

FINAL DRAFT
SHORELINE MASTER PROGRAM
CITY OF BINGEN

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SHORELINE MASTER PROGRAM

CITY OF BINGEN

1 GENERAL PROVISIONS

1.1 Purpose

- (1) The purpose of the City of Bingen Shoreline Master Program is to implement the requirements of RCW 90.58, the Shoreline Management Act of 1971. RCW 90.58.080 directs local governments to develop and administer local shoreline master programs for regulation of uses on shorelines of the state.

- (2) Description of Bingen's Shoreline Area

The City's Shoreline Master Program covers shorelines adjacent to the Columbia River, which is entirely comprised of privately owned land historically used for water-oriented industrial purposes. The existing operations of privately owned land west of South Maple Street consists of a range of water-oriented activities, all of which are interdependent and consistent with the high intensity nature of industrial land uses. The main segment, west of South Maple Street is located on and adjacent to a manmade spit and industrial activities occur through the site. Ecological functions of the shoreline are limited by the hardened shoreline, lack of upland connectivity and water-dependent uses. The City's industrially developed upland and aquatic shoreline areas are significant. They provide for an important regional industrial use with substantial employment within the City of Bingen Exempt Urban Area as designated by the Columbia River Gorge National Scenic Area Act. Exempt urban areas within the Columbia River Gorge National Scenic Area are extremely important to the region, as the Scenic Area Act encourages economic development within these areas and highly limits development in areas outside of the exempt urban areas.

1.2 Authority

- (1) The City's Shoreline Master Program is enacted and administered according to the following state law and rules:
 - A. The Shoreline Management Act of 1971, RCW 90.58;
 - B. State master program approval/amendment procedures and master program guidelines, WAC 173-26; and
 - C. Shoreline management permit and enforcement procedures, WAC 173-27.

1.3 Applicability

- (1) The City's Shoreline Master Program shall apply to all shorelines of the state as defined in RCW 90.58.030. The geographic applicability of the City's Shoreline Master Program is described in Section 3.1, Shoreline jurisdiction.
- (2) Unless specifically exempted by statute, all proposed uses and development occurring within shoreline jurisdiction must conform to RCW 90.58, the Shoreline Management Act, and the City's Shoreline Master Program whether or not a permit is required.
- (3) Federal agency activities must comply with WAC 173-27-060.

1.4 Relationship to other regulations

- (1) Compliance with the City's Shoreline Master Program does not constitute compliance with other federal, state, and local regulations and permit requirements that may apply. The applicant is responsible for complying with all other applicable requirements.
- (2) When any provision of the City's Shoreline Master Program or any other federal, state, or local provision conflicts with the City's Shoreline Master Program, the provision that is most protective of shoreline resources shall prevail.
- (3) The City's Shoreline Master Program includes critical areas regulations applicable only in shoreline jurisdiction; these regulations shall control within shoreline jurisdiction over the general critical area regulations adopted pursuant to the Growth Management Act.

1.5 Liberal construction

- (1) As provided for in RCW 90.58.900, the Shoreline Management Act is exempted from the rule of strict construction. Therefore, the City's Shoreline Master Program shall be liberally construed to give full effect to the purposes and policies for which it was enacted.

1.6 Severability

- (1) If any provision of the City's Shoreline Master Program, or its application to any person or legal entity or circumstances, is held invalid, the remainder of the City's Shoreline Master Program, or the application of the provision to other persons or legal entities or circumstances, shall not be affected.

1.7 Effective date

- (1) The City's Shoreline Master Program is hereby adopted on Month XX, 201X. The City's Shoreline Master Program and all amendments thereto shall become effective 14 days from the date of Ecology's written notice of final approval.

2 DEFINITIONS

- (1) **"Accessory use"** means any use or activity incidental and subordinate to a primary use or development.
- (2) **"Amendment"** means a revision, update, addition, deletion, and/or reenactment to the City's Shoreline Master Program.
- (3) **"Aquaculture"** means the culture or farming of fish or other aquatic plants and animals.
- (4) **"Average grade level"** means the average of the natural or existing topography of the portion of the lot, parcel, or tract of real property that 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.
- (5) **"Boating facilities"** means any public or private facility for storing or launching vessels or watercraft. This means marinas, open water moorage and anchorage areas, boat launch ramps, boat lifts, mooring buoys, piers, floats and docks or any similar single-user or shared-use facility for public recreational use or private residential use. For purposes of this program, boat repair shops and other upland boat storage structures are not considered boating facilities.
- (6) **"Breakwater"** means an offshore structure aligned parallel to the shore, sometimes shore-connected, that provides protection from waves.
- (7) **"City"** means the City of Bingen.
- (8) **"County"** means Klickitat County.
- (9) **"Critical areas"** means any of the following areas or ecosystems: fish and wildlife habitat conservation areas, geologically hazardous areas, frequently flooded areas, and wetlands, as defined in RCW 36.70A and the City's critical areas regulations.
- (10) **"Date of filing"** of the City's final decision involving approval or denial of a substantial development permit is the date of actual receipt by Ecology of the City's final decision on the permit; or, involving approval or denial of a variance or conditional use permit, is the

date of transmittal of Ecology's final decision on the variance or conditional use permit to the City and the applicant.

- (11) **"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 the Shoreline Management Act at any stage of water level.
- (12) **"Dredging"** is the removal of bed material from below the ordinary high water mark or wetlands using other than unpowered, hand-held tools.
- (13) **"Ecological functions"** means the work performed or role played by the physical, chemical, and biological processes that contribute to the maintenance of the aquatic and terrestrial environments that constitute the shoreline's natural ecosystem.
- (14) **"Ecological restoration"** has the same meaning as "restore."
- (15) **"Ecology"** means the Washington State Department of Ecology.
- (16) **"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.
- (17) **"Essential public facilities"** means those important and necessary facilities which provide essential services that are typically difficult to site, such as airports, state educational facilities, state or regional transportation facilities, state and local correctional facilities, solid waste handling facilities, and in-patient facilities including substance-abuse facilities, mental health facilities, and group homes (RCW 36.70A.200). They do not necessarily include all public facilities or services; they may be, but are not necessarily, publicly owned. Essential public facilities in the City of Bingen include, but are not limited to, a solid waste disposal center (recycling center) and wastewater treatment plant.
- (18) **"Exempt"** developments are those set forth in WAC 173-27-040; RCW 90.58.030(3)(e); RCW 90.58.140(9); RCW 90.58.147; RCW 90.58.355; and RCW 90.58.515 that are not required to obtain a shoreline substantial development permit but which must otherwise comply with applicable provisions of the Shoreline Management Act and the City's Shoreline Master Program.
- (19) **"Feasible"** means that an action, such as a development project, mitigation, or preservation requirement, meets all of the following conditions. In cases where the City's Shoreline 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 City

may weigh the action's relative public costs and public benefits, considered in the short- and long-term time frames.

- 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.
- (20) **"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.
- (21) **"Floodplain"** is synonymous with 100-year floodplain 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 that meets the objectives of the Shoreline Management Act.
- (22) **"Floodway"** means an area that either has been established in Federal Emergency Management Agency flood insurance rate maps or floodway maps or consists of those portions of a river valley lying streamward from the outer limits of a watercourse upon which flood waters are carried during periods of flooding that occur with reasonable regularity, although not necessarily annually, said floodway being identified, under normal condition, by changes in surface soil conditions or changes in types or quality of vegetative ground cover condition, topography, or other indicators of flooding that occurs with reasonable regularity, although not necessarily annually. Regardless of the method used to identify a floodway, a 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.
- (23) **"Forest practice"** means any activity conducted on or directly pertaining to forest land and relating to growing, harvesting, or processing timber, including but not limited to: road and trail construction, including forest practices hydraulic projects that include water crossing structures, and associated activities and maintenance; harvesting, final and intermediate; precommercial thinning; reforestation; fertilization; prevention and suppression of diseases and insects; salvage of trees; and brush control. "Forest practice" shall not include preparatory work such as tree marking, surveying and road flagging, and removal or harvesting of incidental vegetation from forest lands such as berries, ferns, greenery, mistletoe, herbs, mushrooms, and other products which cannot normally be

expected to result in damage to forest soils, timber, or public resources. For purposes of this Plan, Bingen's industrial shorelines do not include forest land subject to this definition; moreover, "forest practice" does not include log storage, timber processing, lumber mill, and other accessory operations, which are inherent activities within Bingen's shoreline-dependent high intensity industrial uses.

- (24) "**Geotechnical analysis**" has the same meaning as "geotechnical report."
- (25) "**Geotechnical report**" 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.
- (26) "**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.
- (27) "**Groin**" is a barrier-type structure extending from the backshore or stream bank into a waterbody for the purpose of the protection of a shoreline and adjacent upland by influencing the movement of water and/or deposition of materials.
- (28) "**Guidelines**" means those standards adopted by Ecology to implement the policy of RCW 90.58 for regulation of use of the shorelines of the state.
- (29) "**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 debilitating disease, a structural defect, a root ball significantly exposed, or has been exposed to windthrow within the past 10 years. Hazardous trees include, but are not limited to: conditions where a permanent, primary or appurtenant or accessory structure is within one and one-half tree lengths of the base of the trunk. Where not immediately apparent to the Shoreline Administrator, the hazard tree determination shall be made after review of a report prepared by a certified arborist or forester.
- (30) "**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, and that temporary construction equipment is excluded in this calculation.

- (31) **“Industrial development”** means facilities for processing, manufacturing, and storage of finished or semi-finished goods, including but not limited to wood products, oil, metal or mineral product refining, power generating facilities, including hydropower, ship building and major repair, storage and repair of large trucks and other vehicles or heavy equipment, related storage of fuels, commercial storage and repair of fishing gear, warehousing, construction contractor’s offices and material/equipment storage yards, wholesale trade or storage, and log storage on land or water together with necessary accessory uses such as parking, loading, and waste storage and treatment
- (32) **“In-stream structures”** are structures placed by humans within a stream or river waterward of the ordinary high water mark that either cause or have the potential to cause water impoundment or the diversion, obstruction, or modification of water flow. “In-stream structures” do not include docks, piers and wharves.
- (33) **“May”** means the action is acceptable, provided it conforms to the provisions of the City’s Shoreline Master Program.
- (34) **“Must”** means a mandate; the action is required.
- (35) **“Natural hydrographic conditions”** means the natural conditions for a particular time of year of water delivery and movement through a system.
- (36) **“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.
- (37) **“Nonconforming use or development”** means a shoreline use or development that was lawfully constructed or established prior to the effective date of the City’s Shoreline Master Program, or amendments thereto, but that does not conform to present regulations or standards of the City’s Shoreline Master Program.
- (38) **“Nonwater-oriented uses”** means those uses that are not water-dependent, water-related, or water-enjoyment.
- (39) **“Ordinary high water mark”** on all rivers and streams, 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 the City or the Washington State Department of Ecology: provided, that in any area where the ordinary high water mark

cannot be found, the ordinary high water mark adjoining fresh water shall be the line of mean high water.

- (40) **“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 the City 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.
- (41) **“Person”** means an individual, partnership, corporation, association, organization, cooperative, public or municipal corporation, or agency of the state or local governmental unit however designated.
- (42) **“Priority habitat”** means a habitat type or elements with unique or significant value to one or more species as classified by the Department of Fish and Wildlife. A priority habitat may consist of a unique vegetation type or dominant plant species, a described successional stage, or a specific structural element.
- (43) **“Priority species”** means species requiring protective measures and/or management guidelines to ensure their persistence at genetically viable population levels. Priority species are those that meet any of the criteria listed below.
- A. Criterion 1. State-listed or state proposed species. State-listed species are those native fish and wildlife species legally designated as endangered (WAC 232-12-014), threatened (WAC 232-12-011), or sensitive (WAC 232-12-011). State proposed species are those fish and wildlife species that will be reviewed by the Washington State 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.
 - C. Criterion 3. Species of recreational, commercial, and/or tribal importance. Native and nonnative fish and wildlife species of recreational or commercial importance and recognized species used for tribal commercial, 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.
- (44) **“Provisions”** means policies, regulations, standards, or environment designations.
- (45) **“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.

- (46) **“Public Trust Doctrine”** is the principle that the waters of the state are a public resource owned by and available to all citizens equally for the purposes of navigation, conducting commerce, fishing, recreation and similar uses and that this trust is not invalidated by private ownership of the underlying land. The doctrine limits public and private use of tidelands and other shorelands to protect the public’s right to use the waters of the state. The Public Trust Doctrine does not allow the public to trespass over privately owned uplands to access the tidelands. It does, however, protect public use of navigable water bodies below the ordinary high water mark. Protection of the trust is a duty of the State and the Shoreline Management Act is one of the primary means by which that duty is carried out. The doctrine requires a careful evaluation of the public interest by any action proposed. This requirement is fulfilled in major part by the planning and permitting requirements of the Shoreline Management Act.
- (47) **“Qualified professional”** is a person with experience and training in the pertinent scientific discipline, and who is a qualified scientific expert with expertise appropriate for the relevant subject. 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, unless otherwise specified in this Shoreline Master Program, have at least two years of related work experience.
- (48) **“Restoration”** has the same meaning as “restore.”
- (49) **“Restore”** 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.
- (50) **“Shall”** means a mandate; the action is required.
- (51) **“Shorelands”** means those lands extending landward for 200 feet in all directions as measured on a horizontal plane from the ordinary high water mark; floodways and contiguous floodplain areas landward 200 feet from such floodways; and all wetlands associated with the waters that are subject to the provisions of the City’s Shoreline Master Program.
- (52) **“Shoreline areas”** means all “shorelines of the state” and “shorelands” as defined in RCW 90.58.030.
- (53) **“Shoreline conditional use”** means a use, development, or substantial development that is classified as a shoreline conditional use or is not classified within the City’s Shoreline Master Program.

