

**CITY OF KELSO, WASHINGTON**

**SHORELINE MASTER PROGRAM UPDATE**



**Approved by Department of Ecology April 21, 2016  
Adopted by City Council May 3, 2016**

# Acknowledgements

Although it is difficult to thank everyone who contributed countless hours to the development and review of this document, the City would like to acknowledge and thank the following individuals:

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# 1. Introduction

## 1.1 Title

This document shall be known and may be cited as the Kelso (City) Shoreline Master Program (referred to in this document as Program).

## 1.2 Adoption Authority

This Program is adopted under the authority granted by the Shoreline Management Act (SMA, or the Act) of 1971 (Revised Code of Washington [RCW] 90.58) and Chapter 173-26 of the Washington Administrative Code (WAC) as amended.

## 1.3 Purpose and Intent

- A. To guide the future use and development of shorelines in the City in a positive, effective, and equitable manner consistent with the Act;
- B. To promote the public health, safety, and general welfare of the community by providing long range, comprehensive policies and effective, reasonable regulations for development and use of the City's shorelines; and
- C. To experience no net loss of shoreline ecological functions and processes and to plan for restoring shorelines that have been impaired or degraded by adopting and fostering the following policy contained in RCW 90.58.020, Legislative Findings 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."*

## 1.4 Governing Principles

- A. **The goals, policies, and regulations of this Program are intended to be consistent with the Washington State (State) shoreline master program guidelines in Chapter 173-26 of the WAC. The goals, policies, and regulations are informed by the Governing Principles in WAC 173- 26-186 and the policy statements of RCW 90.58.020.**
- B. Any inconsistencies between this Program and the Act must be resolved in accordance with the Act.
- C. The regulatory or administrative actions contained in this Program must not unconstitutionally infringe on private property rights or result in an unconstitutional taking of private property.
- D. The regulatory provisions of this Program are limited to shorelines of the state, whereas the planning functions of this Program extend beyond the designated shoreline boundaries, given that activities outside the shoreline jurisdiction may affect shorelines of the state.
- E. The policies and regulations established by this Program shall be coordinated with those policies and rules of the Kelso Comprehensive Plan and Development Regulations as well as RCW 34.05.328, Significant Legislative Rules.
- F. Protecting the shoreline environment is an essential statewide policy goal, consistent with other policy goals. This Program protects shoreline ecosystems from such impairments in the following ways:
  - 1. By using a process that identifies, inventories, and ensures meaningful understanding of current and potential ecological functions provided by shorelines;
  - 2. By including policies and regulations that require mitigation of adverse impacts in a manner that results in no net loss of shoreline ecological functions. The required mitigation shall include avoidance, minimization, and compensation of

impacts in accordance with the policies and regulations for mitigation sequencing in WAC 173-26-201(2)(e) Environmental impact mitigation;

3. By including policies and regulations to address cumulative impacts and by fairly allocating the burden of addressing such impacts among development opportunities; and
4. By including regulations and regulatory incentives designed to protect shoreline ecological functions, and to restore impaired ecological functions where such functions have been identified.

## 1.5 Liberal Construction

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

## 1.6 Severability

Should any Section, Subsection, paragraph, sentence, clause, or phrase of this Program or its application to any person or situation be declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of this Program or its application to any other person or situation.

## 1.7 Relationship to Other Plans and Regulations

- A. Proponents of shoreline use or development shall comply with all applicable laws prior to commencing any shoreline use or development.
- B. Where this Program makes reference to any RCW, WAC, or other state or federal law or regulation, the most recent amendment or current edition shall apply.
- C. Uses, developments, and activities regulated by this Program may also be subject to the provisions of the following: the City of Kelso Comprehensive Plan; the Kelso Parks and Recreation Plan (2014); the Washington State Environmental Policy Act (SEPA; RCW 43.21C and WAC 197-11); other provisions of Kelso Municipal Code (KMC), specifically CMC Title 18 Zoning Code; and various other provisions of local, state, and federal law, as may be amended.
- D. In the event this Program conflicts with other applicable City policies or regulations, they must be interpreted and construed so that all the language used is given effect, with no portion rendered meaningless or superfluous, and unless otherwise stated, the provisions that provide the most protection to shoreline ecological processes and functions shall prevail.

- E. Projects and plans in the shoreline jurisdiction that have been previously approved through local and state reviews in accordance with the Shoreline Master Program in effect at the time, shall remain in full force and effect until such time that they expire or are expressly changed by the City and DOE as appropriate.

## 1.8 Effective Date

This Program and all amendments thereto shall take effect fourteen (14) days after written notice of approval from the Washington Department of Ecology (Ecology) and shall apply to new applications submitted on or after that date and to applications that have not been determined to be fully complete by that date.

## 2. Definitions

The following definitions shall be used to guide the implementation of this Program. In the event of any question about the use, applicability, or interpretation of these terms, the City shall make an administrative determination in consultation with Ecology, as appropriate.

**Accessory** – A use, building or structure that is subordinate to and the use of which is incidental to that of the main activity, structure, building or use on the same lot or parcel. If an accessory structure is attached to the main building by a common wall or roof, such accessory building shall be considered a main part of the main building.

**Act** – The Washington State Shoreline Management Act of 1971, as amended, RCW 90.58.

**Adjacent lands** – Lands adjacent to the shorelines of the state (not within shoreline jurisdiction) (RCW 90.58.340).

**Adjacent to** – For the purposes of the Critical Areas Regulation in Appendix C, any activity or development located:

1. On a site immediately adjoining a critical area;
2. A distance equal to or less than the required critical area buffer or zoning and building setback requirements;
3. A distance equal to or less than one-half mile (2,640 feet) from a bald eagle's nest;
4. A distance equal to or less than 300 feet upland from a stream, wetland or water body;
5. Bordering or within the floodway, floodplain, or channel migration zone; or
6. A distance equal to or less than 200 feet from a critical aquifer recharge area.

**Agriculture** or **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 (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.

**Agricultural equipment** and **agricultural facilities** – Includes, but is not limited to:

1. 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;

2. Corridors and facilities for transporting personnel, livestock, and equipment to, from, and within agricultural lands;
3. Farm residences and associated equipment, lands, and facilities; and
4. Roadside stands and on-farm markets for marketing fruit or vegetables.

**Agricultural land** – Those specific land areas on which agricultural activities are conducted as of the date of adoption of a local master program pursuant to these guidelines 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.

**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.

**Alluvial fan** – A low, outspread, relatively flat to gently sloping mass of loose alluvium, shaped like an open fan, deposited by a stream where it issues from a narrow valley, or where a tributary stream issues into the main stream, or wherever a constriction in a valley abruptly ceases or the gradient of the stream suddenly decreases; it is steepest near the mouth of the valley where its apex points upstream, and it slopes gently and convexly outward with gradually decreasing gradient.

**Alluvium** – Sand, clay, etc., gradually deposited by moving water, as along a riverbed, stream or shore of a lake.

**Alteration** – A human action which results in a physical change to the existing condition of land or improvements including but not limited to: clearing vegetation, filling and grading and construction of structures or facilities including impervious surfaces.

**Anadromous fish** – Any fish that spawns and rears in freshwater and matures in the marine environment.

**Appurtenance** – A structure or development customarily incidental to and located upon the same lot occupied by the main use or building.

**Appurtenance, residential** – A structure or development incidental to a single-family residence in accordance with the provisions of WAC 173-27-040(2)(g).

**Aquaculture** – The culture or farming of fish, shellfish, or other aquatic plants and animals.

**Aquifer recharge area** – Areas where water infiltrates the soil and percolates through it and surface rocks to the groundwater.

**Associated wetlands** – Those wetlands that are in proximity to and either influence or are influenced by a lake, river or stream subject to the Shoreline Management Act.

**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.

**Base flood** – A flood event having a one percent chance of being equaled or exceeded in any given year, also referred to as the 100-year flood. Designations of base flood areas on flood insurance map(s) always include the letters A or V.

**Berm** – A linear mound or series of mounds of earth, sand or gravel generally paralleling the water at or landward of the OHWM. Also a linear mound used to screen an adjacent activity, such as a parking lot, from transmitting excess noise and glare.

**Best Management Practices (BMP)** – The schedules of activities, prohibitions of practices, maintenance procedures, and structural or managerial practices approved by the Washington Department of Ecology that, when used singly or in combination, control, prevent or reduce the release of pollutants and other adverse impacts to waters of the State.

**Bioengineering** – The use of biological elements, such as the planting of vegetation, often in conjunction with engineered systems, to provide a structural shoreline stabilization measure with minimal negative impact to the shoreline ecology.

**Boating facility for the purposes of this Program** – Any public or private facility for mooring, storing, or transfer of materials from vessels on the water, such as docks and piers, including on-land related facilities such as approaches and ramps, and includes any private and publicly accessible launch sites or facilities. A boating facility does not include on-land accessory facilities such as parking or storage. Docks, buoys, and marine railways that are accessory to four (4) or fewer single-family residences are also not boating facilities.

**Breakwater** – A structure aligned parallel to shore, sometimes shore-connected, that provides protection from waves.

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**Buffer** – An area that is part of or adjacent to a jurisdictional shoreline or designated critical area that functions to avoid loss or diminution of the ecologic functions and values of the critical area. Specifically, a buffer may:

1. Preserve the ecologic functions and values of a system including, but not limited to, providing microclimate conditions, shading, input of organic material, and sediments; room for variation and changes in natural wetland, river, or stream characteristics;



providing for habitat for lifecycle stages of species normally associated with the resource;

2. Physically isolate a critical area such as a wetland, river, or stream from potential disturbance and harmful intrusion from surrounding uses using distance, height, visual, and/or sound barriers, and generally including dense native vegetation, but also may include human-made features such as fences and other barriers; and
3. Act to minimize risk to the public from loss of life, well-being, or property damage resulting from natural disasters such as from landslide or flooding.

**Building height** – The vertical distance between average grade and the highest part of the coping of a flat roof, or the deck line of a mansard roof, or the average height of the highest gable of a pitched or hipped roof. The height of a stepped or terraced building is the maximum height of any segment of the building. Television antennas, chimneys, and similar appurtenances shall not be used in calculating height, except where such appurtenances obstruct the view of the shoreline of a substantial number of residences on areas adjoining such shorelines. Temporary construction equipment is excluded in this calculation.

**Bulkhead** – A structure of timber, concrete, steel, rock, or similar substance located parallel to the shore, at or along the OHWM, which has as its primary purpose to contain and prevent the loss of soil by erosion, wave, or current action.

**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. The “channel migration zone” does not include areas that are separated from the active river channel by legally existing artificial structures or channel constraints that limit channel movement. Examples of such structures and constraints include transportation facilities built above or constructed to remain intact through a 100-year flood (such as an arterial road, public road serving as a sole access route, or a state or federal highway or a railroad), levees, and other lawfully established structures that are significant investments likely to be repaired and maintained even if damaged.

**Clearing** – The destruction or removal of vegetation from a site by physical, mechanical, chemical or other means. This does not include landscape maintenance or pruning consistent with accepted horticultural practices, which does not impair the health or survival of the trees or native vegetation.

**Commercial dredging** – Applies to establishments engaged in the dredging of sand, gravel or rocks for resale or wholesale marketing.

**Commercial fishing** – The activity of capturing fish and other seafood under a commercial license.

**Compensatory mitigation** – Replacing project-induced losses or impacts to a critical area or its buffer.

**Covered moorage** – A roofed structure over a boat, either with or without walls and typically supported by posts mounted on the dock.

**Critical aquifer recharge area** – Areas with a critical recharging effect on aquifers used for potable water as defined by the Washington State Growth Management Act and as designated in Appendix C of this Program.

**Critical areas** – Those areas and ecosystems as defined under RCW 36.70A and this Program, which include:

1. Wetlands;
2. Areas with a critical recharging effect on aquifers used for potable waters;
3. Fish and wildlife habitat conservation areas;
4. Frequently flooded areas; and
5. Geologically hazardous areas.

**Critical facilities** – Include, but are not limited to, schools, nursing homes, hospitals, police, fire and emergency response installations, and installations that produce, use, or store hazardous materials or hazardous waste.

**Critical habitat** – Specific geographical areas that possess physical or biological features that are essential to the conservation of federally listed species. These designated areas may require special management considerations or protection.

**Cumulative impacts** – The results of incremental actions when added to past, present, and reasonably foreseeable future actions. Cumulative impacts can be deemed substantial and subject to mitigation conditions even though they may consist of individual actions having relatively minor impacts.

**Date of filing** <sup>[KPF1]</sup> The date of actual receipt by Ecology of the City’s decision on a shoreline substantial development permit.

1. For projects that only require a Shoreline Substantial Development Permit: the date that Ecology receives the City’s decision.
2. For a Shoreline Conditional Use Permit (SCUP) or Shoreline Variance (SVAR): the date that Ecology’s decision on the SCUP or SVAR is transmitted to the applicant and the City.
3. For SDPs simultaneously mailed with a SCUP or SVAR to Ecology: the date that Ecology’s decision on the SCUP or SVAR is transmitted to the applicant and the City.

~~**Date of filing** – The date upon actual receipt by Ecology of the City’s decision except as provided for below:~~

- ~~1. With regard to a permit for a variance or a conditional use, “date of filing” means the date the decision of Ecology is transmitted by Ecology to the City.~~
-

~~2. When the city simultaneously transmits to Ecology its decision on a shoreline permit with its approval of either a shoreline conditional use or variance, or both, “date of filing” has the same meaning as defined in 1.~~

**Development** <sup>[KF2]</sup> – An activity consisting of the construction or exterior alteration of structures; dredging; drilling; dumping; filling; removal of any sand, gravel, or minerals; bulkheading; driving of piling; placing of obstructions; or any project of a permanent or temporary nature that may interfere with the normal public use of the surface of the waters overlying lands subject to the Shorelines Management Act of 1971 at any state of water level (RCW 90.58.030(3a)). Development does not include dismantling or removing structures if there is no other associated development or re-development. See also Substantial Development.

**Dike** – An artificial embankment normally set back from the bank or channel in the floodplain for the purpose of keeping floodwaters from inundating adjacent land.

**Dock** – A structure built over or floating upon the water and used as a landing place for boats and other marine transport, fishing, swimming, and other recreational uses. A dock typically consists of the combination of one or more of the following elements: pier, ramp, and/or float.

**Dredging** – The removal of earth, sand, gravel, silt, or debris from below the OHWM of any river, stream, pond, lake, or other water body and beneath the area of seasonal saturation of any wetland.

**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.

**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.

**Enhancement** – Alterations performed to improve the condition of an existing environmentally degraded area so that the functions provided are of a higher quality. Enhancements are to be distinguished from resource creation or restoration projects.

**Erosion** – The general process or the group of processes whereby the material of the earth’s crust are loosened, dissolved, or worn away, and simultaneously moved from one place to another, by natural forces, that include weathering, solution, corrosion, and transportation, but usually exclude mass wasting.

**Erosion hazard area** – See “geologic hazard areas.”

**ESA** – The Endangered Species Act, specifically Section (4)(d), Protective Regulations.

**Essential public facilities** – Includes but is not limited to, airports, state education facilities, state and regional transportation facilities, state and local correctional facilities, solid waste handling facilities, medical care facilities, mental health facilities, and group homes.

**Excavation** – The mechanical removal of earth material.

**Exempt/Exemption** – Developments that are set forth in Section 3.2, Exemptions from Shoreline Substantial Development Permit, of this Program that are not required to obtain a shoreline substantial development permit (SSDP), but which must otherwise comply with applicable provisions of the Act and this Program.

**Existing and ongoing agricultural activities** – See “agricultural activities.”

**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 (WAC 173-27-030(8)).

**Feasible** – That an action, such as a development project, mitigation, or restoration requirement, meets all of the following conditions:

1. 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;
2. The action provides a reasonable likelihood of achieving its intended purpose; and
3. The action does not physically preclude achieving the project's primary intended legal use.

In cases where this Program requires certain actions unless they are infeasible, the burden of proving infeasibility is on the applicant. In determining an action's infeasibility, the City may weigh the action's relative public costs and public benefits, considered in short- and long-term timeframes.

**Fill** – The addition of soil, sand, rock, gravel, sediment, earth retaining structure, or other material to an area waterward of the OHWM, in wetlands, or on shorelands in a manner that raises the elevation or creates dry land.

**Fish** – As used in these regulations, refers to resident game fish; anadromous fish and specified salmonoids listed as endangered or threatened under the Federal Endangered Species Act, Section (4)(d), or the Washington State List of Threatened and Endangered Species.

**Fish and wildlife habitat conservation areas** – Those habitats designated by WAC 365-190130 and include all areas listed in the WAC.

**Float** – An anchored (not directly to the shore) floating platform that is free to rise and fall with water levels and is used for water-dependent recreational activities such as boat mooring,

swimming or diving. Floats may stand alone with no over-water connection to shore or may be located at the end of a pier or ramp.

**Floating home** – A single-family dwelling unit constructed on a float, that is moored, anchored, or otherwise secured in waters, and is not a vessel, even though it may be capable of being towed.

**Flood or flooding** – A temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland waters and/or the unusual and rapid accumulation of runoff of surface waters from any source.

**Flood hazard reduction** – Measures taken to reduce flood damage or hazards. Flood hazard reduction measures may consist of nonstructural or indirect measures, such as setbacks, land use controls, wetland restoration, dike removal, use relocation, bioengineering measures, and storm water management programs; and of structural measures, such as dikes, levees, and floodwalls intended to contain flow within the channel, channel realignment, and elevation of structures consistent with the National Flood Insurance Program.

**Flood plain** – Synonymous with one-hundred-year flood plain and that land area susceptible to inundation with a one percent chance of being equaled or exceeded in any given year. The limit of this area shall be based upon flood ordinance regulation maps or a reasonable method which meets the objectives of the act.

**Floodway** – The area that has been established in effective federal emergency management agency flood insurance rate maps or floodway maps. The floodway does not include 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.

The area, as identified in a master program, that either:

Has been established in federal emergency management agency flood insurance rate maps or floodway maps; or

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. [KF3]

**Forest practices** – Any activity conducted on or directly related to forest land and relating to growing, harvesting, or processing timber. These activities include but are not limited to: road and trail construction, final and intermediate harvesting, pre-commercial thinning, reforestation, fertilization, prevention and suppression of disease and insects, salvage of trees, and brush control (WAC 222-16-010(21)).

**Frequently flooded areas** – Those areas of special flood hazard which are commonly identified as critical areas in local government development regulations.

**Game fish** – “Game fish,” as described in the Washington Game Code, spend their life cycle in freshwater.

**Geologic hazard areas** – Areas that because of their susceptibility to erosion, sliding, earthquake, or other geological events, are not suited to the siting of commercial, residential, or industrial development consistent with public health or safety concerns.

**Geotechnical assessment** – An assessment prepared by a geotechnical engineer licensed by the state of Washington, which evaluates the site conditions and the effects of a proposal and identifies mitigating measures to ensure that the risks associated with geologic hazards will be substantially reduced.

**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.

**Grading** – The movement or redistribution, including excavation or fill, of the soil, sand, rock, gravel, sediment, or other material on a site in a manner that alters the natural contour of the land.

**Groin** – A barrier-type structure extending from the stream bank into a water body for the purpose of the protection of a shoreline and adjacent upland by influencing the movement of water and/or deposition of material.

**Groundwater** – That part of the subsurface water that is in the saturated zone all waters that exist beneath the land surface or beneath the bed of any stream, lake or reservoir, or other body of surface water within the boundaries of this state, including underground streams, from which wells, springs, and ground water runoff are supplied, whatever may be the geological formation or structure in which such water stands or flows, percolates or otherwise moves.

**Hazard tree** – Dead or dying trees, dead parts of live trees, or unstable live trees (due to structural defects or other factors) that are within striking distance of people or primary structures. Hazard trees have the potential to cause property damage, personal injury or fatality in the event of a failure.

**Institutional** – A use or development whose purpose is to serve or promote a government, educational, charitable, or religious organization or its mission. Examples include, but are not

limited to: community centers, educational facilities, government offices, hospitals, and religious facilities.

**In-stream structure** – A structure placed by humans within a stream or river waterward of the ordinary high-water mark that either causes or has the potential to cause water impoundment or the diversion, obstruction, or modification of water flow. In-stream structure does not apply to stormwater outfalls, which are regulated as utilities.

