



City of La Center **SHORELINE MASTER PROGRAM**

APRIL 2013

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ACRONYMS

BMP	Best Management Practices
DAHP	Department of Archaeology and Historical Preservation
ESA	Endangered Species Act
FEMA	Federal Emergency Management Agency
HPA	Hydraulic Project Approval
LCMC	La Center Municipal Code
OHWM	Ordinary High Water Mark
RCW	Revised Code of Washington
SEPA	State Environmental Policy Act
SMA	Shoreline Management Act
SMP	Shoreline Master <i>Program</i>
SSWS	Shoreline of Statewide Significance
USACOE	United States Army Corps of Engineers
WAC	Washington Administrative Code
WDFW	Washington Department of Fish and Wildlife
WDNR	Department of Natural Resources
WDOE	Washington State Department of Ecology

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I. INTRODUCTION

A. Title

This document shall be known and may be cited as the City of La Center *Shoreline Master Program*, *program* or SMP.

B. Adoption Authority

This PROGRAM is adopted under the authority granted by the *Shoreline* Management Act (RCW 90.58) and WAC 173-26 as amended.

C. Purpose and Intent

The purpose of this *program* is:

1. To guide the future *development* of *shorelines* in the City in a positive, effective, and equitable manner consistent with the Act;
2. To promote the public health, safety, and general welfare of the community by providing long range, comprehensive policies and effective, reasonable regulations for *development* and use of the City's *shorelines*; and
3. To ensure, at minimum, no net loss of *shoreline ecological functions* and processes and to plan for restoring *shorelines* that have been impaired or degraded by adopting and fostering the policy contained in RCW 90.58.020, Legislative Findings for *shorelines of the state*.

D. Governing Principles

1. The goals, policies, and regulations of this *program* are intended to be consistent with the State *shoreline* guidelines in WAC 173-26. The goals, policies and regulations are informed by the Governing Principles in WAC 173-26-186, and the policy statements of RCW 90.58.020.
2. Any inconsistencies between this *program* and the Act must be resolved in accordance with the Act.
3. Regulatory or administrative actions contained herein must not unconstitutionally infringe on private property rights or result in an unconstitutional taking of private property.
4. The regulatory provisions of this *program* are limited to *shorelines of the state*, whereas the planning functions of this *program* extend beyond the designated *shoreline* boundaries, given that activities outside the *shoreline jurisdiction* may affect *shorelines of the state*.
5. The policies and regulations established by this *program* must be integrated and coordinated with those contained in the City Comprehensive Plan and those adopted under the Growth Management Act (RCW 36.70A) and RCW 34.05.328 (Significant Legislative Rules).

6. Protecting the *shoreline* environment is an essential statewide policy goal, consistent with other policy goals. This *program* protects *shoreline* ecosystems from such impairments in the following ways:
 - a. By using a process that identifies, inventories, and ensures meaningful understanding of current and potential *ecological functions* provided by *shorelines*.
 - b. By including policies and regulations that require *mitigation* of adverse impacts in a manner that ensures no net loss of *shoreline ecological functions*.
 - c. By including policies and regulations to address cumulative impacts, including ensuring that the cumulative effect of *exempt development* will not cause a net loss of *shoreline ecological functions*, and by fairly allocating the burden of addressing such impacts among *development opportunities*.
 - d. By including regulations and regulatory incentives designed to protect *shoreline ecological functions*, and *restore* impaired *ecological functions* where such functions have been identified.

E. Liberal Construction

As provided for in RCW 90.58.900, the Act is *exempted* from the rule of strict construction; the Act and this *program* shall therefore be liberally construed to give full effect to the purposes, goals, objectives, and policies for which the Act and this *program* were enacted and adopted.

F. Severability

Should any section, subsection, paragraph, sentence, clause or phrase of this *program* or its application to any *person* or situation be declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of this ordinance or its application to any other *person* or situation. The City Council of the City of La Center hereby declares that it would have adopted this ordinance and each section, subsection sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, clauses, phrases or portions be declared invalid or unconstitutional.

G. Relationship to Other Plans and Regulations

1. Proponents of *shoreline use/development* shall comply with all applicable laws prior to commencing any *shoreline* use, *development*, or activity.
2. Where this *program* makes reference to any RCW, WAC, or other state, or federal law or regulation the most recent amendment or current edition shall apply.
3. Uses, *developments* and activities regulated by this *program* may also be subject to the provisions of the City Comprehensive Plan, RCW 43.21C (State Environmental Policy Act) and WAC 197-11 (SEPA Rules), other provisions of the City Code, including LCMC Title 18 (Development Code) and various other provisions of local, state and federal law, as amended.
4. In the event this *program* conflicts with other applicable City policies or regulations, they must be interpreted and construed so that all the language used is given effect, with no portion rendered meaningless or superfluous, and unless otherwise stated, the provisions that provide the most protection to *shoreline* ecological processes and functions shall prevail.
5. Projects in the *shoreline jurisdiction* that have been previously approved through local and state reviews are considered vested. Major changes or new phases of projects that were not included in the originally approved plan or *permit* will be subject to the policies and regulations of this *program*.

H. Effective Date

This *program* and all amendments thereto shall take effect fourteen days after WDOE's written notice of final action to the City, and shall apply to new applications submitted on or after that date, and to applications that have not been determined to be fully complete by that date.

I. Throughout this *program* the listed words have the following meanings:

1. *May* means the actions is acceptable, provided it conforms to the provisions of this *program*.
2. *Must* means a mandate, the action must be done.
3. *Shall* is a mandate, the action must be done.
4. *Should* means that the particular action is required unless there is a demonstrated, compelling reason based on the policy of the *Shoreline* Management Act and this chapter against taking the action.
5. *Feasible* means an action, such as a *development* project, *mitigation*, or preservation requirement, meets all of the following conditions: (a.) the action can be accomplished with technologies and methods that have been used in the past in similar circumstances, or studies or tests have demonstrated in similar circumstances that such approaches are currently available and likely to achieve the intended results; (b.) the action provides a reasonable likelihood of achieving its intended purpose; and (c.) the action does not physically preclude achieving the project's primary intended legal use.

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

The definition of these common words in the foregoing manner is a legal requirement of WAC 173.26.020. Other words and phrases are also defined. They are in italics when used in the text, and The definitions are contained in Chapter VIII of this *program*.

II. APPLICABILITY, SHORELINE PERMITS & EXEMPTIONS

To be authorized, all uses and *development* activities in *shorelines* shall be planned and carried out in a manner consistent with this *program* and the policies of the Act as required by RCW 90.50.140(1), regardless of whether a *shoreline permit*, statement of *exemption*, *shoreline* variance, or *shoreline conditional use* is required.

A. Applicability

1. This *program* shall apply to all of the shorelands and waters within the La Center city and Urban Growth Area (UGA) limits that fall under the jurisdiction of RCW 90.58. Such shorelands shall include:
 - a. Those lands extending two hundred (200) feet in all directions as measured on a horizontal plane from the *ordinary high water mark (OHWM)*,
 - b. *Floodways* and contiguous *floodplain* areas landward, two hundred (200) feet from such *floodways*, and all *wetlands* and river deltas associated with the streams, *lakes* and tidal waters that are subject to the provisions of this *program*, as may be amended; the same to be designated as to location by WDOE, as defined by RCW 90.58. A copy of the Official *Shoreline* Designation Map for the City and its UGA is shown in Appendix A.
 - c. The City is predesignating *shorelines* within its adopted Urban Growth Area. Until annexation, *development* in these areas shall be regulated by the Clark County *Shoreline Master Program*.
2. In addition to lands identified in Section II.A.1 above, shorelands shall include land necessary for buffers for critical areas that occur within *shorelines of the state*.
3. Maps indicating the extent of *shoreline jurisdiction* and *shoreline designations* are for guidance only. They are to be used in conjunction with best available science, field investigations and on-site surveys to accurately establish the location and extent of *shoreline jurisdiction* when a project is proposed. All areas meeting the definition of a *shoreline of the state* or a *shoreline of statewide significance*, whether mapped or not, are subject to the provisions of this *program*.
4. This *program* shall apply to every *person*, individual, firm, partnership, association, organization, corporation, local or state governmental agency, public or municipal corporation, or other non-federal entity that develops, owns, leases, or administers lands, *wetlands*, or waters that fall

under the jurisdiction of the Act; and within the external boundaries of federally owned lands (including but not limited to, private in-holdings in national wildlife refuges).

5. Non-federal agency actions undertaken on federal lands must comply with this *program* and the Act.
6. Native American Tribe actions on tribal lands and federal agency actions on federal lands are not required, but are encouraged, to comply with the provisions of this *program* and the Act. Nothing in this chapter shall affect any rights established by treaty to which the United States is a party.
7. *Shoreline development* occurring in or over navigable waters may require a *shoreline permit* in addition to other approvals required from state and federal agencies.
8. This *program* shall apply whether the proposed *development* or activity is *exempt* from a *shoreline permit* or not.

Table 2-1. List of Shorelines

Shorelines of Statewide Significance (SSWS)
East Fork Lewis River [WAC 173-18-100(18)]
Other shorelines
None

B. Shoreline Substantial *Development* Permit Required

1. *Substantial development* as defined by this *program* and RCW 90.58.030 shall not be undertaken by any *person* on the *shorelines of the state* without first obtaining a *substantial development permit* from the *Shoreline Administrator*, unless the use or *development* is specifically identified as *exempt* from a *substantial development permit*, in which case a letter of *exemption* is required.
2. The *Shoreline Administrator* may grant a *substantial development permit* only when the *development* proposed is consistent with the policies and procedures of RCW 90.58, the provisions of WAC 173-27, and this *program*.
3. Within an urban growth area, a *shoreline substantial development permit* is not required on land that is brought under *shoreline jurisdiction* due to a *shoreline restoration project* creating a landward shift in the OHWM.

C. Exemptions from a Shoreline Substantial *Development* Permit

1. General Requirements
 - a. Except when specifically *exempted* by statute, all proposed uses and *development* occurring within the *shoreline jurisdiction* must conform to RCW 90.58 (*Shoreline Management Act*) and this *program*.
 - b. A use or *development* that is listed as a *conditional use* pursuant to this *program* or is an unclassified use or *development* must obtain a *conditional use permit* even if the *development* or use does not require a *substantial development permit*.
 - c. When a *development* or use is proposed that does not meet the bulk, dimensional, and/or performance standards of this *program*, such *development* or use shall only be authorized by approval of a *shoreline variance* even if the *development* or use does not require a *substantial development permit*.
 - d. If any part of a proposed *development* is not eligible for an *exemption* as defined in RCW 90.58.030(3)(e), WAC 173-27-040 and this section, then a *substantial development permit* is required for the entire proposed *development* project.
 - e. *Exemptions* shall be construed narrowly. Only those *developments* that meet the precise terms of one or more of the listed *exemptions* may be granted *exemptions* from the *substantial development permit* process. *Exemptions* to LCMC 18.300 do not relieve the applicant of compliance with this *program*.

- f. The burden of proof that a *development* or use is *exempt* is on the applicant or proponent of the *development* action.

2. List of Exemptions.

The following activities shall be considered *exempt* from the requirement to obtain a *shoreline substantial development permit*, but shall obtain a statement of *exemption*, as provided for in Section II.C.3.

- a. Any *development* of which the total cost or fair market value does not exceed six thousand, four hundred, sixteen dollars (\$6,416.00) or as adjusted by the state Office of Financial Management, if such *development* does not materially interfere with the normal public use of the water or *shorelines of the state*. For purposes of determining whether or not a *permit* is required, the total cost or fair market value shall be based on the value of *development* that is occurring on *shorelines of the state* as defined in RCW 90.58.030 (2)(c). The total cost or fair market value of the *development* shall include the fair market value of any donated, contributed, or found labor, equipment or materials.
- b. Normal maintenance or normal repair of existing legally-established structures or *developments*, including damage by accident, fire, or elements. No *exemption* will be allowed, however, where repair or replacement causes substantial adverse effects to shoreline resources or environment. Replacement of a structure or *development* may be authorized as repair where such replacement is the common method of repair for the type of structure or *development* and the replacement structure or *development* is comparable to the original structure or *development* including but not limited to its size, shape, configuration, location, and external appearance.
- c. Construction of a normal protective *bulkhead* common to single-family residences. A normal protective *bulkhead* is not *exempt* if constructed for the purpose of creating dry land. When a vertical or near vertical wall is being constructed or reconstructed, not more than one cubic yard of *fill* per one foot of wall may be used as backfill. When an existing *bulkhead* is being repaired by construction of a vertical wall fronting the existing wall, it shall be constructed no further waterward of the existing *bulkhead* than is necessary for construction of new footings. When a *bulkhead* has deteriorated such that an *ordinary high water mark* has been established by the presence and action of water landward of the *bulkhead* then the replacement *bulkhead* must be located at or near the actual *ordinary high water mark*. Beach nourishment and bioengineered erosion control projects may be considered a *normal protective bulkhead* when any structural elements are consistent with the above requirements and when the project has been approved by WDFW.
- d. Emergency construction necessary to protect property from damage by the elements. An "emergency" is an unanticipated and imminent threat to public health, safety, or the environment that requires immediate action within a time too short to allow full compliance with this chapter. Emergency construction does not include *development* of new permanent protective structures where none previously existed. Where new protective structures are deemed by the 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 that would have been required, absent an emergency, pursuant to RCW 90.58, these regulations, or this program, shall be obtained. All emergency construction shall be consistent with the policies and requirements of this RCW 90.58 and this program. As a general matter, flooding or other seasonal events that can be anticipated and may occur but that are not imminent are not an emergency.
- e. Construction and practices normal or necessary for farming, irrigation, and ranching activities, including agricultural service roads and utilities on shorelands, and the construction and maintenance of irrigation structures including but not limited to head gates, pumping facilities, and irrigation channels. A feedlot of any size, all processing plants, other activities of a commercial nature, alteration of the contour of the shorelands by leveling or *filling* other than

that which results from normal cultivation, shall not be considered normal or necessary farming or ranching activities.

- f. Construction or modification of navigational aids such as channel markers and anchor buoys.
- g. Construction on shorelands by an owner, lessee, or contract purchaser of a single-family residence or *appurtenance* for their own use or for the use of their family, which residence does not exceed a *height* of thirty-five (35) feet above *average grade level*, and which meets all requirements of the State and City, other than requirements imposed pursuant to RCW 90.58. Local circumstances may dictate additional interpretations of *normal appurtenances* that shall be set forth and regulated within this program. Construction authorized under this *exemption* shall be located landward of the *ordinary high water mark*.
- h. Construction of a dock, including a community dock, designed for pleasure craft only, for the private non-commercial use of the owner, lessee, or contract purchaser of a single-family or multiple-family residence. This exception applies in fresh waters when the fair market value of the dock does not exceed ten thousand dollars (\$10,000.00), but if subsequent construction having a fair market value exceeding two thousand five hundred dollars (\$2,500.00) occurs within five years of completion of the prior construction, the subsequent construction shall be considered a substantial *development* for the purpose of this chapter.
- i. Operation, maintenance, or construction of canals, waterways, drains, reservoirs, or other facilities that now exist or are hereafter created or developed as a part of an irrigation system for the primary purpose of making use of system waters, including return flow and artificially stored ground water from the irrigation of lands.
- j. Operation and maintenance of any system of *dikes*, ditches, drains, or other facilities existing on September 8, 1975, that were created, developed or utilized primarily as a part of an agricultural drainage or diking system.
- k. The marking of property lines or corners on state-owned lands, when such marking does not significantly interfere with normal public use of the surface of the water.
- l. Any project with a certification from the governor pursuant to RCW 80.50 (certification from the State Energy Facility Site Evaluation Council).
- m. Site exploration and investigation activities that are prerequisite to preparation of an application for *development* if:
 - i. The activity does not interfere with the normal public use of *surface waters*;
 - ii. The activity will have no significant adverse impact on the environment including but not limited to fish, wildlife, fish or wildlife habitat, *water quality*, and aesthetic values;
 - iii. The activity does not involve the installation of any *structure*, and upon completion of the activity the vegetation and land configuration of the site are *restored* to conditions existing before the activity; and
 - iv. A private entity seeking *development* authorization under this section must first post a performance bond or provide other evidence of financial responsibility to the local jurisdiction to assure that the site is *restored* to pre-existing conditions.
 - v. The activity is not subject to the *permit* requirements of RCW 90.58.550.
- n. The process of removing or controlling aquatic *noxious weeds*, as defined in RCW 17.26.020, by herbicide or other treatment methods applicable to weed control published by the Departments of Agriculture or WDOE jointly with other state agencies under RCW 43.21C.
- o. Watershed *restoration* projects as defined in RCW 89.08.460.
- p. A public or private project that is designed to improve fish or wildlife habitat or fish passage when all of the following apply:
 - i. The project has been approved by WDFW;

- ii. The project has received hydraulic project approval by WDFW pursuant to RCW 77.55;
- iii. The City has determined that the project is substantially consistent with this *program*. In this event, The City shall make such determination in a timely manner and confirm it in writing by letter to the project proponent.
- iv. Fish habitat *enhancement* projects that conform to the provisions of RCW 77.55.181 are determined to be consistent with local *shoreline master programs*. At least one of the following criteria must be met:
 - (a) Elimination of human-made fish passage barriers, including culvert repair and replacement; or
 - (b) Restoration of an eroded or unstable streambank employing the principle of *bioengineering*, including limited use of rock as a stabilization only at the toe of the bank, and with primary emphasis on using native vegetation to control the erosive forces of flowing water; or
 - (c) Placement of woody debris or other instream *structures* that benefit naturally reproducing fish stocks.
- q. The procedural requirements of this chapter shall not apply to any *person* conducting a remedial action at a facility pursuant to a consent decree, order, or agreed order issued pursuant to RCW 70.105D, or to WDOE when it conducts a remedial action under RCW 70.105D. WDOE shall ensure compliance with the substantive requirements of this chapter through the consent decree, order, or agreed order issued pursuant to RCW 70.105D, or during the department-conducted remedial action, through the procedures developed by the department pursuant to RCW 70.105D.090.

3. Statements of Exemption

- a. Any *person* claiming *exemption* from the *substantial development permit* requirements shall make an application to the *Shoreline Administrator* for such an *exemption* in the manner prescribed by the *Shoreline Administrator*, except that no written statement of *exemption* is required for emergency *development* pursuant to WAC 173-27-040(2)(d).
- b. A denial of an *exemption* shall be in writing and shall identify the reason(s) for the denial. In accordance with Chapter VII, the *Shoreline Administrator's* decision on a statement of *exemption* may be reconsidered or appealed.
- c. The *Shoreline Administrator* is authorized to grant or deny requests for statements of *exemption* from the *shoreline substantial development permit* requirement for uses and *developments* within *shorelines* that are specifically listed in this section. The statement shall be in writing and shall indicate the specific *exemption* of this *program* that is being applied to the *development*. It shall also provide the *Shoreline Administrator's* analysis of the consistency of the project with this *program* and the Act. The statement of *exemption* may contain conditions and/or *mitigating* measures for approval to achieve consistency and compliance with the provisions of this *program* and Act. The letter shall be sent to the applicant and maintained on file in the offices of the *Shoreline Administrator*. *Exempt* activities related to any of the following shall not be conducted until a statement of *exemption* has been obtained from the *Shoreline Administrator*:
 - i. *dredging*,
 - ii. flood control and in-water *structures*,
 - iii. archaeological or historic site alteration,
 - iv. clearing and ground disturbing activities such as *filling* and excavation, docks, shore stabilization,
 - v. free-standing signs.

- d. A copy of written *exemptions* shall be forwarded to WDOE if federal *permits* are also required for the project (e.g., *wetland fills*, *dredging* and overwater/in water *structures* would all require federal *permits*).

D. Prohibited Uses

1. The following modifications and uses are prohibited in all *shoreline designations* and are not eligible for review as a *shoreline conditional use* or *shoreline variance*:
 - a. Uses not otherwise allowed in the underlying zoning district;
 - b. Parking as a primary use;
 - c. Discharge of solid wastes, liquid wastes, untreated effluents, other *potentially harmful materials*;
 - d. Solid or hazardous waste landfills;
 - e. Speculative *fill* meaning the placement of *fill* material without an associated *development*;
 - f. *Dredging* or *dredge material* disposal to construct land canals or small basins for *boat moorage* or launching, water ski landings, swimming holes or other recreational activities; and
 - g. *Aquaculture*, forestry, industrial, log storage, *marinas*, and mining uses.

E. Non-conforming Uses and Development

1. *Non-conforming uses* and *non-conforming development* (including *non-conforming structures*) that were lawfully constructed, established or commenced prior to the effective date of this *program* and the Act, and which are no longer consistent or conform with the now applicable *shoreline* provisions.
2. Existing Uses and Development. Existing uses, structures and lots legally established prior to the effective date of this *program* are allowed to continue. To the extent that they could not be established under the terms of this *program*, they are deemed *non-conforming* and are subject to the provisions of this section, unless specific exceptions are provided for in Chapter II.
3. Nonconforming Uses
 - a. Additional *development* of any property on which a *non-conforming use* exists shall require that all new uses conform to this *program* and the Act.
 - b. Change of ownership, tenancy, or management of a *non-conforming use* shall not affect its non-conforming status, provided that the use does not change or intensify.
 - c. If a *non-conforming use* is converted to a conforming use, a *non-conforming use* may not be resumed.
 - d. When the *operation* of a *non-conforming use* is vacated or abandoned for a period of twelve (12) consecutive months, the *non-conforming use* rights shall be deemed extinguished and the future use of such property shall be in accordance with the permitted and *conditional use* regulations of this *program*.
 - e. If a conforming building housing a *non-conforming use* is damaged by fire, flood, explosion, or other natural disaster the following provisions related to reconstruction apply:
 - i. If the damage is sixty percent or more of the replacement cost of the *structure* or *development*, reconstruction is not allowed.
 - ii. If the damage is less than sixty percent (60%) of the replacement cost of the *structure* or *development*, such use may be resumed at the time the building is repaired; provided, such *restoration* shall be undertaken within twelve (12) months following said damage.

- f. *Normal maintenance and normal repair* of a *structure* housing a *non-conforming use* may be permitted provided all work is consistent with the provisions of this *program*.

4. *Non-conforming Structures*

- a. A non-conforming building or structure may be maintained or repaired, provided such improvements do not extend or expand the non-conformity of such building or *structure* and are consistent with the provisions of this *program*, unless required by other law or ordinance.
- b. If a *non-conforming structure* or *development* is damaged by fire, flood, explosion, or other natural disaster the following provisions relative to reconstruction apply:
 - i. If the damage is sixty percent or more of the replacement cost of the *structure* or *development*, reconstruction is not allowed.
 - ii. If the damage is less than sixty percent (60%) of the replacement cost of the *structure* or *development*, it may be *restored* or reconstructed to those configurations existing at the time of such damage, provided:
 - (a) The reconstructed or *restored structure* will not cause additional adverse effects to adjacent properties or to the *shoreline* environment;
 - (b) The rebuilt *structure* or portion of *structure* shall not expand the original footprint or *height* of the damaged *structure*;
 - (c) No degree of relocation shall occur, except to increase conformity or to increase *ecological function*, in which case the *structure* shall be located in the least environmentally damaging location possible;
 - (d) The submittal of applications for *permits* necessary to *restore* the *development* is initiated within twelve (12) months of the damage. The *Shoreline Administrator* may waive this requirement in situations with extenuating circumstances;
 - (e) The reconstruction is commenced within one (1) year of the issuance of *permit*;
 - (f) The *Shoreline Administrator* may allow a one (1) year extension provided consistent and substantial progress is being made.

- 5. *Non-conforming Lots*. Legally established, nonconforming, undeveloped lots located landward of the *ordinary high water mark* are buildable, provided that all new *structures* or additions to *structures* on any non-conforming lot must meet all setback, *height* and other construction requirements of the *program* and the Act.

F. *Shoreline Variance*

- 1. The purpose of a variance is to grant relief to specific bulk or dimensional requirements set forth in this *program* where there are extraordinary or unique circumstances relating to the property such that the strict implementation of this *program* would impose unnecessary hardships on the applicant/proponent or thwart the policies set forth in the Act and this *program*.
- 2. When a *shoreline* variance is requested, the City shall issue a final decision that is then filed with WDOE. However, *shoreline* variances must have approval from WDOE, which shall have final approval authority. *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 extraordinary circumstances shall be shown and the *public interest* shall suffer no substantial detrimental effect.
- 3. Variance permits for *development* and/or uses that will be located landward of the *ordinary high water mark* (OHWM) and/or landward of any *wetland* may be authorized provided the applicant can demonstrate all of the following:
 - a. That the strict application of the bulk, dimensional or performance standards set forth in this *program* precludes, or significantly interferes with, reasonable use of the property;

- b. That the hardship described in (a) of this subsection is specifically related to the property, and is the result of unique conditions such as irregular lot shape, size, or natural features and causes external to the *program* including 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 this *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. Variance *permits* for *development* and/or uses that will be located waterward of the *ordinary high water mark* (OHWM), or within any *wetland*, may be authorized provided the applicant can demonstrate all of the following:
 - a. That the strict application of the bulk, dimensional or performance standards set forth in this *program* precludes all reasonable use of the property;
 - b. That the proposal is consistent with the criteria established under subsection (2)(b) through (f) of this section; and
 - c. That the public rights of navigation and use of the *shorelines* will not be adversely affected.
 5. The burden of proving that a proposed *shoreline* variance meets the criteria of this *program* shall be on the applicant. Absence of such proof shall be grounds for denial of the application.
 6. In the granting of all *shoreline* variances, consideration shall be given to the cumulative environmental impact of additional requests for like actions in the area.
 7. Before making a recommendation to grant a *shoreline* variance, the City shall consider issues related to the conservation of valuable natural resources, and the protection of views from nearby public roads, surrounding properties and public areas.
 8. *Shoreline* variances should not result in a net loss of environmental function.
 9. A variance from City *development* code requirements shall not be construed to mean a *shoreline* variance from use regulations in this *program*, and vice versa.
 10. *Shoreline* variances may not be used to *permit* a use or *development* that is specifically prohibited in a *shoreline designation*.

G. Shoreline Conditional Use Permit

1. The purpose of the *conditional use permit* is to provide greater flexibility in varying the application of the use regulations of this *program* in a manner that will be consistent with the policies of the Act and this *program*.
2. When a *conditional use* is requested, the *Shoreline Administrator* shall be the approval authority for the City. However, *shoreline conditional uses* must have approval from WDOE, which shall have final approval authority under WAC 173-27-200.
3. *Conditional use permits* shall be authorized only when they are consistent with the following criteria:
 - a. The proposed use is consistent with the policies of RCW 90.58.020, WAC 173-27-160 and all provisions of this *program*;
 - b. The use will not interfere with 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 this *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. The *public interest* will suffer no substantial detrimental effect;
 - f. Consideration has been given to cumulative impact of additional requests for like actions in the area.
- 4. Other uses not specifically identified in this *program* are considered unclassified uses and may be authorized through a *conditional use permit* if the applicant can demonstrate that the proposed use is consistent with the purpose of the *shoreline designation* and compatible with existing *shoreline* improvements or that extraordinary circumstances preclude reasonable use of the property.
 - 5. Uses specifically prohibited by this *program* may not be authorized.
 - 6. The burden of proving that a proposed *shoreline conditional use* meets the criteria of this *program* and WAC 173-27-160 shall be on the applicant. Absence of such proof shall be grounds for denial of the application.
 - 7. The City is authorized to impose conditions and standards to enable a proposed *shoreline conditional use* to satisfy the *conditional use* criteria.

III. SHORELINE MASTER PROGRAM GOALS & POLICIES

This chapter describes overall *program* goals and policies. The general regulations in Chapter V and the specific use regulations in Chapter VI are the means by which these goals and policies are implemented.

A. General Shoreline Goals

The general goals of this *program* are to:

1. Use the full potential of *shorelines* in accordance with the opportunities presented by their relationship to the surrounding area, their natural resource values, and their unique aesthetic qualities offered by water, topography, and views; and
2. Develop a physical environment that is both ordered and diversified and which integrates water and *shoreline* uses while achieving a net gain of *ecological function*.

B. Shorelines of Statewide Significance (SSWS)

Designated *shorelines of statewide significance* (SSWS) are of value to the entire state as are other water bodies meeting the definition of *shorelines of the state*. The East Fork of the Lewis River, along with its associated shorelands is designated as a *shoreline of statewide significance*. Its location along the southwest boundary of the current city limits and other *shorelines of the state* requires the preparation of this master *program*. In accordance with RCW 90.58.020, SSWS will be managed as follows:

1. Preference shall be given to the uses that are consistent with the statewide interest in such *shorelines*. These are uses that:
 - 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 *ecological function* of the *shoreline*;
 - e. Increase *public access* to publicly-owned areas of the *shorelines*;
 - f. Increase recreational opportunities for the public in the *shoreline*; and

- g. Provide for any other element as defined in RCW 90.58.100 deemed appropriate or necessary.
- 2. Uses that are not consistent with these policies should not be permitted on SSWS.
- 3. Those limited *shorelines* containing unique, scarce and/or sensitive resources should be protected.
- 4. *Development* should be focused in already developed *shoreline* areas to reduce adverse environmental impacts and to preserve undeveloped *shoreline* areas. In general, SSWS should be preserved for future generations by;
 - a. Restricting or prohibiting *development* that would irretrievably damage *shoreline* resources, and
 - b. Evaluating the short-term economic gain or convenience of *developments* relative to the long-term and potentially costly impairments to the natural *shoreline*.

C. Archaeological, Historic, and Cultural Resources

- 1. Goal. The goal for archaeological, historic, and cultural resources is to preserve and prevent the destruction of or damage to any site having historic, cultural, scientific, or educational value. Such sites include those identified by affected Indian tribes, the Department of Archaeology and Historic Preservation, Clark County Historic Preservation Commission, and other appropriate authorities.
- 2. Policies
 - a. As part of every new *development* project, expansion of existing *developments* or *development* of a new use, every effort should be made to identify, protect, preserve, and *restore* important archaeological, historic, and cultural sites located in shorelands of the state for educational, scientific, and enjoyment purposes.
 - b. Where appropriate, make access to such sites available to parties of interest, provided that access to such sites be designed and managed in a manner that protects the resource.
 - c. Encourage the acquisition of historical, cultural and archaeological sites by public or private entities in order to assure their protection and preservation.
 - d. Encourage projects and programs that foster a greater appreciation of *shoreline* management, local history, maritime activities, environmental conservation, and maritime history.
 - e. Continue to contribute to the state and local inventory of archaeological sites enhancing knowledge of local history and understanding of human activities.

D. Conservation

- 1. Goal. The goal of conservation is to protect *shoreline* resources, vegetation, important *shoreline* features, *shoreline ecological functions* and the processes that sustain them to the maximum extent practicable.
- 2. Policies
 - a. *Shorelines* that support high value habitat or high quality associated *wetlands* should be considered for the highest level of protection to remain in an unaltered condition.
 - b. Impacts to critical areas should first be avoided, and where unavoidable, minimized and *mitigated* to result in no net loss of watershed processes and *shorelines* functions.
 - c. Management practices for natural resources in *shoreline* areas should be developed and implemented to ensure the preservation of non-renewable resources, including unique, scenic and ecologically sensitive features, *wetlands*, and wildlife habitat.

- d. Every effort should be made to provide administrative and regulatory assistance to those proposals to create, *restore* or enhance habitat for *priority species*.
- e. Regulatory, non-regulatory, and incentive programs should all be used for the protection and conservation of wildlife habitat areas, and should emphasize policies and standards to protect and conserve critical areas as larger blocks, corridors or interconnected areas rather than in isolated parcels.
- f. The retention of existing vegetation along *shorelines* should be encouraged, and where removal is unavoidable for physical or visual access to the *shoreline*, alteration should be limited in such a manner that habitat connectivity is maintained, degraded areas are *restored*, and the health of remaining vegetation is not compromised.

E. Economic Development

- 1. Goal. The goal for economic *development* is to create and maintain an economic environment that is balanced with the natural and human environment.
- 2. Policies
 - a. Continue to support current economic activity that is consistent with the policies of this SMP should continue to be supported.
 - b. Encourage healthy, orderly economic growth by allowing economic activities that will be an asset to the community while maintaining the highest standards to prevent ecological loss or damage.
 - c. Encourage new water-oriented industrial, commercial, and resource-based activities that will not harm the quality of the site's environment, adjacent shorelands, or *water quality* are encouraged along the *shoreline*.
 - d. As an economic asset, the recreation industry should be encouraged along *shorelines* in a manner that will enhance the public enjoyment of *shorelines*, consistent with protection of critical areas and cultural resources.
 - e. Existing non-water-oriented commercial, industrial, and resource-based activities located in the *shoreline jurisdiction* are encouraged to protect watershed processes and *shoreline* functions.

F. Flood Prevention and Flood Damage Minimization

- 1. Goal. The goal of flood prevention and flood damage minimization is to prevent public and private losses from occurring, and where this proves to be impossible, to minimize them to the extent possible, and; to maintain and *restore* natural flow regimes.
- 2. Policies
 - a. All *shoreline development* should be located, designed, and constructed to prevent flood damage.
 - b. Flood management works should be located, designed, constructed and maintained to protect against the following:
 - i. Loss of life, injury or loss of property;
 - ii. Loss to the physical integrity of the *shoreline*;
 - iii. Loss of *water quality* and natural ground water movement;
 - iv. Loss to fish and other life forms and their habitat and damage to vegetation;
 - v. Damage to recreational resources and aesthetic values and features including *point* and channel bars, islands, and other shore features and scenery.

- c. Non-structural flood hazard reduction measures are preferred to structural measures. Flood hazard reduction measures should be accomplished in a manner that ensures no net loss of *ecological functions* and ecosystem-wide processes.
- d. Flood protection measures that result in channelization and/or reduction in *shoreline function* should be avoided.
- e. An evaluation of alternate flood control measures should consider the removal or relocation of *structures* in flood-prone areas.
- f. New *development* or new uses in *shoreline jurisdiction*, including the subdivision of land, should not be allowed when it would be reasonably foreseeable that the *development* or use would require structural flood hazard reduction.

G. Public Access and Recreation

1. Goal. The goal of *public access* and recreation is to increase the ability of the general public to enjoy the water's edge, travel on the waters of the state, and to view the water and the *shoreline* from adjacent locations.
2. Policies
 - a. Where feasible and consistent with public safety all private and public *developments* should provide, protect, and enhance a *public access* system that is both physical and visual; utilizes both private and public lands; increases the amount and diversity of *public access* to the State's *shorelines* and adjacent areas; and is consistent with the *shoreline* character and shoreline functions, and private rights.
 - b. The acquisition and expansion of appropriate *shoreline* areas is encouraged. The acquired properties could be used as recreational facilities or for other uses benefitting the public at large.
 - c. Whenever practicable, *public access* and recreational facilities should be located in a manner that encourages variety of uses, accessibility, and connectivity in a manner that will preserve natural characteristics and *shoreline functions*.
 - d. Encourage *public access* as part of each *development* project by a public entity, and for all private *development* (except *residential development* of less than four parcels), unless such access is shown to be incompatible due to reasons of safety, security, or impact to the *shoreline* environment.
 - e. Discourage *shoreline* uses that curtail or reduce *public access* unless such restriction is in the interest of the environment, public health, and safety, or is necessary to a proposed beneficial use.

H. Restoration

1. Goal. The goal of *restoration* is to re-establish, rehabilitate and/or otherwise improve impaired *shoreline ecological functions and/or processes* through voluntary and incentive-based public and private programs and actions that are consistent with the *SMP*, the Clark Coalition *Restoration* Plan and other approved *restoration* plans.
2. Policies
 - a. *Shorelines* that are biologically degraded should be reclaimed and *restored* to the greatest extent feasible.
 - b. Restoration strategies should be developed and implemented such that ecosystem processes are sustainable in the long-term.
 - c. Restoration of *shoreline functions* should be encouraged during redevelopment.
 - d. Restoration efforts should consider the feasibility of retrofitting existing *stormwater* control facilities to improve *water quality*.

- e. *Restoration* efforts should consider a focus on *floodplain* and *channel migration zone* reconnection where rivers are confined by levees.
- f. *Restoration* efforts should include surveying and monitoring *invasive species*, *noxious weeds*, and non-native species with the intention of initiating eradication programs as needed.
- g. Planting of vegetation that enhances *shoreline function* should be encouraged.
- h. Education programs should be developed to:
 - i. Educate property owners about proper vegetation/landscape maintenance and the impacts of shore armoring and *over-water structures*; and
 - ii. Educate boaters about proper waste disposal methods, anchoring techniques, and other best boating practices.
- i. Cooperative *restoration* actions involving local, state, and federal agencies, Native American tribes, non-government organizations, and landowners are encouraged.

I. Shoreline Modification and Stabilization

1. Goal. The goal for *shoreline modification* and stabilization is to avoid or minimize it to the maximum extent feasible. When *shoreline modification* is unavoidable, the methods used should be those that are least destructive to the *shoreline* environment, including associated waters.
2. Policies
 - a. New or expanded structural shore stabilization, including *bulkheads*, is allowed only where it is demonstrated to be necessary to protect an existing primary *structure* that is in danger of loss or substantial damage, and where such *structures* and structural stabilization would not cause a net loss of *shoreline ecological functions* and processes.
 - b. Proponents of new *shoreline* uses and *development*, including preferred uses and uses *exempt* from *permits*, should plan, design, locate, construct and maintain the use/*development* to avoid the need for structural *shoreline* armoring works using all methods available.
 - c. When necessary, natural, non-structural *shoreline stabilization* measures are preferred over structural stabilization measures. Alternatives for *shoreline stabilization* should be based on the following hierarchy of preference:
 - i. No action;
 - ii. Flexible stabilization works constructed of natural materials, including soft shore protection, *bioengineering*, beach nourishment, protective *berms*, or vegetative stabilization;
 - iii. Rigid works constructed of structural materials such as *riprap* or concrete.
 - d. *Shoreline stabilization* should be located and designed to accommodate the physical character and hydraulic energy potential of a specific *shoreline* reach, which may differ substantially from adjacent reaches.
 - e. Provisions for multiple use, restoration, and/or public shore access should be incorporated into the location, design and maintenance of shore stabilization for public or quasi-public *development* whenever safely compatible with the primary purpose. *Shoreline stabilization* on publicly owned *shorelines* should not be allowed to decrease long-term public use of the *shoreline*.
 - f. *Shoreline stabilization* projects should be developed through coordination with affected property owners and public agencies.
 - g. Larger works such as jetties, breakwaters, *weirs*, or *groin* systems should be permitted only for *water-dependent uses* and where *mitigated* to provide no net loss of *shoreline ecological functions* and processes.

- h. Lower impact *structures*, including floating, portable or submerged breakwater *structures*, or several smaller discontinuous *structures*, are preferred over higher impact *structures*.
- i. Encourage and facilitate levee setback (including but not limited to, pulling back an existing levee to allow for a larger *floodplain* area contiguous to a water body), levee removal, and other *shoreline enhancement* projects.
- j. *Development* and *shoreline modifications* that would result in interference with the process of channel migration that may cause significant adverse impacts to property or public improvements and/or result in a net loss of *ecological functions* with the rivers and streams should be avoided.

J. Shoreline Use and Development

1. Goal. The goal for *shoreline* use and *development* is to balance the preservation and *development* of *shorelines* in a manner that allows for mutually compatible uses. Resulting land use patterns will be compatible with *shoreline designations* and sensitive to, and compatible with, ecological systems and other *shoreline* resources. To help with this balance, *shoreline* and water areas with unique attributes for specific long term uses such as commercial, residential, industrial, water, wildlife, fisheries, recreational and open space shall be identified and/or reserved.
2. Policies
 - a. Uses in *shorelines* and water areas in priority order are (1) *water-dependent*, (2) *water-related*, and (3) *water-enjoyment*.
 - b. Uses, activities, and facilities should be located on *shorelines* in such a manner as to:
 - i. Retain or improve the quality of *shoreline function*;
 - ii. Respect the property rights of others;
 - iii. Ensure that proposed *shoreline* uses do not create risk or harm to neighboring or downstream properties; and
 - iv. Preserve and/or *restore*, to the maximum reasonable extent, the *shoreline's* natural features and functions in conjunction with any redevelopment or revitalization project.
 - c. The following are encouraged in *shoreline* areas:
 - i. Uses that enhance their specific areas or employ innovative features for purposes consistent with this *program*;
 - ii. The redevelopment of any area not suitable for preservation of natural features, based on its *shoreline* designation, with an emphasis on *public access*;
 - iii. Master planning for large sites or projects;
 - iv. Shared uses and joint use facilities in *shoreline developments*; and
 - v. Uses that allow for or incorporate *restoration* of *shoreline* areas that are degraded as a result of past activities or events.
 - d. Uses proposed on lands adjacent to but outside of immediate *shoreline jurisdiction* *should* be consistent with the intent of this *program* and should not adversely impact *shoreline ecological functions*.

K. Transportation, Utilities, and Essential Public Facilities

1. Goal. The goal for transportation, utilities, and essential public facilities is to provide for these facilities in *shoreline* areas without adverse effects on existing *shoreline* use and *development* or *shoreline ecological functions* and/or processes.

2. Policies

- a. Transportation, utilities, and essential public facilities should be located outside the *shoreline jurisdiction* to the maximum extent possible to reduce interference with natural *shoreline functions* and appropriate *shoreline* uses.
- b. Circulation systems should be safe, reasonable and adequate, and should be designed so that the routes will have the least possible adverse effect on *shoreline function* and existing ecological systems, while still contributing to the visual *enhancement* of the *shoreline*.
- c. Areas of *shoreline* transportation corridors that are unique, have historic significance or contribute significantly to the aesthetic quality of the *shoreline* should be protected, managed and *enhanced*.
- d. Government bodies should devote roads within the *shoreline jurisdiction* to low volume local access routes and where practical, provide multiple use corridors as a part of *shoreline* transportation *development*.
- e. Local utility and transportation corridors should be located to avoid creating barriers between adjacent uplands and the *shoreline* and to harmonize with the topography and other natural characteristics of the *shoreline*.
- f. When new utility and transportation facilities are developed in the *shoreline jurisdiction*, there should be a combined effort by public and private interests to protect, *enhance*, and encourage *development* of physical and visual *shoreline public access*.
- g. Where feasible, public and private entities (as applicable) should take steps to relocate existing utility and transportation facilities, such as transmission lines, rail lines, or freeways that limit public *shoreline* access or other *shoreline* uses and convert such rights-of-way to new *public access* routes.
- h. Utilities and transportation facilities should be installed and facilities designed and located in a coordinated manner that protects the shorelands and water from contamination and degradation.
- i. The siting of essential public facilities in the *shoreline jurisdiction* should be discouraged unless no practical alternatives exist.

