

[LG1]

## **Chapters**

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## **Chapter 21.01 PURPOSE AND APPLICABILITY**

### **21.10.010 Purpose**

The City adopts the goals and principles of the Shoreline Management Act as provided in RCW 90.58.020 and as particularly relevant to Pacific:

1. The shoreline is one of the most valuable and fragile of the City's natural resources.
2. There is a clear and urgent demand for a planned, rational, and concerted effort, jointly performed by federal, state, and local governments, to prevent the inherent harm in an uncoordinated and piecemeal development of the City's shoreline jurisdiction.
3. The City's shoreline policies are intended to protect against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life, while protecting generally public rights of navigation and corollary rights incidental thereto.
4. In the implementation of the Shoreline Master Program, the public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines shall be preserved to the greatest extent feasible consistent with the overall best interest of the state, the county, and the people generally. To this end, uses shall be preferred which control pollution and prevent damage to the natural environment, or are unique to or dependent upon use of the state's shoreline.

### **21.01.020 Shoreline Master Program Elements**

The Shoreline Master Program consists of the following elements which are subject to review and approval by the Washington State Department of Ecology pursuant to RCW 90.58.090:

1. Comprehensive Plan Policies.

SMP Periodic Review – Proposed Amendments – January 2019 draft  
Title 21 SHORELINES MANAGEMENT

2. Regulations in Pacific Municipal Code (PMC) Chapter 21.20 Shoreline Management Regulations.
3. Definitions and procedures in Title 16 Land Use and Environmental Procedures, provided that definitions in WAC 173-26-020, and as it may be amended in the future, prevails over any other definitions.
4. Definitions in Zoning Chapter 20.08 provided that definitions in WAC 173-26-020, and as it may be amended in the future, prevails over any other definitions.
5. Critical Area Regulations in PMC Title 23, provided that definitions in WAC 173-26-020, and as it may be amended in the future, prevails over any other definitions.
6. The Shoreline Restoration Element of the Shoreline Master Plan, of which one printed copy in book form has heretofore been filed and is now on file in the office of the City Clerk and made available for examination by the general public, shall not be considered to contain regulations but shall be utilized as a guideline for capital improvements planning by the City and other jurisdictions undertaking ecological restoration activities within Shoreline Management Act jurisdiction.
7. The [Official Shoreline Map](#)~~Shoreline Environment Overlay Map~~, [illustrates shoreline jurisdiction and Shoreline Environment Designations](#), ~~of which~~ One printed copy has heretofore been filed and is on file in the office of the City Clerk and made available for examination by the general public, and another printed copy ~~of which~~ is available at the Community Development Department. An electronic copy may also be posted online at the City's [website](#)<sup>[LG2]</sup>.

### [21.01.030 Applicability](#)<sup>[LG3]</sup>

[1. Jurisdiction. Shorelines of the state within the City of Pacific and its Urban Growth Area include the White River, a Shoreline of Statewide Significance. The areas subject to the Shoreline Master Program include the White River and all shorelands and associated wetlands in the city. The city has opted not to include the entire 100-year floodplain or land necessary for buffers for critical areas with shoreline jurisdiction.](#)

[2. Federal Jurisdiction Not Subject to Shoreline Management Act. Areas and uses in those areas that are under exclusive federal jurisdiction as established through federal or state statutes are not subject to chapter 90.58 RCW, Shoreline Management Act. There are no such federal lands in the City of Pacific.](#)

[3. All proposed uses and development occurring within shoreline jurisdiction must conform to chapter 90.58 RCW, the Shoreline Management Act, and this master program.](#)

## **21.08 DEFINITIONS**

### **21.08.010 Definitions A:**

**Accessory Use** is any structure or use incidental and subordinate to a primary use or development.

**Accessory Utility** (see Utility, Accessory).

**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 (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.

**Agricultural products** includes, but is not limited to horticultural, vinicultural, 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 twenty 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.

**Agricultural equipment and agricultural facilities** includes, but is not limited to:

- a. 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;
- b. Corridors and facilities for transporting personnel, livestock, and equipment to, from, and within agricultural lands;
- c. Farm residences and associated equipment, lands, and facilities; and
- d. Roadside stands and on-farm markets for marketing fruit or vegetables.

**Agricultural land** means those specific land areas on which agriculture activities are conducted.

**Amendment** means a revision, update, addition, deletion, and/or reenactment to an existing shoreline master program.

**Aquaculture** is the culture or farming of food fish, shellfish, or other aquatic plants and animals. Potential locations for aquaculture are relatively restricted within the SMP of Pacific due to specific requirements for water quality, temperature, flows, oxygen content, adjacent land uses, wind protection, and commercial navigation. Aquaculture should not be permitted in areas where it would result in a net loss of ecological functions, or significantly conflict with navigation and other water-dependent uses. Aquaculture facilities should be designed and located so as not to cause significant ecological impacts, or significantly impact the scenic qualities of the shoreline. Impacts to ecological functions shall be mitigated according to the mitigation sequence described in WAC 173-26-020.

**Associated ~~jurisdictional~~ wetlands** are those wetlands that are in proximity to and either influence or are influenced by shorelines of significance to the State and are, therefore, subject to the Shoreline Management Act<sup>[LG4]</sup>.

**Average grade level** (see the definition of ‘Grade’ below).

**21.08.020 Definitions B:**

**Bioengineering** means the use of biological elements, such as the planting of vegetation, often in conjunction with engineered systems, to provide a structural shoreline stabilization measure with minimal negative impact to the shoreline ecology.

**Boating facilities** for the purposes of this master program, boating facilities means private and publicly accessible launch sites, private and public facilities, including docks and other moorage and any other facility for launching or storing vessels on the water.

**Buffer** means an area adjacent to a wetland, river, or stream that, generally, functions to protect the public from loss suffered when the functions and values of the wetland, river, or stream are degraded. Specifically, a buffer may:

- a. Physically isolate the wetland, river, or stream from surrounding areas using distance, height, visual and/or sound barriers;
- b. Act to minimize risk to the public from loss of life, well-being or property damage resulting from natural disasters associated with the wetland, river, or stream;
- c. Protect the functions and values of the wetland, river, or stream from adverse impacts of adjacent activities;
- d. Provide shading, input of organic debris, and coarse sediments, room for variation and changes in natural wetland, river, or stream characteristics,
- e. Provide habitat for wildlife, and/or
- f. Provide protection from harmful intrusion.

**Building** is a structure having a roof supported by columns or walls, used or intended to be used for the shelter or enclosure of any use or occupancy.

**Building height** means the vertical distance between grade (see “Grade”) and the highest part of the coping of a flat roof, or the deck line of a mansard roof, or the average height of the highest gable of a pitched or hipped roof. The measurement may be taken from the highest adjoining sidewalk or ground surface within a five-foot horizontal distance of the exterior wall of the building when such sidewalk or ground surface is not more than 10 feet above grade. The height of a stepped or terraced building is the maximum height of any segment of the building. See also “Height,” below.

**Bulkhead** is a solid or open pile wall, usually constructed of poured-in-place concrete and located parallel to the shore, which has as its primary purpose to contain and prevent the loss of soil by erosion, wave, or current action.

**21.08.030 Definitions C:**

**Channel Migration Zone (CMZ)** means the area within which a river channel is likely to move over a period of time.

**Commercial development** means those uses that are involved in wholesale, retail, personal service, and business trade. Examples include hotels, motels, banking and other financial services, grocery stores, restaurants, shops, professional offices, and private or public indoor recreation facilities.

**Conditional use** is a use, development, or substantial development that is classified as a conditional use or is not classified within the Master Program.

**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.

**Critical areas**, for the purposes of the SMP, are wetlands within the SMZ, delineated Habitat Conservation Areas [as per PMC 23.60], the main stem of the White River.

**Cumulative impacts** are the results of incremental actions when added to past, present, and reasonably foreseeable future actions. Cumulative impacts can be deemed significant, even though they may be comprised of individual actions having relatively minor impacts.

#### **21.08.040 Definitions D:**

**Date of receipt of a final decision involving approval or denial of a Substantial Development Permit** is the date the applicant receives written notice of the receipt by the Department of Ecology of the City's final decision on the permit.

**Date of receipt involving approval or denial of a variance or conditional use permit** is the date the applicant and the City both receive the Department of Ecology's final written decision on the applicant's request for a variance or conditional use permit, as the case may be.

**Development** is a use requiring the construction or exterior alteration of structures; dredging, drilling, dumping, filling, removal of sand, gravel, or minerals; placement of bulkheads, revetments, or similar in-water, over-water, or near-water containment systems; obstructions or any other project of a permanent or temporary nature. “Development” does not include dismantling or removing structures if there is no other associated development or re-development.

**Development regulations** means the controls placed on development or land uses by the City, including, but not limited to, zoning ordinances, critical areas ordinances, all portions of a shoreline master program other than goals and policies approved or adopted under Chapter 90.58 RCW, planned unit development ordinances, subdivision ordinances, and binding site plan ordinances together with any amendments thereto.

**Director** means the director of the community development department of the city, or his duly authorized designee.

**Dredging** is the removal of earth, sand, gravel, silt, or debris from the bottom of a river, stream, wetland, or other water body.

**Dwelling** is any building or portion thereof designed or used primarily for residential occupancy, including single-family units, duplex, triplex, and fourplex units, and multi-family units, but not including hotels or motels (see also “Multi-family” and “Single-family”).

#### **21.08.050 Definitions E:**

**Ecological functions** (or shoreline functions) means the work performed or 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.

**Emergency** is an unanticipated and/or imminent threat to public health, safety, or the environment that requires immediate action within a time too short to allow full compliance with the Master Program. Emergency construction is defined as that necessary to protect property and facilities from the elements. All emergency construction shall be consistent with the SMA and the Master Program (see RCW 90.58.030(3)(e)(iii)).

**Exempt development** is development listed in WAC 173-27-040 as exempt from the definition of “substantial development,” and, therefore, exempt from the substantial development permit process of the SMA. An activity that is exempt from the substantial development provisions of the SMA must still be carried out in compliance with policies and standards of the SMA and the Master Program. Conditional use and/or variance permits may still be required even though the activity does not need a substantial development permit (RCW 90.58.030(3e)).

**Exemption Certificate** is a letter issued by the community development department verifying that a project has been deemed exempt from the substantial development permit requirements in accordance with the SMA and the Master Program.

#### **21.08.060 Definitions F:**

**Fair market value** of a development is 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 the 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** means, for the purpose of this chapter, that an action, such as a development project, mitigation, or restoration requirement, 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 City may weigh the action's relative public costs and public benefits, considered in short- and long-term time frames.

**Fill** means the addition of soil, sand, rock, gravel, sediment, earth retaining structure, or other material to an area water ward of the OHWM, an approved flood risk reduction structure (if applicable) on wetlands, or on shorelands in a manner that raises the elevation or creates dry land.

**Final Decision** means an order or ruling on a Substantial Development Permit by the City of Pacific, whether it is an approval or denial, established after all local administrative appeals related to the Substantial Development Permit have concluded or the opportunity to initiate such appeals has lapsed.

**Flood Risk Management** is a program intended to provide protection from encroachment by floodwaters by means of conveyance, control, and dispersal of floodwaters caused by abnormally high direct precipitation or stream/river overflow.

**Flood Hazard Reduction** is an action taken to reduce flood damage or hazard to uses, development, and shoreline modifications. Flood hazard reduction measures may consist of nonstructural measures such as setbacks, land use controls, wetland restoration, dike removal, use relocation, biotechnical measures, and storm water management programs. Structural measures may include dikes, levees, revetments, floodwalls, channel realignment, and elevation of structures consistent with the National Flood Insurance Program.

**Floodplain** is the hundred-year floodplain, meaning that land area susceptible to being inundated by stream-derived waters with a one percent chance of being equaled or exceeded in any given year. The limit of this area shall be based upon flood ordinance regulation maps or a reasonable method that meets the objectives of the SMA.

**Floodway** means the area, as identified in a master program, that consists of those portions of a river valley lying [water-stream](#)ward from the outer limits of a watercourse upon which flood waters are carried during periods of flooding that occur with reasonable regularity, although not necessarily annually, said floodway being identified, under normal conditions, by changes in surface soil conditions or changes in types or quality of vegetative ground cover condition, topography, or other indicators of flooding that occurs with reasonable regularity, although not necessarily annually. Regardless of the method used to identify the floodway, the floodway shall not include those lands that can reasonably be expected to be protected from flood waters by flood risk reduction devices maintained by or maintained under license from the federal government, the state, or a political subdivision of the state. See Shoreline Jurisdiction description in Section 21.10.07[LG5].

**Force Majeure** means events or circumstances that prevent or delay compliance with the provisions of the Shoreline Master Program, where such events were (i) beyond that party's control, (ii) reasonably unforeseeable, and (iii) occurred without the fault or negligence of the affected person, including, but not necessarily limited to, acts of God, earthquakes, fires, lightning, floods and similar natural disasters.

#### **21.08.070 Definitions G:**

**Geotechnical report** or geotechnical analysis means a scientific study or evaluation conducted by a qualified expert that includes a description of the ground and surface hydrology and geology, estimates of rate of erosion, urgency (damage within three years) for proposed project, 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.

**Grade** means an elevation determined by averaging the finished ground elevations within 6 feet of points situated every 10 feet along an imaginary line located between the building and the lot line; or where the lot line is more than 6 feet from the building, between the building and a point 6 feet from the building, this is also known as “Average Grade”.

**Grading** or **Graded** means 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.

#### **21.08.080 Definitions H:**

**Hearings Board:** The Shorelines Hearings Board established by the Act.

**Height** (as per WAC 173-27-030) is measured from average grade level to the highest point of a structure: provided, that television antennas, chimneys, and similar appurtenances shall not be used in calculating height, except where such appurtenances obstruct the view of the shoreline of a substantial number of residences on areas adjoining such shorelines, or the applicable master program specifically requires that such appurtenances be included: provided further, that temporary construction equipment is excluded in this calculation.

#### **21.08.090 Definitions I:**

**In-stream structures** are constructed water ward of the OHWM and either cause or have the potential to cause water impoundment or diversion, obstruction, or modification of water flow. For the purposes of these regulations, Breakwaters, Jetties and Weirs are considered “In-stream structures”.

**Industrial use** includes manufacturing, wholesale trade and distribution activities and related accessory uses. -

**Industrial use, heavy,** uses typically have the potential of creating substantial noise, smoke, dust, vibration and other environmental impacts or pollution, and involve one or more characteristics such as large and heavy products; large and heavy equipment and facilities (such as heavy equipment, large machine tools, and huge buildings); or complex or numerous processes.

**Industrial use, light** includes processing, fabricating, assembly, or disassembly of items completely performed on the site and primarily within an enclosed building. Light industrial uses have little or no potential of creating noise, smoke, dust, vibration or other environmental impacts or pollution and include landscaping and buffering from less intense uses such as residential.

#### **21.08.100 Definitions J: None**

#### **21.08.010 Definitions K: None**

#### **21.08.120 Definitions L:**

**Landfill:** Addition of soil, sand, rock, gravel, sediment, earth retaining structure, or other material to an area water ward of the ordinary high water mark, in wetlands, or on shorelands, in a manner that raises the elevation or creates dry land.

Local Service Utilities means Public or private utilities normally servicing a neighborhood or defined subarea in the City, e.g., telephone exchanges; sanitary sewer; stormwater facilities; distribution lines, electrical less than fifty five (55) kV, telephone, cable TV, etc.