**Interested party** – All persons who have notified local government of their desire to receive a copy of the final order on a permit under WAC 173-27-030 (WAC 173-27-030(12)).

**Invasive** – A nonnative plant or animal species that either:

1. Causes or may cause significant displacement in range, a reduction in abundance, or otherwise threatens, native species in their natural communities;
2. Threatens or may threaten natural resources or their use in the state;
3. Causes or may cause economic damage to commercial or recreational activities that are dependent upon state waters; or
4. Threatens or harms human health (RCW 77.08.010(28)).

**Landfill** – A disposal facility or part of a facility at which solid waste is placed in or on land.

**Landslide** – Abrupt downslope movement of a mass of soil or rock.

**Limited utility extension** – The extension of a utility service that is categorically exempt under RCW 43.21C for natural gas, electricity, telephone, water or sewer to service an existing use in compliance with this SMP and does not extend more than twenty-five hundred (2,500) linear feet within the shorelines of the state.

**Littoral drift** – The mud, sand, or gravel material moved parallel to the shoreline in the nearshore zone by waves and current.

**Local utility** – Public or private utilities normally servicing a neighborhood or defined subarea in the city, e.g., telephone exchanges; sanitary sewer; stormwater facilities; distribution lines; electrical distribution less than fifty-five (55) kilovolts; telephone; cable television, etc.

**Marina** – Any commercial or club-owned facility consisting of docks or piers serving five or more vessels or a shared moorage serving a subdivision, public park, or quasi-public recreation area serving 10 or more vessels.

**May** – The action is acceptable, provided it conforms to the provisions of this Program.

**Mining** – The removal of sand, gravel, soil, minerals, and other earth materials for commercial and other uses.

**Mitigation Sequence** – Mitigation in jurisdictional shoreline areas should be sequenced in the following order:

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 during the life of the action;
5. Compensating for the impact by replacing, enhancing, or providing substitute resources or environments; and/or
6. Monitoring the impact and taking appropriate corrective measures.

**Mitigation, in-kind** – Replacement of shoreline resources, such as wetlands or surface water systems with substitute wetlands or surface water systems whose characteristics and functions and values closely approximate those destroyed or degraded by a regulated activity.

**Mitigation, out-of-kind** – Replacement of shoreline resources, such as surface water systems or wetlands with substitute surface water systems or wetlands whose characteristics do not closely approximate those destroyed or degraded by a regulated activity.

**Mitigation plan** – A plan that outlines the activities that will be undertaken to alleviate unavoidable project impacts. The plan generally contains: a site and project description; an environmental assessment of the functions and values of the site that will be impacted; a description of the proposed compensatory mitigation; the goals and objectives of the proposed mitigation; the performance standards against which success will be measured; monitoring of and reporting on the success of the mitigation; and a contingency plan in case of failure.

**Mixed use** – A combination of compatible uses within one development, in which both water-oriented and non-water-oriented uses are included.

**Multiple use** – A combination of compatible uses within one development, and may include commercial, multi-family, and recreation uses, among others.

**Must** – A mandate; the action is required.

**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;

**Nonconforming lot, use, or structure** – A pre-existing parcel which was lawfully created prior to the effective date of this Program but does not meet minimum size or other dimensional requirements, a use which was legally established prior to the effective date of this Program, which would not be permitted as a new use in the area in which it is located under the terms of this Program, or a structure lawfully erected prior to the effective date of this Program or a site altered or improved which does not meet current standards for setbacks, buffers, vegetation conservation, landscaping, public access, screening, or other regulations for the area in which it is located due to changes in regulations since its establishment.



**No net loss of ecological functions** – The maintenance of existing ecological processes and functions.

1. No net loss of ecological functions on the level of the City - that the ecological processes and functions are maintained within a watershed or other functional catchment area. Regulations may result in localized cumulative impacts or loss of some localized ecological processes and functions, as long as the ecological processes and functions of the system are maintained. Maintenance of system ecological processes and functions may require compensating measures that offset localized degradation.
2. On a project basis - that permitted use or alteration of a site will not result in on-site or off-site deterioration of the existing condition of ecological functions that existed prior to initiation of use or alterations as a direct or indirect result of the project.
3. No net loss is achieved both through avoidance and minimization of adverse impacts as well as compensation for impacts that cannot be avoided. Compensation may include on-site or off-site mitigation of ecological functions to compensate for localized degradation.

**Non-water-dependent use** – Those uses which are not dependent on a waterfront location.

**Non-water-oriented use** – Those uses which are not water-dependent, water-related, or water-enjoyment.

**Noxious weeds** – Any plant which, when established, is highly destructive, competitive, or difficult to control. Cowlitz County maintains a noxious weed list.

**Open space** – An area that is intended to provide light and air, view, use, or passage of persons or animals which is almost entirely unobstructed by buildings, paved areas, or other human-made structures, and is designed or preserved for environmental, habitat, scenic, or recreational purposes.

**Ordinary high water mark (OHWM)** – That mark on all lakes, streams, and tidal water that 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 OHWM cannot be found, the OHWM adjoining salt water shall be the line of mean higher high tide and the OHWM adjoining freshwater shall be the line of mean high water.

**Over-water structure** – A structure or other construction located waterward of OHWM or a structure or other construction erected on piling above the surface of the water, or upon a float.

**Permit** – Any shoreline substantial development, variance, conditional use permit, or revision authorized under the Act (RCW 90.58).

**Pier** – Docks and similar structures consisting of a fixed and/or floating platform extending from the shore over the water. This definition does not include overwater trails.

**Pond** – A naturally existing or artificially created body of standing water which exists on a year-round basis and occurs in a depression of land or expanded part of a stream.

**Potentially hazardous substances** – Hazardous materials as well as other materials if discharged or improperly disposed that may present a risk to water resources.

**Priority habitat** – A habitat type with unique or significant value to one or more species. An area classified and mapped as priority habitat must have one or more of the following attributes:

1. Comparatively high fish or wildlife density;
2. Comparatively high fish or wildlife species diversity;
3. Fish spawning habitat;
4. Important wildlife habitat;
5. Important fish or wildlife seasonal range;
6. Important fish or wildlife movement corridor;
7. Rearing and foraging habitat;
8. Refugia habitat;
9. Limited availability;
10. High vulnerability to habitat alteration; or
11. Unique or dependent species.

A priority habitat may be described by a unique vegetation type or by a dominant plant species that is of primary importance to fish and wildlife. A priority habitat may also be described by a successional stage (such as, old growth and mature forests). Alternatively, a priority habitat may consist of a specific habitat element (such as a consolidated marine/estuarine shoreline, talus slopes, caves, snags) of key value to fish and wildlife. A priority habitat may contain priority and/or nonpriority fish and wildlife.

**Priority species** – Species requiring protective measures and/or management guidelines to ensure their persistence at genetically viable population levels. Priority species are those that meet any of the criteria listed below.

1. State-listed or state proposed species. State-listed species are those native fish and wildlife species legally designated as endangered (WAC 232-12-014), threatened (WAC 232-12-011), or sensitive (WAC 232-12-011). State proposed species are those fish and wildlife species that will be reviewed by the department of fish and wildlife (POL-M-

6001) for possible listing as endangered, threatened, or sensitive according to the process and criteria defined in WAC 232-12-297.

2. Vulnerable aggregations. Vulnerable aggregations include those species or groups of animals susceptible to significant population declines, within a specific area or statewide, by virtue of their inclination to congregate. Examples include heron colonies, seabird concentrations, and marine mammal congregations.
3. Species of recreational, commercial, and/or tribal importance. Native and nonnative fish, shellfish, and wildlife species of recreational or commercial importance and recognized species used for tribal ceremonial and subsistence purposes that are vulnerable to habitat loss or degradation.
4. Species listed under the federal Endangered Species Act as either proposed, threatened, or endangered.

**Public access** – Physical and/or visual approach to and along the shoreline available to the general public.

**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 (WAC 173-27-030(14)).

**Qualified professional** – A person with experience, education, and/or professional degrees and training pertaining to the critical area in question as described for each critical area below. Qualified professionals will also possess experience with performing site evaluations, analyzing critical area functions and values, analyzing critical area impacts, and recommending critical area mitigation and restoration. The City shall require professionals to demonstrate the basis for qualifications and shall make final determination as to qualifications. Demonstration of qualifications may include, but not be limited to, professional certification(s) and/or recognition through publication of technical papers or journals. Qualified professionals for each critical area include:

1. Wetlands. Biologist or wetland ecologist who has a bachelor's degree in biological science, soil science, ecology, botany, environmental science or an equivalent degree from an accredited college or university, at least two years of experience under the supervision of a practicing wetland professional and has experience delineating wetlands, preparing wetland reports, conducting function assessments and developing and implementing mitigation plans.
2. Fish and Wildlife Habitat Areas. Biologist/wildlife biologist/stream ecologist/habitat ecologist who has a bachelor's degree in biological, wildlife and/or stream ecology science from an accredited college or university and has at least two years of experience under the supervision of a practicing professional biologist or ecologist.
3. Geologically Hazardous Areas.

- a. Geologist - a person who has a bachelor's degree in geologic sciences from an accredited college or university and at least five years of professional experience as described in WAC 308-15-040 and is licensed as a professional geologist in the State of Washington. The licensed geologist shall have demonstrated experience analyzing geologic hazards and preparing reports for the relevant type of hazard.
  - b. Hydrogeologist - a licensed geologist in the State of Washington with a specialty license in hydrogeology meeting the requirements of WAC 308-15057. The licensed hydrogeologist shall have demonstrated experience analyzing hydrogeologic hazards and preparing reports for the relevant type of hazard.
  - c. Engineering geologist - a licensed geologist in the State of Washington with a specialty license in engineering geology meeting the requirements of WAC 308-15-055. The licensed engineering geologist shall have demonstrated experience analyzing geologic hazards and preparing reports for the relevant type of hazard.
  - d. Geotechnical engineer - a person who has a bachelor's degree in civil engineering from an accredited college or university and at least five years of experience as a practicing geotechnical ~~engineer, and engineer and~~ is a registered professional engineer in the State of Washington (meeting the requirements of RCW 18.43.040). The licensed engineer shall have demonstrated experience conducting geotechnical investigations, analyzing geologic hazards, and preparing reports for the relevant type of hazard.
4. Critical Aquifer Recharge Areas. Hydrogeologist - a licensed geologist in the State of Washington with a specialty license in hydrogeology meeting the requirements of WAC 308-15-057. The licensed hydrogeologist shall have demonstrated experience analyzing hydrogeologic hazards and preparing reports for the relevant type of hazard.
5. Frequently Flooded Areas.
- a. Hydrogeologist - a licensed geologist in the State of Washington with a specialty license in hydrogeology meeting the requirements of WAC 308-15057. The licensed hydrogeologist shall have demonstrated experience analyzing hydrogeologic hazards and preparing reports for the relevant type of hazard.
  - b. Fluvial geomorphologist - a person who has a bachelor's degree in earth sciences from an accredited college or university with applicable course work in fluvial geomorphology and at least five years of professional experience in fluvial geomorphology.
  - c. Hydraulics engineer - a person who has a bachelor's degree in civil engineering from an accredited college or university and at least five years of experience as a practicing hydraulics ~~engineer, and engineer and~~ is a registered professional engineer in the State of Washington (meeting the requirements of RCW 18.43.040). The licensed engineer shall have demonstrated experience

conducting, ~~analyzing~~analyzing, and preparing reports for hydraulic investigations.

**Recreation areas** or **facilities** – Any privately or publicly owned passive or active facility that provides for activities undertaken for pleasure or relaxation and for the refreshment of the mind and body that takes place in the outdoors or in a facility dedicated to the use including walking, fishing, photography, viewing, and ~~bird-watching~~birdwatching and may include parks, playgrounds, sports fields, paths and trails, beaches, or other recreation areas or facilities.

**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.

**Residential** – Buildings, structures or portions thereof that are designed and used as a place for human habitation. Included are single, duplex or multi-family dwellings, manufactured homes, and other structures that serve to house people, as well as the creation of new residential lots through land division. This definition includes accessory uses common to normal residential use, including but not limited to, residential appurtenances, accessory dwelling units, and home occupations.

**Right-of-way** – Land or easements dedicated for public roads, railways, public utilities, public levees, and public dikes.

**Riparian zone** – The upland area immediately adjacent to and paralleling a body of water and is usually composed of trees, ~~shrubs~~shrubs, and other plants. Riparian functions include bank and channel stability, sustaining water supply, providing flood storage, retainment of woody debris, leaf litter, nutrients, ~~sediments~~sediment, and pollutant filtering, while providing shade, shelter and other functions that are important to the survival of both fish and wildlife.

**SEPA** – The Washington State Environmental Policy Act, Chapter 43.21C RCW.

**Shall** – A mandate; the action must be done.

**Shared** or **joint-use moorage** – Interchangeable terms in this Program. These terms mean moorage constructed and utilized by more than one waterfront property owner or by a homeowner's association that owns waterfront property. Shared moorage includes moorage for pleasure craft and/or landing for water sports for use in common by shoreline residents or for use by patrons of a public park or quasi-public recreation area, including rental of non-powered craft. If a shared moorage provides moorage for more than ten slips, then it is a marina.

**Shorelands** or **shoreland areas** – Those lands under the jurisdiction of the Shoreline Management Act extending landward for two hundred (200) feet in all directions as measured on a horizontal plane from the OHWM; floodways and contiguous floodplain areas landward two hundred (200) feet from such floodways; and all wetlands and river deltas associated with the streams, lakes, and tidal waters that are subject to the provisions of the Shoreline

Management Act (RCW 90.58.030); the same to be designated as to location by the Washington Department of Ecology.

**Shorelines** – All of the water areas of the state, including reservoirs, and their associated shorelands, together with the lands underlying them; except (i) shorelines of statewide significance; (ii) 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 (iii) shorelines on lakes less than twenty acres in size and wetlands associated with such small lakes.

**Shoreline areas** and **shoreline jurisdiction** – All "shorelines of the state" and "shorelands" as defined in RCW 90.58.030.

**Shorelines Hearings Board (SHB), State** – A quasi-judicial body established at the State level by the Act to hear appeals by any aggrieved party on the issuance of an SSDP, conditional uses, variance or, enforcement penalties. See RCW 90.58.170 and RCW 90.58.180.

**Shoreline 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. As provided in RCW 36.70A.480, the goals and policies of a shoreline master program approved under RCW 90.58 shall be considered an element of the City of Kelso's Comprehensive Plan. All other portions of this Program adopted under RCW 90.58, including use regulations, shall be considered a part of the City of Kelso development regulations.

**Shoreline modifications** – Those actions that modify the physical configuration or qualities of the shoreline area, usually undertaken in support of or in preparation for a shoreline use, 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.

**Shoreline stabilization** – Structural and non-structural methods to address erosion impacts to property and dwellings, businesses, or structures caused by natural processes, such as currents, floods, tides, wind, or wave action. Non-structural methods include building setbacks, relocation of structures, groundwater management, and planning and regulatory measures to avoid the need for structural shoreline stabilization. "Hard" structural stabilization measures refer to those with solid, hard surfaces such as concrete bulkheads, while "soft" structural measures rely on less rigid materials such as biotechnical vegetation measures or beach enhancement.

**Shorelines of the state** – The total of all "shorelines" and "shorelines of statewide significance" within the state.

**Shorelines of statewide significance** – With respect to the City of Kelso, shorelines of statewide significance are identified as the Columbia River and Cowlitz River (see RCW 90.58.030(2)(f)).

**Should** – That the particular action is required unless there is a demonstrated, compelling reason, based on policy of the Shoreline Management Act and the provisions of the Kelso Shoreline Master Program, against taking the action.

**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.

**Site** – Any parcel or combination of contiguous parcels, or right-of-way, or combination of contiguous rights-of-way under the applicant’s ownership or control where the proposed project occurs.

**Slope** – An inclined earth surface, the inclination of which is expressed as the ratio of horizontal distance to vertical distance. In these regulations, slopes are generally expressed as a percentage; percentage of slope refers to a given rise in elevation over a given run in distance. Slopes 15 to 30 percent constitute areas of geologic concern. Slopes greater than 30 percent constitute potential areas of geological hazard.

**Snag** – Any dead, partially dead, or defective (cull) tree at least 10 feet tall and 12 inches in diameter at breast height.

**Snag-rich areas** – Areas that are characterized by the presence of relatively high numbers of large diameter (greater than 20 inches dbh) snags, in varying states of decay, suitable for use by broad and diverse groups of wildlife. Snag-rich areas include naturally regenerated (unmanaged) forests, riparian areas, and burned, damaged or diseased forests. Snag-rich areas may also include individual snags or small groups of snags of exceptional value to wildlife due to their scarcity or location in particular landscapes.

**Soil with severe erosion hazard** – Any soil type having a degree of hazard or limitation of severe or very severe according to Table 3 of the Soil Survey of Cowlitz County Area, Washington, issued February 1974 by the U.S. Department of Agriculture, Soil Conservation Service.

**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 (WAC 173-27030(15)).

**Substantial development, shoreline** <sup>[KF4]</sup> – Any development of which the total cost or fair market value exceeds ~~six thousand four hundred sixteen dollars (\$6,416)~~ seven thousand forty-seven dollars (\$7,047), 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 definition must be adjusted for inflation by the office of financial management every five years, beginning July 1, 2007, based upon changes in the consumer price index during that time period.

**Substantially degrade** – To cause significant ecological impact.

**Surface water** – Water that flows across the land surface, in channels, or is contained in depressions in the land surface, including but not limited to ponds, lakes, rivers, and streams.

**Talus slope** – A slope formed by the accumulation of rock debris at the bottom of steep slopes or cliffs.

**Transmittal** – *Transmit* means to send from one person or place to another by mail 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.

**Upland** – Generally described as the dry land area above and landward of the OHWM.

**Utilities** – Services and facilities that produce, convey, store, or process power, water, wastewater, stormwater, gas, communications, oil, and the like. On-site utility features serving a primary use, such as water, sewer, or gas line to a residence, are "accessory utilities" and shall be considered a part of the primary use.

**Utility line** – Pipe, conduit, cable or other similar facility by which services are conveyed to the public or individual recipients. Such services shall include, but are not limited to, water supply, electric power, natural gas, communications, and sanitary sewer.

**Variance, shoreline** – A means to grant relief from the specific bulk, dimensional or performance standards set forth in this Program and not a means to vary a use of a shoreline.

**Vessel** – Includes ships, boats, barges, or any other floating craft which are designed and used for navigation and do not interfere with the normal public use of the water (WAC 173-27).

**View corridor** – Portion of a viewshed, often between structures or along thoroughfares. View corridors may or may not be specifically identified and reserved through development regulations for the purpose of retaining the ability of the public to see a particular object (such as a mountain or body of water) or a landscape within a context that fosters appreciation of its aesthetic value.

**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. Examples of water-dependent uses may include, but are not limited to, the following: ship cargo terminal loading areas, ferry and passenger terminals, barge loading facilities, ship building and dry docking, marinas, boating facilities, private moorage facilities, aquaculture, float plane facilities, sewer outfalls, hydroelectric generating plants and water diversion facilities, such as agricultural pumphouses.

**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 enjoyment or recreational use 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 visual and physical 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-oriented use** – A use that is water-dependent, water-related, or water-enjoyment, or a combination of such uses.

**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.

**Water-related use** – A use or portion of a use which is not intrinsically dependent on a waterfront location, but its economic viability is dependent upon a waterfront location because:

1. 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
2. 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.

**Weir** – A structure in a stream or river for measuring or regulating stream flow.

**Wetlands or wetland areas** – Those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation 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. For identifying and delineating a wetland, the methodology shall be done in accordance with the approved federal wetland delineation manual and applicable regional supplements as provided in RCW 90.58.380 and WAC 173-22-035.

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## 3. Applicability, Exemptions, and Prohibited and Nonconforming Uses

### 3.1 Applicability

All new or expanded uses and development within shoreline jurisdiction shall be carried out in a manner consistent with this Program and the policy of the Act as required by RCW 90.58.140(1), regardless of whether a SLE, SSDP, Variance, or SCUP is required. Unless described otherwise, this Program does not apply to the continuance of legally established and permitted uses and developments.