L. Views and Aesthetics

1. Goal. The goal for views and aesthetics is to assure that the public will be able to continue enjoying the physical and aesthetic qualities of the *shorelines*, and that this ability will be increased whenever possible.
2. Policies
 - a. Public entities should identify *shoreline* areas having scenic vistas and high aesthetic value, and act and encourage others to act to preserve and improve upon these values whenever possible.
 - b. Encourage *development* within the *shoreline* area that provides visual and physical linkage to the *shoreline*, and enhances the waterfront.
 - c. Encourage *shoreline development* that designs and builds *structures* in a manner that avoids obstructing the views of others to the maximum extent feasible.

M. Water Quality and Quantity

1. Goal. The goal for *water quality* and quantity is to protect and enhance the quality and quantity of the region's water resources to ensure there is safe, clean water for the public's needs and enjoyment, and; to maintain and *restore* natural flow regimes.

2. Policies

- a. Encourage the location, construction, *operation*, and maintenance of *shoreline* uses, *developments*, and activities to be focused on maintaining or improving the quality and quantity of surface and ground water over the long term.
- b. Strive to minimize the inadvertent release of chemicals, activities that cause erosion, *stormwater* runoff, and faulty on-site sewage through education, site planning, and best management practices.
- c. Encourage the use, maintenance and *restoration* of appropriate vegetative buffers along *surface waters* to improve water temperature and reduce the adverse effects of erosion and runoff.
- d. Strive to maintain and *restore* natural flows.

IV. SHORELINE DESIGNATIONS

A. Introduction

The intent of assigning *shoreline designations* to specific geographies is to encourage *development* that will enhance the present or desired character of the *shoreline*. To accomplish this, segments of *shoreline* are given a *shoreline* designation based on existing *development* patterns, natural capabilities and limitations, and the vision of the City. The *shoreline designations* are intended to work in conjunction with the comprehensive plan and zoning.

Management policies are an integral part of the *shoreline designations* and are used for determining uses and activities that can be permitted in each *shoreline designation*. *Development* regulations specify how and where permitted *development* can take place within each *shoreline designation* and govern *height* and setback.

B. Authority

Local governments are required under the State Shoreline Management Act of 1971 (RCW 90.58) and the Shoreline Master Program Guidelines (WAC 173-26) to develop and assign a land use categorization system known as *shoreline* environment designations for *shoreline* areas as a basis for effective *shoreline master programs*. For purposes of this *program shoreline* designation is used in place of the term *shoreline* environment designation referred to in WAC 173-26.

The method for local government to account for different *shoreline* conditions is to assign a *shoreline designation* to each distinct *shoreline* section in its jurisdiction. The *shoreline designation* assignments provide the framework for implementing *shoreline* policies and regulatory measures for environmental protection, use provisions, and other regulatory measures specific to each *shoreline designation*.

C. Shoreline Designations

The City classification system consists of *shoreline designations* that are consistent with and implement the Act (RCW 90.58), the Shoreline Master Program Guidelines (WAC 173-26) and the City's comprehensive plan. These *designations* have been assigned along with the corresponding criteria provided for each *shoreline designation* that applies in the City. The rationale for the City's *shoreline designations* is provided in Appendix B. In delineating *shoreline designations*, the City aims to ensure that existing *shoreline ecological functions* are protected, and recognize the pattern and intensity of *development* are consistent with the policies for restoration of degraded *shorelines*.

1. Listing of Shoreline Designations
 - a. Aquatic;
 - b. Urban Conservancy; and
 - c. Medium Intensity.
2. Location of Areas Designated in the City of La Center. Areas to which a *shoreline* designation applies are shown on a copy of the Official *Shoreline* Map in Appendix A.
3. Aquatic Shoreline Designation
 - a. Purpose. The purpose of the Aquatic *shoreline* designation is to protect, *restore*, and manage the unique characteristics and resources of the areas waterward of the *OHWM*.
 - b. Designation Criteria. An Aquatic *shoreline* designation is assigned to lands and waters waterward of the ordinary high-water mark.
 - c. Management Policies. In addition to the other applicable policies and regulations of this *program* the following management policies shall apply:
 - i. Uses that preserve the natural characteristics of the *shoreline* or *restore* those characteristics are preferred.
 - ii. New *over-water structures* should be allowed only for *water-dependent uses*, *public access*, recreation, or ecological *restoration*.
 - iii. *Shoreline* uses and modifications *should* be designed and managed to prevent degradation of *water quality* and natural hydrographic conditions.
 - iv. *Shoreline* uses and modifications should be designed and managed to preserve or improve *water quality* and natural hydrographic conditions. Natural hydrologic conditions may be necessary to achieve overall goal of no net loss of function.
 - v. *Public access* for in-water and *shoreline* uses should be allowed provided impacts can be *mitigated* to ensure no net loss of *ecological functions*.
 - vi. Uses and *developments* on navigable waters or their beds should be located and designed to minimize interference with surface navigation, consider impacts to public views; and to allow for the safe passage of fish and wildlife.
 - vii. Multiple or shared use of over-water and water access facilities should be encouraged to reduce the impacts of *shoreline development* and increase effective use of water resources.
 - viii. *Structures* and activities permitted should be related in size, form, design, and intensity of use to those permitted in the immediately adjacent upland area. The size of new *over-water structures* should be limited to the minimum necessary to support the *structure's* intended use.
 - ix. The size of new *over-water structures* should be limited to cause the least disruption possible to the *shoreline* environment.
 - x. Natural light should be allowed to penetrate to the extent necessary to discourage salmonid predation and to support nearshore habitat unless other illumination is required by state or federal agencies.
 - xi. When shoreline uses, development, activities, and modifications in the Aquatic shoreline designation require uses of adjacent landward property, that landward property should be in a shoreline designation that allows that use, development, activity or modification.

4. Urban Conservancy Shoreline Designation

- a. Purpose. The purpose of the Urban Conservancy *shoreline designation* is to protect and *restore ecological functions* of open space, *floodplains*, and other sensitive lands, where they exist alongside urban and developed settings, while allowing a variety of compatible uses.
- b. Designation Criteria. The following criteria are used to consider an Urban Conservancy *shoreline designation*:
 - i. The *shoreline* is located within incorporated municipalities and designated urban growth areas;
 - ii. The *shoreline* has a reasonably high *ecological function* and there is a good opportunity for restoration;
 - iii. The *shoreline* has open space or critical areas that should be preserved from more intensive *development*;
 - iv. The *shoreline* presents opportunities for recreational use as a park or otherwise, as a Master Planned Resort, or can be maintained as open space.
- c. Management Policies. In addition to the other applicable policies and regulations of this *program* the following management policies shall apply:
 - i. Uses that preserve the natural character of the area or promote preservation of open space or critical areas are favored providing they are compatible with the Urban Conservancy setting,
 - ii. Single family *residential development* shall ensure no net loss of *shoreline ecological functions* and preserve the existing character of the *shoreline*,
 - iii. In order to preserve the natural character of the areas as mentioned above, thinning or removal of vegetation should be limited to that necessary to remove noxious vegetation and *invasive* species; provide physical or visual access to the *shoreline*; and to maintain or enhance an existing use,.
 - iv. Low intensity water-oriented commercial uses may be permitted if compatible with surrounding uses, and
 - v. *Public access* and public recreation objectives should be implemented whenever feasible and when significant ecological impacts can be *mitigated*.

5. Medium Intensity Shoreline Designation

- a. Purpose. The purpose of the Medium Intensity *shoreline designation* is to accommodate primarily *residential development* and appurtenant *structures*, but to also allow other types of *development* that are consistent with this chapter. An additional purpose is to provide appropriate *public access* and recreational uses.
- b. Designation Criteria. A Medium Intensity *shoreline designation* is assigned to *shoreline* areas inside incorporated municipalities and urban growth areas if any of the following characteristics apply:
 - i. The *shoreline* has low to moderate *ecological function* with low to moderate opportunity for *restoration*;
 - ii. The *shoreline* contains mostly *residential development* at urban densities and does not contain resource industries;
 - iii. The *shoreline* is planned or platted for residential uses in the comprehensive plan;
 - iv. The *shoreline* has low to moderate potential for public passive or active water-oriented recreation where *ecological functions* can be *restored*; or
 - v. The *shoreline* has low scientific or educational value.

- c. Management Policies. In addition to the other applicable policies and regulations of this *program* the following management policies shall apply:
 - i. The scale and density of new uses and *development* should be compatible with sustaining *shoreline ecological functions* and processes, and the existing residential character of the area;
 - ii. *Public access* and joint use (rather than individual) recreational facilities *should* be provided;
 - iii. Access, utilities, and public services to serve proposed *development* within *shorelines* *should* be constructed outside *shorelines* to the extent feasible, and be the minimum necessary to adequately serve existing needs and planned future *development*, subject to *stormwater* regulations where applicable;
 - iv. Public or private outdoor recreation facilities *should* be provided with proposals for subdivision *development* and encouraged with all *shoreline development* if compatible with the character of the area. Priority *should* be given first to *water-dependent* and then to *water-enjoyment* recreation facilities.
 - v. Commercial *development* *should* be limited to *water-oriented uses*. Non-water-oriented commercial uses should only be allowed as part of mixed-use developments where the primary use is residential and where there is a substantial public benefit with respect to the goals and policies of this *program* such as providing *public access* or restoring degraded *shorelines*.

D. Official Shoreline Map

1. Map Established.
 - a. The location and extent of areas under the jurisdiction of this *program*, and the boundaries of various *shoreline designations* affecting the lands and water of the City shall be as shown on the map entitled, Official Shoreline Map, City of La Center, Washington. The Official Shoreline Map and all the notations, references, amendments, and other information shown on the map are hereby made a part of this *program*, as if such information set forth on the map were fully described herein.
 - b. In the event that new *shoreline* areas are discovered (including but not limited to, associated *wetlands*) that are not mapped and/or designated on the Official Shoreline Map, these areas are automatically assigned an Urban Conservancy designation for lands within incorporated and urban growth areas until the *shoreline* can be re-designated through a City *Shoreline Master Program* amendment.
2. File Copies. The Official Shoreline Map shall be kept on file in the office of the City Planner and the Washington State Department of Ecology. Unofficial copies of the map may be prepared for administrative purposes. To facilitate use of this *program*, an unofficial copy has been attached as Appendix A.
3. Map Amendments. The Official Shoreline Map is an integral part of this *program* and may not be amended except upon approval by the City and WDOE, as provided under the Act.
4. Boundary Interpretation. Until annexation, *development* in these urban growth areas will continue to be regulated by the Clark County Shoreline Master Program. The City's *SMP* will apply concurrent with annexation and no additional procedures are required by WDOE at the time of annexation unless a redesignation is occurring per Section VI.D.5 and Table 4-1.
 - a. If disagreement develops as to the exact location of a *shoreline designation* boundary line shown on the Official Shoreline Map, the following rules shall apply:
 - i. Boundaries indicated as approximately following lot, tract, or section lines shall be so construed;

- ii. Boundaries indicated as approximately following roads or railways shall be respectively construed to follow their centerlines;
 - iii. Boundaries indicated as approximately parallel to or extensions of features indicated in (1) or (2) above shall be so construed.
 - iv. Whenever existing physical features are inconsistent with boundaries on the Official Shoreline Map, the *Shoreline Administrator* shall interpret the boundaries with deference to actual conditions. Appeals of such interpretation may be filed according to the applicable appeal procedures described in Chapter VII, Administration and Enforcement.
5. Mapping Errors. In the event of a mapping error, the jurisdiction will rely upon common boundary descriptions and the criteria contained in RCW 90.58.030(2) and WAC 173-22 pertaining to determinations of shorelands, as amended, rather than the incorrect or outdated map
6. Shoreline Designation Changes and Urban Growth Boundary Revisions. When a portion of *shoreline jurisdiction* is brought into or removed from an urban growth area, a new *shoreline designation* may need to be assigned. *Shoreline designations* shall be assigned in accordance with Table 4-1 below. Where more than one *designation* could be appropriate according to Table 4-1, the *shoreline designation* indicated shall be applied and the best-fitting *shoreline designation* assigned. *Shoreline designation* assignments shall occur concurrently with the annexation or other legislative action to remove a portion of *shoreline jurisdiction* from a city or urban area and to amend the *shoreline* map and shall be effective upon approval by WDOE (see Section IV.D.3).

Table 4-1. Shoreline Designations for Urban¹/Rural² Boundary Revisions

SENDING Designation	From/To	RECEIVING Designation
Aquatic	Rural/Urban	Aquatic
Natural	Rural/Urban	Urban Conservancy
Rural Conservancy – Residential	Rural/Urban	Urban Conservancy
Rural Conservancy – Resource	Rural/Urban	Urban Conservancy

¹ Within urban growth areas

² Outside urban growth areas

V. GENERAL SHORELINE USE & DEVELOPMENT REGULATIONS

All uses and *development* activities in *shorelines* shall be subject to the following general regulations in addition to the applicable use-specific regulations in Chapter VI.

A. General *Shoreline Use and Development* Regulations

1. *Shoreline uses and developments that are water-dependent shall be given priority.*
2. *WAC 173-26-201 (Process to Prepare or Amend “Shoreline Master Programs”) requires that the SEPA “Mitigation” Sequence be incorporated into “shoreline master programs” as follows:*
 - a. *“To assure no net loss of shoreline ecological functions, master programs shall include provisions that require proposed individual uses and developments to analyze environmental impacts of the proposal and include measures to mitigate environmental impacts not otherwise avoided or mitigated by compliance with the master program and other applicable regulations. To the extent Washington's State Environmental Policy Act of 1971 (SEPA), chapter 43.21C RCW, is applicable, the analysis of such environmental impacts shall be conducted consistent with the rules implementing SEPA, which also address environmental impact mitigation in WAC 197-11-660 and define mitigation in WAC 197-11-768. Master programs shall indicate that, where required, mitigation measures shall be applied in the following sequence of steps listed in order of priority, with” (i) “of this subsection being top priority.”*
 - i. *“Avoiding the impact altogether by not taking a certain action or parts of an action;”*
 - ii. *“Minimizing 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;”*
 - iii. *“Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;”*
 - iv. *“Reducing or eliminating the impact over time by preservation and maintenance “operations;”*
 - v. *“Compensating for the impact by replacing, enhancing, or providing substitute resources or environments”; and*

- vi. "Monitoring the impact and the compensation projects and taking appropriate corrective measures."
- b. "In determining appropriate mitigation measures applicable to shoreline development, lower priority measures shall be applied only where higher priority measures are determined to be infeasible or inapplicable. Consistent with WAC 173-26-186 (5) and (8), master programs shall also provide direction with regard to mitigation for the impact of the *development* so that:"
 - i. "Application of the mitigation sequence achieves no net loss of ecological functions for each new development and does not result in required mitigation in excess of that necessary to assure that *development* will result in no net loss of *shoreline* ecological functions and not have a significant adverse impact on other *shoreline functions* fostered by the policy of the act."
 - ii. "When compensatory measures are appropriate pursuant to the mitigation priority sequence above, 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. Authorization of compensatory mitigation measures may require appropriate safeguards, terms or conditions as necessary to ensure no net loss of *ecological functions*."
- 3. *Shoreline* uses and *developments* shall not cause impacts that require remedial action or loss of *shoreline functions* on other properties.
- 4. *Shoreline* uses and *developments* shall be located and designed in a manner such that *shoreline stabilization* is not necessary at the time of *development* and would not be reasonably anticipated as being necessary in the future, unless it can be demonstrated that stabilization is the only alternative to protecting public safety and existing primary *structures*.
- 5. Land shall not be cleared, graded, *filled*, excavated or otherwise altered prior to issuance of the necessary *permits* and approvals for a proposed *shoreline* use or *development* to determine if environmental impacts have been avoided, minimized and *mitigated* to result in no net loss of *ecological functions*.
- 6. *Non-water-oriented uses* shall not adversely impact or displace *water-oriented shoreline uses*.
- 7. Single-family residential uses shall be located, designed and used in accordance with applicable policies and regulations of this *program*. They are prohibited in the Aquatic *shoreline designation*, and may have a lower priority in some other designations.
- 8. All uses and *developments* on or alongside navigable waters should be located and designed to minimize interference with surface navigation; consider impacts to public views and allow for the safe, unobstructed passage of fish and wildlife, particularly species dependent on migration.
- 9. Hazardous materials shall be disposed of in a manner which is in accordance with all applicable federal, state, and local statutes, codes and ordinances, and the *Shoreline Master Program* itself. The handling and disposal of hazardous material will be accomplished in a way that protects the ecological integrity of the *shoreline* area.
- 10. In-water work shall be scheduled to protect biological productivity, including fish runs and spawning, and in-water work shall not occur in areas used for *commercial fishing* during a fishing season.
- 11. Previous approvals of master plans for projects in *shoreline jurisdiction* shall be accepted. New phases of projects for which no master plan has yet been approved, or for which major changes are being proposed, or new projects for which master plans are being submitted should be subject to the policies and regulations of this *program*.

12. Within urban growth areas, WDOE may grant relief from use and *development* regulations of this *program* when:
 - a. A *shoreline restoration project* identified in the *Clark Coalition SMP Restoration Plan* causes or would cause a landward shift in the OHWM creating a hardship meeting specific criteria in RCW 90.58.580;
 - b. The proposed relief meets specific criteria in RCW 90.58.580; and
 - c. The application for relief is submitted to WDOE in writing requesting approval or disapproval as part of a normal review of a *shoreline substantial development permit, conditional use WAC 173-26-201*, or variance. If the proposal is not connected to a *shoreline permit* review, the City may provide a copy of a complete application to WDOE along with the applicant's request for relief.

B. Archeological, Cultural and Historic Resources

3. When a *shoreline use or development* is in an area known or likely to contain archaeological artifacts and data based on Clark County's predictive model, the applicant shall provide for a site inspection and evaluation by a professional archaeologist prior to issuance or as a condition of any *shoreline permit* or approval as determined by the City. Work may not begin until the inspection and evaluation have been completed and the City has issued its *permit* or approval.
4. If any item of possible archaeological interest (including human skeletal remains) is discovered on site, all work shall immediately stop, and the City, State Department of Archaeology and Historic Preservation (DAHP), and affected Native American Tribes shall be notified of such finding. A stop-work order will be issued. The *shoreline permit* will be temporarily suspended. All applicable state and federal *permits* shall be secured prior to commencement of the activities they regulate and as a condition for resumption of *development* activities. *Development* activities may resume only upon receipt of City approval.
5. If the discovery includes human skeletal remains, the find must be secured and protected from further disturbance; the Clark County Medical Examiner and local law enforcement shall be notified in the most expeditious manner possible. The County Medical Examiner will assume jurisdiction over the site and the human skeletal remains, and will make a determination of whether they are crime-related. If they are not, DAHP will take jurisdiction over the remains and report them to the appropriate parties. The State Physical Anthropologist will make a determination of whether the remains are Native American and report that finding to the affected parties. DAHP will handle all consultation with the affected parties as to the preservation, excavation, and disposition of the remains.
6. See LCMC 18.360 (Archaeological Resource Protection) for additional requirements.

C. Critical Areas Protection

1. General Provisions.
 - a. Critical areas defined in Appendix C (LCMC 18.300) which are located within the *shoreline jurisdiction* are protected under this section.
 - b. Any allowed use, *development*, or activity proposed on a parcel with a critical area located in the *shoreline jurisdiction* shall be regulated under the provisions of this *program*.
 - c. Any allowed use, *development*, or activity meeting the definition of a *development exempt* from the *shoreline substantial development permit* process outlined in WAC 173-27-040 and Section II.C of this *program* shall be consistent with the policies and provisions of this *program* for critical areas protection.
 - d. Provisions of the critical areas regulations that are not consistent with the Act and supporting WAC chapters shall not apply in *shoreline jurisdiction*. The following sections are not part of the SMP: LCMC 18.300.060 Variances; 18.300.070 Exemptions (unless consistent with those allowed under the SMA), and 18.300.080 Reasonable Use Exception.

- e. Habitat that cannot be replaced or *restored* within twenty (20) years shall be preserved.
 - f. Where construction of a *single-family residence* is proposed, this activity is considered *exempt* from obtaining a *shoreline substantial development permit* when the construction is located landward of the *ordinary high water mark* and does not include placement of *fill* in *wetlands*. Construction of *single-family residences* requiring *fill* in *wetlands* must obtain a *shoreline Substantial Development Permit* in addition to other *shoreline* approvals as applicable.
 - g. Unless otherwise stated, no *development* shall be constructed, located, extended, modified, converted, or altered, or land divided without full compliance with this *program* and LCMC Title 18.
 - h. Reasonable use exceptions under LCMC 18.300.080 determination shall not apply in the *shoreline jurisdiction*. A shoreline variance permit shall be required if the standards cannot be met.
 - i. Unless otherwise stated, critical area buffers within the *shoreline jurisdiction* shall be protected and/or enhanced in accordance with this *program* and LCMC Title 18.
 - j. Administrative buffer reductions are only allowed to reduce the buffer to no less than 75% of the width of the standard buffer. Buffer width reductions greater than 25% of the standard buffer shall require a shoreline variance permit.
 - k. *Shoreline* uses and *developments* and their associated *structures* and equipment shall be located, designed and operated using best management practices to protect critical areas.
 - l. The applicant shall demonstrate all reasonable efforts have been taken to avoid, and where unavoidable, minimize and *mitigate* impacts such that no net loss of critical area and *shoreline ecological function* is achieved. *Mitigation* shall occur in the following order of priority:
 - i. Avoiding the impact altogether by not taking a certain action or parts of an action.
 - ii. Minimizing 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.
 - iii. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;
 - iv. Reducing or eliminating the impact over time by preservation and maintenance *operations*;
 - v. Compensating for the impact by replacing, enhancing, or providing substitute resources or environments; and
 - vi. Monitoring the impact and the compensation projects and taking appropriate corrective measures.
 - m. In addition to compensatory *mitigation*, unavoidable adverse impacts may be addressed through restoration efforts.
2. Applicable Critical Areas. For purposes of this *program*, the following critical areas will be protected under this program:
- a. Critical Aquifer Recharge Areas, defined in LCMC 18.300.090(A);
 - b. Fish and Wildlife Habitat Conservation Areas, defined in LCMC 18.300.090(B);
 - c. Frequently Flooded Areas, defined in LCMC 18.300.090(C);
 - d. Geologically Hazardous Areas, defined in LCMC 18.300.090(D);
 - e. Slopes with Gradients of 25 Percent or Greater, defined in LCMC 18.300.090(E);
 - f. *Wetlands*, defined LCMC 18.300.090(F);

3. Fish and Wildlife Habitat Conservation Areas

a. General Provisions

- i. Designated habitat areas are those defined in LCMC 18.300.090(B) and those described below:
 - (a) Waterbodies defined as waters of the state (RCW 90.48.020), including waters, bed, and bank;
 - (b) WDNR Classification System Type S, F, Np, and Ns waterbodies as defined and mapped based on WAC 222-16-030 (*Forest Practices Rules*);
 - (c) Riparian Priority Habitat Areas – areas extending landward on each side of the stream or waterbody from the *ordinary high water mark* to the edge of the one hundred (100) year *floodplain*, or the following distances, if greater:
 - (i) WDNR Type S waters, two hundred, fifty (250) feet;
 - (ii) WDNR Type F waters, two hundred (200) feet;
 - (iii) WDNR Type Np waters, one hundred (100) feet; and
 - (iv) WDNR Type Ns waters, seventy-five (75) feet.
 - (d) Other Priority Habitats and Species (PHS) Areas - areas identified by and consistent with WDFW priority habitats and species criteria, including areas within one thousand (1,000) feet of individual species point sites. The city shall defer to WDFW in regards to classification, mapping and interpretation of priority habitat species.
- ii. The above habitat areas are mapped in the adopted “Fish and Wildlife Habitat Conservation Areas Map.” Maps are on file with the City Planner.
- iii. In the event of inconsistencies, official habitat area definitions shall prevail over the maps in determining applicability of this section. The city shall follow the recommendations of WDFW in the interpretation of site-specific conditions as they relate to the definition of priority habitat and species.
- iv. The portion of the riparian priority habitat area nearest to the OHWM shall be set aside for *vegetation conservation* and protection of the waterbody within the *shoreline jurisdiction*.
- v. Where *development* proposals require a Species and Habitat Assessment Report under LCMC 18.300.090(B)(4), the review will be part of the approvals required under this *program*.

b. Regulated Activities

- i. All construction, *development*, earth movement, clearing, or other site disturbance proposals within a habitat area which require a *permit*, approval, or other authorization from the city shall be reviewed pursuant to LCMC 18.300.090(B) and shall comply with the requirements of this section.
- ii. Proposed new single-family *residential development* occurring immediately outside but within three hundred (300) feet of designated *priority species* habitat polygons or within one hundred (100) feet of designated non-riparian priority habitat polygons shall require consultation with WDFW prior to issuance of a *development permit*. In such cases, further review under this section is not required unless WDFW finds that there are potential adverse impacts.
- iii. *Agricultural activities* within designated riparian habitat areas are subject to the provisions of this section and LCMC 18.300.090(B).
- iv. Class IV G *forest practices* (conversions).

c. Standards

- i. Any alterations within designated habitat areas in the *shoreline jurisdiction* require a review and approval prior to clearing or *development* and prior to issuance of any city *permit* or statement of *exemption*.
- ii. Alterations within the designated habitat areas shall:
 - (a) Avoid impacts to the habitat conservation areas during project planning and *development* to the extent possible;
 - (b) Substantially maintain the level of habitat functions and values as characterized and documented using best available science;
 - (c) Minimize habitat disruption or alteration beyond the extent required to undertake the proposal; and
 - (d) Compensate for impacts to the habitat conservation areas to meet the standard of no net loss of *shoreline ecological functions*. *Mitigation* measures and proposals must demonstrate use of best available science.
- iii. In the event that impacts to habitat areas cannot be avoided, *development* and approval of a *mitigation* plan in accordance with the provisions of LCMC 18.300.090(B)(9) is required.

4. Frequently Flooded Areas

- a. General Provisions. The areas of special flood hazard identified by the Federal Emergency Management Agency in a scientific and engineering report entitled "The Flood Insurance Study for Clark County" (effective August 2, 1982, and revised July 19, 2000 and further revised September 5, 2012) and accompanying maps are hereby adopted by reference and declared to be a part of this *program*. The Flood Insurance Study is on file with the City Planner. In addition, Map 27 Potential *Channel Migration Zone* (CMZ) Areas (*Inventory and Characterization Report*, Vol. 1, Lewis and Salmon-Washougal Watersheds and Rural Areas) is hereby incorporated by reference.
 - i. This section shall apply to all frequently flooded areas within the *shoreline jurisdiction* as defined in LCMC 18.300.090(C), including *channel migration zones*. All applications for *development* on lands containing frequently flooded areas, including *conditional uses*, short plats, subdivisions, site plans, rezones, *grading*, and final construction shall be subject to these provisions.
 - ii. Where *development* proposals require a *Floodplain Permit* under LCMC 18.300.090(C), the review will be part of the approvals required under this *program*.
 - iii. The degree of flood protection required by this section is considered reasonable for regulatory purposes, and is based upon scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood *heights* may be increased by manmade or natural causes. This chapter does not imply that land outside flood hazard areas, or uses permitted within such areas, will be free from flooding or flood damages. This chapter shall not create liability on the part of the city, any officer or employee thereof, or the Federal Emergency Management Agency for any flood damages that result from reliance on this chapter or any administrative decision lawfully made thereunder.
- b. Regulated Activities
 - i. The following activities are allowed outright in the *floodway* in accordance with RCW 86.16:
 - (a) Park, recreational, agricultural and other similar open space uses allowed in the underlying zoning district, and not involving *structures*, *fill*, or storage of equipment;

- (b) Repairs, reconstruction, or improvements of residential *structures* which do not increase the ground floor area;
 - (c) Repairs, reconstruction, or improvements to a *structure*, the cost of which does not exceed sixty percent (60%) of the market value of the *structure*, either:
 - (i) Before the repair or reconstruction or improvement is started, or
 - (ii) If the *structure* has been damaged, and is being *restored*, before the damage occurred; provided, that any project for improvement of a *structure* to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by a code enforcement official or designee and are the minimum necessary to assure safe living conditions or to *structures* identified as historic places shall not be included in the sixty percent (60%) determination; and
 - ii. Construction or reconstruction of residential *structures* is prohibited in the *floodway*.
 - iii. Any use other than those permitted outright in a frequently flooded area require a *Floodplain Permit* as specified in LCMC 18.300.090(C) as part of the approvals required under this *program*. All other uses permitted in the zoning district and the *shoreline designation* are allowed in the *floodway* and *floodway* fringe.
- c. Standards
- i. Construction in frequently flooded areas is subject to the standards specified in LCMC 18.300.090(C).
 - ii. Structural flood hazard reduction measures are allowed only when necessary to protect existing *development*.
 - iii. When necessary, *in-stream structures* shall be located, designed, and maintained in such a manner that minimizes flood potential and the damage affected by flooding.
 - iv. *Fills* are prohibited in *floodplains* except where the applicant clearly demonstrates that the geohydraulic characteristics will not be altered in a way that increases flood velocity or risk of damage to life or property, and flood storage capacity will not be reduced (see also Sections V.G.2.i and VI.D.2).
 - v. *Fill* shall be avoided in critical areas or buffers where possible. Pile or *pier* supports or other support methods shall be utilized instead of *fills* whenever feasible, particularly for permitted *development* in *floodways* or *wetlands*.
 - vi. *Dikes* and levees shall not be placed in the *floodway* except for current deflectors necessary for protection of bridges and roads.
 - vii. Removal of beaver dams to control or limit flooding shall be avoided where feasible and allowed only in coordination with WDFW and receipt of all applicable state *permits*.

5. Geologically Hazardous Areas

a. General Provisions

- i. Geologically hazardous areas include: erosion hazard areas, landslide hazard areas, seismic hazard areas, and steep slope hazard areas as defined in LCMC 18.300.090(D) and (E).
- ii. Approximate locations of geologically hazardous areas are identified on adopted maps that are on file with the City Planner. Where the maps and definitions of geologic hazard areas conflict, the definitions shall prevail.
- iii. Where *development* proposals require a geologically hazardous area review under LCMC 18.300.090(D)(4), the review will be part of the approvals required under this *program*.

b. Regulated Activities

- i. All construction, *development*, earth movement, clearing, or other site disturbance which requires a *permit*, approval or other authorization from the County in or within one hundred (100) feet of a geologic hazard area that is not specifically identified as *exempt* in Section II.C shall comply with the requirements of this section.
- ii. Class IV G *forest practices* (conversions).

c. Standards

- i. Required buffers and setbacks for *development* activities in geologic hazard areas are specified in the *International Building Code* (2009).
- ii. The *Shoreline Administrator*, in consultation with the Building Official, may approve buffers and setbacks which differ from those required by the *International Building Code* (2009) if the applicant submits a geologic hazard area study described in LCMC 18.300.090(D)(4), which technically demonstrates and illustrates that the alternative buffer provides protection which is greater than or equal to that provided by the buffer required in the *International Building Code* (2009).
- iii. The *Shoreline Administrator*, in consultation with the Building Official, may increase buffers or setbacks where necessary to meet requirements of the *International Building Code* (2009).

6. Wetlands

a. General Provisions

- i. A wetland *permit* is required for any *development* activity that is within *wetlands* and wetland buffers subject to this *program*, unless specifically authorized by a statement of *exemption*. Requirements for wetland *permit* applications are provided in LCMC 18.300.090(F).
- ii. This section shall not apply to *wetlands* created from non-wetland sites including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, *stormwater* facilities, farm ponds, landscape amenities and unintentionally created *wetlands* created as a result of the construction of a public or private road, street, or highway after July 1, 1990; provided, that *wetlands* created as *mitigation* shall not be *exempt*.
- iii. A wetland determination is required in conjunction with the submittal of a *development permit* application. The *Shoreline Administrator* shall determine the probable existence of a wetland on the parcel involved in the *development permit* application. If *wetlands* or wetland buffers are found to exist on a parcel, wetland delineation is required.
- iv. The location of a wetland and its boundary shall be determined through the performance of a field investigation utilizing the methodology contained in the *Corps of Engineers Wetland Delineation Manual* (1987), applicable regional supplements and as specified in LCMC 18.300.090(F). If a wetland is located off-site and is inaccessible, the best available information shall be used to determine the wetland boundary and category. Methodology is specified in LCMC 18.300.090(F).
- v. All buffers shall be measured horizontally outward from the delineated wetland boundary.
- vi. Wetland buffer widths shall be determined by the *Shoreline Administrator* in accordance with the standards in LCMC 18.300.090(F). Administrative buffer reductions are only allowed to reduce the buffer to no less than 75% of the width of the standard buffer. Anything greater shall require a shoreline variance permit.
- vii. All wetland *permits* require approval of a preliminary and a final *enhancement/mitigation* plan in accordance with the provisions of LCMC 18.300.090(F)(12) and (13).

- viii. Wetland *permit* application, processing, preliminary approval, and final approval procedures are set out in LCMC 18.300.090(F)(14) and (15) and will be part of the approvals required under this *program*.
- ix. Section 18.300.090(F)(3) Exempted Wetlands is not applicable in shoreline jurisdiction.
- b. Regulated Activities. No *development* or activity in *wetlands* or wetland buffers subject to this *program* shall be allowed unless it is demonstrated that:
 - i. The proposed *development* or activity will not result in a net loss of wetland functions to the point of net loss of *ecological function*; and
 - ii. The proposed *development* or activity complies with all state, local and federal laws, including those related to sediment control, pollution control, *floodplain* restrictions, *stormwater* management, *wetlands* protection, and on-site wastewater disposal.
- c. Standards
 - i. *Stormwater* facilities are prohibited within *wetlands* and wetland buffers.
 - ii. Road and utility crossings into and through *wetlands* and wetland buffers are allowed provided all the following conditions are met:
 - (a) Buffer functions, as they pertain to protection of the adjacent wetland and its functions, are replaced;
 - (b) Impacts to the buffer and wetland are first avoided and minimized; and
 - (c) The activity does not result in a decrease in wetland acreage or classification.
 - iii. Regulated activities not involving *stormwater* management, road and utility crossings, or a buffer reduction via *enhancement* are allowed in the buffer if all the following conditions are met:
 - (a) The activity is temporary and will cease or be completed within three (3) months of the date the activity begins;
 - (b) The activity will not result in a permanent *structure* in the buffer;
 - (c) The activity will not result in a reduction of buffer acreage or *ecological function*; and
 - (d) The activity will not result in a reduction of wetland acreage or *ecological function*.
 - iv. Wetland *mitigation* for unavoidable impacts shall be required using the following prioritization:
 - (a) On-site. Locate *mitigation* according to the following priority:
 - (i) Within or adjacent to the same wetland as the impact;
 - (ii) Within or adjacent to a different wetland on the same site;
 - (b) Off-site. *Mitigation* shall be located within the same watershed, or use an established wetland *mitigation* bank; the service area determined by the *mitigation* bank review team and identified in the executed *mitigation* bank instrument;
 - (c) In-kind. Locate or create *wetlands* with similar landscape position and the same hydro-geomorphic (HGM) classification based on a reference to a naturally occurring wetland system; and
 - (d) Out-of-kind. *Mitigate* in a different landscape position and/or HGM classification based on a reference to a naturally occurring wetland system.
 - v. The various types of wetland *mitigation* allowed are listed below in the general order of preference.

- (a) Re-establishment, which is the manipulation of the physical, chemical or biological characteristics of a site with the goal of returning natural or historic functions to a former wetland. Re-establishment results in a gain in wetland acres (and functions). Activities could include removing *fill* material, plugging ditches, or breaking drain tiles.
 - (b) Rehabilitation, which is the manipulation of the physical, chemical or biological characteristics of a site with the goal of returning natural or historic functions to a degraded wetland. Re-establishment results in a gain in wetland function, but does not result in a gain in wetland acres. Activities could involve breaching a *dike* to reconnect *wetlands* to a *floodplain* or return tidal influence to a wetland.
 - (c) Creation (Establishment). The manipulation of the physical, chemical, or biological characteristics of a site with the goal of developing a wetland on an upland or deepwater site where a wetland did not previously exist. Establishment results in a gain in wetland acres. Activities typically involve excavation of upland soils to elevations that will produce a wetland hydro period, create hydric soils, and support the growth of hydrophytic plant species.
 - (d) *Enhancement*. The manipulation of the physical, chemical, or biological characteristics of a wetland site to heighten, intensify, or improve the specific functions(s) or to change the growth stage or composition of the vegetation present. *Enhancement* is undertaken for specified purposes such as *water quality* improvement, flood water retention, or wildlife habitat. *Enhancement* results in a change in some wetland functions and can lead to a decline in other wetland functions, but does not result in a gain in wetland acres. Activities typically consisting of planting vegetation, controlling non-native or *invasive* species, modifying site elevations or the proportion of open water to influence hydro-periods, or some combination of these activities.
- vi. The *mitigation* ratios for each of the *mitigation* types described in Section VI.C.6.c.v above are specified in Appendix 8-C of *Wetlands in Washington State Vol. 2: Guidance for Protecting and Managing Wetlands* (2005), as amended.
 - vii. The *Shoreline Administrator* has the authority to approve preservation of existing *wetlands* as wetland *mitigation* under the following conditions:
 - (a) The wetland area being preserved is a Category I or II wetland or is within a WDFW priority habitat or species area;
 - (b) The preservation area is at least one (1) acre in size;
 - (c) The preservation area is protected in perpetuity by a covenant or easement that gives the city clear regulatory and enforcement authority to protect existing wetland and wetland buffer functions with standards that exceed the protection standards of this chapter; and
 - (d) The preservation area is not an existing or proposed wetland *mitigation* site.
 - viii. Wetland *mitigation* shall be required in accordance with the wetland *mitigation* standards in this section for the following indirect wetland impacts:
 - (a) Buffer loss resulting from wetland *fills* permitted under this section;
 - (b) Reduction of wetland buffers beyond the maximum reduction allowed under Appendix C (LCMC 18.300.090(6)(i)); provided, that such reductions are limited as follows:
 - (i) Road and utility crossings in the wetland buffer approved in accordance with Appendix C (LCMC 18.300.090(F)(8)(c)); and
 - (ii) The total indirect wetland impact from buffer reductions is less than one-quarter (1/4) acre; and

- (c) Unavoidable loss of wetland function due to *stormwater* discharges that do not meet the wetland protections standards in Appendix C (LCMC 18.300.090(F)(10)).
- ix. Wetland *mitigation* shall be protected by the *water quality* function wetland buffers required in Appendix C (LCMC 18.300.090(F)(8)).
 - (a) Reductions to the required buffers may be applied in accordance with Appendix C (LCMC 18.300.090(F)(9)).
 - (b) All wetland buffers shall be included within the *mitigation* site and subject to the conservation covenant required under Appendix C (LCMC 18.300.090(F)(6)).
- x. Alternate wetland *mitigation* is provided in Appendix C (LCMC 18.300.120) and includes wetland *mitigation* banking.
- xi. Applicants may seek buffer reductions, or buffer averaging, but not both.
- xii. Monitoring of wetland *mitigation* is required for a minimum of ten years. Additional monitoring may be required for projects which propose a forested component.

D. Flood Prevention and Flood Damage Minimization

1. *Development* in *floodplains* shall not significantly or cumulatively increase flood hazard or be inconsistent with an adopted comprehensive flood hazard management plan.
2. New *development* or new uses in the *shoreline jurisdiction*, including subdivision of land, should not be established when it would be reasonably foreseeable that the *development* or use would require structural flood hazard reduction measures within the *channel migration zone* or *floodway*. The actual location of the *channel migration zone* on site must be delineated by a *qualified professional*.
3. New structural flood hazard reduction measures in the *shoreline jurisdiction* will be allowed only when it can be demonstrated by scientific and engineering analysis that they are necessary to protect existing *development*, that non-structural measures are not feasible, and that impacts to *ecological function* and *priority species* and habitats can be successfully *mitigated* so as to assure no net loss of *shoreline ecological function*.
4. *In-stream structures* shall be located, designed, and maintained in such a manner that minimizes flood potential and the damage affected by flooding.
5. *Fills* are prohibited in *floodplains* unless the applicant clearly demonstrates that the geohydraulic characteristics will not be altered in a way that increases flood velocity or risk of damage to life or property; and flood storage capacity will not be reduced. See also Section V.G.2.
6. *Fill* shall be avoided in critical areas or buffers where possible. Pile or *pier* supports or other support methods shall be utilized instead of *fills* whenever feasible, particularly for permitted *development* in *floodways* or *wetlands*. See also Section V.G.2.
7. *Dikes* and levees shall not be placed in the *floodway* except for current deflectors necessary for protection of bridges and roads.
8. Removal of gravel for flood management purposes shall be consistent with the adopted flood hazard reduction plan, and the provisions of this *program*. This removal will only be allowed after a biological and geomorphological study determines that extraction has a long-term flood hazard reduction benefit and does not result in net loss of *ecological functions*.
9. Removal of beaver dams to control or limit flooding shall be avoided where feasible, and allowed only in coordination with WDFW and receipt of all applicable state *permits*.
10. Non-structural flood hazard reduction measures are preferred to structural measures. Flood hazard reduction measures *should* be accomplished in a manner that ensures no net loss of *ecological functions* and ecosystem-wide processes.

