

## Chapter 12 Administration and Compliance

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### 12-10 GENERAL PROVISIONS

12-10-010 As required by WAC 173-26-191(2)(a)(iii)(A): All proposed uses and development occurring within shoreline jurisdiction must conform to chapter 90.58 RCW, the Shoreline Management Act and this Master Program, whether or not a permit is required

12-10-020 "Feasible" is defined in the definitions section of this Master Program. In cases where this Master Program require certain actions unless they are infeasible, the burden of proving infeasibility is on the applicant. In determining an action's infeasibility, the reviewing agency may weigh the action's relative public costs and public benefits, considered in the short- and long-term time frame.

12-10-030 Landscape Plan and Installation

- A. Where this Master Program or a condition of a permit or exemption requires a planting plan or a landscape plan, the plan shall contain the following information at a minimum:
1. North arrow and scale (standard engineering scale, 1"=50' or larger)
  2. Property lines, ordinary high water mark, existing and proposed structures, paved or graveled areas, streets, sidewalks, and overhead and underground utilities.
  3. Proposed location of all trees, shrubs, ground cover, and any proposed or existing physical elements, such as fencing, walls, curbing, or benches, that may affect the overall landscape. Areas with existing vegetation that will be retained should be marked and described.
  4. A plant schedule which indicates the scientific and common names, quantities, spacing, and sizes at planting and maturity for all plants in the landscape plan.
  5. A legend which shows symbols and types of plants.
  6. Location and details of irrigation system. The source of water and type of irrigation system shall be noted.
- B. Unless otherwise required or allowed as part of the permit or exemption, the following shall be the standards for all required plantings:
1. The minimum size at planting for shrubs and trees shall be one gallon.
  2. The minimum spacing for shrubs shall be 3' on center.
  3. Plants shall be installed not later than the next planting season after completion of the project.
  4. The proponent shall assess the plantings at least once a year for the first three growing seasons after installation and shall replace all dead or dying plant materials in a timely manner.

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- C. When deemed appropriate, the decision maker may require third party monitoring of required plantings, with reports submitted to the City yearly during the monitoring period.

12-10-040 Transfer of an Approved Permit or Variance. An approved permit or variance may be transferred from the original applicant to any successors in interest to the applicant for the property for which the permit or variance was approved, provided that all of the conditions and requirements of the approved permit or variance shall continue in effect as long as the use or activity is pursued or the structure exists, unless the terms of the permit are modified in accordance with the applicable provisions of this Master Program.

12-10-050 Appeals. Appeals related to issuance or non-issuance of shoreline permits and exemptions shall be processed the same as any other land use appeals.

12-10-060 Enforcement. Violations of this Master Program shall be enforced in the same manner as zoning violations.

12-10-070 Severability. If any provisions of this Master Program, or its application to any person or legal entity or parcel of land or circumstances, is held invalid, the remainder of the Master Program, or the application of the provisions to other persons or legal entities or parcels of land or circumstances, shall not be affected.

12-10-080 Conflict of Provisions. Should a conflict occur between the provisions of this Master Program or between this Master Program and the laws, regulations, code, or rules promulgated by any other authority having jurisdiction within the City of Moses Lake, the most restrictive requirement shall be applied, except when constrained by federal or state law, or where specifically provided otherwise in the Master Program.

## **12-20 PERMITS**

12-20-010 Permit Processing Procedures. Shoreline substantial development permits, shoreline conditional use permits, and shoreline variances shall be processed the same as other land use permits, using the procedures in Moses Lake Municipal Code Title 20. A public hearing in front of the Planning Commission shall be required for Shoreline Substantial Development Permits, Shoreline Conditional Use Permits, and Shoreline Variances. The Planning Commission shall be the approving authority for Shoreline Substantial Development Permits, Shoreline Conditional Use Permits, and Shoreline Variances.

12-20-020 Application submittal requirements. The following shall be required for a complete application:

- A. The name, address, phone number, and signature of the applicant. The applicant should be the owner of the property or the primary proponent of the project and not the representative of the owner or proponent.
- B. The name, address, and phone number of the applicant's representative, if any.
- C. The name, address, phone number, and signature of the property owner, if other than the applicant.
- D. Location of property, including address, legal description, and Assessor Parcel Number.
- E. A general description of the proposed project that includes the proposed use or uses and the activities necessary to accomplish the project.
- F. A general description of the property as it now exists including its physical characteristics and improvements and structures.
- G. 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.

