

CHAPTER 18.68

SHORELINE MANAGEMENT

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PART I – POLICY

18.68.005: Introduction:

(1) The City of Kennewick Shoreline Master Program intends to implement the requirements of the Washington State Shoreline Management Act (SMA) (Revised Code of Washington (RCW) 90.58). The SMA was enacted in 1971 to provide for the management and protection of shorelines of the State by regulating development in the shoreline area. The goal of the SMA is “to prevent the inherent harm in an uncoordinated and piecemeal development of the State's shorelines.” The SMA requires cities and counties to adopt a Shoreline Master Program under rules established by the Washington Department of Ecology (Ecology) to regulate shoreline development and accommodate “all reasonable and appropriate uses” consistent with “protection against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the State and their aquatic life... and public rights of navigation.” The City of Kennewick adopted its Shoreline Master Program in 1974. Ecology adopted the 2003 Shoreline Management Act Guidelines (Chapter 173-26 Washington Administrative Code (WAC)) (Guidelines) which require local government review and updates of Shoreline Master Programs.

(2) The purpose of the Kennewick Shoreline Master Program is to be consistent with the SMA and corresponding guidelines, coordinate with the State Growth Management Act, protect, restore and enhance the City’s environmental resources, offer public access and enjoyment of shorelines, and promote the public health, safety, and general welfare by providing guidelines and regulations for the future development of the City’s shoreline resources.

(3) The updated version of the Kennewick Shoreline Master Program provides goals, policies and regulations for the development of shorelines of Kennewick and acts as a regulatory tool for shoreline developments. The Kennewick Shoreline Master Program incorporates by reference the Shoreline Inventory and Assessment Report (2005), City of Kennewick Shoreline Restoration Plan (May 2009), and the City of Kennewick Shoreline Cumulative Impact Assessment Report (May 2009). Appendices such as the Kennewick Shoreline Critical Area Regulations (Appendix A-2) and the Clover Island High Intensity Special Area Plan Standards (Appendix A-6), along with all other appendices are also included in the Kennewick Shoreline Master Program. (Ord. 5281 Sec. 1, 2009)

18.68.010: Findings:

(1) Protection of private property rights consistent with the public interest associated with the shorelines of the State requires that local, state and federal governments

concertedly use, protect, restore, enhance and preserve the shorelines as one of the State's most valuable and fragile natural resources.

(2) By enacting RCW 90.58 the legislature has established a method for accomplishing these purposes. Meeting these purposes is made more straightforward for the City of Kennewick Shoreline Master Program as nearly all the lands in the shoreline management area are publicly owned by the City, the U.S. Army Corps of Engineers or the Port of Kennewick.

(3) This Chapter is intended to implement the provisions of Chapter 90.58 RCW and the implementation guidance provided in Chapters 173-26 and 173-27 WAC. (Ord. 5281 Sec. 1, 2009)

18.68.020: Statement of Applicability:

(1) All proposed uses and development occurring within shoreline jurisdiction of the City of Kennewick must conform to Chapter 90.58 RCW, the Shoreline Management Act, and this Shoreline Master Program.

(2) Compliance with the provisions of this Chapter does not constitute compliance with other federal, state, and local regulations and permit requirements that may be applicable. The applicant is responsible for complying with all applicable requirements, apart from the process established in this Chapter. Where appropriate, the Planning Official will encourage use of information such as permit applications to other agencies or special studies prepared in response to other regulatory requirements to support required documentation submitted for review under this Chapter. (Ord. 5281 Sec. 1, 2009)

18.68.030: Severability: If any clause, sentence, paragraph, section, or part of this Chapter or the application thereof to any person or circumstances shall be judged by any court of competent jurisdiction to be invalid, such order or judgment shall be confined in its operation to the controversy in which it was rendered. The decision shall not affect or invalidate the remainder of any part thereof and to this end the provisions of each clause, sentence, paragraph, section or part of this law are hereby declared to be severable. (Ord. 5281 Sec. 1, 2009)

18.68.040: Definitions: As used in this Chapter, unless the context otherwise requires, the following definitions and concepts apply:

(1) "Applicant" means a person who files an application for permit under this Chapter and who is the owner of the land on which the proposed activity would be located, a contract purchaser, or the authorized agent of such a person.

(2) "Average Grade Level" means 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.

(3) "Best Management Practices" or "BMPs" means conservation practices or systems of practices and management measures that:

(a) Control soil loss and reduce water quality degradation caused by high concentrations of nutrients, animal waste, toxics, and sediment;

- (b) Minimize adverse impacts to surface water and ground water flow and their circulation patterns, and to the chemical, physical, and biological characteristics of wetlands;
- (c) Protect trees and vegetation designated to be retained during and following site construction; and
- (d) Provide standards for proper use of chemical herbicides.

(4) “Boating Facilities” includes: marinas, both backshore and foreshore, dry storage and wet-moorage types; boat launch ramps; covered moorage; boat houses; mooring buoys; and marine travel lifts, but excludes docks serving four or fewer single-family residences (See definition of “Private Docks”).

(5) “Commercial” or “Commercial Development” means those facilities involved in a wholesale or retail business or service. They range from office buildings, hotels, motels, grocery markets, shopping centers, restaurants, gift shops and private or public indoor recreation facilities. Excluded from this category are residential or agriculture, and industry.

(6) “Critical Area” means any area classified in RCW 36.70A and in Appendix A-2 as ecologically sensitive or hazardous areas, including, but not limited to: Wetlands, critical aquifer recharge areas, frequently flooded areas, geologically hazardous areas, and fish and wildlife habitat conservation areas.

(7) “Development” means any activity consisting of construction or exterior alteration of structures, earth movement, dredging, drilling, dumping, filling, excavation, driving of piles, bulk heading, placing of obstructions, clearing of vegetation, or construction of anything which interferes with the normal public use of the surface of the waters overlying lands subject to this Chapter. Development does not include the following activities:

- (a) Interior building improvements;
- (b) Exterior structure maintenance activities, including painting and roofing as long as it does not expand the existing footprint of the structure;
- (c) Routine landscape maintenance of established, ornamental landscaping, such as lawn mowing, pruning and weeding; and
- (d) Maintenance of the following existing facilities that does not expand the affected area: septic tanks (routine cleaning); wells; and individual utility service connections.

(8) “Ecological Functions” or “Shoreline Functions” means 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.

(9) “Ecological Restoration” means 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 [WAC 173-26-020(27)].

(10) “Ecosystem-Wide Processes” means 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.

(11) “Feasible” means that an action, such as a development project, mitigation, or preservation requirement, meets all of the following conditions:

- (a) The action can be accomplished with technologies and methods that have been used in the past in similar circumstances, or studies or tests have demonstrated in similar circumstances that such approaches are currently available and likely to achieve the intended results;
- (b) The action provides a reasonable likelihood of achieving its intended purpose; and
- (c) The action does not physically preclude achieving the project’s intended legal use.

In cases where this Chapter requires certain actions unless they are infeasible, the burden of proving infeasibility is on the applicant.

(12) “Fill” or “Landfill” means the addition of soil, sand, rock, gravel, sediment, earth retaining structure, or other material to an area waterward of the ordinary high water mark, in wetlands, or on shorelands in a manner that raises the elevation or creates dry land.

(13) “Habitat Enhancement” means actions performed within an existing shoreline, critical area or buffer to intentionally increase or augment one or more ecological functions or values. Actions include but are not limited to increasing aquatic and riparian plant diversity or cover, increasing structural complexity, installing environmentally compatible erosion controls, or removing non-indigenous plant or animal species.

(14) “Height” is measured from average grade level to the highest point of a structure: Provided, that television antennas, chimneys, and similar appurtenances shall not be used in calculating height, except where such appurtenances obstruct the view of the shoreline of a substantial number of residences on areas adjoining such shorelines; provided further, that temporary construction equipment is excluded in this calculation.

(15) “Industrial Use” or “Industrial Development” means any activity that is involved in the production, processing, manufacturing, fabrication, or assembling of goods and materials, including the storage of material used in the industrial process, including warehousing, wash-down facilities, blacksmithing, welding, wholesale bakery, recycling facilities and distribution centers. (KMC 18.09.1010 Ord. 5180 Sec. 1, 2007). Industrial Uses or Developments include the following categories:

- (a) Water-dependent (e.g., container shipping by water);
- (b) Water-related (e.g., boat transfer areas for boat repair); and
- (c) Non-water-oriented (Manufacturing facility).

(16) “Joint Use Community Recreational Facilities” is defined as a use that could be for either public or private group use, including use by a private club. The private group could restrict access to community recreational facilities to group members only.

(17) “Marina” is a facility that provides launching, storage, supplies, moorage, and other accessory services for four or more pleasure and/or commercial water craft.

(18) “Mitigation” or “Mitigate” means to avoid, minimize, or compensate for adverse impacts of development to shorelines. Mitigation actions, in order of preference, include:

- (a) Avoiding the impact altogether by not taking a certain action or parts of an action;
- (b) Minimizing impacts by limiting the degree of magnitude of the action and its implementation by using appropriate technology or by taking affirmative steps to avoid or reduce impacts such as project redesign, relocation, or

- timing;
- (c) Rectifying the impact by repairing, rehabilitating or restoring the affected environment;
- (d) Reducing or eliminating the impact over time by preservation and maintenance operations;
- (e) Compensating for the impact by replacing, enhancing, or providing substitute resources or environments; and
- (f) Monitoring the impact and the compensation projects and taking appropriate corrective measures.

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

(19) “Mixed Use” or “Mixed Use Development” means a combination of uses within the same building or site as a part of an integrated development project with functional interrelationships and coherent physical design. Mixed use developments, which incorporate non-water oriented uses, must include water dependent use(s), and provide significant public benefit with respect to the Shoreline Management Act’s objectives such as providing public access and ecological restoration, except for commercial uses whose site is physically separated from the shoreline by another property or public right-of-way, or if the site’s navigability is severely limited, the non-water oriented commercial use shall provide a significant public benefit with respect to the Shoreline Management Act’s objectives such as providing public access and ecological restoration. Finally, Mixed Use Developments should reduce use conflicts by first giving preference to water dependent uses, then to water-related uses and water enjoyment uses, lastly to non-water oriented. The City has determined the Clover Island High Intensity Special Area Plan with associated standards meets this definition.

(20) “Non-water-oriented uses” are those uses that are not water-dependent, water-related, or for water-enjoyment.

(21) “Ordinary High Water Mark” means the point on all water bodies 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 the City or state or federal agencies: provided that in any area where the ordinary high water mark cannot be found, the ordinary high water adjoining fresh water shall be the line of mean high water.

(22) “Person” means an individual, partnership, corporation, association, organization, cooperative, public municipal corporation, or district, or agency of the state or local governmental unit however designated.

(23) “Planning Official” means the City Official for the City of Kennewick Planning Department or other City staff granted the authority to act on behalf of the Planning Official.

(24) “Private Docks” means docks serving four or less residential units. It does not include docks that serve semi-private facilities such as a yacht club or other private membership organization, these types of docks fall under the definition of “boating facilities.”

(25) “Public Access” means 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.

(26) “Recreational Uses” includes the following three categories:

- (a) Water-dependent (e.g., boating facilities, fishing pier, swim rafts) (see also definition of “Recreation Facilities” and “Water-dependent” below);
- (b) Water-enjoyment, (e.g. paths leading to the dock, parks, shoreline educationally themed are water enjoyment) (see also definition of “Recreation Facilities” and “Water-enjoyment” below); and
- (c) Non-water-oriented. Non water-oriented recreational uses are further divided into three subcategories based on their relative impact to the shoreline environment (see also “Water-related” and “Non-water oriented” definitions below):
 - (i) High Intensity recreational uses require substantial development/land modification or large areas of fertilized lawn. Such uses may include but are not limited to camp grounds, sport courts (e.g., tennis/basketball), golf courses, sport fields (e.g., ball park), aquatic centers, or skateboard parks;
 - (ii) Moderate Intensity recreational uses are typified by formal parks for passive recreation requiring some modification of natural conditions, limited paving and often including accessory structures (e.g., picnic shelters, restrooms, viewing galleries, gazebos, and playground equipment; and
 - (iii) Low Intensity recreational uses are passive in nature (e.g., walking, photography, wildlife viewing) and require very minimal alteration of natural conditions. Such uses/modifications may include but are not limited to non-motorized, non-impervious surface trails, vista points, wildlife viewing areas, picnic tables, and benches.

(27) “Recreation Facilities” are facilities such as parks, trails and pathways, campgrounds, and swim rafts that provide a means for relaxation, play, or amusement.

(28) “Restoration” or “Restore” means the reestablishment or upgrading of impaired ecological shoreline processes or functions. This may be accomplished through measures including, but not limited to, re-vegetation, 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.

(29) “Shall” means a mandate; the action must be done.

(30) “Should” means that the particular action is required unless there is a demonstrated, compelling reason, based on policy of the Shoreline Management Act and this Chapter, against taking the action.

(31) “Shorelands” or “Shoreland Areas” means: those lands extending landward for two hundred feet in all directions as measured on a horizontal plane from the ordinary high water mark; floodways and contiguous floodplain areas landward two hundred feet from such floodways; and all wetlands and river deltas associated with the streams, lakes, and tidal waters which are subject to the provisions of the Shoreline Management Act and this Chapter; the same to be designated as to location by Ecology.

(32) “Shoreline Master Program” means the comprehensive shoreline plan for the City and associated land use regulations together with maps, diagrams, charts or other descriptive material and text, developed in accord with RCW 90.58.020.

(33) “Shoreline Stabilization – Replacement” means the construction of a new structure to perform a shoreline stabilization function of an existing structure which can no longer adequately serve its purpose. Additions to or increases in size of existing shoreline stabilization measures shall be considered new structures.

(34) “Shorelines” means all of the water areas of the State, including reservoirs, and their associated wetlands, together with the lands underlying them, except:

- (a) Shorelines of state-wide significance (see definition below);
- (b) Shorelines on segments of streams upstream of a point where the mean annual flow is 20 cubic feet per second or less and the wetlands associated with such upstream segments; and
- (c) Shorelines on lakes less than 20 acres in size and wetlands associated with such small lakes.

(35) “Shorelines of State-Wide Significance” means those shorelines of the State defined in RCW 90.58.030(2)(e) including:

- (a) Those lakes, whether natural, artificial or a combination thereof, with a surface acreage of 1,000 acres or more measured at the ordinary high water mark;
- (b) Those natural rivers or segments located east of the crest of the Cascade Range downstream of a point where the annual flow is measured at 200 cubic feet per second or more, or those portions of rivers east of the crest of the Cascade Range downstream from the first 300 square miles of drainage area, whichever is longer; and
- (c) Those shorelands associated with (a) and (b) of this subsection.

