

Chapter 15.36 SHORELINE MASTER PROGRAM

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15.36.010 Purpose.

The purpose of this chapter is to establish an administrative system designed to assign responsibilities for implementation of the shoreline master program and shoreline permit review within the city of Enumclaw, to provide an orderly process by which to review proposals and permit applications, and to ensure all persons affected by the shoreline master program are treated in a fair and equitable manner. All permits must be consistent with:

- A. The legislative policies stated in the SMA, RCW [90.58.020](#) (SMA); and
- B. The shoreline master program of the city of Enumclaw. ~~(Ord. 2509 § 3 (Exh. B), 2012).~~

15.36.020 Shoreline master program adopted.

The city of Enumclaw shoreline master program adopted by Ordinance No. ~~2509~~ 2665 is herein incorporated by reference as set forth in full. ~~(Ord. 2509 § 3 (Exh. B), 2012).~~

15.36.030 Permits required.

Any person wishing to undertake development within shoreline jurisdiction shall apply for a substantial development permit, a shoreline conditional use permit, a shoreline variance permit, or a statement of exemption. Based on the city's comprehensive plan and shoreline master program, the administrator shall determine which permit is required or if the proposal is exempt from a shoreline permit.

A. Substantial Development Permit. Any development of which the total cost or fair market value exceeds ~~\$5,000~~ [that cited in RCW 90.58.030\(3\)\(e\)](#), or any development which materially interferes with the normal public use of the water or shorelines of the state. No substantial development shall be undertaken on shorelines of the city without first obtaining a substantial development permit from the city. Applications for such permits shall be made on forms provided by the administrator. An application shall provide the information necessary to be considered complete as specified in the application process.

1. Review Process and Notice Provisions. A substantial development permit is a Type II permit subject to the review process and notice requirements found in Chapter [15.20](#) EMC. In the event of a conflict between Chapter [15.20](#) EMC and this chapter, this chapter prevails.

2. Decision Criteria. A substantial development permit must be consistent with the policies and regulations contained within the city's shoreline master program and the requirements of Chapter [90.58](#) RCW.

3. Decision. The administrator shall file the permit decision with the Department of Ecology and the Attorney General. Construction of development authorized by a shoreline substantial development permit shall not begin until 21 days from the date that the permit is ~~received~~ [filed](#) by the Department of Ecology or until after all properly filed appeals are terminated.

B. Shoreline Conditional Use Permit. A shoreline conditional use is any use, development, or substantial development classified as a conditional use or any use not classified within the SMP. A shoreline conditional use permit allows flexibility in varying the application of the use regulations consistent with the shoreline master program, the comprehensive plan, and the SMA. Shoreline conditional use permits should also be granted in a circumstance where denial of the permit would result in a thwarting of those same policies. In authorizing a shoreline conditional use, special conditions may be attached to the permit to prevent undesirable effects of the proposed use. Uses that are specifically prohibited may not be authorized with approval of a shoreline conditional use permit. Applications for such permits shall be made on forms provided by the administrator. An application shall provide the information necessary to be considered complete as specified in the application process.

1. Review Process and Notice Provisions. A shoreline conditional use permit is a Type IV permit subject to the review process and notice requirements found in Chapter [15.24](#) EMC. In the event of a conflict between Chapter [15.24](#) EMC and this chapter, this chapter will prevail.

2. Decision Criteria.

a. Uses classified as shoreline conditional uses may be authorized provided the applicant can demonstrate [the proposal meets WAC 173-27-160 and](#) all of the following [are met](#):

(1) That the proposed use will be consistent with the policies of the SMA and the policies of the master program;

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

(3) That the proposed use of this site and design of the project will be compatible with other permitted uses within the area;

(4) That the proposed use will cause no unreasonably adverse effects to the shoreline environment designation in which it is to be located; and

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

b. Other uses that are not classified or set forth in the master program may be authorized as conditional uses provided that the applicant can demonstrate, in addition to the criteria set forth in subsection (B)(2)(a) of this section, that extraordinary circumstances preclude reasonable use of the property in a manner consistent with the use regulations of the master program.

c. In the granting of all conditional use permits, consideration shall be given to the cumulative impact of additional requests or like actions in the area.