#### **21.08.130 Definitions M:**

**Marinas** is defined as commercial or private docks or piers serving five or more vessels.

**Master Program** means the City of Pacific Shoreline Master Program.

**May** means the action is acceptable, provided it conforms to the provisions of the SMP.

**Mining** is the removal of sand, gravel, soil, minerals, and other earth materials for commercial and other uses.

**Multi-family attached residential** is a building containing two or more residential units attached at common walls and located above or below similar units or other uses in a mixed-use development or in a stand-alone residential building without other uses.

**Multiple Use** (This definition for PMC 21.08, Shoreline Master Program Regulations, use only.) The combining of compatible uses within one development, in which water-oriented and non-water-oriented uses are included.

**Must** means a mandate; the action is required.

#### **21.08.140 Definitions N:**

**Nonconforming Use or Site** means a use which lawfully occupied a building or land at the time the ordinance codified in this title became effective and which does not conform to development regulations not related to the characteristics of a structure governed by the building code but to the use or to facilities provided on a site including but not limited to, the vegetation conservation, shoreline stabilization, landscaping, parking, fence, driveway, street opening, pedestrian amenity, screening and other regulations of the district in which it is located due to changes in Code requirements, or annexation.

**Non Water-Dependent Use** is those uses which are not water-dependent.

**Non-Water-Oriented Use** is those uses which are not water-dependent, water-related, or water-enjoyment.

#### **21.08.150 Definitions O:**

**Open Space** (This definition for PMC 21.08, Shoreline Master Program Regulations, use only.) A land area allowing view, use or passage which is almost entirely unobstructed by buildings, paved areas, or other manmade structures.

**Ordinary High Water Mark (OHWM)** is that mark along the river or other bodies of water that can 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, or as it may naturally change thereafter; or as it may change thereafter in accordance with permits issued by the City of Pacific or the Washington State Department of Ecology; provided that in any area where the ordinary high water mark cannot be found, the ordinary high water mark shall be the line of mean high water.

#### **21.08.160 Definitions P:**

**Party Of Record** means all persons, agencies or organizations who have submitted written comments in response to a notice of application; made oral comments in a formal public hearing conducted on the application; or notified local government of their desire to receive a copy of the final decision on a permit and who have provided an address for delivery of such notice by mail.

**Permit** means any form of permission required under the SMA prior to undertaking activity on shorelines of the state, including substantial development permits, variances, conditional use permits, permits for oil or natural gas exploration activities, permission which may be required for selective commercial timber harvesting, and shoreline exemptions.

**Pier** is a general term including docks and similar structures consisting of a fixed or floating platform extending from the shore over the water. This definition does not include overwater trails.

**Planned Urban Development** (This definition for PMC 21.08, Shoreline Master Program Regulations, use only.) Special contractual agreement between the developer and a governmental body governing development of land.

**Priority Shoreline Use** is a use given preference by the Shoreline Management Act and the Master Program. These uses are water-dependent or water-related, and provide public access and recreational use of the shoreline. Priority shoreline use includes single-family residential and other uses that provide an opportunity for substantial numbers of people to enjoy the shoreline.

**Priority species** means species requiring protective measures and/or management guidelines to ensure their persistence at genetically viable population levels. Priority species are those that meet any of the criteria listed below.

a. Criterion 1: State-listed or state-proposed species. State-listed species are those native fish and wildlife species legally designated as endangered (WAC 232-12-014), threatened (WAC 232-12-011), or sensitive (WAC 232-12-011). State-proposed species are those fish and wildlife species that will be reviewed by the Washington Department of Fish and Wildlife (POL-M-6001) for possible listing as endangered, threatened, or sensitive according to the process and criteria defined in WAC 232-12-297.

b. Criterion 2: Vulnerable aggregations. Vulnerable aggregations include those species or groups of animals susceptible to significant population declines, within a specific area or statewide, by virtue of their inclination to congregate. Examples include heron colonies, seabird concentrations, and marine mammal congregations.

c. Criterion 3: Species of recreational, commercial, and/or tribal importance. Native and nonnative fish, shellfish, and wildlife species of recreational or commercial importance and recognized

species used for tribal ceremonial and subsistence purposes that are vulnerable to habitat loss or degradation.

d. Criterion 4: Species listed under the federal Endangered Species Act as proposed, threatened, or endangered.

**Provisions** mean policies, regulations, standards, guideline criteria, or environment designations.

**Public access** is a means of physical and/or visual approach to and along the shoreline available to the general public.

**Public interest** means the interest shared by the citizens of the state or community at large in the affairs of government, or some interest by which their rights or liabilities are affected including, but not limited to, an effect on public property or on health, safety, or general welfare resulting from a use or development.

**Public Trust Doctrine** is the principle that the waters of the state are a public resource owned by and available to all citizens equally for the purposes of navigation, conducting commerce, fishing, recreation and similar uses and that this trust is not invalidated by private ownership of the underlying land. The doctrine limits public and private use of tidelands and other shorelands to protect the public's right to use the waters of the state. The Public Trust Doctrine does not allow the public to trespass over privately owned uplands to access the tidelands. It does, however, protect public use of navigable water bodies below the ordinary high water mark. Protection of the trust is a duty of the State, and the Shoreline Management Act is one of the primary means by which that duty is carried out. The doctrine requires a careful evaluation of the public interest served by any action proposed. This requirement is fulfilled in major part by the planning and permitting requirements of the Shoreline Management Act.

**21.08.170 Definitions Q:** None

#### **21.08.0180 Definitions R:**

**Recreational development** means commercial and public facilities designed and used to provide recreational activities such as hiking, fishing, photography, viewing, and bird-watching. It also includes facilities for active or more intensive uses, such as parks with sports facilities, and other outdoor recreation areas.

**Replacement stabilization measure** means the construction of a new structure to perform a shoreline stabilization function of an existing structure which can no longer adequately serve its purpose. Additions to or increases in size of existing shoreline stabilization measures shall be considered new structures.

**Residential development** means one or more buildings, structures, lots, parcels or portions thereof that are designed for and used or intended to be used to provide a place of abode for human beings, including single-family residences, duplexes, other detached dwellings, multi-family residences, apartments, townhouses, mobile home parks, other similar attached dwellings, condominiums, subdivisions and short subdivisions, together with accessory uses and structures normally applicable to residential uses including, but not limited to garages, sheds, parking areas, fences,

and guest cottages, Residential development does not include hotels, motels or any other type of overnight or transient housing, recreational vehicle parks, or camping facilities.

**Restore, Restoration, or ecological restoration** means the reestablishment or upgrading of impaired ecological shoreline processes or functions. This may be accomplished through measures including but not limited to re-vegetation, removal of intrusive shoreline structures and removal or treatment of toxic materials. Restoration does not imply a requirement for returning the shoreline area to aboriginal or pre-European settlement conditions.

#### **21.08.190 Definitions S:**

**SMA** is the Shoreline Management Act of 1971.

**SMP** is the City of Pacific Shoreline Master Program.

**Setback** means a measured distance from the ordinary high water mark (OHWM) of the White River, unless specifically indicated otherwise, i.e. a setback measured from the toe of the landward side of a dike or top of the water ward side of a dike.

**Shall** means a mandate; the action must be done.

**Shorelands or shoreland areas** means those lands extending landward for two hundred feet in all directions as measured on a horizontal plane from the ordinary high water mark; floodways and contiguous floodplain areas landward two hundred feet from such floodways; and all wetlands and river deltas associated with the streams, lakes, and tidal waters that are subject to the provisions of RCW 90.58.030; the same as to location by the Department of Ecology.

**Shoreline areas** mean all "shorelines of the state" and "shorelands."

**Shoreline Management Act of 1971 (SMA)** is the state law codified as Chapter 90.58 RCW.

**Shoreline Master Program or Master Program** means the comprehensive use plan for a described area (see Shorelands), and the use regulations together with 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 approved under Chapter 90.58 RCW shall be considered an element of the city's comprehensive plan (City of Pacific Comprehensive Plan). All other portions of the shoreline master program adopted under Chapter 90.58 RCW, including use regulations, shall be considered a part of the city's development regulations (Pacific Municipal Code).

**Shoreline modifications** means 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.

**Shoreline Setback Line** is the line that establishes the limits of all buildings, structures, and fencing along the shoreline.

**Shorelines of statewide significance** means those natural rivers or segments thereof west of the crest of the Cascade range downstream of a point where the mean annual flow is measured at one thousand cubic feet per second or more with respect to the City of Pacific are identified as the

~~White River within the city limits, Pacific Urban Growth Area, shorelands, and wetlands associated with the White River~~ (see RCW 90.58.030(2)(e)).

**Shoreline Stabilization** means structural and nonstructural methods to address erosion impacts to property and dwellings, businesses, or structures caused by natural processes, such as currents, floods, tides, wind, or wave action.

**Should** means that the particular action is required unless there is a demonstrated, compelling reason, based on policy of the Shoreline Management Act and this chapter, against taking the action. The Director, in consultation with the DOE, shall make the determination about whether or not an applicant has demonstrated that there is a compelling reason against taking an action.

**Sign** is a device of any material or medium, including structural component parts, that is used or intended to be used to attract attention to the subject matter for advertising, identification, or informative purposes. Examples of temporary signs include: real estate signs, directions to events, political advertisements, event or holiday signs, construction signs and signs advertising a sale or promotional event.

**Single-family attached residential units** are townhouses, attached at a common wall, but not above or below another unit (see Multi-family attached residential units).

**Single-family detached residential unit**, when considering shoreline exemptions, is a structure designed for and occupied exclusively by one family and the household employees of that family.

**State Master Program** means the cumulative total of all shoreline master programs and amendments thereto approved or adopted by rule by the department.

**Stormwater BMPs** are science-based “best management practices” for controlling surface water runoff.

**Structure** means a permanent or temporary edifice or building, or any piece of work artificially built or composed of parts joined together in some definite manner, whether installed on, above, or below the surface of the ground or water, except for vessels.

**Substantial development** means 1) any development of which the total cost or fair market value exceeds seven thousand forty-seven dollars (\$7,047), as adjusted for inflation by the office of financial management, or 2) any development which materially interferes with the normal public use of the water or shorelines of the state<sup>LG6</sup>.

#### **21.08.200 Definitions T:**

**Transmit** means to send from one person or place to another by mail or hand delivery. The date of transmittal for mailed items is the date that the document is certified for mailing or, for hand-delivered items, is the date of receipt at the destination.

#### **21.08.210 Definitions U:**

**Upland** is the area above and landward of the ordinary high water mark.

**Utility** means a public or private agency which provides a service that is utilized or available to the general public (or a location-specific population thereof) such services may include, but are not limited to, storm water detention and management, sewer, water, telecommunications, cable, electricity, and natural gas.

**Utility, Accessory** means utilities that are small-scale distribution services connected directly to the uses along the shoreline and are not carrying significant capacity to serve other users that are not located in the shoreline jurisdiction.

**21.08.220 Definitions V:**

**Variance** is a means to grant relief from the specific bulk, dimensional or performance standards set forth in the applicable master program and not a means to vary a use of a shoreline.

**Vessel** includes ships, boats, barges, or any other floating craft which are designed and used for navigation and do not interfere with the normal public use of the water.

**21.08.230 Definitions W:**

**Water-dependent use** means a use or portion of a use which cannot exist in a location that is not adjacent to the water and which is dependent on the water by reason of the intrinsic nature of its operations.

**Water-enjoyment use** means a recreational use or other use that facilitates public access to the shoreline as a primary characteristic of the use; or a use that provides for enjoyment or recreational use 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 visual and physical 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** means a use that is water-dependent, water-related, or water-enjoyment, or a combination of such uses.

**Water Quality** means the physical characteristics of water within shoreline jurisdiction, including water quantity and hydrological, physical, chemical, esthetic, recreation-related, and biological characteristics. Where used in this master program, the term “water quantity” refers only to development and uses regulated under this chapter and affecting water quantity, such as impermeable surfaces and storm water handling practices. Water quantity, for purposes of this master program, does not mean the withdrawal of groundwater or diversion of surface water pursuant to RCW 90.03.250 through 90.03.340.

**Water-related use** means a use or portion of a use which 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.

**Wetlands** mean areas that are inundated or saturated by surface water or groundwater 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 non-wetland 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 non-wetland areas to mitigate the conversion of wetlands.

**21.08.240 Definitions Y:** None

**21.08.250 Definitions Z:** None

## **21.10 SHORELINE OVERLAY DISTRICTS ESTABLISHED**

### **21.10.010 Purpose**

To more effectively plan and manage shoreline resources through the development of a Shoreline Master Program, a system of categorizing shoreline areas through a classification called “Environments” has been used. These environments function as an overlay district within the zoning code. This system applies appropriate policies and regulations to distinctively different shoreline areas. The purpose of shoreline environment designations is to differentiate between areas whose geographical, hydrological, topographical, use, or other features imply differing objectives for the use and future development of the City’s shorelines. To accomplish the purpose of this chapter the following shoreline environment designations have been established:

- A. Urban Conservancy
- B. Shoreline Residential
- C. Shoreline Recreation
- D. Shoreline Commercial
- E. Aquatic Shoreline Overlay District

### **21.10.020 Urban Conservancy**

#### **A. Purpose**

The purpose of the “Urban Conservancy Environment” is to protect and restore the ecological functions of open space, floodplain and other sensitive lands where they exist in urban and developed settings, while allowing a variety of compatible uses consistent with the Comprehensive Plan.

#### **B. Designation Criteria**

The Urban Conservancy Environment designation is appropriate for those areas planned for development that are compatible with maintaining or restoring of the ecological functions of the area, and that are not generally suitable for intensive water dependent uses.

#### **C. Management Policies**

The following management polices apply to all shorelines in the Urban Conservancy Environment:

1. Primary allowed uses and their associated development standards should reserve the natural character of the area or promote preservation of open space, floodplain or sensitive lands where they exist in urban and developed settings, either directly or over the long term. Uses that result in restoration of ecological functions should be allowed if the use is otherwise compatible with the purpose of the environment and the setting.
2. Standards should be established for shoreline stabilization measures, vegetation conservation, water quality, and shoreline modifications within the “urban conservancy” designation. These standards should ensure that new development does not result in a net loss of shoreline ecological functions or further degrade other shoreline values.
3. Public access and public recreation objectives should be implemented whenever feasible and significant ecological impacts can be mitigated.

#### **21.10.030 Shoreline Residential**

##### **A. Purpose**

The purpose of the “Shoreline Residential Environment” is to accommodate residential development and accessory structures that are consistent with this chapter. An additional purpose is to provide appropriate public access and recreational uses.

##### **B. Designation Criteria**

The Shoreline Residential Environment designation is appropriate for those areas of the City’s shorelines that are characterized predominantly by residential development or are planned and platted for residential development.

##### **C. Management Policies**

The following management policies should apply to all shorelines in the Shoreline Residential Environment:

1. Standards for density or minimum frontage width, setbacks, lot coverage limitations, buffers, shoreline stabilization, vegetation conservation, critical area protection, and water quality shall be set to maintain no net loss of shoreline ecological functions.
2. New residential developments should provide public access and joint use community recreational facilities where appropriate.
3. Access, utilities, and public services should be available and adequate to serve existing needs and/or planned future development.

#### **21.10.040 Shoreline Recreation**

##### **A. Purpose**

The purpose of the “Shoreline Recreation Environment” is to provide recreational and public access opportunities along the City’s shorelines. An additional purpose is to maintain and restore ecological functions to the area and preserve open space within the City.

B. Designation Criteria

The Shoreline Recreation Environment designation is appropriate for those areas that are used predominately for recreational purposes.

