

I. BACKGROUND

In 1971, the Shoreline Management Act (RCW 90.58) was approved by the voters of the State of Washington. This law regulates the development and use of certain river, lake and marine shorelines within the State. A part of this law requires local governments (cities and counties) to adopt local "Shoreline Master Programs." The purpose of the local Master Programs is to apply the state law to the shorelines within each jurisdiction. The local Shoreline Master Program must be consistent with the Shoreline Management Act and with state administrative regulations adopted pursuant to the Act. This document, along with the administrative ordinances of local governments, constitute shoreline management for the Thurston Region.

The Act provides for regulation of shoreline development and use in two principal ways. First, it requires that each local Shoreline Master Program contain policies and regulations which define permitted uses and activities. All development activity within shoreline jurisdiction must be consistent with the Master Program, and hence these policies and regulations. In one respect, the Master Program is like a comprehensive plan for shorelines because it contains policies, and in another respect it is similar to a zoning code which contains specific performance standards and regulations. (The relationship between local zoning code and the Master Program is discussed in a following Section IV.B (refer to page - 4 -)).

The second way the Act regulates shoreline activities is by requiring permits for certain types of development or use. Compliance with the permit requirements is in addition to the need to comply with the program regulations. Thus, even if a person does not have to obtain a permit for a project, it still must comply with the regulations.

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II. PERMITS

A brief description of required permits follows. The procedures by which permits are obtained and administered is discussed in a following Section V (refer to page - 8 -).

A. Substantial Development Permit

State law provides that no "Substantial Development" shall be undertaken on Shorelines of the State without first obtaining a Substantial Development Permit (SDP). "Substantial Development" is defined as any development of which the total cost or fair market value exceeds two thousand five hundred dollars (\$2,500), or any development which materially interferes with the normal public use of the water or shorelines of the state. The law provides a limited number of exceptions to this permit requirement (refer to RCW 90.58.030(3)(e)).

Substantial Development Permits are issued by the jurisdiction in which the development will occur. The jurisdiction's final decision to approve or deny a Shoreline Permit may be appealed by any aggrieved person to the State Department of Ecology, the state Shorelines Hearing Board and to the court (refer to Section V.C, page - 10 -). State law provides that permits shall be granted only when the development proposed is consistent with the policy of the Shoreline Management Act, the state shoreline regulations (WACs) and the local Master Program (refer to WAC 173-14).

B. Shoreline Conditional Use Permit

State law authorizes local government to include in their Master Programs land uses and development which may be permitted by Conditional Use Permit. The purpose of a conditional use permit is to allow greater flexibility in varying the application of the use regulations of the Master Program. Review criteria governing issuance of the Conditional Use Permit are prescribed by state regulation and provisions of this program. Uses which are specifically prohibited by the master program shall not be authorized. Application for Conditional Use Permit approval is made to the local government with jurisdiction, and a public hearing is held. Final approval or disapproval is granted by the State Department of Ecology (refer to WAC 173-14).

C. Shoreline Variance Permit

State law authorizes the granting of relief from specific bulk, dimensional or performance standards of the master program in extraordinary situations. Such relief may be obtained through a Shoreline Variance Permit. Review criteria governing issuance of the Variance Permit are prescribed by state regulation and provisions of this program. Application for Variance Permit approval is also made to the local government with jurisdiction, and a public hearing is held. Final approval or disapproval is granted by the State Department of Ecology (refer to WAC 173-14).

D. Letter of Exemption from Substantial Development Permit Process

All developments 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 the approval of the local government where the development will occur. That jurisdiction will ensure that it conforms to the Shoreline Master Program and to state law. If it complies, a letter of exemption states that there are no further Shoreline permits to obtain, and may contain conditions which the proponent must meet.

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III. 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).

IV. APPLICABILITY

A. Geographic Applicability

This program applies to all cities, towns and unincorporated areas of Thurston County.

B. Relationship to Zoning and Other Land Use Controls

In addition to the policies and regulations of use activities contained within the Shoreline Management Act and this Master Program, other laws also regulate land use and development within shoreline areas. For example, the State Building Code requires the issuance of a building permit for the construction of structures, the State Subdivision Act requires subdivision approval if the land is to be divided into lots, and State Health Regulations require permits for water and sewerage systems. A person proposing a project within the shorelines must comply with these and other laws as well as meeting the requirements of the Shoreline Management Act and the local Master Program.

