

Chapter 8

Administrative Procedures

I. Shoreline Permit Requirements

Any person wishing to undertake a substantial development within shoreline jurisdiction shall apply to the Administrator for a Shoreline Permit. Based on the provisions of this Master Program, the Administrator shall determine if a Substantial Development Permit, a Shoreline Conditional Use Permit, and/or a Shoreline Variance is required.

Exempt developments, which are outlined below in Section A, shall not require a Substantial Development Permit. However, an exempt development may require a Conditional Use Permit, and/or a Variance from Master Program provisions.

A. Exemptions from Substantial Development Permit Requirements

An exemption from the Substantial Development Permit requirements does not constitute an exemption from the policies and use regulations of the Shoreline Management Act, the provisions of this Master Program, and other applicable city, state, or federal permit requirements.

The following shall not be considered substantial developments for the purpose of this Master Program.

1. Any development of which the total cost or fair market value, whichever is higher, does not exceed five thousand (\$5,000) dollars, if such development does not materially interfere with the normal public use of the water or shorelines of the state. For purposes of determining whether or not a permit is required, the total cost or fair market value shall be based on the value of development that is occurring on shorelines of the state. The total cost or fair market value of the development shall include the fair market value of any donated, contributed or found labor, equipment or materials;
2. Normal maintenance or repair of existing structures or developments, including damage by accident, fire, or elements. "Normal maintenance" includes those usual acts to prevent a decline, lapse, or cessation from a lawfully established condition. "Normal repair" means to restore a development to a state comparable to its original condition within a reasonable period after decay or partial destruction except where repair causes substantial adverse effects to the shoreline resource or environment. Replacement of a structure or development may be authorized as repair where such replacement is the common method of repair for the type of structure or development and the replacement

structure or development is comparable to the original structure or development including but not limited to its size, shape, configuration, location and external appearance and the replacement does not cause substantial adverse effects to shoreline resources or environment;

3. Construction of a normal protective bulkhead common to single family residences. A "normal protective bulkhead" is constructed at or near the ordinary high water mark to protect a single family residence and is for protecting land from erosion, not for the purpose of creating dry land. Where an existing bulkhead is being replaced, it shall be constructed no further waterward of the existing bulkhead than is necessary for construction of new footings;
4. Emergency construction necessary to protect property from damage by the elements. An "emergency" is an unanticipated and imminent threat to public health, safety, or the environment which requires immediate action within a time too short to allow full compliance with the Act or this Master Program. As a general matter, flooding or other seasonal events that can be anticipated and may occur but that are not imminent are not an emergency;
5. Construction and practices normal or necessary for farming, irrigation, and ranching activities, including agricultural service roads and utilities, and the construction and maintenance of irrigation structures including but not limited to head gates, pumping facilities, and irrigation channels: Provided that a feedlot of any size, all processing plants, other activities of a commercial nature, alteration of the contour of the area by leveling or filling other than that which results from normal cultivation, shall not be considered normal or necessary farming or ranching activities. A feedlot shall be an enclosure or facility used or capable of being used for feeding livestock, hay, grain, silage, or other livestock feed, but shall not include land for growing crops or vegetation for livestock feeding and/or grazing, nor shall it include normal livestock wintering operations;
6. Construction 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 have a building height that exceeds of thirty (30) feet and meets all requirements of the state agency or local government having jurisdiction thereof;
7. Construction of a dock, including community dock, designed for pleasure craft only, for the private noncommercial use of the owner, lessee, or contract purchaser of a single family residence or multi-family residences. The fair market value of the dock does not exceed ten thousand (\$10,000) dollars, but any subsequent construction having a fair market value exceeding two thousand five hundred (\$2,500) dollars occurs within five years of completing of the prior construction, a Substantial Development Permit is required;