C. Management Policies

The following management policies should apply to all shorelines in the Shoreline Recreation Environment:

1. When considering development in a Shoreline Recreation Environment, concern should be given both to the goal of recreational use and the goal of ecological stewardship ensuring no net loss of ecological function.
2. Development in a Shoreline Recreation Environment should be related primarily to expanding recreational opportunities in the area. These activities include but are not limited to boating, swimming, walking, hiking, and recreational sports. Priority should be given to those developments related to a water-dependent activity such as swimming or boating.
3. Recreational opportunities should be accessible by and attractive to all demographic populations in the City.
4. Park management should encourage ecological stewardship as outlined in Section 3 of the SMP Restoration Plan. This includes such measures as setting picnic areas away from the water's edge, planting and maintaining native vegetation buffers along the water, and making floodplain connections where feasible.

**21.10.050 Shoreline Commercial**

A. Purpose

The purpose of the “Shoreline Commercial Environment” is to provide for high-intensity, water-oriented commercial, transportation, and industrial uses while protecting existing ecological functions and restoring ecological functions in areas that have been previously degraded.

B. Designation Criteria

The Shoreline Commercial Environment designation is appropriate for those areas of the City's shorelines that currently support high-intensity uses related to commerce, light industrial, transportation, or navigation; or are suitable and planned for high-intensity water-oriented uses.

C. Management Policies

The following management policies should apply to all shorelines in the Shoreline Commercial Environment:

1. Priority should be given to water-dependent uses. Second priority should be given to water-related and water-enjoyment uses. Nonwater-oriented uses should not be allowed except in limited situations where they do not conflict with or limit opportunities for water-oriented uses or on sites where there is no direct access to the shoreline or where public access and ecological restoration are provided.

2. Policies and regulations shall assure no net loss of shoreline ecological functions as a result of new development. Where applicable, new development shall include environmental cleanup and restoration of the shoreline in accordance with any relevant state and federal laws.
3. Visual and physical public access should be required as a condition of development.
4. Aesthetic objectives should be implemented by means such as sign control regulations, appropriate development siting, screening and architectural standards, and maintenance of natural vegetative buffers.

#### **21.10.060 Aquatic Shoreline Overlay District**

##### **A. Purpose**

The purpose of the Aquatic Environment is to protect, restore, and manage the unique characteristics and resources of the areas water ward of the ordinary high-water mark.

##### **B. Designation Criteria**

The Aquatic Environment is defined as the area water ward of the ordinary high water mark of all streams and rivers, and other water bodies constituting shorelines of the state together with their underlying lands and their water column; but do not include associated wetlands and other shorelands shoreward of the ordinary high water mark. This designation is not found on the Shoreline Environment Map, but shall be assigned based on the description above.

##### **C. Management Policies**

1. Water-dependent uses and a limited range of water-oriented uses are allowed in the Aquatic Overlay, subject to provision of shoreline ecological enhancement and public access.
2. New over-water structures are allowed only for water-dependent uses, public access, or ecological restoration and should be limited to the minimum necessary to support the structure's intended use.
3. Transportation and utility facilities and Essential Public Facilities may be allowed for which no alternative location is feasible.
4. Ecological enhancement is an allowed and preferred use.

#### **21.10.070 Shoreline Overlay Districts, Map, and Boundaries**

[Shorelines of the state in Pacific include an approximately 0.75-mile portion of the White River.](#) The following “Shoreline Environment Descriptions” provide general written descriptions of the geographic extent of each of the individual Shoreline Environmental Designations within areas subject to compliance with this Master Program.

Federal Emergency Management Agency (FEMA) Flood Insurance Rating Maps (FIRM) do not delineate a Floodway boundary within the City of Pacific. Therefore, for the purpose of defining the landward extent of SMP jurisdiction, the City shall consider the water ward edge of flood

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control (levee) structures, as the point from which Shoreline Jurisdiction extends 200-foot landward along a horizontal line extending in all [directions](#)<sup>[LG7]</sup>.

**21.10.080 Official Map**

Official maps prepared pursuant to Chapter 173-26 WAC are on file with the City Clerk and included as “Exhibit A” to the Master Program.

**21.10.090 Shoreline Designations by Reach**

**Table 21.10.090** [i](#)

<b>Reach</b>	<b>Description</b>	<b>Shoreline Designation</b>
A	Right Bank <sup>1</sup> , east City Limits to the west side of the BNSF Railroad Right of Way	Shoreline Commercial
B	Right Bank east side of the Skinner Road Right of Way (west side of the BNSF Railroad Right of Way) to the west boundary of the White River Park Subdivision	Shoreline Residential
C	Right Bank, Pacific City Park, west and south boundary of lot 3 of the White River Park Subdivision to the north line of the SW ¼ of the SE ¼ of Section 36, Town 21N Range 4 E	Shoreline Recreation
D	Right Bank, South boundary of the Pacific City Park to the King County/Pierce County Line	Urban Conservancy
E	Right Bank, King County/Pierce County Line to the north Right of Way line of Stewart Road SE	Urban Conservancy
F <sup>2</sup>	Left Bank <sup>1</sup> , East City Limits to King County/Pierce County Line	<u>Waterward of Levee:</u> Urban Conservancy  <u>Top of Levee and area Landward of Levee:</u> Shoreline Commercial
G <sup>2</sup>	Left Bank, King County/Pierce County Line to north Right of Way line of Stewart Road SE	Urban Conservancy

Notes:

<sup>1</sup>[Direction based on view looking downstream.](#)

<sup>2</sup>[Reaches F and G located in the city’s urban growth area are predesignated in preparation for future annexation; these areas remain under the shoreline jurisdiction of King County until which time annexation is complete.](#)

### **21.10.100 Non-Designated Areas**

Areas found to be within shoreline jurisdiction that are not mapped and/or designated are automatically assigned the “Urban Conservancy” designation until re-designated through a Master Program amendment process.

## **Chapter 21.20 GENERAL STANDARDS AND USE REGULATIONS**

This section shall apply to all use and development activities within the shoreline.

### **21.20.010 No Net Loss of Ecological Functions**

- A. Shoreline use and development shall be carried out in a manner that prevents or mitigates adverse impacts to ensure no net loss of ecological functions and processes in all development and use, including cumulative impacts. Permitted uses are designed and conducted to minimize, in so far as practical, any resultant damage to the ecology and environment (RCW 90.58.020 ). Shoreline ecological functions that shall be protected include, but are not limited to, fish and wildlife habitat, food chain support, and water temperature maintenance. Shoreline processes that shall be protected include, but are not limited to, water flow; erosion and accretion; infiltration; ground water recharge and discharge; sediment delivery, transport, and storage; large woody debris recruitment; organic matter input; nutrient and pathogen removal; and stream channel formation/maintenance.
- B. An application for any permit or approval shall demonstrate all reasonable efforts have been taken to provide sufficient mitigation such that the activity does not result in net loss of ecological functions, including cumulative impacts. Mitigation shall occur in the following prioritized order:
  1. Avoiding the adverse impact altogether by not taking a certain action or parts of an action, or moving the action outside the shoreline area.
  2. Minimizing adverse impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology and engineering, or by taking affirmative steps to avoid or reduce adverse impacts.
  3. Rectifying the adverse impact by repairing, rehabilitating, or restoring the affected environment.
  4. Reducing or eliminating the adverse impact over time by preservation and maintenance operations during the life of the action.
  5. Compensating for the adverse impact by replacing, enhancing, or providing similar substitute resources or environments. Preference shall be given to measures that replace the impacted functions on-site or in the immediate vicinity of the impact. However, alternative compensatory mitigation within the watershed that addresses limiting factors

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or identified critical needs for shoreline resource conservation based on watershed or comprehensive resource management plans may be authorized.

6. Monitoring the adverse impact and taking appropriate corrective measures.

Applicants for permits have the burden of proving that the proposed development is consistent with the criteria set forth in the Shoreline Master Program and the Act, including demonstrating all reasonable efforts have been taken to provide sufficient mitigation such that the activity does not result in net loss of ecological functions.

**21.20.020 Critical Areas within Shoreline Jurisdiction**

A. ~~The following critical~~ Critical areas located in shoreline jurisdiction shall be regulated within under the Shoreline Management Act jurisdiction in accordance with the provisions this Master Program, which includes applicable sections of the . Critical areas include wetlands, critical aquifer recharge areas, frequently flooded areas, geologically hazardous areas, and fish and wildlife habitat conservation areas. The City’s Critical Areas Ordinance, and are (#1592, dated November 22, 2004, including the Flood Control Ordinance #1639, dated 2006) at Title 23 of the Pacific Municipal Code is hereby incorporated by reference and considered part of the Master Program with the following exceptions to apply within shoreline jurisdiction:

- 23.10.030 Definitions for “Buffer” and “~~–~~ SMP definitions shall prevail;
- 23.10.070 Exemptions – activities that may be exempt ~~Wetlands~~ from ~~23.10.030~~ the CAO shall still comply with all applicable provisions of this Master Program;
- 23.10.140 Variances – variances, including reasonable use exceptions, shall be processed as a shoreline variance permit;

Wetlands

- 23.20.010 Wetlands, Designation – identification and designation of wetlands and delineation of their boundaries shall be done in accordance with the approved federal wetland delineation manual and applicable regional supplements;
- 23.20.020 Wetlands, Rating – ratings shall be according to the 2014 Washington State Wetlands Rating System for Western Washington – 2014 Update (Ecology Publication #14-06-029, October 2014);
- 23.20.040 Wetlands, Substantive Requirements –
  - (B) Standard buffer widths shall be: ~~[RN8]~~ See PMC 23.20.045. [LG9]  
Category I: 300 feet  
Category II: 300 feet

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Category III: 150 feet

Category IV: 50 feet

(E) See PMC 23.20.045.

(F) Reduction of the standard buffer width shall be limited to no more than 25%, so that three-quarters of the standard width is retained (See PMC 23.20.045).

(G) Allowed stormwater management facilities shall be limited to stormwater dispersion outfalls and bioswales only, and only in the outer 25% of the buffer for Category III and IV wetlands.

~~• 23.20.050 – Wetlands, Mitigation, .060 – Small Wetlands, and .070 –~~

~~○ (A) All mitigation shall be according to Wetland Buffer Averaging Mitigation in Washington State, Part 1: Agency Policies and Guidance (Version 1, Ecology Publication #06-06-011a, March 2006) and Wetland Mitigation in Washington State, Part 2: Developing Mitigation Plans (Version 1, Ecology Publication #06-06-011b, March 2006).~~

~~• 23.60.050 (K – O) Habitat Conservation Areas~~

~~○ (E) (F) and (G) All mitigation shall be in accordance with the Washington State Wetlands Rating System for Western Washington – 2014 Update (Ecology Publication #14-06-029, October 2014), and the mitigation ratios and credit-debit method of the Wetland Guidance for CAO Updates: Western Washington Version (Ecology Publication #16-06-001, June 2016).~~

B. Administration of all critical areas shall ensure no net loss of ecological functions and processes in all development and use, including cumulative impacts as provided in Section 21.20.010.

**21.20.030 Shoreline Vegetation Conservation**

In addition to the standards of PMC Title 23, the following shall apply:

A. A vegetation management plan shall be required for all Critical Area buffer areas within SMA jurisdiction to include:

1. Maintaining adequate cover of native vegetation including trees and understory. If a portion of the buffer has been cleared, or if tree cover is substantially less than a native climax mixed evergreen and deciduous planting, supplemental plantings shall be required.

2. Providing a dense screen of native evergreen trees at the perimeter of the buffer. If existing vegetation is not sufficient to prevent viewing adjacent development from within the buffer, planting shall be required equivalent to two rows of 3' high stock of native evergreens at a triangular spacing of 15 feet, or three rows of gallon containers at a triangular spacing of 8 feet. Fencing may be required if needed to block headlights or other sources of light or to provide an immediate effective visual screen.
  3. Providing a plan for control of invasive weeds, and removing existing invasive species.
  4. Providing for a monitoring and maintenance plan for a period of at least five (5) years. This provision may be waived for single family residential lots.
- B. In cases where approved development results in unavoidable adverse impacts to existing shoreline vegetation, mitigation shall be required to ensure that there will be no net loss in the ecological functions performed. Mitigation shall take place on-site to the maximum extent feasible. Mitigation plans shall be completed before initiation of other permitted activities, unless a phased or concurrent schedule that assures completion prior to occupancy has been approved by the director.
- C. Lawns and other non-native vegetation maintained within shoreline jurisdiction shall minimize use of chemical fertilizers, pesticides, herbicides, or other similar substances. Such chemical treatments shall not be applied within 10 feet of the OHWM. Applications in solid time release form shall be preferred over liquid or concentrate application. Best Management Practices (BMPs) shall be implemented in all chemical applications.

#### **21.20.040 Public Access**

##### **A. Type of Development Requiring Public Access**

Physical public access shall be provided for the following development in the shoreline area, subject to the criteria in PMC 21.20.040:

1. Any new development that would either generate a demand for one or more forms of such access, would impair existing legal access opportunities or rights, or is required to meet the specific policies and regulations of this Program.
2. Water-dependent uses and developments that increase public use of the shorelines and public aquatic lands, or that would impair existing legal access opportunities, or that utilize public harbor lands or aquatic lands, or that are developed with public funding or other public resources.
3. Where a use is not a priority use under the Act, and all non-water-dependent development and uses.
4. Any non-single family development or use, or more than four (4) single-family residential lots or single-family dwelling units, including subdivision, within a proposal or a contiguously owned parcel.
5. Any use of public aquatic lands, except as related to single-family residential use of the shoreline.

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6. Publicly financed or subsidized flood control or shoreline stabilization measures.
- B. Interference with Public Access
1. Public access provided by shoreline street ends, public utilities, and rights-of-way shall not be diminished (RCW 36.87.130).
  2. Development uses and activities shall be designed and operated to avoid adversely interfering with the public's physical and visual access to the water and shorelines.

C. Design Criteria for Public Access

Public access shall incorporate the following location and design criteria:

1. Proximity to Water's Edge: Design of public access shall provide the general public with opportunity to reach, touch, view, and enjoy the water's edge and shall be as close horizontally and vertically to the shoreline's edge as feasible, provided that public access does not adversely affect sensitive ecological features or lead to an unmitigated reduction in ecological functions.
2. Walkways or Trails Required in Vegetated Buffers: Public access on sites where vegetated open space is provided along the shoreline shall consist of a public pedestrian walkway roughly parallel to the ordinary high water mark of the property. The walkway shall be buffered from sensitive ecological features, may be set back from the water's edge, and may provide limited and controlled access to sensitive features and the water's edge where appropriate. Fencing may be provided to control damage to plants and other sensitive ecological features and where appropriate. Trails shall be constructed of permeable materials and limited to 4 to 6 feet in width to reduce impacts to ecologically sensitive resources.
3. Access Requirements for Sites without Vegetated Buffers: Public access on sites or portions of sites not including vegetated open space, such as water dependent uses, shall include
  - a. Not less than ten (10) percent of the developed area within shoreline jurisdiction or three thousand (3,000) square feet, whichever is greater, on developments including non-water-dependent uses.
  - b. For water-dependent uses, the amount and location may be varied in accordance with the criteria in Subsection 21.20.040 (A).
  - c. Public access facilities shall extend along the entire water frontage, unless such facilities interfere with the functions of water-dependent uses. The minimum width of public access facilities shall be 10 feet and shall be constructed of materials consistent with the design of the development.
4. Facilities addressed in the City Transportation Plan shall be developed in accordance with the standards of that plan.
5. Access Requirements for Overwater Structures: Public access on over-water structures on public aquatic lands shall be provided, and may include common use of walkway areas.

