

Kittitas Regional Shoreline Master Program Update Draft SMP Administrative and Procedures, Chapter 6 December 2012

This handout presents the draft administration and procedures provisions (Chapter 6) of the Kittitas Regional SMP update. The proposed provisions reflect the minimum required by state laws governing shoreline development (see specific RCWs and WACs cited in text, which indicate the source of the provision).

The table below presents options for additional provisions that jurisdictions may wish to consider in order to gain permit processing efficiencies or to avoid conflicts with local permit processing procedures.

Section	Options for Additional Provisions or Approaches
6.2. Applicability	Language from WAC 173-26-191 has been included, which discusses the exemptions provided by the statute. The list of specific exemptions has not been included. These specific exemptions include, for example, remedial actions pursuant to a consent decree, storm water treatment in an existing boatyard, environmental excellence programs, etc. (see WAC 173-27-045) or land in UGA that is brought under shoreline jurisdiction due to a shoreline restoration project creating a landward shift in the ordinary high water mark (see RCW 90.58.580(3)). These specific exemptions could be added to Section 6.2.
6.3.C Letter of Exemption	<p>The WAC does not require Shoreline Exemption letters except for the specific circumstances listed. However, reviewing projects that applicants believe are shoreline exempt is one way for local governments to ensure that the project is indeed exempt, to confirm that the project complies with the policies and regulations of the SMP, and to track shoreline development (and restoration projects) for the purpose of cumulative impact analysis. Most exempt projects would still require some other kind of permit (such as a building permit) where SMP compliance could be analyzed but some developments may be exempt from permitting requirements.</p> <p>An additional option could be to require exemption letters for all projects; rather than just for those required by the WAC.</p>
6.5.B Hearing Examiner	<p>Review authority for CUPs and Variances could be assigned to BOCC if that is preferred. The Department of Ecology offers the following guidance:</p> <p><i>In deciding which body to give the decision making responsibility for conditional uses and variances, local governments should consider the following:</i></p> <ul style="list-style-type: none"><i>City and county legislative bodies are typically very busy. Requiring them to review and approve all conditional use permits and variances, particularly in a large jurisdiction, may result in substantial permitting delays and additional work for an already overworked legislative body.</i> <p><i>City and county legislative bodies are primarily policy makers. They establish policy by adopting Shoreline Master Programs (SMPs) and</i></p>

approving SMP amendments. Deciding permits is an administrative function. Many local communities assign responsibility for conditional use permits and variances to an existing body with permitting expertise, such as a hearing examiner.

6.7 Review Procedures

There are several alternatives for satisfying the procedural requirements of the SMP. The procedures can be fully incorporated in the SMP document, the procedures can be fully incorporated in other parts of the local codes, or a combination of the two.

Ecology recommends including procedures in other parts of the local code rather than in the SMP for the following reasons:

- Any changes to the procedural requirements will not need Ecology approval if they are not located within the SMP; and
- The procedural provisions can be integrated or matched with permit procedures for other types of development, allowing for more efficiency by staff.

This draft SMP proposes to include most procedural requirements in the SMP, with minimal inclusion in local codes. Trying to incorporate all the necessary provisions from the WAC and RCWs into each participating jurisdiction's existing codes would be a complex, time intensive and expensive effort; therefore, these provisions will be included only in the SMP. However, in order to avoid duplicate requirements for permit consolidation and single open record hearing in other sections of the code, local codes regarding hearings should be revised to address SMP permits.

6.7.B Complete Application

This section contains the minimum submittal requirements. An alternative option could be to require additional submittal items – such as a compliance narrative that requires the applicant to describe how they meet the Review Criteria in Section 6.

6.7.D.4 Notice Method

The minimum WAC notice methods have been included. The WAC leaves room for “Any other manner deemed appropriate by local authorities to accomplish the objectives of reasonable notice to adjacent landowners and the public.” Additional notice provisions that could be included. For example, rather than the WAC minimum of notifying property owners within a 300-foot radius of a project, a larger radius could be used, such as the 500-foot radius used by Kittitas County Code. In addition to the minimum of sign-posting, an additional requirement to provide notice in the newspaper and on the website could be required, consistent with the Kittitas County Code.

