CHAPTER 2  APPLICABILITY, SHORELINE PERMITS AND EXEMPTIONS

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

2.1 Applicability

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

   a. those lands extending two hundred (200) feet in all directions as measured on a horizontal plane from the ordinary high water mark (OHWM);

   b. the full extent of floodplains; and

   c. all wetlands and river deltas associated with the streams and lakes 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.

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

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

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

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

5. Shoreline development occurring in or over navigable waters may require a shoreline permit in addition to other approvals required from state and federal agencies.
6. The provisions of RCW 35.21.160 are recognized, which state that jurisdictions along lakes or waterways have shoreline jurisdiction that extends to the middle of such lakes or waterways.

7. This Program shall apply whether the proposed development or activity is exempt from a shoreline permit or not.

2.2 Shoreline Substantial Development Permit Required

2.2.1 General Requirements

1. Substantial development as defined by this Program and RCW 90.58.030(3)(e) shall not be undertaken by any person on the shorelines of the state without first obtaining a substantial development permit from the Shoreline Administrator, unless the use or development is specifically identified as exempt from a substantial development permit, in which case a letter of exemption is required.

2. The Shoreline Administrator may grant a substantial development permit only when the development proposed is consistent with the policies and procedures of RCW 90.58, the provisions of WAC 173-27, and this Program.

3. Within an urban growth area a shoreline substantial development permit is not required on land that is brought under shoreline jurisdiction due to a shoreline restoration project creating a landward shift in the OHWM.

2.2.2 Developments Not Subject to the Act

1. Native American Tribes’ actions on tribal lands and federal agencies’ actions on federal lands are not required, but are encouraged, to comply with the provisions of this Program and the Act. Nothing in this Program shall affect any rights established by treaty to which the United States is a party.

2. Environmental excellence programs entered into under RCW 43.21K.

2.3 Exemptions from a Shoreline Substantial Development Permit

2.3.1 General Requirements

1. Except has specifically exempted by statute, all proposed uses and development occurring within shoreline jurisdiction must conform to RCW 90.58, the 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 (Section 2.7) 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 (Section 2.6) even if the development or use does not require a substantial development permit.

4. If any part of a proposed development requires a shoreline substantial development permit, then a shoreline substantial development permit is required for the entire proposed development project.

5. Exemptions from the requirement to obtain a shoreline substantial development permit shall be construed narrowly. Only those developments that meet the precise terms of one or more of the listed exemptions may be granted exemptions from the substantial development permit process. The burden of proof that a development or use is exempt is on the applicant for the development action.

2.3.2 List of Exemptions

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

1. Any development of which the total cost or fair market value does not exceed five thousand, seven hundred, eighteen dollars ($5,718.00) or as adjusted by the State Office of Financial Management, if such development does not materially interfere with the normal public use of the water or shorelines of the state. For purposes of determining whether or not a permit is required, the total cost or fair market value shall be based on the value of development that is occurring on shorelines of the state as defined in RCW 90.58.030 (2)(c). The total cost or fair market value of the development shall include the fair market value of any donated, contributed, or found labor, equipment or materials.

2. Normal maintenance or repair of existing legally-established structures or developments, including damage by accident, fire, or elements. 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.

3. Construction of a 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 (1) cubic yard of fill per one (1) 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 (WDFW).

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

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

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

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

8. Construction of a dock, including a community dock, designed for pleasure craft only, for the private non-commercial use of the owner, lessee, or contract
purchaser of a single-family or multiple-family residence. This exception applies
in fresh waters when the fair market value of the dock does not exceed ten
thousand dollars ($10,000.00), but if subsequent construction having a fair market
value exceeding two thousand five hundred dollars ($2,500.00) occurs within five
(5) years of completion of the prior construction, the subsequent construction
shall be considered a substantial development for the purpose of this chapter.

9. Operation, maintenance, or construction of canals, waterways, drains, reservoirs,
or other facilities that now exist or are hereafter created or developed as a part of
an irrigation system for the primary purpose of making use of system waters,
including return flow and artificially stored ground water from the irrigation of
lands.

10. 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.

11. Operation and maintenance of any system of dikes, ditches, drains, or other
facilities existing on September 8, 1975, that were created, developed or utilized
primarily as a part of an agricultural drainage or diking system.

12. Any project with a certification from the governor pursuant to RCW 80.50
(certification from the State Energy Facility Site Evaluation Council).