3. Decision. All shoreline conditional uses issued by the city must be submitted to the Washington State Department of Ecology (Ecology) for its approval or disapproval. A decision is not final until submitted to and approved by the Washington State Department of Ecology. Construction of development authorized by a shoreline conditional use permit shall not begin until 21 days from the date that the decision by the Department of Ecology is transmitted to the administrator, or until after all properly filed appeal proceedings are terminated.

C. Shoreline Variance. The purpose of a variance is strictly limited to granting relief to specific bulk, dimensional, or performance standards set forth in the master program where there are extraordinary or unique circumstances relating to the properties such that the strict implementation of the master program would impose unnecessary hardships on the applicant or thwart the policies set forth in the SMA.

1. Review Process and Notice Provisions. A shoreline variance permit is a Type IV permit subject to the review process and notice requirements found in Chapter [15.24](#) EMC. Where there is a conflict between Chapter [15.24](#) EMC and this chapter, this chapter will prevail.

2. Decision Criteria. The criteria for granting variances shall be consistent with WAC [173-27-170](#) and include the following:

a. Variances should be granted in a circumstance where denial of the permit would result in a thwarting of the policy enumerated in the SMA. In all instances, extraordinary circumstances should be shown, and the public interest shall suffer no substantial detrimental effect.

b. Variances for development that will be located landward of the ordinary high-water mark may be authorized provided the applicant can demonstrate all of the following:

(1) That the strict application of the bulk, dimensional, or performance standards as set forth in the master program precludes or significantly interferes with a reasonable permitted use of the property;

(2) That the hardship is specifically related to the property and is the result of unique conditions, such as irregular lot shape, size, or natural features, in the application of the master program and not, for example, from deed restrictions or the applicant's own actions;

(3) That the design of the project will be compatible with other permitted activities in the area and will not cause adverse effects to adjacent properties or the shoreline environment designation;

(4) That the variance authorized does not constitute a grant of special privilege not enjoyed by other properties in the area, and will be the minimum necessary to afford relief; and

(5) That the public interest will suffer no substantial detrimental effect.

c. Variances for development that will be located waterward of the ordinary high-water mark may be authorized provided the applicant can demonstrate all of the criteria specified in subsection (C)(2)(b) of this section. The applicant must also demonstrate that the public rights of use of the shorelines will not be adversely affected by the granting of the variance, and 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.

d. In granting of all variances, consideration shall be given to the cumulative impact of additional requests or like actions in the area.

3. Decision. All shoreline variances issued by the city must be submitted to the Washington State Department of Ecology (Ecology) for its approval or disapproval. A decision is not final until submitted to and approved by the Washington State Department of Ecology. Construction of development authorized by a shoreline variance shall not begin until 21 days from the date that the decision by the Department of Ecology is transmitted to the administrator, or until after all properly filed appeal proceedings are terminated.

D. Shoreline Exemption. Certain activities, developments or uses are exempt from the Substantial Development Permit requirements of the Act and this Program. These developments are those set forth in WAC 173-27-040 (or as amended), and do not meet the definition of substantial development under RCW 90.58.030(3)(e). If a development does not meet the definition of “substantial development” ~~(RCW 90.58.030(3)(e))~~, it may be exempt from the requirement to obtain a shoreline substantial development permit, but may require a shoreline conditional use permit, shoreline variance, or a statement of exemption.

1. Statement of Exemption Required. Applicants for all nonshoreline permits or approvals within the shoreline jurisdiction must obtain a written statement of exemption from securing a shoreline substantial development permit. This process verifies the action is exempt and offers the applicant an itemization of shoreline policies and other requirements applicable to the proposed project.

2. Review Process. A statement of exemption is an administrative determination. Before determining a proposal is exempt, the administrator may conduct a site inspection to ensure the proposal meets the exemption criteria.

