# CITY OF TOLEDO

**LEWIS COUNTY** **WASHINGTON**

## SHORELINE MASTER PROGRAM UPDATE

**ECOLOGY GRANT G1200045**
**G&O #11254**
**DECEMBER 2014**

Gray & Osborne, Inc.
CONSULTING ENGINEERS

# CITY OF TOLEDO

**LEWIS COUNTY** **WASHINGTON**

## SHORELINE MASTER PROGRAM UPDATE

**ECOLOGY GRANT G1200045**
**G&O #11254**
**DECEMBER 2014**

Gray & Osborne, Inc.
CONSULTING ENGINEERS

# TOLEDO CITY COUNCIL

**Jerry Pratt, Mayor**
**Nate Cook**
**Steve Dobosh**
**Jim Fluckinger**
**Carol Hill**
**Mike Thomas**

# TOLEDO PLANNING COMMISSION

**Kristina Cook, Chairman**
**Jennifer Ferrell**
**Dean Scott**

# ACKNOWLEDGMENTS

The City of Toledo would like to acknowledge the many public and private agencies that developed information that was used in this update.

The first part of this update was prepared with Grant Funding from the Washington State Department of Ecology SMA Grant Agreement No. G1200045.

# TABLE OF CONTENTS


1. GENERAL PROVISIONS ..... 1
   Purposes ..... 1
   Applicability ..... 2
   Governing Principles of this Master Program ..... 3
   Title ..... 4
   Short title ..... 4
   Authority ..... 5
   Reference to Plans, Regulations or Information Sources ..... 5
   Relationship to Other Land Use Regulations ..... 5
   Liberal Construction ..... 6
   Severability ..... 6
   Amendments ..... 6
   Effective Date ..... 6
2. SHORELINE JURISDICTION AND ENVIRONMENT DESIGNATIONS ..... 7
   Shorelines of the State ..... 7
   Shoreline Jurisdiction for Streams and Flood Plains ..... 7
   Shorelines within the City of Toledo and its Urban Growth Area ..... 7
   Shoreline Environment Designations ..... 7
   Aquatic ..... 7
   Urban Conservancy ..... 8
   Official Map ..... 10
   Conflicts between Designation and Criteria ..... 10
   Shoreline Areas not Mapped or Designated ..... 10
3. SHORELINE PERMITS ..... 10
   General Provisions ..... 10
   Permit Applications ..... 11
   Substantial Development Permit ..... 18
   Shoreline Conditional Use Permit ..... 18
   Shoreline Variance Permit ..... 19
   Shoreline Exemptions ..... 21
   Unspecified Uses ..... 25
   Time Requirements and Revisions ..... 25
   Penalties and Enforcement ..... 27
4. NONCONFORMING DEVELOPMENT ..... 27
   Nonconforming Uses and Structures – General ..... 27
   Development of a Nonconforming Lot ..... 30
5. MASTER PROGRAM GOALS ..... 31
   Conservation ..... 31
      Purpose ..... 31
      Goals ..... 31
      Purpose ..... 31
      Goals ..... 32
   Historic, Archeological, Cultural, Scientific and Educational Resources ..... 32

Purpose....32
Goals....32
Public Access....33
Purpose....33
Goals....33
Recreation....33
Purpose....33
Goals....34
Restoration and Enhancement....34
Purpose....34
Goals....34
Shoreline Use....34
Purpose....34
Goals....35
Transportation and Utilities....35
Purpose....35
Goals....35
6. GENERAL POLICIES AND REGULATIONS....36
Environment Impact Mitigation....36
Policies....36
Regulations....36
Critical Areas and Shoreline Vegetation Conservation....37
Policies....37
Public Access....45
Policies....45
Regulations....46
Water Quality....50
Policies....50
Regulations....51
Parking....51
Policies....51
Regulations....52
Signage....52
Policies....52
Regulations....52
Policies....53
Regulations....53
Scientific or Educational Uses....54
Policies....54
Regulations....54
7. USES AND ACTIVITIES POLICIES AND REGULATIONS....55
Table of Uses and Activities by Shoreline Environment Designation....57
Table of Regulations by Shoreline Environment Designation....58
Table of Shoreline Modifications by Shoreline Environment Designation....59
Agriculture....60

Policies ..... 60
Aquaculture ..... 61
Policies ..... 61
Regulations ..... 61
Boating Facilities ..... 61
Policies ..... 61
Regulations ..... 62
Commercial ..... 62
Policies ..... 62
Regulations ..... 63
Forest Practices ..... 64
Policies ..... 64
Regulations ..... 64
Industrial ..... 65
Policies ..... 65
Regulations ..... 65
Policies ..... 65
Regulations ..... 65
Recreation ..... 65
Policies ..... 65
Regulations ..... 66
Residential ..... 67
Policies ..... 67
Regulations ..... 68
Solid Waste Disposal ..... 70
Policies ..... 70
Regulations ..... 70
Transportation ..... 70
Policies ..... 70
Regulations ..... 70
Utilities ..... 72
Policies ..... 72
Regulations ..... 73
8. SHORELINE MODIFICATION POLICIES AND REGULATIONS ..... 74
General Policies ..... 74
Dredging and Dredge Disposal ..... 75
Policies ..... 75
Regulations ..... 77
Fill ..... 80
Policies ..... 80
Regulations ..... 81
Restoration and Enhancement ..... 82
Policies ..... 82
Regulations ..... 83
Shoreline Stabilization ..... 84

Policies ..... 84
Regulations ..... 86
Bioengineering Regulations ..... 87
Revetment, Gabion and Bulkhead Regulations ..... 88
Dikes, Levees and Instream Structures ..... 90
Policies ..... 90
Regulations ..... 92
9. DEFINITIONS ..... 94

# LIST OF TABLES

| No. | Table | Page |
|---|---|---|
| 1 | Uses and Activities by Shoreline Environment Designation | 57 |
| 2 | Regulations by Shoreline Environment Designation | 58 |
| 3 | Shoreline Modifications by Shoreline Environment Designation | 59 |

# LIST OF FIGURES

| No. | Figure | On Page |
|---|---|---|
| 1 | Possible Expansion to a Nonconforming Single-Family Residence | 29 |

# LIST OF MAPS

| No. | Map | Follows Page |
|---|---|---|
| 1 | Toledo Shoreline Environment Designations | 116 |

# APPENDIX

Chapter IV of City of Toledo Land Development Code (Critical Areas Protection)

# 1. GENERAL PROVISIONS

## PURPOSES

The purposes of this Shoreline Master Program are to:

A. Guide the future use and development of the City of Toledo's shorelines in a positive, effective, and equitable manner consistent with the Washington State Shoreline Management Act of 1971 (Revised Code of Washington (RCW) 90.58) as amended; and

B. Promote the health, safety, and general welfare of the community by providing long range, comprehensive policies and effective, reasonable regulations for use and development of City of Toledo shorelines; and

C. Ensure, at minimum, no net loss of shoreline ecological functions and processes; and

D. Plan for restoring shorelines that have been impaired or degraded in the past; and

E. Adhere to the policies contained in RCW 90.58.020 for shorelines of the state:

*"It is the policy of the State to provide for the management of the shorelines of the State by planning for and fostering all reasonable and appropriate uses. This policy is designed to insure the development of these shorelines in a manner, which, while allowing for limited reduction of rights of the public in the navigable waters, will promote and enhance the public interest. This policy contemplates protecting against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the State and their aquatic life, while protecting generally public rights of navigation and corollary rights incidental thereto...*

*In the implementation of this policy the public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the State shall be preserved to the greatest extent feasible consistent with the overall best interest of the State and the people generally. To this end uses shall be preferred which are consistent with control of pollution and prevention of damage to the natural environment or are unique to or dependent upon use of the State's shoreline. Alterations of the natural condition of the shorelines of the State, in those limited instances when authorized, shall be*

*given priority for single family residences, ports, shoreline recreational uses including but not limited to parks, marinas, piers, and other improvements facilitating public access to shorelines of the State, industrial and commercial developments which are particularly dependent on their location on or use of the shorelines of the State, and other development that will provide an opportunity for substantial numbers of the people to enjoy the shorelines of the State.*

*Permitted uses in the shorelines of the State shall be designed and conducted in a manner to minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline area and any interference with the public's use of the water."*

**APPLICABILITY**

A. All proposed uses, modifications and development, as defined in Sections 7 and 8, occurring within shoreline jurisdiction shall comply with this Master Program and RCW 90.58. This Master Program applies to all uses and developments within shoreline jurisdiction whether or not a shoreline permit or statement of permit exemption is required.

B. The Program's shoreline uses and developments shall be classified as follows:

1. Permitted uses and developments – Uses and developments that are consistent with this Program and RCW 90.58. Such uses/developments shall require a shoreline substantial development permit, a shoreline conditional use permit, shoreline variance, and/or a statement that the use/development is exempt from a shoreline substantial development permit.

2. Prohibited uses and developments – Uses and developments that are inconsistent with this Program and/or RCW 90.58 and which cannot be allowed through any permit or variance.

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 permitted subject to review and approval by the City and/or the Washington State Department of Ecology. Many permitted uses/developments, including those that do not require a substantial development permit, can individually or cumulatively affect adjacent properties and/or natural resources and therefore must comply with the Program in order to avoid or minimize such adverse impacts. The City may attach conditions of approval to any permitted use via a permit or

statement of exemption as necessary to assure consistency of the project with the Shoreline Management Act and the Program.

D. This Program shall apply to:

1. All of the lands and waters of the City of Toledo that fall under the jurisdiction of RCW 90.58; and

2. Every person, individual, firm, partnership, association, organization, local or state governmental agency, public or municipal corporation, or other non-federal entity; and

3. All non-federal uses and developments undertaken on federal lands and on lands subject to non-federal ownership, lease, or easement, even though such lands may fall within the external boundaries of federally owned lands.

4. The provisions of this Program shall not apply to lands held in trust by the United States for Indian Nations, tribes or individuals.

## GOVERNING PRINCIPLES OF THIS MASTER PROGRAM

A. The goals, policies and regulations of this Program are based on the governing principles in WAC 173-26-186 and the policy statements of RCW 90.58.020.

B. Any inconsistencies between this Program and RCW 90.58 must be resolved in accordance with the RCW.

C. The planning policies of this Program may be achieved by diverse means, one of which is regulation. The City may also acquire land, implement capital projects and programs, encourage voluntary measures, create incentive programs, or use other means to implement the Program planning policies.

D. When regulating use and development of private property, the City's actions must be consistent with all relevant legal limitations including constitutional limitations. This Program must not unconstitutionally infringe on private property rights or result in an unconstitutional taking of private property.

E. The regulatory provisions of this Program are limited to shorelines of the state, whereas the planning functions of this Program may extend beyond shoreline jurisdiction.

F. The policies and regulations of this Program must be integrated and coordinated with the policies and rules of the City of Toledo Comprehensive Plan (Comprehensive Plan), and its implementing development regulations adopted under the Growth Management Act (RCW 36.70A) and it's most current revision of the Toledo Land Development Code. Critical areas within shoreline jurisdiction will be managed in accordance with the regulations in chapter 6, section 2 of this SMP.

G. The policies and regulations of this Program are intended to protect shoreline ecological functions by:

1. Requiring that current and potential ecological functions be identified and understood when evaluating new uses and developments;

2. Requiring adverse impacts to be mitigated in a manner that ensures no net loss of shoreline ecological functions. Mitigation sequencing, as described in Section 6, Environment Impact Mitigation Regulations, shall include avoiding first, then minimizing, and then replacing/compensating for lost functions and/or resources.

3. Ensuring that all uses and developments, including preferred uses and uses that are exempt from a shoreline substantial development permit, will not cause a net loss of shoreline ecological functions.

4. Preventing, to the greatest extent practicable, cumulative impacts from individual developments.

5. Fairly allocating the burden of preventing cumulative impacts among development opportunities.

6. Including goals, policies and actions to restore shoreline ecological functions where such functions have been degraded by past actions.

**TITLE**

This document shall be known and may be cited as the Shoreline Master Program (SMP) for the City of Toledo, Washington.

**SHORT TITLE**

This document may be referred to internally as the Master Program or Program.

## AUTHORITY

Authority for enactment and administration of this SMP is the Shoreline Management Act of 1971, Chapter 90.58, Revised Code of Washington (RCW), also referred to herein as the "SMA." All SMPs must satisfy the requirements of Chapter 173-26 WAC, State master program approval/amendment procedures and master program guidelines, and Chapter 173-27 WAC, Shoreline permitting and enforcement procedures.

## REFERENCE TO PLANS, REGULATIONS OR INFORMATION SOURCES

Where this Program makes reference to any RCW or WAC, as amended and the current edition of other state, or federal regulations, shall apply.

## RELATIONSHIP TO OTHER LAND USE REGULATIONS

A. In the case of development subject to the shoreline permit requirement of this program, the Administrator shall not issue a building permit for such development until a shoreline permit has been granted. Also, any permit issued by the Administrator for such development shall be subject to the same terms and conditions that apply to the shoreline permit.

B. In the case of development subject to regulations of this program but exempt from the shoreline substantial development permit requirement, any required statement of exemption shall be obtained prior to issuance of the building permit; provided that, for single family residences, a building permit reviewed and signed off by the Administrator may substitute for a written statement of exemption. A record of review documenting compliance with bulk and dimensional standards as well as policies and regulations of this program shall be included in the permit review.

C. In the case of conditional use permits, rescissions and/or variances allowed or required by the Land Development Code and Subdivision and Zoning Standards for development that is also within shorelines, the Administrator shall document compliance with bulk and dimensional standards as well as policies and regulations of this program. The Administrator shall attach conditions to such permits and variances as required to make such development consistent with this Program.

D. In the case of land divisions, such as short subdivisions, long plats, planned unit developments, and binding site plans that require City approval, the local decision maker shall document compliance with bulk and dimensional standards as well as policies and regulations of this program and attach appropriate conditions and/or mitigating measures to

such approvals to ensure the design, development activities and future use associated with such land division(s) are consistent with this Program.

E. Developments within shoreline jurisdiction shall also comply with City development standards, and applicable state and federal regulations, where they do not conflict with the shoreline goals, shoreline policies, and development regulations of this Program.

F. Critical areas including frequently flooded areas, wetlands, fish and wildlife habitats, critical aquifer recharge areas, and geologically hazardous areas that are located within shoreline jurisdiction are regulated by this Program as detailed in Section 6, Critical Areas and Shoreline vegetation Conservation (page 28).

**LIBERAL CONSTRUCTION**

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

**SEVERABILITY**

If any provision of this Program or its application to any person or legal entity or circumstances is held invalid, the remainder of the Program, or the application of the provision to other persons or legal entities or circumstances, shall not be affected.

The SMA and this Program adopted pursuant thereto comprise the basic state and City regulations for the use of shorelines in the City. In the event provisions of this Program conflict with other applicable City policies or regulations, the more restrictive shall prevail. Should any section or provision of this Program be declared invalid, such decision shall not affect the validity of this Program as a whole.

**AMENDMENTS**

Amendments to the Program including changes to the mapped shoreline environment designations shall be processed per WAC 173-26.

**EFFECTIVE DATE**

This Program and all amendments thereto shall become effective 14 days from the date of final action, as outlined in RCW 90.58.090.

# 2. SHORELINE JURISDICTION AND ENVIRONMENT DESIGNATIONS

## SHORELINES OF THE STATE

The jurisdiction of this Program is "shorelines of the state," which includes all "shorelines" as defined in RCW 90.58.030.

## SHORELINE JURISDICTION FOR STREAMS AND FLOOD PLAINS

Shoreline jurisdiction for streams where the mean annual flow is 20 cubic feet per second or greater shall include the greater of the following:

A. Those lands which extend landward 200 feet as measured on a horizontal plane from the ordinary high water mark;

B. Floodways and contiguous floodplain areas landward 200 feet from such floodways; and

C. Those wetlands which are in proximity to and either influence or are influenced by the stream. This influence includes but is not limited to one or more of the following: Periodic inundation; location within a flood plain; or hydraulic continuity.

## SHORELINES WITHIN THE CITY OF TOLEDO AND ITS URBAN GROWTH AREA

The City of Toledo shall have authority over those shorelines within its municipal boundaries. Those shorelines within the City that have been inventoried and found to meet the criteria for Shoreline Jurisdiction as outlined above include:

- Cowlitz River

## SHORELINE ENVIRONMENT DESIGNATIONS

The Shoreline Master Program Guidelines (Chapter 173-26 WAC) recommend a classification system for designating shorelines. The purpose, designation criteria, and management policies for each of these "Shoreline Environment Designations" or "SEDs" are described below.

## AQUATIC

A. The purpose of the "aquatic" environment is to protect, restore and manage the unique characteristics and resources of the areas waterward of the ordinary high-water mark.

B. The "aquatic" environment designation shall be applied to lands waterward of the ordinary high-water mark.

C. Management policies

1. Allow new over-water structures only for water-dependent uses, public access, or ecological restoration.

2. The size of new over-water structures should be limited to the minimum necessary to support the structure's intended use.

3. In order to reduce the impacts of shoreline development and increase effective use of water resources, multiple use of over-water facilities should be encouraged.

4. All developments and uses on navigable waters or their beds should be located and designed to minimize interference with surface navigation, to consider impacts to public views, and to allow for the safe, unobstructed passage of fish and wildlife, particularly those species dependent on migration.

5. Uses that adversely impact the ecological functions of critical freshwater habitats should not be allowed except where necessary to achieve the objectives of RCW 90.58.020, and then only when their impacts are mitigated according to the sequence described in this SMP as necessary to assure no net loss of ecological functions.

6. Shoreline uses and modifications should be designed and managed to prevent degradation of water quality and alteration of natural hydrographic conditions.

7. Local governments should reserve shoreline space for shoreline preferred uses. Such planning should consider upland and in-water uses, water quality, navigation, presence of aquatic vegetation, existing shellfish protection districts and critical habitats, aesthetics, public access and views.

**URBAN CONSERVANCY**

A. The purpose of the "urban conservancy" environment is to protect and restore ecological functions of open space, flood plain and other sensitive lands where they exist in urban and developed settings, while allowing a variety of compatible uses.

B. The "urban conservancy" environment designation shall be applied to shoreline areas appropriate and planned for development that is compatible with maintaining or restoring of the ecological functions of the area, that are not generally suitable for water-dependent uses and that lie in incorporated municipalities and urban growth areas if any of the following characteristics apply:

1. Shoreline areas that are suitable for water-related or water-enjoyment uses;

2. Shoreline areas that are open space, flood plain or other sensitive areas that should not be more intensively developed;

3. Shoreline areas that have potential for ecological restoration;

4. Shoreline areas that retain important ecological functions, even though partially developed; or

5. Shoreline areas that have the potential for development that is compatible with ecological restoration.

C. Management Policies

1. Uses that preserve the natural character of the area or promote preservation of open space, flood plain or sensitive lands either directly or over the long term should be the primary allowed uses. Uses that result in restoration of ecological functions should be allowed if the use is otherwise compatible with the purpose of the environment and the setting.

2. Standards established for shoreline stabilization measures, vegetation conservation, water quality, and shoreline modifications within the "urban conservancy" designation should ensure that new development does not result in a net loss of shoreline ecological functions or further degrade other shoreline values.

3. Public access and public recreation objectives should be implemented whenever feasible and significant ecological impacts can be mitigated.

4. Water-oriented uses should be given priority over nonwater-oriented uses. For shoreline areas adjacent to commercially navigable waters, water-dependent uses should be given highest priority.

### OFFICIAL MAP

A. Shoreline Jurisdiction and the Shoreline Environment Designations are depicted on a map, hereby incorporated as a part of this SMP that shall be known as "Map 1, Toledo Shoreline Environment Designations."

B. The boundaries of shoreline jurisdiction on the map are approximate. The extent of shoreline jurisdiction shall be based upon an on-site inspection and the criteria found in RCW 90.58.030 pertaining to shorelands.

C. The official copy of this map shall reside with the Washington State Department of Ecology.

D. Copies of this map are available for public use from the City of Toledo.

### CONFLICTS BETWEEN DESIGNATION AND CRITERIA

In the event that any of the environment designation boundaries shown on Map 1 conflict with the criteria outlined in the aquatic and urban conservancy designations, the criteria shall control.

### SHORELINE AREAS NOT MAPPED OR DESIGNATED

- Per WAC 173-26-211 (2)(e), all areas within shoreline jurisdiction that are not mapped and/or designated are automatically assigned an urban conservancy designation until the shoreline can be redesignated through a master program amendment.

## 3. SHORELINE PERMITS

### GENERAL PROVISIONS

A. All development and use of shorelines of the state shall be carried out in a manner that is consistent with this SMP and the policy of the Act as required by RCW 90.58.140(1), whether or not a shoreline permit or statement of exemption is required.

No use, land or water alteration, or development shall be undertaken within shoreline jurisdiction of the Shoreline Management Act by any person without first obtaining a permit, except the Mayor or their designee may issue a letter of exemption from a substantial development permit.

Before issuing a Statement of Exemption, the Mayor or the person designated by the Mayor to be the Shoreline Administrator shall review the Master Program to determine if the proposed development requires a

Shoreline Conditional Use Permit and/or a Variance. It may be necessary for City staff to conduct a site inspection to ensure that the proposed development meets the exemption criteria.

**PERMIT APPLICATIONS**

A. **Application Forms-** Applications for such shoreline exemptions shall be made on forms provided by the City.

B. **Site Plan-** A site plan shall meet the requirements of the underlying development permit, shall be drawn to scale and include the items listed below:

1. Site boundary.

2. Property dimensions in the vicinity of project.

3. Ordinary high water mark

4. Location, size, and type of critical areas, if present.

5. Typical cross section or sections showing:

   a. Existing ground elevation

   b. Proposed ground elevation

   c. Height of existing structures

   d. Height of proposed structures

6. Where appropriate, proposed land contours using one-foot intervals, if development involves grading, cutting, filling, or other alteration of land contours.

7. Show dimensions and locations of existing structures which will be maintained.

8. Show dimensions and locations of proposed structures.

9. Identify source, composition, and volume of fill material.

10. Identify composition and volume of any extracted materials and identify proposed disposal area.

11. Location of proposed utilities, such as sewer, water, gas, and electricity.

12. Shoreline designation according to the Master Program.

C. **Vicinity Map**

1. Indicate site location using common points of reference (roads, state highways, prominent landmarks, etc.).

2. If the development involves the removal of any soils by dredging or otherwise, identify the proposed disposal site on the map. If the disposal site is beyond the confines of the vicinity map, provide another vicinity map showing the precise location of the disposal site and its distance to the nearest city or town.

3. Give brief narrative description of the general nature of the improvements and land use within 1,000 feet in all directions from development site (i.e., residential to the north, commercial to the south, etc.).

D. **Application Fees-** A filing fee in an amount established by the annual fee schedule adopted by the City Council shall be paid to the City of Toledo at the time of application.

E. **Complete Application-** Complete application and documents for all Shoreline Permits shall be submitted to the City for processing and review. The application will be reviewed for completeness and a determination of completeness made by the Shoreline Administrator within 30 days of the application date.