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6. Connections: Public access shall be located adjacent to other public areas, accesses, and trails, connected to the nearest public street, and include provisions for handicapped and physically impaired persons where feasible.
7. Parking Requirements: Where public access is within 400 feet of a public street, on-street public parking shall be provided where feasible. For private developments required to provide more than 20 parking spaces, public parking may be required in addition to the required parking for the development at a ratio of one (1) space per 1,000 square feet of public access area up to three (3) spaces and at one space per 5,000 square feet of public access area for more than three (3) spaces. Parking for public access shall include the parking spaces nearest to the public access area and may include handicapped parking if the public access area is handicapped accessible.
8. Planned Trails: Where public trails are indicated on the City's transportation, park, or other plans, trails shall be provided within shoreline and non-shoreline areas of a site.
9. Privacy: Design shall minimize intrusions on privacy of adjacent use by avoiding locations adjacent to residential windows and/or private open spaces, or by screening or other separation techniques.
10. Public Access Required for Occupancy: Required public access sites shall be fully developed and available for public use at the time of occupancy of the use or activity, or in accordance with other provisions for guaranteeing installation through a monetary performance assurance.
11. Easement Recorded: Public access provisions on private land shall run with the land and be recorded via a legal instrument such as an easement, or as a dedication on the face of a plat or short plat. Such legal instruments shall be recorded prior to the time of building occupancy or plat recording, whichever comes first.
12. Maintenance Responsibility: Maintenance of the public access facility shall be the responsibility of the owner unless otherwise accepted by a public or non-profit agency through a formal recorded agreement. Public access facilities shall be maintained over the life of the use or development. Future actions by successors in interest or other parties shall not diminish the usefulness or value of required public access areas and associated improvements.
13. Hours of Access: Public access facilities shall be available to the public 24 hours per day unless an alternate arrangement is granted through the initial shoreline permitting process for the project. Changes in access hours proposed after initial permit approval shall be processed as a Shoreline Conditional Use.
14. Signage Required: The standard state-approved logo or other approved signs that indicate the public's right of access and hours of access shall be installed and maintained by the owner. Such signs shall be posted in conspicuous locations at public access sites and at the nearest connection to an off-site public right of way.

D. Public Access Guidelines by Reach

Public access shall incorporate the following location and design criteria:

Public access for new or substantially altered development shall comply with the following guidelines:

Reach A public access shall be in the form of a trail parallel to the shoreline at such time as the existing mobile home park redevelops. Such access shall be connected with the sidewalk on A Street and also connected to the north with the existing soft surface trail along the White River Estates Mobile Home Park. The location of public access will depend on the extent to which water dependent uses are developed on the site. A viewing platform near the OHWM at an elevation above flood stage should be provided.

Reach B is a developed single family subdivision. A viewing platform at the extension of Skinner Road near the OHWM at an elevation above flood stage should be provided. It is unlikely that public access can be provided on individual lots. If the area is re-subdivided in the future, public access should be provided in accordance with standards in PMC 21.20.040 (A). If the existing flood control revetment is modified in the future, safe public access should be incorporated in the design.

Reach C consisting of the City of Pacific Park should continue to provide public access near the land-water interface. If future shoreline ecological restoration takes place, modification of the location of the trail in accordance with PMC 20.20.040 (A) should be considered. The City should evaluate whether a hard surface trail is desirable to provide more flexible access for bicycles and the mobility impaired.

Reach D should provide public access along the existing maintenance road. At such time that existing flood control facilities are modified, a formal public access plan shall be developed for the area between the OHWM and the flood control levees or other facilities. Connections should be provided to White River Drive and other public streets.

Reach E should provide public access along the existing maintenance road. At such time that existing flood control facilities are modified, a formal public access plan shall be developed for the area between the OHWM and the flood control levees or other facilities. This access should be extended to Stewart Road by a bridge over the Government Ditch and the channel that connects the wetland to the south of the ditch to the river. Provision of public parking adjacent to Stewart Road SE or Butte Avenue SE should be considered.

Reaches F and G should provide public access along the existing maintenance road. At such time that existing flood control facilities are modified, a formal public access plan shall be developed for the area between the OHWM and the flood control levees or other facilities to connect to Stewart Road. Safe pedestrian access across the BNSF Railroad to A Street SE should be provided.

#### E. Modification of Public Access Requirements

The requirements for public access may be modified as a Shoreline Conditional Use for any application in which the following criteria are demonstrated to be met. In cases where a Substantial Development Permit is not required, use of this waiver or modification may take place only through a Shoreline Variance. As a condition of waiver or modification of access requirements, contribution to off-site public access shall be required.

Modification of public access requirements may be approved only when:

1. Unavoidable health or safety hazards to the public will occur;
2. Inherent security requirements of the use cannot be satisfied;

3. The cost of providing the access, or mitigating the impacts of the access, is unreasonably disproportionate to the total long-term development and operational cost over the life-span of the proposed development;
4. Significant unavoidable environmental impacts will result from the public access; or
5. Significant unavoidable conflict between any access provisions and the proposed use and/or adjacent uses would occur.
6. Prior to determining that public access is not required, all reasonable alternatives and mitigation options must be pursued, including but not limited to: regulating access, designing separation of uses and activities, and providing for specific facilities for public visual access.

#### **21.20.050 Use Compatibility and Aesthetic Effects**

General: Shoreline use and development activities shall be designed and operated to allow the public's visual access to the water and shoreline and maintain shoreline scenic and aesthetic qualities that are derived from natural features, such as shore forms and vegetative cover.

- A. Maximum Building Height: Buildings shall be limited to a height of no more than 30 feet above average finished grade level and should be located so as to protect scenic views except at locations specified in Shoreline Bulk Standards Table PMC 21.20.090(i).
- B. Lighting: Display and other exterior lighting shall be designed and operated so as to prevent glare, to avoid illuminating nearby properties used for non-commercial purposes, and to prevent hazards for public traffic. Methods of controlling spillover light include, but are not limited to, limits on the height of light structure and on light levels of fixtures, light shields, and screening.
- C. Integration and Screening of Mechanical Equipment: Building mechanical equipment shall be incorporated into building architectural features, such as pitched roofs, to the maximum extent feasible. Where mechanical equipment cannot be incorporated into architectural features, a visual screen shall be provided consistent with building exterior materials that obstructs views of such equipment.
- D. Walkway and Stair Width: Private walkways and stairs located within shoreline vegetated buffers shall not exceed 4 feet in width. Where ADA requirements apply, such facilities may be increased to 6 feet in width. Public trail widths shall be limited to the minimum necessary to serve the public use for which they are designated.
- E. Community Disturbances: Noise, odors, night lighting, water and land traffic, and other structures and activities shall be considered in the design plans, and their impacts avoided or mitigated.
- F. Selective Pruning of Trees: The pruning of for safety and view protection and removal of noxious weeds is only authorized in accordance with provisions of WAC 173-26-221(5)(c)

#### **21.20.060 Water Quality, Storm water and Non-Point Pollution**

Shoreline development and use shall incorporate measures to protect and maintain surface and ground water quantity and quality in accordance with all applicable laws. Appropriate vegetation restoration and conservation actions shall be undertaken consistent with regulations under Title 23 CRITICAL AREAS.

A. General Guidelines for Water Quality

1. Development within the City's shoreline shall conform to all requirements in the City's Comprehensive Stormwater Plan, stormwater standards, Comprehensive Plan, and Flood Hazard Areas regulations.
2. The construction of new outfalls into water bodies and improvements to existing facilities shall comply with all appropriate Federal, State, and City regulations for water quality.
3. Water discharged to rivers shall receive appropriate treatment as provided by stormwater management standards and shall not present a thermal or other barrier to fish migration.
4. Stormwater ponds, basins, and vaults shall be located as far from the water's edge as feasible and shall minimize disturbance of vegetation conservation buffers.

B. Management of Chemicals

Use of pesticides, herbicides, and fertilizers in or near shoreline jurisdiction shall conform to the following:

1. Pesticides applied using aerial spraying techniques within the shoreline jurisdiction, including over water bodies or wetlands, shall be prohibited unless specifically permitted under the Washington Departments of Agriculture or Ecology.
2. Pesticides shall be used, handled, and disposed of in accordance with provisions of the Washington State Pesticide Application Act (RCW 17.21) and the Washington State Pesticide Control Act (RCW 15.58) to prevent contamination and sanitation problems.

**21.20.070 Educational and Archeological Areas and Historic Sites**

The City will work with tribal, state, federal, and other local governments as appropriate to identify significant local historical, cultural, and archaeological sites in observance of applicable state and federal laws protecting such information from general public disclosure. Detailed cultural assessments may be required in areas with undocumented resources based on the probability of the presence of cultural resources.

- A. Coordination Encouraged: Owners of property containing identified or probable historical, cultural, or archaeological sites are encouraged to coordinate well in advance of application for development to assure that appropriate agencies such as the Washington State Department of Archaeology and Historic Preservation, affected tribes, and historic preservation groups have ample time to assess the site and identify the potential for cultural resources.
- B. Detailed Cultural Assessments Required: Upon receipt of application for a development in an area of known or probable cultural resources, the City shall require a site assessment by a

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qualified professional archaeologist or historic preservation professional and ensure review by qualified parties including the Washington State Department of Archaeology and Historic Preservation, affected tribes, and historic preservation groups.

- C. Work to Stop Upon Discovery: If historical, cultural, or archaeological sites or artifacts are discovered in the process of development, work on that portion of the site shall be stopped immediately, the site secured, and the find reported as soon as possible to the director. Upon notification of such find, the property owner shall notify the Washington State Department of Archaeology and Historic Preservation and affected tribes. The Reviewing Official shall provide for a site investigation by a qualified professional and may provide for avoidance, or conservation of the resources, in coordination with appropriate agencies.
- D. Access for Educational Purposes Encouraged: Land owners are encouraged to provide access to qualified professionals and, where appropriate, to the general public for the purpose of public education related to a cultural resource identified on a property.

**21.20.080 Permitted Use Table**

The following table determines which shoreline modifications and shoreline uses are allowed or prohibited in each Shoreline Environment provided that uses allowed in the Aquatic Environment are those allowed in the adjacent upland environment, limited to water dependent use, ecological enhancement, and those transportation and utility facilities and Essential Public Facilities for which no alternative location is feasible.

Except for the land uses prohibited in this table, land uses allowed in the underlying zoning are allowed in this overlay district, subject to the preference for water-oriented uses and subject to specific criteria for uses included in these regulations.

Land uses in the underlying zoning that require a Conditional Use Permit in the underlying zoning, require a Shoreline Conditional Use Permit.

If a use is prohibited in the underlying zoning district, it is also prohibited in the shoreline.

KEY: X= Prohibited, P= Permitted, CU= Conditional Use Permit

**Table 21.20.080 i**

	Urban Conservancy	Shoreline Residential	Shoreline Recreation	Shoreline Commercial
Low Intensity Scientific, Cultural, Historic, or Educational Use	P	P	P	P
Fish and Wildlife Resource Enhancement	P	P	P	P
Accessory Dwelling Units	CU <sup>4</sup>	CU	X	X
Adult Day Care I	X	CU	X	X
Adult Family Home	P <sup>4</sup>	P <sup>4</sup>	X	X
Agriculture	P <sup>6</sup>	X	X	X
Aquaculture and Fish Hatcheries	CU	X	X	CU
Boat Launches	P	X	P	CU
Commercial Retail Uses	X	X	X	P <sup>3</sup>
Community and Cultural Services	CU	CU	CU	CU

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	Urban Conservancy	Shoreline Residential	Shoreline Recreation	Shoreline Commercial
Dredging	CU	CU	CU	CU
Dwellings, Single Family Detached	P <sup>4</sup>	P <sup>4</sup>	X	P <sup>4</sup>
Dwellings, Multi-Family	X	X	X	X
Eating and Drinking Uses	X	X	X	P <sup>3</sup>
Educational Facilities	X	CU	X	CU
Essential Public Facilities	CU	CU	CU	CU
Golf Courses	X	CU	X	X
Group Homes	X	X	X	X
Health Services	X	X	X	CU
Home Occupations	P <sup>1</sup>	P <sup>1</sup>	X	CU
Heavy Industrial Use	X	X	X	X
Light Industrial Use	X	X	X	P <sup>1</sup>
Lodging	X	X	X	CU
Mining	X	X	X	P <sup>4</sup>
Office Uses	X	X	X	CU
Parking areas serving primary use within the shoreline	P <sup>3</sup>	P <sup>3</sup>	P <sup>3</sup>	P <sup>3</sup>
Parking areas not serving primary use within the shoreline	X	X	X	X
Parks, Neighborhood	P <sup>1</sup>	P <sup>1</sup>	P <sup>1</sup>	CU
Parks, Regional/Community	P <sup>1</sup>	P <sup>1</sup>	P <sup>1</sup>	X
Passive Recreation	P <sup>1</sup>	P <sup>1</sup>	P <sup>1</sup>	P <sup>1</sup>
Piers/ Docks	X	X	X	X
Recreation Facilities in Buildings	P <sup>1</sup>	P <sup>1</sup>	P <sup>1</sup>	X
Marinas	X	X	X	X
Motor vehicles and related equipment sales/rental/repair and services	X	X	X	X
Structures for Floodway Management, including drainage or storage and pumping facilities	P <sup>5</sup>	P <sup>5</sup>	P <sup>5</sup>	P <sup>5</sup>
Transportation facilities – vehicular - serving uses within the shoreline	CU	P <sup>3</sup>	P <sup>3</sup>	P <sup>3</sup>
Transportation facilities – vehicular - serving uses outside the shoreline	CU	CU	CU	CU
Trails, public pedestrian and bicycle not including overwater trails	P <sup>5</sup>	P <sup>5</sup>	P <sup>5</sup>	P <sup>5</sup>
Trails, Overwater	CU	CU	CU	CU
Utilities that serve uses within the shoreline	P <sup>3</sup>	P <sup>3</sup>	P <sup>3</sup>	P <sup>3</sup>
Utilities that serve uses outside the shoreline	CU	CU	CU	CU
<b>USES NOT SPECIFIED</b>	CU	CU	CU	CU

**Table Notes**

**P1:** Provided that the use does not degrade the ecological functions or natural character of the shoreline area.

**P2:** Use is allowed, but structures shall not be placed within the shoreline jurisdiction.

**P3:** Allowed only to serve approved or conditional uses, but should be located outside of shoreline jurisdiction if feasible.

**P4:** Limited to existing structures or uses on existing lots.

**P5:** Subject to criteria for establishment and design of use, including assessment of the need for a shoreline location and analysis of non-shoreline configurations.

**P6:** Existing use is permitted, but new use is subject to a shoreline conditional use permit.

**P7:** Only allowed if the use is water-dependent.

**21.20.090 Shoreline Bulk Standard**

The following table determines bulk standards in each shoreline environment.

