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Preface

Summary of the Shoreline Management Act

The citizens of Washington State passed the Shoreline Management Act (SMA) in 1972 in recognition "that the shorelines of the state are among the most valuable and fragile of its natural resources and that there is great concern throughout the state relating to their utilization, protection, restoration, and preservation." With this purpose in mind, the SMA requires "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 state's shorelines."[1]

There are three broad policies for implementing the intent of the SMA:

- The accommodation of preferred uses that require a shoreline location in the following priority:
  - Areas for protecting and restoring shoreline health;
  - Water-dependent uses;
  - Water-related uses;
  - Water-enjoyment uses; and
  - Single family residences, when consistent with the control of pollution and prevention of damage to the natural environment
- The protection of shoreline natural resources, including "…the land and its vegetation and wildlife, and the waters of the state and their aquatic life…" against adverse effects. All allowed uses are required to mitigate adverse environmental impacts to the maximum extent feasible and preserve the natural character and aesthetics of the shoreline.
- Provide public access to publicly owned shoreline areas and promote recreational opportunities for the public in shoreline areas.

Under the SMA, the city must prepare and adopt a Shoreline Master Program (SMP) for managing development along shorelines of the state. The preparation and adoption of the city's SMP must conform to Chapter 173-26 WAC, *State Master Program Approval/Amendment Procedures, and Master Program Guidelines*.

The SMA also establishes a balance of authority between the City of South Bend and the State of Washington. The SMA gives authority to the city to prepare a SMP that reflects local geographic, economic, and environmental conditions. However, the city must obtain approval of the SMP by the Washington Department of Ecology before its adoption. In addition, while the city may review and issue shoreline substantial development permits, shoreline conditional use and variance permits must receive dual approval by the Washington Department of Ecology as well before becoming effective. Together, this legislatively mandated partnership ensures that shoreline development meets the requirements of the SMA.

History of the Shoreline Management Act in the City of South Bend

The City of South Bend has been planning under the SMA since the adoption of its first Master Program in 1975.

The requirement to update the city's current Master Program was an outcome of amendments to the SMA the State Legislature passed in 1995 that required local governments to update their Master Programs in accordance with Chapter 173-26 WAC. The city adopted its first Master Program update under these rules in April 2017.

The SMA also requires local governments to periodically review and revise their Master Programs, if necessary, every eight years to assure consistency with state law. The periodic is distinct from the comprehensive update

[1] RCW 90.58.020

undertaken for the 2017 SMP; WAC 173-26-090 only requires the city to review its SMP and make amendments deemed necessary to reflect changing local circumstances, new information, or improved data.

The city initiated is periodic review of this SMP in August 2021 by first incorporating new legislative and rule amendments int the document that came into effect since its adoption in 2017. The city also evaluated the SMP's to ensure consistency with the Comprehensive Plan and development regulations.

The city followed with meetings before the Planning Commission and a public outreach program to determine if there were any changed local circumstances that might need consideration during the periodic review. Finding none, the city prepared and distributed a draft for public comment in December 2021 using the optional joint review process per WAC 173-26-104. After considering and responding to all public comment during the January 2022 public hearing, the Planning Commission recommended approval to the City Council. The City Council accepted the Planning Commission recommendation and adopted this SMP with revisions on March XX, 2022. The Department of Ecology approved the SMP on April XX, 2022. The city began the current Master Program periodic review in October 2021 and completed it in April 2022.

Goals for Future Shoreline Development

The vision for future development along the City of South Bend's shorelines anticipates accomplishing five broad goals through this Shoreline Master Program.[2] These are:

Preserve Our Natural Beauty

The City of South Bend is a special, peaceful place of great natural and aesthetic beauty. The community's greatest asset contributing to its singular charm is the Willapa River and its shorelines. Whether viewed distantly from homes on the hillsides on the south side of town or up close along the river itself, South Bend's shorelines offers picturesque scenery of a working waterfront amidst a natural environment.

The Shoreline Master Program needs to preserve and encourage this unique mix of the built and natural environment. Future development along the shoreline should focus on continuing current development patterns, maintaining view corridors of the river, and improving existing infrastructure along Robert Bush Drive.

Protect Our Natural Resources

The health of South Bend's shorelines is the foundation to its natural beauty. Clean water, abundant fish and wildlife, and large, scenic open spaces contribute to the quality of life of residents and visitors alike. The Shoreline Master Program needs to protect these resources as well as keep them accessible for all citizens to enjoy.

Economic Progress Balanced with Our Natural Beauty

South Bend's quality of everyday life owes much to the health of the Willapa River and its sloughs. The shorelines provide significant opportunities for commercial and recreational fisheries, seafood processing, active and passive water-enjoyment recreation, and tourism.

When people and the natural environment coexist in harmony, the shorelines will continue to provide a bright future for South Bend. The Shoreline Master Program will need to ensure the protection of these resources by encouraging balanced development that will not impact shoreline natural functions. Protecting shoreline vegetation where possible, maintaining water quality, and providing habitat for fish and wildlife will be important.

Water-Dependent & Related Uses that Encourage Business & Tourism

South Bend's shorelines have tremendous economic value. Its current mix of water-dependent, water-related, and water-enjoyment uses have created a development pattern that the Shoreline

[2] "A Visioning Report for the City of South Bend's Program update," February 2015

Master Program should continue to build upon in the future. Tourism-related development intermixed with local seafood processing, businesses, and services are uses that the city needs to encourage. The Shoreline Master Program should limit future residential development along the waterfront by allowing single-family residences only.

With good planning, combined with public and private investment, South Bend's waterfront can become a model Washington community, much like Port Townsend, Langley, and La Conner.

Walking Path along Shoreline through Town

The Willapa Hills Trail is a popular water-enjoyment walkway enjoyed by South Bend residents and visitors alike. The trail, owned and maintained by the Washington State Parks, runs for 56 miles from Chehalis to South Bend that is perfect for walking, biking, and other non-motorized activities. The trail currently terminates in South Bend at Summit Avenue.

Continuation of the trail from Summit Avenue to the South Bend Boat Launch has been a long-term goal of the city. The Shoreline Master Program will work with future development to accommodate continuation of the trail along the south shore of the Willapa wherever possible. This may include requiring public access corridors from Robert Bush Drive to the river or dedication of land along the river for short distances. Any future public improvements to the US 101 must accommodate the trail.

We Want a Park!

A key waterfront goal of the city is to obtain property between Robert Bush Drive and the south shoreline of the Willapa River to develop into a public park that emphasizes public access. Several large, undeveloped vacant parcels exist between Summit Avenue and Washington Street that offer potential conversion to this desired use.

Chapter 1: Introductory Provisions

Section 1.1 Title

The title of this document is the City of South Bend Shoreline Master Program, hereafter referred to as the "Master Program."

Section 1.2 Purpose and Intent

1.2.1 The purpose and intent of the policies and development standards within this Master Program shall be to implement the policies of the Shoreline Management Act under Chapter 90.58 RCW, hereinafter referred to as "the Act."

1.2.2 The goals of this Master Program shall promote the health, safety, and general welfare of the citizens of the City of South Bend by:

A. Utilizing shorelines of the state for economically productive uses that are particularly dependent on shoreline location or use;

B. Promoting access to publicly owned shoreline areas and encouraging recreational use;

C. Protecting and restoring the ecological functions of shoreline natural resources;

D. Ensuring the public's right of navigation and corollary uses in shorelines of the state;

E. Protecting and restoring buildings and sites that have historic, cultural, educational, and scientific value;

F. Planning for circulation and public facilities and utilities serving city and regional needs;

G. Preventing and minimizing flood damage;

H. Recognizing and protecting private property rights by ensuring regulations, permit procedures, and enforcement are consistent with the constitutional limitations in a manner consistent with WAC 173-26-186(5); and

I. Coordinating shoreline management with other local, state, and federal programs.

Section 1.3 Adoption Authority

The City of South Bend adopts this Master Program pursuant to the authority granted under the Act, the State Master Program Approval/Amendment Procedures and Master Program Guidelines under Chapter 173-26 of the Washington Administrative Code (WAC), and the Shoreline Management Permit and Enforcement Procedures Chapter 173-27 WAC.

Section 1.4 Applicability

1.4.1 This Master Program is the comprehensive use plan for those shorelines in the City of South Bend under the jurisdiction of the Act.

1.4.2 Unless specifically exempted by statute, all proposed uses and development occurring within shoreline jurisdiction must conform to chapter 90.58 RCW, the Shoreline Management Act and this master program whether or not a permit is required.

1.4.3 This Master Program achieves the procedural and substantive requirements of Chapter 173-26 WAC by establishing overall plan goals, policies, and regulations that includes maps, diagrams, tables, and other descriptive text and materials.

1.4.4 The following documents provide supporting information for this Master Program but are not adopted as part of this Master Program:

A. Public Participation Plan for the Shoreline Master Program Update;

B. Shoreline Analysis Report for Shorelines in the City of South Bend;

C. Shoreline Restoration Plan for Shorelines in the City of South Bend; and

D. Cumulative Impacts Analysis and No Net Loss Report for the City of South Bend Shoreline Master Program.

1.4.5 Developments not required to obtain shoreline permits or local reviews. Requirements to obtain a substantial development permit, conditional use permit, variance, letter of exemption, or other review to implement the Shoreline Management Act do not apply to the following:

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

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

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

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

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

1.4.6

Section 1.5 Adoption of Critical Areas Regulations by Reference

1.5.1 Chapter 14.15 of the South Bend Municipal Code (SBMC), Critical Areas, (as adopted by Ordinance #1514 on October 10, 2016), is integral to this Master Program and is hereby adopted by reference for application in shoreline jurisdiction; provided, however, that the following exceptions shall apply:

A. Developments and uses within shoreline jurisdiction requiring a reasonable use exception or variance within any critical area buffer shall be subject to the shoreline variance provisions under Section 6.7 of this Master Program and not Chapter 14.15 SBMC.

B. Water-oriented uses may locate within critical area buffers when consistent with the policies and regulations of this Master Program and Chapter 14.15 SBMC.

C. Existing development, uses, and parcels under Section 3.4 within shoreline jurisdiction that are in critical areas shall be subject to this Master Program.

D. The fish and wildlife habitat conservation area buffer for Type S waters shall be consistent with the shoreline buffer provisions under Section 3.3.3 of this Master Program and not Chapter 14.15 SBMC.

E. The small cities guidance at Chapter 14.15.03.A(2)(c)(ii) is replaced by *Wetland Guidance for CAO Updates: Western Washington* (Ecology Publication #16-06-001) or as amended.

F. Buffer Dimensions. The Table 1 wetland buffer dimensions of Chapter 14.15.030.D(3) SBMC do not apply; instead, the following Table 1 buffer standards apply in shoreline jurisdiction:

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Table 1. Wetland Buffer Dimensions (in feet)

Wetland Category	Habitat score 3-5 points	Habitat score 6-7 points	Habitat score 8-9 points	Buffer width based on special characteristics
Category I or II: Based on rating of wetland functions (and not listed below)	75	110	225	NA
Category I: Bogs and Wetlands of High Conservation Value	NA	NA	225	190
Category I: Forested	75	110	225	NA
Category I: Estuarine and wetlands in coastal lagoons	NA	NA	NA	150
Category II: Estuarine and wetlands in coastal lagoons	NA	NA	NA	110
Category III: All types except interdunal	60	110	225	NA
Category IV: All types	40	40	40	NA

G. Impact Minimization & Wildlife Corridor. The impact reduction measures of both of Chapter 14.15.030.D(4) SBMC do not apply; instead, the Table 1 Buffers require that both of the following criteria are met:

i. All of the measures in Table 2 below are implemented, where applicable, to minimize the impacts of the adjacent land uses; and

ii. A relatively undisturbed, vegetated corridor at least 100 feet wide is protected between the wetland and any shoreline of the state or other Priority Habitats as defined by the Washington State Department of Fish and Wildlife. The latest definitions of priority habitats and their locations are available on the WDFW web site at: https://wdfw.wa.gov/species-habitats/at-risk/phs. The corridor must be protected for the entire distance between the wetland and the shoreline/Priority Habitat by some type of legal protection such as a conservation easement. Presence or absence of a nearby habitat must be confirmed by a qualified biologist.

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Table 2. Required measures to minimize impacts to wetlands.

Disturbance	Required Measures to Minimize Impacts
Lights	• Direct lights away from wetland
Noise	• Locate activity that generates noise away from wetland • If warranted, enhance existing buffer with native vegetation plantings adjacent to noise source • For activities that generate relatively continuous, potentially disruptive noise, such as certain heavy industry or mining, establish an additional 10' heavily vegetated buffer strip immediately adjacent to the outer wetland buffer
Toxic Runoff	• Route all new, untreated runoff away from wetland while ensuring wetland is not dewatered • Establish covenant limiting use of pesticides within 150' of wetland • Apply integrated pest management
Stormwater Runoff	• Retrofit stormwater detention and treatment for roads and existing adjacent development • Prevent channelization flow from lawns that directly enters the buffer • Use Low Intensity Development techniques (refer to stormwater manual for further information)
Change in Water Regime	• Infiltrate or treat, detain, and disperse into buffer new runoff from impervious surfaces and new lawns
Pets and Human Disturbance	• Use privacy fencing OR plant dense vegetation to delineate buffer edge and to discourage using vegetation appropriate for the ecoregion • Place wetland and its buffer in a separate tract or protect with conservation easement
Dust	• Use best management practices to control dust

H. Isolated Wetlands. The buffer exception for isolated wetlands of Chapter 14.15.030.D(5) SBMC does not apply to associated wetlands in shoreline jurisdiction.

1.5.2 Incorporation of amendments to Chapter 14.15 SBMC into the Master Program requires an amendment to this Master Program consistent with Chapter 7.

Section 1.6 Relationship to Other Plans and Regulations

1.6.1 Uses and development activities regulated by this Master Program may also be subject to other provisions of the South Bend Municipal Code (SBMC) and other state and federal laws.

1.6.2 Shoreline permit applicants are responsible for complying with all applicable laws before commencing any use or development activity permitted through this Master Program.

1.6.3 Whenever this Master Program cites any RCW, WAC, or other state, or federal law, regulation, or policy, the most recent amendment shall apply.

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1.6.4 In the event this Master Program conflicts with any other city laws or policies, the more restrictive provision shall apply unless stated otherwise.

Section 1.7 Applicability of the Ocean Resources Management Act

The ocean use policies, regulations, and permitting procedures apply as follow:

1.7.1 Ocean Resources Management Act (ORMA; RCW 43.143). Ocean uses and developments proposed within the ORMA geographical area must be consistent with ocean use policies and regulations and reviewed using the additional approval criteria of Section 6.11.

A. Geographic Application. The Ocean Management provisions of this Master Program apply to coastal waters and those associated shorelands located within the City of South Bend.

1.7.2 Marine Spatial Plan (MSP). New ocean uses and developments proposed within the MSP study area must be consistent with the ocean use policies, regulations, and permitting procedures of Section 3.6, Ocean Uses. The MSP study area covers marine waters of the Pacific Ocean within state waters, from the OHWM out to 3 nautical miles.

A. The MSP applies to a proposed project only if all three of the following criteria are met:

iii. Occurs within the geographic boundaries of the MSP study area;

iv. Will adversely impact renewable resources or existing ocean uses; and

v. Is a "new use", as defined by the MSP.

B. All new ocean uses proposed within the MSP study area must be consistent with the protection standards for Important, Sensitive, and Unique areas (ISUs) and Fisheries and reviewed using the additional process requirements for new ocean use proposals.

C. Applicability of ISU protection standards. The state has developed maps of ISUs using the best available data at the time of the MSP development. These maps are intended to assist applicants in identifying where ISUs exist. As finer resolution or updated data becomes available, the state may update the ISU maps, which may include adding, deleting, or updating the distribution of an ISU. However, ISU protection standards will apply to any ISU, wherever it is identified in state waters. It is the responsibility of applicants to verify whether ISUs exist in their proposed new ocean use project area and to demonstrate protection standards will be met.

Section 1.8 Liberal Construction

This Master Program is exempt from the rule of strict construction and the City of South Bend shall liberally construe its provisions to give full effect to the objectives and purposes provided under the Act.

Section 1.9 Severability

Any section, policy, or regulation of this Master Program declared invalid shall not affect the validity of this Master Program as a whole.

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Federal projects should comply with the Coastal Zone Management Act, per WAC 173-27-060.

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Chapter 2: Shoreline Jurisdiction & Environments

Section 2.1 Shoreline Jurisdiction

2.1.1 This Master Program applies to shorelines of the state within the jurisdiction of the City of South Bend. Shorelines of the state include:

A. Rivers and streams with a mean annual flow of 20 cubic feet per second or more; and

B. Shorelands extending landward two hundred feet in all directions as measured on a horizontal plane from the ordinary high water mark; floodways and contiguous floodplain areas two hundred feet from such floodways; and all associated wetlands and river deltas.

2.1.2 The Willapa River, Skidmore Slough, and Potter Slough, including their associated shorelands, comprise shorelines of the state within city boundaries.

2.1.3 The Act identifies the Willapa River and the associated shorelands in the City of South Bend as a shoreline of statewide significance.

Section 2.2 Designation of Shoreline Environments and Official Map

2.2.1 There are three shoreline environment designations within the City of South Bend. A description of the purpose, designation criteria, and policies for each Shoreline Environment follows below.

2.2.2 The Official Shoreline Environment Map and descriptive text in Appendix A shows the location of each Shoreline Environment and is for general planning purposes only. The lateral extent of shoreline jurisdiction and the location of the OHWM, associated wetlands, and floodplain and/or floodway, will require a site-specific evaluation at the time of a project proposal. The boundary of each Shoreline Environment shall be determined as follows:

A. Boundaries that appear to follow lot, tract, or section lines shall be interpreted as such;

B. Boundaries that appear to follow roads shall be interpreted as such to their centerlines; or

C. Whenever existing physical features are inconsistent with boundaries on the Official Shoreline Map, the Administrator shall interpret the boundaries, with deference to actual conditions and the policies of the Master Program.

2.2.3 The City of South Bend Official Shoreline Environment Map with descriptive text shall be kept on file in the office of the Administrator. This map shall bear the original approving signature of the mayor and city clerk-treasurer. Unofficial copies of the map may be prepared for administrative purposes.

2.2.4 In the event of a mapping error, the city shall rely on common boundary descriptions and the criteria contained in RCW 90.58.030(2) and WAC 173-22 pertaining to determinations of shorelands, as amended, rather than the incorrect or outdated map.

2.2.5 Any area shown on the map as within shoreline jurisdiction that does not meet the criteria for shoreline jurisdiction shall not be subject to the requirements of the Master Program.

2.2.6 All areas within shoreline jurisdiction that are not mapped and/or designated are assigned an Urban Conservancy designation until it is designated otherwise through a Master Program amendment.

2.2.7 Any change to the boundary of a shoreline environment designation, or the conversion of one shoreline environment designation to another, requires a Master Program amendment.

