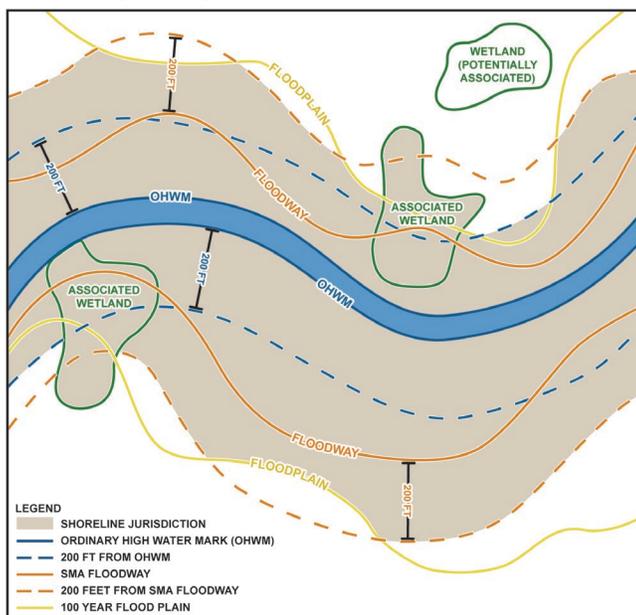


CHAPTER 2 APPLICABILITY, SHORELINE PERMITS, AND EXEMPTIONS

2.1 Applicability

1. This Program shall apply to all of the shorelands and waters within the Shelton city limits that fall under the jurisdiction of RCW 90.58 (see Figure 2-1 for illustrative purposes). 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 Ecology, as defined by RCW 90.58.

Figure 2-1. Graphic Depiction of the SMA Shoreline Jurisdiction Limits



2. The City has predesignated shorelines within its adopted Urban Growth Area (UGA). Until annexation, development in these areas shall be regulated by the Mason County Shoreline Master Program. Once annexed, those properties shall be regulated by the City of Shelton Shoreline Master Program.
3. A copy of the Official Shoreline Environment Designation Map for the City and its UGA is shown in Chapter 4. Maps indicating the extent of shoreline jurisdiction and shoreline environment designations are for guidance only. They are to be used in conjunction with best available science, field investigations and onsite surveys to accurately establish the location and extent of shoreline jurisdiction when a project is proposed.
4. 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.
5. This Program shall apply to every person, individual, firm, partnership, association, organization, corporation, local or state governmental agency, public or municipal corporation, or other nonfederal 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).
6. Nonfederal agency actions undertaken on federal lands must comply with this Program and the Act.
7. 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.
8. Shoreline development occurring in or over navigable waters may require a shoreline permit in addition to other approvals required from state and federal agencies.
9. This Program shall apply whether the proposed development or activity is exempt from a shoreline permit or not.
10. The shoreline jurisdiction within the city limits of Shelton and its Urban Growth Area includes the following shoreline areas:
 - a. Oakland Bay
 - b. Johns Creek
 - c. Island Lake
 - d. Goose Lake

- e. Goldsborough Creek
 - f. Mill Creek
11. The portion of Puget Sound in Shelton waterward from the line of extreme low tide is considered a “shoreline of statewide significance” per RCW 90.58.030(2)(f).

2.2 Shoreline Substantial Development Permit

1. Any person wishing to undertake substantial development on shorelines shall apply to the Administrator for a shoreline substantial development permit.
2. A substantial development permit is required for any development with a total cost or fair market value exceeding six thousand, four hundred, sixteen dollars (\$6,416) (or the value as amended or adjusted for inflation per RCW 90.58.030 [3] [e]) or any development which materially interferes with the normal public use of the water or shorelines of the state, except those exempted developments set forth in WAC 173-27-040 (Developments Exempt from Substantial Development Permit Requirements) (also see Section 2.3.2).
3. 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.
4. The Shoreline Administrator may attach conditions to the approval of permits as necessary to assure consistency of the project with the Act and the Master Program.