- (54) **“Shoreline functions”** has the same meaning as “ecological functions.”
- (55) **“Shoreline jurisdiction”** has the same meaning as “shoreline areas.” The City’s shoreline jurisdiction is the minimum shoreline jurisdiction under the Shoreline Management Act, and does not include the optional inclusion of the entire 100-year floodplain or land necessary for buffers for critical areas.
- (56) **“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.
- (57) **“Shoreline permit”** means any shoreline substantial development permit, shoreline variance permit, shoreline conditional use permit, or revision authorized under RCW 90.58.
- (58) **“Shoreline stabilization”** includes actions taken to address erosion impacts to property and dwellings, businesses, or structures caused by natural processes, such as current, flood, wind, or wave action. These actions include structural and nonstructural methods. Nonstructural methods include building setbacks, relocation of the structure to be protected, groundwater management, and planning and regulatory measures to avoid the need for structural stabilization.
- (59) **“Shoreline variance”** is a means to grant relief from the specific bulk, dimensional or performance standards set forth in the City’s Shoreline Master Program and not a means to vary a use of a shoreline.
- (60) **“Shorelines”** means all of the water areas of the state, including reservoirs, and their associated shorelands, together with the lands underlying them; except shorelines of statewide significance; shorelines on segments of streams upstream of a point where the mean annual flow is 20 cubic feet per second or less and the wetlands associated with such upstream segments; and shorelines on lakes less than 20 acres in size and wetlands associated with such small lakes.
- (61) **“Shorelines of statewide significance”** means the following shorelines of the state, as applicable to the City:
- A. Those natural rivers or segments thereof downstream of a point where the annual flow is measured at 200 cubic feet per second or more, or those portions of rivers east of the crest of the Cascade range downstream from the first 300 square miles of drainage area, whichever is longer;
 - B. Shorelands associated with the above.
- (62) **“Shorelines of the state”** are the total of all “shorelines” and “shorelines of statewide significance” within the state.

- (63) **“Should”** means that the particular action is required unless there is a demonstrated, compelling reason, based on policy of the Shoreline Management Act, the Guidelines, and the City’s Shoreline Master Program against taking the action.
- (64) **“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.
- (65) **“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.
- (66) **“Substantial development”** shall mean any development of which the total cost or fair market value exceeds \$6,416, or any development which 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 (current threshold dates to September 15, 2012) based upon changes in the consumer price index during that time period. See WAC 173-27-040 for a list of developments that shall not be considered substantial development.
- (67) **“Substantially degrade”** means to cause significant ecological impact.
- (68) **“Utility”** means a public or private business that provides a service that is utilized or available to the general public (or a location-specific population thereof) such services may include, but are not limited to, storm water detention and management, sewer, water, telecommunications, cable, electricity, and natural gas. Utility production and processing facilities are facilities such as, but not limited to, power plants and sewage treatment plants.
- (69) **“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.
- (70) **“Water-dependent use”** means a use or portion of a use that cannot exist in a location that is not adjacent to the water and that is dependent on the water by reason of the intrinsic nature of its operations.
- (71) **“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.

- (72) **“Water-oriented use”** means a use that is water-dependent, water-related, or water-enjoyment, or a combination of such uses.
- (73) **“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.
- (74) **“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.

3 SHORELINE JURISDICTION

3.1 Shoreline jurisdiction

- (1) **Shorelines of the state.** In accordance with the Shoreline Management Act, the City’s shoreline jurisdiction subject to the City’s Shoreline Master Program includes all “shorelines of the state” and “shorelands.” Shorelines of the state are the total of all “shorelines” and “shorelines of statewide significance.” The City’s shorelines of the state include the Columbia River, a shoreline of statewide significance. These terms are defined in Chapter 2, Definitions. The City’s shoreline jurisdiction is the minimum shoreline jurisdiction under the Shoreline Management Act, and does not include the optional inclusion of the entire 100-year floodplain or land necessary for buffers for critical areas. Because the portion of the Columbia River adjacent to the City is within the Bonneville Pool, for purposes of the City’s Shoreline Master Program, the river has no channel migration zone within the City.

- (2) **Where shoreline jurisdiction does not include an entire parcel.** In circumstances where shoreline jurisdiction does not include an entire parcel, only that portion of the parcel within shoreline jurisdiction and any use, activity or development proposed within shoreline jurisdiction on that portion of the parcel is subject to the City's Shoreline Master Program.

3.2 Shorelines Map

- (1) **Shorelines Map.**
- A. The City's shoreline jurisdiction and the environment designations established by the City's Shoreline Master Program are shown on the Shorelines Map. The Shorelines Map is adopted by reference and declared to be a part of the City's Shoreline Master Program. The Shorelines Map can be seen in Appendix A.
 - B. The Shorelines Map may be updated administratively or through an amendment to the City's Shoreline Master Program as indicated in regulation 3.2(2) below. Minor mapping inaccuracies corrected administratively shall not be greater than one acre in size. Ecology shall be provided with an updated Shorelines Map when any updates are made.
- (2) **Shorelines Map approximate.** The Shorelines Map only approximately identifies or depicts the lateral extent of shoreline jurisdiction and environment designations from the shoreline waterbody. The actual lateral extent of shoreline jurisdiction and environment designations shall be determined on a site-specific basis at the time a development is proposed based on the location of the ordinary high water mark and the presence of associated wetlands, as applicable.
- A. Ordinary high water mark and wetland boundary determinations are valid for five years from the date the determination is made. After five years has elapsed, the City shall determine whether a revision or additional assessment is necessary.
 - B. Any areas within shoreline jurisdiction that are not mapped and/or designated due to minor mapping inaccuracies in the lateral extent of shoreline jurisdiction related to site-specific surveys of ordinary high water mark are automatically assigned the category of the contiguous waterward environment designation. Where the mapping inaccuracy results in inclusion of an unmapped associated wetland, that wetland shall be assigned a High-Intensity designation. Correction of such minor mapping inaccuracies may be made and incorporated into the Shorelines Map without an amendment to the City's Shoreline Master Program.
 - C. Any areas within shoreline jurisdiction that are not mapped and/or designated that are not addressed by regulation 3.2(2)B shall be regulated by the City's critical areas

regulations as a Type F water until the shoreline can be redesignated through an SMP amendment process conducted consistent with Section 8.13, Amendments.

- D. Any area shown on the Shorelines Map as within shoreline jurisdiction that does not meet the criteria for shoreline jurisdiction shall not be subject to the requirements of the City's Shoreline Master Program. Correction of such minor mapping inaccuracies may be made and incorporated into the Shorelines Map without an amendment to the City's Shoreline Master Program.
- E. When interpreting the exact location of an environment designation boundary line, the location shown on the Shorelines Map shall prevail consistent with the following rules:
 - 1. Boundaries indicated as approximately following parcel, tract, or section lines shall be so construed.
 - 2. In cases of boundary line adjustments or subdivisions, the designation of the parent parcel shall not change as a result, except if pursuant to an amendment to the City's Shoreline Master Program.
 - 3. Boundaries indicated as approximately following roads and railroads shall be construed to follow the nearest right-of-way edge.
 - 4. Boundaries indicated as approximately parallel to or extensions of features indicated in regulations 3.2(2)E.1 or 3.2(2)E.2 above shall be so construed.

4 SHORELINE POLICIES

4.1 General policies

4.1.1 Archaeological & historic resources

- (1) Due to the limited and irreplaceable nature of the resource(s), the destruction of or damage to any site having historic, cultural, scientific or educational value, as identified by the appropriate authorities, should be prevented.

4.1.2 Critical areas

- (1) The existing ecological functions and ecosystem-wide processes of critical areas should be protected.
- (2) Human uses and values that are compatible with the protection of the existing ecological functions and ecosystem-wide processes of critical areas, such as public access and aesthetic values, should be promoted provided that impacts to ecological functions are first avoided, and any unavoidable impacts are mitigated.

4.1.3 Environmental protection

- (1) The City's Shoreline Master Program should assure, at a minimum, no net loss of ecological functions necessary to sustain shoreline natural resources.
- (2) To assure no net loss of shoreline ecological functions, proposed individual uses and developments should mitigate any remaining adverse environmental impacts not fully mitigated by compliance with the City's Shoreline Master Program or other applicable regulations that mitigate environmental impacts. Such regulations may include, but are not limited to, the State Environmental Policy Act, the Hydraulic Code Rules administered by Washington State Department of Fish and Wildlife, and regulations for in-water work administered by the US Army Corps of Engineers.

4.1.4 Flood hazard reduction

- (1) When evaluating alternate flood control measures, the removal or relocation of structures in flood-prone areas should be considered.
- (2) Where feasible, preference should be given to non-structural flood hazard reduction measures over structural measures.
- (3) River and stream processes should be returned to a more natural state where feasible and appropriate, including the restoration of off-channel hydrological connections.
- (4) Flood hazard protection measures should not result in a net loss of ecological functions and ecosystem-wide processes associated with rivers and streams.

4.1.5 Public access

- (1) Public access should be provided consistent with the existing character of the shoreline and with consideration of opportunities and constraints for physical and visual access, as well as consideration of ecological functions, security, and public safety.
- (2) Public access should not interfere with water-oriented industrial uses or compromise the safety of industrial uses or the public.
- (3) Shoreline public access, if feasible, should be coordinated with shoreline industrial land uses and other local, state, tribal, and federal agencies, and should be consistent to the extent practicable with applicable parks, recreation, open space and trails plans.

4.1.6 Vegetation conservation

- (1) Vegetation conservation should be undertaken to maintain the ecological functions and ecosystem-wide processes performed by vegetation along shorelines, with recognition that water-dependent, water-related and water-enjoyment uses may require vegetation removal. Vegetation conservation should also be undertaken to protect human safety and property, to increase the stability of shorelines, to reduce the need for structural shoreline

stabilization measures, to improve the visual and aesthetic qualities of the shoreline, to protect plant and animal species and their habitats, and to enhance shoreline uses.

4.1.7 Water quality & quantity

- (1) Impacts to water quality and quantity that would result in a net loss of shoreline ecological functions or in a significant impact to aesthetic qualities or recreational opportunities should be prevented.
- (2) Low impact development facilities that do not substantially change the character of the shoreline, such as vegetation filter strips, grass-lined swales, and vegetated bioretention and infiltration facilities, should be encouraged in association with development allowed in shoreline jurisdiction. The use of native vegetation should be encouraged.

4.2 Shoreline use & modification policies

4.2.1 General shoreline use & modification policies

- (1) The development of property in the shoreline jurisdiction should protect the public's health, safety, and welfare; the land and its vegetation and wildlife; and property rights while implementing the policies of the Shoreline Management Act.
- (2) The City, when determining allowable uses and resolving use conflicts within the shoreline jurisdiction, should apply the following preferences and priorities in the order listed below.
 - A. Reserve appropriate areas for protecting and restoring ecological functions to control pollution and prevent damage to the natural environment and public health.
 - B. Reserve shoreline areas for water-dependent and associated water-related uses.
 - C. Reserve shoreline areas for other water-related and water-enjoyment uses that are compatible with ecological protection and restoration objectives.
 - D. Locate single-family residential uses where they are appropriate and can be developed without significant impact to ecological functions or displacement of water-dependent uses.
 - E. Limit nonwater-oriented uses to those locations where the above described uses are inappropriate or where nonwater-oriented uses demonstrably contribute to the objectives of the Shoreline Management Act.
- (3) For shoreline of statewide significance, the City should give preference to uses, in the following order of preference, which:
 - A. Recognize and protect the statewide interest over local interest;
 - B. Preserve the natural character of the shoreline;

- C. Result in long-term over short-term benefit;
 - D. Protect the resources and ecology of the shoreline;
 - E. Increase public access to publicly owned areas of the shorelines;
 - F. Increase recreational opportunities for the public in the shoreline;
 - G. Provide for any other element as defined in RCW 90.58.100 deemed appropriate or necessary.
- (4) Use conflicts should be reduced by prohibiting or applying special conditions to uses that are not consistent with the control of pollution and prevention of damage to the natural environment or are not unique to or dependent upon use of the City's shoreline.
 - (5) Only shoreline modifications that are appropriate to the specific type of shoreline and environmental conditions for which they are proposed should be allowed.
 - (6) The adverse effects of shoreline modifications should be reduced and, as much as possible, shoreline modifications should be limited in number and extent.
 - (7) Shoreline modifications, individually and cumulatively, should not result in a net loss of ecological functions. This should be achieved by giving preference to those types of shoreline modifications that have a lesser impact on ecological functions and requiring mitigation of identified impacts resulting from shoreline modifications.
 - (8) Structural shoreline modifications should be allowed only where they are demonstrated to be necessary to support or protect an allowed primary structure or a legally existing shoreline use that is in danger of loss or substantial damage or are necessary for reconfiguration of the shoreline for mitigation or enhancement purposes.
 - (9) The enhancement of impaired ecological functions should be planned for where feasible and appropriate, while accommodating permitted uses.

4.2.2 Agriculture

- (1) Agriculture should be prohibited in shoreline jurisdiction, consistent with City zoning.

4.2.3 Aquaculture

- (1) Aquaculture is dependent on the use of the water area and, when consistent with control of pollution and prevention of damage to the environment, is a preferred use of the water area. While aquaculture is not anticipated within the City's shoreline jurisdiction, some scale or form of aquaculture could be appropriate, provided it complies with applicable state and federal laws.

4.2.4 Boating facilities

- (1) Boating facilities should meet health, safety, and welfare requirements, and no net loss of ecological functions as a result of development of such facilities should be assured.

4.2.5 Breakwaters & groins

- (1) Breakwaters and groins waterward of the ordinary high water mark should be allowed only where necessary to support water-dependent uses, public access, shoreline stabilization, or other specific public purpose.

4.2.6 Commercial development

- (1) Preference should be given first to water-dependent commercial uses over nonwater-dependent commercial uses; and second, to water-related and water-enjoyment commercial uses over nonwater-oriented commercial uses.
- (2) Public access and ecological restoration should be considered as potential mitigation of impacts to shoreline resources and values for all water-related or water-dependent commercial development unless such improvements are demonstrated to be infeasible or inappropriate.