2.2.8 The city may predesignate shorelines within an urban growth area consistent with WAC 173-26-150 and the designation criteria established for shoreline environment within this Master Program.

Section 2.3 Aquatic Environment (A)

2.3.1 Purpose: The purpose of the Aquatic Environment is to protect, restore, and manage the shorelines of the state waterward of the ordinary high water mark.

2.3.2 Designation criteria:

A. Lands waterward of the ordinary high water mark;

B. Estuarine wetlands; and

C. Aquatic environments that offer significant opportunities for restoration that benefit ecological functions and ecosystem-wide processes.

2.3.3 Policies:

A. The primary uses within this shoreline environment should serve water-dependent, public access, and restoration uses.

B. The design of new over-water structures should be the least size necessary for its intended use to minimize impact to aquatic and upland development.

C. To reduce potential impacts to shorelines, over-water structures should serve multiple uses.

D. Nonwater-oriented development should not locate over water except in existing structures or in limited instances where they are auxiliary to and necessary in support of water-dependent uses.

E. Uses that adversely affect shoreline ecological functions should not be allowed unless necessary to achieve the policies of the Act and only when impacts are mitigated to assure no net loss of ecological functions.

F. The design and management of shoreline uses and modifications should prevent degradation of water quality and alteration of shoreline ecological functions.

Section 2.4 City Waterfront Environment (CW)

2.4.1 Purpose: The City Waterfront Environment recognizes traditional development patterns along South Bend's waterfront that includes a mix of commercial, industrial, residential, and recreational water-oriented and nonwater-oriented uses. It also encourages new development opportunities that give preference to water-oriented development over nonwater-oriented development.

2.4.2 Designation criteria:

A. Shorelines in the downtown area along Robert Bush Drive;

B. Shorelines that have low to moderate shoreline ecological function;

C. Shorelines with an existing mix of commercial, industrial, residential, and recreational water-oriented and nonwater-oriented development;

D. Shorelines with existing, nonconforming overwater buildings;

E. Shorelines that offer significant opportunities for public access for local residents and visitors alike; and/or

F. Shorelines in the comprehensive plan and zoning ordinance designated within Downtown Commercial District.

2.4.3 Policies:

A. The City Waterfront Environment should provide a mix of water- and nonwater-oriented commercial, industrial, residential, cultural, recreation, and public access development and uses that serve the everyday needs of residents and provide amenities for tourists.

B. New water-oriented development should have priority over new nonwater-oriented development

C. New development should provide public access, including protection of view corridors, consistent with Section 3.6.

D. New development should protect water quality by using low impact development techniques.

E. Nonwater-oriented development should not locate over water except in existing structures or in limited instances where they are auxiliary to and necessary in support of water-dependent uses.

F. Encourage actions that restore degraded ecological functions.

Section 2.5 Urban Conservancy Environment (UC)

2.5.1 Purpose: The Urban Conservancy environment protects and restores ecological functions of open space, associated wetlands, floodplains, and other sensitive lands while allowing a variety of compatible uses.

2.5.2 Designation criteria:

A. Shorelines consisting of primarily undeveloped areas appropriate for uses that are compatible with maintaining or restoring ecological functions;

B. Shorelines upland of the ordinary high water mark with associated freshwater wetlands, floodplains, quality riparian corridors, and parcels with intact habitat;

C. Shorelines that have high potential for water-enjoyment activities or ecological restoration; and/or

D. Shorelines that retain important ecological function even though partially developed with low-intensity shoreline uses, such as agriculture, forestry, and large residential lots.

2.5.3 Policies:

A. New development and uses should not result in a net loss of ecological functions or further degrade other shoreline values. Site design should preserve the natural character of the area and promote preservation of open space and critical areas.

B. New water-oriented development should have priority over new nonwater-oriented development.

C. Site design for water-related and water-enjoyment uses should leave critical area buffers and wetlands undisturbed to the greatest extent feasible.

Section 2.6 Use, Development, and Modification Table

Table 1 summarizes the permitted, conditional, and prohibited uses by shoreline environment. All permitted and conditional uses in Table 1 are subject to the provisions of this Master Program and may require other permits from the city or other regulatory agencies. The symbols used in the table are:

A = Aquatic Environment

CW = City Waterfront

UC = Urban Conservancy

P = Permitted use

C = Conditional use

X = Prohibited use

NA = Not applicable

Table 1: Permitted, Conditional, & Prohibited Uses by Shoreline Environment

Shoreline Uses	**A**	**CW**	**UC**
Agriculture	NA	X	P
Aquaculture	P	P	P
Boating facilities	P	P	X
Commercial development			
- Water-oriented	P	P	X[1]
- Nonwater-oriented	X[2]	X[2]	X[2]
Forest practices	NA	NA	P[3]
Industrial development	X	P	X
In-stream structures	C	NA	C
Mining	X	X	X
Recreational development	P	P	P
Residential development	X[4]	P	P
Transportation development	C	P[5]	C[5]
Utilities development	C	P	C
Uses not listed	C	C	C
Shoreline Modifications	**A**	**CW**	**UC**
Dredging	C[6]	NA	C
Dredge disposal	P	C	X
Filling & grading	C[7]	P	P
Piers & docks	P	P	P
Shoreline habitat & natural system enhancement projects	P	P	P
Shoreline stabilization	C	P	C
Ocean Uses	**A**	**CW**	**UC**
New ocean uses	C	C	X
Ocean energy production	C	C	X
Ocean mining	C	C	X
Ocean oil & gas uses & activities	X	X	X
Ocean research	P	P	C
Emergency ocean salvage	P	P	X
Non-emergency ocean salvage	C	C	X
Ocean transportation	C	C	X

Notes:

[1] Home occupations allowed under Title 16 are exempt

[2] See Section 4.5.3.C for exceptions

[3] Forest practices along shorelines of statewide significance are a conditional use

[4] Existing overwater residential may continue per Section 3.4 Nonconforming Structures, Uses & Lots; new overwater residential is prohibited per Section 4.10.D.3.

[5] Parking as a primary use is prohibited

[6] Maintenance dredging and minor dredging to facilitate restoration is permitted

[7] Waterward fills for ecological restoration is a permitted use

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Chapter 3: General Provisions for all Environments

Section 3.1 Applicability

The provisions of this chapter establish goals, policies, and regulations that shall apply to all shoreline environments without regard to environment designation.

Section 3.2 Archaeology and Historic Preservation

3.2.1 Goal:

Encourage the identification, protection, and restoration of sites within the city's shorelines that have archeological and historic importance to the public.

3.2.2 Policies:

A. Consult and cooperate with community groups; county, state, and federal agencies; and affected Indian tribes to identify, protect, and preserve important archeological, historic, and cultural sites located within shoreline jurisdiction.

B. Where appropriate, encourage public access to archeological, historic, and cultural sites in a manner that protects these resources.

3.2.3 Regulations:

A. All substantial development, statements of exemption, and conditional use permits within 200 feet of an area documented to contain archeological or historic resources shall have a qualified expert perform a site assessment and prepare a recommendation report unless the Washington State Department of Archaeology and Historic Preservation (DAHP) waives this requirement. The assessment and recommendation shall conform to DAHP guidelines and the applicant shall pay for its preparation expense.

B. The city, in consultation with DAHP or other affected tribal, state, or federal agencies, shall determine whether the research design or study is adequate.

C. The Administrator may attach conditions of approval to a shoreline permit to assure the protection of archeological, cultural, or historic sites.

D. If archeological or historic resources are uncovered during project excavation or construction, all work shall stop immediately and the discovery reported to the Administrator who shall notify DAHP and affected tribes. The developer shall prepare a report as described in Section A above.

E. Depending on the outcome of the report, the Administrator may revise a shoreline permit with conditions to assure the protection of the site.

Section 3.3 Protection of Ecological Functions and Critical Areas

3.3.1 Goal:

Protect shoreline resources by ensuring no net loss of existing ecological functions by providing buffers for critical areas and shorelines and conserving native shoreline vegetation.

3.3.2 Policies:

A. Manage shoreline development and uses so that critical areas or existing native shoreline vegetation remain unaltered to the greatest extent feasible.

B. Impacts to critical areas and native riparian vegetation should be avoided first; but when such impacts are unavoidable, minimize, or mitigate them to ensure no net loss of ecological function.

C. Establish shoreline buffer widths along shorelines that recognize existing shoreline development patterns and do not result in a net loss of ecological function.

D. Allow for shoreline buffers that should include limited exceptions for single-family residences to access, view, and enjoy the shoreline.

E. Encourage activities that create, restore, or enhance ecological functions, especially for priority species.

3.3.3 Regulations:

A. Shoreline development, uses, and activities shall be located and designed to ensure no net loss of ecological function unless authorized otherwise under this Master Program.

B. Ecological functions existing at the time of the adoption of this Master Program shall serve as the baseline for evaluating new development and its effect on the no net loss standard.

C. Work in or adjacent to critical areas located within shoreline jurisdiction shall be consistent with Chapter 14.15 SBMC as well as this Master Program.

D. Development and uses shall protect existing shoreline ecological functions. Avoiding impacts by not taking a certain action or parts of an action is the first priority. However, if avoidance is not possible, mitigation is required to address impacts in accordance with the following order of priority:

i. Minimize impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology or by taking affirmative steps to avoid or reduce impacts;

ii. Rectify the impact by repairing, rehabilitating, or restoring the affected environment;

iii. Reduce or eliminate the impact over time by preservation and maintenance operations;

iv. Compensate for the impact by replacing, enhancing, or providing substitute resources or environments; and

v. Monitor the impact and the compensation projects and take appropriate corrective measures.

E. Credits from a certified mitigation bank may be used to compensate for unavoidable impacts.

F. Requirements for mitigation shall be consistent with Chapter 14.15 SBMC.

G. Shoreline buffers shall be maintained along all Type S shorelines to protect and maintain ecological functions of the shoreline and to minimize risks to public safety. The width of the shoreline buffer shall be measured horizontally from the site's ordinary high water mark. The width of the shoreline buffer shall be consistent with Table 2.

Table 2: Minimum Shoreline Buffer by Shoreline Designation

Shoreline Designation	Minimum Shoreline Buffer
City Waterfront	25 feet
Urban Conservancy	110 feet

H. Primary uses and structures that meet the definition of water-oriented may locate within a shoreline buffer when consistent with the mitigation requirements under Section 3.3.3 C and D.

I. Removal of vegetation within the shoreline buffer shall be avoided except under the following conditions:

i. Where removal of native vegetation cannot be avoided, it shall be mitigated consistent with the requirements under Section 3.3.3 C and D.

ii. Property owners may do limited and selective clearing for views that do not compromise slope stability and ecological functions. View maintenance techniques shall preserve plant composition and structure by removing no more than 25 percent of the canopy cover of any individual tree or native plant vegetation. The Administrator may allow removal of hazard trees if structures or site improvements on the property are in danger.

iii. The owner of a single-family residence may locate in a shoreline buffer a private dock and/or pier, a six-foot pedestrian pathway leading to the shoreline, and a cleared recreation area that does not exceed 15% of the total area of the shoreline buffer.

iv. Projects that eradicate invasive species, including noxious weeds and non-native species, are allowed. Removal of non-native vegetation shall be replaced with native vegetation.

Section 3.4 **Nonconforming Structures, Uses and Lots**

Deleted: Existing Development

3.4.1 Goal:

Provide reasonable provisions to allow the continuation and use of lawfully established structures, uses, and lots created before the adoption of this Master Program.

Deleted: uses, structures, and parcels

3.4.2 Policies:

A. Existing upland structures should be allowed to accommodate nonwater-oriented uses when there is no foreseeable demand for water-oriented ones.

B. Existing structures within shoreline buffers should be allowed to expand if the expansion minimizes the impacts to ecological functions to the greatest extent feasible.

C. Existing residences and their appurtenances legally established prior to this master program should be classified as conforming structures, as allowed by RCW 90.58.620.

3.4.3 Regulations:

A. Nonconforming structures.

Deleted: Any legally established development, including residential and appurtenant structures, built before the effective date of this Master Program that does not meet all of the provisions therein, shall be considered a conforming structure, and may undergo repair, maintenance, or replacement.

i. Structures that were legally established and are used for a conforming use but are nonconforming with regard to setbacks, buffers or yards; area; bulk; height or density may continue as legal nonconforming structures and may be maintained and repaired.

ii. Nonconforming structures may be enlarged or expanded provided that said enlargement meets the applicable provisions of the master program. In the absence of other more specific regulations, proposed expansion shall not increase the extent of nonconformity by further encroaching upon or extending into areas where construction would not be allowed for new structures, unless a shoreline variance permit is obtained.

iii. Nonconforming single-family residences that are located landward of the ordinary high water mark may be enlarged or expanded in conformance with applicable bulk and dimensional standards by the addition of space to the main structure or by the addition of normal appurtenances as defined in WAC 173-27-040 (2)(g) upon approval of a conditional use permit.

iv. 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.

v. In the absence of other more specific regulations, a structure which is being or has been used for a nonconforming use may be used for a different nonconforming use only upon the approval of a conditional use permit. A conditional use permit may be approved only upon a finding that:

a) No reasonable alternative conforming use is practical; and

b) The proposed use will be at least as consistent with the policies and provisions of the act and the master program and as compatible with the uses in the area as the preexisting use.

In addition, such conditions may be attached to the permit as are deemed necessary to assure compliance with the above findings, the requirements of the master program and the Shoreline Management Act and to assure that the use will not become a nuisance or a hazard.

vi. A nonconforming structure which is moved any distance must be brought as closely as practicable into conformance with the applicable master program and the act.

vii. If a nonconforming development is damaged to an extent not exceeding seventy-five percent of the replacement cost of the original development, it may be reconstructed to those configurations existing immediately prior to the time the development was damaged, provided that application is made for the permits necessary to restore the development within two years of the date the damage occurred.

B. Nonconforming uses.

i. Uses that were legally established and are nonconforming with regard to the use regulations of the master program may continue as legal nonconforming uses.

ii. In the absence of other more specific regulations in the master program, such uses shall not be enlarged or expanded, except upon approval of a conditional use permit.

iii. If a nonconforming use is discontinued for twelve consecutive months or for twelve months during any two-year period, the nonconforming rights shall expire and any subsequent use shall be conforming unless re-establishment of the use is authorized through a conditional use permit which must be applied for within the two-year period. Water-dependent uses should not be considered discontinued when they are inactive due to dormancy, or where the use includes phased or rotational operations as part of typical operations. A use authorized pursuant to subsection A.v. of this section shall be considered a conforming use for purposes of this section.

C. Nonconforming lots.

iv. A nonconforming lot may be developed if permitted by other land use regulations of the local government and so long as such development conforms to all other requirements of the applicable master program and the act.

D. Residential structures and appurtenant structures that were legally established and are used for a conforming use, but that do not meet the current setback, buffer; area; bulk; height; or density standards shall be considered a conforming structure, and:

i. a. Redevelopment, expansion, change with the class of occupancy, or replacement of the residential structure may be allowed consistent with this master program, including requirements for no net loss of shoreline ecological functions;

ii. b. For purposes of this provision, "appurtenant structures" means garages, sheds, and other legally established structures, but does not include bulkheads and other shoreline modifications or overwater structures.

iii. c. Nothing in this provision:

a) Restricts the ability of this master program to limit redevelopment, expansion, or replacement of overwater structures located in hazardous areas, such as floodplains and geologically hazardous areas; or

b) Affects the application of other federal, state, or local government requirements to residential structures.

Deleted: Existing development and uses within a shoreline buffer may expand, redevelop, change occupancy class, or rebuild without a Shoreline Variance in accordance with the following provisions:¶
The existing development is in the City Waterfront or Urban Conservancy Environments;¶
Expansion of a development or use extends landward of the existing footprint of the structure or activity; and¶
Upward expansion may occur in conformance with applicable height limitations in Section 3.7.¶
Existing parcels landward of the ordinary high water mark that were created before the effective date of this Master Program, and unable to meet the shoreline buffer requirements under Section 3.3.3 may accommodate a single-family residence with a Shoreline Variance in accordance with the following provisions:¶
There is no opportunity to consolidate lots under common ownership to alleviate the nonconformity; and¶
The proposed location of the building area uses the minimum area necessary within a shoreline buffer.

Section 3.5 Flood Hazard Reduction

3.5.1 Goal:

Promote public health, safety, and general welfare by minimizing the location of development and uses within flood-prone areas that require the need for future structural flood hazard reduction measures.

3.5.2 Policies:

A. Development in floodplains should not significantly increase flood hazards.

B. Whenever feasible, the Master Program gives preference to the use of nonstructural flood hazard reduction measures over structural ones.

C. The city should not allow new development or uses in shoreline jurisdiction, including the subdivision of land, which would require anticipated structural flood hazard reduction measures during the estimated life of the project.

D. Where feasible, the city may consider the removal of artificial restrictions to natural channel migration, restoration of off-channel hydrological connections, and returning river processes to a more natural state.

E. Coordinate comprehensive land use plans and development regulations with the Master Program to allow appropriate development within floodplains.

3.5.3 Regulations:

A. Development in floodplains shall not significantly or cumulatively increase flood hazard or be inconsistent with Chapter 14.10 SBMC.

B. New development or uses, including the subdivision of land, shall not be permitted if it can be reasonably expected that there will be a need for future structure flood hazard reduction measures.

C. New structural flood hazard reduction measures shall not be permitted to locate within shoreline jurisdiction unless scientific and engineering analysis prepared by a qualified professional demonstrates that:

i. The measure is necessary to protect existing development;

ii. Nonstructural measures are not a feasible alternative; and

iii. Mitigation can successfully reduce impacts on ecological functions and priority species and habitats so there is no net loss of shoreline ecological function.

D. The placement of new structural flood hazard reduction measures shall be landward of associated wetlands and shoreline buffers except for actions that increase ecological functions, such as wetland restoration. Flood hazard reduction projects may be authorized only if geotechnical analysis documents and determines that no other alternative is feasible for reducing flood hazards to existing development.

E. New public structural flood hazard reduction measures, such as dikes and levees, shall provide public access pathways, except as provided under Section 3.6.

Section 3.6 Ocean Management

3.6.1 Goal:

Avoid impacts to renewable ocean resources, marine life, fishing, aquaculture, recreation, navigation, air or water quality, or other existing ocean or coastal uses.

3.6.2 Policies

A. Applicability. These ocean management policies and their implementing regulations will be used in evaluating ocean uses, developments, and activities proposed in coastal waters subject to ORMA. These provisions augment the other requirements of this SMP. They are not intended to regulate recreational uses or currently existing commercial uses involving fishing or other renewable marine or ocean resources.