**Table 21.20.090 i**

	Urban Conservancy	Shoreline Residential	Shoreline Recreation	Shoreline Commercial
Structure Setback from Ordinary High Water Mark (OHWM) - Minimum				
Water-Dependent Use	100 ft. <sup>1</sup>	None <sup>1</sup>	None <sup>1</sup>	None <sup>1</sup>
Water-Related or Water Enjoyment Use	Equal to the Critical Area Buffer plus 10 feet <sup>2</sup>			
Non-Water Oriented Use	Equal to the Critical Area Buffer plus 10 feet <sup>2</sup>			
Front Yard, Side Yard, and Rear Yard Setbacks	Governed by the underlying zoning			
Impervious Area within 100 feet of OHWM- Maximum <sup>3</sup>	10%	30%	10%	20%
Lot Coverage for Buildings <sup>4</sup>	10%	30%	10%	30%
Maximum Building Height <sup>5</sup>	30 ft.	30 ft.	30 ft.	30 ft.

1. Setback shall be the maximum determined by the specific needs of the Water-Dependent Use and shall not apply to a structure housing any other use.
2. Water-Oriented Uses may be established closer to the OHWM only in cases where the Critical Areas Buffer is varied in accordance with 23.10.130.G. and shall be no closer than 50 feet.
3. Up to 5% additional impervious surface is allowed in buffers for private access to the shoreline on a pathway up to 4 feet wide.
4. No building coverage is allowed in Critical Area buffers.
5. Additional height may be allowed by Conditional Use Permit if essential to the function of a water-dependent use.

## **Chapter 21.30 SHORELINE MODIFICATION**

Shoreline modifications are generally related to construction of a physical element such as a levee, bulkhead, or pier at or near the river's edge or extending into the channel. Other shoreline modification actions include dredging, filling, or vegetation clearing in the shoreline jurisdiction. Modifications are usually undertaken in support of or in preparation for an allowed shoreline use or development.

### **21.30.010 Flood Hazard Reduction**

Flood hazard reduction is a priority for the City of Pacific. However, hazard reduction must be accomplished in accordance with provisions for no net loss of ecological functions and shoreline restoration.

- A. New structural flood hazard reduction measures allowed only:  
Where demonstrated to be necessary and when non-structural methods are infeasible and mitigation is accomplished and landward of associated wetlands and buffer areas except where no alternative exists as documented in a geotechnical analysis.
- B. All flood control shall conform to PMC Chapter 23.40 Flood Control.
- C. Preferred methods of flood hazard reduction should apply to all new or substantially altered flood hazard measures and shall be designed to restore natural resources associated with streams, restore natural stream channel functions, and overflow corridors where they will result in lower flood peaks and velocities.
- D. New or substantially altered structural flood hazard reduction measures, such as dikes, levees, berms and similar flood control structures, shall be placed landward of the floodway as determined by the U.S. Army Corps of Engineers and the State of Washington and Department of Ecology, set back from the OHWM, and located landward of associated wetlands and designated conservation areas to the maximum extent feasible.
- E. Dikes, levees, berms and similar flood control structures shall be shaped and planted with vegetation suitable for wildlife habitat.
- F. Removal of gravel from the river channel for flood management purposes may be allowed only as part of an adopted integrated flood control management program that demonstrates that other flood hazard reduction strategies would not be effective in the absence of gravel removal.
- G. Public access shall be dedicated and improved in all publicly financed or subsidized flood hazard reduction programs unless the criteria of 21.20.040 for Modification of Public Access Requirements are met.
- H. New or expanding development or uses in the shoreline, including subdivision of land, that would likely require new structural flood control works within a stream, channel migration zone, or floodway should not be allowed, except as permitted within WAC 173-26-221(3)(b) and (3)(c)(i).

**21.30.020 Dredging and Dredge Material Disposal**

- A. Dredging for the sole purpose of obtaining fill material or aggregate resources is prohibited.
- B. Dredging shall be conditionally permitted in the following situations:
  - 1. In conjunction with a water-dependent use of water bodies or adjacent shorelands; and
  - 2. For projects associated with a project adopted as part of the applicable Flood Hazard Control Plan MTCA or CERCLA habitat restoration, or
  - 3. Any other significant restoration effort approved by a shoreline CUP.
- C. Dredging in wetlands is prohibited unless it is part of an approved habitat restoration or enhancement project.
- D. Dredged materials must be deposited on an approved upland site outside of the shoreline jurisdiction.
- E. Dredging and dredge disposal within the SMZ shall be permitted only where it is demonstrated that the proposed actions will not:
  - 1. Result in significant and/or ongoing damage to water quality, fish, and other essential aquatic biological elements;
  - 2. Adversely alter natural drainage and circulation patterns, currents, river and tidal flows or significantly reduce flood water capacities; or
  - 3. Cause other significant adverse ecological impacts.
- F. Dredging shall utilize techniques that cause minimum dispersal and broadcast of bottom material.
- G. When dredging is permitted, the dredging shall be the minimum necessary to accommodate the proposed use and unavoidable impacts shall be mitigated.
- H. Permit applications for shoreline dredging and dredge material disposal may be required to include the following information:

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1. Physical, chemical, and biological assessment of the proposed dredged material applicable to the particular dredging site.
2. Specific data to be considered include:
  - a. Physical - Grain size, clay, silt, sand, or gravel as determined by sieve analysis;
  - b. Chemical - Including conventional parameters, metals, and organics;
  - c. Biological - Bioassays to determine the suitability of dredged material for a selected disposal option;
  - d. Dredging volumes, methods, schedule, frequency, hours of operation and procedures;
  - e. Method of disposal, including the location, size, capacity, and physical characteristics of the disposal site, transportation method and routes, hours of operation, schedule;
  - f. Stability of bed lands adjacent to proposed dredging area;
  - g. Hydraulic analyses, including tidal fluctuation, current flows, direction and projected impacts. Hydraulic modeling studies are required for large scale, extensive dredging projects, in order to identify existing hydrological and geological patterns and probable effects of dredging;
  - h. Assessment of water quality impacts; and
  - i. Biological assessment including migratory, seasonal, and spawning use areas.
- I. New development shall be located and designed to avoid or minimize the need for new or maintenance dredging where feasible.
- J. Maintenance dredging of established navigation channels, public access facilities, and basins is restricted to maintaining previously dredged and/or existing authorized location, depth, and width.
- K. Dredging of beds or shores of navigable waters owned by the State of Washington shall require prior authorization of the Washington Department of Natural Resources.

**21.30.030 Shoreline Stabilization (bulkheads and revetments)**

- A. New shoreline uses and developments shall be located away from the shoreline in order to preclude the need for new shoreline stabilization structures during the life of the structure, as demonstrated by a geotechnical analysis.

- B. Shoreline Stabilization Alternatives Hierarchy: Structural shoreline stabilization measures should be used only when more natural, flexible, non-structural methods such as vegetative stabilization, beach nourishment, and bioengineering have been determined infeasible. Alternatives for shoreline stabilization should be based on the following hierarchy of preference:
1. No action (allow the shoreline to retreat naturally), increase building setbacks, and relocate structures.
  2. Flexible stabilization constructed of natural materials incorporating measures such as soft shore protection and bioengineering, including beach nourishment, protective berms, or vegetative stabilization.
  3. Flexible stabilization, as described above, with rigid works, as described below, constructed as a protective measure at the buffer line.
  4. A combination of rigid works, as described below, and flexible defense works, as described above.
  5. Rigid works constructed of artificial materials such as riprap or concrete.
- C. New or replacement structural stabilization measures shall not be allowed except when necessity is demonstrated in one of the following situations, and subject to the following conditions:
1. New or enlarged structural shoreline stabilization measures for an existing primary structure, including residences, should not be allowed unless there is conclusive evidence, documented by a geotechnical analysis, that:
    - a. An existing structure is in danger from shoreline erosion within three years, or where waiting until the need is immediate would prevent the opportunity to use measures that avoid impacts on ecological functions;
    - b. The structure cannot be feasibly relocated further from the land/water interface; or
    - c. Planting vegetation or installing on-site drainage improvements on the shoreline are not feasible or not sufficient;
    - d. Normal shoreline erosion itself, without a scientific or geotechnical analysis, is not demonstration of need;
  2. The stabilization measure is evaluated by the hierarchy in subsection B above;
  3. The stabilization measure will not result in a net loss of shoreline ecological functions.
  4. The shoreline stabilization structures are limited to the minimum size necessary.
- D. Existing shoreline stabilization structures not in compliance with this code may be retained, repaired, or replaced in accordance with the criteria below:
1. Normal maintenance and repair may be performed for a shoreline stabilization facility for a legally established land use, however if substantial reconstruction of the stabilization structure is required or if the land use for which the shoreline

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stabilization structure was constructed is abandoned or replaced, the provisions for new structures in subsections A, B and C, above, shall apply.

2. Additions to or increases in size of existing shoreline stabilization measures shall be considered new structures.
- E. Shoreline stabilization measures as part of projects for the restoration of ecological functions or hazardous substance remediation projects pursuant to Chapter 70.105D RCW may be approved when compliance with the following standards are documented by a geotechnical analysis:
1. The stabilization measures together with any compensatory mitigation proposed by the applicant and/or required by regulatory agencies will not result in a net loss of shoreline ecological functions.
  2. The stabilization structure is evaluated by the hierarchy in subsection B above.
- F. Groins, weirs and other in-water structures may be authorized only as part of a Flood Hazard Control Plan or for ecological restoration. A geotechnical analysis of stream geomorphology both upstream and downstream shall document that alternatives to in-water structures are not feasible. Documentation shall establish impacts on ecological functions that must be mitigated to achieve no net loss.
- G. When any structural shoreline stabilization measures are demonstrated to be necessary, the following criteria shall apply:
1. Shoreline stabilization measures shall be designed by a qualified professional. Certification by the design professional may be required to ensure that installation meets all design parameters.
  2. Shoreline stabilization measures shall be designed to be of the minimum size necessary.
  3. Measures shall be incorporated into the design to assure no net loss of shoreline ecological functions.
- H. Geotechnical analysis pursuant to this section shall contain the following:
1. The estimated time frames and rates of erosion related to the life span of the structures or facilities being protected;
  2. An analysis of stream geomorphology both upstream and downstream shall assess the physical character and hydraulic energy potential of the specific stream reach and adjacent reaches upstream or down to assure that the physical integrity of the stream corridor is maintained, that stream processes are not adversely affected, and that the revetment will not cause significant damage to other properties or valuable shoreline resources; and
  3. An assessment of aquatic and upland wildlife that may be affected by stabilization measures.
- I. Restoration and/or public access shall be incorporated into the location, design, and maintenance of shoreline stabilization measures for public or quasi-public developments

whenever safely compatible with the primary purpose. Shore stabilization on publicly owned shorelines should not be allowed to decrease long term public use of the shoreline.

- J. Soft shoreline stabilization measures that provide restoration of shoreline ecological functions may be permitted water ward of the OHWM. Replenishment of substrate materials to maintain the specifications of the permitted design may be allowed as normal maintenance.

#### **21.30.040 Clearing and Grading**

- A. Clearing and grading activities shall only be allowed in association with an allowed (permitted) shoreline development.
- B. Clearing and grading activities shall be limited to the minimum necessary for the intended development, including any clearing and grading approved as part a landscape plan.
- C. A Temporary Erosion and Sediment Control (TESC) Plan shall be implemented that employs best management practices (BMPs) consistent with city design and construction standards.
- D. Clearing and grading activities shall adhere to a prepared schedule and plan approved by the director and shall specify:
  - 1. limits of clearing and grading activities;
  - 2. design, implementation, maintenance, and monitoring of mitigation requirements to prevent erosion, siltation, and destruction of vegetation; and
  - 3. time period of grading which shall be completed or stabilized by October 31st of each year unless the applicant provides technical analysis that demonstrates to the satisfaction of the director that no harm to the shoreline environment would result from grading between October 31st and April 1st.
- E. Clearing invasive shoreline vegetation listed on the King County Noxious Weed List is permitted in the shoreline, provided hand held equipment is used and native vegetation is promptly reestablished in the disturbed area.

#### **21.30.050 Fill**

Fill placed water ward of the OHWM or within Critical Area buffers shall be prohibited except for specific, permitted, water-dependent uses or ecological restoration projects where there is no feasible alternative to accommodate the use, and shall be limited to the minimum necessary to provide for the proposal.

#### **21.30.060 Ecological Function and Habitat Enhancement**

- A. An ecological function or habitat enhancement project shall be limited to areas in which past human activities have altered or degraded natural functions unless alteration of natural topography, vegetation, and other features is necessary as part of a larger enhancement program.

- B. The area of an enhancement project shall be protected in perpetuity through a conservation easement or similar encumbrance conveyed to the city or other public agency unless owned by a public agency with a primary responsibility for natural resource protection.
- C. A Model Toxic Control Act cleanup project shall restore a site to meet Critical Area buffers and other requirements of this code unless a particular approval for water-dependent use has been approved on the site.
- D. Habitat improvements shall use an ecosystem or landscape approach to assure that plans are integrated into overall shoreline geomorphic and ecological functions.

#### **21.30.070 In-Stream Structures**

- A. In-stream structures shall be prohibited except as an essential element of a permitted water-dependent use or as an essential part of a flood hazard reduction program or ecological restoration project. In all cases it must be demonstrated that there are no feasible alternative and the size shall be limited to the minimum necessary to provide for the required functions.
- B. Where in-stream structures are permitted, they shall be developed and maintained in a manner that does not adversely impact ecological functions or fish and wildlife habitat.
- C. Public access to and along the affected shoreline shall be provided in compliance with PMC 21.20.04.
- D. Design, construction and maintenance shall comply with all relevant regulatory programs, including but not limited to the State Department of Fish and Wildlife, State Department of Ecology, and other relevant agencies.
- E. Shoreline conditional use permit required for all in-stream structures except those related to ecological enhancement.

### **Chapter 21.40 SHORELINE USES**

Shoreline use activities are developments or activities that exist or are anticipated to occupy shoreline locations. Regulations are designed to assure that design, construction, and use requires specific provisions to assure compatibility with other uses and achieve no net loss of ecological functions.

Each proposed development within SMA jurisdiction shall be evaluated to determine its conformance with the use activity policies and regulations, as well as the Comprehensive Plan Shoreline Management Element goals and policies, and these regulations.

Uses and activities that are exempt from the requirements for a shoreline substantial development permit must be consistent with the policies and regulations of the SMA and the SMP.

#### **21.40.010 Prohibited Uses**

The following uses are prohibited in all shoreline environments:

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- A. Boat houses;
- B. Forest practices;
- C. Heavy Industrial Uses;
- D. New or expanded mining; and
- E. Permanent solid waste storage or transfer facilities; and
- F. Piers and Docks

**21.40.020 Agriculture**

- A. Existing and ongoing agricultural activities shall be permitted in all shoreline environment designations. All other agricultural activities shall be subject to conditional use review.
- B. Existing and ongoing agricultural activities are encouraged to provide a buffer of natural or planted permanent native vegetation between areas of crops, grazing, or other agricultural activity and adjacent waters, channel migration zones, and wetlands.
- C. Farming of fish, management of other aquatic products, and fish hatcheries are subject to the policies and regulations for Aquaculture in Section 21.40.03.
- D. Erosion control measures shall conform to guidelines and standards established by the U.S. Soil Conservation Service and the King County Conservation District.
- E. The management of agricultural activities shall prevent the direct runoff of sediment-laden, nutrient-laden, or chemical-laden waters into water bodies. Direct access to shoreline waters shall not be provided for livestock watering.
- F. Conversion of agricultural uses to other uses shall comply with the provisions of this Title.

