

1 **CHAPTER 2 APPLICABILITY, SHORELINE PERMITS AND**
2 **EXEMPTIONS**

3 To be authorized, all uses and development activities in shorelines shall be planned
4 and carried out in a manner consistent with this Program and the policy of the Act
5 as required by RCW 90.58.140(1), regardless of whether a shoreline permit,
6 statement of exemption, shoreline variance, or shoreline conditional use is
7 required.

8 **2.1 Applicability**

9 1. This Program shall apply to all of the shorelands and waters within the Clark
10 County limits that fall under the jurisdiction of RCW 90.58. Such shorelands shall
11 include:

- 12 a. those lands extending two hundred (200) feet in all directions as measured on
13 a horizontal plane from the ordinary high water mark (OHWM);
- 14 b. the full extent of floodplains; and
- 15 c. all wetlands and river deltas associated with the streams and lakes that are
16 subject to the provisions of this program, as may be amended; the same to be
17 designated as to location by Ecology, as defined by RCW 90.58.

18 A copy of the Shoreline Map for the County and all urban growth areas is shown
19 in Appendix A.

20 2. Maps indicating the extent of shoreline jurisdiction and shoreline designations are
21 guidance only. They are to be used in conjunction with best available science,
22 field investigations and on-site surveys to accurately establish the location and
23 extent of shoreline jurisdiction when a project is proposed. All areas meeting the
24 definition of a shoreline of the state or a shoreline of statewide significance,
25 whether mapped or not, are subject to the provisions of this Program.

26 3. This Program shall apply to every person, individual, firm, partnership,
27 association, organization, corporation, local or state governmental agency, public
28 or municipal corporation, or other non-federal entity that develops, owns, leases,
29 or administers lands, wetlands, or waters that fall under the jurisdiction of the Act;
30 and within the external boundaries of federally-owned lands (including but not
31 limited to, private in-holdings in national wildlife refuges).

32 4. Non-federal agency actions undertaken on federal lands must comply with this
33 Program and the Act.

34 5. Shoreline development occurring in or over navigable waters may require a
35 shoreline permit in addition to other approvals required from state and federal
36 agencies.

- 37 6. The provisions of RCW 35.21.160 are recognized, which state that jurisdictions
38 along lakes or waterways have shoreline jurisdiction that extends to the middle of
39 such lakes or waterways.
- 40 7. This Program shall apply whether the proposed development or activity is exempt
41 from a shoreline permit or not.

42 **2.2 Shoreline Substantial Development Permit Required**

43 **2.2.1 General Requirements**

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

55 **2.2.2 Developments Not Subject to the Act**

- 56 1. Native American Tribes' actions on tribal lands and federal agencies' actions on
57 federal lands are not required, but are encouraged, to comply with the provisions
58 of this Program and the Act. Nothing in this Program shall affect any rights
59 established by treaty to which the United States is a party.
- 60 2. Environmental excellence programs entered into under RCW 43.21K.

61 **2.3 Exemptions from a Shoreline Substantial Development** 62 **Permit**

63 **2.3.1 General Requirements**

- 64 1. Except has specifically exempted by statute, all proposed uses and development
65 occurring within shoreline jurisdiction must conform to RCW 90.58, the Act, and
66 this Program.
- 67 2. A use or development that is listed as a conditional use pursuant to this Program
68 or is an unclassified use or development must obtain a conditional use permit
69 (Section 2.7) even if the development or use does not require a substantial
70 development permit.

- 71 3. When a development or use is proposed that does not meet the bulk, dimensional,
72 and/or performance standards of this Program, such development or use shall only
73 be authorized by approval of a shoreline variance (Section 2.6) even if the
74 development or use does not require a substantial development permit.
- 75 4. If any part of a proposed development requires a shoreline substantial
76 development permit, then a shoreline substantial development permit is required
77 for the entire proposed development project.
- 78 5. Exemptions from the requirement to obtain a shoreline substantial development
79 permit shall be construed narrowly. Only those developments that meet the
80 precise terms of one or more of the listed exemptions may be granted exemptions
81 from the substantial development permit process. The burden of proof that a
82 development or use is exempt is on the applicant for the development action.

83 **2.3.2 List of Exemptions**

84 The following activities shall not be considered substantial developments but shall
85 obtain a statement of exemption, as provided for in Section 2.3.3.