2.3 Exemptions from a Shoreline Substantial Development Permit

2.3.1 General Requirements

1. 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.
2. 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.

3. 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.
4. Before determining that a proposal is exempt, the Administrator may conduct a site inspection to ensure that the proposal meets the exemption criteria.
5. 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.
6. Exemptions shall be construed narrowly. Only those developments that meet the precise terms of one or more of the listed exemptions may be granted exemption from the substantial development permit process.
7. The burden of proof that a development or use is exempt is on the applicant or proponent of the development action.

2.3.2 List of Exemptions

1. The following list should be considered a summary of exempt activities. Exemptions and details can be found in RCW 90.58.030 (3)(e), 90.58.147, 90.58.355, 90.58.515, and WAC 173-27-040, as amended. Exempt 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 2.3.3.
 - a. Any development of which the total cost or fair market value, whichever is higher, does not exceed six thousand, four hundred, sixteen dollars (~~\$7,0476,416~~) 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 repair of existing structures or developments, including damage by accident, fire or elements. "Normal maintenance" includes those usual acts to prevent a decline, lapse, or cessation from a lawfully established condition. "Normal repair" means to restore a

development to a state comparable to its original condition, including but not limited to its size, shape, configuration, location and external appearance, within a reasonable period after decay or partial destruction, except where repair causes substantial adverse effects to shoreline resource or environment. Replacement of a structure or development may be authorized as repair where such replacement is the common method of repair for the type of structure or development and the replacement structure or development is comparable to the original structure or development including but not limited to its size, shape, configuration, location and external appearance and the replacement does not cause substantial adverse effects to shoreline resources or environment.

- c. Construction of the normal protective bulkhead common to single-family residences. A "normal protective" bulkhead includes those structural and nonstructural developments installed at or near, and parallel to, the ordinary high water mark for the sole purpose of protecting an existing single-family residence and appurtenant structures from loss or damage by erosion. A normal protective bulkhead is not exempt if constructed for the purpose of creating dry land. When a vertical or near vertical wall is being constructed or reconstructed, not more than one cubic yard of fill per one foot of wall may be used as backfill. When an existing bulkhead is being repaired by construction of a vertical wall fronting the existing wall, it shall be constructed no further waterward of the existing bulkhead than is necessary for construction of new footings. When a bulkhead has deteriorated such that an ordinary high water mark has been established by the presence and action of water landward of the bulkhead then the replacement bulkhead must be located at or near the actual ordinary high water mark. Beach nourishment and bioengineered erosion control projects may be considered a normal protective bulkhead when any structural elements are consistent with the above requirements and when the project has been approved by the Department of Fish and Wildlife.
- d. Emergency construction necessary to protect property from damage by the elements. An "emergency" is an unanticipated and imminent threat to public health, safety, or the environment which requires immediate action within a time too short to allow full compliance with this chapter. Emergency construction does not include development of new permanent protective structures where none previously existed. Where new protective structures are deemed by the administrator to be the appropriate means to address the emergency situation, upon abatement of the emergency situation the new structure shall be removed or any

permit which would have been required, absent an emergency, pursuant to chapter 90.58 RCW, these regulations, or the local master program, obtained. All emergency construction shall be consistent with the policies of chapter 90.58 RCW and the local master program. As a general matter, flooding or other seasonal events that can be anticipated and may occur but that are not imminent are not an emergency.