3. Decision Criteria. An exemption from the substantial development permit requirements does not constitute an exemption from the policies and use regulations of the Shoreline Management Act, the provisions of this master program, and other applicable city, state, or federal permit requirements. The exemption granted may be conditioned to ensure the activity is consistent with the shoreline master program, the city’s comprehensive plan, and SMA. The city shall attach shoreline management terms and conditions to the building permits and other permits and approval pursuant to RCW [90.58.140](#).

4. Exemptions Waterward of OHWM. Whenever a development falls within the exemption criteria and is subject to a U.S. Army Corps of Engineers Section 10 or Section 404 Permit, the administrator shall

prepare a statement of exemption, and transmit a copy to the applicant and the Washington State Department of Ecology. (~~Ord. 2509 § 3 (Exh. B), 2012~~).

E. Development Exceptions. These exceptions are not required to obtain shoreline permits or local reviews. Requirements to obtain a substantial development permit, conditional use permit, variance, letter of exemption, or other review to implement the Shoreline Management Act do not apply to the following:

1. Remedial actions. Pursuant to RCW 90.58.355, any person conducting a remedial action at a facility pursuant to a consent decree, order, or agreed order issued pursuant to chapter 70.105D RCW, or to the department of ecology when it conducts a remedial action under chapter 70.105D RCW.
2. Boatyard improvements to meet NPDES permit requirements. Pursuant to RCW 90.58.355, any person installing site improvements for storm water treatment in an existing boatyard facility to meet requirements of a national pollutant discharge elimination system storm water general permit.
3. WSDOT facility maintenance and safety improvements. Pursuant to RCW 90.58.356, Washington State Department of Transportation projects and activities meeting the conditions of RCW 90.58.356 are not required to obtain a substantial development permit, conditional use permit, variance, letter of exemption, or other local review.
4. Projects consistent with an environmental excellence program agreement pursuant to RCW 90.58.045.
5. Projects authorized through the Energy Facility Site Evaluation Council process, pursuant to chapter 80.50 RCW.

15.36.040 Appeals.

A. Local Appeals. Any decision made by the administrator regarding shoreline exemptions, statements of exemption, shoreline policy or regulation interpretations may be appealed to the hearing examiner pursuant to EMC [15.06.070](#).

B. Appeal to State Shorelines Hearings Board. Any person aggrieved by the granting, denying, rescinding, or revision of a shoreline substantial development permit, shoreline conditional use permit, shoreline variance or shoreline permit revision may seek review from the State Shorelines Hearings Board by filing an original and one copy of the request with the Hearings Board within 21 days of the date that the permit decision is ~~received~~ filed by Ecology ([RCW 90.58.140\(6\)](#)). The date of filing is defined below: If the case is a variance or conditional

use permit decision, the appeal must be filed within 21 days from the date Ecology transmits its decision to the city and applicant.

1. For projects that only require a Substantial Development Permit: the date that Ecology receives the [City](#) decision.
2. 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 [the City](#).
3. 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](#).

~~(Ord. 2509 § 3 (Exh. B), 2012).~~

15.36.050 Time limits.

A. Duration of Permits. The city may issue shoreline permits with termination dates of up to five years. If a permit does not specify a termination date, the following requirements apply, consistent with WAC [173-14-060](#):

1. Time Limit for Substantial Progress. Construction, or substantial progress toward completion, must begin two years after approval of the shoreline permit; and
2. Extension for Substantial Progress. The city may, at its discretion with prior notice to parties of record and Ecology, extend the two-year time period for the substantial progress for a reasonable time up to one year, based on factors including the inability to expeditiously obtain other governmental permits which are required prior to the commencement of construction.

B. Five-Year Permit Authorization. If the applicant has not completed construction within five years of approval, the city will review the shoreline permit and, upon showing of good cause, will either extend the permit for one year, or terminate the permit. Prior to the city authorizing any permit extensions, it shall notify any parties of record and Ecology. ~~(Ord. 2509 § 3 (Exh. B), 2012).~~

15.36.060 Revisions to permits (See also WAC [173-27-100](#)).

A. When an applicant seeks to revise a substantial development, conditional use, or variance permit, the planning department shall request from the applicant detailed plans and text describing the proposed changes in the permit.