F. **Permit Process**- When a complete application and associated information have been received by the Shoreline Administrator; the actions listed below shall be taken:

1. **Public Notice.** The Shoreline Administrator shall have a Notice of Application for Substantial Development Permit, Conditional Use, or Variance (as applicable) published in a newspaper of general circulation, within the area in which the development is proposed.

2. The Notice of Application for Substantial Development Permit, Conditional Use, or Variance (as applicable) describes the location of the project and includes a statement that any person desiring to present their views to the City may do so in writing within thirty (30) days of the final newspaper publication. The notice will also provide the date when a public hearing will be held if the

application is for a conditional use permit or a variance and will state that any person may submit oral or written comments at the hearing. All persons who indicate their desire to receive a copy of the final order shall be notified, in a timely manner, of the Shoreline Administrator's decision.

3. The Notice of Application for a Substantial Development Permit, Conditional Use, or Variance (as applicable) must be published in the appropriate newspaper at least once a week, on the same day of the week, for two consecutive weeks.

4. The Shoreline Administrator shall also post the Notice of Application for a Substantial Development Permit, Conditional Use or Variance (as applicable) on-site per the City of Toledo Land Development Code, Chapter V, Section 15.02, Public Notice.

5. The Shoreline Administrator may require any other manner of public notice deemed appropriate to accomplish the objectives of reasonable notice to the adjacent landowners and the public as outlined in the City of Toledo Land Development Code, Chapter V, Section 15.02, Public Notice.

6. The Shoreline Administrator shall notify the U.S. Fish and Wildlife Service and the National Marine Fisheries Service when application is made for a Variance.

7. **Public Hearing.** At least one public hearing shall be held by the City Council regarding an application for a Conditional Use Permit or Variance. The public hearing should be held within sixty (60) days from the date the thirty (30) day public comment period has ended.

8. A written notice of the public hearing at which the City Council and Shoreline Administrator will consider the Conditional Use Permit or Variance application shall be mailed or delivered to the applicant a minimum of seven (7) days prior to the hearing. The Shoreline Administrator's findings and conclusions and recommended action on the application shall be sent to the applicant with the notice of public hearing.

9. **Local Agency Review.** The Shoreline Administrator shall complete their review of an application for a Substantial Development Permit, Conditional Use, or Variance using the following information:

a. The application.

b. Applicable SEPA documents.

c. Evidence presented at the public hearing (applicable only for Conditional Use Permits and Variance applications).

d. Written and oral comments from interested persons.

e. The findings, conclusions, and recommendation of the Shoreline Administrator.

f. Information and comment from other City departments.

g. Independent study of the Community Development Department.

The City Council and/or the Shoreline Administrator may require an applicant to furnish information and data in addition to that contained or required on the substantial Development Permit, Conditional Use, or Variance application.

10. **Local Agency Review Criteria.** The Shoreline Administrator shall review the application and related information and make a decision to approve, approve with condition, or deny the application for a Substantial Development Permit, Conditional Use, or Variance. No Permit shall be granted unless the proposed development is consistent with the provisions of this Master Program, the Shoreline Management Act of 1971, and the rules and regulations adopted by the Department of Ecology there under.

11. **Burden of Proof on Applicant.** The burden of proving that the proposed substantial development is consistent with the criteria which must be met before a Permit is granted shall be on the applicant.

12. **Conditional Approval.** Should the Shoreline Administrator and/or the City Council find that any application does not substantially comply with criteria imposed by the Master Program and the Shoreline Management Act of 1971, they may deny such application or attach any terms or condition which is deemed suitable and reasonable to affect the purpose and objective of this Master Program.

13. **Bonds.** The Shoreline Administrator may require the applicant to post a bond in favor of the City of Toledo to assure full compliance with any terms and conditions imposed by the Shoreline Administrator and/or the City Council on any Substantial Development or Conditional Use Permit. Said bond shall be in an amount to reasonably assure the City that any deferred improvement will be carried out within the time stipulated.

14. **Shoreline Administrator's Final Decision.** Within Thirty (30) days from the date of the public hearing, or within Thirty (30) days from the end of the public comment period for the public notice of a Substantial Development Permit, the City shall send the Shoreline Administrator's final order, including findings and conclusions to the applicant. The following information shall be provided to the Department of 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 Master Program policies and regulations and the consistency of the project with appropriate review criteria for the type of permit(s);

    c. The final decision of the City;

    d. The permit data sheet per WAC 173-27-990;

    e. Affidavit of public notice; and

    f. Where applicable, the Shoreline Administrator shall also file the applicable documents required by the State Environmental Policy Act (RCW 43.21C).

    The Shoreline Administrator shall provide Notice of Final Decision per the City of Toledo Land Development Code, Chapter V, Section 15.

15. **Department of Ecology Review of Variance and Conditional Use Permits.** After the City Council has approved a Variance or Conditional Use Permit, the Shoreline Administrator shall submit the Permit to the Department of Ecology for its approval, approval with conditions, or denial. When a Substantial Development Permit and a Conditional Use or Variance Permit are required for a

development, the submittal on the Permits shall be made simultaneously. The Department of Ecology shall render and transmit its final decision approving, approving with conditions, or disapproving the Variance or Conditional Use Permit within thirty (30) days of submittal by the City of Toledo. Filing is not complete until all the required documents have been received by the Department of Ecology and the Attorney General. Upon receipt of the Department of Ecology's final decision, the Shoreline Administrator shall notify those interested persons having requested notification of such decision.

16. Development authorized by a Variance or Conditional Use Permit shall not begin until twenty-one (21) days from the date the City receives the decision of the Department of Ecology, provided no appeal proceedings have been initiated.

17. Appeals

a. **Local Appeals.** Any decision made by the Shoreline Administrator may be appealed to the City Council subject to the following provisions:

i. Appeals shall be submitted in writing to the city clerk by 5:00 p.m. of the twenty-first calendar day following the date of the Shoreline Administrator's decision. When the last day of the comment period so computed is a Saturday, Sunday, or federal or city holiday, the period shall run until 5:00 p.m. on the next business day. The appeal shall be in writing and shall state specific objections to the decision and the relief sought. The appeal shall be accompanied with any applicable filing fees established in the annual City of toledo Fee Schedule.

ii. The record established by the Shoreline Administrator (including testimony, exhibits, comment letters, plans, staff reports, etc.) shall be the record used by council unless it is supplemented by the city council pursuant to this section. A request to supplement the record shall be made in a separate document that is attached to the appeal. The appeal shall not mention or refer to the material that is proposed to be added to the record. A request to supplement the record shall include a brief

description of the nature of the material to be added and a separate, attached copy of the material to be added. The request to supplement the record must clearly establish that the new evidence or information to be added to the record was not available or could not have been reasonably produced at the time of application or the public hearing before the City Council.

iii. The council may affirm, modify, reverse the Shoreline Administrator's decision, remand to the Shoreline Administrator with directions for further proceedings, or grant other appropriate relief. If the council reverses or modifies the Shoreline Administrator's decision, the council shall enter findings and/or conclusions to support the decision.

iv. The Shoreline Administrator's decision on appeal shall be given substantial weight.

b. **Appeals to State Shorelines Hearings Board.** Any person aggrieved by the granting, denying, or rescinding of a Shoreline Permit on shorelines of the state pursuant to RCW 90.58.140 may seek review from the State Shorelines Hearings Board by filing a petition for review within twenty-one (21) days of the date of receipt of the City's or Ecology's final decision concerning the shoreline permit. Appeals of any final permit decision may be made pursuant to 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). An appeal of a Variance or Conditional Use Permit shall be filed with the Hearings Board within twenty-one (21) days of the date the Department of Ecology's final decision is transmitted to the City of Toledo and the applicant. The request for review shall be in the form required by the rules for practice and procedure before the Shorelines Hearings Board. The person seeking review shall also file a copy of the request for review with the State Department of Ecology and the Attorney General.

18. **Washington State Department of Ecology Review.** Development authorized by a Shoreline Substantial Development

Permit shall not begin until 21 days from the date the Department of Ecology acknowledges in writing receipt of the Shoreline Substantial Development Permit: provided no appeals have been initiated during this 21-day period.

**SUBSTANTIAL DEVELOPMENT PERMIT**

A. A shoreline substantial development permit shall be required for all proposed use and development of shorelines unless the proposal is specifically exempted by shoreline exemptions.

B. In order to be approved, the decision maker shall find that the proposal is consistent with the following criteria:

1. All applicable regulations of this Program appropriate to the shoreline environment designation and the type of use or development proposed shall be met, except those bulk and dimensional standards that have been modified by approval of a shoreline variance as outlined on page 20.

2. All policies of this Program appropriate to the shoreline environment designation and the type of use or development activity proposed shall be considered and substantial compliance demonstrated.

3. Consideration shall be given to the cumulative environmental impact of additional requests for like actions in the shoreline vicinity. For example, if shoreline substantial development permits were granted for other developments in the area where similar circumstances exist, the sum of the permitted actions should also remain consistent with the policy of RCW 90.58.020 and should not produce significant adverse effects to the shoreline ecological functions and processes or other users.

C. The City is the final authority for a Shoreline Substantial Development Permit, unless there is an appeal filed with the State Shoreline Hearings Board.

**SHORELINE CONDITIONAL USE PERMIT**

The purpose of a conditional use permit is to provide a system within the Program which allows flexibility in the application of use regulations in a manner consistent with the policies of RCW 90.58.020. In authorizing a conditional use, the City or Department of Ecology (department) may attach special conditions to the permit to prevent undesirable

effects of the proposed use and/or to assure consistency of the project with the act and the Program.

A. Uses which are classified or set forth in the Program as conditional uses may be authorized provided that the applicant demonstrates all of the following:

   1. That the proposed use is consistent with the policies of RCW 90.58.020 and the Program;

   2. That the proposed use will not interfere with the normal public use of public shorelines;

   3. That the proposed use of the site and design of the project is compatible with other authorized uses within the area and with uses planned for the area under the Comprehensive Plan and this Program;

   4. That the proposed use will cause no significant adverse effects to the shoreline environment in which it is to be located; and

   5. That the public interest suffers no substantial detrimental effect.

B. 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.

C. Other uses which are not classified or set forth in the applicable master program may be authorized as conditional uses provided the applicant can demonstrate consistency with the requirements of this section and the requirements for conditional uses contained in the master program.

D. Uses which are specifically prohibited by the Program may not be authorized.

**SHORELINE VARIANCE PERMIT**

The purpose of a variance permit is strictly limited to granting relief from specific bulk, dimensional or performance standards set forth in the Master Program where there are extraordinary circumstances relating to the physical character or configuration of

property such that the strict implementation of the master program will impose unnecessary hardships on the applicant or thwart the policies set forth in RCW 90.58.020.

A. Variance permits should be granted in circumstances where denial of the permit would result in a thwarting of the policy enumerated in RCW 90.58.020. In all instances the applicant must demonstrate that extraordinary circumstances shall be shown and the public interest shall suffer no substantial detrimental effect.

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

1. That the strict application of the bulk, dimensional or performance standards set forth in the applicable master program precludes, or significantly interferes with, reasonable use of the property.

2. That the hardship described in 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 the master program, and not, for example, from deed restrictions or the applicant's own actions.

3. That the design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and shoreline master program and will not cause adverse impacts to the shoreline environment;

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

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

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

C. 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:

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

2. That the proposal is consistent with the criteria established under Subsection B above; and

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

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

E. Variances from the use regulations of this Master Program are prohibited.

**SHORELINE EXEMPTIONS**

A. An exemption from the substantial development permit process is not an exemption from compliance with the Act or this Program, or from any other regulatory requirements. To be authorized, all uses and developments must be consistent with the policies and regulatory provisions of this Program and the Act. A statement of exemption shall be obtained for exempt activities.

B. Exemptions shall be construed narrowly. Only those developments that meet the precise terms of one or more of the listed exemptions may be granted exemptions from the substantial development permit process.

C. The burden of proof that a development or use is exempt is on the applicant or proponent.

D. If any part of a proposed development is not eligible for exemption, then a substantial development permit is required for the entire project.

E. A development or use that is listed as a conditional use pursuant to this Program or is an unlisted use, must obtain a shoreline conditional use permit even if the development or use does not require a shoreline substantial development permit.

F. When a development or use is proposed that does not comply with the bulk, dimensional and/or performance standards of the 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.

G. All permits or statements of exemption issued for development or use within shoreline jurisdiction shall include written findings prepared by the Shoreline Administrator, including compliance with applicable bulk and dimensional standards and policies and regulations of this Program. The Shoreline Administrator may attach conditions to the approval of exempt developments and/or uses as necessary to assure consistency of the project with the Act and the Program.

H. Exemptions listed. The following shall be considered exempt from the requirement to obtain a shoreline substantial development permit in accordance with RCW 90.58.030 and WAC 173-27-040.

1. Any development of which the total cost or fair market value, whichever is higher, does not exceed five thousand seven hundred eighteen dollars ($5,718), or as adjusted by WAC 173-27-040, if such development does not materially interfere with the normal public use of the water or shorelines of the state. For the purpose of determining whether or not a permit is required, the total cost or fair market value shall be based on the value of the 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 structures or developments, including damage by accident, fire, or elements;

3. Construction of the normal protective bulkhead common to single family residences;

4. Emergency construction necessary to protect property from damage by the elements;

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. 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;

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 for his own use or for the use of his or her family, which residence does not exceed a height of thirty-five 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 this chapter;

8. 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 and multiple family residences. This exception applies if either: (A) In salt waters, the fair market value of the dock does not exceed $2,500; or (B) in fresh waters, the fair market value of the dock does not exceed $10,000, but if subsequent construction having a fair market value exceeding $2,500 occurs within 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 groundwater for 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, which were created, developed, or utilized primarily as a part of an agricultural drainage or diking system;

12. 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 the 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 a structure, and upon completion of the activity the vegetation and land configuration of the site are restored to conditions existing before the activity;

    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 ensure that the site is restored to preexisting conditions; and

    e. The activity is not subject to the permit requirements of RCW 90.58.550;

13. The process of removing or controlling an aquatic noxious weed, as defined in RCW 17.26.020, through the use of an 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 jointly with other state agencies under RCW 43.21C.

I. Letter of exemption. All uses, land and water alterations, and development that are not defined as substantial developments are exempted from the requirement to obtain a shoreline substantial development permit. However, these developments must still comply with the standards of the Shoreline Master Program. In addition, these developments may still need a shoreline conditional use permit or a shoreline variance.

A project proponent must obtain confirmation that it conforms to the Shoreline Master Program and to state law. If it complies, a letter of exemption will be issued stating that there are no further Shoreline permits to obtain, and may contain conditions which the proponent must meet.

## UNSPECIFIED USES

This program does not attempt to identify or foresee all conceivable shoreline uses or types of development. When a use or development is proposed which is not readily classified within an existing use or development category, the administrator shall identify and apply those program policies and regulations which will best promote the policies of the Shoreline Management Act and the shoreline program, with special reference to the policies of the environmental designation in which the use will be located. Unspecified uses shall require a Shoreline Conditional Use Permit.

## TIME REQUIREMENTS AND REVISIONS

A. Time Requirements for Shoreline Permits

1. **Duration of Permits:** The City of Toledo may issue shoreline permits with termination dates of up to five years. If a Permit does not specify a termination date, the following requirements apply, consistent with WAC 173-27:

   a. **Time Limit for Substantial Progress.** Construction activities shall be commenced or, where no construction activities are involved, the use or activity shall be commenced within two (2) years after approval of the effective date of a Shoreline Permit.

   b. **Extension for Substantial Progress.** The City of Toledo 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 the proposed extension is given to parties of record on the Shoreline Permit and to the Department of Ecology.

   c. **5-Year Permit Authorization**. If construction has not been completed within 5 years after the effective date of a Shoreline Permit, the City will review the Permit and, upon showing of good cause, either extend the Permit for one year based on reasonable factors, or terminate the Permit. A request for extension must be filed before the expiration date and notice of the proposed extension is given to parties of record and the Department of Ecology. Note: Only one single extension is permitted.

B. Revisions of 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, the Master Program and/or the policies and provisions of chapter 90.58 RCW. Changes which are not substantive in effect do not require approval of a revision. When an applicant desires to revise a Permit, the applicant must submit detailed plans and text describing the proposed changes. If the Shoreline Administrator determines that the revisions proposed are *within the scope and intent of the original Permit*, consistent with the Master Program, and the Shoreline Management Act, the Shoreline Administrator may approve the revision. "Within the scope and intent of the original Permit" means all of the following:

1. No additional over-water construction is involved, except that pier, dock, or float construction may be increased by five hundred (500) square feet or ten percent (10%) from the provisions of the original permit, whichever is less;

2. Ground area coverage and height is not increased more than ten percent (10%) from the provisions of the original permit;

3. The revised permit does not authorize development to exceed height, setback, lot coverage, or any other requirement of the City of Toledo Shoreline Master Program except as authorized under a variance granted as the original permit or part thereof;

4. Additional or revised landscaping is consistent with conditions (if any) attached to the original Permit;

5. The use authorized pursuant to the original Permit is not changed; and

6. No adverse environmental impact will be caused by the project revision.

If the sum of the proposed revision and any previously approved revisions do not meet the criteria above, an application for a new Shoreline Permit must be submitted. If the revision involves a Conditional Use or Variance, the Shoreline Administrator must submit the revision to the Department of Ecology for Ecology's approval, approval with conditions, or denial, and shall indicate that the revision is being submitted under the requirements

of WAC 173-27-100. Ecology shall render and transmit to the City of Toledo and the applicant its final decision within fifteen (15) days of the date of Ecology's receipt of the submittal from the City. The Shoreline Administrator shall notify parties of record of Ecology's final decision. (see WAC 173-27).

The City of Toledo or the Department of Ecology's decision on revision to the Permit may be appealed within twenty-one (21) days of such decision, in accordance with WAC 173-27-100.

Construction allowed by the revised Permit that is not authorized under the original Permit is undertaken at the applicant's own risk until the expiration of the appeals deadline.

**INSPECTIONS**

Pursuant to RCW 90.58.200, the Shoreline Administrator or their authorized representatives of that local government may enter land or structures to enforce the provisions of this Program. Entry shall be at reasonable times. If the land or structures are occupied, the Shoreline Administrator shall first present proper credentials and request entry; and if the land or structures are unoccupied, the Shoreline Administrator shall first make a reasonable effort to locate the owner, or other person having control of the property, and request entry.

**PENALTIES AND ENFORCEMENT**

The Shoreline Management Act imposes significant penalties for violation of the act, regulations and master programs. A violation constitutes a gross misdemeanor, which is punishable by fine or imprisonment (RCW 90.58.220). In addition to the criminal penalty, the Act imposes liability on any person violating the act or conditions of a permit for all damage to public or private property arising from the violation. Furthermore, the violator may have to restore an area affected by a violation, and pay the entire cost of restoration, including attorney's fees and court costs (RCW 90.58.230).

# 4. NONCONFORMING DEVELOPMENT

Uses, lots or structures within shoreline jurisdiction that do not meet the specific standards of this Program are subject to the nonconforming provisions of this section.

**NONCONFORMING USES AND STRUCTURES – GENERAL**

A. In accordance with the requirements of this section, structures that were legally established prior to the Program or amendments thereto, and are used for a conforming use but which are nonconforming with regard to setbacks, buffers or yards, area, bulk, height or density may be maintained and repaired and may be enlarged or expanded provided that said

enlargement does not increase the extent of nonconformity by further encroaching upon or extending into areas where construction or use would not be allowed for new development or uses.

B. A nonconforming structure which is moved any distance must be brought into conformance with the Program and the Shoreline Management Act.

C. If a nonconforming structure is damaged to an extent not exceeding 75 percent of the replacement cost of the original structure, it may be reconstructed to those configurations existing immediately prior to the time the structure was damaged, provided that application is made for the permits necessary to restore the structure within 6 months of the date the damage occurred, all permits are obtained, and the restoration is completed within 2 years of permit issuance, except that nonconforming single-family residences, manufacture homes and mobile homes may be reconstructed regardless of the extent of damage so long as application is made within the times required by this subsection.

D. Residential structures and uses located in a residential zone district and in existence at the time of adoption of this Program may be rebuilt after a fire or other natural disaster to their original dimensions, location and height, but may not be enlarged except as provided in the Subsection E.3 below.

E. Residential structures and uses located in a residential zone district and in existence at the time of adoption of this Program shall be deemed nonconforming in terms of height, use, or location provisions of this Program. Such structures shall comply with the following requirements:

1. Existing nonconforming residential buildings may be replaced within the existing footprint upon approval of a shoreline substantial development permit.

2. For the replacement of manufactured homes and mobile homes, a greater building footprint than existed prior to replacement may be allowed in order to accommodate the conversion of single-wide manufactured homes to double-wide manufactured homes, upon approval of a shoreline conditional use permit.

3. Existing nonconforming single-family residences may be enlarged or expanded in conformance with the applicable bulk and dimensional standards upon approval of a shoreline conditional use permit and by conformance with the following requirements:

a. An expansion or enlargement to the main structure or the addition of a normal appurtenance as defined in

WAC 173-27-040(2)(g) to the main structure shall only be accomplished by:

i. Addition of space above the building footprint of the main structure; and

ii. Addition of space onto or behind that side of the main structure which is farthest away from the ordinary high-water mark.

If the requirements in i to ii above cannot be accomplished without causing significant harm to shoreline vegetation or other shoreline ecological functions, the Administrator may require additional site analysis to determine if an alternative location for the expansion or enlargement of the structure is feasible.

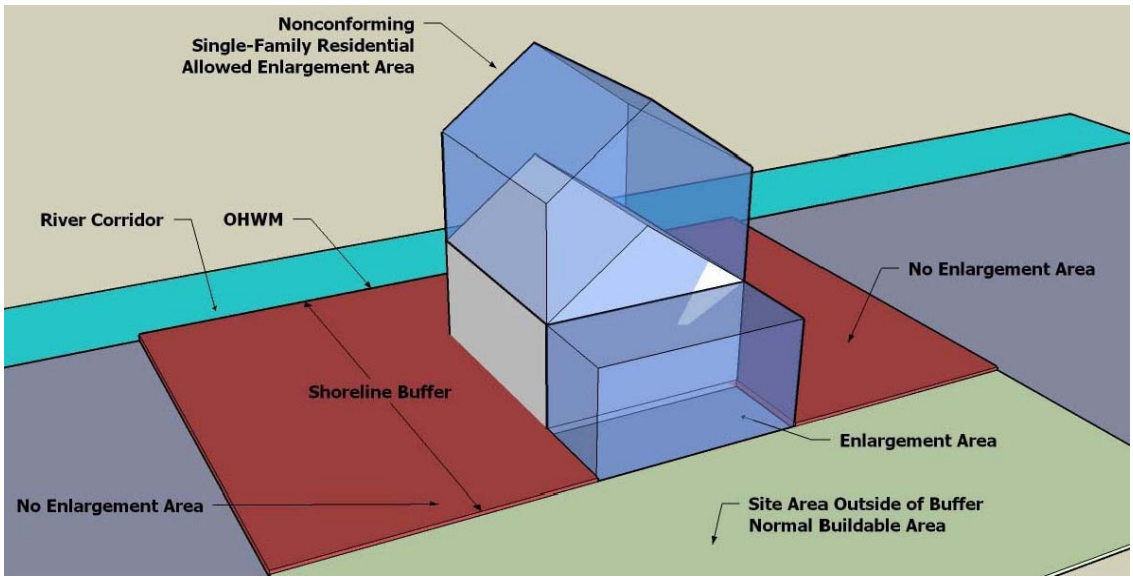



**FIGURE 1**

**Possible Expansion to a Nonconforming Single-Family Residence**

F. Existing residential buildings that have a change in use to another legal, conforming use shall conform to the buffer and structure setback requirements and all other requirements of the Program.

