created or developed as a part of an irrigation system for the primary purpose of making use of system waters, including return flow and artificially stored ground water from the irrigation of lands.~~

10. ~~The marking of property lines or corners on State-owned lands, when such marking does not significantly interfere with normal public use of the surface of the water.~~

11. ~~Operation and maintenance of any system of dikes, ditches, drains, or other facilities existing on September 8, 1975, which were created, developed or utilized primarily as a part of an agricultural drainage or diking system.~~

12. ~~Any project with a certification from the governor pursuant to Chapter 80.50 RCW.~~

13. ~~Site exploration and investigation activities that are prerequisite to preparation of an application for development authorization under this chapter, if:~~

a. ~~The activity does not interfere with the normal public use of the surface waters;~~

b. ~~The activity will have no significant adverse impact on the environment including but not limited to fish, wildlife, fish or wildlife habitat, water quality, and aesthetic values;~~

c. ~~The activity does not involve the installation of any structure, and upon completion of the activity the vegetation and land configuration of the site are restored to conditions existing before the activity;~~

d. ~~A private entity seeking development authorization under this section first posts a performance bond or provides other evidence of financial responsibility to the local jurisdiction to ensure that the site is restored to preexisting conditions; and~~

e. ~~The activity is not subject to the permit requirements of RCW 90.58.550.~~

14. ~~The process of removing or controlling aquatic noxious weeds, as defined in RCW 17.26.020, through the use of an herbicide or other treatment methods applicable to weed control that are recommended by a final environmental impact statement published by the Department of Agriculture or the Department of Ecology jointly with other State agencies under Chapter 43.21C RCW.~~

15. ~~Watershed restoration projects as defined herein. Local government shall review the projects for consistency with the Shoreline Master Program in an expeditious manner and shall issue its decision along with any conditions within 45 days of receiving all materials necessary to review the request for exemption from the applicant. No fee may be charged for accepting and processing requests for exemption for watershed restoration projects as used in this section.~~

~~“Watershed restoration project” means a public or private project authorized by the sponsor of a watershed restoration plan that implements the plan or a part of the plan and consists of one or more of the following activities:~~

a. ~~A project that involves less than 10 miles of stream reach, in which less than 25 cubic yards of sand, gravel, or soil are removed, imported, disturbed or discharged, and in which no existing vegetation is removed except as minimally necessary to facilitate additional plantings;~~

b. ~~A project for the restoration of an eroded or unstable stream bank that employs the principles of bioengineering, including limited use of rock as a stabilization only at the toe of the bank, and with primary emphasis on using native vegetation to control the erosive forces of flowing water; or~~

c. ~~A project primarily designed to improve fish and wildlife habitat, remove or reduce impediments to migration of fish, or enhance the fishery resource available for use by all of the citizens of the State; provided, that any structure, other than a bridge or culvert or in-stream habitat enhancement structure~~

associated with the project, is less than 200 square feet in floor area and is located above the ordinary high water mark of the stream.

d.—“Watershed restoration plan” means a plan, developed or sponsored by the Department of Fish and Wildlife, the Department of Ecology, the Department of Natural Resources, the Department of Transportation, a Federally recognized Indian tribe acting within and pursuant to its authority, a city, a county, or a conservation district that provides a general program and implementation measures or actions for the preservation, restoration, re-creation, or enhancement of the natural resources, character, and ecology of a stream, stream segment, drainage area, or watershed for which agency and public review has been conducted pursuant to Chapter 43.21C RCW, the State Environmental Policy Act.

16.—A public or private project that is designed to improve fish or wildlife habitat or fish passage, when all of the following apply:

- a.—The project has been approved in writing by the Department of Fish and Wildlife;
- b.—The project has received hydraulic project approval by the Department of Fish and Wildlife pursuant to Chapter 77.55 RCW; and
- c.—The local government has determined that the project is substantially consistent with the local Shoreline Master Program. The local government shall make such determination in a timely manner and provide it by letter to the project proponent.