**21.40.030 Aquaculture and Fish Hatcheries**

- A. A Shoreline Substantial Development Permit is required for all agricultural development not specifically exempted by the provisions of RCW 90.58.030(3)(e)(iv).
- B. Development of aquaculture facilities and fish hatcheries shall be permitted as a conditional use in the Urban Conservancy and Shoreline Commercial Environments.
- C. Aquaculture facilities and fish hatcheries shall be located landward of Critical Area buffers, except for elements requiring direct access to water such as water supply facilities.
- D. Aquaculture facilities and fish hatcheries shall be screened from view from adjacent residential or recreational areas by fences, berms, and/or vegetative buffers.
- E. Aquaculture facilities and fish hatcheries shall demonstrate that design and operational specifications shall control odor and shall address all facilities including storage and disposal of feed and other organic materials.
- F. Aquaculture facilities and fish hatcheries shall demonstrate that wastes will be disposed of in compliance with all applicable governmental waste disposal standards.

- G. Aquaculture facilities and fish hatcheries that involve significant risk of cumulative adverse effects on water quality, sediment quality, benthic and pelagic organisms, wild fish populations, and/or other ESA-listed species through potential contribution of antibiotic resistant bacteria, escapement of nonnative species, or other inputs or activities shall not be permitted.

**21.40.040 Boating Facilities**

- A. Because of the dynamic nature of the White River, private boating facilities, including docks and other moorage and private boat ramps or other launching facilities are prohibited.
- B. Public boat launching ramps shall be permitted in the Urban Conservancy and Shoreline Recreation Environments and permitted only for water-dependent uses or for public access only. Such facilities may include vehicle and trailer parking areas; and docks and floats for temporary use. accessory structures such as maintenance buildings and public restrooms..
- C. Applications for boat launching ramps shall demonstrate that:
1. The ramp will minimize impediments to migrating fish and will not locate on sites important for salmonids and other aquatic species, including spawning, feeding, or rearing areas;
  2. Navigation or recreation areas will not be obstructed;
  3. Parking and other support facilities excepting driveways and ramps providing direct access to the water will be located outside Critical Area buffers;
  4. Adequate parking supply will be provided to prevent parking spillover to public streets in residential areas;
  5. The boat launch design assures that structures will be aesthetically compatible with, or enhance, existing shoreline features and uses, and meet all applicable landscape buffer and parking lot landscaping requirements;
  6. Adequate facilities for the efficient handling of sewage and litter will be provided; and
  7. The proposal is restricted to the minimum size necessary to serve a proposed water-dependent use (except for docks accessory to single-family residences).

**21.40.050 Commercial, Light Industrial, Community Services, and Essential Public Facilities**

- A. New commercial uses or new light industrial uses are limited to the Shoreline Commercial Environment.
- B. New community service uses are limited to the Shoreline Commercial and Shoreline Recreation Environments.
- C. Essential Public Facilities are allowed in all Shoreline Environments subject to provisions of PMC 20.06.050 and subject to demonstration that no feasible location outside the

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shoreline exists within the service area of the facility. Location within the Urban Conservancy or Shoreline Residential Environments is subject to demonstration that no feasible location exists within other shoreline environments.

- D. New commercial, light industrial, and community services developments are subject to the following use preference:
1. Water-Dependent Uses: Water-dependent commercial, light industrial, and community services uses shall be given preference over water-related and water-enjoyment commercial and community services uses. Prior to approval of water-dependent uses, the Reviewing Official shall review a proposal for design, layout, and operation of the use and shall make specific findings that the use qualifies as a water-dependent use. Water-dependent commercial, light industrial, and community services uses shall provide public access in a manner that will not interfere with the water-dependent aspects of the use. The portion of a site not required for water-oriented use may include multiple use, approved non-water-oriented uses, ecological restoration, and public access.
  2. Water-Related Uses: Water-related commercial, light industrial, and community services uses shall not be approved if they displace existing water-dependent uses. Prior to approval of a water-related commercial or community services use, review of the design, layout, and operation of the use shall confirm that the use has a functional requirement for a waterfront location, or the use provides a necessary service supportive of the water-dependent uses, and/or the proximity of the use to its customers makes its services less expensive and/or more convenient. Multiple use development within 100 feet of the OHWM that incorporates water-dependent use may not include non-water oriented uses at the ground level except as consistent with a Master Site Plan approved prior to the adoption of this section.
  3. Water-Enjoyment Uses: Water-enjoyment commercial, light industrial, and community services uses shall not be approved if they displace existing water-dependent or water-related uses or if they occupy space designated for water-dependent or water-related use identified in a substantial development permit or other approval. Prior to approval of water-enjoyment uses, review of the design, layout, and operation of the use shall confirm that the use facilitates public access to the shoreline, or the use provides for aesthetic enjoyment of the shoreline for substantial number of people as a primary characteristic of the use. 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.
  4. Non-Water Oriented Uses: Non-water oriented commercial, light industrial, and community services uses may be permitted where:
    - a. Located on a site physically separated from the shoreline by another private property in separate ownership or a public right-of-way such that access for water-oriented use is precluded, or a public levee and habitat enhancement project, provided that such conditions were lawfully established prior to the

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effective date of the Shoreline Master Program, or established with the approval of the City.

- (1) Where proposed on a site where navigability is severely limited, the commercial, light industrial, or community service use provides a significant public benefit such as providing public access and ecological restoration.
  - (2) Where the use is part of a multiple use project that provides significant public benefit with respect to the objectives of the Act by:
    - i. Restoring ecological functions both in aquatic and upland environments that will provide native vegetation buffers according to the Restoration Element of this plan and other plans and policies including the WRIA 10 Salmon Restoration Plans; or
    - ii. Providing as public access the balance of the water frontage not devoted to ecological restoration and associated buffers, or providing onsite circulation or access to offsite public access as appropriate.
- E. Over-water structures, or other structures water ward of the OHWM, are allowed only for those portions of water-dependent commercial uses, light industrial uses, community services uses, or Essential Public Facilities that require over-water facilities as an essential feature of their function or for public recreation and public access facilities. Design of over-water structures or structures beyond the OHWM shall demonstrate that they will not interfere with normal stream geomorphic processes or require shoreline stabilization.
- F. All new or expanded commercial, light industrial, and community services developments and Essential Public Facilities shall take into consideration the scenic and aesthetic qualities of the shoreline and compatibility with adjacent uses. They shall make adequate provisions such as location of structures, parking and other facilities, and landscape screening, fences and other measures to protect the privacy and enjoyment of adjacent land uses and open space areas.
- G. Accessory development or use that does not require a shoreline location such as parking, service buildings or areas, access roads, utilities, signs, and storage of materials shall be located outside of SMA jurisdiction wherever feasible. Siting within SMA jurisdiction should be limited to facilities required to serve approved water-oriented uses and/or developments and should be located inland away from the land/water interface and landward of water-oriented developments.
- H. Signs for all development and uses must comply with the City of Pacific Sign Code and
1. Off-premise outdoor advertising signs are prohibited in all shoreline environments.
  2. No signs shall be erected or maintained upon trees, or drawn or painted upon rocks or other natural features.
  3. No signs shall be located between building setbacks and the OHWM except informational and directional signs.

**21.40.060 Recreation**

- A. Recreation facilities within SMA jurisdiction that are water-oriented or provide public access to the water are preferred.
- B. Accessory use facilities such as restrooms and parking areas shall be set back from Critical Area buffers and shall be outside SMA jurisdiction if feasible.
- C. A zone of native vegetation shall be provided adjacent to the edge of the water of the maximum practical extent consistent with provisions for public access and water oriented facilities.
- D. Recreation areas should be areas of chemical-free management except spot spraying for weed control of sufficient width to assure that fertilizers, pesticides, herbicides and other chemicals are not discharged into the water. Management of native vegetation is preferred in this area.
- E. Recreational development shall provide non-motorized access to the shoreline such as pedestrian and bicycle paths and shall provide signs indicating the public's right of access to shoreline areas. Motorized vehicular access is prohibited except as essential for water dependent uses such as boat launch ramps and maintenance.
- F. Recreational facilities shall make adequate provisions, such as landscape screening, fences and other measures to protect the privacy and enjoyment of adjacent land uses and open space areas.
- G. Non-water-oriented recreational developments may be permitted only where it can be demonstrated that:
  - 1. A water-oriented use is not reasonably expected to locate on the proposed site due to topography and/or other physical features, surrounding land uses, or the site's separation from the water.
  - 2. The proposed use does not usurp or displace land currently occupied by a water-oriented use and will not interfere with adjacent water-oriented uses.
  - 3. The proposed use will be of appreciable public benefit by increasing ecological functions together with public use, enjoyment, or access to the shoreline.
- H. All new non-water-oriented recreational development, where allowed, shall be conditioned with the requirement to provide public access and ecological restoration where practical.
- I. Recreation facilities shall demonstrate that they are located, designed and operated in a manner consistent with the purpose of the environmental designation in which they are located and will result in no net loss of shoreline ecological functions or ecosystem-wide processes.

**21.40.070 Residential Development**

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- A. Any new residential subdivision or other residential development shall meet all policies and regulations of this program, PMC Title 20 zoning code, and the subdivision code PMC Title 19, and other applicable policies and regulations.
- B. Multi-family and single-family attached residential are allowed where identified as permitted uses in the underlying zoning district, providing for subdivision of land for more than four parcels, except when there are demonstrated security and/or life safety issues consistent with the Public Access section of this Master Program.
- C. Any new residential subdivision or other residential development shall demonstrate that a primary residence can be built and maintained on each new lot that:
  - 1. Does not require new structural shoreline stabilization;
  - 2. Does not require a variance or modification of any standard within the SMP;
  - 3. Does not require modification of standard Critical Area buffers;
  - 4. Does not require new flood hazard control measures not currently incorporated in the applicable Flood Hazard Management Plan or result in increased flood hazard to other property; and
  - 5. Does not result in an unmitigated net loss of ecological functions.
- D. Transportation and utility facilities to serve new residential subdivision or other residential development should be located outside of SMP jurisdiction if possible and as far from the water's edge as feasible.
- E. Any new residential subdivision or other residential development should be clustered if possible to provide the maximum feasible area of natural or restored native vegetation adjacent to the shoreline.
- F. Residential development including accessory over-water structures is prohibited.
- G. Public access to and along the affected shoreline shall be provided in compliance with PMC 21.20.040.
- H. Fences that extend water ward of the OHWM shall be prohibited.

**21.40.080 Transportation**

**Roads and Bridges**

- A. Development of new roads or substantially expanded existing roads shall demonstrate the need for a shoreline location and that no feasible upland alternative outside the shoreline is available;
- B. Roads shall cross shoreline areas by the shortest, most direct route feasible to minimize impacts, unless such route would cause significant adverse impacts based on specific local features.
- C. The project configuration, design, and related features will minimize alteration of Critical Area buffers, will fit the existing topography as much as feasible, and minimize alterations to the natural or existing topography.

- D. New or expanded roads will provide Public Access in accordance with PMC 21.20.040 and where they afford scenic vistas, pedestrian viewpoints will be provided.
- E. Wetlands shall be avoided whenever feasible. Bridges shall be utilized when crossing wetlands to avoid obstructing movement of surface and groundwater unless it can be demonstrated that fill and compensatory mitigation will produce equal or greater ecological functions.
- F. Road crossings of streams will utilize bridges rather than culverts to the maximum extent feasible.
- G. Private access roads or driveways providing ingress and egress for individual single family residences or lots shall be limited to the minimum allowed by the Fire Code.
- H. Bridges will be built of sufficient lateral and vertical clearance to allow the unimpeded passage of flood flows and debris.

#### **Non-Motorized Facilities**

- I. Non-motorized facilities shall follow provision for public access facilities.
- J. Trails shall be developed consistent with the city's adopted plans
- K. Non-motorized facilities shall avoid sensitive features of the shoreline, including wetlands and fish and wildlife habitat. Facilities shall be placed outside of, or in the outer portions of buffers. Elevated walkways shall be utilized where feasible to cross wetlands and streams.

#### **Railroads**

- L. New railroads requiring right-of-way expansion within the shoreline are prohibited unless an analysis of regional transportation alternatives documents that no feasible alternative exists.
- M. Expansion of existing railroad facilities within existing rights-of-way (i.e. additional track or other features) must demonstrate the need for a shoreline location and that no feasible upland alternative outside the shoreline is available.
- N. The project configuration, design and related features will minimize alteration of Critical Area buffers, will fit the existing topography as much as feasible, and minimize alterations to the natural or existing topography.
- O. Wetlands shall be avoided whenever feasible. Bridges shall be utilized when crossing wetlands to avoid obstructing movement of surface and groundwater unless it can be demonstrated that fill and compensatory mitigation will produce equal or greater ecological functions.
- P. The replacement of the existing BNSF White River Bridge with a bridge with abutments set back further from the floodway is encouraged.
- Q. Trails and shoreline access should be provided with easements to safely cross railroads, to enhance regional non-motorized circulation and improve public access to the shoreline.

#### **21.40.090 Utilities**

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- A. Accessory utilities and local service utilities provide facilities needed to serve water-dependent and other permitted uses in the shoreline are subject to standards for ecological protection and visual compatibility.
- B. Regional utility systems designed to primarily serve utility demand of the larger region shall be located outside of SMA jurisdiction, to the extent feasible, except for crossings of water bodies and other elements of shorelands by linear facilities which shall cross in a perpendicular alignment minimizing disturbance.
- C. Linear facilities consisting of pipelines, sewers, cables and other facilities roughly parallel to the shoreline shall be discouraged except where no other feasible alternative exists. When permitted, design shall assure that maintenance of the facilities does not result in a net loss of shoreline ecological functions or significant impacts to other shoreline resources and values. At the time of replacement of such facilities that are nearing the end of their lifespan, or when such facilities are expanded, consideration shall be given to relocating outside of the shoreline as if they were new facilities.
- D. Utility crossings of water bodies shall be attached to bridges or located in other existing facilities, if feasible. If new installations are required to cross water bodies or wetlands they should avoid disturbing banks and streambeds and shall be designed to avoid the need for shoreline stabilization. Crossings shall be tunneled or bored where feasible. Installations shall be deep enough to avoid failures or need for protection due to exposure resulting from stream bed mobilization, aggregation, or lateral migration. Underwater utilities shall be placed in a sleeve if feasible to avoid the need for excavation in the event of the need for maintenance or replacement.
- E. New electrical distribution lines within the shoreline shall be placed underground. Distribution lines that cross water or other critical areas may be allowed to be placed above ground if:
  - 1. There is no feasible alternative route or
  - 2. Underground installation would substantially disrupt ecological functions and processes of water bodies and wetlands as horizontal drilling or similar technology that does not disturb the surface is not feasible; and
  - 3. Visual impacts are minimized to the extent feasible; and
  - 4. If overhead facilities require that native trees and other vegetation in a Critical Areas buffer cannot be maintained in a natural condition, compensatory mitigation is provided on or off-site.
- F. Utility rights of way shall be managed for compatible multiple uses such as shore access, trails, and recreation whenever feasible. Utility right of way acquisition should be coordinated with transportation and recreation planning. New utility corridors, or expansion of facilities on existing corridors, shall provide public access in accordance with PMC 21.20.040. Utilities shall be encouraged to provide pedestrian public access on existing utility corridors.
- G. Stormwater management facilities, including detention / retention / treatment ponds, vaults, media filtration facilities, and lagoons or infiltration basins, may be permitted within SMA jurisdiction if:

1. The facility does not displace vegetation or otherwise adversely impact a Critical Area buffer, or is located in a portion of a buffer previously disturbed; or
  2. The facility replaces an existing facility within SMP jurisdiction and results in a net reduction of impacts.
- H. Stormwater, wastewater, or water supply pump stations; and stormwater discharge facilities such as dispersion trenches, level spreaders, and outfalls, may be located in the shoreline jurisdiction if:
1. Due to topographic or other physical constraints there are no feasible locations for these facilities outside the shoreline;
  2. The facility minimizes and compensates for impacts to Critical Area buffers; and
  3. Any discharge facility is designed and maintained to prevent erosion or other adverse impacts.