8. 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 ground water for the irrigation of lands;
9. The marking of property lines or corners on state owned lands, when such marking does not significantly interfere with the normal public use of the surface waters;
10. 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 part of an agricultural drainage or diking system.
11. Any project with certification from the Governor pursuant to Chapter 80.50 RCW.
12. Watershed restoration projects as defined in WAC 173-27-040. Local government shall review the projects for consistency with the Shoreline Master Program in an expeditious manner and shall issue its decision along with any conditions within forty-five (45) days of receiving all materials necessary to review the request for exemption from the applicant. No fee may be charged for accepting and processing requests for exemption for watershed restoration.
13. Site exploration and investigation activities that are prerequisite to preparation of an application for development authorization under this chapter, if:
 - The activity does not interfere with the normal public use of the surface waters;
 - 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;
 - The activity does not involve the installation of any structure, and upon completion of the activity the vegetation and land configuration of the site are restored to conditions existing before the activity;
 - A private entity seeking development authorization under this section first posts a performance bond or provides other evidence of financial responsibility to the local jurisdiction to ensure that the site is restored to preexisting conditions.
14. The process of removing or controlling aquatic noxious weeds, as defined in RCW 17.26.020, through the use of an herbicide or other treatment methods applicable to weed control that are recommended by a final environmental impact statement published by the Department of

Agriculture or the Department of Ecology jointly with other state agencies under chapter 43.21C RCW;

15. 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:
 - 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;
 - The project has received hydraulic project approval by the department of fish and wildlife pursuant to chapter 75.20 RCW; and
 - The local government has determined that the project is consistent with the local shoreline master program. The local government shall make such determination in a timely manner and provide it by letter to the project proponent.
16. Hazardous substance remedial actions. The procedural requirements of this Master Program shall not apply to a project for which a consent decree, order or agreed order has been issued pursuant to chapter 70.105D RCW or to the department of ecology when it conducts a remedial action under chapter 70.105D RCW. The Department of Ecology shall, in consultation with the appropriate City, assure that such projects comply with the substantive requirements of chapter 90.58 RCW, chapter 173-26 WAC and the local master program.

B. Unclassified Uses

Uses that are not classified in *Chapter 7* may be authorized as Conditional Uses provided the applicant can demonstrate compliance with the criteria listed in Section III.B.3 and all other applicable policies and regulations of this Master Program.

II. Shoreline Permit Procedures

Pre-application

A. Information Prior to Submitting Application

Prior to submitting a complete application for a Substantial Development Permit, a Conditional Use Permit, and/or a Variance, the applicant may request preliminary site plan review by the City departments. This will enable the applicant to become familiar with the requirements of this Master Program, other applicable regulations, and the approval process. The preliminary site plan review shall be conducted according to procedures established by the Administrator.

B. Statement of Exemption

A Statement of Exemption must be obtained from the Administrator for a development that is exempt from Shoreline Substantial Development Permit requirements, but which requires other permit approvals, such as a building permit. This statement will verify that the development is exempt. The statement will also list any provisions that must be followed to ensure that the development is consistent with the Master Program and the Act. The Statement of Exemption shall be attached to the other permit approvals.

Whenever a development falls within the exemption criteria listed above and is subject to a U.S. Army Corps of Engineers Section 10 or Section 404 Permit, the Administrator shall prepare a Statement of Exemption and send a copy of this statement to the Washington Department of Ecology.

Before issuing a Statement of Exemption, the Administrator shall review the Master Program to determine if the proposed development requires a Shoreline Conditional Use Permit and/or a Variance. It may be necessary for the Administrator to conduct a site inspection to ensure that the proposed development meets the exemption criteria.

1. **Application Forms.** Applications for such shoreline exemptions shall be made on forms provided by the Administrator.
2. **Site Plan** – a site plan shall meet the requirements of the underlying development permit and shall include the following those items listed Section C.2 below.

C. Substantial Development Permits

1. **Application Forms.** No substantial development shall be undertaken on shorelines of the City without first obtaining a Substantial Development Permit from the Hearing Examiner. Applications for such permits shall be made on forms provided by the Administrator.

For Variance and Conditional Use Permit requests, the application shall also demonstrate compliance with the provisions of Section III in this chapter. In addition to the information requested on the application, the applicant shall provide, at a minimum, the following information:

2. **Site Plan** - drawn to scale and including:
 - a. Site boundary.
 - b. Property dimensions in the vicinity of project.
 - c. Ordinary high water mark.

- d. Typical cross section or sections showing:
 - i) existing ground elevation
 - ii) proposed ground elevation
 - iii) height of existing structures
 - iv) height of proposed structures
- e. Where appropriate, proposed land contours using one-foot intervals, if development involves grading, cutting, filling, or other alteration of land contours.
- f. Show dimensions and locations of existing structures which will be maintained.
- g. Show dimensions and locations of proposed structures.
- h. Identify source, composition, and volume of fill material.
- i. Identify composition and volume of any extracted materials and identify proposed disposal area.
- j. Location of proposed utilities, such as sewer, septic tanks, and drainfields, water, gas, and electricity.
- k. If the development proposes septic tanks, does proposed development comply with local and state health regulations?
- l. Shoreline designation according to the Master Program.
- m. Show which areas are shorelines and which are shorelines of statewide significance.