G. A use which is listed 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 nonconforming use.

H. 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 preexisting nonconformities.

I. If a nonconforming use is discontinued for 12 consecutive months or 12 months during any 2-year period, the nonconforming rights shall expire and any subsequent use shall be conforming.

**DEVELOPMENT OF A NONCONFORMING LOT**

A. An undeveloped lot, tract, parcel, site or division of land which was established in accordance with local and state subdivision requirements prior to the effective date of the Act or this Program may be developed if permitted by other land use regulations of the City if such development conforms to all other requirements of this Program and the Act.

B. When lot size would prevent development of a nonconforming lot consistent with the applicable buffer or setback requirements, the Administrator may authorize development under the following conditions:

1. A written request is received from the project proponent.

2. The development will be located as far landward as possible from the ordinary high-water mark.

3. The decision of the Administrator is based upon the shoreline variance criteria.

C. Upon receiving a written request for development of a nonconforming lot, the Administrator shall mail notice of the request to all property owners within 300 feet. At a minimum, the notice shall state the following:

1. The decision on the request will be made within 10 days from the date that the notice was mailed; and

2. Interested citizens may contact the Administrator for further information.

D. Appeal of the Administrator's decision shall be made in accordance with the appeal procedures set forth in section 15.07 of the City of Toledo land Development Code.

# 5. MASTER PROGRAM GOALS

This section describes the overall goals of the Master Program. These goals are informed by WAC 173-26 and the governing principles outlined on page 3 of Section 1.

The general policies and regulations in Section 6, and the specific use and modification policies and regulations in Sections 7 and 8 are the means by which these goals are implemented. Achievement of these goals shall be consistent with the state's policies of avoiding cumulative impacts and ensuring no net loss of shoreline processes, functions, and values.

- These goals are not listed in order of priority.

## CONSERVATION

### Purpose

As required by RCW 90.58.100(2)(f), the conservation goals address the protection of natural resources, scenic vistas, aesthetics, and vital shoreline areas for fisheries and wildlife for the benefit of present and future generations.

### Goals

A. Preserve, enhance and protect shoreline resources (i.e., wetlands and fish and wildlife habitats) for their ecological functions and values, and aesthetic and scenic qualities.

B. Maintain and sustain natural shoreline formation processes through effective shoreline management.

C. Promote restoration and enhancement of areas that are biologically and/or aesthetically degraded while maintaining appropriate use of the shoreline.

D. Protect and enhance native shoreline vegetation to maintain water quality, fish and wildlife habitat, and other ecological functions, values and processes.

## ECONOMIC DEVELOPMENT

### Purpose

As required by RCW 90.58.100(2)(a), the economic development goals address the location and design of industries, transportation facilities, port facilities, tourist facilities, commerce and other developments that are particularly dependent on their location on or use of the shorelines.

**Goals**

A. Encourage viable, orderly economic growth through economic activities that benefit the local economy and are environmentally sensitive. Such activities should not disrupt or degrade the shoreline or surrounding environment.

B. Accommodate and promote water-oriented industrial and commercial uses and development, giving highest preference to water-dependent uses.

C. Encourage water-oriented recreational use as an economic asset that will enhance public enjoyment of the shoreline.

D. Encourage economic development in areas already partially developed with similar uses when consistent with this Program and the Toledo Comprehensive Plan.

## HISTORIC, ARCHEOLOGICAL, CULTURAL, SCIENTIFIC AND EDUCATIONAL RESOURCES

**Purpose**

As required by RCW 90.58.100(2)(g), these goals address protection and restoration of buildings, sites and areas having historic, archeological, cultural, scientific or educational significance.

**Goals**

A. Maintain finite and irreplaceable links to the past by identifying, preserving, protecting, and where appropriate, restoring historic, archaeological, cultural, scientific and educational (HACSE) sites.

B. Protect HACSE sites and buildings identified on national, state or local historic registers from destruction or alteration, and from encroachment by incompatible uses.

C. Foster greater appreciation for shoreline management, maritime activities, environmental conservation, natural history and cultural heritage by educating and informing citizens of all ages through diverse means.

D. Ensure that tribal organizations and the Washington State Department of Archaeology and Historic Preservation are involved in the review of projects that could potentially affect such resources.

## PUBLIC ACCESS

### Purpose

As required by RCW 90.58.100(2)(b), the public access goals address the ability of the public to reach, touch and travel on the shorelines of the state and to view the water and the shoreline from adjacent locations.

### Goals

A. Increase the ability of the general public to reach, touch, and enjoy the water's edge, to travel on the waters of the state, and/or to view the water and the shoreline from adjacent locations, provided that private rights, the public safety, and shoreline ecological functions and processes are protected consistent with the U.S. and State constitutions, and state statutes.

B. Locate, design, manage and maintain public access in a manner that protects shoreline ecological functions and processes and the public health and safety.

C. Design and manage public access in a manner that ensures compatibility with water-dependent uses.

D. Where appropriate, acquire access to shorelands. Encourage cooperation among the City and Lewis County, landowners, developers, other agencies and organizations to enhance and increase public access to shorelines as specific opportunities arise.

E. Provide and protect visual access to shorelines.

F. Require public access to and along the shorelines as a condition of approval for shoreline development activities commensurate with the impacts of such development and the corresponding benefit to the public, and consistent with constitutional limitations.

G. Develop and manage public access to prevent adverse impacts to adjacent private shoreline properties and developments.

## RECREATION

### Purpose

As required by RCW 90.58.100(2)(c), the recreational goals address the creation and expansion of water-oriented public recreational opportunities.

**Goals**

A. Encourage diverse recreational opportunities in shoreline areas that can support such use and development without human health, safety, and/or security risks, and without adverse effects on shoreline functions, processes, values, private property rights, and/or neighboring uses.

B. Plan for future shoreline recreational needs and acquire (i.e. through purchase, donation or other agreement) shoreline areas that have a high potential to provide recreation areas.

C. Provide for both active and passive recreational needs when developing recreational areas.

D. Support other governmental and non-governmental efforts to acquire and develop additional shoreline properties for public recreational uses.

## RESTORATION AND ENHANCEMENT

**Purpose**

As required by WAC 173-26-186, the restoration and enhancement goals address reestablishment, rehabilitation and improvement of impaired shoreline ecological functions, values and/or processes.

**Goals**

A. Improve impaired shoreline ecological functions and/or processes through voluntary and incentive-based public and private programs and actions that are consistent with this Program and other approved restoration plans.

B. Provide fundamental support to restoration work by various organizations by identifying shoreline restoration priorities, and by organizing information on available funding sources for restoration opportunities.

C. Target restoration and enhancement towards improving habitat requirements of priority and/or locally important wildlife species.

## SHORELINE USE

**Purpose**

As required by RCW 90.58.100(2)(e), the shoreline use goals address the general distribution, location, and extent of housing, business, industry, transportation,

agriculture, natural resources, aquaculture, recreation, education, navigation and other categories of public and private land use.

**Goals**

A. Ensure that shoreline use patterns are compatible with the ecological functions and values of the shoreline and avoid disruption of natural shoreline processes.

B. Protect water quality and aquatic habitat with all new shoreline development.

C. Increase protection of shoreline ecological resources by properly siting and regulating water-dependent and residential uses that have preferred status for use of waterfront lands.

D. Encourage uses that allow for or include restoration so that areas affected by past activities or catastrophic events can be improved.

E. Ensure that all new development is consistent with the Toledo Comprehensive Plan and development code.

F. Limit development intensity in ecologically sensitive and fragile areas.

G. Reduce health and safety risks by limiting development in areas subject to flooding, erosion, landslides, channel migration and other hazards.

## TRANSPORTATION AND UTILITIES

**Purpose**

As required by RCW 90.58.100(2)(d), transportation and utilities goals address circulation and the general location and extent of thoroughfares, transportation routes and other public utilities and facilities.

**Goals**

A. Develop efficient and economical transportation and utility systems in a manner that assures the safe movement of people, goods and services without adverse effects on shoreline use and development or shoreline ecological functions, processes or values.

B. Locate, construct and maintain new transportation and utility facilities in areas that do not require shoreline stabilization, dredging, extensive cut/fill and other forms of shoreline alteration.

# 6. GENERAL POLICIES AND REGULATIONS

The following general policies and regulations apply to all shorelines of the state that are located in Toledo, regardless of the specific shoreline environment designation. They are to be used in conjunction with the more specific shoreline use and modification policies and regulations in Sections 7 and 8. Policies are statements of intent directing or authorizing a course of action.

- General policies and regulations are not listed in order of priority.

## ENVIRONMENT IMPACT MITIGATION

### Policies

All shoreline use and developments should be carried out in a manner that avoids and minimizes adverse impacts so that the resulting ecological condition does not become worse than the current condition. This means assuring no net loss of ecological functions and processes and protecting critical areas identified in Section 6 that are located in shoreline jurisdiction. Should a proposed use or development potentially create significant adverse environmental impacts not otherwise avoided or mitigated by compliance with this Program, the Administrator should require mitigation measures to ensure no net loss of shoreline ecological functions.

### Regulations

A. To the extent Washington's State Environmental Policy Act of 1971 (SEPA) RCW 43.21C, is applicable, the analysis of environmental impacts from proposed shoreline uses or developments shall be conducted consistent with the rules implementing SEPA, Chapter IV of the City of Toledo Land Development Code and WAC 197–11.

B. Where required, mitigation measures shall be applied in the following sequence of steps listed in order of priority.

   1. Avoiding the impact altogether by not taking a certain action or parts of an action;

   2. Minimizing impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology or by taking affirmative steps to avoid or reduce impacts;

   3. Rectifying the impact by repairing, rehabilitating or restoring the affected environment;

4. Reducing or eliminating the impact over time by preservation and maintenance operations;

5. Compensating for the adverse impact by replacing, enhancing, or providing substitute resources or environments (compensatory mitigation);

6. Monitoring the impact and the compensation projects and taking appropriate corrective measures.

C. In determining appropriate mitigation measures applicable to shoreline development, lower priority measures shall be applied only where higher priority measures are determined to be infeasible or inapplicable.

D. Required mitigation shall not be in excess of that necessary to assure that proposed uses or development will result in no net loss of shoreline ecological functions.

E. Mitigation actions shall not have a significant adverse impact on other shoreline functions fostered by the policies of the Shoreline Management Act.

F. When compensatory measures are appropriate pursuant to the priority of mitigation sequencing above, preferential consideration shall be given to measures that replace the impacted functions directly and in the immediate vicinity of the impact. However, alternative compensatory mitigation within the watershed that addresses limiting factors or identified critical needs for shoreline resource conservation based on watershed or comprehensive resource management plans applicable to the area of impact may be authorized. Authorization of compensatory mitigation measures may require appropriate safeguards, terms or conditions as necessary to ensure no net loss of ecological functions.

## CRITICAL AREAS AND SHORELINE VEGETATION CONSERVATION

### Policies

A. Adopt regulations to assure that development within the shoreline jurisdiction results in no let loss of ecological functions necessary to sustain the existing shoreline natural resources.

B. Provide a level of protection to critical areas within the shoreline area that assures no net loss of shoreline ecological functions necessary to sustain shoreline natural resources. If conflicts between the SMP and the critical

area regulations arise, the regulations that are most consistent with the SMA or its WAC provisions will govern.

C. Allow activities in critical areas that protect and, where possible, restore the ecological functions and ecosystem-wide processes of the City's shoreline.

D. Preserve, protect, restore and/or mitigate for unavoidable impacts to wetlands and fish and wildlife habitat conservation areas within and associated with the City's shorelines to achieve no net loss of critical areas and their functions.

E. Developments in shoreline areas that are identified as geologically hazardous should be avoided.

F. Actions taken to reduce flood damage or hazards should not result in a net loss of ecological functions. Uses, developments, and shoreline modifications that may significantly or cumulatively increase flood hazards should not be allowed.

G. Development and shoreline modifications that would interfere with the process of channel migration and may cause adverse impacts to properties or public improvements downstream or result in a net loss of shoreline ecological functions should not be allowed.

H. New development or creation of new lots that would cause foreseeable risk from geological conditions to people or improvements during the life of the development should not be allowed.

I. New development that would require structural shoreline stabilization over the life of the development should not be allowed, unless there are no feasible alternatives or locations for such development and when no net loss of shoreline ecological functions will result.

J. Limit the removal of vegetation along the shoreline to the minimum necessary to accommodate the approved shoreline uses and development.

K. Prefer native vegetation along the shoreline over a site cleared of vegetation to create views and lawns.

L. Allow limited selective clearing of native shoreline vegetation for approved uses provided that slope stability and ecological functions are not compromised.

M. Preserve existing native vegetation along the shoreline and require planting as mitigation when impacts to vegetation for authorized uses cannot be avoided.

N. Provide flexibility when balancing overlapping shoreline policies regarding vegetation conservation, a preference for water-oriented uses, and requirements to provide public access.

**Regulations**

A. All shoreline uses and activities shall be located, designed, constructed and managed to protect and/ or enhance the ecological functions and ecosystem-wide processes provided by critical areas including, but not limited to: wetlands, fish and wildlife habitats, critical aquifer recharge areas, geologically hazardous areas and frequently flooded areas.

B. The following chapter of the Toledo Land Development Code, pertaining to the protection of critical areas, shall be incorporated into this SMP as amended below to protect critical areas within shoreline jurisdiction.

1. Chapter IV (Critical Areas Protection) of the City of Toledo Land Development Code (LDC);

C. Exceptions to the applicability of the critical areas regulations in Chapter IV of the Toledo LDC in shoreline jurisdiction are listed below.

1. Section 13.02 “Wetland Delineation and Protection”

a. (b)(3) - Identification of wetlands and delineation of their boundaries shall be done in accordance with the most recent edition of the U. S. Army Corps of Engineers (2010) Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Western Mountains, Valleys, and Coast Region (Version 2.0). Wetland delineations are valid for 5 years.

b. (b)(4) - Wetlands shall be rated according to the Washington State Department of Ecology wetland rating system found in the *"Washington State Wetland Rating System for Western Washington*", revised April 2004 (Ecology Publication No. 04-06-025, or as revised and approved by Ecology).

c. (c) - The following activities are regulated if they occur in a regulated wetland or its buffer:

i. The removal, excavation, grading, or dredging of soil, sand, gravel, minerals, organic matter, or material of any kind.

ii. The dumping of, discharging of, or filling with any material.

iii. The draining, flooding, or disturbing of the water level or water table.

iv. Pile driving.

v. The placing of obstructions.

vi. The construction, reconstruction, demolition, or expansion of any structure.

vii. The destruction or alteration of wetland vegetation through clearing, harvesting, shading, intentional burning, or planting of vegetation that would alter the character of a regulated wetland.

viii. "Class IV - General Forest Practices" under the authority of the "1992 Washington State Forest Practices Act Rules and Regulations," WAC 222-12-030, or as thereafter amended.

ix. Activities that result in:

a. A significant change of water temperature.

b. A significant change of physical or chemical characteristics of the sources of water to the wetland.

c. A significant change in the quantity, timing, or duration of the water entering the wetland.

d. The introduction of pollutants.

d. (d)(2) – Buffer widths are determined according to a wetland's rating, however the buffer widths shall be as follows:

| Category of Wetland | Width of Buffer |
|---|---|
| IV | 50 feet |
| III | 150 feet |
| II | 300 feet |
| I | 300 feet |

e. (e) - Requirements for Compensatory Mitigation:

i. Compensatory mitigation for alterations to wetlands shall be used only for impacts that cannot be avoided or minimized and shall achieve equivalent or greater biologic functions. Compensatory mitigation plans shall be consistent with *Wetland Mitigation in Washington State – Part 2: Developing Mitigation Plans--Version 1*, (Ecology Publication #06-06-011b, Olympia, WA, March 2006 or as revised), and *Selecting Wetland Mitigation Sites Using a Watershed Approach (Western Washington)* (Publication #09-06-32, Olympia, WA, December 2009).

ii. Mitigation ratios shall be consistent with the following:

| Category and Type of Wetland | Creation or Re-establishment | Rehabilitation | Enhancement |
|---|---|---|---|
| Category I: Bog, Natural Heritage site | Not considered possible | Case by case | Case by case |
| Category I: Mature Forested | 6:1 | 12:1 | 24:1 |
| Category I: Based on functions | 4:1 | 8:1 | 16:1 |
| Category II | 3:1 | 6:1 | 12:1 |
| Category III | 2:1 | 4:1 | 8:1 |
| Category IV | 1.5:1 | 3:1 | 6:1 |

iii. Compensatory mitigation shall be allowed only after mitigation sequencing is applied and higher priority means of mitigation are determined to be infeasible.

iv. Compensatory mitigation proposals shall establish performance measures for evaluating the success of compensatory mitigation actions, shall establish long term monitoring and reporting procedures to determine if performance standards are met, and shall establish long term protection and management of compensatory mitigation sites.

2. Section 13.03 "Geologically Hazardous Areas Delineation and Protection"

   a. New development or the creation of new lots that would cause foreseeable risk from geologic conditions to people or improvements over the life of the development is prohibited.

   b. New development that would require structural shoreline stabilization over the life of the development is prohibited, unless there is no alternative location for the development and no net loss of shoreline ecological functions will result.

   c. Existing primary residential structures in geologically hazardous areas may be protected with shoreline stabilization structures or measures only when the Administrator determines no alternative, including the relocation or reconstruction of existing structures, is found to be feasible and less expensive than the proposed stabilization measure. All stabilization measures shall comply with the provisions in 8 of this SMP.

3. Section 13.05 "Fish and Wildlife Habitat Conservation Areas Delineation and Protection": Within the shoreline jurisdiction, the buffer from the ordinary high water mark of the Cowlitz River shall be 50 feet. Note that setbacks from the ordinary high water mark may be larger, as outlined on Table 2 in Chapter 7.

D. Any provision of the Land Development Code that is not consistent with the Shoreline Management Act Chapter, 90.85 RCW, and supporting Washington Administrative Code chapters shall not apply in shoreline jurisdiction.

E. The provisions of the City's Land Development Code do not extend shoreline jurisdiction beyond the limits specified in this Program.

F. Critical area buffers shall consist of an undisturbed area of native vegetation or areas identified for restoration under a specific permit or mitigation plan. Along the Cowlitz River, this buffer is generally 50 feet. Where existing native vegetation exists, it shall be preserved to the maximum extent feasible consistent with safe construction practices, and other provisions of this section. Native trees, shrubs and groundcover shall be preserved to maintain and provide shoreline ecological functions such as habitat, shade and slope stabilization.

G. Within critical area buffers, no more than 15 percent of the area with shoreline vegetation shall be cleared for approved uses or activities outlined in regulation K below. All native trees in the buffer over 4 inches in diameter at breast height shall be retained. Trees determined by the City to be hazardous or diseased may be removed if they are located so as to risk damaging permanent physical improvements to property or causing personal injury.

H. The Administrator may allow removal of vegetation exceeding that described above where an applicant agrees to replacement plantings that are demonstrated to provide greater benefit to shoreline ecological functions (generally replanting with native vegetation) than would be provided by strict application of this section.

I. Shoreline buffer regulations shall not apply to the removal of aquatic weeds and fresh water algae undertaken pursuant to WAC 173-201.

J. In the absence of a development proposal, existing, lawfully established landscaping and gardens within a buffer may be maintained in their existing condition, including but not limited to mowing lawns, weeding, removal of noxious and invasive species, harvesting and replanting of garden crops, pruning and replacement planting of ornamental vegetation or indigenous native species to maintain the condition and appearance of such areas as they existed prior to adoption of this code, provided this does not apply to areas previously established as mitigation sites, or other areas protected via conservation easements or similar restrictive covenants.

K. Alterations to critical areas and/or their buffers may be allowed without a shoreline variance permit to accommodate allowed uses listed below, provided the uses are constructed and maintained in a manner that minimizes adverse impacts on shoreline ecological functions and complies with the Program and all applicable regulations for critical areas.

1. Uses and activities allowed in the City's Critical Areas Protection ordinance when also allowed in the applicable shoreline environment;

2. Bridges and water-dependent utilities;

3. Pedestrian trail access from upland areas to the shoreline, launch ramps, viewing platforms, wildlife viewing blinds and other similar water-oriented uses;

4. Allowed water-oriented uses in all shoreline environments. The uses must increase public access to the shoreline, provided that development is located, designed, constructed and operated to minimize critical area and buffer disturbance to the maximum extent feasible. Such development or redevelopment shall restore or enhance degraded ecological functions as mitigation. Such development shall not be exempt from the Section 6 provisions for Environmental Impact Mitigation; and Critical Areas and Shoreline Vegetation Conservation.

L. New or expanded development or uses in shoreline jurisdiction, including subdivision of land, which would likely require structural flood hazard reduction measures within a stream, channel migration zone or floodway over the life of the development is prohibited.

M. The following uses may be authorized within floodways or channel migration zones if there is no other feasible option: actions to protect or restore ecological functions, existing and ongoing agricultural uses provided no new restrictions to channel movement occur, bridges, utility lines and other public utility and transportation structures, and repair and maintenance of an existing legal use.

N. New structural flood hazard reduction measures within a channel migration zone or floodway shall be consistent with an adopted comprehensive flood hazard management plan approved by the department. Such plan must evaluate cumulative impacts to the watershed.

O. Critical area assessments and reports as required by the Toledo CAO (as incorporated into this SMP) may be combined with any special reports or assessments required by later sections of this SMP at the discretion of the Administrator and as long as all requirements of both sections are addressed.

P. Mitigation for impacts to critical areas and their buffers shall be carried out in accordance with the Toledo CAO as incorporated into this SMP. In addition to the information that is required in mitigation or enhancement

reports therein, the applicant shall demonstrate in such report how the mitigation sequence in Section 6.1 of this SMP has been followed.

## PUBLIC ACCESS

### Policies

A. Land uses that provide opportunities for substantial numbers of the people to enjoy the shorelines of the state are preferred.

B. Physical or visual access to shorelines should be incorporated in all new development when the development would either generate a demand for one or more forms of such access, and/or would impair existing legal access opportunities or rights. Public health and safety concerns should also be adequately addressed and maintenance of shoreline ecological functions and/or processes should be assured.

C. Provide public access as a part of a residential development of five or more units or lots, or when there has been significant historical usage by the public. Historic use is regular use by the public over a period of years rather than incidental or occasional use by one or only few members of the public. This policy is not intended to apply to construction of an individual dwelling on a single lot. The Administrator may consider community access for multifamily or multi-lot residential developments rather than general public access, depending on the anticipated demand generated by the development as well as the location of the site relative to other public access sites or types of access in the vicinity.