- e. Construction and practices normal or necessary for farming, irrigation, and ranching activities, including agricultural service roads and utilities on shorelands, construction of a barn or similar agricultural structure, and the construction and maintenance of irrigation structures including but not limited to head gates, pumping facilities, and irrigation channels: Provided, That a feedlot of any size, all processing plants, other activities of a commercial nature, alteration of the contour of the shorelands by leveling or filling other than that which results from normal cultivation, shall not be considered normal or necessary farming or ranching activities. A feedlot shall be an enclosure or facility used or capable of being used for feeding livestock hay, grain, silage, or other livestock feed, but shall not include land for growing crops or vegetation for livestock feeding and/or grazing, nor shall it include normal livestock wintering operations.
- f. Construction or modification of navigational aids such as channel markers and anchor buoys.
- g. Construction on shorelands by an owner, lessee or contract purchaser of a single-family residence for their own use or for the use of their family, which residence does not exceed a height of thirty-five (35) feet above average grade level and which meets all requirements of the state agency or local government having jurisdiction thereof, other than requirements imposed pursuant to chapter 90.58 RCW. "Single-family residence" means a detached dwelling designed for and occupied by one family including those structures and developments within a contiguous ownership which are a normal appurtenance. An "appurtenance" is necessarily connected to the use and enjoyment of a single-family residence and is located landward of the ordinary high water mark and the perimeter of a wetland. 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. Construction authorized under this exemption shall be located landward of the ordinary high water mark.

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

i. In salt waters, the fair market value of the dock does not exceed two thousand five hundred dollars (\$2,500); or

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

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

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

ii. However, if subsequent construction occurs within five years of the completion of the prior construction, and the combined fair market value of the subsequent and prior construction exceeds the amount specified above, the subsequent construction shall be considered a substantial development for the purpose of this chapter; but if subsequent construction having a fair market value exceeding two thousand five hundred dollars (\$2,500) occurs within five (5) years of completion of the prior construction, the subsequent construction shall be considered a substantial development for the purpose of this chapter.

For purposes of this section salt water shall include the tidally influenced marine and estuarine water areas of the state including the Puget Sound and all bays and inlets associated.

- i. Operation, maintenance, or construction of canals, waterways, drains, reservoirs, or other facilities that now exist or are hereafter created or developed as a part of an irrigation system for the primary purpose of making use of system waters, including return flow and artificially stored groundwater from the irrigation of lands.
- j. The marking of property lines or corners on state-owned lands, when such marking does not significantly interfere with normal public use of the surface of the water.
- k. Operation and maintenance of any system of dikes, ditches, drains, or other facilities existing on September 8, 1975, which were created,

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- developed or utilized primarily as a part of an agricultural drainage or diking system.
- l. Any project with a certification from the governor pursuant to chapter 80.50 RCW.
 - m. Site exploration and investigation activities that are prerequisite to preparation of an application for development authorization under this chapter, if:
 - i. The activity does not interfere with the normal public use of the surface waters;
 - ii. The activity will have no significant adverse impact on the environment including but not limited to fish, wildlife, fish or wildlife habitat, water quality, and aesthetic values;
 - iii. The activity does not involve the installation of any structure, and upon completion of the activity the vegetation and land configuration of the site are restored to conditions existing before the activity;
 - iv. A private entity seeking development authorization under this section first posts a performance bond or provides other evidence of financial responsibility to the local jurisdiction to ensure that the site is restored to preexisting conditions; and
 - v. The activity is not subject to the permit requirements of RCW 90.58.550.
 - n. The process of removing or controlling aquatic noxious weeds, as defined in RCW 17.26.020, through the use of a herbicide or other treatment methods applicable to weed control that are recommended by a final environmental impact statement published by the Department of Agriculture or the Department of Ecology jointly with other state agencies under RCW 43.21C.
 - o. Watershed restoration projects as defined below. Local government shall review the projects for consistency with the shoreline master program in an expeditious manner and shall issue its decision along with any conditions within forty-five (45) days of receiving all materials necessary to review the request for exemption from the applicant. No fee may be charged for accepting and processing requests for exemption for watershed restoration projects as used in this section.
 - i. "Watershed restoration project" means a public or private project authorized by the sponsor of a watershed restoration plan that implements the plan or a part of the plan and consists of one or more of the following activities:

- a) A project that involves less than ten (10) miles of stream-reach, in which less than twenty-five (25) cubic yards of sand, gravel, or soil is removed, imported, disturbed or discharged, and in which no existing vegetation is removed except as minimally necessary to facilitate additional plantings;
 - b) A project for the restoration of an eroded or unstable stream bank that employs the principles of bioengineering, including limited use of rock as a stabilization only at the toe of the bank, and with primary emphasis on using native vegetation to control the erosive forces of flowing water; or
 - c) A project primarily designed to improve fish and wildlife habitat, remove or reduce impediments to migration of fish, or enhance the fishery resource available for use by all of the citizens of the state, provided that any structure, other than a bridge or culvert or instream habitat enhancement structure associated with the project, is less than two hundred (200) square feet in floor area and is located above the ordinary high water mark of the stream.
- ii. "Watershed restoration plan" means a plan, developed or sponsored by the Department of Fish and Wildlife, the Department of Ecology, the Department of Natural Resources, the Department of Transportation, a federally recognized Indian tribe acting within and pursuant to its authority, a city, a county, or a conservation district that provides a general program and implementation measures or actions for the preservation, restoration, re-creation, or enhancement of the natural resources, character, and ecology of a stream, stream segment, drainage area, or watershed for which agency and public review has been conducted pursuant to chapter 43.21C RCW, the State Environmental Policy Act.
- p. 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 in writing by the Department of Fish and Wildlife;
 - ii. The project has received hydraulic project approval by the Department of Fish and Wildlife pursuant to chapter 77.55 RCW; and
 - iii. The City of Shelton has determined that the project is substantially consistent with this shoreline master program. The City shall make such determination in a timely manner and provide it by letter to the project proponent.

- a) Fish habitat enhancement projects that conform to the provisions of RCW 77.55.181 are determined to be consistent with this shoreline master program, as follows:
- (a) In order to receive the permit review and approval process created in this section, a fish habitat enhancement project must meet the criteria under (p)(iii)(1)(a)(i) and (ii) of this subsection:
- (i) A fish habitat enhancement project must be a project to accomplish one or more of the following tasks:
1. Elimination of human-made fish passage barriers, including culvert repair and replacement;
 2. 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
 - ~~3.~~ 3. Placement of woody debris or other in-stream structures that benefit naturally reproducing fish stocks.
 - ~~3.4.~~ 3.4. Restoration of native kelp and eelgrass beds and restoring native oysters.
- The Department of Fish and Wildlife shall develop size or scale threshold tests to determine if projects accomplishing any of these tasks should be evaluated under the process created in this section or under other project review and approval processes. A project proposal shall not be reviewed under the process created in this section if the Department of Ecology determines that the scale of the project raises concerns regarding public health and safety; and
- (ii) A fish habitat enhancement project must be approved in one of the following ways:
1. By the Department of Fish and Wildlife pursuant to RCW chapter 77.95 or 77.100;
 2. By the sponsor of a watershed restoration plan as provided in RCW chapter 89.08;

3. By the Department of Ecology as a Department of Fish and Wildlife-sponsored fish habitat enhancement or restoration project;
 4. Through the review and approval process for the jobs for the environment program;
 5. Through the review and approval process for conservation district-sponsored projects, where the project complies with design standards established by the conservation commission through interagency agreement with the United States Fish and Wildlife Service and the natural resource conservation service;
 6. Through a formal grant program established by the legislature or the Department of Fish and Wildlife for fish habitat enhancement or restoration; and
 7. Through other formal review and approval processes established by the legislature.
- (b) Fish habitat enhancement projects meeting the criteria of (p)(iii)(1)(A) of this subsection are expected to result in beneficial impacts to the environment. Decisions pertaining to fish habitat enhancement projects meeting the criteria of (p)(iii)(1)(A) of this subsection and being reviewed and approved according to the provisions of this section are not subject to the requirements of RCW 43.21C.030 (2)(c).
- (c)
- (i) A hydraulic project approval permit is required for projects that meet the criteria of (p)(iii)(1)(A) of this subsection and are being reviewed and approved under this section. An applicant shall use a joint aquatic resource permit application form developed by the Office of Regulatory Assistance to apply for approval under this chapter. On the same day, the applicant shall provide copies of the completed application form to the Department of Fish and Wildlife and to each appropriate local government. The City of Shelton shall accept the application as notice of the proposed project. The Department of Fish and Wildlife shall provide a fifteen-day (15) comment period during which it will receive comments regarding environmental impacts. Within forty-five (45) days, the Department of Ecology shall either issue a permit, with or without conditions, deny approval, or make a determination that the review and

approval process created by this section is not appropriate for the proposed project. The Department of Ecology shall base this determination on identification during the comment period of adverse impacts that cannot be mitigated by the conditioning of a permit. If the Department of Ecology determines that the review and approval process created by this section is not appropriate for the proposed project, the Department of Ecology shall notify the applicant and the City of Shelton of its determination. The applicant may reapply for approval of the project under other review and approval processes.