3. Vicinity Map

- a. Indicate site location using natural points of reference (roads, state highways, prominent landmarks, etc.).
- b. If the development involves the removal of any soils by dredging or otherwise, identify the proposed disposal site on the map. If the disposal site is beyond the confines of the vicinity map, provide another vicinity map showing the precise location of the disposal site and its distance to the nearest city or town.
- c. Give brief narrative description of the general nature of the improvements and land use within 1,000 feet in all directions from development site (i.e., residential to the north, commercial to the south, etc.).

D. Application Fees.

A filing fee in an amount established in SMC 18.56 shall be paid to the City of Sumner at the time of application.

E. Complete Application

Complete application and documents for all Shoreline Permits shall be submitted to the Administrator for processing and review. The application will be reviewed for completeness and a determination of completeness made per SMC 18.56.

Review

F. Permit Process.

When a complete application and associated information have been received by the Administrator, the actions listed below shall be taken. These actions also apply to shoreline Conditional Use Permits and requests for Variances:

1. **Public Notice.** The Administrator shall have a Notice of Application for Substantial Development Permit, Conditional Use, or Variance (as applicable) published in a newspaper of general circulation, within the area in which the development is proposed.

The Notice of Application for Substantial Development Permit, Conditional Use, or Variance (as applicable) describes the location of the project and includes a statement that any person desiring to present their views to the Hearing Examiner may do so in writing within thirty (30) days of the final newspaper publication. The notice also provides the date when a public hearing will be held on the application and states that any person may submit oral or written comments at the hearing. All persons who indicate their desire to receive a copy of the final order shall be notified, in a timely manner, of the Hearing Examiner's decision.

The Notice of Application for a Substantial Development Permit, Conditional Use, or Variance (as applicable) must be published in the appropriate newspaper at least once a week, on the same day of the week, for two consecutive weeks.

The Administrator shall also post the Notice of Application for a Substantial Development Permit, Conditional Use or Variance (as applicable) on-site per SMC 18.56.

The Administrator may require any other manner of public notice deemed appropriate to accomplish the objectives of reasonable notice to the adjacent landowners and the public.

The Administrator shall notify the U.S. Fish and Wildlife Service and the National Marine Fisheries Service when application is made for a Variance.

2. **Public Hearing.** At least one public hearing shall be held by the Hearing Examiner regarding an application for a Substantial Development Permit, Conditional Use, or Variance. The public hearing should be held at the earliest possible date after the thirty (30) day public comment period has ended.

A written notice of the public hearing at which the Hearing Examiner will consider the application shall be mailed or delivered to the applicant a minimum of seven (7) days prior to the hearing. The Administrator's findings and conclusions and recommended action on the application shall be sent to the applicant with the notice of public hearing.

3. **Hearing Examiner Review.** The Hearing Examiner shall review an application for a Substantial Development Permit, Conditional Use, or Variance using the following information:
 - a. The application.
 - b. Applicable SEPA documents.
 - c. Evidence presented at the public hearing.
 - d. Written and oral comments from interested persons.
 - e. The findings, conclusions, and recommendation of the Administrator.
 - f. Information and comment from other city departments.
 - g. Independent study of the Hearing Examiner.

The Hearing Examiner may require an applicant to furnish information and data in addition to that contained or required on the substantial Development Permit, Conditional Use, or Variance application.

4. **Hearing Examiner Review Criteria.** The Hearing Examiner shall review the application and related information and make a decision to approve, approve with condition, or deny the application for a Substantial Development Permit, Conditional Use, or Variance. No Permit shall be granted unless the proposed development is consistent with the provisions of this Master Program, the Shoreline Management Act of 1971, and the rules and regulations adopted by the Department of Ecology there under.
5. **Burden of Proof on Applicant.** The burden of proving that the proposed substantial development is consistent with the criteria which must be met before a Permit is granted shall be on the applicant.