D. Nonwater-oriented, water related and water enjoyment uses or activities located on the shoreline should provide public access as a public benefit.

E. Public access area and/or facility requirements should be commensurate with the scale and character of the development and should be reasonable, effective and fair to all affected parties including but not limited to the land owner and the public.

F. Public access design should provide for public safety and minimize potential impacts to private property, individual privacy, and protect shoreline ecological functions and processes.

G. Shoreline development by public entities, such as local governments, port districts, state agencies, and public utility districts, should provide public access measures as part of each development project, unless such access is shown to be infeasible or incompatible due to reasons of safety, security, or impact to the shoreline.

**Regulations**

A. Public access shall consist of a dedication of land or a physical improvement in the form of a walkway, trail, bikeway, corridor, viewpoint, park, deck, observation tower, or other area serving as a means of view and/or physical approach to public waters and may include interpretive centers and displays.

B. Public access shall be evaluated for all shoreline permits. Public access will not be required for the following uses.

1. Agriculture;

2. Dredging;

3. Ecological restoration or enhancement activities not associated with development, unless done by a public entity;

4. Instream structures;

5. Landfill and excavation;

6. Shoreline stabilization, unless done by a public entity; and

7. Single-family residential development of four or fewer lots or units.

C. In addition to the list of uses in subsection B above, the Administrator may waive public access requirements when one or more of the following provisions apply:

1. Unavoidable health or safety hazards to the public exist that cannot be prevented by any practical means;

2. Inherent security requirements of the use cannot be satisfied through the application of alternative design features or other solutions;

3. The cost of providing the access, easement, alternative amenity, or mitigating the impacts of public access is unreasonably disproportionate to the total long term cost of the proposed development;

4. Significant environmental impacts will result from the public access that cannot be mitigated; or

5. Significant undue and unavoidable conflict between any access provisions and the proposed use and/or adjacent uses would occur and cannot be mitigated.

D. Before public access is waived per subsection C above, the City must determine that all reasonable alternatives have been exhausted; including, but not limited to:

1. Regulating access by such means as maintaining a gate and/or limiting hours of use;

2. Designing separation of uses and activities (e.g., fences, terracing, use of one-way glazing, hedges, landscaping, etc.); or

3. Providing for access at a site geographically separated from the proposal such as a street end, vista, or trail system.

E. When provisions for public access are waived, this decisions shall be made in writing listing the rationale per subsections C and D above, and shall be archived so that this decision can be reviewed by the Washington State Department of Ecology during the next master program update cycle.

F. Parcels within shoreline jurisdiction but which do not front onto the shoreline will not be required to provide shoreline public access. They may be required to provide public access to other parcels along the shoreline (e.g., water's edge), where this is needed.

G. If public access on shoreline parcels is demonstrated to be infeasible or inappropriate on site due to significant interference to operations or hazards to life and property, alternative visual access opportunities may be provided at a location not directly adjacent to the water such as a viewpoint, observation tower, or other areas serving as a means to view public waters.

H. This master program shall seek opportunities to increase public access to existing publicly owned shorelines, such as street ends and unopened rights-of-ways. Public access to the shoreline shall be balanced with the preservation of shoreline habitat and ecological functions on a case-by-case basis.

I. Public access shall incorporate the following location and design criteria:

1. Where open space is provided along the shoreline and public access to the water can be provided in a manner that will not adversely impact shoreline ecological functions and/or processes, a public pedestrian access walkway is preferred. The walkway shall be buffered from sensitive ecological features and provide limited and controlled access to sensitive features and the water's edge where appropriate. Fencing may be provided to control damage to plants and other sensitive ecological features, where appropriate. Trails shall be constructed of permeable materials except for a shared use trail or public access which is part of a boardwalk, and limited in width to reduce impacts to ecologically sensitive resources.

2. Public access shall be located adjacent to other public areas, accesses and connecting trails, connected to the nearest public street, and include provisions for handicapped and physically impaired persons where feasible.

3. Where views of the water or shoreline are available and physical access to the water's edge is not present or appropriate, a public viewing area shall be provided.

4. Public access areas shall be designed to minimize intrusions on privacy by avoiding locations adjacent to windows and/or outdoor private open spaces or by screening or other separation techniques.

5. Public access areas shall be designed to provide for the safety of users, including the control of offensive conduct through public visibility of the public access area, or through provisions for oversight. The Administrator may authorize a public access to be temporarily closed in order to develop a program to address offensive conduct. If offensive conduct cannot be reasonably controlled, alternative facilities may be approved through a permit revision.

6. Public amenities appropriate to the use of a public access area such as benches, picnic tables and sufficient public parking to serve the users shall be provided.

7. Commercial developments that attract a substantial number of persons and developments by government/public entities may be required to provide public restrooms, facilities for disposal of animal waste and other appropriate facilities within public access areas.

J. The minimum width of public access easements shall be 10 feet in width, with 20 feet being the preferred width where significant public use is expected. The Administrator may reduce the width of public access easements if undue hardship would result or increase the width if necessary to serve the intended function. However, the reduction or enlargement shall only be what is necessary to achieve the intended purpose and such justification and circumstances shall be outlined in writing and archived per subsection E above.

K. Required public access sites shall be fully developed and available for public use at the time of occupancy of the use or activity or in accordance with other provisions for guaranteeing installation through a monetary performance assurance.

L. Public access facilities shall be maintained over the life of the use or development. Future actions by successors in interest or other parties shall not diminish the usefulness or value of required public access areas and associated improvements.

M. Public access provisions shall run with the land and be recorded via a legal instrument such as an easement, or as a dedication on the face of a plat or short plat. Such legal instruments shall be recorded with the Lewis County Auditor's Office prior to the time of building permit approval, occupancy or plat recordation, whichever comes first.

N. Maintenance of the public access facility shall normally be the responsibility of an accepted public or non-profit agency through a formal agreement recorded with the Lewis County Auditor's Office. However, if appropriate given the use, this responsibility may be required of the owner, future home owners association, or other entity approved by the City.

O. Public access facilities shall be available to the public 24 hours per day unless specific exceptions are granted through the shoreline permit.

P. The standard City or other approved signs that indicate the public's right of access and hours of access shall be installed and maintained by the owner/developer. Such signs shall be posted in conspicuous locations at public access sites.

## WATER QUALITY

### Policies

A. Shoreline uses and activities should be located, designed, constructed and maintained to avoid significant ecological impacts by altering water quality, quantity, or hydrology.

B. Setbacks, buffers, storm water storage basins and low-impact development techniques and materials should be utilized and encouraged to avoid negative impacts on water quality.

C. Measures for controlling erosion, stream flow rates, or flood waters through the use of stream control works should be located, designed, constructed and maintained so as to avoid degradation of existing water quality.

D. The City will seek to improve water quality, quantity, and flow characteristics in order to protect and restore ecological functions and ecosystem-wide processes of shorelines within Shoreline Management Act jurisdiction. This will be implemented through the regulation of development and activities, through the design of new public works, such as roads, drainage, and water treatment facilities, and through coordination with other local, state, and federal water quality regulations and programs.

E. Prohibit uses and activities that pose a risk of contamination of ground or surface waters, such as:

1. Storage, disposal, or land application of waste (excluding secondary/tertiary treated effluent from municipal sewer systems), including solid waste landfills,

2. Operations for confinement feeding of animals,

3. Junk yards and auto wrecking yards,

4. Storage of hazardous or dangerous substances within a floodplain, and

5. Alterations to structures and uses served by septic systems that do not meet state septic requirements.

**Regulations**

A. New development within shoreline jurisdiction shall not be allowed on septic systems.

B. When existing development operating on septic systems is proposed to be expanded or intensified, they shall be required to connect to municipal sewer.

C. New development shall provide stormwater management facilities designed, constructed, and maintained in accordance with the City's current stormwater management standards. Alternative measures may be considered where it can be demonstrated that off-site facilities would provide better treatment, or where common retention, detention and/or water quality facilities meeting such standards have been approved as part of a comprehensive stormwater management plan.

D. Best management practices for control of erosion and sedimentation shall be implemented for all development in shorelines through an approved temporary erosion and sediment control plan, or administrative conditions.

E. Wood treated with creosote, copper chromium arsenic or pentachlorophenol is prohibited in or above shoreline water bodies.

F. All materials that may come in contact with water shall be constructed of materials, such as untreated wood, concrete, approved plastic composites or steel, that will not adversely affect water quality or aquatic plants or animals. Materials used for decking or other structural components shall be approved by applicable state agencies for contact with water to avoid discharge of pollutants from wave splash, rain, or runoff.

G. Hazardous or dangerous substances or waste shall not be stored in flood hazard areas.

**PARKING**

**Policies**

A. Allow parking within the shoreline jurisdiction only in support of an approved use.

B. Design and construct parking facilities to minimize off-site light and glare by using fully shielded and appropriately aimed fixtures to provide appropriate lighting levels.

C. Locate parking facilities landward from the ordinary high water mark.

D. Link parking facilities with the shoreline and to the buildings they serve by walkways.

**Regulations**

A. Parking facilities within the shoreline are only allowed as necessary to support an authorized use. Parking as a primary use is prohibited.

B. Parking facilities shall be located landward of the principal use or building, except when the parking facility is within or beneath the structure and adequately screened or in cases when an alternate orientation would have less adverse impact on the shoreline.

C. Over water parking facilities are prohibited.

D. Parking facilities shall be designed and landscaped to minimize adverse impacts upon adjacent shorelines and abutting properties.

E. Parking facilities shall provide safe and convenient pedestrian circulation within the parking area and to the shoreline~~s~~.

F. Parking facilities shall comply with the water quality development standards in this Program, which include on-site stormwater control measures.

**SIGNAGE**

**Policies**

A. Design signs within shoreline jurisdiction so that they interfere as minimally as possible with visual access to the shoreline.

B. Design and locate signs to insure compatibility with the shoreline environment designation, and adjacent land and water uses.

C. Prohibit billboards within all shoreline environment designations.

**Regulations**

A. Off-premise signs are prohibited within any shoreline environment designation. Traffic signs are not to be considered off-premise signs.

B. All public access shall be marked with signs approved by the Administrator.

## HISTORICAL OR ARCHEOLOGICAL RESOURCES

### Policies

A. Coordinate development review within the shoreline with the Washington State Department of Archaeology and Historic Preservation, and affected Indian tribes regarding historic or archaeological interest.

B. Provide for the protection, rehabilitation, restoration and reconstruction of historic structures listed on the federal, state or local historic registers.

C. Report the discovery of a historic or prehistoric site during excavation or development to the Washington State Department of Archeology and Historic Preservation and to the affected Indian tribes.

D. Encourage the enrollment of historic structures or sites on the Federal, state or local historic registers.

### Regulations

A. The protection, rehabilitation, restoration, and reconstruction of historic structures shall be governed by *The Secretary of the Interior's Standards for Rehabilitation & Illustrated Guidelines for Applying the Standards* (1992), as amended.

B. The City shall consult with the Washington Department of Archaeology and Historic Preservation and the affected Indian tribes when known sites are proposed for development. Their comments and recommendations shall be given substantial weight, which may result in denying a development permit where the historic or archaeological value of the site outweighs the development value.

C. The discovery of archaeological resources or sites during excavation or development shall be reported to the Administrator, the Washington State Department of Archaeology and Historic Preservation, and the affected Indian tribes.

D. Should a historic, cultural or archeological site or artifact of potential significance be discovered in the process of development on the shoreline, then work on that portion of the development site shall be stopped immediately and reported to the Administrator, Washington State

Department of Archaeology and Historic Preservation, and Tribes with interest as soon as possible.

E. When warranted by preliminary evaluation or an inadvertent discovery occurs, the Administrator shall then require a site assessment be conducted by a professional archeologist or historic preservation professional, as applicable, to determine the significance of the discovery and the extent of damage to the resource. Once the site assessment is complete, it shall be distributed to the Washington Department of Archaeology and Historic Preservation, and the affected Tribe for a 15-day review period. In the case of case of human remains, this shall be a 30-day review period.

F. If there is a positive determination of a site's significance, the Administrator may require additional provisions that are deemed to be reasonable and necessary. If the site is determined not to be significant by the above listed agencies or governments, or if the above listed agencies or governments have failed to respond within the applicable review period following receipt of the site assessment, such stopped work may resume.

## SCIENTIFIC OR EDUCATIONAL USES

### Policies

A. Scientific studies and educational uses of the shoreline should be conducted in such a way so as to minimize environmental impacts and comply with the management policies associated with the applicable environmental designation.

B. Shoreline permits should be required for scientific and educational activities which may significantly affect water quality or natural systems.

### Regulations

A. Scientific or educational uses and activities are limited to those which will not:

1. Jeopardize existing wildlife populations or organisms;

2. Permanently alter the character of biological habitats; or

3. Degrade the character of the shoreline environment in which they are located.

B. Temporary disruptions of biological systems may be permitted when a scientific activity will result in their restoration or improvement.

C. Permits encompassing a variety of activities over an extended period of time may be granted provided limits on the duration of approval are established.

D. Temporary facilities necessary for the conduct of a scientific project shall be removed at the conclusion of the prescribed research activity period.

E. Proposals for shoreline development or use in or on known sites of scientific value that would adversely affect, damage, or diminish such resources shall be prohibited. Such proposals may be allowed by shoreline conditional use permit if it is shown that the materials, artifacts or resources are recoverable and transferrable through adequate evaluation by qualified personnel.

# 7. USES AND ACTIVITIES POLICIES AND REGULATIONS

This section describes policies and regulations that apply to specific uses and activities in shoreline jurisdiction. Policies and regulations are intended to work in concert with all other policies and regulations contained in this Program.

Uses and activities shall be subject to the policies and regulations for that specific uses or activity. When there are no regulations for a specific use or activity, the proposed use shall assure no net loss of shoreline ecological functions and shall require a shoreline Conditional Use Permit.

- Refer to Table 1 for shoreline uses and activities by shoreline environment.
- Refer to Table 2 for regulations by shoreline environment.

## GENERAL POLICIES

A. Evaluate new shoreline developments and uses for their effects on public health.

B. Assess project-specific impacts and a project's potential for net loss of ecosystem-wide processes or ecological functions during permit review.

C. Require mitigation of site specific development impacts to protect existing ecological functions.

D. Prohibit private or public development which would degrade existing ecological functions.

E. Eliminate prohibited shoreline uses and poor quality shoreline conditions when authorizing a new shoreline development or activity.

F. Encourage developers, property owners, community groups and others to enhance degraded shorelines and return them to an ecologically functioning condition.

G. Provide appropriate enforcement measures which insure that all conditions are met, and require that improvements or mitigation are installed, monitored and maintained.

H. Monitor and track developments approved within shoreline jurisdiction so that this data will be available during future reviews and updates of this Program.

## TABLE OF USES AND ACTIVITIES BY SHORELINE ENVIRONMENT DESIGNATION

### TABLE 1

### Uses and Activities by Shoreline Environment Designation

| Uses and Activities | Urban Conservancy | Aquatic |
|---|---|---|
| Agriculture | P | NA |
| Aquaculture | X | X |
| Boating Facilities | | |
| • Boat launches/ramps | C | C |
| • Marinas | X | X |
| Commercial[1] | | |
| • Water-oriented | P | X |
| • Non water-oriented | P | X |
| Forest Practices | X | X |
| Industrial | X | X |
| Mining | X | X |
| Recreation | | |
| • Water-oriented | C[2]/P[3] | C |
| • Non water-oriented | X | X |
| Residential | | |
| • Single-Family | P | X |
| Solid Waste Disposal | X | X |
| Transportation | | |
| • Roads and Railroads | C[2]/P[3] | C |
| • Trail | P | C |
| Utilities | C[2]/P[3] | C |

1. Only those commercial uses allowed by the underlying zoning may be authorized. Home occupations are not considered commercial uses for the purposes of this SMP, provided they comply with the requirements for Home Occupations in the Toledo Land Development Code.
2. Within 100 feet from the ordinary high water mark.
3. Beyond 100 feet from the ordinary high water mark.

P = Permitted Use; Use may require Substantial Development Permit or statement of exemption approval
C = Requires a Shoreline Conditional Use Permit
X = Prohibited; not eligible for a Substantial Development Permit, Shoreline Conditional Use Permit, or Shoreline Variance

## TABLE OF REGULATIONS BY SHORELINE ENVIRONMENT DESIGNATION

### TABLE 2

### Regulations by Shoreline Environment Designation

| Regulations | Urban Conservancy | Aquatic |
|---|---|---|
| Agriculture | | |
| OHWM setback | * | NA |
| Building height | 35' | NA |
| Boating Facilities | | |
| OHWM setback | 0' | NA |
| Building height | 20' | NA |
| Commercial | | |
| *Water oriented* | | |
| OHWM setback | 50' | NA |
| Building height | 35' | NA |
| Maximum impervious surfaces | 50% | NA |
| *Non water oriented* | | |
| OHWM setback | * | NA |
| Building height | 35' | NA |
| Maximum impervious surfaces | 50% | NA |
| Recreation Development | | |
| *Water oriented* | | |
| OHWM setback | 0' | NA |
| Building height | 25' | NA |
| Maximum impervious surfaces | 30% | NA |
| *Non water oriented* | | |
| OHWM setback | NA | NA |
| Building height | NA | NA |
| Maximum impervious surfaces | NA | NA |
| Residential | | |
| Single & Multi-Family Dwelling | | |
| OHWM setback | ** | NA |
| Maximum Density | Per zoning | NA |
| Building Height | 35' | NA |
| Maximum Impervious Surfaces | 30% | NA |
| Transportation | | |
| Roads and Railroads | | |
| OHWM setback | * | NA |
| Trails | | |
| OHWM setback | * | NA |

**TABLE 2 – (continued)**

**Regulations by Shoreline Environment Designation**

| Regulations | Urban Conservancy | Aquatic |
|---|---|---|
| Utilities | | |
| OHWM setback | * | NA |
| Building height | 35' | NA |

OHWM = Ordinary high water mark.
* = Use must be located outside of critical area buffer. Certain exceptions apply; refer to Section 6.
**= Lots widths less than 60' shall have 0' setback from the 50 foot critical Area Buffer (CAB), lot widths ranging from 60' to 79' shall have a 20' setback from the CAB, lot widths ranging from 80' to 99' shall have a 40' setback from the CAB and lots 100' wide or more shall have a 50' setback from the CAB.
NA = Not applicable, refer to the appropriate Master Program section for additional standards.

## TABLE OF SHORELINE MODIFICATIONS BY SHORELINE ENVIRONMENT DESIGNATION

**TABLE 3**

**Shoreline Modifications by Shoreline Environment Designation**

| Shoreline Modifications | Urban Conservancy | Aquatic |
|---|---|---|
| Dredging and Disposal | C | C |
| Fill | | |
| • Ecological Restoration Project | P | P |
| • All Other Activities | C | C |
| Overwater structures (piers/docks/floats) | X | X |
| Restoration and Enhancement | P | P |
| Shoreline Stabilization | | |
| • Bioengineering | P | C |
| • Revetments, Gabions and Bulkheads | C | C |
| Breakwaters, Jetties and Groins | X | X |
| Dikes, Levees, and Instream Structures | C | C |

P = Modification may require Substantial Development Permit or statement of exemption.
C = Requires a Shoreline Conditional Use Permit.
NA = Not applicable, refer to the appropriate Master Program section for additional standards.

## AGRICULTURE

### Policies

A. Prevent soil erosion and minimize siltation, turbidity, pollution and other environmental degradation in watercourses with new and expanded agricultural practices.

B. Prohibit the creation of new agricultural lands by diking, draining or filling associated wetlands.

C. Agriculture is a preferred use on floodplains, when practiced consistent with the control of pollution and prevention of damage to the natural environment.

### Regulations

Agricultural uses and activities may be allowed by shoreline environment designation as listed in Table 1, and shall be subject to the regulations of Table 2 and the regulations listed below.

A. Agricultural development shall conform to applicable state and federal policies and regulations.

B. Appropriate farm management techniques shall be used to prevent contamination of nearby water bodies and adverse effects on plant, fish and animal life from fertilizer and pesticide use and application.

C. New agricultural activities on land not meeting the definition of agricultural land, conversion of agricultural lands to other uses, and other development on agricultural land that does not meet the definition of agricultural activities shall be subject to the following:

1. A shoreline substantial development permit shall be required for any agricultural development not specifically exempted by the provisions of RCW 90.58.030 (3)(e)(iv), and

2. Agricultural uses and development in support of agricultural uses:

a. Shall be located and designed to have a no net loss of ecological functions, and

b. Shall not have a significant adverse impact on other shoreline resources and values.

D. Confinement lots, feeding operations, lot wastes, stockpiles of manure solids and storage of noxious chemicals are prohibited within the floodway and within 200 feet landward of the ordinary high water mark, whichever is greater.

## AQUACULTURE

Due to the significant impact aquaculture typically imposes on water resources and the possible conflict with other beneficial uses of water within an urban area, aquaculture uses and facilities are incompatible within the shoreline areas of the City.

### Policies

A. Prohibit aquaculture uses and facilities within all shoreline environment designations.

### Regulations

A. Uses and facilities for aquaculture are prohibited within all shoreline environment designations.

## BOATING FACILITIES

### Policies

A. Boating facilities should be located, designed and constructed to minimize adverse environmental and aesthetic impacts and to assure no net loss of ecological functions.

B. Measures to conserve native vegetation along shorelines should be required for all boating facilities. Vegetation conservation must include avoidance or minimization of clearing or grading, restoration of areas of native vegetation or control of invasive or non-native vegetation.

C. Boating facilities should be located and designed to eliminate or minimize the need for maintenance activities such as dredging and filling.

D. Boating facilities should be limited to where parking and access to the facility can be accommodated without causing adverse impacts to adjacent properties.

E. Marinas should not be allowed only on sites with suitable environmental conditions, shoreline configuration, access and neighboring uses.

**Regulations**

Boating facilities may be allowed by shoreline environment designation as listed in Table 1, and shall be subject to the regulations of Table 2 and the regulations listed below.

A. Marinas and their accessory facilities are prohibited in shoreline jurisdiction.

B. Boating facilities shall provide public access pursuant to the regulations of this Program.

C. Boating facilities and uses shall comply with the Mitigation Sequencing and Critical Areas and Shoreline Vegetation Conservation sections of this Program.

D. Boating facilities shall be located, designed, constructed and operated so as not to result in a net loss of shoreline ecological functions.

E. New boating facilities and uses shall comply with the water quality standards in this Program.

F. Launch ramps shall be located in areas where there is adequate water movement to ensure water flushing and mixing.

G. Launch ramps shall be located on stable shorelines where water depths are adequate to eliminate to minimize the need for dredging, filling, beach feeding and other maintenance activities.

H. Covered moorage over fresh water is prohibited.

I. Boating facilities shall utilize effective measures to prevent the release of oil, chemicals, or other hazardous materials onto or into the water. Such measures may include but are not limited to dikes, catch basins, interceptor drains or planted buffers.