11. Flood protection measures that result in channelization and/or reduction in *shoreline function* should be avoided.

E. Public Access

1. Provisions for adequate *public access* shall be incorporated into all *shoreline development* proposals that involve public funding unless the proponent demonstrates *public access* is not feasible due to one or more of the reasons stated in Section V.E.3 below.
2. Provisions for adequate *public access* shall be incorporated into all land divisions and other *shoreline development* proposals (except *residential development* of less than four (4) parcels).
3. *Public access* will not be required where the proponent demonstrates one or more of the following:
 - a. Unavoidable health or safety hazards to the public exist that cannot be practically prevented;
 - b. Necessary security requirements of the use cannot be satisfied through the application of alternative design features or other solutions;
 - c. There must be a logical nexus between the negative impact of the *development* and the need for dedication of property. Dedication of property as a condition of approval must also be roughly proportional to the impact of a proposed *development*. See also *Nollan v. California Coastal Commission*, 483 US 825 (1987) and *Dolan v. City of Tigard*, 512 US 374 (1994);
 - d. If, as a pre-condition of approval, a dedication of property is required to enhance *public access* steps must be taken in the approval process to make certain that the requirements have a logical connection with negative aspects of the *development*, and that the requirement is roughly proportional to the negative aspects being addressed or offset.
 - e. Significant environmental impacts that cannot be *mitigated* will result from the *public access*; or
 - f. Significant undue and unavoidable conflict between *public access* requirements for the proposed use and adjacent uses would occur. The applicant must first demonstrate to the City's satisfaction that all reasonable alternatives have been evaluated and found infeasible, including but not limited to:
 - i. Regulating access by such means as maintaining a gate and/or limiting hours of use;
 - ii. Designing separation of uses and activities using fences, terracing, use of one-way glazing, hedges, landscaping or other suitable means; and
 - iii. Provisions for access at a site geographically separated from the proposal such as a street end, vista or trail system.
 - g. *Public access* shall include the use of barrier free routes of travel and shall include facilities based on criteria within the Americans with Disabilities Act Accessibility Guidelines.
 - h. *Public access* strategies shall include provisions for protecting adjacent properties from trespass and other possible adverse impacts to neighboring properties.
 - i. Signs indicating the public's right of access to *shoreline* areas shall be installed and maintained in conspicuous locations.
 - j. When required, *public access* shall be fully developed and available for public use at the time of occupancy of the use or activity.
 - k. *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, *pier*, *boat* launching ramp, dock or *pier* area, or other area serving as a means of view and/or physical approach to public waters and may include interpretive centers and displays.
 - l. *Public access* easements and *permit* conditions shall be recorded on the deed of title and/or on the face of a plat or short plat as a condition running contemporaneous with the authorized

land use, as a minimum. Said recording with the County Auditor's Office shall occur at the time of *permit* approval.

- m. Future actions by the applicant, successors in interest, or other parties shall not diminish the usefulness or value of the *public access* provided.
- n. Maintenance of the *public access* facility is the responsibility of the owner unless otherwise accepted by a public or non-profit agency through a formal agreement approved by the *Shoreline Administrator* and recorded with the County Auditor's Office.

F. Restoration

- 1. *Restoration of ecological functions* and processes shall be encouraged and allowed on all *shorelines* and shall be located, designed and implemented in accordance with applicable policies and regulations of this *program* and consistent with other City programs. See also Section VI.D.5.
- 2. Impacts to *shoreline functions* shall be fully *mitigated*. Such *mitigation* may include elements from the *Restoration Plan*.
- 3. Elements of the Clark Coalition Shoreline *Restoration Plan* may also be implemented in any *shoreline designation* to improve *shoreline function*.
- 4. *Restoration* efforts shall be developed by a *qualified professional*, shall be based on federal, state, and local guidance and shall consider the following:
 - a. Riparian soil conditions;
 - b. In-stream fish habitats; and
 - c. Healthy aquatic and terrestrial food webs.

G. Site Planning and Development

- 1. General
 - a. Vehicle and pedestrian circulation systems shall be designed to minimize clearing, *grading*, alteration of topography and natural features, and designed to accommodate wildlife movement.
 - b. Parking, storage, and non-water dependent *accessory structures* and areas shall be located landward from the OHWM and landward of the water-oriented portions of the principle use.
 - c. Trails and uses near the *shoreline* shall be landscaped or screened to provide visual and noise buffering between adjacent dissimilar uses or scenic areas, without blocking visual access to the water.
 - d. Elevated walkways shall be utilized, as appropriate, to cross sensitive areas such as *wetlands*.
 - e. Fencing, walls, hedges, and similar features shall be designed in a manner that does not significantly interfere with wildlife movement.
 - f. Exterior lighting shall be designed, shielded and operated to avoid illuminating nearby properties or public areas, prevent glare on adjacent properties, public areas or roadways, prevent land and water traffic hazards and to reduce night sky effects to avoid impacts to fish and wildlife.
- 2. Clearing, Grading, *Fill* and Excavation
 - a. Land disturbing activities such as clearing, *grading*, *fill* and excavation shall be conducted in such a way as to minimize impacts to soils and native vegetation, and shall at a minimum meet the requirements of the *International Building Code (IBC)* as adopted under LCMC 15.05.030.

- b. Clearing, *grading*, *fill* and excavation shall be scheduled to minimize adverse impacts, including but not limited to, damage to *water quality* and aquatic life.
 - c. Clearing, *grading fill* and excavation shall not result in substantial changes to *surface water* drainage patterns off the project site and onto adjacent properties.
 - d. *Developments* shall include provisions to control erosion during construction and to ensure preservation of native vegetation for bank stability.
 - e. Clearing, *filling*, or excavation shall not be conducted where *shoreline stabilization* will be necessary to protect materials placed or removed. Disturbed areas shall be stabilized immediately and revegetated with native vegetation.
 - f. *Fills* shall be permitted only in conjunction with a permitted use, and shall be of the minimum size necessary to support that use. Speculative *fills* are prohibited.
 - g. Any placement of materials from off-site (other than permitted deposition of clean *dredge spoils*) shall be considered *fill* and shall comply with the *fill* provisions in the *International Building Code* (IBC) as adopted under LCMC 15.05.030. *Fill* shall consist of only clean materials.
 - h. Soil, gravel or other substrate transported to the site for *fill* shall be screened and documented that it is uncontaminated. Use of any contaminated materials as *fill* is prohibited.
 - i. *Fills* shall be located, designed, and constructed to protect *shoreline ecological functions* and ecosystem-wide processes, including channel migration.
 - j. *Fills* waterward of the *ordinary high-water mark* shall be allowed only when necessary to support:
 - i. *water-dependent use*, "or *public access*,
 - ii. cleanup and disposal of contaminated sediments as part of an interagency environmental clean-up plan,
 - iii. disposal of dredged material considered suitable under, and conducted in accordance with the dredged material management program of WDNR,
 - iv. 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,
 - v. *mitigation*, environmental *restoration*, beach nourishment or *enhancement* projects.
 - k. *Fills* waterward of the ordinary high-water mark for any use except ecological *restoration* should require a *conditional use permit*.
 - l. Excavation below the OHWM is considered *dredging* and subject to provisions under that section in Section VI.D.
 - m. For the purposes of this *program*, preparatory work associated with the conversion of land to non-forestry uses and/or *developments* shall not be considered a *forest practice* and shall be reviewed in accordance with the provisions for the proposed non-forestry use, the general provisions of this *program*, and shall be limited to the minimum necessary to accommodate an approved use.
3. Building Design
- a. *Structures* shall be designed to conform to natural contours.
 - b. Non-single family *structures* shall incorporate architectural features that provide compatibility with adjacent properties, enhance views of the landscape from the water, and reduce scale to the extent possible.

- c. Building surfaces on or adjacent to the water shall employ materials that minimize reflected light.
- d. Interior and exterior *structure* lighting shall be designed, shielded and operated to avoid illuminating nearby properties or public areas, prevent glare on adjacent properties, public areas or roadways, prevent land and water traffic hazards, and reduce night sky effects to avoid impacts to fish and wildlife.

H. Vegetation Conservation

1. Existing native vegetation within the *shoreline jurisdiction* shall be retained, and removal of such vegetation avoided. Where removal of native vegetation cannot be avoided, it shall be minimized to protect *ecological functions*.
2. Lost functions may be replaced by enhancing other functions if no net loss in overall functions is demonstrated and habitat connectivity is maintained. *Mitigation* shall be provided consistent with an approved *mitigation* plan.
3. Clearing of *invasive* or non-native *shoreline* vegetation or plants listed on the State Noxious Weed List using hand-held equipment is permitted in *shoreline* locations if native vegetation is promptly re-established in the disturbed area. In circumstances where the use of hand-held equipment is impractical or unreliable, the *Shoreline Administrator* may approve other methods of removal, such as the use of certain herbicides, providing such approval is obtained prior to the commencement of removal.
4. If non-native vegetation is to be removed, then it shall be replaced with native vegetation within the *shoreline jurisdiction*.
5. Thinning of trees is limited as follows:
 - a. Removal of no more than twenty-five percent (25%) of the canopy of any tree or group of trees (calculated based on the area of the crown, or upper portion(s) comprised of branches and leaves or as determined by a certified arborist) in any given five-year period;
 - b. Pruning of trees that does not affect *shoreline ecological functions*. No more than twenty percent (20%) of the limbs on any single tree may be removed and no more than twenty percent (20%) of the canopy cover in any single stand of trees may be removed in a given five- (5-) year period. Pruning shall comply with the National Arborist Association pruning standards, unless the tree is a hazard tree as defined in LCMC 18.350.070. New *structures* or *development* within a *shoreline* area *should* be sited to avoid the creation of future hazard trees.
6. *Mitigation* requirements for removal of vegetation shall be determined after review of a habitat management plan prepared by a *qualified professional* that assesses the cumulative impacts associated with removing riparian vegetation.
7. Topping trees is prohibited.
8. Natural features such as snags, stumps, logs or uprooted trees, which do not intrude on the *navigational channel* or threaten public safety, and existing *structures* and facilities, shall be left undisturbed.
9. Natural in-stream features such as snags, uprooted trees, or stumps should be left in place unless it can be demonstrated that they are not enhancing *shoreline function* or are a threat to public safety.
10. Aquatic weed control shall only occur to protect native plant communities and associated habitats or where an existing *water-dependent use* is restricted by the presence of weeds. Aquatic weed control shall occur in compliance with all other applicable laws and standards and shall be done by a *qualified professional*.

11. Unless otherwise stated, the *vegetation conservation* regulations of this *program* do not apply to commercial *forest practices* as defined by this *program* when such activities are covered under the Washington State *Forest Practices Act* (RCW 76.09), except where:
 - a. such activities are associated with a conversion to other uses or other *forest practice* activities over which local governments have authority; or to
 - b. flood control levees required to be kept free of vegetation that damages their structural integrity.
12. The conversion of forest lands to non-forestry uses shall not be considered a *forest practice*. Such conversions will be reviewed under the regulations for the new use, this *program*, and shall be limited to the minimum necessary to accommodate an approved use. For the purposes of the *program*, preparatory work associated with the conversion of land to non-forestry uses and/or *developments* shall not be considered a *forest practice* and shall be reviewed in accordance with the provisions for the proposed non-forestry use, the general provisions of this *program*, and shall be limited to the minimum necessary to accommodate an approved use.

I. Views and Aesthetics

1. Visual access shall be maintained, enhanced, and preserved on *shoreline* street-ends, public utility rights-of-way above and below the *ordinary high water mark* and *view corridors* whenever appropriate.
2. *Development* on or over the water shall be constructed to avoid interference with views from surrounding properties to the adjoining *shoreline* and adjoining waters to the extent practical.
3. Any new or expanded building or *structure* over thirty-five (35) feet in *height* above *average grade level* that obstructs the *shoreline* view of a substantial number of residents shall not be allowed. The *Shoreline Administrator* may require a view analysis including *view corridor* view profiles, and vertical profiles from various locations to determine if *shoreline* views will be obstructed.

J. Water Quality and Quantity

1. The location, design, construction, and management of all *shoreline* uses and activities shall protect the quality and quantity of surface and ground water adjacent to the site.
2. All *shoreline development* shall comply with the applicable requirements of LCMC 18.320 (*Stormwater* and *Erosion Control*).
3. Best management practices (BMPs) for control of erosion and sedimentation shall be implemented for all *shoreline development*.
4. *Potentially harmful materials*, including but not limited to oil, chemicals, tires, or hazardous materials, shall not be allowed to enter any body of water or wetland, or to be discharged onto the land except in accordance with LCMC 18.320. *Potentially harmful materials* shall be maintained in a safe and leak-proof condition.
5. Herbicides, fungicides, fertilizers, and pesticides shall not be applied within twenty-five (25) feet of a waterbody, except by a *qualified professional* in accordance with state and federal laws. Further, pesticides subject to the final ruling in *Washington Toxics Coalition, et al., v. EPA* shall not be applied within sixty (60) feet for ground applications or within three hundred (300) feet for aerial applications of the subject water bodies and shall be applied by a *qualified professional* in accordance with state and federal law.
6. Any *structure* or feature in the *Aquatic shoreline designation* shall be constructed and/or maintained with materials that will not adversely affect *water quality* or aquatic plants or animals. Materials used for decking or other structural components shall be approved by applicable state agencies for contact with water to avoid discharge of pollutants.

7. Conveyance of any substance not composed entirely of surface and *stormwater* directly to water resources shall be in accordance with LCMC 18.320.
8. Septic systems should be located as far landward of the *shoreline* and *floodway* as possible. Where permitted, new on-site septic systems shall be located, designed, operated, and maintained to meet all applicable *water quality*, utility, and health standards.

VI. SPECIFIC SHORELINE USE REGULATIONS

A. General Provisions

1. This chapter contains the regulations that apply to specific uses, *developments*, and activities in the *shoreline jurisdiction*.
2. These regulations are intended to work in concert with all sections of this *program* and in particular the Goals and Policies (Chapter III) and General Use and *Development* Regulations (Chapter V).

B. Shoreline Use, Modification, and Standards Table

1. Each *shoreline designation* shall be managed in accordance with its designated purpose as described in this *program*. Table 6-1 identifies those uses that are prohibited, may be permitted or permitted with a *conditional use* approval in each *shoreline designation*. In the event conflicts exist between the Table 6-1 and the text in this chapter, the text shall apply.
2. Table 6-1 also summarizes general setbacks and building *heights* for uses within each *shoreline designation*. No *permit* for any new or expanded building or *structure* of more than thirty-five feet above *average grade level* on shorelines of the state that will obstruct the view of a substantial number of residences on areas adjoining such shorelines except where a master *program* does not prohibit the same and then only when overriding considerations of the *public interest* will be served. These setbacks apply in conjunction with the requirements of the critical areas requirements established in Chapter V. In the event a conflict exists between Table 6-1 and the requirements of Chapter V, the most protective of *shoreline functions* shall apply.
3. In Table 6-1, setbacks are measured landward from the *ordinary high water mark* (OHWM). For transportation facilities and utilities, the setback from OHWM pertains to the right of way and not the *structure* or pipeline. In the *Aquatic shoreline designation*, the setback is waterward of the OHWM. Building *heights* are calculated according to LCMC 18.40.010, and WAC 173-27-030(9) as applicable.

C. Use Specific *Development* Regulations

1. Agriculture
 - a. Agricultural practices shall prevent erosion of soils and bank materials within *shoreline* areas and minimize siltation, turbidity, pollution, and other environmental degradation of watercourses and *wetlands*.

- b. Stream banks and water bodies shall be protected from damage due to concentration and overgrazing of livestock by providing the following:
 - i. Suitable bridges, culverts or ramps for stock crossing;
 - ii. Ample supplies of clean water in tanks on dry land for stock watering; and
 - iii. Fencing or other grazing controls to prevent damage to riparian vegetation, bank compaction or bank erosion.
- c. New confinement lots, feeding *operations*, lot wastes, stockpiles of manure solids, manure lagoons, and storage of noxious chemicals are prohibited.
- d. The disposal of farm wastes, chemicals, fertilizers and associated containers and equipment within *shoreline jurisdiction* is prohibited. However, composted organic wastes may be used for fertilization or soil improvement.
- e. New uses proposed as part of a conversion of *agricultural lands* shall comply with the provisions of LCMC Title 18 and this *program*.
- f. *Development* on *agricultural land* that does not meet the definition of *agricultural activities* and the conversion of *agricultural land* to nonagricultural uses, shall be consistent with the environmental designation.

2. Boating Uses

- a. All boating uses, *development* and facilities shall protect the rights of navigation.
- b. Boating facilities shall be sited and designed to ensure no net loss of *shoreline ecological functions*, and shall meet WDNR requirements and other state guidance if located in or over state-owned aquatic lands.
- c. Boating facilities shall locate on stable *shorelines* in areas where:
 - i. There is adequate water mixing and flushing;
 - ii. Such facilities will not adversely affect flood channel capacity or otherwise create a flood hazard;
 - iii. Water depths are adequate to minimize spoil disposal, *filling*, beach degradation and other channel maintenance activities; and
 - iv. Water depths are adequate to prevent the *structure* from grounding out at the lowest low water.
- d. Boating facilities shall not be located:
 - i. Along braided or meandering river channels where the channel is subject to change in alignment;
 - ii. On *point* bars or other accretion beaches; or
 - iii. Where new or *maintenance dredging* will be required;
 - iv. In areas with important bank margin habitat for all life stages of aquatic species; or
 - v. Where wave action caused by boating use would increase bank erosion rates.
- e. Boating facilities shall locate where access roads are adequate to handle the traffic generated by the facility and shall be designed so that lawfully existing or planned public *shoreline* access is not unnecessarily blocked, obstructed nor made dangerous.
- f. Boating uses and facilities shall be located far enough from public swimming beaches, fishing, and *aquaculture* harvest areas, and waterways used for commercial navigation to alleviate any adverse impacts, safety concerns and potential use conflicts.

- g. In-water work shall be scheduled to protect biological productivity (including but not limited to fish runs, spawning, and bottom productivity). In-water work shall not occur in areas used for *commercial fishing* during a fishing season unless specifically addressed and *mitigated* for in the *permit*.
- h. *Accessory uses* at boating facilities shall be:
 - i. Limited to *water-oriented uses*, including uses that provide physical or visual *shoreline* access for substantial numbers of the general public; and
 - ii. Located as far landward as possible while still serving their intended purposes.
 - iii. Parking and storage areas shall be landscaped or screened to provide visual and noise buffering between adjacent dissimilar uses or scenic areas.
- i. All utilities shall be placed at or below the dock surface, or below ground, as appropriate.
- j. All signage shall adhere to the standards for signs in this chapter and the City sign code,
- k. Where appropriate, docks shall install public safety signs, to include the locations of fueling facilities, pump-out facilities, and locations for proper waste disposal.
- l. Boating facilities shall be constructed as follows:
 - i. They will be built using materials that will not adversely affect water quality or aquatic plants and animals.
 - ii. Materials used for submerged portions, decking and other components that may come in contact with water shall be approved by applicable state agencies for use in water to avoid discharge of pollutants from wave splash, rain or runoff.
 - iii. Wood treated with creosote, copper chromium, arsenic, pentachlorophenol or other similarly toxic materials is prohibited.
 - iv. Where in waters providing a public drinking water supply the facilities shall be constructed of untreated materials, such as untreated wood, approved plastic composites, concrete, or steel.
- m. Vessels shall be restricted from extended *mooring* on waters of the state except as allowed by state regulations and provided that lease or permission is obtained from the state and impacts to navigation and *public access* are *mitigated*.

3. Boat Launch Facilities

- a. Launch facilities, haul-out facilities and minor accessory buildings, shall be designed and constructed in a manner that minimizes adverse impacts on fluvial processes, biological functions, aquatic and riparian habitats, *water quality*, navigation and neighboring uses.
- b. *Boat* launch facilities shall be designed and constructed using methods/technology that have been recognized and approved by state and federal resource agencies as the best currently available.
- c. A private *boat* launch shall be allowed on a parcel or lot only when public *boat* launches are unavailable within ½-mile upstream or downstream of any property line.
- d. No more than one (1) private *boat* launch facility or *structure* shall be permitted on a single residential parcel or lot.
- e. *Boat* launch and haul-out facilities, such as ramps, marine travel lifts and marine railways, and minor accessory buildings shall be designed and constructed in a manner that minimizes adverse impacts on fluvial processes, biological functions, aquatic and riparian habitats, *water quality*, navigation and neighboring uses.

- f. *Boat* launch facilities shall be designed and constructed using methods/technology that have been recognized and approved by state and federal resource agencies as the best currently available.
 - g. All *boat* launch facilities not associated with a single-family residential parcel or lot shall provide restrooms/hand-sanitizing facilities for boaters' use that are designed, constructed and maintained to be clean, well-lighted, safe and convenient for public use.
 - h. Installation of *boat* waste disposal facilities such as pump-outs and portable dump stations shall be provided at public *boat* launches when feasible. The locations of such facilities shall be considered on an individual basis in consultation with WDOE, WDNR, WDFW as well as the Washington Departments of Health, and Parks, as necessary.
4. *Moorage & Recreational Floats*
- a. *Mooring Buoys*
 - i. *Mooring buoys* for residential use on a river shall be securely anchored to allow for changes in river level, and shall be designed to withstand the one hundred- (100-) year flood or be seasonally removable.
 - ii. *Mooring buoys* shall be placed as specified by WDFW, WDNR, and the U.S. Coast Guard to balance the goals of protecting nearshore habitat and minimizing obstruction to navigation. Anchors and other design features shall meet WDFW standards.
 - iii. *Mooring buoys* shall be discernible from a distance of at least one hundred (100) yards. One (1) *mooring buoy* for each waterfront lot shall be permitted unless greater need is demonstrated by the applicant and documented by the City. In cases such as those of a community park with recreational users or a *residential development* with lot owners both on and away from the *shoreline* needing *moorage*, community *moorage* facilities shall be used instead of *mooring buoys*.
 - b. *Docks & Piers*
 - i. Existing, legally-established, private recreational docks, *piers*, and *floats* for individual lots are considered conforming uses and *structures*. If any such *float*, *dock* or *pier* is abandoned, becomes hazardous, or is removed for any reason, it may be replaced by a new *float*, *dock* or *pier* built to current standards. These standards may, among other things, require that new *docks* or *piers* be floating rather than fixed. All required *permits* and approvals shall be obtained prior to commencing construction.
 - ii. All *moorage* facilities shall be constructed and maintained in a safe and sound condition. Those that are abandoned or unsafe shall be removed or repaired promptly by the owner or lessee.
 - iii. Fixed *moorage* facilities shall not be permitted for residential use on rivers. Floating docks shall be required in rivers and streams unless it can be demonstrated that fixed docks will result in substantially less impact on geo-hydraulic processes and flood hazards can be minimized or *mitigated*. A *pier*, landward of a floating dock, which connects to the shore at one end and to the floating dock by a gangway at the other is allowed. Docks for residential use on a river shall be securely anchored to pilings to allow for changes in river level, and shall be designed to withstand the one-hundred year (100-year) flood or be seasonally removable.
 - iv. Hotels, motels and new residential land divisions having *shoreline* frontage and involving more than four (4) residential dwellings that desire to have docks shall provide for a community dock if feasible. Proposed docks and *piers* shall include no more than one (1) *mooring* space per dwelling unit up to a maximum of nine (9), and there can be only one such *moorage* facility. All conditions of approval related to required access easements and dedications shall be identified on the face of the plat. In addition, the community dock easement shall be recorded with the County Auditor.

- v. Applicants for community or *joint-use* residential docks and *piers* shall demonstrate and document that adequate maintenance of the structure, activities, and associated landward area will be provided by identified responsible parties. The applicant shall file a legally enforceable joint use agreement or other legal instrument prior to the issuance of any building *permits*. The documents shall at minimum address the following:
 - (a) Apportionment of construction and maintenance expenses;
 - (b) Easements and liability agreements; and
 - (c) Use restrictions.
- vi. *Joint-Use Mooring Facilities*
 - (a) Joint use moorage facilities shall be limited to no more than nine (9) berths. *Moorage* facilities of more than nine (9) berths are prohibited.
 - (b) Only one joint use mooring facility (*boat* launch, *float*, dock, *pier*, *dock/pier* combination, or *mooring buoy*) is allowed on a parcel or lot when a public facility is unavailable within ½-mile upstream or downstream of any property line and all applicable requirements are met.
 - (c) Joint use boating facilities may be permitted if the applicant demonstrates the need to support the intended water-dependent use and no marina or public boat launch is located within ½ mile upstream or downstream of any property line and all applicable requirements of this program are met. WAC 173-26-231(3)(b) and (c).
- vii. Provisions for waste discharge shall be made in all proposals for public *moorage* facilities, and shall include oil containment barriers when required by the U.S. Coast Guard under provisions of the Clean Water Act.
- viii. Bulk storage (non-portable storage in fixed tanks) for gasoline, oil and other petroleum products for any use or purpose is prohibited on docks and *piers*
- ix. If a *bulkhead-like* base is proposed for a *pier* or dock where there is net positive *littoral drift*, the base shall be built landward of the OHWM or protective *berms*. When plastics or other non-biodegradable materials are used in *float*, *pier*, or dock construction, precautions shall be taken to ensure their containment.
- x. The maximum dimensions of a residential dock or *pier*, shall be no greater than necessary, and shall meet the *development* standards listed below. These dimensions may be adjusted by the *Shoreline Administrator* on a case by-case basis to protect sensitive *shoreline* resources:
 - (a) *Piers*/anchors and/or ramps shall extend waterward, perpendicular from the *ordinary high water mark* (OHWM), to a point where the water depth is sufficient to prevent damage to shallow-water habitat.
 - (b) The *moorage* facility may extend into the waterbody the minimum distance necessary to allow for *moorage* of the *boats* anticipated but in no instance more than 30' waterward of the OHWM.
 - (c) The bottom of either the *pier* or landward edge of the ramp shall be elevated at least 2 feet above the plane of OHWM.
 - (d) *Piers* and ramps shall be no more than eight (8) feet in width. Floating docks and associated finger *piers* shall be no more than eight (8) feet wide and twenty (20) feet long. *Piers*, ramps and docks shall be constructed to allow a minimum of 60% light penetration over 60% of each *structure*.
 - (e) Skirting shall not be placed on *piers*, ramps, floating docks, or *floats*. Protective bumper material will be allowed along the outside edge of the *float* or floating dock as long as the material does not extend below the bottom edge of the *float* frame or impede light penetration.

- (f) *Shoreline* concrete anchors must be placed at least ten (10) feet landward from the OHWM, and shall be sized no larger than four (4-) feet wide by four- (4-) feet long, unless otherwise approved by National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NOAA Fisheries), the US Army Corps of Engineers (Corps), and Washington Department of Fish and Wildlife (WDFW).
- (g) *Overwater structures* shall be located in water sufficiently deep to prevent the *structure* from grounding out at the lowest low water.
- (h) All docks and *floats* shall include stops that serve to keep the *floats* off the *lake* bottom or river bed at low water levels. If a *bulkhead-like* base is proposed for a *pier* or dock where there is net positive *littoral drift*, the base shall be built landward of the OHWM or protective *berms*. When plastics or other non-biodegradable materials are used in *float*, *pier*, or dock construction, precautions shall be taken to ensure their containment.
- (i) Pilings must be structurally sound and cured prior to placement in the water. Pilings employed for docks, *piers*, or any other *structure* shall have a minimum vertical clearance of one foot above extreme high water. Pile spacing shall be the maximum feasible to minimize shading and avoid a "wall" effect that would block or baffle wave patterns, currents, *littoral drift*, or movement of aquatic life forms, or result in *structure* damage from driftwood impact or entrapment.
- (j) Docks used for motor *boats* should be located where the water will be deeper than seven (7) feet at the lowest low water to avoid prop scour.
- (k) The portions of *piers*, elevated docks, and gangways that are over the nearshore/littoral area shall have unobstructed grating over the entire surface area. Floating docks and *piers* shall have unobstructed grating over at least sixty percent (60%) of the surface area.
- xi. Commercial *covered moorage* facilities may be permitted only where *boat* construction or repair work is to be the primary activity and covered work areas are demonstrated to be the minimum necessary over water, including a demonstration that adequate landside sites are not feasible. When permitted, commercial *covered moorage* facilities must be constructed to allow 60% light penetration over 60% of the *structure*, whether enclosed or not.
- xii. *Covered moorage* facilities associated with any *residential development* shall be prohibited.
- xiii. Docks and *piers* shall be set back a minimum of ten (10) feet from side property lines, except that *joint-use* facilities may be located closer to or upon a side property line when agreed to by contract or covenant with the owners of the affected properties. A copy of such agreement shall be recorded with the County Auditor and filed with the *shoreline permit* application.
- xiv. Recreational *floats* are subject to the following standards:
 - (a) They shall be located as close to the shore as possible, and no farther waterward than any existing *floats* and established swimming areas.
 - (b) They shall be constructed so that the deck surface is a minimum of one (1) foot above the water surface and with reflectors for night-time visibility incorporated into their design.
 - (c) *Floats* serving the public, a subdivision, a multi-family *development*, a hotel, motel, or multiple property owners shall not exceed one hundred sixty (160) square feet and shall be constructed to allow a minimum of 60% light penetration over 60% of the *structure*.

5. Commercial Uses

- a. Water-oriented commercial uses are preferred over *non-water-oriented* commercial uses.
- b. New commercial uses and *development* shall demonstrate that there will not be a net loss of *ecological function* or significant adverse impacts to other *shoreline* resources or other *shoreline* uses.
- c. *Non-water-oriented commercial uses* are allowed as a *conditional use* only as part of a mixed-use *development* that includes *water-related* and *water-enjoyment uses* and provides a significant public benefit such as *public access* and/or *ecological restoration*.
- d. Loading, service areas, and other *accessory uses* shall be located landward of a commercial *structure* or underground whenever possible, but shall in no case be waterward of the *structure*.
- e. Where commercial uses are allowed as a *conditional use*, the following must be demonstrated:
 - i. A *water dependent use* is not reasonably expected to locate on the proposed site due to topography, surrounding land uses, or physical features due to the site's separation from the water;
 - ii. The proposed use does not displace a current *water-oriented use* and will not interfere with adjacent *water-oriented uses*; and
 - iii. The proposed use will be of substantial public benefit such as by increasing the public use, enjoyment, *ecological function*, and/or access to the *shoreline*.

6. Institutional Uses

- a. Water-oriented *institutional uses* and developments are preferred.
- b. Non-water-oriented *institutional uses* may be permitted provided that a significant public benefit such as public access and/or ecological restoration are provided.
- c. Loading, service areas, and other accessory uses shall be located landward of a primary structure or underground whenever possible, but shall in no case be waterward of the structure. Loading and service areas shall be screened from view with native plants.
- d. Where *institutional uses* are allowed as a *conditional use*, the following must be demonstrated:
 - i. A *water dependent use* is not reasonably expected to locate on the proposed site due to topography, surrounding land uses, physical features, or due to the site's separation from the water;
 - ii. The proposed use does not displace a current *water-oriented use* and will not interfere with adjacent *water-oriented uses*; and
 - iii. The proposed use will be of substantial public benefit by increasing the public use, enjoyment, or access to the *shoreline*.

7. Parking as a Primary Use

- a. Parking as a primary use is prohibited in all *shoreline* areas.

8. Recreational Development

- a. *Recreational developments* should not result in net loss of environmental functions.
- b. *Recreational developments* shall provide facilities for non-motorized access to the *shoreline* such as pedestrian and bicycle paths.
- c. Trails within the shoreline *jurisdiction* shall comply with the dimensional standards for a Type 6 Water Trail found in the *La Center Urban Area Capital Facilities Plan* (2008), Appendix C,

Figure 14. If the *Shoreline Administrator* determines this would cause undue hardship, or it is impractical or environmentally unsound, the easement width may be reduced by the minimum extent necessary to meet *public access* standards.

- d. Recreation areas or facilities on the *shoreline* shall provide physical or visual *public access*.
- e. All permanent, substantial recreational *structures* and facilities shall be located outside officially mapped *floodways*. The *Shoreline Administrator* may grant administrative exceptions for non-intensive minor *accessory uses* such as picnic tables, playground equipment and similar items.
- f. Recreational sites with active uses shall be provided with restrooms and hand washing facilities in accordance with public health standards and without adversely altering the natural features attractive for recreational uses.
- g. Recreational facilities shall protect the value and enjoyment of adjacent or nearby private properties and natural areas from trespass, overflow and other possible adverse impacts using buffer strips, screening, fences, signs and similar methods.
- h. Golf course *structures* (clubhouses and maintenance buildings) shall be located no closer than one hundred (100) feet from the OHWM of any *shorelines of the state*.
- i. Tees, greens, fairways, golf cart routes, and other site *development* features shall be located no closer than one hundred (100) feet from the OHWM of any *shorelines of the state*. If the *Shoreline Administrator* determines this would cause undue hardship, is impractical or environmentally unsound, the distance may be reduced by the minimum extent necessary to meet *public access* standards.
- j. The setback for *water-related* and *water-enjoyment recreational development* in the Urban Conservancy, and Medium Intensity *shoreline designations* is fifty (50) feet, with the exception that trails shall be subject to Section VI.C.8.c above. The intention of this is to respond to natural topographical features, provide for visual and physical *public access*, and to create interesting experiences for trail users.

9. *Residential Development*

- a. *Residential developments* shall include provisions to ensure preservation of native vegetation, control erosion during construction and limit runoff from impervious surfaces.
- b. New residential construction shall be located so as not to require *shoreline stabilization* measures.
- c. New *residential development* shall be prohibited in, over, or floating on the water.
- d. New *residential development* shall be located and designed to a density that minimizes view obstructions to and from the *shoreline*. Where appropriate, clustering of residential units shall be allowed to minimize physical and visual impacts on *shorelines*.
- e. In those areas where offsite sewage systems are not feasible, density shall be limited to that which can demonstrably accommodate protection of surface and groundwater quality.
- f. *Residential development* and associated sewage disposal systems, shall be prohibited in *floodways* and *channel migration zones*.
- g. *Appurtenances*, *accessory uses*, and facilities serving a residential *structure* shall be located outside setbacks and critical areas and buffers unless otherwise allowed under this *program* to promote community access and recreational opportunities.
- h. Residential lots created through land division in the *shoreline* shall only be permitted when the following standards are met:
 - i. When lots are sized and configured to ensure impacts to environmental functions are avoided; and

- ii. Structural flood hazard reduction measures are not required and will not be necessary during the life of the *development* or use, and
 - iii. *Shoreline stabilization* measures are not required, and
 - iv. Where a new *moorage* facility is proposed within a residential waterfront *development* of more than four (4) units, only one *joint-use facility* shall be allowed. This condition of approval with required access easements and dedications shall be identified on the face of the plat. In addition, the *joint-use* dock easement shall be recorded with the County Auditor.
- i. Multifamily and multi-lot residential and *recreational developments* should provide *public access* and joint use for community recreational facilities.
 - j. Legally established *residential development* located landward of the OHWM, including *normal appurtenances*, existing on the effective date of this *program* that do not meet the standards of this *program* are considered to be conforming and may be maintained, repaired, replaced, or expanded provided that any future *development*:
 - i. Does not exceed *height* limitations;
 - ii. Does not encroach further waterward than the existing primary *structure*;
 - iii. Does not encroach further into critical areas or buffers; and
 - iv. Will result in no net loss of *shoreline ecological functions*.

10. Signs

- a. Signage is regulated under LCMC 18.275 (Sign Regulations).
- b. All signs shall be located and designed to minimize interference with vistas, viewpoints, and visual access corridors to the *shoreline*.
- c. Overwater signs or signs on *floats* or pilings shall be prohibited, except when related to navigation or a *water-dependent use*.
- d. Illuminated signs shall be limited to informational, directional, navigational or safety purposes and shall be shielded to eliminate glare when viewed from surrounding properties or watercourses.

11. Transportation Uses

- a. All transportation facilities in *shoreline* areas shall be constructed and operated on a basis that causes the least possible adverse impact to the environment, and shall respect the natural character of the *shoreline*, making every effort to preserve wildlife, aquatic life and their habitats.
- b. New or expanded surface transportation facilities not related to and necessary for the support of *shoreline* activities shall be located outside the *shoreline jurisdiction* wherever possible. If this is not possible, they should be set back from the *ordinary high water mark* far enough to make *shoreline stabilization*, such as *riprap*, *bulkheads* or jetties, unnecessary.
- c. All roads shall be adequately set back from water bodies and shall provide *buffer areas* of compatible, self-sustaining native vegetation. *Shoreline* scenic drives and viewpoints may provide breaks in the vegetative buffer to allow open views of the water.
- d. Transportation facilities that are allowed to cross over water bodies and associated *wetlands* shall utilize elevated, open pile or *pier structures* whenever feasible. All bridges shall be built high enough to allow the passage of debris and anticipated high water flows.
- e. Transportation and utility facilities shall be required to make joint use of rights-of-way and to consolidate crossing of water bodies where feasible.

12. Utilities Uses. These provisions apply to services and facilities that produce, convey, store, or process power, gas, wastewater, communications, and similar services and functions. On-site utility features serving a primary use, such as a water, sewer or gas line to a residence or other approved use are accessory utilities and shall be considered a part of the primary use.
- a. Utility facilities shall be located outside *shoreline jurisdiction* whenever feasible. Where distribution and transmission lines (except electrical transmission lines) must be located in the *shoreline jurisdiction* they shall be located underground. Where overhead electrical transmission lines must parallel the *shoreline*, they shall be outside of the two hundred (200) foot *shoreline* environment unless topography or safety factors would make it unfeasible.
 - b. Utilities shall be designed, located and installed in such a way as to minimize impacts to scenic views, and minimize conflicts with present and planned land and *shoreline* uses.
 - c. Transmission, distribution, and conveyance facilities shall be located in existing rights-of-way and corridors, or shall cross *shoreline jurisdictional* areas by the shortest, most direct route feasible, unless such route would cause significant environmental damage.
 - d. Utility production and processing facilities, such as power plants and wastewater treatment facilities, or parts of those facilities that are *non-water-oriented* shall not be allowed in the *shoreline jurisdiction* unless it can be demonstrated conclusively that no other feasible option is available.
13. Stormwater control facilities are limited to detention / retention / treatment ponds, media filtration facilities, and lagoons or infiltration basins.
- a. Within the *shoreline jurisdiction* they shall only be permitted under the following circumstances:
 - i. The *stormwater* facilities are designed to mimic and resemble natural *wetlands* and meet applicable City or State *stormwater* management standards;
 - ii. Discharge water meets state *water quality* standards; and
 - iii. Low impact *development* approaches have been considered and implemented to the maximum extent feasible.
 - b. Outfalls shall be designed and constructed to avoid impacts to existing native aquatic vegetation attached to or rooted in the substrate. In river and stream *shoreslines*, *stormwaters* outfall *structures* may require permanent bank hardening to prevent failure of the outfall *structure* or erosion of the *shoreline*. Diffusers or discharge points must be located offshore at a distance beyond the nearshore area to avoid impacts to those habitats.
 - c. Water reclamation discharge facilities such as injection wells or activities such as land application are prohibited in the *shoreline jurisdiction* unless the discharge meets WDOE Class A reclaimed water standards. Proponents for discharge of Class A reclaimed water in the *shoreline jurisdiction* must demonstrate habitat benefits of such discharge.
 - d. Construction of underwater utilities or those within the *wetland* perimeter shall be scheduled to avoid major fish migratory runs or use construction methods that do not cause disturbance to the habitat or migration.
 - e. All underwater pipelines transporting liquids intrinsically harmful to aquatic life or potentially detrimental to *water quality* shall provide automatic shut off valves.
 - f. Upon completion of utility installation/maintenance projects on *shoreslines*, banks shall, at a minimum, be *restored* to pre-project configuration, replanted and provided with maintenance care until the newly planted vegetation is fully established. Plantings shall be native species and/or be similar to vegetation in the surrounding area.

D. Shoreline Modification Regulations

1. General Requirements

- a. *Shoreline Modifications* shall only be allowed where it can be demonstrated that the proposed activities are necessary to support or protect an allowed use or *structure*, or are necessary for reconfiguration of the *shoreline* or bedlands to provide for an allowed *water-dependent use*, shoreline *mitigation* or *enhancement* purposes.
- b. Modifications shall only be allowed when impacts are avoided, minimized, and *mitigated* to assure no net loss of *shoreline ecological functions*.
- c. In-water work shall be scheduled to protect biological productivity including fish runs and spawning. In-water work shall not occur in areas used for *commercial fishing* during a fishing season unless specifically addressed and *mitigated* for in the *permit*.