Frequently, local government will have adopted zoning regulations and comprehensive land use plans which apply both within and outside shoreline areas. When these codes are applied within the shoreline area, there may be differences in the zoning regulations and the plan policies as compared with the regulations and policies of the Master Program. Because the Master Program is technically a state law (i.e., WAC), the requirements of the Master Program will prevail in the event of a

conflict with the local zoning or plan. Whether there is a "conflict," will depend upon the specific subject under consideration. Generally, however, a conflict will not exist if the zoning or plan requirements are more protective of shoreline environment than the Master Program. For example, if the zoning district allows a density of one unit per acre, and the Master Program allows a density of two units per acre without intending to discourage lower densities, no "conflict" would exist. In this case, the requirements of the more restrictive code would prevail (i.e., zoning).

C. Lands Adjacent to Shorelines

The Shoreline Management Act expressly contemplates that the use and development of land adjacent to shorelines complement the policy of the Act and Master Program. The purpose of this section is to discuss the manner in which this coordination is to be achieved.

In order to understand the relationship between land use control in the shoreline area and on adjacent lands, it is necessary to recognize the distinction between the regulatory permit process and the land use planning process. Simply stated, a development which is undertaken without obtaining the applicable shoreline permits or which is inconsistent with use regulations of the Master Program, is unlawful. On the other hand, a use or development which is to some extent inconsistent with a plan policy is not necessarily unlawful, although it may be denied or conditioned on the basis of its inconsistency with the plan. These principles apply to the regulation of shoreline and adjacent lands in the following:

1. All of the property lies outside the shorelines. No shoreline permit is required when development is to occur on property lying wholly outside the shoreline area, even though the development may have an impact in the shoreline. However, because the Shoreline Management Act and other laws require all developments to take into account the Shoreline Management Act and Master Program when reviewing the proposed development pursuant to other laws (such as zoning site plan review or subdivision review), the development can and should be affected (i.e., conditioned or, in appropriate circumstances, denied) in order to promote shoreline policy.
2. Part of the property is in the shorelines, part lies outside, and all the "development" is outside the shoreline. As in the prior situation (a), no shoreline permit may be required because all of the "development" lies outside

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the shoreline, and this remains true even though a portion of the land lies within the shorelines. "Development" refers to development for which a shoreline permit would otherwise be required (e.g., development with a fair market value of \$1,000 or more). However, use and actions within the shoreline, even though they do not constitute "development," must be consistent with the regulations of the Act and shoreline program. Furthermore, as is the case with property lying completely outside the shoreline, development of the property lying outside the shoreline should be reviewed for consistency with the Act and shoreline program when other review or permit processes are followed.

3. Part of the property is in the shoreline, part lies outside, and all or part of the "development" is proposed within the shoreline. A permit is required for the "development" within the shorelines. In addition, uses and other actions within the shorelines must comply with the master program regulations. Furthermore, when the development proposal consists of a single, integrated project and a shoreline permit is required due to development within the shorelines, review and approval of development outside the shorelines pursuant to other laws may be postponed until shoreline permit review is accomplished if the public interest would be served by such a review sequence. Finally, although development conditions may be attached to developments within shorelines, conditions may not be attached, pursuant to the Shoreline Management Act, to aspects of a development lying outside the shorelines. However, certain development conditions may be attached to portions of a development lying outside the shorelines pursuant to review processes other than the shoreline permit process (e.g., SEPA, subdivision review), and these conditions may be expressly designed to further shoreline policy (as in the case of subdivision approvals) or may indirectly produce that result (as in the case of SEPA review).

D. Developments and Uses Subject to Several Regulatory Sections

Some proposed developments or uses will be subject to more than one regulatory section of this program. For example, a proposed marina may be subject to regulations concerning "Dredging," "Landfilling," "Marinas and Boat Launching Facilities," "Commercial Development" and "Parking and Loading." A proposed development must be reviewed for consistency with the regulations of each applicable section. In the event of a conflict between requirements, the requirement which better promotes the priorities and policies of the Shoreline Management Act should prevail. In addition, the more specific requirement should prevail over a general requirement. Finally, the extent to which conflicting requirements are reconciled will largely depend upon a reasonable integration of requirements in the context of the specific project and its unique situation.