4.2.7 Dredging & dredge material disposal

- (1) Dredging and dredge material disposal should be done in a manner that avoids, minimizes or mitigates significant ecological impacts.
- (2) Dredging and dredge material disposal should be consistent with adopted regional interagency dredge material management plans and watershed management plans.
- (3) Uses of suitable dredge material that benefit shoreline resources are encouraged consistent with the City's Shoreline Master Program and applicable state and federal laws.

4.2.8 Fill & excavation

- (1) Fills and excavations should be located, designed, and constructed to protect shoreline ecological functions and ecosystem-wide processes.
- (2) Fills waterward of the ordinary high water mark should be allowed only when necessary to facilitate water-dependent uses, flood hazard reduction, cleanup and disposal of contaminated sediments, consistent with the City's Shoreline Master Program and applicable state and federal laws.

4.2.9 Forest practices

- (1) Forest practices should be prohibited in shoreline jurisdiction, consistent with City zoning.

4.2.10 Industrial development

- (1) Preference should first be given to water-dependent industrial uses over nonwater-dependent industrial uses; and second, to water-related industrial uses over nonwater-oriented industrial uses.
- (2) Industrial development and redevelopment should be encouraged to locate where environmental cleanup and restoration of the shoreline area can be incorporated.

4.2.11 In-stream structures

- (1) The location and planning of in-stream structures should give due consideration to the full range of public interests, including, but not limited to, watershed functions and processes, and environmental concerns, with special emphasis on protecting and restoring priority habitats and species.

4.2.12 Mining

- (1) Mining should be prohibited in shoreline jurisdiction, consistent with City zoning.

4.2.13 Recreational development

- (1) Shoreline recreational development should be given priority and should be primarily related to access to, enjoyment of, and use of shorelines of the state.
- (2) State-owned shorelines should be given appropriate special consideration for providing recreational activities for the public.

4.2.14 Residential development

- (1) Residential development should be prohibited in shoreline jurisdiction, consistent with City zoning.

4.2.15 Shoreline habitat & natural systems enhancement projects

- (1) Proposed shoreline habitat and natural system enhancement projects should be fostered.
- (2) Shoreline habitat and natural system enhancement projects should address legitimate restoration needs and priorities and facilitate implementation of the City's approved Shoreline Restoration Plan.

4.2.16 Shoreline stabilization

- (1) The City should regulate shoreline stabilization in order to avoid the individual and cumulative net loss of ecological functions.
- (2) New development should be located and designed to avoid the need for future shoreline stabilization to the extent feasible.

- (3) Structural shoreline stabilization measures should only be used when nonstructural methods are not feasible or not sufficient.
- (4) Soft structural shoreline stabilization measures should be used prior to hard stabilization measures unless demonstrated to be insufficient.

4.2.17 Transportation & parking

- (1) Safe, reasonable, and adequate circulation systems should be provided to, through or over shorelines where necessary and otherwise consistent with the City's Shoreline Master Program.
- (2) Circulation systems should include systems for pedestrian, bicycle, and public transportation where appropriate.

4.2.18 Utilities

- (1) All utility facilities should be designed and located to assure no net loss of shoreline ecological functions, preserve the natural landscape, and minimize conflicts with present and planned land and shoreline uses while meeting the needs of future populations in areas planned to accommodate growth.
- (2) Shoreline uses should not be allowed where the City's comprehensive plan does not provide sufficient roads, utilities, and other services to support them. Existing utility services routed through shoreline areas should not be the sole justification for more intense development.

5 ENVIRONMENT DESIGNATIONS

5.1 High-Intensity

5.1.1 Purpose

- (1) The purpose of the High-Intensity environment is to provide for high-intensity water-oriented commercial, transportation, and industrial uses while protecting existing ecological functions and restoring ecological functions in areas that have been previously degraded.

5.1.2 Designation

- (1) A High-Intensity environment designation is assigned to shoreline areas that currently support high-intensity uses related to commerce, transportation or navigation; or are suitable and planned for high-intensity water-oriented uses.

5.1.3 Management policies

- (1) In regulating uses in the High-Intensity environment, first priority should be given to water-dependent uses. Second priority should be given to water-related and water-enjoyment uses. Nonwater-oriented uses should not be allowed except as part of mixed-use developments. Nonwater-oriented uses may also be allowed in limited situations where they do not conflict with or limit opportunities for water-oriented uses or on sites where there is no direct access to the shoreline.
- (2) Where appropriate and feasible, visual and physical public access should be required.
- (3) The City of Bingen zoning code standards will be used to regulate design issues, such as sign control regulations, appropriate development siting, screening and architectural standards, and maintenance of vegetation in shoreline setbacks.

5.2 Aquatic

5.2.1 Purpose

- (1) The purpose of the Aquatic environment is to protect, restore, and manage the unique characteristics and resources of areas waterward of the ordinary high water mark.

5.2.2 Designation

- (1) An Aquatic environment designation is assigned to lands waterward of the ordinary high water mark.

5.2.3 Management policies

- (1) There is an intrinsic relationship between the aquatic environment and the upland land uses in the high intensity environment.
- (2) New over-water structures should only be allowed for water-dependent uses, public access, or ecological restoration.
- (3) The size of new overwater structures should be limited to the minimum necessary to support the structure's intended use.
- (4) In order to reduce the impacts of shoreline development and increase effective use of water resources, multiple use of overwater facilities should be encouraged.
- (5) All developments and uses on navigable waters or their beds should be located and designed to minimize interference with surface navigation, to consider impacts to public views, and to allow for the safe, unobstructed passage of fish and wildlife, particularly those species dependent on migration.

- (6) Uses that adversely impact the ecological functions of critical freshwater habitats should not be allowed except where necessary to achieve the objectives of RCW 90.58.020, and then only when their impacts are mitigated according to the sequence described in regulation 6.3(3) as necessary to assure no net loss of ecological functions.
- (7) Shoreline uses and modifications should be designed and managed to prevent degradation of water quality and natural hydrographic conditions.

6 GENERAL REGULATIONS

6.1 Archaeological & historic resources

- (1) **Regulations.**
 - A. Permits issued in areas known to have, or suspected of having, archaeological artifacts or resources shall require a site inspection or evaluation by a registered professional archaeologist in coordination with affected Tribes prior to initiating disturbance. Cost of the evaluation and inspection is the responsibility of the permit applicant. Those artifacts deemed significant shall be recovered before work begins or resumes.
 - B. If any archaeological resources are uncovered during excavation in shoreline jurisdiction, work must be stopped and the developer and property owners must notify the City, the State Department of Archaeology and Historic Preservation, and any affected Indian Tribes.
 - C. All feasible means shall be employed to ensure that data, structures, and sites having historical, scientific, educational, or archaeological significance are extracted, preserved, or used in a manner commensurate with their importance.
 - D. All developments proposed for location adjacent to historical sites which are registered on the State or National Historic Register shall be located and designed so as to be complementary to the historic site. Development which degrades or destroys the historic character of such sites shall not be permitted.
 - E. Consistent with constitutional and statutory limitations, public and private developments shall be located and designated to prevent destruction and alteration of sites having historic, cultural, scientific, or educational value as identified by appropriate authorities.
 - F. The establishment, restoration, or revitalization of historical, archaeological, scientific, or education facilities shall be done in such a manner that would cause minimal disturbance to adjacent properties as well as natural features of the shoreline.

6.2 Critical areas

- (1) **Critical areas within shoreline jurisdiction.** City critical area regulations, as codified in Chapter 17.65 of the Bingen Municipal Code (Ordinance No. 2015-06-646, dated July 21, 2015), are incorporated into the City's Shoreline Master Program, with the below-listed modifications. BMC 17.65.010.I, Exemptions, or BMC 17.65.010.J, Partial Exemptions, may respectively exempt or partially exempt a project from critical areas review; however, a shoreline permit or exemption pursuant to the City's Shoreline Master Program may still be required.
- A. The below-listed parts shall not apply under the City's Shoreline Master Program.
 - 1. BMC 17.65.010.A, Purpose.
 - 2. BMC 17.65.010.E, Applicability.
 - 3. BMC 17.65.010.N, Variances.
 - 4. BMC 17.65.010.O, Exceptions.
 - 5. Any parts that are inconsistent with the Shoreline Management Act or its implementing rules in the Washington Administrative Code.
 - B. The below-listed parts are amended as follows for application to the City's Shoreline Master Program.
 - 1. BMC 17.65.030B.1.d, Critical Areas Report for Fish and Wildlife Habitat Conservation Areas, is amended to include the following regulation.
 - a. A critical area report shall not be required for projects in which the only water type concerned is Type S (shoreline of the state).
- (2) **Conflicts.** If there are conflicts between Chapter 17.65 of the Bingen Municipal Code and other parts of the City's Shoreline Master Program, those that are the most protective of shoreline ecological functions shall apply.

6.3 Environmental protection

- (1) **No net loss of ecological functions.** Individual uses and developments shall not result in a net loss of shoreline ecological functions. Proposed individual uses and developments shall mitigate any remaining adverse environmental impacts not fully mitigated by compliance with the City's Shoreline Master Program or other applicable regulations that mitigate environmental impacts. Such regulations may include, but are not limited to, the State Environmental Policy Act, the Hydraulic Code Rules administered by Washington State Department of Fish and Wildlife, and regulations for in-water work administered by the US Army Corps of Engineers.

- (2) **Mitigation sequence analysis, when required.** If a proposed shoreline use or modification is entirely addressed by specific, objective standards (such as setback distances or materials requirements) contained in the City's Shoreline Master Program, then the mitigation sequence analysis described in regulation 6.3(3) is not required. In the following circumstances, a project applicant must provide a mitigation sequence analysis as described in regulation 6.3(3):
- A. If a proposed shoreline use or modification is addressed in any part by discretionary standards (such as standards requiring a particular action "if feasible" or requiring the minimization of development size) contained in the City's shoreline regulations, then the mitigation sequence analysis is required for the discretionary standard(s).
 - B. When an action requires a shoreline conditional use permit or shoreline variance permit.
 - C. When specifically required by a provision in the City's Shoreline Master Program.
- (3) **Mitigation sequence analysis.** An applicant required to complete a mitigation sequence analysis pursuant to regulation 6.3(2) must describe how the proposal will follow the below mitigation sequence. Application of the mitigation sequence must achieve no net loss of ecological functions for each new development and not have a significant adverse impact on other shoreline functions fostered by the policy of the Shoreline Management Act. Mitigation measures are listed in descending order of priority. Lower priority measures shall be applied only where higher priority measures are determined to be infeasible or inapplicable by a technical analysis or qualified professional. Mitigation in excess of that necessary to ensure that development will result in no net loss of ecological functions will not be required, but may be voluntarily performed.
- A. Avoid the impact altogether by not taking a certain action or parts of an action;
 - B. 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;
 - C. Rectify the impact by repairing, rehabilitating, or restoring the affected environment;
 - D. Reduce or eliminate the impact over time by preservation and maintenance operations;
 - E. Compensate for the impact by replacing, enhancing, or providing substitute resources or environments; and
 - F. Monitor the impact and the compensation projects and taking appropriate corrective measures.
- (4) **Compensatory mitigation.** When compensatory measures are appropriate pursuant to the mitigation sequence analysis described in regulation 6.3(3):

- A. Preferential consideration shall be given to measures that replace the impacted functions directly and in the immediate vicinity of the impact. However, alternative compensatory mitigation within the watershed that addresses limiting factors or identified critical needs for shoreline resource conservation based on watershed or comprehensive resource management plans applicable to the area of impact may be authorized.
 - B. Compensatory mitigation measures must be maintained over the life of the use or development.
 - C. Authorization of compensatory mitigation measures may require appropriate safeguards, terms or conditions as necessary to ensure no net loss of ecological functions.
- (5) **Mitigation plan.** When compensatory measures are appropriate, the applicant must develop and implement a mitigation plan prepared by a qualified professional. A mitigation plan must include, at a minimum:
- A. A description of the existing shoreline environment.
 - B. A description of anticipated impacts.
 - C. A description of how the mitigation plan addresses anticipated impacts, with supporting rationale.
 - D. Drawings showing existing and proposed conditions.
 - E. Measurable performance standards for evaluating the success of the mitigation plan.
 - F. A contingency plan identifying potential courses of action if performance standards are not being met.
 - G. A five-year maintenance and monitoring program, including:
 - 1. A schedule for maintenance and monitoring.
 - 2. A schedule for the submission of monitoring reports to the City to document milestones, successes, problems, and contingency actions.
 - 3. A discussion of how monitoring data will be evaluated to determine if performance standards are being met.
 - H. Financial guarantees to ensure the mitigation plan is fully implemented.

6.4 Flood hazard reduction

- (1) **Applicability.** Flood hazard reduction provisions apply to actions taken to reduce flood damage or hazard and to uses, development, and shoreline modifications that may increase flood hazards. Flood hazard reduction measures may consist of nonstructural

measures, such as setbacks, land use controls, wetland restoration, dike removal, use relocation, biotechnical measures, and stormwater management programs, and of structural measures, such as dikes, levees, revetments, floodwalls, channel realignment, and elevation of structures consistent with the National Flood Insurance Program.

- (2) **Development in floodplains.** Development in floodplains must not significantly or cumulatively increase flood hazard or be inconsistent with a comprehensive flood hazard management plan adopted pursuant to RCW 86.12 (provided the plan has been adopted after 1994 and approved by Ecology).
- (3) **New development or uses, including subdivisions.** New development or uses in shoreline jurisdiction, including the subdivision of land, must not be established when it would be reasonably foreseeable that the development or use would require structural flood hazard reduction measures within a floodway during the life of the development or use.
- (4) **Uses and activities within a floodway.** The following uses and activities may be authorized where appropriate and/or necessary within a floodway:
 - A. Actions that protect or restore the ecosystem-wide processes or ecological functions, including development with a primary purpose of protecting or restoring ecological functions and/or ecosystem-wide processes.
 - B. Bridges, utility lines, outfalls, and other public utility and transportation structures where no other feasible alternative exists or the alternative would result in unreasonable and disproportionate cost. Where such structures are allowed, mitigation shall address impacted functions and processes in the affected section of the watershed.
 - C. Repair and maintenance of an existing legal use, provided that such actions do not cause significant ecological impacts or increase flood hazards to other uses.
 - D. Modifications or additions to an existing nonagricultural legal use, provided that the new development includes appropriate protection of ecological functions.
 - E. Development where structures exist that prevent active channel movement and flooding.
 - F. Measures to reduce shoreline erosion, provided that it is demonstrated that the erosion rate exceeds that which would normally occur in a natural condition, that the measure does not interfere with fluvial hydrological and geomorphological processes normally acting in natural conditions, and that the measure includes appropriate mitigation of impacts to ecological functions associated with the river or stream.