2. Dredging and Dredge Material Disposal

a. *Dredging*

- i. *Non-maintenance dredging* shall be avoided where possible. New *dredging*, meaning *dredging* in a location that has not been previously dredged, requires a demonstration that the proposed uses will not result in significant or ongoing adverse impacts to *water quality*, fish and wildlife habitat conservation areas, other critical areas, flood holding capacity, natural drainage and water circulation patterns, significant plant communities, prime *agricultural land*, and *public access* to *shorelines*. When such impacts are unavoidable, they shall be minimized and *mitigated* such that they result in no net loss of functions.
- ii. *Maintenance dredging* of established navigation channels and basins shall be restricted to the widths and depths accomplished by the original *dredging*.
- iii. *Dredging* and dredge disposal shall be prohibited on or in archaeological sites that are listed on the National Register of Historic Places, the Washington Heritage Register, and/or the Clark County Historic Register until such time that they have been reviewed and approved by the appropriate agency.
- iv. New *dredging* activity is prohibited in areas that are particularly subject to environmental damage or to areas that are habitats identified as critical to the life cycle of fish, shellfish, or wildlife.
- v. *Dredging* techniques that cause minimum dispersal and broadcast of bottom material shall be used, and only the amount of dredging necessary shall be permitted.
- vi. *Dredging* waterward of the *OHWM* shall be permitted only:
 - (a) For navigation or navigational access;
 - (b) In conjunction with a *water-dependent use* of water bodies or adjacent shorelands;
 - (c) As part of an approved habitat improvement project;
 - (d) To improve water flow or *water quality*, provided that all dredged material shall be contained and managed so as to prevent it from reentering the water; and
 - (e) In conjunction with a bridge, navigational *structure* or wastewater treatment facility for which there is a documented public need and where other feasible sites or routes do not exist.
- vii. *Dredging* for *fill* is prohibited unless the material is necessary for the *restoration* of *ecological functions*.

b. *Dredge Material Disposal*

- i. *Dredge material disposal* shall be avoided where possible. Dredge disposal shall be permitted only where it is demonstrated that the proposed water-dependent or water-related uses 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 circulations patterns, significant plant communities, prime *agricultural land*, and *public access to shorelines*.
- ii. When such impacts are unavoidable, they shall be *minimized* and *mitigated* such that they result in no net loss of functions.
- iii. Dredged material shall be disposed of on land only, at sites reviewed and approved by the USACOE and the *Shoreline Administrator*. Applicants shall demonstrate that the proposed site will ultimately be suitable for a use permitted by this *program*;
 - (a) Disposal shall be managed so that the smallest possible land area is affected, unless dispersed disposal is authorized as a condition of *permit* approval for soil *enhancement* or other purposes;
 - (b) Steps will be taken to assure *shoreline ecological functions* and processes will be preserved, including protection of surface and ground water, and that erosion, sedimentation, floodwaters or runoff will not increase adverse impacts to *shoreline ecological functions* and processes, or property; and
 - (c) Sites will be adequately screened from view of local residents or passersby on public right-of-ways to the maximum extent practicable.
- iv. The following conditions shall apply to land disposal sites:
 - (a) Springs and aquifers shall be identified and protected.
 - (b) Containment *dikes* and adequate settling basins shall be built and maintained so that the water discharged from the site carries a minimum of suspended sediment. Required basins shall be designed to maintain at least one foot of standing water at all times to encourage proper settling.
 - (c) Proper diversion of surface discharge shall be provided to maintain the integrity of the natural streams, *wetlands*, and drainage ways.
 - (d) There shall be a single point of ingress and egress for removal of the de-watered material.
 - (e) Runoff shall be directed through grassy swale, meaning a vegetated drainage channel that is designed to remove various pollutants from *stormwater* runoff through biofiltration, or other treatment features that assures protection of *water quality* and a location that maximizes circulation and fishing.
 - (f) Sites shall be revegetated with appropriate native species as soon as possible to retard erosion and *restore* wildlife habitat and other critical areas functions;
 - (g) Vegetation shall be maintained by the property owner; and
 - (h) *Dredge materials* deposited upland and not part of a permitted *dike* or levee shall constitute *fill*, and when deposited within the jurisdiction of this *program*, shall comply with the *fill* regulations.
- v. Within the *shoreline jurisdiction*, dredged material shall be disposed of in water only at sites approved by the USACOE and the *Shoreline Administrator*. Disposal techniques that cause minimum dispersal and broadcast of bottom material shall be used, and only if:
 - (a) Land disposal is infeasible, less consistent with this *program*, or prohibited by law;
 - (b) Nearshore disposal as part of a program to *restore* or enhance *shoreline ecological functions* and processes is not feasible;

- (c) Offshore habitat will be protected, *restored*, or enhanced;
 - (d) Adverse effects on *water quality* or biologic resources from contaminated materials will be *mitigated*;
 - (e) Shifting and dispersal of spoil will be minimal; and
 - (f) *Water quality* will not be adversely affected.
 - vi. The disposal of dredged materials in water or *wetlands* within *shoreline jurisdiction* shall be permitted only:
 - (a) To improve wildlife habitat;
 - (b) To correct material distribution problems adversely affecting fish habitat;
 - (c) To create, expand, rehabilitate, or *enhance* a beach when permitted under this *program* and any required state or federal *permit*;
 - (d) When land disposal is demonstrated to be more detrimental to *shoreline* resources than water deposition; or
 - (e) In approved, open-water disposal sites.
3. Flood Control Works
- a. General
 - i. *Dikes* and levees shall only be authorized by *conditional use permit* when it can be demonstrated by a scientific and engineering analysis that:
 - (a) They are necessary to protect existing development;
 - (b) Nonstructural measures are not feasible;
 - (c) Impacts on ecological functions and critical areas can be successfully mitigated so as to assure no net loss; and
 - (d) Appropriate vegetation conservation actions are undertaken.
 - ii. *Dikes* and levees shall be designed to protect the natural processes and resource values associated with streams including but not limited to wildlife habitat.
 - iii. Springs and aquifers shall be identified and protected.
 - iv. *Public access* shall be provided in accordance with *public access* policies and regulations of the property owner and this *program*.
 - v. *Dikes* and levees shall be limited in size to the minimum *height* required to protect adjacent lands from the projected flood stage as identified in the applicable comprehensive flood control management plan or as required by FEMA for *dike* recertification.
 - vi. *Dikes* and levees shall not be constructed with material dredged from the adjacent wetland or stream area unless part of a comprehensive flood and habitat *enhancement* plan, and only by *conditional use*.
 - vii. New public structural flood hazard reduction measures, such as *dikes* and levees, should dedicate and improve *public access* per WAC 173-26-221(3)(C)(iv).
 - b. Design
 - i. *Dikes* and levees shall be designed, constructed, and maintained in accordance with Hydraulic Project Approval and other required *permits*, and in consideration of resource agency requirements and recommendations.
 - ii. *Dikes* and levees shall be set back at convex (inside) bends to allow streams to maintain *point* bars and associated aquatic habitat through normal accretion. Where bank *dikes*

have already cut off *point* bars from the edge of the *floodway*, consideration should be given to their relocation in order to lower flood stages and current velocities.

- iii. Proper diversion of surface discharge shall be provided to maintain the integrity of the natural streams, *wetlands*, and drainages.
- iv. Structural flood hazard reduction measures shall be placed landward of associated *wetlands* and *vegetation conservation* areas unless this is no other feasible alternative to reduce flood hazard to existing *development*.
- v. The removal of gravel for flood management purposes shall be consistent with an adopted flood hazard reduction plan and with this chapter and allowed only after a biological and geomorphological study shows that extraction has a long term benefit to flood hazard reduction, does not result in a net loss of *ecological functions*, and is part of a comprehensive flood management solution.

2. In-stream Structures

a. General

- i. *In-stream structures* shall be constructed and maintained in a manner that does not degrade the quality of affected waters. The City may condition the *permit* to achieve this objective.
- ii. Natural in-stream features such as snags, uprooted trees, or stumps should be left in place unless it can be demonstrated that they are not enhancing *shoreline function* or are a threat to public safety.
- iii. *In-stream structures* shall provide for adequate upstream or downstream migration of anadromous fish, where applicable. These fish migrate up rivers and streams from the ocean to breed in fresh water.
- iv. *In-stream structures* shall preserve valuable recreation resources and aesthetic values such as *point* and channel bars, islands and braided banks.

b. Design & Placement

- i. *In-stream structures* and their support facilities shall be located and designed to avoid the necessity for *shoreline defense structures*. Those defense *structures* that are necessary shall be minimized and any impacts *mitigated*.
- ii. Materials adequate to immediately correct emergency erosion situations shall be maintained on-site.
- iii. All debris, overburden and other waste materials from construction shall be disposed of in such a manner as to prevent their entry into a water body, including a *wetland*, by erosion, from drainage, high water, or other vectoring mechanisms.
- iv. All heavy construction equipment, and fuel storage, repair, and construction material staging areas shall be located as far landward as necessary to avoid and minimize impacts to *shoreline functions*. Powerhouses, but not raceways, shall be located farther than one hundred (100) feet from the OHWM unless there is no feasible alternative and any unavoidable impacts are minimized and *mitigated*. Penstocks shall be located, designed, and constructed so as to present as low a profile as possible. Powerhouses and penstocks shall be located and designed to return flow to the stream in as short a distance as possible.
- v. A *mitigation* plan shall be prepared by the applicant, and be subject to approval by the appropriate authority.
- vi. Structural flood hazard reduction measures shall be placed landward of associated *wetlands* and *vegetation conservation* areas unless there is no other feasible alternative to reduce flood hazard to existing *development*. The need for, and analysis of feasible

alternatives to structural improvements shall be documented through a *geotechnical analysis*.

3. Shoreline Restoration and Enhancement

- a. *Shoreline restoration and enhancement* activities designed to *restore shoreline ecological functions* and processes as well as *shoreline* features *should* be targeted toward meeting the needs of sensitive and/or regionally important plant, fish, and wildlife species shall be given priority. See also Section V.F.
- b. *Shoreline restoration, enhancement, and mitigation* activities designed to create dynamic and sustainable ecosystems to assist the City achieve no net loss of *shoreline ecological functions* are preferred.
- c. *Restoration* activities shall be carried out in accordance with an approved *shoreline restoration plan*, and in accordance with the provisions of this *program*.
- d. To the extent possible, *restoration, enhancement, and mitigation* activities shall be integrated and coordinated with other parallel natural resource management efforts, such as those identified in the Clark Coalition *Shoreline Restoration Plan*.
- e. Habitat and beach creation, expansion, *restoration*, and *enhancement* projects may be permitted subject to required state or federal *permits* when the applicant has demonstrated that:
 - i. The project will not be carried out within spawning, nesting, or breeding fish and wildlife habitat conservation areas;
 - ii. Upstream or downstream properties or fish and wildlife habitat conservation areas will not be adversely affected;
 - iii. *Water quality* will not be degraded;
 - iv. Flood storage capacity will not be degraded;
 - v. Impacts to critical areas and buffers will be avoided and where unavoidable, minimized and *mitigated*; and
 - vi. The project will not interfere with the normal public use of the navigable waters of the state.
 - vii. Natural hydrologic flows will be maintained.
- f. The City shall review the projects for consistency with this *program* in an expeditious manner and shall issue its decision along with any conditions within forty-five (45) days of receiving all materials necessary to review the request for *exemption* from the applicant.

4. Shoreline Stabilization

a. General

- i. New structural *shoreline* armoring may be permitted and existing structural *shoreline* armoring may be expanded only when one or more of the following apply:
 - (a) When non-structural measures, vegetation planting, or on-site drainage improvements would be insufficient to achieve *enhancement, restoration* or remediation objectives to *restore ecological function*.
 - (b) When non-structural measures, vegetation planting, or on-site drainage improvements would be insufficient to remediate hazardous substances.
 - (c) When a geomorphic/*geotechnical analysis* has established that *shoreline* armoring is necessary to protect public transportation infrastructure or essential public facilities and other options are *infeasible*.

- (d) When a geomorphic/*geotechnical analysis* has established that an existing, lawfully established primary *structure* is in imminent danger of loss or substantial damage from erosion caused by tidal action currents, or waves.”
- ii. New structural stabilization measures shall not be allowed except when necessity is demonstrated in the following manner:
 - (a) To protect existing primary *structures*:
 - (i) New or enlarged structural *shoreline stabilization* measures for an existing primary *structure*, including residences, *should* not be allowed unless there is conclusive evidence, documented by a *geotechnical analysis*, that the *structure* is in danger from *shoreline* erosion caused by tidal action, currents, or waves. Normal sloughing, erosion of steep bluffs, or *shoreline* erosion itself, without a scientific or *geotechnical analysis*, is not demonstration of need. The *geotechnical analysis* should evaluate on-site drainage issues and address drainage problems away from the *shoreline* edge before considering structural *shoreline stabilization*.
 - (ii) The erosion control *structure* will not result in a net loss of *shoreline ecological functions*.
 - (b) In support of new *non-water-dependent development*, including *single-family residences*, when all of the conditions below apply:
 - (i) The erosion is not being caused by upland conditions, such as the loss of vegetation and drainage.
 - (ii) Nonstructural measures, such as placing the *development* further from the *shoreline*, planting vegetation, or installing on-site drainage improvements, are not feasible or not sufficient.
 - (iii) The need to protect primary *structures* from damage due to erosion is demonstrated through a *geotechnical report*. The damage must be caused by natural processes, such as tidal action, currents, and waves.
 - (iv) 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:
 - (i) The erosion is not being caused by upland conditions, such as the loss of vegetation and drainage.
 - (ii) Nonstructural measures, planting vegetation, or installing on-site drainage improvements, are not feasible or not sufficient.
 - (iii) The need to protect primary *structures* from damage due to erosion is demonstrated through a *geotechnical report*.
 - (iv) 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:
 - (i) Nonstructural measures, planting vegetation, or installing on-site drainage improvements, are not feasible or not sufficient.

- (ii) The erosion control *structure* will not result in a net loss of *shoreline ecological functions*.
- iii. Proposed designs for new or expanded shore stabilization shall be designed in accordance with applicable WDOE and WDFW guidelines, use best available science, document that alternative solutions are not feasible or do not provide sufficient protection, demonstrate that future stabilization measures would not be required on the project site or adjacent properties, and be certified by a *qualified professional*.
- iv. Land subdivisions or lot line adjustments shall be designed to assure that future *development* of the newly-created lots will not require structural stabilization for subsequent *development* to occur.
- v. New or expanded structural *shoreline stabilization* for existing primary *structures*, including roads, railroads, public facilities, etc., is prohibited unless there is conclusive evidence documented by a *geotechnical analysis* that there is a significant possibility that the *structure* will be damaged within three (3) years as a result of *shoreline* erosion caused by stream processor waves, and only when significant adverse impacts are *mitigated* to ensure no net loss of *shoreline ecological functions* and/or processes.
- vi. Where a *geotechnical analysis* confirms a need to prevent potential damage to a primary *structure*, but the need is not imminent, the analysis may still be used to justify more immediate authorization for *shoreline stabilization* using *bioengineering* approaches.
- vii. Replacement of an existing *shoreline stabilization structure* with a similar *structure* is permitted if there is a demonstrated need to protect existing primary uses, *structures*, or public facilities including roads, bridges, railways, and utility systems from erosion caused by stream undercutting or wave action; provided that the existing *shoreline stabilization structure* is removed from the *shoreline* as part of the replacement activity. Replacement walls or *bulkheads* shall not encroach waterward of the *ordinary high-water mark* or existing *structure* unless the residence was occupied prior to January 1, 1992, and there are overriding safety or environmental concerns. In such cases, the replacement *structure* shall abut the existing *shoreline stabilization structure*, and shall be designed to minimize harm to environmental functions.
- viii. *Shoreline stabilization* projects that are part of a fish habitat *enhancement* project meeting the criteria of RCW 77.55.181 are *exempt* and will be regulated under the state process. Stabilization projects that are not part of such a fish *enhancement* project will be regulated by this *program*.
- ix. Small-scale or uncomplicated *shoreline stabilization* projects (for example, tree planting projects) shall be reviewed by a *qualified professional* to ensure that the project has been designed using best available science.
- x. Large-scale or more complex *shoreline stabilization* projects (for example, projects requiring *fill* or excavation, placing objects in the water, or hardening the bank) shall be designed by a *qualified professional* using best available science. The applicant may be required to have a *qualified professional* oversee construction or construct the project.
- xi. Standards for new stabilization *structures* when found to be necessary include limiting the size to minimum, using measures to assure no net loss of *shoreline ecological functions*, using soft approaches, and *mitigating* for impacts.
- xii. When any structural *shoreline stabilization* measures are demonstrated to be necessary pursuant to above provisions, the applicant shall:
 - (a) Limit the size of stabilization measures to the minimum necessary. Use measures designed to assure no net loss of *shoreline ecological functions*. Soft approaches shall be used unless demonstrated not to be sufficient to protect primary *structures*, dwellings, and businesses.

- (b) Ensure that publicly financed or subsidized *shoreline* erosion control measures do not restrict appropriate *public access* to the *shoreline* except where such access is determined to be infeasible because of incompatible uses, safety, security, or harm to *ecological functions*. Where feasible, incorporate *ecological restoration* and *public access* improvements into the project.
- (c) *Mitigate* new erosion control measures, including replacement *structures*, on feeder bluffs or other actions that affect beach sediment-producing areas to avoid and, if that is not possible, to minimize adverse impacts to sediment conveyance systems.
- (d) Where sediment conveyance systems cross jurisdictional boundaries, local governments should coordinate *shoreline* management efforts. If beach erosion is threatening existing *development*, local governments should adopt master *program* provisions for a beach management district or other institutional mechanism to provide comprehensive *mitigation* for the adverse impacts of erosion control measures.

b. Bioengineered Stabilization

- i. All bioengineered projects shall be designed in accordance with best available science and use a diverse variety of native plant materials including but not limited to trees, shrubs, herbaceous non-woody plants, and grasses, unless demonstrated infeasible for the particular site.
- ii. All cleared areas shall be replanted following construction and irrigated (if necessary) to ensure that within three years' time all vegetation is fully re-established. Areas that fail to adequately reestablish vegetation shall be replanted with approved plant materials until such time as the plantings are viable.
- iii. Bank protection in the form of a *buffer zone* shall be provided for a minimum of three (3) years. The *buffer zone* shall exclude livestock, vehicles, and/or other activities that could disturb the site.
- iv. All bioengineered projects shall be monitored and maintained. Areas damaged by pests and/or the elements shall be promptly repaired.
- v. All construction and planting activities shall be scheduled to minimize impacts to *water quality* and fish and wildlife aquatic and upland habitat, and to optimize survival of new vegetation.

c. Structural Stabilization

- i. Naturally regenerating systems for the prevention and control of *shoreline* erosion shall be used instead of structural solutions where the length and configuration of *shoreline* will accommodate such systems; such protection is a reasonable solution to the needs of the specific site; and the project will:
 - (a) Recreate or enhance natural *shoreline* conditions;
 - (b) Create or enhance natural habitat;
 - (c) Reverse erosional conditions; or
 - (d) Enhance access to the *shoreline*, especially to public *shorelines*.
- ii. Bulkheads
 - (a) General
 - (i) All *bulkheads* and *revetments* must be in support of an allowable *shoreline* use that is in conformance with the provisions of this *program*, unless it can be demonstrated that such activities are necessary for the maintenance of *shoreline* environmental resources, and are in the *public interest*.

- (ii) *Bulkheads* and *revetments* are subject to approval of the *Shoreline Administrator* including design, location, and necessity, and shall be allowed only when evidence is presented that conclusively demonstrates that one of the following conditions exists:
 1. Serious wave erosion threatens an established primary use or existing primary building(s) on upland property;
 2. *Bulkheads* and *revetments* are necessary to the operation and location of water-dependent and water-related activities consistent with this *program*, provided that all alternatives have proven infeasible (i.e., use relocation, use design, nonstructural shore stabilization options), and that such *bulkheads* meet other policies and regulations of this chapter; or
 3. Proposals for *bulkheads* or *revetments* have first demonstrated that use of natural materials and processes and nonstructural solutions to bank stabilization are unworkable in protecting existing *development*.
 - (iii) Natural materials and processes such as protective *berms*, drift logs, brush, beach feeding, or vegetative stabilization shall be utilized to the maximum extent possible.
 - (iv) *Bulkheads* and *revetments* are prohibited for any purpose if they will cause significant erosion or beach starvation.
 - (v) Design of *revetments* shall include and provide improved access to public *shorelines* whenever possible and appropriate. All forms of *revetments* shall be constructed and maintained in a manner that does not reduce *water quality* and/or fisheries habitat.
 - (vi) Use of a *bulkhead* to protect a platted lot where no *structure* presently exists is prohibited.
- (b) Location
- (i) *Bulkheads* shall not be located on shores where valuable geohydraulic-hydraulic or biological processes are sensitive to interference and critical to *shoreline* conservation, such as feeder bluffs, marches, *wetlands*, or accretion shore forms such as spits, hooks, bars, or barrier beaches.
 - (ii) *Bulkheads* are to be permitted only where local physical conditions such as foundation bearing material, surface, and subsurface drainage are suitable.
 - (iii) On all *shorelines*, *bulkheads* shall be located landward of the OHWM, landward of protective *berms* (artificial or natural), and generally parallel to the natural *shoreline*. In addition:
 1. On bluff or bank *shorelines* where no other *bulkheads* are adjacent, the construction of a *bulkhead* shall be as close to the bank as possible, and in no case shall it be more than three (3) feet waterward from the toe of the natural bank.
 2. *Bulkheads* may tie in flush with existing *bulkheads* on adjoining properties, provided that (1) the adjoining *bulkheads* were built at or near the OHWM, and (2) the new *bulkhead* does not extend more than three feet waterward of OHWM at any point. If there is an existing *bulkhead* on only one of the adjacent properties, the proposed *bulkhead* may tie in flush with the adjacent *bulkhead* at or landward of the OHWM, and shall be contoured to minimize the land area waterward of the required setback, that shall be met on the side not abutting an existing *bulkhead*.
 - (iv) Replacement *bulkheads* may be located immediately in front of and abutting (sharing a common surface) an existing *bulkhead*, provided that replacement

bulkheads shall not be authorized abutting an abandoned or neglected *bulkhead*, or a *bulkhead* in serious disrepair that is located more than three (3) feet waterward of OHWM. Replacement of such *bulkheads* shall be located at OHWM.

(c) Design

- (i) *Bulkhead* design and *development* shall conform to all other applicable state agency policies and regulations, including the WDFW criteria governing the design of *bulkheads*.
- (ii) When a *bulkhead* is required at a *public access* site, provision for safe access to the water shall be incorporated into *bulkhead* design.
- (iii) *Bulkheads* shall be designed with the minimum dimensions necessary to adequately protect the *development* for the expected life of the *development*.
- (iv) *Bulkheads* shall be designed to permit the passage of surface or ground water without causing ponding or saturation of retained soil/materials.
- (v) Adequate toe protection consisting of proper footings, a fine retention mesh, etc., shall be provided to ensure *bulkhead* stability without relying on additional *riprap*.
- (vi) Stairs or other permitted *structures* may be built into a *bulkhead*, but shall not extend waterward of it.
- (vii) Materials used in *bulkhead* construction shall meet the following standards:
 - 1. *Bulkheads* shall utilize stable, non-erosional, homogeneous materials such as concrete, wood, rock *riprap*, or other suitable materials that will accomplish the desired end with the maximum preservation of natural *shoreline* characteristics.
 - 2. Beach materials shall not be used for *fill* behind *bulkheads* unless it is specifically authorized by the *permit*, and then only when it is demonstrated that leaving the material on the beach would be detrimental to *shoreline* resources.
- (viii) Gabions (wire mesh filled with concrete or rocks) shall not be used in *bulkhead* construction where alternatives more consistent with this *program* are feasible, because of their limited durability and the potential hazard to shore users and the *shoreline* environment.
- (ix) *Fill* behind *bulkheads* shall be considered landfill, and shall be subject to the provisions for landfill, and the requirement for obtaining a *shoreline substantial development permit*.

iii. *Revetments*

(a) General

- (i) *Revetments* must be in support of an allowable *shoreline* use that is in conformance with the provisions of this *program*, unless it can be demonstrated that such activities are necessary and in the *public interest* for the maintenance of *shoreline* environmental resources.
- (ii) Design of *revetments* shall include and provide improved access to public *shorelines* whenever possible and appropriate. All forms of *revetments* shall be constructed and maintained in a manner that does not reduce *water quality* and/or fisheries habitat.
- (iii) Design of the proposed *revetment* shall incorporate proper consideration of

1. Data on local geophysical conditions;
 2. Data on stream flow, velocity, and/or flood capacity; and
 3. Effects on adjacent properties.
- (iv) Bank *revetments*, where permitted, shall be placed at the extreme edge or bank of the *shoreline*.
- (v) *Revetments* shall only be used when habitat-friendly alternatives are not feasible.
- (b) Design
- (i) When permitted, the siting and design of *revetments* shall be performed using appropriate engineering principles, including guidelines of the Natural Resources Conservation Service and USACOE.
 - (ii) *Revetment* shall be constructed using techniques and materials that will enhance natural *shoreline* values and functions, including fish and wildlife habitat, *water quality*, vegetation and aesthetics. The following techniques and materials shall be used:
 1. *Riprap* material shall consist of clean quarried rock, free of loose dirt and any pollutants, and shall be of sufficient size and weight to prevent movement by wave or current action. Tires, automobile bodies, scrap metal paper products and other inappropriate solid waste materials shall not be used for *riprap*.
 2. Use of downed logs, snags, or rock-work to enhance habitat and to provide a more natural appearance to the *shoreline* shall be incorporated into the design where appropriate.
 3. Where on-site environmental conditions allow, vegetation shall be integrated into the *riprap* design to reduce erosion, provide cover, shade and habitat, and improve the natural appearance of the, consistent with the applicable vegetation management provisions of this *program*.
 - (iii) If an armored *revetment* is employed, the following design criteria shall be met.
 1. The size and quantity of the material shall be limited to only that necessary to withstand the estimated energy intensity of the hydraulic system;
 2. Filter cloth must be used to aid drainage and help prevent settling; and
 3. The toe reinforcement or protection must be adequate to prevent a collapse of the system from river scouring or wave action for the anticipated life of the project.
 - (iv) The area shall be *restored* as nearly as possible to pre-project condition, including replanting with native species and maintenance care until the newly planted vegetation is established.
- iv. Breakwaters, Jetties, Rock Weirs, and Groins
- (a) General
- (i) Breakwaters, jetties, *rock weirs*, and *groins* are allowed only by *conditional use* and where necessary to support *water-dependent uses*, *public access*, *shoreline stabilization*, or other specific public purposes such as protection from strong wave action. Applicants proposing *groins*, jetties, and solid breakwaters shall notify all *shoreline* landowners within the same drift sector. If it is not possible to make a reasonable determination of the drift sector, all *shoreline* land owners within one (1) mile of the project proposal shall be notified.

- (ii) The effect of proposed breakwaters, jetties, *rock weirs*, and *groins* on sand movement shall be evaluated during *permit* review. The beneficiaries and/or owners of large-scale defense works that substantially alter, reduce, or block *littoral drift*, and cause new erosion of downdrift shores shall be required to establish and maintain an adequate long term beach feeding *program* either by artificially transporting sand to the downdrift side of an inlet with jetties or by artificial beach feeding in the case of *groins*, breakwaters and *rock weirs*.
 - (iii) The effect of proposed breakwaters, jetties, *rock weirs*, and *groins* on bank margin habitat, channel migration, and *floodplain* processes *should* be evaluated during *permit* review.
- (b) Location
- (i) Breakwaters shall be prohibited in *lakes*.
 - (ii) Jetty, *rock weir*, or *groin development* that would result in a net adverse impact on adjacent and nearby properties and *shorelines* is prohibited.
- (c) Design
- (i) Proposed designs for new or expanded breakwaters, jetties, *rock weirs*, and *groins* shall be designed and certified by a registered civil engineer.
 - (ii) The design of breakwaters, jetties, *rock weirs*, and *groins* shall conform to all applicable requirements established by WDFW and the USACOE. Breakwaters, jetties, *rock weirs*, and *groins* shall be designed and constructed in a manner that will prevent detrimental impacts on water circulation, sand movement, and aquatic life. The design shall also minimize impediments to navigation and to visual access from the *shoreline*.
 - (iii) The design of new breakwaters, *groins*, and jetties shall incorporate provisions for *public access* such as sightseeing and public fishing if it is determined such access is *feasible* and desirable. Open-pile or floating breakwaters shall be the only type allowed unless it can be shown that solid breakwaters will have no significant adverse effect on the aquatic biology and shore processes, or that such adverse effects can be adequately *mitigated*.
 - (iv) Materials used for the construction of breakwaters, jetties, *rock weirs*, and *groins* shall exhibit the qualities of long-term durability, ease of maintenance, and compatibility with local shore features, processes, and aesthetics. The use of solid waste, junk, or abandoned automobiles, asphalt, or any building demolition debris is prohibited.
 - (v) Floating breakwaters shall be used in place of solid, rubble mound types wherever they can withstand anticipated wave action in order to maintain sand movement and protect fish and aquatic habitat.

Table 6-1. Shoreline Use, Modification and Development Standards

P = Permitted; C = *Conditional Use*; X = Prohibited; N/A = Not Applicable; UNL = Unlimited.

	AQ	UC	MI
SHORELINE DESIGNATION	Aquatic	Urban Conservancy	Medium Intensity
SHORELINE USES			
Agriculture			
Agriculture	X	C	X
Setback	N/A	100'	N/A
Maximum <i>Height</i>	N/A	35'	N/A
Aquaculture	X	X	X
Boating Uses			
Motorized <i>Boat Launches</i>	P	C	C

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	AQ	UC	MI
SHORELINE DESIGNATION	Aquatic	Urban Conservancy	Medium Intensity
Non-motorized <i>Boat Launches</i>	P	P	P
Docks, <i>Piers, Mooring Buoys</i> Setback	P ¹ 0'	P 0'	P ¹ 0'
Commercial Uses			
Water-dependent Setback	C 0'	X N/A	P 0'
Maximum <i>Height</i> 0'-100' from OHWM	15'	N/A	35'
>100' from OHWM	15'	N/A	45' ²
Water-related, Water-enjoyment Setback	X N/A	X N/A	P 25'
Maximum <i>Height</i> 0'-100' from OHWM	N/A	N/A	35'
>100' from OHWM	N/A	N/A	45' ²
Non-water-oriented Setback	X N/A	X N/A	C ³ 100'
Maximum <i>Height</i>	N/A	N/A	35'
Forestry	X	X	X
Industrial	X	X	X
Institutional Uses			
Water-dependent Setback	C N/A	C 0'	P 0'
Maximum <i>Height</i> 0'-100' from OHWM	N/A	25'	35'
>100' from OHWM	N/A	35'	45' ²
Water-related, Setback	X N/A	X N/A	P 25'
Maximum <i>Height</i> 0'-100' from OHWM	N/A	N/A	35'
>100' from OHWM	N/A	N/A	45' ²
Non-water-oriented Setback	X N/A	X N/A	C ³ 100'
Maximum <i>Height</i>	N/A	N/A	35'
Log Storage	X	X	X
Mining	X	X	X
Parking			
Primary Use Setback	X N/A	X N/A	X N/A
Accessory Use Setback	X N/A	P 100'	P 100'
Maximum <i>Height</i>	N/A	35'	35'
Recreational Uses			
Water-dependent Setback	P 0'	P 0'	P 0'
Maximum <i>Height</i>	15'	15'	35'
Water-related/enjoyment (trails, accessory buildings) Setback	X N/A	P 50'	P 50'
Maximum <i>Height</i>	N/A	15'	35'
Non-water-oriented (golf courses, sports fields)	X	C	C

Table 6-1. Shoreline Use, Modification and Development Standards

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	AQ	UC	MI
SHORELINE DESIGNATION	Aquatic	Urban Conservancy	Medium Intensity
Setback	N/A	100'	100'
Maximum Height	N/A	25'	25'
Residential Uses			
Single-family ⁵	X	P	P
Setback	N/A	100'	50'
Maximum Height	N/A	35'	35'
Floating homes (new)	X	N/A	N/A
Maximum Height	N/A	N/A	N/A
Multifamily	X	X	P
Setback	N/A	N/A	50'
Maximum Height	N/A	N/A	35'
Transportation Uses			
Highways, Arterials, Railroads (parallel to OHWM)	X	P	P
Setback	N/A	200'	100'
Secondary/Public Access Roads (parallel to OHWM)	X	P	P
Setback	NA	100'	50'
Bridges (perpendicular to shoreline) ⁶	C	C	P
Setback	0'	0'	0'
Utility Uses			
Above-ground Utilities (parallel to shoreline)	C	P	P
Setback	0'	100'	50'
Maximum Height	15'	35'	35'
Distribution Pole Height ⁷	0'	45' ²	45' ²
Electrical Transmission Lines	C	C	C
Tower Height	UNL	UNL	UNL
Underground Utilities (parallel to shoreline)	C	P	P
Setback	0'	100'	50'
Underground Utilities (perpendicular to shore)	C	C	C
Setback	0'	0'	0'
Unclassified Uses			
Unclassified Uses	C	C	C
Setback	0'	100'	100'
Maximum Height	15'	35'	35'
Shoreline Modifications			
Dredging and Dredge Material Disposal			
Non-maintenance Dredging	C	N/A	N/A
Maintenance Dredging	P	N/A	N/A
Dredge Material Disposal	C	X	C
Dredging & Disposal as part of Ecological Restoration/ Enhancement	P	P	P
Flood Control Works, In-stream Structures			
Dams, Dikes, & Levees	C	C	C
Instream structures	C	N/A	N/A
Fills			
Waterward of OHWM	C	N/A	N/A
Landward of OHWM	N/A	P ⁸	P ⁸
Shoreline Restoration			
Ecological Restoration/ Enhancement/	P	P	P

Table 6-1. Shoreline Use, Modification and *Development* Standards

P = Permitted; C = *Conditional Use*; X = Prohibited; N/A = Not Applicable; UNL = Unlimited.

	AQ	UC	MI
SHORELINE DESIGNATION	Aquatic	Urban Conservancy	Medium Intensity
<i>Mitigation</i>			
Shoreline Stabilization			
Bioengineered	P	P	P
Structural	C	C	C

² A view study may be required per VI.B.2 ³ As part of mixed-use *development* only. ⁵ See also VI.C.9 ⁶ Bridges shall be located or designed to minimize shading of wetlands. ⁷ May be increased to support telecommunications. ⁸ *Fills* may not be placed in critical areas or buffers. Note: Setbacks are landward from the OHWM in the UC & MI shoreline designations, and waterward of the OHWM in the AQ Shoreline Designation.

VII. ADMINISTRATION AND ENFORCEMENT

A. General Provisions

1. All proposed uses and *development* occurring within a *shoreline jurisdiction* must conform to the Shoreline Management Act (SMA) and this *program* (SMP). The policies and regulations of this *program* apply to all *shoreline* uses and *developments* within the *shoreline jurisdiction* whether or not a *shoreline permit* or statement of *exemption* is required.
2. The requirements of this *program* are only applicable within the City's *shoreline jurisdiction*.
3. Classification of a use or *development* as permitted does not necessarily mean the use/*development* is allowed. It means the use/*development* may be allowed subject to review and approval by the City and/or WDOE. The City may attach conditions of approval to any permitted use via a *permit* or statement of *exemption* to assure consistency of a project with the Act and this *program*. To be authorized under this *program*, all uses and *developments* shall be planned and carried out in a manner that is consistent with the City codes and this *program* regardless of whether a *shoreline Substantial Development Permit*, Statement of *Exemption*, *Shoreline Variance*, or *Shoreline Conditional Use Permit* is required.
4. Applicants requesting *permits* or statements of *exemption* under this *program* have the burden to prove that the proposed *development* or activity is consistent with the criteria that must be met before a *permit* or statement of *exemption* is granted.
5. Applicants shall submit all information and documentation determined by the *Shoreline Administrator* as necessary to process an application.
6. The City shall not issue any *permit* for *development* within the *shoreline jurisdiction* until approval has been granted pursuant to this *program*.
7. A *development* or use that does not comply with the bulk, dimensional, and/or performance standards of this *program* shall require a *shoreline variance* even if the *development* or use does not require a *Substantial Development Permit*.
8. A *development* or use that is listed as having a *conditional use* pursuant to this *program*, or is an unlisted use, must obtain a *Conditional Use Permit* even if the *development* or use does not require a *Substantial Development Permit*.
9. Issuance of a *Shoreline Substantial Development Permit*, *Shoreline Variance* or *Shoreline Conditional Use Permit* does not constitute approval pursuant to any other federal, state or City laws or regulations.

10. All *shoreline permits* or statements of *exemption* issued for *development* or use within *shoreline jurisdiction* shall include written findings prepared by the *Shoreline Administrator*, documenting compliance with bulk and dimensional policies and regulations of this *program*. The *Shoreline Administrator* may attach conditions to the approval as necessary to assure consistency with the RCW 90.58 and this *program*. Such conditions may include a requirement to post a performance bond assuring compliance with *permit* requirements, terms and conditions.
11. Proposed actions that would alter designated critical areas or their buffers, as established by this *program* (Chapter V) shall be reviewed for compliance with this *program*. If required, the applicable critical area report and/or *mitigation* plan and/or habitat management plan shall be submitted as part of the *development* application or request for statement of *exemption*. The critical area review shall be conducted and processed in conjunction with the highest threshold of review that is applicable to the primary *development* proposed in the:
 - a. Review pursuant to Section II.C.2 (List of *Exemptions*);
 - b. Land Use *Permit* or Building *Permit*;
 - c. Excavation, *Grading*, Clearing and Erosion Control *Permit*;
 - d. SEPA Threshold Determination;
 - e. *Shoreline Substantial Development Permit*;
 - f. *Shoreline Conditional Use Permit*; or
 - g. *Shoreline Variance*.

B. Administrative Authority and Responsibility

1. *Shoreline Administrator*. The *Shoreline Administrator* shall have the authority to act upon the following matters:
 - a. Interpretation, enforcement, and administration of the City's *Shoreline Master Program* as prescribed in this title;
 - b. Applications for *Shoreline Management Substantial Development Permits*;
 - c. Applications for *Shoreline Conditional Use Permits*;
 - d. Applications for *Shoreline Variances*;
 - e. Modifications or revisions to any of the above approvals, and;
 - f. Requests for Statements of *Exemption*.

The *Shoreline Administrator* shall document all project review actions in *shoreline* areas in order to periodically evaluate the cumulative effects of authorized *development* on *shoreline* conditions per WAC 173-26-191. Administrative interpretations shall be made in consultation with WDOE to insure that any formal written interpretations are consistent with the purpose and intent of RCW 90.58 and the applicable guidelines.

2. *City Planning Commission*. The City Planning Commission shall be responsible for hearing and making recommendations for action to the City Council on the following types of matters:
 - a. Amendments to the *Shoreline Master Program*. Any of the provisions of this *program* may be amended as provided for in WAC 173-26-100.
 - b. Periodic review of this program shall be conducted as required by state law and regulations RCW 90.58.080(4). Adjustments shall be made as necessary to reflect changing local circumstances, new information or improved data, and changes in state statutes and regulations. This review process shall be consistent with WAC 173-26-090 and shall include a local citizen involvement effort and public hearing to obtain the views and comments of the public.

3. City Council

- a. The City Council shall be responsible for making final determinations on amendments to the *Shoreline Master Program*, for review and approval by WDOE, which shall be adopted by ordinance. The Council shall enter findings and conclusions setting forth the factors it considered in reaching its decision.
- b. The City shall periodically review the *program* and make adjustments as are necessary to reflect changing local circumstances, new information or improved data, and changes in State statutes and regulations. This review process shall be consistent with WAC 173-26 requirements and shall include a local citizen involvement effort and public hearing to obtain the views and comments of the public.
- c. The City Council shall conduct a comprehensive review of this *program* on or before June 30, 2020, and every eight years thereafter, to assure that the *program*: complies with applicable laws and guidelines in effect at the time of the review; and to assure consistency with the City's comprehensive plan and *development* regulations adopted under RCW 36.70A and other local requirements.
- d. Any of the provisions of this *program* may be amended as provided for in RCW 90.58.120 and .200 and WAC 173-26. Amendments or revision to this *program*, as provided by law, do not become effective until approved by WDOE.
- e. Proposals for *shoreline* re-designation (i.e., amendments to the *shoreline* maps and descriptions) must demonstrate consistency with the criteria set forth in WAC 173-22.

4. City Hearing Examiner. The City Hearing Examiner shall be responsible for making final determinations on appeals of Statements of *Exemptions* and *Shoreline Substantial Development Permits*.

5. WDOE and Attorney General

- a. The duties and responsibilities of WDOE shall include, but are not limited to the following:
 - i. Reviewing and approving *program* amendments prepared by the City pursuant to WAC 173-26-120. Amendments or revisions to the *program*, as provided by law, do not become effective until approved by WDOE.
 - ii. Approving, denying or approving with conditions *Shoreline Conditional Use Permits* and *Shoreline Variance Permits* filed by the City.
- b. WDOE and the Attorney General have the authority to review and petition for review the City's *permit* decisions. Petitions for review must be commenced within twenty one (21) days from the *date of filing* of the City's decision.

C. WDOE Review

1. WDOE shall be notified of any *Substantial Development*, *Conditional Use* or *Variance Permit* decisions made by the *Shoreline Administrator* (or Hearing Examiner when required), whether it is an approval or denial. The notification shall occur after all local administrative appeals related to the *permit* have concluded or the opportunity to initiate such appeals has lapsed. When a *Substantial Development Permit*, *Conditional Use* or *Variance Permit* is required for a *development*, the submittal of the *permits* shall be made concurrently. The *Shoreline Administrator* shall file the following with WDOE and the Attorney General:
 - a. A copy of the complete application per WAC 173-27-180;
 - b. Findings and conclusions that establish the basis for the decision including but not limited to identification of *shoreline* environment designation, applicable *program* policies and regulations and the consistency of the project with appropriate review criteria for the type of *permit(s)*;
 - c. The final decision of the City;

- d. The *permit* data sheet per WAC 173-27-990;
 - e. Affidavit of public notice; and
 - f. Where applicable, the *Shoreline Administrator* shall also file the applicable documents required by the State Environmental Policy Act (RCW 43.21C).
2. When the project has been modified in the course of the local review process, plans or text shall be provided to WDOE that clearly indicates the final approved plan.
 3. If WDOE determines that the submittal does not contain all of the documents and information required by this section, WDOE shall identify the deficiencies and notify the City and the applicant in writing. WDOE will not act on *Conditional Use* or *Variance Permit* submittals until the material requested in writing is submitted to them.
 4. WDOE shall convey to the City and applicant its final decision approving, approving with conditions, or disapproving the *permit* within thirty (30) days of the date of submittal by the City. The *Shoreline Administrator* will notify those interested *persons* having requested notification of such decision.
 5. WDOE shall base its determination to approve, approve with conditions or deny a *Conditional Use Permit* or *Variance Permit* on consistency with the policy and provisions of the SMA, WAC 173-27-160, WAC 173-27-170 and WAC 173-27-210, and the criteria listed in this *program*.
 6. Appeals of WDOE decisions on *conditional use* and variances requests shall be made to the *Shorelines Hearing Board* as specified in Section VII.E.3.

D. Public Notice Requirements

1. A notice of application, comment periods, decisions, public hearings, and appeal hearings on applications and decisions associated with *shoreline substantial development permits*, *shoreline conditional uses* and *shoreline* variances shall be as provided in WAC 173-27-110 or LCMC 18.030 as applicable.
2. In addition, copies of the original application and other pertinent materials used in the final *shoreline permit* decision shall be sent to the State in accordance with state regulations, and, pursuant to RCW 90.58 or 43.21C. The *permit* and any other written evidence of the final order of the City relative to a *permit* application, shall be transmitted by the *Shoreline Administrator* to the Attorney General of the State of Washington and to WDOE in accordance with WAC 173-27-130 and RCW 90.58.140(6).

E. Appeals

1. Filing Appeals
 - a. Any decision or ruling of the *Shoreline Administrator* may be reconsidered upon a request for reconsideration within seven (7) days of the date of issuance of the decision. Applicants may appeal the initial notice of decision or subsequent reconsideration to the Hearings Examiner.
 - b. The Hearing Examiner shall hold a public hearing, conduct adjudicative proceedings, maintain a record thereof, and enter findings of facts, conclusions of law, and a final decision or other order as appropriate.
 - c. Appeals from decisions or rulings of the *Shoreline Administrator* shall be made within twenty-one (21) calendar days of the *date* of the *permit* decision. If the last day for filing an appeal falls on a weekend day or a holiday, the last day for filing shall be the next working day.
 - d. An appeal of the *Shoreline Administrator* shall take the form of a written statement of the alleged reason(s) the decision was in error, or specifying the grounds for appeal. The following information, accompanied by an appeal fee as specified in LCMC 18.030.130, shall be submitted:
 - i. An indication of facts that establish the appellant's right to appeal,

- ii. An identification of explicit exceptions and objections to the decision being appealed, or an identification of specific errors in fact or conclusion,
- iii. The requested relief from the decision being appealed, and
- iv. Any other information reasonably necessary to make a decision on the appeal.

Appeals shall be filed with the Office of the Hearing Examiner according to LCMC 18.030.130.