(36) “Shorelines of the State” are the total of all “shorelines” and “shorelines of state-wide significance” within the State.

(37) “Shoreline Modification” means those actions that modify the physical configuration or qualities of the shoreline area, usually through the construction of a physical element such as a levee, breakwater, pier, weir, dredged basin, fill, bulkhead, or other shoreline structure. They can include other actions, such as clearing, grading, or application of chemicals.

(38) “Shoreline Stabilization Replacement” means the construction of a new structure to perform a shoreline stabilization function of an existing structure which can no longer adequately serve its purpose. Additions to, or increases in, size of existing shoreline stabilization measures shall be considered new structures.

(39) “Structure” means that which is built or constructed. A structure is an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner, which requires an approval (KMC 18.09.2040).

(40) “Substantial Development” means any development of which the total cost or fair market value exceeds \$5,718 per 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. Under current law, the dollar threshold will be recalculated every five years by the Office of Financial Management (OFM). OFM will post updated dollar thresholds in the Washington State Register. The Legislature can change the dollar threshold at any time.

(41) “Water-Dependent Use” means a use or a portion of a use which cannot exist in any other location and 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 boat docks, boat fueling stations, instream structures, fishing, boat launching, swimming, and water intake and outfall discharges/pipes.

(42) “Water-Enjoyment Use” means a recreational use or other use that facilitates public access to the shoreline as a primary characteristic of the use; or a use that provides for recreational use or aesthetic enjoyment of the shoreline for a substantial number of people as a general characteristic of the use and which through location, design, and operation ensures the public's ability to enjoy the physical and aesthetic qualities of the shoreline. In order to qualify as a water-enjoyment use, the use must be open to the general public and the shoreline-oriented space within the project must be devoted to the specific aspects of the use that fosters shoreline enjoyment (as defined in WAC 173-26-020). Water-enjoyment uses may include, but are not limited to:

- (a) Parks with activities enhanced by proximity to the water;
- (b) Trails, and other improvements that facilitate public access to shorelines of the State;
- (c) Restaurants with water views and public access improvements;
- (d) Retail establishments with water views and public access improvements;
- (e) Museums with an orientation to shoreline topics;
- (f) Scientific/ecological reserves;
- (g) Resorts with uses open to the public and that provide public access to the shoreline; and
- (h) Any combination of those uses listed above.

(43) “Water-Oriented Use” means a use that is water-dependent, water-related, or water-enjoyment, or a combination of such uses.

(44) “Water-Related Use” means a use or portion of a use which is not intrinsically dependent on a waterfront location but whose economic viability is dependent upon a waterfront location because:

- (a) The use has a functional requirement for a waterfront location such as the arrival or shipment of materials by water or the need for large quantities of water; or
- (b) The use provides a necessary service supportive of the water-dependent uses and the proximity of the use of its customers makes its services less expensive and/or more convenient. (Ord. 5281 Sec. 1, 2009)

18.68.050: Special Policy Goals – Shorelines of Statewide Significance: In recognition of the Columbia River, a Shoreline of Statewide Significance, the following Special Policy Goals listed in order of preference have been established for use in implementing the City’s Shoreline Regulations. Preference shall be given to uses which:

- (1) Recognize and protect state-wide interest over local interest;
- (2) Preserve the natural character of the shoreline;
- (3) Result in long-term over short-term benefit;
- (4) Protect the resources and ecology of the shorelines;
- (5) Maintain and enhance public access to the shorelines;
- (6) Increase recreational opportunities for the public on the shorelines;
- (7) Promote and enhance public interest;

- (8) Protect public rights of navigation;
- (9) Preserve and protect culturally significant features; and
- (10) Provide, whenever feasible, all necessary accommodations to enhance the participation and enjoyment of persons with special needs. (Ord. 5281 Sec. 1, 2009)

18.68.060: Goals – Shoreline Development Elements: The following goals have been developed in response to various elements of shoreline development and are provided to guide implementation of this Chapter:

(1) Economic Development Element. Encourage economic development, with emphasis on water-oriented commercial and recreational uses in a manner that will provide for the orderly development of Clover Island and areas adjacent to the Corps of Engineer's levee in a harmonious manner which accentuates and enhances Lake Wallula.

(2) Public Access Element. On Clover Island, improve public access to designated areas of Lake Wallula for recreational uses as indicated in the Clover Island High Intensity Special Area Plan Standards (Appendix A-6). Maintain areas along Columbia Park, the levee and Duffy's Pond by which the public can reach Lake Wallula and Duffy's Pond for fishing, viewing and other public access purposes. Maintain access to the park and levee using pedestrian and bicycle bridges.

(3) Recreational Element. Enhance the recreational facilities potential of the shorelines. Clover Island recreational uses should complement existing and proposed developments. Maintain and enhance recreational facilities along Columbia Park and the levee to provide diversification in recreational uses.

(4) Circulation Element. Circulation to the levee and the Clover Island causeway should be improved for ease of access and should include adequate off-street parking facilities to serve the people who will be using area for recreational and commercial purposes. Maintain and enhance, where appropriate, circulation and access within Columbia Park.

(5) Shoreline Use Element. Assure that the various land uses are compatible and aimed toward maximum utilization without diminishing the quality of the environment. Shorelines abutting the levee area should take advantage of the presence of Lake Wallula and should be oriented in a manner to coordinate lakefront uses and non-lakefront uses.

(6) Conservation Element. Enhance the aesthetic characteristics and environmental functions and values of the levee, Duffy's Pond, Clover Island and Columbia Park areas and take necessary steps to conserve the natural setting of those shoreline areas which are presently in an undeveloped state.

(7) History, Scientific and Cultural Element. Establish areas on or near the levee and Columbia Park which will have a cultural, educational, historical or scientific value and protect these areas in a proactive and substantive way.

(8) Flood Prevention Element. Assure that, whenever feasible, steps are taken to prevent and/or minimize the risk of flood and associated flood damages to property and land uses. (Ord. 5281 Sec. 1, 2009)

18.68.070: Policies – Environment Designation of Shorelines:

(1) The City of Kennewick environment designation (ED) classification system consists of three shoreline environments. These environment designations have been established based on the findings in the Shoreline Inventory and Assessment Report of 2005.

The delineation of each environment has been aimed to assure the protection of existing shoreline ecological functions. Such designations are consistent with policies for restoration of degraded shorelines, and aquatic and riparian habitat enhancement. The three shoreline environments are:

- (a) Aquatic;
- (b) Clover Island High Intensity; and
- (c) Urban Conservancy.

(2) These shoreline environments are based on those provided in the State guidelines and include designation criteria and management policies that recognize the unique characteristics of Kennewick and specific areas of the shoreline. The areas within each environment are publically owned.

(3) The boundary of the designated shoreland areas shall be governed by the criteria set forth in RCW 90.58.030 and WAC 173-22-040 except that the City will amend the Shoreline Master Program to reflect the new designation within three years of the discovery of any discrepancy.

(4) All areas within shoreline jurisdiction that are not mapped and/or designated are automatically assigned an Urban Conservancy Environment Designation until the shoreline can be redesignated through the Shoreline Master Program amendment.

(5) The following policies apply to lands falling under the respective Environment Designation:

- (a) "Aquatic" Environment.

- (i) Purpose. The purpose of the "Aquatic" environment is to protect, restore, and manage the unique characteristics and resources of the areas waterward of the ordinary high water mark.

- (ii) Management policies.

- (A) New over-water structures are allowed only for water-dependent uses, public access, or ecological restoration. (WAC 173-26-211(5)(c)(ii)(A)).

- (B) The size of new over-water structures shall be limited to the minimum necessary to support the structure's intended use.

- (C) In order to reduce the impacts of shoreline development and increase effective use of water resources, multiple uses of over-water facilities are encouraged.

- (D) All developments and uses on navigable waters or their beds shall 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.

- (E) Uses that adversely impact the ecological functions of critical freshwater habitats shall not be allowed except where necessary to achieve the objectives of RCW 90.58.020, and then only when their impacts are mitigated according to the sequence described in Appendix A-2, Critical Areas, and consistent with this Shoreline Master Program and RCW 90.58, the Shoreline Management Act, as necessary to assure no net loss of ecological functions.

- (F) Shoreline uses shall be designed and managed to minimize degradation of water quality and alteration of natural hydrographic conditions.
- (iii) Designation Criteria.
 - (A) The “Aquatic” environment designation is assigned to lands within the City that are located waterward of the ordinary high water mark.
- (b) “Clover Island High Intensity” Environment.
 - (i) Purpose.
 - (A) The purpose of the Clover Island “High Intensity” environment is to continue to provide economic development and recreation opportunities that add to the existing water dependent uses, and public access and view opportunities via a mix of high-intensity water-oriented and non-water oriented commercial, multi-family residential, and transportation uses while providing additional public access, improved aesthetic quality, enhanced aquatic and nearshore ecological functions and maintaining view corridors consistent with the Clover Island High Intensity Special Area Plan Standards (Appendix A-6).
 - (ii) Management Policies.
 - (A) The Clover Island High Intensity Environment has been determined by the City to be a special area plan per WAC 173-26-211(5)(d)(ii)(A) and 173-26-201(3)(d)(ix). The Clover Island master plan goals, objectives and master plan elements are consistent with the goals, policies and objectives of the City’s Shoreline Master Program. It is intended that the detail outlined in this Chapter (KMC 18.68) and development, enhancement and public access standards provided in Appendix A-6 will control development on Clover Island.
 - (B) The Clover Island High Intensity Special Area Plan Standards and this Shoreline Master Program give priority to water-dependent uses. The City recognizes the many existing Clover Island water-dependent uses, including but not limited to existing marinas, boat launch, boat docks, and the fuel docking station. The Shoreline Master Program also gives priority to water-related and water-enjoyment uses, including existing and planned public viewing areas of the river and nearshore environment. Non water-oriented uses are only allowed as part of the mixed use development, consistent with the Clover Island High Intensity Special Area Plan Standards. Nonwater-oriented uses shall not conflict with existing and planned Clover Island water-oriented and water dependent uses, and must in all cases maintain and/or provide public access to the shoreline per the path/trail system and public viewing areas consistent with the Clover Island High Intensity Special Area Plan Standards, and accompanying development as it occurs.

- (C) Multi-family and multi-lot residential and recreational developments shall provide public access and may provide the joint use community recreational facilities.
 - (D) Access, utilities, and public services shall be made available and sized adequately to serve existing needs and future development.
 - (E) Enhancement of shoreline ecological functions shall coincide with new development. Implementation of the aquatic and nearshore habitat enhancement standards, as required in this Chapter and the Clover Island High Intensity Special Area Plan Standards shall accompany new development and comply with relevant local, state, and federal law. Accompany, in this case, means within twelve months of completion of a new development project, the shoreline adjacent to the new development shall be enhanced consistent with the Clover Island High Intensity Special Area Plan Standards as identified in Appendix A-6-4. Enhancement work will be conducted within the work window specified in applicable federal and state permits (typically late fall/winter time period).
 - (F) Visual and physical public access to shorelines shall be maintained, dedicated, improved and enhanced consistent with the Clover Island High Intensity Special Area Plan Standards (identified in Appendix A-6-1 through A-6-3), and WAC 173-26-221(4)(d) and KMC 18.68.110(2)(e).
- (iii) Designation Criteria.
- (A) The “Clover Island High Intensity” environment designation is assigned only to Clover Island, which currently supports high-intensity and water-dependent uses related to commerce, transportation and navigation. This environment designation is suitable and planned for additional high-intensity water dependent, water-oriented, and non-water oriented uses, as part of mixed use development such as multi-family residential and commercial, while maintaining and enhancing public access, view corridors, and aquatic and nearshore habitat enhancement consistent with the Clover Island High Intensity Special Area Plan Standards.
- (c) “Urban Conservancy” Environment.
- (i) Purpose. The purpose of the “Urban Conservancy” Environment is to protect and restore ecological functions of open space, flood plain and other sensitive lands where they exist in urban and developed settings, while allowing a variety of compatible uses.
 - (ii) Management Policies.
 - (A) Uses that preserve the natural character of the area or promote preservation of open space, flood plain or sensitive lands either directly or over the long term should be the primary allowed uses. Uses that result in restoration or enhancement of ecological functions will be allowed if the use is otherwise

- compatible with the purpose of the environment and the setting.
- (B) Assure no net loss of shoreline ecological processes or functions occurs as a result of new development.
- (C) The location and design of new development shall provide for public access and public recreation opportunities whenever feasible and when significant ecological impacts can be mitigated.
- (D) Water-oriented uses shall be given priority over non water-oriented uses. For shoreline areas adjacent to commercially navigable waters, water-dependent uses shall be given highest priority.
- (iii) Designation Criteria.
 - (A) An “Urban Conservancy” Environment designation is assigned to shoreline areas within the City that are appropriate and planned for development that is compatible with maintaining or restoring the ecological functions of the area, that are not generally suitable for water-dependent uses, or if any of the following characteristics apply:
 - (I) They are suitable for water-related or water-enjoyment uses;
 - (II) They are open space, flood plain or other sensitive areas that should not be more intensively developed;
 - (III) They have potential for ecological restoration;
 - (IV) They retain important ecological functions, even though partially developed; or
 - (V) They have the potential for development that is compatible with ecological restoration. (Ord. 5281 Sec. 1, 2009)

PART II – LAND USE REQUIREMENTS

18.68.110: General Shoreline Master Program Provisions:

- (1) Applicability. The provisions of this section shall apply to all shorelines within the City, regardless of Environment Designations assigned in Section 18.68.070 of this Chapter. The provisions of this section shall apply to all proposed new development and uses.
- (2) General Provisions.
 - (a) Archaeological and Historic Resources.
 - (i) Applicability. The provisions of this subsection apply to archaeological and historic resources located within shoreline jurisdiction that are either recorded at the State Department of Archaeology and Historic Preservation and/or by local jurisdictions or those that are inadvertently discovered. Archaeological sites within shoreline jurisdiction are subject to 27.44 RCW and 27.53 RCW and development or uses that may impact such sites shall comply with Chapter 25-48 WAC as well as the provisions of this Chapter.