13. Site exploration and investigation activities that are prerequisite to preparation of
an application for development authorization under this chapter, if:

   a. The activity does not interfere with the normal public use of surface waters;

   b. 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;

   c. The activity does not involve the installation of any structure, and upon
      completion of the activity the vegetation and land configuration of the site are
      restored to conditions existing before the activity; and

   d. 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 assure that the site is restored to pre-
      existing conditions.

14. The process of removing or controlling aquatic noxious weeds, as defined in
RCW 17.26.020, through the use of an herbicide or other treatment methods
applicable to weed control published by the Departments of Agriculture or
Ecology jointly with other state agencies under RCW 43.21C.

15. Watershed restoration projects as defined in RCW 89.08.460.
16. A public or private project that is designed to improve fish or wildlife habitat or fish passage when all of the following apply:

   a. The project has been approved by WDFW;

   b. The project has received hydraulic project approval (HPA) by WDFW pursuant to RCW 77.55; and

   c. Clark County has determined that the project is substantially consistent with the local shoreline master program. Clark County shall make such determination in a timely manner and provide it by letter to the applicant.

   Fish habitat enhancement projects that conform to the provisions of RCW 77.55.181 are determined to be consistent with local shoreline master programs.

17. 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 Ecology when it conducts a remedial action under RCW 70.105D.

18. A substantial development permit is not required on land within urban growth areas as defined in RCW 36.70A.030 that is brought under shoreline jurisdiction due to a shoreline restoration project creating a landward shift in the ordinary high water mark (RCW 90.58.580(3)).

19. Other than conversions to non-forest land use, forest practices regulated under RCW 76.09 are not subject to additional regulations under the Act or this Program (90.58.030(2)(d)(ii)). Environmental excellence program agreements entered into under RCW 43.21K (RCW 90.58.045).

2.3.3 Statements of Exemption

1. Any person claiming exemption from the substantial development permit requirements shall make an application to the Shoreline Administrator for such an exemption in the manner prescribed by the Shoreline Administrator, except that no written statement of exemption is required for emergency development pursuant to WAC 173-27-040(2)(d).

2. The Shoreline Administrator is authorized to grant or deny requests for statements of exemption from the shoreline substantial development permit requirement for uses and developments within shorelines that are specifically listed in Section 2.3.2. The statement shall be in writing and shall indicate the specific exemption of this Program that is being applied to the development, and shall provide a summary of the Shoreline Administrator’s analysis of the consistency of the project with this Program and the Act. The letter shall be sent to the applicant and maintained on file in the offices of the Shoreline Administrator.
3. Statements of exemption may contain conditions and/or mitigating measures of approval to achieve consistency and compliance with the provisions of this Program and the Act.

4. A denial of an exemption shall be in writing and shall identify the reason(s) for the denial. The Shoreline Administrator’s decision on a statement of exemption is not subject to administrative appeal.

5. Exempt activities shall not be conducted until a statement of exemption has been obtained from the Shoreline Administrator.

2.3.4 Prohibited Uses

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

1. Uses not otherwise allowed in the underlying zoning district;

2. Parking as a primary use;

3. Discharge of solid wastes, liquid wastes, untreated effluents, and other potentially harmful materials;

4. Solid waste facilities;

5. Hazardous waste facilities as defined in CCC Section 40.100.070;

6. Speculative fill; and

7. Dredging or dredge material disposal in wetlands, or to construct land canals or small basins for boat moorage or launching, water ski landings, swimming holes or other recreational activities.

2.4 Nonconforming Uses and Development

2.4.1 Existing Uses and Development

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

1. Additional development of any property on which a nonconforming use exists shall require that all new uses conform to this Program and the Act.

2. Change of ownership, tenancy, or management of a nonconforming use shall not affect its nonconforming status, provided that the use does not change or intensify.

3. If a nonconforming use is converted to a conforming use, a nonconforming use may not be resumed.

4. When the operation of a nonconforming use is vacated or abandoned for a period of twelve (12) consecutive months, the nonconforming use rights shall be deemed extinguished and the future use of such property shall be in accordance with the permitted and conditional use regulations of this Program.

5. If a conforming building housing a nonconforming use is damaged by fire, flood, explosion, or other natural disaster and the damage is less than sixty percent (60%) of the replacement cost of the structure or development, such use may be resumed at the time the building is repaired; provided, such restoration shall be undertaken within twelve (12) months following said damage.

6. Normal maintenance and repair of a structure housing a nonconforming use may be permitted provided all work is consistent with the provisions of CCC Section 40.530.010 and this Program.

7. Legally-established floating homes and residences are considered conforming uses, subject to the requirements in Section 6.3.11.