(ii) Any person aggrieved by the approval, denial, conditioning, or modification of a permit under this section may formally appeal the decision to the hydraulic appeals board pursuant to the provisions of WAC chapter 173-27.

(d) The City of Shelton may not require permits or charge fees for fish habitat enhancement projects that meet the criteria of (p)(iii)(1)(A) of this subsection and that are reviewed and approved according to the provisions of this section.

q. Developments not required to obtain shoreline permits or local reviews.

Requirements to obtain a Substantial Development Permit, Conditional Use Permit, Variance, letter of exemption, or other review to implement the Shoreline Management Act do not apply to the following:

- i. Remedial actions. Pursuant to RCW 90.58.355, any person conducting a remedial action at a facility pursuant to a consent decree, order, or agreed order issued pursuant to RCW 70.105D, or to the Department of Ecology when it conducts a remedial action under RCW 70.105D.
- ii. Boatyard improvements to meet NPDES permit requirements. Pursuant to RCW 90.58.355, any person installing site improvements for storm water treatment in an existing boatyard facility to meet the requirements of a national pollutant discharge elimination system storm water general permit.
- iii. WSDOT facility maintenance and safety improvements. Pursuant to RCW 90.58.356, Washington State Department of Transportation projects and activities meeting the conditions of RCW 90.58.356 are not required to obtain a Substantial Development Permit, Conditional Use Permit, Variance, letter of exemption, or other local review.

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- iv. Projects consistent with an environmental excellence program agreement pursuant to RCW 90.58.045.
- v. Projects authorized through the Energy Facility Site Evaluation Council process pursuant to RCW 80.50.
- ~~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 Department of Ecology when it conducts a remedial action under RCW 70.105D. The Department of Ecology 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 of Ecology-conducted remedial action, through the procedures developed by the Department of Ecology pursuant to RCW 70.105D.090.~~
- r. The external or internal retrofitting of an existing structure with the exclusive purpose of compliance with the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.) or to otherwise provide physical access to the structure by individuals with disabilities.

2.3.3 Statements of Exemption

1. Any person claiming exemption from the substantial development permit requirements **shall be required** to make written request for such an exemption in the manner prescribed by the Shoreline Administrator.
2. The Shoreline Administrator is authorized to grant requests for statements of exemption from the shoreline substantial development permit requirement for uses and developments within shorelines that are specifically listed in Section 2.3.2. The “statement of exemption” 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.
3. A copy of written exemptions shall be forwarded to the Department of Ecology if federal permits are also required for the project (e.g., wetland fills, dredging and overwater/in-water structures would all require federal permits).

4. A denial of an exemption shall be in writing and shall identify the reason(s) for the denial. In accordance with Chapter 7, the Shoreline Administrator's decision on a statement of exemption may be reconsidered or appealed.

2.4 Nonconforming Uses and Development

1. "Nonconforming use or development" means a shoreline use or development which was lawfully constructed or established prior to the effective date of the Shoreline Master Program, but which does not conform to present regulations or standards of the Program.
2. Existing uses, structures and lots, legally established prior to the effective date of this Program are allowed to continue in their current form.
3. A structure for which a variance has been issued shall be considered a legal nonconforming structure, and the requirements of this section shall apply as they apply to pre-existing nonconformities.
4. A use which is classified as a conditional use but which existed prior to adoption of this Program or any amendment thereto, and for which a conditional use permit has not been obtained, shall be considered a legal nonconforming use.