6.8 Appeals

Some counties (such as Douglas County) incorporate a Hearing Examiner appeal option for administrative decisions. This could be included as an option in the SMP, or appeals could go directly to the shorelines hearings board, as provided by the WAC.

6.10.B Submittal Requirements

The minimum WAC requirements have been included. An option would be for additional requirements such as a compliance narrative, fees, etc. to be included, as well.

6.12. Enforcement

The minimum WAC requirements have been included. Enforcement provisions could also be made more specific and go beyond reliance on the statutes and Department of Ecology authority.

6. Administration and Procedures

Sections:

- 6.1 Purpose
- 6.2 Applicability
- 6.3 Exemptions
- 6.4 Types of Permits
- 6.5 Review Authority
- 6.6 Review Criteria
- 6.7 Review Procedures
- 6.8 Appeals
- 6.9 Timing
- 6.10 Revisions
- 6.11 Nonconforming Uses and Structures
- 6.12 Enforcement
- 6.13 Amendments to SMP

6.1 *Purpose [WAC 173-27-020]*

The purpose of this Shoreline Management Program is to provide for the administration and management of development and uses within the shoreline jurisdiction in a manner consistent with RCW 90.58, the Shoreline Management Act, and other rules and guidelines adopted by the department of ecology.

6.2 *Applicability*

1. Generally. Except when specifically exempted by statute, all proposed uses and development occurring within shoreline jurisdiction must conform to chapter 90.58 RCW, the Shoreline Management Act, and this master program. No substantial development shall be undertaken on shorelines of the state without first obtaining a permit. See also Section 1.8 Applicability. [WAC 173-26-191(2)(A)(III)(a)]
2. Agricultural activities on agricultural lands. Nothing in this SMP shall require modification of or limit agricultural activities occurring on agricultural lands. However, new agricultural activities on land not meeting the definition of agricultural land, conversion of agricultural lands to other uses, and development not meeting the definition of agricultural activities is subject to the provisions of this SMP. [RCW 90.58.065]

6.3 *Permit Exemptions*

1. General Provisions. [WAC 173-27-040(1)]
 - a. Exemptions shall be construed narrowly. Only those developments that meet the precise terms of one or more of the listed exemptions may be granted exemption from the substantial development permit process.

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- b. An exemption from the substantial development permit process is not an exemption from compliance with the act or master program or from any other regulatory requirements.
 - c. The burden of proof that a development or use is exempt from the permit process is on the applicant.
 - d. 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.
 - e. Conditions may be attached to the approval of exempted developments or uses as necessary to assure consistency of the project with the act and the master program.
2. Developments Exempt from Shoreline Substantial Development Permitting Process. Exempt developments include those set forth in WAC 173-27-040(2) and RCW 90.58.030, as amended, generally including:
- a. Any development of which the total cost or fair market value, whichever is higher, does not exceed five thousand dollars, if such development does not materially interfere with the normal public use of the water or shorelines of the state.
 - b. Normal maintenance or repair of existing structures or developments, including damage by accident, fire or elements.
 - c. Construction of the normal protective bulkhead common to single-family residences.
 - d. Emergency construction necessary to protect property from damage by the elements.
 - e. Construction and practices normal or necessary for farming, irrigation, and ranching activities but excluding feedlots, processing plants, other activities of a commercial nature and alterations of shorelands beyond that which results from normal cultivation;
 - f. Construction or modification of navigational aids such as channel markers and anchor buoys;
 - g. Construction of a single-family residence;
 - h. Construction of a dock, including a community dock, designed for pleasure craft only with a fair market value of ten thousand dollars or less (provided, 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);
 - i. Operation, maintenance, or construction of canals, waterways, drains, reservoirs, or other facilities that now exist or are hereafter created or developed as a part of an irrigation system for the primary purpose of making use of system waters, including return flow and artificially stored groundwater from the irrigation of lands;
 - j. 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

