

40.460.700 ADMINISTRATION AND ENFORCEMENT**40.460.705 GENERAL PROVISIONS**

- A. Except as specifically exempted by statute, all proposed uses and development occurring within shoreline jurisdiction must conform to RCW 90.58, the Act and this Program.
- B. The requirements of this Program are only applicable within the County'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 County and/or Ecology. The County may attach conditions of approval to any permitted use via a permit as necessary to assure consistency of a project with the Act and this Program.
- D. To be authorized under this Program, all uses and developments shall be planned and carried out in a manner that is consistent with the County codes and this Program regardless of whether a shoreline substantial development permit, shoreline variance, or shoreline conditional use permit is required.
- E. Applicants requesting review for permits 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 is granted.
- F. The Shoreline Administrator has the authority under Section 40.100.050 to interpret and apply the provisions of this Program. The Shoreline Administrator shall consult with Ecology to insure that any formal written interpretations are consistent with the purpose and intent of chapter 90.58 RCW and the applicable guidelines.
- G. The County shall not issue any permit for development within the shoreline jurisdiction until approval has been granted pursuant to this Program.
- H. 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.
- I. A development or use that is listed as 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.
- J. 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 County laws or regulations.

40.460.710 ADMINISTRATIVE AUTHORITY AND RESPONSIBILITY

- A. Shoreline Administrator and Shoreline Management Review Committee.
1. The responsible official or his/her designee is the Shoreline Administrator for the County.
 2. The Shoreline Management Review Committee (SMRC), consisting of the Public Works Director (Chairman), Community Development Director, Environmental Services Director, and the Parks and Recreation Director, or their designated representatives, shall convene as often as necessary on the call of the Chairman to review shoreline requests and permit applications for which the notice of application procedures of WAC 173-27 and this section has been completed. After considering the application and other relevant material, SMRC may, by majority vote, take one (1) of the following actions:
 - a. approve issuance of the permit;
 - b. approve the permit subject to certain specified conditions; or
 - c. formulate recommendations on the application to be forwarded to the Shoreline Administrator for action.
 3. The Shoreline Administrator, through the Shoreline Management Review Committee, shall have the authority to act upon the following matters:
 - a. Interpretation, enforcement, and administration of this 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.
 4. 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.
- B. Clark County Planning Commission.
The County Planning Commission shall be responsible for hearing and making recommendations for action to the Board of County Commissioners 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. Review and adjustments. 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.
- C. Board of County Commissioners.
The Board of County Commissioners shall be responsible for making final determinations on amendments to this Program, which shall be adopted by ordinance. The Board shall enter findings and conclusions setting forth the factors it considered in reaching its decision. Amendments shall be submitted to and reviewed by Ecology.

D. Ecology and the Attorney General.

1. The duties and responsibilities of Ecology shall include, but are not limited to the following:
 - a. Reviewing and approving Program amendments prepared by the County pursuant to WAC 173-26-120 (State Process for Approving/Amending Shoreline Master Programs). Amendments or revisions to this Program, as provided by law, do not become effective until approved by Ecology.
 - b. Final approval and authority to condition or deny shoreline conditional use permits and shoreline variance permits filed by the County.
2. Ecology and the Attorney General have the authority to review and petition for review the County's permit decisions. Petitions for review must be commenced within twenty-one (21) days from the date the final decision was filed.

E. Ecology Review.

1. Ecology shall be notified of any substantial development, conditional use or variance permit decisions made by the Shoreline Administrator, 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:
 - 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 County;
 - 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 Ecology that clearly indicates the final approved plan.
3. If Ecology determines that the submittal does not contain all of the documents and information required by this section, Ecology shall identify the deficiencies and notify the County and the applicant in writing. Ecology will not act on conditional use or variance permit submittals until the material requested in writing is submitted to them.
4. Ecology shall convey to the County and applicant its final decision approving, approving with conditions, or disapproving the permit within thirty (30) days of the date of submittal by the County. The Shoreline Administrator will notify those interested persons having requested notification of such decision.
5. Ecology 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 Act and the criteria listed in this Program.
6. Appeals of Ecology decisions on conditional use and variance requests shall be made to the Shorelines Hearings Board as specified in Section 40.460.725(A)(3).

F. Master Program Amendments.

1. This Program shall be periodically reviewed no later than eight (8) years following its approval by Ecology and adjustments shall be made as are necessary to reflect changing local circumstances, new information or improved data, and changes in State statutes and regulations. This review process shall be consistent with WAC 173-26 requirements and shall include a local citizen involvement effort and public hearing to obtain the views and comments of the public.
2. Any of the provisions of this Program may be amended as provided for in RCW 90.58.120 and .200 and Chapter 173-26 WAC. Amendments or revision to this Program, as provided by law, do not become effective until approved by Ecology.
3. Proposals for shoreline re-designation (i.e., amendments to the shoreline maps and descriptions) must demonstrate consistency with the criteria set forth in WAC 173-22-040.

40.460.715 PRE-APPLICATION CONFERENCE

A pre-application conference is required prior to filing a permit application for a shoreline substantial development permit, variance, or conditional use permit decision.

40.460.720 PERMIT SUBMITTAL REQUIREMENTS

- A. The Shoreline Administrator shall provide written informational materials, procedures, instructions, and forms, required to submit an application for a shoreline substantial development permit, variance, or conditional use permit.
- B. These materials could include a plan cover sheet; JARPA form; SEPA checklist; fee schedule; review criteria; process and timelines to assist potential applicants and interested parties on the permit application submittal and review process.