## **Chapter 21.50 SHORELINE ADMINISTRATION**

### **21.50.010 Development Compliance**

All uses and developments within the jurisdiction of the Shoreline Management Act shall be planned and carried out in a manner that is consistent with the Shoreline Master Program and the policies of the Act as required by RCW 90.58.140(1), regardless of whether a shoreline permit, statement of exemption, shoreline variance, or shoreline conditional use permit is required. The Reviewing Official shall assure compliance with the provisions of the Shoreline Master Program for all permits and approvals processed by the City.

### **21.50.020 Shoreline Regulations Apply As Overlay**

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

Shoreline regulations shall apply as an overlay and in addition to development regulations, including but not limited to zoning, environmental regulations, development standards, subdivision regulations, and other regulations established by the City.

- A. Allowed uses shall be limited by the general polices and specific regulations regarding use preferences for water-dependent and water-oriented uses. Allowed uses may be specified and limited in specific shoreline permits. In the case of non-conforming development, the use provisions of this code shall be applied to any change of use, including occupancy permits.
- B. In the event of any conflict between Shoreline policies and regulations and any other regulations of the City, Shoreline policies and regulations shall prevail unless other

regulations provide greater protection of the shoreline natural environment and aquatic habitat.

- C. All regulations applied within the shoreline shall be liberally construed to give full effect to the objectives and purposes for which they have been enacted. Shoreline Master Program policies, found in the City's Comprehensive Plan, establish intent for the shoreline regulations in addition to RCW 90.58 and Chapter 173 of the Washington Administrative Code 173-26 and 173-27.

#### **21.50.030 Permit Administration**

Shoreline regulations shall be administered as provided for in PMC Title 16, Land Use and Environmental Procedures.

#### **21.50.040 Non-Conforming Uses, Continuation**

In addition to the provisions of Chapter 20.12, the following provisions shall apply within SMA jurisdiction:

Continuation, Non-Conforming Uses, defined herein to include structures and improvements which were legal upon their initiation, but do not conform to development regulations subsequently enacted, or those of a zoning district to which they are subsequently placed, or the allowed uses or performance standards of the SMP, may continue only if the nonconforming use:

- A. is not enlarged or extended in a manner which:
1. increases or reinforces its degree of nonconformity;
  2. results in enlargement of the building footprint or impervious area in a Critical Area buffer that extends further toward the water unless necessary to meet minimum standards of life-safety codes; or
  3. results in net loss of ecological functions;
- B. is not physically changed other than normal and necessary operation, maintenance, and repairs not exceeding 50 percent of the assessed valuation of the building or structure;
- C. is kept in good repair and is not a safety hazard; and
- D. has never ceased for a continuous period of 180 days or more.

#### **21.50.050 Developments not required to obtain shoreline permits or local review<sup>[LG10]</sup>**

A. Exceptions to Local Review Under SMA: Requirements to obtain a substantial development permit, conditional use permit, variance, letter of exemption, or other review conducted by the City to implement the SMA do not apply to the following projects for which there is no local review:

1. 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.
2. 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.

3. 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.

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

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

### **21.50.060 Exemption from Substantial Development Permit** [LG11]

A substantial development permit shall be required for all proposed use and development of shorelines unless the proposal is specifically exempt pursuant to RCW 90.58. ~~030(3)(e)140(1)~~. The following shall not be considered substantial developments for the purpose of this Master Program and are exempt from obtaining a Shoreline Substantial Development Permit (SSDP), provided that any additional exemptions established by legislative amendment of the statute shall constitute exemptions without amendment to this code. An exemption from an SSDP is not an exemption from compliance with the Act, ~~or the~~ applicable provisions of this Shoreline Master Program, or from any other regulatory requirements.

~~A. Governor's Certification: Any project with a certification from the Governor pursuant to chapter 80.50 RCW.~~

~~B.A. Projects Valued at \$6,416,047 or less: Any development of which the total cost or fair market value does not exceed six-seven thousand four hundred and sixteenforty-seven dollars (\$7,0476,416.00), if such development does not materially interfere with the normal public use of the water or shorelines of the state. The \$6,416 level is subject to adjustment for inflation by the office of financial management every five years.~~

~~C.B. Maintenance and Repair: Normal maintenance or repair of existing structures or developments, including damage by accident, fire or elements.~~

1. "Normal maintenance" includes those usual acts to prevent a decline, lapse, or cessation from a lawfully established condition.
2. "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 the shoreline resource or environment.
3. 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.

DC. Emergency Construction: Emergency construction necessary to protect property from damage by the elements.

1. 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 for full compliance with the Shoreline Master Program.
2. Emergency construction does not include development of new permanent protective structures where none previously existed. Where new protective structures are deemed 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, chapter 17-27 WAC or this Shoreline Program shall be obtained.
3. All emergency construction shall be consistent with the policies of chapter 90.58 RCW and the Shoreline Master Program.
4. In general, flooding or other seasonal events that can be anticipated and may occur, but that are not imminent, are not an emergency.

ED. Agricultural Construction or Practices: Construction and practices normal or necessary for farming, irrigation, and ranching activities, including agricultural service roads and utilities on shorelands, and the construction and maintenance of irrigation structures, including but not limited to head gates, pumping facilities, and irrigation channels. A feedlot of any size, all processing plants, other activities of a commercial nature, 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.

FE. Construction of Single-Family Residence and Accessory Buildings: Construction on shorelands by an owner, lessee or contract purchaser of a single family residence for his own use or for the use of his family, which residence does not exceed a height of 30 feet above average grade level as defined in WAC 173-27-030, and which meets all requirements of the State agency or local government having jurisdiction thereof, other than requirements imposed pursuant to this Section.

1. “Single family” residence means a detached dwelling designed for and occupied by one (1) 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 OHWM and the perimeter of a wetland.
2. Construction authorized under this exemption shall be located landward of the OHWM.

GF. Construction of Non-Commercial Docks: 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 and multi-family residences.

This exception applies if

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- a. the fair market value of the dock does not exceed twenty-two thousand five hundred dollars (\$22,500) for docks that are constructed to replace existing docks, and of equal or lesser square footage than the existing dock being replaced; or eleven thousand two hundred dollars (\$11,200) for all other docks constructed in fresh waters; ~~twenty thousand dollars (\$10,000.00)~~; however, if subsequent construction having a fair market value exceeding two thousand five hundred dollars (\$2,500.00) occurs within five (5) years of completion of the prior construction, the subsequent construction shall require a substantial development permit; and
- b. A dock is a landing and moorage facility for watercraft and does not include recreational decks, storage facilities, or other appurtenances.

HG. Construction Authorized by the Coast Guard: Construction or modification, by or under the authority of the Coast Guard or a designated port management authority, of navigational aids such as channel markers and anchor buoys.

H. Operation, Maintenance, or Construction Related to Irrigation: Operation, maintenance, or construction of canals, waterways, drains, reservoirs, or other facilities that now exist or are hereafter created or developed as part of an irrigation system for the primary purpose of making use of system waters, including return flow and artificially stored groundwater for the irrigation of lands.

J. Marking of Property Lines on State-Owned Lands: The marking of property lines or corners on State-owned lands when such marking does not interfere with the normal public use of the surface of the water.

KJ. Operation and Maintenance of Agricultural Drainage or Dikes: 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.

LK. Activities Necessary for Permit Application: Site exploration and investigation activities that are prerequisites to preparation of an application for development authorization under the Shoreline Master Program, if:

1. the activity does not interfere with the normal public use of the surface waters;
2. 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;
3. the activity does not involve the installation of a structure, and upon completion of the activity the vegetation and land configuration of the site are restored to conditions existing before the activity;
4. a private entity seeking development authorization under the Shoreline Master Program first posts a performance bond or provides other evidence of financial responsibility to the director to ensure that the site is restored to pre-existing conditions; and
5. the activity is not subject to the permit requirements of RCW 90.58.550.

ML. Removal or Control of noxious Weeds: The process of removing or controlling an aquatic noxious weed, 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

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impact statement published by the Department of Agriculture or the Department of Ecology jointly with other State agencies under chapter 43.21C RCW.

~~NM.~~ Watershed Restoration Projects: Watershed restoration projects as defined below:

1. “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 ten (10) miles of stream reach, in which less than twenty five (25) cubic yards of sand, gravel, or soil is 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.
  - 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 two hundred (200) square feet in floor area and is located above the OHWM of the stream.
2. “Watershed restoration plan” means a plan developed or sponsored by a state department, a federally recognized Indian Tribe, a city, a county, or a conservation district, for which agency and public review has been conducted pursuant to chapter 43.21C RCW, the State Environmental Policy Act. The watershed restoration plan generally contains 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.

~~ON.~~ Projects to Improve Fish and Wildlife Passage or Habitat: A public or private project, the primary purpose of which is to improve fish or wildlife habitat or fish passage, when all of the following apply:

1. The project has been approved in writing by the Department of Fish and Wildlife as necessary for the improvement of the habitat or passage and appropriately designed and sited to accomplish the intended purpose.
2. The project has received hydraulic project approval by the Department of Fish and Wildlife pursuant to chapter 75.20 RCW.
3. The director has determined that the project is consistent with this Master Program.

~~P.~~ Hazardous Substance Remediation: ~~Hazardous substance remedial actions pursuant to WAC 173-27-040(3).~~

~~Q.~~ Projects on Lands Not Subject to Shoreline Jurisdiction Prior to Restoration: ~~Actions on land that otherwise would not be under the jurisdiction of the Shoreline Management Act except for a change in the location of OHWM or other criteria due to a shoreline restoration~~

~~project creating a landward shift in the ordinary high water mark that brings the land under the jurisdiction of the Act approved in accordance with PMC 21.50.110.~~

RO. The external or internal retrofitting of an existing structure with the exclusive purpose of compliance with the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.) or to otherwise provide physical access to the structure by individuals with disabilities.

SP. All of the above exemptions are subject to the following regulations:

1. Exemptions shall be construed narrowly. Only those developments that meet the precise terms of one or more of the listed exemptions may be granted exemptions from the substantial development permit process.
2. The burden of proof that a development or use is exempt is on the applicant/proponent of the exempt development action.
3. If any part of a proposed development is not eligible for exemption, then a Substantial Development Permit is required for the entire project.

#### **21.50.0670 Exemption Certification Procedures**

- A. Any person claiming exemption from the permit requirements of this Master Program as a result of the exemptions specified in this Section shall make application for an exemption certificate to the director in the manner prescribed by the City.
- B. Any development which occurs within the regulated Shorelines of the State, whether it requires a permit or not, must be consistent with the intent of the state law.
- C. The City may attach conditions to the approval of exempted developments and/or uses as necessary to assure consistency of the project with the Shoreline Management Act and the Shoreline Master Program.

~~D. If any part of a proposed development is not eligible for exemption, then a Shoreline Permit is required for the entire proposed development project [LG12].~~

#### **21.50.0780 Land Division**

Prior to approval of any land division, such as short subdivisions, long plats, and boundary line adjustments within shoreline jurisdiction, the Reviewing Official shall document compliance with bulk and dimensional standards as well as policies and regulations of the Shoreline Master Program and attach appropriate conditions and/or mitigating measures to such approvals to ensure the design, development activities, and future use associated with such lands are consistent with the Shoreline Master Program.

#### **21.50.0890 Approval Criteria**

In order to approve any development within SMP jurisdiction, the Reviewing Official must find that a proposal is consistent with the following criteria:

- A. All regulations of the Shoreline Master Program appropriate to the shoreline designation and the type of use or development proposed shall be met, except those bulk and dimensional standards that have been modified by approval of a Shoreline Variance.
- B. All policies of the Shoreline Master Program appropriate to the shoreline area designation and the type of use or development activity proposed shall be considered and substantial

compliance demonstrated, except those bulk and dimensional standards that have been modified by approval of a Shoreline Variance. A reasonable proposal that cannot fully conform to these policies may be permitted, provided it is demonstrated to the Reviewing Official that the proposal is clearly consistent with the overall goals, objectives and intent of the Shoreline Master Program.

**21.50.1090 Written Findings Required**

All permits or statements of exemption issued for development or use within shoreline jurisdiction shall include written findings prepared by the Reviewing Official, including compliance with bulk and dimensional standards and policies and regulations of the Shoreline Master Program. The Reviewing Official may attach conditions to the approval of exempt developments and/or uses as necessary to assure consistency of the project with the Act and the Program.

**21.50.1100 Building Permit Compliance:**

For all development within shoreline jurisdiction, the Building Official shall not issue a building permit for such development until compliance with the Shoreline Master Program has been documented. If a Shoreline Substantial Development permit is required, no permit shall be issued until all comment and appeal periods have expired. Any permit issued by the Building Official for such development shall be subject to the same terms and conditions that apply to the shoreline permit.

**21.50.1120 Restoration Project Relocation of OHWM**

The City may grant relief from Shoreline Master Program development standards and use regulations when the following apply:

- A. A shoreline restoration project causes, or would cause, a landward shift in the ordinary high water mark, resulting in the following:
  - 1. Land that had not been regulated under this chapter prior to construction of the restoration project is brought under shoreline jurisdiction; or
  - 2. Additional regulatory requirements apply due to a landward shift in required shoreline buffers or other regulations of the applicable Shoreline Master Program; and
  - 3. Application of Shoreline Master Program regulations would preclude or interfere with use of the property permitted by local development regulations, thus presenting a hardship to the project proponent.
- B. The proposed relief meets all of the following criteria:
  - 1. The proposed relief is the minimum necessary to relieve the hardship.
  - 2. After granting the proposed relief, there is net environmental benefit from the restoration project.
  - 3. Granting the proposed relief is consistent with the objectives of the shoreline restoration project and consistent with the Shoreline Master Program.

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4. Where a shoreline restoration project is created as mitigation to obtain a development permit, the project proponent required to perform the mitigation is not eligible for relief under this section.
- C. The application for relief must be submitted to the Department of Ecology for written approval or disapproval. This review must occur during the department's normal review of a shoreline substantial development permit, conditional use permit, or variance. If no such permit is required, then the department shall conduct its review when the local government provides a copy of a complete application and all supporting information necessary to conduct the review.
1. Except as otherwise provided in Subsection D of this section, the Department of Ecology shall provide at least 20-days notice to parties that have indicated interest to the department in reviewing applications for relief under this section, and post the notice on to their website.
  2. The Department shall act within 30 calendar days of close of the Public Notice period, or within 30 days of receipt of the proposal from the local government if additional public notice is not required.
- D. The public notice requirements of Subsection C of this section do not apply if the relevant shoreline restoration project was included in a Shoreline Master Program or shoreline restoration plan as defined in WAC 173-26-201, as follows:
1. The restoration plan has been approved by the department under applicable Shoreline Master Program guidelines; and
  2. the shoreline restoration project is specifically identified in the Shoreline Master Program or restoration plan or is located along a shoreline reach identified in the Shoreline Master Program or restoration plan as appropriate for granting relief from shoreline regulations; and
  3. the Shoreline Master Program or restoration plan includes policies addressing the nature of the relief and why, when, and how it would be applied.