- 86 1. Any development of which the total cost or fair market value does not exceed five
87 thousand, seven hundred, eighteen dollars (\$5,718.00) or as adjusted by the State
88 Office of Financial Management, if such development does not materially
89 interfere with the normal public use of the water or shorelines of the state. For
90 purposes of determining whether or not a permit is required, the total cost or fair
91 market value shall be based on the value of development that is occurring on
92 shorelines of the state as defined in RCW 90.58.030 (2)(c). The total cost or fair
93 market value of the development shall include the fair market value of any
94 donated, contributed, or found labor, equipment or materials.
- 95 2. Normal maintenance or repair of existing legally-established structures or
96 developments, including damage by accident, fire, or elements. Replacement of a
97 structure or development may be authorized as repair where such replacement is
98 the common method of repair for the type of structure or development and the
99 replacement structure or development is comparable to the original structure or
100 development including but not limited to its size, shape, configuration, location,
101 and external appearance and the replacement does not cause substantial adverse
102 effects to shoreline resources or environment.
- 103 3. Construction of a normal protective bulkhead common to single-family
104 residences. A "normal protective" bulkhead includes those structural and
105 nonstructural developments installed at or near, and parallel to, the ordinary high
106 water mark for the sole purpose of protecting an existing single-family residence
107 and appurtenant structures from loss or damage by erosion. A normal protective
108 bulkhead is not exempt if constructed for the purpose of creating dry land. When
109 a vertical or near vertical wall is being constructed or reconstructed, not more than
110 one (1) cubic yard of fill per one (1) foot of wall may be used as backfill. When

111 an existing bulkhead is being repaired by construction of a vertical wall fronting
112 the existing wall, it shall be constructed no further waterward of the existing
113 bulkhead than is necessary for construction of new footings. When a bulkhead has
114 deteriorated such that an ordinary high water mark has been established by the
115 presence and action of water landward of the bulkhead then the replacement
116 bulkhead must be located at or near the actual ordinary high water mark. Beach
117 nourishment and bioengineered erosion control projects may be considered a
118 normal protective bulkhead when any structural elements are consistent with the
119 above requirements and when the project has been approved by the Department of
120 Fish and Wildlife (WDFW).

121 4. Emergency construction necessary to protect property from damage by the
122 elements. An "emergency" is an unanticipated and imminent threat to public
123 health, safety, or the environment that requires immediate action within a time too
124 short to allow full compliance with this chapter. Emergency construction does not
125 include development of new permanent protective structures where none
126 previously existed. Where new protective structures are deemed by the Shoreline
127 Administrator to be the appropriate means to address the emergency situation,
128 upon abatement of the emergency situation the new structure shall be removed or
129 any permit that would have been required, absent an emergency, pursuant to
130 RCW 90.58 these regulations, or this Program, shall be obtained. All emergency
131 construction shall be consistent with the policies and requirements of this chapter,
132 RCW 90.58, and this Program. As a general matter, flooding or other seasonal
133 events that can be anticipated and may occur but that are not imminent are not an
134 emergency.

135 5. Construction and practices normal or necessary for farming, irrigation, and
136 ranching activities, including agricultural service roads and utilities on shorelands,
137 and the construction and maintenance of irrigation structures including but not
138 limited to head gates, pumping facilities, and irrigation channels. A feedlot of any
139 size, all processing plants, other activities of a commercial nature, alteration of the
140 contour of the shorelands by leveling or filling other than that which results from
141 normal cultivation, shall not be considered normal or necessary farming or
142 ranching activities.

143 6. Construction or modification of navigational aids such as channel markers and
144 anchor buoys.

145 7. Construction on shorelands by an owner, lessee, or contract purchaser of a single-
146 family residence or appurtenance for their own use or for the use of their family,
147 which residence does not exceed a height of thirty-five (35) feet above average
148 grade level, and which meets all requirements of the County, other than
149 requirements imposed pursuant to RCW 90.58. Construction authorized under this
150 exemption shall be located landward of the ordinary high water mark.

151 8. Construction of a dock, including a community dock, designed for pleasure craft
152 only, for the private non-commercial use of the owner, lessee, or contract