**COMMERCIAL**

**Policies**

A. Plan and construct commercial development to minimize adverse environmental and visual impacts and to assure no net loss of ecological functions.

B. Encourage the clustering of commercial development to minimize the loss of shoreline ecological functions and to increase open spaces.

C. Provide access to the shoreline for customers of new commercial development and the general public.

D. Measures to conserve native vegetation along shorelines should be required for all commercial development. Vegetation conservation should include avoidance or minimization of clearing or grading, restoration of areas of vegetation impacted, and control of invasive or non-native vegetation.

E. The restoration of degraded shoreline ecological functions should be required as mitigation for new or expanded commercial structures within shoreline jurisdiction. The degree and type of restoration is to be commensurate with any unavoidable loss of ecological functions at that site.

F. All commercial structures and accessory uses should be designed and located so as to preserve views and vistas to and from the water.

G. Allow commercial development only when there are adequate provisions for utilities, circulation and access.

H. Prohibit new over water commercial development.

I. The preference for commercial uses in shoreline jurisdiction should be for water oriented commercial uses and development over non-water oriented commercial uses and development.

**Regulations**

Commercial uses and activities may be allowed by shoreline environment designation as listed in Table 1, and shall be subject to the regulations of Table 2 and the regulations listed below.

A. Commercial development over water is prohibited.

B. Commercial development shall be sited and designed to protect views, vistas and aesthetic values and to minimize impacts to the character of the shoreline environment and the views of neighboring property owners.

C. New commercial developments and uses are not allowed in critical area buffers without a variance, unless such developments and uses are water oriented. All commercial developments and uses shall provide for

vegetation conservation in accordance with the Critical Areas and Shoreline Vegetation Conservation section of this Program and comply with the mitigation sequence in Chapter 6 of this Program.

D. Commercial uses that may be authorized as water-oriented uses are required to incorporate appropriate design and operational elements so that they meet the definition of water-oriented uses.

E. Public access and ecological restoration shall be considered as mitigation for impacts to shoreline resources and values for water-oriented commercial development, unless they are infeasible or inappropriate.

F. New commercial developments shall comply with the water quality regulations in this Program, which include on-site stormwater control measures.

G. Non-water oriented commercial uses are prohibited in shoreline jurisdiction unless the use is part of a mixed use project that includes a water dependent uses or provides a public benefit such as public access and ecological restoration. Non-water oriented commercial uses are allowed on properties physically separated from the shoreline by another property or public right of way.

## FOREST PRACTICES

Forest practices are incompatible with goals for shoreline areas along the Cowlitz River. Resource areas for forest practices are designated in appropriate areas outside the boundaries of the City.

### Policies

A. Prohibit forest practices within all shoreline environment designations.

### Regulations

A. Forest Practices are prohibited in all shoreline environment designations.

B. For the purpose of this Program, preparatory work associated with the conversion of land to non-forestry uses and/or developments shall not be considered forest practices and shall be reviewed in accordance with the provisions for the proposed non-forestry use, the general provisions of this Program, including vegetation conservation, and shall be limited to the minimum necessary.

## INDUSTRIAL

Industrial uses and facilities are incompatible with goals for shoreline areas along the Cowlitz River.

### Policies

Prohibit industrial uses within all shoreline environment designations.

### Regulations

Industrial uses are prohibited within all shoreline environment designations.

## MINING

Mining facilities are incompatible with goals for shoreline areas along the Cowlitz River.

### Policies

Prohibit mining uses within all shoreline environment designations.

### Regulations

Mining uses are prohibited within all shoreline environment designations.

## RECREATION

### Policies

A. Acknowledge a priority for recreational development along shorelines, when primarily related to access to, enjoyment and use of the water.

B. Consider all recreational development projects on the basis of their compatibility with the environment.

C. Plan public access to recreational locations such as fishing streams to prevent concentration of use pressures.

D. Link shoreline parks and public access points through linear open spaces. Such open space may include trails located in accordance with applicable policies.

E. Design recreational developments to preserve, enhance, or create scenic views and vistas.

F. Locate parking areas inland, away from the immediate edge of the water and recreational beaches. Link the parking to the shoreline by walkways.

G. Allow facilities for intensive recreational activities only where sewage disposal and pest control can be accomplished to meet public health standards without altering the environment adversely.

H. Encourage access to public waters as part of a City recreation plan, or private development.

I. Encourage low intensity recreational uses on floodplains with largely intact ecological processes and functions and allow high intensity recreational uses on floodplains that have been modified and are upland of the ordinary high water mark.

J. Commercial recreational development should be consistent with the provisions for commercial development in chapter 7 of this SMP.

**Regulations**

Recreational uses and activities may be allowed by shoreline environment designation as listed in Table 1, and shall be subject to the regulations of Table 2 and the regulations listed below.

A. Assure that recreational development is given priority and is primarily related to access to, enjoyment and use of the water and shorelines of the state.

B. Public recreational development and public access associated with those facilities shall be located, designed and operated in a manner consistent with the purpose of the shoreline environment designation and that minimizes the impact on shoreline ecological functions.

C. Non-water oriented recreation facilities or structures shall be setback 200 feet from the ordinary high water mark as described in Table 2.

D. Recreational events and temporary uses in the public interest may be approved by the Administrator when those uses will not damage the shoreline area.

E. Public or private recreation areas which cater to the use of all-terrain or off-road vehicles as the primary recreational activity are prohibited within shoreline jurisdiction.

F. Recreational developments shall be designed with consideration of public access and public view corridors.

G. Public access points must provide parking space appropriate for the intended use, or document the rationale in a shoreline permit.

H. Recreational developments shall provide facilities for nonmotorized access, such as pedestrian, bicycle and/or equestrian path links to the shoreline.

I. All public access shall be marked with signs approved by the Administrator.

J. New recreational facilities shall comply with the water quality regulations in this Program, which include on-site stormwater control measures.

K. Commercial recreational development shall be consistent with the provisions for commercial development in chapter 7.

**RESIDENTIAL**

**Policies**

A. Plan and construct residential development to minimize adverse environmental and visual impacts and to assure no net loss of ecological functions.

B. Encourage the clustering of residential development to minimize the loss of shoreline ecological functions and to increase open spaces.

C. For new residential development, including the subdivision of land into five or more lots should provide access to the shoreline for residents of the new development and or the general public.

D. Provide open space in accordance with the Toledo Land Development Code.

E. Promote incentive dedication agreements to accomplish the intent of Policies A to D above.

F. Measures to conserve native vegetation along shorelines should be required for all residential development. Vegetation conservation should include avoidance or minimization of clearing or grading, restoration of areas of vegetation impacted, and control of invasive or non-native vegetation.

G. The restoration of degraded shoreline ecological functions should be required as mitigation for new or expanded residential structures within shoreline jurisdiction. The degree and type of restoration is to be commensurate with any unavoidable loss of ecological functions at that site.

H. All residential structures and accessory uses should be designed and located so as to preserve views and vistas to and from the water.

I. Prevent the segmentation of critical areas among many owners by requiring subdivisions to place critical areas within separate tracts.

J. Limit residential density to assure no net loss of ecological functions.

K. Allow residential development only when there are adequate provisions for utilities, circulation and access.

L. Prohibit new over water residential development.

M. New residential development, including appurtenant structures and uses, should be sufficiently set back from steep slopes and shorelines vulnerable to erosion so that structural improvements, including bulkheads and other shoreline stabilization structures or flood hazard reduction measures, are not necessary to protect such structures and uses.

**Regulations**

Residential uses and activities may be allowed by shoreline environment designation as listed in Table 1, and shall be subject to the regulations of Table 2 and the regulations listed below.

A. The creation of new lots shall be approved if all of the following can be demonstrated:

1. A primary residence can be built on each new lot without any of the following, either at the time of construction or over the life of the development:

a. New structural shoreline stabilization or flood hazard reduction measures;

b. New structures in the required shoreline setback or required critical area buffer;

c. Causing significant vegetation removal that adversely impacts ecological functions;

d. Causing significant erosion or reduction in slope stability, or increased flood hazards in the new development or to adjacent or downstream properties.

2. Adequate sewer, water, access and utilities can be provided.

3. The intensity and type of development is consistent with the City Comprehensive Plan and development regulations.

4. Potential significant adverse environmental impacts (including significant ecological impacts) can be avoided or mitigated to achieve no net loss of ecological functions, taking into consideration temporal loss due to development and potential adverse impacts to the environment.

B. Residential development over water is prohibited.

C. Residential development shall be arranged and designed to protect views, vistas and aesthetic values to minimize impacts to the character of the shoreline environment and the views of neighboring property owners.

D. New residential subdivisions of more than 4 lots shall provide public access pursuant to the regulations of this Program.

E. New residential developments and uses shall comply with the mitigation sequencing and critical areas and shoreline vegetation conservation sections of this Program

F. Wetlands and lands below the ordinary high water mark shall not be used to compute required lot area, lot dimensions, densities and/or required yards.

G. New residential developments shall comply with the water quality regulations in this Program.

H. Subdivisions shall protect streams, wetlands, their buffers, floodways and channel migration zones, and geologic hazards by locating these features within a separate tract or parcels. Such areas shall be held in common by the subdivision landowners, or one landowner.

## SOLID WASTE DISPOSAL

### Policies

Prohibit facilities that handle solid waste within all shoreline environment designations.

### Regulations

Uses for which the primary purpose is the disposal, handling, storage and transfer of solid waste are prohibited within all shoreline environment designations.

## TRANSPORTATION

### Policies

A. Locate new and expanded arterials, freeways, and railways away from and outside of shoreline jurisdiction unless there are no feasible alternatives.

B. Design roads, trails, and railroads to be located as far landward as possible, to fit the topography and utilize existing corridors so that minimum alterations of natural conditions will be necessary.

C. Design, construct and maintain roads, trails, and railroads to minimize erosion and to permit natural movement of ground water and flood waters.

D. Piers and bridges are preferred to the placement of fill within the shoreline for the road, trails, and railroad crossings.

E. Dispose of construction debris, overburden, and other waste materials in such a way as to prevent their entry by erosion from drainage, high water, or other means into any surface water body.

F. Rely upon the City of Toledo Transportation Plan Element of the Comprehensive Plan to identify new transportation crossings or corridors within shoreline areas.

### Regulations

Transportation uses and activities may be allowed by shoreline environment designation as listed in Table 1, and shall be subject to the regulations of Table 2 and the regulations listed below.

A. Roads, trails, and railroads shall be designed to cross shoreline areas by the shortest, most direct route feasible.

B. Future community transportation corridors within shoreline areas shall be prohibited unless shown/included in the City's Transportation Plan Element of the Comprehensive Plan.

C. The placement of fill for roads, trails, or railroads within shoreline jurisdiction shall be restricted to the smallest possible footprint for the intended purpose.

D. Bridges for roads, trails, and railroads may be located within salmon and steelhead habitat provided that the following conditions are met:

1. An alternative alignment is not feasible;

2. The project is located and designed to minimize its impacts on the environment;

3. Any adverse impacts are mitigated; and

4. Open-piling and piers required to construct the bridge may be placed waterward of the ordinary high water mark, if no alternative method is feasible.

E. The placement of fill for roads, trails, and railroads may be allowed in water bodies, wetlands, side channels and on accretion beaches if:

1. All structural and upland alternatives have been proven to be infeasible;

2. The transportation facilities are necessary to support uses consistent with this master program; and

3. Such review is undertaken as a shoreline conditional use.

F. Appropriate design and erosion control techniques shall be used to construct or repair roads, trails, and railroads so they assure no net loss of shoreline ecological functions and processes.

G. Where permitted to parallel shorelines, roads or railroads shall be setback a sufficient distance from the ordinary high-water line to minimize loss of ecological functions.

H. A public trail/trails may be allowed within the required critical area buffer and setback in accordance with the provisions of subsection K of the regulation section for Critical Areas and Shoreline Vegetation Conservation.

I. New transportation projects shall comply with the water quality regulations, which include on-site stormwater control measures.

## UTILITIES

### Policies

A. Utilities in shoreline areas should not obstruct or destroy scenic views.

B. Place utilities underground when feasible, or design them to do minimal damage to the aesthetic qualities of the shoreline area. Where compelling reasons exist to place utilities above ground, such as impacts to ecological functions or values, this may be permitted with full mitigation of aesthetic impacts.

C. Locate utilities outside of shoreline jurisdiction, unless there are no feasible alternatives. When necessary, locate them as far landward as possible and preserve the natural landscape, shoreline ecology, and minimize conflicts with present and planned land uses.

D. When utility placement occurs in shoreline areas, banks and shorelands should be restored to their pre-project configuration, replanted with native species, and maintained until the new vegetation is established.

E. Sewage treatment, water reclamation and power plants should be designed and located so as not to interfere with, and to be compatible with recreational, residential or other public uses of the water and shorelands.

F. Recycling or land disposal of sewage wastes is preferred to new sewage outfalls to shoreline waterbodies. Where no alternative to outfalls into water exist, the location is to be part of an approved regional sewage management plan.

G. Use utility rights-of-way for public access to and along shoreline waterbodies, where feasible.

H. Design and construct bridge-like structures for above water crossing of utilities rather than fill.

I. Use best available science and mitigation sequencing in accordance with the Environmental Impact Mitigation regulations in Section 6 to locate new utility corridors within shoreline areas. Co-locate new major transmission facilities along existing utility corridors, where possible.

**Regulations**

Utility uses and activities may be allowed by shoreline environment designation as listed in Table 1, and shall be subject to the regulations of Table 2 and the regulations listed below.

A. Utility facilities and lines shall be designed and located to assure no net loss of shoreline ecological functions, preserve the natural landscape, and minimize conflicts with present and planned land and shoreline uses while meeting the needs of future populations in areas planned to accommodate growth.

B. Utility production and processing facilities, such as power plants and sewage treatment plants, or parts of those facilities that are non-water oriented shall not be allowed in shoreline areas unless it can be demonstrated that no other feasible option is available.

C. Utility transmission facilities such as power lines, cables and pipelines shall be located outside of the shoreline area where feasible. When the utility needs to be located within shoreline jurisdiction, mitigation sequencing pursuant to the Environmental Impact Mitigation regulations in Section 6 shall be used to justify the location, and existing rights of way and utility corridors shall be used, to the extent feasible.

D. In-water utility corridors may be located within salmon and steelhead habitat provided that the following conditions are met:

1. An alternative alignment is not feasible;

2. The project is located and designed to minimize its impacts on the environment;

3. Any adverse impacts are mitigated;

4. Any fill is located landward of the ordinary high water mark; and

5. Open-piling and piers required to construct a bridge necessary for a utility crossing may be placed waterward of the ordinary high water mark, if no alternative method is feasible.

E. Applications for permits for utility facilities and lines shall document how the size of the facility or line has been minimized within the shoreline area and shall identify the methods of revegetation of the affected area to predevelopment elevations, replanting with native or pre-existing species,

and provisions for the maintenance and care for the newly planted vegetation.

F. Installation of utility service to a development within shoreline jurisdiction shall not require a separate shoreline permit, but shall be regulated by the specific use regulations for the activity and the standards of this section.

G. Utilities shall be placed underground unless such undergrounding would be economically or technically prohibitive, or would be significantly detrimental to the environment.

H. Utility facilities shall be designed for minimal environmental and aesthetic impact.

I. Underwater utilities shall be located at a depth sufficient to prevent interference between the utility and other shoreline use activities.

J. Utility facilities and lines shall identify safeguards to ensure that no long-term damage will be caused to the adjacent or downstream environment should an accident occur involving that facility or line.

K. New utility facilities shall comply with the water quality regulations, which include on-site stormwater control measures.

# 8. SHORELINE MODIFICATION POLICIES AND REGULATIONS

The policies and regulations in this chapter apply to all types of shoreline modifications. Shoreline modifications are generally related to construction of a physical element such as a dike, breakwater, dredged basin, or fill, but modifications can include other actions such as clearing, grading, application of chemicals, or significant vegetation removal.

Shoreline modifications usually are undertaken in support of or in preparation for a shoreline use. An example for a marine shoreline setting would be fill (shoreline modification) required for a cargo terminal (industrial use) or dredging (shoreline modification) to allow for a marina (boating facility use).

- Refer to Table 3 for shoreline modifications by shoreline environment.

## GENERAL POLICIES

A. Development should be designed and located so that future shoreline modifications are unnecessary, including protective measures such as filling, bulkheading, shoreline berms and levees, or substantial grading of the site.

B. Insure that permits for shoreline modifications follow mitigation sequencing in the Environmental Impact Mitigation regulations in Section 6.

C. Allow structural shoreline modifications only where they are demonstrated to be necessary to support or protect an allowed primary structure or legally existing shoreline use that is in danger of loss or substantial damage, or are necessary for reconfiguration of the shoreline for mitigation or enhancement purposes.

D. Only shoreline modifications that are appropriate to the specific type of shoreline and environmental conditions for which they are proposed should be allowed.

E. Shoreline modifications that that have a lesser impact on ecological functions are preferred over those with more impacts so that shoreline modifications do not individually or cumulatively result in a net loss of shoreline ecological functions.

## DREDGING AND DREDGE DISPOSAL

### Policies

A. Allow dredging in locations where a comprehensive management plan has been evaluated and authorized by local and state governmental entities, and only when significant ecological impacts are minimized and when mitigation is provided.

B. New development should be designed and located to avoid and minimize the need for new and maintenance dredging.

C. Conduct dredging in such a manner as to minimize damage to natural systems in both the area to be dredged and the area for deposit of dredged materials.

D. Dispose dredged material at a site where chemicals in high concentrations cannot cause significant harm to resident biota.

E. Plan and conduct dredging so as to minimize interference with navigation and adverse impacts to other shoreline uses, properties and values.

F. Allow dredging of less than 500 cubic yards as part of ecological restoration or enhancement, beach nourishment, public access or public

recreation provided it is otherwise consistent with the policies and provisions of this master program.

G. Allow dredging for the following activities:

1. In conjunction with a water-dependent use of water bodies or adjacent shorelands;

2. In conjunction with a bridge, navigational structure or wastewater treatment facility for which there is a documented public need and where other feasible sites or routes do not exist;

3. Maintenance of irrigation reservoirs, drains, canals or ditches for agricultural and stormwater purposes;

4. Removal of gravel for flood management purposes consistent with an adopted flood hazard reduction plan and only after a biological and geomorphological study demonstrates that extraction has a long-term benefit to flood hazard reduction, does not result in a net loss of shoreline ecological processes and functions and is part of a comprehensive flood management solution;

5. Restoration or enhancement of shoreline ecological processes and functions benefiting water quality and/or fish and wildlife habitat;

6. Minor trenching to allow the installation of authorized shoreline stabilization measures or necessary underground pipes or cables if no alternative, including boring, is feasible, and:

    a. Impacts to fish and wildlife habitat are avoided to the maximum extent possible;

    b. The utility installation does not increase or decrease the natural rate, extent or opportunity of channel migration;

    c. Appropriate best management practices are employed to prevent water quality impacts or other environmental degradation.

**Regulations**

Dredging may be allowed as listed in Table 3, and shall be subject to the regulations below.

A. All permits which include dredging shall supply a dredging plan which includes the following information:

1. A description of the applicable purpose of the proposed dredging and an analysis of compliance with the policies and regulations of this Program.

2. A detailed description of the existing physical character, shoreline geomorphology and biological resources (including migratory, seasonal and spawning use) provided by the area proposed to be dredged, including:

    a. A site plan map outlining the perimeter of the proposed dredge area, include the existing bathymetry depths and have data points at a minimum of 2-foot increments in depth.

    b. A habitat survey must be conducted and Washington State Department of Fish and Wildlife (WDFW) must be contacted to ensure the survey is conducted according to the most recent survey guidelines.

    c. Information on stability of bedlands adjacent to proposed dredging and spoils disposal areas.

3. A detailed description of the physical, chemical and biological characteristics of the dredge spoils to be removed.

    a. Physical analysis of material to be dredged: material composition and amount, grain size, organic materials present, source of material, etc.

    b. Chemical analysis of material to be dredged: volatile solids, chemical oxygen demand (COD), grease and oil content, mercury, lead and zinc content, etc.

    c. Biological analysis of material to be dredged.

4. A description of the method of materials removal, including facilities for settlement and movement.

    a. Dredging procedure: length of time it will take to complete dredging, method of dredging and amount of materials removed.

    b. Frequency and quantity of project maintenance dredging.

5. Detailed plans for dredge spoil disposal, including specific land disposal sites and relevant information on the disposal site, including but not limited to:

    a. Spoils disposal area, including:

        i. Physical characteristics including location, topography, existing drainage patterns, surface and ground water;

        ii. Size and capacity of disposal site;

        iii. Means of transportation to the disposal site;

        iv. Proposed dewatering and stabilization of spoils;

        v. Methods of controlling erosion and sedimentation; and

        vi. Future use of the site and conformance with land use policies and regulations.

    b. Total initial spoils volume.

    c. Plan for disposal of maintenance spoils for at least a 50-year period.

6. Hydraulic modeling studies sufficient to identify existing geo-hydraulic patterns and probable effects of dredging.

B. Dredging and dredge disposal shall be prohibited on or in archaeological sites that are listed on the Washington State Register of Historic Places.

C. Dredging for the sole purpose of obtaining landfill material is prohibited.

D. Dredging to construct canals or small basins for water ski landings or swimming holes is prohibited.

E. Limit dredging to support water dependent uses, navigation, public access, and restoration. Prohibit dredging which will cause unmitigated damage to shallow water habitat used by salmon and steelhead for migration corridors, rearing, feeding and refuge.

F. The removal of river gravel bars may be allowed when all of the following conditions can be met:

   a. The gravel removed from the river or stream does not exceed the average annual recruitment of bedload material as shown by an approved geomorphic and sediment transport analysis. Additional gravel may be removed where the applicant can demonstrate the channel capacity has been significantly reduced.

   b. The gravel is removed from the area between the existing water level and the permanently vegetated portions of the bank.

   c. The project will not cause any adverse impacts on salmon and steelhead habitat, especially through increased sedimentation.

G. Dredging waterward of the OHWM for the primary purpose of obtaining fill material shall not be allowed, expect when the material is necessary for restoration of ecological functions. When allowed, the site where the fill is to be placed must be located waterward of the OHWM.

H. Dredge disposal sites shall adhere to the following conditions:

   1. Containment dikes and adequate settling basins shall be built and maintained so that the site's discharge water carries a minimum of suspended sediment. Required basins shall be designed to maintain at least 1 foot of standing water at all times to encourage proper settling.

   2. Proper diversion of surface discharge shall be provided to maintain the integrity of the natural streams, wetlands and drainages.

   3. Shoreline ecological functions and processes will be preserved, including protection of surface and ground water; erosion, sedimentation, floodwaters or runoff will not increase adverse impacts to shoreline ecological functions and processes or property.

4. Runoff water shall be controlled so as to enter a waterway through grassy swales or other treatment features that assures protection of water quality and other environmental resources.

5. Underground springs and aquifers shall be identified and protected.

6. The outside face of dikes shall be sloped at 1-1/2 to 1 (horizontal to vertical) or flatter and seeded with grass and/or native vegetation. Landscaping and buffer areas may be required.