6. **Conditional Approval.** Should the Hearing Examiner find that any application does not substantially comply with criteria imposed by the Master Program and the Shoreline Management Act of 1971, they may deny such application or attach any terms or condition which is deemed suitable and reasonable to affect the purpose and objective of this Master Program.
7. **Bonds.** The Hearing Examiner may require the applicant to post a bond in favor of the City of Sumner to assure full compliance with any terms and conditions imposed by the Hearing Examiner on any Substantial Development Permit. Said bond shall be in an amount to reasonably assure the City that any deferred improvement will be carried out within the time stipulated.
8. **Hearing Examiner Decision.** Within five (5) days of the decision, the Administrator shall send the Hearing Examiner's final order, including findings and conclusions to the following:
 - a. The applicant.
 - b. The Department of Ecology.
 - c. The Attorney General.

The Administrator shall provide Notice of Final Decision per SMC 18.56.

9. **Department of Ecology Review of Variance and Conditional Use Permits.** After the Hearing Examiner has approved a Variance or Conditional Use Permit, the Administrator shall file the Permit with the Department of Ecology for its approval, approval with conditions, or denial. When a Substantial Development Permit and a Conditional Use or Variance Permit are required for a development, the filing on local government's rulings on the Permits shall be made simultaneously. The Department of Ecology will issue its decision on a Variance or Conditional Use Permit within thirty (30) days of filing. Filing is not complete until all the required documents have been received by the Department of Ecology and the Attorney General. Upon receipt of the Department of Ecology's decision, the Administrator shall notify those interested persons having requested notification of such decision.

Development authorized by a Variance or Conditional Use Permit shall not begin until sixty (60) days from the date the Administrator files the approved Permit with the Department of Ecology, provided no appeal proceedings have been initiated.

10. **Appeals**
 - a. **Local Appeals.** Any decision made by the Hearing Examiner may be appealed to the City Council subject to the following provisions:

- i) Appeals shall be submitted in writing to the city clerk by 5:00 p.m. of the fifteenth calendar day following the date of the decision. When the last day of the comment period so computed is a Saturday, Sunday, or federal or city holiday, the period shall run until 5:00 p.m. on the next business day. The appeal shall be in writing and shall state specific objections to the decision and the relief sought. The appeal shall be accompanied with any applicable filing fees.
 - ii) The record established by the hearing examiner (including testimony, exhibits, comment letters, plans, staff reports, etc.) shall be the record used by council unless it is supplemented by the city council pursuant to this section. A request to supplement the record shall be made in a separate document that is attached to the appeal. The appeal shall not mention or refer to the material that is proposed to be added to the record. A request to supplement the record shall include a brief description of the nature of the material to be added and a separate, attached copy of the material to be added. The request to supplement the record must clearly establish that the new evidence or information to be added to the record was not available or could not have been reasonably produced at the time of the open record hearing before the hearing examiner.
 - iii) The council may affirm, modify, reverse the hearing examiner's decision, remand to the hearing examiner with directions for further proceedings, or grant other appropriate relief. If the council reverses or modifies the hearing examiner's decision, the council shall enter findings and/or conclusions to support the decision.
 - iv) The hearing examiner's decision on appeal shall be given substantial weight.
 - v) The city council shall establish rules for council appeals.
- b. **Appeals to State Shoreline Hearings Board.** Any person aggrieved by the granting, denying, rescission, or modification of a Shoreline Permit may seek review from the State Shorelines Hearings Board. An appeal of a Shoreline Substantial Development Permit shall be initiated by filing an original and one copy of request for review with the Hearings Board within twenty-one (21) days of the Department of Ecology's receipt of the final decision by the City Council. An appeal of a Variance or Conditional Use Permit shall be filed with the Hearings Board within twenty-one (21) days of the Department of Ecology's decision. The request for review shall be in the form required by

the rules for practice and procedure before the Shorelines Hearings Board. The person seeking review shall also file a copy of the request for review with the State Department of Ecology and the Attorney General.

11. **Washington State Department of Ecology Review.** Development authorized by a Shoreline Substantial Development Permit shall not begin until twenty-one (21) days from the date the Administrator files the approved Permit with the Department of Ecology and the Attorney General: provided no appeals have been initiated during this twenty-one (21) day period. The date of filing is the date the Department of Ecology and the Attorney General receive all the required documents.