2.4.1 Nonconforming Uses

1. If a nonconforming use is discontinued for twenty-four (24) consecutive months or for twenty-four (24) months during any three (3)-year period, any subsequent proposed use shall conform to the provisions of this Program. It shall not be necessary to show that the owner of the property intends to abandon such nonconforming use in order for the nonconforming rights to expire.
2. A structure which is being used or has been used for a nonconforming use may be used for a different nonconforming use only upon the approval of a conditional use permit. A conditional use permit may be approved only on the finding that:
 - a. No reasonable alternative conforming use is practical; and
 - b. The proposed use will be at least as consistent with the policies and provisions of the Act and the Master Program and as compatible with the uses in the area as the preexisting use.
3. In addition, such conditions may be attached to the permit as are deemed necessary to assure compliance with the above findings, the requirements

of the Master Program and the Shoreline Management Act, and to assure that the use will not become a nuisance or a hazard.

2.4.2 Nonconforming Structures

1. A structure or development that is nonconforming to the standards of SMC 21.64 may be altered or renovated consistent with the requirements established in SMC 21.64.088. A structure or development that is nonconforming to the standards of the Shoreline Master Program shall comply with the following:
 - a. A nonconforming structure or development may be continued and maintained provided that it is not enlarged, intensified, increased, or altered in any way which increases its nonconformity, except for circumstances identified under SMC 21.64.
 - b. A nonconforming structure or development may be moved in a manner which does not increase its nonconformity relative to the Master Program and the Act.
 - c. If a nonconforming, nonresidential structure or development is damaged by fire or other catastrophic event to an extent not exceeding 75 percent replacement cost of the original structure, it may be reconstructed to the configuration existing immediately prior to the time the structure was damaged, provided that permits necessary to restore the development are applied for within one (1) year of the date the damage occurred, and the reconstruction is completed within two(2) years of permit issuance.
 - d. If a nonconforming residential structure or development is damaged by fire or other catastrophic event, it may be reconstructed to that configuration existing immediately prior to the time the structure was damaged, provided that permits necessary to restore the development are applied for within one (1) year of the date the damage occurred, and the reconstruction is completed within two (2) years of permit issuance.
2. Legally established residential structures and associated appurtenances that are landward of the ordinary high water mark and are used for a conforming use shall be considered legal conforming structures even if they do not meet regulatory standards for setbacks, buffers, or yards; area; bulk; height; or density.
 - a. Expansion of such structures located over water or in hazardous areas, such as floodways, is prohibited.

- b. Expansion to the main structure or the addition of a normal appurtenance shall only be accomplished by addition of space above the existing building footprint or behind the side of the main structure which is farthest away from the ordinary high water mark and in a manner consistent with SMC 21.64.

For purposes of Section 2.4.2, regulation #2, appurtenant structures means garages, sheds and other legally established structures as defined in Chapter 8. Appurtenant structures do not include bulkheads and other shoreline modifications or overwater structures such as piers and docks.

2.4.3 Nonconforming Lots

1. An undeveloped lot, tract, parcel, site, or land division located landward of the ordinary high water mark which was established in accordance with local and state subdivision requirements prior to the effective date of the Act and the Master Program but which does not conform to the present lot size or density standards may be developed if permitted by other land use regulations and as long as such development conforms to all other requirements of the Master Program and the Act.

2.5 Shoreline Variance

1. The Shoreline Management Act states that Master Programs shall contain provisions allowing for variances from the standards and provisions of the Program. These provisions should be applied in a manner that, while protecting the environment, will assure that a person will be able to use his/her property in a fair and equitable manner.
2. The purpose of a variance permit is strictly limited to granting relief to specific bulk, dimensional, or performance standards set forth in the Master Program, and where there are extraordinary or unique circumstances relating to the physical character or configuration of property such that the strict implementation of the Master Program would impose unnecessary hardships on the applicant or thwart the Shoreline Management Act policies as stated in RCW 90.58.020.
3. When a shoreline variance is requested, the Hearings Examiner shall be the approval authority for the City. However, shoreline variance permits must have approval from the Department of Ecology, which shall have final approval authority under WAC 173-27-200.
4. An application for a shoreline variance shall be submitted on a form provided by the City and accompanied by maps, completed environmental

checklist, applicable fees, and any other information specified in this Master Program or requested by the Administrator.