- A. This Program shall apply to all of the shorelands and waters within the City of Kelso that fall under the jurisdiction of RCW 90.58. Such shorelands shall include those lands extending two hundred (200) feet in all directions as measured on a horizontal plane from the ordinary high water mark (OHWM), floodways and contiguous floodplain areas landward two hundred feet from such floodways, associated wetlands, river deltas associated with the streams that are subject to the provisions of this program, as may be amended; the same to be designated as to location by Ecology, as defined by RCW 90.58.
  1. Within the City of Kelso the following waters are considered “shorelines” and are subject to the provisions of this Program: Columbia River, Cowlitz River, Coweeman River, and Owl Creek. A copy of the Kelso Shoreline Environment Designations Map is shown in Appendix B.
  2. The provisions of this Program shall not apply to developments specified in WAC [173-27-044, Developments not required to obtain shoreline permits or local reviews and \[KF5\]WAC 173-27-045, Developments Not Subject to the Shoreline Management Act.](#)
- B. B. All shoreline uses and development activities outside of the city limits are subject to the provisions of the Cowlitz County Shoreline Master Program. Upon annexation, the City will continue to apply the shoreline designation and applicable standards of the County’s Shoreline Master Program until such time that the City Master Program is amended to include the annexed property.
- C. Maps indicating the extent of shoreline jurisdiction and shoreline environment designations are for guidance only. They are to be used in conjunction with the most current, accurate, and complete scientific and technical information available, field investigations, and on-site surveys to accurately establish the location and extent of shoreline jurisdiction when a project is proposed. All areas meeting the definition of a shoreline or a shoreline of statewide significance, whether mapped or not, are subject to the provisions of this Program.

- D. This Program shall apply to every person, individual, firm, partnership, association, organization, corporation, local or state governmental agency, public or municipal corporation, or other non-federal entity that develops, owns, leases, or administers lands, wetlands, or waters that fall under the jurisdiction of the Act; and within the external boundaries of federally owned lands.
- E. Non-federal agency actions undertaken on federal lands must comply with this Program and the Act.
- F. Native American Tribes' actions on tribal lands and federal agencies' actions on federal lands are not required, but are encouraged, to comply with the provisions of this Program and the Act. Nothing in this Chapter shall affect any rights established by treaty to which the United States is a party.
- G. Hazardous substance remedial actions pursuant to a consent decree, order, or agreed order issued under RCW 70.105(D) are exempt from all procedural requirements of this Program.
- H. Applicants that are responding to an emergency related to drought conditions or issuance of a drought order that requires a water withdrawal or facility shall be provided an expedited permit decision from the City, no longer than fifteen (15) calendar days after the date of application in accordance with RCW 90.58.370.
- I. Certain forest practices that are not regulated by the Act and are regulated under RCW 76.09 are not subject to additional requirements of this Program.
- J. The administrative regulations of this Program are superseded in authority by the terms and provisions of an environmental excellence program or agreement entered into under RCW 43.21(K), Environmental Excellence Program. The environmental excellence agreement must meet the substantive requirements of this Program. An environmental excellence program agreement must achieve more effective or efficient environmental results than the results that would be otherwise achieved.
- K. Unless specifically exempted by statute, all proposed uses and development occurring within shoreline jurisdiction must conform to Chapter 90.58 RCW, the Shoreline Management Act and this Program whether or not a permit is required.

## 3.2 Exemptions from a Shoreline Substantial Development Permit

- A. Substantial development as defined by this program and RCW 90.58.030 requires approval from the City through a Shoreline Substantial Development Permit (SSDP) (See Chapter 8 for permit review and approval procedures), except that:
  - 1. An SSDP is not required for projects that meet the terms established in WAC 173-27-040(2), Developments Exempt from Substantial Development Permit Requirement (See Appendix E).<sup>[KF6]</sup>

2. An SSDP is not required for those actions described in WAC 173-27-045, Developments Not Subject to the Shoreline Management Act (See Appendix E).
  - A. Any person claiming exemption from the permit requirements of this Program as a result of the exemptions specified in this Section shall make application for a Shoreline Letter of Exemption (SLE) as described in Chapter 8.
  - B. If any part of a proposed development is not eligible for exemption, then a shoreline permit is required for the entire proposed development project.
  - C. Any development which occurs within the regulated shorelines of the state, whether it requires a permit or not, must be consistent with the intent of the Act and this Program.

### 3.3 Nonconforming Uses, Structures, and Development

- A. Existing uses, structures, and lots legally established prior to the effective date of this Program are allowed to continue. Where lawful uses, structures, and lots exist that could not be established under the terms of this Program, such uses, structures, and lots are deemed nonconforming and are subject to the provisions of this Section, unless specific exceptions are provided for in this Section.
- B. Uses and developments landward of a levee, dike, revetment, road, railway, or right-of-way that were legally established in conformance with the provisions of the Kelso Comprehensive Plan and Development Regulations prior to the effective date of this Master Program shall be considered legal conforming uses and developments under this Program.
- C. 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.
- D. A structure which is being or has been used for a nonconforming use within the past twelve (12) months may be used for a different nonconforming use only upon the approval of a new conditional use permit and demonstration of the following criteria:
  1. No reasonable alternative conforming use is practical; and
  2. The proposed use will be at least as consistent with the policies and provisions of the Act and this Program and as compatible with the uses in the area as the preexisting use.

In addition, such conditions may be attached to the permit as are deemed necessary to assure compliance with the above findings, the requirements of this Program and the Act, and to assure that the use will not become a nuisance or a hazard.

- E. If a nonconforming development is damaged to an extent not exceeding seventy five percent of the replacement cost of the original development, it may be reconstructed to those configurations existing immediately prior to the time the development was damaged,

provided that application is made for the permits necessary to restore the development within one (1) year of the date the damage occurred, all permits are obtained and the restoration is completed within two (2) years of permit issuance or the conclusion of any appeal on the permit.

- F. If a nonconforming use is discontinued for twelve (12) consecutive months or for twelve (12) months during any two-year period, the nonconforming rights shall expire and any subsequent use shall be conforming. A use authorized pursuant to Subsection D of this Section shall be considered a conforming use for purposes of this Section.
- G. An undeveloped lot, tract, parcel, site, or division of land located landward of the OHWM which was established in accordance with City and state subdivision requirements prior to the effective date of the Act or this Program, but which does not conform to the present lot size standards, may be developed if permitted by other land use regulations of the City and so long as such development conforms to all other requirements of this Program and the Act.
- H. Vegetation conservation standards of this Program shall not apply retroactively in a way which requires lawfully existing uses and developments, including residential landscaping and gardens, to be removed except as required as mitigation for new and expanded development.
- I. Notwithstanding Sections 3.3.A through 3.3.H, the following shall apply only to pre-existing legal residential structures constructed prior to the effective date of this Program:
  - 1. Residential structures and appurtenant structures that were legally established and are used for a conforming use, but that do not meet standards for the following, shall be considered a conforming structure: Setback, buffers, or yards; area; bulk; height; or density.
  - 2. The City may allow redevelopment, expansion, or a change of class of occupancy for residential structures that are consistent with underlying zoning, the SMP, including requirements for no net loss of shoreline ecological functions and maximum height, and that do not intrude farther into a required buffer.
  - 3. Pre-existing legal residential structures that are damaged or destroyed may be replaced to their prior size and location provided:
    - a. All other requirements of the City of Kelso Municipal Code and the Cowlitz County Health Department are satisfied; and
  - 4. A complete application for a building permit shall be submitted within one (1) year of the act causing damage or destruction to the dwelling unit.
  - 5. Nothing in this Section shall:

- a. Restrict the ability of this Program to limit development, expansion, or replacement of over-water structures located in hazardous areas, such as floodplains and geologically hazardous areas; or
- b. Affect the application of other federal, state, or City requirements to residential structures.

## 4. Shoreline Master Program Goals and Policies

### 4.1 General Shoreline Goals

#### 4.1.1 Goal

Plan for and foster all reasonable and appropriate uses of shorelines in the City of Kelso. This should be done in a manner which will achieve an orderly balance of shoreline uses that improve the quality of the environment.

#### 4.1.2 Policies

- A. Require that all new or expanded uses and new or expanded developments are as compatible as possible with the site, the surrounding area, and the environment, provide restoration as appropriate, and do not result in a net loss of shoreline ecological functions.
- B. Water-dependent and associated water-related uses are the highest priority for shorelines.
- C. Water-related and water-enjoyment uses that are compatible with ecological protection and restoration objectives are the second highest priority.
- D. Limit non-water-oriented uses to those locations where access to the water is not provided or where the non-water-oriented use contributes to the objectives of the Act in providing ecological restoration and public access.
- E. Use of shoreline areas should consider optimal use for future generations by recognition of potential long term benefits to the public and discouragement of short term gain or convenience.
- F. Provide a mechanism for tracking project review actions and periodically review the cumulative effect of actions taken within the shoreline to determine if the goal of no net loss of shoreline ecological functions is being met.
- G. Provide site development performance standards and other appropriate criteria to guide the use and development of shorelines.
- H. Allow multiple use of shoreline areas where integration of compatible uses or activities is feasible.
- I. Provide flexibility for development, including non-water-oriented uses, within the shoreline in areas physically separated from the shoreline by another property or public right-of-way.



- J. Respect and protect private property rights.

## 4.2 Historic, Cultural, Archaeological, and Educational Resources

### 4.2.1 Goal

Protect, preserve, and encourage restoration of those sites and areas on the shoreline which have significant historical, cultural, educational, or scientific value.

### 4.2.2 Policies

- A. Continue to identify historic, cultural, and archaeological resources within the shoreline in cooperation with federal, state, local, and tribal agencies.
- B. Preserve for the public benefit, with opportunity for appropriate public utilization, significant historic, scientific, and educational areas of the shoreline.
- C. Provide that the review and construction of development permits includes professional assessment of historic, cultural, and archaeological resources, as appropriate, and that such resources are preserved or conserved in compliance with applicable laws.
- D. Work with the public to increase awareness of the Act and the importance of protecting shorelines.

## 4.3 Conservation and Restoration

### 4.3.1 Goal

Protect, preserve, and encourage the restoration of shoreline areas and critical areas.

### 4.3.2 Policies

- A. All development within shoreline jurisdiction should implement the following sequence of actions when addressing potential adverse effects on the ecological functions within shoreline jurisdiction in the listed 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 during the life of the action;
  5. Compensating for the impact by replacing, enhancing, or providing substitute resources or environments; and
  6. Monitoring the impact and the compensation project and take appropriate corrective measures.
- B. Establish and maintain a regional wetland mitigation bank(s).
  - C. Identify, prioritize, and implement shoreline restoration projects in accordance with the provisions of the Program and supporting documents.
  - D. Shoreline landowners are encouraged to preserve and enhance native woody vegetation and native groundcovers to stabilize soils and provide habitat. When shoreline uses or modifications require a planting plan (i.e., uses or modifications that require a mitigation plan), maintaining native plant communities, replacing noxious weeds and avoiding installation of ornamental plants are preferred. Nonnative vegetation requiring use of fertilizers, herbicides/pesticides, or summer watering is discouraged.

## 4.4 Economic Development

### 4.4.1 Goal

Give priority to those industrial, commercial, and recreational uses and developments that are particularly dependent on their location on City of Kelso's shoreline.

### 4.4.2 Policies

- A. Minimize the adverse effects of new commercial, industrial, and recreational development upon the physical environment and natural processes through careful siting and design and mitigation sequencing.
- B. Provide effective flood protection for the City of Kelso.

## 4.5 Flood Prevention and Flood Damage Minimization

### 4.5.1 Goal

Minimize flood hazards to human life and to property while enhancing the ecological processes of the shoreline.

### 4.5.2 Policies

- A. Manage flood protection through implementation of the City's Comprehensive Plan, Comprehensive Stormwater Management Plan, stormwater regulations, and the regional flood hazard control plans for the Columbia, Cowlitz, and Coweeman Rivers in accordance with applicable local, state, and federal requirements.
- B. Recognize that flood control works, such as levees, dikes, and revetments, are an existing and important feature to protect life and property in the City of Kelso and the region.
- C. Where feasible, non-structural methods or integrated bioengineering/soft engineering approaches to protect, enhance, and restore shoreline ecological functions and processes and other shoreline resources should be encouraged as an alternative to structural flood control works.
- D. Protect existing development from flood damage:
  - 1. Maintain existing levee and pump systems to effectively reduce flood hazards in areas currently protected by such facilities.
  - 2. Provide for maintenance dredging of the Cowlitz River and other streams affected by continuing deposition of Mt. St. Helens volcanic deposits to maintain flow capacity and control risk of flooding.
  - 3. New structural flood hazard reduction measures should be avoided whenever possible in order to avoid reducing floodplain functions crucial to fish and wildlife species, bank stability, and water quality. When necessary, they should be consistent with an adopted comprehensive flood hazard management plan and accomplished in a manner that assures no net loss of ecological functions and ecosystem-wide processes.
  - 4. Long-term programs for flood hazard reduction should include measures to prevent or remove development in flood-prone areas, to manage storm water within the floodplain, and to maintain or restore river and stream systems' natural hydrological and geomorphological processes in addition to structural flood control measures such as levees.
  - 5. Removal of gravel, as opposed to volcanic deposits, for flood management purposes should be avoided unless identified as a necessary part of an adopted flood hazard reduction plan and allowed only after a biological and hydraulic study shows that extraction has a long-term benefit to flood hazard ~~reduction, and~~ reduction and does not result in a net loss of ecological functions.
- E. Reduce potential hazard to new development by reducing exposure to flood hazards to the extent feasible.
  - 1. New development should be located outside of floodways and should avoid location in floodplains to the maximum extent feasible.

2. New development should be designed and located to preclude the need for flood control structures. New or expanded development or uses in the shoreline, including subdivision of land, that would likely require flood control structures within a stream, channel migration zone, or floodway should be prohibited.
  3. Development should be prohibited in the channel migration zone if it would result in interference with the process of channel migration which may cause significant adverse impacts to property or public improvements and/or result in a net loss of ecological functions associated with the rivers and streams.
- F. Support measures to restore floodplain and channel migration zone functions, including flood storage, off-channel habitat, associated wetlands, and buffers of native vegetation, through levee setbacks and similar programs, when feasible.

## 4.6 Public Access

### 4.6.1 Goal

Promote safe, convenient and diversified access to publicly owned shorelines of the City of Kelso that recognizes the rights of private property owners.

### 4.6.2 Policies

- A. Public access should be provided in consideration of opportunities and constraints for physical and visual access, existing and planned future uses, as well as consideration of ecological functions and public safety.
- B. Public access to and along the water's edge should be available throughout publicly owned shoreline areas, although direct physical access to the water's edge may be restricted to protect shoreline ecological values.
- C. Future developments and redevelopments should not adversely affect existing public access and should provide new opportunities for the public to reach, touch, and enjoy the water's edge.
- D. Seek to purchase, or otherwise make available to the public, shoreline properties if their value for public use merits such action.
- E. Existing highway and railroad corridors along shorelines should accommodate public access to the shoreline and provide safe overcrossings to shoreline public access facilities when feasible.
- F. Coordinate with local, state, and federal agencies so that shoreline access is consistent with the city and regional parks recreation, open space and trails plans.
- G. Respect and protect the enjoyment of private rights in shoreline property when considering opportunities for public access.

- H. It is the intent of the City to establish a public access fund within the City budget to support public access to shorelines.

## 4.7 Recreation

### 4.7.1 Goal

Provide additional opportunities for diverse forms of recreation for the public and for improving present facilities.

### 4.7.2 Policies

- A. Shoreline recreation development is a priority and facilities should be located, designed, and operated in a manner consistent with the purpose of the environmental designation in which they are located and such that no net loss of shoreline ecological functions or ecosystem-wide processes result.
- B. Water-oriented recreational uses are preferred, and the SMP should allow shoreline recreational development in order to provide access, use, and enjoyment of shorelines that does not displace water-dependent uses.
- C. Continue to identify, obtain, preserve and/or protect areas with high values for recreation when feasible.
- D. Permit recreational uses as part of private development where compatible with other uses and activities.
- E. Provide a balanced choice of recreational opportunities including those requirements of the elderly and the physically challenged when feasible.
- F. Cultivate innovative and cooperative techniques among public agencies and private persons or groups which increase and diversify recreation opportunities.
- G. Allow compatible recreational uses including bicycle and foot paths in transportation and utility corridors where feasible.
- H. Coordinate with local, state, and federal agencies so that shoreline recreational developments are consistent with the City and regional parks recreation, open space and trails plans.
- I. In providing space for public recreation along the shorelines, give primary emphasis to providing for the local recreation needs for boating, kayaking, canoeing, swimming, bicycling, fishing, picnicking, and other activities benefiting from shoreline access, as well as retaining and expanding regional trail systems.
- J. Develop recreational activity areas in a manner which complements commercial and residential uses and/or natural habitats.

- K. Prioritize recreational development in coordination with the City of Kelso Comprehensive Plan.

## 4.8 Transportation

### 4.8.1 Goal

Develop safe, convenient, and diversified shoreline circulation systems to assure efficient movement of goods and people with minimum disruptions to the shoreline environment and minimum conflict between the different users.

### 4.8.2 Policies

- A. Locate and design new major circulation systems well away from the shoreline, except for necessary crossings, whenever feasible.
- B. Encourage existing corridors for transportation facilities along shorelines to better accommodate public access to the shoreline and provide safe overcrossings to shoreline public access facilities whenever feasible.
- C. Encourage non-motorized vehicle access such as pedestrian and bicycle to shorelines.
- D. Allow parking facilities within shoreline jurisdiction only to support an authorized use when locations outside of shoreline jurisdiction are not suitable or feasible or when located landward of a levee, dike, revetment, railway, or right-of-way.

## 4.9 Utilities and Essential Public Facilities

### 4.9.1 Goal

Provide utility and essential public services necessary to protect the public and safety in a cost effective and efficient manner.

### 4.9.2 Policies

- A. All new utility facilities should 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. New utility processing and production facilities should not be located in shoreline areas unless it can be demonstrated that no other feasible option exists.
- C. Utilities should be upgraded and maintained to ensure water quality standards will be met.
- D. Utilities should be located in existing rights of way and corridors whenever possible.

- E. Transmission facilities for the conveyance of services, such as power lines, cables, and pipelines, should be located outside of the shoreline area where feasible and when necessarily located within the shoreline area should assure no net loss of ecological functions.
- F. Non-water-dependent essential public facilities or parts thereof should not be located in shoreline areas unless no other feasible alternative exists and should be designed and operated to assure that there is no net loss of ecological function in accordance with the mitigation sequencing provisions of this Program.

## 4.10 Shoreline Uses

### 4.10.1 Goal

Establish specific shoreline use standards in accordance with the provisions of the Washington State Shoreline Management Act, WAC 173-26, WAC 173-27, the Kelso Comprehensive Plan, the Kelso Municipal Code, and this Master Program.

### 4.10.2 Policies

- A. Agriculture
  - 1. New outdoor agricultural uses within shoreline jurisdiction should be prohibited.
  - 2. Agricultural uses legally established prior to the effective date of this Master Program may be continued.
- B. Aquaculture
  - 1. New aquaculture uses within the Shoreline should be restricted to projects that support ecological restoration.
- C. Boating Facilities
  - 1. New or expanded boating facilities should be located at sites with suitable environmental conditions, shoreline configuration, access, and neighboring upland and aquatic uses.
  - 2. Boating facilities that minimize the amount of shoreline modification, in-water structures, and overwater cover are preferred.
  - 3. Joint use of boating facilities is encouraged.
- D. Commercial
  - 1. Priority should be given to water-dependent commercial uses within shoreline jurisdiction.
  - 2. New commercial development that is not water-oriented should be discouraged in shoreline jurisdiction unless such development provides a significant public

benefit with respect to the Shoreline Management Act's objectives, such as public access and ecological restoration, or if the site is physically separated from the shoreline by another property or public right-of-way.

E. Forest Practices

1. New forest practices within the Shoreline should be prohibited.

F. Industrial

1. Priority should be given to water-dependent industrial uses within shoreline jurisdiction.
2. New industrial development that is not water-oriented should be discouraged in shoreline jurisdiction unless such development provides a significant public benefit with respect to the Shoreline Management Act's objectives, such as public access and ecological restoration, or if the site is physically separated from the shoreline by another property or public right-of way.