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- of the water;
- k. 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;
 - l. Any project with a certification from the governor pursuant to chapter 80.50 RCW;
 - m. Site exploration and investigation activities that are prerequisite to preparation of an application for development authorization, when all of the conditions and provisions of WAC 173-27-040(2)(m) are met;
 - n. The process of removing or controlling aquatic noxious weeds, as defined in RCW 17.26.020, through the use of an herbicide or other treatment methods recommended under chapter 43.21C RCW;
 - o. Watershed restoration projects;
 - p. A public or private project that is designed to improve fish or wildlife habitat or fish passage, when all of the conditions and provisions of WAC 173-27-040(2)(p) are met and the project is consistent with RCW 90.58.147;
3. Letter of Exemption. [WAC 173-27-050]
- a. Required. A letter of exemption is not required unless a development exempt from the substantial development permit requirements is a watershed restoration project or subject to one or more of the following federal permits:
 - i. U.S. Army Corps of Engineers section 10 permit under the Rivers and Harbors Act of 1899 (generally applicable to any project occurring on or over navigable waters); or
 - ii. Section 404 permit under the Federal Water Pollution Control Act of 1972 (generally applicable to any project which may involve discharge of dredge or fill material to any water or wetland area).
 - b. Contents. When required, the letter of exemption must indicate the specific exemption provision from WAC 173-27-040 that is being applied to the development and provide a summary of the local government's analysis of the consistency of the project with the master program and the act.
 - c. Watershed restoration projects. Watershed restorations projects must be reviewed in an expeditious manner and an exemption decision, together with any conditions, must be issues within forty-five days of receiving all materials necessary to review the request for exemption. No fee may be charged for accepting and processing requests for exemption for watershed restoration projects as used in this section. [WAC 173-27-040(2)(o)]

6.4 Types of Permits [WAC 173-27-040]

1. Substantial Development Permits. All substantial development undertaken on shorelines of the state requires a permit to ensure consistency with the policies of RCW 90.58.020 and the master program.

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2. Variances. The purpose of a variance permit is strictly limited to granting relief from specific bulk, dimensional or performance standards set forth in the applicable master program where there are extraordinary circumstances relating to the physical character or configuration of property such that the strict implementation of the master program will impose unnecessary hardships on the applicant or thwart the policies set forth in RCW 90.58.020. When a development or use is proposed that does not comply with the bulk, dimensional and performance standards of the master program, such development or use can only be authorized by approval of a variance. [WAC 173-27-170]
3. Conditional Uses. The purpose of a conditional use permit is to provide a system within the master program which allows flexibility in the application of use regulations in a manner consistent with the policies of RCW 90.58.020. Uses which are classified or set forth in the applicable master program as conditional uses may be authorized with a conditional use permit. Other uses which are not classified or set forth in the applicable master program may be authorized as conditional uses provided the applicant can demonstrate consistency with the requirements of this section and the requirements for conditional uses contained in the master program. Uses which are specifically prohibited by the master program may not be authorized as conditional uses. [WAC 173-27-160]

6.5 Review Authority [RCW 90.58.240]

1. Director. The Director or his/her designee shall have the authority to review and approve, deny, or approve with conditions applications for the following:
 - a. Letters of exemption.
 - b. Shoreline substantial development permits.
 - c. Revisions to substantial development permits.
 - d. Requests for timing extensions.
2. Hearing Examiner. The Hearing Examiner or his/her designee shall have the authority to review and make initial recommendations for approval, denial, or approval with conditions for the following:
 - a. Shoreline conditional use permits.
 - b. Shoreline variances.
3. Board of County Commissioners. The Board of County Commissioners or their designee shall have the authority to:
 - a. Acquire lands and easements within shorelines of the state by purchase, lease, or gift, either alone or in concert with other governmental entities, when necessary to achieve implementation of master programs;
 - b. Accept grants, contributions, and appropriations from any agency, public or private, or individual for the purposes of the master program;
 - c. Appoint advisory committees to assist in carrying out the purposes of the

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- master program; and
 - d. Contract for professional or technical services required by the master program which cannot be performed by its employees. [RCW 90.58.240]
 - e. Adoption of moratoria or other interim official controls necessary to implement SMP, in accordance with RCW 90.58.590 as amended.
4. Department of Ecology. The Department of Ecology shall be responsible for the final approval, denial or approval with conditions for the following: [WAC 173-27-200]
- a. Shoreline conditional use permits and revisions to same.
 - b. Shoreline variances and revisions to same.