2. Hearings

- a. Applications which require an open-record hearing shall be considered by the Hearing Examiner. When an open-record hearing is required, all other land use *permit* applications for a specific site or project shall be considered concurrently. Therefore, in this situation, applications for which the *Shoreline Administrator* has authority shall be transferred to the jurisdiction of the Hearing Examiner to allow consideration of all land use actions concurrently.
- b. The Hearing Examiner shall consider concurrently all related land use *permit* applications for a specific site, and any accompanying environmental appeal under LCMC 18.310. Applications for which the *Shoreline Administrator* has authority shall be transferred to the jurisdiction of the Hearing Examiner to allow concurrent consideration of all land use actions, as prescribed in LCMC 18.030.
- c. Any decision or ruling of the Hearing Examiner on a *shoreline substantial development permit* may be appealed to the State *Shorelines Hearing Board*.

3. State Shorelines Hearing Board

- a. Appeals of any final *permit* decision may be made to the *Shorelines Hearing Board* as governed by the procedures established in RCW 90.58.180 (Appeals from Granting, Denying, or Rescinding *Permits*) and WAC 461-08 (Practice and Procedure, Review of the Granting, Denying or Rescinding of *Substantial development Permits*, Hearings).
- b. All appeals of any final *permit* decision must be made to the *Shorelines Hearing Board* within twenty-one (21) days after the City's or WDOE's final decision *date of filing* concerning the *shoreline permit* or formal approval to revisions of the *permit*.

F. Commencement of *Development Activity* and *Permit Validity*

- 1. No construction pursuant to a *Substantial Development Permit*, *shoreline variance* or *shoreline conditional use* authorized by this *program* shall begin or be authorized and no building, *grading* or other construction *permits* shall be issued by the City until twenty-one (21) days from the *date of filing*.
- 2. Construction may be commenced no sooner than thirty (30) days after the *date of filing* unless construction is prohibited until all Superior Court review proceedings are final after judicial hearing as provided in RCW 90.58.140. Any applicant who wishes to begin construction pursuant to this section prior to termination of all review proceedings does so at the applicant's own risk.
- 3. Construction activities shall be commenced, or where no construction activities are involved, the use or activity shall be commenced within two (2) years of the effective date of a *Substantial Development Permit*. The *Shoreline Administrator* may authorize a single extension for a period not to exceed one (1) year based on reasonable factors, if a request for extension has been filed before the expiration date and notice of proposed extension is given to parties of record on the *Substantial Development Permit* and to the department.
- 4. Authorization to conduct construction activities shall terminate five (5) years after the effective date of a *substantial development permit*. The *Shoreline Administrator* may authorize a single extension if it has been filed before the expiration date and notice of the proposed extension is given to parties of record and WDOE.

G. Enforcement

1. General Enforcement

- a. The enforcement provisions of RCW 90.58.210 and WAC 173-27-240 through -310 shall apply.
- b. The *Shoreline* Management Act calls for a cooperative enforcement “program between local and state government. It provides for both civil and criminal penalties, orders to cease and desist, orders to take corrective action and *permit* rescission. The choice of enforcement action and the severity of any penalty should be based on the nature of the violation and the damage or risk to the public or to public resources. The existence or degree of bad faith of the *persons* subject to the enforcement action, the benefits that accrue to the violator, and the cost of obtaining compliance may also be considered.
- c. The *Shoreline Administrator*, and/or authorized representative, shall have the power to seek enforcement of the *shoreline* regulations of the City using his or her own powers or powers vested with other state or local authorities.
- d. The *Shoreline Administrator*, with the consent of the owner or occupier of a building or premises, or pursuant to a lawfully issued inspection warrant, may enter at reasonable times any building or premises subject to the consent or warrant to perform the duties imposed by this *program*.
- e. These *shoreline* regulations shall be enforced for the benefit of the health, safety and welfare of the general public, and not for the benefit of any particular *person* or class of *persons*.
- f. No provision of, or term used in, this code is intended to impose upon the City, or any of its officers or employee, any duty which would subject them to damages in a civil action.
- g. The *Shoreline Administrator* shall have the authority to request evidence of a statement of *exemption* for any *development*.

2. Investigation and Notice of Violation

- a. An investigation shall be made of any *structure* or use which the City reasonably believes does not comply with the standards and requirements of this *program*.
- b. If, after an investigation, it is determined that the standards or requirements of this title have been violated, a notice of violation shall be served, by first class mail, upon the owner, tenant or other *person* responsible for the condition.
- c. The compliance period shall not be less than two weeks, except where substantial life safety issues exist.

3. Penalties. Any *person* found to have willfully engaged in activities on the City's *shorelines* in violation of the Shoreline Management Act of 1971 or in violation of this *program*, and rules or regulations adopted pursuant thereto, shall be subject to the penalty provisions of LCMC 18.50.050.

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

H. Public and Private Redress

1. Any *person* subject to the regulatory provisions of this *program* who violates any provision of this *program* or the provisions of a *permit* issued pursuant thereto shall be liable for all damages to public or private property arising from such violation, including the cost of *restoring* the affected area to its condition prior to such violation.
2. The City Attorney may bring suit for damages under this section on behalf of the City. Nothing in this section precludes private *persons* from bringing suit for damages on their own behalf.

I. Fees for Permits Obtained after *Development*

1. *Permits* obtained following, rather than prior to, the commencement of a *development* or use shall be three (3) times the normal amount. This provision is in addition to the enforcement measures contained in this chapter and in LCMC 18.050.
2. Delinquent *permit* penalties shall be paid in full, including interest and any applicable penalties, prior to resuming the use or activity.

J. Revocation of *Permits*

1. Any *permit* may, after a hearing with adequate legal notice, be rescinded by the issuing authority upon the finding that a permittee has not complied with conditions of a *permit*. If WDOE is of the opinion that noncompliance exists, WDOE shall provide written notice to the local government and the permittee. If WDOE is of the opinion that the noncompliance continues to exist thirty days after the date of the notice, and the local government has taken no action to rescind the *permit*, WDOE may petition the hearings board for a rescission of the *permit* upon written notice of the petition to the local government and the permittee if the request by WDOE is made to the hearings board within fifteen days of the termination of the thirty-day notice to the local government.
2. *Permits* found to have been authorized based on a misrepresentation of the facts shall also be subject to revocation.
3. When required, corrective action shall be completed within ninety (90) days of the issuance of the order of the *Shoreline Administrator*.
4. Should a discretionary *shoreline permit* be revoked, the use rights attached to the site and/or *structure* in question shall revert to uses permitted outright in the underlying zoning district, subject to all *development* standards contained therein. Revocation of a *permit* does not preclude the assessment of penalties in Section VII.G above. Appeals of the revocation order shall be in accordance with Section VII.E.

VIII. DEFINITIONS

ACCESSORY STRUCTURE means a subordinate building or use incidental to the use of the main building or use.

ACCESSORY USE means any use or activity incidental and subordinate to a primary use or development.

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

AGRICULTURAL EQUIPMENT and "agricultural facilities" includes, but is not limited to: (i) The following used in agricultural *operations*: Equipment; machinery; constructed shelters, buildings, and ponds; fences; upland finfish rearing facilities; water diversion, withdrawal, conveyance, and use equipment and facilities including, but not limited to, pumps, pipes, tapes, canals, ditches, and drains; (ii) Corridors and facilities for transporting personnel, livestock, and equipment to, from, and within *agricultural lands*; (iii) Farm residences and associated equipment, lands,

and facilities; and (iv) Roadside stands and on-farm markets for marketing fruit or vegetables; and

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

AQUACULTURE means the cultivation or farming of food fish, shellfish, or other aquatic plants and animals as defined in WAC 173-26-241(3)(b). Aquaculture does not include the harvest of wild geoduck associated with the state managed wild stock geoduck fishery.

APPURTENANCE means a structure necessarily connected to the use and enjoyment of a *single-family residence* and is located landward of the *ordinary high water mark* and the perimeter of a wetland.

NORMAL APPURTENANCES include a garage; deck; driveway; utilities; fences; installation of a septic tank and drainfield and *grading* which does not exceed two hundred fifty cubic yards and which does not involve placement of *fill* in any wetland or waterward of the *ordinary high water mark*. WAC 173-27-040(2)(g).

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. WAC 173-27-030(3)

BERM means a linear mound or series of mounds of earth, sand and/or gravel generally paralleling the water at or landward of the *OHWM*. Also a linear mound used to screen an adjacent activity, such as a parking lot, from transmitting excess noise and glare.

BIOENGINEERING means project designs or construction methods that use live woody vegetation or a combination of live woody vegetation and specially developed natural or synthetic materials to establish a complex root grid within the existing bank that is resistant to erosion, provides bank stability, and maintains a healthy riparian environment with habitat features important to fish life. Use of wood structures or limited use of clean angular rock may be allowable to provide stability for establishment of the vegetation. WAC 220-110-020(12).

BOAT see **VESSEL**.

BUFFER AREA or BUFFER ZONE means a strip of land that is designed and designated to permanently remain vegetated in an undeveloped condition to protect an adjacent aquatic or wetland resource from landward impacts, improve water quality, and to provide habitat for fish and wildlife.

BULKHEAD means a solid, open-pile, or irregular wall of rock, *riprap*, concrete, steel, or timber or combination of these materials erected parallel to and near *ordinary high water mark* to provide a protective vertical wall resistant to water and wave action.

A NORMAL PROTECTIVE BULKHEAD includes those structural and nonstructural *developments* installed at or near, and parallel, to, the *ordinary high water mark* for the sole purpose of protecting an existing single family residence and appurtenant structures from loss or damage by erosion.

CHANNEL MIGRATION ZONE (CMZ) means the area along a river within that the channel(s) can be reasonably predicted to migrate over time as a result of natural and normally occurring hydrological and related processes when considered with the characteristics of the river and its surroundings.

COMMERCIAL FISHING is the activity of capturing fish and other seafood under a commercial license, the purpose being to sell the catch.

CONDITIONAL USE means a use, *development*, or vegetation conservation that is classified as

a conditional use, or is not classified within the *program*, and requires a conditional use *permit*. WAC 173-27-160.

COVERED MOORAGE means *boat moorage*, with or without walls, that has a roof to protect a vessel.

DATE OF FILING means the date of actual receipt by WDOE of the local government's decision except: (a) with regard to a permit for a variance or conditional use, DATE OF FILING means the date the decision of WDOE is transmitted by WDOE to the local government, and; (b) when a local government simultaneously transmits to WDOE its decision on a shoreline substantial development with its approval of either a shoreline conditional use permit or variance, or both, DATE OF FILING has the same meaning as defined in (a).

DEVELOPMENT means a use consisting of the construction or exterior alteration of *structures*; *dredging*; drilling; dumping; *filling*; removal of any sand, gravel, or minerals; bulkheading; driving of piling; placing of obstructions; or any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to this chapter at any state of water level. RCW 90.58.030(3)(a).

DIKE is an artificial embankment normally set back from the bank or channel in the *floodplain* for the purpose of keeping floodwaters from inundating

DREDGE SPOIL OR MATERIAL means the material removed by *dredging*.

DREDGING is the removal or displacement of earth or sediments such as gravel, sand, mud, silt, or debris from below the *OHWM* of any stream, river, *lake*, or water body or wetland.

MAINTENANCE DREDGING means *dredging* for the purpose of maintaining a prescribed minimum depth previously authorized by a federal, state, and/or local *permit* as part of any specific waterway project.

MAINTENANCE DREDGING also includes *dredging* that maintains the previously authorized width of a channel, *boat* basin or berthing area.

ECOLOGICAL FUNCTIONS or SHORELINE FUNCTIONS means the work performed or role played by the physical, chemical, and biological processes that contribute to the maintenance of the aquatic and terrestrial environments which constitute the shoreline's natural ecosystem. WAC 173-26-200 (2)(c)

ENHANCEMENT means alterations performed to improve the condition of an existing degraded

area so that the functions provided are of a higher quality. Enhancements are to be distinguished from resource creation or *restoration* projects.

EXEMPT / EXEMPTION means *developments* that are set forth in Chapter II (Exemptions from *Substantial Development Permit*) of this *program* that are not required to obtain a *Shoreline Substantial Development Permit*, but which must otherwise comply with applicable provisions of the act and the *program*.

FILL means the addition of soil, sand, rock, gravel, sediment, earth retaining *structure*, or other material to an area waterward of the OHWM, in wetlands, or on shorelands in a manner that raises the elevation or creates dry land. WAC 173-26-020(14).

FLOAT means a fixed platform structure anchored in and floating upon a water body that does not connect to the shore, and that provides landing for water dependent recreation or *moorage* for vessels or watercraft.

FLOATING HOME means a single-family dwelling unit constructed on a *float*, that is *moored*, anchored, or otherwise secured in waters, and is not a *vessel*, even though it may be capable of being towed.

FLOODPLAIN means the one hundred-year floodplain and refers to the 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 act. WAC 173-26-020(15)

FLOODWAY means the area, as identified in a master *program*, that has been established in Federal Emergency Management Agency Flood Insurance Rate Maps or floodway maps. The *floodway* shall not include those lands that can reasonably be expected to be protected from flood waters by flood control devices maintained by or maintained under license from the federal government, the state, or a political subdivision of the state. RCW 90.58.030(2)(b).

FOREST PRACTICES means any activity conducted on or directly related to forest land and relating to growing, harvesting, or processing timber. These activities include but are not limited to road and trail construction, final and intermediate harvesting, pre-commercial thinning, reforestation, fertilization, prevention and suppression of disease and insects, salvage of trees, and brush control. WAC 222-16-010(21)

GEOTECHNICAL REPORT or GEOTECHNICAL ANALYSIS means a scientific study or evaluation of geological, hydrological, geochemical, and/or geomorphological aspect(s) of a site conducted by a qualified expert.

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. WAC 173-26-020(20).

GROIN OR SPUR DIKE OR ROCK WEIR means a barrier-type structure extending from the backshore or stream bank into a water body for the purpose of the protection of a shoreline and adjacent upland by influencing the movement of water and/or deposition of material.

HEIGHT means the distance measured from the 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 it obstructs the view of a substantial number of residences on areas adjoining such shorelines (or this *program* provides otherwise): Provided further that temporary construction equipment is excluded in this calculation. WAC 173-27-030(9)

INSTITUTIONAL USE means a use and related *structure(s)* for the provision of educational, medical, cultural, social and/or recreational services to the community, including but not limited to such uses as schools, colleges, museums, community centers, and the relevant essential public facilities identified in WAC 365-196-550.

IN-STREAM STRUCTURE means a *structure* placed by humans within a stream or river waterward of the *ordinary high-water mark* that either causes or has the potential to cause water impoundment or the diversion, obstruction, or modification of water flow. In-stream structures may include those for hydroelectric generation, irrigation, water supply, flood control, transportation, utility service transmission, fish habitat *enhancement*, or other purpose.

INVASIVE means a nonnative plant or animal species that: (a.) causes or may cause significant displacement in range, a reduction in abundance, or otherwise threatens, native species in their natural communities; (b.) threatens or may threaten natural resources or their use in the state; (c.) causes or may cause economic damage to commercial or

recreational activities that are dependent upon state waters; or (d.) threatens or harms human health. RCW 77.08.010(28)

JOINT USE (MOORAGE) FACILITY means a *moorage* for nine or fewer pleasure craft and/or land for water sports for use in common by shoreline residents with adjoining lots, each with water frontage, or of a certain subdivision or community within shoreline jurisdiction or for use by patrons of a public park, or quasi-public recreation area, including rental of non-powered craft. A joint-use *moorage* facility is a *MARINA* if: (a.) it provides commercial goods and services; (b.) it is of a large scale (ten slips or more); (c.) *moorage* is proposed to be leased to upland property owners; or (d.) the proposal includes a *boat* launching facility other than a ramp.

LAKE means a body of standing water in a depression of land or expanded part of a river, including reservoirs, of twenty (20) acres or greater in total area. A lake is bounded by the *ordinary high water mark* or, where a stream enters a lake, the extension of elevation of the lake's *ordinary high water mark* within the stream.

LITTORAL means the area of the shore from the OHWM waterward to a depth of two meters below ordinary low water or to the maximum extent of non-persistent emergent plants.

LITTORAL DRIFT means the mud, sand, or gravel material moved parallel to the shoreline in the nearshore zone by waves and current.

MAINTENANCE DREDGING—See Dredging

MARINA means a water-dependent commercial use that consists of a system of *piers*, buoys, or *floats* which provides *moorage* for at least ten *boats*. Marinas are prohibited under this *program*. For the purposes of this *program*, large community *moorage* facilities, yacht club facilities, and camp or resort *moorage* areas are also considered marinas. *Boat* launch facilities and supplies and services for small commercial or pleasure craft are often associated with marinas. Uses accessory to marinas may include fuel docks and storage, boating equipment sales and rental, repair services, public launching, bait and tackle shops, potable water, waste disposal, administration, parking, groceries, and dry goods. Foreshore marinas are marinas located waterward of the *ordinary high water mark*.

MITIGATION means to avoid, minimize or compensate for adverse impacts to shoreline *ecological functions* and processes.

Compensatory mitigation is an action to reduce the severity of effects from an action that may cause potential impacts to functions and values of critical areas and their buffers.

MOORAGE means a *pier*, dock, buoy or *float*, either fixed or floating, to which vessels may be secured. Individual mooring facilities refers to moorage for single vessels. See also definition for COVERED MOORAGE.

MOORING BUOY means a floating object anchored to the bottom of a water body that provides tie-up capabilities for vessels or watercraft.

NAVIGATIONAL CHANNELS are those routes on the waters of state beyond the outer harbor line.

NON-CONFORMING STRUCTURE means a structure that was lawfully constructed or established prior to the effective date of the applicable Act or *program* provision, and which no longer conforms to the applicable shoreline provisions (WAC 173-27-080(1)). See also Non-conforming Use.

NON-CONFORMING USE OR DEVELOPMENT means use or activity that was lawfully established prior to the effective date of the applicable Act or program provision, and which no longer conforms to the applicable shoreline provisions. WAC 173-27-080(1)

NON-WATER-DEPENDENT USE OR ACTIVITY means a *water-related*, *water-enjoyment*, or *non-water-oriented use or activity*.

NON-WATER-ORIENTED USE OR ACTIVITY a use or activity that is not *water-dependent*, *water-related*, or *water-enjoyment*.

NORMAL APPURTENANCE—See *appurtenance*

NORMAL MAINTENANCE are those usual acts to prevent a decline, lapse, or cessation from a lawfully established condition. WAC 173-27-040(2)(b).

NORMAL PROTECTIVE BULKHEAD—See Bulkhead

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.

NOXIOUS WEEDS means non-native plants that are destructive, competitive, and difficult to control as defined by the Washington State Noxious Weed Control Board.

OPERATION(S) means industrial, commercial, institutional, or residential activity that may be publicly or privately-owned and operated, and may involve the use of stationary facilities,

equipment, transport vehicles, or transfer equipment. To the extent allowed by state or federal law, this definition includes all federal, state, or local government entities.

ORDINARY HIGH WATER MARK (OHWM) means that mark found by examining the bed and banks of a body of water and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation as that condition exists on June 1, 1971, as it may naturally change thereafter, or as it may change thereafter in accordance with *permits* issued by a local government or WDOE: In any area where the ordinary high water mark cannot be found, the ordinary high water mark adjoining salt water shall be the line of mean higher high tide and the OHWM adjoining fresh water shall be the line of mean high water (RCW 90.58.030(2)(b) and WAC 173-22-030(6)).

OVER-WATER STRUCTURE means a *structure* or other construction located waterward of the *Ordinary High Water Mark* (OHWM) or a *structure* or other construction erected on *piling* above the surface of the water, or upon a *float*.

PERMIT (noun) means any *Substantial Development, Variance, Conditional Use Permit*, or revision thereto authorized under RCW 90.58.

PERSON means an individual, partnership, corporation, association, organization, cooperative, public or municipal corporation, or agency of the state or local governmental unit however designated.

PIER means a fixed platform *structure* supported by *piles* in a water body that abuts the shore to provide landing for *water-dependent recreation* or *moorage* for *vessels* or *watercraft* and does not include above water storage.

POINT (noun, as geographical feature) – means a low profile shoreline promontory of more or less triangular shape, the top of which extends seaward. A point may be the wave cut shelf remnant of a headland bluff or a purely accretional deposit that began as a hooked spit and becomes a point by subsequently closing the lagoon gap between the headland and the tip of the hook. Points are characterized by converging *berms* that normally enclose a lagoon, marsh, or meadow, depending on the point's stage of *development*.

POTENTIALLY HARMFUL MATERIALS means Hazardous materials as well as other materials such as the following which, if discharged or improperly disposed, may present a risk to water resources: 1) Petroleum products including but not limited to petroleum fuel and petroleum based coating and preserving materials; 2) oils containing PCB's; 3) antifreeze and other liquid automotive products; 4) metals, either in particulate or dissolved form, in concentrations above established regulatory standards; 5) flammable or explosive materials; 6) radioactive material; 7) used batteries; 8) corrosives, acids, alkalis, or bases; 9) paints, stains, resins, lacquers or varnishes; 10) degreasers; 11) solvents; 12) construction materials; 13) drain cleaners and other toxic liquid household products; 14) pesticides, herbicides, fungicides or fertilizers unless applied in accordance with local, state and federal standards; 15) steam cleaning and carpet cleaning wastes; 16) car wash water; 17) laundry wastewater; 18) soaps, detergents, ammonia; 19) swimming pool backwash; 20) chlorine, bromine, and other disinfectants; 21) heated water; 22) domestic animal wastes; 23) sewage; 24) recreational vehicle waste; 25) animal carcasses, excluding salmonids; 26) food wastes; 27) collected lawn clippings, leaves or branches; 28) trash or debris; 29) silt, sediment, or gravel; 30) dyes; and 31) untreated or unapproved wastewater from industrial processes.

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.

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 WDFW (POL-M-6001) for possible listing as endangered, threatened, or sensitive according to the process and criteria defined in WAC 232-12-297.

Criterion 2. Vulnerable aggregations. Vulnerable aggregations include those species or groups of animals susceptible to significant population declines, within a specific area or statewide, by virtue of their inclination to congregate. Examples include heron colonies,

seabird concentrations, and marine mammal congregations.

Criterion 3. Species of recreational, commercial, and/or tribal importance. Native and nonnative fish, shellfish, and wildlife species of recreational or commercial importance and recognized species used for tribal ceremonial and subsistence purposes that are vulnerable to habitat loss or degradation.

Criterion 4. Species listed under the federal Endangered Species Act as either proposed, threatened, or endangered (WAC 173-26-020(25)).

PROGRAM see Shoreline Master *Program*

PUBLIC ACCESS means the physical 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 (WAC 173-26-221).

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* (WAC 173-27-030(14)).

QUALIFIED PROFESSIONAL means a *person* with experience and training in the pertinent discipline, and who is a qualified expert with expertise appropriate for the relevant subject.

RECREATIONAL DEVELOPMENT includes commercial and public facilities designed and used to provide recreational opportunities to the public.

RESIDENTIAL DEVELOPMENT is the *development* of single-family and *multi-family residences* and their *normal appurtenances*, and the creation of new residential lots through land division.

RESTORATION, RESTORE means to reestablish or upgrade impaired ecological processes or functions.

REVTMENT means a sloped wall constructed of *riprap* or other material placed on stream banks or other shorelines to retard bank erosion and minimize lateral stream movement. A revetment typically slopes waterward and has rough or jagged facing. The slope differentiates it from a *bulkhead* that is a vertical structure.

RIPRAP means a foundation or retaining wall of stones or rock placed along the water's edge or on an embankment to prevent erosion.

SHORELINE ADMINISTRATOR is the local government official or his/her designee, responsible for administering this *program*.

SHORELINE DESIGNATIONS means the categories of shorelines established by this *program* in order to provide a uniform basis for applying policies and use regulations within distinctively different shoreline areas.

SHORELINE FUNCTIONS—SEE ECOLOGICAL FUNCTIONS

SHORELINE JURISDICTION means all shorelines of the state and shorelands as defined in RCW 90.58.030. See also Section II.A.

SHORELINE MASTER PROGRAM, SMP or *program* is the comprehensive use plan for a described area, and the use regulations together with maps, diagrams, charts, or other descriptive material and text, a statement of desired goals, and standards developed in accordance with the policies enunciated in RCW 90.58.020 It is an element of the local government's comprehensive plan, and shall be considered a part of the local government's *development* regulations.

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*, *dredging* or application of chemicals.

SHORELINE RESTORATION PROJECT means a project designed to *restore* impaired *ecological function* of a *shoreline*.

SHORELINE STABILIZATION includes actions taken to address erosion impacts to property and structures caused by processes such as current, flood, wind, or waves. These actions include structural and non-structural methods. Structural measures include but are not limited to *bulkheads*, *revetments*, and riprap. Non-structural measures include building setbacks, relocation of *structures*, and *bioengineered* methods that use vegetation or wood.

SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT is the *permit* required by this *program* for uses that are substantial *developments* in shoreline jurisdiction.

SHORELINES means all of the water areas of the state, including reservoirs, and their associated shorelands, together with the lands underlying them, except: (a) *shorelines of statewide significance*; (b) shorelines on segments of streams upstream of a point where the mean

annual flow is twenty (20) cubic feet per second or less, and the *wetlands* associated with such upstream segments; and (c) shorelines on *lakes* less than twenty (20) acres in size and wetlands associated with such small lakes. See RCW 90.58.030(2)(d) and WAC 173-18, 173-26 and 173-22.

SHORELINES HEARING BOARD means a quasi-judicial body established by the Shoreline Management Act of 1971 to hear appeals by any aggrieved party on the issuance of a *substantial development permits program*. For local governments planning under RCW 36.70A, appeals of master programs shall be to the Growth Management Hearings Board. The petition must be filed pursuant to the requirements of RCW 90.58.190. WDOE's written notice of final action will conspicuously and plainly state it is the department's final decision and there will be no further modifications under RCW 90.58.090(2). WAC 173-26-130.

SHORELINES OF STATEWIDE SIGNIFICANCE (SSWS) means a select category of shorelines of the state, defined in RCW 90.58.030(2)(f), where special policies apply: (a.) Those *lakes*, whether natural, artificial, or a combination thereof, with a surface acreage of 1,000 acres or more, measured at the *ordinary high water mark*; (b.) Those natural rivers or segments thereof, downstream of a point where the mean annual flow is measured at 1,000 cubic feet per second, or more, and (c.) Those shorelands associated with paragraphs a and b above.

SHORELINES OF THE STATE are the total of all shorelines and *shorelines of statewide significance* within the state.

SINGLE FAMILY RESIDENCE means a detached dwelling designed for and occupied by one family including those structures and *developments* within a contiguous ownership which are a *NORMAL APPURTENANCE*.

SOLID WASTE FACILITY or Hazardous Waste Facility refers to any land or *structure* where solid or hazardous waste is stored, collected, transported, or processed in any form, whether loose, baled or containerized, including but not limited to the following: transfer stations, landfills, or solid waste loading facilities. Solid waste handling and disposal facilities do not include the following: handling or disposal of solid waste as an incidental part of an otherwise permitted use; and solid waste recycling and reclamation activities not conducted on the same site as an accessory to

the handling and disposal of garbage and refuse.

STORMWATER means runoff during and following precipitation or snowmelt events, including surface runoff, drainage, and interflow.

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. WAC 173-27-030(15).

SUBSTANTIAL DEVELOPMENT means any *development* with a total cost or fair market value exceeding five thousand seven hundred and eighteen dollars (\$5,718), or as adjusted by the state Office of Financial Management, or any *development* that materially interferes with the normal public use of the water or *shorelines of the state*, except as specifically *exempted* pursuant to RCW 90.58.030(3e) and WAC 173-27-040. See also definition of DEVELOPMENT and EXEMPTION.

SURFACE WATER means water that flows across the land surface, in channels, or is contained in depressions in the land surface, including but not limited to ponds, *lakes*, rivers, and streams.

TRANSPORTATION FACILITY includes roads, railways, bridges and related *structures* such as culverts, *fills*, embankments, causeways, for the purpose of moving people using motorized or non-motorized means of transport.

VEGETATION CONSERVATION are activities to protect and *restore* vegetation along or near marine and freshwater shorelines that contribute to the ecological functions of shoreline areas.

VESSEL includes ships, *boats*, barges, or any other floating watercraft that are designed and used for navigation and do not interfere with the normal public use of the water (WAC 173-27).

VIEW CORRIDOR means activities to protect and *restore* vegetation along or near marine and freshwater shorelines that contribute to the *ecological functions* of shoreline areas. Vegetation conservation provisions include the prevention or restriction of plant clearing and earth *grading*, vegetation *restoration*, and the control of *invasive* weeds and nonnative species (WAC 173-26-221).

WATER-DEPENDENT USE is a use or portion of a use that cannot exist in a location which is not adjacent to the water and which is dependent on the water by reason of the

intrinsic nature of its operations. Examples of water-dependent uses include *marinas*, ship building, dry docking, sewer outfalls, and shoreline *restoration* projects.

WATER-ENJOYMENT USE is a recreational use or other use that facilitates *public access* to the shoreline as a primary characteristic of the 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. Examples of water-enjoyment uses include parks, *piers*, museums, restaurants, educational/scientific reserves, resorts and mixed use projects.

WATER-ORIENTED USE means a use that is *water-dependent*, *water-related*, or *water-enjoyment*, or a combination of such uses.

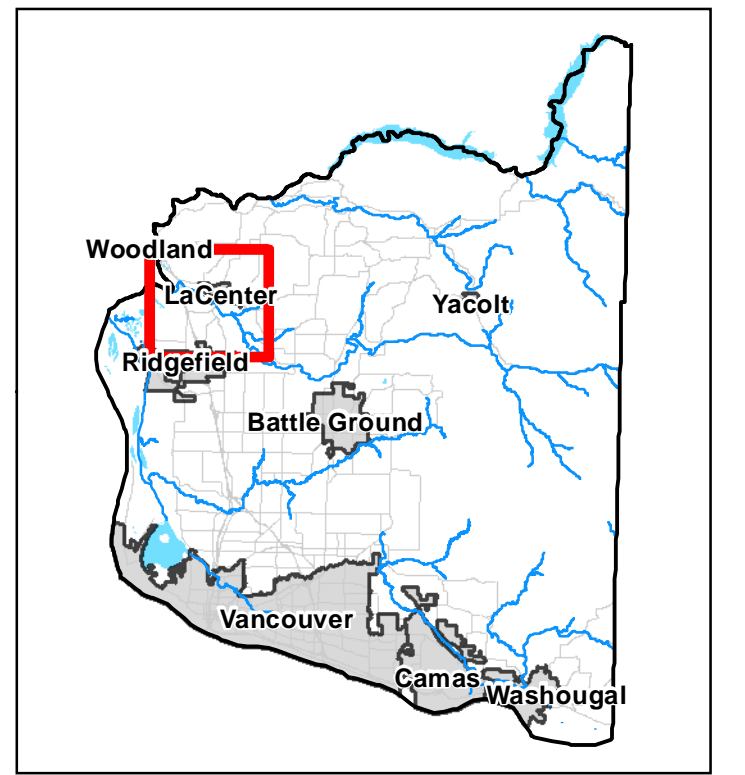
WATER QUALITY means the characteristics of water within shoreline jurisdiction, including water quantity, hydrological, chemical, aesthetic, recreation-related, and biological characteristics.

WATER-RELATED USE means a use or portion of use that is not intrinsically dependent on a waterfront location but whose economic viability is dependent upon a waterfront location because: (a.) of 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 make its services less expensive and/or more convenient.

WEIR means a structure in a stream or river for measuring or regulating stream flow.

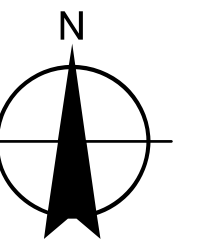
WETLANDS or WETLAND AREAS means areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas. Wetlands do not include those artificial wetlands intentionally created from non-wetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial

wetlands intentionally created from non-wetland areas to *mitigate* the conversion of wetlands



- Legend**
- City Limits
 - Urban Growth Areas
 - Associated Wetlands*
- Shoreline Designations**
- Aquatic
 - Natural
 - Urban Conservancy
 - Medium Intensity
 - High Intensity
 - Rural Conservancy Residential
 - Rural Conservancy Resource Land
 - USFWS National Wildlife Refuges**

* Definitive presence will be determined on a project basis.
** Private development in National Wildlife Refuges are regulated under the Rural Conservancy Residential provisions of this SMP.
The City is pre-designating shorelines within its adopted Urban Growth Area (UGA). Until annexation, development in these areas will continue to be regulated by the Clark County Shoreline Master Program (SMP).



0 0.25 0.5
Miles

Coordinate System: State Plane NAD 1983 (ft)
Washington South FIPS 4602

NOTE: Map data shown here are the property of the sources listed below. Inaccuracies may exist, and ESA implies no warranties or guarantees regarding any aspect of data depiction.

Data Sources: ESA, 2010; Clark County, 2009, 2011; DNR, 2009



**Official Shoreline
Designation Map**
**City of La Center,
Washington**

APPENDIX C

Chapter 18.300S CRITICAL AREAS (SHORELINES ONLY)

Sections:

18.300.010	Authority and title
18.300.020	Purpose
18.300.030	Definitions
18.300.040	Applicability and critical areas map
18.300.050	Variances
18.300.060	Reasonable use exception
18.300.070	Critical lands
18.300.080	Critical area buffers.
18.300.090	Allowed uses.
18.300.100	Limited uses.
18.300.110	Development standards
18.300.120	Mitigation
18.300.130	Residential density transfer
18.300.140	Selective timber harvesting on critical lands
18.300.150	Modification to overlay zone
18.300.160	Application fees
18.300.170	Bonds to Insure Mitigation, Maintenance and Monitoring.
18.300.180	Critical Area Inspections

18.300.010 Authority and title

This chapter is established pursuant to RCW 36.70A.060 and La Center Ordinance No. 2001-2. This chapter is known as the La Center critical areas ordinance.

18.300.020 Purpose

The purpose of the critical areas overlay district is to implement the open space policies of the La Center comprehensive plan. This chapter creates an overlay district that requires the conservation and/or enhancement of identified critical areas while encouraging urban densities and affordable housing through density transfer to non-sensitive (buildable) lands.

Critical areas are valuable and fragile natural resources with significant development constraints that, in their natural state, provide many valuable social and ecological functions. The attendant buffers of critical areas are

essential to the maintenance and protection of the sensitive land, its functions and values. The loss of social and ecological functions provided by critical areas, especially wetlands, riparian zones and fish and wildlife habitat, results in a detriment to public safety and welfare.

Critical areas help to relieve the burdens on the people of La Center which urban development can create including congestion, noise and odors, air pollution, and water quality degradation.

Critical areas serve several important urban design functions. They provide: (1) open space corridors separating and defining developed areas within the city; (2) views which enhance property values and quality of life in developed neighborhoods; (3) educational opportunities for the citizens of La Center; and (4) accessible areas for residents to stroll, hike and enjoy La Center's valuable natural features. The La Center comprehensive plan proposes a system of connected trails that are closely associated with La Center's stream corridors, natural drainage ways and the East Fork of the Lewis River.

Conservation of critical areas has associated natural resource benefits, including improved air and water quality, maintenance of fish and wildlife habitat, decreased erosion and sedimentation to streams, absorption of pollutants and preservation of rare plant and animal species.

The intent of this overlay district is for the city of La Center to achieve no net loss of wetlands, floodplains, fish and wildlife habitat areas, and riparian zones and to avoid the loss of geologically hazardous areas and aquifer recharge/wellhead protection areas. The city's preferred strategy to achieve no net loss is to avoid adverse impacts to critical areas and buffers. However, the city recognizes that there are situations and circumstances where avoidance is not practicable whereupon the intent of this chapter is to minimize and mitigate the environmental impacts of development within and adjacent to critical areas and buffers. An overriding objective of this overlay district is to protect stream corridors and associated wetlands and riparian vegetation throughout the urban area. This overlay district is also designed to ensure conservation of wetland areas and their

functions, where such areas are associated with steep slopes or stream corridors. The overlay district promotes a balance between recreational and public use of critical areas, consistent with the maintenance of their natural appearance and functional values.

Development limitations on critical areas reduces the need to require additional studies to ensure compliance with the State Environmental Policy Act (SEPA) process and other state or federal environmental regulations.

18.300.030 Definitions

For the purposes of this chapter the definitions set forth in this chapter and Chapter 18.040 LCMC shall apply. Unless specifically defined in this chapter or Chapter 18.040 LCMC, words or phrases used in this chapter shall be interpreted so as to give them the meaning they have in common usage and to give this title its most reasonable application.

(1) "Alter" means to adjust, modify or rework a structure or parcel of land.

(2) "Altered," when referring to wetlands, means a wetland of which at least 50 percent has been graded, drained, de-vegetated, or replanted with non-wetland plants.

(3) "Anadromous" means fish that migrate up rivers and streams from the ocean to breed in fresh water.

(4) "Area of Special Flood Hazard:" the land in the flood plain within a community subject to a one percent or greater chance of flooding in any given year. Designation on the Flood Insurance Rate Maps include the letter A.

(5) "Base Flood:" the flood having a 1% chance of being equaled or exceed in any given year (also referred to as the "100-year flood"). Designations on the Flood Insurance Rate Maps include the letter A.

(6) "Basement" means any area of the building including any sunken room or sunken portion of a room, having its floor below ground level (subgrade) on all sides.

(7) "Best available information" means data, other than official flood insurance rate map data, from federal, state, or other sources, provided this data has either been generated using

technically defensible methods or is based on reasonable historical analysis and experience.

(8) "Best available science (BAS)" means a valid scientific process or method of inquiry that is consistent with the criteria for establishing best available science as found in WAC 365-195-900, as amended.

(9) "Buffer" means an area that surrounds and protects critical area functions from adverse impacts.

(10) "City" means a Class 4 municipality governed by the mayor and La Center city council, or the city designee.

(11) "Conservation covenant" means a recorded instrument entered into pursuant to a condition of approving a triggering application.

(12) "Council" means the council of the city of La Center.

(13) "Creation (Establishment)" means the manipulation of the physical, chemical, or biological characteristics present to develop a critical area or wetland on an upland or deepwater site, where a wetland did not previously exist. Activities typically involve excavation of upland soils to elevations that will produce a wetland hydroperiod, create wetland soils and support the growth of hydrophytic plant species. Creation results in a net gain of wetland acres.

(14) "Critical Areas" means any of the following areas or ecosystems: wetlands, critical aquifer recharge areas, streams, fish and wildlife habitat conservation areas, frequently flooded areas, and geologically hazardous areas as defined by the Growth Management Act (RCW 36.70A.170).

(15) "Critical facility" means a facility for which even a slight chance of flooding would be too great. Critical facilities include but are not limited to schools, hospitals, police, fire and emergency response installations, nursing homes, and installations which produce, use, or store hazardous materials or hazardous waste.

(16) "Designated floodway" means the regulatory floodway that has been delineated on the FIRM with detailed information on the community's flood insurance study.

(17) "Development" means any manmade change to improved or unimproved real estate,

including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials located within the area of special flood hazard.

(18) “Emergent wetland” means a wetland with at least 30 percent of the surface area covered by erect, rooted, herbaceous vegetation as the uppermost vegetative strata.

(19) “Endangered species” means fish and wildlife species native to Washington that are seriously threatened with extinction throughout all or a significant part of their ranges within the state.

(20) “Enhancement” means actions performed to improve the condition of an existing degraded wetland or buffer so that the functions provided are of a higher quality.

(21) “Exotic” means any species of plants or animals that are not native to the watershed.

(22) “Flood” or “flooding” means a general and temporary condition of partial or complete inundation of normally dry land areas from:

(a) The overflow of inland or tidal waters; and/or

(b) The unusual and rapid accumulation of runoff of surface waters from any source.

(23) “Flood insurance rate map (FIRM)” means the official map on which the Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

(24) “Flood insurance study” means the official report provided by the Federal Insurance Administration that includes flood profiles and the water surface elevation of the base flood.

(25) “Flood protection elevation” means one foot above the base flood elevation.

(26) “Floodway” means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot. For areas of special flood hazard studied in detail, the floodway boundary is delineated upon the flood insurance rate maps.

(27) “Floodway fringe” shall mean the land between the boundary of the floodway and the limits of the 100-year floodplain.

(28) “Floor (lowest)” means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a basement area, is not considered a building’s lowest floor; provided, that such enclosure is not built so as to render the structure in violation of the applicable nonelevation design requirements of this chapter.

(29) “Forested wetland” means a wetland with at least 30 percent of the surface area covered by a canopy of woody obligate, facultative wet, or facultative plants greater than 20 feet in height.

(30) “Frequently flooded” means a flooding class in which flooding is likely to occur often under normal weather conditions (more than 50 percent chance of flooding in any year or more than 50 times in 100 years).

(31) “Functions” means the beneficial roles served by wetlands including the control of flood waters, maintenance of summer stream flows, filtration of pollutants, recharge of ground water, and provision of significant habitat areas for fish and wildlife.

(32) “Geologically hazardous areas” means areas that because of their susceptibility to erosion, sliding, earthquake, or other geological events, are not suited to the siting of commercial, residential, or industrial development consistent with public health or safety concerns.

(33) “Habitat” means the environment occupied by individuals of a particular species, populations or community.

(34) “Headwaters” means springs, lakes, ponds, or wetlands providing significant sources of water to a stream.

(35) “High intensity land use” means roadways, commercial, industrial, and multifamily (more than four units per parcel) land uses.

(36) “Hydric soil” means a soil that is saturated, flooded or ponded long enough during the growing season to develop anaerobic conditions in the upper part. The presence of hydric soil shall be determined following the methods described in the U.S. Army Corps Wetlands Delineation Manual.

(37) “Hydrophytic vegetation” means macrophytic plant life growing in water or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content. The presence of hydrophytic vegetation shall be determined following the methods described in the wetlands delineation manual.

(38) “Intermittent stream” means surface streams with no measurable flow during 30 consecutive days in a normal water year.

(39) “JARPA means “Joint Aquatics Resource Permit Application.

(40) “Local habitat area” means an area that contains sufficient food, water, or cover for native terrestrial or aquatic species that the city of La Center has identified in this chapter as being of significant local concern.

(41) “Lowest floor” means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a basement area, is not considered a building’s lowest floor; provided, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this chapter.

(42) “Listed Species” are State listed species including native fish and wildlife species legally designated as Endangered (WAC 232-12-014), Threatened (WAC 232-12-011) or Sensitive (WAC 232-12-011); and includes threatened and endangered species under the Federal Endangered Species Act, 50 C.F.R.17.11 and 50 C.F.R. 17.12.

(43) “Manufactured home” means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term “manufactured home” does not include a “recreational vehicle”.