G. Institutional

1. Priority should be given to water-oriented institutional uses within shoreline jurisdiction.
2. New or expanded institutional development that is not water-oriented should be prohibited in shoreline jurisdiction unless such development provides a significant public benefit with respect to the Shoreline Management Act's objectives, such as public access and ecological restoration, or if the site is physically separated from the shoreline by another property or public right-of-way.
3. Institutional uses that foster appreciation of shoreline historic, cultural, scientific, and educational resources are encouraged.

H. In-stream Structures

1. Ensure the location, design, construction and maintenance of in-stream structures give due consideration to the full range of public interests, ecological functions and processes, and environmental concerns.
2. Priority consideration should be given to non-structural and non-regulatory approaches as an alternative to the construction of new in-stream structures.

I. Mining

1. Mining activities should be sited, designed, operated and completed to result in no net loss of shoreline ecological functions and processes after final reclamation of the site.
2. Give preference to mining proposals that result in the creation, restoration or enhancement of habitat for priority species.



## J. Residential

1. Recognize single-family uses as a preferred use when they can be developed without significant impact to ecological functions or displacement of water-dependent uses.
2. The design of residential uses should minimize the need for new shoreline stabilization.
3. New residential development in shoreline jurisdiction, comprising more than four (4) dwelling units, multi-unit residential development, and the subdivision of land into more than four (4) parcels should provide for public access to the shoreline consistent with this Program, when feasible.

## 4.11 Shoreline Modifications

### 4.11.1 Goal

Establish specific standards to limit and guide modifications to shoreline areas in accordance with the provisions of the Shoreline Management Act, WAC 173-26, the Kelso Comprehensive Plan, the Kelso Development Regulations, and the provisions of the Master Program.

### 4.11.2 Policies

#### A. General Policies

1. Allow shoreline modifications only where it can be demonstrated that the proposed activities are necessary to support or protect an allowed use or development.
2. The individual and cumulative effects of shoreline modification should not result in a net loss of ecological functions. Ecological impacts should be avoided and mitigated in accordance with the mitigation sequence of this Program.
3. Shoreline modifications should only be approved if they are appropriate to the specific type of shoreline and environmental conditions for which they are proposed.
4. As much as possible, the number and extent of shoreline modifications should be limited.
5. Ecological functions impaired by development activities should be enhanced and/or restored where feasible and appropriate while accommodating permitted uses. As shoreline modifications occur, the projects should incorporate all feasible measures to protect ecological shoreline functions and ecosystem-wide processes.
6. New structural shoreline modifications should be allowed only where 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 where structural modifications are necessary for mitigation or enhancement purposes.

B. Shoreline Stabilization

1. Types of shoreline stabilization that have a lesser impact on ecological functions are preferred.

C. Breakwaters, Jetties, Rock Weirs, and Groins

1. May be permitted waterward of the OHWM only when necessary to support water-dependent uses, public access, shoreline stabilization, or to protect a ~~publically~~publicly owned flood control structure.

D. Piers and Docks

1. Moorage buoys are preferred over docks where appropriate to minimize shallow water impacts to shoreline resources.
2. Joint use docks are preferred over single-use docks to help reduce the number of over water structures.
3. Piers and docks should only be permitted when they are in support of a water-dependent use or for the public to gain access to shorelines of the state.

E. Fill and Excavation

1. Fills and excavation should be located, designed, and constructed to protect shoreline ecological functions and ecosystem-wide processes including channel migration in accordance with the provisions of WAC 173-26-231 (3)(c).

F. Dredging and Dredge Material Disposal

1. Dredging operations should conform to the operating standards specified on any federal and state permits required for such operations.
2. New development should be sited and designed to avoid or, if that is not possible, to minimize the need for new and maintenance dredging.
3. The necessary and ongoing maintenance dredging of the Cowlitz River for flood control purposes, including actions by the U.S. Army Corps of Engineers, should be supported.

G. Shoreline Habitat and Ecological Enhancement

1. Facilitate the projects described within the Shoreline Restoration Plan (Appendix D).
2. Shoreline restoration and enhancement activities designed to restore shoreline ecological functions and processes and/or shoreline features should be targeted

toward meeting the needs of sensitive and/or regionally important plant, fish, and wildlife species.

3. Shoreline restoration and enhancement activities should be designed to create or improve dynamic and sustainable ecosystems.
4. All shoreline restoration and enhancement projects should protect the integrity of adjacent natural resources including aquatic habitats and water quality.
5. Where possible, restoration and enhancement activities should be integrated and coordinated with other parallel natural resource management efforts.

# 5. Shoreline Environment Designations and Shorelines of Statewide Significance

## 5.1 Introduction

The intent of assigning shoreline environment designations to specific geographies is to encourage development that will enhance the present or desired character of the shoreline. To accomplish this, segments of shoreline are given a shoreline environment designation based on existing development patterns, natural capabilities and limitations, and the vision of the City of Kelso. The shoreline environment designations are intended to work in conjunction with the comprehensive plan and zoning.

Management policies are an integral part of the shoreline environment designations and are used for determining uses and activities that can be permitted in each shoreline environment designation.

Chapters 6 and 7 contain development regulations to specify how and where permitted development can take place within each shoreline environment ~~designation~~designation, and they govern height and setback.

## 5.2 Authority

Local governments are required in accordance with the provisions of the Shoreline Management Act Program to develop and assign a land use categorization system known as “shoreline environment designations” for shoreline areas as a basis for effective shoreline master programs.

The City of Kelso accounted for different shoreline conditions by assigning a shoreline environment designation to each distinct shoreline section in the City. The shoreline environment designations provide the framework for implementing shoreline policies and regulatory measures for environmental protection, use provisions, and other regulatory measures specific to each shoreline environment designation.

## 5.3 Shoreline Environment Designation Interpretation

- A. Shoreline jurisdiction maps are approximate. The OHWM and resultant upland, lateral extent of shoreline jurisdiction will need to be determined on a site-specific basis at the time of application. Any areas within shoreline jurisdiction that are not mapped and/or designated due to minor mapping inaccuracies in the upland extent of shoreline

jurisdiction are automatically assigned the category of the contiguous upland shoreline environment designation.

- B. Areas that were not mapped in the shoreline jurisdiction or not known to meet the applicability criteria in Section 3.1, Applicability, shall be assigned an Urban Conservancy environment designation until the shoreline can be designated through a Program amendment.
- C. Property shown in shoreline jurisdiction that does not meet the definitions of shoreline or shoreland found in RCW 90.58.030 or the applicability criteria in Section 3.1, Applicability, shall not be subject to the requirements of this Program.
- D. Potentially associated wetlands shown on the Shoreline Environment Designation Map (Appendix B) must be delineated at the time of application. Those portions of delineated associated wetlands would receive the adjoining environment designation. In the case that there is more than one adjoining environment designation, the most restrictive designation should be assigned.
- E. Boundaries indicated as approximately following lot, tract, or section lines shall be so construed. Boundaries indicated as approximately following roads or railways shall be respectively construed to follow the nearest right-of-way edge.

## 5.4 Shoreline Environment Designations

The City classification system consists of shoreline environment designations that are consistent with and implement the Act, the Program, and the City of Kelso Comprehensive Plan.

These environment designations have been assigned consistent with the corresponding criteria provided for each shoreline environment designation. In delineating shoreline environment designations, the City aims to ensure that existing shoreline ecological functions are protected with the proposed pattern and intensity of development. Such environment designations should be consistent with the policies for restoration of degraded shorelines. The shoreline environment designations are High-Intensity, Residential, Urban Conservancy, and Aquatic.

### 5.4.1 High-Intensity Environment

#### Purpose

The purpose of the High-Intensity environment designation is to provide for high-intensity, water-oriented commercial, transportation, and industrial uses while protecting existing ecological functions and seeking to restore ecological functions in areas that have been previously degraded.

#### Management Policies

- A. Priority should be given to water-dependent, water-related, and water-enjoyment uses in that order of preference. Non-water-oriented uses within the High-Intensity SED are

appropriate on sites where there is no direct access to the shoreline because of another property or a public-right-of way separating it from the shoreline.

- B. Non-water-oriented uses on sites adjacent to the water should provide significant public benefit with respect to the Shoreline Management Act's objectives, such as public access and ecological restoration in compliance with the provisions of this Program.
- C. Where unavoidable impacts to ecological functions occur, appropriate mitigation should be provided in accordance with this Program to achieve no-net loss. Where applicable, development should include environmental cleanup and restoration of the shoreline in accordance with relevant state and federal law.
- D. Visual and/or physical public access should be provided, where feasible.
- E. Aesthetic objectives of this Program should be in character with high-intensity development and include height limits, screening, and other standards consistent with the primary purpose of accommodating high-intensity uses.
- F. Full utilization of existing urban and extensively altered areas should be achieved before further expansion of intensive development is allowed.

### Designation Criteria

The High-Intensity environment designation is given to shoreline areas within the City of Kelso if they currently support or are planned for high-intensity uses related to commercial, industrial or transportation.

## 5.4.2 Residential Environment

### Purpose

The purpose of the Residential environment designation is to accommodate residential development and appurtenant structures, as well as public use, public access, and recreational uses that are consistent with this Program.

### Management Policies

- A. New residential development should take into account the environmental limitations and sensitivity of the shoreline area, the level of infrastructure and services available, the proximity to levees, dikes, revetments, roads, railways, required setbacks and minimum frontage width, and other public ~~right-of-ways~~rights-of-way and comprehensive planning considerations.
- B. Multi-family, multi-lot residential (greater than four [4] lots), and recreational developments should provide public access and joint use for community facilities in compliance with this Program.
- C. Access, utilities, and public services should be available and adequate to serve existing needs and/or planned future development.

- D. New commercial development should be limited to water-oriented uses, as provided in this Program.

#### Designation Criteria

The Residential environment designation is assigned to shoreline areas in the City of Kelso if they are predominantly single-family or multi-family residential development or are planned and platted for residential development.

### 5.4.3 Urban Conservancy Environment

#### Purpose

The purpose of the Urban Conservancy environment designation is to protect and restore ecological functions of open space, floodplain, and other sensitive lands where they exist in urban and developed settings while allowing a variety of compatible uses including recreational areas, facilities, and utilities. Activities permitted in these areas are intended to have minimal adverse impacts upon the shoreline.

#### Management Policies

- A. Primary allowed uses within this environment designation should preserve the relatively natural character of the area or promote preservation of open space, floodplain, or other sensitive lands where they exist in urban and developed settings either directly or over the long term.
- B. Standards have been established for shoreline stabilization measures, vegetation conservation, water quality, and shoreline modifications within the Urban Conservancy environment designation.
- C. Public access and public recreation objectives should be implemented whenever feasible but only when any resulting significant ecological impacts can be mitigated.
- D. Water-oriented uses should be given priority over non-water-oriented uses. For shoreline areas adjacent to commercially navigable waters, water-dependent uses should be given highest priority.

#### Designation Criteria

The Urban Conservancy environment designation is assigned to shoreline areas where development could occur while maintaining or having the ability to restore ecological functions. These are shoreline areas that are not generally suitable for water-dependent uses within incorporated municipalities that display any of the following characteristics:

- A. Suitability for water-related or water-enjoyment uses;
- B. Open space, floodplain, or other sensitive areas that should not be more intensively developed;
- C. Potential for ecological restoration;
- D. Retention of ecological functions, even though partially developed; or

- E. Potential for development that is compatible with ecological restoration.

## 5.4.4 Aquatic Environment

### Purpose

The purpose of the Aquatic environment designation is to protect, restore, and manage the unique characteristics and resources of the areas waterward of the OHWM.

### Management Policies

- A. Allow new overwater and in-water structures only for water-dependent uses, public access, or ecological restoration. In order to reduce the impacts, multiple use of overwater facilities should be encouraged, and the size of new overwater structures should be limited to the minimum necessary to support the structure's intended use.
- B. 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.
- C. Uses that adversely impact the ecological functions of freshwater habitats should not be allowed, except where necessary to achieve the objectives of RCW 90.58.020.
- D. New and maintenance dredging should be permitted in accordance with applicable local, state, and federal standards and the provisions of this Program.
- E. Shoreline uses and modifications should be designed and managed to prevent degradation of water quality and alteration of natural hydrographic conditions.
- F. The repair and maintenance of flood control features such as levees, dikes, and revetments shall be permitted in accordance with applicable local, state, and federal standards.

### Designation Criteria

- A. The Aquatic environment designation is applied to lands waterward of the OHWM.

## 5.5 Shorelines of Statewide Significance

The Act designated certain shoreline areas as Shorelines of Statewide Significance (SSWS). Because these shorelines are major resources from which all people in the state derive benefit, the City shall give preference to uses which favor long-range goals and support the overall public interest.

Within the City of Kelso, the Columbia River and the Cowlitz River are designated as SSWS. SSWS are of value to the entire state. In accordance with RCW 90.58.020, SSWS will be managed as follows:



- A. Every project located on an SSWS shall demonstrate consistency with the following priorities, in order of preference, in all permit review, in addition to compliance with other criteria provided by this Program:
1. Recognize and protect the statewide interest over local interest.
    - a. Solicit comments and opinions from groups and individuals representing statewide interests by circulating amendments to the Program, and any proposed amendments affecting SSWS, to state agencies, affected tribes, adjacent jurisdictions, citizen's advisory committees and local officials, and statewide interest groups.
    - b. Recognize and take into account state agencies' policies, programs, and recommendations in developing and administering use regulations and in approving shoreline permits.
    - c. Solicit comments, opinions, and advice from individuals with expertise in ecology and other scientific fields pertinent to shoreline management.
  2. Preserve the natural character of the shoreline.
    - a. Designate and administer shoreline environments and use regulations to minimize damage to the ecology and environment of the shoreline as a result of man-made intrusions on shorelines.
    - b. Restore, enhance, and/or redevelop those areas where intensive development or uses already exist in order to reduce adverse impact on the environment and to accommodate future growth rather than allowing high-intensity uses to extend into low-intensity use or underdeveloped areas.
    - c. Protect and preserve existing diversity of native vegetation and habitat values, wetlands, and riparian corridors associated with shoreline areas.
  3. Support actions that result in long-term over short-term benefit.
    - a. Evaluate the short-term economic gain or convenience of developments relative to the long-term and potentially costly impairments to the natural shoreline.
    - b. Protect resources and values of SWSS for future generations by modifying or prohibiting development that would irretrievably damage shoreline resources.
    - c. Actively promote aesthetic considerations when contemplating new development, redevelopment of existing facilities, or general enhancement of shoreline areas.
  4. Protect the resources and ecological function of the shoreline.

- a. Minimize development activity that will interfere with the natural functioning of the shoreline ecosystem, including, but not limited to, stability, drainage, aesthetic values, and water quality.
  - b. All shoreline development should be located, designed, constructed, and managed to avoid disturbance of and minimize adverse impacts to wildlife resources, including spawning, nesting, rearing, and habitat areas and migratory routes.
  - c. Restrict or prohibit public access onto areas which cannot be maintained in a natural condition under human use.
  - d. Shoreline materials including, but not limited to, bank substrate, soils, beach sands and gravel bars should be left undisturbed by shoreline development. Gravel mining should be severely limited in shoreline areas.
  - e. Preserve environmentally sensitive wetlands for use as open space or buffers and encourage restoration of currently degraded wetland areas.
5. Increase public access to publicly owned areas of the shoreline.
- a. Retain and enhance public access to the shoreline including passive enjoyment, recreation, fishing, and other enjoyment of the shoreline and public waters consistent with the enjoyment of property rights of adjacent lands.
  - b. Give priority to developing a system of linear access consisting of paths and trails along the shoreline areas, providing connections across current barriers.
  - c. Provide multipurpose non-motorized trail facilities, in accordance with the provisions of the American'sAmericans with Disabilities Act, wherever feasible.
6. Increase recreational opportunities for the public on the shoreline.
- a. Plan for and encourage development of public facilities for water-oriented recreational use of the shorelineshoreline.

## 6. General Shoreline Regulations

This Chapter describes general regulations which apply to all shorelines of the state that are located in the City of Kelso. Chapter 6 is used in conjunction with specific use and modification regulations found in Chapter 7.

### 6.1 No Net Loss of Ecological Function

- A. All shoreline use and development, including preferred uses and uses that are exempt from permit requirements, shall be located, designed, constructed, conducted, and maintained in a manner that maintains shoreline ecological functions, in accordance with the mitigation sequencing provisions of this Program.
- B. Shoreline ecological functions that shall be protected include, but are not limited to, fish and wildlife habitat, food web support, and water quality maintenance.
- C. Shoreline processes that shall be protected include, but are not limited to, water flow; erosion and accretion; infiltration; groundwater recharge and discharge; sediment delivery, transport, and storage; large woody debris recruitment; organic matter input; nutrient and pathogen removal; and stream channel formation/maintenance.
- D. In-water work shall be scheduled to protect biological productivity (including but not limited to fish runs, spawning, and benthic productivity). In-water work shall not occur in areas used for commercial fishing during a fishing season unless specifically addressed and mitigated for in the permit.
- E. An application for any permit or approval shall demonstrate all reasonable efforts have been taken to provide sufficient mitigation such that the activity does not result in net loss of ecological functions. Mitigation shall occur in the following prioritized order:
  - 1. Avoid the adverse impact altogether by not taking a certain action or parts of an action or by moving the action.
  - 2. Minimize adverse impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology and engineering or by taking affirmative steps to avoid or reduce adverse impacts.
  - 3. Rectify the adverse impact by repairing, rehabilitating, or restoring the affected environment.
  - 4. Reduce or eliminate the adverse impact over time by preservation and maintenance operations during the life of the action.
  - 5. Compensate for the adverse impact by replacing, enhancing, or providing similar substitute resources or environments. Preference shall be given to measures that replace the impacted functions on-site or 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 may be authorized.

6. Monitor the adverse impact and the compensation projects and take appropriate corrective measures.
- F. Applicants for permits have the burden of proving that the proposed development is consistent with the criteria set forth in this Program and the Act, including demonstrating all reasonable efforts have been taken to provide sufficient mitigation such that the activity does not result in net loss of ecological functions.

## 6.2 Archaeological, Cultural, and Historic Resources

- A. If historic, cultural, or archaeological sites or artifacts are discovered in the process of development, work shall be stopped immediately in accordance with the provisions of federal, state, and local laws, the site secured, and the find reported as soon as possible to the City. The property owner also shall notify the Washington State Department of Archaeology and Historic Preservation (DAHP) and affected tribes. The City may provide for a site investigation by a qualified professional and may provide for avoidance or conservation of the resources in coordination with appropriate agencies. All shoreline permits shall contain a special provision notifying permittees of this requirement. Failure to comply with this requirement shall be considered a violation of the shoreline permit and shall subject the permittee to legal action.
- B. Prior to approval of development in an area of known or probable cultural resources, the City shall require a site assessment by a qualified professional archaeologist in coordination with affected tribes. Conditions of approval may require preservation or conservation of cultural resources as provided by applicable federal, state, and local statutes. All permits issued for development in areas known to be archaeologically significant shall provide for monitoring of any development activity for previously unidentified cultural resources.

## 6.3 Critical Areas Protection

Critical Areas Regulations that apply in shoreline jurisdiction are located in Appendix C.

### 6.3.1 Applicable Critical Areas

For purposes of this Program, the following critical areas, as defined in Appendix C, will be protected under this Program: Wetlands; Critical Aquifer Recharge Areas; Frequently Flooded Areas; Geologically Hazardous Areas; and Fish and Wildlife Habitat Conservation Areas.

### 6.3.2 General Provisions

- A. Shoreline uses, activities, developments, and their associated structures and equipment shall be located, designed, and operated to protect the ecological processes and functions of critical areas.
- B. New and expanded development proposals shall integrate protection of wetlands, fish and wildlife habitat, and flood hazard reduction with other stream management provisions to ensure no net loss of ecological functions.
- C. Critical areas within the shoreline jurisdiction shall be regulated for any use, development, or activity as provided in accordance with this Program and Appendix C.
- D. If provisions of Appendix C and other parts of this Program conflict, the provisions most protective of ecological resources shall apply, as determined by the City.
- E. Unless otherwise stated, critical area buffers associated with jurisdictional shoreline areas shall be regulated in accordance with this Program and Appendix C.
- F. All critical areas in the City of Kelso located in areas outside of the jurisdiction of the Shoreline Management Act shall be subject to the provisions of the Kelso Municipal Code and the Washington State Growth Management Act.
- G. These provisions do not extend the shoreline jurisdiction beyond the limits specified in this Program as defined in Section 3.1, Applicability.