B. These general ocean management policies are applicable to all shoreline permits for newly proposed ocean uses, their services, distribution, and supply activities and their associated facilities.

i. Ocean uses and activities that will not adversely impact renewable resources shall be given priority over those that will. Correspondingly, ocean uses that will have less adverse impacts on renewable resources shall be given priority over uses that will have greater adverse impacts.

ii. Ocean uses that will have less adverse social and economic impacts on coastal uses and communities should be given priority over uses and activities that will have more such impacts. When the adverse impacts are generally equal, the ocean use that has less probable occurrence of a disaster should be given priority.

iii. The alternatives considered to meet a public need for a proposed use should be commensurate with the need for the proposed use. For example, if there is a demonstrated national need for a proposed use, then national alternatives should be considered.

iv. For ocean uses and activities, SEPA shall be applied consistent with WAC 197-11-060 (4)(e) and 197-11-792 (2)(c). The determination of significant adverse impacts should be consistent with WAC 197-11-330(3) and 197-11-794. The sequence of actions described in WAC 197-11-768 should be used as an order of preference in evaluating steps to avoid and minimize adverse impacts.

v. Impacts on commercial resources, such as the crab fishery, on noncommercial resources, such as environmentally critical and sensitive habitats, and on coastal uses, such as loss of equipment or loss of a fishing season, should be considered in determining compensation to mitigate adverse environmental, social and economic impacts to coastal resources and uses.

vi. Allocation of compensation to mitigate adverse impacts to coastal resources or uses should be based on the magnitude and/or degree of impact on the resource, jurisdiction and use.

vii. Rehabilitation plans and bonds prepared for ocean uses should address the effects of planned and unanticipated closures, completion of the activity, reasonably anticipated disasters, inflation, new technology, and new information about the environmental impacts to ensure that state of the art technology and methods are used.

viii. Ocean uses and their associated coastal or upland facilities should be located, designed and operated to prevent, avoid, and minimize adverse impacts on migration routes and habitat areas of species listed as endangered or threatened, environmentally critical and sensitive habitats such as breeding, spawning, nursery, foraging areas and wetlands, and areas of high productivity for marine biota such as upwelling and estuaries.

ix. Ocean uses should be located to avoid adverse impacts on proposed or existing environmental and scientific preserves and sanctuaries, parks, and designated recreation areas.

x. Ocean uses and their associated facilities should be located and designed to avoid and minimize adverse impacts on historic or culturally significant sites in compliance with chapter 27.34 RCW. Permits in general should contain special provisions that require

permittees to comply with chapter 27.53 RCW if any archaeological sites or archaeological objects such as artifacts and shipwrecks are discovered.

xi. Ocean uses and their distribution, service, and supply vessels and aircraft should be located, designed, and operated in a manner that minimizes adverse impacts on fishing grounds, aquatic lands, or other renewable resource ocean use areas during the established, traditional, and recognized times they are used or when the resource could be adversely impacted.

xii. Ocean use service, supply, and distribution vessels and aircraft should be routed to avoid environmentally critical and sensitive habitats such as sea stacks and wetlands, preserves, sanctuaries, bird colonies, and migration routes, during critical times those areas or species could be affected.

xiii. In locating and designing associated onshore facilities, special attention should be given to the environment, the characteristics of the use, and the impact of a probable disaster, in order to assure adjacent uses, habitats, and communities' adequate protection from explosions, spills, and other disasters.

xiv. Ocean uses and their associated facilities should be located and designed to minimize impacts on existing water dependent businesses and existing land transportation routes to the maximum extent feasible.

xv. Onshore facilities associated with ocean uses should be located in communities where there is adequate sewer, water, power, and streets. Within those communities, if space is available at existing marine terminals, the onshore facilities should be located there.

xvi. Attention should be given to the scheduling and method of constructing ocean use facilities and the location of temporary construction facilities to minimize impacts on tourism, recreation, commercial fishing, local communities, and the environment.

xvii. Special attention should be given to the effect that ocean use facilities will have on recreational activities and experiences such as public access, aesthetics, and views.

xviii. Detrimental effects on air and water quality, tourism, recreation, fishing, aquaculture, navigation, transportation, public infrastructure, public services, and community culture should be considered in avoiding and minimizing adverse social and economic impacts.

xix. Special attention should be given to designs and methods that prevent, avoid, and minimize adverse impacts such as noise, light, temperature changes, turbidity, water pollution and contaminated sediments on the marine, estuarine or upland environment. Such attention should be given particularly during critical migration periods and life stages of marine species and critical oceanographic processes.

xx. Pre-project environmental baseline inventories and assessments and monitoring of ocean uses should be required when little is known about the effects on marine and estuarine ecosystems, renewable resource uses and coastal communities or the technology involved is likely to change.

xxi. Oil or gas exploration, development, or production should be prohibited from Cape Flattery south to Cape Disappointment; in Grays Harbor, Willapa Bay, and the Columbia River downstream from the Longview bridge. For all other areas the following policies apply:

a) Oil and gas, mining, disposal, and energy producing ocean uses should be designed, constructed, and operated in a manner that minimizes environmental impacts on the coastal waters environment, particularly the seabed communities, and minimizes impacts on recreation and existing renewable resource uses such as fishing.

b) To the extent feasible, the location of oil and gas, and mining facilities should be chosen to avoid and minimize impacts on shipping lanes or routes traditionally used by commercial and recreational fishermen to reach fishing areas.

c) Discontinuance or shutdown of oil and gas, mining or energy producing ocean uses should be done in a manner that minimizes impacts to renewable resource ocean uses such as fishing, and restores the seabed to a condition similar to its original state to the maximum extent feasible.

C. The state's Marine Spatial Plan (MSP) provides a base of scientific information on ocean uses and resources, provides a framework for evaluating new ocean use proposals, and establishes protections for sensitive areas and fisheries. As such, the state's MSP informed the ocean management provisions of this SMP and should be utilized in their implementation.

3.6.3 Regulations

A. The following ORMA ocean management regulations apply to all shoreline permits for newly proposed ocean uses, their services, distribution, and supply activities and their associated facilities:

i. Oil and gas exploration, development, and production is prohibited in the Aquatic shoreline environment designation.

ii. Seafloor mining may be allowed consistent with the following:

a) The applicant has demonstrated that the location and operation has been designed in a manner that has no detrimental effects on ground fishing, renewable resource uses, beach erosion and accretion processes; and

b) The applicant has provided for mitigation of impacts that accounts for the established habitat recovery rates.

iii. Ocean energy producing uses should only be allowed when the applicant has demonstrated the following:

a) The location, construction, and operation has been designed in a manner that has no detrimental effects on beach erosion, accretion, and wave processes;

b) The effect of the project on upwelling and other oceanographic and ecosystem processes have been assessed; and

c) Associated energy distribution facilities and lines are located in existing utility rights of way and corridors, whenever feasible.

iv. Ocean disposal uses may be allowed when the applicant has demonstrated the following:

a) Storage, loading, transporting, and disposal of materials shall be done in conformance with local, state, and federal requirements for protection of the environment;

b) The ocean disposal site has been approved by the Washington department of ecology, the Washington department of natural resources, the United States Environmental Protection Agency, and the United States Army Corps of Engineers, as appropriate. Ocean disposal sites for which the primary purpose is habitat enhancement may be located in a wider variety of locations;

c) The Ocean disposal site has been located and designed to prevent, avoid, and minimize adverse impacts on environmentally critical and sensitive habitats, coastal resources and uses, or loss of opportunities for mineral resource development; and

d) Ocean disposal should be sited in areas where the dredge material will provide beneficial use to the greatest extent possible.

v. Ocean transportation uses may be allowed consistent with the following:

a) The applicant has provided an assessment of the impacts the proposed transportation use will have on renewable resource activities such as fishing and on environmentally critical and sensitive habitat areas, environmental and scientific preserves and sanctuaries.

b) When feasible, hazardous materials such as oil, gas, explosives and chemicals, should not be transported through highly productive commercial, tribal, or recreational fishing areas. If no such feasible route exists, the routes used should pose the least environmental risk.

c) Transportation uses should be located or routed to avoid habitat areas of endangered or threatened species, environmentally critical and sensitive habitats, migration routes of marine species and birds, marine sanctuaries and environmental or scientific preserves to the maximum extent feasible.

vi. Ocean research uses may be allowed consistent with the following:

a) Other ocean uses occurring in the same area have been identified and potential use conflicts have been minimized.

b) Ocean research meeting the definition of "exploration activity" of WAC 173-15-020 shall comply with the requirements of WAC 173-15: Permits for oil or natural gas exploration activities conducted from state marine waters.

c) The project has been located and will be operated in a manner that minimizes intrusion into or disturbance of the coastal waters environment consistent with the purposes of the research and the intent of the general ocean use guidelines.

d) Upon completion or discontinuance of the ocean research the site shall be restored to its original condition to the maximum extent feasible, consistent with the purposes of the research.

e) Ocean research findings should be made available for public dissemination, whenever feasible.

vii. Ocean salvage uses may be allowed consistent with the following:

a) Nonemergency marine salvage and historic shipwreck salvage activities should be conducted in a manner that minimizes adverse impacts to the coastal waters environment and renewable resource uses such as fishing.

b) Nonemergency marine salvage and historic shipwreck salvage activities should not be conducted in areas of cultural or historic significance unless part of a scientific effort sanctioned by appropriate governmental agencies.

B. Important, Sensitive and Unique Areas (ISUs) Designation. The ISUs assign protection standards and definitions for adverse effects for a list of ecological, historic, cultural, and infrastructure areas. The MSP provides maps utilizing the best available data on ISU locations.

i. Ecological ISUs:

a) Biogenic Habitats: Aquatic vegetation, corals, and sponges

b) Rocky Reefs

c) Seabird colonies: islands and rocks used for foraging and nesting by seabirds.

d) Pinniped haul-outs

e) Forage fish spawning areas: intertidal areas used for spawning by herring, smelt or other forage fish.

ii. Historic, Cultural and Infrastructure ISUs:

a) Historic and archaeological sites: Structures or sites over 45 years old that are listed or eligible for listing in local, state or national preservation registers (e.g. shipwrecks or lighthouses); or Artifacts or other material evidence of tribal or historic use or occupation (e.g. burials, village sites, or middens).

b) Buoys and submarine cables: Fixed infrastructure such as navigation or monitoring buoys, fiber optic cables, electrical transmission cables, other fixed monitoring equipment in the marine environment (e.g. hydrophones) and any associated mooring lines, anchors or other equipment.

C. ISU Mapping and Location. The state has developed maps of ISUs intended to assist applicants in identifying where ISUs exist. https://www.msp.wa.gov/ important-sensitive-and-unique-areas-isus/. However, ISU protection standards will apply to any ISU, wherever it is identified in state waters. It is the responsibility of applicants to verify whether ISUs exist in their proposed project area and to demonstrate protection standards will be met.

D. ISU Protection standards. New ocean uses should only be allowed when the applicant can demonstrate consistency with the following ISU adverse effects and protection standards:

i. An applicant for proposed new ocean uses involving offshore development must demonstrate that the project will have no adverse effects on an ISU located at the project site and to off-site ISUs potentially affected by the project, using site-specific surveys, scientific data and analysis, which demonstrate either:

a) The current ISU maps do not accurately characterize the resource or use or the project area (mapped or not mapped) does not contain an ISU resource or use; or

b) The weight of scientific evidence clearly indicates that the project will cause no adverse effects to the resources of the ISU.

c) Adverse effects standards for Ecological ISUs means degradation of ecosystem function and integrity (direct habitat damage, burial of habitat, habitat erosion, and reduction in biological diversity) or degradation of living marine organisms (abundance, individual growth, density, species diversity, and species behavior).

d) Adverse effects standards for historic, cultural or fixed infrastructure ISUs include the following:

(1) Direct impacts from dredging, dumping, or filling;

(2) Alteration, destruction, or defacement of historic, archaeological or cultural artifacts; and

(3) Direct impacts from placement or maintenance of new, temporary, or permanent structures in areas with existing infrastructure or historic, archaeological or cultural artifacts.

e) Additional buffers may be appropriate to protect ISU resources from adverse effects. Project developers shall consult with the Washington Department of Fish and Wildlife on recommended buffers for Ecological ISUs associated with their proposed project prior to filing application materials with local or state agencies. Project developers shall consult with the Washington Department of Archaeological

and Historical Preservation and tribal preservation officers on further identification and protection of cultural or historical artifacts.

E. Applicants for proposed new ocean uses involving offshore development must consult with WDFW, individuals participating in affected commercial and recreational fisheries, and each of the coastal tribes to identify and understand the proposed project's potential adverse effects to fisheries and tribal uses.:

F. Fisheries Protection standards. New ocean uses involving offshore development shall only be allowed when the applicant can demonstrate that their project meets all of the following standards to protect fisheries located at the project site and nearby from adverse effects:

i. There are no likely long-term significant adverse effects for commercial or recreational fisheries. Adverse effects can be direct, indirect or cumulative.

a) There are no likely long-term significant adverse effects for commercial or recreational fisheries. Adverse effects can be direct, indirect or cumulative.

(1) A significant reduction in the access of commercial or recreational fisheries to the resource used by any fishery or a fishing community(s);

(2) A significant increase in the risk to entangle fishing gear;

(3) A significant reduction in navigation safety for commercial and recreational fisheries; and

(4) Environmental harm that significantly reduces quality or quantity of marine resources available for harvest.

ii. All reasonable steps are taken to avoid and minimize social and economic impacts to fishing.

(1) Avoid adverse social and economic impacts to fishing through proposed project location, design, construction, and operation, such as avoiding heavily used fishing areas. Where adverse impacts to fishing cannot be reasonably avoided, demonstrate how project has minimized impacts;

(2) Minimize the number of and size of anchors. Space structures for greater compatibility with existing uses and bury cables in the seafloor and through the shoreline;

(3) Minimize risk of entangling fishing gear from new structures installed in the seafloor or placed in the water. Minimize the displacement of fishers from traditional fishing areas, and the related impact on the travel distance, routing, and navigation safety in order to fish in alternative areas;

(4) Minimize the compression of fishing effort caused by the reduction in the areas normally accessible to fishers;

(5) Minimize the economic impact resulting from the reduction in area available for commercial and recreational fishing for the effected sectors and ports.

(6) Limit the number and size of projects located in an area to minimize the impact on a particular port, sector, or fishery;

(7) Consider the distribution of projects and their cumulative effects; and

(8) Other reasonable and relevant considerations as determined by the fisheries consultation process and specifics of the proposed project.

Section 3.7 Public Access

3.7.1 Goal:

Increase the ability of the public to enjoy the water's edge, travel on the waters of the state, and to view the water and shoreline from adjacent locations.

3.7.2 Policies:

A. Development activities within shoreline jurisdiction should promote and enhance public access to waters of the state, including opportunities to view shorelines from public rights-of-ways, in a manner consistent with private property rights, public safety, and the protection of shoreline ecological functions.

B. Nonwater-oriented uses should provide a higher level of public access improvements over water-oriented uses.

C. Extension and improvement of the Willapa Hills Trail system within the city is a public access priority.

D. Encourage water-oriented commercial development to integrate design features that satisfy public access requirements, such as including windows looking out to the shoreline and outdoor decks, patios, and walkways.

E. Protect view corridors of the shoreline by limiting structural encroachment into side yard setbacks established through the zoning ordinance.

F. Public access requirements for new or expanded development or uses should be reasonable and reflect the scale of the improvement.

G. Allow flexibility when deciding where required public access improvements should be located that considers the needs of the developer and the community.

3.7.3 Regulations:

A. Public access is a requirement for development within shorelines except as provided below:

i. Single-family residences or residential projects containing four or fewer dwelling units; and

ii. Another property or public right-of-way physically separates the development from the shoreline.

B. The requirement for public access to shorelines does not confer the right to enter upon or cross private property except on dedicated and marked public easements.

C. Required public access shall be commensurate with the level of shoreline development and may consist of one or more of the following physical improvements approved by the Administrator:

i. A five-foot wide walkway or trail on an easement no less than twelve feet wide that leads from a public right-of-way to waters of the state;

ii. Installation of amenities, such as benches, picnic facilities, windbreaks, covered patios, interpretive centers, parking improvements, or restrooms;

iii. The connection or continuation of a public walkway, bike path, or trail that is equivalent in design and area;

iv. A viewpoint, deck, pier, or boat launch; or

v. Other improvements appropriate to the level of development.

D. The location of public access required for development normally occurs on the subject property, provided, however, that the Administrator may approve off-site public access or improvements under the following situations:

i. There are unavoidable health or safety hazards to the public created by the proposed use that site design cannot mitigate;

ii. On-site design alternatives cannot address inherent security concerns related to the proposed use;

iii. Public access would create adverse impacts to shoreline ecological functions; and/or

iv. Significant, unavoidable conflicts could occur between public access improvements, the proposed use, and/or adjacent uses that site design cannot mitigate.

E. Alternatives for satisfying off-site public access or improvements may include enhancing existing public access points, developing viewpoints at street ends abutting shorelines, and/or improving or extending shoreline trails.

F. When appropriate, the Administrator may condition public access by limiting the hours of public use or requiring fencing or landscaping that separate uses and activities.

G. The permit applicant shall record with the County Auditor the public access easement and permit conditions on the deed or on the face of a plat as a condition running with the land.

H. The permit applicant shall install a sign indicating the public access site and any applicable information required by the Administrator.

I. Required public access improvements shall be fully developed and available for public use at the time of occupancy of the development.

J. Shoreline development by public entities shall provide public access except when access is incompatible due to reasons of safety, security, or impact to ecological functions.

Section 3.8 Setbacks and Heights

3.8.1 Goal

Limit the placement and height of structures within shoreline jurisdiction to ensure protection of shoreline aesthetic qualities and ecological functions.

3.8.2 Policies

A. The height and lot coverage of structures should not unreasonably obstruct the shoreline view from rights-of way or neighboring properties.

B. Use appropriate building setbacks from shoreline buffers to prevent impacts to these areas from construction and maintenance activities related to the development or use.

3.8.3 Regulations:

A. Pursuant to RCW 90.58.320, no permit shall allow new or expanded development to be more than 35 feet above average grade level that will obstruct the view of a substantial number of residences on areas adjoining such shorelines unless overriding considerations of the public interest will be served.

B. Power poles and transmission towers are not subject to height limits but shall be no higher than necessary to achieve the intended purpose.

C. New or expanded development shall maintain a minimum building setback of ten feet from the landward edge of the shoreline buffer. This setback shall remain an open space that may include architectural features, landscaping, decks, and patios.

Section 3.9 Shorelines of Statewide Significance

3.9.1 Goal:

Manage shorelines of statewide significance in a manner that recognizes the overall best interests of the state and its citizens.

3.9.2 Policies:

A. Management of shorelines of statewide significance should give preference to development in the following order of priority:

i. Recognize and protect the statewide interest over local interest;

ii. Preserve the natural character of the shoreline;

iii. Result in long term over short term benefit;

iv. Protect the resources and ecology of the shoreline;

v. Increase public access to publicly owned areas of the shorelines;

vi. Increase recreational opportunities for the public in the shoreline; and

vii. Provide for any other element as defined in RCW 90.58.100 deemed appropriate or necessary.