(44) “Minimizing impacts to wetlands or buffers” means:

(a) Using appropriate and best available technology or best available science;

(b) Taking affirmative steps to avoid or reduce impacts;

(c) Sensitive site design and siting of facilities and construction staging areas away from regulated wetlands and their buffers;

(d) Providing protective measures such as siltation curtains, hay bales and other siltation prevention measures, scheduling the regulated activity to avoid interference with wildlife and fisheries rearing, resting, nesting or spawning activities;

(e) Not jeopardizing the continued existence of endangered, threatened, rare, sensitive, or monitor species as listed by the federal government or the state of Washington.

(45) “Mitigation area” is the land area used to compensate for impacts to critical areas and/or their attendant buffers. Compensation may be for loss of acreage and/or functions of the critical area and/or attendant buffers.

(46) “Mitigation Sequence” is the order of action that the approving agency shall require so as to avoid or compensate for impacts to critical areas resulting from the proposed project activity. The type(s) of mitigation required shall be considered and implemented, where feasible, as determined by the city, in the following sequential order of preference:

(a) Avoiding the impact by not taking a certain action or parts of an action;

(b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation;

(c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;

(d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action;

(e) Compensating for the impact by replacing or providing substitute resources or environments; or

(f) Monitoring the impact and taking appropriate corrective measures to achieve the identified goal.

(47) “Native,” when referring to plants or plant communities, means those species or communities that are indigenous to the watershed, including extirpated species.

(48) “New construction” means structures for which the “start of construction” commenced on or after the effective date of this chapter.

(49) “Normal water year” means a 12-month period (October 1st through September 30th) with average precipitation based upon data from the past 50 years.

(50) “Obligate,” “facultative wet,” and “facultative” refer to groupings of plants according to their frequency of occurrence in wetlands. Obligate wetland plants almost always (99 percent probability) occur in wetlands under natural conditions. Facultative wet plants usually (67 to 99 percent probability) occur in wetlands. Facultative plants are equally likely (34 to 66 percent probability) to occur in wetlands or non-wetlands. Such groupings are more fully defined in the wetlands delineation manual.

(51) “Open water,” when not specifically defined by the rating criteria, means a proportion of open water to vegetative cover equal to 25 percent to 75 percent of the total wetland area during a majority of a normal water year.

(52) “Ordinary High Water Mark” on all lakes, streams, and tidal water is that mark that will be found by examining the bed and bands and ascertaining where the presence and action of waters are so common and usual, and so long continued in ordinary years, as to mark upon the soil, a character distinct from that of the abutting upland in respect to vegetation as that condition exists on June 1, 1971, as it may naturally change thereafter, or as it may change thereafter in accordance with permits issued by a local government or department: PROVIDED, That in any area where the ordinary high water line cannot be found, the ordinary high water line adjoining saltwater shall be the line of mean higher high tide and the ordinary high water mark adjoining fresh water shall be line of high water. (RCW 90.58.030(2)(b).)

(53) “Person” means an individual, partnership, corporation, association, organization, cooperative, public or municipal corporation, or any agency of the state or local governmental unit however designated.

(54) “Preservation (Protection/Maintenance)” means removing a threat to, or preventing the decline of, wetland conditions by an action in or

near a wetland. This includes the purchase of land or easements, repairing water control structures or fences, or structural protection such as repairing a barrier island. Preservation does not result in a gain of wetland acres, may result in a gain in functions, and will be used only in exceptional circumstances.

(55) “Priority habitat” is a habitat type with unique or significant value to many species. An area identified and mapped as priority habitat has one or more of the following attributes: Comparatively high fish and wildlife density, comparatively high fish and wildlife species diversity, important fish and wildlife breeding habitat, important fish and wildlife seasonal ranges, limited availability, high vulnerability to habitat alteration, or unique or dependent species. The Washington State Department of Fish and Wildlife maintains a list of maps and priority species that occur within the state and La Center.

(56) “Priority species” are fish and wildlife species requiring protective measures and/or management guidelines to ensure their perpetuation. The Washington State Department of Fish and Wildlife maintains a list of priority species that occur within the state and La Center.

(57) “Qualified wetland professional” generally means a person with at least two years of full-time professional experience and comprehensive training in wetlands issues, including experience performing wetland delineations using state and federal manuals, assessing wetland functions and values, analyzing wetland impacts, preparing wetland reports, developing and implementing mitigation plans, and recommending and designing wetland mitigation projects.

(58) “Recreational vehicle” means a vehicle that is:

- (a) Built on a separate chassis;
- (b) Four hundred square feet or less when measured at the largest horizontal projection;
- (c) Is designed to be self-propelled or permanently towable by a light duty truck; and
- (d) Is designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

(59) “Regulated activities” include land clearing, grading, placement of fill or waste material, removal of protected native vegetation, construction and other habitat-altering activities.

(60) “Restoration” means the manipulation of physical, chemical or biological characteristics of a site with the goal of returning natural or historic functions to a former or degraded wetland. Restoration is divided into the following two classes:

(a) Re-establishment which is the manipulation of physical, chemical or biological characteristics with the goal of returning natural or historic functions to a former wetland. This results in a net gain of wetland acres.

(b) Rehabilitation which is the manipulation of physical, chemical or biological characteristics of a site with the goal of repairing natural or historic functions of a degraded wetland. This results in the gain in wetland function but does not result in a gain in wetland acres.

(61) “Review Authority” means the decision maker that issues the final land use order, not the appeal authority.

(62) “Riparian habitat area” is defined as areas adjacent to aquatic systems with flowing water (e.g., rivers, perennial or intermittent streams, seeps, springs) that contain elements of both aquatic and terrestrial ecosystems which mutually influence each other.

(63) “Scrub-shrub wetland” means a wetland with at least 30 percent of its surface area covered by woody vegetation less than 20 feet in height as the uppermost strata.

(64) “Sensitive species” are fish and wildlife species native to Washington that are vulnerable or declining, and are likely to become endangered or threatened in a significant portion of their ranges within the state, without cooperative management or the removal of the threats.

(65) SEPA means “State Environmental Policy Act, RCW 42.21C and WAC 197-11.

(66) “Start of construction” includes substantial improvement and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement of a manufactured home on a

foundation, or other permanent construction beyond the stage of excavation, was within 180 days of the permit date.

(a) The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation, or the placement of a manufactured home on a foundation.

(b) Permanent construction does not include:

(i) Land preparation, such as clearing, grading and filling;

(ii) Installation of streets and/or walkways;

(iii) Excavation for a basement, footings, piers, or foundation or the erection of temporary forms;

(iv) Construction of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure.

(c) For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

(67) “Storm water management facilities” include biofiltration swales, filter strips, bubbler diffusers, detention ponds, retention ponds, wet ponds, and similar facilities designed and intended to control and treat storm waters, but not including ditches designed and intended primarily for conveyance.

(68) “Streams” means those areas where surface waters produce a defined channel or bed excluding streams and lakes regulated under the State Shorelines Management Act.

(69) “Structure” means a walled and roofed building including a gas or liquid storage tank that is principally above ground.

(70) “Substantial damage” means damage of any origin sustained by a structure whereby the costs of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

(71) “Substantial improvement” means any repair, reconstruction, or improvement of a

structure, the cost of which equals or exceeds 50 percent of the market value of the structure either:

(a) Before the improvement or repair is started; or

(b) If the structure has been damaged and is being restored, before the damage occurred. For the purpose of this definition “substantial improvement” is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.

The term can exclude:

(c) Any project for improvement of a structure to correct pre-cited existing violations of state or local health, sanitary, or safety code specifications which have been previously identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions, or

(d) Any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

(72) “Threatened” species are native to the state of Washington and likely to become endangered in the foreseeable future throughout a significant portion of its range within the state without cooperative management or the removal of threats. Threatened species are legally designated in WAC 232-12-011.

(73) “Triggering application” means an application for one of the permits or approvals listed in this chapter.

(74) “Water-dependent” means a use or a portion of a use that requires direct contact with the water and cannot exist at a non-water location due to the intrinsic nature of its operations.

(75) “Watershed” means an area draining to the East Fork of the Lewis River.

(76) “Wetland(s)” means areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

Wetlands do not include those artificial wetlands intentionally created from non-wetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from non-wetland areas created to mitigate conversion of wetlands.

(77) “Wetland classes and subclasses” means descriptive classes of the wetlands taxonomic classification system of the United States Fish and Wildlife Service (Cowardin, et al. 1978).

(78) “Wetlands delineation manual” means the Washington State Wetland Identification and Delineation Manual (Publication #96-94) dated March 1997, and as subsequently amended.”

18.300.040 Applicability and critical areas map

(A) Applicability. The provisions of this chapter apply to lands within the La Center corporate limits and urban growth area that are either designated as critical areas and their buffers on the city’s official critical areas maps, or are critical areas and buffers which are identified as part of a project specific application and land use review.

(1) Properties containing critical areas are subject to this title.

(2) Buffers are protected and impacts to buffers are regulated to help improve the functional values of critical areas.

(3) When the requirements of this chapter are more stringent than those of other La Center codes and regulations, the requirements of this chapter shall apply.

(4) Where a site contains two or more critical areas, the site shall meet the minimum standards and requirements for each identified critical area as set forth in this title.

(B) Critical Areas. Critical areas include:

(1) Wetlands;

(2) Category I and II aquifer recharge areas;

(3) Wellhead protection areas;

(4) Fish and wildlife habitat conservation areas;

(5) Frequently flooded areas;

(6) Geologically hazardous areas; and

(7) Slopes with a gradient of 25 percent or greater.

(C) Map Location. The general location of critical areas is depicted on the adopted La Center critical areas map. The critical areas map is an indicator of probable regulated areas. The precise limits of critical areas and their attendant buffers on a particular parcel of land shall be determined by the applicant prior to approval of a development action on the subject property. Development shall avoid critical areas, and where avoidance is not practical, as determined by the city, development shall minimize adverse impacts to critical areas and buffers, consistent with the provisions of this chapter. To determine whether avoidance is practical, the city shall consider issues such as: the substantial evidence presented by the applicant demonstrating the avoidance measures the applicant considered; the quality of the critical resource and buffer functions and values to be impacted, avoidance of impacts to higher quality resources and buffers is preferred; the nature and extent of mitigation and enhancement measures proposed to compensate for the proposed impact; whether the impacts proposed are necessary to implement the city's capital facilities plan; and other factors determined relevant by the city. The city may also consider the financial implications of avoidance but shall not give private gain greater weight than resource management founded upon best available science. The city public works director shall keep on permanent file and maintain the critical areas map.

(D) Use of Existing Procedures and Laws. The following laws and procedures shall be used to implement this chapter:

(1) La Center Municipal Code (LCMC). Development activity regulated under this title that will occur within a protected critical area or critical area buffer shall comply with the provisions of this chapter.

(2) The State Environmental Policy Act (SEPA), Chapter 43.21C RCW. Development

activity that is likely to have a significant adverse impact upon identified critical areas regulated by this chapter shall not be categorically exempt from SEPA review and shall demonstrate compliance with this chapter. (See LCMC 18.310.235.)

(3) The Shorelines Management Act (SMA), Chapter 90.58 RCW.

(E) State and Federal Agency Review. Regulated activities subject to this chapter shall be routed to appropriate state and federal agencies for review and comment as required through the SEPA and/or JARPA review process.

(F) Applicability by Activity. Table 18.300.040 establishes the level of review required for uses or activities under Title 18 LCMC.

(1) Exempt (E). Activities or uses that are exempt require no review and do not need to meet the standards of the ordinance.

(2) Review Required (RR). Activities and uses that are categorized as 'Review Required' must comply with the standards of the Chapter but no special report is needed. Determination of compliance with the Chapter shall be determined through the review process required for the underlying development permit application.

(3) Critical Area Report (CAR). When a Critical Area Report is required, the applicant must submit a report consistent with this chapter and with the underlying development application and will submit additional application fees consistent with the adopted fee schedule.

(4) The Director shall have the discretion to determine whether the proposed activity may adversely impact protected critical areas and or their buffers and shall assign the appropriate level of review, Exempt, Review Required, or Critical Areas Report. The decision of the Director may be appealed to the Hearing Examiner.

(5) Critical Aquifer Recharge Area (CARA). See section LCMC 18.300.090(A)(1)(e) for a list of uses prohibited in a CARA I area. The Director shall exercise discretion to determine whether similar uses not listed therein require additional review and oversight.

Table 18.300.040

USE / ACTIVITY	Development located in any of the following critical areas may be Exempt (E) , Require Review (RR) , or are subject to a Critical Area Report (CAR) :			
	WETLAND	FISH AND WILDLIFE HABITAT	GEOLOGIC HAZARDOUS AREA	FREQUENTLY FLOODED AREA
RESIDENTIAL ACTIVITIES				
One Single Family Dwelling on a pre-existing legal lot located in a Critical Area or buffer.	E	E	E	RR
Single Family Permit Located outside Critical Area or buffer	E	E	E	E
Approved Multi-Family Site Plan Prior to 2004	RR	RR	RR	RR
Multi-Family site plan within critical area or buffer	CAR	CAR	CAR	CAR
Multi-family site plan outside critical area or buffer	E	E	E	E
Interior or exterior alteration or repair that does not change the footprint of the building or does not increase the footprint within a critical area or buffer	E	E	E	RR
COMMERCIAL & INDUSTRIAL ACTIVITIES				
New construction on vacant land in Critical Area or buffer	CAR	CAR	CAR	CAR
New construction previously approved prior to adoption of this ordinance.	E	E	E	RR
New construction on vacant land outside critical areas or buffer	E	E	E	E
Expansion, alteration or addition to existing construction within a critical area or buffer	RR	RR	RR	RR
Expansion, alteration or addition to existing construction outside of critical area or buffer	E	E	E	E
Public facilities and services identified on the CFP such as road, sewer and water infrastructure, power line, gas lines, and so forth	RR	RR	RR	RR
Public facilities on a site already developed where there is no proposed impact to a resource or buffer	E	E	E	RR
OTHER ACTIVITIES				
Clearing, filling, grading, and native vegetation removal activities within a Critical Area or buffer	CAR	CAR	CAR	CAR
Forest Practices except Conversions	RR	RR	RR	RR
Emergencies ¹	RR	RR	RR	RR
Repair of existing: structures, infrastructure improvements, utilities, public or private roads or drainage systems in critical areas or buffers.	RR	RR	RR	RR

¹ Emergencies: See LCMC 18.300.070. Within one week of substantially completing the emergency work, the party responsible for the emergency activity shall file a report with the Planning Director demonstrating compliance with this Chapter.

Public facilities on a site already developed where there is no proposed impact to a resource or buffer	E	E	E	RR
Activities within an existing improved right-of-way or roadway easement.	E	E	E	RR
Chemical applications subject to applicable local, state or federal handling and application requirements.	E	E	E	E
Minor site investigative work, up to 10 cubic yards of fill or removal or removal of trees of 6" DBH or less.	E	E	E	RR
Hand removal of invasive weeds and black berries.	E	E	E	E
Public and Private pedestrian trails	RR	RR	RR	RR
Select removal of hazard trees and vegetation when necessary to comply with fire codes	RR	RR	RR	RR
Construction of fences in a Critical Area or Buffer	RR	RR	RR	RR
Vegetation removal and maintenance activities inside existing landscaped areas on lots that predate adoption of this chapter (other than removal of trees greater than 6" DBH).	E	E	E	RR

18.300.050 Allowed uses

(A) Unless the requirements of this chapter are met, La Center shall not grant any approval or permission to alter the condition of any land, water, or vegetation, or to construct or alter any structure or improvement regulated through the following: building permit, commercial or residential; binding site plan; franchise right-of-way construction permit; site development permit; right-of-way permit; shoreline permits; short subdivision; use permits; subdivision; utility permits; or any subsequently adopted permit or required approval not expressly exempted by this chapter.

(B) Compliance with these regulations does not remove an applicant's obligation to comply with applicable provisions of any other federal, state, or local law or regulation.

(C) The city may approve uses listed in section LCMC 18.300.050(D), Allowed Uses, subject to a Type II process, if the proposed development activity meets the standards in LCMC 18.300.050, Development standards, and LCMC 18.300.060, Mitigation.

(D) Allowed Uses. The city may allow the following uses on critical areas and within buffer

areas subject to the development standards of LCMC 18.300.050 and appropriate mitigation standards as described in LCMC 18.300.060:

- (1) Pervious trails for non-motorized use;
- (2) Below or above ground utilities, facilities and improvements, where necessary to serve development consistent with the La Center comprehensive plan and development code, including: streets, roads, highways, sidewalks, street and road lighting systems, traffic signals, domestic water systems, storm and sanitary sewer systems, open space, and parks and recreational facilities, where there is no other reasonable alternative, based on topographic and environmental conditions, as determined by the Director.

(3) Removal of diseased or dangerous trees, as determined by the Director of Public Works, or the removal of invasive or nuisance plants.

(4) Construction, replacement, or alteration of a single-family dwelling unit in a residential zoning district on a legal lot of record created and prior to December 31, 1994, so long as the replacement or expansion conforms with the height regulations, lot coverage and dimension standards and other design provisions for the

zone in which the residence is located. The dwelling unit shall be used solely for single-family purposes. Approval is subject to Type II review. The city may modify underlying zoning district dimensional standards applicable by up to a 50 percent adjustment, if necessary to protect critical areas.

(5) Existing agricultural practices on lands used continuously for agricultural purposes since December 31, 1994. Allowed agricultural practices include: pasture, vineyards, Christmas tree farms, gardens, etc., but do not include machine intensive row crop production. Best management practices shall be required.

(6) Specific Uses Allowed in Wetlands.

(a) Enhanced Replacement. Replacing or enhancing a wetland such that the enhanced wetland is of higher quality and meets the criteria for a higher category.

(b) Wetland Banking. Construction, enhancement or restoration of wetlands to use as mitigation for future wetland development impacts in the same watershed is permitted if:

(i) A critical area permit shall be obtained prior to any mitigation banking. Federal and state wetland regulations, if applicable, shall supersede city requirements.

(ii) All impacts to wetlands and wetland buffers shall be mitigated and monitored consistent with LCMC 18.300.090(F)(12).

(c) New lots shall not be platted within a wetland or wetland buffer.

(E) Limited uses. Limited uses, as described in this section, shall avoid critical areas, to the greatest extent reasonable and practicable. Limited uses may be allowed within critical area buffers subject to the mitigation measures and implementation of a monitoring plan as described in LCMC 18.300.090(F)(12). Applications for development within critical areas or buffers shall demonstrate that all reasonable efforts have been examined with the intent to avoid and minimize impacts to critical areas and buffers. All limited uses shall be consistent with the provisions of this chapter and shall be subject to SEPA review.

(1) Subdivision or Short Plat. The subdivision or short plat process may be used when provisions are made (e.g., avoidance, mitigation,

dedication of land or conservation easements) that substantially minimizes adverse effects upon critical areas.

(2) Development Subject to Site Plan Review. Any new building or structure affecting critical areas or buffers shall be subject to site plan review, unless otherwise exempted in this chapter.

(3) Stormwater Facilities. Stormwater facilities may be allowed in buffers of Class III and IV wetlands with low habitat function (less than twenty (20) points on the habitat section of the rating system form); provided, the facilities shall be built on the outer 25% of the buffer and not degrade the existing buffer function and are designed to blend with the natural landscape. Unless determined otherwise by the responsible official, the following activities shall be considered to degrade a wetland buffer when they are associated with the construction of a stormwater facility:

(a) Removal of trees greater than four (4) inches diameter at four and one-half (4-1/2) feet above the ground or greater than twenty (20) feet in height;

(b) Disturbance of plant species that are listed as rare, threatened or endangered by the county or any state or federal management agency;

(c) The construction of concrete structures other than manholes, inlets, and outlets that are exposed above the normal water surface elevation of the facility;

(d) The construction of maintenance and access roads;

(e) Slope grading steeper than four to one (4:1) horizontal to vertical above the normal water surface elevation of the stormwater facility;

(f) The construction of pre-treatment facilities such as fore bays, sediment traps, and pollution control manholes;

(g) The construction of trench drain collection and conveyance facilities;

(h) The placement of fencing; and

(i) The placement of rock and/or riprap, except for the construction of flow spreaders, or the protection of pipe outfalls and overflow

spillways; provided, that buffer functions for areas covered in rock and/or riprap are replaced.

(j) Stormwater facilities may not be placed in a buffer area that has been reduced through approved buffer averaging or buffer reduction measures.

18.300.060 Variances

(A) An applicant who seeks to vary from the requirements of this chapter may seek a variance pursuant to this section. The city shall review a request to vary from the requirements of this chapter through a Type III review process.

(B) An application to vary from the requirements of this chapter shall demonstrate compliance with all of the following criteria:

(1) There are special circumstances applicable to the subject property or to the intended use such as shape, topography, location, or surroundings that do not apply generally to other properties;

(2) The variance is necessary for the preservation and enjoyment of a substantial property right or use possessed by other similarly situated property, but which because of special circumstances is denied to the property in question;

(3) Granting the variance will not be materially detrimental to the public welfare or injurious to the property or improvement;

(4) Granting the variance will not violate, abrogate, or ignore the goals, objectives, or policies of the La Center comprehensive plan;

(5) In addition to the approval criteria above, an application to vary from the buffer requirements of a fish habitat conservation area or riparian area shall demonstrate that the requested buffer width modification preserves adequate vegetation to:

(a) Maintain proper water temperature;

(b) Minimize sedimentation; and

(c) Provide food and cover for critical fish and wildlife species;

(6) When granting a variance, the city may attach specific conditions to the variance that will serve to meet the goals, objectives, and policies of this chapter, including the preparation and implementation of a mitigation and

monitoring plan consistent with LCMC 18.300.090(F)(12).

18.300.070 Exemptions

(A) Exempt activities in all Critical Areas. The following developments, activities, and associated uses shall be exempt from the provisions of this Chapter, provided that they are otherwise consistent with the provisions of other local, state, and federal laws and requirements, and a written request for exemption has been filed with and approved by the Planning Director.

(1) The Director shall have the authority to negotiate memoranda of agreements with utility service providers or public agencies, and said agreements shall specify best management practices to be used in situations of emergency and usual and customary repair, which if rigorously adhered to, may exempt said emergency or repair activity, including routine operation and maintenance from further review under this chapter. Memorandum of agreements shall be authorized by the La Center City Council only after notice and completion of a public hearing on the full terms and merits of the agreement.

(2) Emergencies. Emergency activities are those activities necessary to prevent an immediate threat to public health, safety, or welfare, or that pose an immediate risk of damage to private property and that require remedial or preventative action in a timeframe too short to allow for compliance with the requirements of this Chapter. Emergency actions that create an impact to a critical area or its buffer shall use reasonable methods to address the emergency; in addition, they must have the least possible impact to the critical area or its buffer. The person or agency undertaking such action shall notify the City within one (1) working day following commencement of the emergency activity. Following the emergency appropriate mitigation shall be implemented and permanent activities, installations or impacts are subject to review and compliance with the applicable standards.

(a) Authorization. Notwithstanding the provisions of this Chapter, the Planning Director

may issue a temporary emergency permit prospectively or, in the case of imminent threats to public health, safety or welfare, retroactively, where the anticipated threat or loss may occur before a permit can be issued or modified under the procedures otherwise required by the act and other applicable laws.

(b) Prior to issuing an emergency permit, the Planning Director shall issue a finding that extraordinary circumstances exist and that the potential threat to public health, safety or welfare from the emergency situation is clearly significant and substantial.

(c) Conditions. Any emergency permit granted shall incorporate, to the greatest extent practicable and feasible but not inconsistent with the emergency situation, the standards and criteria required for non-emergency activities under this act and shall:

(i) Be limited in duration to the time required to complete the authorized emergency activity, not to exceed 90 days; and

(ii) Require, within this 90-day period, the restoration of any wetland altered as a result of the emergency activity, except that if more than the 90 days from the issuance of the emergency permit is required to complete restoration, the emergency permit may be extended to complete this restoration.

(d) Notice. Notice of issuance of an emergency permit shall be published in a newspaper having general circulation in the city of La Center not later than 10 days after issuance of such permit.

(e) Termination. The emergency permit may be terminated at any time without process upon a determination by the city that the action is no longer necessary to protect human health or the environment.

(3) Repair. Repair or replacement of existing structures, infrastructure improvements, utilities, public or private roads, dikes, levees or drainage systems, including operation and maintenance of existing facilities, that do not require construction permits, if the activity does not further alter or increase the impact to, or encroach further within, the critical area or buffer and there is no increased risk to life or

property as a result of the proposed maintenance or repair.

(4) Forest practices. Forest practices regulated and conducted in accordance with the provisions of Chapter 76.09 RCW and forest practices regulations, Chapter 222 WAC, and those that are exempt from La Center's jurisdiction, provided that forest practice conversions are not exempt.

(5) Activities within the improved public right-of-way or recorded easement. Replacement, modification, installation, or construction of utility facilities, lines, pipes, mains, equipment, or appurtenances, not including substations, when such facilities are located within the improved portion of the public right-of-way or recorded easement, or, a City authorized private roadway except those private activities that alter a wetland or watercourse, such as culverts or bridges, or results in the transport of sediment or increased stormwater.

(6) Chemical applications. The application of herbicides, pesticides, organic or mineral-derived fertilizers, or other hazardous substances, if necessary, provided that their use shall be restricted in accordance with Department of Fish and Wildlife Management Recommendations, the city of Portland's pest management program and the regulations of the Department of Agriculture and the U.S. Environmental Protection Agency.²

(7) Minor site investigative work. Work necessary for land use submittals, such as surveys, soil logs, percolation tests, and other related activities, where such activities do not require construction of new roads or significant amounts of excavation. In every case, impacts to the critical area shall be minimized and disturbed areas shall be immediately restored.

(8) Boundary markers. Construction or modification of boundary markers or fences.

² More information on commercial and residential use of chemicals can be found in Department of Ecology "Guidance Document for Establishment of Critical Aquifer Recharge Areas Ordinances" Version 3.0, Publication #97-30; and from the state Department of Agriculture, <http://www.wa.gov/agr/>.

(9) Construction and modifications to existing structures that does not increase the footprint of the structure.

(10) The removal of the following vegetation with hand labor and light equipment, and vegetation removal that is a hazard to electrical power lines with hand held and walk beside equipment such as mowers and weed eaters in compliance with the provisions contained in the ANSI A300 (Part 1) guidelines, including, but not limited to:

- (a) Invasive non-native weeds;
- (b) English Ivy (*Hedera helix*),
- (c) Himalayan blackberry (*Rubus discolor*, *R. procerus*); and
- (d) Evergreen blackberry (*Rubus laciniatus*).

(11) Emergency or hazard tree removal conducted so that habitat impacts are minimized.

(12) Public improvement projects located within existing impervious surface areas.

(13) Public Agency and Utility Exemption.

(B) Exemption request and review process. The proponent of the activity shall submit a completed exemption request form to the Building Official that describes the activity and states the exemption listed in this Section that applies. The Director shall review the exemption request to verify that it complies with this Chapter and approve or deny the exemption. If the exemption is approved, it shall be placed on file with the department and the requesting party notified. If the exemption is denied, the proponent may continue in the review process and shall be subject to the requirements of this Chapter. Determinations shall be considered a Type I process pursuant to LCMC 18.030.080 and subject to appeal pursuant to LCMC 18.030.130.

(C) Exempt activities shall minimize impacts to critical areas. All exempted activities shall use reasonable methods to avoid potential adverse impacts to critical areas. To be exempt from this Chapter does not give permission to degrade a critical area or ignore risk from natural hazards. Any incidental damage to, or alteration of, a critical area that is not a necessary outcome of the exempted activity shall be restored,

rehabilitated, or replaced at the responsible party's expense.

18.300.080 Reasonable use exception

(A) Reasonable Use Exceptions. The following exceptions shall apply. The city shall apply the standards of this chapter to the maximum extent practicable to avoid and minimize adverse impacts on the functions and values of critical areas and buffers. Mitigation of impacts, consistent with this chapter, is required. Reasonable use exemptions include:

(1) The placement of a new single-family residence and normal accessory structures on a buildable legal lot of record created prior to December 31, 1994. The city shall employ reasonable discretion in applying the standards of this chapter to limit the proposed location and size of structures and removal of native vegetation.

(2) The expansion of a home or accessory structure on a lot that does not show building or development envelopes, wetlands or wetland buffers on the recorded plat, not to exceed twenty-five percent (25%) of the existing building footprint.

(3) The replacement of single-wide mobile home with another dwelling and normal accessory structures.

(4) Fire hazard clearing recommended by the fire marshal, or consistent with written fire marshal or fire chief guidelines.

(B) General Requirements.

(1) Except when application of this chapter would deny all reasonable use of a lot, an applicant who seeks a modification from the regulations of this chapter may pursue a variance as provided in LCMC 18.300.060, Variances, and consistent with the requirements of this subsection.

(2) The mayor or his or her designee shall prepare and maintain application forms necessary to implement this subsection.

(C) Application Requirements.

(1) Preliminary Review. The provisions for conducting a preliminary review of a proposed reasonable use exception are set forth in LCMC 18.300.080.

(2) Regulations – General Provisions – Application Filing.

(a) Reasonable use exception applications shall be reviewed for completeness in accordance with city submittal standards checklists and pursuant to LCMC 18.030.050.

(b) An applicant for a development proposal may file a request for a reasonable use exception which shall include the following information:

(i) A description of the areas of the site which are critical areas or within setbacks required under this title;

(ii) A description of the amount of the site which is within setbacks required by other standards of this Title;

(iii) A description of the proposed development, including a site plan;

(iv) An analysis of the impact that the amount of development described in subsection (B)(2)(b)(iii) of this section would have on the critical area(s);

(v) An analysis of whether any other reasonable use with less impact on the critical area(s) and associated buffer(s) is possible;

(vi) A design of the proposal so that the amount of development proposed as reasonable use will have the least impact practicable on the critical area(s);

(vii) An analysis of the modifications needed to the standards of this chapter to accommodate the proposed development;

(viii) A description of any modifications needed to the required front, side, and rear setbacks; building height; and buffer widths to provide for a reasonable use of the site while providing greater protection to the critical area(s); and

(ix) Such other information as the city determines is reasonably necessary to evaluate the issue of reasonable use as it relates to the proposed development.

(D) Public Review.

(1) The city shall process a request for a reasonable use exception as a Type III procedure pursuant to LCMC 18.030.090.

(2) The city shall forward a copy of a request for reasonable use exception to the state and federal agencies with jurisdiction over the

resource at issue and to all property owners within 300 feet of the subject property.

(3) The city shall provide public notice of the request for reasonable use exception pursuant to LCMC 18.030.120.

(4) A party shall appeal a final decision of a request for reasonable use exception pursuant to LCMC 18.030.130.

(E) Reasonable Use Approval Criteria. The hearing examiner shall approve a reasonable use exception if the examiner determines the following criteria are met:

(1) There is no other reasonable use or feasible alternative to the proposed development with less impact on the critical area(s);

(2) The proposed development does not pose a threat to the public health, safety, or welfare on or off the site;

(3) Any alteration of the critical area(s) shall be the minimum necessary to allow for reasonable use of the property;

(4) The proposed development will not result in a “take” of a threatened or endangered species;

(5) The inability of the applicant to derive reasonable use of the property is not the result of actions by the applicant in subdividing the property or adjusting a boundary line thereby creating the undevelopable condition after the effective date of this chapter; and

(6) The proposal mitigates the impacts on the critical area(s) to the maximum extent possible, while still allowing reasonable use of the site. The applicant shall prepare and implement a mitigation and monitoring plan consistent with LCMC 18.300.090(F)(12).

18.300.090 Critical lands

(A) **Critical Aquifer Recharge Areas.** Due to the exceptional susceptibility and/or vulnerability of ground waters underlying aquifer recharge areas to contamination and the importance of such ground waters as sources of public water supply, it is the intent of this chapter to safeguard ground water resources by mitigating or precluding future discharges of contaminants from new land use activities. The provisions of this chapter shall apply to regulated activities specified herein within those

portions of the La Center UGA classified as Category I Aquifer Recharge Areas.

(1) Category I Aquifer Recharge Areas (CARA I).

(a) Areas with a critical recharging effect on aquifers used for potable water are areas where an aquifer that is a source of drinking water is vulnerable to contamination that would affect the potability of the water.

(b) La Center wellheads are owned and operated by Clark Public Utilities.

(c) Development, other than the maintenance of vegetation, shall be prohibited within 50 feet of any wellhead within the UGA.

(d) For purposes of this chapter, critical aquifer recharge areas include lands within the 10-year zone of contribution, as shown on the La Center critical areas map.

(e) The following uses are prohibited in Category I aquifer recharge areas:

(f) Landfills;

(g) Class V injection wells: (I) agricultural drainage wells; (II) untreated sewage waste disposal wells; (III) cesspools; (IV) industrial process water and disposal wells; and (V) radioactive waste disposal;

(h) Radioactive disposal sites; and

(i) Surface mining operations.

(2) Storage Tank Permits. The Clark County fire marshal regulates and authorizes permits for underground storage tanks, pursuant to the Uniform Fire Code (Article 79) and this chapter. The Washington Department of Ecology also regulates and authorizes permits for underground storage tanks (Chapter 173-360 WAC).

(3) Facilities with Underground Tanks – New Underground Tanks.

(4) All new underground storage facilities used or to be used for the underground storage of hazardous substances or hazardous wastes shall be designed and constructed so as to:

(5) Prevent releases due to corrosion or structural failure for the operational life of the tank;

(6) Be protected against corrosion, constructed of non-corrosive material, steel clad with a non-corrosive material, or designed to include a secondary containment system to

prevent the release or threatened release of any stored substance; and

(7) Use material in the construction or lining of the tank that is compatible with the substance to be stored.

(8) Aboveground Tanks.

(9) No new aboveground storage facility or part thereof shall be fabricated, constructed, installed, used, or maintained in any manner which may allow the release of a hazardous substance to the ground, ground waters, or surface waters of La Center within a CARA I.

(10) For a tank that will contain a hazardous substance, no new aboveground tank or part thereof shall be fabricated, constructed, installed, used, or maintained without having constructed around and under it an impervious containment area enclosing or underlying the tank or part thereof.

(11) A new aboveground tank that will contain a hazardous substance will require a secondary containment system either built into the tank structure or a dike system built outside the tank for all tanks located within an aquifer recharge area. The secondary containment system or dike system must be designed and constructed to contain the material stored in the tank(s).

(12) The applicant shall demonstrate, through the land use approval process, that the proposed activity will not have any adverse impacts on ground water in critical aquifer recharge areas, based on the Safe Drinking Water Act and the Wellhead Protection Area Program, pursuant to Public Water Supplies, Chapter 246-290 WAC; Water Quality Standards for Ground Waters of the State of Washington, Chapter 173-200 WAC; and Dangerous Waste Regulations, Chapter 173-303 WAC. By this reference, Chapters 173-200, 173-303 and 246-290 WAC, as written and hereafter updated, will be part of this chapter.

(B) Fish and Wildlife Habitat Conservation Areas.

(1) Fish & Wildlife Areas. Identified sensitive fish and wildlife habitat areas shall be preserved or adverse impacts mitigated. Fish and wildlife areas are divided into four basic categories:

(a) Riparian.

(i) Overwhelming evidence exists to support the use of riparian buffers of adequate size to maintain healthy, productive fish and wildlife habitat. Although riparian areas comprise only a small portion of the surface landscape, approximately 90 percent of Washington's land-based vertebrate species prefer, or are dependent upon, riparian habitat for essential life.

(ii) Riparian habitat areas may include frequently flooded areas, critical recharge areas and wetlands. Riparian habitat areas are those areas immediately adjacent to waterways that contain elements of both aquatic and terrestrial ecosystems that mutually influence each other. WAC 222-16-020, relating to stream classification, shall be the city's classification system for streams.

(b) Endangered or Threatened.

(i) Areas that have a primary association with federal listed endangered or threatened species of fish or wildlife and which if altered may reduce the likelihood that the species will maintain and reproduce over the long term. Endangered or threatened species found in the La Center corporate limits and urban growth area as of June 1, 2001, are listed in Appendix A.

(ii) Point locations are the specific sites (nests, dens, etc.) where critical wildlife species are found. Many of these sites have been identified and mapped by the Washington Department of Fish and Wildlife (WDFW). Point locations are lands where species designated as endangered or threatened have a primary association with that land. Development of such lands shall be controlled in accordance with a site specific fish and wildlife management plan consistent with the WDFW's priority habitats and species management recommendations and prepared by a qualified consultant. The Washington Department of Fish and Wildlife should be consulted to provide a technical review and an advisory role in the decision making process.

(c) Local Habitat Areas.

(i) Species of local importance are those species that are of local concern due to their

population status or their sensitivity to habitat manipulation or that are game species.

(ii) Habitats of local importance include a seasonal range or habitat element with which a given species has a primary association, and which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long-term. These might include areas of high relative density or species richness, breeding habitat, winter range, and movement corridors. These might also include habitats that are of limited availability or high vulnerability to alteration, such as cliffs, talus, and wetlands.

(iii) Local habitat areas include those areas specifically identified as local habitat areas on the city's adopted critical areas map and background maps used to prepare the critical areas map.

(I) The city or private citizens may nominate areas for consideration as local habitat areas and for inclusion on the critical areas map.

(II) The applicant shall be responsible for preparing the nomination using city prescribed forms. The applicant shall pay a processing fee of one percent of the assessed value of the proposed area as zoned at the time of application.

(III) The hearing examiner, through a Type III process, and in reliance upon all best available science in the hearing record, shall make a determination of whether the nominated area qualifies as a local habitat area.

(d) Priority Habitat Species (PHS) Areas. Areas with which state-listed monitor or candidate species or federally listed candidate species have a primary association, as specified in Washington Department of Wildlife Policies 4802 and 4803, and which if altered may reduce the likelihood that the species will maintain and reproduce over the long term.

(e) Buffers

(2) Sources. The City consulted the following sources to identify critical fish and wildlife habitat areas were:

(a) Water Type Reference Maps, Washington Department of Natural Resources;

(b) Natural Heritage Data Base, Washington Department of Natural Resources;

(c) Priority Habitats and Species Program and Priority Habitat Species Maps;

(d) Washington Department of Fish and Wildlife;

(e) Non-game Data Base, Washington Department of Fish and Wildlife;

(f) Washington Rivers Information System, Washington Department of Fish and Wildlife;

(g) Water Resource Index Areas (WRIA), Washington Department of Fish and Wildlife; and

(h) Field studies performed by qualified natural resource specialists.

(3) Education and Information. A voluntary education program to explain the need for and methods of habitat management may provide for long-term protection and enhancement of critical fish and wildlife habitat areas. By informing citizens about the declining populations of several fish and wildlife species in La Center, the diminishing animal habitat available, and the management techniques that individuals can use to preserve and restore fish and wildlife habitat areas, the City can foster good stewardship of the land by property owners.

(a) The City will provide educational materials and lists of additional sources of information to applicants proposing regulated activities in the vicinity of critical fish and wildlife habitat areas. Materials will be selected from a variety of state and local resources.

(b) The City may accumulate information on the number of proposed activities associated with fish and wildlife habitat areas as identified by this Chapter and indicated by state and local governmental maps to be in the vicinity of identified critical fish and wildlife habitats. Information shall include the number of single-family residences and other development occurring in the vicinity of critical fish and wildlife areas. Based on this information, additional regulations could be developed.

(c) The education and information program is an important adjunct to the implementation of the regulatory provisions of this Chapter.

(4) Species and Habitat Assessment Report. A Critical Area Report is required where specifically indicated and when an activity is proposed within a critical area or buffer that is

not specifically exempt, or permitted with review. Where a Critical Area Report is required it shall be consistent with the following standards.

(a) The report must be completed by a qualified professional;

(b) The Critical Area report shall use scientifically valid and professionally recognized and accepted methods and studies or best available science in the analysis of critical area data and field reconnaissance and reference the source of science used. The critical area report shall evaluate the proposal and all probable impacts to critical areas in accordance with the provisions of this Chapter.

(c) Minimum report contents. At a minimum, the report shall contain the following:

(i) The name and contact information of the applicant, and the name and address of the qualified professional who prepared the report, a description of the proposal, and identification of the permit requested;

(ii) A copy of the site plan for the development proposal showing:

(I) Identified critical areas, buffers, and the development proposal with dimensions;

(II) Limits of any areas to be cleared;

(III) A description of the proposed stormwater management plan for the development and consideration of impacts to drainage alterations and;

(IV) General location and types of vegetation.

(iii) The dates, names, and qualifications of the persons preparing the report and documentation of any fieldwork performed on the site;

(iv) Identification and characterization of all critical areas, wetlands, water bodies, and buffers adjacent to the proposed project area;

(v) A statement specifying the accuracy of the report, and all assumptions made and relied upon;

(vi) A description of reasonable efforts made to apply mitigation sequencing pursuant to mitigation sequencing, LCMC 18.300.120, to avoid, minimize, and mitigate impacts to critical areas;

(vii) Plans for adequate mitigation, as needed, to offset any impacts, in accordance with mitigation plan requirements, LCMC 18.300.120, including, but not limited to:

(I) The impacts of any proposed development within or adjacent to a critical area or buffer on the critical area; and

(II) The impacts of any proposed alteration of a critical area or buffer on the development proposal, other properties and the environment;

(viii) A discussion of the performance standards applicable to the critical area and proposed activity;

(ix) Financial guarantees to ensure compliance; and

(x) Any additional information required for the critical area as specified in the corresponding chapter.

(d) Unless otherwise provided, a critical area report may be supplemented by or composed, in whole or in part, of any reports or studies required by other laws and regulations or previously prepared, by a qualified professional, for and applicable to the development proposal site, as approved by the director.

(e) The Director may waive specific requirements of the critical area reports where less information is required to adequately address the impacts to the critical area or where existing information is on file with the city that addresses the impacts.

(f) The Director may require additional information that is necessary to determine compliance with the standards of this Chapter.

(g) A qualified professional shall be a person who has the education, training, experience, and/or certification that meets the specific requirements to evaluate fish and wildlife habitat.

(5) Best Available Science. Habitat reports and decisions to alter habitat areas shall rely on the Best Available Science to protect the functions and values of critical habitat areas and must give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fish and their habitat. Best Available Science is that scientific information applicable to the critical area prepared by local,

state or federal natural resource agencies, a qualified scientific professional or team of qualified scientific professionals, that is consistent with criteria established in WAC 365-195-900 through WAC 365-195-925.

(6) Habitat Buffers. Fish and wildlife habitat conservation areas and buffers are assigned to the lands regulated by this section according to Tables 18.300.090(B)(1). Development activities are restricted within buffer areas as indicated in Tables 18.300.090(B)(6).