(5) **Structural flood hazard reduction measures.**

- A. New structural flood hazard reduction measures in shoreline jurisdiction may be allowed only when demonstrated by a scientific and engineering analysis that they are necessary to protect existing development and that nonstructural measures are not feasible, that impacts on ecological functions and priority species and habitats can be successfully mitigated so as to assure no net loss, and that appropriate vegetation conservation actions will be undertaken consistent with Section 6.6, Vegetation conservation.
- B. New structural flood hazard reduction measures must be placed landward of associated wetlands and applicable shoreline setbacks, except for actions that increase ecological functions, such as wetland restoration; provided that such flood hazard reduction projects be authorized only if it is determined that no other alternative to reduce flood hazard to existing development is feasible. The need for, and analysis of feasible alternatives to, structural improvements must be documented through a geotechnical and hydrological analysis.
- C. New structural public flood hazard reduction measures, such as dikes and levees, must dedicate and improve public access pathways unless public access improvements would cause unavoidable health or safety hazards to the public, inherent and unavoidable security problems, unacceptable and unmitigable significant ecological impacts, unavoidable conflict with the proposed use, or a cost that is disproportionate and unreasonable to the total long-term cost of the development.

6.5 Public access

- (1) **Applicability.** Public access includes 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. Because of Bingen's unique shoreline area, safe public shoreline access for the High Intensity-A environment designation west of South Maple Street may not be appropriate or feasible for the foreseeable future. Therefore this section of the SMP is not applicable to the High Intensity-A environment designation, west of South Maple Street. This section of the SMP may inform future planning processes should the existing high-intensity industrial water-oriented nature of the shoreline change.
- (2) **Conditions when public access required for private entities.** Except as provided in regulation 6.5(3), shoreline substantial developments or conditional uses proposed by private entities shall provide public access where any of the following conditions are present, unless reasonable, safe and convenient public access to the shoreline exists within one-quarter mile (1,320 feet) of the site.

- A. A development or use will create increased demand for public access to the shoreline.
 - B. New non-water-oriented uses are proposed that are not accessory to a water-oriented use.
 - C. A use or activity will interfere with public use of lands or waters subject to the public trust doctrine.
- (3) **When on-site public access not required for private entities.** On-site public access shall not be required for private entities where one or more of the following conditions apply. To meet any of the following conditions, the applicant must demonstrate that all reasonable alternatives to provide public access have been exhausted, such as regulating access by maintaining a gate and/or limiting hours of use and/or separating uses and activities (e.g. fences, terracing, landscaping, etc.).
- A. Unavoidable health or safety hazards to the public exist that cannot be prevented by any practical means.
 - B. Constitutional or other legal limitations apply.
 - C. Inherent security requirements of the use cannot be satisfied through the application of alternative design features or other solutions.
 - D. The cost of providing the access, easement or an alternative amenity is unreasonably disproportionate to the total long-term cost of the proposed development.
 - E. Adverse impacts to shoreline ecological processes and functions that cannot be mitigated will result from the public access.
 - F. Significant unavoidable conflict between any access regulations and the proposed use and adjacent uses would occur and cannot be mitigated.
- (4) **When public access required for public entities.** There are no publicly owned areas of the Bingen shoreline. Should this change, shoreline development by public entities, port districts, state agencies, and public utility districts shall include public access measures as part of each shoreline development project, unless such access is shown to be incompatible due to reasons of safety, security, or impact to the shoreline environment.
- (5) **On-site public access.** On-site public access, if required, shall meet the following criteria:
- A. Public access shall consist of a dedication of land or a physical improvement in the form of a walkway, trail, bikeway, corridor, viewpoint, park, deck, observation tower, dock or pier, or other area serving as a means of view and/or physical approach to public waters. It may include interpretive displays.
 - B. Public access provisions shall run with the land (remain with the land, regardless of ownership) and be recorded via a legal instrument such as an easement. Such legal

instruments shall be recorded with the Klickitat County Auditor's Office prior to the time of building permit approval, occupancy or plat approval, whichever comes first (RCW 58.17.110). Future actions by the applicant's successors in interest or other parties shall not diminish the usefulness or value of required public access areas and associated improvements.

- C. Minimum width of public access easements shall be established based on site specific conditions-unless the Shoreline Administrator determines that undue hardship to the proponent would result. In such cases, easement width may be reduced only to the minimum extent necessary to relieve the hardship.
- D. Public access shall be connected to the nearest public street, where feasible.
- E. Appropriate amenities sufficient to serve users, such as benches and picnic tables, shall be provided, where feasible.
- F. Public access sites shall be developed in accordance with the Americans with Disabilities Act.
- G. The standard state-approved logo or other City-approved signs that indicate the public's right of access and hours of access shall be constructed, installed, and maintained by the applicant or owner in conspicuous locations.
- H. Required public access sites shall be fully developed and available for public use at the time of occupancy of the shoreline development.
- I. Maintenance of the public access facility over the life of the use or development shall be the responsibility of the owner unless otherwise accepted by a public or non-profit agency through a formal agreement recorded with the Klickitat County Auditor's Office.
- J. Public access improvements shall be constructed and maintained in a manner that does not result in a net loss of shoreline ecological functions.

6.6 Vegetation conservation

- (1) **Applicability.** Vegetation conservation includes activities to protect vegetation along or near shorelines that contribute to the ecological functions of shoreline areas.
- (2) **Existing vegetation.** Vegetation conservation standards do not apply retroactively to existing legally established uses and developments. Vegetation associated with such uses and developments may be maintained.
- (3) **Shoreline setbacks.** Requirements for shoreline setbacks are identified in Table 7-2.

- (4) **Vegetation removal.**
 - A. Vegetation removal must be limited to the minimum necessary to accommodate approved shoreline development. The City may require site plan alterations to achieve maximum vegetation retention.
 - B. Vegetation removal within shoreline setbacks, except for the removal of noxious weeds per regulation 6.6(7), requires the development and implementation of a mitigation plan prepared pursuant to regulation 6.6(9).
- (5) **Pruning of trees for views.** Selective pruning to preserve views that also maintains the health of the tree is allowed. Selective pruning of trees for views does not include removal of understory vegetation, and must not compromise the health of the tree.
- (6) **Hazard trees.** Hazard trees may be removed if the hazard cannot be eliminated by pruning, crown thinning, or other technique that maintains some habitat function. Hazard tree removal may be mitigated without a mitigation plan by conversion of the hazard tree to a wildlife snag or the installation of a similar tree. Native tree removal in shoreline jurisdiction must be mitigated by the installation of a native tree at a 1:1 impact to mitigation ratio. Non-native tree removal in shoreline setbacks must be mitigated by installation of a native or suitable non-native tree at a 1:1 impact to mitigation ratio. All mitigation trees shall be preferentially placed in the shoreline setback, unless the trees provide connectivity to upland habitats or other critical areas.
- (7) **Noxious weeds.** Hand removal or spot spraying of noxious weeds included on the Washington State Noxious Weed List as a Class A, B or C weed on shorelands outside of steep or unstable slope areas is allowed in accordance with applicable best management practices.
- (8) **Aquatic weed control.** Aquatic weed control may only occur to address adverse impacts to native plant communities, fish and wildlife habitats, or existing water-dependent uses. Aquatic weed control shall occur in compliance with applicable laws and standards. Removal using mechanical methods is preferred over chemical methods.
- (9) **Mitigation plans for vegetation removal.** Mitigation plans for vegetation removal must be prepared by a qualified professional and must contain the information required in regulation 6.3(5). In addition, such mitigation plans must include the following standards, as applicable.
 - A. Performance standards shall require 100 percent survival in year 1, with 100 percent tree survival and 80 percent shrub and groundcover survival at the end of the monitoring period.
 - B. Native tree removal in shoreline jurisdiction must be mitigated by installation of a similar native tree at a 1:1 impact to mitigation ratio. Non-native tree removal in

shoreline setbacks must be mitigated by installation of a native or suitable non-native tree at a 1:1 impact to mitigation ratio. All mitigation trees shall be preferentially placed in the shoreline setback, unless the trees provide connectivity to upland habitats or other critical areas.

6.7 Water quality & quantity

- (1) **Applicability.** Water quality and quantity provisions apply to all development and uses in shoreline jurisdiction that could adversely affect water quality and quantity.
- (2) **Prevent impacts.** The design, construction and operation of shoreline uses and developments shall incorporate measures, including but not limited to best management practices, to prevent impacts to surface water and groundwater quality and quantity that would result in a net loss of shoreline ecological functions or in a significant impact to aesthetic qualities or recreational opportunities.
- (3) **Stormwater management structures.** Stormwater management structures, including but not limited to ponds, basins, and vaults, shall be located outside of shoreline jurisdiction where possible, as far from the ordinary high water mark as feasible, and shall minimize disturbance of vegetation in shoreline setbacks. Existing swales and stormwater systems within the shoreline area may be maintained and repaired; however, any expansions shall be consistent with this regulation.
- (4) **Materials.** All materials that may come in contact with water shall be constructed of materials, such as untreated or approved treated wood, concrete, approved plastic composites or steel, that will not adversely affect water quality or aquatic plants or animals.
- (5) **Chemicals.** Pesticides, herbicides, and fertilizers must be applied in a manner that minimizes direct or indirect entrance into nearby waters. The usage of chemicals in water must be in accordance with all applicable agency standards. Use of non-toxic, mechanical, or biological controls is preferred.

7 SHORELINE USE & MODIFICATION REGULATIONS

7.1 General shoreline use & modification regulations

- (1) **Applicability.** The regulations in this section apply to all shoreline uses and modifications.
- (2) **Shoreline use and modification matrix.** Table 7-1 indicates shoreline uses and modifications that may be allowed or are prohibited in shoreline jurisdiction within each environment designation. Shoreline uses and modifications are classified in the matrix as indicated below. Uses and modifications that may be allowed according to the matrix must

in all cases be consistent with all other applicable parts of the City's Shoreline Master Program in order to be authorized by the City.

- A. Uses and modifications that may be allowed by a shoreline substantial development permit or exemption are indicated by a "P" on the matrix.
- B. Uses and modifications that may be allowed by a shoreline conditional use permit are indicated by a "C" on the matrix.
- C. Uses and modifications that are prohibited are indicated by an "X" on the matrix.
- D. Uses and modifications that are not applicable to an environment designation are indicated by an "NA" on the matrix.

Table 7-1. Shoreline use and modification matrix

Shoreline Use/Modification	High Intensity	Aquatic
Agriculture	X	NA
Aquaculture	X	C
Boating facilities		
Boat launches		
Commercial, industrial	P	P
Other, including residential	X	X
Piers/Docks		
Commercial, industrial, or public access	P	P
Other, including residential	X	X
Marinas	X	X
Breakwaters and groins	C ¹	C ¹
Commercial development	P	P
Dredging and dredge material disposal		
Dredging for existing navigation uses	NA	P
Dredging for water-dependent uses	NA	P
Dredging or dredge material disposal for habitat restoration	P	P
Dredging, other	NA	C
Dredge material disposal	P	P
Fill and excavation		
Fill	P	C
Excavation	P	NA
Flood hazard reduction measures	P	P

Shoreline Use/Modification	High Intensity	Aquatic
Forest practices	X	NA
Industrial development	P	P
In-stream structures	P	P
Mining	X	X
Recreational development	P	P
Residential development	X ²	X
Shoreline habitat and natural systems enhancement projects	P	P
Shoreline stabilization		
New hard	P	P
New soft	P	P
Repair and replacement	P	P
Transportation and parking		
New and expanded roads and railroads	P	X
Parking accessory to an allowed use	Permitted as part of primary use	X
Stand-alone parking	X	X
Utilities		
Production and processing facilities	P	P
Transmission facilities	P	C
Accessory utilities	Permitted as part of primary use	Permitted as part of primary use
¹ Structures installed to protect or restore ecological functions, such as woody debris installed in streams, may be allowed by a shoreline substantial development permit or exemption.		
² Quarters for a caretaker, guard, or other persons whose permanent residency is required for operational safety or protective purposes may be allowed by a shoreline substantial development permit or exemption.		

- (3) **Unlisted uses.** Any new uses or modifications not explicitly listed or comparable to those included in Table 7-1 shall be reviewed through a shoreline conditional use permit.
- (4) **Shoreline setbacks.** Table 7-2 indicates shoreline setbacks within each environment designation.

Table 7-2. Shoreline setbacks

Water Type	Environment Designation¹	<u>Structure Setback for Water- Dependent Uses^{2,3}</u>	<u>Structure Setback for Nonwater- Dependent Uses³</u>
S (shorelines of the state)	High Intensity – A	0 feet	25 feet ⁴
	High Intensity – B	0 feet	50 feet
<p>¹ Approximate extents of environment designations, including sub-designations, can be seen on the Shorelines Map in Appendix A.</p> <p>² Mitigation sequencing must be demonstrated and any adverse impacts to ecological functions mitigated.</p> <p>³ Structure setback measured from ordinary high water mark.</p> <p>⁴ Structure setback for Nonwater-Dependent Uses may be reduced to a minimum of 15 feet if the applicant demonstrates that the existing condition in the area between 15 and 25 feet from the ordinary high water mark is already impacted and void of vegetation.</p>			

(5) **Height.**

- A. To exceed 35 feet, an applicant must demonstrate compliance with the following criteria:
 - 1. The view of a substantial number of residences on areas adjoining shorelines will not be obstructed
 - 2. If a substantial number of residences on areas adjoining shorelines will be obstructed, that overriding considerations of public interest will be served.