- 153 purchaser of a single-family or multiple-family residence. This exception applies
154 in fresh waters when the fair market value of the dock does not exceed ten
155 thousand dollars (\$10,000.00), but if subsequent construction having a fair market
156 value exceeding two thousand five hundred dollars (\$2,500.00) occurs within five
157 (5) years of completion of the prior construction, the subsequent construction
158 shall be considered a substantial development for the purpose of this chapter.
- 159 9. Operation, maintenance, or construction of canals, waterways, drains, reservoirs,
160 or other facilities that now exist or are hereafter created or developed as a part of
161 an irrigation system for the primary purpose of making use of system waters,
162 including return flow and artificially stored ground water from the irrigation of
163 lands.
- 164 10. The marking of property lines or corners on state-owned lands, when such
165 marking does not significantly interfere with normal public use of the surface of
166 the water.
- 167 11. Operation and maintenance of any system of dikes, ditches, drains, or other
168 facilities existing on September 8, 1975, that were created, developed or utilized
169 primarily as a part of an agricultural drainage or diking system.
- 170 12. Any project with a certification from the governor pursuant to RCW 80.50
171 (certification from the State Energy Facility Site Evaluation Council).
- 172 13. Site exploration and investigation activities that are prerequisite to preparation of
173 an application for development authorization under this chapter, if:
- 174 a. The activity does not interfere with the normal public use of surface waters;
- 175 b. The activity will have no significant adverse impact on the environment
176 including but not limited to fish, wildlife, fish or wildlife habitat, water
177 quality, and aesthetic values;
- 178 c. The activity does not involve the installation of any structure, and upon
179 completion of the activity the vegetation and land configuration of the site are
180 restored to conditions existing before the activity; and
- 181 d. A private entity seeking development authorization under this section first
182 posts a performance bond or provides other evidence of financial
183 responsibility to the local jurisdiction to assure that the site is restored to pre-
184 existing conditions.
- 185 14. The process of removing or controlling aquatic noxious weeds, as defined in
186 RCW 17.26.020, through the use of an herbicide or other treatment methods
187 applicable to weed control published by the Departments of Agriculture or
188 Ecology jointly with other state agencies under RCW 43.21C.
- 189 15. Watershed restoration projects as defined in RCW 89.08.460.

- 190 16. A public or private project that is designed to improve fish or wildlife habitat or
191 fish passage when all of the following apply:
- 192 a. The project has been approved by WDFW;
- 193 b. The project has received hydraulic project approval (HPA) by WDFW
194 pursuant to RCW 77.55; and
- 195 c. Clark County has determined that the project is substantially consistent with
196 the local shoreline master program. Clark County shall make such
197 determination in a timely manner and provide it by letter to the applicant.
- 198 Fish habitat enhancement projects that conform to the provisions of RCW
199 77.55.181 are determined to be consistent with local shoreline master programs.
- 200 17. Any person conducting a remedial action at a facility pursuant to a consent
201 decree, order, or agreed order issued pursuant to RCW 70.105D or to Ecology
202 when it conducts a remedial action under RCW 70.105D.
203
- 204 18. A substantial development permit is not required on land within urban growth
205 areas as defined in RCW 36.70A.030 that is brought under shoreline jurisdiction
206 due to a shoreline restoration project creating a landward shift in the ordinary high
207 water mark (RCW 90.58.580(3)).
- 208 19. Other than conversions to non-forest land use, forest practices regulated under
209 RCW 76.09 are not subject to additional regulations under the Act or this Program
210 (90.58.030(2)(d)(ii)). Environmental excellence program agreements entered into
211 under RCW 43.21K (RCW 90.58.045).

212 **2.3.3 Statements of Exemption**

- 213 1. Any person claiming exemption from the substantial development permit
214 requirements shall make an application to the Shoreline Administrator for such an
215 exemption in the manner prescribed by the Shoreline Administrator, except that
216 no written statement of exemption is required for emergency development
217 pursuant to WAC 173-27-040(2)(d).
- 218 2. The Shoreline Administrator is authorized to grant or deny requests for statements
219 of exemption from the shoreline substantial development permit requirement for
220 uses and developments within shorelines that are specifically listed in Section
221 2.3.2. The statement shall be in writing and shall indicate the specific exemption
222 of this Program that is being applied to the development, and shall provide a
223 summary of the Shoreline Administrator's analysis of the consistency of the
224 project with this Program and the Act. The letter shall be sent to the applicant and
225 maintained on file in the offices of the Shoreline Administrator.

- 226 3. Statements of exemption may contain conditions and/or mitigating measures of
227 approval to achieve consistency and compliance with the provisions of this
228 Program and the Act.
- 229 4. A denial of an exemption shall be in writing and shall identify the reason(s) for
230 the denial. The Shoreline Administrator's decision on a statement of exemption is
231 not subject to administrative appeal.
- 232 5. Exempt activities shall not be conducted until a statement of exemption has been
233 obtained from the Shoreline Administrator.