(a) Water types are defined and mapped based on WAC 222-16-030 or 222-16-031, whichever is in effect on the date of application. While the WAC definitions control, generally, Type S streams include shorelines of the state and have flows averaging 20 or more cubic feet per second; Type F streams are those that are non-Type S but still provide fish habitat; and Type N streams do not have fish habitat and are either perennial (Np) or seasonal (Ns). Erosion gullies or rills, and streams which are man-made, or streams less than six (6) inches wide or not having a defined bed and/or bank are not included.

(7) Buffer Standards.

(a) Building Setback and Construction near Buffer. A minimum setback of fifteen (15) feet from the buffer shall be required for construction of any impervious surface(s) greater than 120 square feet of base coverage from the head or toe of a slope where the overall slope is greater than 35%. Clearing, grading, and filling within 15 feet of the buffer setback shall be allowed only when the applicant can demonstrate that native vegetation within the buffer will not be damaged. The additional impervious surface setback from the toe and head of a slope may be waived if the applicant demonstrates, by credible evidence, that the proposed impervious surface will not significantly affect the stability of the slope

(b) Marking of the Buffer Area. The edge of the buffer area shall be clearly staked, flagged, and fenced prior to and through completion of construction. The buffer boundary markers shall be clearly visible, durable, and permanently affixed to the ground.

(c) Fencing from Farm Animals. Permanent fencing shall be required from the buffer when farm animals are introduced on a site.

(8) Riparian Area Ecosystem Buffers. Regulated activities proposed along rivers and streams shall provide for habitat protection.

(a) The riparian ecosystem buffer is generally an area of no building, consisting of undisturbed natural vegetation. The buffer shall be required along all streams as classified by the DNR water typing classification system (WAC 222-16-030). The buffer shall extend landward from the ordinary high water mark of the water body.

(b) The buffer of a river or stream shall not extend landward beyond an existing substantial improvement such as an improved road, dike, levee, or a permanent structure which reduces the impact proposed activities would have on the river or stream.

(c) The City identifies the following river and stream segments, as being critical to anadromous fish and, therefore, requiring a larger buffer protection include:

(i) East Fork of the Lewis River within the UGA; and

(ii) Brezee, McCormick and Jenny Creeks within the UGA.

(9) Mitigation.

(a) Approval. City approval of a mitigation plan is a prerequisite for approval of any development activities within a designated habitat area or habitat buffer.

(b) Application. The applicant shall submit a written request describing the extent and nature of the proposed development activity on Critical Areas and buffers. The request shall include boundary locations of all critical areas and associated buffers.

(i) The application for development shall include a mitigation plan prepared in compliance with this section.

(ii) The City may require the applicant to prepare special reports evaluating potential adverse impacts upon critical areas and potential mitigation measures as part of the land use application process. These reports may include, but are not limited to, the following: Storm Water Management Plan; Hydrology, Geology,

and Soils Report; Grading and Erosion Control Plan; Native Vegetation Report; Fish and Wildlife Assessment and Impact Report; Water Quality Report; Wetlands Delineation; and other reports determined necessary by the City.

(c) The City may consult with state and federal resource management agencies and, in order to protect wildlife habitat or natural resource values, shall attach such conditions as may be necessary to effectively mitigate identified adverse impacts of the proposed development activity.

(d) The City may request third party “peer review” of an application by qualified professionals and may incorporate recommendations from such third party reports in findings approving or denying the application.

(e) All reports recommending mitigation shall include provisions for monitoring of programs and replacement of improvements, on an annual basis, consistent with report recommendations and at years one (1), three (3), five (5), seven (7), and, if mitigation measures will result in reclassification of the resource to a higher category, year ten (10) shall be required.

(f) The City may require replacement mitigation to be established and functional concurrent with project construction.

(10) No Net Loss.

(a) Mitigation efforts, when allowed, shall ensure that development activity does not yield a net loss of the area or function, including fish and wildlife habitat values, of the Critical Area. No net loss shall be measured by:

(i) Avoidance or mitigation of adverse impacts to fish or wildlife; or

(ii) Avoidance or mitigation of net loss of habitat functions necessary to sustain fish life; or

(iii) Avoidance or mitigation of loss of area by habitat type.

(b) Mitigation to achieve no-net-loss should benefit those organisms being impacted.

(c) Where development results in a loss of habitat area, the mitigation plan shall demonstrate that habitat area is replaced at an equal or greater functional value(s).

(i) Wherever possible, replacement or enhancement shall occur on-site.

(ii) However, where the applicant can demonstrate that off-site mitigation will provide greater functional values, the City may approve such off-site mitigation.

(11) Mitigation Plan. A mitigation plan shall provide for the design, implementation, maintenance, and monitoring of mitigation measures. A mitigation plan shall include but is not limited to the following:

(a) Methods and techniques to be used to mitigate impacts to the critical area;

(b) Explanation of methods and techniques, such as, constructions practices to be used to implement to the identified mitigation methods;

(c) Methods and techniques for monitoring the proposed mitigation and a time-frame for such monitoring.

(12) Buffer Reduction. The city may allow the reduction of Np and Ns stream buffers by no more than 50% of the required buffer width if the area proposed for buffer reduction:

(a) Is currently adversely impacted by development such as roads, parking areas, buildings, public facilities; or

(b) Has primarily non-native vegetation, such as grass pasture; and

(c) The proposed reduction will not significantly reduce the water quality and habitat functions of the buffer.

(d) When buffer reduction is allowed, the applicant shall provide the city with a Vegetative Buffer Enhancement plan for review and approval.

(e) Stormwater facilities are not permitted in the remainder buffers reduced by operation of this buffer reduction provision.

(13) Vegetative Buffer Enhancement. Where the city permits the use of buffer reduction opportunity described in this section, the following enhancement standards shall apply:

(a) The applicant shall submit to the City a written request describing the extent and nature of the proposed development activity and shall submit a enhancement plan prepared by a professional biologist, landscape architect or other equally qualified person.

(b) Buffer shall not be reduced to less than 50% the base buffer width listed in Tables 18.300.090(B)(1) and 18.300.090(B)(6).

(c) The enhancement plan shall include calculations and maps that illustrate:

(i) Required boundary locations of all critical areas and associated buffers;

(ii) Proposed buffer areas after reduction;

(iii) The nature and extent of the enhancement measures proposed;

(iv) A timeline for completion of the enhancement plan;

(v) A financial surety mechanism acceptable to the city.

(d) Methods and techniques used to mitigate impacts to critical areas, consistent with best management practices

(e) An explanation of methods and techniques, such as, construction practices to be used to implement to the identified mitigation methods; and

(f) Methods and techniques for monitoring said mitigation and a proposed time-frame for monitoring.

(g) The enhanced area shall be of equal or greater habitat value(s) based on best available science.

(h) Enhancement shall occur on-site, unless the applicant can demonstrate that off-site mitigation will provide greater functional value(s).

(i) The city may elect to submit the Vegetative Buffer Enhancement Plan to one or more qualified expert for peer review.

(14) Standard Requirements. All applications requiring review under this section shall have the following minimum conditions applied:

(a) Marking Buffer During Construction. The location of the outer extent of the habitat buffer or if no buffer is required the habitat area, shall be marked in the field and such markings shall be maintained throughout the duration of the permit.

(b) Permanent Marking of Buffer Area. A permanent and perpetual physical demarcation along the upland boundary of the habitat buffer area shall be installed and thereafter maintained. Such demarcation may consist of logs, a tree or hedgerow, wood or wood like fencing, or other prominent physical marking approved by the Director. In addition, signs measuring (minimum size 1 foot x 1 foot and posted 3.5 feet above

grade) shall be posted at an interval of one (1) per lot or every one hundred (100) feet, whichever is less, and perpetually maintained at locations along the outer perimeter of the habitat buffer approved by the Director worded substantially as follows: HABITAT BUFFER – PLEASE RETAIN IN A NATURAL STATE.

(c) A conservation covenant shall be recorded in a form approved by the city attorney as adequate to incorporate the other restrictions of this section and to give notice of the requirement to obtain a permit prior to engaging in regulated activities within a habitat area or its buffer.

(C) Frequently Flooded Areas.

(1) Basis for Establishing the Areas of Special Flood Hazard. The areas of special flood hazard identified by the Federal Insurance Administration in a scientific and engineering report entitled “The Flood Insurance Study for Clark County, Washington and Incorporated Areas” dated September 5, 2012, with accompanying Flood Insurance Rate Maps (FIRM), and any revisions thereto, are hereby adopted by reference and declared to be a part of this chapter. The flood insurance study is on file at the office of the city clerk/treasurer. The best available information for flood hazard area identification as outlined in Section 18.300.090(C)(16)(c) shall be the basis for regulation until a new FIRM is issued which incorporates the data utilized under Section 18.300.090(C)(16)(c).

(2) Compliance. No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this chapter and other applicable regulations.

(3) Abrogation and Greater Restrictions. Where this chapter and another code, ordinance, easement, covenant or deed restriction conflict or overlap, that which imposes the more stringent restriction shall prevail.

(4) Interpretation. In the interpretation and application of this section, all provisions shall be:

- (a) Considered as minimum requirements;
- (b) Liberally construed in favor of the governing body; and

(c) Deemed neither to limit nor repeal any other powers granted under state statutes.

(5) Interpretation of FIRM Boundaries. The local administrator, the governing body or its agent or employee may interpret and apply when necessary the exact location of the boundaries of the areas of special flood hazards where there appears to be a conflict between a mapped boundary and actual field conditions. Any aggrieved person may contest the location of the boundary and shall be given a reasonable opportunity to appeal the interpretation to the local administrator and then the governing body. Such appeal shall be granted consistent with the standards of Section 60.6 of the Rules and Regulations of the National Flood Insurance Program (44 CFR 59-76)

(6) Warning and Disclaimer of Liability. The degree of flood protection required by this chapter is considered reasonable for regulatory purposes, and is based upon scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by manmade or natural causes. This chapter does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This chapter shall not create liability on the part of the city of La Center, any officer or employee thereof, or the Federal Emergency Management Agency or Federal Insurance Administration for any flood damages that result from reliance on this chapter or any administrative decision lawfully made hereunder.

(7) Floodplain (FP) Combining District. A floodplain (FP) combining district is established and shall be applied to all areas of special flood hazard identified on the flood insurance rate maps, which have been adopted by reference. The land use and siting provisions of these areas shall be in addition to other zoning provisions applied. For areas of special flood hazards that include a floodway; two distinct areas are recognized within the FP district: the “floodway” area and the “floodway fringe” area.

(8) Regulatory Area. The areas for state and local floodplain management regulations shall be those areas subject to a base (100-year) flood

(except as noted for siting of critical facilities). Base floodplains are designated as special flood hazard areas on the most recent flood insurance rate maps provided by the Federal Emergency Management Agency for the National Flood Insurance Program. Best available information shall be used in areas where a base flood elevation has not been determined.

(9) Relationship to Other Requirements. Land uses in the floodplain combining district shall be subject to all relevant local, state, or federal regulations including those of the underlying zoning district. Where applicable, permit requirements under the Shoreline Management Act (Chapter 90.58 RCW), or the State Flood Control Zone Act (Chapter 86.16 RCW) may be substituted for permits required under this chapter; provided, that the standards of this chapter are applied.

(10) Criteria for Land Management and Use. The standards and definitions contained in 44 CFR Parts 59 and 60 for the National Flood Insurance Program are adopted by reference as the minimum state standards.

(11) A floodplain permit shall be obtained before construction or development begins within any area of special flood hazard. The permit shall be required for all structures, including manufactured homes, and other development. Permit application forms shall be furnished by the mayor or his or her designee. The application shall include, but is not limited to, plans in duplicate drawn to scale showing the nature, location, dimensions and elevations of the area in question, and existing or proposed structures, fill, storage of materials, and drainage facilities. Specifically, the following information is required:

(a) Elevation in relation to mean sea level of the lowest floor (including basement) of all structures;

(b) Elevation in relation to mean sea level to which any structure has been floodproofed;

(c) Certification by a registered professional engineer or architect that the floodproofing methods for any nonresidential structure meet the floodproofing requirements; and

(d) Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.

(12) Designation of the Local Administrator. The mayor or his or her designee is authorized to administer and implement this title by granting or denying floodplain permit applications in accordance with its provisions.

(13) Duties and Responsibilities of the Local Administrator. Duties of the local administrator, if applicable, shall include, but not be limited to:

(a) Development Review.

(i) Review all proposed developments to determine whether or not a floodplain permit is required.

(ii) Review all proposed developments with respect to the flood insurance study maps and zoning district boundaries. Make interpretations where needed as to the exact location of special flood hazard area boundaries.

(b) Permit Review.

(i) Review all proposed development permits to determine that the permit requirements of this title have been satisfied.

(ii) Review all proposed development permits to determine that all necessary permits have been obtained from those federal, state or local governmental agencies from which prior approval is required.

(iii) Review all proposed development permits to determine if the proposed development is located in the floodway. If located in the floodway, assure that the encroachment provisions are met.

(c) Use of Other Base Flood Data. When base flood elevation data has not been provided in accordance with subsection (C)(1) of this section (Basis for Establishing the Areas of Special Flood Hazard), the mayor or his or her designee shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from an agency of federal or state government, or other sources, in order to administer this section, including specific standards for residential construction, nonresidential construction and floodways and floodway requirements.

(d) Information to be Obtained and Maintained.

(i) Where base flood elevation data is provided through the flood insurance study or required as in subsection (C)(1) of this section, obtain and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, and whether or not the structure contains a basement.

(ii) For all new or substantially improved floodproofed structures, the local administrator shall:

(I) Verify and record the actual elevation (in relation to mean sea level) to which any structure has been floodproofed;

(II) Maintain the floodproofing certifications;

(III) Maintain for public inspection all records pertaining to the provisions of this chapter;

(e) Alteration of Watercourses.

(i) Notify adjacent communities and the Washington State Department of Ecology prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration and the Federal Emergency Management Agency;

(ii) Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished; and

(f) Interpretation of FIRM Boundaries. Make interpretation, where needed, as to exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation.

(14) Variance Procedure – Additional State Requirements. The variance procedure contained in 44 CFR Part 60.6 and this title shall apply to the additional state requirements contained in WAC 173-158-060 and 173-158-070, unless an activity or use is expressly prohibited therein.

(15) Appeal and Review of City Action.

(a) A person with standing may appeal the approval or denial of a floodplain permit as provided in LCMC 18.030.130.

(i) In acting on appeals or permit approval requests, the city shall consider all technical evaluations, all relevant factors, and standards specified in other sections of this chapter, and:

(I) The danger that materials may be swept onto other lands to the injury of others;

(II) The danger of life and property due to flooding or erosion damage;

(III) The susceptibility of the proposed facility and its contents to flood damage, and the effect of such damage on the individual owner;

(IV) The importance of the services provided by the proposed facility to the community;

(V) The necessity to the facility of a waterfront location where applicable;

(VI) The availability of alternative locations for the proposed use that are not subject to flooding or erosion damage;

(VII) The compatibility of the proposed use with existing and anticipated development;

(VIII) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;

(IX) The safety of access to the property in times of flood for ordinary and emergency vehicles;

(X) The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters, and the effects of wave action, if applicable, expected at the site; and

(XI) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, water systems, streets and bridges.

(ii) Upon consideration of the above factors, and the purposes of this chapter, the appeal hearing body may attach such conditions to actions on appeals and approvals as it deems necessary to further the purpose of this chapter.

(iii) The mayor or his or her designee shall maintain the records of all appeal and approval actions of the city of La Center.

(16) Conditions for Variances.

(a) Generally, the only condition under which a variance from the elevation standard may be issued is for new construction and substantial improvements to be erected on a lot

of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level. As the lot size increases, the technical justification required for issuing the variance increases.

(b) Variances may be issued for the reconstruction, rehabilitation, or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places.

(c) Variances shall not be issued within a designated floodway if any increase in flood levels during the base flood discharge would result.

(d) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(e) Variances shall only be issued upon:

(i) Showing a good and sufficient cause;

(ii) A determination that failure to grant the variance would result in exceptional hardship to the applicant;

(iii) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

(f) Variances as interpreted in the National Flood Insurance Program are based on the general zoning law principle that they pertain to a physical piece of property; they are not personal in nature and do not pertain to the structure, its inhabitants, economic or financial circumstances. They primarily address small lots in densely populated residential neighborhoods. As such, variances from the flood elevations shall be quite rare.

(g) Variances may be issued for nonresidential buildings in very limited circumstances to allow a lesser degree of floodproofing than watertight or dry-floodproofing, where it can be determined that such action will have low damage potential, complies with all other variance criteria except subsection (C)(16)(a) of this section, and otherwise complies with anchoring and

construction materials and methods general standards below.

(h) Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

(17) Penalties and Enforcement.

(a) The attorney general or the attorney for the local government shall bring such injunctive, declaratory, or other actions as are necessary to ensure compliance with this chapter.

(b) Any person who fails to comply with this chapter shall also be subject to a civil penalty not to exceed \$1,000 for each violation. Each violation or each day of noncompliance shall constitute a separate violation.

(c) The penalty provided for in this section shall be imposed by a notice in writing either by certified mail with return receipt requested or by personal service to the person incurring the same from the department or local government, describing the violation with reasonable particularity and ordering the act or acts constituting the violation or violations to cease and desist or, in appropriate cases, requiring necessary corrective action to be taken within a specific and reasonable time.

(d) Any penalty imposed pursuant to this section by the department shall be subject to review by the pollution control hearings board. Any penalty imposed pursuant to this section by the city shall be subject to review by the city council. Any penalty jointly imposed by the department and city shall be appealed to the pollution control hearings board.

(18) General Standards. In all areas of special flood hazards the following standards set forth in this article are required.

(a) Anchoring.

(i) All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure.

(ii) All manufactured homes must likewise be anchored to prevent flotation, collapse or

lateral movement, and shall be installed using methods and practices that minimize flood damage. Anchoring methods may include, but are not limited to, use of over-the-top or frame ties to ground anchors (Reference FEMA P-85 “Protecting Manufactured Homes from Floods and Other Hazards” guidebook for additional techniques).

(b) Construction Materials and Methods.

(i) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.

(ii) All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.

(iii) Electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities shall be designed and/or otherwise elevated or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

(c) Utilities.

(i) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;

(ii) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters; and

(iii) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

(iv) Water wells shall be located on high ground that is not in the floodway.

(d) Subdivision Proposals.

(i) All subdivision proposals shall be consistent with the need to minimize flood damage;

(ii) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize or eliminate flood damage;

(iii) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage; and

(iv) Where base flood elevation data has not been provided or is not available from another authoritative source, it shall be generated for subdivision proposals and other proposed developments which contain at least 50 lots or five acres (whichever is less).

(e) Review of Building Permits. Where elevation data is not available either through the flood insurance study or from another authoritative source, applications for building permits shall be reviewed to assure that proposed construction will be reasonably safe from flooding. The test of reasonableness is a local judgment and includes use of historical data, high water marks, photographs of past flooding, etc., where available. Failure to elevate at least two feet above grade in these zones may result in higher insurance rates.

(19) Additional Standards.

(a) Critical Facilities.

(i) Critical facilities should be afforded additional flood protection due to their nature. The city shall use the 500-year frequency flood as a minimum standard instead of the 100-year frequency flood as used for other types of development.

(ii) Construction of new critical facilities shall be, to the extent possible, located outside the limits of the 500-year floodplain as identified on the city’s FIRM. Construction of new critical facilities shall be permissible within the 500-year frequency floodplain if no feasible alternative site is available. Critical facilities constructed within the 500-year frequency floodplain shall have the lowest floor elevated to or above the level of the 500-year frequency flood or the flood protection elevation, whichever is greater. Floodproofing and sealing measures must be taken to ensure that toxic substances will not be displaced by or released into flood waters.

(iii) Access routes elevated to or above the level of the 500-year frequency flood shall be provided to all critical facilities to the extent possible.

(b) Flood Protection Elevation. In order to account for the impacts of future development

on flood depths, and in order to ensure the least expensive insurance rates for floodplain occupants, all development within special flood hazard areas which requires elevation or floodproofing shall be elevated or floodproofed to the flood protection elevation (base flood elevation plus one foot).

(20) Specific Standards. In all areas of special flood hazards where base flood elevation data has been provided as set forth in subsection (C) (1) of this section, Basis for Establishing the Areas of Special Flood Hazard, or (C)(13)(c) of this section, Use of Other Base Flood Data, the following provisions are required:

(a) Residential Construction.

(i) New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated one foot or more above the base flood elevation.

(ii) Fully enclosed areas below the lowest floor that are subject to flooding are prohibited, or shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of flood waters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:

(I) A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.

(II) The bottom of all openings shall be no higher than one foot above grade.

(III) Openings may be equipped with screens, louvers, or other coverings or devices; provided, that they permit the automatic entry and exit of flood waters.

(iii) Below-grade crawlspaces are allowed in a special flood hazard area; however, buildings that have below-grade crawlspaces will have higher flood insurance premiums than buildings that have the preferred crawlspace construction, with the interior elevation at or above the lowest adjacent exterior grade. If a below-grade crawlspace is permitted, the following provisions are required:

(I) The interior grade of a crawlspace below the Base Flood Elevation must not be more than two feet below the lowest adjacent exterior grade.

(II) The height of the below-grade crawlspace, measured from the interior grade of the crawlspace to the top of the crawlspace foundation must not exceed four feet at any point. The height limitation is the maximum allowable unsupported wall height according to the engineering analysis and building code requirements for flood hazard areas (see the section Guidance for Pre-Engineered Crawlspaces, on page 7 of the latest version of FEMA Technical Bulletin 11). This limitation will also prevent these crawlspaces from being converted into habitable spaces.

(III) There must be an adequate drainage system that removes floodwaters from the interior of the crawlspace. The enclosed area should be drained within a reasonable time after a flood event. The type of drainage system will vary based on the site gradient and other drainage characteristics such as soil types. Possible options include natural drainage through porous, well drained soils and by drainage systems such as perforated pipes, drainage tiles, or gravel or crushed stone drainage by gravity or mechanical means.

(IV) The velocity of floodwaters at the site should not exceed five feet per second for any crawlspace. For velocities in excess of five feet per second, other foundation types should be used.

(V) Below-grade crawlspace construction in accordance with the requirements listed above will not be considered basements.

(VI) Refer to the latest version of FEMA Technical Bulletin 11 for diagrams of below-grade crawlspace construction in addition to additional information to supplement the requirements.

(b) Nonresidential Construction. New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall either have the lowest floor, including basement, elevated to the level of one foot or more above the base flood elevation, or,

together with attendant utility and sanitary facilities, shall:

(i) Be floodproofed so that below the flood protection elevation the structure is watertight with walls substantially impermeable to the passage of water;

(ii) Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy;

(iii) Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting provisions of this subsection based on their development and/or review of the structural design, specifications and plans. Such certifications shall be provided to the official;

(iv) Nonresidential structures that are elevated, not floodproofed, must meet the same standards for space below the lowest floor as described in this subsection (C)(23)(a)(ii) of this section;

(v) Applicants floodproofing nonresidential buildings shall be notified that flood insurance premiums will be based on rates that are one foot below the floodproofed level (e.g., a building floodproofed to the base flood level will be rated as one foot below that level).

(21) **Manufactured Homes.** All manufactured homes to be placed or substantially improved on sites shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is one foot or more above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement.

(22) **Recreational Vehicles.** Recreational vehicles placed on sites are required to either:

(a) Be on site for fewer than 180 consecutive days, or

(b) Be fully licensed and ready for highway use, on its wheels or jacking system, be attached to the site only by quick disconnect type utilities and security devices, and have no permanently attached additions; or

(23) **Floodways and Floodway Requirements.** Located within areas of special flood hazard established in Section (C)(1) of this section (Basis for Establishing the Areas of Special

Flood Hazard Area) are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of floodwaters that can carry debris, and increase erosion potential, the following provisions apply:

(a) Prohibit encroachments, including fill, new construction, substantial improvements, and other development unless certification by a registered professional engineer is provided demonstrating through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels during the occurrence of the base flood discharge.

(b) Construction or reconstruction of residential structures is prohibited within designated floodways, except for

(i) repairs, reconstruction, or improvements to a structure which do not increase the ground floor area; and

(ii) repairs, reconstruction or improvements to a structure, the cost of which does not exceed 50 percent of the market value of the structure either,

(I) before the repair, or reconstruction is started, or

(II) if the structure has been damaged, and is being restored, before the damage occurred. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions, or to structures identified as historic places, may be excluded in the 50 percent.

(c) If Subsections (C)(26)(a) and (C)(26)(b) are satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of this section. The placement of any manufactured homes are not allowed in floodways and not included.

(24) **Zones with Base Flood Elevations but no Floodways.** In areas with base flood elevations (but a regulatory floodway has not been designated), no new construction, substantial improvements, or other development (including fill) shall be permitted, unless it is demonstrated

that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

(D) Geologically Hazardous Areas.

(1) Erosion hazard areas are those areas containing soils that, according to the United States Department of Agriculture Soil Conservation Service Soil Classification System, may experience severe to very severe erosion.

(2) Landslide hazard areas are areas potentially subject to risk of mass movement due to a combination of geologic, topographic, and hydrologic factors.

(3) Seismic hazard areas are areas subject to severe risk of damage as a result of earthquake induced ground shaking, slope failure, settlement, or soil liquefaction.

(4) Development on lands classified as “erosion hazards,” “landslide hazards” or “seismic hazards” shall be prohibited unless the applicant provides a report, prepared and signed by a licensed engineer, specializing in geotechnical engineering, which provides construction methodologies, based upon best available science, and quality assurances that the site can be developed without significant risk to public safety.

(E) Slopes with a Gradient of 25 Percent or Greater.

(1) Slope gradient shall be measured in two-foot contours over 10-foot intervals.

(2) Lands with slopes of 25 percent or greater are considered unbuildable and development is not allowed.

(3) Slopes between 15 percent and 25 percent are generally considered buildable; however, the mayor or his or her designee may require an applicant to provide substantial evidence that a slope between 15 percent and 25 percent is geologically stable if there is evidence that similarly situated slopes have demonstrated substantial instability in the past.

(F) Wetlands.

(1) Purpose. Wetlands constitute important natural resources which provide significant environmental functions including: the control of

flood waters, maintenance of summer stream flows, filtration of pollutants, recharge of ground water, and provisions of significant habitat areas for fish and wildlife. Uncontrolled urban-density development in and adjacent to wetlands can eliminate or significantly reduce the ability of wetlands to provide these important functions, thereby detrimentally affecting public health, safety, and general welfare.

(2) Applicability. The provisions of this chapter apply to any soil disturbance occurring or land use proposal affecting a Category 1, 2, 3, or 4 wetland or its buffer unless otherwise expressly exempted by this chapter.

(3) Exempted Wetlands. This chapter shall not apply to the following wetlands:

(a) Isolated wetlands less than 1/10th of an acre in size and scoring less than 20 points under the Department of Ecology Rating System, as amended.

(b) Riparian. Wetlands less than five feet wide above the ordinary high water mark along streams and lakes which are regulated under the State Shorelines Management Act.

(4) Interpretation. Except where a contrary intent clearly appears, the provisions of this chapter shall be construed to the maximum feasible extent consistent with the Federal Clean Water Act, 33 USC Section 1251 et seq., and the rules and guidelines promulgated pursuant thereto. Nothing in this chapter shall be construed to preclude application of the State Environmental Policy Act in approving applications not listed in LCMC 18.310.090.

(5) City policy towards disturbance of wetlands and wetland buffers.

(a) The city has limited oversight, staffing and expertise in monitoring and management of impacted wetlands or wetland buffers. Therefore, as a matter of public policy, the city prefers avoidance of wetlands and wetland buffers and discourages disturbance of wetlands or wetland buffers for private purposes.

(b) The city prohibits platting of privately held lots in wetlands or wetland buffers.

(c) The city may allow disturbance of Category III and IV wetlands or wetland buffers for public purposes if the disturbance directly advances the provision of infrastructure facilities

and services. Public purpose includes streets, potable water, sanitary sewer, stormwater facilities, schools, and utilities.

(d) The city may allow impacts to Category III and IV wetlands and wetland buffers if the mitigation area is owned by a homeowners association or similar entity recognized by the city and if the city finds that the accepting entity has the means and ability to inspect, monitor, and maintain the mitigation area for a minimum of ten (10) years.

(e) In limited circumstances, the city may allow impacts to Category I and II wetlands and wetland buffers if the impacted area is dedicated to the city, or similarly protected, with funds deemed by the city to be sufficient to restore and enhance the wetland and buffer and to inspect, monitor, and maintain the mitigation area for a minimum of ten (10) years.

(6) Wetland Delineation and Marking.

(a) An application for wetland impacts shall not be deemed technically complete until completion (if required) of a wetland delineation.

(b) The mayor or his or her designee shall determine whether a wetland delineation is required based upon several factors including but not limited to a site visit, review of existing critical areas maps, review of National Wetland Inventory maps, the presence of hydric soils, historical evidence, or consultation with a qualified experts.

(c) Wetland Delineation.

(i) Methodology. The location of a wetland and its boundary shall be determined through the performance of a field investigation, to be performed by a qualified scientific expert (see WAC 395-195-905) using the methodology contained in the wetlands delineation manual. The applicant shall be responsible for the cost of the professional services. If a wetland is located off-site and is inaccessible, the best available science shall be used to determine the wetland boundary and category.

(ii) Information Requirements. Wetland boundaries shall be staked and flagged in the field and a delineation report shall be submitted to the city. The report shall include the following information:

(I) U.S.G.S. Quadrangle map with site clearly defined;

(II) Topographic map of area;

(III) National wetland inventory map showing site;

(IV) Soil Conservation Service soils map of the site;

(V) Site map, at a scale no smaller than one inch equals 400 feet, if practical, showing the following information: (a) wetland boundaries; (b) sample sites and sample transects; (c) boundaries of forested areas; and (d) boundaries of wetland classes if multiple classes exist;

(VI) Discussion of methods and results with special emphasis on technique used from the wetlands delineation manual;

(VII) Acreage of each wetland on the site based on the survey if the acreage will impact the buffer size determination or the project design;

(VIII) All completed field data sheets (U.S. Army Corps of Engineers' format for three parameter application) numbered to correspond to each sample site.

(iii) Responsibility. The wetland delineation is the responsibility of the applicant. The city shall verify the accuracy of the boundary delineation within 20 working days of receiving the delineation report. This review period may be extended when excessively dry conditions prohibit the confirmation of the wetland delineation. If the delineation is found to not accurately reflect the boundary of the wetland, the city will issue a report, within 30 working days of receiving the applicant's delineation report, citing evidence (for example, soil samples) that demonstrates where the delineation is in error. The applicant may then either revise the delineation and submit another report or administratively appeal.

(d) Buffers. All buffers shall be measured perpendicularly outward from the delineated wetland boundary.

(e) Marking Buffer during Construction. The location of the outer extent of the wetland buffer shall be marked in the field and such markings shall be maintained throughout the duration of the permit.

(f) Permanent Marking of Buffer Area. A permanent physical demarcation along the upland boundary of the wetland buffer area shall be installed and thereafter maintained. Such demarcation may consist of logs, a tree or hedge row, fencing, or other prominent physical marking approved by the hearing examiner. In addition, small signs shall be posted at an interval of one per lot or every 100 feet, whichever is less, and perpetually maintained at locations along the outer perimeter of the wetland buffer worded substantially as follows: "Wetland and Buffer – Please Retain in a Natural State."

(g) A conservation covenant shall be recorded in a form approved by the city attorney as adequate to incorporate the other restrictions of this section and to give notice of the requirement to obtain a wetland permit prior to engaging in regulated activities within a wetland or its buffer.

(h) In the cases of plats, short plats, and recorded site plans, include on the face of such instrument the boundary of the wetland and its buffer and a reference to the separately recorded conservation covenant provided for in subsection (F)(5)(g) of this section.

(7) Wetland Rating. The Washington State Department of Ecology wetland rating system, *Washington State Wetland Rating System for Western Washington (Revised, Publication #04-06-025, August, 2004)*, as updated, shall be used in part to determine base buffer widths and to determine mitigation and enhancement requirements.

(a) The determination of the specific category of wetland and buffer type for each wetland shall be the responsibility of the applicant and subject to city approval.

(b) A single wetland may be classified into more than one category only if the Director finds, based upon substantial evidence in the record, the classification will result in a substantial diminution of property value.

(c) Wetlands that are enhanced thereafter shall provide buffers that satisfy the function requirements of the buffer for the enhanced and higher category wetland.

(d) Wetland rating system.

(i) Category I. Category I wetlands represent a unique or rare wetland type; are more sensitive to disturbance than most wetlands; are relatively undisturbed and contain ecological attributes that are impossible to replace within a human lifetime; or provide a high level of water quality, hydrologic and habitat functions. These wetlands meet one or more of the following criteria:

(I) Wetlands that are identified by scientists of the Washington Department of Natural Resources Washington Natural Heritage Program as high quality wetlands, relatively undisturbed wetlands or wetlands that support State listed threatened or endangered plants;

(II) Bogs due to their sensitivity to disturbance and they are irreplaceable through compensatory mitigation;

(III) Mature (softwoods 80 years old or older & hardwoods 50 years old or older) and old growth forested wetlands larger than 1 acre;

(IV) Wetlands that perform many functions well, as indicated by scoring 70 points (out of 100) in the rating system.

(ii) Category II. Category II wetlands are difficult, but not impossible to replace; and perform most functions relatively well or perform one group of functions (water quality, hydrologic or habitat) very well and the other two groups moderately well. These wetlands have moderately high level of functions, as indicated by scoring 51-69 points in the Ecology rating system.

(iii) Category III. Category III wetlands are perform a moderate level of functions; typically have been disturbed in some manner; and are often less diverse and more isolated from other natural resources in the landscape than Category II wetlands. These wetlands score between 30-50 points in the Ecology rating system.

(iv) Category IV. Category IV wetlands have the lowest levels of functions and are often heavily disturbed. These wetlands score less than 30 points in the Ecology rating system.

(8) Base Buffer Width.

(a) Buffer width, measured in feet, shall be based upon "Alternative 3 in Appendix 8C of Freshwater Wetlands in Washington State, Vol.

2”. Intensity of use shall be based upon Table “8C-3, Types of proposed land use that can result in high, moderate, and low levels of impacts to adjacent wetlands” described in “Appendix 8C of Freshwater Wetlands in Washington State, Vol. 2”, and attached to this ordinance.

(b) New urban residential lots shall not be platted within wetland buffers

(c) Stormwater facilities and public utilities, if approved the city, may be located within the outer 25% of Category III or IV wetland provided no other location is feasible and that it will not degrade the functions of the wetland or its buffer. Stormwater facilities may not be allowed in wetland buffers that have been reduced through the buffer reduction or buffer averaging provisions of this chapter.

(9) Wetland Buffer Reduction. (See section 18.300.090(F)(5) for policy guidance.)

(a) Functionally Isolated Buffer Areas. Areas which are functionally separated from a wetland and do not protect the wetland from adverse impacts due to pre-existing roads, structures, or vertical separation, shall be excluded from buffers otherwise required by this Chapter.

(b) The full buffer width of higher quality wetlands (habitat scores of 20 or greater) shall not be extended over lesser quality wetlands that have reduced habitat function as designated in Tables 18.300.090(F)(7)(a)-1, 18.300.090(F)(7)(a)-2, 18.300.090(F)(7)(a)-3, if all of the following criteria are met:

(i) The area of reduced habitat function is at least 1 acre in size;

(ii) The area supports less than 5 native plant species and contains no special habitat features listed in H1.5 of the rating form;

(iii) The area does not meet any WDFW Priority Habitat or Species criteria;

(iv) The required buffer width to protect habitat function is provided for all portions of the wetland that do not have reduced habitat function.

(c) The city may allow the averaging of a buffer of a Category III or IV wetland:

(i) The buffer proposed for reduction has a habitat rating of 19 points or less;

(ii) No area averaged is less than 50% the width of the required base buffer;

(iii) The proposed reduction will not create a net loss of buffer function; and

(iv) The total area contained in the buffer after averaging shall be at least functionally equivalent and equal in size to the area contained within the buffer prior to averaging.

(d) A buffer for a Category III or IV wetland may be reduced by no more than 50% of the area of the buffer if:

(i) The buffer proposed for reduction has a habitat rating of 19 points or less;

(ii) The proposed reduction will not create a net loss of buffer function;

(iii) Buffer width shall not be less than 50% of the base buffer width at any point; and

(iv) Mitigation and enhancement measures, consistent with the provisions of this chapter, are approved by the city and implemented by the developer.

(v) The city may elect to submit the mitigation and enhancement plans to one or more qualified expert for peer review.

(e) General Site Design Measures. High intensity buffers may be reduced to moderate intensity buffers if all of the following mitigation measures are applied to the greatest extent practicable:

(i) Buffer Enhancement. The intent and effect of an approved buffer enhancement program shall be to measurably improve low functioning buffers by increasing the identified functions of the buffer. This may include the removal and management of noxious weeds and/or invasive vegetation or specific measures to improve hydrologic or habitat function.

(ii) Shielding of High Intensity Uses.

(I) Lights. Direct all lights away from wetlands;

(II) Noise. Locate activity that generates noise away from wetlands;

(III) Pets and Human Disturbance. Use privacy fencing; plant dense vegetation to delineate buffer edge and to discourage disturbance using vegetation appropriate for the ecoregion; place wetland and its buffer in a separate tract.

(iii) Surface Water Management.

(I) Existing runoff. Retrofit stormwater detention and treatment for roads and existing development and disperse direct discharge of channelized flows from lawns and landscaping;

(II) Change in water regime. Infiltrate and/or disperse stormwater runoff from impervious surfaces and drainage from lawns and landscaping into the buffer at multiple locations, except where the infiltration or dispersal would either be in opposition to the recommendations contained in the geo-technical report for the project or where the infiltration or dispersal would occur in a geologically hazardous area.

(f) Low Impact Development. In the alternative, if the development of the site has a low impact upon the critical area, the applicant may reduce the buffer width. However, the following reductions cannot be used in combination:

(i) Limiting effective impervious surface. Use of low impact development techniques and/or limiting the extent of impervious site area. Areas set aside as non-impervious surface must be protected by some type of permanent legal protection such as a covenant or easement.

(I) Less than 35% effective impervious surface results in a low intensity impact.

(II) Less than 50% effective impervious surface results in a moderate intensity impact.

(ii) Enhanced Stormwater Management. Reduction of high land use intensity buffer to moderate land use intensity buffer for implementation of stormwater treatment measures that exceed adopted city standards. (For example, storm water facilities designed to the Western Washington Manual rather than the Puget Sound Manual.) This could include measures such as pre-treatment or tertiary treatment of run-off and limiting discharge from the site to pre-development run-off flow and volume.

(iii) Habitat Corridors. Establishment of a minimum 100 feet wide functioning or enhanced vegetated corridor between the wetland and any other Priority Habitat areas as defined by the Washington State Department of Fish and Wildlife:

(I) Applies only to wetlands with habitat function scores higher than 20 on the rating system form;

(II) The habitat corridor must be protected for the entire distance between the wetland and the Priority Habitat area by some type of permanent legal protection such as a covenant or easement.

(10) Wetland Development Standards – General.

(a) Any development proposal that impacts a wetland or wetland buffer shall not be allowed without an approved mitigation or enhancement plan consistent with LCMC 18.300.120 and the mitigation sequencing preference. (See “mitigation” in LCMC 18.300.090(F)(12).)

(b) The city shall not approve a development proposal that impacts wetlands or wetland buffers without a finding that:

(i) The proposed activity shall not cause significant degradation of ground water or surface water quality or fish and wildlife habitat;

(ii) The proposed activity shall comply with all state, local and federal laws, including those related to sediment control, pollution control, floodplain restrictions, storm water management, and on-site wastewater disposal; and

(iii) Wetland and wetland buffer impacts shall be avoided or substantially minimized consistent with the mitigation sequencing criteria.

(11) Wetland Activities. Activities that trigger a wetland permit shall meet the following standards:

(a) Wetland impacts to Category I wetlands that are bogs or Natural Heritage sites shall be avoided.

(b) All other wetland impacts shall meet the compensation ratios stated in Table 18.300.090(F)(11) LCMC, Wetland Mitigation Ratios for projects in the La Center Urban Growth Area.

(12) Wetland Enhancement – Preliminary Plan. The preliminary enhancement/mitigation plan consists of two parts, baseline information for the site and a conceptual plan.

(a) Baseline information shall include:

(i) Wetland delineation report;

(ii) Description and maps of vegetative conditions at the site;

(iii) Description and maps of hydrological conditions at the site;

(iv) Description of soil conditions at the site based on a preliminary on-site analysis;

(v) A topographic map of the site;

(vi) Assessment of the functional uses of the existing wetland and buffer.

(b) The contents of the conceptual plan shall include:

(i) Goals and objectives of the proposed project;

(ii) Description of wetland type to be created;

(iii) Map showing proposed wetland and buffer. This map should include the base buffer and the proposed buffer;

(iv) Site plan;

(v) Discussion and map of plant material to be planted and planting densities;

(vi) Preliminary drainage plan identifying location of proposed drainage facilities including detention structures and water quality features (e.g., swales);

(vii) Discussion of water sources for the wetland;

(viii) Project schedule;

(ix) Discussion of how the completed project will be managed and monitored;

(x) Discussion of contingency plans in case the project does not meet the goals initially set for the project.

(13) Wetland Enhancement – Final Plan. The contents of the final enhancement/mitigation plan shall include:

(a) Preliminary enhancement/mitigation plan and all conditions imposed on that plan.

(b) Performance Standards. Specific criteria shall be provided for evaluating whether or not the goals and objectives of the enhancement/mitigation project are being met. Such criteria may include water quality standards, survival rates of planted vegetation, species abundance and diversity targets, habitat diversity indices, or other ecological, geological or hydrological criteria.

(c) Detailed Construction Plans. Written specifications for the enhancement/mitigation

project shall be provided. The specifications shall include: the proposed construction sequence, grading and excavation details, water and nutrient requirements for planting, specification of substrate stockpiling techniques, and planting instructions, as appropriate. These written specifications shall be accompanied by detailed site diagrams, sealed cross-sectional drawings, topographic maps showing slope percentage and final grade elevations, and any other drawings appropriate to show construction techniques or anticipated final outcome.