B. To ensure the protection of statewide interests over local interests, the city should review all development proposals, along the Willapa River, a shoreline of statewide significance, for consistency with RCW 90.58.020 through the following actions:

i. Include mitigation and/or enhancement of ecological conditions if such opportunities exist when shoreline development or redevelopment occurs;

ii. Consult with state and federal resource agencies and tribal governments for development proposals that affect fish and wildlife and other shoreline resources;

iii. Give preference to those uses that are sustainable, do not deplete natural resources, and are compatible with other approved uses over those that do not have these qualities;

iv. Give preference to those uses that provide long-term benefits over those uses that provide only short-term gains;

v. Give preference to those uses that preserve aesthetic qualities over those uses that impact aesthetic qualities;

vi. Give preference to those uses that require a shoreline location over those that are nonwater-oriented uses;

vii. Locate nonwater-oriented uses outside shoreline jurisdiction or in areas where they will not interfere with or displace preferred uses or public access;

viii. Protect and support areas that serve aquaculture, recreation and tourism, and other economic resources of statewide importance;

ix. Regulate those uses that have the potential to cause significant adverse impacts to shoreline ecological functions and ecosystem-wide processes;

x. Design all public access and recreation development to protect the ecological resources upon which such activities depend; and

xi. Encourage public and private development that provides trails, viewpoints, water access points, and water-related recreation opportunities where conditions are appropriate for such uses.

Section 3.10 Water Quality and Quantity

3.10.1 Goal:

Protect and enhance the quality and quantity of the region's water resources critical to the city's public health, economy, wetlands, and fish and wildlife resources.

3.10.2 Policies:

A. The location, construction, operation, and maintenance of all shoreline uses and developments should maintain or enhance surface and ground water quality.

B. The requirements for and maintenance of critical area buffers and vegetation along rivers and associated wetlands are important for protecting water quality.

C. The city should encourage stormwater control projects that improve discharges to rivers and associated wetlands.

3.10.3 Regulations:

A. Shoreline development shall protect water quality by preventing stormwater and nonpoint pollution from entering waters of the state consistent with the provisions of the most current *Stormwater Management Manual for Western Washington*.

B. New development and uses in the City Waterfront Environment shall incorporate appropriate low impact development measures to control and filter stormwater from impervious surfaces used as parking or storage areas. Landscape filter/buffer corridors, infiltration trenches, and grassed bioretention swales are examples of low impact development measures.

Chapter 4: Shoreline Uses

Section 4.1 Applicability

The provisions in this chapter apply to specific common uses and types of development to the extent they occur within shoreline jurisdiction. All uses and development must be consistent with the Master Program.

Section 4.2 Agriculture

4.2.1 Goal:

Manage agricultural practices within the shoreline environment to ensure protection of shoreline ecological functions.

4.2.2 Policies:

A. The siting, operation, and maintenance of new agricultural activities on non-agricultural land should ensure protection of shoreline ecological resources.

B. Encourage existing agriculture to minimize impacts to the shoreline environment by utilizing best management practices for soil conservation and fertilizer, pesticide, and herbicide application.

4.2.3 Regulations:

A. This section shall not require modification of or limit agricultural activities occurring on agricultural lands existing before the adoption of this Master Program.

B. 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).

C. New agricultural lands created after the effective date of this Master Program shall:

i. Conform to all Master Program provisions;

ii. Assure no net loss of ecological functions; and

iii. Not create adverse impacts to shoreline resources and values.

D. Conversion of existing agricultural land and activities to non-agricultural uses shall be consistent with this Master Program.

Section 4.3 Aquaculture

4.3.1 Goal:

Encourage aquaculture practices that contribute to the city's economy while protecting shoreline aesthetics and ecological functions.

4.3.2 Policies:

A. The design and location of aquaculture facilities should:

i. Avoid conflicts with navigation and other water-dependent uses;

ii. Prevent the spread of disease to native aquatic life and the introduction of non-native invasive species; and

iii. Be consistent with the aesthetic qualities of the surrounding shorelines.

B. Provide flexibility when siting and locating new or innovative aquaculture development and uses because potential locations are restricted, and the technology associated with some forms of aquaculture are experimental.

4.3.3 Regulations:

A. Aquaculture is a water-dependent activity that when consistent with control of pollution and prevention of damage to the environment is a preferred use of the water area.

B. No aquaculture project shall conflict with navigation or other water-dependent uses.

C. The ongoing maintenance, harvest, replanting or changing of species cultivated in any existing or permitted operation does not constitute new use or development and shall not require a permit.

D. Net pens for finfish, mussel rafts, and oyster floats shall not interfere with navigation, impact shoreline values for adjacent landowners, or result in a net loss of shoreline ecological function.

E. New aquatic species not previously cultivated within the city require written approval of the Director of the Washington Department of Fish and Wildlife before introduction to any aquatic environment.

Section 4.4 Boating Facilities

4.4.1 Goal:

Design, site, and operate commercial and recreational boating facilities to be compatible with the surrounding aquatic environment and adjacent land uses.

4.4.2 Policies:

A. Multiple use and/or expansion of existing piers and floats should be encourage over construction of new structures when possible.

B. The size of piers and floats for boating facilities should be the minimum necessary to meet the needs of the proposed water-dependent use.

C. The location of boating facilities should be in areas that create the least impact to shoreline functions.

D. Avoid locating boating facilities where shallow depths require excessive overwater lengths or frequent dredging.

E. Public boat launches are preferred over private ones.

4.4.3 Regulations:

A. The location of new boating facilities shall not interfere with navigation or block views to the shoreline.

B. The design and construction of new or expanded boating facilities shall consist of materials approved by applicable state agencies.

C. Applications for new or expanded boating facilities shall provide an operational plan that addresses the following elements:

i. Fuel handling and storage;

ii. Sewage and waste collection and disposal;

iii. Parking and storage;

iv. Access to emergency services; and

v. Provisions for live-aboard boaters.

D. All non-water dependent structures associated with a boating facility shall locate landward of the ordinary high water mark.

E. Boating facilities that allow live-aboards shall provide pump-out and/or treatment facilities for sewage.

F. Boating facilities existing before the adoption of this Master Program that do not comply with this section may be repaired with appropriate permitting without changing the dimensions or configuration. However, a modification to a non-compliant boating facility may not exceed its nonconformity.

G. Water-related and water-enjoyment uses may be allowed at boating facilities where they are clearly auxiliary to and in support of water-dependent uses.

H. The design, operation, and maintenance of commercial fueling docks shall be consistent with the "Guidelines for the Safe Operation and Maintenance of Marinas" published by the National Water Safety Congress.

I. Anchored vessels shall not interfere with navigation or moor on shorelines of the state in excess of 30 days without a lease or permission from the Washington Department of Natural Resources, except as allowed by applicable state regulations.

Section 4.5 Commercial Development

4.5.1 Goal:

Encourage commercial development along the city's shorelines that creates economic opportunity for the community while protecting ecological functions.

4.5.2 Policies:

A. Water-dependent, water-related, and water-enjoyment commercial uses are preferred over nonwater-oriented uses.

B. Allow nonwater-oriented uses to locate in existing buildings when vacancies demonstrate a lack of market demand for water-oriented uses.

C. The design and location of commercial development along shorelines should be visually compatible with adjacent properties.

4.5.3 Regulations:

A. Commercial development is not a water-dependent, water-related or water-enjoyment use until the Administrator determines that the proposed design, layout, and operation of the use or development is consistent with the definition and intent under this Master Program.

B. New nonwater-oriented commercial development is not an allowed use unless:

i. The use is part of a mixed-use project that includes water-dependent uses and provides significant public benefit with respect to providing public access and ecological restoration;

ii. Navigability is severely limited at the proposed site and the commercial use provides significant public benefit with respect to providing public access and ecological restoration; and/or

iii. Another property or public right-of-way physically separates the development from the shoreline.

C. Nonwater-oriented commercial development shall not locate over water except if located within an existing structure or in support of water dependent uses.

D. A nonwater-oriented commercial use may locate within an existing, vacant structure that remains unoccupied for greater than 90 days, provided there is no expansion of the structure.

Section 4.6 Forest Practices

4.6.1 Goal:

Promote forest practices within shoreline jurisdiction that protect shoreline ecological functions and values.

4.6.2 Policies:

A. Forest practices should be conducted in a manner that minimizes adverse impacts on the aesthetic qualities of shorelines of statewide significance.

4.6.3 Regulations:

A. Management of forest practices within shoreline jurisdiction fall under the purview of the Forest Practices Act, Chapter 76.13 RCW, the Forest Practice Rules, Title 222 WAC, and the *Forests and Fish Report* (1999).

B. A forest practice that only involves timber cutting is not a development under the act and does not require a shoreline substantial development permit or a shoreline exemption. A forest practice that includes activities other than timber cutting may be a development under the act and may require a substantial development permit, as required by WAC 222-50-020.

C. Forest practices regulated under this Master Program include conversions, other Class IV general forest practices that likely will result in a conversion to non-forest uses, and selective commercial timber cutting along shorelines of statewide significance as provided under RCW 90.58.150.

D. Forest practices within two hundred feet abutting landward of the ordinary high water mark within shorelines of statewide significance, shall allow only selective commercial timber cutting, so that no more than thirty percent of the merchantable trees may be harvested in any ten year period of time, provided that:

i. Other timber harvesting methods may occur in those limited instances where the topography, soil conditions, or silviculture practices necessary for regeneration make selective logging ecologically detrimental; and

ii. Clear cutting may occur if it is solely incidental to the preparation of land for other uses.

E. Forest practices under Section 4.6.3.C that do not utilize selective timber cutting requires a conditional use permit.

F. Timber harvest activities subject to this Master Program cannot happen until city approval of a local plat approval or other applicable land use decision, including the issuance of any required shoreline permits.

G. Preparatory work associated with the conversion of forestlands within shoreline jurisdiction to a non-forestry use or development shall be consistent with the provisions of this Master Program, including protection of ecological functions by retaining or establishing native vegetation within the shoreline buffer.

Section 4.7 Industrial development

4.7.1 Goal:

Encourage industrial development along the city's shorelines that creates economic opportunity while protecting ecological functions.

4.7.2 Policies:

A. Water-dependent and water-related industrial developments are preferred over nonwater-oriented industrial developments.

B. Preferred sites for water-oriented industrial development should demonstrate compatibility with adjacent land uses.

C. Industrial developments and redevelopments should be encouraged to locate where environmental cleanup and restoration is needed.

D. Encourage private and public industrial developments to share piers, cargo handling, storage, parking, and other accessory facilities.

4.7.3 Regulations:

A. Industrial development is not a water-oriented use until the Administrator determines that the proposed design, layout, and operation of the use or development is consistent with the definition and intent under this Master Program.

B. Nonwater-oriented industrial development is not an allowed use unless:

i. The use is part of a mixed-use project that includes water-dependent uses and provides significant public benefit with respect to providing public access and ecological restoration;

ii. Navigability is severely limited at the proposed site and the industrial use provides significant public benefit with respect to providing public access and ecological restoration; and/or

iii. Another property or public right-of-way physically separates the development from the shoreline

C. Existing nonwater-oriented industrial development may expand landward only if the expansion is consistent with the provisions of this Master Program.

Section 4.8 Instream Structures

4.8.1 Goal:

Ensure that necessary instream structures minimize impacts to ecological functions, navigation, public access, and fish and wildlife resources.

4.8.2 Policies:

A. Projects for instream structures should demonstrate a compelling public benefit that outweighs the potential adverse impacts to ecological functions, fish and wildlife, navigation, and public access.

B. Encourage instream structures that allow for ecological restoration and improve fish and wildlife habitat.

C. Encourage improvements to existing instream structural developments that minimize impacts to fish and wildlife resources, ecological functions, and ecosystem-wide processes.

4.8.3 Regulations:

A. Authorization of instream structures shall be permitted only when a qualified professional demonstrates that:

i. The instream structure shall address a need for public safety or infrastructure;

ii. Nonstructural measures are not feasible; and

iii. Impacts to ecological functions and critical areas are avoided or mitigated.

B. New or expanded instream structural developments shall provide adequate fish passage and avoid loss of habitat.

C. The design and location of instream structures shall avoid interfering with navigation.

D. Breakwaters and jetties shall be allowed when analysis by a qualified professional demonstrates that:

i. The structure is necessary for protecting water-dependent uses in the Aquatic Environment, such as boating facilities, from strong wave actions or currents; and

ii. Adverse impacts to water circulation, sediment transport, fish and wildlife migration, and aquatic vegetation can be avoided or mitigated.

Section 4.9 Recreational Development

4.9.1 Goal:

Encourage the development of a wide range of publicly- and privately-owned recreational opportunities for residents and tourists to enjoy shorelines and shorelands within the city.

4.9.2 Policies:

A. Coordinate city efforts with local, state, federal, and nonprofit entities to increase recreational opportunities for citizens and visitors to enjoy the city's shorelines.

B. Work towards the acquisition and development of a public park along the city's waterfront.

C. Promote the expansion of the Willapa Hills Trail along Robert Bush Drive in partnership with the Washington State Parks from the intersection of Quincy Street to the South Bend Boat Ramp by acquiring easements whenever feasible.

D. Site and design of recreational facilities should minimize impacts to ecological functions and neighboring private properties.

4.9.3 Regulations:

A. Water-oriented recreation developments are preferred over nonwater-oriented development unless another property or public right-of-way separates the development from the shoreline.

B. All recreational developments shall make adequate provisions for

i. Providing adequate parking and access;

ii. Avoiding adverse impacts to adjacent properties; and

iii. Preventing trespass to adjacent private properties.

C. Recreational developments shall make adequate provisions for conserving natural features of the shoreline, including protecting shoreline vegetation, and water quality.

Section 4.10 Residential development

4.10.1 Goal:

Ensure the compatibility of residential development with ecological functions and avoid those areas that present a risk to people and property.

4.10.2 Policies:

A. Residential development is a priority use of the shoreline when it is located in a manner that controls pollution and protects shoreline functions, critical areas, and vegetation conservation.

B. Residential development should be consistent with the character of the shoreline environment designation.

C. Residential development should avoid locating where structural shoreline stabilization improvements will be necessary for protecting from future flooding.

D. Provide incentives to residential development that restores ecological functions.

4.10.3 Regulations:

A. A shoreline substantial development permit is not required for construction of a single-family residence by any owner, lessee, or contract purchaser for their own use or the use of their family. Single-family residences and their appurtenances must otherwise conform to this Master Program.

B. New residential lots created through subdivision shall not create the need for new shoreline stabilization or flood hazard reduction measures that would cause significant impacts to other properties or public improvements.

C. New residential subdivisions creating more than four parcels shall incorporate provisions for low-impact development techniques to protect shoreline water quality.

D. New over-water residences, including floating homes, are a prohibited use in all shoreline environments.

E. The footprint expansion of any residential structure over water or wetlands, including decks and balconies, is prohibited.

Section 4.11 Transportation and Parking Development

4.11.1 Goal:

Design, site, and maintain transportation and parking developments in a manner that complements shoreline aesthetics and minimizes impacts to ecological functions.

4.11.2 Policies:

A. The location of new streets should avoid shorelines whenever feasible.

B. The design and location of new streets should minimize the need for structural shoreline stabilization improvements, modification of natural drainage systems, and waterway crossings.

C. Major improvements to US 101 by the Washington Department of Transportation should include public access improvements for pedestrians and bicycles when feasible.

D. Parking facilities should incorporate landscaping as a low impact development measure for treating runoff and improving the aesthetics of the shoreline environment.

4.11.3 Regulations:

A. Major street and highway improvements within shoreline jurisdiction shall include low-impact development measures to protect, maintain, or improve water quality.

B. Parking as a primary use is prohibited within shoreline jurisdiction.

C. Parking as an accessory to an authorized use shall locate as far upland from the shoreline as possible and use low impact development measures to protect water quality.

D. The city shall not vacate any right-of-way that abuts a shoreline except as provided under RCW 35.79.035.

Section 4.12 Utilities

4.12.1 Goal:

The design and location of utilities infrastructure within shoreline jurisdiction should be consistent with the character of the environment designation.

4.12.2 Policies:

A. The design and location of utilities should avoid aesthetic impacts to the shoreline environment.

B. Utilities that do not serve shoreline development should locate outside of shoreline jurisdiction whenever feasible.

4.12.3 Regulations:

A. New public or private utilities shall locate beyond shoreline jurisdiction, unless:

i. The utility requires a location adjacent to the water;

ii. Alternative locations are not feasible; or

iii. The utilities are necessary for a permitted shoreline development or use consistent with this Master Program.

B. The design and location of utility facilities and services shall protect scenic views. Utilities shall locate underground, alongside or under bridges, and within existing rights-of ways unless no other feasible option exists.

C. Aboveground utilities, such as pump stations or electrical substation, shall incorporate appropriate screening or landscaping to minimize visual impacts.

D. The location and design of utilities shall avoid the need for structural shoreline modifications to the greatest extent feasible.

Chapter 5: Shoreline Modifications

Section 5.1 Applicability

Shoreline modifications relate to the construction of a physical element, such as a dike, piers and docks, dredging, and fill, but can include other actions such as clearing, grading, or significant vegetation removal. Shoreline modifications usually support a shoreline use or are undertaken in preparation for a shoreline development or use.

Section 5.2 General Requirements

5.2.1 Modifications shall be allowed only when impacts are avoided, minimized, and mitigated to assure no net loss of shoreline ecological functions.

5.2.2 The schedule for in-water work shall protect biological productivity (including but not limited to fish runs, spawning, and benthic productivity). In-water work shall not occur in areas used for commercial fishing during a fishing season unless specifically addressed and mitigated for in the permit.

Section 5.3 Dredging and Dredge Materials Disposal

5.3.1 Goal:

Allow dredging and dredge material disposal practices that provide for navigation, utility development, environmental restoration, and public access in a manner that minimize impacts to ecological resources.

5.3.2 Policies:

A. Support routine maintenance of navigation channels to piers, docks, and boat launches to ensure safe access to water-dependent and water-related development and uses.

B. Siting of new water-dependent development should be in locations that avoid or minimize the need for future maintenance dredging.

C. Land disposal of dredge materials should be in areas outside of shoreline jurisdiction.

D. Avoid dredge spoil disposal in the Aquatic Environment that would interfere with navigation, critical areas, aquaculture, and areas with potential for ecological restoration.

5.3.3 Regulations:

A. Dredging to establish, expand, relocate, or reconfigure navigation channels shall be allowed only where needed to accommodate existing navigational uses and in a manner consistent with Section 3.3.

B. On-going maintenance dredging of existing navigation channels, basins, and boating facilities is limited to previously authorized location, depth, and width and is exempt from the need for a Substantial Development Permit. All other provisions of this Master Program shall apply.

C. Allow minor dredging to facilitate environmental restoration, enhancement, or remediation projects if consistent with this Master Program and restoration strategies.

D. The in-water discharge of dredge materials shall be at aquatic disposal sites identified by the Washington Dredged Material Management Program, except as allowed in Section 5.3.3.C.