## 6.4 Flood Prevention and Flood Damage Minimization

This Program addresses flooding in two different ways. This section includes flood hazard reduction measures, including flood control works, intended to avoid increasing hazards and minimize damage. Appendix C includes flood hazard protections by reference to Chapter 18.12 of the Kelso Municipal Code.

- A. Development or uses in floodplains shall avoid significantly or cumulatively increasing flood hazards and shall be consistent with applicable flood hazard regulations or management plans adopted pursuant to 86.12 RCW.
- B. New residential, commercial, or industrial development and uses, including subdivision of land, within shoreline jurisdiction are prohibited if it would be reasonably foreseeable that the development or use would require new structural flood hazard reduction measures in the channel migration zone or floodway over the life of the development.
- C. The following uses and activities may be authorized in floodways or channel migration zones when otherwise permitted by this Program:
  - 1. Actions and development with a primary purpose of protecting or restoring ecological functions and ecosystem-wide processes.
  - 2. Bridges, utility lines, public stormwater and wastewater facilities and their outfalls, and other public utility and transportation structures where no other feasible alternative exists or where the alternative would result in unreasonable

and disproportionate costs. Where such structures are allowed, mitigation shall address impacted functions and processes in the affected shoreline.

3. Repair and maintenance of an existing legally established use, provided flood hazards to other uses are not increased and that the activity does not cause significant ecological impacts that cannot be mitigated.
  4. Development where structures exist that prevent active channel movement and flooding.
  5. Modifications or additions to an existing nonagricultural legal use provided that channel migration is not further ~~limited~~limited, and that the new development includes appropriate protection of ecological functions.
  6. Measures to reduce shoreline erosion provided that it is demonstrated that the erosion rate exceeds that which would normally occur in a natural condition, that the measures do not interfere with fluvial hydrological and geomorphological processes normally acting in natural conditions, and that the measures include appropriate mitigation of impacts to ecological functions associated with the river or stream.
- D. Removal of materials such as gravel sand, or other sediment, for flood management purposes shall be consistent with an adopted flood hazard reduction plan and is allowed only after a biological and geomorphological study shows that extraction has a long-term benefit to flood hazard reduction, does not result in a net loss of ecological functions, and is part of a comprehensive flood management solution, except when the removal is part of a U.S. Army Corps of Engineers dredging activity.
- E. Channel Migration Zones:
1. Channel migration zones must be evaluated on a ~~site-by-site~~site-by-site basis when required by the City.
  2. The Channel Migration Zone Map is available for review at the City as either hard copy or computer-generated image. Applicants may submit a site-specific channel migration zone study if they believe these conditions do not exist on the subject property and the map is in error. The study must be prepared consistent with WAC 173-26-221(3)(b), and may include, but is not limited to, historic aerial photographs, topographic mapping, flooding records, and field verification. The study must be prepared by a licensed geologist or engineer with at least five years of applied experience in assessing fluvial geomorphic processes and channel response.
- F. Flood Control Works:
1. New or expanded structural flood hazard reduction measures, such as dikes, levees, berms, and similar flood control structures, shall be consistent with flood

hazard regulations or management plans adopted pursuant to RCW 86.12, provided the plan has been adopted after 1994 and approved by Ecology.

2. New or expanded structural flood hazard reduction measures shall be permitted only when it can be demonstrated by a scientific and engineering analysis that:
  - a. They are necessary to protect existing development;
  - b. Non-structural flood hazard reduction measures are infeasible;
  - c. Appropriate vegetation conservation actions are undertaken consistent with Section 6.6, Vegetation Conservation; and
  - d. Appropriate mitigation is provided consistent with Section 6.1.
3. New structural public flood hazard reduction measures, such as dikes and levees, shall dedicate and improve public access pathways consistent with Section 6.5 of the SMP.
4. To the maximum extent feasible, new or altered dikes and levees shall be designed to be:
  - a. No greater than the minimum height required to protect adjacent lands from the predicted flood stage as identified in the applicable comprehensive flood control management plan or as required by the U.S. Army Corps of Engineers for dike certification.
  - b. Placed landward of associated wetlands and designated fish and wildlife conservation area buffers identified in Table 4 of Appendix C of this SMP, except for actions that increase ecological functions, unless there is no other feasible alternative, as documented by a geotechnical analysis, to reduce flood hazard to existing development in which case all impacts will be mitigated as required in Section 6.1 and Appendix C.
  - c. Located and designed so as to protect and restore the natural character of the stream, avoid the disruption of channel integrity, and provide the maximum opportunity for natural floodway functions to take place including levee setbacks to allow for more natural functions of floodplains, channel migration zones, off-channel habitat, and associated wetlands directly interrelated and interdependent with the stream.
  - d. Planted with appropriate vegetation meeting the certification requirements while providing the greatest amount of ecological function possible.
5. A geotechnical or geofluvial report prepared by a qualified professional shall demonstrate that new or altered flood protection structures will not increase downstream flooding and will not adversely affect the integrity of downstream

ecological functions including disruption of natural drainage flows and stormwater runoff.

- G. Information Required. The City shall require the applicant to provide the following information as part of an application for development within a flood hazard area. The City may also request additional information listed in KMC Chapter 18.12, as incorporated by reference in Appendix C.
1. Flood hazard area characteristics up- and downstream or up- and downcurrent from the project area;
  2. Existing shoreline stabilization and flood protection works within the area;
  3. Physical, geological, and soil characteristics of the area;
  4. Biological resources and predicted impact to fish, vegetation, and animal habitat associated with shoreline ecological systems;
  5. Predicted impact upon adjacent area shore and hydraulic processes, adjacent properties, and shoreline and water uses; and
  6. Analysis of alternative flood protection measures, both structural and nonstructural.
- H. The levees in Kelso are owned and maintained by Cowlitz County Drainage Improvement District No. 1 (North Kelso) and Cowlitz County Consolidated Diking District No 3 (South Kelso). Both Districts are in the process of having their levees certified by the US Army Corps of Engineers and are participating in the FEMA PAL program for provisionally accepted levees. The PAL program requires the same standards of maintenance as fully certified levees. In the event that a levee or section of levee is not certified, the Diking District will continue to require the same standards of maintenance.

## 6.5 Public Access

Public access provisions apply to all shorelines of the state, if feasible, unless stated otherwise and are intended to protect 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.

- A. Applicability (also see Figure 6-1):
1. Public access shall be required in the following circumstances:
    - a. The use or development is a public project; or
    - b. The project is a water-enjoyment or non-water-oriented use or development; or
    - c. The project is a residential development of more than four (4) dwelling units; or

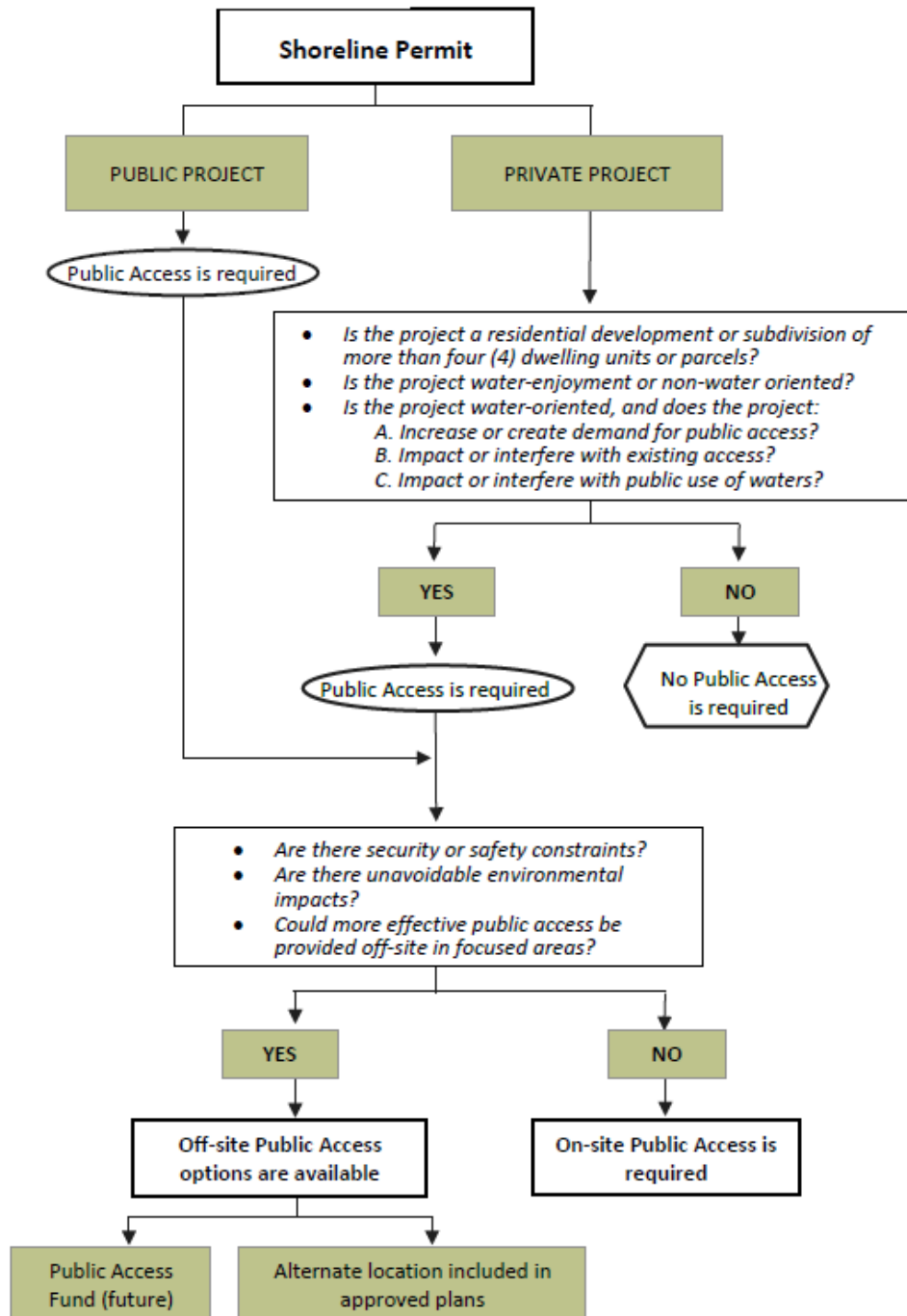


- d. The project is a subdivision of land into more than four (4) parcels; or
  - e. The project is a private water-dependent or water-related use or development and one of the following conditions exists:
    - i. The project increases or creates demand for public access;
    - ii. The project impacts or interferes with existing access by blocking access or discouraging use of existing access; or
    - iii. The project impacts or interferes with public use of waters subject to the Public Trust Doctrine.
2. Public access to the shoreline shall not be required for the following:
- a. Activities qualifying for a Shoreline Letter of Exemption;
  - b. New single-family residential development of four (4) or fewer units; or
  - c. Reasonable, safe and convenient public access to the shoreline exists within one-quarter mile (1,320 feet) of the site.
3. Physical public access shall not be required where the new or expanded use or development would be physically separated from the shoreline by another property or public right-of-way.
4. The City may approve alternatives to on-site, physical access to the shoreline if the applicant can demonstrate with substantial evidence that at least one of the following conditions exist:
- a. Unavoidable health or safety hazards to the public exist which cannot be prevented by any reasonable means;
  - b. Inherent security requirements of the use cannot be satisfied through the application of alternative design features or other solutions;
  - c. The cost of providing the access, easement, or an alternative amenity, is unreasonably disproportionate to the total long-term cost of the proposed development;
  - d. Environmental impacts that cannot be mitigated, such as damage to spawning areas or nesting areas, would result from public access on-site;
  - e. Significant undue and unavoidable conflict between access provisions and the proposed use and/or adjacent uses would occur and cannot be mitigated; and/or
  - f. More effective public access can be provided off-site by focusing public access improvements at sites within shoreline jurisdiction identified in the adopted Kelso Parks and Recreation Plan, the Cowlitz County

Regional Trail Plan, and/or the Kelso Comprehensive Plan, and/or SMP Public Access Plan adopted in the future.

- To be approved for alternative public access, the applicant shall demonstrate that all feasible alternatives have been considered, including, but not limited to, regulating access through allowed hours of use, maintaining access gate, and/or separating uses and activities with fences, terracing, hedges, etc.

Figure 6-1. Public Access Applicability



B. Public Access Standards:

1. When public access is required and provided on-site, it shall be:
  - a. Located and designed to be compatible with the natural shoreline character, to avoid adverse impacts to shoreline ecological functions, and to ensure public safety.
  - b. Allowed to encroach into the shoreline buffer when necessary to provide physical and or visual access to the water's edge when otherwise consistent with this Program and Appendix C, Critical Areas Regulations.
  - c. Connected to the nearest public street and shall include improvements that conform to the requirements of the ADA when feasible or required by law.
  - d. Fully developed and available for public use prior to final occupancy when required for public land, commercial, port, or industrial use/development.
  - e. Clearly identified by signage installed and maintained in easily visible locations indicating the public's right of access, hours of access, and other information as needed to control or limit access according to conditions of approval.
  - f. Recorded by easement and permit conditions on the deed of title and/or the face of a short or long plat. Recordation shall occur at the time of final plat approval or prior to final occupancy.
  - g. Consistent with all relevant constitutional and other legal limitations on regulation of private property.
2. Off-site or Alternative Public Access:
  - a. When public access is provided off-site, its location, design, and access type shall be consistent with the applicable provisions in Section B.1 above and the City's adopted Parks and Recreation Plan, the Cowlitz County Regional Trail Plan, the Kelso Comprehensive Plan, and/or the Shoreline Public Access Plan adopted in the future.
  - b. When public access is allowed off-site, an applicant may elect to make a payment into the jurisdiction's Shoreline Public Access Fund in lieu of developing the access directly, if such a fund has been established by the City.
3. Public access requirements for a single-family residential development of greater than four (4) parcels but less than ten (10) parcels can be met by providing community access to the shoreline or to a common waterfront lot/tract for non-commercial recreation use by the property owners and guests within the subdivision.

## 6.6 Vegetation Conservation

- A. All development shall minimize vegetation removal in areas of shoreline jurisdiction to the amount necessary to accommodate the permitted use.
- B. Unless otherwise specified, all shoreline uses and development shall comply with the setback and buffer provisions of this Program included in Table 7-1; Table 4, Appendix C; and Section 6.3, Critical Areas Protection, to protect and maintain shoreline vegetation.
- C. Vegetation conservation standards of this Program shall not apply retroactively in a way which requires lawfully existing uses and developments, including residential landscaping and gardens, to be removed, except as required as mitigation for new and expanded development. Routine maintenance of existing landscaping and gardens is allowed.
- D. Vegetation clearing in shoreline jurisdiction shall be limited to the minimum necessary to accommodate approved shoreline development and to comply with applicable local, state, and federal standards. Routine maintenance of existing landscaping and gardens is allowed.
- E. Mitigation plans shall be approved before initiation of other permitted activities unless a phased schedule that ensures completion prior to occupancy has been approved.
- F. Aquatic weed control shall only occur to protect native plant communities and associated habitats or where an existing water-dependent use is restricted by the presence of weeds. Aquatic weed control shall occur in compliance with all other applicable laws and standards and shall be done by a qualified expert.
  - 1. For more information, please refer to WDFW publication # APF-1-98, "Aquatic Plants and Fish," available online at [http://wdfw.wa.gov/licensing/aquatic\\_plant\\_removal/](http://wdfw.wa.gov/licensing/aquatic_plant_removal/).
- G. Limbing or crown thinning shall comply with the Tree Care Industry Association pruning standards, unless the tree is a hazard tree as defined by this SMP. No more than 25 percent of the limbs of any single tree may be removed and no more than 20 percent of the canopy cover in any single stand of trees may be removed for view preservation.
- H. Vegetation may be removed from levees, dikes, airports, roads, and railways in accordance with the provisions of this Program and applicable federal, state, and local standards, including but not limited to the requirements of the US Army Corps of Engineers, the Federal Aviation Administration, the Washington State Department of Transportation Aviation Division, and the City of Kelso.
- I. Vegetation may be removed or altered landward of shoreline buffers described in this Program provided that there is no net loss of ecological function.

## 6.7 Water Quality and Quantity

- A. All shoreline development shall comply with the applicable requirements of the City's Comprehensive Stormwater Management Plan, Comprehensive Plan, and best management practices to prevent impacts to water quality and stormwater quantity that would result in a net loss of shoreline ecological functions and/or a significant impact to aesthetic qualities or recreational opportunities.
- B. Stormwater management structures including ponds, basins, and vaults shall be located outside of shoreline jurisdiction where possible, as far from the water's edge as feasible, and shall minimize disturbance of vegetation conservation buffers. Low-impact development facilities (which do not substantially change the character of the shoreline) such as vegetation filter strips, grass-lined swales, and vegetated bioretention and infiltration facilities, are encouraged in association with development allowed in shoreline jurisdiction.
- C. Sewage management. To avoid water quality degradation, sewer service is subject to the requirements outlined below.
  - 1. Any existing septic system or other on-site system that fails or malfunctions will be required to connect to an existing municipal sewer service system if feasible, or make system corrections approved by the Cowlitz County Environmental Health Unit.
  - 2. Any new development, business, single-family or multi-family unit will be required to connect to an existing municipal sewer service system if feasible, or install an on-site septic system approved by Cowlitz County Environmental Health Unit.

# 7. Specific Shoreline Use and Modification Regulations

The regulations in this Chapter apply to specific uses and modifications within shoreline jurisdiction. In many circumstances, more than one Section of use or modification regulations will apply to a specific proposal. Guiding policies for uses and modifications are located in Chapter 4.

## 7.1 Shoreline Use, Modification, and Standards Tables

- A. Table 7-1 Shoreline Use, Modification, Setbacks, and Heights, shall be used to determine which uses and modifications may be permitted (P), approved with conditions through the issuance of a Shoreline Conditional Use Permit (SCUP), or prohibited (X) in each shoreline environment designation.
- B. All uses and development activities proposed for jurisdictional shoreline areas must comply with all provisions of the Kelso Municipal Code as determined by the City.
- C. Setbacks shall be measured on a horizontal plane, perpendicular and landward from the required feature described in Table 7-1 below.