7.2 Agriculture

- (1) **Prohibited.** Agriculture is prohibited in shoreline jurisdiction, consistent with City zoning.

7.3 Aquaculture

- (1) **Where allowed.** Aquaculture is allowed as a conditional use in the Aquatic environment where it can be located, designed, constructed, and managed to avoid all of the following: a net loss of shoreline ecological functions, spreading diseases to native aquatic life, and significantly conflicting with navigation and public access.
- (2) **Best management practices.** Aquaculture facilities must identify and use best management practices to minimize impacts such as light and noise from the construction and management of the facilities.

- (3) **New aquatic species.** New aquatic species that have not been previously cultivated in Washington State shall not be introduced into City waters without prior written approval of the Director of the Washington State Department of Fish and Wildlife and the Director of the Washington State Department of Health.
- (4) **Wastes.** Aquaculture wastes shall be disposed of in a manner compliant with all applicable governmental waste disposal standards. No garbage, wastes, or debris shall be allowed to accumulate at the site of any aquaculture operation.
- (5) **Rights of treaty tribes.** The rights of treaty tribes to aquatic resources within their usual and accustomed areas shall be addressed through direct coordination between the project proponent and the affected tribe(s) through the permit review process.
- (6) **Prohibitions.** The culture of non-native or GMO species is prohibited.

7.4 Boating facilities

- (1) **Applicability.** Boating facilities provisions apply to all over- and in-water facilities that facilitate as their primary purpose the launching or mooring vessels, or serve some other water-dependent purpose. Facilities covered include piers and docks, and boat launches.
- (2) **New piers and docks, when allowed.** New piers and docks shall be allowed only for water-dependent uses or public access.
 - A. Water-related and water-enjoyment uses may be allowed as part of mixed-use development on over-water structures where they are clearly auxiliary to and in support of a water-dependent use, provided the minimum size requirement needed to meet the water-dependent use is not violated.
- (3) **New piers and docks, demonstration of need.** New pier or dock construction shall be permitted only when the applicant has demonstrated that a need exists to support a water-dependent use.
 - A. Prior to proceeding with new pier or dock construction, an industrial or commercial entity involving water-dependent uses shall provide to the City an evaluation showing the need for new pier(s) or dock space. Such evaluation shall serve as the necessary justification for pier design, size and construction.
- (4) **Location, design, and construction.**
 - A. Boating facilities, including associated and accessory uses, shall be located, designed and constructed to avoid or, if that is not possible, to minimize and mitigate the impacts to:
 - 1. Ecological functions, critical areas resources such as fish habitats, and processes such as currents.

2. Navigation.
 3. Public access.
 - B. Pier and dock construction shall be restricted to the minimum size necessary to meet the needs of the proposed water-dependent use.
 - C. Structures shall be made of materials that:
 1. Have been approved by applicable state agencies.
 2. Have a generally non-reflective exterior finish to reduce glare.
- (5) **Boat launches.**
- A. New or expanded boat launch facilities may be approved only if use of existing facilities is documented to exceed the designed capacity. Prior to providing boat launch facilities at a new location, justification shall be provided demonstrating that expansion of existing launch facilities is not feasible.
 - B. Boat launches shall be designed and constructed using methods and technologies that have been recognized and approved by state and federal resource agencies as the best currently available, with consideration of site-specific conditions. At a minimum, the obstruction of currents, alteration of sediment transport, and the accumulation of drift logs and debris shall be minimized.
- (6) **Extended mooring.** Extended mooring on waters of the state by vessels is only as allowed by applicable state regulations, unless a lease or permission is obtained from the state and impacts to navigation and public access are mitigated.

7.5 Breakwaters & groins

- (1) **When allowed.** Breakwaters and groins located waterward of the ordinary high water mark shall be allowed only where necessary to support water-dependent uses, public access, shoreline stabilization, or other specific public purpose.
- (2) **Professional design.** Proposals for new or expanded breakwaters and groins shall be designed by qualified professionals, including both an engineer and a biologist.
- (3) **Minimum size.** Breakwaters and groins shall be limited to the minimum size necessary.
- (4) **Protection of critical areas and ecological functions.** Breakwaters and groins shall be designed to protect critical areas and ecological functions, and shall provide for mitigation according to the sequence defined in regulation 6.3(3).

7.6 Commercial development

- (1) **Use preference.** Preference shall be given first to water-dependent commercial uses over nonwater-dependent commercial uses; and second, to water-related and water-enjoyment commercial uses over nonwater-oriented commercial uses.
- (2) **Nonwater-oriented commercial uses, when allowed.** Nonwater-oriented commercial uses are prohibited on the shoreline unless they meet the following criteria:
 - A. The use is part of a mixed-use project that includes water-dependent uses and provides a significant public benefit with respect to the Shoreline Management Act's objectives such as providing public access and/or ecological restoration;
 - B. Navigability is severely limited at the proposed site and the commercial use provides a significant public benefit with respect to the Shoreline Management Act's objectives such as providing public access and/or ecological restoration; or
 - C. If the site is physically separated from the shoreline by another property or public right-of-way.
- (3) **Accessory development.** Accessory development or use that does not require a shoreline location, such as parking, service buildings or areas, access roads, utilities, signs, and storage of materials, shall be located upland of the primary development, where practicable, and in all cases no closer to the water than the primary development.
- (4) **Nonwater-oriented commercial uses over water.** Nonwater-dependent commercial uses shall not be allowed over water except in existing structures or in the limited instances where they are auxiliary to and necessary in support of water-dependent uses.
- (5) **No net loss of ecological functions or significant adverse impacts.** Commercial development must not result in a net loss of shoreline ecological functions or have significant adverse impacts to other shoreline uses, resources and values such as navigation, recreation and public access.
- (6) **Public access.** Commercial development shall provide public access if required by Section 6.5, Public access.

7.7 Dredging and dredge material disposal

- (1) **Applicability.** Dredging and dredge material disposal provisions are not intended to cover other removals of bed material waterward of the ordinary high water mark or wetlands that are incidental to the construction of an otherwise authorized use or modification (e.g. removal of substrate necessary to place footings for shoreline stabilization measures). Such in-water substrate modifications shall be conducted pursuant to applicable general and specific use and modification regulations of the City's Shoreline Master Program.

- (2) **New development.** New development must be sited and designed to avoid or, if that is not possible, to minimize the need for new and maintenance dredging.
- (3) **Dredging, when allowed.** Dredging may be allowed for the following purposes when significant ecological impacts are minimized and mitigation is provided:
 - A. Establishment, expansion, relocation or reconfiguration of navigation channels and basins where necessary for assuring safe and efficient accommodation of existing navigational uses.
 - B. Maintenance dredging of established navigation channels and basins provided dredging is restricted to maintaining previously dredged and/or existing authorized location, depth, and width.
 - C. Development, expansion and maintenance of essential public facilities when there are no feasible alternatives.
 - D. Reduction of flood hazards when consistent with an approved flood hazard management plan.
 - E. Restoration or enhancement of shoreline ecological functions and processes benefiting water quality and/or fish and wildlife habitat.
 - F. Development, expansion and maintenance of water-dependent uses when there are no feasible alternatives.
- (4) **Dredging for fill material.**
 - A. Dredging waterward of the ordinary high water mark for the primary purpose of obtaining fill material shall not be allowed, except when the material is necessary for the restoration of ecological functions.
 - B. When allowed, the site where the fill is to be placed must be located waterward of the ordinary high water mark. The project must be associated with either a Model Toxics Control Act or Comprehensive Environmental Response, Compensation, and Liability Act habitat restoration project or, if approved through a shoreline conditional use permit, any other significant habitat enhancement project.
- (5) **Dredge material disposal, when allowed.** Dredge material disposal, both upland and in-water, may be approved, provided:
 - A. The dredge material disposal complies with at least one of the following:
 1. The dredge material disposal has been evaluated by the US Army Corps of Engineers' Dredge Management Material Program; or
 2. The dredge material disposal is consistent with the guidance from the U.S. Army Corps of Engineers/Environmental Protection Agency publication, Identifying, Planning, and Financing Beneficial Use Projects Using Dredged

Material – Beneficial Use Planning Manual (EPA842-B-07-001, October 2007, or as amended).

- B. A qualified professional demonstrates that the dredge material disposal will not result in significant or ongoing adverse impacts to water quality, fish and wildlife habitat conservation areas and other critical areas;; flood holding capacity, natural drainage and water circulation patterns, significant plant communities, or shoreline public access.
- (6) **Avoid, minimize, and mitigate.** Dredging and dredge material disposal shall be done in a manner that avoids or minimizes significant ecological impacts, and impacts that cannot be avoided shall be mitigated in a manner that assures no net loss of shoreline ecological functions.
- A. Dredging shall be confined to the minimum area necessary to accomplish the intended purpose or use.
 - B. Dredging and dredge disposal shall be scheduled to minimize impacts to biological productivity (including, but not limited to, fish runs, spawning, and benthic productivity) and to minimize interference with fishing activities and other water-dependent uses.
- (7) **Agency approvals.** Dredging and dredge material disposal must be approved by all state and federal agencies with jurisdiction. Copies of all such approvals must be provided to the City.
- (8) **Maintenance of upland dredge material disposal sites.** Approved upland dredge disposal sites may conduct site management activities, such as regular clearing and grading, as specified in agency approval documents. Such activities will be regulated as maintenance activities under the City’s Shoreline Master Program, provided there are no impacts to water quality or other ecological functions outside of the dredge material disposal area. Vegetation clearing on a dredge disposal site shall not require compensatory mitigation.

7.8 Fill & excavation

- (1) **When fills and excavations allowed, upland.** Upland fills and excavations may be allowed provided they are:
- A. Part of an allowed shoreline use or modification.
 - B. Located outside applicable shoreline setbacks, unless specifically allowed.
- (2) **When fills allowed, waterward of the ordinary high water mark.** Fills waterward of the ordinary high water mark shall be allowed only when necessary to support:

- A. A water-dependent or public access use.
 - B. Cleanup and disposal of contaminated sediments as part of an interagency environmental clean-up plan.
 - C. Disposal of dredged material considered suitable under, and conducted in accordance with the Dredged Material Management Program of the Department of Natural Resources.
 - D. Expansion or alteration of transportation facilities of statewide significance currently located on the shoreline and then only upon a demonstration that alternatives to fill are not feasible.
 - E. A mitigation, environmental restoration, beach nourishment or enhancement project.
- (3) **Protection of shoreline ecological functions.** Fills and excavations shall be located, designed, and constructed to protect shoreline ecological functions and ecosystem-wide processes.
- (4) **Design.** All fills and excavations, except when for the purpose of shoreline restoration, must be designed:
- A. To be the minimum size necessary to implement the allowed use or modification.
 - B. To fit the topography so that minimum alterations of natural conditions will be necessary.
 - C. To not adversely affect hydrologic conditions or increase the risk of slope failure, if applicable.
- (5) **Fill material.** Unless site characteristics dictate otherwise, fill material within surface waters or wetlands shall be sand, gravel, rock, or other clean material with a minimum potential to degrade water quality and shall be obtained from a state-authorized source.
- (6) **Temporary erosion and sediment control plan.** A temporary erosion and sediment control plan, including best management practices, shall be provided for all proposed fill and excavation activities. Disturbed areas shall be immediately protected from erosion using mulches, hydroseed, or similar methods, and revegetated, as applicable.
- (7) **Excavation below the ordinary high water mark or in wetlands.** Excavation below the ordinary high water mark or in wetlands using other than unpowered, hand-held tools, except removals of bed material that are incidental to the construction of an otherwise authorized use or modification (e.g. shoreline stabilization measure), shall be considered dredging and be subject to the regulations in Section 7.7, Dredging and dredge material disposal.

7.9 Forest practices

- (1) **Prohibited.** Forest practices are prohibited in shoreline jurisdiction, consistent with City zoning.

7.10 Industrial development

- (1) **Use preference.** Preference shall first be given to water-dependent industrial uses over nonwater-dependent industrial uses; and second, to water-related industrial uses over nonwater-oriented industrial uses.
- (2) **Nonwater-oriented industrial development.** New nonwater-oriented industrial development shall be prohibited on shorelines except when:
 - A. The use is part of a mixed-use project that includes water-dependent uses and provides a significant public benefit with respect to the Shoreline Management Act's objectives such as providing public access and/or ecological restoration;
 - B. Navigability is severely limited at the proposed site and the industrial use provides a significant public benefit with respect to the Shoreline Management Act's objectives such as providing public access and/or ecological restoration; or
 - C. If the site is physically separated from the shoreline by another property or public right-of-way.
- (3) **No net loss of ecological functions or significant adverse impacts.** Industrial development must be located, designed, and constructed in a manner that assures no net loss of shoreline ecological functions and such that it does not have significant adverse impacts to other shoreline resources and values.
- (4) **Public access.** Industrial development shall provide public access if required by Section 6.5, Public access.

7.11 In-stream structures

- (1) **Protection and preservation of ecosystem-wide processes, ecological functions, and cultural resources.** In-stream structures shall provide for the protection and preservation of ecosystem-wide processes, ecological functions, and cultural resources, including, but not limited to, fish and fish passage, wildlife and water resources, shoreline critical areas, hydrogeological processes, and natural scenic vistas.
- (2) **Interference with water-dependent uses.** New in-stream structures shall not interfere with existing water-dependent uses, including recreation.

- (3) **Safety and navigation.** In-water structures shall not be a safety hazard or obstruct navigation.
- (4) **Qualified professional.** In-stream structures shall be designed by a qualified professional.

7.12 Mining

- (1) **Prohibited.** Mining is prohibited in shoreline jurisdiction, consistent with City zoning.