6.6 *Review Criteria*

1. All Development Permits: No permit shall be issued for any new or expanded building or structure of more than thirty-five feet above average grade level on shorelines of the state that will obstruct the view of a substantial number of residences on areas adjoining such shorelines unless overriding considerations of the public interest will be served. [WAC 173-27-140]
2. Substantial Development Permits: A substantial development permit shall be granted only when the applicant demonstrates all of the following: [WAC 173-27-150]
 - a. That the development is consistent with the policies and procedures RCW 90.58 and WAC 173-27;
 - b. That the development is consistent with the policies and procedures of the master program; and
 - c. That the development has been appropriately conditioned where necessary to assure consistency of the project with the act and the local master program.
3. Conditional Use Permits: Uses which are classified or set forth in the applicable master program as conditional uses or unclassified uses not specifically prohibited may be authorized as a conditional use provided that the applicant demonstrates all of the following: [WAC 173-27-160]
 - a. That the proposed use is consistent with the policies of RCW 90.58.020 and the master program;
 - b. That the proposed use will 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 will cause no significant adverse effects to the shoreline environment in which it is to be located;

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- e. That the public interest suffers no substantial detrimental effect;
- f. That the cumulative impact of additional requests for like actions in the area would not produce substantial adverse effects to the shoreline environment; and
- g. That the proposed use has been appropriately conditioned to prevent undesirable effects of the proposed use and to assure consistency of the project with the act and the local master program.
- h. When converting from one nonconforming use to a different nonconforming use, the applicant must demonstrate that no reasonable alternative conforming use is practical and that the proposed use will be at least as consistent with the policies and provisions of the act and the master program and as compatible with the uses in the area as the preexisting use. [WAC 173-27-080(6)]

4. Variance: [WAC173-27-170]

- a. General provisions. Variance permits should be granted in circumstances where denial of the permit would result in a thwarting of the policy enumerated in RCW 90.58.020. In all instances the applicant must demonstrate that extraordinary circumstances shall be shown and the public interest shall suffer no substantial detrimental effect. Variances from the use regulations of the master program are prohibited.
- b. Review criteria for all variances. Variance permits for development and/or uses that will be located landward of the ordinary high water mark (OHWM) and/or landward of any wetland may be authorized provided the applicant can demonstrate all of the following:
 - i. That the strict application of the bulk, dimensional or performance standards set forth in the applicable master program precludes, or significantly interferes with, reasonable use of the property;
 - ii. That the hardship is specifically related to the property, and is the result of unique conditions such as irregular lot shape, size, or natural features and the application of the master program, and not, for example, from deed restrictions or the applicant's own actions;
 - iii. 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;
 - iv. That the variance will not constitute a grant of special privilege not enjoyed by the other properties in the area;
 - v. That the variance requested is the minimum necessary to afford relief;
 - vi. That the public interest will suffer no substantial detrimental effect; and
 - vii. That the cumulative impact of additional requests for variances in the area where similar circumstances exist would not produce substantial adverse effects to the shoreline environment.
- c. Additional review criteria for variances waterward of the OHWM. In addition

to the criteria established under subsection b above, applicants for variance permits for development and/or uses that will be located waterward of the ordinary high water mark (OHWM) must also demonstrate:

- i. That the strict application of the bulk, dimensional or performance standards set forth in the applicable master program precludes all reasonable use of the property; and
- ii. That the public rights of navigation and use of the shorelines will not be adversely affected.

6.7 Review Procedures

1. Generally. The general procedural requirements of the county or city shall apply to shoreline permits except where this Chapter is more restrictive or specific, in which case the provision of this Chapter shall apply.
2. Complete application. The Reviewing Official shall issue a determination of completeness, upon finding that the following required information has been submitted with an application for a substantial development, conditional use, or variance permit: [WAC 173-27-180]
 - a. The name, address and phone number of the applicant.
 - b. The name, address and phone number of the applicant's representative, if applicable.
 - c. The name, address and phone number of the property owner, if other than the applicant.
 - d. Property address and identification of the section, township and range to the nearest quarter, quarter section. Applications for projects located in open water areas away from land shall provide a longitude and latitude location to the nearest minute.
 - e. Name of the shoreline (water body) that the site of the proposal is associated with.
 - f. A general description of the proposed project that includes the proposed use or uses and the activities necessary to accomplish the project.
 - g. A general description of the property as it now exists including its physical characteristics and improvements and structures.
 - h. A general description of the vicinity of the proposed project including identification of the adjacent uses, structures and improvements, intensity of development and physical characteristics.
 - i. 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:
 - i. The boundary of the parcel(s) of land upon which the development is proposed.
 - ii. 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

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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.