E. 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 program 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.

V. ADMINISTRATIVE PROCEDURES

A. General

Those rules and policies which govern the administration of this Master Program are prescribed in four state and local laws. They are (1) the Shoreline Management Act, Chapter 90.58 of the Revised Code of Washington (RCW); (2) the Washington Administrative Code chapter 173, WAC; (3) the Shoreline Master Program for the Thurston Region, (this document); and (4) ordinances of local governments within Thurston County. The type of administrative regulation prescribed by each of those laws is more fully described below, as well as the relationship between these regulations. In general this document describes only the specific regulations of one of these, the Shoreline Master Program for the Thurston Region. However, each of the other laws may need to be consulted for applicable administrative regulations depending upon the nature of the issue in question.

1. Shoreline Management Act. The first law which prescribes administrative rules and policies is the state Shoreline Management Act, RCW 90.58. The Act establishes the basic administrative framework for Shoreline Master Programs throughout the state. The Act also authorizes various state agencies (Department of Ecology and Shorelines Hearing Board) and local governments (counties and cities) to adopt additional, more detailed rules and policies for administration of Master Programs. These detailed rules and policies are laws known as administrative regulations.
2. Washington Administrative Code. Administration regulations adopted by the state agencies are found in the Washington Administrative Code, known and cited as "WAC." The WAC's contain much more detailed administrative regulations than the Act. Further, the WAC's, like the Act, apply state-wide. The WAC's are the principal rules for administration of the Program. WAC's of particular significance to administration of the Program are WAC 173-14, concerning Substantial Development, Conditional Use and Variance Permits, and WAC 173-16 regarding revisions to master programs. Related WAC's are identified in Chapters 173 WAC and 461 WAC.
3. Local Master Program. Those administrative regulations adopted by local governments are contained in local shoreline Master Programs, and also

include use regulations. In the Thurston Region, a "Regional" set of administrative regulations is established as a part of the Master Program. These regulations are supplemental to those contained within the WAC. These "Regional" administrative regulations will apply within every local government in Thurston County unless a local government elects to adopt different regulations applicable only to that government (see Section Two).

4. Local Administrative Regulations. If a local government within the Thurston Region elects to have administrative regulations which differ from the Regional regulations, such regulation would be bound in a local ordinance. Thus, the fourth law in which administrative regulations might be found is in a local ordinance. An example would be a local ordinance which provides for a hearings examiner to conduct the public hearings for shoreline permits.

In the event of a conflict between a local and "Regional" administrative rule, the local administrative rule prevails. In the event of a conflict between a local or "Regional" rule and a WAC, the WAC prevails. The Shoreline Management Act administrative provisions always prevail in the event of a conflict with a WAC, a regional rule, or a local rule.

In general, a person can become familiar with all necessary administrative regulations by: (a) Consulting the applicable WAC; (b) Consulting this Master Program; and (c) If the local government (city or county) has adopted a local ordinance, consulting the local ordinance. It is important to remember that all four laws described above are periodically amended by different bodies at different times. Further to correctly assess all the policy and regulations it is necessary to use current documents.

B. Administration/Local Ordinance

The Shoreline Master Program shall be administered pursuant to the procedures and policies contained in this document (the Shoreline Master Program for the Thurston Region) and Section "C" below, unless a local government shall have amended their Shoreline Master Program by adopting a local ordinance regulating such matters.

C. Regional Permit Procedure

1. Applications for Shoreline Substantial Development Permits, Conditional Use Permits and Variance Permits are subject to and shall be processed pursuant to

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Chapter 173-14 WAC as it now exists or is hereafter amended, and as provided below.

2. Applications for shoreline permits including a Substantial Development, a Conditional Use or a Variance Permit shall be submitted to the local government (city or county) on forms supplied by that jurisdiction. The application shall contain the information required by WAC 173-14-110 and such other information as may be required by the local government. The applicant shall pay to the local government the application fee prescribed by the approved fee schedule. In addition to the application fee, the applicant may have to pay fees for environmental analysis pursuant to RCW 43.21C (SEPA), and for other necessary actions or approvals.
3. Pursuant to WAC 173-14-080, a public hearing shall be held by the local government's Planning Commission to render a recommendation regarding applications identified in paragraph "1" above, except where the local government has adopted a Hearings Examiner System. Those local governments within the Region having adopted the Hearings Examiner system are: Thurston County, City of Olympia, City of Tumwater, and City of Lacey.
4. Pursuant to WAC 173-14-070, notice of the application and hearing shall be published in the manner prescribed therein, and mailed to the latest recorded real property owners as shown by the records of the county assessor within at least three hundred (300) feet of the boundary of the subject property.
5. The permit application and the recommendation of the Planning Commission shall be sent to the legislative body (e.g., Board or Council) of the local government, which shall then schedule a public hearing concerning the application and render a decision regarding the issuance of the permit. Notice of the public hearing shall be given in the same manner as the notice of the planning commission hearing.
6. The decision of the legislative body may be appealed to the Shorelines Hearing Board pursuant to WAC 173-14-170.