**21.50.1230 Shoreline Permit Application Procedures**

- A. Shoreline permits shall be processed in accordance with the applicable procedures of PMC Title 16, Land Use and Environmental Procedures.
- B. No shoreline development shall be undertaken on shorelines of the City without first obtaining a permit or approval, whether or not a “substantial development permit” is required.
- C. When appropriate due to the type of critical areas, habitat, or species present, or project area conditions, the Reviewing Official may require the applicant to prepare or fund analyses or activities conducted by third party or parties selected by the Reviewing Official and paid for by the applicant. Analyses and/or activities conducted under this Subsection include, but are not limited to:
  1. Evaluation by an independent qualified professional of the applicant's analysis and the effectiveness of any proposed mitigating measures or programs, to include any recommendations as appropriate; and

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2. A request for consultation with the Washington Department of Fish and Wildlife, Washington State Department of Ecology, or the local Native American Indian Tribe or other appropriate agency; and/or
  3. Analysis of detailed surface and subsurface hydrologic features both on and adjacent or abutting to the site.
- D. Public Notice: Three (3) copies of a notice of development application shall be posted prominently on the property concerned and in conspicuous public places within three hundred (300) feet thereof. The Notice of Development Application shall also be mailed to property owners within three hundred (300) feet of the boundaries of the subject property, exclusive of right of ways.
- E. Standard Public Comment Time: Each notice of development application shall include a statement that persons desiring to present their views with regard to said application may submit these in writing or notify the Community Development Department in writing of their interest within fourteen (14) days from the date of the notice of application.
- F. Special Public Comment Time: Notice of Development Application for a substantial development permit regarding a limited utility extension as defined in RCW 90.58.140 (11)(b) or for the construction of a bulkhead or other measures to protect a single family residence and its appurtenant structures from shoreline erosion shall include a fourteen (14) day comment period. Such notification or submission of views to the Director shall entitle those persons to a copy of the action taken on the application.

**21.50.1340 Conditional Approval**

Should the applicable reviewer find that any application does not substantially comply with criteria imposed by the Master Program and the Shoreline Management Act of 1971, he/she may deny such application or attach any terms or condition which he/she deems suitable and reasonable to affect the purpose and objectives of this Master Program.

**21.50.1450 Surety Devices**

The Director may require the applicant to post a surety device in favor of the City to assure full compliance with any terms and conditions imposed on any shoreline permit. Said surety device shall be in an amount to reasonably assure the City that any deferred improvement will be carried out within the time stipulated and in accordance with approved plans.

**21.50.1560 Conditional Use**

The objective of a conditional use provision is to provide more control and flexibility for implementing the regulations of the Master Program. With provisions to control undesirable effects, the scope of allowed uses can be expanded.

Decision Criteria: Uses classified as Conditional Uses can be permitted only after consideration and by meeting such performance standards that make the use compatible with other permitted uses within that area. A Conditional Use Permit may be granted subject to the Hearing Examiner determining compliance with each of the following conditions:

- A. The use must be compatible with other permitted uses within that area.
- B. The use will not interfere with the public use of public shorelines.

- C. Design of the site will be compatible with the surroundings and the City’s Master Program.
- D. The use shall be in harmony with the general purpose and intent of the City’s Master Program.
- E. The use meets the Conditional Use criteria in WAC 173-27-160.

**21.50.1670 Variances**

A development may be granted which is at variance with the criteria established in the SMP where, owing to special conditions pertaining to the specific piece of property, the literal interpretation and strict application of the criteria established in the SMP would cause undue and unnecessary hardship or practical difficulties. A variance may be required for a use that does not require a Substantial Development Permit but which may not be approved because it does not comply with the provisions of the SMP.

Decision Criteria: The fact that the applicant might make a greater profit by using his property in a manner contrary to the intent of the Master Program is not, by itself, sufficient reason for a variance. The Hearing Examiner must find each of the following:

- A. Exceptional or extraordinary circumstances or conditions applying to the subject property, or to the intended use thereof, that do not apply generally to other properties on shorelines in the same vicinity.
- B. The Variance Permit is necessary for the preservation and enjoyment of a substantial property right of the applicant possessed by the owners of other properties on shorelines in the same vicinity.
- C. The Variance Permit will not be materially detrimental to the public welfare or injurious to property on the shorelines in the same vicinity.
- D. The Variance granted will be in harmony with the general purpose and intent of this Master Program.
- E. The public welfare and interest will be preserved. If more harm will be done to the area by granting the variance than would be done to the applicant by denying it, the Variance shall be denied, but each property owner shall be entitled to the reasonable use and development of his lands as long as such use and development is in harmony with the general purpose and intent of the Shoreline Management Act of 1971, and the provisions of this Master Program.
- F. The proposal meets the variance criteria in WAC 173-27-170.

**21.50.1780 Time Requirements for Shoreline Permits**

- A. The time requirements of this Section shall apply to all Substantial Development Permits and to any development authorized pursuant to a variance or Conditional Use Permit authorized under the Shoreline Master Program.
- B. No construction pursuant to such permit shall begin or be authorized and no building, grading or other construction permits or use permits shall be issued by the City until 21 days from the date a substantial development permit was filed with the Department of Ecology and the Attorney General, or until all review proceedings are completed as were

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initiated within the twenty one (21) days of the date of filing. Filing shall occur in accordance with RCW 90.58.140(6) and WAC 173-27-130.

- C. No permits and construction pursuant to a conditional use permit or variance shall begin or be authorized until 21 days from the date of notification of approval by the Department of Ecology, or until all review proceedings are completed as were initiated within the twenty one (21) days of the date of filing. Filing shall occur in accordance with RCW 90.58.140(6) and WAC 173-27-130.
- D. Unless a different time period is specified in the shoreline permit as authorized by RCW 90.58.143, construction activities, or a use or activity for which a permit has been granted pursuant to this Master Program, must be commenced within two (2) years of the effective date of a shoreline permit, or the shoreline permit shall terminate and a new permit shall be necessary. However, the director may authorize a single extension for a period not to exceed one year based on reasonable factors if a request for extension has been filed with the City before the expiration date and notice of the proposed extension is given to parties of record and the Department of Ecology. Construction activities or commencement of construction means that construction applications must be submitted, permits must be issued, and foundation inspections must be approved and completed.
- E. A permit authorizing construction shall extend for a term of no more than five (5) years after the effective date of a shoreline permit, unless a longer period has been specified pursuant to RCW 90.58.143 and Subsection F of this Section. If an applicant files a request for an extension prior to expiration of the shoreline permit, the director shall review the permit and upon a showing of good cause may authorize a single extension of the shoreline permit for a period of up to one year. Otherwise said permit shall terminate. Notice of the proposed permit extension shall be given to parties of record and the Department of Ecology. To maintain the validity of a shoreline permit, it is the applicant's responsibility to maintain valid construction permits in accordance with adopted Building Codes.
- F. If it is determined that standard time requirements of Subsections D and E should not be applied, the Hearing Examiner, upon a finding of good cause, may establish shorter time limits, provided that as a part of action on a conditional use or variance permit the approval of the Department of Ecology shall be required. "Good cause" means that the time limits established are reasonably related to the time actually necessary to perform the development on the ground and complete the project that is being permitted.
- G. For purposes of determining the life of a shoreline permit, the effective date of a substantial development permit, shoreline conditional use permit, or shoreline variance permit shall be the date of filing as provided in RCW 90.58.140(6). The permit time periods do not include the time during which a use or activity was not actually pursued due to the pendency of appeals or legal actions, or due to the need to obtain any other government permits and approvals for the development that authorize the development to proceed.
- H. It is the responsibility of the applicant to inform the director of the pendency of other permit applications filed with agencies other than the City, and of any related administrative or legal actions on any permit or approval. If no notice of the pendency of other permits or approvals is given to the City prior to the expiration date established by the

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shoreline permit or the provisions of this Section, the expiration of a permit shall be based on the effective date of the shoreline permit.

- I. If the granting of a shoreline permit by the City is appealed to the Shoreline Hearings Board, and the Shoreline Hearings Board has approved the granting of the permit, and an appeal for judicial review of the Shoreline Hearings Board decision is filed, construction authorization may occur subject to the conditions, time periods, and other provisions of RCW 90.58.140(5)(b).

- J. After all local permit administrative appeals or reconsideration periods are complete and the permit documents are amended to incorporate any resulting changes, the City will 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; a permit data form (cover sheet); and applicable SEPA documents.
  2. Consistent with RCW 90.58.140(6), the state’s 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: the date that Ecology receives the City’s decision.
    - b. For a Conditional Use Permit (CUP) or Variance: the date that Ecology’s decision on the CUP or Variance is transmitted to the applicant and City.
    - 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.

- K. Special procedures for WSDOT projects.

1. Permit review time for projects on a state highway. Pursuant to RCW 47.01.485, the Legislature established a target of 90 days review time for local governments.
2. Optional process allowing construction to commence twenty-one days after date of filing. Pursuant to RCW 90.58.140, Washington State Department of Transportation projects that address significant public safety risks may begin twenty-one days after the date of filing if all components of the project will achieve no net loss of shoreline ecological functions.

**21.50.1890 Rulings to State**

Any ruling on an application for a substantial development permit under authority of this Master Program, whether it is an approval or denial, shall, with the transmittal of the ruling to the applicant, be filed concurrently with the Department of Ecology and the Attorney General by the Director. Filing shall occur in accordance with RCW 90.58.140(6) and WAC 173-27-130.

**21.50.190200 Appeals**

Any person aggrieved by the granting, denying, or rescinding of a permit on shorelines of the state pursuant to RCW 90.58.140 may, except as otherwise provided in \*chapter 43.21L RCW, seek review from the shorelines hearings board by filing a petition for review within twenty-one days of the date of receipt of the decision as provided for in RCW 90.58.140(6).

**21.50.2100 Enforcement**

All provisions of this Master Program shall be enforced by the Director. For such purposes, the Director or his duly authorized representative shall have the power of a police officer.

**21.50.2120 Rescission of Permits**

- A. Any shoreline permit issued under the terms of this Master Program may be rescinded or suspended upon a finding that a permittee has not complied with conditions of the permit.
- B. Such rescission and/or modification of an issued permit shall be initiated by serving written notice of noncompliance on the permittee, which shall be sent by registered or certified mail, return receipt requested, to the address listed on the application or to such other address as the applicant or permittee may have advised the City; or such notice may be served on the applicant or permittee in person or his agent in the same manner as service of summons as provided by law.
- C. Before any such permit can be rescinded, a public hearing shall be held by the Hearing Examiner. Notice of the public hearing shall be made in accordance with PMC 16.30.030. The decision of the Hearing Examiner shall be the final decision of the City on all rescinded applications. A written decision shall be transmitted to the Department of Ecology, the Attorney General's office, the applicant, and such other departments or boards of the City as are affected thereby and the legislative body of the City.
- D. The Department of Ecology may petition the Shoreline Hearings Board for a rescission of the permit if the department is of the opinion that the noncompliance continues to exist thirty days after the date of the notice, and the local government has taken no action to rescind the permit, as provided by RCW 90.58.140(8).

**21.50.2230 Violations and Penalties**

- A. Every person violating any of the provisions of this Master Program or the Shoreline Management Act of 1971 shall be punishable under conviction by a fine not exceeding one thousand dollars (\$1,000.00), or by imprisonment not exceeding 90 days, or by both such fine and imprisonment, and each day's violation shall constitute a separate punishable offense.
- B. The City Attorney may bring such injunctive, declaratory, or other actions as are necessary to insure that no uses are made of the Shorelines of the State within the City's jurisdiction which are in conflict with the provisions and programs of this Master Program or the

Shoreline Management Act of 1971, and to otherwise enforce provisions of this Section and the Shoreline Management Act of 1971.

- C. Any person subject to the regulatory program of this Master Program who violates any provision of this Master Program or the provisions of a permit issued pursuant thereto shall be liable for all damages to public or private property arising from such violation, including the cost of restoring the affected area to its condition prior to such violation. The City Attorney shall bring suit for damages under this subsection on behalf of the City. Private persons shall have the right to bring suit for damages under this subsection on their own behalf and on behalf of all persons similarly situated. If liability has been established for the cost of restoring an area affected by violation, the Court shall make provision to assure that restoration will be accomplished within a reasonable time at the expense of the violator. In addition to such relief, including monetary damages, the Court in its discretion may award attorney's fees and costs of the suit to the prevailing party.

#### **21.50.2340 Shoreline Moratorium**

The City Council may adopt moratoria or other interim official controls as necessary and appropriate to implement the provisions of the Shoreline Management Act. Prior to adopting such moratorium or other interim official controls, the City Council shall:

1. Hold a public hearing on the moratorium or control within 60 days of adoption;
2. adopt detailed findings of fact that include, but are not limited to, justifications for the proposed or adopted actions and explanations of the desired and likely outcomes; and
3. notify the Department of Ecology of the moratorium or control immediately after its adoption. The notification must specify the time, place, and date of any public hearing held.

Said moratorium or other official control shall provide that all lawfully existing uses, structures, or other development shall continue to be deemed lawful conforming uses and may continue to be maintained, repaired, and redeveloped, so long as the use is not expanded, under the terms of the land use and shoreline rules and regulations in place at the time of the moratorium.

Said moratorium or control adopted under this section may be effective for up to six months if a detailed work plan for remedying the issues and circumstances necessitating the moratorium or control is developed and made available for public review. A moratorium or control may be renewed for two six-month periods if the City Council complies with Subsection H. before each renewal.

If a moratorium or control is in effect on the date a proposed Master Program or amendment is submitted to the Department of Ecology, the moratorium or control must remain in effect until the Department's final action under RCW 90.58.090; however, the moratorium expires six months after the date of submittal if the Department has not taken final action.

#### **21.50.2450 Administration rules promulgation.**

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The director is authorized to adopt such rules as are necessary and appropriate to implement this chapter. The director may prepare and require the use of such forms as are necessary to its administration.

**21.50.2560 Amendments authorized.**

The provisions of the Shoreline Master Program Use Regulations or the Shoreline Environment Map may be amended as provided for in RCW 90.58.120 and 90.58.200 and Chapter 173-26 WAC. Amendments shall be processed in accordance with one of the following procedures:

1. Standard local process for approving/amending shoreline master programs, WAC 173-26-100.
2. Optional joint review process for amending shoreline master programs, WAC 173-26-104.

**21.50.2670 Amendments adopted City Council.**

Adoption of an amendment to the official controls shall be adopted by the city council by ordinance after a public hearing and report by the Planning Commission in accordance with the procedural requirements of PMC 16.32.

**21.50.2780 Initiation of amendments**

The Shoreline Use Regulations or Map amendments thereto may be initiated by:

- The adoption of a motion by the City Council requesting the Planning Commission to set a matter for hearing and recommendation.
- The adoption of a motion by the Planning Commission.
- Application of one or more owners of property affected by the proposal.
- A department or agency of the City or governmental entity.

**21.50.2890 Burden of proof**

Proponents for Shoreline Environment Map redesignations (i.e., amendments to the Shoreline Environment Designation Map) shall bear the burden of proof for demonstrating consistency with the shoreline environment criteria of the Master Program, Chapter 173-26 WAC, and the goals and policies of the City of Pacific Comprehensive Plan.

**21.50.290300 Transmittal to the Department of Ecology**

Subsequent to final action by the Council adopting or amending the Shoreline Master Program or official control, said Master Program, official control, or amendment thereto shall be submitted to the Department of Ecology for approval. No such Master Program, official control, or amendment thereto shall become effective until approval by the Department of Ecology is obtained pursuant to RCW 90.58.90. Master Programs or amendments thereto are effective 14 days after Ecology's approval letter.