7.13 Recreational development

- (1) **Applicability.** Recreational development includes commercial and public facilities designed and used to provide recreational opportunities to the public.
- (2) **Features.** Recreational uses and facilities located within shoreline jurisdiction shall include features related to access to, enjoyment of, and use of shorelines of the state.
- (3) **Consistency with environment designation and no net loss.** Public recreational developments shall be located, designed, and operated in a manner consistent with the purpose of the environment designation in which they are located and such that no net loss of shoreline ecological functions or ecosystem-wide processes results.

7.14 Residential development

- (1) **Prohibited.** Residential development is prohibited in shoreline jurisdiction, consistent with City zoning.

7.15 Shoreline habitat and natural systems enhancement projects

- (1) **Applicability.** Shoreline habitat and natural systems enhancement projects include those activities proposed and conducted specifically for the purpose of establishing, restoring, or enhancing habitat for priority species in shorelines. Shoreline habitat and natural systems enhancement projects may include shoreline modification actions such as modification of vegetation, removal of nonnative or invasive plants, shoreline stabilization, dredging, and filling, provided that the primary purpose of such actions is clearly restoration of the natural character and ecological functions of the shoreline.
- (2) **Approved plan.** Shoreline habitat and natural system enhancement projects must be carried out in accordance with an approved shoreline restoration plan.
- (3) **Scientific and technical information and best management practices.** Shoreline restoration and enhancement projects shall be designed using the most current, accurate,

and complete scientific and technical information available, and implemented using best management practices.

- (4) **Other shoreline uses, resources and values.** Shoreline habitat and natural systems must not result in substantial interference with other shoreline uses, resources and values such as navigation, recreation and public access.
- (5) **Maintenance and monitoring.** Long-term maintenance and monitoring (minimum of three years) shall be arranged by the project applicant and included in shoreline habitat and natural system enhancement project proposals.
- (6) **Relief from shift in the ordinary high water mark.** When a shoreline habitat and natural systems enhancement project causes or would cause a landward shift in the ordinary high water mark resulting in a hardship, affected property owners are advised to consult with the City to assess whether and how relief may be granted under RCW 90.58.580.

7.16 Shoreline stabilization

- (1) **Subdivision.** Subdivision of land must be based on a geotechnical report prepared in accordance with regulation 7.16(6) to assure that the lots created will not require shoreline stabilization in order for reasonable development to occur.
- (2) **New development.**
 - A. New development shall be located and designed to avoid the need for future shoreline stabilization to the extent feasible.
 - B. New development on steep slopes shall be set back sufficiently to ensure that shoreline stabilization is unlikely to be necessary during the life of the structure, as demonstrated by a geotechnical report prepared in accordance with regulation 7.16(6).
 - C. New development that would require shoreline stabilization that would cause significant impacts to adjacent or down-current properties and shoreline areas shall not be allowed.
- (3) **New or enlarged structural stabilization measures, when allowed.** New or enlarged structural stabilization measures shall not be allowed except as follows.
 - A. To protect existing primary structures, when all of the conditions below apply.
 1. New or enlarged structural shoreline stabilization measures for an existing primary structure shall not be allowed unless there is conclusive evidence, documented by a geotechnical report prepared in accordance with regulation 7.16(6), that the structure is in danger from shoreline erosion caused by currents or waves. Normal sloughing, erosion of steep bluffs, or shoreline

erosion itself, without a geotechnical report, is not demonstration of need. The geotechnical report shall evaluate on-site drainage issues and address drainage problems away from the shoreline edge before considering structural shoreline stabilization.

2. The erosion control structure will not result in a net loss of shoreline ecological functions.
- B. In support of new nonwater-dependent development when all of the conditions below apply.
1. The erosion is not being caused by upland conditions, such as the loss of vegetation and drainage.
 2. Nonstructural measures, such as placing the development farther from the shoreline, planting vegetation, or installing on-site drainage improvements, are not feasible or not sufficient.
 3. The need to protect primary structures from damage due to erosion is demonstrated through a geotechnical report prepared in accordance with regulation 7.16(6). The damage must be caused by natural processes, such as currents, and waves.
 4. The erosion control structure will not result in a net loss of shoreline ecological functions.
- C. In support of water-dependent development, when all of the conditions below apply.
1. The erosion is not being caused by upland conditions, such as the loss of vegetation and drainage.
 2. Nonstructural measures, planting vegetation, or installing on-site drainage improvements, are not feasible or not sufficient.
 3. The need to protect primary structures from damage due to erosion is demonstrated through a geotechnical report prepared in accordance with regulation 7.16(6).
 4. The erosion control structure will not result in a net loss of shoreline ecological functions.
- D. 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.
1. Nonstructural measures, planting vegetation, or installing on-site drainage improvements, are not feasible or not sufficient.

2. The erosion control structure will not result in a net loss of shoreline ecological functions.
- (4) **Replacement of existing structural stabilization measures.** 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. An existing shoreline stabilization structure may be replaced with a similar structure if in accordance with the following.
- A. There is a demonstrated need to protect principal uses or structures from erosion caused by currents or waves.
 - B. The replacement structure must be designed, located, sized, and constructed to assure no net loss of ecological functions.
 - C. Replacement walls or bulkheads shall not encroach waterward of the ordinary high water mark or existing structure.
- (5) **Repair and maintenance.** Repair and maintenance includes modifications to an existing shoreline stabilization measure that are designed to ensure the continued function of the measure by preventing failure of any part. Repair and maintenance of existing shoreline stabilization measures may be allowed, subject to the following provisions. While repair and maintenance of shoreline stabilization structures may meet the criteria for exemption from a shoreline substantial development permit, such activity is not exempt from the provisions of the City’s Shoreline Master Program.
- A. Any additions to or increases in the size of existing shoreline stabilization measures, including the placement of a new shoreline stabilization structure landward of a failing shoreline stabilization structure, shall be considered new structures, not maintenance or repair.
 - B. Areas of temporary disturbance within shoreline setbacks shall be expeditiously restored to their pre-project condition or better.
- (6) **Geotechnical reports.** Geotechnical reports pursuant to this section shall meet the definition of a “geotechnical report” as established in Chapter 2, Definitions, and comply with the following provision, as applicable.
- A. Geotechnical reports pursuant to this section that address the need to prevent potential damage to a primary structure shall address the necessity for shoreline stabilization by estimating time frames and rates of erosion and report on the urgency associated with the specific situation.

(7) **Design of structural stabilization measures.**

- A. Soft approaches shall be used unless demonstrated not to be sufficient to protect primary structures, dwellings, and businesses. Hard armoring solutions shall not be authorized except when a geotechnical report prepared in accordance with regulation 7.16(6) confirms that there is a significant possibility that a primary structure will be damaged within three years as a result of shoreline erosion in the absence of such hard armoring measures, or where waiting until the need is that immediate, would foreclose the opportunity to use measures that avoid impacts on ecological functions. Thus, where the geotechnical report confirms a need to prevent potential damage to a primary structure, but the need is not as immediate as the three years, that report may still be used to justify more immediate authorization to protect against erosion using soft measures.
- B. The size of stabilization measures shall be limited to the minimum necessary.
- C. Measures shall be used to assure no net loss of shoreline ecological functions.
- D. Soft shoreline stabilization measures that provide restoration of shoreline ecological functions may be permitted waterward of the ordinary high water mark.
- E. Avoid and, if that is not possible, minimize adverse impacts to sediment conveyance systems. Where sediment conveyance systems cross jurisdictional boundaries, the local governments should coordinate shoreline management efforts.
- F. Publicly financed or subsidized shoreline erosion control measures must not restrict appropriate public access to the shoreline except where such access is determined to be infeasible in accordance with regulation 6.5(3). Where feasible, ecological restoration and public access improvements shall be incorporated into projects.

7.17 Transportation & parking

- (1) **Planning, location, and design.** Transportation and parking facilities and routes must be planned, located, and designed to have the least possible adverse effect on unique or fragile shoreline features, to not result in a net loss of shoreline ecological functions, and to not adversely impact existing or planned water-dependent uses.
 - A. Where other options are available and feasible, new roads or road expansions shall not be built within shoreline jurisdiction.
 - B. Crossings shall occur as near to perpendicular with the waterbody as possible, unless an alternate path would minimize disturbance of native vegetation or result in avoidance of other critical areas such as wetlands.
- (2) **Parking facilities.** Parking facilities in shorelines are not a preferred use and are subject to the following provisions:

- A. Parking shall be allowed only as necessary to support an authorized use.
- B. Parking shall be sited outside of shoreline jurisdiction unless no feasible alternative location exists.
- C. Parking shall be located landward of the use served, if feasible.
- D. Parking shall be planted or landscaped to provide a visual and noise buffer if adjoining dissimilar uses or scenic areas.
- E. Use of pervious surfaces and/or incorporation of stormwater retention/infiltration systems, such as bioswales, is encouraged.

7.18 Utilities

- (1) **Applicability.** Utilities provisions apply to 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.
- (2) **Production and processing facilities.** Utility production and processing facilities, such as power plants and sewage treatment plants, or parts of those facilities, that are nonwater-oriented shall not be allowed in shoreline areas unless it can be demonstrated that no other feasible option is available.
- (3) **Transmission facilities.** Transmission facilities for the conveyance of services, such as power lines, cables, and pipelines, shall be located outside of the shoreline area where feasible and when necessarily located within the shoreline area shall assure no net loss of shoreline ecological functions.
- (4) **Existing right-of-ways and corridors.** Utilities shall be located in existing right-of-ways and corridors whenever possible.
- (5) **Crossings.** Where utility corridors must cross shoreline jurisdiction, such crossings shall take the shortest, most direct route feasible, unless such a route would result in loss of ecological function, disrupt public access to the shoreline, or obstruct visual access to the shoreline.
- (6) **Design and location.** All utility facilities shall be designed and located to assure no net loss of shoreline ecological functions.
- (7) **Post-installation.** Upon completion of utility system installation, and any maintenance project, the disturbed area shall be regraded to compatibility with the natural terrain and replanted to prevent erosion and provide appropriate vegetative cover, preferably with native species.

8 ADMINISTRATION, PERMITS & ENFORCEMENT

8.1 Administrative responsibilities

- (1) **Shoreline Administrator.** The Shoreline Administrator for the City is the Mayor or his/her designee. The Shoreline Administrator is vested with the authority to:
 - A. Administrate the City's Shoreline Master Program.
 - B. Advise interested persons and prospective applicants as to the administrative procedures and related components of the City's Shoreline Master Program.
 - C. Determine applicable fees and collect fees for all necessary permits as provided in City ordinances or resolutions.
 - D. Make field inspections as needed, and prepare or require reports on shoreline permit applications.
 - E. Make administrative decisions and interpretations of the policies and regulations of the City's Shoreline Master Program and the Shoreline Management Act.
 - F. Grant or deny exemptions from shoreline substantial development permit requirements.
 - G. Grant or deny shoreline substantial development permits and time extensions to shoreline permits and their revisions.
 - H. Make written recommendations to the City Council as appropriate, including recommendations to grant or deny shoreline conditional use permits and shoreline variance permits. The Shoreline Administrator may recommend amendments to the City's Shoreline Master Program to the City Council.
 - I. Issue a stop work order pursuant to the procedure set forth in WAC 173-27-270 upon a person undertaking an activity on shorelines in violation of RCW 90.58 or the City's Shoreline Master Program, and seek remedies for alleged violations of the City's Shoreline Master Program, provisions of the Shoreline Management Act, or conditions attached to a shoreline permit issued by the City.
- (2) **State Environmental Policy Act Official.** The responsible State Environmental Policy Act official or his/her designee is authorized to conduct environmental review of all use and development activities subject to the City's Shoreline Master Program, pursuant to WAC 197-11 and RCW 43.21C. The responsible State Environmental Policy Act official is designated in accordance with the City's State Environmental Policy Act implementation ordinance.
- (3) **City Council.** The City Council is vested with authority to:

- A. Grant or deny shoreline conditional use permits.
- B. Grant or deny shoreline variance permits.
- C. Decide on appeals of administrative decisions issued by the Shoreline Administrator.
- D. Initiate an amendment to City's Shoreline Master Program according Section 8.13, Amendments.
- E. Adopt all amendments to City's Shoreline Master Program. Amendments shall become effective 14 days from the date of Ecology's written notice of final approval.

8.2 Nonconforming uses & structures

- (1) **Applicable regulations.** Nonconforming uses and structures shall be subject to the version of Bingen Municipal Code Chapter 17.68, Nonconforming Uses, in effect on the effective date of the City's Shoreline Master Program and the following regulation. In the event of a conflict with Bingen Municipal Code Chapter 17.68, the following regulation shall apply.
- (2) **Nonconforming structures.** Structures that were legally established and are used for a conforming use but that are nonconforming with regard to the dimensional standards of the City's Shoreline Master Program (such as setbacks and height) may be maintained and repaired and may be enlarged or expanded provided that said enlargement does not increase the extent of nonconformity by further encroaching upon or extending into areas where construction or use would not be allowed for new development or uses under the City's Shoreline Master Program.

8.3 Exemptions

- (1) **Application and interpretation of exemptions.**
 - A. Exemptions shall be construed narrowly. Only those developments that meet the precise terms of one or more of the exemptions may be granted exemption from the shoreline substantial development permit process.
 - B. An exemption from the shoreline substantial development permit process is not an exemption from compliance with the Shoreline Management Act or the City's Shoreline Master Program, nor from any other regulatory requirements. To be authorized, all uses and developments must be consistent with the provisions of the City's Shoreline Master Program and the Shoreline Management Act. A development or use that is listed as a shoreline conditional use pursuant to City's Shoreline Master Program or is an unlisted use, must obtain a shoreline conditional use permit even though the development or use does not require a shoreline substantial development permit. When a development or use is proposed that does not comply

with the dimensional or performance standards of the City's Shoreline Master Program, such development or use can only be authorized by approval of a shoreline variance.