234 **2.3.4 Prohibited Uses**

235 The following modifications and uses are prohibited in all shoreline designations and
236 are not eligible for review as a shoreline conditional use or shoreline variance. See
237 Chapter 8 and CCC Section 40.100.070 for definitions of the following
238 modifications and uses:

- 239 1. Uses not otherwise allowed in the underlying zoning district;
- 240 2. Parking as a primary use;
- 241 3. Discharge of solid wastes, liquid wastes, untreated effluents, and other potentially
242 harmful materials;
- 243 4. Solid waste facilities;
- 244 5. Hazardous waste facilities as defined in CCC Section 40.100.070;
- 245 6. Speculative fill; and
- 246 7. Dredging or dredge material disposal in wetlands, or to construct land canals or
247 small basins for boat moorage or launching, water ski landings, swimming holes
248 or other recreational activities.

249 **2.4 Nonconforming Uses and Development**

250 **2.4.1 Existing Uses and Development**

251 Existing uses, structures and lots legally established prior to the effective date of this
252 Program are allowed to continue. Where lawful uses, structures and lots exist that could
253 not be established under the terms of this Program, such uses, structures and lots are
254 deemed nonconforming and are subject to the provisions of this section, unless specific
255 exceptions are provided for in Section 2.5.2.

256 **2.4.2 Nonconforming Uses**

- 257 1. Additional development of any property on which a nonconforming use exists
258 shall require that all new uses conform to this Program and the Act.
- 259 2. Change of ownership, tenancy, or management of a nonconforming use shall not
260 affect its nonconforming status, provided that the use does not change or
261 intensify.
- 262 3. If a nonconforming use is converted to a conforming use, a nonconforming use
263 may not be resumed.
- 264 4. When the operation of a nonconforming use is vacated or abandoned for a period
265 of twelve (12) consecutive months, the nonconforming use rights shall be deemed
266 extinguished and the future use of such property shall be in accordance with the
267 permitted and conditional use regulations of this Program.
- 268 5. If a conforming building housing a nonconforming use is damaged by fire, flood,
269 explosion, or other natural disaster and the damage is less than sixty percent
270 (60%) of the replacement cost of the structure or development, such use may be
271 resumed at the time the building is repaired; provided, such restoration shall be
272 undertaken within twelve (12) months following said damage.
- 273 6. Normal maintenance and repair of a structure housing a nonconforming use may
274 be permitted provided all work is consistent with the provisions of CCC Section
275 40.530.010 and this Program.
- 276 7. Legally-established floating homes and residences are considered conforming
277 uses, subject to the requirements in Section 6.3.11.

278 **2.4.3 Nonconforming Structures**

- 279 1. A nonconforming building or structure may be maintained or repaired, provided
280 such improvements do not extend or expand the nonconformity of such building
281 or structure and are consistent with the provisions of this Program, unless required
282 by other law or ordinance.
- 283 2. If a nonconforming structure or development is damaged by fire, flood, explosion,
284 or other natural disaster and the damage is less than sixty percent (60%) of the
285 replacement cost of the structure or development, it may be restored or
286 reconstructed to those configurations existing at the time of such damage,
287 provided:
- 288 a. The reconstructed or restored structure will not cause additional adverse
289 effects to adjacent properties or to the shoreline environment;
- 290 b. The rebuilt structure or portion of structure shall not expand the original
291 footprint or height of the damaged structure;

- 292 c. No degree of relocation shall occur, except to increase conformity or to
293 increase ecological function, in which case the structure shall be located in the
294 least environmentally damaging location possible;
- 295 d. The submittal of applications for permits necessary to restore the development
296 is initiated within twelve (12) months of the damage. The Shoreline
297 Administrator may waive this requirement in situations with extenuating
298 circumstances;
- 299 e. The reconstruction is commenced within one (1) year of the issuance of
300 permit;
- 301 f. The Shoreline Administrator may allow a one (1) year extension provided
302 consistent and substantial progress is being made; and
- 303 g. Any residential structures, including multi-family structures, may be
304 reconstructed up to the size, placement and density that existed prior to the
305 damage, so long as other provisions of this Program are met.

306 **2.4.4 Nonconforming Lots**

307 Legally established, nonconforming, undeveloped lots located landward of the ordinary
308 high water mark are buildable, provided that all new structures or additions to structures
309 on any nonconforming lot must meet all setback, height and other construction
310 requirements of the Program and the Act.