5. Variance permits for development that will be located landward of the ordinary high water mark and/or landward of any wetland may be authorized provided the applicant can demonstrate all of the following:
 - a. That the strict requirements of the bulk, dimensional, or performance standards set forth in the Master Program preclude or significantly interfere with a reasonable use of the property;
 - b. That the hardship described above is specifically related to the property, and is the result of unique conditions such as irregular lot shape, size, or natural features and the application of the Master Program, and not, for example, from deed restrictions or the applicant's own actions;
 - c. That the design of the project will be compatible with other authorized uses within the area and with uses planned for the area under the Comprehensive Plan and Master Program and will not cause adverse impacts to the shoreline environment;
 - d. That approval of the variance will not constitute a grant of special privilege not enjoyed by the other properties in the area;
 - e. That the variance requested is the minimum necessary to afford relief; and
 - f. That the public interest will suffer no substantial detrimental effect.
6. Variance permits for development and/or uses that will be located either waterward of the ordinary high water mark 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 the Master Program precludes all reasonable use of the property;
 - b. That the proposal is consistent with the criteria established under subsection (5)(b) through (f); and
 - c. That the public rights of navigation and use of the shorelines will not be adversely affected.
7. In the granting of all variance permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if variances were granted to other developments and/or uses in the area where similar circumstances exist, the total of the variances

should also remain consistent with the policies of RCW 90.58.020 and shall not cause substantial adverse effects to the shoreline environment.

8. The burden of proving that a proposed shoreline variance meets the criteria of this Master Program shall be on the applicant. Absence of such proof shall be grounds for denial of the application.
9. A variance from City development code requirements shall not be construed to mean a shoreline variance from use regulations in this Master Program, and vice versa.
10. Shoreline variances may not be used to permit a use or development that is specifically prohibited in a shoreline environment designation.
11. Variance review shall require a public hearing before the City of Shelton Hearings Examiner.
12. On all variance applications, the plans shall clearly indicate where development could occur without approval of a variance, the physical features and circumstances on the property that provide a basis for the request, and the location of adjacent structures and uses.
13. After the City's approval of a variance application, the Administrator shall submit the permit to the Department of Ecology for its approval, approval with conditions, or denial. Upon receipt of the Ecology decision, the Administrator shall notify those interested persons having requested notification of such decision.

2.6 Shoreline Conditional Use Permit

1. The Shoreline Management Act states that Master Programs shall contain provisions for allowing certain uses with specific limitations under a conditional use permit. These provisions should be applied in a manner that, while protecting the environment, will assure that a person will be able to use his/her property.
2. The purpose of a conditional use permit is to provide a system within the Master Program which allows flexibility in the application of the use regulations of this Program in a manner consistent with the policies of RCW 90.58.020. In authorizing a conditional use permit, special conditions may be attached to the permit by the City or the Department of Ecology to prevent undesirable effects of the proposed use and/or to assure consistency of the project with the Act and the Master Program.
3. When a conditional use permit is requested, the Hearings Examiner shall be the approval authority for the City. However, shoreline conditional use