Fish habitat enhancement projects that conform to the provisions of RCW 77.55.181 are determined to be consistent with local shoreline master programs, as follows:

i.—In order to receive the permit review and approval process created in this section, a fish habitat enhancement project must meet the criteria under subsections (A)(16)(c)(i)(A) and (B) of this section:

(A)—A fish habitat enhancement project must be a project to accomplish one or more of the following tasks:

- ~~Elimination of human-made fish passage barriers, including culvert repair and replacement;~~
- ~~Restoration of an eroded or unstable streambank employing the principle of bioengineering, including limited use of rock as a stabilization only at the toe of the bank, and with primary emphasis on using native vegetation to control the erosive forces of flowing water; or~~
- ~~Placement of woody debris or other in-stream structures that benefit naturally reproducing fish stocks.~~

~~The Department of Fish and Wildlife shall develop size or scale threshold tests to determine if projects accomplishing any of these tasks should be evaluated under the process created in this section or under other project review and approval processes. A project proposal shall not be reviewed under the process created in this section if the Department determines that the scale of the project raises concerns regarding public health and safety; and~~

~~(B) A fish habitat enhancement project must be approved in one of the following ways:~~

- ~~By the Department of Fish and Wildlife pursuant to Chapter 77.95 or 77.100 RCW;~~
- ~~By the sponsor of a watershed restoration plan as provided in Chapter 89.08 RCW;~~
- ~~By the Department as a Department of Fish and Wildlife sponsored fish habitat enhancement or restoration project;~~
- ~~Through the review and approval process for the jobs for the environment program;~~
- ~~Through the review and approval process for conservation district sponsored projects, where the project complies with design standards established by the Conservation Commission through interagency agreement with the United States Fish and Wildlife Service and the Natural Resources Conservation Service;~~

- ~~Through a formal grant program established by the Legislature or the Department of Fish and Wildlife for fish habitat enhancement or restoration; and~~
- ~~Through other formal review and approval processes established by the Legislature.~~

ii. ~~Fish habitat enhancement projects meeting the criteria of subsection (A)(16)(c)(i) of this section are expected to result in beneficial impacts to the environment. Decisions pertaining to fish habitat enhancement projects meeting the criteria of subsection (A)(16)(c)(i) of this section and being reviewed and approved according to the provisions of this section are not subject to the requirements of RCW 43.21C.030(2)(c).~~

~~(A) A hydraulic project approval permit is required for projects that meet the criteria of subsection (A)(16)(c)(i) of this section and are being reviewed and approved under this section. An applicant shall use a joint aquatic resource permit application form developed by the Office of Regulatory Assistance to apply for approval under this chapter. On the same day, the applicant shall provide copies of the completed application form to the Department of Fish and Wildlife and to each appropriate local government. Local governments shall accept the application as notice of the proposed project. The Department of Fish and Wildlife shall provide a 15-day comment period during which it will receive comments regarding environmental impacts. Within 45 days, the Department shall either issue a permit, with or without conditions, deny approval, or make a determination that the review and approval process created by this section is not appropriate for the proposed project. The Department shall base this determination on identification during the comment period of adverse impacts that cannot be mitigated by the conditioning of a permit. If the Department determines that the review and approval process created by this section is not appropriate for the proposed project, the Department shall notify the applicant and the appropriate local governments of its determination. The applicant~~

~~may reapply for approval of the project under other review and approval processes.~~

~~(B) — Any person aggrieved by the approval, denial, conditioning, or modification of a permit under this section may formally appeal the decision to the hydraulic appeals board pursuant to the provisions of this chapter.~~

~~iii. — No local government may require permits or charge fees for fish habitat enhancement projects that meet the criteria of subsection (A)(16)(c)(i) of this section and that are reviewed and approved according to the provisions of this section.~~

~~17. — Before issuing a shoreline exemption, the Director shall review the Master Program to determine if the proposed development requires a shoreline variance and/or a shoreline conditional use permit.~~

20.220.040 Shoreline variance.

The purpose of a variance is to grant relief to specific bulk, ~~or dimensional, or performance~~ requirements set forth in the Master Program where there are extraordinary or unique circumstances relating to the physical character or configuration of property such that the strict implementation of ~~this program~~ the Master Program would impose unnecessary hardships on the applicant or ~~diminish~~ thwart the policies set forth in RCW 90.58.020.

~~A. — The Director is authorized to approve a shoreline variance from the performance standards of this Master Program only when all of the criteria enumerated in WAC 173-27-170 are met.~~

~~B. — A shoreline variance should be granted in circumstances where denial of the permit would thwart the policies enumerated in RCW 90.58.020.~~

~~C. — In all instances, the applicant must demonstrate that extraordinary circumstances exist and the public interest will not suffer substantial detrimental effect.~~

AD. The applicant for a shoreline variance must demonstrate that the variance meets the criteria in WAC 173-27-170. In all instances, the applicant must demonstrate that extraordinary circumstances exist and the public interest shall suffer no substantial detrimental effect.