- C. The burden of proof that a development or use 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 shoreline substantial development permit is required for the entire proposed development.
 - E. The City may attach conditions to the approval of exempted developments and/or uses as necessary to assure consistency of the project with the Shoreline Management Act and the City's Shoreline Master Program.
- (2) **Exempt developments.** The City shall not require substantial development permits for developments identified as exempt in WAC 173-27-040; RCW 90.58.030(3)(e); RCW 90.58.140(9); RCW 90.58.147; RCW 90.58.355; and RCW 90.58.515, as amended. The Shoreline Administrator shall review the above citations for each proposed development to ensure the most accurate determination of exemption status. As of the effective date of the City's Shoreline Master Program, WAC 173-27-040 identifies the following developments that may be applicable in the City as exempt:
- A. Any development of which the total cost or fair market value, whichever is higher, does not exceed \$6,416, if such development does not materially interfere 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 (current threshold dates to September 15, 2012) 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. The total cost or fair market value of the development shall include the fair market value of any donated, contributed or found labor, equipment or materials;
 - 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;
- C. Emergency construction necessary to protect property from damage by the elements. An "emergency" is an unanticipated and imminent threat to public health, safety, or the environment which requires immediate action within a time too short to allow full compliance with the City's Shoreline Master Program. Emergency construction does not include development of new permanent protective structures where none previously existed. Where new protective structures are deemed by the Shoreline 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, WAC 173-27, or the City's Shoreline Master Program, obtained. All emergency construction shall be consistent with the policies of chapter 90.58 RCW and the City's Shoreline 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;
 - D. Construction or modification of navigational aids such as channel markers and anchor buoys;
 - E. 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;
 - F. Any project with a certification from the governor pursuant to chapter 80.50 RCW;
 - G. Site exploration and investigation activities that are prerequisite to preparation of an application for development authorization under the City's Shoreline Master Program, if:
 - 1. The activity does not interfere with the normal public use of the surface waters;
 - 2. The activity will have no significant adverse impact on the environment including but not limited to fish, wildlife, fish or wildlife habitat, water quality, and aesthetic values;
 - 3. The activity does not involve the installation of any structure, and upon completion of the activity the vegetation and land configuration of the site are restored to conditions existing before the activity;
 - 4. A private entity seeking development authorization under this section first posts a performance bond or provides other evidence of financial responsibility to the City to ensure that the site is restored to preexisting conditions; and

5. The activity is not subject to the permit requirements of RCW 90.58.550;
- H. 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 State Department of Agriculture or the Washington State Department of Ecology jointly with other state agencies under chapter 43.21C RCW;
- I. Watershed restoration projects as defined herein. The City shall review the projects for consistency with the City's Shoreline Master Program in an expeditious manner and shall issue its decision along with any conditions within 45 days of receiving all materials necessary to review the request for exemption from the applicant. No fee may be charged for accepting and processing requests for exemption for watershed restoration projects as used in this section.
 1. "Watershed restoration project" means a public or private project authorized by the sponsor of a watershed restoration plan that implements the plan or a part of the plan and consists of one or more of the following activities:
 - a. A project that involves less than ten miles of streamreach, in which less than 25 cubic yards of sand, gravel, or soil is removed, imported, disturbed or discharged, and in which no existing vegetation is removed except as minimally necessary to facilitate additional plantings;
 - b. A project for the restoration of an eroded or unstable stream bank that employs the principles of bioengineering, including limited use of rock as a stabilization only at the toe of the bank, and with primary emphasis on using native vegetation to control the erosive forces of flowing water; 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 200 square feet in floor area and is located above the ordinary high water mark of the stream.
 2. "Watershed restoration plan" means a plan, developed or sponsored by the Washington State Department of Fish and Wildlife, Ecology, the Washington State Department of Natural Resources, the Washington State 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;

- J. A public or private project that is designed to improve fish or wildlife habitat or fish passage, when all of the following apply:
1. The project has been approved in writing by the Washington State Department of Fish and Wildlife;
 2. The project has received Hydraulic Project Approval by the Washington State Department of Fish and Wildlife pursuant to chapter 77.55 RCW; and
 3. The City has determined that the project is substantially consistent with the City's Shoreline Master Program. The City shall make such determination in a timely manner and provide it by letter to the project proponent.

Fish habitat enhancement projects that conform to the provisions of RCW 77.55.181 are determined to be consistent with City's Shoreline Master Program, as follows:

- a. In order to receive the permit review and approval process created in this section, a fish habitat enhancement project must meet the criteria under regulations 8.3(2)J.3.a.i and 8.3(2)J.3.a.ii:
 - i. A fish habitat enhancement project must be a project to accomplish one or more of the following tasks: elimination of human-made fish passage barriers, including culvert repair and replacement; restoration of an eroded or unstable streambank employing the principle of bioengineering, including limited use of rock as a stabilization only at the toe of the bank, and with primary emphasis on using native vegetation to control the erosive forces of flowing water; or placement of woody debris or other instream structures that benefit naturally reproducing fish stocks.

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

- ii. A fish habitat enhancement project must be approved in one of the following ways: by the Washington State Department of Fish and Wildlife pursuant to chapter 77.95 or 77.100 RCW; by the sponsor of a watershed restoration plan as provided in chapter 89.08 RCW; by the department as a Washington State Department of Fish and Wildlife-sponsored fish habitat enhancement or restoration project; through the review and approval process for the Jobs for the Environment program; through the review and approval process for conservation district-sponsored projects, where the project complies with design standards established by the Conservation Commission through interagency agreement with the US Fish and Wildlife Service and the Natural Resource Conservation Service; through a formal grant program established by the legislature or the Washington State Department of Fish and Wildlife for fish habitat enhancement or restoration; and through other formal review and approval processes established by the legislature.
- b. Fish habitat enhancement projects meeting the criteria of regulation 8.3(2)J.3.a are expected to result in beneficial impacts to the environment. Decisions pertaining to fish habitat enhancement projects meeting the criteria of regulation 8.3(2)J.3.a and being reviewed and approved according to the provisions of this section are not subject to the requirements of RCW 43.21C.030(2)(c).
- c.
 - i. A Hydraulic Project Approval permit is required for projects that meet the criteria of regulation 8.3(2)J.3.a and are being reviewed and approved under this section. An applicant shall use a Joint Aquatic Resource Permit Application form developed by the Office of Regulatory Assistance to apply for approval. On the same day, the applicant shall provide copies of the completed application form to the Washington State Department of Fish and Wildlife and to each appropriate local government. Local governments shall accept the application as notice of the proposed project. The Washington State Department of Fish and Wildlife shall provide a 15-day comment period during which it will receive comments regarding environmental impacts. Within 45 days, the department shall either issue a permit, with or without conditions, deny approval, or make a determination that the review and approval process created by this section is not appropriate for the proposed project. The department shall base this determination on identification during the comment

period of adverse impacts that cannot be mitigated by the conditioning of a permit. If the department determines that the review and approval process created by this section is not appropriate for the proposed project, the department shall notify the applicant and the appropriate local governments of its determination. The applicant may reapply for approval of the project under other review and approval processes.

ii. Any person aggrieved by the approval, denial, conditioning, or modification of a permit under this section may formally appeal the decision to the Hydraulic Appeals Board pursuant to the provisions of WAC 173-27.

d. The City may not require permits or charge fees for fish habitat enhancement projects that meet the criteria of regulation 8.3(2)J.3.a and that are reviewed and approved according to the provisions of this section.

(3) **Letter of exemption.** The City shall issue a letter of exemption if required by this section. Otherwise, the exemption status shall be documented in the project application file.

A. The City shall prepare a letter of exemption, addressed to the applicant and Ecology, whenever a development is determined by the City to be exempt from the substantial development permit requirements and the development is subject to one or more of the following federal permit requirements:

1. A US 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. Specific applicability information should be obtained from the US Army Corps of Engineers.) or
2. 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. Specific applicability information should be obtained from the US Army Corps of Engineers.)

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 City's analysis of the consistency of the project with the City's Shoreline Master Program and the Shoreline Management Act.

8.4 Shoreline permit application requirements

- (1) **Shoreline permit application requirements.** A complete application for a shoreline permit shall contain, at a minimum, the following information, as well as any other application requirements identified in the City's Shoreline Master Program.
 - A. The name, address and phone number of the applicant. The applicant should be the owner of the property or the primary proponent of the project and not the representative of the owner or primary proponent.
 - B. The name, address and phone number of the applicant's representative if other than the applicant.
 - C. The name, address and phone number of the property owner, if other than the applicant.
 - D. Location of the property. This shall, at a minimum, include the property address or latitude and longitude to the nearest minute. All applications for projects located in open water areas away from land shall provide a longitude and latitude location.
 - E. A general description of the proposed project that includes the proposed use or uses and the activities necessary to accomplish the project.
 - F. A general description of the property as it now exists including its physical characteristics and improvements and structures.
 - G. A general description of the vicinity of the proposed project including identification of the adjacent uses, structures and improvements, intensity of development and physical characteristics.
 - H. A site development plan consisting of maps and elevation drawings, drawn to an appropriate scale to depict clearly all required information, photographs and text that shall include:
 1. The boundary of the parcel(s) of land upon which the development is proposed.
 2. The ordinary high water mark of all waterbodies located adjacent to or within the boundary of the project. This may be an approximate location provided, that for any development where a determination of consistency with the applicable regulations requires a precise location of the ordinary high water mark the mark shall be located precisely and the biological and hydrological basis for the location as indicated on the plans shall be included in the development plan. Where the ordinary high water mark is neither adjacent to or within the boundary of the project, the plan shall indicate the distance and direction to the nearest ordinary high water mark of a shoreline.

3. Existing and proposed land contours. The contours shall be at intervals sufficient to accurately determine the existing character of the property and the extent of proposed change to the land that is necessary for the development. Areas within the boundary that will not be altered by the development may be indicated as such and contours approximated for that area.
 4. A delineation of all wetland areas that will be altered or used as a part of the development.
 5. A general indication of the character of vegetation found on the site.
 6. The dimensions and locations of all existing and proposed structures and improvements including but not limited to: buildings, paved or graveled areas, roads, utilities, material stockpiles or surcharge, and stormwater management facilities.
 7. Where applicable, a landscaping plan for the project.
 8. Where applicable, plans for development of areas on or off the site as mitigation for impacts associated with the proposed project shall be included and contain information consistent with the requirements of this section.
 9. Quantity, source and composition of any fill material that is placed on the site whether temporary or permanent.
 10. Quantity, composition and destination of any excavated or dredged material.
 11. A vicinity map showing the relationship of the property and proposed development or use to roads, utilities, existing developments and uses on adjacent properties.
 12. Where applicable, a depiction of the impacts to views from existing residential uses and public areas.
- (2) **Additional requirements for shoreline variance permit applications.** On all shoreline variance permit applications, the plans shall clearly indicate where development could occur without approval of a shoreline variance permit, the physical features and circumstances on the property that provide a basis for the request, and the location of adjacent structures and uses.

8.5 Shoreline permit application notice requirements

- (1) **Applicability.** The City shall notify the public, Ecology, affected tribes, and other agencies with jurisdiction of applications for a shoreline substantial development permit, shoreline conditional use permit, or shoreline variance permit. Notification pursuant to this section may be carried out as a part of an integrated City permit notification procedure.

- (2) **Notice of application.** The City shall provide notice of application within 14 days after the determination of completeness as provided in RCW 36.70B.070, and include the following in whatever sequence or format the City deems appropriate:
- A. The date of application, the date of the notice of completion for the application, and the date of the notice of application.
 - B. A description of the proposed project action and a list of the project permits included in the application and, if applicable, a list of any studies requested under RCW 36.70B.070 and WAC 173-27-180.
 - C. The identification of other permits not included in the application, to the extent known by the City.
 - D. The identification of existing environmental documents that evaluate the proposed project, and, if not otherwise stated on the document providing the notice of application, the location where the application and any studies can be reviewed.
 - E. A statement of the public comment period, which shall be not less than 30 days following the date of notice of application, and statements of the right of any person to comment on the application, receive notice of and participate in any hearings, request a copy of the decision once made, and any appeal rights. The City may accept public comments at any time prior to the closing of the record of an open record predecision hearing, if any, or, if no open record predecision hearing is provided, prior to the decision on the project permit.
 - F. The date, time, place, and type of hearing, if applicable and scheduled at the date of notice of the application.
 - G. A statement of the preliminary determination, if one has been made at the time of notice, of those development regulations that will be used for project mitigation and of consistency.
 - H. Any other information determined appropriate by the City.
- (3) **Open record predecision hearing.** If an open record predecision hearing, as defined in RCW 36.70B.020, is required for the requested project permit(s), the notice of application shall be provided at least 15 days prior to the open record hearing.
- (4) **Notification of general public and property owners.** The City shall give notice to the general public and property owners in the vicinity by at least one of the following methods:
- A. Mailing of the notice to the latest recorded real property owners as shown by the records of the County assessor within at least 300 feet of the boundary of the property upon which the development is proposed;

- B. Posting of the notice in a conspicuous manner on the property upon which the project is to be undertaken; or
 - C. Any other manner deemed appropriate by the City to accomplish the objectives of reasonable notice to adjacent landowners and the public.
- (5) **Notification of individuals and organizations.** The City shall provide for timely notification of individuals and organizations that request such notice in writing.
- (6) **Notification of agencies.** The City shall provide notice to all affected tribes and agencies with jurisdiction per RCW 43.21C and to all other agencies that request in writing any such notice.

8.6 Special shoreline permit procedures for limited utility extensions & bulkheads

- (1) **Limited utility extension.** For purposes of this section, a “limited utility extension” means the extension of a utility service that:
- A. Is categorically exempt under RCW 43.21C RCW for one or more of the following: natural gas, electricity, telephone, water, or sewer;
 - B. Will serve an existing use in compliance with the City’s Shoreline Master Program; and
 - C. Will not extend more than 2,500 linear feet within the shorelines of the state.
- (2) **Time periods and procedures.** An application for a shoreline substantial development permit for a limited utility extension or for the construction of a bulkhead or other measures to protect a single-family residence and its appurtenant structures from shoreline erosion shall be subject to all other applicable requirements, except that the following time periods and procedures shall be used:
- A. The public comment period shall be 20 days. The notice provided shall state the manner in which the public may obtain a copy of the City’s decision on the application no later than two days following its issuance.
 - B. The City shall issue its decision to grant or deny the permit within 21 days of the last day of the comment period.
 - C. If there is an appeal of the decision to grant or deny the permit to the City government legislative authority, the appeal shall be finally determined by the legislative authority within 30 days.