E. Dredging for the primary purpose of obtaining fill material is not allowed except when the material is necessary for the restoration of ecological functions. When allowed, the site where the fill is to be placed must be located waterward of the ordinary high water mark and either associated with a Model Toxics Control Act (MTCA) or a Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) habitat restoration project, or if approved through a shoreline conditional use permit, any other significant habitat enhancement project.

Section 5.4 Fill and grading

5.4.1 Goal:

Minimize the need to fill and grade within the shoreline environment except to accommodate approved shoreline uses and modifications.

5.4.2 Policies:

A. The amount of fill used within the shoreline environment should be the minimum necessary to accommodate a shoreline use or modification.

B. Monitor the cumulative impacts of placing fill in areas that increase the potential of flooding area properties.

5.4.3 Regulations:

A. Fill and grading shall be permitted only in conjunction with a specific use already permitted through this Master Program.

B. The placement of fill waterward of the ordinary high water mark shall occur only when necessary for the following approved developments:

i. Water-dependent development;

ii. Mitigation action, ecological restoration or enhancement project;

iii. Aquaculture operations to improve production;

iv. Expansion or alteration of transportation facilities of statewide significance currently located on the shoreline if alternatives to fill are shown to be not feasible; or

v. Water-oriented public access or recreation.

C. A conditional use permit is required for any fills waterward of the ordinary high water mark except for ecological restoration projects.

D. Fills shall avoid critical areas and critical area buffers to the greatest extent feasible.

E. Fill material used in shoreline areas shall be free of contaminated materials.

Section 5.5 Docks, Piers, Floats, and Boat Launches

5.5.1 Goal:

Develop docks, piers, floats, and boat launches to serve residential, commercial, and recreational uses effectively while ensuring the protection of shoreline ecological functions and values.

5.5.2 Policies:

A. Multiple use and/or expansion of existing piers and floats should be encouraged over construction of new structures when possible.

B. The size of piers and floats should be the minimum necessary to meet the needs of the proposed water-dependent use and constructed of approved materials.

C. The location of piers, floats, and boat launches should be in areas that create the least impact to shoreline functions.

D. Avoid locating piers and docks where shallow depths require excessive overwater lengths or frequent dredging.

E. Encourage residential developments to provide joint use or community dock facilities.

F. Encourage residences to rely on mooring buoys rather than docks, piers, or floats.

G. Public boat launches are preferred over private facilities.

5.5.3 Regulations:

A. New recreational docks, piers, and floats shall be allowed only for water-dependent uses or public access. A dock associated with a single-family residence is a water dependent use if it is designed and intended as a facility for access to watercraft and complies with the provisions of this Master Program.

B. A single-family residence shall not have more than one single-use pier or dock per lot.

C. Docks and piers for commercial, industrial, and transportation uses shall only serve water-dependent uses and shall be the minimum size necessary to accommodate the proposed use, provided, however, that larger structures may be permitted if an analysis demonstrates the need for future expansion over the next 10 years.

D. The design of all new residential docks, piers, and floats shall be the minimum necessary for their intended use. The following standards shall apply:

i. Docks and piers:

b) The width shall not exceed 6 feet; and

c) Piers shall be no longer than the maximum length necessary to reach useable water to ensure vessels do not rest on substrate at any time.

ii. Floats:

a) The width of a single-use float shall not exceed 8 feet in width and 30 feet in length;

b) The width of a joint-use float shall not exceed 8 feet in width and 60 feet in length; and

c) The float location shall ensure that the float, anchor lines, or any vessel shall not rest on substrate at any time.

iii. Ramp widths shall not exceed 4 feet.

iv. Piers and floats shall be located at least 10 feet away from the abutting side property line or the imaginary extension thereof into the water.

v. The Administrator may approve increasing the maximum dimensions for piers, floats, and ramps to accommodate a resident with disabilities.

E. New residential developments with more than two dwelling units shall provide joint use or community docks rather than individual docks.

F. Docks existing before the adoption of this Master Program that do not comply with this section may be repaired with appropriate permitting without changing the dimensions or configuration. However, a modification to a non-compliant dock may not exceed its nonconformity.

G. The location and design of docks and floats shall not interfere with navigation or public access.

H. The design and construction of new or expanded docks shall consist of materials approved by applicable state agencies.

I. No pier or dock shall be used as a residence.

J. Storage of fuel, oils, and other toxic materials is prohibited on residential docks and piers.

Section 5.6 Shoreline Habitat and Natural System Enhancement Projects

5.6.1 Goal:

Encourage shoreline habitat and natural systems enhancement projects that improve shoreline ecological functions and contribute to healthy fish and wildlife populations.

5.6.2 Policies:

A. Encourage property owners, community groups, local, state, federal, and tribal entities to aid in implementing restoration projects identified through the City of South Bend Restoration Plan prepared pursuant to WAC 173-26-201(2)(f).

B. Provide incentives through the city's development regulations that encourage property owners to restore habitat along shorelines.

5.6.3 Regulations:

A. Shoreline restoration and enhancement projects shall be consistent with applicable provisions of this Master Program.

B. Fish habitat enhancement projects conforming to the provisions of RCW 77.55.181 shall be exempt from substantial development permits when consistent with the master programs, as follows:

i. A fish habitat enhancement project must accomplish one or more of the following tasks:

a) Elimination of human-made fish passage barriers, including culvert repair and replacement;

b) Restoration of an eroded or unstable streambank employing the principle of bioengineering, including limited use of rock as a stabilization only at the toe of the bank, and with primary emphasis on using native vegetation to control the erosive forces of flowing water; or

c) Placement of woody debris or other instream structures that benefit naturally reproducing fish stocks.

ii. A fish habitat enhancement project must be approved in one of the following ways:

a) By the Department of Fish and Wildlife pursuant to Chapter 77.95 or 77.100 RCW;

b) By the sponsor of a watershed restoration plan as provided in Chapter 89.08 RCW;

c) By the department as a Department of Fish and Wildlife -sponsored fish habitat enhancement or restoration project;

d) Through the review and approval process for the Jobs for the Environment Program;

e) Through the review and approval process for Conservation District-sponsored projects, where the project complies with design standards established by the Conservation Commission through the interagency agreement with the United States Fish and Wildlife Service and the Natural Resource Conservation Service;

f) Through a formal grant program established by the legislature or the Department of Fish and Wildlife for fish habitat enhancement or restoration; and

g) Through other formal review and approval processes established by the legislature.

C. The city shall not require permits or charge fees for fish habitat enhancement projects that meet the criteria under B of this subsection.

D. The creation or expansion of restoration and enhancement projects may be permitted or exempt, subject to required state or federal permits, when the applicant has demonstrated that:

i. The project will not adversely impact spawning, nesting, or breeding within fish and wildlife habitat conservation areas;

ii. Upstream or downstream properties or fish and wildlife habitat conservation areas will not be adversely affected;

iii. Water quality will not be degraded;

iv. Flood storage capacity will not be degraded;

v. Impacts to critical areas and buffers will be avoided and where unavoidable, minimized and mitigated; and

vi. The project will not interfere with the normal public use of the navigable waters of the state.

Section 5.7 Shoreline Stabilization

5.7.1 Goal:

Avoid or minimize the need for shoreline stabilization, and if unavoidable, give preference to nonstructural stabilization methods over structural ones.

5.7.2 Policies:

A. Use structural shoreline stabilization measures only when more natural, non-structural methods, such as vegetative stabilization, beach nourishment, and bioengineering have been determined not feasible. Alternatives for shoreline stabilization should be based on the following hierarchy of preference:

i. Take no action and allow the shoreline to retreat naturally; protect structures by increasing building setbacks or relocating them.

ii. Construct flexible defense works of natural materials that may include soft shore protection, bioengineering, beach nourishment, protective berms, or vegetative stabilization.

iii. Replace failing structures and allow expansion if no other practical alternative exists.

iv. Allow the construction of rigid works consisting of artificial materials such as riprap or concrete when alternative methods have been determined infeasible.

B. Permit the construction of larger works, such as jetties, breakwaters, or groin systems, only when no other practical alternatives exist. Avoid the location of uses and shoreline modifications along shorelines that will require future shoreline stabilization measures.

C. Provide incentives for property owners to remove structural shoreline stabilization or replace them with nonstructural modifications.

D. Consider the impacts to area properties when evaluating proposals for shoreline modifications.

E. Assure that the development of individual shoreline modifications do not have a cumulative adverse impact on flooding, erosion, ecological functions, and ecosystem-wide processes.

5.7.3 Regulations for Shoreline Stabilization

A. Allow structural shoreline stabilization only where there is a demonstrated need to support or protect an existing primary structure that is in danger of substantial damage or loss.

B. New structural shoreline stabilization measures shall not be allowed except when necessity is demonstrated in the following manner:

i. To protect existing primary structures:

a) There is conclusive evidence, documented by a geotechnical analysis that the structure is in danger from shoreline erosion caused by tidal action, currents, waves, or sea level rise. Normal sloughing, erosion of steep bluffs, or shoreline erosion itself, without a scientific or geotechnical analysis, is not demonstrated need. The geotechnical analysis should evaluate on-site drainage issues and address drainage problems away from the shoreline edge before considering structural shoreline stabilization; and

b) The erosion control structure will not result in a net loss of shoreline ecological functions.

ii. In support of new nonwater-dependent development, including single-family residences, when all of the following conditions apply:

a) The erosion is not the result of upland conditions, such as the loss of vegetation and drainage;

b) Nonstructural measures, such as placing the development further from the shoreline, planting vegetation, or installing on-site drainage improvements, are not feasible or insufficient;

c) A geotechnical report demonstrates the need to protect primary structures from damage due to erosion. The damage must be the result of natural aquatic processes, such as tidal action, currents, waves, and sea level rise; and

d) The erosion control structure will not result in a net loss of shoreline ecological functions.

iii. In support of water-dependent development when all of the following conditions below apply:

a) The erosion is not the result of upland conditions, such as the loss of vegetation and drainage;

b) Nonstructural measures, planting vegetation, or installing on-site drainage improvements, are not feasible or not sufficient;

c) A geotechnical report demonstrates the need to protect primary structures from damage due to erosion. The damage must be the result of natural aquatic processes, such as tidal action, currents, waves, and sea level rise; and

d) The erosion control structure will not result in a net loss of shoreline ecological functions.

iv. To protect projects for the restoration of ecological functions or hazardous substance remediation projects pursuant to RCW 70.105D when all of the conditions below apply:

a) Nonstructural measures, planting vegetation, or installing on-site drainage improvements, are not feasible or insufficient; and

b) The erosion control structure will not result in a net loss of shoreline ecological functions.

v. A property owner may replace an existing shoreline stabilization structure with a similar structure if there is a demonstrated need to protect primary uses or structures from erosion

caused by currents, tidal action, waves, or sea level rise. Replacement may occur in accordance with the following provisions:

a) The design, location, size, and construction of the replacement structure results in no net loss of shoreline ecological functions;

b) Replacement walls or bulkheads do not encroach waterward of the ordinary high-water mark or existing structure unless the residence was occupied before January 1, 1992 and there is significant safety or environmental concern. In such cases, the replacement structure shall abut the existing shoreline stabilization structure;

c) Where a net loss of shoreline ecological functions associated with critical saltwater habitats would occur by leaving the existing structure, remove it as part of the replacement measure; and

d) Replacement of structural stabilization measures with nonstructural ones that restore shoreline ecological functions may locate waterward of the ordinary high-water mark.

C. For purposes of this section, "replacement" means the construction of a new structure to perform a shoreline stabilization function of an existing structure that can no longer adequately serve its purpose. Additions to or increases in size of existing shoreline stabilization measures shall be considered new structures.

D. When allowed pursuant to the provisions of this Master Program, structural shoreline stabilization must meet all of the following requirements:

i. The impacts can be mitigated in accordance with the mitigation sequencing established under Section 3.3.3.C and .D such that there is no net loss of ecological functions;

ii. The size of a shoreline stabilization structure shall be limited to the minimum necessary to protect the primary structure or use. Shoreline stabilization shall be designed by a state licensed professional geotechnical engineer and/or engineering geologist, and constructed according to applicable state and federal laws;

iii. The shoreline stabilization shall be constructed and maintained in a manner that does not degrade the quality of affected waters; and

iv. No demolition debris or other solid waste shall be used for shoreline stabilization.

Chapter 6: Permit Procedures and Enforcement

Section 6.1 Administrative Duties and Responsibilities

6.1.1 The City Supervisor or designee is the Administrator with the following duties and responsibilities:

A. Provide overall administration of this Master Program;

B. Make administrative decisions and interpretations of the policies and regulations within this Master Program and the Act;

C. Prepare and grant Letters of Exemption from substantial development permits;

D. Determine completeness of project applications under this Master Program;

E. Grant revisions to permits in accordance with the provisions in this Master Program;

F. Prepare and adopt findings of fact, conclusions, and decision that grants or denies a substantial development permit;

G. Prepare written recommendations to the Planning Commission on project applications for conditional use and variance permits, and to assure that all relevant information, testimony, and questions regarding a specific matter is available to the Planning Commission during their review and decision process;

H. Issue a stop work order pursuant to the procedures set forth in WAC 173-27-270 upon a person undertaking an activity on shorelines in violation of RCW 90.58 or this Master Program and to seek remedies for alleged violations; and

I. Prepare and submit to the Washington Department of Ecology a final decision by the city on a project permit decision or revision.

J. Develop and maintain a permit tracking system.

6.1.2 The duties and responsibilities of the Planning Commission are to:

A. Hear appeals of decisions by the Administrator;

B. Prepare and adopt findings of fact, conclusions, and decisions that grant or deny a conditional use permit or variance;

C. Periodically review the Master Program and make recommendations to the City Council for amendment.

6.1.3 The duties and responsibilities of the City Council are to:

A. Hear appeals of decisions by the Planning Commission;

B. Initiate and adopt amendments to this Master Program.

6.1.4 The duties and responsibilities granted under this Master Program shall regulate development of private property in a manner consistent with all relevant constitutional and other legal limitations in accordance with WAC 173-26-186(5).

Section 6.2 General Shoreline Permit Requirements

6.2.1 A shoreline permit is necessary for development within the jurisdiction of this Master Program unless a specific exemption applies. Shoreline permits under this Master Program include:

i. Substantial development permits;

ii. Conditional use permits; and

iii. Variances.

6.2.2 The Administrator shall determine if a substantial development permit, conditional use permit, and/or variance is necessary under the provisions of this Master Program.

6.2.3 All development and uses shall be consistent with the provisions of this Master Program regardless if a shoreline permit is necessary.

Section 6.3 Administrative Decisions and Interpretations

The Administrator shall make administrative decisions and interpretations of the management policies and development standards of this Master Program and the Act in accordance with SBMC 15.08.140. The Administrator shall consult with the Department of Ecology to ensure that any formal written interpretations are consistent with the purpose and intent of the Act and Chapters 173-26 and 173-27 WAC.

Section 6.4 Shoreline Exemptions

6.4.1 Certain developments are exempt from the substantial development permit requirements of the Act and this Master Program. These developments are those set forth in WAC 173-27-040 (or as amended), and do not meet the definition of substantial development under RCW 90.58.030(3)(e).

6.4.2 Application and interpretation of exemptions

A. The city shall construe exemptions narrowly. Only those developments that meet the precise terms of one or more of the listed exemptions may be exempt from a shoreline permit.

B. An exemption from a shoreline substantial development permit is not an exemption from compliance with the Act or this Master Program, or from any other regulatory requirements of the city or other state and federal agencies.

C. The burden of proof that a development is exempt from the permit process is on the applicant.

D. If any part of a proposed development is not eligible for exemption, then a substantial development permit is required for the entire proposed development project.

E. Any unlisted development or development listed as a conditional use within this Master Program shall obtain a conditional use permit even though the proposal does not require a substantial development permit.

F. The Administrator may attach conditions to the approval of exempt development as necessary to assure consistency of the project with the Act and this Master Program.

6.4.3 WAC 173-27-040 lists activities that are exempt activities from the requirement to obtain a shoreline substantial development or conditional use permit under this Master Program.

A. Any development of which the total cost or fair market value, whichever is higher, does not exceed $7,047 dollars, if such development does not materially interfere with the normal public use of the water or shorelines of the state.

B. Normal maintenance or repair of existing structures or developments, including damage by accident, fire or elements. "Normal maintenance" includes those usual acts to prevent a decline, lapse, or cessation from a lawfully established condition. "Normal repair" means to restore a development to a state comparable to its original condition, including but not limited to its size, shape, configuration, location and external appearance, within a reasonable period after decay or partial destruction, except where repair causes substantial adverse effects to shoreline 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.

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Deleted: The dollar threshold established in this subsection must be adjusted for inflation by the office of financial management every five years, beginning July 1, 2007, based upon changes in the consumer price index during that time period. For purposes of determining whether or not a permit is required, the total cost or fair market value shall be based on the value of development that is occurring on shorelines of the state as defined in RCW 90.58.030 (2)(c).

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

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

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

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

G. Construction on shorelands by an owner, lessee or contract purchaser of a single-family residence for their own use or for the use of their family, which residence does not exceed a height of thirty-five feet above average grade level and which meets all requirements of the state agency or local government having jurisdiction thereof, other than requirements imposed pursuant to chapter 90.58 RCW. "Single-family residence" means a detached dwelling designed for and occupied by one family including those structures and developments within a contiguous ownership which are a normal appurtenance. An "appurtenance" is necessarily connected to the use and enjoyment of a single-family residence and is located landward of the ordinary high water mark and the perimeter of a wetland. On a statewide basis, normal appurtenances include a garage; deck; driveway; utilities; fences; installation of a septic tank and drainfield and grading which does not exceed two hundred fifty cubic yards and which does not involve placement of fill in any wetland or waterward of the ordinary high water mark. Local circumstances may dictate additional interpretations of normal appurtenances which shall be set forth and regulated within

the applicable master program. Construction authorized under this exemption shall be located landward of the ordinary high water mark.

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

i. In salt waters, the fair market value of the dock does not exceed two thousand five hundred dollars; or

ii. In fresh waters the fair market value of the dock does not exceed:

a) Twenty-two thousand five hundred dollars ($22,500) for docks that are constructed to replace existing docks, are of equal or lesser square footage than the existing dock being replaced; or

b) Eleven thousand two hundred ($11,200) dollars for all other docks constructed in fresh waters.

However, if subsequent construction occurs within five years of completion of the prior construction, and the combined fair market value of the subsequent and prior construction exceeds the amount specified above, the subsequent construction shall be considered a substantial development for the purpose of this chapter.