(d) Monitoring Program. Description of a detailed program for monitoring the success of the enhancement/mitigation project. In addition to the standards described in LCMC 18.300.120, a monitoring program shall include, but is not limited to:

(i) Establishing vegetation plots to track changes in plant species composition and density over time;

(ii) Using photo stations to evaluate vegetation community response;

(iii) Sampling surface and subsurface waters to determine pollutant loading, and changes from the natural variability of background conditions (pH, nutrients, and heavy metals);

(iv) Measuring base flow rates and storm water runoff to model and evaluate water quality predictions, if appropriate;

(v) Measuring sedimentation rates, if applicable; and

(vi) Sampling fish and wildlife populations to determine habitat utilization, species abundance and diversity. A protocol shall be included outlining how the monitoring data will be evaluated by agencies that are tracking the progress of the project. A monitoring report shall be submitted annually, at a minimum, documenting milestones, successes, problems, and contingency actions of the compensation project. The compensation project shall be monitored for a period necessary to establish that performance standards have been met, but not for a period less than five years.

(e) Associated Plans and Other Permits.

(i) Final landscaping plan;

(ii) Final drainage plan; and

(iii) Final erosion and sediment control plan.

(f) Evidence of Financial and Scientific Proficiency. A description of how the enhancement/mitigation project will be managed during construction and the scientific capability of the designer to successfully implement the proposed project. In addition, a demonstration of the financial capability of the applicant to successfully complete the project and ensure it functions properly over a five-year period. Evidence that required bonding can be obtained.

(g) Contingency Plan. Identification of potential courses of action, and any corrective measures to be taken when monitoring or evaluation indicates project performance standards are not being met.

(14) Wetland Permit – Application.

(a) Applications for wetland permits shall be made to the city on forms furnished by the city. The city shall process a wetland permit application as a request for land use approval pursuant to Chapter 18.030 LCMC.

(b) Wetlands permit applications shall include:

(i) Wetland delineations and required buffer width;

(ii) A site plan for the proposed activity overlaid on an aerial photograph at a scale no smaller than one inch equals 400 feet showing the location, width, depth and length of all existing and proposed structures, roads, storm water management facilities, sewage treatment, and installations within the wetland and its buffer;

(iii) The exact sites and specifications for all regulated activities including the amounts and methods;

(iv) A proposed preliminary enhancement/mitigation plan meeting the requirements of this chapter.

(15) Wetland Permit – Approval.

(a) The city shall issue final approval of the wetland permit authorizing commencement of the activity permitted thereby upon:

(i) Submittal and approval of a final enhancement/mitigation plan;

(ii) Installation and approval of the required field markings;

(iii) The recording of a conservation covenant.

(b) Conditions. An approval of a wetland permit shall incorporate the following condition:

(i) Posting of a cash performance bond or other security acceptable to the city in an amount and with surety and conditions sufficient to fulfill the requirements of the required final plan, mitigation plan and enhancement plan and to secure compliance with other conditions and limitations set forth in the permit.

(ii) The city shall release the bond upon determining that:

(I) All activities, including any required compensatory mitigation, have been completed in accordance with the terms and conditions of the permit and the requirements of this chapter; and

(II) Upon forfeiture of a performance or maintenance bond, the proceeds thereof shall be utilized either to correct deficiencies which resulted in forfeiture or, if such correction is deemed by the county to be impractical or ineffective, to enhance other wetlands in the same watershed.

(c) Duration. Wetland permit final approval shall be valid for a period of two years from the date of issuance unless:

(i) A longer period, not to exceed five years, is specified in the permit; or

(ii) The city grants an extension upon the written request of the original permit holder or successor in title demonstrating to the satisfaction of the city:

(I) That the original intent of the permit would not be altered or enlarged by the extension; and

(II) That relevant circumstances and standards have not changed substantially since the permit application; and

(III) That the applicant has complied with the terms of the permit.

(d) Revocation. In addition to other remedies provided for elsewhere, the city may suspend or revoke a permit if the applicant or permittee has not complied with any of the conditions or limitations set forth in the permit, has exceeded the scope of work set forth in the

permit, or has failed to undertake the project in the manner set forth in the permit.

Table 18.300.090(B)(1) Priority Habitat & Species Buffers

Resource Type	Critical Zone	Protected Buffer
Wildlife Habitat		
Local Habitat	Delineated	Use BAS for species.
Non-riparian Priority Habitat & species	Delineated	300 feet or threshold based upon consultation with WDFW or through the city's peer review process. ³
Subject to the ESA	Delineated	Use BAS for species up to 1,300 review threshold distance

Table 18.300.090(B)(6) Riparian Areas

Fish & Wildlife Habitat Areas	Characteristic	Riparian Ecosystem Area (in feet)
RIPARIAN AREAS		
Type S (fish bearing)	East Fork of the Lewis River	250
Type F (perennial or fish bearing)	Breeze, Jenny & McCormick Creeks and stream < 5 feet wide, if fish bearing	200
Type Np streams, low mast wasting potential	Less than 3 feet in width on average	150
Type Ns stream, high mast wasting potential	Seasonal streams with a defined channel	75

Table 18.300.090(F)(7)(a)-1 Buffers Required to Protect Hydrologic Functions

Wetland Rating	Low Intensity Use	Moderate Intensity Use	High Intensity Use
Category I	50 ft.	75 ft.	100 ft.
Category II	50 ft.	75 ft.	100 ft.
Category III	40 ft.	60 ft.	80 ft.
Category IV	25 ft.	40 ft.	50 ft.

Table 18.300.090(F)(7)(a)-2 Buffers Required to Protect Habitat Functions in Category III Wetlands

Habitat Score in the Rating Form	Low Intensity Use	Moderate Intensity Use	High Intensity Use
≤ 19 points	See Table 1	See Table 1	See Table 1
≥ 20 points	75 ft.	110 ft.	150 ft.

Table 18.300.090(F)(7)(a)-3 Buffers Required to Protect Habitat Functions in Category I & II Wetlands

³ For example, the city may allow a reduced buffer around a single Oregon white oak tree as a result of consultation with the regulatory agency or as a result of the city peer review process if the important functions and values of the resource will not be significantly diminished as a result of the buffer reduction.

Habitat Score in the Rating Form	Low Intensity Use	Moderate Intensity Use	High Intensity Use
≤ 19 points	See Table 1	See Table 1	See Table 1
20-23 points	60 ft.	90 ft.	120 ft.
24-27 points	90 ft.	130 ft.	180 ft.
28-30 points	130 ft.	195 ft.	260 ft.
≥ 31 points	150 ft.	225 ft.	300 ft.

Table 18.300.090(F)(11) LCMC Wetland Mitigation Ratios

Impacted Wetland Category & Type	Reestablishment or Creation	Rehabilitation	1:1 Reestablishment or Creation (R/C) plus Enhancement (E)	Enhancement Only
Category I bog	Not considered possible	6:1 rehabilitation of a bog	Case-by-case	Case-by-case
Category I Natural Heritage Site	Not considered possible	6:1 rehabilitation of a natural heritage site	Case-by-case	Case-by-case
Category I forested	6:1	12:1	1:1 R/C and 10:1 E	18:1
Category I based on score for functions	4:1	8:1	1:1 R/C and 6:1 E	12:1
Category II	3:1	6:1	1:1 R/C and 4:1 E	8:1
Category III	2:1	4:1	1:1 R/C and 2:1 E	6:1
Category IV	1.5:1	3:1	1:1 R/C and 2:1 E	4:1

18.300.100 Best Available Science

Critical area reports and decisions to alter critical areas shall rely on the Best Available Science to protect the functions and values of critical areas and must give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fish and their habitat. Best Available Science is that scientific information applicable to the critical area prepared by local, state or federal natural resource agencies, a qualified scientific professional or team of qualified scientific professionals, that is consistent with criteria established in WAC 365-195-900 through WAC 365-195-925.

18.300.110 Development standards

Within Critical Areas, the city shall prohibit soil excavation, grading, removal of native vegetation species, draining, intentional burning, planting of invasive or nuisance vegetation, placement of structures and new construction on critical areas unless otherwise authorized in this chapter.

(A) These development standards apply to uses on critical areas and within buffers unless otherwise exempted in this title.

(B) In order to approve application for development on lands subject to this chapter, the mayor or his or her designee shall find that the following standards have been met:

(1) All reasonable alternatives for locating the development activity in such a way so as to avoid critical areas have been considered and the development activity will be located in the least

environmentally sensitive area as practicable and the purpose of this chapter, as described in LCMC 18.300.010, is fulfilled. If avoidance is not practicable, as determined by the city, development shall minimize adverse impacts to critical areas and buffers consistent with the mitigation sequencing measures and mitigation and enhancement measures prescribed in the chapter.

(2) The city has approved the vegetation removal methods and the removal of native plants has been avoided.

(3) All adverse impacts to all affected critical areas and buffers are either avoided or fully mitigated.

(4) The plan minimizes cuts and fills.

(5) Soils are not exposed during the rainy season (November 1st through April 30th) and construction activity is limited to the dry season (May 1st through October 31st).

(6) The mayor or his or her designee has reviewed and approved an erosion control plan, grading plan, and vegetation removal and replanting plan prior to construction activity.

(7) All activities have received applicable state and federal permits, and comply with SEPA requirements if the lead agency makes a threshold determination of significance (DS), or a mitigated determination of non-significance (MDNS).

(8) Hydraulic permits are required for any activity occurring within the ordinary high water mark of any state regulated Class I or Class II stream.

(9) Compliance with this chapter does not constitute compliance with state and federal environmental standards. The applicant shall be responsible for demonstrating such compliance.

(C) Review Process.

(1) The review process shall be the type specified in the LCMC for each particular land use action unless otherwise specified in this chapter.

(2) Applications to develop on critical areas or their buffers shall be subject to Type I review if, within a one-year period, the cumulative impact on critical areas is:

(a) Disturbance of less than 10 cubic feet of soil;

(b) An activity, the fair market cost of which is less than \$500.00; or

(c) The activity involves less than 1,000 square feet of critical areas.

(D) SEPA Review. On a case-by-case basis, the Responsible Official may issue a Determination of Nonsignificance (DNS) if:

(1) The application for development review contains all requested information, including reports, maps and other documents relevant to the proposed activity; and

(2) The proposed activity complies with all applicable development review and performance standards; and

(3) Compliance with all applicable development standards and performance standards is made a binding condition of land use approval.

18.300.120 Mitigation

(A) Approval. City approval of a mitigation plan is a prerequisite for approval of any development activities on critical areas.

(1) The applicant shall submit a written request describing the extent and nature of the proposed development activity on critical areas and buffers. The request shall include boundary locations and identification of all designated critical areas and buffers.

(2) The application for development shall include a mitigation plan prepared in compliance with this section. (See Appendix C, "Monitoring and Maintenance Plan" as an illustration of recommended plan.)

(3) The city may require the applicant to prepare special reports evaluating potential adverse impacts upon critical areas and potential mitigation measures as part of the land use application process. These reports may include, but are not limited to, the following: storm water management plan; hydrology, geology, and soils report; grading and erosion control plan; native vegetation report; fish and wildlife assessment and impact report; water quality report; wetlands delineation; and other reports determined necessary by the city.

(4) The city shall consult with state and federal resource management agencies and, in order to protect wildlife habitat or natural

resource values, shall attach such conditions as may be necessary to effectively mitigate identified adverse impacts of the proposed development activity.

(5) The city may request third party “peer review” of an application by qualified professionals and may incorporate recommendations from such third party reports in findings approving or denying the application.

(6) All reports recommending mitigation shall include provisions for monitoring of programs and replacement of improvements, on an annual basis, consistent with report recommendations and at years one, three, five, seven. The city reserves the right to require reporting at year ten (10).

(7) The city may require replacement mitigation to be established and functional prior to project construction.

(B) No Net Loss.

(1) Mitigation efforts, when allowed, shall ensure that development activity does not yield a net loss of the area or function of the critical areas. No net loss shall be measured by:

(a) Avoidance or mitigation of adverse impacts to fish life; or

(b) Avoidance or mitigation of net loss of habitat functions necessary to sustain fish life; or

(c) Avoidance or mitigation of loss of area by habitat type.

(2) Mitigation to achieve no net loss should benefit those organisms being impacted.

(3) Where development results in a loss of wetland area, the mitigation plan shall demonstrate that wetland area is replaced consistent with the ratios described in the tables in LCMC 18.300.035. The created or enhanced wetland shall be, acre for acre, of equal or greater biological values, including habitat value, and with equivalent hydrological values including storage capacity.

(a) Wherever possible, replacement or enhancement shall occur on-site.

(b) However, where the applicant can demonstrate that an off-site location is in the same drainage basin, and that greater biological and hydrological values will be achieved, the city may approve such off-site mitigation.

(c) Wetponds established and maintained for control of surface water shall not constitute mitigation for wetland alterations.

(d) Where there is a wetland within 25 feet of the toe of a slope equal to or greater than 25 percent, the buffer shall be a minimum of 25 feet beyond the toe of the slopes.

(C) Mitigation Plan. A mitigation plan shall provide for the design, implementation, maintenance, and monitoring of mitigation measures. A mitigation plan shall include but is not limited to the following:

(1) Methods and techniques to be used to mitigate impacts to critical areas;

(2) Explanation of methods and techniques, such as construction practices to be used to implement the identified mitigation methods;

(3) Methods and techniques for monitoring said mitigation and a proposed time-frame for such monitoring.

(D) Storm Water Management. Any development on critical areas shall be consistent with either Chapter 18.320 LCMC, Storm Water and Erosion Control, or the most recent version of the “Stormwater Management Manual for Western Washington,” Washington State Department of Ecology, at the discretion of the Public Works Director.

(E) Buffer Enhancement. Where a development avails itself of the buffer reduction opportunity described in this chapter, the following enhancement standards shall apply:

(1) The applicant shall submit to the city a written request describing the extent and nature of the proposed development activity and shall submit a written enhancement plan.

(2) The enhancement plan shall include calculations and maps that illustrate:

(a) Required boundary locations of all critical areas and attendant buffers;

(b) Proposed buffer areas after reduction;

(c) Proposed areas to receive enhancement measures;

(d) A timeline for completion of the enhancement plan;

(e) Methods and techniques to be used to mitigate impacts to critical areas;

(f) An explanation of methods and techniques, such as construction practices to be

used to implement the identified mitigation methods; and

(g) Methods and techniques for monitoring said mitigation and a proposed time-frame for monitoring.

(3) The enhanced area shall functionally be of greater biological values, including habitat value, and with greater hydrological values including storage capacity.

(4) Enhancement shall occur on-site.

(5) Wetponds established and maintained for control of surface water shall not constitute mitigation for wetland alterations.

(6) Surface water management or flood control shall not be considered enhancement.

18.300.130 Residential density transfer

The city may permit density transfer from critical areas (sending lands) to designated non-critical areas (receiving areas).

(A) Residential Density Transfer. A property owner may transfer residential density to a receiving area.

(1) . A receiving area shall be on the same parcel or same property, within the same zoning classification, owned by the property owner sending the density.

(2) Density may be transferred from a sending area only one time.

(3) The value of the transfer shall be calculated as follows:

(a) LDR districts: Gross area of a critical area completely avoided times the minimum number of units allowed per gross acre in the affected zoning district times 60%. For example, in an R1-7.5 zone, if 2 acres of critical areas are completely avoided and the minimum density allowed is 4 units per acre, the allowable density transfer would be 4.8 units. (2 ac. X 4 du/ac x 60% = 4.8.)

(b) MDR District: Gross area of a critical area completely avoided times the minimum number of units allowed per gross acre in the affected zoning district times 60%. For example, in a MDR-16 zone, if 2 acres of critical areas are completely avoided and the minimum density allowed is 9.6 units per acre, the allowable density transfer would be 4 units. (2 ac. x 8 du/ac x 60% = 9.6.)

(B) Transfer Criteria. The mayor, or his or her designee, shall approve requests to transfer density subject to the following criteria:

(1) Adverse impacts to natural resources on the receiving areas shall be mitigated consistent with the mitigation section of this chapter.

(2) The building height standards of the receiving area shall be met.

(3) No receiving are lot gross area shall be less than 20% of the minimum lot size within the receiving district. For example, if the receiving area is an R1-7.5 district no lot created as a result of density transfer shall be less than 6,000 sq. ft.

(4) No lot created as a result of density transfer that is smaller than the average minimum lot required in the receiving district may be located on the perimeter of the project site.

(5) The transfer of density to a receiving area shall not result in an increase in density throughout the project greater than the maximum net density allowed in the base zone or in the construction of a housing type not otherwise allowed in the receiving area.

(6) On density sending lands the remaining critical areas and buffers shall be enhanced at a ratio of four acres of enhanced function for every one acre (4:1) used in the density transfer calculations.

(7) Sending areas shall be:

(a) Dedicated to the city for public use; or

(b) Protected as an unbuildable area by means of deed restriction, conservation easement, or other mechanism approved by the city council.

(C) Recordation Required. Density may be transferred from a protected critical areas area only once. The mayor, or his or her designee, (upon consultation with the city attorney) shall be responsible for approving the mechanism used for protecting each critical area. The mayor or his or her designee shall maintain a list of sites from which density has been transferred, and a corresponding list of sites that have received density from protected critical areas. The applicant shall record the density transfer mechanism with Clark County and shall furnish

the mayor or his or designee with a copy of the recorded instrument.

18.300.140 Selective timber harvesting on critical lands

(A) Applicability. Consistent with RCW 76.09.240, the city extends its planning and zoning jurisdiction over forest practices in critical areas to the extent that:

(1) Commercial forestry activity occurs on lands identified as critical areas on the city's adopted critical areas maps;

(2) An application submitted under RCW 76.09.060 indicates that the lands will be converted to a use other than commercial timber productions;

(3) The subject lands were platted after January 1, 1960; and

(4) Consistent with the adopted La Center comprehensive plan, the city of La Center presumes that any application for commercial timber harvest within the La Center urban growth boundary that is subject to Chapter 76.09 RCW et seq. is for the purpose of converting forested lands into urban lands.

(B) Standards. Selective commercial timber harvesting may be permitted on critical areas subject to the following standards:

(1) Written Plan Required. Trees to be removed shall be identified through the development approval process and shall be clearly marked prior to their removal. An applicant shall present a written plan, explaining in detail the location of trees to be removed, and the method of removal, to the mayor, or his or her designee, for review and approval.

(2) In conjunction with a development application, selective tree cutting may occur to the minimum extent necessary in conjunction with an approved development.

(3) Prior to approval of a harvesting permit, the applicant shall sign and record an agreement with the city stating that no development application may be filed on the subject property, other than a single-family residence, for six years following completion of timber harvesting operations.

(4) Selective tree removal on critical lands shall not result in loss of more than 50 percent of existing tree canopy covering critical areas.

(5) The applicant shall demonstrate that the methods used for tree harvesting and removal are the least disruptive practicable.

(6) Operations shall be limited to the dry season, that is, from May 1st through October 30th.

(7) Applicants for selective timber harvesting shall prepare an erosion control plan for review and approval by the mayor or his or her designee and, if the plan is approved, shall comply with the plan during harvesting activity and shall maintain required erosion control mechanisms for a period of 180 days after completion of the timber removal project.

(C) Conditions. The mayor, or his or her designee, may recommend conditions of approval necessary to minimize adverse impacts on natural resource values, including water quality and wildlife habitat to the extent that such conditions are consistent with the La Center comprehensive plan.

18.300.150 Modification to overlay zone

The city may modify the boundaries of the critical areas overlay district based upon expert studies. Such amendments shall occur under Type III proceedings.

(A) Land to be conserved as public or private open space, through dedication, conservation easements or other appropriate means, shall retain a critical areas overlay designation.

(B) Land approved for private building construction shall be removed from this overlay district.

(C) The city shall maintain a record of all administrative amendments to the critical areas overlay district, including findings in support of the decision to modify the boundaries of the overlay district.

(D) The city shall correct mapping errors through a Type I process.

18.300.160 Application fees

At the time of application for land use review or critical areas review, the applicant shall pay a critical areas review fee, adopted and amended

by the city council, from time to time, by resolution.

18.300.170 Bonds to Insure Mitigation, Maintenance and Monitoring.

(A) When mitigation required pursuant to a development proposal is not completed prior to the City final permit approval, such as final plat approval or final building inspection, the City shall require the applicant to post a performance bond or other security in a form and amount deemed acceptable by the City. If the development proposal is subject to mitigation, the applicant shall post a performance bond and a mitigation bond or other security in a form and amount deemed acceptable by the City to ensure mitigation is fully functional.

(B) The bond shall be in the amount of one hundred and fifty percent (150%) of the estimated cost of the uncompleted actions or the estimated cost of restoring the functions and values of the critical area that are at risk, whichever is greater and the cost of maintenance and monitoring for a ten (10) year period.

(C) The bond shall be in the form of an assignment of savings account, or an irrevocable letter of credit guaranteed by an acceptable financial institution with terms and conditions acceptable to the city attorney or other method acceptable to the Planning Director.

(D) Bonds or other security authorized by this Section shall remain in effect until the City determines, in writing, that the standards bonded for have been met. Mitigation bonds or other security shall be held by the City for a minimum

of ten (10) years to ensure that the required mitigation has been fully implemented and demonstrated to function, and may be held for longer periods when necessary.

(E) Depletion, failure, or collection of bond funds shall not discharge the obligation of an applicant or violator to complete required mitigation, maintenance, monitoring, or restoration.

(F) Public development proposals shall be relieved from having to comply with the bonding requirements of this Section if public funds have previously been committed for mitigation, maintenance, monitoring, or restoration.

(G) Any failure to satisfy critical area requirements established by law or condition including, but not limited to, the failure to provide a monitoring report within thirty (30) days after it is due or comply with other provisions of an approved mitigation plan shall constitute a default, and the City may demand payment of any financial guarantees or require other action authorized by the City code or any other law.

(H) Any funds recovered pursuant to this Section shall be used to complete the required mitigation, maintenance or monitoring.

18.300.180 Critical Area Inspections

Reasonable access to the site shall be provided to the City, state, and federal agency review staff for the purpose of inspections during any proposal review, restoration, emergency action, or monitoring period.

La Center Flood Hazard Areas

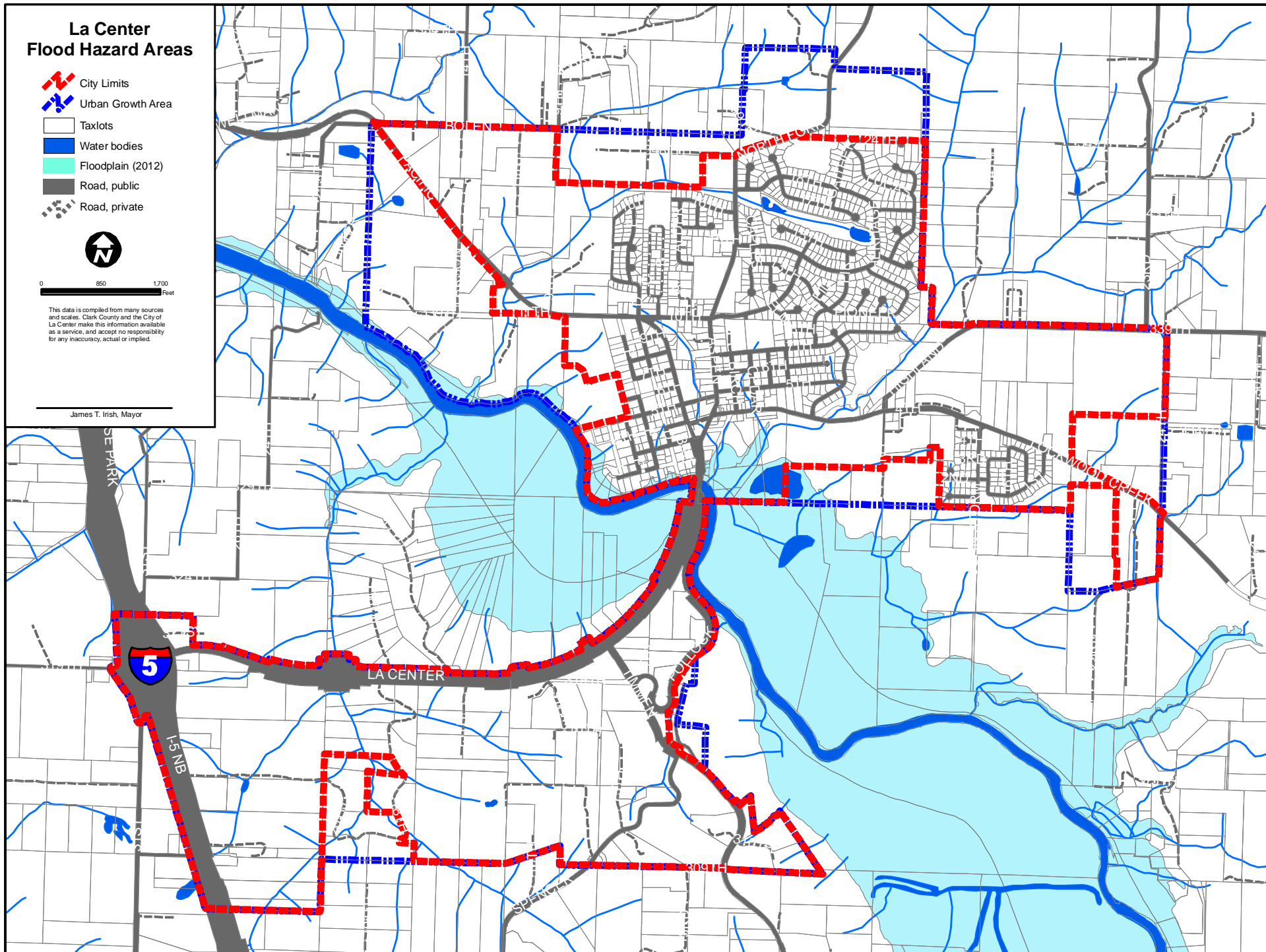
- City Limits
- Urban Growth Area
- Taxlots
- Water bodies
- Floodplain (2012)
- Road, public
- Road, private



0 850 1,700
Feet

This data is compiled from many sources and scales. Clark County and the City of La Center make this information available as a service, and accept no responsibility for any inaccuracy, actual or implied.

James T. Irish, Mayor



Chapter 18.330
SHORELINE ADMINISTRATION

Sections:

- 18.330.010 General Provisions
- 18.330.020 Administrative Authority and Responsibility
- 18.330.030 WDOE Review
- 18.330.040 Public Notice Requirements
- 18.330.050 Appeals
- 18.330.060 Commencement of Development Activity and Permit Validity
- 18.330.070 Enforcement
- 18.330.080 Public and Private Redress
- 18.330.090 Fees for Permits Obtained after Development
- 18.330.100 Revocation of Permits

18.330.010 General Provisions

- A. All proposed uses and development occurring within a shoreline jurisdiction must conform to the Shoreline Management Act (SMA) and this program (SMP). The policies and regulations of this program apply to all shoreline uses and developments within the shoreline jurisdiction whether or not a shoreline permit or statement of exemption is required.
- B. The requirements of this program are only applicable within the City's shoreline jurisdiction.
- C. Classification of a use or development as permitted does not necessarily mean the use/development is allowed. It means the use/development may be allowed subject to review and approval by the City and/or WDOE. The City may attach conditions of approval to any permitted use via a permit or statement of exemption to assure consistency of a project with the Act and this program. To be authorized under this program, all uses and developments shall be planned and carried out in a manner that is consistent with the City codes and this program regardless of whether a shoreline Substantial Development Permit, Statement of Exemption, Shoreline Variance, or Shoreline Conditional Use Permit is required.
- D. Applicants requesting permits or statements of exemption under this program have the burden to prove that the proposed development or activity is consistent with the criteria that must be met before a permit or statement of exemption is granted.
- E. Applicants shall submit all information and documentation determined by the Shoreline Administrator as necessary to process an application.
- F. The City shall not issue any permit for development within the shoreline jurisdiction until approval has been granted pursuant to this program.
- G. A development or use that does not comply with the bulk, dimensional, and/or performance standards of this program shall require a shoreline variance even if the development or use does not require a Substantial Development Permit.
- H. A development or use that is listed as having a conditional use pursuant to this program, or is an unlisted use, must obtain a Conditional Use Permit even if the development or use does not require a Substantial Development Permit.

- I. Issuance of a Shoreline Substantial Development Permit, Shoreline Variance or Shoreline Conditional Use Permit does not constitute approval pursuant to any other federal, state or City laws or regulations.
- J. All shoreline permits or statements of exemption issued for development or use within shoreline jurisdiction shall include written findings prepared by the Shoreline Administrator, documenting compliance with bulk and dimensional policies and regulations of this program. The Shoreline Administrator may attach conditions to the approval as necessary to assure consistency with the RCW 90.58 and this program. Such conditions may include a requirement to post a performance bond assuring compliance with permit requirements, terms and conditions.
- K. Proposed actions that would alter designated critical areas or their buffers, as established by this program (Chapter V) shall be reviewed for compliance with this program. If required, the applicable critical area report and/or mitigation plan and/or habitat management plan shall be submitted as part of the development application or request for statement of exemption. The critical area review shall be conducted and processed in conjunction with the highest threshold of review that is applicable to the primary development proposed in the:
 - 1. Review pursuant to Section II.C.2 (List of Exemptions):
 - 2. Land Use Permit or Building Permit;
 - 3. Excavation, Grading, Clearing and Erosion Control Permit;
 - 4. SEPA Threshold Determination;
 - 5. Shoreline Substantial Development Permit;
 - 6. Shoreline Conditional Use Permit; or
 - 7. Shoreline Variance.

18.330.020 Administrative Authority and Responsibility

- A. Shoreline Administrator. The Shoreline Administrator shall have the authority to act upon the following matters:
 - 1. Interpretation, enforcement, and administration of the City's Shoreline Master program as prescribed in this title;
 - 2. Applications for Shoreline Management Substantial Development Permits;
 - 3. Applications for Shoreline Conditional Use Permits;
 - 4. Applications for Shoreline Variances;
 - 5. Modifications or revisions to any of the above approvals, and;
 - 6. Requests for Statements of Exemption.
- B. The Shoreline Administrator shall document all project review actions in shoreline areas in order to periodically evaluate the cumulative effects of authorized development on shoreline conditions per WAC 173-26-191. Administrative interpretations shall be made in consultation with WDOE to insure that any formal written interpretations are consistent with the purpose and intent of RCW 90.58 and the applicable guidelines.

C. City Planning Commission. The City Planning Commission shall be responsible for hearing and making recommendations for action to the City Council on the following types of matters:

1. Amendments to the Shoreline Master program. Any of the provisions of this program may be amended as provided for in WAC 173-26-100.
2. Periodic review of this program shall be conducted as required by state law and regulations RCW 90.58.080(4). Adjustments shall be made as necessary to reflect changing local circumstances, new information or improved data, and changes in state statutes and regulations. This review process shall be consistent with WAC 173-26-090 and shall include a local citizen involvement effort and public hearing to obtain the views and comments of the public.

D. City Council

1. The City Council shall be responsible for making final determinations on amendments to the Shoreline Master program, for review and approval by WDOE, which shall be adopted by ordinance. The Council shall enter findings and conclusions setting forth the factors it considered in reaching its decision.
2. The City shall periodically review the program and make adjustments as are necessary to reflect changing local circumstances, new information or improved data, and changes in State statutes and regulations. This review process shall be consistent with WAC 173-26 requirements and shall include a local citizen involvement effort and public hearing to obtain the views and comments of the public.
3. The City Council shall conduct a comprehensive review of this program on or before June 30, 2020, and every eight years thereafter, to assure that the program: complies with applicable laws and guidelines in effect at the time of the review; and to assure consistency with the City's comprehensive plan and development regulations adopted under RCW 36.70A and other local requirements.
4. Any of the provisions of this program may be amended as provided for in RCW 90.58.120 and .200 and WAC 173-26. Amendments or revision to this program, as provided by law, do not become effective until approved by WDOE.
5. Proposals for shoreline re-designation (i.e., amendments to the shoreline maps and descriptions) must demonstrate consistency with the criteria set forth in WAC 173-22.

E. City Hearing Examiner. The City Hearing Examiner shall be responsible for making final determinations on appeals of Statements of Exemptions and Shoreline Substantial Development Permits.

F. WDOE and Attorney General

1. The duties and responsibilities of WDOE shall include, but are not limited to the following:
 - a. Reviewing and approving program amendments prepared by the City pursuant to WAC 173-26-120. Amendments or revisions to the program, as provided by law, do not become effective until approved by the Washington State Department of Ecology.
 - b. Approving, denying or approving with conditions Shoreline Conditional Use Permits and Shoreline Variance Permits filed by the City.

2. WDOE and the Attorney General have the authority to review and petition for review the City's permit decisions. Petitions for review must be commenced within twenty one (21) days from the date of receipt of City's decision was filed.

18.330.030 WDOE Review

- A. WDOE shall be notified of any Substantial Development, Conditional Use or Variance Permit decisions made by the Shoreline Administrator (or Hearing Examiner when required), whether it is an approval or denial. The notification shall occur after all local administrative appeals related to the permit have concluded or the opportunity to initiate such appeals has lapsed. When a Substantial Development Permit and either Conditional Use or Variance Permit are required for a development, the submittal of the permits shall be made concurrently. The Shoreline Administrator shall file the following with Ecology and the Attorney General:
 1. A copy of the complete application per WAC 173-27-180;
 2. Findings and conclusions that establish the basis for the decision including but not limited to identification of shoreline environment designation, applicable program policies and regulations and the consistency of the project with appropriate review criteria for the type of permit(s);
 3. The final decision of the City;
 4. The permit data sheet per WAC 173-27-990;
 5. Affidavit of public notice; and
 6. Where applicable, the Shoreline Administrator shall also file the applicable documents required by the State Environmental Policy Act (RCW 43.21C).
- B. When the project has been modified in the course of the local review process, plans or text shall be provided to WDOE that clearly indicates the final approved plan.
- C. If WDOE determines that the submittal does not contain all of the documents and information required by this section, WDOE shall identify the deficiencies and notify the City and the applicant in writing. WDOE will not act on Conditional Use or Variance Permit submittals until the material requested in writing is submitted to them.
- D. WDOE shall convey to the City and applicant its final decision approving, approving with conditions, or disapproving the permit within thirty (30) days of the date of submittal by the City. The Shoreline Administrator will notify those interested persons having requested notification of such decision.
- E. WDOE shall base its determination to approve, approve with conditions or deny a Conditional Use Permit or Variance Permit on consistency with the policy and provisions of the SMA, WAC 173-27-160, WAC 173-27-170 and WAC 173-27-210, and the criteria listed in this program.
- F. Appeals of WDOE decisions on conditional use and variances requests shall be made to the Shorelines Hearing Board as specified in Section VII.E.3.

18.330.040 Public Notice Requirements

- A. A notice of application, comment periods, decisions, public hearings, and appeal hearings on applications and decisions associated with shoreline substantial development permits.

shoreline conditional uses and shoreline variances shall be as provided in WAC 173-27-110 or LCMC 18.030 as applicable.

- B. In addition, copies of the original application and other pertinent materials used in the final shoreline permit decision shall be sent to the State in accordance with state regulations, and, pursuant to RCW 90.58 or 43.21C. The permit and any other written evidence of the final order of the City relative to a permit application, shall be transmitted by the Shoreline Administrator to the Attorney General of the State of Washington and to WDOE in accordance with WAC 173-27-130 and RCW 90.58.140(6).

18.330.050 Appeals

1. Filing Appeals

- a. Any decision or ruling of the Shoreline Administrator may be reconsidered upon a request for reconsideration within seven (7) days of the date of issuance of the decision. Applicants may appeal the initial notice of decision or subsequent reconsideration to the Hearings Examiner.
- b. The Hearing Examiner shall hold a public hearing, conduct adjudicative proceedings, maintain a record thereof, and enter findings of facts, conclusions of law, and a final decision or other order as appropriate.
- c. Appeals from decisions or rulings of the Shoreline Administrator shall be made within twenty-one (21) calendar days of the date the permit decision was filed. If the last day for filing an appeal falls on a weekend day or a holiday, the last day for filing shall be the next working day.
- d. An appeal of the Shoreline Administrator shall take the form of a written statement of the alleged reason(s) the decision was in error, or specifying the grounds for appeal. The following information, accompanied by an appeal fee as specified in LCMC 18.030.130, shall be submitted:
 - i. An indication of facts that establish the appellant's right to appeal.
 - ii. An identification of explicit exceptions and objections to the decision being appealed, or an identification of specific errors in fact or conclusion.
 - iii. The requested relief from the decision being appealed, and
 - iv. Any other information reasonably necessary to make a decision on the appeal.

Appeals shall be filed with the Office of the Hearing Examiner according to LCMC 18.030.130.

2. Hearings

- a. Applications which require an open-record hearing shall be considered by the Hearing Examiner. When an open-record hearing is required, all other land use permit applications for a specific site or project shall be considered concurrently. Therefore, in this situation, applications for which the Shoreline Administrator has authority shall be transferred to the jurisdiction of the Hearing Examiner to allow consideration of all land use actions concurrently.
- b. The Hearing Examiner shall consider concurrently all related land use permit applications for a specific site, and any accompanying environmental appeal under LCMC 18.310. Applications for which the Shoreline Administrator has authority shall

be transferred to the jurisdiction of the Hearing Examiner to allow concurrent consideration of all land use actions, as prescribed in LCMC 18.030.

- c. Any decision or ruling of the Hearing Examiner on a shoreline substantial development permit may be appealed to the State Shorelines Hearing Board.

3. State Shorelines Hearing Board

- a. Appeals of any final permit decision may be made to the Shorelines Hearing Board as governed by the procedures established in RCW 90.58.180 (Appeals from Granting, Denying, or Rescinding Permits) and WAC 461-08 (Practice and Procedure, Review of the Granting, Denying or Rescinding of Substantial development Permits, Hearings).
- b. All appeals of any final permit decision must be made to the Shorelines Hearing Board within twenty-one (21) days after the City's or WDOE's final decision was filed concerning the shoreline permit or formal approval to revisions of the permit.

18.330.060 Commencement of Development Activity and Permit Validity

- A. No construction pursuant to a Substantial Development Permit, shoreline variance or shoreline conditional use authorized by this program shall begin or be authorized and no building, grading or other construction permits shall be issued by the City until twenty-one (21) days from the date the decision was filed.
- B. Construction may be commenced no sooner than thirty (30) days after the date the permit decision was filed unless construction is prohibited until all Superior Court review proceedings are final after judicial hearing as provided in RCW 90.58.140. Any applicant who wishes to begin construction pursuant to this section prior to termination of all review proceedings does so at the applicant's own risk.
- C. Construction activities shall be commenced, or where no construction activities are involved, the use or activity shall be commenced within two (2) years of the effective date of a Substantial Development Permit. The Shoreline Administrator may authorize a single extension for a period not to exceed one (1) year based on reasonable factors, if a request for extension has been filed before the expiration date and notice of proposed extension is given to parties of record on the Substantial Development Permit and to the department.
- D. Authorization to conduct construction activities shall terminate five (5) years after the effective date of a substantial development permit. The Shoreline Administrator may authorize a single extension if it has been filed before the expiration date and notice of the proposed extension is given to parties of record and WDOE.

18.330.070 Enforcement

A. General Enforcement

1. The enforcement provisions of RCW 90.58.210 and WAC 173-27-240 through -310 shall apply.
2. The Shoreline Management Act calls for a cooperative enforcement program between local and state government. It provides for both civil and criminal penalties, orders to cease and desist, orders to take corrective action and permit rescission. The choice of enforcement action and the severity of any penalty should be based on the nature of the violation and the damage or risk to the public or to public resources. The existence or

degree of bad faith of the persons subject to the enforcement action, the benefits that accrue to the violator, and the cost of obtaining compliance may also be considered.

3. The Shoreline Administrator, and/or authorized representative, shall have the power to seek enforcement of the shoreline regulations of the City using his or her own powers or powers vested with other state or local authorities.
4. The Shoreline Administrator, with the consent of the owner or occupier of a building or premises, or pursuant to a lawfully issued inspection warrant, may enter at reasonable times any building or premises subject to the consent or warrant to perform the duties imposed by this program.
5. These shoreline regulations shall be enforced for the benefit of the health, safety and welfare of the general public, and not for the benefit of any particular person or class of persons.
6. No provision of, or term used in, this code is intended to impose upon the City, or any of its officers or employee, any duty which would subject them to damages in a civil action.
7. The Shoreline Administrator shall have the authority to request evidence of a statement of exemption for any development.

B. Investigation and Notice of Violation

1. An investigation shall be made of any structure or use which the City reasonably believes does not comply with the standards and requirements of this program.
2. If, after an investigation, it is determined that the standards or requirements of this title have been violated, a notice of violation shall be served, by first class mail, upon the owner, tenant or other person responsible for the condition.
3. The compliance period shall not be less than two weeks, except where substantial life safety issues exist.

C. Penalties. Any person found to have willfully engaged in activities on the City's shorelines in violation of the Shoreline Management Act of 1971 or in violation of this program, and rules or regulations adopted pursuant thereto, shall be subject to the penalty provisions of LCMC 18.50.050.

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

18.330.080 Public and Private Redress

- A. Any person subject to the regulatory provisions of this program who violates any provision of this program or the provisions of a permit issued pursuant thereto shall be liable for all

damages to public or private property arising from such violation, including the cost of restoring the affected area to its condition prior to such violation.

- B. The City Attorney may bring suit for damages under this section on behalf of the City. Nothing in this section precludes private persons from bringing suit for damages on their own behalf.

18.330.090 Fees for Permits Obtained after Development

- A. Permits obtained following, rather than prior to, the commencement of a development or use shall be three (3) times the normal amount. This provision is in addition to the enforcement measures contained in this chapter and in LCMC 18.050.
- B. Delinquent permit penalties shall be paid in full, including interest and any applicable penalties, prior to resuming the use or activity.

18.330.100 Revocation of Permits

- A. Any permit may, after a hearing with adequate legal notice, be rescinded by the issuing authority upon the finding that a permittee has not complied with conditions of a permit. If WDOE is of the opinion that noncompliance exists, WDOE shall provide written notice to the local government and the permittee. If WDOE is of the opinion that the noncompliance continues to exist thirty days after the date of the notice, and the local government has taken no action to rescind the permit, WDOE may petition the hearings board for a rescission of the permit upon written notice of the petition to the local government and the permittee if the request by WDOE is made to the hearings board within fifteen days of the termination of the thirty-day notice to the local government.
- B. Permits found to have been authorized based on a misrepresentation of the facts shall also be subject to revocation.
- C. When required, corrective action shall be completed within ninety (90) days of the issuance of the order of the Shoreline Administrator.
- D. Should a discretionary shoreline permit be revoked, the use rights attached to the site and/or structure in question shall revert to uses permitted outright in the underlying zoning district, subject to all development standards contained therein. Revocation of a permit does not preclude the assessment of penalties in Section VII.G above. Appeals of the revocation order shall be in accordance with Section VII.E.