- (ii) Principles. Due to the limited and irreplaceable nature of the resource(s), the objective of this section is to prevent the destruction of, or damage to, any site having historic, cultural, scientific, or educational value as identified by the appropriate authorities, including affected Indian tribes, and the State Department of Archaeology and Historic Preservation.
 - (iii) Standards. The following standards shall apply to development in shoreline jurisdiction:
 - (A) Developers and/or property owners shall immediately stop work and notify the Planning Department, the State Department of Archaeology and Historic Preservation, and affected Indian tribes if archaeological resources are uncovered during excavation.
 - (B) Permits for development in areas documented to contain archaeological resources shall require a site inspection or evaluation by a professional archaeologist in coordination with affected Indian tribes.
- (b) Critical Areas.
- (i) Applicability. Pursuant to the provisions of RCW 90.58.090(4), as amended by ESHB 1933, this Shoreline Master Program provides for management of critical areas designated as such pursuant to RCW 36.70A.170(1)(d) and required to be protected pursuant to WAC 173-26-221(2) and (3) and RCW 36.70A.060(2) that are located within shorelines of the State. Policies and regulations that are adopted under this Chapter shall be: (1) consistent with the specific provisions of 173-26-221(2) WAC and 173-26-221(3) WAC and the policies and goals of this Chapter; and (2) provide a level of protection to critical areas within the shoreline area that is at least equal to that provided by the Kennewick Shoreline Critical Areas Regulations in Appendix A-2.
 - (ii) Principles. The following are objectives of the provisions of this subsection:
 - (A) In addressing issues related to critical areas, the most current, accurate, and complete scientific and technical information available will be used;
 - (B) In protecting and restoring critical areas within shoreline jurisdictions, the full spectrum of planning and regulatory measures shall be integrated;
 - (C) Existing ecological functions and ecosystem-wide processes shall be protected and restoration of degraded ecological functions and enhancement of ecosystem-wide processes shall be encouraged; and
 - (D) Human uses and values that are compatible with other objectives of this Chapter shall be encouraged, such as public access and aesthetic values, provided they do not significantly adversely impact ecological functions.

- (iii) Standards. The following standards shall apply to development in shoreline jurisdiction:
 - (A) Where critical areas are identified within shoreline jurisdiction, all proposed uses and development shall be subject to the administrative provisions of this Chapter, and shall comply with the development standards required by critical areas regulations in Appendix A-2;
 - (B) Applicants for proposed development within or adjacent to critical areas within shoreline jurisdiction shall demonstrate compliance with critical areas regulations in Appendix A-2 as part of shoreline or other permit reviews, and submit all relevant documentation with the permit application(s); and
 - (C) Applicants for proposed development within or adjacent to critical areas within shoreline jurisdiction shall demonstrate compliance with KMC 18.72 Clearing & Grading in Appendix A-8 as part of shoreline Substantial Development Permit or other permit reviews, and submit all relevant documentation.
- (iv) Exceptions. The provisions of Kennewick Critical Areas Regulations do not extend Shoreline Jurisdiction beyond the limits specified in this Shoreline Master Program. For regulations addressing critical area buffer areas that are outside Shoreline Jurisdiction, see Kennewick Critical Areas Regulations in KMC 18.59 through 18.63.
- (c) Geologically Hazardous Areas.
 - (i) Applicability. The provisions of this section apply to geologic hazards within the shoreline jurisdiction.
 - (ii) Standards. Development in designated geologically hazardous areas located in shoreline jurisdiction shall be regulated in accordance with the following:
 - (A) Development shall comply with Appendix A-2, Chapter 5, of this Chapter;
 - (B) New development or the creation of new lots that would cause foreseeable risk or adverse impacts from geological conditions to people or improvements during the life of the development shall be prohibited;
 - (C) New development that would require structural shoreline stabilization over the life of the development shall be prohibited. For Clover Island High Intensity Environment, structural shoreline stabilization, as necessary, shall be accompanied by habitat enhancement to improve riparian and nearshore habitat functions. Exceptions may also be made for the limited instances where stabilization is necessary to protect allowed uses where no alternative locations are available and no net loss of ecological functions will result as found in Section 18.68.120(3)(a). Proposed stabilization measures shall recognize the principles found in WAC 173-26-231(3)(a)(ii) and shall conform to standards found in WAC 173-26-231(3)(a)(iii)(A-F); and

- (D) Where no alternatives, including relocation or reconstruction of existing structures, are found to be feasible, and less expensive than the proposed stabilization measure, stabilization structures or measures to protect existing residential structures may be allowed in strict conformance with the requirements of WAC 173-26-231 and then only if there is no net loss of ecological functions.
- (d) Flood Hazard Reduction.
- (i) Applicability. The provisions of this subsection apply to actions taken to reduce flood damage or hazard and to uses, development, and shoreline modifications that may increase flood hazards in shoreline jurisdiction.
 - (ii) Principles. The following are objectives of the provisions of this subsection:
 - (A) Where feasible, preference shall be given to non-structural flood hazard reduction measures over structural measures;
 - (B) In managing flood hazards within shoreline jurisdiction, the full spectrum of planning and regulatory measures shall be integrated;
 - (C) Flood hazard reduction measures shall, with appropriate mitigation sequencing, result in no net loss of ecological functions;
 - (D) Where feasible, efforts to return stream corridors to more natural hydrological conditions shall be encouraged; it is recognized that seasonal flooding is an essential natural process;
 - (E) When evaluating alternate flood control measures, removal or relocation of structures in flood-prone areas shall be considered; and
 - (F) Encourage planning for and facilitating removal of restrictions to off channel hydrological connections consistent with actions identified in the Shoreline Restoration Plan (Appendix A-4 to this Chapter).
 - (iii) Standards. The following standards shall apply to development in shoreline jurisdiction:
 - (A) Development in flood plains shall not significantly or cumulatively increase flood hazard nor be inconsistent with Shoreline Critical Areas Regulations in Appendix A-2 and the Flood Damage Prevention Ordinance KMC 18.66 (Appendix A-7). New development or new uses in shoreline jurisdiction, including the subdivision of land, shall not be established when it would be reasonably foreseeable that the development or use would require structural flood hazard reduction measures;
 - (B) Where frequently flooded areas are identified as a Critical Area within shoreline jurisdiction, all proposed uses and development shall be subject to administrative provisions of

this Chapter, and shall comply with development standards required by Shoreline Critical Areas Regulations in Appendix A-2, and the Flood Damage Prevention Ordinance KMC 18.66 (Appendix A-7);

- (C) New structural flood hazard reduction measures shall be allowed in shoreline jurisdiction only when it can be demonstrated by scientific and engineering analysis that they are necessary to protect existing development, that nonstructural measures are not feasible, that impacts to ecological functions can be successfully mitigated so as to assure no net loss, and that appropriate vegetation conservation actions will be undertaken consistent with WAC 173-26-221(5). Structural flood hazard reduction measures shall be consistent with KMC 18.66;
 - (D) New structural flood hazard reduction measures shall be placed landward of wetlands and vegetation conservation areas, and shall comply, as applicable, with Shoreline Critical Areas Regulations, Appendix A-2, Flood Damage Prevention Ordinance KMC 18.66, WAC 173-26-221(3)(c)(iii) and the provisions of this Chapter;
 - (E) New structural flood hazard reduction measures, such as dikes and levees, shall be designed to include and improve public access pathways unless public access improvements would cause unavoidable health or safety hazards to the public, inherent and unavoidable security problems, unacceptable and unmitigable significant ecological impacts, unavoidable conflict with the proposed use, or a cost that is disproportionate and unreasonable to the total long-term cost of the development;
 - (F) Removal of gravel for flood management purposes shall be consistent with Shoreline Critical Areas Regulations, Appendix A-2, KMC 18.66 and the provisions of this Chapter, and shall be allowed only after a biological and flood management study demonstrates the 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.
- (e) Public Access.
- (i) Applicability. The provisions of this subsection apply to development in shoreline jurisdiction.
 - (ii) Principles. The following are the objectives of the provisions of this subsection:
 - (A) The public interest shall be promoted with regard to rights to access waters held in public trust by the State while protecting private property rights and public safety;
 - (B) The rights of navigation and space necessary for water-dependent uses shall be protected;

- (C) To the greatest extent feasible consistent with the overall best interest of the State and the people generally, the public's opportunity to enjoy the physical and aesthetic qualities of shorelines of the State, including views of the water, shall be protected; and
 - (D) Uses and the location, design, and construction of development in the shoreline jurisdiction shall, whenever feasible, minimize interference with the public's use of the water.
- (iii) Standards. The following standards shall apply to development in the shoreline jurisdiction:
- (A) All new development by public entities, including local government, port districts, state agencies, and public utility districts, shall include public access measures as part of each development project, unless such access is shown to be incompatible for safety, security, or impact to the shoreline environment reasons.

For Clover Island, public access must be consistent with the Clover Island High Intensity Special Area Plan Standards (see Appendix A-6). Planned public access improvement specified by the pathways identified in Appendix A-6-2 exhibit (Public Access) shall be made within 12 months of build out of the following lots, as specified in the Appendix A-6-3 (Building Heights) exhibit:

 - (I) West and northwest (Causeway and "notch") and adjacent interior pathways will be completed proportionately within 12 months of Parcels A, B and C and Lot 1 completing build out;
 - (II) North shoreline pathway (from west edge of Lot 2, and Lots 3-11, 30, and 31) will be completed proportionately within 12 months of Lots 2 through 5 completing build out; and
 - (III) South shoreline and interior pathway (due south of "notch") will be completed within 12 months of eastern half of Lot 15 and Lots 16 through 18 completing build out.
 - (IV) Public access shall be provided along the south shoreline for eastern lot 13 through western half of Lot 15 as provided for in permitted Yacht Club development.
 - (V) Long term shoreline pathway around east end of island (Lots 29 through 32) shall be phased in with any proposed improvements on those lots and/or shoreline stabilization occurring on Clover Island.
 - (B) New structural public flood hazard reduction measures, such as dikes and levees, shall dedicate and improve public access pathways unless public access improvements would cause

unavoidable health or safety hazards to the public, inherent and unavoidable security problems, unacceptable and unmitigable significant ecological impacts, unavoidable conflict with the proposed use, or a cost that is disproportionate and unreasonable to the total long-term cost of the development;

- (C) All new development for water enjoyment, and water-related and nonwater-dependent uses and for subdivisions of land into more than four parcels or sections of leased lands, shall include dedicated and improved public access proposal measures and which shall be recorded with final site plan, unless such access is shown to be incompatible for reasons of safety, security, or impact to the shoreline environment, or where such measures are shown to be infeasible or alternative measures are shown to be more desirable. In determining the infeasibility, undesirability, or incompatibility of public access in a given situation, the applicant shall analyze and propose alternative methods of providing public access, such as off-site improvements, viewing platforms, separation of uses through site planning and design, and restricting hours of public access. The City Planning Official will then consider these alternative methods in a final permit decision.

For the Clover Island High Intensity Environment, developments and uses shall maintain and, where specified, enhance public access and view corridors consistent with the Clover Island High Intensity Special Area Plan Standards (Appendix A-6);

- (D) All new development shall comply with the 35 feet height limitation, except for development provided in the Clover Island High Intensity Environment, where the development shall be consistent with the Clover Island High Intensity Special Area Plan Standards. Building or structures more than 35 feet above the ordinary high water mark in the Urban Conservancy and Aquatic Environments shall be processed through a Conditional Use Permit.

For the Clover Island High Intensity Environment, the City has determined that development will not obstruct views for a substantial number of residences on the adjoining state shoreline, as the existing levee currently blocks the entire shoreline view for existing residences. This is also true for the other residences south of the levee that extends along the entire shoreline of Segments D and E (Appendix A-1) For the Clover Island High Intensity Environment, the view corridors and viewpoints established in the Clover Island High Intensity Special Area Plan Standards (Appendix A-6-1) will be preserved, and development will remain within the established heights.

The Clover Island High Intensity Special Area Plan Standards will serve the public interest by providing economic development, enhancing public access, maintaining specified on-island view corridors, and providing for enhanced aquatic and riparian habitat. Therefore, areas specified in the Clover Island High Intensity Special Area Plan Standards that exceed 35 feet in height on the island are allowed through the Substantial Development Permit process, consistent with other established standards for view, public access and habitat enhancement (see Appendix A-6).

Specifically, according to WAC 173-27-160, the City has determined that, for the Clover Island High Intensity Environment, as specified in the City-adopted master plan and Clover Island High Intensity Special Area Plan Standards (Appendix A-6), that the:

- (I) Proposed uses are consistent with the policies of RCW 90.58.020 and the Shoreline Master Program;
 - (II) Proposed uses will not interfere and will actually enhance the normal public use of public shorelines;
 - (III) Proposed uses and design of the project are compatible with other authorized uses within the area and with uses planned for the area under the City's Comprehensive Plan and Shoreline Master Program;
 - (IV) Proposed uses will cause no significant adverse effects and actually will enhance the shoreline environment in which it is to be located;
 - (V) Public interest will suffer no detrimental impacts and actually will benefit from the planned improvements; and
 - (VI) Cumulative impacts are addressed in Appendix A-5.
- (E) As part of any master plan or proposal, other than those specified in the Clover Island High Intensity Special Area Plan Standards, for structures over 35 feet in height, an applicant shall be required to submit a view analysis and cumulative impacts analysis that reviews residential obstruction(s) to allow the City to determine whether development under the master plan or proposal obstructs a substantial number of residences (RCW 90.58.320). Structures over 35 feet, other than those specified in the Clover Island High Intensity Special Area Plan Standards, shall be approved only through a Conditional Use Permit process according to Section 18.68.240 of this Chapter and WAC 173-27-160. Designs shall protect visual access to the water from onshore. Shoreline view corridors shall be protected through incorporation of appropriate design (e.g., modulation of building heights and massing) and location of new development. Potential impacts to views shall be minimized

through location and orientation of development on the subject property. The applicant shall:

- (I) Incorporate a view analysis using photographs, videos, photo-based simulations, or computer-generated simulations. The view analysis shall assess and portray visual access from mainland residences adjoining the shoreline. In all cases, photographs, videos, land use, land cover, or other sources of information shall be no older than 12 months prior to submittal of the application. All photographic, video or simulated view representations will employ equipment that produces imagery with an angle of view equivalent to that achievable with a 35 mm “normal” camera lens, i.e., an angle of view of about 50°.

To document any possible obstruction of existing or potential residential views by proposed development in the Urban Conservancy Environment designation, a minimum of three pictures shall be taken from residences or potential residential lots at a radius of 400 feet from the proposed development at equal distances from each other and toward the shoreline;

- (II) Ensure that the view analysis is cumulative in nature by including vacant existing parcels of record as well as existing structures. Vacant parcels of record shall be assumed to be developed and, as such, their structures to be in compliance with the 35-foot height limitation as established through photographs, videos, photo-based simulations, or computer-generated simulations;
- (III) If demonstrated through photographs, videos, photo-based simulations, or computer-generated simulations that the proposed development will obstruct less than 30% of the view of the shoreline enjoyed by a substantial number of residences on areas adjoining such shorelines, then the development may be considered through the conditional use process;
- (IV) In consideration of the potential view obstruction resulting from the proposed structure, side yard setbacks may need to be increased. No side yard setbacks shall be reduced to accommodate the proposed structure; and
- (V) To address “overriding considerations of the public interest” the applicant shall provide a cumulative impacts analysis that documents the public benefits served by issuance of a Conditional Use Permit. The analysis shall address such considerations as cumulative view obstruction results of height adjustments (within a 1,000-foot radius) of the proposed development combined with those of other developments that exceed

the 35-foot height limitation, environmental benefits (enhancement or restoration), public access/open space benefits, and economic benefits. The cumulative impact analysis shall address overall views that are lost, compromised, and/or retained; available view corridors; and surface water views lost, compromised, and/or retained.