**Table 7-1. Shoreline Use, Modification, Setbacks, and Heights**

Table Key: P = May be permitted through an SSDP or SLE SCUP = May be permitted through an SCUP review X = Prohibited N/A = Not Applicable	Shoreline Environment Designations			
	High-Intensity	Residential	Urban Conservancy	Aquatic
<b>Shoreline Uses</b>				
<b>Agriculture (1)</b>	X	X	X	X
<b>Aquaculture (2)</b>	P	P	P	P
<b>Boating Facilities (3)</b>	<b>P</b>	<b>P</b>	<b>P</b>	<b>P</b>
Marinas	X	X	X	X
Residential Docks, Piers, and Launch Facilities	P	P	P	P
<b>Commercial (4)</b>				
Water-dependent	P	P	X	P
Water-related	P	P	X	X
Water-enjoyment	P	P	X	P
Non-water-oriented	P	X	X	X
<b>Forest Practices (5)</b>	X	X	X	X
<b>Industrial (6)</b>				
Water-dependent	P	X	X	P
Water-related	P	X	X	X

Table Key: P = May be permitted through an SSDP or SLE SCUP = May be permitted through an SCUP review X = Prohibited N/A = Not Applicable	Shoreline Environment Designations			
	High-Intensity	Residential	Urban Conservancy	Aquatic
Non-water-oriented	P	X	X	X
<b>Institutional (7)</b>	P	P	P	X
<b>In-stream Structures (8)</b>	P	P	P	P
<b>Mining (9, 17, 19)</b>	SCUP	SCUP	SCUP	SCUP
<b>Recreation (10)</b>				
Water-dependent	P	P	P	P
Water-related	P	P	P	P
Water-enjoyment	P	P	P	P
Non-water-oriented	P	P	X	X
<b>Residential (11)</b>				
Single-family	P	P	P	X
Multi-family	P	P	X	X
Floating or over-water residence, including live-aboard vessels	X	X	X	X
<b>Transportation and Parking (12)</b>				
Roads and railroads	P	P	P	P
Bridges	P	P	P	P
Non-motorized facilities	P	P	P	P
Accessory Parking	P	P	P	X
<b>Utilities (13)</b>	P	P	P	P
<b>Uses Not Specified</b>	SCUP	SCUP	SCUP	SCUP
<b>Modifications</b>				
<b>Shoreline Stabilization (14)</b>	P	P	P	P
<b>Breakwaters and Groins (15)</b>	SCUP	SCUP	SCUP	SCUP
<b>Fill / Excavation (16)</b>	P	P	P	SCUP
<b>Dredging (17)</b>				
Dredging	N/A	N/A	N/A	SCUP
Dredge Disposal / Material Stockpiling	P	P	P	SCUP
<b>Habitat / Ecological Enhancement (18)</b>	P	P	P	P
<b>Flood Control Works (20)</b>				
Modification of Existing Flood Control Works (including relocation farther landward)	P	P	P	SCUP
New Flood Control Works	P	P	P	SCUP
<b>Dimensional Standards</b>				
<b>Buffer (22)</b>	See Table 4, Appendix C			
<b>Building setback from Buffer or Landward Toe of Levee, Where Present as noted in Table 4, Appendix C</b>	10 ft.	10 ft.	10 ft.	N/A
<b>Maximum Height (21)</b>	35 ft.	35 ft.	35 ft.	35 ft.

Table Key: P = May be permitted through an SSDP or SLE SCUP = May be permitted through an SCUP review X = Prohibited N/A = Not Applicable	Shoreline Environment Designations			
	High-Intensity	Residential	Urban Conservancy	Aquatic
<b>Minimum River Frontage Per Lot</b>	N/A	60 ft.	N/A	N/A

Table Notes:

- (1) See Section 7.2.1 for more details.
- (2) See Section 7.2.2 for more details.
- (3) See Section 7.2.3 for more details.
- (4) See Section 7.2.4 for more details.
- (5) See Section 7.2.5 for more details.
- (6) See Section 7.2.6 for more details.
- (7) See Section 7.2.7 for more details.
- (8) See Section 7.2.8 for more details.
- (9) See Section 7.2.9 for more details.
- (10) See Section 7.2.10 for more details.
- (11) See Section 7.2.11 for more details.
- (12) See Section 7.2.12 for more details.
- (13) See Section 7.2.13 for more details.
- (14) See Section 7.3.2 for more details.
- (15) See Section 7.3.3 for more details. A Breakwater or groin for the purposes of restoration or ecological protection is a permitted use through an SSDP and does not require an SCUP.
- (16) See Section 7.3.4 for more details.
- (17) See Section 7.3.5 for more details.
- (18) See Section 7.3.6 for more details.
- (19) New mining activities proposed in channel migration zones located within jurisdictional shoreline areas may be approved only through a Shoreline Conditional Use Permit.
- (20) See Section 6.4 for more details.
- (21) Additional height may be approved in accordance with Section 7.2.6.G
- (22) Uses and developments identified in Section 3.K of Appendix C, may locate within the buffers shown in Table 4, Appendix C and within the setbacks shown in Table 7-1. These uses must meet mitigation sequencing requirements to avoid, minimize, and mitigate for adverse impacts.

## 7.2 Shoreline Use

### 7.2.1 Agriculture

- A. In accordance with RCW 90.58.065, this Program shall not restrict existing or ongoing agricultural activities occurring on agricultural lands.
- B. New or expanded agriculture is a prohibited use activity within shoreline jurisdiction.
- C. Preparatory work associated with the conversion of land to non-agriculture uses and/or developments shall be consistent with the policies and regulations for the proposed non-agriculture use and the general provisions of this Program, including vegetation conservation.



## 7.2.2 Aquaculture

- A. New aquaculture uses may be permitted only in association with the restoration of native fish species in the Columbia, Cowlitz, and Coweeman Rivers.
- B. Aquaculture is not allowed where it would result in a net loss of ecological functions, or significantly conflict with navigation or other water-dependent uses.
- C. Non-commercial aquaculture undertaken for conservation or habitat restoration purposes is a preferred use within the City of Kelso's shorelines.
- D. Aquaculture facilities shall not significantly impact the aesthetic qualities of the shoreline.

## 7.2.3 Boating Facilities

- A. General Requirements for boating facilities except docks serving four (4) or fewer single family residences (See subsection D):
  - 1. New and modified boating facilities shall meet Washington State Department of Natural Resources requirements and other state guidance if located in or over state-owned aquatic lands.
  - 2. Boating facilities shall locate in areas where:
    - a. There is adequate water mixing and flushing;
    - b. The structure shall not block or obstruct lawfully existing or planned public shoreline access;
    - c. Such facilities will not adversely affect flood channel capacity or otherwise create a flood hazard;
    - d. Water depths are adequate to minimize new or maintenance dredging and other channel maintenance activities;
    - e. The structure shall minimize the obstruction of currents, alteration of sediment transport, and the accumulation of drift logs and debris;
    - f. New shoreline stabilization shall not be needed. Where the need for stabilization is unavoidable, only the minimum necessary shoreline stabilization to adequately protect facilities, users, and watercraft may be allowed; and
    - g. Water depths are adequate to prevent floating structures from grounding out at the lowest low water or else stoppers are installed to prevent grounding out.
  - 3. Boating facilities shall not be located:

- a. Along braided or meandering river channels where the channel is subject to change in alignment;
  - b. On point bars or other accretion beaches;
  - c. Where existing in-water navigation uses would be impaired or obstructed.
4. Boating facilities shall be constructed of materials that will not adversely affect water quality or aquatic plants and animals over the long term. Materials used for submerged portions, decking, and other components that may come into contact with water shall be approved by applicable state agencies for use in water.
5. Boating uses and facilities shall be located far enough from public swimming beaches, fishing, and other aquatic uses to avoid adverse impacts, safety concerns, and potential use conflicts.
6. Accessory uses at boating facilities shall be:
  - a. Limited to water-oriented uses, including uses that provide physical or visual shoreline access for the general public.
  - b. Located as far landward as possible while still serving their intended purposes.
7. Parking and storage areas shall be landscaped or screened to provide visual and noise buffering between adjacent dissimilar uses or scenic areas.
8. Lighting associated with overwater structures shall be beamed, hooded, or directed to avoid causing glare on adjacent properties or waterbodies. Illumination levels shall be the minimum necessary for safety.
9. When feasible boating facilities shall be designed to be aesthetically compatible with the surrounding shoreline environment, and where aesthetic impacts are unavoidable mitigation shall be provided.
10. Boating facilities shall locate where access roads are adequate to handle the traffic generated by the facility and shall be designed so that lawfully existing or planned public shoreline access is not obstructed.
11. New uses, developments, and activities accessory to boating facilities shall be located outside any applicable shoreline buffer unless at least one of the following is met:
  - a. Proximity to the water-dependent project elements is critical to the successful implementation of the facility's purpose, and the elements are supportive of the water-dependent use and have no other utility (e.g., a road to a boat launch facility);

- b. The applicant's lot/site has topographical or other constraints where no other location of the development is feasible (e.g., the water-dependent use or activity is located on a parcel entirely or substantially encumbered by the required buffer).

In these circumstances, uses and modifications accessory to water-dependent boating facilities must be designed and located to minimize intrusion into the buffer, and any adverse impacts to ecological functions shall be mitigated.

#### B. Boat Launches

1. Launch ramps shall be designed and constructed using methods/technology that have been recognized and approved by state and federal resource agencies as the best currently available with consideration for site-specific conditions and the particular needs of that use.
2. There is no maximum length or width for boat launches; however, the proponent must demonstrate that the size proposed is the minimum necessary to allow the use proposed.
3. Non-motorized boat launches shall use gravel or other permeable material.
4. Additional standards for public boat launches are as follows:
  - a. Public boat launches shall include adequate restroom and sewage and solid waste disposal facilities in compliance with applicable health regulations.
  - b. When overwater development is proposed in association with a public boat launch facility, it may be permitted only where such use requires direct water access and/or where such facilities will substantially increase public opportunities for water access.
  - c. Public boat launches shall be located and designed to prevent traffic hazards and to minimize traffic impacts on nearby access streets.
  - d. Public boat launch sites shall include parking spaces for boat trailers commensurate with projected demand.

#### C. Docks

1. New piers and docks shall be allowed only for water-dependent uses or public access.
2. New dock construction, excluding docks accessory to single-family residences (regulated under Subsection D of this Section), shall be permitted only when the applicant has demonstrated that a specific need exists to support the intended primary water-dependent use. The applicant shall demonstrate need by

providing a needs analysis or comprehensive master plan projecting future needs for dock or moorage space for approval. If approved by the City, the document may serve as the necessary justification for design, size, and construction to the extent that the plans are consistent with this Program.

3. Extended moorage on waters of the state requires a lease or permission from the Washington state Department of Natural Resources.
- D. This Section applies to docks, buoys, and boat launches that are accessory to four (4) or fewer single-family residences. A dock associated with a single-family residence is considered a water-dependent use if it is designed and intended for access to watercraft and complies with the requirements of this Program.
1. A new moorage structure (dock or buoy) to serve a single-family residence may be allowed only when the lot does not have access to a shared structure and there is no homeowners association or other corporate entity capable of developing shared structure.
  2. Prior to approval a new residential dock, an applicant shall demonstrate that a mooring buoy is not feasible to provide moorage.
  3. When feasible, new residential development of two or more dwellings with new accessory docks shall provide joint use or community dock facilities to reduce ecological impacts of new overwater facilities.
  4. Docks shall meet the following standards:
    - a. Docks shall be restricted to the minimum size necessary to meet the needs of the proposed water-dependent use. The length of docks accessory to residential use/development shall be no greater than that required for safety and practicality for the residential use. The maximum length for residential docks shall be limited to either sixty (60) feet as measured horizontally from the OHWM, or the length necessary to provide a minimum of six (6) feet of water depth. The maximum width for residential docks shall be limited to six (6) feet. The dimensional standards may be adjusted as required by local, state and federal agencies, however adjustments exceeding these maximums require a variance.
    - b. New or expanded covered moorage is prohibited.
    - c. Residential moorage facilities shall be constructed of materials that will not adversely affect water quality or aquatic plants and animals over the long term. Materials used for submerged portions, decking, and other components that may come into contact with water shall be approved by applicable state agencies for use in water.

- d. Floats shall be constructed and attached so that they do not ground out on the substrate. Float stops, tubs, or similar structures may be used. A minimum of one (1) foot of elevation above the substrate is required.
  - e. Pile spacing shall be the maximum feasible to minimize shading and avoid a “wall” effect that would block or baffle wave patterns, currents, littoral drift, or movement of aquatic life forms, or result in structure damage from driftwood impact or entrapment, except as may be necessary to protect the public health and safety and comply with other provisions of this Program, as determined by the City.
  - f. Piling diameter shall be sized to use the minimum possible while meeting the structural requirements of expected loads.
    - Grating, or clear translucent material, shall cover the surface area of the pier and ramp waterward of the OHWM and all portions of float(s) not underlain by float tubs or other material that provides buoyancy. The open area of grating shall have a minimum of sixty percent (60 percent) open space, or as otherwise required by state or federal agencies during permit review, unless determined to be infeasible due to specific site or project considerations. Clear translucent material shall have greater than ninety percent (90 percent) light transmittance as rated by the manufacturer. For guidance on docks, see:
      - WAC 220-110-060
      - <http://wdfw.wa.gov/publications/00052/>
      - Other documents available at
      - <http://wdfw.wa.gov/conservation/habitat/planning/ahg/>
  - g. Docks shall be set back a minimum of ten (10) feet from side property lines, except that joint-use facilities may be located closer to, or upon, a side property line when agreed to by contract or covenant with the owners of the affected properties. This agreement shall be recorded in a format(s) prescribed by the City and a copy filed with the shoreline permit application.
5. Unavoidable impacts from new or expanded private boat moorage or launch construction pursuant to this Section shall be minimized and mitigated consistent with the requirements of this Program.
  6. Moorage or launch structures shall not be allowed in freshwater aquatic habitats unless it can be established that the structure, including auxiliary impacts and established mitigation measures, will not be detrimental to the natural habitat or species of concern, and complies with the mitigation sequencing provisions of this Program.

## 7.2.4 Commercial

- A. Water-dependent commercial uses are preferred over non-water-dependent commercial uses. Water-related and Water enjoyment use are preferred over non-water-oriented uses.
- B. Non-water-dependent commercial uses shall not be allowed if they displace existing viable water-dependent uses or if they are proposed to occupy space designated for water-dependent uses identified in a previously approved SSDP or SLE.
- C. New or expanded non-water-oriented commercial development may be allowed only when:
  - 1. It is part of a mixed-use project including water-dependent uses and provides a significant public benefit with respect to the Shoreline Management Act's objectives, such as public access and ecological restoration; or
  - 2. Navigability is severely limited at the site and the development provides a significant public benefit with respect to the Shoreline Management Act's objectives, such as public access and ecological restoration; or
  - 3. The site is physically separated from the shoreline by another property or public right-of-way.
- D. Commercial uses shall provide a significant public benefit with respect to the Shoreline Management Act's objectives, such as public access and ecological restoration where feasible, in compliance with Section 6.5 of this SMP, and shall avoid impacts to existing navigation, recreation and existing public access.
- E. Overwater structures, or other structures waterward of the OHWM, are allowed only for those portions of water-dependent commercial uses that require overwater facilities as an essential feature of their function or for public access facilities. Design of overwater structures or structures beyond the OHWM shall demonstrate that they will not interfere with normal stream geomorphic processes, require additional future shoreline stabilization, and interfere with navigation or normal public use of the water.
- F. Commercial uses that may be authorized as water-related or water-enjoyment commercial uses are required to incorporate appropriate design and operational elements so that they meet the definition of water-related or water-enjoyment uses.

## 7.2.5 Forest Practices

- A. Due to the lack of timber harvest potential within the City's shoreline jurisdiction, forest practices activities are not applicable to the City of Kelso, and are prohibited.
- B. aForestry practices for preparatory work associated with the conversion of land to non-forestry uses and/or developments shall be consistent with the policies and regulations for the proposed non-forestry use and the general provisions of this Program, including vegetation conservation.

## 7.2.6 Industrial

- A. Water-dependent industrial uses are preferred over non-water-dependent industrial uses. Water-oriented uses are preferred over non-water-oriented uses.
- B. Water-related and non-water oriented industrial uses shall not be allowed if they displace existing viable water-dependent uses or if they are proposed to occupy space designated for water-dependent uses identified in a previously approved SSDP or SLE.
- C. New or expanded non-water-oriented industrial development may be allowed only when:
  - 1. It is part of a mixed-use project including water-dependent uses and provides a significant public benefit with respect to the Shoreline Management Act's objectives, such as public access and ecological restoration; or
  - 2. Navigability is severely limited at the site and the development provides a significant public benefit with respect to the Shoreline Management Act's objectives, such as public access and ecological restoration; or
  - 3. The site is physically separated from the shoreline by another property or public right-of-way.
- D. Industrial development and redevelopment should be encouraged to locate where environmental cleanup and restoration of the shoreline area can be incorporated prior to impacting undeveloped shoreline areas.
- E. Proposed developments shall maximize the use of existing industrial facilities and avoid duplication of dock or pier facilities before expanding into undeveloped areas or building new facilities. Proposals for new industrial developments shall demonstrate the need for expansion into an undeveloped area.
- F. Only water-dependent elements of a proposal for industrial use may encroach on required vegetated buffers of this Program (see Table 4, Appendix C, Critical Areas Regulations).
- G. Water-oriented structures may be allowed to exceed a height of thirty-five (35) feet. Such structures may include, but are not limited to, facilities which must be of a greater height in order to function, such as cranes or other facilities designed to move or place products, fixed loading facilities that must provide clearance over vessels, storage facilities such as grain elevators, as well as accessory features such as lighting required for operations. The applicant must demonstrate compliance with the following criteria:
  - 1. The public interest will be served by accommodating the increased height.
  - 2. The view of a substantial number of residences in areas adjoining such shorelines will not be obstructed.

3. Increased height will not substantially interfere with views from a designated public place, vista, or feature specifically identified in an adopted local, state, or federal plan or policy.

### 7.2.7 Institutional

- A. Water-oriented institutional uses and developments are preferred.
- B. Where allowed, non-water-oriented institutional uses may be permitted:
  1. If navigability is severely limited at the proposed site, and the institutional use provides a significant public benefit with respect to the Shoreline Management Act's objectives, such as providing public access and ecological restoration; or
  2. If the site is physically separated from the shoreline by another property or public right-of-way; or
  3. As part of a mixed-use development that provides a significant public benefit with respect to the Shoreline Management Act's objectives, such as public access and ecological restoration.
- C. Loading, service areas, and other accessory uses shall be located landward of a primary structure or underground whenever possible.
- D. New institutional development within shoreline jurisdiction:
  1. Shall be designed such that no new shoreline stabilization measures are necessary;
  2. Shall be located and designed to minimize view obstructions to and from the shoreline from other properties; and,
  3. Shall be prohibited in floodways and channel migration zones.

### 7.2.8 In-stream Structures

- A. Applications for new or expanded in-stream structural uses shall include the following information prior to final approval, unless the City determines that the issues are adequately addressed via another regulatory review process:
  1. A hydraulic analysis prepared by a licensed professional engineer that describes anticipated effects of the project on stream hydraulics, including potential increases in base flood elevation, changes in stream velocity, and the potential for redirection of the normal flow of the affected stream.
  2. A habitat management plan prepared by a qualified professional biologist that describes the anticipated effects of the project on fish and wildlife resources, provisions for protecting in-stream resources during construction and operation, and measures to compensate for impacts to resources that cannot be avoided.



3. A description of sites proposed for the depositing of debris, overburden, and other waste materials generated during construction.
4. Proposed provisions for accommodating public access to and along the affected shoreline, as well as any proposed on-site recreational features.

## 7.2.9 Mining

Mining in Washington is controlled by the Surface Mining Act of 1970 (RCW 78.44) and is administered by the Washington Department of Natural Resources. The provisions of this legislation shall be followed in all cases.

- A. An applicant for mining and associated activities within the shoreline jurisdiction shall demonstrate that the proposed activities are dependent on a shoreline location consistent with this Program and WAC 173-26-241 3(h). Non-water-dependent mining activities are prohibited within shoreline jurisdiction.
- B. To be approved the applicant must demonstrate that there will be no:
  1. Adverse impact on the structural integrity of the shoreline that would change existing aquatic habitat or aquatic flow characteristics; and
  2. Changes in hydraulic processes to or from adjacent waterbodies that would damage aquatic habitat, shoreline habitat, or groundwater.
- C. Mining waterward of the OHWM may be permitted only when the applicant demonstrates that:
  1. Removal of specified quantities of sand and gravel or other materials at specific locations will not adversely affect natural gravel transport or other stream processes.
  2. The proposed mining and associated activities will not have significant adverse impacts on habitat for priority species and will not cause a net loss of shoreline ecological functions.
  3. Determinations required by 1 and 2 above must be made consistent with RCW 90.58.100(1) and WAC 173-26-201(2)(a).
  4. In considering renewal, extension, or reauthorization of other mining operations waterward of the OHWM in locations where they have previously been conducted, the City must require compliance with this Subsection to the extent that no such review has previously been conducted. Where there has been prior review, the City must review previous determinations comparable to the requirements of this Section to assure compliance with this Subsection under current site conditions.
- D. To ensure future use and visibility of the shoreline areas after completion of mining activities, the following provisions for land reclamation shall be met and shall be demonstrated in a

reclamation plan approved by the Washington Department of Natural Resources that complies with the format and standards of RCW 78.44 and WAC 332-18:

1. All reclamation shall be completed within two (2) years after discontinuance of mining operations.
  2. All equipment, machinery, buildings, and structures shall be removed from the site upon discontinuance or abandonment of mining operations.
  3. Backfill material used in site reclamation shall be natural materials. Combustible, flammable, noxious, toxic, or solid waste materials are not permitted as backfill or for on-site disposal.
  4. Reclamation shall prevent future erosion and sedimentation. Topography of the site shall be restored to contours compatible with the surrounding land and shoreline area.
  5. Final topography of the site shall not cause standing water to collect and remain on the site except as part of a sedimentation collection and removal system.
  6. All exposed areas shall be revegetated utilizing native, self-sustaining plants suitable to the immediate shoreline environment.
- E. The provisions of this section do not apply to dredging of authorized navigation channels or management, placement, or beneficial reuse of dredged materials when conducted in accordance with Section 7.3.5 and all other provisions of this Program.