- iii. 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.
 - iv. A delineation of all wetland areas that will be altered or used as a part of the development.
 - v. A general indication of the character of vegetation found on the site.
 - vi. 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.
 - vii. Where applicable, a landscaping plan for the project.
 - viii. 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.
 - ix. Quantity, source and composition of any fill material that is placed on the site whether temporary or permanent.
 - x. Quantity, composition and destination of any excavated or dredged material.
 - xi. A vicinity map showing the relationship of the property and proposed development or use to roads, utilities, existing developments and uses on adjacent properties.
 - xii. Where applicable, a depiction of the impacts to views from existing residential uses and public areas.
 - xiii. 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.
3. Concurrent submittals. When a substantial development permit and a conditional use or variance permit are required for a development, the submittal on the permits shall be made concurrently.
4. Notice. [WAC 173-27-110]

- a. Required. The Reviewing Official shall notify the public, the Department of

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Ecology, other agencies with jurisdiction as well as individuals and organizations that have requested notice in writing of applications for a shoreline management substantial development, conditional use, or variance permit.

- b. Timing. Notice of application shall be provided within fourteen days after the determination of completeness. When an open record hearing is required. If an open record pre-decision hearing is required for the requested project permits, the notice of application shall be provided at least fifteen days prior to the open record hearing.
 - c. Contents. The notice shall include:
 - i. The date of application, the date of the notice of completion for the application, and the date of the notice of application;
 - ii. A description of the proposed project action and a list of the project permits included in the application and, if applicable, a list of any studies requested;
 - iii. The identification of other permits not included in the application to the extent known by the local government;
 - iv. The identification of existing environmental documents that evaluate the proposed project, and, if not otherwise stated on the document providing the notice of application, such as a city land use bulletin, the location where the application and any studies can be reviewed;
 - v. A statement of the public comment period, which shall be not less than thirty days following the date of notice of application, and statements of the right of any person to comment on the application, receive notice of and participate in any hearings, request a copy of the decision once made, and any appeal rights. A local government may accept public comments at any time prior to the closing of the record of an open record predecision hearing, if any, or, if no open record predecision hearing is provided, prior to the decision on the project permit;
 - vi. The date, time, place, and type of hearing, if applicable and scheduled at the date of notice of the application;
 - vii. A statement of the preliminary determination, if one has been made at the time of notice, of those development regulations that will be used for project mitigation and of consistency; and
 - viii. Any other information determined appropriate by the local government.
 - d. Method. The notification system shall assure that notice to the general public and property owners in the vicinity of such application is given by at least one of the following methods:
 - i. Mailing of the notice to the latest recorded real property owners as shown by the records of the county assessor within at least three hundred feet of the boundary of the property upon which the development is proposed; or
 - ii. Posting of the notice in a conspicuous manner on the property upon which the project is to be undertaken.
5. Review and decision. The appropriate review authority identified in Section 5 shall review applications for compliance with review criteria in Section 6 and either

approve, deny, or approve with conditions. In the case of shoreline conditional use permits and variances, the decision shall serve as a recommendation to the Department of Ecology, which is responsible for the final decision on shoreline conditional use permits and variances.

6. Submittal to Department of Ecology [WAC 173-27-130]

- a. Required submittal. All applications for a permit or a permit revision shall be submitted to the Department of Ecology upon a final decision by local government, pursuant to WAC 173-27-130.
- b. Appeals. When a permit has been appealed pursuant to RCW 90.58.180, upon conclusion of all review proceedings, a copy of the final order shall be provided by the local government to the Department of Ecology.
- c. Modified project. When the project has been modified in the course of the review proceeding, plans or text shall be provided to the local government that clearly indicate the final approved plan and the local government shall reissue the permit accordingly and submit a copy of the reissued permit and supporting documents consistent with subsection (3) of this section to the department for completion of the file on the permit. The purpose of this provision is to assure that the local and department files on the permit are complete and accurate and not to provide a new opportunity for appeal of the permit.
- d. Conditional use permits and variances. Shoreline conditional use permits and variances shall be transmitted to the Department of Ecology for final approval, denial, or approval with conditions.