B. If the planning staff determines that the proposed changes are within the scope and intent of the original permit, the revision may be approved, provided it is consistent with Chapter [173-27](#) WAC, the SMA, and this master program. "Within the scope and intent of the original permit" means the following:

1. No additional over-water construction will be involved;
2. Lot coverage and height may be increased a maximum of 10 percent from provisions of the original permit, provided that revisions involving new structures not shown on the original site plan shall require a new permit;
3. Landscaping may be added to a project without necessitating an application for a new permit if consistent with the conditions attached to the original permit and with the shoreline master program;
4. The use authorized pursuant to the original permit is not changed;
5. No additional significant adverse environmental/ecological impact will be caused by the project revision; and
6. The revised permit shall not authorize development to exceed height, lot coverage, setback, or any other requirements of the applicable master program except as authorized under a variance granted as the original permit or a part thereof.

C. If the revision, or the sum of the revision and any previously approved revisions, will violate the criteria specified above, the city shall require the applicant to apply for a new substantial development, conditional use, or variance permit, as appropriate, in the manner provided for herein.

D. Revisions to permits may be authorized after original permit authorization has expired under RCW [90.58.143](#). The purpose of such revisions shall be limited to authorization of changes which are consistent with this section and which would not require a permit for the development or change proposed under the terms of Chapter [90.58](#) RCW, this regulation and the local master program. If the proposed change constitutes substantial development then a new permit is required. Provided, this subsection shall not be used to extend the time requirements or to authorize substantial development beyond the time limits of the original permit.

E. The revision approval, including the revised site plans and text consistent with the provisions of WAC [173-27-180](#) as necessary to clearly indicate the authorized changes, and the final ruling on consistency with this

section shall be filed with the Department of Ecology in the same manner as required for the original permit. In addition, local government shall notify parties of record of their action.

F. If the revision to the original permit involves a conditional use or variance, local government shall submit the revision to Ecology for Ecology's approval, approval with conditions, or denial, and shall indicate that the revision is being submitted under the requirements of WAC [173-27-100](#). Ecology will render and transmit to local government and the applicant its final decision within 15 days of the date of its ~~receipt filing~~ of the submittal from local government. Local government shall notify parties of record of Ecology's final decision.

G. The revised permit is effective immediately upon final decision by local government or, when appropriate under subsection F of this section, upon final action by the Department. ~~(Ord. 2509 § 3 (Exh. B), 2012).~~

15.36.070 Nonconforming uses.

A. The provisions of Chapter [15.10](#) EMC, Nonconforming Uses, Structures and Signs, are incorporated into this SMP as though fully set forth herein, with the following exception:

1. If a nonconforming development is damaged to an extent not exceeding 75 percent replacement cost of the original structure, it may be reconstructed to those configurations existing immediately prior to the time the structure was damaged, provided that application is made for the permits necessary to restore the development within six months of the date the damage occurred, and all permits are obtained and the restoration is completed within two years of permit issuance.

B. All references to provisions contained in EMC Title [18](#), Enumclaw Zoning Code, shall be construed as referring to this SMP (including shoreline permits), and all references to zoning environments shall represent shoreline environment designations as established by this SMP. ~~(Ord. 2509 § 3 (Exh. B), 2012).~~

15.36.080 Enforcement.

A. Enforcement and penalties shall be consistent with WAC [173-27-240](#) through [173-27-300](#).

B. The choice of enforcement action and the severity of any penalty should be based on the nature of the violation and the damage or risk to the public or to public resources. The existence or degree of bad faith of the persons subject to the enforcement action, the benefits accrued to the violator, and the cost of obtaining compliance may also be considered. ~~(Ord. 2509 § 3 (Exh. B), 2012).~~