- (F) Public access improvements shall not result in a net loss of shoreline ecological functions; and
 - (G) Signage shall be in conformance with Section 18.68.130(3)(i) of this Chapter and the zoning code (KMC 18.24). All signs shall be located and designed to minimize interference with view corridors and visual access to the shoreline.
- (f) Shoreline Vegetation Conservation, Restoration, and Enhancement.
- (i) Applicability. Vegetation conservation includes activities to protect, restore or enhance vegetation along or near shorelines that contribute to ecological functions. The provisions of this subsection apply to all proposed development and uses in shoreline jurisdiction.
 - (ii) Principles. The following are the objectives of the provisions of this subsection:
 - (A) Scientific and technical information shall be used in addressing issues related to vegetation conservation;
 - (B) In protecting and restoring vegetation within shoreline jurisdiction, the full spectrum of planning and regulatory measures shall be integrated; and
 - (C) Existing ecological functions and ecosystem-wide processes shall be protected, and restoration of degraded ecological functions and ecosystem-wide processes shall be encouraged;
 - (iii) Standards. The following standards shall apply to development in shoreline jurisdiction:
 - (A) The design, construction and location of proposed new development and uses shall follow those goals, policies and guidelines set out in the Shoreline Critical Areas Ordinance (Appendix A-2);
 - (B) The design, construction and location of proposed new development and uses shall, wherever feasible, avoid and minimize the removal or damage of existing native vegetation;
 - (C) At a minimum, the Applicant shall consult shoreline management assistance materials provided by Ecology and Management Recommendations for Washington's Priority Habitats, prepared by the Washington State Department of Fish and Wildlife, where applicable;
 - (D) Selective pruning of trees for safety and view protection may be allowed, establishing up to a 50% total view corridor. In the case where another view corridor has been specified in federal and/or state permits as beneficial for aquatic and terrestrial species, these provisions would apply. No topping shall be

- allowed unless approved by the Planning Official. The removal and control of noxious weeds is authorized. Removal of noxious weeds and/or invasive species shall be incorporated in vegetation management plans, as necessary, to facilitate establishment of a stable community of native plants;
- (E) Vegetation removal not associated with a development permit application requires the submittal and approval of a mitigation and management plan prepared by a qualified biologist, and must be consistent with the provisions of this section; and
 - (F) Clover Island High Intensity – Vegetation planting for the aquatic and shoreline habitat enhancement plan, shall be consistent with the native vegetation and planting specifications provided in the Clover Island High Intensity Special Area Plan Standards (Appendix A-6-4) and consistent with provisions in applicable federal and state permits.
- (g) Water Quality, Storm Water, and Nonpoint Pollution.
- (i) Applicability. The provisions of this subsection apply to all development and uses in shoreline jurisdiction that affect water quality.
 - (ii) Principles. The following are the objectives of the provisions of this subsection:
 - (A) Impacts to water quality and storm water quantity that would result in a net loss of shoreline ecological functions, a significant impact to aesthetic qualities, or recreational opportunities, shall be prevented wherever feasible; and
 - (B) Shoreline management provisions and other regulations that address water quality and storm water quantity, including public health, storm water, and water discharge standards, shall be integrated as feasible into permits issued under this Chapter.
 - (iii) Standards.
 - (A) All development activities approved under this Shoreline Master Program shall be designed and maintained consistent with the City’s Stormwater Management Plan and Engineering Design Standards. Stormwater control and discharges shall be in compliance and maintained according to the Ecology Stormwater Manual for Eastern Washington.
 - (B) Shoreline use and development shall minimize the need for chemical fertilizers, pesticides or other similar chemical treatments to prevent contamination of surface and ground water and/or soils and adverse effects on shoreline ecological functions and values.
 - (C) All development in shoreline jurisdiction must meet all applicable local, state, and federal water quality protection standards and requirements and prevent impacts to water quality and storm water quantity that would result in a net loss of shoreline ecological functions and prevent significant

impacts to aesthetic qualities or recreational opportunities.
(Ord. 5281 Sec. 1, 2009)

18.68.120: Shoreline Modifications:

- (1) Applicability. The provisions of this section apply to all shoreline modifications within shoreline jurisdiction.
- (2) Principles. The following are the objectives of the provisions of this section:
 - (a) Shoreline modifications for the Clover Island High Intensity Environment shall be consistent with the Clover Island High Intensity Special Area Plan Standards (Appendix A-6-4) and shoreline stabilization standards established in Section 18.68.120(3)(a);
 - (b) Structural shoreline modifications shall be allowed only where they are demonstrated to be necessary to support or protect an allowed structure, 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;
 - (c) Shoreline modifications shall be allowed only when appropriate to the specific type of shoreline and environmental conditions for which they are proposed;
 - (d) Shoreline modifications, individually and cumulatively, shall not result in a net loss of ecological functions; preference shall be given to shoreline modifications that have a lesser impact on ecological functions, and mitigation shall be required for identified adverse impacts resulting from shoreline modifications;
 - (e) Where applicable, scientific and technical information shall be used in planning for shoreline modifications;
 - (f) Restoration or enhancement of ecological functions shall be encouraged where feasible and appropriate, while accommodating permitted uses, and all feasible measures to protect ecological functions and ecosystem-wide processes shall be incorporated. For the Clover Island High Intensity Environment, enhancement shall be consistent with the Clover Island High Intensity Special Area Plan Standards (Appendix A-6) and provisions in applicable federal and state permits; and
 - (g) Significant ecological impacts shall be mitigated as defined in this Chapter and according to the mitigation sequence in Appendix A-2.
- (3) Standards for Specific Shoreline Modifications.
 - (a) Shoreline Stabilization.
 - (i) Shoreline stabilization measures include the following:
 - (A) Structural (“stabilization structures”) and nonstructural methods to address erosion impacts to property and dwellings, businesses, or structures caused by natural processes, such as current, flood, tides, wind, or wave action; and
 - (B) Nonstructural methods including building setbacks, relocation of the structure to be protected, ground water management, planning and regulatory measures to avoid the need for structural stabilization.

- (ii) New development, including newly created parcels, shall be designed and located to prevent the need for future shoreline stabilization, based upon hydrological or geotechnical analysis.
- (iii) New development on steep slopes or bluffs shall be set back according to the requirements indicated in Appendix A-2 to ensure that shoreline stabilization is unlikely to be necessary during the life of the structure, as demonstrated by a geotechnical analysis.
- (iv) New development that would require shoreline stabilization which causes significant impacts to adjacent or down-current properties and shoreline areas is prohibited.
- (v) New structural stabilization measures shall not be allowed except when necessary as demonstrated in the following manner:

- (A) To protect existing primary structures, new or enlarged stabilization structures for an existing primary structure, including residences, shall not be allowed unless there is conclusive evidence documented by a geotechnical analysis that the structure is in danger of failing within three years from shoreline erosion caused by currents, or waves.

Normal sloughing, or shoreline erosion itself, without a geotechnical analysis, is not demonstration of need. In order to demonstrate need, the geotechnical analysis shall evaluate on-site drainage issues and address drainage problems away from the shoreline edge before considering structural measures. The erosion control structure with appropriate mitigation shall not result in a net loss of ecological functions;

- (B) New stabilization structures in support of new non-water-dependent or water-dependent development shall be allowed when consistent with the Clover Island High Intensity Special Area Plan Standards (Appendix A-6) or when all of the following conditions apply: the erosion is not being caused by upland conditions such as the loss of vegetation and drainage; nonstructural measures such as placing the development further from the shoreline, planting vegetation, or installing on-site drainage improvements, are not feasible or sufficient; need is demonstrated by a geotechnical analysis that damage must be caused by natural processes such as currents, and waves; and the erosion control structure and appropriate mitigation will not result in a net loss of shoreline ecological functions;

- (C) New stabilization structures in support of projects for the restoration of ecological functions or hazardous substance remediation projects pursuant to Chapter 70.105D RCW shall be allowed when consistent with the Clover Island High Intensity Special Area Plan Standards (Appendix A-6) or when all of the following conditions apply: nonstructural measures, planting vegetation, or installing on-site drainage improvements are not feasible or sufficient; and the erosion

- control structure and appropriate mitigation will not result in a net loss of shoreline ecological functions;
- (D) Shoreline stabilization shall be constructed to minimize damage to fish habitats and to maintain safe navigational movement. For the Clover Island High Intensity Environment shoreline stabilization below the OHWM to protect existing or planned upland water-dependent facilities specified in the plan or applicable federal and state permits shall be accompanied by habitat enhancement, including anchored brush piles or ballasted root wads or other specified measures. Open-piling construction is preferable in lieu of the solid type;
 - (E) Bulkheads shall be designed to permit the passage of surface or ground water without causing ponding or saturation of retained soil or materials. Adequate toe protection (proper footings, a fine retention mesh, etc.) shall be provided to ensure bulkhead stability without relying on additional riprap; and
 - (F) Bulkheads shall be designed to be of the minimum dimensions necessary. When a bulkhead is required at a public access site with planned water access, provision for safe access to the water shall be incorporated into its design.
- (vi) Replacement of existing stabilization structures shall be based on demonstrated need to protect uses or structures from erosion caused by currents, or waves:
- (A) The replacement structure shall be designed, located, sized and constructed to assure no net loss of ecological functions, and, if located in the Clover Island High Intensity Environment, to also achieve improved aquatic and riparian habitat function.
 - (B) Waterward encroachment of a replacement structure shall be allowed for residences occupied prior to January 1, 1992; and then only if there are overriding safety or environmental concerns and then replacement structure shall abut the existing shoreline stabilization structure and must still comply with applicable federal and state permit provisions.
 - (C) For Clover Island High Intensity Environment replacement structures must be consistent with the Clover Island High Intensity Special Area Plan Standards (Appendix A-6-4) and applicable federal and state permit provisions, including anchored brush piles or ballasted root wads and native riparian vegetation plantings and other specified measures, or for soft shoreline stabilization measures that provide restoration of ecological functions.
 - (D) Soft shoreline stabilization measures that provide restoration or enhancement of shoreline ecological functions may be permitted waterward of the ordinary high water mark. Additionally, If the development is located in the Clover Island High Intensity Environment, the soft shoreline

stabilization measures shall be consistent with the Clover Island High Intensity Special Area Plan Standards.

- (vii) Geotechnical reports prepared pursuant to this section that address the need to prevent potential damage to a structure shall address the necessity for shoreline stabilization by estimating time frames and rates of erosion and shall report on the urgency associated with the specific situation. As a general matter, hard armoring solutions shall not be authorized except when a report confirms that there is a significant possibility that such a structure will be damaged within three years as a result of shoreline erosion in the absence of such hard armoring measures, or where waiting until the need is that immediate, would foreclose the opportunity to use measures that avoid impacts on ecological functions. Where the geotechnical report confirms a need to prevent potential damage to a structure, but the need is not as immediate as three years, that report may still be used to justify more immediate authorization to protect against erosion using soft measures.
- (viii) Shoreline stabilization structures shall be limited to the minimum size necessary. Soft approaches shall be used unless demonstrated not to be sufficient to protect structures, dwellings, and businesses. Where feasible, ecological restoration or enhancement, and public access improvements shall be incorporated into the project. Public access shall be required as part of publicly financed shoreline erosion control measures except where such access is determined to be infeasible because of incompatible uses, safety, security, or harm to ecological functions. For the Clover Island High Intensity Environment, enhancements shall be consistent with the Clover Island High Intensity Special Area Plan Standards (Appendix A-6) and applicable federal and state permit provisions, including anchored brush piles or ballasted root wads and native riparian vegetation plantings, and other specified measures, applicable federal and state permit provisions, including anchored brush piles or ballasted root wads and native riparian vegetation plantings and other specified measures.
- (ix) For conditions of erosion or mass wasting due to upland conditions, projects must be consistent with standards set out in KMC 18.68.110(2)(b)(iii)(C).
- (x) Riprapping and other bank stabilization measures shall be located, designed and constructed to avoid the need for channelization of streams and to protect, as feasible, the natural character of the streamway.
- (xi) Where flood protection measures such as levees are planned, they shall be placed landward of the streamway, including associated swamps and marshes and other wetlands directly inter-related and inter-dependent with the stream proper.
- (xii) Where shoreline stabilization is allowed, it shall consist of “soft,” flexible, and/or natural materials or other bioengineered approaches

- unless a geotechnical analysis demonstrates that such measures are infeasible.
- (xiii) Publicly financed or subsidized shoreline erosion control measures shall not restrict appropriate public access to the shoreline, except where such access is determined to be infeasible because of incompatible uses, safety, security, or harm to ecological functions. Where feasible, ecological restoration and public access improvements shall be incorporated into the project.
- (b) Piers, Viewing Platforms, and Docks.
- (i) The following standards shall apply to new piers, viewing platforms and docks:
 - (A) New piers, viewing platforms, and docks are allowed in the Clover Island High Intensity Environment consistent with the Clover Island High Intensity Special Area Plan Standards (Appendix A-6) to provide for existing and future water-dependent uses and subject to approval and conditions of federal and state permits addressing aquatic and riparian habitat, and consistent with the Shorelines Critical Areas Appendix A-2 requirements;
 - (B) New piers, viewing platforms and docks are allowed for public and commercial purposes. Docks serving four or less residential units are prohibited;
 - (C) New piers and docks are allowed only for water-dependent uses or public access;
 - (D) New piers and docks are restricted to the minimum size necessary to serve a proposed water-dependent use (based upon a needs analysis provided by the Applicant). For Clover Island High Intensity environment, the minimum width for piers, docks and ramps shall be 6 feet and the maximum width shall be 12 feet;
 - (E) New piers and docks are permitted only when specific need is demonstrated; and
 - (F) Water-related and water-enjoyment uses may be allowed as part of mixed-use development on over-water structures where they are clearly auxiliary to, and in support of, water-dependent uses, provided the minimum size requirement needed to meet the water-dependent use is not violated (WAC 173-26-231(3)(b)).
 - (ii) The use of floating docks shall be encouraged in those areas where scenic values are high and where conflicts with recreational boaters and fishermen will not be created.
 - (iii) Open-pile piers shall be encouraged where shore trolling is important, where there is significant littoral drift and where scenic values will not be impaired. Piers and viewing platforms for the Clover Island High Intensity Environment shall be consistent with the Clover Island High Intensity Special Area Plan Standards and applicable federal and state construction standards and/or requirements. Pilings shall be permitted

only when needed as a structural part of floating docks and to minimize the impact of local high winds on the structures. Pilings shall be structurally sound and cured prior to placement in the water. Creosote treated pilings are prohibited. Pilings employed in piers or any other structure shall have a minimum vertical clearance of two feet above the OHWM. The minimum number of pilings necessary shall be used in piers or viewing platforms.