6.8 Appeals [RCW 90.58.180]

Any person aggrieved by the granting, denying, or rescinding of a permit on shorelines of the state may seek review from the shorelines hearings board by filing a petition for review within twenty-one days of the date of filing of the decision, pursuant to RCW 90.58.180.

6.9 Timing [WAC 173-27-090 and 173-27-190]

1. Applicability. The time requirements of this section shall apply to all substantial development permits and to any development authorized pursuant to a variance or conditional use permit.
2. Effective Date. The effective date of a substantial development permit shall be the date of filing as provided in RCW 90.58.140(6).
3. Commencement. Construction activities associated with a shoreline permit are not authorized and shall not begin until twenty-one days from the date of filing or until all review proceedings initiated within twenty-one days from the date of such filing have been terminated. Construction activities, or the use or activity where no construction

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activities are involved, shall be commenced within two years of the effective date of a substantial development permit. [WAC 173-27-190]

4. Expiration. Authorization to conduct development activities shall terminate five years after the effective date of a shoreline permit, unless extended in accordance with the provisions below.
5. Extension. The Review Official may authorize a single extension for a period not to exceed one year based on reasonable factors, if a request for extension has been filed before the expiration date and notice of the proposed extension is given to parties of record on the shoreline permit and to the Department of Ecology.
6. Exclusions. The time periods in this section do not include the time during which a use or activity was not actually pursued due to the pendency of administrative appeals or legal actions or due to the need to obtain any other government permits and approvals for the development, including all reasonably related administrative or legal actions on any such permits or approvals.
7. Flexibility. Upon a finding of good cause, based on the requirements and circumstances of the project proposed and consistent with the policy and provisions of the master program and RCW 90.58, the Department may adopt different time limits from those set forth in this subsection as part of action on a substantial development permit.

6.10 Revisions [WAC 173-27-100]

1. Applicability.
 - a. Substantive changes. A permit revision is required whenever the applicant proposes substantive changes to the design, terms or conditions of a project from that which is approved in the permit. Changes are substantive if they materially alter the project in a manner that relates to its conformance to the terms and conditions of the permit, the master program and/or the policies and provisions of the Shoreline Management Act (RCW 90.58). Changes which are not substantive in effect do not require approval of a revision.
 - b. Substantial development. If the proposed change, or the sum of the proposed revisions and any previously approved revisions, constitutes substantial development then the applicant is not eligible for the revision process and shall be required to apply for a new permit.
2. Submittal requirements. An applicant seeking to revise a permit shall submit detailed plans and text describing the proposed changes to the Review Official.
3. Review criteria and findings. The Review Official may approve a revision when the proposed changes are within the scope and intent of the original permit, and are consistent with the applicable master program and the act. At a minimum, the

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Review Official must find:

- a. No additional over water construction is involved except that pier, dock, or float construction may be increased by five hundred square feet or ten percent from the provisions of the original permit, whichever is less;
 - b. Ground area coverage and height may be increased a maximum of ten percent from the provisions of the original permit;
 - c. The revised permit does not authorize development to exceed height, lot coverage, setback, or any other requirements of the applicable master program except as authorized under a variance granted as the original permit or a part thereof;
 - d. Additional or revised landscaping is consistent with any conditions attached to the original permit and with the applicable master program;
 - e. The use authorized pursuant to the original permit is not changed; and
 - f. No adverse environmental impact will be caused by the project revision
4. Timing and limitations. Revisions to permits may be authorized after original permit authorization has expired. However, such revisions shall be limited to authorization of changes which are consistent with this section and which would not require a shoreline permit for the development or change. This subsection shall not be used to extend the time requirements or to authorize substantial development beyond the time limits of the original permit.
5. Notice. Notice of the revision approval shall be given to parties of record on the original permit and to the Department of Ecology.
6. Effective date. The revised permit is effective immediately upon final decision by the Review Official or, when appropriate, upon final action by the Department of Ecology.
7. Appeals.
- a. Timing. Appeals shall be in accordance with RCW 90.58.180 and shall be filed within twenty-one days from the date of receipt of the local government's action on a substantial development permit revision by the Department of Ecology or, for revisions to conditional use permits or variances, the date the Department of Ecology's final decision is transmitted to local government and the applicant.
 - b. Grounds. Appeals shall be based only upon contentions of noncompliance with the provisions of WAC 173-27-100.
 - c. Construction during appeal period. Construction undertaken pursuant to that portion of a revised permit not authorized under the original permit is at the applicant's own risk until the expiration of the appeals deadline.
 - d. Impact of appeal on original permit. If an appeal is successful in proving that a revision is not within the scope and intent of the original permit, the decision shall have no bearing on the original permit.