D. Inspections

Pursuant to RCW 90.58.200, the Administrator or his 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 Administrator shall first present proper credentials and request entry; and if the land or structures are unoccupied, the Administrator shall first make a reasonable effort to locate the owner, or other person having control of the property, and request entry.

E. Nonconforming Uses, Lots and Structures

1. Continuance; Contiguous Lots

- a. Subject to the provisions of this Program, a use, lot or structure lawfully existing prior to the effective date of this Program or any amendment thereto (refer to page - iii -), which is rendered nonconforming by adoption of the Program or an amendment, may continue in the manner and to the extent that it existed upon the effective date of the program or amendment, respectively.
- b. However, when a nonconforming lot is contiguous to another lot and both lots have the same owner, the contiguous lots are deemed a single, undivided lot for purposes of this program unless (1) each lot has a dwelling; (2) the purchase of an adjacent lot is subsequent to the adoption of this Program (i.e., May 21, 1976); or (3) pursuant to RCW 58.17.170, one or more of the lots is a platted lot, and less than five (5) years has lapsed since the final plat in which either of the lots is located was filed for record.

2. Alterations and Expansions of Nonconforming Structures. Proposed alterations or expansions of nonconforming structures may be allowed subject to conditions of approval attached by the decision-making body (e.g., Administrator, Board or Council). The proposal may also be denied. In determining whether to approve a proposed alteration and expansion, the decision-making body should consider the following criteria:

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- a. The extent to which the proposed alteration or expansion is inconsistent with the Policies and Regulations of the Master Program.
- b. The extent to which the proposal is compatible, in terms of use, appearance and other factors, with neighboring land uses.
- c. The extent to which a precedent might be set which would, cumulatively, result in development which is inconsistent with the Program.
- d. The extent to which measures may be taken to mitigate inconsistencies with Policies or Regulations of the Master Program, or adverse impacts of the proposal.

Expansions of nonconforming structures are prohibited when the expansion is to accommodate a nonconforming use; provided that when such accommodation entails only a change in density, the expansion shall not be automatically prohibited.

3. Expansions of Nonconforming Uses. The expansion of a nonconforming use is prohibited. An intensification of use is permitted and occurs when the intensified use is contained within the existing structure, or area which has been in use, and is not different in kind from the existing nonconforming use.
4. Relocation of Nonconforming Structure or Use. Nonconforming structures or uses shall not be relocated if the move adds to nonconformity.
5. Resumption of Discontinued or Abandoned Nonconforming Use or Structure. A nonconforming use or structure, when abandoned or discontinued, shall not be resumed. Discontinuance or abandonment is presumed to occur when the land or structure is not used for a particular use for twelve (12) consecutive months. Any person wishing to appeal a staff determination that discontinuance or abandonment has occurred may appeal to the legislative body within ten (10) days of the determination by filing an appeal with the local government department responsible for administering the Program.
6. Development of a Nonconforming Lot. When lot size would prevent development of a nonconforming lot consistent with the applicable setback

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requirements the administrator may authorize development under the following conditions:

- a. A written request is received from the project proponent.
- b. The development will be located as far landward as possible from the ordinary high-water mark.
- c. The decision of the administrator is based upon the criteria found in WAC 173-14-150 (Review Criteria for Variance Permits), as adopted and hereafter amended.

Upon receiving a written request, 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 ten days from the date that the notice was mailed; and
- (2) Interested citizens may contact the shoreline administrator for further information and to learn the administrator's decision.

Appeal of the administrator's decision shall be made in accordance with the procedures of appeal established in the affected jurisdiction's land use regulations.

- 7. Reconstruction of a Nonconforming Structure. In the event that a nonconforming structure is less than fifty percent (50%) destroyed by fire, explosion, natural catastrophe, or act of public enemy, nothing in this Program shall prevent the reconstruction of the nonconforming structure provided that reconstruction must be completed within one (1) year after the destruction. The determination of whether a building or structure is less than fifty percent (50%) destroyed shall rest with the building department. In the event that fifty percent (50%) or more of the structure is destroyed, then reconstruction is prohibited.
- 8. Conversion of a Nonconforming Use. A nonconforming use may not be converted to a prohibited use.