40.460.725 APPLICATION REVIEW REQUIREMENTS

- A. Upon receipt of a fully complete completed shoreline substantial development permit, shoreline variance, or shoreline conditional use permit application, the county will issue a Notice of Application as required for a Type III action pursuant to Section 40.510.030(E).
- B. The comment period for such applications shall be thirty (30) days.
- C. An application for a shoreline substantial development permit, shoreline variance, or shoreline conditional use permit shall be reviewed using the timelines for a Type III action pursuant to Section 40.510.030(F).
- D. To the fullest extent possible, the shoreline permit process shall be integrated with other planning and licensing procedures of this title. Shoreline applications may accompany another related application through the review process, and interested persons may present views thereon, but no formal public hearing is required.

- E. Proposed actions that would alter designated critical areas or their buffers, as established by this Program (Section 40.460.530) 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. 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:
1. Review pursuant to Section 40.460.230 (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.
- F. The County shall review restoration 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.
- G. Issuance of shoreline permits approved by SMRC shall be the responsibility of the Shoreline Administrator.
- H. All shoreline permits 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.

40.460.730 REVISIONS TO PERMITS

A permit revision is required whenever the applicant proposes substantive changes to the design, terms or conditions of a project from that which is approved in the permit. Changes are substantive if they materially alter the project in a manner that relates to its conformance to the terms and conditions of the permit, this Program and/or the policies and provisions of RCW 90.58. Changes which are not substantive in effect do not require approval of a revision. All revisions shall be processed in accordance with WAC 173-27-100.

40.460.735 APPEALS

A. Filing Appeals.

1. Appeals of any final shoreline permit decision shall be governed by RCW 90.58.180.
2. Any decision or ruling of the Shoreline Administrator may be appealed by any aggrieved person or entity having standing under the ordinance of the Shoreline Administrator's written order.

3. ~~Time Limit for Appealing. Appeals from decisions or rulings of the Shoreline Administrator shall be made within fourteen (14) calendar days of the date of the written order or within seven (7) calendar days of the date of issuance of the decision on a request for reconsideration, not counting the day of issuance of the decision. If the last day for filing an appeal falls on a weekend day or a holiday.~~

~~B. State Shorelines Hearings Board.~~

- ~~A. Appeals of any final permit decision may be made to the Shorelines Hearings 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 Hearings Board within twenty-one (21) days after the County's or Ecology's final decision concerning the shoreline permit or formal approval to revisions of the permit.~~

40.460.740 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 County until twenty-one (21) days from the date the permit decision was filed, or until all review proceedings are terminated.
- B. Construction may be commenced no sooner than thirty (30) days after the date the appeal of the Shorelines Hearings Board's decision is filed if a permit is granted by the local government, and
1. the granting of the permit is appealed to the Shorelines Hearings Board within twenty-one (21) days of the date of ~~filing receipt;~~
 2. the hearings board approves the granting of the permit by the local government or approves a portion of the substantial development for which the local government issued the permit; and
 3. an appeal for judicial review of the hearings board decision is filed pursuant to chapter 34.05 RCW.
- 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 shoreline 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 Ecology.

40.460.745 ENFORCEMENT

A. General Enforcement.

1. The enforcement provisions of RCW 90.58.210 and WAC 173-27-240 through 173-27-310 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 authority to enforce the shoreline regulations of the County.
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, 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 County, or any of its officers or employee, any duty which would subject them to damages in a civil action.

B. Investigation and Notice of Violation.

1. An investigation shall be made of any structure or use which the County 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 (2) weeks, except where substantial life safety issues exist.

C. Penalties.

Any person found to have willfully engaged in activities on the County's shorelines in violation of the Act or in violation of this Program, and rules or regulations adopted pursuant thereto, shall be subject to the penalty provisions of the CCC Title 32.

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.

40.460.750 PUBLIC AND PRIVATE REDRESS

- A. Any person subject to the regulatory program 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 County Prosecutor may bring suit for damages under this section on behalf of the County. Nothing in this section precludes private persons from bringing suit for damages on their own behalf. If liability has been established for the cost of restoring an area affected by violation, the court shall make provisions to assure that restoration will be accomplished within a reasonable time at the expense of the violator. In addition to such relief, including monetary damages, the court, in its discretion, may award attorneys' fees and costs of the suit to the prevailing party.

40.460.755 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 the CCC Title 32.
- B. Delinquent permit penalties shall be paid in full prior to resuming the use or activity.

40.460.760 REVOCATION OF PERMITS

- A. Any permit may, after a hearing with adequate notice to the permittee and the public, be rescinded by the issuing authority upon the finding that a permittee has not complied with conditions of a permit. Non-compliance could result from either a failure to take corrective action in response to a violation, or a misrepresentation of the facts in the permit application. When required, corrective action shall be completed within ninety (90) days of the issuance of the order by the Shoreline Administrator.
- B. If Ecology is of the opinion that noncompliance exists, the department shall provide written notice to the local government and the permittee. If Ecology is of the opinion that the noncompliance continues to exist thirty (30) days after the date of the notice, and the local government has taken no action to revoke the permit, Ecology may petition the Shorelines Hearings Board for a revocation of the permit upon written notice of the petition to the local government and the permittee if the request by

Ecology is made to the hearings board within fifteen (15) days of the end of the thirty-(30-) day notice to the local government.

- C. Revocation of a permit does not preclude the assessment of penalties in Section 40.460.745. Appeals of the revocation order shall be in accordance with Section 40.460.735.