- (iv) Priority shall be given to the use of public piers, viewing platforms and docks. Cooperative use of these facilities is encouraged.
 - (v) New structures will be preferentially placed in developed areas to avoid degradation of habitat.
 - (vi) Location, design and construction of all piers, viewing platforms and docks shall result in no net loss of ecological processes and functions, and avoid, minimize and mitigate for ecological impacts. Construction materials and light transmission standards must be consistent with applicable state and federal requirements, and be based upon the most current, accurate, and complete scientific and technical information available. Piers, viewing platforms, and docks proposed in the Clover Island High Intensity Environment shall be consistent with the Clover Island High Intensity Special Area Plan Standards and applicable federal and state construction standards and/or requirements and other specified measures, including the following:
 - (A) New overwater structures must not be located on or within 50 feet of existing native aquatic vegetation;
 - (B) New overwater structures must be located in water sufficiently deep to prevent the structure from grounding out at the lowest low water;
 - (C) New pier, ramp or dock grating surfaces must provide for a 40% minimum open area;
 - (D) Flotation material must be encapsulated with a shell that prevents breakup or loss of flotation material, and cannot be located where it impedes fish passage;
 - (E) Replacement of existing covered boat facilities (boat garages, covered moorage) shall be composed of clear translucent materials that have a minimum 25% light transmittance in either the roof material or exposed wall; and
 - (F) Night lighting must be oriented to minimize illumination of surrounding waters.
 - (vii) Storage of fuel, oils and other toxic materials is prohibited on docks and piers except in portable containers that are provided with secondary containment.
- (c) Fill.
- (i) Location, design and construction of shoreline fills or cuts shall protect existing ecological values or natural resources and ensure that significant alteration of local currents will not occur nor create a hazard to adjacent life, property, and natural resources. Shoreline fills shall be avoided in critical areas or shoreline buffers, except for

- habitat enhancement as provided for in the Clover Island High Intensity Special Area Plan Standards, and applicable federal and state permit provisions including native riparian vegetation plantings and other specified measures. When unavoidable, or buffers are not involved, they should be minimized, and designed and located so that there will be no significant damage to and no net loss of existing ecological functions; ecosystem-wide processes and natural resources shall be protected.
- (ii) Fills waterward of the ordinary high water mark shall be allowed by Substantial Development Permit in the Clover Island High Intensity Environment for ecological enhancement as provided for in the Clover Island High Intensity Special Area Plan Standards and applicable federal and state permit provisions, or by Conditional Use Permit when necessary to support the following uses:
 - (A) Water-dependent uses;
 - (B) Public access;
 - (C) Cleanup and disposal of contaminated sediments as part of an intra-agency environmental cleanup plan;
 - (D) Disposal of dredged material considered suitable under, and conducted in accordance with, the Dredged Material Management Program of the Department of Natural Resources;
 - (E) Expansion or alteration of transportation facilities of statewide significance currently located on the shoreline and that demonstrate that alternatives to fill are not feasible;
 - (F) A mitigation action;
 - (G) Environmental restoration or enhancement; and
 - (H) Beach nourishment or enhancement.
 - (iii) All perimeters of fills shall be provided with vegetation, bioengineered approaches or other mechanisms for erosion prevention.
 - (iv) Fill materials shall be of such quality that they will not adversely affect water quality.
- (d) Breakwaters, Jetties, Weirs, and Groins.
- (i) Structures shall be designed, located and constructed with appropriate mitigation in such a way as to assure no net loss of ecological functions. The effect on public access and aesthetic values of the shoreline shall be considered in the design and location of structures.
 - (ii) Structures waterward of the ordinary high water mark shall be allowed only for water-dependent uses, public access, shoreline stabilization, or other specific public purpose.
 - (iii) A shoreline Conditional Use Permit shall be required for all structures except shoreline protection/restoration/enhancement projects and only allowed when demonstrated that no feasible alternative is available. Mitigation sequencing shall be provided to ensure no net loss of shoreline ecological functions and processes and shall be demonstrated by submittal of Mitigation Management Plan.

- (e) Dredging and Dredge Material Disposal.
 - (i) Dredging and dredge material disposal shall be done in a manner which avoids or otherwise minimizes significant ecological impacts. Impacts which cannot be avoided shall be mitigated.
 - (ii) New development siting and design shall avoid the need for new and maintenance dredging.
 - (iii) Dredging for the purposes of establishing, expanding, or relocating or reconfiguring navigation channels and basins shall be allowed where necessary to assure safe and efficient accommodation of existing navigational uses. In such cases, significant ecological impacts shall be minimized and mitigation provided for any unavoidable impacts.
 - (iv) Maintenance dredging of established navigation channels and basins is restricted to maintaining previously dredged and/or existing authorized location, depth, and width.
 - (v) Dredging for fill materials shall not be allowed, except when the material is necessary for the restoration of ecological functions, and is associated with a MTCRA or CERCLA habitat restoration project or is approved through a shoreline Conditional Use Permit for use in any other significant habitat enhancement project. When allowed, fill material must be placed waterward of the ordinary high water mark.
 - (vi) Dredging of materials suitable for shoreline restoration or other activities to benefit shoreline resources may be allowed, provided the activity is done in a manner which avoids or otherwise minimizes ecological impacts.
 - (vii) Disposal of dredge material on shorelands, wetlands or within a channel migration zone shall be discouraged and is allowed only by shoreline Conditional Use Permit.
- (f) Signage.
 - (i) Off premise signs shall not be permitted on the shorelines.
 - (ii) Signs shall be mounted flush to the buildings they represent, and shall not extend above the roofline.
 - (iii) Flashing, moving, or animating signs shall not be permitted, unless required by law for air and water navigation.
 - (iv) Each use shall be permitted one square foot of sign for each five feet of the building frontage.
 - (v) Vistas and viewpoints shall not be degraded and visual access to the water from such vistas shall not be impaired by the placement of signs. All signs shall be located and designed to minimize interference with view corridors and visual access to the shoreline.
 - (vi) When feasible, signs shall be constructed against existing buildings to minimize visual obstructions of the shoreline and water bodies.
 - (vii) No signs shall be placed on trees, other natural features, or public utility poles.
- (g) Shoreline Habitat and Natural Systems Restoration and Enhancement Projects.
 - (i) Shoreline habitat and natural systems enhancement projects, including those activities proposed and conducted specifically for the purpose of

establishing, restoring, or enhancing habitat for listed species in shorelines, are encouraged, provided such projects' primary purpose is clearly enhancing or restoring the shoreline natural character and ecological functions. The project shall address legitimate enhancement or restoration needs and priorities and facilitate implementation of the restoration plan (Appendix A-4) developed pursuant to WAC 173-26-201(2)(f) and the Clover Island High Intensity Special Area Plan Standards (Appendix A-6) and with applicable federal and state permit provisions.

- (ii) For the Clover Island High Intensity Environment, implementation of the aquatic, nearshore and riparian habitat enhancement plan, as provided in the Clover Island High Intensity Special Area Plan Standards shall accompany new development. Accompany means within twelve months of completion of a new development project, enhance the shoreline next to the new development consistent with the Clover Island High Intensity Special Area Plan Standards (Appendix A-6-4). Enhancement work will be conducted within the work window specified in applicable federal and state permits (typically late fall/winter time period). (Ord. 5281 Sec. 1, 2009)

18.68.130: Shoreline Uses:

- (1) Applicability. The provisions of this section apply to specific common uses and types of development to the extent they occur within shoreline jurisdiction. All uses and development must be consistent with the Shoreline Master Program.
- (2) General Use Provisions.
 - (a) Principles. The following are objectives of the provisions of this section:
 - (i) Uses that are consistent with the control of pollution and prevention of damage to the natural environment, or are unique to or dependent upon uses of the State's shoreline areas, are preferred. Preference shall be given first to water-dependent uses, second to water-related uses and third to water-enjoyment uses;
 - (ii) The location, design and construction of new development in shoreline areas shall be done in a way that protects the public's health, safety, and welfare, as well as the land and its vegetation and wildlife, and protects property rights while implementing the policies of the Shoreline Management Act; and
 - (iii) Permitted uses shall result in no net loss of ecological functions associated with the shorelines.
 - (b) Conditional Uses.
 - (i) Purpose. The purpose of this section is to define the types of uses and development that require a shoreline Conditional Use Permit pursuant to RCW 90.58.100(5). Conditional Use Permits may be required for a variety of purposes, including:
 - (A) To effectively address unanticipated uses that are not classified in this Shoreline Master Program as described in WAC 173-27-030;
 - (B) To address cumulative impacts; and

- (C) To provide the opportunity to require specially tailored environmental analysis or design criteria for types of use or development that may otherwise be inconsistent with a specific environment designation within this Shoreline Master Program or with the Shoreline Management Act policies.
- (ii) Applicability. The following types of uses and development may require a Conditional Use Permit (see Section 18.68.240 for application process):
 - (A) Uses and development that may or will significantly impair or alter the public's use of the water areas of the State;
 - (B) Uses and development which, by their intrinsic nature, may have a significant ecological impact on shoreline ecological functions or shoreline resources depending on location, design, and site conditions;
 - (C) Specific shoreline uses identified in this Chapter as requiring a Conditional Use Permit; and
 - (D) The height limit for all uses shall be 35 feet in the Aquatic and Urban Conservancy Environments, and for the Clover Island High Intensity Environment, the heights provided in the Clover Island High Intensity Special Area Plan Standards (Appendix A-6). Proposed Uses may be able to exceed this limit through the Conditional Use process as described in Section 18.68.240.
- (c) Prohibitions.
 - (i) Aquaculture activities are prohibited in shorelands.
 - (ii) Agriculture activities are prohibited in shorelands.
- (d) Nonconforming Uses. When a shoreline use or structure which was lawfully constructed or established prior to the effective date of the Shoreline Management Act or the Shoreline Master Program, or amendments thereto, but does not conform to the present regulations or standards of the Shoreline Master Program or policies of the Act, the following standards shall apply:
 - (i) Nonconforming development may be continued and maintained, repaired, renovated, or structurally altered, provided that it is not enlarged, intensified, increased, or altered in any way which increases its nonconformity, except to enhance views from upland areas including streets, to enhance public access, or to contribute to protection, enhancement, restoration, or rehabilitation of or mitigation for impacts to critical areas or their buffers;
 - (ii) A nonconforming development which is moved any distance must be brought into conformance with the Shoreline Master Program and the Act;
 - (iii) 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 six months of the date the damage occurred,

- all permits are obtained and the restoration is completed within two years of permit issuance;
- (iv) If a nonconforming use is discontinued for twelve consecutive months or for twelve months during any two-year period, the nonconforming rights shall expire and any subsequent use shall be conforming. A use authorized pursuant to subsection (6) of this section shall be considered a conforming use for purposes of this section;
 - (v) A structure which is being or has been used for a nonconforming use may be used for a different nonconforming use only upon the approval of a Conditional Use Permit. A Conditional Use Permit may be approved only upon a finding that:
 - (A) No reasonable alternative conforming use is practical;
 - (B) The proposed use will be at least as consistent with the policies and provisions of the Act and the Shoreline Master Program and as compatible with the uses in the area as the preexisting use; and
 - (C) In addition such conditions may be attached to the permit as are deemed necessary to assure compliance with the above findings, the requirements of the Shoreline Master Program and the Shoreline Management Act and to assure that the use will not become a nuisance or a hazard.
 - (vi) An undeveloped lot, tract, parcel, site, or division of land located landward of the ordinary high water mark which was established in accordance with City zoning requirements prior to the effective date of the Act and this Shoreline Master Program but which does not conform to the present lot size standards may be developed if permitted by other City land use regulations and so long as such development conforms to all other requirements of the applicable Shoreline Master Program and the Act;
 - (vii) Structures that were legally established and are used for a conforming use but which are nonconforming with regard to setbacks, buffers or yards, area, bulk, height or density may be maintained and repaired and may be enlarged or expanded provided that said enlargement does not increase the extent of nonconformity by further encroaching upon, or extending into, areas where construction or use would not be allowed for new development or uses.

Uses and developments that were legally established and are nonconforming with regard to the use regulations of the Shoreline Master Program may continue as legal nonconforming uses. Such uses shall not be enlarged or expanded.

A use which is listed as a conditional use but which existed prior to adoption of the Shoreline Master Program or any relevant amendment and for which a Conditional Use Permit has not been obtained shall be considered a nonconforming use. A use which is listed as a conditional use but which existed prior to the applicability of the Shoreline Master Program to the site and for which a Conditional Use Permit has not been obtained shall be considered a

nonconforming use.

(e) Shoreline Uses Table.

- (i) The shoreline uses table identifies the level of approval required for the specific shoreline uses described in this Chapter.
- (ii) Buffers shall be maintained in accordance with Critical Areas Appendix A-2, Chapter 6 or any other Chapters of this Appendix A-2 as appropriate within shoreline jurisdiction.
- (iii) Building setbacks are measured landward from the edges of all critical area buffers or from the edges of all critical areas, if no buffers are required according to Appendix A-2, Section 1.220.
- (iv) To provide flexibility in the application of use regulations in a manner consistent with RCW 90.58.020, a Conditional Use Permit may be provided with special conditions, as applicable (See Sections 18.68.130 (2)(b) and 18.68.240)
- (v) Bulk, dimensional and performance standard exceptions are made through the variance process.
- (vi) Reasonable Use. Where project proponents would seek a “Reasonable Use” exception to their proposal, they shall seek exception process and relief through the conditional use or variance process.

	Clover Island High Intensity	Urban Conservancy	Aquatic
	Permit	Permit	Permit
Boating Facilities			
Water dependent	SDP	SDP	SDP
Water oriented	SDP	CUP	Prohibited
Commercial			
Water dependent	SDP	SDP	SDP
Water-related and water-enjoyment	SDP	SDP	CUP
Non-water oriented	SDP	CUP	Prohibited
Industrial			
Water dependent	Prohibited	Prohibited in ED map Sections A-D/ CUP Section E	Prohibited in ED map Sections A-D/, CUP Section E
Water-related and –water enjoyment	Prohibited	CUP only Section E	CUP
Non-water oriented	Prohibited	CUP only Section E	Prohibited
In-stream Structures	SDP for uses that improve ecological functions. CUP for all other uses	CUP	CUP
Historic, Educational and Recreational			
Water dependent	SDP	SDP	SDP
Water-related and water-enjoyment	SDP	SDP	CUP
Water-enjoyment – walkways and trails	SDP	SDP	CUP
Non-water oriented(5)	SDP	CUP	Prohibited

	Clover Island High Intensity	Urban Conservancy	Aquatic
Residential Development			
Multi-Family Residential Development	SDP	Prohibited	Prohibited
Single Family and Duplex	Prohibited	Prohibited	Prohibited
Transportation Motorized (includes public transit)	SDP	SDP	CUP
Capital Facilities and Utilities All Utilities Water Supply Utilities Signage	SDP	SDP	CUP
Fill	SDP	SDP	CUP
Dredging Disposal of Dredge Material in Shoreline Jurisdiction	CUP	CUP	CUP

1. SDP = Substantial Development Permit
2. CUP = Conditional Use Permit. Uses not specifically identified may be considered through the CUP application process (see Section 18.68.240).