~~E. Proposals that require a critical area reasonable use permit pursuant to SMC 20.30.336 shall also require a shoreline variance.~~

B. A shoreline variance should be granted in circumstances where denial of the permit would thwart the policies enumerated in RCW 90.58.020.

C. The Director is authorized to approve a shoreline variance from the bulk, dimensional, or performance standards of this Master Program only when all of the criteria enumerated in WAC 173-27-170 are met.

~~D.F.~~ Prior to approval of any shoreline variance, the Director shall consider the cumulative environmental impacts of previous, existing, and possible future requests for like actions in the area. The total effects of approved shoreline variances should remain consistent with the policies of RCW 90.58.020 and this Master Program and shall not produce significant adverse effects to the shoreline ecological functions, processes, or other users.

~~E.G.~~ Before making a determination to approve a shoreline variance, the Director shall consider issues related to the conservation of valuable natural resources and the protection of views from public lands.

~~F.H.~~ Shoreline variance requests based on the applicant's/proponent's desire to enhance the view from the subject development may be granted where there are no likely detrimental effects to existing or future users, views from public lands, critical areas, other features or shoreline ecological functions and/or processes, and where reasonable alternatives of equal or greater consistency with this program are not available.

~~G.I.~~ A shoreline variance shall not be granted:

1. ~~When it would allow a greater height or lesser shoreline setback than what is typical for the area immediately surrounding the development site.~~

2. When it seeks relief from the use regulations of the Master Program.

~~H.J.~~ A variance issued per SMC 20.30.310 shall not be construed to mean approval of a shoreline variance from ~~Shoreline~~ Master Program use regulations.

~~I.K.~~ An issued shoreline variance does not provide relief from the variance requirements under SMC 20.30.310.

20.220.050 Shoreline conditional use permit.

The purpose of a shoreline conditional use permit is to allow greater flexibility in the application of the use regulations of the Master Program in a manner consistent with the policies of RCW 90.58.020.

A. The applicant for a shoreline conditional use permit must demonstrate that all of the criteria in WAC 173-27-160 are met.~~The Director is authorized to issue shoreline conditional use permits only when all the criteria enumerated in WAC 173-27-160 are met.~~

B. Shoreline conditional use permits should be granted in a circumstance where denial of the permit would result in a conflict with the policies enumerated in RCW 90.58.020.

C. The Director is authorized to issue shoreline conditional use permits only when all the criteria enumerated in WAC 173-27-160 are met.

1. In granting conditional use permits, consideration shall be given to the cumulative impact of additional requires for like actions in the area.

2. In authorizing a shoreline conditional use, special conditions may be attached to the permit by the Director or by the Department of Ecology to minimize the effects of the proposed use. Uses that are specifically prohibited by the Master Program may not be authorized with the approval of a shoreline conditional use permit.

D. A conditional use permit shall not be issued when uses are specifically prohibited by this Master Program. Non-classified uses or uses not set forth in the Master Program may be authorized as a conditional use provided the applicant can demonstrate consistency with the requirements of this chapter.~~Proposals that require a critical area reasonable use permit pursuant to SMC 20.30.336 shall also require a shoreline variance.~~

**Subchapter 2.
SMP Permit Procedures**

20.220.060 General.

A. Permits required under this chapter shall be processed consistent with the provisions of Chapter 20.30 SMC and the criteria in this subchapter.

B. No permit shall be approved unless the proposed development is consistent with the provisions of this Master Program, the Shoreline Management Act of 1971, and the rules and regulations adopted by the Department of Ecology.

C. Applications for shoreline permits shall also demonstrate compliance with the provisions of this subchapter.

20.220.070 Application review.

- A. Applications for shoreline permits shall comply with the submittal requirements developed pursuant to SMC 20.30.100 and WAC 173-27-180 and shall provide all information the Director determines necessary for an application to be complete.
- B. **Burden of Proof.** It is the applicant's responsibility to provide proof that the proposed development is consistent with the permit criteria requirements.
- C. **Approval.** The Director may approve, or approve with conditions, any application that complies with criteria imposed by the Master Program and the Shoreline Management Act.
- D. **Conditions.** The Director may attach to a permit any suitable and reasonable terms or conditions necessary to ensure the purpose and objectives of this Master Program and the Shoreline Management Act.
- E. **Denial.** The Director may deny any application that does not comply with criteria imposed by the Master Program or the Shoreline Management Act.
- F. **Financial Guarantees.** The Director may require a financial guarantee to assure full compliance with the terms and conditions of any substantial development permit, shoreline variance or shoreline conditional use. The guarantee shall be in an amount to reasonably assure the City that permitted improvements will be completed within the time stipulated.