III. Variance and Conditional Use Permit Criteria

The Shoreline Management Act states that Master Programs shall contain provisions covering Conditional Uses and Variances. These provisions should be applied in a manner, which while protecting the environment, will assure that a person will be able to use his/her property in a fair and equitable manner.

A. Variances

1. **Purpose.** The purpose of a Variance Permit is strictly limited to granting relief to specific bulk, dimensional, or performance standards set forth in the Master Program. A Variance is also appropriate where there are extraordinary or unique circumstances relating to the property such that the strict implementation of the Master Program would impose unnecessary hardships on the applicant.

Construction pursuant to this Permit shall not begin nor can construction be authorized except as provided in RCW 90.58.020. In all instances, extraordinary circumstances shall be shown and the public interest shall suffer no substantial detrimental effect.

2. **Application.** An application for a shoreline Variance shall be submitted on a form provided by the Administrator and accompanying material as required by SMC 18.56.

An applicant for a Substantial Development Permit who wishes to request a Variance shall submit the Variance application and the Permit simultaneously.

3. **Criteria for Granting Variances.** Variance Permits for development that will be located landward of the ordinary high water mark, except those areas designated by the Department of Ecology as marshes, bogs, or swamps pursuant to WAC 173-22, may be authorized provided the applicant can demonstrate all of the following:
 - a. That the strict requirements of the bulk, dimensional, or performance standards set forth in the Master Program preclude or significantly interfere with a reasonable use of

the property not otherwise prohibited by the Master Program.

- b. That the hardship described above is specifically related to the property, and is the result of unique conditions such as irregular lot shape, size, or natural features and the application of the Master Program, and not, for example, from deed restrictions or the applicant's own actions.
- c. That the design of the project will be compatible with other permitted activities in the area and will not cause adverse effects to adjacent properties or the shoreline environment.
- d. That the Variance authorized does not constitute a grant of special privilege not enjoyed by the other properties in the area, and will be the minimum necessary to afford relief.
- e. That the public interest will suffer no substantial detrimental effect. Variance permits for development that will be located either waterward of the ordinary high water mark or within wetlands as defined in RCW 90.58.030(2)(h), may be authorized provided the applicant can demonstrate all the criteria stated above as well as the following:
 - That the public rights of navigation and use of the shorelines will not be adversely affected by granting the Variance.
 - That the strict application of the bulk, dimensional or performance standards set forth in the Shoreline Master Program precludes all reasonable use of the property
 - That the proposal is consistent with the criteria established under subsection 3.a. through 3.d. of this section.

In the granting of all Variances, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if Variances were granted to other developments in the area where similar circumstances exist, the total of the Variances should also remain consistent with the policies of RCW 90.58 and should not produce substantial adverse effects to the shoreline environment.

Requests for varying the use to which a shoreline area is to be put are not requests for Variances, but rather requests for Conditional Uses. Such requests shall be evaluated using the Conditional Use criteria set forth below.

B. Conditional Use

1. **Purpose.** The purpose of a Conditional Use Permit is to allow greater flexibility in varying the application of the use regulations of the Master Program in a manner consistent with the policies of RCW 90.58.020; provided that Conditional Use Permits should also be granted in a circumstance where denial of the permit would result in a thwarting of State policy enumerated in RCW 90.58.020. In authorizing a Conditional Use special conditions may be attached to the permit by the City of Sumner or by the Department of Ecology to prevent undesirable effects of the proposed use. Uses that are specifically prohibited by the Master Program may not be authorized with the approval of a Conditional Use Permit.

2. **Application** An application for a Shoreline Conditional Use Permit shall be submitted on a form provided by the Administrator and accompanying material as required by SMC 18.56.

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

3. **Criteria for Granting Shoreline Conditional Use Permits.** Uses classified as conditional uses may be authorized provided that the applicant can demonstrate all of the following:
- a. That the proposed use will be consistent with the policies of RCW 90.58.020 and the policies of the Master Program;
 - b. That the proposed use will not interfere with the normal public use of public shorelines;
 - c. That the proposed use of the site and design of the project will be compatible with other permitted uses within the area and with uses planned for the area under the comprehensive plan;
 - d. That the proposed use will cause no significant adverse effects to the shoreline environment in which it is to be located; and
 - e. That the public interest will suffer no substantial detrimental effect.

In the granting of all Conditional Use Permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if Conditional Use Permits were granted for other developments in the area where similar circumstances exist, the total of the Conditional Uses shall also remain consistent with the policies of RCW 90.58.020 and shall not produce substantial adverse effects to the shoreline environment.