(3) Standards for Specific Shoreline Uses. Permit process, height limit, and setback requirements for uses in each shoreline environment designation shall be in accordance with the shoreline use table in Section 18.68.130 and as stated in the following sections:

- (a) Boating Facilities and Marinas. For the purposes of this Chapter, “boating facilities” includes marinas, boat storage and launch ramp development, and accessory uses.
 - (i) For the water dependent portion of the boating facilities, Substantial Development Permits shall be required in the Clover Island High Intensity, Urban Conservancy and Aquatic Environments.
 - (ii) Non-water oriented portions of boating facilities shall require Substantial Development Permits in the Clover Island High Intensity Environment consistent with the Clover Island High Intensity Special Area Plan Standards, and Conditional Use Permits in the Urban Conservancy Environment. Such uses shall be prohibited in the Aquatic Environment.
 - (iii) Water dependant uses, as defined by this Shoreline Master Program, may be located within a habitat conservation area or buffer when the applicant or property owner can demonstrate compliance with Appendix A-2, Chapters 1-6.
 - (iv) Boating facilities shall be located only at sites with suitable environmental conditions, shoreline configuration, access, and neighboring uses. Such facilities shall meet health, safety, and welfare requirements. All boating facilities shall be permitted and in compliance with all local, state and federal requirements.
 - (v) Location, design and construction of new boating facilities shall avoid, when feasible, or otherwise mitigate aesthetic impacts to the

- shoreline that are derived from natural or cultural features, such as shoreforms, vegetative cover, and historic sites/structures.
- (vi) Boating facilities shall not conflict with existing or planned public access opportunities. Public access is required for new marinas, particularly where water-enjoyment uses are associated with the marina, in accordance with WAC 173-26-221(4) and KMC 18.68.110(2)(e).
 - (vii) Boaters are prohibited from living in their vessels (live-aboard). Non-motorized floating homes shall not be permitted.
 - (viii) Boating facilities, and associated and accessory uses shall not be allowed if they result in a net loss of shoreline ecological functions.
 - (ix) Extended moorage on waters of the State without a lease or permission from appropriate authorities is prohibited, and any significant impacts to navigation and public access shall be mitigated.
 - (x) Special attention shall be given to the design and development of operational procedures for fuel handling and storage in order to minimize accidental spillage and provide satisfactory means for handling any spillage that does occur. A “maintenance and spill prevention and control plan” shall be required to be submitted by the applicant in order to get a shoreline permit.
 - (xi) In planning for propelled watercraft, assurances shall be made that waste disposal practices meet local and State health regulations, that the crafts are not located over highly productive fish food areas, and that the crafts are located to be compatible with the intent of the designated environments.
 - (xii) Marinas for float plane moorage shall be developed in accordance with any guidelines developed by the Washington State Department of Fisheries, Federal Aviation Administration, and U.S. Coast Guard.
- (b) Commercial Uses.
- (i) The location, design and construction of commercial uses and redevelopment shall achieve no net loss of shoreline ecological functions. For the Clover Island High Intensity Environment, the proposal shall enhance shoreline ecological functions within twelve months of completion of a new development project, consistent with the Clover Island High Intensity Special Area Plan Standards. Enhancement work will be conducted within the work window specified in applicable federal and state permits (typically late fall/winter time period).
 - (ii) Preference shall be given first to water dependent commercial uses, second to water-related uses, and third to water-enjoyment uses.
 - (iii) All commercial uses shall provide public access. Refer to WAC 173-26-221(4) and KMC 18.68.110(2)(e) for public access provisions.
 - (iv) In areas designated for commercial use, nonwater-oriented commercial development may be allowed if the site is physically separated from the shoreline by another property or public right-of-way.

Nonwater-dependent commercial uses should not be allowed

over water except in existing structures or in the limited instances where they are auxiliary to and necessary in support of water-dependent uses.

Commercial development shall not result in a net loss of shoreline ecological functions or have significant adverse impact to other shoreline uses, resources and values provided for in RCW 90.58.020 such as navigation, recreation, and public access.

Non-water oriented commercial uses shall not be allowed unless:

- (A) The use is part of a mixed-use project that includes water-dependent uses and provides a significant public benefit with respect to the Shoreline Management Act's objectives such as providing public access and ecological restoration and complies with other applicable use standard(s) as established in this Chapter; or
- (B) Navigability is severely limited at the proposed site; and the commercial use provides a significant public benefit with respect to the Shoreline Management Act's objectives such as providing public access and ecological restoration.

For water dependent commercial uses, Substantial Development Permits shall be required in the Clover Island High Intensity, Urban Conservancy and Aquatic Environments.

- (v) Non-water oriented commercial uses shall require Substantial Development Permits in the Clover Island High Intensity Environment consistent with the Clover Island High Intensity Special Area Plan Standards, and Conditional Use Permits for deviations to these standards and in the Urban Conservancy Environment. Non-water oriented projects shall be consistent with subsections (i) and (iv) above. Non-water oriented projects shall be prohibited in the Aquatic Environment.
- (vi) A Substantial Development Permit shall be required for water-related and water-enjoyment commercial uses in the Urban Conservancy. A Conditional Use Permit shall be required for uses in the Aquatic Environment, consistent with the following:
 - (A) Pier and dock construction shall be restricted to the minimum size necessary to meet the needs of the proposed water-dependent use. Water-related and water-enjoyment uses may be allowed as part of mixed-use development on over-water structures where they are clearly auxiliary to, and in support of, water-dependent uses and consistent with minimum size requirements needed to meet the water-dependent use (WAC 173-26); and
 - (B) As Part of Mixed-Use, mixed use developments shall comply with other applicable use standard(s) as established in this Chapter.

- (vii) Water dependant uses, as defined by this Shoreline Master Program, may be located within a habitat conservation area or buffer when the applicant or property owner can demonstrate compliance with Appendix A-2, Chapters 1-6.
 - Water-related, water enjoyment, and non-water oriented commercial uses shall be required to comply with the critical area regulations, buffer and setback regulations as identified in Appendix A-2.
- (viii) Where commercial use is proposed for location on land in public ownership, public access is required.
- (c) Industrial Uses.
 - (i) Priority shall be given to water-dependent industries which require use of navigable water, and then to other water-oriented industrial uses, over other industrial uses.
 - (ii) New non-water-oriented industrial development shall be prohibited on shorelines except when:
 - (A) The use is part of a mixed-use project that includes water-dependent uses and provides a significant public benefit with respect to the Shoreline Management Act's objectives such as providing public access and ecological restoration or enhancement; or
 - (B) Navigability is severely limited at the proposed site; and the industrial use provides a significant public benefit with respect to the Shoreline Management Act's objectives such as providing public access and ecological restoration or enhancement; or
 - (C) In areas designated for industrial use, non-water-oriented industrial uses may be allowed if the site is physically separated from the shoreline by another property, public right-of-way, or a levee system maintained by or maintained under license from the federal government, the State, or a political subdivision of the State.
 - (iii) Industrial facilities are prohibited in the Clover Island High Intensity Environment. Industrial facilities are prohibited in the Urban Conservancy and Aquatic Environments, except reconstructed, replaced or new facilities in shoreline segment E (Exhibit 1) where they may be allowed through a Conditional Use Permit. Only the dock/port portion of a facility may be located in the Aquatic Environment.
 - (iv) The height limit for industrial uses shall be 35 feet. Industrial facilities may be able to exceed this limit through the Conditional Use process as described in Sections 18.68.240 and 18.68.110(2)(e) of this Chapter.
 - (v) Water dependant uses, as defined by this Shoreline Master Program, may be located within a habitat conservation area or buffer when the applicant or property owner can demonstrate compliance with critical areas provisions (Appendix A-2).

- (vi) The design, location, and construction of industrial uses shall include appropriate mitigation, as necessary, to assure no net loss of ecological functions.
 - (vii) Applicants for industrial uses shall consider incorporating public access as mitigation for impacts to shoreline resources and values unless public access cannot be provided in a manner that does not result in significant interference with operations or hazards to life or property, as provided in WAC 173-26-221(4). Where a proposed industrial use is on publically owned land, public access shall be required.
 - (viii) Industrial development and redevelopment will be encouraged to provide environmental cleanup and restoration of the shoreline area as part of the development, as applicable.
 - (ix) Industrial port facilities will be designed to permit viewing of shoreline areas from view-points, waterfront restaurants, and similar public facilities which will not interfere with operations or endanger public health and safety.
 - (x) The cooperative use of pre-existing docks parking, cargo handling, and water dependent storage facilities is strongly encouraged in waterfront industrial areas. New additional parking facilities shall be located landward of the pre-existing buildings and development.
- (d) In-stream Structures. For the purposes of this Chapter, “In-stream structure” means 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 structures may include those for hydroelectric generation, irrigation, water supply, flood control, transportation, utility service transmission, fish habitat enhancement, or other purpose.
- In-stream structures shall provide for the protection and preservation, of ecosystem-wide processes, ecological functions, and cultural resources, including, but not limited to, fish and fish passage, wildlife, and water resources, critical areas, hydrogeological processes, and natural scenic vistas. The location and planning of in-stream structures shall give due consideration to the full range of public interests, watershed functions and processes, and environmental concerns, with special emphasis on protecting and restoring or enhancing priority habitats and species.
- (i) Substantial Development Permits shall be required in the Clover Island High Intensity Environment consistent with the Clover Island High Intensity Special Area Plan Standards.
 - (ii) Conditional Use Permits shall be required for deviations to the Clover Island High Intensity Special Area Plan Standards and in the Urban Conservancy and Aquatic Environments.
 - (iii) In-stream structures shall be sited and designed consistent with appropriate engineering principles, including guidelines of the Natural Resource Conservation Service and the U.S. Army Corps of Engineers and the City of Kennewick Flood Damage Protection Code 18.93 and this Shoreline Master Program.

- (iv) Non-structural and non-regulatory methods to protect, enhance and restore shoreline ecological functions and processes and other shoreline resources shall be encouraged as an alternative to structural flood control works and in-stream structures. Nonregulatory and non-structural methods may include public facility and resource planning, land or easement acquisition, education, voluntary protection and enhancement projects, or incentive programs.
- (v) In-stream structures shall be constructed and maintained in a manner that does not degrade the quality of affected waters. The City may require reasonable conditions to achieve this objective such as setbacks, buffers, or storage basins.
- (vi) Natural in-stream features such as snags, uprooted trees or stumps should be left in place unless it can be demonstrated that they are actually causing bank erosion or higher flood stages.
- (vii) In-stream structures shall allow for normal ground water movement and surface runoff.
- (viii) In-stream structures shall preserve valuable recreation resources and aesthetic values, such as islands.
- (ix) No in-stream structure may be constructed without the developer having obtained all applicable federal, state, and local permits and approvals, including but not limited to an Hydraulic Project Approval (HPA) from the State Department of Fish and Wildlife.
- (e) Historic, Educational, and Recreational Uses. For the purposes of this Chapter, “historic, educational, and recreational uses” include commercial and public facilities designed and used to make such uses accessible to the public.
 - (i) Shoreline recreational development shall be given priority and is primarily related to access to, enjoyment and use of the water and shorelines of the State.
 - (ii) Historic, educational, and recreational uses are allowed in all environments.
 - (iii) Water-dependent uses of the shoreline for historic, educational, and recreational uses are allowed with Substantial Development Permits in all environments. Water-related and water enjoyment uses will be allowed with Substantial Development Permits when consistent with the Clover Island High Intensity Special Area Plan Standards, and in the Urban Conservancy Environment, and by Conditional Use Permit in the Aquatic Environment.
 - (iv) Water-dependent uses of the shoreline, as defined by this Shoreline Master Program, for historic, educational, and recreational uses that require no permanent structures may be located within a habitat conservation area or buffer when the applicant or property owner can demonstrate compliance with Appendix A-2.
 - (v) Water Oriented and Non-water Oriented projects, as part of a mixed-use project, including the Clover Island High Intensity Special Area Plan Standards, shall comply with setback and buffer standards established in Shoreline Master Program Critical Area Standards,

Appendix A-2. Temporary water enjoyment structures with a 30-day or less time limit of placement (such as for boat races) may be permitted with a 10 foot shoreline setback within Clover Island High Intensity and Urban Conservancy Environment buffers.

- (vi) Walkways and trails provided that those pathways that are generally parallel to the perimeter of the wetland or shoreline may be located in the outer twenty-five percent (25%) of the buffer area. For the Clover Island High Intensity Environment, walkways/boardwalks can be located in the outer 50% of the buffer area if they are built on piling and provide mitigation as required in Shoreline Master Program Critical Area Standards, Appendix A-2.
- (vii) Trail width of 10 ft maximum is allowed within the buffer area. Water dependent access is allowed within the buffer, consistent with Shoreline Master Program Critical Area Standards, Appendix A-2, and Americans with Disabilities Act (ADA) regulations.
- (viii) The Planning Official has the ability to increase the trail width or modify trail design on a case-by-case basis if: (1) the additional width of the trail is located outside the required buffer, and/or (2) there is an established need for compliance with ADA accessible trail regulation. In such cases, the trail shall be the minimum size necessary.
- (ix) The location, design and operation of public recreational facilities shall be conducted in a manner consistent with the purpose of the environment designation in which they are located and that assures no net loss of shoreline ecological functions of the shoreline.
- (x) Linkage of shoreline parks and public access points through the use of linear access is encouraged.
- (xi) To avoid wasteful use of the limited supply of recreational shoreland, parking areas shall be located inland away from the immediate edge of the water and recreational beaches. Access should be provided by walkways or other methods.
- (xii) Recreational developments should be of such variety as to consider the diversity of demands from groups in nearby population centers. The supply of recreation facilities should be directly proportional to the proximity of population and compatible with the environment designations.
- (xiii) Facilities for intensive recreational activities shall be provided where sewage disposal and vector control can be accomplished to meet public health standards without adversely altering the natural features attractive for recreational uses.
- (xiv) In locating proposed new open areas which use large quantities of fertilizers and pesticides in their turf maintenance programs, provisions must be made to prevent these chemicals from entering water. If this type of facility is approved on a shoreline location, provisions shall be made for protection of water areas from drainage and surface runoff. The Planning Official may require a critical areas analysis, stormwater management plan, park management plan, or

golf/turf chemical management plan as part of the project permitting review.