7. Sites shall be adequately screened from view. Dredge disposal in shoreline areas shall not impair scenic views.

8. Dredge materials deposited upland and not part of a permitted dike or levee shall constitute fill, and when deposited within the jurisdiction of this master program, shall comply with the fill regulations of this master program.

**FILL**

**Policies**

A. Shoreline use and development should be located and designed to minimize the need for fill.

B. The mitigation sequence should be used to limit the size and location of fills.

C. Shoreline fills should be designed and located to avoid causing significant damage to existing ecological values or natural resources, or create a risk of significant injury to life or adjacent property.

D. The perimeter of a fill should be designed to avoid or eliminate erosion and sedimentation impacts, both during initial landfill activities and over time. Natural appearing and self-sustaining control methods are preferred over structural methods.

E. Fills for water-dependent uses should be prioritized over fill for other purposes.

F. Allow the deposition of fill material in water areas:

1. For habitat improvement,

2. For a beneficial use in riverbed enhancement;

3. For mitigation actions;

4. For water dependent uses;

5. For public access; or

6. For cleanup and disposal of contaminated sediments.

G. Require a shoreline conditional use permit for any fill placed waterward of the ordinary high-water mark for any use except ecological restoration.

H. Require fill projects to provide mitigation to prevent a net loss of shoreline ecological functions.

I. Prohibit the placement of fill in floodways or wetlands, unless part of an approved ecological restoration activity.

**Regulations**

Fill may be allowed as listed in Table 3, and shall be subject to the regulations below.

A. Fills shall consist of clean materials including such earth materials as clay, sand, and gravel, and also may include oyster or clam shells. In addition, concrete may be included in fill material if it is not liable to pollute ground water and is approved by the Administrator. The use of solid waste~~s~~ and organic debris, such as wood and other vegetative materials, in a fill are prohibited.

B. Fills for riverbed enhancement shall be designed, constructed, and maintained to prevent, minimize and control all material movement, erosion, and sedimentation from the affected area.

C. Shoreland fill shall support native vegetation and be replanted to blend with the surrounding environment.

D. Fills may be allowed only when it can be demonstrated that the proposed action will not:

1. Result in significant damage to water quality, fish, and/or wildlife habitat; and

2. Adversely alter natural drainage and circulation patterns, currents, river and tidal flows or significantly reduce flood water capacities.

E. Fill which will interfere with public rights of navigation and rights corollary thereto shall not be permitted unless there is an overriding public interest.

F. Fill for the sole purpose of creating new dry land is prohibited.

G. Fill within a 100-year floodplain is prohibited except when it can be clearly demonstrated that the geohydraulic characteristics and floodplain storage capacity will not be altered to increase flood hazard or other damage to life or property, individually or cumulatively.

H. Fill of parcel within a 100-year floodplain for the purpose of raising the first floor elevation of a residential single family structure is prohibited, however a limited amount of fill will be allowed adjacent to an elevated foundation to protect the foundation from frost heave.

I. Fill located waterward of the ordinary high water mark for the purpose of ecological restoration may be allowed subject to a shoreline substantial development permit, rather than a shoreline conditional use permit.

## RESTORATION AND ENHANCEMENT

### Policies

A. Insure that permits for restoration and enhancement projects address the environmental impact mitigation policies and regulations in Section 6.

B. Encourage and facilitate cooperative restoration and enhancement programs between local, state, and federal public agencies, tribes, non-profit organizations, and landowners to address shorelines with impaired ecological functions and/or processes.

C. Ensure restoration and enhancement are consistent with and, where practicable, prioritized based on the biological recovery goals for listed fish species and other species for which a recovery plan is available.

D. Integrate restoration and enhancement with other parallel natural resource management efforts.

E. Prioritize restoration actions and stand-alone projects in the following order:

1. Create dynamic and sustainable ecosystems.

2. Preserve and restore connectivity between side channels, floodplains and hyporheic zones.

3. Restore natural channel-forming geomorphologic processes.

4. Replant native vegetation, particularly native conifers, in riparian areas to restore functions. Native conifers help reduce sediment delivery to streams, provide shade and reduce water temperatures, and represent a future supply of large woody material.

5. Reduce sediment input to streams and rivers and associated impacts.

6. Improve water quality.

7. Restore native vegetation and natural hydrologic functions of degraded and former wetlands.

8. Replant native vegetation in riparian areas to restore functions, and retain intact habitat by continuing to protect well vegetated shorelines.

9. Remove obsolete and no longer needed shoreline modifications.

**Regulations**

Restoration and enhancement may be allowed as listed in Table 3, and shall be subject to the regulations below.

A. Restoration shall be carried out in accordance with a restoration plan that has been reviewed, approved and permitted in compliance with the environmental impact mitigation policies and regulations in Section 6 of this Program.

B. Shoreline restoration and enhancement projects including shoreline modification activities such as removal of vegetation, shoreline stabilization, dredging and filling may be allowed provided the primary purpose of such action is clearly restoration of the natural character and ecological functions of the shoreline.

C. In accordance with RCW 90.58.580, a Substantial Development Permit is not required for development on land that is brought under shoreline jurisdiction due to a shoreline restoration project. However, projects are still required to comply with the regulations of this Master Program.

D. Projects taking place on lands that are brought into shoreline jurisdiction due to a shoreline restoration project that caused a landward shift of the OHWM may apply to the Shoreline Administrator for relief from the SMP regulations and use regulations under the provisions of RCW 90.58.580. Any relief granted shall be strictly in accordance with the limited provisions of RCW 90.58.580, including the specific approval of the Department of Ecology.

## SHORELINE STABILIZATION

Shoreline stabilization includes actions taken to address erosion impacts to property and dwellings, businesses or structures caused by natural processes, such as floods, wind or wave action. These actions include structural and nonstructural methods. Nonstructural methods of shoreline stabilization include building setbacks, relocation of structures, groundwater and stormwater management, and planning and regulatory measures that avoid the need for structural stabilization.

Structural stabilization methods include hard and soft measures. Hard structural stabilization measures refer to those with solid, hard surfaces such as concrete bulkheads, while soft structural methods rely on less rigid materials such as vegetation enhancement, biotechnical measures, and gravel placement. Generally, the harder the construction measure, the greater the impact on shoreline processes.

### Policies

A. Prioritize shoreline stabilization measures in the following order of preference:

1. No action (allow the shoreline to retreat naturally), increased building setbacks, and structure relocation.

2. Upland vegetation enhancement and drainage controls.

3. Flexible defense works constructed of natural materials including soft shore protection, bioengineering, protective berms or vegetative stabilization.

4. Rigid works constructed such as bulkheads and walls of artificial materials such as riprap or concrete. Materials used for construction of shoreline stabilization is to be selected for long-term durability, ease of maintenance, compatibility with local shore features, including aesthetic values and flexibility for future uses.

5. Applications that propose less preferred methods must demonstrate why preferred methods are not feasible.

B. Structures and subdivisions of property along the shoreline should be designed and located to avoid the need for future shoreline stabilization.

C. Shoreline stabilization should be located and designed to:

1. Protect and maintain shoreline ecological functions, and the integrity of riparian features; and

2. Not unnecessarily interfere with or decrease public access to public shorelines or with other appropriate shoreline uses including, but not limited to, navigation, or private recreation.

3. Fit the physical character and hydraulic energy potential of a specific shoreline reach, which may differ substantially from adjacent reaches.

D. Public or quasi-public shoreline stabilization projects should be designed to accommodate multiple uses, restoration, and/or public access, where feasible.

E. Limit new or expanded structural shoreline stabilization to when a geotechnical analysis demonstrates there is a need to protect an existing primary structure or principle use:

F. Larger shoreline stabilization projects should be restricted to when the water-dependent use it supports benefits the region to the extent it outweighs potential resource losses from such works.

G. Shoreline stabilization for the purpose of filling shorelines should be prohibited.

H. Shoreline stabilization projects should include coordination with affected property owners and public agencies for a whole stream reach to address ecological and geo-hydraulic processes.

I. Remove failing, harmful, unnecessary, or ineffective structures and restore shoreline processes and ecological functions by using less harmful long-term stabilization measures.

**Regulations**

A. All proposals for structural shoreline stabilization shall be consistent with mitigation sequencing as outlined in the environmental impact mitigation policies and regulations in Chapter 6, as well as the critical areas and shoreline vegetation conservation policies and regulations in Chapter 6. When structural shoreline stabilization is allowed, mitigation shall be required for all adverse impacts to assure no net loss of shoreline ecological functions.

B. New development shall be located and designed to avoid the need for future shoreline stabilization to the extent feasible. Subdivisions of land shall assure that any new lots created will not require shoreline stabilization in order for reasonable development to occur, as demonstrated by a geotechnical analysis.

C. New or expanded structural shoreline stabilization measures shall not be allowed except when necessity is demonstrated in the following manner:

1. It is conclusively demonstrated by a geotechnical analysis to be necessary to protect an existing primary structure or new non-water dependent development that is in danger from shoreline erosion caused by natural processes. Normal sloughing, erosion of steep bluffs, or shoreline erosion itself, without a geotechnical analysis, is not demonstration of need. For water dependent development, the threat of damage or erosion need not be from natural processes;

2. The erosion is not being caused by upland conditions such as vegetation loss or drainage problems;

3. Nonstructural measures such as such as placing development further from the shoreline, installing on site drainage improvements or planting vegetation are not feasible or not sufficient;

4. The structure will not result in a net loss of shoreline ecological functions.

D. New structural shoreline stabilization measures to protect restoration projects or hazardous substance remediation projects will be authorized when nonstructural stabilization is not feasible or not sufficient and when the structure will not result in a net loss of shoreline ecological functions.

E. Existing shoreline stabilization structures may be replaced with a similar structure if there is a demonstrated need to protect principle uses or primary structures from erosion caused by natural processes. For purposes of this regulation, a structure or use must be within 25 feet of the OHWM for need to be automatically demonstrated. Structures or uses further than 25 feet from the OHWM shall require a geotechnical analysis per regulation F below to demonstrate need. Hard replacement structures shall not encroach waterward of the OHWM. Soft replacement methods that provide restoration of shoreline ecological functions may be permitted waterward of the OHWM. Also for purposes of this section, 'replacement' means the construction of a new structure to perform the stabilization function of an existing structure that can no longer adequately serve its purpose. Additions to or increases in size of an existing shoreline stabilization measure shall be considered a new structure.

F. Geotechnical reports required by this section shall address the necessity for shoreline stabilization by estimating time frames and rates of erosion and report on the urgency associated with the specific situation. Hard armoring shall not be authorized except when the geotechnical analysis confirms there is a significant possibility that a structure or use will be damaged within 3 years as a result of shoreline erosion in the absence of such hard armoring. Where the geotechnical report confirms a need to prevent potential damage but the need is not as immediate as three years, the report may be used to justify more immediate authorization to protect against erosion using soft stabilization measures.

**Bioengineering Regulations**

A. Bioengineering projects shall incorporate self-maintaining vegetation and materials over those which require routine maintenance, where feasible.

B. Bioengineering projects shall be designed and constructed to:

1. Ensure that water quality, fish and wildlife habitats and flood holding capacity are not degraded, and timed so that the survival of new plantings is optimized;

2. Maximize the use of native vegetation;

3. Minimize the structural soil stabilization components, including riprap, to last only until vegetation is well established; and.

4. Include vegetative buffers, fencing and/or other measures to avoid disturbance of the project site by livestock and vehicles.

C. The waterward extent of bioengineering projects shall be limited to that which is necessary to achieve the intended results.

D. Bioengineering shall be used when a geotechnical analysis confirms a need to prevent potential damage to a primary structure, but the need is not as immediate as within 3 years.

E. Bioengineering projects shall incorporate the following:

1. A diverse variety of native plant materials, including trees, shrubs and grasses, unless demonstrated infeasible for the particular site.

2. All cleared areas shall be replanted following construction and irrigated (if necessary) to ensure that all vegetation is fully re-established within 3 years. Areas that fail to adequately reestablish vegetation shall be replanted with approved plant materials until such time as the plantings are viable.

3. The critical area buffer shall remain undisturbed to allow bank protection plantings to become established. The buffer shall exclude livestock, vehicles and activities that could disturb the site for a minimum of three years.

4. All bioengineering projects shall be monitored and maintained as necessary. Areas damaged by pests and/or the elements shall be promptly repaired.

5. All construction and planting activities shall be scheduled to minimize impacts to water quality and fish and wildlife aquatic and upland habitat and to optimize survival of new vegetation.

**Revetment, Gabion and Bulkhead Regulations**

A. Revetments, gabions or bulkheads may be allowed to protect a legally existing primary structure or authorized shoreline use after the Administrator has determined that other techniques, such as bioengineering, are not feasible.

B. New and repairs to exiting revetments, gabions and bulkheads for a nonconforming use are prohibited, unless it can be demonstrated that it is necessary for the maintenance of shoreline ecological functions and is in the public interest.

C. Revetments, gabions and bulkheads are prohibited in wetlands, and in salmon and trout spawning areas, except for the purpose of fish or wildlife habitat enhancement or restoration.

D. Installation of a revetment, gabion or bulkhead to protect a lot where no structure presently exists is prohibited.

E. The construction of a bulkhead for the primary purpose of retaining or creating dry land is prohibited, except as allowed by the fill regulations.

F. The design of revetments, gabions or bulkheads shall incorporate proper consideration of:

1. Data on local geophysical conditions;

2. Data on stream flow, velocity and flood capacity; and

3. Effects on adjacent properties.

G. Revetments or gabions shall incorporate downed logs, snags or existing large rocks into the design, where feasible. The use of tires, automobile bodies, scrap metal, paper products and solid waste materials is prohibited.

H. Bulkheads are prohibited for any purpose if they will cause significant on site or downstream erosion.

I. The design of revetments shall be in accordance with the Washington Department of Fish and Wildlife's most current edition of the *Integrated Streambank Protection Guidelines* for freshwater shorelines.

J. The design and construction of bulkheads shall conform to all other applicable state agency policies and regulations including the Washington Department of Fish and Wildlife criteria governing the design of bulkheads.

K. Riprap used for revetments or gabions shall consist of clean quarried rock, free of loose dirt and any pollutants, and shall be of sufficient size and weight to prevent movement by wave or current action.

L. When located on the convex (inside) bend of a stream or river a proposed revetment shall be setback to allow stream to maintain point bars and associated aquatic habitat through normal accretion. Where revetments or similar structures have already cut off point bars from the stream, consideration shall be given to their relocation.

M. Stairs may be built into a bulkhead, but shall not extend waterward of its face.

## DIKES, LEVEES AND INSTREAM STRUCTURES

### Policies

A. Applications for dike, levee and instream structure projects should address the Environmental Impact Mitigation and critical areas and shoreline vegetation conservation policies and regulations in Section 6.

B. Non-structural flood hazard reduction solutions should be preferred over structural flood control devices, for example:

1. Limiting development in historically flood-prone areas or historic channel migration areas;

2. Regulating and limiting increases in peak stormwater runoff from new upland development; and

3. Land acquisition for additional flood storage.

C. Structural flood hazard reduction measures should be limited to when they are necessary to protect existing legally established development and where non-structural flood hazard reduction measures have been determined to be infeasible.

D. Dikes, levees and instream structures should be located, designed, and constructed to provide:

1. Protection of the physical integrity of the stream corridor and other properties that may be damaged by interruptions of the geohydraulic system;

2. Protection of water quality and natural ground water movement;

3. Protection of fish, vegetation and other life forms and their habitat vital to the aquatic food chain;

4. Protection of recreation resources and aesthetic values such as point and channel bars, islands and other shore features and scenery;

5. Dedicated public access where appropriate; and

6. Protection of natural hydrologic and geomorphic channel and floodplain processes.

E. Prohibit structural flood hazard reduction measures where they will result in any of the following:

1. Increased residential, commercial or industrial development in undeveloped 100-year floodplains or channel migration areas;

2. Loss of significant flood storage capacity in undeveloped 100-year floodplains; and

3. Deflecting or constricting flood flows to a degree that will result in significantly increased flood heights on unprotected properties.

F. Dikes, levees and instream structures should be designed and constructed to be:

1. Consistent with and incorporate elements from applicable watershed management plans, restoration plans and/or surface water management plans; and

2. Compatible with continued long-term multiple use of shoreline resources by all appropriate user groups.

G. Existing dikes, levees and instream structures should be removed, when feasible.

H. Instream structures, dikes, levees and associated facilities should provide for the protection and preservation of natural and cultural resources including, but not limited to, fish, wildlife and water resources, sensitive areas such as wetlands, sensitive geologic and geohydraulic areas and waterfalls, erosion and accretion shoreforms and natural scenic vistas.

I. For shoreline development by public entities, such as local governments, port districts, state agencies, and public utility districts, refer to the public access provision in subsection H of the Public Access policies in Section 6.

**Regulations**

Dikes, levees and instream structures may be allowed as listed in Table 6.11, and shall be subject to the regulations below.

General Regulations

A. Dikes, levees and instream structures shall be subject to mitigation sequencing as outlined in the Environmental Impact Mitigation regulations in Section 6 as well as critical area and shoreline vegetation conservation policies and regulations in Section 6. When allowed, mitigation shall be required for all adverse impacts to assure no net loss of shoreline ecological functions.

Dike and Levee Regulations

A. New dikes and levees may be constructed as part of a shoreline environmental restoration project, a state-approved comprehensive flood control management plan, an approved watershed plan, or an approved stormwater drainage basin plan.

B. Dikes and levees shall not be constructed with material dredged from the adjacent wetland or stream area unless part of a comprehensive flood and habitat plan.

C. Dikes and levees shall not be placed in the floodway except as necessary for protection of bridges and roads.

D. Dikes and levees shall be subject to following:

1. Such works shall be located and designed to protect shoreline ecological processes and functions;

2. Such works shall be limited in size to the minimum height required to protect adjacent lands from the protected flood stage;

3. Such works shall be set back to the greatest extent feasible landward of the floodway, ordinary high water mark, and wetlands;

4. Such works are to be located near the tangent to outside meander bends so that the stream can maintain normal meander progression and utilize most of its natural flood water storage capacity;

5. Such works shall not interfere with channel migration except to protect existing structures;

6. Such works shall be designed and constructed to meet Natural Resources Conservation Service technical manual standards;

7. Such works shall be constructed in coordination with the Washington Department of Fish and Wildlife (WDFW).

Instream Structure Regulations

A. Instream structures shall be planned and constructed based on a state-approved comprehensive flood control management plan, when available, and in accordance with the local National Flood Insurance Program.

B. Instream structures shall be permitted only when it is demonstrated by engineering and scientific evaluations that:

   1. They are necessary to protect health/safety and/or existing development.

   2. Non-structural flood hazard reduction measures are infeasible.

   3. Measures are consistent with an adopted comprehensive flood hazard management plan that evaluates cumulative impacts to the watershed system.

C. Instream structures shall preserve valuable recreation resources and aesthetic values such as point and channel bars, side channels, islands and braided channels.

D. A new instream structure (such as, but not limited to, high flow bypass, sediment ponds, instream ponds, retention and detention facilities, dams and weirs) shall be allowed only as part of an approved mitigation or restoration project, or approved watershed basin plan.

E. Instream structures shall be designed to avoid modifying flows and water quality in ways that may adversely affect critical fish species.

# 9. DEFINITIONS

The terms used throughout this Program shall be defined and interpreted as indicated below. When consistent with the context, works used in the present shall include the future, the singular shall include the plural, and the plural the singular.

1. **Act** or **SMA.** The Shoreline Management Act of 1971 (Chapter 90.58 RCW, as amended).

2. **Accessory Building, Structure or Use.** The use of the land or a subordinate building or a portion of a principle building, such use being secondary or incidental to a permitted use or structure, whether such permitted use is on the same lot as the proposed accessory building or use, or on a contiguous lot or lots under the same ownership; provided, that the accessory structure or use may be established in conjunction with or after the establishment of the permitted structure or use.

3. **Administrator.** That person as appointed by the City to administer the provisions of these regulations within the City.

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

5. **Agricultural Equipment** and **Agricultural Facilities.** Include, but are not limited to:

    A. The following used in agricultural operations: Equipment; machinery; constructed shelters, buildings, and ponds; fences; upland finfish rearing facilities; water diversion, withdrawal, conveyance, and use equipment and facilities including, but not limited to, pumps, pipes, tapes, canals, ditches, and drains;

    B. Corridors and facilities for transporting personnel, livestock, and equipment to, from, and within agricultural lands;

C. Farm residences and associated equipment, lands, and facilities; and

D. Roadside stands and on-farm markets for marketing fruit or vegetables.

6. **Agricultural Commodities.** Any plants, or parts thereof, and animals produced by a farmer with their primary use being for sale, consumption, or propagation by man or animals.

7. **Agricultural Land.** Those specific land areas on which agricultural activities are conducted as of the effective date of this master program, as evidenced by aerial photography or other documentation. After the effective date of the master program, land converted to agricultural use is subject to compliance with the requirements of the master program.

8. **Agricultural Products.** Includes, but is not limited to, horticultural, viticultural, floricultural, vegetable, fruit, berry, grain, hops, hay, straw, turf, sod, seed, and apiary products; feed or forage for livestock; Christmas trees; hybrid cottonwood and similar hardwood trees grown as crops and harvested within twenty years of planting; and livestock including both the animals themselves and animal products including, but not limited to, meat, upland finfish, poultry and poultry products, and dairy products.

9. **Amendment.** A revision, update, addition, deletion, and/or reenactment to an existing shoreline master program.

10. **Applicable Master Program**. The master program approved or adopted by the Department pursuant to RCW 90.58.090(6) or 90.58.190(4) prior to acceptance of a complete application by local government.

11. **Approval.** An official action by a local government legislative body agreeing to submit a proposed shoreline master program or amendments to the department for review and official action pursuant to this chapter; or an official action by the department to make a local government shoreline master program effective, thereby incorporating the approved shoreline master program or amendment into the state master program.

12. **Aquacultural Practices.** Include the hatching, cultivating, planting, feeding, raising, harvesting and processing of aquatic plants and animals, and the maintenance and construction of necessary equipment, buildings and growing areas. Methods of aquaculture include but are not limited to fish hatcheries, fish pens, shellfish rafts, racks and longlines, seaweed floats and the culture of clams and oysters on tidelands and subtidal areas.

13. **Archaeological Resource/Site.** Includes a geographic locality in Washington, including, but not limited to, submerged and submersible lands and the bed of the sea within the state's jurisdiction, that contains archaeological objects.

14. **Archaeologist, Professional.** A person with qualifications meeting the federal secretary of the interior's standards for a professional archaeologist. Archaeologists not meeting this standard may be conditionally employed by working under the supervision of a professional archaeologist for a period of four years provided the employee is pursuing qualifications necessary to meet the federal secretary of the interior's standards for a professional archaeologist.

15. **Average Grade Level.** The average of the natural or existing topography of the portion of the lot, parcel, or tract of real property which will be directly under the proposed building or structure: In the case of structures to be built over water, average grade level shall be the elevation of the ordinary high water mark. Calculation of the average grade level shall be made by averaging the ground elevations at the midpoint of all exterior walls of the proposed building or structure.