Deleted: 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 multiple family residences. This exception applies if either: (A) In salt waters, the fair market value of the dock does not exceed two thousand five hundred dollars; or (B) in fresh waters, the fair market value of the dock does not exceed: (I) Twenty thousand dollars for docks that are constructed to replace existing docks, are of equal or lesser square footage than the existing dock being replaced, and are located in a county, city, or town that has updated its master program consistent with the master program guidelines in chapter 173-26 WAC as adopted in 2003; or (II) ten thousand dollars for all other docks constructed in fresh waters. However, if subsequent construction occurs within five years of completion of the prior construction, and the combined fair market value of the subsequent and prior construction exceeds the amount specified in either (e)(vii)(A) or (B) of this subsection (3), the subsequent construction shall be considered a substantial development for the purpose of this chapter. All dollar thresholds under (e)(vii)(B) of this subsection (3) must be adjusted for inflation by the office of financial management every five years, beginning July 1, 2018, based upon changes in the consumer price index during that time period.

Deleted: ¶

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

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

K. 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.

L. Any project with a certification from the governor pursuant to Chapter 80.50 RCW, Energy Facilities.

M. Site exploration: Site exploration and investigation activities that are prerequisite to preparation of an application for development authorization under the Act if:

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

ii. 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;

iii. 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;

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

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

N. 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 Washington Department of Agriculture or Ecology jointly with other state agencies under Chapter 43.21C RCW;

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

i. "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 miles of streamreach, in which less than twenty-five 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; or

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

ii. "Watershed restoration plan" means a plan, developed or sponsored by the department of fish and wildlife, the department of ecology, the department of natural resources, the department of transportation, a federally recognized Indian tribe acting within and pursuant to its authority, a city, a county, or a conservation district that provides a general program and implementation measures or actions for the preservation, restoration, re-creation, or enhancement of the natural resources, character, and ecology of a stream, stream segment, drainage area, or watershed for which agency and public review has been conducted pursuant to chapter 43.21C RCW, the State Environmental Policy Act.

P. Projects designed to improve fish or wildlife habitat or fish passage consistent with RCW 90.58.147.

Q. 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 Section 12101 et seq.) or to otherwise provide physical access to the structure by individuals with disabilities.

6.4.4 Letters of Exemption

A. The Administrator shall prepare a letter of exemption whenever a development is determined by a local government to be exempt from the substantial development permit requirements and the development is subject to one or more of the following federal permit requirements:

i. A U.S. Army Corps of Engineers Section 10 Permit under the Rivers and Harbors Act of 1899 (the provisions of Section 10 of the Rivers and Harbors Act generally apply to any project occurring on or over navigable waters); or

Deleted: A public or private project that is designed 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;¶
The project has received hydraulic project approval by the department of fish and wildlife pursuant to chapter 77.55 RCW; and¶
The local government has determined that the project is substantially consistent with the local shoreline master program. The local government shall make such determination in a timely manner and provide it by letter to the project proponent

Deleted: <#>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. The department must ensure compliance with the substantive requirements of this chapter through the consent decree, order, or agreed order issued pursuant to Chapter 70.105D RCW, or during the department-conducted remedial action, through the procedures developed by the department pursuant to RCW 70.105D.090. Such actions do not require local review or a letter of exemption.¶
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. The Department of Ecology must ensure compliance with the substantive requirements of the Act through the review of engineering reports, site plans, and other documents related to the installation of boatyard storm water treatment facilities. Such actions do not require local review or a letter of exemption.¶
The following department of transportation projects and activities do not require a substantial development permit, conditional use permit, variance, letter of exemption, or other review conducted by a local government:¶
Maintenance, repair, or replacement that occurs within the roadway prism of a state highway as defined in RCW 46.04.560, the lease or ownership area of a state ferry terminal, or the lease or ownership area of a transit facility, including ancillary transportation facilities such as pedestrian paths, bicycle paths, or both, and bike lanes;¶
Construction or installation of safety structures and equipment, including pavement marking, freeway surveillance and control systems, railroad protective devices not including grade separated crossings, grooving, glare screen, safety barriers, energy attenuators, and hazardous or dangerous tree removal;¶
Maintenance occurring within the right-of-way; or¶
Construction undertaken in response to unforeseen, extraordinary circumstances that is necessary to ...

ii. A Section 404 permit under the Federal Water Pollution Control Act of 1972 (the provisions of Section 404 of the Federal Water Pollution Control Act generally apply to any project which may involve discharge of dredge or fill material to any water or wetland area).

B. The letter shall indicate the specific exemption provision from WAC 173-27-040 that is being applied to the development and provide a summary of the Administrator's analysis of the consistency of the project with this Master Program and the Act.

C. The Administrator shall provide the project applicant and the Department of Ecology with copies of any required Letters of Exemption.

D. The Administrator shall maintain a list of all project applications deemed exempt under Section 6.4.

Section 6.5 Shoreline Substantial Development Permits

6.5.1 The Act provides that no substantial development shall take place on the shorelines of the state without first obtaining a substantial development permit.

6.5.2 The city shall grant a substantial development permit only when the project applicant can demonstrate that the proposed development is consistent with the policies and procedures of the Act and this Program, as well as criteria in WAC 173-27-150.

6.5.3 The Act provides a limited number of exceptions to the definition of substantial development. Those exceptions listed under Section 6.4.3 and in RCW 90.58.030 do not require a substantial development permit. Whether or not a development constitutes a substantial development, all development must comply with the requirements contained in the Act and this Master Program and may require other permits or approvals.

6.5.4 The city may issue a substantial development permit with limitations or conditions to assure consistency with the Act and this Master Program.

6.5.5 The following special procedures apply to WSDOT Projects:

A. 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.

B. 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.

Section 6.6 Shoreline Conditional Use Permits

6.6.1 The purpose of a shoreline conditional use permit is to provide flexibility in authorizing uses in a manner consistent with RCW 90.58.020. Accordingly, the city may impose special conditions to prevent undesirable effects of the proposed development to assure consistency of the project with the Act and this Master Program.

6.6.2 The city shall grant a shoreline conditional use permit only after the applicant can demonstrate compliance with WAC 173-27-160 and this section as follows:

A. That the proposed use is consistent with the policies of RCW 90.58.020 and this 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 is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and shoreline master program;

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 suffers no substantial detrimental effect.

6.6.3 In the granting of all conditional use permits, the city shall consider the cumulative impact of additional requests for like actions in the area. For example, if there were conditional use permits 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.

6.6.4 Uses which are specifically prohibited by the master program may not be authorized.

Section 6.7 Variances

6.7.1 The purpose of a variance permit is strictly limited to circumstances where:

A. Granting relief from specific bulk, dimensional, or performance standards set forth in this Master Program; and

B. There are extraordinary or unique circumstances relating to the physical character or configuration of the property such that the strict implementation of this Master Program will impose unnecessary hardships on the applicant or thwart the policies set forth in RCW 90.58.020.

6.7.2 In all instances, the project applicant shall show evidence that extraordinary circumstances exist and the public interest suffers no substantial detrimental effect.

6.7.3 Variance permits for development located landward of the ordinary high mark and/or landward of any wetland as defined in RCW 90.58.030(2)(h) may be authorized provided the applicant can demonstrate all of the following:

A. That the strict application of the bulk, dimensional or performance standards set forth in Master Program preclude, or significantly interfere with, reasonable use of the property;

B. That the hardship described under Section 6.7.1 is specifically related to the property and is the result of unique conditions, such as irregular lot shape, size, or natural features, and not from deed restrictions or from the actions of the applicant or a predecessor in title;

C. That the design of the project is compatible with other authorized uses within the area and with uses planned for the area under the Comprehensive Plan and this Master Program, and will not cause net loss to shoreline ecological functions;

D. That the variance will not constitute a grant of special privilege not enjoyed by the other properties in the area;

E. That the variance requested is the minimum necessary to afford relief; and

F. That the public interest will suffer no substantial detrimental effect.

6.7.4 Variance permits for development and/or uses that will be located waterward of the ordinary high water mark or within any wetland as defined in RCW 90.58.030(2)(h), may be authorized provided the applicant can demonstrate all of the following:

A. That the strict application of the bulk, dimensional or performance standards set forth in this Master Program preclude all reasonable use of the property;

B. That the proposal is consistent with the criteria established under Section 6.7.13 B through F; and

C. The action will not adversely affect public rights of navigation and use of the shorelines.

6.7.5 In the granting of all variance permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if there were previous granting of variances to other developments in the area where similar circumstances exist, the total of the variances shall remain

consistent with the policies of RCW 90.58.020 and shall not cause substantial adverse effects to the ecological functions.

6.7.6 Variances shall not authorize uses different from the Shoreline Use and Modifications in Table 1 under Section 2.6.

Section 6.8 Unclassified Uses

Other uses not classified or set forth in this Master Program may be authorized as conditional uses provided the applicant can demonstrate consistency with the requirements of this section and the requirements for conditional uses contained in the master program.

Section 6.9 Prohibited Uses

Any use specifically prohibited by this Master Program may not be authorized through a shoreline permit.

Section 6.10 Application Review Procedures

6.10.1 Preapplication conferences shall follow the provisions of SBMC 15.08.040.

6.10.2 Project applications for a shoreline development permit shall include the following:

A. City of South Bend project application in accordance with SBMC 15.08.060;

B. State Environmental Policy Act Checklist in accordance with Chapter 15.12 SBMC;

C. Joint Aquatic Resource Permit Application (JARPA) form; and

D. Any critical area technical assessment(s) as provided under Section 14.15.020(E).

6.10.3 The Administrator determines if the project application is complete in accordance with SBMC 15.08.070.

6.10.4 The Notice of Application shall provide for a 30-day public comment period for substantial, conditional use, and variance applications and shall follow the requirements of SBMC 15.08.080 and .090.

6.10.5 The criteria for granting or denying a substantial development permit shall be consistent with Section 6.5.

6.10.6 The criteria for granting or denying a conditional use permit shall be consistent with Section 6.6.

6.10.7 The criteria for granting or denying a shoreline variance shall be consistent with Section 6.7.

6.10.8 Any public hearing required for a shoreline conditional use permit or variance shall follow the requirements under SBMC 15.08.110.

6.10.9 The city may issue a shoreline permit with limitations or conditions to assure consistency of the project application with the Act and this Master Program.

Section 6.11 Application Review Procedures for Ocean Uses

6.11.1 Additional ORMA approval criteria for ocean uses and developments. In addition to the otherwise required shoreline substantial development, conditional use, or variance approval criteria, newly proposed ocean uses or development shall meet or exceed this additional approval criteria:

A. There is a demonstrated significant local, state, or national need for the proposed use or activity;

B. There is no reasonable alternative to meet the public need for the proposed use or activity;

C. There will be no likely long-term significant adverse impacts to coastal or marine resources or uses;

D. All reasonable steps are taken to avoid and minimize adverse environmental impacts, with special protection provided for the marine life and resources of the [include only those areas that

are within the local government's shoreline jurisdiction: Columbia River, Willapa Bay and Grays Harbor estuaries, and Olympic National Park];

E. All reasonable steps are taken to avoid and minimize adverse social and economic impacts, including impacts on aquaculture, recreation, tourism, navigation, air quality, and recreational, commercial, and tribal fishing;

F. Compensation is provided to mitigate adverse impacts to coastal resources or uses;

G. Plans and sufficient performance bonding are provided to ensure that the site will be rehabilitated after the use or activity is completed; and

H. The use or activity complies with all applicable local, state, and federal laws and regulations.

6.11.2 Additional MSP procedural requirements for new ocean use proposals. In addition to the otherwise required shoreline substantial development, conditional use, or variance permit procedural requirement, MSP defined new ocean use proposals shall include the following:

A. Pre-application Meeting. Prior to submitting any applications for shoreline permits for new ocean uses or developments the applicant will participate in at least one pre-application meeting which may be consolidated and coordinated with all local, state, and federal agencies. During the pre-application stage:

i. The applicant should use the MSP to understand potential use and resource conflicts, including review of the baseline data, maps, analyses, and management framework. This information can assist applicants in avoiding and minimizing impacts to resources and uses through project siting and design.

ii. The applicant should provide required data and information about the project, and identify and coordinate with stakeholder groups as well as other governments, including state, tribal, and federal government entities.

iii. The applicant should identify state and local policies, procedures, and requirements, including those referenced in the Marine Spatial Plan.

B. Inventory – Review adequacy of site-specific inventory and respond to requests for additional data or studies.

C. Effects Analysis – Submit an effects evaluation (See Section 4.5 of the MSP) which includes proposed mitigation measures, and best management practices.

D. Plans – Submit proposed construction and operation plans, including adequacy of prevention, monitoring, and response plans.

E. Coordination – Continue to coordinate with government entities (local, state, tribal, and federal agencies), stakeholders (representatives from fishing, aquaculture, maritime commerce, conservation, tourism, recreation), and the Washington Coastal Marine Advisory Council (WCMAC), and the public in all aspects of project development and review.

Section 6.12 Notice of Decision and Filing

6.12.1 Upon consideration of a project application for a shoreline permit, the review authority shall issue a Notice of Decision, whether approval or denial, that includes findings of fact and conclusions that describe the proposed development's consistency with the Act and this Master Program.

6.12.2 In granting approval of a shoreline permit, the city may attach conditions, modifications, or restrictions regarding the location, character, and other features of the proposed development necessary to assure that the development will be consistent with the policy and provisions of the Act and this Master Program as well as the supplemental authority provided under the State Environmental Policy Act in Chapter 15.12 SBMC.

6.12.3 After all local permit administrative appeals or reconsideration periods are complete and the permit documents are amended to incorporate any resulting changes, [COUNTY/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.

A. 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.

B. 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:

i. 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.

ii. 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 the 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.

6.12.4 The submittal of substantial development permits, conditional use permits, variances, or revisions, are complete when the Department of Ecology receives all pertinent documents required under Section 6.12.3 above. If the Department of Ecology determines the submittal does not contain all of the pertinent documents and information required, it shall identify those deficiencies and notify the city and the project applicant in writing. The Department of Ecology will not act on a conditional use permit or variance submittal until it receives the material requested.

6.12.5 The effective date of a permit shall be the date of filing of the Notice of Decision as provided below:

A. The date of filing for a substantial development permit is the actual date of receipt the Department of Ecology receives a complete Notice of Decision.

B. The date of filing for a conditional use permit or variance is the date the Department of Ecology transmits its decision to the city.

C. The date of filing when the city simultaneously transmits its decision on a substantial development permit with its approval of either a shoreline conditional use permit or variance, or both, is the date the Department of Ecology transmits it decision to the city.

6.12.6 Construction activities shall not begin until 21 days from the date of filing of the Notice of Decision or until all review proceedings before the Shoreline Hearings Board are complete.

6.12.7 If a permitted development begins construction before the completion of the required 21-day period stated in Section 6.12.6, the construction is at the owner's risk. If, as a result of judicial review, the courts order the removal of any portion of the construction, or the restoration of any portion of the environment involved, or require the alteration of any portion of a substantial development constructed pursuant to a permit, the project applicant cannot recover damages or costs involved.

Deleted: The Administrator shall file the Notice of Decision, whether approval or denial, and after all local appeals have been decided, to the Department of Ecology and to all interested parties of record having requested notification. A complete Notice of Decision includes. 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.:

Deleted: A copy of the complete application as provided under Section 6.10.2 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;

Deleted: ~~The Notice of Decision;~~ 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

Deleted: ~~The permit data sheet required by WAC 173-27-190;~~ For projects that only require a Substantial Development Permit: the date that Ecology receives the city decision

Deleted: 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 the city

Deleted: <#>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.¶
Applicable documents required under the State Environmental Policy Act Procedures, Chapter 15.12 SBMC; and¶
Any project modifications of text or plans that occurred during the course of the city's review process.¶

Section 6.13 Permit Revisions

6.13.1 A permit revision is necessary whenever the project applicant proposes substantive changes to the design, terms, or conditions within an approved permit. Changes are substantive if the project is materially altered in a manner that relates to its conformance to the terms and conditions of the permit, the Master Program, and/or the policies and provisions of the Act.

6.13.2 If the city determines that the proposed changes are within the scope and intent of the original permit, and are consistent with the master program and the act, the revision may be approved. Within the scope and intent of the original permit means all of the following:

A. There is no additional over-water construction, except that a pier, dock or floating structure may be increased by 500 square feet or ten percent over that approved under the original shoreline permit approval, whichever is less;

B. Ground area coverage and/or height may be increased a maximum of ten percent over that approved under the original approval; provided that, the revised approval does not authorize development to exceed the height, setback, or any other requirements of this Master Program except as authorized under a variance granted for the original development;

C. Additional or revised landscaping is consistent with any conditions attached to the original approval and with this Master Program;

D. The use authorized pursuant to the original approval has not changed; and

E. There is no adverse environmental impact caused by the project revision.

6.13.3 Revisions to permits may be authorized after original permit authorization has expired under RCW 90.58.143. The purpose of such revisions shall be limited to authorization of changes which are consistent with this section and which would not require a permit for the development or change proposed under the terms of the Act, WAC 173-27 and the master program. If the proposed change constitutes substantial development then a new permit is required. Provided, this subsection shall not be used to extend the time requirements or to authorize substantial development beyond the time limits of the original permit.

6.13.4 The project applicant will submit a written request for a shoreline permit revision to the Administrator. The request shall include detailed plans and text describing the proposed changes. The city authority that approved the original permit will review the request to assure consistency with this Master Program and the Act and may approve, approve with conditions, or deny the request upon adopting a Notice of Decision as provided under Section 6.12.

6.13.5 The city shall require a new permit if the proposed revision and any previously approved revisions in combination would constitute development beyond the scope and intent of the original approval.

Section 6.14 Expiration of Permits

6.14.1 The following time requirements shall apply to all substantial development permits, conditional use permits, or variances:

A. Construction shall commence, or those use or activities when there is no construction involved shall commence, within two years of the date of filing of the permit. The Administrator may authorize a single extension based on reasonable factors, if the project applicant files a written request for extension before the expiration date and the city gives notice of the proposed extension to parties of record and the Department of Ecology.

B. Authorization to conduct development activities shall terminate five (5) years after the effective date of a permit or permit exemption. The Administrator may authorize a single extension for a period not to exceed one year based on reasonable factors, if the project applicant files a written

request for an extension before the expiration date and the city gives notice of the proposed extension to parties of record and the Department of Ecology.

C. The effective date of a shoreline permit is the date of filing as provided in Section 6.12.5. The permit time periods identified in this section do not include the time that a development did not commence because:

i. The pendency of an administrative appeal or legal actions; or

ii. The need to obtain any other government permits and approvals for the development that authorize the development to proceed, including all reasonably related administrative or legal actions on any such permits or approvals.

Section 6.15 Appeals

6.15.1 Any person aggrieved by a decision of the Administrator may appeal that decision to the Planning Commission in accordance with the provisions under SBMC 15.08.150.

6.15.2 Any person aggrieved by a decision of the Planning Commission may appeal that decision to the City Council in accordance with the provisions under SBMC 15.08.155.

6.15.3 All requests for review of any final permit decisions under the Act and Chapter 173-27 WAC are governed by the procedures established in RCW 90.58.180 and Chapter 461-08 RCW. The filing of the appeal with the Shoreline Hearings Board shall within 21 days of the date of filing as defined in Section 6.12.5 for a Notice of Decision.