6.11 Nonconforming Uses and Structures [WAC 173-27-080]

1. Nonconforming structures.

- a. **Applicability.** A structure for which a variance has been issued shall be considered a legal nonconforming structure and the requirements of this section shall apply as they apply to preexisting nonconformities.
- b. **Continuation.** Structures that were legally established and are used for a conforming use but which are nonconforming with regard to setbacks, buffers, yards, lot size, bulk, height or density may be maintained and repaired.
- c. **Expansion.** Legally established nonconforming structures 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.
- d. **Relocation.** A nonconforming structure which is moved any distance must be brought into conformance with the applicable master program and the act.
- e. **Replacement.** 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.

2. Nonconforming uses.

- a. **Applicability.** A use which is listed as a conditional use but which existed prior to adoption of the 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 master program to the site and for which a conditional use permit has not been obtained shall be considered a nonconforming use.
- b. **Continuation.** Uses that were legally established and are nonconforming with regard to the use regulations of the master program may continue as legal nonconforming uses.
- c. **Expansion.** Such uses shall not be enlarged or expanded, except that nonconforming single-family residences that are located landward of the ordinary high water mark may be enlarged or expanded in conformance with applicable bulk and dimensional standards by the addition of space to the main structure or by the addition of normal appurtenances upon approval of a conditional use permit.
- d. **Conversion.** 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.

- e. Replacement. 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.
- f. Expiration. 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.

6.12 Enforcement.

- 1. Applicability. Enforcement action by the department or local government may be taken whenever a person has violated any provision of the act or any master program or other regulation promulgated under the act. The choice of enforcement action and the severity of any penalty should be based on the nature of the violation, the damage or risk to the public or to public resources, and/or the existence or degree of bad faith of the persons subject to the enforcement action. [WAC 173-27-260]
- 2. Order to cease and desist. [WAC 173-27-270]
 - a. Authority. Local government shall have the authority to serve upon a person a cease and desist order if an activity being undertaken on shorelines of the state is in violation of chapter 90.58 RCW or this master program.
 - b. Contents. The order shall set forth:
 - i. A description of the specific nature, extent, and time of violation and the damage or potential damage; and
 - ii. A notice that the violation or the potential violation cease and desist or, in appropriate cases, the specific corrective action to be taken within a given time. A civil penalty under WAC 173-27-280 may be issued with the order.
 - c. Effective date. The cease and desist order shall become effective immediately upon receipt by the person to whom the order is directed.
 - d. Compliance. Failure to comply with the terms of a cease and desist order can result in enforcement actions including, but not limited to, the issuance of a civil penalty.
- 3. Penalties. [WAC 173-27-280]
 - a. Applicability. A person who fails to conform to the terms of a substantial development permit, conditional use permit or variance, who undertakes a development or use on shorelines of the state without first obtaining a permit, or who fails to comply with a cease and desist order issued under these

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- regulations may be subject to a penalty.
- b. Authority. The county or city shall bring such declaratory injunctive or other proceeding as may be necessary to assure that no uses be made of the shorelines of the state located in Kittitas County contrary to the provisions of this program or of RCW 90.58. [language from Douglas County]
 - c. Shared responsibility. The county and cities shall enforce RCW 90.58.210 through 90.58.230 and WAC 173-27, as amended, in cooperation with the State. [language from Douglas County]

6.13 Amendments to Master Program
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