## 7.2.10 Recreational Development

- A. Shoreline recreational development that provides access to and enjoyment of the water and shorelines of the state are a preferred use.
- B. Recreational areas and facilities on the shoreline shall provide physical or visual public access to the shoreline, subject to Section 6.5 of this SMP.
- C. Recreational uses and developments may be permitted when they do not displace water-dependent uses and are consistent with existing water-related and water-enjoyment uses.
- D. Only water-dependent or water-enjoyment elements of a recreational proposal as outlined in section 3.K of Appendix C may encroach on required vegetated buffers of this Program.
- E. Commercial recreational development must also be consistent with the requirements of Section 7.2.4 of this SMP.
- F. Parking areas shall be located outside of shoreline jurisdiction, unless unfeasible, in which case parking facilities shall be sited on the landward side of recreational development and levees/dikes, if present, in accordance with the mitigation sequencing provisions of this Program.

- G. Provisions shall be made for adequate vehicular parking and safe pedestrian crossings.
- H. New overwater structures for recreation use shall be allowed only when:
  - 1. They accommodate a water-dependent recreation use or facility; or
  - 2. They provide access for the public to enjoy the shorelines of the state; and
  - 3. The resulting impacts to critical areas and the associated buffer are fully mitigated.
- I. Recreational facilities shall provide adequate facilities for potable water supply, sewage disposal, and/or garbage collection when feasible.

## 7.2.11 Residential Development

- A. New residential development shall comply with the shoreline buffer provisions established in Table 4 of Section 3.H of Appendix C. Redevelopment or expansion of residential structures shall also conform to the provisions in Section 3.3 of this SMP as applicable.
- B. New residential development including subdivisions, short plats, new appurtenances and accessory uses and structures:
  - 1. Shall be designed such that no new shoreline stabilization measures are necessary for the life of the structure.
  - 2. Shall be located and designed to minimize view obstructions to and from the shoreline from other properties.
  - 3. Shall be prohibited in floodways and channel migration zones.
- C. Residential appurtenances, accessory uses, and facilities serving a residential structure shall be located outside setbacks, critical areas, and buffers unless otherwise allowed by this Program.
- D. New residential lots shall be configured such that new structural flood hazard reduction and shoreline stabilization measures will not be required during the life of the development or use.
  - 1. Plats and subdivisions shall be designed and developed in a manner that assures no net loss of ecological functions will result from full build-out of all lots.
- E. Clustering of residential units, as permitted by the City, is permitted where minimization of physical and visual impacts to the shorelines can be achieved.
- F. Where housing developments are proposed in locations that would interrupt existing shoreline views, provisions shall be made for reasonable view corridors. The City may adjust the project dimensions and/or prescribe development operation and screening standards as deemed appropriate.

## 7.2.12 Transportation and Parking

### A. Roads, Railroads and Bridges

1. New or expanded surface transportation facilities not related to and necessary for the support of shoreline activities consistent with this SMP shall be located outside of the shoreline jurisdiction wherever possible unless location outside of shoreline jurisdiction is infeasible.
2. The applicant shall demonstrate that new or expanded facilities are designed to:
  - a. Minimize impacts to critical areas and associated buffers and to minimize alterations to the natural or existing topography to the extent feasible;
  - b. Avoid or minimize the need for shoreline stabilization.
3. New transportation crossings over streams shall be avoided, but where necessary shall utilize bridges rather than culverts to the extent possible.
4. Requirements for bridge and culvert installation crossing all streams shall be consistent with the Washington State Department of Fish and Wildlife standards.
5. All excavation materials and soils exposed to erosion by all phases of road, bridge, and culvert work shall be stabilized and protected by seeding, mulching, or other effective means, both during and after construction.
6. New transportation crossings over wetlands and the associated buffer shall be avoided and minimized. Where demonstrated that no other route is feasible, bridges that do not obstruct the movement of surface or groundwater are required unless it can be demonstrated that fill and compensatory mitigation will produce equal or greater ecological functions.
7. Private access roads or driveways providing ingress and egress for individual single-family residences or lots shall be limited to the minimum width allowed by the fire code.
8. Bridges shall provide the maximum length of clear spans feasible with pier supports to produce the minimum amount of deflection feasible.
9. Circulation routes to and on shorelands shall include systems for pedestrian, bicycle, and public transportation where appropriate.
10. Non-Motorized Facilities

### B. Non-motorized facilities, such as trails, shall comply with provisions for public access that are part of this Program.

1. New or expanded non-motorized transportation facilities shall be located outside of critical areas and their associated buffers or in the outer 25 percent of the critical area buffer with the exception of non-motorized facilities constructed for water access.

2. Elevated walkways shall be utilized where feasible to cross wetlands and streams instead of culverts.
- C. Parking facilities are not a preferred use and shall be allowed only where necessary to support an authorized use. Parking facilities accessory to a permitted use shall be:
1. Set back as far as possible from the OHWM and outside shoreline jurisdiction where feasible; and
  2. Located outside of critical areas and associated buffers.
- D. Facility lighting shall be designed and operated to avoid illuminating nearby properties or public areas; prevent glare on adjacent properties, public areas, or roadways to avoid infringing on the use and enjoyment of such areas; and to prevent hazards. Methods of controlling spillover light include, but are not limited to, limits on height of structure, limits on light levels of fixtures, light shields, setbacks, buffer areas, and screening. Lighting must be directed away from critical areas unless necessary for public health and safety.

### 7.2.13 Utilities

These provisions apply to services and facilities that produce, convey, store, or process power, gas, sewage, communications, oil, waste, and similar services and functions. On-site utility features serving a primary use, such as a water, sewer, or gas line to a residence or other approved use, are accessory utilities and shall be considered a part of the primary use.

- A. New or expanded non-water dependent utilities or parts thereof may be located within shoreline jurisdiction only when the applicant demonstrates based on analysis of alternative locations and technologies that:
1. No alternative location outside of shoreline jurisdiction is feasible;
  2. If a new corridor is proposed, utilization of existing corridors is not feasible, including expansion or replacement of existing facilities; and
  3. The proposal minimizes changes to the visual character of the shoreline environment as viewed from the water and surrounding views to the water.
  4. The above requirements do not apply to water-dependent utilities, or parts thereof, which require a shoreline location, such as stormwater or wastewater treatment plant outfalls.
- B. The presence of existing utilities shall not justify more intense development. Rather, the development shall be consistent with the City Comprehensive Plan, Development Regulations, and this SMP, and shall be supported by adequate utilities.
- C. Where overhead electrical transmission lines must parallel the shoreline, they shall be outside of shoreline jurisdiction unless infeasible due to site constraints, including but not limited to topography or safety.

- D. Transmission, distribution, and conveyance facilities shall be located in existing rights of way and corridors whenever feasible.
- E. Utility crossings of waterbodies shall be attached to bridges where feasible. Where attachment to a bridge is not feasible, underground construction methods that avoid surface disturbance are preferred and shall cross shoreline jurisdictional areas by the shortest, most direct route feasible, unless such route would cause significant environmental damage.
- F. All underwater pipelines transporting liquids intrinsically harmful to aquatic life or potentially harmful to water quality shall be equipped with automatic shut-off valves.
- G. Structural utility buildings, such as pump stations, electrical substations, or other facilities, shall be located outside of jurisdictional shoreline areas, unless infeasible, in which case they shall be visually compatible in scale with surrounding development and landscape to provide compatibility with natural features and adjacent uses.
- H. Stormwater outfalls may be placed below the OHWM to reduce scouring. New outfalls and modifications to existing outfalls shall be designed and constructed to avoid impacts to existing native aquatic vegetation attached to or rooted in substrate.
- I. Existing facilities such as the City's Municipal Water System and Sewer System, that are located landward of a levee, may be improved in accordance with the mitigation sequencing provisions contained in this Program.

## 7.3 Shoreline Modification

### 7.3.1 General Regulations

All shoreline modifications must comply with the following general provisions and the following specific provisions, as appropriate:

- A. Structural modifications may be permitted only where they are demonstrated to be necessary to support or protect an allowed primary structure or a 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;
- B. Preference shall be given to shoreline modifications that have a lesser impact on ecological functions; and
- C. Modifications shall be designed to incorporate all feasible measures to protect ecological shoreline functions and ecosystem-wide processes.

### 7.3.2 Shoreline Stabilization

- A. Proposals for new shoreline stabilization shall demonstrate that proposed measures are the minimum size necessary, and comply with mitigation sequencing requirements of

this program. Proposals for additions to or enlargements of shoreline stabilization measures shall be treated as new stabilization for all requirements of this Section.

- B. Compliance with the following criteria shall be documented through geotechnical analysis by a qualified professional. Geotechnical reports pursuant to this Section shall address the necessity for shoreline stabilization by estimating timeframes and rates of erosion and shall report on the urgency associated with the specific situation.
  - 1. New development and lots created by subdivision shall demonstrate that new shoreline stabilization will not be necessary, for the life of the development, in order for reasonable development to occur.
  - 2. Development on steep slopes shall be set back sufficiently to ensure that shoreline stabilization is unlikely to be necessary during the life of the structure (see Appendix C, Critical Areas Regulations).
  - 3. Development that would require new shoreline stabilization that would cause significant impacts to adjacent or down-current properties and shoreline areas, shall not be allowed.
  - 4. Hard armoring solutions shall be authorized only:
    - a. When a report finds that a primary structure will be damaged within three (3) years from shoreline erosion without hard armoring measures;
    - b. If waiting to provide erosion protection would foreclose the opportunity to use measures that avoid impacts on ecological functions; or
    - c. When hard armoring is not justified based on the above criteria, a geotechnical report may be used to justify protection against erosion using soft shoreline stabilization measures.
- C. Shoreline stabilization shall be designed and constructed to be the minimum size necessary and to avoid or minimize stream channel direction modification, realignment, and straightening, or to result in increased channelization of normal stream flows or impacts to sediment transport.
- D. New or expanded shoreline stabilization shall follow this hierarchy of preference:
  - 1. No action (allow the shoreline to retreat naturally).
  - 2. Non-structural methods such as increased building setbacks, relocating structures, and/or other methods to avoid the need of stabilization.
  - 3. Stabilization constructed of soft structural protection and bioengineering, including, but not limited to, protective berms or vegetative stabilization.
  - 4. Soft structural stabilization, as described above, in combination with hard structure stabilization, as described below, constructed as a protective measure.

5. Hard structure stabilization constructed of artificial materials such as, but not limited to, riprap or concrete.

Applicants should consult applicable shoreline stabilization guidance documents, such as the Integrated Streambank Protection Guidelines, promulgated by state or federal agencies.

- E. New structural shoreline stabilization measures to protect an existing primary structure, including residences, are only allowed when there is conclusive evidence, documented by a geotechnical analysis that the structure is in danger from shoreline erosion caused by currents or waves rather than from upland conditions. Normal sloughing, erosion of steep bluffs, or shoreline erosion itself, without a scientific or geotechnical analysis, is not demonstration of need. The geotechnical analysis should evaluate on-site drainage issues and address drainage problems by relocating drainage away from the shoreline edge before considering structural shoreline stabilization. Considerations shall include the feasibility of reconstruction and/or relocation of the structure if it is cost effective in relation to any new or expanded erosion control structures. New structural shoreline stabilization measures shall not result in a net loss of shoreline ecological functions.
- F. New shoreline structural stabilization may be permitted in support of a water-dependent development when all of the conditions below are met as demonstrated in a geotechnical report by a qualified professional:
  1. The erosion is not being caused by upland conditions, such as the loss of vegetation and drainage.
  2. There is a need to protect primary structures from damage due to erosion.
  3. Non-structural measures, such as placing the development farther from the shoreline, planting vegetation, or installing on-site drainage improvements, are not feasible or not sufficient.
  4. The stabilization structure will not result in a net loss of shoreline ecological functions.
- G. New shoreline structural stabilization may be permitted in support of a new non-water-dependent development (including single-family residences) when all of the conditions below are met as demonstrated in a geotechnical report by a qualified professional:
  1. The erosion is not being caused by upland conditions, such as the loss of vegetation and drainage.
  2. There is a need to protect primary structures from damage due to erosion caused by natural processes, such as currents or waves.
  3. Non-structural measures, such as placing the development farther from the shoreline, planting vegetation, or installing on-site drainage improvements, are not feasible or not sufficient.



4. The stabilization structure will not result in a net loss of shoreline ecological functions.
- H. New shoreline structural stabilization may be permitted to protect ecological restoration or hazardous substance remediation projects when the conditions below are met as demonstrated in a geotechnical report by a qualified professional:
1. Non-structural measures, such as placing the development farther from the shoreline, planting vegetation, or installing on-site drainage improvements, are not feasible or not sufficient.
  2. The stabilization structure will not result in a net loss of shoreline ecological functions.
- I. The construction of a shoreline stabilization structure, either “soft” or “hard” for the primary purpose of creating dry land is prohibited.
- J. Replacement of an existing shoreline stabilization structure with a similar structure is permitted if there is a demonstrated need to protect existing primary uses or structures from erosion caused by current or wave action. Replacement walls or bulkheads shall not encroach waterward of the OHWM or existing structure unless the residence was occupied prior to January 1, 1992, and there are overriding safety or environmental concerns. In such cases, the replacement structure shall abut the existing shoreline stabilization structure. Replacement must result in no net loss of ecological functions. For purposes of this Subsection regarding standards on shoreline stabilization measures, "replacement" means the construction of a new structure to perform a shoreline stabilization function of an existing structure that can no longer adequately serve its purpose. Additions to or increases in the size of existing shoreline stabilization measures shall be considered new structures.
- K. A publicly financed or subsidized shoreline stabilization project shall not restrict existing public access, and where feasible, such structural stabilization shall incorporate public access. See Section 6.5, Public Access, for additional information.
- L. Bioengineered projects shall be designed by a qualified professional in accordance with the most current, accurate, and complete scientific and technical information available, and shall incorporate a variety of sustainable plants, unless demonstrated infeasible for the particular site.
- M. Gabions (wire-mesh baskets filled with concrete or rocks) shall not be used in bulkhead construction of shoreline stabilization structures, where alternatives more consistent with this Program are feasible, because of their limited durability and the potential hazard they present to shore users and the shoreline environment.

### 7.3.3 Breakwaters, Weirs, and Groins

- A. Breakwaters, groins and weirs located waterward of the OHWM shall be allowed only where necessary to support water-dependent uses, public access, shoreline stabilization, or other specific public purpose.

- B. Open pile or floating breakwater designs shall be used unless it can be demonstrated that riprap or other solid construction would not result in any greater net impacts to shoreline ecological functions, processes, fish passage, or shore features.
- C. Breakwaters, weirs and groins shall be designed to protect critical areas and shall provide for mitigation according to the sequence defined in Section 6.1 of this SMP.

### 7.3.4 Fill and Excavation

- A. Fill may be placed in flood hazard areas only when otherwise allowed by the Frequently Flooded Areas Regulations in this Program (Appendix C) and where it is demonstrated in a hydrogeological report prepared by a qualified professional that adverse impacts to hydrogeologic processes will be avoided.
- B. Fill placed below the OHWM for any other use besides ecological restoration requires a Shoreline Conditional Use Permit.
- C. Fill may be placed below the OHWM only when it is demonstrated that the fill is necessary to:
  - 1. Accomplish an aquatic habitat restoration plan.
  - 2. Support a mitigation action, environmental restoration, beach nourishment or other enhancement project.
  - 3. Correct the adverse results of past shoreline modification that have disrupted natural stream geomorphic conditions and adversely affected aquatic or terrestrial habitat.
  - 4. Support a water-dependent use.
  - 5. Serve as part of a public access proposal.
  - 6. Support cleanup of contaminated sediments as part of an interagency environmental clean-up plan, or permitted under MTCA or CERCLA.
  - 7. Expand or alter transportation facilities of statewide significance currently located on the shoreline only when demonstrated that alternatives to fill are not feasible.
- D. Fill is restricted in wetlands or fish and wildlife habitat conservation areas in accordance with the critical areas standards in this Program, Appendix C.
- E. Excavation of previously deposited dredge spoils above the OHWM may be permitted if the spoils site is part of a dredge materials management plan and the spoils were not originally placed as part of a beach nourishment or other shoreline restoration project.
- F. Excavation below the OHWM is considered dredging and is subject to provisions in Section 7.3.5.

### 7.3.5 Dredging and Dredge Material Disposal

- A. Dredging and in-water dredge disposal must be approved by state and federal agencies with jurisdiction, with documentation provided to local government as a condition of any shoreline permit.
- B. New dredging shall be permitted only:
  - 1. When establishing, expanding, or reconfiguring navigation channels, anchorage areas, and basins in support of existing navigational uses;
  - 2. When implementing an approved regional dredge management plan for flood control purposes;
  - 3. As part of an approved habitat improvement project;
  - 4. As part of a Model Toxics Control Act or Comprehensive Environmental Response, Compensation, and Liability Act project;
  - 5. In conjunction with a new port, bridge, navigational structure, wastewater treatment facility, essential public facility, hydroelectric facility, fish hatchery, or other water-dependent use for which there is a documented public need and where other feasible sites or methods are not feasible; or
  - 6. When otherwise approved by state and federal agencies.
- C. New development shall be sited and designed to avoid or, if that is not possible, to minimize the need for new and maintenance dredging.
- D. Maintenance dredging shall be restricted to previously authorized locations, depths, and widths.
- E. Dredging waterward of the OHWM for the primary purpose of obtaining fill material is allowed only when the material is necessary for the restoration of ecological functions. When allowed, the site where the fill is to be placed must be located waterward of the OHWM. The project must be either associated with a Model Toxics Control Act or Comprehensive Environmental Response, Compensation, and Liability Act habitat restoration project or, if approved through an SCUP, any other significant habitat enhancement project.
- F. Dredge materials exceeding the Ecology criteria for toxic sediments shall be disposed of according to state and federal law. Proof of proper disposal at an upland permitted facility may be required.
- G. Disposal of dredge material on shorelands or wetlands within a river's channel migration zone shall be discouraged. In the limited instances where it is allowed, such disposal shall require an SCUP. Disposal of dredge material within wetlands or within a river's channel migration zone shall be allowed only when proposed as part of an ecological restoration project demonstrated by a qualified professional to:

1. Improve wildlife habitat;
2. Correct the adverse results of past shoreline modification that have disrupted natural stream geomorphic conditions and adversely affected aquatic or terrestrial habitat; or
3. Create, expand, rehabilitate, or enhance a beach when permitted under this Program and any required state or federal permit.

This provision is not intended to address discharge of dredge material into the flowing current of the river or in deep water within the channel where it does not substantially affect the geohydrologic character of the channel migration zone.

H. When allowed, dredge material disposal must meet the following standards:

1. Dredge disposal in shoreline jurisdiction shall be permitted only where it is demonstrated by a qualified professional that the disposal will not result in significant or ongoing adverse impacts to water quality, fish and wildlife habitat conservation areas and other critical areas, flood holding capacity, natural drainage and water circulation patterns, significant plant communities, prime agricultural land, and public access to shorelines. When such impacts are unavoidable, they shall be minimized and mitigated such that they result in no net loss of functions.
2. Dredge disposal both above and below the OHWM may be approved if it is demonstrated that it complies with the provisions of Section 7.3.5.H.1 above and one or more of the following:
  - a. It benefits shoreline resources; or
  - b. If applicable, it utilizes the guidance from the 2007, or as amended, U.S. Army Corps of Engineers and Environmental Protection Agency publication EPA842-B-07-001, Identifying, Planning, and Financing Beneficial Use Projects Using Dredged Material – Beneficial Use Planning Manual; or
  - c. For dredging projects under U.S. Army Corps of Engineers jurisdiction, the disposal has been identified and evaluated through an approved Corps Dredge Management Material Program.
- I. Clearing of secondary, volunteer vegetation growth on approved dredge disposal deposits does not require compensatory mitigation.
- J. Dredge disposal is allowed through an SSDP on lands already covered by legally deposited dredge spoils.
- K. Dredging and dredge disposal shall be scheduled to minimize impacts to biological productivity (including, but not limited to, fish runs, spawning, and benthic productivity) and to minimize interference with fishing activities and other water-dependent uses.