Uses that are specifically prohibited by this Master Program may not be authorized pursuant to this section.

IV. Time Requirements and Revisions

A. Time Requirements For Shoreline Permits

1. **Duration of Permits:** The City of Sumner may issue shoreline permits with termination dates of up to five years. If a Permit does not specify a termination date, the following requirements apply, consistent with WAC 173-27:
 - a. **Time Limit for Substantial Progress.** Construction, or substantial progress toward completion, must begin within two (2) years after approval of the Permits.
 - b. **Extension for Substantial Progress.** The City of Sumner may at its discretion, with prior notice to parties of record and the Department of Ecology, extend the two-year time period for the substantial progress for a reasonable time up to one year based on factors, including the inability to expeditiously obtain other governmental permits which are required prior to the commencement of construction.
 - c. **Five-Year Permit Authorization.** If construction has not been completed within five (5) years of approval by the City of Sumner, the City will review the Permit and, upon showing of good cause, either extend the Permit for one year, or terminate the Permit. Prior to the City authorizing any Permit extensions, it shall notify any parties of record and the Department of Ecology. Note: Only one (1) single extension is permitted.

B. Revision of Permits.

When an applicant desires to revise a Permit, the applicant must submit detailed plans and text describing the proposed changes. If the Administrator determines that the revisions proposed are within the scope and intent of the original Permit, consistent with WAC 173-27, the Administrator may approve the revision. "Within the scope and intent of the original Permit" means all of the following:

1. No additional over-water construction is involved, except that pier, dock, or float construction may be increased by five hundred (500) square feet or ten percent (10%), whichever is less;
2. Ground area coverage and height is not increased more than ten percent (10%);

3. Additional structures do not exceed a total of two hundred fifty (250) square feet;
4. The revision does not authorize development to exceed height, setback, lot coverage, or any other requirement of the City of Sumner Shoreline Master Program except as authorized under a variance granted as the original permit or part thereof;
5. Additional landscaping is consistent with conditions (if any) attached to the original Permit;
6. The use authorized pursuant to the original Permit is not changed; and
7. No substantial adverse environmental impact will be caused by the project revision.

If the sum of the proposed revision and any previously approved revisions do not meet the criteria above, an application for a new Shoreline Permit must be submitted. If the revision involves a Conditional Use or Variance which was conditioned by the Department of Ecology, the revision also must be reviewed and approved by the Department of Ecology (see WAC 173-27).

The City of Sumner or the Department of Ecology decision on revision to the Permit may be appealed within twenty-one (21) days of such decision, in accordance with WAC 173-27-190.

Construction allowed by the revised Permit that is not authorized under the original Permit is undertaken at the applicant's own risk until the expiration of the appeals deadline.

V. Nonconforming Development, Development & Building Permits, and Unclassified Uses

A. Nonconforming Development.

Nonconforming development is a shoreline use or structure which was lawfully constructed or established prior to the effective date of the Act or the Master Program, or amendments thereto, but which does not conform to present regulations or standards of the Master Program or policies of the act. In such cases, the following standards shall apply:

1. Nonconforming development may be continued provided that any enlargement or expansion does not increase the extent of nonconformity and by further encroaching upon or extending into areas where construction or use would not be allowed for new development or uses;
2. A nonconforming development which is moved any distance must be brought into conformance with the Master Program and the Act;

3. If a nonconforming structure is damaged to an extent not exceeding seventy-five (75) percent replacement cost of the nonconforming structure, it may be reconstructed to those configurations existing immediately prior to the time the structure was damaged, so long as restoration is completed within one year of the date of damage, with the exception that, single family nonconforming development may be one hundred (100) percent replaced if restoration is completed within three years of the date of damage;
4. If a nonconforming use is discontinued for twelve (12) consecutive months or for twelve (12) months during any two-year period, any subsequent use shall be conforming; it shall not be necessary to show that the owner of the property intends to abandon such nonconforming use in order for the nonconforming rights to expire;
5. A nonconforming use shall not be changed to another nonconforming use, regardless of the conforming or nonconforming status of the building or structure in which it is housed; and
6. An undeveloped lot, tract, parcel, site, or division which was established prior to the effective date of the Act and the Master Program, but which does not conform to the present lot size or density standards may be developed so long as such development conforms to all other requirements of the Master Program and the Act.
7. A use which is listed as a conditional use but which existed prior to adoption of the Master Program for which a Conditional Use Permit has not been obtained shall be considered a nonconforming use.
8. A structure for which a Variance has been issued shall be considered a legal nonconforming structure and the requirements of this section shall apply as they apply to preexisting nonconformities.