8.7 Shoreline permit review criteria

8.7.1 Review criteria for all development

- (1) **Consistency.** No authorization to undertake use or development on shorelines of the state shall be granted by the City unless upon review the use or development is determined to be consistent with the provisions of the Shoreline Management Act and the City's Shoreline Master Program.

8.7.2 Review criteria for shoreline substantial development permits

- (1) **Authorization criteria.** A shoreline substantial development permit shall be granted only when the development proposed is consistent with:
 - A. The policies and procedures of the Shoreline Management Act;
 - B. The provisions of this regulation; and
 - C. The City's Shoreline Master Program.
- (2) **Conditions.** The City may attach conditions to the approval of permits as necessary to assure consistency of the project with the Shoreline Management Act and the City's Shoreline Master Program.

8.7.3 Review criteria for shoreline conditional use permits

- (1) **Applicability.** The purpose of a shoreline conditional use permit is to provide a system within the City's Shoreline Master Program that allows flexibility in the application of use regulations in a manner consistent with the policies of RCW 90.58.020. In authorizing a shoreline conditional use, special conditions may be attached to the permit by the City or Ecology to prevent undesirable effects of the proposed use and/or to assure consistency of the project with the Shoreline Management Act and the City's Shoreline Master Program.
- (2) **Authorization criteria.** Uses which are classified or set forth in the City's Shoreline Master Program as shoreline conditional uses may be authorized provided that the applicant demonstrates all of the following:
 - A. That the proposed use is consistent with the policies of RCW 90.58.020 and the City's Shoreline 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 the City's 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.
- (3) **Consideration of cumulative impacts.** In the granting of all shoreline conditional use permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if conditional use permits were granted for other developments in the area where similar circumstances exist, the total of the conditional uses shall also remain consistent with the policies of RCW 90.58.020 and shall not produce substantial adverse effects to the shoreline environment.
 - (4) **Uses not classified.** Other uses which are not classified or set forth in the City's Shoreline Master Program may be authorized as shoreline conditional uses provided the applicant can demonstrate consistency with the requirements of this section.
 - (5) **Prohibited uses.** Uses which are specifically prohibited by the City's Shoreline Master Program may not be authorized.

8.7.4 Review criteria for shoreline variance permits

- (1) **Applicability.** The purpose of a shoreline variance permit is strictly limited to granting relief from specific bulk, dimensional or performance standards set forth in the City's Shoreline Master Program where there are extraordinary circumstances relating to the physical character or configuration of property such that the strict implementation of the City's Shoreline Master Program will impose unnecessary hardships on the applicant or thwart the policies set forth in RCW 90.58.020.
- (2) **Circumstances.** Shoreline variance permits should be granted in circumstances where denial of the permit would result in a thwarting of the policy enumerated in RCW 90.58.020. In all instances the applicant must demonstrate that extraordinary circumstances shall be shown and the public interest shall suffer no substantial detrimental effect.
- (3) **Authorization criteria, landward of ordinary high water mark.** Shoreline variance permits for development and/or uses that will be located landward of the ordinary high water mark, as defined in RCW 90.58.030(2)(c), 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 the City's Shoreline Master Program precludes, or significantly interferes with, reasonable use of the property;

- B. That the hardship described in regulation 8.7.4(3)A is specifically related to the property, and is the result of unique conditions such as irregular lot shape, size, or natural features and the application of the City's Shoreline Master Program, and not, for example, from deed restrictions or the applicant's own actions;
 - 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 the City's Shoreline Master Program and will not cause adverse impacts to the shoreline environment;
 - 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.
- (4) **Authorization criteria, waterward of ordinary high water mark.** Variance permits for development and/or uses that will be located waterward of the ordinary high water mark, as defined in RCW 90.58.030(2)(c), 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 the City's Shoreline Master Program precludes all reasonable use of the property;
 - B. That the proposal is consistent with the criteria established under regulation 8.7.4(3)(B) through regulation 8.7.4(3)(F); and
 - C. That the public rights of navigation and use of the shorelines will not be adversely affected.
- (5) **Consideration of cumulative impacts.** In the granting of all shoreline variance permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example if shoreline variances were granted to other developments and/or uses in the area where similar circumstances exist the total of the shoreline variances shall also remain consistent with the policies of RCW 90.58.020 and shall not cause substantial adverse effects to the shoreline environment.
- (6) **Variations from use.** Variations from the use regulations of the City's Shoreline Master Program are prohibited.

8.8 Filing with Ecology

- (1) **Submittal upon final decision.** All applications for a permit or a permit revision shall be submitted to Ecology upon a final decision by the City. Final decision by the City shall mean the order or ruling, whether it be an approval or denial, which is established after all local administrative appeals related to the permit have concluded or the opportunity to initiate such appeals has lapsed.
- (2) **Concurrent submittals.** When a substantial development permit and a conditional use or variance permit are required for a development, the submittal on the permits shall be made concurrently.
- (3) **Submittal requirements.** A complete submittal shall consist of the following documents and information:
 - (a) A copy of the complete application pursuant to Section 8.5, Shoreline permit application requirements;
 - (b) Findings and conclusions that establish the basis for the decision including but not limited to identification of shoreline environment designation, applicable policies and regulations of the City's Shoreline Master Program and the consistency of the project with appropriate review criteria for the type of permit(s) as established in Section 8.7, Shoreline permit review criteria;
 - (c) The final decision of the City;
 - (d) The permit data sheet required by WAC 173-27-190; and
 - (e) Where applicable, the City shall also file the applicable documents required by chapter 43.21C RCW, the State Environmental Policy Act, or in lieu thereof, a statement summarizing the actions and dates of such actions taken under chapter 43.21C RCW.
- (4) **Project modification during City review.** When the project has been modified in the course of the City review process, plans or text shall be provided to Ecology that clearly indicate the final approved plan.
- (5) **Incomplete submittals.** Submittal of substantial development permits, conditional use permits, variances, rescissions and revisions is complete when all of the documents required pursuant to regulation 8.8(3) and regulation 8.8(4) have been received by Ecology. If Ecology determines that the submittal does not contain all of the documents and information required by this section, Ecology shall identify the deficiencies and so notify the City and the applicant in writing. Ecology will not act on conditional use permit or variance submittal until the material requested in writing is submitted to Ecology.

- (8) **Notice of “date of filing.”** Ecology shall provide a written notice to the City and the applicant of the “date of filing.”
- (9) **Transmittal of decision.** Any decision on an application for a permit under the authority of this section, whether it is an approval or a denial, shall, concurrently with the transmittal of the ruling to the applicant, be filed with Ecology and the attorney general.
- (10) **Appeals.** When a permit has been appealed pursuant to RCW 90.58.180, upon conclusion of all review proceedings, a copy of the final order shall be provided by the City to Ecology. When the project has been modified in the course of the review proceeding, plans or text shall be provided to the City, consistent with the provisions of WAC 173-27-180, that clearly indicate the final approved plan and the City shall reissue the permit accordingly and submit a copy of the reissued permit and supporting documents consistent with regulation (3) to Ecology for completion of the file on the permit. The purpose of this provision is to assure that City and Ecology files on the permit are complete and accurate and not to provide a new opportunity for appeal of the permit.

8.9 Time requirements of shoreline permits

- (1) **Applicability.** The time requirements of this section shall apply to all shoreline permits authorized by the City’s Shoreline Master Program.
- (2) **Different time limits.** Upon a finding of good cause, based on the requirements and circumstances of the project proposed and consistent with the provisions of City’s Shoreline Master Program, the City may adopt different time limits from those set forth in regulations 8.9(3) and 8.9(4) as a part of action on a shoreline permit.
- (3) **Commencement.** Construction activities shall be commenced or, where no construction activities are involved, the use or activity shall be commenced within two years of the effective date of the shoreline permit. However, the City may authorize a single extension for a period not to exceed one year based on reasonable factors, if a request for extension has been filed before the expiration date and notice of the proposed extension is given to parties of record on the shoreline permit and to Ecology.
- (4) **Termination.** Authorization to conduct development activities shall terminate five years after the effective date of a shoreline permit. However, the City may authorize a single extension for a period not to exceed one year based on reasonable factors, if a request for extension has been filed before the expiration date and notice of the proposed extension is given to parties of record on the shoreline permit and to Ecology.
- (5) **Effective date.** The effective date of a substantial development permit shall be the date of receipt as provided in RCW 90.58.140(6). The permit time periods in regulations 8.9(3) and 8.9(4) do not include the time during which a use or activity was not actually pursued due

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

- (6) **Revisions.** Revisions to permits may be authorized after original permit authorization has expired, provided that this procedure shall not be used to extend the original permit time requirements or to authorize shoreline substantial development after the time limits of the original permit.
- (7) **Notification to Ecology.** The City shall notify Ecology in writing of any change to the effective date of a permit, as authorized by this section, with an explanation of the basis for approval of the change. Any change to the time limits of a permit other than those authorized by RCW 90.58.143 as amended shall require a new permit application.

8.10 Shoreline permit revisions

- (1) **Applicability.** A permit revision is required whenever an applicant proposes substantive changes to the design, terms or conditions of a project from that which is approved in the permit. Changes are substantive if they materially alter the project in a manner that relates to its conformance to the terms and conditions of the permit, the City's Shoreline Master Program and/or the policies and provisions of RCW 90.58. Changes that are not substantive in effect do not require approval of a revision.
- (2) **Description of proposed changes.** When an applicant seeks to revise a permit, the City shall request from the applicant detailed plans and text describing the proposed changes.
- (3) **Approval of revisions.** If the City determines that the proposed changes are within the scope and intent of the original permit, and are consistent with the City's Shoreline Master Program and the Shoreline Management Act, the City may approve a revision. If the revision, or the sum of the revision and any previously approved revisions, are not within the scope and intent of the original permit, the City shall require that the applicant apply for a new permit.
 - A. "Within the scope and intent of the original permit" means all of the following:
 - 1. No additional over water construction is involved except that pier, dock, or float construction may be increased by 500 square feet or ten percent from the provisions of the original permit, whichever is less;
 - 2. Ground area coverage and height may be increased a maximum of ten percent from the provisions of the original permit;
 - 3. The revised permit does not authorize development to exceed height, lot coverage, setback, or any other requirements of the City's Shoreline Master

Program except as authorized under a shoreline variance granted as the original permit or a part thereof;

4. Additional or revised landscaping is consistent with any conditions attached to the original permit and with the City's Shoreline Master Program;
 5. The use authorized pursuant to the original permit is not changed; and
 6. No adverse environmental impact will be caused by the project revision.
- (4) **Revisions after original permit authorization has expired.** 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 that are consistent with this section and that would not require a permit for the development or change proposed under the terms of RCW 90.58, this regulation and the City's Shoreline Master Program. If the proposed change constitutes substantial development then a new permit is required. Provided, this regulation shall not be used to extend the time requirements or to authorize substantial development beyond the time limits of the original permit.
- (5) **Filing and notification.** The revision approval, including the revised site plans and text consistent with the provisions of WAC 173-27-180 as necessary to clearly indicate the authorized changes, and the final ruling on consistency with this section shall be filed with Ecology. In addition, the City shall notify parties of record of their action.
- (6) **Revisions to shoreline conditional use permits and shoreline variance permits.** If the revision to the original permit involves a shoreline conditional use permit or shoreline variance permit, the City shall submit the revision to Ecology for approval, approval with conditions, or denial, and shall indicate that the revision is being submitted under the requirements of this regulation. Ecology shall render and transmit to the City and the applicant its final decision within 15 days of the date of Ecology's receipt of the submittal from the City. The City shall notify parties of record of Ecology's final decision.
- (7) **Effective date.** The revised permit is effective immediately upon final decision by the City or, when appropriate under regulation 8.10(6), upon final action by Ecology.
- (8) **Appeals.** Appeals shall be in accordance with RCW 90.58.180 and shall be filed within 21 days from the date of receipt of the City's action by Ecology or, when appropriate under regulation 8.10(6), the date Ecology's final decision is transmitted to the City and the applicant. Appeals shall be based only upon contentions of noncompliance with the provisions of regulation 8.10(3)(A) of this section. Construction undertaken pursuant to that portion of a revised permit not authorized under the original permit is at the applicant's own risk until the expiration of the appeals deadline. If an appeal is successful in proving that a revision is not within the scope and intent of the original permit, the decision shall have no bearing on the original permit.

8.11 Requests for review of final permit decisions

- (1) **Requests for review.** All requests for review of any final permit decisions under RCW 90.58 and WAC 173-27 are governed by the procedures established in RCW 90.58.180 and WAC 461-08.

8.12 Enforcement

- (1) **WAC 173-27 Part II.** The City shall apply WAC 173-27 Part II, Shoreline Management Act Enforcement, to enforce the provisions of the City's Shoreline Master Program.

8.13 Amendments

- (1) **Process.** Amendments to the City's Shoreline Master Program shall be processed according to the procedures prescribed in WAC 173-26-100.

8.14 Shoreline activity tracking

- (1) **Documentation of City shoreline project review actions.** The City shall document all project review actions in shoreline jurisdiction, including shoreline substantial development permits, shoreline conditional use permits, shoreline variance permits and shoreline exemptions.
- (2) **Periodic evaluation.** The City shall conduct a review of the City's Shoreline Master Program once every eight years, or as required by RCW 90.58.080. Using the information collected per regulation 8.14(1), the City shall evaluate the cumulative effects of authorized development on shoreline conditions.

8.15 Annexation

- (1) **Annexation of shoreline areas.** City annexation of shoreline areas are subject to the requirements of WAC 173-26-150 and WAC 173-26-160.

APPENDIX A: SHORELINES MAP