- L. Dredging and dredge materials disposal shall be done in a manner that avoids or minimizes significant ecological impacts and impacts that cannot be avoided shall be mitigated.

### **7.3.6 Shoreline Habitat and Ecological Enhancement Projects**

Shoreline habitat and ecological enhancement projects are those in which public and/or private parties engage to establish, restore, or enhance ecological sites.

- A. Long-term maintenance and monitoring shall be included in restoration or enhancement projects.
- B. Shoreline restoration and enhancement projects shall be designed using scientific and technical information and implemented using best management practices. Applicants should consult applicable guidance documents, such as the most current version of the Washington State Department of Fish and Wildlife's Stream Habitat Restoration Guidelines, promulgated by state or federal agencies.
- C. Habitat creation, expansion, restoration, and enhancement projects may be permitted in all shoreline environment designations subject to required state or federal permits when the applicant has demonstrated that there will be a specific ecological improvement and the following:
  - 1. Spawning, nesting, or breeding fish and wildlife habitat conservation areas will not be adversely affected;
  - 2. Water quality will not be degraded;
  - 3. Flood storage capacity will not be degraded;
  - 4. Streamflow will not be reduced;
  - 5. Impacts to critical areas and buffers will be avoided and where unavoidable, minimized and mitigated;
  - 6. The project will not interfere with the normal public use of the navigable waters of the state; and
  - 7. The project is consistent with the types and purposes of restoration information provided in the Shoreline Restoration Plan, Appendix D.
- D. Shoreline restoration and enhancement projects that include shoreline modification actions may be allowed provided the primary purpose of such action is clearly restoration of the natural character and ecological functions of the shoreline.

## 8. Shoreline Administration and Enforcement

### 8.1 General

- A. All proposed new uses and new development occurring within the shoreline jurisdiction must conform to RCW 90.58, the Act, and this Program, whether or not a shoreline permit is required.
- B. “The City,” for the purposes of making administrative decisions and processing permits as may be required by the Program, means the Kelso City Manager or his/her designees.
- C. Permit procedures and enforcement shall be conducted in a manner consistent with constitutional limitations on regulation of private property as specified in WAC 17326-186 (5) and WAC 173-26-191(2)(a)(iii)(A).
- D. SSDPs, SLEs, SCUPs, Shoreline Variances, and permit revisions are subject to review procedures in accordance with the provisions of Chapter 18B of the Kelso Municipal Code (KMC) or as subsequently amended.
- E. The regulations of the Program shall be used in conjunction with the regulations contained in the KMC. Where there is a conflict between the KMC and the Program, the Program shall control, as determined by the City.
- F. The effective date of a shoreline permit or, variance shall be the date of filing with the Ecology as provided in RCW 90.58.140(6). The permit time period does not include the time during which a use or activity was not actually pursued due to the pendency of administrative appeals or legal actions or due to the need to obtain any other government permits and approvals for the development that authorize the development to proceed, including all reasonably related administrative or legal actions on any such permits or approvals.
- G. The City shall ensure that any official action will comply with the State Environmental Policy Act.

### 8.2 Application Requirements

- A. A complete application for an SSDP, SCUP, or Shoreline Variance shall contain, at a minimum, the information required for a complete application specified in WAC 173-27-180, as determined by the City.
- B. When an applicant submits an application for any development proposal, the application shall indicate whether any critical area is located on the site.

- C. The City may conduct a preliminary environmental review, based on existing in-house resources and data, to determine if critical areas are known or suspected to exist on the applicant's parcel; however, the ultimate burden of proof is on the applicant to provide sufficient data to the City should the City suspect critical areas are present.
- D. A representative of the City may visit the site and, in conjunction with the review of the information provided by the applicant and any other suitable information, shall 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 to adequately evaluate a proposal, the City shall notify the applicant that additional studies as specified herein shall be provided.
- E. When the determination of critical areas has been completed, a written report will be issued to the applicant, placed in an address file, and a copy sent to the property owner if different from the applicant. A property owner may request a re-evaluation by the City once in any twelve (12)-month period when a change in physical conditions or government institutional actions warrants such re- evaluation.
- F. A shoreline permit (SSDP or SCUP) is required if it is determined that the proposed alteration or development is located within jurisdictional shoreline area, and/or a critical area or buffer.
  - 1. Technical assessments. The City may require the applicant to submit a technical assessment addressing how the proposal incorporates best available science. The technical assessment shall be adequate for the City to evaluate the development proposal and all probable adverse impacts to critical areas. If adequate factual information exists to facilitate such evaluation, the City may determine that a technical assessment is not necessary. The City will advise the applicant of existing technical information that may be pertinent to their property. Technical assessments shall be attached to the development permit application package.
  - 2. All critical area technical assessments and studies required of the applicant shall be prepared by a qualified expert. The City's decision to require additional studies will be based on the complexity of the project and/or a site inspection. The applicant for development shall be responsible for any cost associated with preparing critical area technical assessments and/or studies.
- G. G. The City shall solicit comments or technical assistance on the shoreline permit application from resource agencies with jurisdiction over the proposal within 14 days of determining an application is complete. These agencies shall have thirty (30) days from the date the application is circulated by the City for comments. If a response is not received from the resource agency within the 30-day review period, the City will assume there are no comments on the project or activity forthcoming from the resource agency.
- H. Any person preparing to submit an application for development or use of land located within a critical area or associated buffer shall first apply for a pre-application

conference, unless waived by the City in concurrence with the applicant. At this meeting, the City shall discuss the requirements of these regulations and provide applicable critical areas maps, scientific information, and other source materials. The City shall summarize the application review process and work with the proponent to identify potential issues that may arise during the review process in addition to discussing other permit procedures and requirements.

- I. The City will notify the public and other agencies with jurisdiction of applications for a shoreline substantial development, conditional use, or variance permit as required by WAC 173-27-110.

## 8.3 Shoreline Letter of Exemption (SLE)

- A. The City may issue a Shoreline Letter of Exemption (SLE) for proposed development activities or programs in jurisdictional shoreline areas that do not require an SSDP.
- B. All Shoreline Letters of Exemption issued by the City shall be in writing and maintained in a file.
- C. An SLE is a Type I permit and shall be processed in accordance with the provisions of Chapter 18B of the KMC as it now exists or as subsequently amended.
- D. An SLE may be issued for project-specific development activities or for programmatic, routine activities that may be repeated on a regular basis in accordance with approved standards such as the repair and maintenance of roads, right-of-ways, trails, parks, and/or storm water facilities.
- E. Activities authorized through the issuance of an SLE must comply with all applicable provisions of the Kelso Municipal Code and comply with conditions included for approval to achieve consistency and compliance with the provisions of this Program and the Act.
- F. Requests or applications for an SLE shall be submitted in a format prescribed by the City and include such documentation as may be required by the City.
- G. If the exemption is approved, the City shall prepare and provide an SLE to the applicant and Ecology indicating the specific applicable exemption provisions from WAC 173-27-040 and providing a summary of the project's consistency with this Program and the Act, as amended.
- H. An exemption from an SSDP is not an exemption from compliance with the Act or the Program, or from any other regulatory requirements. A use or development exempt from an SSDP may require an SCUP or a Shoreline Variance.
- I. A project requiring an additional permit and subject to an exemption to an SSDP shall be reviewed under the criteria of the underlying permit with an additional finding recorded by the City addressing the grounds under which the project is exempt.



- J. A denial of an exemption shall be in writing and shall identify the reason(s) for the denial.

## 8.4 Shoreline Substantial Development Permits (SSDP)

- A. An SSDP shall be required for projects occurring within the City's shoreline jurisdiction pursuant to the requirements and procedures contained in WAC 173-27 (Shoreline Management Permit and Enforcement Procedures); except for those projects described in Section 3.2, Exemptions from a Shoreline Substantial Development Permit.
- B. An SSDP is a Type II permit and shall be processed in accordance with the provisions of Chapter 18B of the KMC as it now exists or is subsequently amended by the City, except that requests for review shall be made to the Shoreline Hearings Board as outlined in RCW 90.58.180.
- C. Applications for SSDPs shall be accompanied by the application materials specified in WAC 173-27-180 Application Requirements for Substantial Development, Conditional Use, or Variance Permit as determined by the City.
- D. Upon the review of materials submitted by an applicant the City may, at its discretion, require peer review be completed by a consultant chosen by the City, at the sole expense of the applicant.
- E. Notification of the public shall be as required by Chapter 18B of the KMC, as it now exists or is subsequently amended, , except that public comment periods as outlined in 18B.05.020 E shall be 30 days for shoreline permits.
- F. Time requirements for SSDPs are as follows (See WAC 173-27-090 for complete language.):
  - 1. Construction activities shall commence, or where no construction activities are involved, the use or activity shall commence within two (2) years of the effective date of an SSDP.
  - 2. The period for commencement of construction or use may be extended once for a one (1)-year period if a request based on reasonable factors is filed before the expiration date and notice of the proposed extension is given to parties of record.
  - 3. The authorization to conduct certain development activities (see WAC 173-27-090) shall terminate five (5) years after the effective date of an SSDP.
  - 4. The authorization period to conduct development activities may be extended once for a one (1)-year period if a request based on reasonable factors is filed before the expiration date and notice of the proposed extension is given to parties of record and the department.

5. The time periods in Subsections F (1) and (4), above, do not include the time during which a use or activity was not actually pursued due to the pendency of administrative appeals or legal actions or due to the need to obtain any other government permits and approvals for the development that authorize the development to proceed, including all reasonably related administrative or legal actions on any such permits or approvals.
- G. Applications for an SSDP will be reviewed against the following criterion:
1. Proposed use or development on shorelines of the state must be consistent with the policy and provisions of the Act and this Program.
- H. Appeals to the Shorelines Hearings Board shall be consistent with RCW 90.58.140. Construction pursuant to a shoreline permit may not begin or be authorized until twenty-one (21) days from the date the permit decision was filed with Ecology.

## 8.5 Shoreline Conditional Use Permits (SCUP)

- A. The purpose of an SCUP 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.
- B. An SCUP is required for uses and development that are not classified in the Program and for those uses and modifications as indicated in Table 7-1 of this Program. In authorizing a conditional use, the City 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 this Program.
- C. An SCUP is a Type III permit and shall be processed in accordance with the provisions of Chapter 18B of the KMC as it now exists or as subsequently amended, except that requests for review shall be made to the Shoreline Hearings Board as outlined in RCW 90.58.180.
- D. Applications for an SCUP shall be accompanied by the application materials specified in WAC 173-27-180 Application Requirements for Substantial Development, Conditional Use, or Variance Permit as determined by the City.
- E. The criteria for approving conditional uses shall be consistent with WAC 173-27-160 Review Criteria for Conditional Use Permits and shall include 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 the 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.
  6. Other uses that are not classified or set forth in the Program may be authorized as conditional uses provided that the applicant can demonstrate consistency with the requirements of this Section, WAC 173-27-160, and RCW 90.58.020.
  7. When reviewing SCUP applications, consideration shall be given to the cumulative impact of like actions in the area. For example, if any SCUPs 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.
  8. Uses which are specifically prohibited or not allowed by the Program may not be authorized through the issuance of an SCUP.
- F. To ensure compliance with the applicable criteria stated in the KMC, the City shall have the authority to require and approve a specific plan for a proposed use, to impose performance standards in the form of conditions of approval that make the use compatible with other permitted uses in the area, and to expand the requirements set forth in the KMC by means of conditions that are applicable to the proposed use. In no case shall the City have the authority to reduce the requirements of the City's municipal code when considering an application for a conditional shoreline development permit; any such reduction shall only be granted upon the issuance of a variance.
- G. Where plans are required to be submitted and approved as part of the application for an SCUP, modifications of the original plans may be made only after a review has been conducted and approval granted by the City in accordance with the provisions of the KMC.
- H. Time requirements for SCUPs are as outlined in WAC 173-27-090. Construction pursuant to a permit may not begin or be authorized until twenty-one days (21) from the date the permit decision was filed as provided in RCW 90.58.140 (6)(b).

## 8.6 Variances

- A. The purpose of a shoreline variance is strictly limited to granting relief to specific bulk, dimensional, or performance standards set forth in the Program where there are extraordinary or unique circumstances relating to the property such that the strict

implementation of the Program would impose unnecessary hardship on the applicant or thwart the policies set forth in the Act.

- B. Variances from the use regulations of the Program are prohibited.
- C. Shoreline variances are Type III permits and shall be processed in accordance with the provisions of Chapter 18B of the KMC as it now exists or as subsequently amended, except that requests for review shall be made to the Shoreline Hearings Board as outlined in RCW 90.58.180.
- D. Applications for shoreline variance shall be accompanied by the application materials specified in WAC 173-27-180 *Application Requirements for Substantial Development, Conditional Use, or Variance Permit* as determined by the City.
- E. Applications for shoreline variance shall be reviewed with the following criteria:
  - 1. Variance permits for development and/or uses that will be located landward of the 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:
    - a. 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;
    - b. That the hardship described in 1.a of this Subsection is specifically related to the property, and is the result of unique conditions such as irregular lot shape, size, or natural features and the application of the master program, and not, for example, from deed restrictions or the applicant's own actions;
    - c. That the design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and shoreline master program and will not cause adverse impacts to the shoreline environment;
    - d. That the variance will not constitute a grant of special privilege not enjoyed by the other properties in the area;
    - e. That the variance requested is the minimum necessary to afford relief; and
    - f. That the public interest will suffer no substantial detrimental effect.
  - 2. Variance permits for development and/or uses that will be located waterward of the OHWM, as defined in RCW 90.58.030 (2)(b), or within any wetland as defined in RCW 90.58.030 (2)(h), may be authorized provided the applicant can demonstrate all of the following:

- a. That the strict application of the bulk, dimensional or performance standards set forth in the applicable master program precludes all reasonable use of the property;
  - b. That the proposal is consistent with the criteria established under Subsection 1.b through 1.f of this Section; and
  - c. That the public rights of navigation and use of the shorelines will not be adversely affected.
3. 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.

## 8.7 Revisions to Permits

- A. When an applicant seeks to revise a SLE, SSDP, SCUP, or shoreline variance, whether such permit or variance was granted under this Program or under the Program in effect prior to adoption of this Program, the City shall request from the applicant detailed plans and text describing the proposed changes to the project. If the staff determines that the proposed changes are within the general scope and intent of the original SLE, SSDP, SCUP, or shoreline variance, as the case may be, the revision may be approved by the City without the need for the applicant to file a new permit application provided the development is consistent with the Act, and WAC 173-27100.
- B. All shoreline permit revisions shall be transmitted to Ecology upon the City's final decision. If the revision is to a SLE or SSDP, it becomes effective immediately upon final decision by the City. If the permit revision is concerning a shoreline conditional use or shoreline variance permit, the proposed revision is subject to Ecology review. Ecology shall respond with its final decision on the permit revision request within fifteen (15) days of the date of receipt by Ecology per WAC 173-27-100(6). The City shall notify parties of record of the final decision.
- C. Shoreline permit revisions may be appealed to the Shoreline Hearings Board within twenty-one (21) days of the final decision to the permit revision in accordance with the provisions of WAC 173-27- 100(8).

## 8.8 Permit Filing [KF7]

- A. After all local permit administrative appeals or reconsideration periods are complete and the permit documents are amended to incorporate any resulting changes, the City will mail the permit using return receipt requested mail to the Department of Ecology regional office and the Office of the Attorney General. Projects that require both

Conditional Use Permits and or Variances shall be mailed simultaneously with any Substantial Development Permits for the project.

1. The permit and documentation of the final local decision will be mailed together with the complete permit application; a findings and conclusions letter; a permit data form (cover sheet); and applicable SEPA documents.
2. Consistent with RCW 90.58.140(6), the state's Shorelines Hearings Board twenty-one day appeal period starts with the date of filing, which is defined below:
  - a. For projects that only require a Substantial Development Permit: the date that Ecology receives the City decision.
  - b. For a Conditional Use Permit (CUP) or Variance: the date that Ecology's decision on the CUP or Variance is transmitted to the applicant and City.
  - c. For SDPs simultaneously mailed with a CUP or VAR to Ecology: the date that Ecology's decision on the CUP or Variance is transmitted to the applicant and the City.

## **8.8-9 Restoration Project Relocation of OHWM**

The City may grant relief from Program development standards and use regulations when the following apply:

- A. A shoreline restoration project causes, or would cause, a landward shift in the OHWM, resulting in the following:
  1. Land that had not been regulated under this Program prior to construction of the restoration project is brought under shoreline jurisdiction; or
  2. Additional regulatory requirements apply due to a landward shift in required shoreline buffers or other regulations of the Program; and
  3. Application of Program regulations would preclude or interfere with use of the property permitted by local development regulations, thus presenting a hardship to the project proponent.
- B. The proposed relief meets all of the following criteria:
  1. The proposed relief is the minimum necessary to relieve the hardship.
  2. After granting the proposed relief, there is net environmental benefit from the restoration project.
  3. Granting the proposed relief is consistent with the objectives of the shoreline restoration project and consistent with the Program.

4. Where a shoreline restoration project is created as mitigation to obtain a development permit, the project proponent required to perform the mitigation is not eligible for relief under this Section.
- C. The application for relief must be submitted to Ecology for written approval or disapproval. This review must occur during the Ecology's normal review of an SSDP, SCUP, or Shoreline Variance. If no such permit is required, then Ecology shall conduct its review when the City provides a copy of a complete application and all supporting information necessary to conduct the review.
1. Except as otherwise provided in Subsection D of this Section, Ecology shall provide at least twenty (20)-days' notice to parties that have indicated interest to Ecology in reviewing applications for relief under this Section, and post the notice on to their website.
  2. Ecology shall act within thirty (30) calendar days of close of the public notice period, or within thirty (30) days of receipt of the proposal from the City if additional public notice is not required.
- D. The public notice requirements of Subsection C of this Section do not apply if the relevant shoreline restoration project was included in this Program or shoreline restoration plan as defined in WAC 173-26-201, as follows:
1. The restoration plan has been approved by the Ecology under applicable Shoreline Master Program guidelines; and
  2. The shoreline restoration project is specifically identified in the Shoreline Master Program or Shoreline Restoration Plan (Appendix D) or is located along a shoreline reach identified in the Shoreline Master Program or Shoreline Restoration Plan as appropriate for granting relief from shoreline regulations; and
  3. The Shoreline Master Program or Shoreline Restoration Plan includes policies addressing the nature of the relief and why, when, and how it would be applied.

## **8.9-10 Enforcement**

Any person failing to conform to the terms of a permit issued in accordance with the Program or who undertakes development on the shorelines of the state without first obtaining any permit required by the Program shall be subject to a civil penalty per WAC Sections 173-27-240 through 173-27-300 and the City of Kelso Municipal Code as it now exists or is subsequently amended.

## **8.110 Shoreline Activity Tracking**

- A. The City will track all shoreline permits and exemption activities to evaluate whether this SMP is achieving no net loss of shoreline ecological functions. Activities to be

tracked using the City's permit system include development, conservation, restoration and mitigation, such as but not limited to:

1. New shoreline development;
2. Shoreline Variances and the nature of the variance;
3. Compliance issues;
4. Net changes in impervious surface areas, including associated stormwater management;
5. Net changes in fill or armoring;
6. Net change in linear feet of flood hazard structures; and
7. Net changes in vegetation (area, character).

Using the information collected in Subsection A, a no net loss report shall be prepared every eight years as part of the City's SMP evaluation or Comprehensive Plan Amendment process to evaluate the cumulative effects of authorized development on shoreline conditions. Should the no net loss report show degradation of the baseline condition documented in the Shoreline Analysis Report, changes to the SMP and/or Shoreline Restoration Plan shall be proposed at the time of the eight-year update to prevent further degradation and address the