16. **Bedlands.** Those submerged lands below the line of extreme low tide in marine waters and below the line of navigability of navigable lakes and rivers

17. **Berm.** One or several linear deposits of sand and gravel generally paralleling the shore at or landward of OHWM; berms are naturally stable because of material size or vegetation

18. **Billboard.** See "Signs and Billboards"

19. **Bioengineering.** The practice of using natural vegetative materials (and often structural components) to stabilize shorelines and prevent erosion.

20. **Boating Facilities.** Includes marinas located both landward and waterward of the OHWM (dry storage and wet-moorage types); and launch ramps.

21. **Buffer.** An area measured landward perpendicularly from the ordinary high water mark that is intended to reduce the adverse impacts of adjacent land uses on shoreline ecological functions and provide important habitat for wildlife.

22. **Building.** Any structure designed for or used for the support, shelter or enclosure of persons, animals or personal property, and which is used in a fixed location on land, shorelands or tidelands.

23. **Bulkhead.** Either public or private wall usually constructed parallel to the shore at or immediately adjacent to the Ordinary High Water Mark. The primary

purpose of a bulkhead is to contain and prevent the loss of soil caused by erosion or wave action.

24. **Channel Migration Zone (CMZ).** The area along a river within which the channel(s) can be reasonably predicted to migrate over time as a result of natural and normally occurring hydrological and related processes when considered with the characteristics of the river and its surroundings.

25. **Clearing.** The destruction or removal of vegetative ground cover and/or trees including, but not limited to, root material removal and/or topsoil removal. This includes such activities as clear cutting or selective harvest of trees, pulling out of stumps, hauling off of shrubs, slash piles, etc.

26. **Cluster Development.** A residential development which reserves substantial portions of land as open space or recreational areas for the joint use of the occupants of the development. This land may be provided by allowing dwelling units to be placed on lots smaller than the legal minimum size for regular subdivisions, as long as the density does not exceed prescribed standards.

27. **Commercial Development.** Those uses involved in wholesale, retail, service and business trade. Examples include hotels, motels, grocery markets, shopping centers, restaurants, shops, offices and private or public indoor recreation facilities.

28. **Conditional Use.** A use, development, or substantial development which is classified as a conditional use or is not classified within the master program.

29. **Critical Areas.** Those areas with especially fragile biophysical characteristics and/or with significant environmental resources as identified in a scientifically documented inventory. *RCW 36.70A.030* defines "critical areas" as: wetlands; areas with a critical recharging effect on aquifers used for potable waters; fish and wildlife habitat conservation areas; frequently flooded areas; and geologically hazardous areas.

30. **Critical Freshwater Habitats.** Designated areas of streams, rivers, wetlands and lakes, their associated channel migration zones and flood plains.

31. **Density.** The permissible number of dwelling units that may be developed on a specific amount of land area measured in number of dwelling units per acre.

32. **Department.** Washington State Department of Ecology.

33. **Development.** A use consisting of the construction or exterior alteration of structures; dredging; drilling; dumping; filling; removal of any sand, gravel or minerals; bulkheading; pile driving; placing of obstructions; or any project of a

permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to the Act at any stage of water level.

34. **Development Regulations.** The controls placed on development or land uses by a county or city, including, but not limited to, zoning ordinances, critical areas ordinances, all portions of a shoreline master program other than goals and policies approved or adopted under chapter 90.58 RCW, planned unit development ordinances, subdivision ordinances, and binding site plan ordinances together with any amendments thereto.

35. **Dike.** An embankment to prevent flooding by a stream or other water body, often referred to as a levee.

36. **Dredging.** The removal or displacement of earth or sediments such as gravel, sand, mud or silt and/or other materials or debris from any stream, river, lake or marine water body and associated shorelines and wetlands.

37. **Drilling.** The process of cutting a hole into the earth for the purpose of obtaining petroleum products.

38. **Dwelling.** A building or portion thereof, designed or used for residential occupancy.
The term dwelling shall not be construed to mean a motel, rooming house, hospital or other accommodation used for more or less transient occupancy.

39. **Ecological Functions or Shoreline Functions.** The work performed or role played by the physical, chemical, and biological processes that contribute to the maintenance of the aquatic and terrestrial environments that constitute the shoreline's natural ecosystem.

40. **Ecosystem-Wide Processes.** The suite of naturally occurring physical and geologic processes of erosion, transport, and deposition; and specific chemical processes that shape landforms within a specific shoreline ecosystem and determine both the types of habitat and the associated ecological functions.

41. **Education.** Any development undertaken for the support of public or private research or education.

42. **Emergency.** An unanticipated and imminent threat to public health, safety or the environment which requires immediate action with a time too short to allow full compliance with this Master Program. 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 permits which

would have been required by this SMP or the SMA, absent an emergency, must be obtained. Generally, flooding or other seasonal events that can be anticipated and may occur but are not imminent are not an emergency.

43. **Environment.** See "Shoreline Environment Designations".

44. **Exempt.** Developments set forth in WAC 173-27-040 and RCW 90.58.030 (3)(e), 90.58.140(9), 90.58.147,90.58.355 , and 90.58.515 which are not required to obtain a substantial development permit but which must otherwise comply with applicable provisions of the act and the local master program.

45. **Fair market value.** The open market bid price for conducting the work, using the equipment and facilities, and purchase of the goods, services and materials necessary to accomplish the development. This would normally equate to the cost of hiring a contractor to undertake the development from start to finish, including the cost of labor, materials, equipment and facility usage, transportation and contractor overhead and profit. The fair market value of the development shall include the fair market value of any donated, contributed or found labor, equipment or materials.

46. **Feasible.** An action, such as a development project, mitigation, or preservation requirement, meets all of the following conditions:

    A. The action can be accomplished with technologies and methods that have been used in the past in similar circumstances, or studies or tests have demonstrated in similar circumstances that such approaches are currently available and likely to achieve the intended results;

    B. The action provides a reasonable likelihood of achieving its intended purpose;

    C. The action does not physically preclude achieving the project's primary intended legal use;

    D. In cases where these guidelines require certain actions unless they are infeasible, the burden of proving infeasibility is on the applicant; and

    E. In determining an action's infeasibility, the reviewing agency may weigh the action's relative public costs and public benefits, considered in the short- and long-term time frames.

47. **Fill.** The addition of soil, sand, rock, gravel, sediment, earth retaining structure, or other material to an area waterward of the OHWM, or on shorelands in a manner that raises the elevation or creates dry land.

48. **Flood Plain.** Synonymous with 100-year flood plain and means that land area susceptible to inundation with a 1 percent chance of being equaled or exceeded in any given year. The limit of this area shall be based upon flood ordinance regulation maps.

49. **Floodway.** The area, as identified in a master program, that either: (i) Has been established in federal emergency management agency flood insurance rate maps or floodway maps; or (ii) consists of those portions of a river valley lying streamward from the outer limits of a watercourse upon which flood waters are carried during periods of flooding that occur with reasonable regularity, although not necessarily annually, said floodway being identified, under normal condition, by changes in surface soil conditions or changes in types or quality of vegetative ground cover condition, topography, or other indicators of flooding that occurs with reasonable regularity, although not necessarily annually. Regardless of the method used to identify the floodway, the floodway shall not include those lands that can reasonably be expected to be protected from flood waters by flood control devices maintained by or maintained under license from the federal government, the state, or a political subdivision of the state.

50. **Forest Practices**. The raising and harvesting of trees as a crop as defined by WAC 222-16, as amended. Within the city or its urban growth area all Class 1, 2 or 3 forest practices shall be administered as Class 4 conversions, and shall be subject to local land use regulations.

51. **Geologically Hazardous Areas.** Areas susceptible to severe erosion or slide activity, such as unstable bluffs, and include areas with high potential for earthquake activity. They may be identified in critical areas inventories or the Coastal Zone Atlas. In general, they are not suitable for placing structures or locating intense activities or uses due to the inherent threat to public health and safety.

52. **Geotechnical Report or Geotechnical Analysis.** A scientific study or evaluation conducted by a qualified expert that includes a description of the ground and surface hydrology and geology, the affected land form and its susceptibility to mass wasting, erosion, and other geologic hazards or processes, conclusions and recommendations regarding the effect of the proposed development on geologic conditions, the adequacy of the site to be developed, the impacts of the proposed development, alternative approaches to the proposed development, and measures to mitigate potential site-specific and cumulative geological and hydrological impacts of the proposed development, including the potential adverse impacts to adjacent and down-current properties. Geotechnical reports shall conform to accepted technical standards and must be prepared by qualified professional engineers or geologists who have professional expertise about the regional and local shoreline geology and processes.

53. **Grading.** The movement or redistribution of the soil, sand, rock, gravel, sediment, or other material on a site in a manner that alters the natural contour of the land.

54. **Guidelines** or **SMP Guidelines.** Those standards adopted to implement the SMA policy for regulation of use of the shorelines of the state prior to adoption of master programs, and to provide criteria to local governments and Ecology for developing shoreline master programs (SMP). Chapter 173-26 WAC or as amended.

55. **Hazard Tree.** Any tree that is susceptible to immediate fall due to its condition (damage, disease, or dead) or other factors, which because of its location is at risk of damaging permanent physical improvement to property causing personal injury.

56. **Hazardous Waste.** Includes all dangerous and extremely hazardous waste as defined by RCW 70.105.010.

57. **Hearings Board.** The State Shorelines Hearings Board established by the act in RCW 90.58.170.

58. **Height or Building Height.** Measured from average grade level to the highest point of a structure: Provided, that television antennas, chimneys, and similar appurtenances shall not be used in calculating height, except where it obstructs the view of a substantial number of residences on areas adjoining such shorelines. Provided further, that temporary construction equipment is excluded in this calculation.

59. **Historic Place.** A building, structure, district, object or site on or determined to be eligible for the local, State or National Register of Historic Places.

60. **Historic Preservation Professional.** An individual who hold a graduate degree in architectural history, art history, historic preservation, or closely related field, with coursework in American architectural history, or a bachelor's degree in architectural history, art history, historic preservation or closely related field plus one of the following:

    A. At least 2 years of full-time experience in research, writing, or teaching in American architectural history or restoration architecture with an academic institution, historical organization or agency, museum, or other professional institution; or

    B. Substantial contribution through research and publication to the body of scholarly knowledge in the field of American architectural history.

61. **Impervious Surface.** Those surfaces that do not allow the downward passage of water.

62. **Industrial Developments.** Facilities for processing, manufacturing and storage of finished or semi-finished goods.

63. **Junk.** Old iron, steel, brass, cooper, tin, lead or other base metals; old cordage, ropes, rags, fibers or fabrics; old rubber; old bottles or other glass, bones; wastepaper, plastic and other waste or discarded material which might be prepared to be used again in some form; any or all of the foregoing; and motor vehicles, no longer used as such, to be used for scrap metal or stripping of parts; but "junk" shall not include materials or objects accumulated by a person as by-products, waste or scraps from the operation of his own business or materials or objects held and used by a manufacturer as an integral part of his own manufacturing process.

64. **Landfilling**. Refer to “Fill.”

65. **Legislative Body.** The City Council of the City of Toledo.

66. **Levee.** A natural or man-made embankment on the bank of a stream for the purpose of keeping flood waters from inundating adjacent land. Some levees have revetments on their sides.

67. **Local Government**. Any county, incorporated city or town which contains within its boundaries shorelines of the state subject to chapter 90.58 RCW.

68. **Lot.** A fractional portion of subdivided land having fixed boundaries.

69. **Lot Area.** The area contained within the boundaries of a lot excluding any area below the ordinary high-water mark.

70. **Lot, Front.** The portion of a lot adjacent to either the public street affording principal access to the property or the waterfront, if the property abuts a water body.

71. **Lot Length.** The maximum lineal dimension of a lot, not including an access roads less than 25 feet in width.

72. **Lot Width.** For lots of a generally rectangular character, the average lineal dimension taken at right angles to the lot length. For other lots, the diameter of the largest circle which can be placed wholly within the boundaries of the lot.

73. **Master Program.** The comprehensive use plan for a described area, and the use regulations together with maps, diagrams, charts, or other descriptive material and

text, a statement of desired goals, and standards developed in accordance with the policies enunciated in RCW 90.58.020.

74. **Maximum Density**. The largest number of dwelling uses per acre allowed by the SMP or local development regulations.

75. **Maximum Impervious Surface**. The largest amount of hard surfaces allowed with a parcel, which could include roots, pavement, patios, walkways, and gravel parking areas.

76. **May.** Denotes an action is acceptable, provided it conforms to the provisions of this chapter.

77. **Mining.** Removal of naturally occurring metallic and nonmetallic minerals and other related materials, including sand, gravel and quarry rock from on, and beneath, the earth's surface normally for commercial and construction purposes. This can include deep pit, open pit, surface mining, quarrying, placer and hydraulic mining.

78. **Must.** Denotes a mandate; the action is required.

79. **Native Vegetation.** Refer to “Vegetation, native”.

80. **Natural or existing topography.** The topography of the lot, parcel, or tract of real property immediately prior to any site preparation or grading, including excavation or filling.

81. **Nonconforming Building or Structure.** A building or structure or portion thereof which was lawfully erected, altered or maintained, but because of the application of this Master Program no longer conforms to the requirements of the Master Program.

82. **Nonconforming Lot.** A parcel of land legally established prior to the effective date of the Shoreline Master Program which does not conform with the lot size or area requirements of this Master Program.

83. **Nonconforming Use.** A use or activity that was lawfully established prior to the effective date of the Shoreline Master Program but no longer conforms to the requirements of the Master Program.

84. **Nonwater-Oriented Uses.** Those uses that are not water-dependent, water-related, or water-enjoyment.

85. **Normal Maintenance.** This includes those usual acts to prevent a decline, lapse or cessation from a lawfully established condition.

86. **Normal Repair.** 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 involves total replacement which is not common practice or causes substantial adverse effects to the shoreline resource or environment.

87. **Off-Premise Sign.** Refer to "Sign, Off Premise".

88. **Open Space.** Land and natural areas which retain their natural or semi-natural character because they have not been developed with structures, paving or other development and, for the purposes of this program, are normally required of residential and/or recreation developments.

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

90. **Over Water.** Location of a structure or development above the surface of the water, including placement of buildings on piling or floats.

91. **Parcel.** A tract or plot of land of any size which may or may not be subdivided or improved.

92. **Parking.** Any space or area specifically allotted for the purpose of temporary, daily or overnight off-street storage of motor vehicles to support a shoreline use authorized by the shoreline master program.

93. **Party of record.** Includes all persons, agencies or organizations who have submitted written comments in response to a notice of application; made oral comments in a formal public hearing conducted on the application; or notified local government of their desire to receive a copy of the final decision on a permit and who have provided an address for delivery of such notice by mail.

94. **Permit.** Any substantial development, variance, conditional use permit, or revision authorized under chapter 90.58 RCW.

95. **Person.** An individual, partnership, corporation, association, organization, cooperative, public or municipal corporation, or agency of the state or local governmental unit however designated.

96. **Planned Unit Development.** A development which permits departures from the conventional siting and setback requirements of other sections of this Master Program in the interest of achieving superior site development, creating open space, and encouraging imaginative design by permitting design flexibility.

97. **Primary Structure** means the structure associated with the principal use of the property. It may also include appurtenant structures (such as a garages, driveways, utilities, and septic tanks and drainfields) that cannot feasibly be relocated. It does not include structures such as tool sheds, gazebos, greenhouses or other ancillary improvements that can feasibly be moved landward to prevent the erosion threat.

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

    "Priority habitat, state" or "state priority habitat" means a seasonal range or habitat element, so identified by the Washington State Department of Wildlife, with which a given species has a primary association, and which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long term. These might include areas of high relative diversity or species richness, breeding habitat, winter range and movement corridors. These might also include habitats that are of limited availability or high vulnerability to alteration.

99. **Priority Species.** "Priority species, local" or "local priority species" means those species that may not be endangered or threatened from a statewide perspective, but are of local concern due to their population status or their sensitivity to habitat manipulation and have been designated as such.

    "Priority species, state" or "state priority species" means those species that are so identified by the Washington State Department of Wildlife due to their population status and their sensitivity to habitat manipulation. Priority species include those which are state-listed endangered, threatened and sensitive species.

100. **Property Lines.** The exterior boundaries of a lot or parcel.

101. **Provisions.** Policies, regulations, standards, guideline criteria or environment designations.

102. **Public Access.** Public access includes the ability of the general public to reach, touch, and enjoy the water's edge, to travel on the waters of the state, and to view the water and the shoreline from adjacent locations. Examples of public access may include trails, paths, roads or view points by which the general public can reach or view public waters.

103. **Public Interest.** The interest shared by the citizens of the state or community at large in the affairs of government, or some interest by which their rights or liabilities are affected including, but not limited to, an effect on public property or on health, safety, or general welfare resulting from a use or development.

104. **Public Street.** Any street, way, road, alley or highway in public ownership.

105. **Recreation.** Facilities for refreshment of body and mind through play, amusement or relaxation. This includes passive uses such as hiking, canoeing, photography and fishing. It also includes intensive uses such as boat ramps, motor vehicles, playgrounds and parks whether they are for public or private usage.

106. **Recreational Development.** Provides opportunities for the refreshment of body and mind through forms of play, sports, relaxation, amusement or contemplation. It includes facilities for passive recreational activities such as hiking, photography, viewing and fishing. It also includes facilities for active or more intensive uses such as parks, campgrounds, golf courses and their support buildings including clubhouses, and other outdoor recreation areas.

107. **Residence, Single-Family Detached.** A detached building designed for occupancy by one family and containing one dwelling unit.

108. **Residential Development.** One or more buildings, structures, lots, parcels or portions thereof that are designed for and used or intended to be used to provide a place of abode for human beings. Residential development includes single-family dwellings; duplexes; other detached dwellings; floating homes; multi-family development (apartments), condominiums, townhouses and rowhouses; manufactured home parks; subdivisions; and short subdivisions, together with accessory uses and structures normally applicable to residential uses including but not limited to garages, sheds, tennis courts, swimming pools, parking areas, fences, cabanas, saunas and guest cottages.

109. **Restore, Restoration or Ecological Restoration.** The reestablishment or upgrading of impaired ecological shoreline processes or functions. This may be accomplished through measures including, but not limited to, revegetation, removal of intrusive shoreline structures and removal or treatment of toxic materials. Restoration does not imply a requirement for returning the shoreline area to aboriginal or pre-European settlement conditions.

110. **Revetment.** A sloped shoreline structure (constructed of riprap or other substantial material) built to protect an existing eroding shoreline or newly placed fill against waves, wakes, currents, or weather.

111. **Riprap.** Broken stone placed on shoulders, slopes or other such places to protect them from erosion.

112. **Roads and Railroads.** Those passageways, and associated facilities and activities used by or associated with pedestrians, vehicles and trains, including but not limited to: all public and private roads; major highways; freeways; railways; the corridors in which they are placed; bridges; culverts; riprapping; landfills; cuts; turnouts; driveways; rest stations; viewpoints; picnic areas; landscaping; and soil erosion safeguards.

113. **Scientific Research and Education.** Any development undertaken for the support of public or private science research or education.

114. **Setback.** An area in which development of structures is restricted. Setbacks apply to structures and in general are intended to: assure that development is located a safe distance from bluffs and other natural features, including required vegetative buffers; improve shoreline aesthetics; protect shoreline views; and keep enough space between developments and natural shoreline processes (e.g., wave action and erosion) to avoid the need for bulkheading or other shoreline stabilization measures.

115. **Shall.** Denotes a mandate; the action must be done.

116. **Shorelands** or **Shoreland Areas.** Those lands extending landward for 200 feet in all directions as measured on a horizontal plane from the ordinary high water mark; floodways and contiguous floodplain areas landward two hundred feet from such floodways; and all wetlands and river deltas associated with the streams, lakes, and tidal waters which are subject to the provisions of the Shoreline Management Act; the same to be designated as to location by the Department of Ecology.

117. **Shoreline Areas or Shoreline Jurisdiction.** All shorelines of the state and shorelands as defined in RCW 90.58.030.

118. **Shoreline Environment Designation.** The classifications of shorelines of the state established by the master program to differentiate between areas where existing uses, physical features and the goals of the community imply differing objectives regarding their use and future development.

119. **Shoreline Management Act.** The Shoreline Management Act of 1971 (Chapter 90.58 RCW, as amended).

120. **Shoreline Master Program or Master Program**. The comprehensive use plan element for a described area, and the use regulations together with maps, diagrams, charts, or other descriptive material and text, a statement of desired goals, and standards developed in accordance with the policies enunciated in RCW 90.58.020. As provided in RCW 36.70A.480, the goals and policies of a shoreline master program for a city approved under chapter 90.58 RCW shall be considered an element of the city's comprehensive land use plan. All other portions of the shoreline master program for a county or city adopted under chapter 90.58 RCW, including use regulations, shall be considered a part of the city's development regulations.

121. **Shoreline Modifications.** Those actions that modify the physical configuration or qualities of the shoreline area, usually through the construction of a physical element such as a dike, breakwater, pier, weir, dredged basin, fill, bulkhead, or other shoreline structure. They can include other actions, such as clearing, grading, or application of chemicals.

122. **Shoreline Permit.** Refer to "Permit".

123. **Shorelines**. All of the water areas of the state, including reservoirs, and their associated shorelands, together with the lands underlying them; except

    A. Shorelines of statewide significance;

    B. Shorelines on segments of streams upstream of a point where the mean annual flow is twenty cubic feet per second or less and the wetlands associated with such upstream segments; and

    C. Shorelines on lakes less than twenty acres in size and wetlands associated with such small lakes.

124. **Shorelines of Statewide Significance.** The following shorelines of the state are so designated:

    A. The area between the ordinary high water mark and the western boundary of the state from Cape Disappointment on the south to Cape Flattery on the north, including harbors, bays, estuaries, and inlets;

B. Those areas of Puget Sound and adjacent salt waters and the Strait of Juan de Fuca between the ordinary high water mark and the line of extreme low tide as follows:

1. Nisqually Delta -- from DeWolf Bight to Tatsolo Point;

2. Birch Bay -- from Point Whitehorn to Birch Point;

3. Hood Canal -- from Tala Point to Foulweather Bluff;

4. Skagit Bay and adjacent area -- from Brown Point to Yokeko Point; and

5. Padilla Bay -- from March Point to William Point.

C. Those areas of Puget Sound and the Strait of Juan de Fuca and adjacent salt waters north to the Canadian line and lying seaward from the line of extreme low tide;

D. Those lakes, whether natural, artificial, or a combination thereof, with a surface acreage of one thousand acres or more measured at the ordinary high water mark;

E. Those natural rivers or segments thereof as follows:

1. Any west of the crest of the Cascade range downstream of a point where the mean annual flow is measured at one thousand cubic feet per second or more;

2. Any east of the crest of the Cascade range downstream of a point where the annual flow is measured at two hundred cubic feet per second or more, or those portions of rivers east of the crest of the Cascade range downstream from the first three hundred square miles of drainage area, whichever is longer;

F. Those shorelands associated with A, B, D, and E.

125. **Shorelines of the State.** The total of all shorelines and shorelines of statewide significance within the state.