Section 6.16 Enforcement

6.16.1 The city may bring such declaratory, injunctive, or other action as may be necessary to assure that no development within shoreline jurisdiction is inconsistent with the provisions of this Master Program or the Act. Ecology also shall have enforcement authority pursuant to the Act and Chapter 173-27 WAC "Part II Shoreline Management Act Enforcement."

6.16.2 The city shall have the authority to serve upon a person a cease and desist order if an activity undertaken on shorelines of the state is in violation of chapter 90.58 RCW or the Master Program.

6.16.3 The content of the order shall set forth and contain:

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

B. A notice that the violation, or the potential violation, shall cease and desist and may include in appropriate cases, the specific corrective action the person shall take within a given time. The city may issue a civil penalty under WAC 173-27-280 with the order.

6.16.4 The cease and desist order issued under this section shall become effective immediately upon receipt by the person to whom the order is directed.

6.16.5 Failure to comply with the terms of a cease and desist order can result in enforcement actions including, but not limited to, the issuance of a civil penalty.

Section 6.17 Civil Penalties

6.17.1 A person who fails to conform to the terms of a shoreline permit issued under RCW 90.58.140, or who undertakes a development or use on shorelines of the state without first obtaining a shoreline permit, or who fails to comply with a cease and desist order issued under these regulations, may be subject to a civil penalty by the city and/or the Department of Ecology. The city and/or the Department of Ecology may impose a penalty only upon an additional finding that a person:

A. Has previously been subject to an enforcement action for the same or similar type of violation of the same statute or rule;

B. Has been given previous notice of the same or similar type of violation of the same statute or rule;

C. The violation has a probability of placing a person in danger of death or bodily harm;

D. Has a probability of causing more than minor environmental harm; or

E. Has a probability of causing physical damage to the property of another in an amount exceeding one thousand dollars.

6.17.2 In the alternative, the city and/or the Department of Ecology may issue a penalty to a person for violations that do not meet the criteria under Section 6.17.1 of this section, after the Department of Ecology and/or city provides the following information in writing to a person through a technical assistance visit or a notice of correction:

A. A description of the condition that is not in compliance and a specific citation to the applicable law or rule;

B. A statement of what is required to achieve compliance;

C. The date of completion for compliance to be achieved;

D. Notice of the means to contact any technical assistance services provided by the agency or others; and

E. Notice of when, where, and to whom a request to extend the time to achieve compliance for good cause may be filed with the agency.

6.17.3 No penalty shall be issued until the person or business has been given a reasonable time to correct the violation and has not done so.

6.17.4 The amount of the penalty shall not exceed one-thousand (1,000) dollars for each violation. Each day of violation shall constitute a separate violation.

6.17.5 Any person who, through an act of commission or omission, procures, aids or abets in the violation, shall be considered to have committed a violation for the purposes of the civil penalty.

6.17.6 A civil penalty shall be imposed by a Notice of Penalty in writing, either by certified mail with return receipt requested or by personal service, to the person incurring the same from the Department of Ecology and/or the city, or from both jointly. The notice shall describe the violation, approximate the date(s) of violation, and shall order the acts constituting the violation to cease and desist, or, in appropriate cases, require necessary corrective action within a specific time.

Section 6.18 Appeal of Civil Penalties

6.18.1 Persons incurring a penalty imposed by the department or imposed jointly by the department and the city may appeal the same to the shorelines hearings board. Appeals to the shorelines hearings board are adjudicatory proceedings subject to the provisions of Chapter 34.05 RCW. Persons incurring a penalty imposed by local government may appeal the same to the local government legislative authority.

6.18.2 Appeals shall be filed within thirty days of the date of receipt of the penalty. The term "date of receipt" has the same meaning as provided in RCW 43.21B.001.

6.18.3 Penalties imposed under this section shall become due and payable thirty days after receipt of notice imposing the same unless application for remission or mitigation is made or an appeal is filed. Whenever an application for remission or mitigation is made, penalties shall become due and payable thirty days after receipt of the city's and/or the department's decision regarding the remission or mitigation.

Whenever an appeal of a penalty is filed, the penalty shall become due and payable upon completion of all review proceedings and upon the issuance of a final decision confirming the penalty in whole or in part.

6.18.4 If the amount of a penalty owed the department is not paid within thirty days after it becomes due and payable, the attorney general, upon request of the department, shall bring an action in the name of the state of Washington to recover such penalty. If the amount of a penalty owed local government is not paid within thirty days after it becomes due and payable, the city may take actions necessary to recover such penalty.

6.18.5 Penalties recovered by the department shall be paid to the state treasurer. Penalties recovered by the city shall be paid to the local government treasury. Penalties recovered jointly by the department and the city shall be divided equally between the department and the city unless otherwise stipulated in the order.

Section 6.19 Criminal penalties

Any person willfully engaged in activities on the shorelines of the state in violation of the Act, this Master Program, or any rules and regulations adopted pursuant thereto, shall be guilty of a gross misdemeanor, pursuant to RCW 90.58.220.

Chapter 7: Master Program Amendments

Section 7.1 Master Program Review

7.1.1 The city shall periodically review this Master Program to evaluate its relationship to community goals, the cumulative effects of development, new information, and changes in local, state, and federal statutes and rules. This periodic review shall occur at a minimum of every 8 years, beginning on or before June 30, 2022, and every eight years thereafter.

7.1.2 The Administrator shall issue a written report annually in January to the Planning Commission and the City Council documenting all project applications and exemptions within shoreline jurisdiction.

Section 7.2 Amendments to the Master Program

7.2.1 Any person, resident, property owner, business, owner, and nongovernmental or governmental agency may initiate amendments to this Master Program.

7.2.2 Applications for Master Program amendments shall specify the changes requested, including justification for the request.

7.2.3 The city shall undertake amendments to this Master Program in accordance with the procedures of the Act, Chapter 173-26 WAC, and Chapter 15.08 SBMC.

7.2.4 The Planning Commission shall hold a public hearing on applications for amendments to the Master Program in accordance with SBMC 15.08.110. After completing the public hearing, the Planning Commission shall consider the application and issue a recommendation with findings of fact based on the following criteria:

A. The proposed amendment would make the Master Program:

i. More consistent with the Act and Chapter 173-26 WAC or

ii. More equitable in its application to persons or property due to changed conditions within an area; and

B. The proposed amendment shall not result in a net loss of ecological function.

7.2.5 The Planning Commission shall forward said recommendation within 15 days of the date of its adoption to the City Council.

7.2.6 Upon receipt of the Planning Commission recommendation, the City Council shall set a date for a public meeting where it will consider and take action on the recommendation.

7.2.7 If the City Council agrees with the recommendation of the Planning Commission, it shall approve the amendment. If the City Council considers a change in the recommendation, it may proceed as follows:

A. The City Council may approve the amendment if the changes are within the scope of alternatives considered by the Planning Commission, public testimony, or staff recommendation;

B. The City Council may refer the application for amendment back to the Planning Commission for further consideration and reissuance of a recommendation; or

C. The City Council may conduct its own hearing and adopt its own findings of fact and decision consistent with Section 7.2.4 A and B.

7.2.8 Upon local adoption of the amendment, the city shall forward it to the Department of Ecology for review and approval in accordance with WAC 173-26-110.

7.2.9 An amendment to the Master Program takes effect when and in such form as approved or adopted by the Department of Ecology. The effective date is fourteen days from the date of the department's written notice of final action to the city stating the department has approved or rejected the amendment. The

department's written notice to the city must conspicuously and plainly state that it is the department's final decision and that there will be no further modifications to the proposal.

Chapter 8: Definitions

The terms used throughout this Master Program shall be defined and interpreted as indicated below. When consistent with the context, words used in the present tense shall include the future; the singular shall include the plural, and the plural the singular.

Section 8.1 Definitions A - C

8.1.1 **"Act"** means the Washington State Shoreline Management Act, chapter 90.58 RCW.

8.1.2 **"Agricultural activities"** means agricultural uses and practices including, but not limited to: Producing, breeding, or increasing agricultural products; rotating and changing agricultural crops; allowing land used for agricultural activities to lie fallow in which it is plowed and tilled but left unseeded; allowing land used for agricultural activities to lie dormant as a result of adverse agricultural market conditions; allowing land used for agricultural activities to lie dormant because the land is enrolled in a local, state, or federal conservation program, or the land is subject to a conservation easement; conducting agricultural operations; maintaining, repairing, and replacing agricultural equipment; maintaining, repairing, and replacing agricultural facilities, provided that the replacement facility is no closer to the shoreline than the original facility; and maintaining agricultural lands under production or cultivation;

8.1.3 **"Agricultural products"** includes, but is not limited to, horticultural, viticultural, floricultural, vegetable, fruit, berry, grain, hops, hay, straw, turf, sod, seed, and apiary products; feed or forage for livestock; Christmas trees; hybrid cottonwood and similar hardwood trees grown as crops and harvested within 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;

8.1.4 **"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

8.1.5 Roadside stands and on-farm markets for marketing fruit or vegetables;

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

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

8.1.8 **"Approval"** means an official action by a local government legislative body agreeing to submit a proposed shoreline master program or amendments to the department for review and official action pursuant to this chapter; or an official action by the department to make a local government shoreline master program effective, thereby incorporating the approved shoreline master program or amendment into the state master program.

8.1.9 **"Appurtenance"** means those structures necessarily connected to the use and enjoyment of a single-family residence and is located landward of the ordinary high water mark and the perimeter of a wetland. On a statewide basis, normal appurtenances include a garage; deck; driveway; utilities; fences; installation of a septic tank and drainfield and grading which does not exceed two hundred fifty cubic yards and which does not involve placement of fill in any wetland or waterward of the ordinary high water mark. Local

circumstances may dictate additional interpretations of normal appurtenances that shall be set forth and regulated within the applicable master program. Construction authorized under this exemption shall be located landward of the ordinary high water mark.

8.1.10 **"Aquaculture"** means the culture or farming of fish, shellfish, or other aquatic plants and animals. Aquaculture does not include the harvest of wild geoduck associated with the state managed wildstock geoduck fishery.

8.1.11 **"Associated wetlands"** means those wetlands which are in proximity to and either influence or are influenced by tidal waters or a lake or stream subject to RCW 90.58.

8.1.12 **"Average grade level"** means the average of the natural or existing topography of the portion of the lot, parcel, or tract of real property which will be directly under the proposed building or structure: In the case of structures to be built over water, average grade level shall be the elevation of the ordinary high water mark. Calculation of the average grade level shall be made by averaging the ground elevations at the midpoint of all exterior walls of the proposed building or structure.

8.1.13 **"Boating facility"** means a facility that includes boat launch ramps, covered moorage, dry boat storage, and marinas. The term excludes docks serving four or fewer single-family residences.

8.1.14 **"Boat launch"** means an inclined slab, set of pads, rails, planks, or graded slope used for launching boats with trailers or by hand.

8.1.15 **"Conditional use"** means a use, development, or substantial development that is classified as a conditional use or is not classified within the applicable master program.

8.1.16 **"Consumer price index"** means, for any calendar year, that year's annual average consumer price index, Seattle, Washington area, for urban wage earners and clerical workers, all items, compiled by the bureau of labor and statistics, United States department of labor. The office of financial management must calculate the new dollar threshold and transmit it to the office of the code reviser for publication in the Washington State Register at least one month before the new dollar threshold is to take effect..

8.1.17 **"Critical areas"** as defined under chapter 36.70A RCW includes the following areas and ecosystems:

A. Wetlands;

B. Areas with a critical recharging effect on aquifers used for potable waters;

C. Fish and wildlife habitat conservation areas;

D. Frequently flooded areas; and

E. Geologically hazardous areas.

Section 8.2 Definitions D - F

8.2.1 **"Department"** means the state department of ecology.

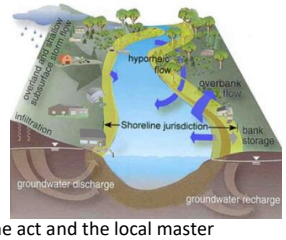
8.2.2 **"Development"** means a use consisting of the construction or exterior alteration of structures; dredging; drilling; dumping; filling; removal of any sand, gravel, or minerals; bulkheading; driving of piling; placing of obstructions; or any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to this chapter at any state of water level. Development does not include dismantling or removing structures if there is no other associated development or re-development.

8.2.3 **"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.

8.2.4 **"Dock"** means a landing and/or moorage facility for watercraft and does not include recreational decks, storage facilities or other appurtenances. A dock floats on the surface of the water and is connected to land or a pier.

8.2.5 **"Ecological functions"** or **"shoreline functions"** include but are not limited to hydrologic functions such as transport of water and sediment, shoreline vegetation, hyporheic functions, and habitat functions."

8.2.6 **"Ecosystem-wide processes"** means the suite of naturally occurring physical and geologic processes of erosion, transport, and deposition; and specific chemical processes that shape landforms within a specific shoreline ecosystem and determine both the types of habitat and the associated ecological functions. Examples of ecosystem-wide processes include movement of sediment, surface- and groundwater, nutrients, toxins, pathogens, and large wood.



8.2.7 **"Exempt"** developments are those set forth in WAC 173-27-040 and RCW 90.58.030 (3)(e), 90.58.140(9), 90.58.147, 90.58.355, and 90.58.515 which are not required to obtain a substantial development permit but which must otherwise comply with applicable provisions of the act and the local master program.

8.2.8 **"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.

8.2.9 **"Feasible"** means, for the purpose of this chapter, that an action, such as a development project, mitigation, or preservation 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 this Master Program requires certain actions unless they are infeasible, the burden of proving infeasibility is on the applicant.

In determining an action's infeasibility, the reviewing agency may weigh the action's relative public costs and public benefits, considered in the short- and long-term time frames.

8.2.10 **"Fill"** means the addition of soil, sand, rock, gravel, sediment, earth retaining structure, or other material to an area waterward of the ordinary high water mark, in wetlands, or on shorelands in a manner that raises the elevation or creates dry land.

8.2.11 **"Float"** means a platform structure anchored in and floating upon a water body that does not connect to the shore, and that provides landing for water dependent recreation or moorage for vessels or watercraft, and that does not include above water storage.

8.2.12 **"Flood plain"** is synonymous with one hundred-year flood plain and means that land area susceptible to inundation 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 which meets the objectives of the act.

8.2.13 **"Floodway"** means the area, as identified in a master program, that has been established in federal emergency management agency flood insurance rate maps or floodway maps. The floodway shall not

include those lands that can reasonably be expected to be protected from floodwaters by flood control devices maintained by or maintained under license from the federal government, the state, or a political subdivision of the state.

8.2.14 **"Forest land"** means land primarily devoted to growing trees for long-term commercial timber production on land that can be economically and practically managed for such production, including Christmas trees subject to the excise tax imposed under *RCW 84.33.100 through 84.33.140, and that has long-term commercial significance. In determining whether forest land is primarily devoted to growing trees for long-term commercial timber production on land that can be economically and practically managed for such production, the following factors shall be considered: (a) The proximity of the land to urban, suburban, and rural settlements; (b) surrounding parcel size and the compatibility and intensity of adjacent and nearby land uses; (c) long-term local economic conditions that affect the ability to manage for timber production; and (d) the availability of public facilities and services conducive to conversion of forest land to other uses.

Section 8.3 Definitions G – I

8.3.1 **"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, the affected land form and its susceptibility to mass wasting, erosion, and other geologic hazards or processes, conclusions and recommendations regarding the effect of the proposed development on geologic conditions, the adequacy of the site to be developed, the impacts of the proposed development, alternative approaches to the proposed development, and measures to mitigate potential site-specific and cumulative geological and hydrological impacts of the proposed development, including the potential adverse impacts to adjacent and down-current properties. Geotechnical reports shall conform to accepted technical standards and must be prepared by qualified professional engineers or geologists who have professional expertise about the regional and local shoreline geology and processes.

8.3.2 **"Grading"** 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.

8.3.3 **"Guidelines"** means those standards adopted by the department to implement the policy of chapter 90.58 RCW for regulation of use of the shorelines of the state prior to adoption of master programs. Such standards shall also provide criteria for local governments and the department in developing and amending master programs.

8.3.4 **"Hazard tree"** means any tree that presents a risk to persons or property due to a high probability of falling in the near future because of a debilitating disease, a structural defect, a root ball significantly exposed, or having been exposed to windthrow within the past ten years. Hazardous trees include, but are not limited to, conditions where a permanent, primary structure or appurtenant or accessory structure is within one and one half tree lengths of the base of the trunk.

8.3.5 **"Height"** 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.

8.3.6 **"Important, Sensitive and Unique Areas (ISUs)"** means specific areas in state waters that meet one or more of the following criteria:

A. Areas that are environmentally sensitive or contain unique or sensitive species or biological communities that must be conserved and warrant protective measures [RCW 43.372.040(6)(c)].

B. Areas with known sensitivity and where the best available science indicates the potential for offshore development to cause irreparable harm to the habitats, species, or cultural resources.

C. Areas with features that have limited, fixed and known occurrence.

D. Areas with inherent risk or infrastructure (e.g. buoys or cables) that are incompatible with new ocean uses.

8.3.7 **"Instream structures"** means a structure placed by humans within a stream, river, or estuary waterward of the ordinary high water mark that either causes or has the potential to cause water impoundment or the diversion, obstruction, or modification of water flow. In-stream structures may include those for hydroelectric generation, irrigation, water supply, flood control, tide gates, transportation, utility service transmission, breakwaters, jetties, fish habitat enhancement, or other purpose.

Section 8.4 Definitions J - L

"Local government" means the City of South Bend and the shorelines of the state within its boundaries subject to Chapter 90.58 RCW.

Section 8.5 Definitions M - O

8.5.1 **"Marine Spatial Plan for Washington's Pacific Coast (MSP)"** means a planning document designed to address new ocean use development off Washington's Pacific coast that had not been previously permitted or approved prior to the adoption of the plan in June 2018. The MSP uses a series of data, maps, and analyses in combination with a management framework to evaluate potential impacts from new ocean use projects on existing uses and resources, based on the principles and criteria outlined in the Ocean Resources Management Act (ORMA) [RCW 43.143.030(2)] and the Ocean Management Guidelines [WAC 173-26-360]. It applies a coordinated decision-making process between various governments, tribes, and stakeholders, and includes additional siting recommendations and fisheries protection standards. These principles have been incorporated into this SMP. See Ecology Publication No. 17-06-027, Revised June 2018 (https://fortress.wa.gov/ecy/ publications/documents/1706027.pdf and https://msp.wa.gov/)

8.5.2 **"Master program"** or "shoreline master program" shall mean the comprehensive use plan for a described area, 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 RCW90.58.020 and the applicable guidelines. As provided in RCW 36.70A.480, the goals and policies of a shoreline master program shall be considered an element of the city's 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.

8.5.3 **"May"** means the action is acceptable, provided it conforms to the provisions of this chapter.