- (f) Residential Development.
 - (i) New multi-family residential uses are permitted as a non-water oriented use within the Clover Island High Intensity Environment consistent with the Clover Island High Intensity Special Area Plan Standards.
 - (ii) New multi-family residential developments are prohibited in Urban Conservancy and Aquatic Environments.
 - (iii) Mixed use residential development in the Clover Island High Intensity Environment shall require the same buffer limitations as part of its water-oriented or mixed use portion.
 - (iv) The development and appropriate mitigation shall assure no net loss of shoreline ecological functions will result from new residential development.
 - (v) New over-water residences, including floating homes, are prohibited within shoreline jurisdiction.
 - (vi) The maximum density for multi-unit residential development shall not exceed 27 dwelling units per acre.
 - (vii) Single-family and duplex residential developments are prohibited in all environment designations.
- (g) Transportation.
 - (i) Substantial Development Permits shall be required for transportation facilities located in the Clover Island High Intensity and Urban Conservancy Environments. Conditional Use Permits shall be required for transportation facilities in the Aquatic Environment.
 - (ii) Motorized transportation facilities shall comply with setback and buffer standards established in Shoreline Master Program Critical Area Standards, Appendix A-2.
 - (iii) Proposed transportation and parking facilities shall be planned, located, and designed where routes shall have the least possible adverse effect on unique or fragile shoreline features, and with appropriate mitigation will not result in a net loss of shoreline ecological functions or adversely impact existing or planned water-dependent uses.
 - (iv) Circulation system planning shall include systems for pedestrian, bicycle, and public transportation where appropriate. Circulation planning and projects should support existing and proposed shoreline uses that are consistent with this Chapter.
 - (v) Parking facilities in shorelines are not a preferred use and shall be allowed only as necessary to support an authorized use. Environmental and visual impacts of parking facilities shall be minimized.
 - (vi) Whenever feasible, major highways, freeways, and railways should be located away from shorelands, except in port and heavy industrial areas, so that shoreland roads may be reserved for slow-moving recreational traffic.

- (vii) Transportation and parking plans and projects shall be consistent with the public access policies, public access plan, and environmental protection provisions of this Chapter.
- (viii) Where feasible, transportation corridors should be located upland to reduce pressures for the use of waterfront sites.
- (h) Capital Facilities and Utilities. Definition: Utilities are services and facilities that produce, convey, store or process such things as power, natural gas, sewage, communications, oil and waste. Capital facilities include wastewater treatment plants, bridges, water reservoirs, electrical substations, and gas regulating stations. On-site utility features serving a primary use such as a water, sewer or gas line to a development are “accessory utilities” and shall be considered part of the use.
 - (i) Substantial Development Permits shall be required for utilities within the Clover Island High Intensity and Urban Conservancy Environments. A Conditional Use Permit shall be required for utilities located in the Aquatic Environment.
 - (ii) Utilities supporting water-dependent uses, as defined by this Shoreline Master Program, may be located within a habitat conservation area or buffer when the applicant or property owner can demonstrate compliance with Shoreline Master Program Critical Area Standards (Appendix A-2). Utilities shall also comply with setback and buffer standards established in Appendix A-2.
 - (iii) The design, location, and construction of utility facilities with appropriate mitigation shall be conducted in such a manner as 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.
 - (iv) Utilities shall be located in existing rights-of-way and corridors whenever feasible.
 - (v) Utility production and processing facilities, such as power plants and sewage treatment plants, or parts of those facilities that are non water-oriented, such as pumping stations, are prohibited in shoreline jurisdiction, unless it can be demonstrated that no other feasible option is available. Stormwater outfall infrastructure is allowed.
 - (vi) Expansions or upgrades of existing wastewater treatment facility outfalls shall be allowed.
 - (vii) Transmission facilities for the conveyance of services, such as power lines, communication cables, and pipelines, shall be located outside of shoreline jurisdiction where feasible, and when necessarily located within the shoreline area shall with appropriate mitigation assure no net loss of shoreline ecological functions.
 - (viii) Over-water utility crossings shall be allowed only when no feasible alternative exists.
 - (ix) New utilities or the substantial expansion of existing utilities shall:
 - (A) Be located underground or under water, if feasible;

- (B) Utilize low impact, low profile design and construction methods; and
- (C) Be consistent with all applicable federal, state and local regulations.
- (x) Maintenance and replacement of existing utilities shall be exempt from subsections (viii)(A) and (viii)(B) above.
- (xi) Transmission facilities for the conveyance of services, such as power lines, cables, and pipelines, shall be located outside of the shoreline area where feasible and when necessarily located within the shoreline area shall assure no net loss of shoreline ecological functions.
- (i) Fill Practices.
 - (i) Substantial Development Permits shall be required for proposed fill projects within the Clover Island High Intensity and Urban Conservancy Environments. A Conditional Use Permit shall be required for proposed fill projects located in the Aquatic Environment.
 - (ii) See Section 18.68.120(3)(c) for additional requirements.
- (j) Dredging and Disposal of Dredge Material Practices.
 - (i) A Conditional Use Permit shall be required for proposed dredge and dredge material disposal projects located in the Clover Island High intensity, Urban Conservancy, and Aquatic Environments.
 - (ii) See Section 18.68.120(3)(e) for additional requirements. (Ord. 5281 Sec. 1, 2009)

III. ADMINISTRATION

18.68.210: Administrative Provisions:

(1) All proposed uses and development occurring within shoreline jurisdiction must conform to Chapter 90.58 RCW, the Shoreline Management Act, and this Shoreline Master Program, regardless of whether a Substantial Development Permit, Conditional Use Permit or variance is required.

(2) The provisions of this section are minimum requirements and are not intended to limit the City's ability to permit other uses and developments within this Shoreline Master Program as shoreline conditional uses or shoreline variances where necessary or appropriate.

(3) The Planning Official shall administer this Chapter and may adopt such rules and make interpretations as deemed necessary to carry out its provisions. (Ord. 5281 Sec. 1, 2009)

18.68.215: SEPA Procedures:

(1) Whenever an application for shoreline Substantial Development Permit, Conditional Use Permit, variance or exemption is subject to the rules and regulations of SEPA (RCW 43.21(C)), the review requirements of SEPA, including time limitations, shall apply.

(2) Applications for shoreline permit(s) or approval(s) that are not categorically exempt under SEPA shall be subject to environmental review by the City pursuant to WAC 197-11 and KMC Chapter 4.08.

(3) As part of the SEPA review, the Planning Official may require additional information regarding the proposed development in accordance with WAC 197-11 and KMC Chapter 4.08.

(4) Failure of the applicant/proponent to submit sufficient information for the City to make a threshold determination shall be grounds for the responsible official to determine the application incomplete. (Ord. 5281 Sec. 1, 2009)

18.68.220: Shoreline Map: The shorelines within the City and corresponding environment designations may be identified on an official shoreline map. Copies of the maps are available to the public at all reasonable times for inspection at the City of Kennewick Planning Department at 210 West 6th Avenue, Kennewick, WA 99336. These maps are available during the City Hall's normal business hours. Copies of portions thereof, or of the complete set, will be available from the Planning Department at the expense of the party requesting the same. The shoreline jurisdictional boundary shall be reviewed on a case-by-case basis for individual developments and permits. (Ord. 5281 Sec. 1, 2009)

18.68.230: Application for Substantial Development Permits:

(1) An applicant desiring to begin a new substantial development within the shoreline jurisdiction must apply to the Planning Official for a shoreline Substantial Development Permit. The application must comply with Section 18.68.260 of this Chapter.

(a) A Substantial Development Permit shall be granted only when the development proposed is consistent with:

- (i) The policies and procedures of the Shoreline Management Act;
- (ii) The provisions of this regulation; and
- (iii) The adopted Shoreline Master Program for Kennewick's shoreline.

(2) Notice of Application. After filing a proper application, the City must publish notice thereof at least once a week on the same day of the week for two consecutive weeks in a newspaper of general circulation within the City. The City must also mail written notice to the Clover Island Yacht Club, Port of Kennewick, Audubon Society, Park and Recreation Commission, and all property owners within 300 feet of the proposed substantial development. The City may require an applicant to give notice at his or her expense.

Any interested person shall be allowed to submit comments regarding the application, or contact the Planning Official to request a copy of the action taken upon the application. All persons who submit their views and all others who notify the Planning Official within 30 days of the last date of publication of the notice are entitled to receive a copy of the action taken upon the application.

(3) Duties of the Hearing Examiner. The Planning Official shall make recommendations based on this Shoreline Master Program and transmit such recommendations to the Hearing Examiner within a reasonable time after the end of the 30-day notice period. The Hearing Examiner shall consider the proposed substantial development based on information from: the application; written comments from interested parties during the public comment period; independent study of the Planning Department; and views expressed during any public hearing which may be held by the Hearing Examiner. The Hearing Examiner may request additional information. After the review, the

Hearing Examiner shall approve, conditionally approve, or deny permits; provided that if the Hearing Examiner does not wish to follow the recommendations of the Planning Official, it may refer the matter back to the Planning Official for reconsideration. Upon

receipt of the further recommendations of the Planning Official the Hearing Examiner shall then adopt the recommendation or consider the matter at its own public hearing. The Hearing Examiner may rescind any permit upon the finding that the applicant has not complied with the conditions of the permit. All permits entailing a variance or conditional use under the approved Shoreline Master Program shall be submitted to Ecology for its approval or disapproval.

(4) Notice of Action. The City must notify the following persons in writing of any final approval or denial of a permit:

- (a) The applicant;
- (b) Ecology;
- (c) The Washington State Attorney General;
- (d) Any person who has submitted written comments upon the application during the public comment period; and
- (e) Any person who has written the Planning Department requesting notification.

(5) Building Permits Delayed. No building permit may be issued within 30 days of issuing a shoreline Substantial Development Permit or until all review proceedings initiated within those 30 days are terminated. Nothing in this permit shall be construed as excusing the applicant from compliance with any local, state, or federal statutes, ordinances or regulations applicable to the proposed substantial development.

(6) Appeals. Any person aggrieved by the granting, denying, or rescinding of a shoreline development permit may seek review by filing a request for review with the Shorelines Hearings Board, Ecology and the Attorney General within 30 days of receipt of the final order. (Ord. 5322 Sec. 64, 2010; Ord. 5281 Sec. 1, 2009)

18.68.240: Application for Conditional Use Permits:

(1) The purpose of a Conditional Use Permit is to provide a system within the Shoreline Master Program which allows flexibility in the application of use regulations in a manner consistent with the policies of RCW 90.58.020. In authorizing a conditional use, special conditions may be attached to the permit by the City to prevent undesirable effects of the proposed use and/or to assure consistency of the project with the Act and the local Shoreline Master Program.

(2) Uses which are classified or set forth in this Shoreline Master Program as conditional uses and unlisted uses may be authorized, provided, that the applicant demonstrates all of the following:

- (a) That the proposed use is consistent with the policies of RCW 90.58.020 and the Shoreline Master Program;
- (b) That the proposed use shall not interfere with the normal public use of public shorelines;
- (c) That the proposed use of the site and design of the project is compatible with other authorized uses within the area and with uses planned for the area under the Comprehensive Plan and Shoreline Master Program;
- (d) That the proposed use shall cause no significant adverse effects to the shoreline environment in which it is to be located; and
- (e) That the public interest suffers no substantial detrimental effect.

(3) In the granting of all Conditional Use Permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if Conditional Use Permits were granted for other developments in the area where similar

circumstances exist, the total of the conditional uses shall also remain consistent with the policies of RCW 90.58.020 and shall not produce substantial adverse effects to the shoreline environment.

(4) Other uses which are not classified or set forth in this Shoreline Master Program may be authorized as conditional uses, provided, the applicant can demonstrate consistency with the requirements of this section and the requirements for conditional uses contained in the Shoreline Master Program.

(5) Uses which are specifically prohibited by the Shoreline Master Program may not be authorized pursuant to either subsection (2) or (3) of this section.

(6) Conditional Use Permits shall be processed as administrative permit applications with public notice and comment pursuant to KMC Chapter 18.42 and shall meet the approval criteria listed in this section. The Planning Official shall issue the permit and administrative appeals shall be heard by the Hearing Examiner. Non-administrative appeals are heard by the Shoreline Hearings Board.

(7) All notification shall be in accordance with WAC 173-27-110 and KMC Section 4.12.090. (Ord. 5322 Sec. 65, 2010; Ord. 5281 Sec. 1, 2009)

18.68.250: Application for Variance: The purpose of a Variance Permit is strictly limited to granting relief from specific bulk, dimensional or performance standards set forth in this Shoreline Master Program where there are extraordinary or unique circumstances relating to the physical character or configuration of property such that the strict implementation of the Shoreline Master Program shall impose unnecessary hardships on the applicant or thwart the policies set forth in RCW 90.58.020. Variances may be authorized, provided, the applicant can demonstrate compliance with the following:

(1) Variance Permits shall be granted in circumstances where denial of the permit would result in a thwarting of the policy enumerated in RCW 90.58.020. In all instances the applicant must demonstrate that extraordinary or unique circumstances exist and the public interest shall suffer no substantial detrimental effect.

(2) Variance Permits for development and/or uses that will be located landward of the ordinary high water mark, 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 Shoreline Master Program precludes, or significantly interferes with, reasonable use of the property;
- (b) That the hardship described in (a) of this subsection is specifically related to the property, and is the result of unique conditions such as irregular lot shape, size, or natural features and the application of the Shoreline 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 shall not constitute a grant of special privilege not enjoyed by the other properties in the area; and
- (e) That the variance requested is the minimum necessary to afford relief.

(3) Variance Permits for development and/or uses that will be located waterward of the ordinary high water mark, 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 Shoreline Master Program precludes all reasonable use of the property;
- (b) That the proposal is consistent with the criteria established under subsection (2)(b) through (e) of this section; and
- (c) That the public rights of navigation and use of the shorelines will not be adversely affected.

(4) 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.

(5) Variances from the use regulations of the Shoreline Master Program are prohibited.

(6) Variance Permits will be processed as administrative permit applications with public notice and comment pursuant to KMC Chapters 18.42 and 18.54, and shall meet the approval criteria listed in Section 18.68.250(2) above. The Planning Official will issue the permit and administrative appeals will be heard by the Hearing Examiner.