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F. Amendments

1. Amendments to the Shoreline Master Program, including changes to the mapped Environmental designations, shall be processed pursuant to WAC 173-19 as now or hereafter amended, and as provided below.
2. Applications for proposed amendments shall be submitted to the Planning Department on forms supplied by the department. The applicant shall pay to the department the application fee prescribed by the approved fee schedule. In addition to the application fee, the applicant may have to pay fees for environmental analysis pursuant to RCW 43.21C (SEPA), and for other necessary actions or approvals.
3. The legislative body shall hold the public hearing prescribed by WAC 173-19-062(1). The legislative body shall refer a proposed amendment to the Planning Commission for a recommendation. If the Planning Commission elects to hold a public hearing, a notice of the hearing shall be given in the same manner as the hearing held by the legislative body.
4. If the proposed amendment is a map change to the Shoreline Environment designation, which is quasi-judicial in character, notice of the proposed amendment shall be mailed to all owners of the property which is proposed for designation, as shown by the records of the county assessor. In addition, notice shall be mailed to all the owners of property which lies within three hundred (300) feet of the boundary of the property proposed for redesignation. Notices given pursuant to this subsection shall be mailed at least ten (10) calendar days before the date of the hearing. The applicant shall furnish to the Planning Department the names and addresses of property owners who are to receive notice.
5. a. Any judicial action to review the amendment of the Master Program shall be commenced within thirty (30) days from the date the Department of Ecology order adopting the amendment is filed with the State Code Reviser. Any judicial action to review a decision not to amend the Master Program shall be commenced within thirty (30) days from the date of the governing body's decision not to amend.

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- b. The plaintiff bringing any such action shall pay the full cost of transcription of the record prepared for judicial review.
6. The following process is recommended when substantial revisions to the Master Program are desired by one or more of the jurisdictions using the program. It is initiated by one or more jurisdictions proposing to Thurston Regional Planning Council (TRPC) that a review be undertaken. If TRPC agrees, the following process will begin:
- a. TRPC will appoint an advisory committee to review the areas of concern and develop recommendations. The advisory committee will consist of voting and non-voting members. The voting members, who represent the public and various interest groups are:
 - (1) One representative from the planning commission of each local government using the Shoreline Master Program;
 - (2) One representative from each affected Indian Tribe;
 - (3) One representative from the Port of Olympia;
 - (4) Eight members of the general public chosen to represent a variety of interest groups.
 - (5) Other representatives as deemed appropriate by TRPC.

The nonvoting members, who provide technical expertise and advice to the voting members, are:

- (1) One staff planner from each local government using the Shoreline Master Program;
- (2) One staff member from the Thurston County Economic Development Council;
- (3) One staff member from the Port of Olympia;

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- (4) One staff member each from the Washington Departments of Fisheries, Wildlife, and Ecology;
 - (5) Other representatives as deemed appropriate by TRPC.
 - b. The draft recommendations from the advisory committee should be submitted to each local government using the Master Program prior to the final meeting of the committee. This is intended to provide an opportunity to resolve any problems at the advisory committee level.
 - c. The draft recommendations from the advisory committee shall be submitted to the Department of Ecology for informal review and approval. This should be done on an on-going basis as the advisory committee develops its recommendations and/or prior to the final meeting of the committee.
 - d. The recommendations of the advisory committee are submitted to TRPC for review and approval.
 - e. TRPC forwards the changes as approved to the affected local jurisdictions for review and approval.
 - f. The adopted changes are submitted to the Department of Ecology for final adoption.
- 7. Where more detailed planning is desired for specific geographic areas, such as river corridors, one or more jurisdictions may develop Special Area Management Plans. A Special Area Management Plan should be comprehensive in nature and include at least the following:
 - a. Scope/Boundary of Plan
 - b. Policies
 - c. Use Regulations
 - d. Standards

A Special Area Management Plan is designed to replace existing environmental designations, and where conflicts exist, supersede general regulations. This approach is intended to allow jurisdictions to creatively address specific problems and situations while still maintaining the character, purpose or intent of the Master Program.

If a Special Area Management Plan is initiated, a letter of notification must be sent to the other jurisdictions that use this Shoreline Master Program prior to beginning the planning process. (The City of Tumwater did not adopt this sentence.)

G. 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.

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