2.4.3 Nonconforming Structures

1. A nonconforming building or structure may be maintained or repaired, provided such improvements do not extend or expand the nonconformity of such building or structure and are consistent with the provisions of this Program, unless required by other law or ordinance.

2. If a nonconforming structure or development is damaged by fire, flood, explosion, or other natural disaster and the damage is less than sixty percent (60%) of the replacement cost of the structure or development, it may be restored or reconstructed to those configurations existing at the time of such damage, provided:

   a. The reconstructed or restored structure will not cause additional adverse effects to adjacent properties or to the shoreline environment;

   b. The rebuilt structure or portion of structure shall not expand the original footprint or height of the damaged structure;
c. No degree of relocation shall occur, except to increase conformity or to increase ecological function, in which case the structure shall be located in the least environmentally damaging location possible;

d. The submittal of applications for permits necessary to restore the development is initiated within twelve (12) months of the damage. The Shoreline Administrator may waive this requirement in situations with extenuating circumstances;

e. The reconstruction is commenced within one (1) year of the issuance of permit;

f. The Shoreline Administrator may allow a one (1) year extension provided consistent and substantial progress is being made; and

g. Any residential structures, including multi-family structures, may be reconstructed up to the size, placement and density that existed prior to the damage, so long as other provisions of this Program are met.

2.4.4 Nonconforming Lots

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

2.5 Shoreline Variance

1. The purpose of a variance is to grant relief to specific bulk or dimensional requirements set forth in this Program where there are extraordinary or unique circumstances relating to the property such that the strict implementation of this Program would impose unnecessary hardships on the applicant or thwart the policies set forth in the Act and this Program.

2. When a shoreline variance is requested, the Shoreline Administrator shall be the final approval authority for the County. However, shoreline variances must have approval from Ecology, which shall have final approval authority. Shoreline variance permits should be granted in circumstances where denial of the permit would result in a thwarting of the policy enumerated in the Act (RCW 90.58.020). In all instances extraordinary circumstances shall be shown and the public interest shall suffer no substantial detrimental effect.

3. The Shoreline Administrator is authorized to recommend a variance from the performance standards of this Program only when all of the following criteria are met (WAC 173-27-170):
a. That the strict application of the bulk, dimensional or performance standards set forth in this Program precludes, or significantly interferes with, reasonable use of the property;

b. That the hardship described in (a) of this subsection is specifically related to the property, and is the result of unique conditions such as irregular lot shape, size, or natural features and the application of this Program, and not, for example, from deed restrictions or the applicant's own actions;

c. That the design of the project is compatible with other authorized uses within the area and with uses planned for the area under the Comprehensive Growth Management Plan and this Program and will not cause adverse impacts to the shoreline environment;

d. That the variance will not constitute a grant of special privilege not enjoyed by the other properties in the area;

e. That the variance requested is the minimum necessary to afford relief; and

f. That the public interest will suffer no substantial detrimental effect.

4. Variance permits for development and/or uses that will be located waterward of the ordinary high water mark (OHWM), as defined in RCW 90.58.030 (2)(b), or within any wetland as defined in RCW 90.58.030 (2)(h), may be authorized provided the applicant can demonstrate all of the following:

a. That the strict application of the bulk, dimensional or performance standards set forth in this Program precludes all reasonable use of the property;

b. That the proposal is consistent with the criteria established under subsection (3)(b) through (f) of this section; and

c. That the public rights of navigation and use of the shorelines will not be adversely affected.

5. The burden of proving that a proposed shoreline variance meets the criteria of this program shall be on the applicant. Absence of such proof shall be grounds for denial of the application.

6. In the granting of all shoreline variances, consideration shall be given to the cumulative environmental impact of additional requests for like actions in the area.

7. Before making a recommendation to grant a shoreline variance, the County shall consider issues related to the conservation of valuable natural resources, and the protection of views from nearby public roads, surrounding properties and public areas.
8. A variance from County development code requirements shall not be construed to mean a shoreline variance from use regulations in this Program, and vice versa.

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

2.6 Shoreline Conditional Use Permit

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

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

3. Conditional use permits shall be authorized only when they are consistent with the following criteria:
   a. The proposed use is consistent with the policies of RCW 90.58.020, WAC 173-27-160 and all provisions of this Program;
   b. The use will not interfere with normal public use of public shorelines;
   c. That the proposed use of the site and design of the project is compatible with other authorized uses within the area and with uses planned for the area under the Comprehensive Growth Management Plan and this Program;
   d. The public interest will suffer no substantial detrimental effect; and
   e. Consideration has been given to cumulative impact of additional requests for like actions in the area.

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

5. 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.

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