311 **2.5 Shoreline Variance**

- 312 1. The purpose of a variance is to grant relief to specific bulk or dimensional
313 requirements set forth in this Program where there are extraordinary or unique
314 circumstances relating to the property such that the strict implementation of this
315 Program would impose unnecessary hardships on the applicant or thwart the
316 policies set forth in the Act and this Program.
- 317 2. When a shoreline variance is requested, the Shoreline Administrator shall be the
318 final approval authority for the County. However, shoreline variances must have
319 approval from Ecology, which shall have final approval authority. Shoreline
320 variance permits should be granted in circumstances where denial of the permit
321 would result in a thwarting of the policy enumerated in the Act (RCW 90.58.020).
322 In all instances extraordinary circumstances shall be shown and the public interest
323 shall suffer no substantial detrimental effect.
- 324 3. The Shoreline Administrator is authorized to recommend a variance from the
325 performance standards of this Program only when all of the following criteria are
326 met (WAC 173-27-170):

- 327 a. That the strict application of the bulk, dimensional or performance standards
328 set forth in this Program precludes, or significantly interferes with, reasonable
329 use of the property;
- 330 b. That the hardship described in (a) of this subsection is specifically related to
331 the property, and is the result of unique conditions such as irregular lot shape,
332 size, or natural features and the application of this Program, and not, for
333 example, from deed restrictions or the applicant's own actions;
- 334 c. That the design of the project is compatible with other authorized uses within
335 the area and with uses planned for the area under the Comprehensive Growth
336 Management Plan and this Program and will not cause adverse impacts to the
337 shoreline environment;
- 338 d. That the variance will not constitute a grant of special privilege not enjoyed
339 by the other properties in the area;
- 340 e. That the variance requested is the minimum necessary to afford relief; and
- 341 f. That the public interest will suffer no substantial detrimental effect.
- 342 4. Variance permits for development and/or uses that will be located waterward of
343 the ordinary high water mark (OHWM), as defined in RCW 90.58.030 (2)(b), or
344 within any wetland as defined in RCW 90.58.030 (2)(h), may be authorized
345 provided the applicant can demonstrate all of the following:
- 346 a. That the strict application of the bulk, dimensional or performance standards
347 set forth in this Program precludes all reasonable use of the property;
- 348 b. That the proposal is consistent with the criteria established under subsection
349 (3)(b) through (f) of this section; and
- 350 c. That the public rights of navigation and use of the shorelines will not be
351 adversely affected.
- 352 5. The burden of proving that a proposed shoreline variance meets the criteria of this
353 program shall be on the applicant. Absence of such proof shall be grounds for
354 denial of the application.
- 355 6. In the granting of all shoreline variances, consideration shall be given to the
356 cumulative environmental impact of additional requests for like actions in the
357 area.
- 358 7. Before making a recommendation to grant a shoreline variance, the County shall
359 consider issues related to the conservation of valuable natural resources, and the
360 protection of views from nearby public roads, surrounding properties and public
361 areas.

362 8. A variance from County development code requirements shall not be construed to
363 mean a shoreline variance from use regulations in this Program, and vice versa.

364 9. Shoreline variances may not be used to permit a use or development that is
365 specifically prohibited in a shoreline designation.

366 **2.6 Shoreline Conditional Use Permit**

367 1. The purpose of the conditional use permit is to provide greater flexibility in
368 varying the application of the use regulations of this Program in a manner that
369 will be consistent with the policies of the Act and this Program, particularly where
370 denial of the application would thwart the policies of the Act.

371 2. When a conditional use is requested, the Shoreline Administrator shall be the final
372 approval authority for the County. However, shoreline conditional uses must have
373 approval from Ecology, which shall have final approval authority under WAC
374 173-27-200.

375 3. Conditional use permits shall be authorized only when they are consistent with the
376 following criteria:

377 a. The proposed use is consistent with the policies of RCW 90.58.020, WAC
378 173-27-160 and all provisions of this Program;

379 b. The use will not interfere with normal public use of public shorelines;

380 c. That the proposed use of the site and design of the project is compatible with
381 other authorized uses within the area and with uses planned for the area under
382 the Comprehensive Growth Management Plan and this Program;

383 d. The public interest will suffer no substantial detrimental effect; and

384 e. Consideration has been given to cumulative impact of additional requests for
385 like actions in the area.

386 4. Other uses not specifically identified in this Program are considered “unclassified
387 uses” and may be authorized through a conditional use permit if the applicant can
388 demonstrate that the proposed use is consistent with the purpose of the shoreline
389 designation and compatible with existing shoreline improvements or that
390 extraordinary circumstances preclude reasonable use of the property. However,
391 uses specifically prohibited by this Program may not be authorized.

392 5. The burden of proving that a proposed shoreline conditional use meets the criteria
393 of this Program and WAC 173-27-160 shall be on the applicant. Absence of such
394 proof shall be grounds for denial of the application.

395 6. The County is authorized to impose conditions and standards to enable a proposed
396 shoreline conditional use to satisfy the conditional use criteria.