B. Development and Building Permits

No building permit or other development permit shall be issued for any parcel of land developed or divided in violation of this Master Program. All purchasers or transferees of property shall comply with provisions of the Act and this Master Program and each purchaser or transferee may recover damages from any person, firm, corporation, or agent selling, transferring, or leasing land in violation of the Act or this Master Program including any amount reasonable spent as a result of inability to obtain any development permit and spent to conform to the requirements of the Act or this Master Program as well as cost of investigation, suit, and reasonable attorney's fees occasioned thereby. Such purchaser, transferee, or lessor may, as an alternative to conforming their property to these requirements, may rescind the sale, transfer, or lease and recover cost of investigation, and reasonable attorney's fees occasioned thereby from the violator.

C. Unclassified Uses

Uses that are not classified in *Chapter 7* may be authorized as Conditional Uses provided the applicant can demonstrate compliance with the criteria listed in Section III.B.3 and all other applicable policies and regulations of this Master Program.

VI. Enforcement and Penalties

A. Enforcement.

1. The provisions of chapter 15.06 SMC relating to Enforcement shall apply to this chapter.
2. All provisions of the Master Program shall be enforced by the Administrator and/or a designated representative. For such purposes, the Administrator or a duly authorized representative shall have the power of a police officer.
3. The choice of enforcement action and the severity of any penalty should be based on the nature of the violation and the damage or risk to the public or to public resources. The existence or degree of bad faith of the persons subject to the enforcement action, the benefits that accrue to the violator, and the cost of obtaining compliance may also be considered.

B. Penalty.

1. Any person found to have willfully engaged in activities on the city's shorelines in violation of the Shoreline Management Act of 1971 or in violation of the city's Master Program, rules or regulations adopted pursuant thereto shall be subject to the penalty provisions of SMC 15.06.070 (Civil citation penalties) and 15.06.110 (Criminal penalties).

C. Public and Private Redress

Any person subject to the regulatory program of the Master Program who violates any provision of the 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 may bring suit for damages under this section on behalf of the city. Private persons shall have the right to bring suit for damages under this section 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 provisions 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 attorneys' fees and costs of the suit to the prevailing party.

D. Delinquent Permit Penalty

A person applying a Permit after commencement of the use or activity may, at the discretion of the City be required, in addition, to pay a delinquent Permit penalty not to exceed three (3) times the appropriate Permit fee: Provided, that a person who has caused, aided or abetted a violation within two (2) years after the issuance of a regulatory order, notice of violation or penalty by the department or the City against said person may be subject to a delinquent Permit penalty not to exceed ten (10) times the appropriate Permit fee. Delinquent Permit penalties shall be paid in full prior to resuming the use or activity.

VII. Master Program – Review, Amendments and Adoption

A. Master Program Review

This Master Program shall be periodically reviewed and adjustments shall be made as are necessary to reflect changing local circumstances, new information or improved data, and changes in State statutes and regulations. This review process shall be consistent with WAC 173-26 requirements and shall include a local citizen involvement effort and public hearing to obtain the views and comments of the public.

B. Amendments to Master Program

Any of the provisions of this Master Program may be amended as provided for in RCW 90.58.120 and .200 and Chapter 173-26 WAC. Amendments or revision to the Master Program, as provided by law, do not become effective until approved by the Washington State Department of Ecology.

The U.S. Fish and Wildlife Service and the National Marine Fisheries Service shall receive early and continual notice of any amendments to the Shoreline Master Program.

Proposals for shoreline environment redesignation (i.e., amendments to the shoreline maps and descriptions), must demonstrate consistency with the criteria set forth in WAC 173-26.

C. Severability

If any provisions of this Master Program, or its application to any person or legal entity or parcel of land or circumstances, is held invalid, the remainder of the Master Program, or the application of the provisions to other persons or legal entities or parcels of land or circumstances, shall not be affected.

D. Effective Date

This ordinance shall be effective five days from and after its passage, approval, and publication as provided by law. See Appendix B for adopting ordinance.