- permits must have approval from the Department of Ecology, which shall have final approval authority under WAC 173-27-200.
4. An application for a shoreline conditional use permit shall be submitted on a form provided by the City, accompanied by maps, completed environmental checklist, applicable fees, and any other information specified in this Master Program or requested by the Administrator.
 5. Uses classified as conditional uses may be authorized provided that the applicant demonstrates all of the following:
 - a. That the proposed use is consistent with the policies of RCW 90.58.020 and the Master Program;
 - b. That the proposed use will not interfere with the normal public use of public shorelines;
 - c. That the proposed use of the site and design of the project are compatible with other authorized uses within the area and with uses planned for the area under the Comprehensive Plan and the Master Program;
 - d. That the proposed use will cause no significant adverse effects to the shoreline environment in which it is to be located; and
 - e. That the public interest suffers no substantial detrimental effect.
 6. In the granting of all conditional use permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if conditional use permits were granted for other developments in the area where similar circumstances exist, the total of the conditional uses shall also remain consistent with the policies of RCW 90.58.020 and shall not produce substantial adverse effects to the shoreline environment.
 7. Conditional use permits shall require a public hearing before the City of Shelton Hearings Examiner.
 8. Uses which are specifically prohibited by this Master Program may not be authorized through a conditional use permit process unless part of a request pursuant to Section 2.4 (Nonconforming Uses and Structures).
 9. 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.
 10. The City is authorized to impose conditions and standards to enable a proposed shoreline conditional use to satisfy the conditional use criteria.

11. Uses which are not specifically identified or set forth in this Master Program are considered unclassified and may be authorized through a conditional use permit provided the applicant can demonstrate consistency with the requirements of this section and the requirements for conditional uses contained in the City of Shelton Shoreline Master Program.
12. After the City's approval of a conditional use application, the Administrator shall submit the permit to the Department of Ecology for its approval, approval with conditions, or denial. Upon receipt of the Ecology decision, the Administrator shall notify those interested persons having requested notification of such decision.

2.7 Permit Application

1. The Administrator shall provide the necessary application forms for shoreline substantial development permits, letter of exemptions, conditional use and variance permits. The applicant shall provide, at a minimum, the following information as applicable to the proposal:
 - a. Site plan drawn to scale and including:
 - i. Site boundary
 - ii. Property dimensions
 - iii. Location of ordinary high water mark
 - iv. Location(s) of critical areas and associated buffer as designated in SMC 21.64
 - v. General direction of surface drainage
 - vi. Typical cross section or sections showing:
 - (1) existing ground elevation
 - (2) proposed ground elevation
 - (3) height of existing structures
 - (4) height of proposed structures
 - vii. Where appropriate, proposed land contours using 5-foot intervals in water area and 10-foot intervals on areas landward of ordinary high water mark; areas of proposed grading, cut, or fill should be shown with existing and proposed contours;
 - viii. Existing site conditions, including: dimensions and location of existing structures (including setbacks from all property lines and critical areas), dimensions and location of parking areas (including

- setbacks from all property lines and critical areas), existing locations and types of landscaping/vegetation (indicate whether vegetation is proposed to be retained or removed), and location of any existing easements;
- ix. Proposed site conditions, including: dimensions and locations of proposed structures (including setbacks from all property lines, critical areas and existing structures), dimensions and locations of parking areas (including setback from all property lines and critical areas), proposed areas of landscaping/vegetation, location of proposed graveled areas or other areas of proposed property coverage;
 - x. Location of proposed utilities (sewer, septic-system tank and drainfield, water, gas, electricity, stormwater management facilities, etc.).
- b. General description of the character of vegetation found on site.
 - c. General description of the existing ecological functions and processes affecting, maintaining, or influencing the shoreline at/near the project site along with a summary characterization of the effects of the proposed project on existing ecological functions and processes in the vicinity of the project and a description of how the proposal complies with the mitigation sequence in section 5.4 of this Master Program. If the project is likely to have adverse effects on shoreline ecological functions or processes, a mitigation plan shall be provided demonstrating measures that will be taken to offset impacts. Depending on the proposed development and existing site conditions, this information may be required to be prepared by a qualified professional pursuant to Chapter 21.64 (Critical Areas) of the Shelton Municipal Code.
 - d. Source, composition, and volume of fill material (if any).
 - e. Composition and volume of any extracted materials and proposed disposal area (if any).
 - f. Shoreline environment designation according to the Master Program.
2. Complete application and supporting documents for all shoreline permits shall be submitted to the Administrator for processing and review. Any deficiencies in the application shall be corrected by the applicant prior to further processing. The date of application for all permits shall be the date on which the Administrator receives a **complete** permit application.