20.220.080 Permit process.

- A. **Application Submittal.** Complete applications for a substantial development permit, shoreline variance, and a shoreline conditional use permit are Type B actions. The applications will be processed pursuant to the procedures identified in this subchapter and SMC 20.30.010 through 20.30.270 and Table 20.30.050. Unless RCW 90.58 or other applicable law provides otherwise, the target time for local review is as set forth in Chapter 20.30 SMC.
- B. **Decision.** The Director shall provide notice of final decision per SMC 20.30.150. Pursuant to RCW 90.58.140(6), the Director shall send the final decision, including findings and conclusions, to the following State agencies:
1. Department of Ecology.
 2. Attorney General.
- C. **Department of Ecology Review of Permits.**

1. After the Director has approved a shoreline variance or shoreline conditional use permit, the Director shall file the permit with the Department of Ecology for its approval, approval with conditions, or denial.

~~2. When a substantial development permit, a shoreline variance, or a shoreline conditional use permit are required for a development, the local government's ruling on the permit shall be filed simultaneously with Ecology.~~

~~23.~~ The Department of Ecology will issue its decision on a shoreline variance or shoreline conditional use permit within 30 days of filing.

~~34.~~ Upon receipt of the Department of Ecology's decision, the Director shall notify those interested parties having requested notification of such decision.

D. Local Permit Filing Procedures. After all local permit administrative appeals are complete and the permit documents are amended to incorporate any resulting changes, the City shall mail the permit using return receipt requested mail to the Department of Ecology regional office and the Office of the Attorney General. Projects that require both Conditional Use Permits and or Variances shall be mailed simultaneously with any Substantial Development Permits for the project.

1. The permit and documentation of the final local decision will be mailed together with the complete permit application; a findings and conclusions letter; the final decision of the City, a permit data sheet required by WAC 173-27-190; and applicable SEPA documents.

2. Consistent with RCW 90.58.140(6), the State Shorelines Hearings Board twenty-one-day appeal period starts with the date of filing, which is defined below:

a. For projects that only require a Substantial Development Permit (SDP): the date that Ecology receives the City of Shoreline decision.

b. For a Conditional Use Permit (CUP) or Variance (VAR): the date that Ecology's decision on the CUP or Variance is transmitted to the applicant and the City of Shoreline.

c. For SDPs simultaneously mailed with a CUP or VAR to Ecology: the date that Ecology's decision on the CUP or Variance is transmitted to the applicant and the City of Shoreline.

20.220.090 Local appeals.

There are no administrative appeals for shoreline permit decisions made by the Director.

20.220.110 Appeals to State Shoreline Hearings Board.

- A. Appeals of the final decision of the City with regard to shoreline management shall be governed by the provisions of RCW 90.58.180.
- B. Appeals to the Shoreline Hearings Board of a decision on a shoreline substantial development permit, shoreline variance or shoreline conditional use permit may be filed by the applicant/proponent or any aggrieved party pursuant to RCW 90.58.180.
- C. ~~The effective date of the City's decision shall be the date of filing with the Department of Ecology as defined in RCW 90.58.140.~~

20.220.120 Initiation of development.

- A. Development pursuant to a shoreline substantial development permit shall not be authorized until 21 days after the "date of filing" of the Director's decision with the Department of Ecology;
- B. Development for which a shoreline variance or shoreline conditional use is required shall not begin and shall not be authorized until 21 days after the "date of filing" of the Department of Ecology's decision with the Director; or
- C. All appeal proceedings before the ~~Washington~~ State Shoreline Hearings Board have terminated.

20.220.130 Expiration of permits.

The City of Shoreline may specify the length of time a shoreline permit will be effective based on the specific requirements of the development proposal. If a permit does not specify an expiration date, the following requirements apply, consistent with ~~WAC 173-14-060~~ WAC 173-27-090:

- A. **Time Limit for Substantial Progress.** Construction activities, or substantial progress toward completion, or where no construction activities are involved, the use or activity must begin within two (2) years after ~~approval~~ the effective date of the permits.
- B. **Extension for Substantial Progress.** If a request for extension has been filed before the expiration date and notice of the proposed extension is ~~The City of Shoreline may at its discretion, with prior notice given~~ to parties of record and the Department of Ecology, the City

~~may authorize extend the two-year time period for the substantial progress for a reasonable time up to one year~~ a single extension of no more than one (1) year based on reasonable factors, including the inability to expeditiously obtain other governmental permits that are required prior to the commencement of construction.