8.5.4 **"Minerals"** include gravel, sand, and valuable metallic substances.[1]

8.5.5 **"Mining"** means the removal of sand, soil, minerals, and other naturally occurring materials from the earth for commercial or economic use.

8.5.6 **"Mooring buoy"** means an anchored floating device in a water body used for the landing or storage of a vessel or watercraft.

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

8.5.8 **"Natural or existing topography"** means the topography of the lot, parcel, or tract of real property immediately prior to any site preparation or grading, including excavation or filling.

8.5.9 **"New ocean uses"** means uses and developments that have not occurred or were not permitted within Washington's Coastal waters prior to the completion of the Marine Spatial Plan for Washington's Pacific Coast, as adopted June 2018. New uses, as defined by the MSP, are in-water uses, with potential adverse impacts to renewable resources or existing uses that have not been previously reviewed or authorized/permitted within the MSP study area. The MSP anticipates new ocean use proposals for

activities such as renewable energy, dredged material disposal, mining, marine product harvesting, and offshore aquaculture operations.

8.5.10 **"Nonconforming lot"** means a lot that met dimensional requirements of the applicable master program at the time of its establishment but now contains less than the required width, depth or area due to subsequent changes to the master program.

8.5.11 **"Nonconforming structure"** means an existing structure that was lawfully constructed at the time it was built but is no longer fully consistent with present regulations such as setbacks, buffers or yards; area; bulk; height or density standards due to subsequent changes to the master program.

8.5.12 **"Nonconforming use"** "Nonconforming use" means an existing shoreline use that was lawfully established prior to the effective date of the act or the applicable master program,-but which does not conform to present use regulations due to subsequent changes to the master program.

8.5.13 **"Nonwater-oriented uses"** means those uses that are not water-dependent, water-related, or water-enjoyment.

8.5.14 **"Normal appurtenances"** means a garage; deck; driveway; utilities; fences; installation of a septic tank and drainfield; and grading which does not exceed two hundred fifty cubic yards and which does not involve placement of fill in any wetland or waterward of the ordinary high water mark. Construction of appurtenant structures shall be located landward of the ordinary high water mark.

8.5.15 **"Normal maintenance"** means those usual acts to prevent a decline, lapse, or cessation from a lawfully established condition.

8.5.16 **"Normal repair"** means to restore a development to a state comparable to its original condition, including but not limited to its size, shape, configuration, location and external appearance, within a reasonable period after decay or partial destruction, except where repair causes substantial adverse effects to shoreline resource or environment.

8.5.17 **"Ocean disposal"** means uses that involve the deliberate deposition or release of material at sea, such as solid wastes, industrial waste, radioactive waste, incineration, incinerator residue, dredged materials, vessels, aircraft, ordinance, platforms, or other man-made structures

8.5.18 **"Ocean energy production"** means uses that involve the production of energy in a usable form directly in or on the ocean rather than extracting a raw material that is transported elsewhere to produce energy in a readily usable form. Examples of these ocean uses are facilities that use wind, wave action or differences in water temperature to generate electricity.

8.5.19 **"Ocean mining"** means such uses as the mining of metal, mineral, sand, and gravel resources from the sea floor.

8.5.20 **"Ocean oil and gas uses and activities"** means the extraction of and exploration for oil and gas resources from beneath the ocean.

8.5.21 **"Ocean research"** means activities that involve scientific investigation for the purpose of furthering knowledge and understanding. Investigation activities involving necessary and functionally related precursor activities to an ocean use or development may be considered exploration or part of the use or development.

8.5.22 **"Ocean salvage"** means uses that share characteristics of other ocean uses and involve relatively small sites occurring intermittently. Historic shipwreck salvage which combines aspects of recreation, exploration, research, and mining is an example of such a use.

8.5.23 **"Ocean transportation"** means such uses as shipping, transferring between vessels, and offshore storage of oil and gas; transport of other goods and commodities; and offshore ports and airports.

8.5.24 **"Ocean use"** means activities or developments involving renewable and/or nonrenewable resources that occur on Washington's coastal waters and includes their associated off shore, near shore, inland marine,

shoreland, and upland facilities and the supply, service, and distribution activities, such as crew ships, circulating to and between the activities and developments. Ocean uses involving nonrenewable resources include such activities as extraction of oil, gas and minerals, energy production, disposal of waste products, and salvage. Ocean uses which generally involve sustainable use of renewable resources include commercial, recreational, and tribal fishing, aquaculture, recreation, shellfish harvesting, and pleasure craft activity.

8.5.25 **"Ordinary high water mark"** on all lakes, streams, and tidal water is that mark that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation as that condition exists on June 1, 1971, as it may naturally change thereafter, or as it may change thereafter in accordance with permits issued by a local government or the department: PROVIDED, That in any area where the ordinary high water mark cannot be found, the ordinary high water mark adjoining salt water shall be the line of mean higher high tide and the ordinary high water mark adjoining fresh water shall be the line of mean high water.

Section 8.6 Definitions P – R

8.6.1 **"Party of record"** includes 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.

8.6.2 **"Permit"** means any substantial development, variance, conditional use permit, or revision authorized under chapter 90.58 RCW.

8.6.3 **"Person"** means an individual, partnership, corporation, association, organization, cooperative, public or municipal corporation, or agency of the state or local governmental unit however designated.

8.6.4 **"Pier"** means a platform structure supported by piles in a water body that abuts the shore to provide landing for water-dependent recreation or moorage for vessels or watercraft and does not include above water storage.

8.6.5 **"Primary structure"** means any permanent building, road, bridge, or utility requiring a permit or approval which is necessary to support the primary use of a site.

8.6.6 **"Primary use"** means the predominate use of any lot or development as determined by the comprehensive plan and development regulations.

8.6.7 **"Priority habitat"** means a habitat type with unique or significant value to one or more species. An area classified and mapped as priority habitat must have one or more of the following attributes:

A. Comparatively high fish or wildlife density;

B. Comparatively high fish or wildlife species diversity;

C. Fish spawning habitat;

D. Important wildlife habitat;

E. Important fish or wildlife seasonal range;

F. Important fish or wildlife movement corridor;

G. Rearing and foraging habitat;

H. Important marine mammal haul-out;

I. Refugia habitat;

J. Limited availability;

K. High vulnerability to habitat alteration;

L. Unique or dependent species; or

M. Shellfish bed.

A priority habitat may be described by a unique vegetation type or by a dominant plant species that is of primary importance to fish and wildlife (such as oak woodlands or eelgrass meadows). A priority habitat may also be described by a successional stage (such as, old growth and mature forests). Alternatively, a priority habitat may consist of a specific habitat element (such as a consolidated marine/estuarine shoreline, talus slopes, caves, snags) of key value to fish and wildlife. A priority habitat may contain priority and/or nonpriority fish and wildlife.

8.6.8 **"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 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 either proposed, threatened, or endangered.

8.6.9 **"Project permit"** or **"project application"** means any land use or environmental permit or license required from a local government for a project action, including but not limited to building permits, subdivisions, binding site plans, planned unit developments, conditional uses, shoreline substantial development permits, site plan review, permits or approvals required by critical area ordinances, site-specific rezones authorized by a comprehensive plan or subarea plan, but excluding the adoption or amendment of a comprehensive plan, subarea plan, or development regulations except as otherwise specifically included in this subsection.

8.6.10 **"Provisions"** means policies, regulations, standards, guideline criteria or environment designations.

8.6.11 **"Public access"** means the ability of the general public to reach, touch, and enjoy the water's edge, to travel on the waters of the state, and to view the water and the shoreline from adjacent locations.

8.6.12 **"Public facilities"** include streets, roads, highways, sidewalks, street and road lighting systems, traffic signals, domestic water systems, storm and sanitary sewer systems, parks and recreational facilities, and schools.

8.6.13 **"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.

8.6.14 **"Public services"** include fire protection and suppression, law enforcement, public health, education, recreation, environmental protection, and other governmental services.

8.6.15 **"Qualified expert"** means a person with experience and training in the pertinent scientific discipline, and who is a qualified scientific expert with expertise appropriate for the relevant critical area subject in accordance with WAC 365-195-905(4). A qualified professional must have obtained a B.S. or B.A. or equivalent degree in biology, engineering, environmental studies, fisheries, geomorphology, or related field, and two years of related work experience.

A. A qualified professional for habitats or wetlands must have a degree in biology and professional experience related to the subject species.

B. A qualified professional for a geological hazard must be a professional engineer or geologist, licensed in the state of Washington.

C. A qualified professional for critical aquifer recharge areas means a hydrogeologist, geologist, engineer, or other scientist with experience in preparing hydrogeologic assessment.

8.6.16 **"Recreational development"** includes commercial, private, and public facilities designed and used to provide recreation opportunities.

8.6.17 **"Residential development"** means a dwelling structure (or structures) designed and intended for single-family (or multifamily) occupancy that has its own housekeeping and kitchen facilities. Hotel, motel, and bed & breakfast businesses are primarily for transient tenancy and are not residential development for the purposes of this Program. Residential development includes their normal appurtenances and the creation of new residential lots through land division.

8.6.18 **"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, revegetation, 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.

Section 8.7 Definitions S – U

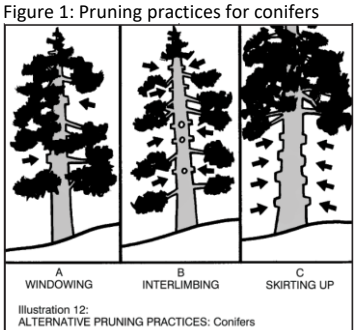
8.7.1 "Selective clearing" for trees means:

A. "Windowing," the pruning of major limbs that obscure a view, excluding the top third of the tree;

B. "Interlimbing," the removal of an entire branch or individual branches through the canopy, excluding the top third of the tree, to allow more light to pass through as well as reducing wind resistance; and

C. "Skirting-up," the limbing of the tree from the bottom upward to a maximum of twenty feet from the ground.

Figure 1: Pruning practices for conifers



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

8.7.3 **"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 which are subject to the provisions of this chapter; the same to be designated as to location by the department of ecology.

8.7.4 **"Shorelines"** means all of the water areas of the state, including reservoirs, and their associated shorelands, together with the lands underlying them; except

A. Shorelines of statewide significance;

B. Shorelines on segments of streams upstream of a point where the mean annual flow is twenty cubic feet per second or less and the wetlands associated with such upstream segments; and

C. Shorelines on lakes less than twenty acres in size and wetlands associated with such small lakes.

8.7.5 **"Shoreline areas"** and "shoreline jurisdiction" means all "shorelines of the state" and "shorelands" as defined in RCW 90.58.030.

8.7.6 **"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.

8.7.7 **"Shoreline stabilization"** means modifications to the existing shoreline intended to reduce or prevent erosion of uplands or beaches and/or influence wave action, currents and/or the natural transport of sediments along the shoreline. Shoreline stabilization measures may consist of:

A. Nonstructural stabilization measures, which may include building setbacks, relocation of the structure to be protected, groundwater management, and planning and regulatory measures to avoid the need for structural stabilization; and

B. Structural stabilization measures, which may include:

i. Soft stabilization measures that contribute to restoration, protection, or enhancement of shoreline ecological functions, such as the use of gravels, cobbles, boulders, logs, and native vegetation that have been placed to provide shore stability in a non-linear, sloping arrangement; or

ii. Hard stabilization measures that control erosion using hardened structures that armor and stabilize the shoreline landward of the structure from further erosion, including, but not limited to, bulkheads, riprap, and revetments.

8.7.8 **"Shorelines of statewide significance"** means the shorelines of the Willapa River.

8.7.9 **"Shorelines of the state"** are the total of all "shorelines" and "shorelines of statewide significance" within the state.

8.7.10 **"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.

8.7.11 **"Significant vegetation removal"** means the removal or alteration of trees, shrubs, and/or ground cover by clearing, grading, cutting, burning, chemical means, or other activity that causes significant ecological impacts to functions provided by such vegetation. The removal of invasive or noxious weeds does not constitute significant vegetation removal. Tree pruning, not including tree topping, where it does not affect ecological functions, does not constitute significant vegetation removal.

8.7.12 **"Silviculture"** means management practices related to controlling, establishment, growth, composition, and quality of forest vegetation.

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

8.7.14 **"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.

8.7.15 **"Substantially degrade"** means to cause significant ecological impact.

8.7.16 **"Substantial development"** shall mean any development of which the total cost or fair market value exceeds seven thousand forty-seven dollars ($7,047; effective September 2, 2017), or any development that materially interferes with the normal public use of the water or shorelines of the state. The dollar threshold must be adjusted for inflation by the office of financial management every five years, beginning July 1, 2007, based upon changes in the consumer price index during that time period.

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8.7.17 **"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.

8.7.18 **"Utilities"** means services and facilities that produce, convey, store, or process power, gas, sewage, communications, oil, waste, and the like. On-site utility features serving a primary use, such as a water, sewer or gas line to a residence, are "accessory utilities" and shall be considered a part of the primary use.

Section 8.8 Definitions V – Z

8.8.1 **"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.

8.8.2 **"Vegetation conservation"** means activities to protect and restore vegetation along or near marine and freshwater shorelines that contribute to the ecological functions of shoreline areas. Vegetation conservation provisions include the prevention or restriction of plant clearing and earth grading, vegetation restoration, and the control of invasive weeds and nonnative species.

8.8.3 **"Vegetation conservation corridor"** means an area of land measured horizontally from the edge of the ordinary high water mark landward that is equal in width to a required buffer for a fish and wildlife habitat conservation are buffer under Chapter 14.15 SBMC. A vegetation conservation corridor consists of an undisturbed area of native vegetation established to protect the integrity and functions of the shoreline.

8.8.4 **"Vegetation, Native"** means vegetation comprised of plant species, other than noxious weeds, that are naturally occurring in the surrounding shoreline environment. Examples of trees include Douglas fir, western hemlock western red cedar, alder, big-leaf maple, and vine maple. Examples of shrubs and plants include willow, elderberry, salmonberry, salal, sword fern, and fireweed.

8.8.5 **"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.

8.8.6 **"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.

8.8.7 **"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 recreational use or aesthetic enjoyment of the shoreline for a substantial number of people as a general characteristic of the use and which through location, design, and operation ensures the public's ability to enjoy the physical and aesthetic qualities of the shoreline. In order to qualify as a water-enjoyment use, the use must be open to the general public and the shoreline-oriented space within the project must be devoted to the specific aspects of the use that fosters shoreline enjoyment.

8.8.8 **"Water-oriented use"** means a use that is water-dependent, water-related, or water-enjoyment, or a combination of such uses.

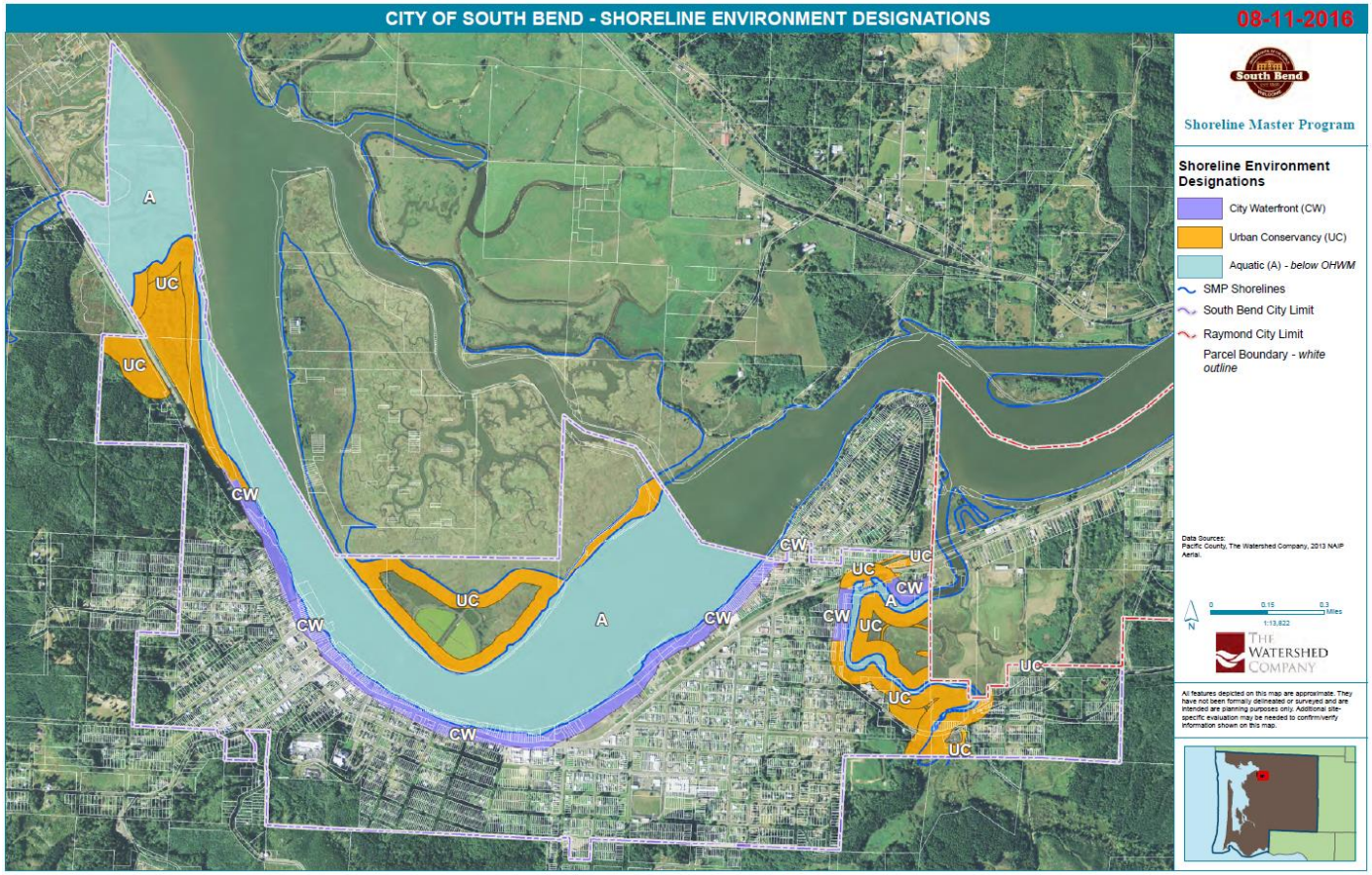
8.8.9 **"Water quality"** means the physical characteristics of water within shoreline jurisdiction, including water quantity, hydrological, physical, chemical, aesthetic, recreation-related, and biological characteristics. Where used in this chapter, the term "water quantity" refers only to development 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 chapter, does not mean the withdrawal of ground water or diversion of surface water pursuant to RCW 90.03.250 through 90.03.340.

8.8.10 **"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.

8.8.11 **"Wetlands"** means 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 nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from nonwetland areas to mitigate the conversion of wetlands.

Appendix A: Shoreline Environment Designation Map