126. **Should.** Denotes that the particular action is required unless there is a demonstrated, compelling reason, based on policy of the Shoreline Management Act and this chapter, against taking the action.

127. **Signs and Billboards.** Devices of any material or medium, including structural component parts, used or intended to be used to attract attention to the subject matter for advertising, identification or informative purposes.

128. **Sign, Off-Premise.** Any sign used to advertise goods or services not generally available on the premises on which the display is located.

129. **Significant Vegetation Removal.** The removal or alteration of trees, shrubs, and/or ground cover by clearing, grading, cutting, burning, chemical means, or other activity that causes significant ecological impacts to functions provided by such vegetation. The removal of invasive or noxious weeds does not constitute significant vegetation removal. Tree pruning, not including tree topping, where it does not affect ecological functions, does not constitute significant vegetation removal.

130. **Single-Family Residence.** See Residence, Single-Family.

131. **Solid Waste.** All solid, semi-solid, and liquid wastes including garbage, rubbish, ashes, plastics, industrial wastes, wood wastes and sort yard wastes associated with commercial logging activities, swill, demolition and construction wastes, abandoned vehicles and parts of vehicles, household appliances and other discarded commodities.

132. **Solid Waste Disposal.** The discharge, deposit, injection, dumping, spilling, leaking or placing of any solid or hazardous waste on any land area on or in the water.

133. **State Master Program.** The cumulative total of all master programs approved or adopted by the Department of Ecology.

134. **Street.** See Road.

135. **Street, Flanking.** A street abutting what is normally considered the side of a lot or parcel.

136. **Street, Fronting.** A street abutting what is ordinarily regarded as the front of a lot or parcel.

137. **Street, Public.** A street in public ownership.

138. **Structure.** A permanent or temporary edifice or building, or any piece of work artificially built or composed of parts joined together in some definite manner, whether installed on, above, or below the surface of the ground or water, except for vessels.

139. **Submerged Lands.** Those areas below the ordinary high-water mark of marine waters, lakes and rivers.

140. **Substantially Degrade.** Means to cause significant ecological impact.

141. **Substantial Development.** Any development of which the total cost or fair market value exceeds $5,718, or any development which materially interferes with the normal public use of the water or shorelines of the state. The dollar threshold established in this subsection must be adjusted for inflation by the office of financial management every 5 years, beginning July 1, 2007, based upon changes in the consumer price index during that time period. "Consumer price index" means, for any calendar year, that year's annual average consumer price index, Seattle, Washington area, for urban wage earners and clerical workers, all items, compiled by the bureau of labor and statistics, United States department of labor. The office of financial management must calculate the new dollar threshold and transmit it to the office of the code reviser for publication in the Washington State Register at least one month before the new dollar threshold is to take effect.

    The following shall not be considered substantial developments for the purpose of this master program:

    A. Normal maintenance or repair of existing structures or developments, including damage by accident, fire, or elements;

    B. Construction of the normal protective bulkhead common to single-family residences;

    C. Emergency construction necessary to protect property from damage by the elements;

    D. 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. 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;

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

F. Construction on shorelands by an owner, lessee, or contract purchaser of a single family residence for his own use or for the use of his or her family, which residence does not exceed a height of 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 this chapter;

G. 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 and multiple family residences. This exception applies if either:

1. In salt waters, the fair market value of the dock does not exceed $2,500; or

2. in fresh waters, the fair market value of the dock does not exceed $10,000, but if subsequent construction having a fair market value exceeding $2,500 occurs within 5 years of completion of the prior construction, the subsequent construction shall be considered a substantial development for the purpose of this chapter;

H. 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 for the irrigation of lands;

I. 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;

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

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

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

2. 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;

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

4. 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

5. The activity is not subject to the permit requirements of RCW 90.58.550;

L. The process of removing or controlling an aquatic noxious weed, as defined in RCW 17.26.020, through the use of an 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 jointly with other state agencies under RCW 43.21C.

142. **Surface Water Body.** Any water area which is within the shorelines of the state.

143. **Trail.** A facility physically separated from motorized vehicular traffic to accommodate pedestrians, bicyclists and other non-motorized vehicles. Such trails may be used for commuting and recreational purposes and may connect neighborhoods and other destinations.

144. **Transmit.** To send from one person or place to another by means of mail, email, or hand delivery. The date of transmittal for mailed items is the date that the document is certified for mailing or, for hand-delivered items, is the date of receipt at the destination.

145. **Transportation Facilities.** Those structures and developments that aid in land and water surface movement of people, goods and services. They include roads and highways, bridges and causeways, bikeways, trails, railroad facilities, ferry terminals, float plane terminals, heliports and other related facilities.

146. **Utilities.** Services and facilities that produce, convey, store, process or dispose of electric power, gas, water, sewage, stormwater, communications (including cellular towers), oil, waste and the like.

147. **Utilities, Accessory.** Those small-scale distribution or on site features or services connected directly to the uses along the shoreline.

148. **Variance.** Is a means to grant relief from the specific bulk, dimensional or performance standards set forth in the applicable master program and not a means to vary a use of a shoreline.

149 **Vegetation, Native.** Native plants commonly found Lewis County. Generally comprised of three vegetative levels including an overstory of trees, an understory of shrubs, and a floor of herbs.

150. **Water-Dependent Use.** A use or portion of a use which cannot exist in a location that is not adjacent to the water and which is dependent on the water by reason of the intrinsic nature of its operations.

Water-dependent uses include, but are not limited to:

A. Aquaculture;

B. Boat launch facilities;

C. Ferry terminals;

D. Hydroelectric power plants;

E. Marinas;

F. Marine construction, dismantling and repair;

G. Marine and limnological research and education;

H. Private and public docks for moorage;

I. Piers facilitating public access to shorelines of the State;

J. Terminal and transfer facilities for marine commerce and industry;

K. Water intakes and outfalls;

L. Log booming; and

M. Tug and barge facilities.

151. **Water-Enjoyment Use.** A recreational use or other use that facilitates public access to the shoreline as a primary characteristic of the use; or a use that provides

for recreational use or aesthetic enjoyment of the shoreline for a substantial number of people as a general characteristic of the use and which through location, design, and operation ensures the public's ability to enjoy the physical and aesthetic qualities of the shoreline. In order to qualify as a water-enjoyment use, the use must be open to the general public and the shoreline-oriented space within the project must be devoted to the specific aspects of the use that fosters shoreline enjoyment.

Water-enjoyment uses include but are not limited to:

A. Aquarium, with direct water intake;

B. Restaurants;

C. Public golf courses and clubhouses;

D. Museums;

E. Trails;

F. Boardwalks; and

G. Viewing towers.

152. **Water-Oriented Use.** A use that is water-dependent, water-related, or water-enjoyment, or a combination of such uses.

153. **Water Quality.** The physical characteristics of water within shoreline jurisdiction, including water quantity, hydrological, physical, chemical, aesthetic, recreation-related, and biological characteristics. Where used in this chapter, the term "water quantity" refers only to development and uses regulated under this chapter and affecting water quantity, such as impermeable surfaces and storm water handling practices. Water quantity, for purposes of this chapter, does not mean the withdrawal of ground water or diversion of surface water pursuant to RCW 90.03.250 through 90.03.340.

154. **Water-Related Use.** A use or portion of a use which is not intrinsically dependent on a waterfront location but whose economic viability is dependent upon a waterfront location because: (a) The use has a functional requirement for a waterfront location such as the arrival or shipment of materials by water or the need for large quantities of water; or (b) The use provides a necessary service supportive of the water-dependent uses and the proximity of the use to its customers makes its services less expensive and/or more convenient.

Water-related uses include, but are not limited to:

A. Warehousing or storage facilities;

B. Support services for fish hatcheries;

C. Seafood processing plants;

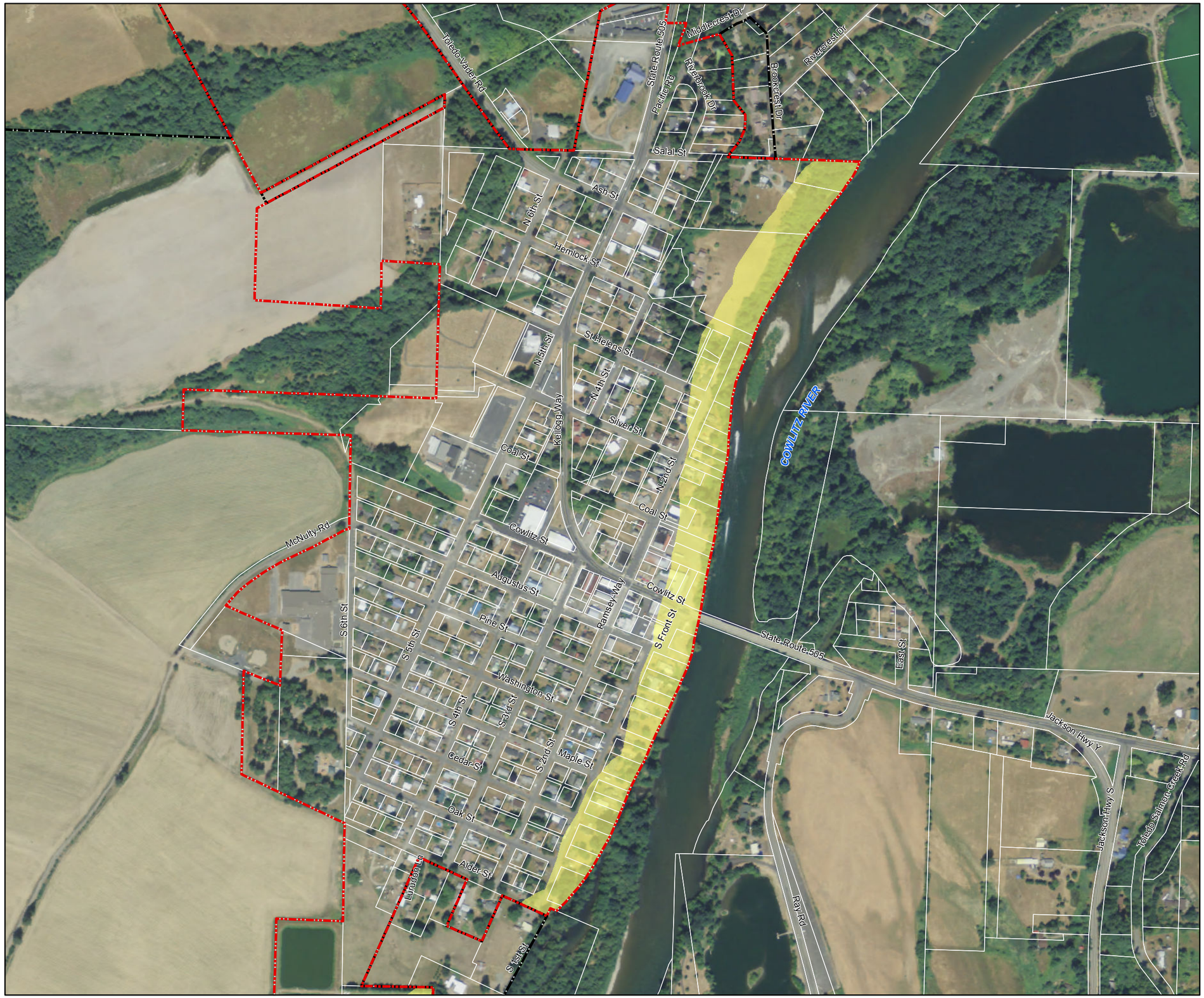
D. Wood products manufacturing;

E. Log storage;

F. Watercraft sales; and

G. Boating supplies.

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




N

0 500 1,000 Feet

## Legend

- URBAN CONSERVANCY ENVIRONMENT*
- CITY LIMITS
- UGA LIMITS

*INCLUDES PROPERTIES THAT INTERSECT THE 200' FLOODWAY BUFFER, THE 100 YEAR FLOODPLAIN AND THE 200' OHW BUFFER

*ALL FEATURES DEPICTED ON THIS MAP ARE APPROXIMATE. THEY HAVE NOT BEEN FORMALLY DELINEATED OR SURVEYED AND ARE INTENDED FOR PLANNING PURPOSES ONLY. ADDITIONAL SITE-SPECIFIC EVALUATION MAY BE NEEDED TO CONFIRM/VERIFY INFORMATION SHOWN ON THIS MAP.*

# CITY OF TOLEDO

MAP 1
TOLEDO SHORELINE
ENVIRONMENTAL DESIGNATIONS

Gray & Osborne, Inc.

# APPENDIX

# CHAPTER IV OF LAND DEVELOPMENT CODE

# CHAPTER IV
# CRITICAL AREAS PROTECTION

## SECTION 12: GENERAL PROVISIONS

12.01 PURPOSE. It is not the intent of this article to deny a reasonable use of public or private property, but to assure that land development occurs in a manner that will protect critical areas: wetlands, aquifer recharge areas, geologically hazardous areas, and fish and wildlife habitat conservation areas.

12.02 COMPLIANCE WITH CRITICAL AREAS PROTECTION. All public and private land uses in the City of Toledo shall comply with the requirements of this article as a condition to any project permit application granted under the Land Development Code.

12.03 EXEMPT ACTIVITIES IN CRITICAL AREAS. The following uses or activities within a critical area or critical area buffer are exempt from the requirements of this Article to the extent that they are not prohibited by other state or federal laws and do not degrade the critical area:

a) Conservation, enhancement, restoration, or preservation measures or projects;

b) Low intensity, passive recreational uses;

c) Short-term scientific studies and educational uses;

d) Repair and maintenance of existing public roads, bridges, and storm water facilities;

e) Walkways without structures;

f) Public parks;

g) Site investigation work necessary for land use applications; and,

h) Forest practices governed by RCW 76.09.

12.04 EMERGENCY WORK IN CRITICAL AREAS. The Mayor may authorize emergency work in critical areas without a permit if that official determines an imminent threat to public health or safety will occur before completion of normal permit procedures. Emergency work shall be limited to abating the emergency only and restoration of the critical area, if possible, shall follow the emergency.

## SECTION 13: TECHNICAL ASSESSMENTS

13.01 TECHNICAL ASSESSMENTS REQUIRED.

a) Applications for any project permit approval or threshold decision shall indicate whether any critical area is located on or within 200 feet of the site. The Administrator or designated representative shall visit the site, and in conjunction with a review of the Comprehensive Land Use Plan, information provided by the applicant, and any other suitable information, make a determination as to whether or not sufficient information is available to evaluate the proposal. If it is determined that the information presented is not sufficient, the Administrator shall notify the applicant to provide additional assessments before the issuance of a Determination of Completeness as provided under Section 13.05 of the Land Development Code or a Threshold Decision as provided under Title 4 of the Toledo City Code.

b) It shall be the responsibility of the applicant to provide the City with appropriate technical assessments and reports prepared by a qualified expert, if necessary, to fulfill the requirements of an application for a project permit review under Land Development Code or threshold decision under Title 4.2 of the Toledo City Code, or any other city, state or federal laws. The applicant shall pay all expenses associated with the preparation of any technical assessment required by the city. Technical assessments shall use the best science available in accordance with RCW 36.70A.172 and this Chapter IV of the Land Development Code.

13.02 WETLAND DELINEATION AND PROTECTION.

a) The City shall regulate development activities to protect wetlands. Development activities shall not diminish the capacity of wetlands to:
   1) Provide flood and storm water control;
   2) Recharge the aquifer;
   3) Improve surface and ground water quality by trapping sediments, removing nutrients, and providing chemical detoxification;
   4) Stabilize the streambeds; and
   5) Protect federally listed endangered and threatened species.

b) The City adopts by reference the following maps and best available science resources for wetlands in the City of Toledo and the Urban Growth Area:
   1) National Wetlands Inventory Map, US Fish and Wildlife Service
   2) Soil Survey of Lewis County Area, Washington, USDA, 1980;
   3) Washington State Wetlands Identification and Delineation Manual, Washington Department of Ecology, 1997, Publication #96-94;

4) Washington State Wetland Rating System for Western Washington, Washington Department of Ecology, 1993, Publication #93-74; and,
5) Guidelines for Developing Freshwater Wetlands Mitigation Plans and Proposals, Washington Department of Ecology, 1994, Publication #94-29.
6) If the location, designation, or classification of a wetland shown on any map adopted by reference under the Toledo City Code is in conflict with the determination of any field investigation, the latter shall prevail.

c) The City prohibits development activities in wetlands unless:
   1) No practical alternative exists for locating the project elsewhere; or
   2) The prohibition precludes any reasonable use of the property.

d) A wetland buffer that separates a wetland boundary from a regulated use is mandatory to mitigate adverse impacts of development activities. The following standards shall apply when determining buffer widths:
   1) Buffer widths are measured perpendicularly from the wetland boundary;
   2) Buffer widths are determined according to a wetland's rating:
      i. Category I wetlands require a buffer width of 200 feet;
      ii. Category II wetlands require a buffer width of 100 feet;
      iii. Category III wetlands require a buffer width of 50 feet; and,
      iv. Category IV wetlands require a buffer width of 25 feet.
   3) A technical assessment prepared by a qualified expert may reduce the required buffer width if it will not adversely affect the function of the wetland or that the use of other mitigation measures achieves the same result.

e) If an application for development activities makes it necessary to alter or eliminate a wetland, the applicant shall enhance or replace the wetland based upon a technical assessment and mitigation plan prepared by a qualified expert. Altered wetlands shall require mitigation to ensure the same level of wetland function that existed at the time of the permit application. The replacement of eliminated wetlands shall be at a ratio of 1:1 and have an equal or greater wetland rating.

f) A qualified expert shall prepare any wetland technical assessments required by the City. The report shall include:
   1) The exact location of the wetland boundary;
   2) An evaluation of wetland functions and values;
   3) An analysis of how the proposed use would or would not diminish the wetland protection standards under 13.02 a) of this ordinance; and
   4) Recommendations for mitigating adverse environmental impacts on wetland values and functions during construction and post-construction.

## 13.03 GEOLOGICALLY HAZARDOUS AREAS DELINEATION AND PROTECTION.

a) The City shall regulate development activities in geologically hazardous area to protect the public's health, safety, and welfare. Development activities in geologically hazardous areas shall:
   1) Minimize erosion and movement of sediment;
   2) Preserve or replace vegetation in erosion hazard areas;
   3) Prevent increased surface water discharge to adjacent properties;
   4) Prevent decreased slope stability on adjacent properties; and,
   5) Design or mitigate projects in geologically hazardous areas to eliminate unsafe conditions to on- and off-site property owners.

b) The City adopts by reference the following maps and best available science resources for geologically hazardous areas in the City of Toledo and the Urban Growth Area:
   1) Soil Survey of Lewis County Area, Washington, USDA, 1980;
   2) Geologic Map of the Mount St. Helens Quadrangle, Washington, Washington Division of Geology and Earth Resources, 1987 DGER OFR 87-4; and,
   3) If the location, designation, or classification of a geologically hazardous area shown on any map adopted by reference under the Toledo City Code is in conflict with the determination of any field investigation, the latter shall prevail.

c) A qualified expert shall prepare any technical assessment required by the City for a geologically hazardous area. The report shall:
   1) Determine the exact boundaries of all geologically hazardous areas affecting the site and the impact of the proposed development on the standards set forth under 13.03 a) of this ordinance; and,
   2) Recommend mitigation measures to ensure compliance with the standards set forth under 13.03 a) of this ordinance or, if mitigation is not possible, recommendations for adequate buffers from the hazard or hazards to protect public health, safety, and welfare.

## 13.04 AQUIFER RECHARGE AREAS DELINEATION AND PROTECTION.

a) The City shall regulate development activities in aquifer recharge areas to protect groundwater quality and quantity for use as a potable water source.

b) The City adopts by reference the following best available science resources for aquifer recharge areas in the City of Toledo and the Urban Growth Area:
   1) Geology and Ground-Water Resources of West-Central Lewis County, Washington, by J.M. Weigle and B.L. Foxworth, Olympia, WA Department of Conservation Division of Water Resources, 1962;

2) City of Toledo Wellhead Protection Planning, November 1998;
3) Wellhead Protection Program Guidance Document, Washington Department of Health, April 1995, Publication #331-018; and,
4) If the location, designation, or classification of an aquifer recharge area shown on any map adopted by reference under the Toledo City Code is in conflict with the determination of any field investigation, the latter shall prevail.

c) A qualified expert who is a licensed geologist shall prepare any technical assessment required by the City for an aquifer recharge area. The report shall include:
   1) A characterization of the site and its relationship to the aquifer;
   2) A discussion of the effects of the proposed development activities and its ability to meet the establish standards of 13.04 a) of this ordinance; and,
   3) Recommended mitigation measures to ensure compliance with the standards set forth under 13.04 a).

13.05 FISH AND WILDLIFE HABITAT CONSERVATION AREAS DELINEATION AND PROTECTION.

a) The City shall regulate development activities in fish and wildlife habitat conservation areas to maintain species in suitable habitats within their natural geographic distribution and to prevent isolated subpopulations.

b) The City adopts by reference the following maps and best available science resources for fish and wildlife habitat conservation areas in the City of Toledo:
   1) Priority Habitat Maps, Washington Department of Fish and Wildlife
   2) Lower Columbia Salmon Recovery and Fish and Wildlife Subbasin Plan, Volume II – Subbasin Plan, Chapter E – Cowlitz, Coweeman, and Toutle (WRIAs 25-26), Lower Columbia Fish Recovery Board, December 15, 2004.

c) A qualified expert shall prepare any technical assessment required by the City for development activities on parcels located within 200 feet of a fish and wildlife habitat conservation area. The technical assessment shall include:
   1) An analysis and discussion of species or habitats known or suspected to be located within two hundred feet (200') of the site;
   2) Evaluation of the effects of the proposed development activities and its ability to meet the establish standards of 13.05 a) of this ordinance; and,
   3) Recommended mitigation measures to ensure compliance with the standards set forth under 13.05 a). In cases where a fish and wildlife habitat conservation area is on or adjacent to a development site, a

minimum separation of up to fifty feet (50') or greater may be required for regulated uses if the technical assessment indicates the need for a buffer.

## SECTION 14: REQUIRED IMPROVEMENTS

14.01 SURETY FOR MITIGATION IMPROVEMENTS.

a) The City may require the applicant to submit a surety for the construction and/or maintenance of any mitigation measures required under this Chapter for a period not to exceed five (5) years from the date of substantial completion of work. The city may release the surety earlier than assigned if a technical assessment prepared by a qualified expert affirms that the mitigation measure is functioning in accordance with its design.

b) The value of a construction surety shall be not less than one-hundred and twenty-five (125) percent of the contract cost for the mitigation improvement as estimated by the City Engineer. The value of a maintenance surety shall be not less than fifteen (15) percent of the total value of the mitigation improvement as estimated by the City Engineer. The surety shall meet the approval of the City Attorney.

14.02 RESPONSIBILITY FOR IMPROVEMENTS. The property owner, or his or her successors, shall be responsible for the maintenance of any mitigation measure required under this Article.