(7) All notification shall be in accordance with WAC 173-27-110 and KMC Chapter 4.12.090. (Ord. 5322 Sec. 66, 2010; Ord. 5281 Sec. 1, 2009)

18.68.260: Application Requirements for Substantial Development, Conditional Use, or Variance Permits: A complete application for a Substantial Development, Conditional Use, or Variance Permit shall contain, as a minimum, the following information:

- (1) The name, address and phone number of the applicant. The same information is required for the applicant's representative if other than the applicant or owner;
- (2) A site plan that includes the location and legal description of the proposed substantial development;
- (3) The present use of the property;
- (4) A description of the proposed substantial development including description of adjacent uses, structures and improvements;
- (5) A brief statement explaining how the proposed substantial development is consistent with the Shoreline Management Act;
- (6) The signature of the applicant or his or her agent;
- (7) Documentation to demonstrate completion of a Critical Areas' evaluation and, if necessary, Critical Areas' report and/or other information as required under Appendix A-2;
- (8) Any further information required by 173-26 WAC, along with other information that may be reasonably necessary to process the application;
- (9) A fee in accord with the adopted fee schedule;

(10) A site development plan consisting of maps and elevation drawings, drawn to an appropriate scale, to depict clearly all required information, photographs, and text which shall include:

- (a) The boundary of the parcel(s) of land upon which the development is proposed;
- (b) The ordinary high water mark of all water bodies located adjacent to or within the boundary of the project. This may be an approximate location, provided that for any development where a determination of consistency with the applicable regulations requires a precise location of the ordinary high water mark the mark shall be located precisely and the biological and hydrological basis for the location as indicated on the plans shall be included in the development plan. Where the ordinary high water mark is neither adjacent to or within the boundary of the project, the plan shall indicate the distance and direction to the nearest ordinary high water mark of a shoreline;
- (c) Existing and proposed land contours. The contours shall be at intervals sufficient to accurately determine the existing character of the property and the extent of proposed change to the land that is necessary for the development. Areas within the boundary that will not be altered by the development may be indicated as such and contours approximated for that area;
- (d) A delineation of all wetland areas that will be altered or used as a part of the development;
- (e) A general indication of the character of vegetation found on the site;
- (f) The dimensions and locations of all existing and proposed structures and improvements, including, but not limited to; buildings, paved or graveled areas, roads, utilities, septic tanks and drainfields, material stockpiles or surcharge, and stormwater management facilities;
- (g) Where applicable, a landscaping plan for the project;
- (h) Where applicable, plans for development of areas on or off the site as mitigation for impacts associated with the proposed project shall be included and contain information consistent with the requirements of this section;
- (i) Quantity, source and composition of any fill material that is placed on the site whether temporary or permanent;
- (j) Quantity, composition and destination of any excavated or dredged material;
- (k) A vicinity map showing the relationship of the property and proposed development or use to roads, utilities, existing developments and uses on adjacent properties;
- (l) Where applicable, a depiction of the impacts to views from existing residential uses and public areas; and
- (m) On all variance applications the plans shall clearly indicate where development could occur without approval of a variance, the physical features and circumstances on the property that provide a basis for the request, and the location of adjacent structures and uses. (Ord. 5281 Sec. 1, 2009)

18.68.270: Cumulative Effects of Shoreline Development:

(1) The Planning Department shall, to the extent feasible, cooperate with adjacent jurisdictions to assess cumulative effects of shoreline development throughout the region.

(2) The Planning Official shall track development annually and every three years shall prepare a report that summarizes cumulative effects of authorized development on shoreline conditions, and also identifies restoration and/or enhancement projects that have been completed. The report shall be submitted for information to the Cities of Pasco and Richland, Benton County, the Port of Kennewick, Ecology, Washington Department of Fish and Wildlife, the U.S. Army Corps of Engineers, and the Yakama Nation and Confederated Tribes of the Umatilla Indian Reservation. (Ord. 5281 Sec. 1, 2009)

18.68.280: Shoreline Exemptions:

(1) An exemption from a Substantial Development Permit process is not an exemption from compliance with the Act or this Shoreline Master Program, or from any other regulatory requirements. To be authorized, all uses and developments must be consistent with the policies and regulatory provisions of this Shoreline Master Program and the Act. An exemption from the requirement to obtain a substantial development permit is not an exemption from the requirement to obtain a conditional use permit or variance. The burden of proof that a development or use is exempt from the permit process is on the applicant. If any part of a proposed development is not eligible for exemption, then a substantial development permit is required for the entire proposed development project. The Planning Official may attach conditions to the approval of exempted developments and/or uses as necessary to assure consistency of the project with the Act and this Master Program.

(2) The following activities shall be considered exempt from the requirement to obtain a shoreline Substantial Development Permit:

- (a) Environmental Excellence Program agreements (RCW 90.58.045): Notwithstanding any other provision of law, any legal requirement under this Chapter, including any standard, limitation, rule, or order is superseded and replaced in accordance with the terms and provisions of an environmental excellence program agreement, entered into under Chapter 43.21K RCW;
- (b) Energy Facility Site Evaluation Council - RCW 90.58.140(9): The holder of a certification from the governor pursuant to Chapter 80.50 RCW;
- (c) Hazardous Substance Remedial Actions - 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 Ecology when it conducts a remedial action under Chapter 70.105D RCW;
- (d) Emergency Water Withdrawals and Facilities - RCW 90.58.370: All state and local agencies with authority to issue permits or other authorizations in connection with emergency water withdrawals and facilities authorized under RCW 43.83B.410 shall expedite the processing of such permits or authorizations in keeping with the emergency nature of such requests and shall provide a decision to the applicant within fifteen calendar days of the date of application;
- (e) Secure Community Transition Facilities - RCW 90.58.390: To meet an emergency caused by the need to expeditiously site facilities to house sexually violent predators who have been committed under Chapter 71.09

RCW, secure community transition facilities sited pursuant to the preemption provisions of RCW 71.09.342 and secure facilities sited pursuant to the preemption provisions of RCW 71.09.250;

- (f) Fish Habitat Enhancement Projects - RCW 77.55.181(4): Fish habitat enhancement projects that meet the criteria of subsection (2)(a) of this section and that are reviewed and approved according to the provisions of this section when meeting the criteria further found in WAC 173-27-040(2)(p);
- (g) Normal maintenance or repair of existing structures or developments, including damage by accident, fire or elements. Normal maintenance includes those usual acts to prevent a decline, lapse or cessation from a lawfully established condition. Normal repair means to restore a development to a state comparable to its original condition within a reasonable period after decay or partial destruction, except where repair causes substantial adverse effects to the shoreline resource or environment. Replacement of a structure or development may be authorized as repair where such replacement is the common method of repair for the type of structure or development and the replacement structure or development is comparable to the original structure or development, including, but not limited to, its size, shape, configuration, location and external appearance and the replacement does not cause substantial adverse effects to shoreline resources or the environment;
- (h) Emergency construction necessary to protect property from damage by the elements. An emergency is an unanticipated and imminent threat to public health, safety or the environment that requires immediate action within a time too short to allow full compliance with this Shoreline Master Program. Emergency construction does not include development of new permanent protective structures where none previously existed. Where new protective structures are deemed by the Planning Official to be the appropriate means to address the emergency situation, upon abatement of the emergency situation the new structure shall be removed or any permit that would have been required, absent an emergency, pursuant to RCW 90.58, WAC 173-27, or this Shoreline Master Program, shall be obtained. All emergency construction shall be consistent with the policies of RCW 90.58 and this Shoreline Master Program. As a general matter, flooding or other seasonal events that can be anticipated and may occur, but that are not imminent, are not an emergency;
- (i) Construction or modification, by or under the authority of the Coast Guard or a designated port management authority, of navigational aids such as channel markers and anchor buoys;
- (j) Operation, maintenance, or construction of canals, waterways, drains, reservoirs, or other facilities that now exist or are hereafter created or developed as a part of an irrigation system for the primary purpose of making use of system waters including return flow and artificially stored ground water for the irrigation of lands, provided that this exemption shall not apply to construction of new irrigation facilities proposed after December 17, 2003;
- (k) Construction of a dock, including a community dock, designed for pleasure craft only, for the private noncommercial use of the owner, lessee, or contract purchaser of multiple family residences, the cost of which does not exceed \$10,000.00 but if subsequent construction having a fair market value

exceeding two thousand five hundred dollars occurs within five years of completion of the prior construction, the subsequent construction shall be considered a substantial development for the purpose of this Chapter. A dock is a landing and moorage facility for watercraft and does not include recreational decks, storage facilities or other appurtenances;

- (l) The marking of property lines or corners on state-owned lands, when such marking does not significantly interfere with normal public use of the surface of the water;
- (m) The process of removing or controlling aquatic noxious weeds, as defined in RCW 17.26.020, through the use of a herbicide or other treatment methods applicable to weed control that is recommended by a final environmental impact statement published by the Department of Agriculture or the Department of Ecology jointly with other state agencies under RCW 43.21C;
- (n) Site exploration and investigation activities that are a prerequisite to preparation of an application for development authorization under this Chapter, if:
 - (i) The activity does not interfere with the normal public use of the surface waters;
 - (ii) The activity will have no significant adverse impact on the environment including, but not limited to, fish, wildlife, fish or wildlife habitat, water quality, and aesthetic values;
 - (iii) The activity does not involve the installation of a structure, and upon completion of the activity the vegetation and land configuration of the site are restored to conditions existing before the activity;
 - (iv) A private entity seeking development authorization under this section first posts a performance bond or provides other evidence of financial responsibility to the local jurisdiction to ensure that the site is restored to preexisting conditions; and
 - (v) The activity is not subject to the permit requirements of RCW 90.58.550;
- (o) Any development of which does not meet the definition of “Substantial Development” found in 18.68.040(40);
- (p) Operation and maintenance of any system of dikes, ditches, drains, or other facilities existing on September 8, 1975, which were created, developed or utilized primarily as a part of an agricultural drainage or diking system;
- (q) Any project with a certification from the governor pursuant to Chapter RCW 80.50;
- (r) Watershed restoration projects as defined herein. Local government shall review the projects for consistency with the Shoreline Master Program in an expeditious manner and shall issue its decision along with any conditions within forty-five days of receiving all materials necessary to review the request for exemption from the applicant. No fee may be charged for accepting and processing requests for exemption for watershed restoration projects as used in this section and must be meet the criteria further found in WAC 173-27-040(2)(o); (Ord. 5281 Sec. 1, 2009)

18.68.290: Legal Provisions:

- (1) Violations and Penalties.
 - (a) In the event any person violates any of the provisions of this Chapter, the City may issue a correction notice to be delivered to the owner or operator, or to be conspicuously posted at the site. In a non-emergency situation, such notice may include notice of the intent to issue a stop work order no less than ten (10) calendar days following the receipt of the correction notice. In an emergency situation where there is a significant threat to public safety or the environment, the City may issue a stop work order. The stop work order shall include, in writing, the right to request an administrative review within seventy-two (72) hours following receipt of the stop work order.
 - (b) In addition to incurring civil liability under Section 18.68.290(2) below and RCW 90.58.210, pursuant to RCW 90.58.220 any person found to have willfully engaged in activities on shorelines of the State in violation of the provisions of the Act or of this Shoreline Master Program, or other regulations adopted pursuant thereto shall be punished by:
 - (i) A fine of not less than twenty-five dollars (\$25) or more than one thousand dollars (\$1,000);
 - (ii) Imprisonment in the City jail for not more than ninety (90) days; or
 - (iii) Both such fine and imprisonment; provided that, the fine for the third and all subsequent violations in any five (5) year period shall not be less than five hundred dollars (\$500) nor more than ten thousand dollars (\$10,000). Provided further, that fines for violations of RCW 90.58.550, or any rule adopted thereunder, shall be determined under RCW 90.58.560. Each permit violation or each day of continued development without a required permit shall constitute a separate violation.
 - (c) The penalty provided in Subsection B shall be assessed and may be imposed by a notice in writing, either by certified mail with return receipt requested or by personal service, to the person incurring the same. The notice shall include the amount of the penalty imposed and shall describe the violation with reasonable particularity. In appropriate cases, corrective action shall be taken within a specific and reasonable time.
 - (d) Within thirty (30) calendar days after the notice is received, the person incurring the penalty may apply in writing to the City for remission or mitigation of such penalty. Upon receipt of the application, the City may remit or mitigate the penalty upon whatever terms the City, in its discretion, deems proper. The City's final decision on mitigation or revisions may be reviewed by the Hearing Examiner if the aggrieved party files a written appeal therewith of said decision within ten (10) calendar days of its issuance.
 - (e) If work activity has occurred on a site in violation of this Shoreline Master Program, prompt corrective action, restoration, or mitigation of the site will be required when appropriate. If this provision is not complied with, the City may restore or mitigate the site and charge the responsible person for the full cost of such an activity. Additionally, any and all permits or approvals issued by the City may be denied for that site for a period of up to six (6) years.

- (f) The City may suspend or revoke a permit if the applicant violates the conditions or limitations set forth in the permit or exceeds the scope of the work set forth in the permit.
- (g) Any person who willfully violates any court order or regulatory order of injunction issued pursuant to this Shoreline Master Program shall be subject to a fine of not more than five thousand dollars (\$5,000), imprisonment in the County jail for not more than ninety (90) days, or both.
- (2) Remedies.
 - (a) The City Attorney or Planning Official, where authorized, shall bring such injunctive, declaratory, or other actions as are necessary to ensure that no uses are made of the shorelines of the State located within City of Kennewick in conflict with the provisions of this Shoreline Master Program, the Act, or other regulations adopted pursuant thereto, and to otherwise enforce the provisions of this Shoreline Master Program.
 - (b) Any person subject to the regulatory provisions of this Shoreline Master Program or the Act who violates any provision thereof, or permit, or permit condition issued pursuant thereto, shall be liable for all damage to public or private property arising from such violation, including the cost of restoring the affected area to its condition prior to violation. The City Attorney shall bring suit for damages under this section on their own behalf and on the behalf of all persons similarly situated. If liability has been established for the cost of restoring an area affected by a violation, the court shall make provision to assure that restoration will be accomplished within a reasonable time at the expense of the violator. In addition to such relief, including money damages, the court, in its discretion, may award attorney's fees and costs of the suit to the prevailing party.
 - (c) A person who fails to conform to the terms of a Substantial Development Permit, Conditional Use Permit or variance issued under RCW 90.58.140, who undertakes a development or use on shorelines of the State without first obtaining any required permit or authorization, or who fails to comply with a stop work order may be subject to a civil penalty. The penalty shall be imposed pursuant to the procedure set forth in WAC 173-27-280 and become due and recovered as set forth in WAC 173-27-290(3) and (4). Persons incurring a penalty may appeal the same to the Shoreline Hearings Board or the City Council pursuant to WAC 173-27-290(1) and (2).
 - (d) Any order, requirement or determination by the City pursuant to Section 18.68.290(1) – Violations and Penalties may be appealed in accordance with the provisions of 18.68.230(7). (Ord. 5281 Sec. 1, 2009)