C. **Five-Year Permit Authorization.** If construction has not been completed within five years of ~~approval~~ the effective date of the permit ~~by the City of Shoreline~~ and a request for extension has been filed before the expiration date, the City may authorize a single extension of no more than one (1) year based on reasonable factors. ~~the City will review the permit and, upon showing of good cause, either extend the permit for one year, or terminate the permit.~~

D. Only one extension of up to one (1) year may be authorized.

E. Prior to the City authorizing any permit extensions, it shall notify any parties of record and the Department of Ecology. ~~Note: Only one extension is permitted.~~

20.220.140 Revision to permits.

A. A permit revision is required whenever the applicant proposes substantive changes to the design, terms or conditions of a project from those which are approved in the permit. Changes are substantive if they materially alter the project in a manner that relates to its conformance to the terms and conditions of the permit, this Master Program or the ~~Act~~ SMA. Changes that are not substantive in effect do not require a permit revision.

B. An application for a revision to a shoreline permit shall be submitted to the Director. The application shall include detailed plans and text describing the proposed changes. The City shall review and process the request in accordance with the requirements of WAC 173-27-100.

20.220.150 Nonconforming use and development.

A. **Nonconforming Structures.**

1. Structures that were legally established and are used for a conforming use, but which are nonconforming with regard to setbacks, buffers or yards, area, bulk, height, or density, may be maintained and repaired, and may be enlarged or expanded; provided, that said enlargement does not increase the extent of nonconformity by further encroaching upon or extending into areas where construction or use would not be allowed for new development or uses. Such normal appurtenances are by definition located landward of the ordinary high water mark.

2. A structure for which a shoreline variance has been issued shall be considered a legal nonconforming structure, and the requirements of this section shall apply as they apply to preexisting nonconformities.
3. A structure that is being or has been utilized for a nonconforming use may be used for a different nonconforming use only upon the approval of a shoreline conditional use permit. A shoreline conditional use permit may be approved only upon a finding that:
 - a. No reasonable alternative conforming use is practical;
 - b. The proposed use will be at least as consistent with the policies and provisions of the ~~Act~~ SMA and this Master Program, and as compatible with the uses in the area, as the preexisting use; and
 - c. Conditions may be attached to the permit as are deemed necessary to assure compliance with the above findings, the requirements of the Master Program and the SMA ~~Shoreline Management Act~~, and to ensure that the use will not become a nuisance or a hazard.
4. Any structure nonconforming as to height or setback standards that becomes damaged may be repaired or reconstructed; provided, that:
 - a. The extent of the previously existing nonconformance is not increased; and
 - b. The building permit application for repair or reconstruction is submitted within 12 months of the occurrence of damage or destruction.

B. Nonconforming Uses.

1. Uses that were legally established and are nonconforming with regard to the use regulations of the Master Program may continue as legal nonconforming uses. Such uses shall not be enlarged or expanded, without an approved conditional use permit, except that nonconforming single-family residences that are located landward of the ordinary high water mark may be enlarged or expanded in conformance with applicable bulk and dimensional standards by the addition of space to the main structure or by the addition of normal appurtenances as defined in WAC 173-27-040(2)(g).
2. A use which is listed as a conditional use but existed prior to adoption of the Master Program or any relevant amendment, and for which a conditional use permit has not been obtained, shall be considered a nonconforming use.

3. A use which is listed as a conditional use in SMC Table 20.230.081 but existed prior to the applicability of the Master Program to the site, and for which a shoreline conditional use permit has not been obtained, shall be considered a nonconforming use.

4. If a nonconforming use is abandoned for 12 consecutive months, or for 12 months during any two-year period, the nonconforming rights shall expire and any subsequent use shall be made conforming. A use authorized pursuant to subsection (B)(1) of this section shall be considered a conforming use for purposes of this section.

C. **Nonconforming Lots.** An undeveloped lot, tract, parcel, site, or division of land located landward of the ordinary high water mark which was established in accordance with Chapter 20.30 SMC, Subchapter 7, and State subdivision requirements prior to the effective date of the ActSMA or the ~~applicable~~ Master Program that does not conform to the present lot size standards may be developed if permitted by other land use regulations of ~~the local government~~ the City, as long as such development conforms to all other requirements of the ~~applicable~~ Master Program and the ActSMA.

20.220.160 Enforcement.

A. The Director is authorized to enforce the provisions of this chapter and any rules and regulations promulgated hereunder pursuant to the enforcement and penalty provisions of WAC 173-27.

B. This program will be enforced by the means and procedures set forth in Chapter 20.30 SMC, Subchapter 9.