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- H. A site development plan consisting of maps and elevation drawings, drawn to an appropriate standard scale to depict clearly all required information, photographs, and text which shall include:
  - 1. The boundary of the parcel(s) of land upon which the development is proposed.
  - 2. The ordinary high water mark (OHWM) 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 OHWM, 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 OHWM is neither adjacent to or within the boundary of the project, the plan shall indicate the distance and direction to the nearest OHWM of a shoreline.
  - 3. 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.
  - 4. A wetland analysis report for any wetlands within 200' of the development, and a compensatory mitigation report for wetland areas that will be altered or used as a part of the development.
  - 5. A general indication of the character of vegetation found on the site.
  - 6. The dimensions and locations of all existing and proposed structures and improvements including but not limited to buildings, paved or graveled areas, roads, utilities, material stockpiles or surcharge, and stormwater management facilities.
- I. Where applicable, a landscaping plan for the project.
- J. Where applicable, plans for development of areas on or off site as mitigation for impacts associated with the proposed project.
- K. Quantity, source, and composition of any fill material that is placed on the site, whether temporary or permanent.
- L. Quantity, composition, and destination of any excavated or dredged material.
- M. A vicinity map showing the relationship of the property and proposed development or use to roads, utilities, existing developments and uses on adjacent properties.
- N. Where applicable, a depiction of the impacts to views from existing residential uses and public areas.
- O. For conditional use permits and variances, a written statement addressing the approval criteria listed below.
- P. For variances, a plan which clearly indicates where development could occur without approval of a variance, the physical features and circumstances on the property that provide a basis for the variance request, and the location of adjacent structures and uses.
- Q. If applicable, critical area reports.
- R. Any other information deemed necessary by the Shoreline Administrator.

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## 12-20-030      Review criteria for all development

- A. All uses and developments shall be consistent with the policies and provisions of the Shoreline Management Act, the state guidelines implementing the Act, and this Master Program. All permits or statements of exemption issued for development or use within shoreline jurisdiction shall include written findings prepared by the Administrator, including compliance with bulk and dimensional standards, policies, and regulations of this Master Program. At the time of approval of the permit or exemption, the approving authority may attach conditions to the approval of developments and/or uses as necessary to assure consistency of the project with the Shoreline Management Act, guidelines, and Master Program.
- B. No permit shall be issued for any new or expanded building or structure with a height of more than 35' above average grade that will obstruct the view of a substantial number of residences on areas adjoining the shorelines except when overriding considerations of the public interest will be served.

## 12-20-040      Review Criteria for Substantial Development Permits

- A. All uses and development shall be consistent with the policies and procedures of the Shoreline Management Act, the state guidelines implementing the Act, and this Master Program.
- B. At the time of permit approval, the Planning Commission may attach conditions to the approval of permits as necessary to assure consistency of the project with the Act, the guidelines, and this Master Program.

## 12-20-050      Shoreline Conditional Use Permits

- A. The purpose of a Shoreline Conditional Use Permit is to allow greater flexibility in the application of the use regulations of the Shoreline Master Program in a manner consistent with the policies of RCW 90.58.020. Conditional use permits should be granted in a circumstance where denial of the permit would result in a thwarting of the policy enumerated in RCW 90.58.020. Where necessary, special conditions may be required on the development or on the use of land or water.
- B. Uses which are classified in this Master Program as conditional uses and uses which are unmentioned uses within the Master Program may be authorized provided the applicant demonstrates all of the following:
  - 1. The proposed use is consistent with the policies of RCW 90.58.020 and this Master Program.
  - 2. The proposed use will not interfere with the normal public use of public shorelines.
  - 3. 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 this Master Program.
  - 4. The proposed use will cause no significant adverse effects to the shoreline environment in which it is to be located.
  - 5. The public interest will suffer no substantial detrimental effect.
- C. In granting conditional use permits, the Planning Commission shall consider the cumulative impact of additional requests for like action 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.
- D. A use which is specifically prohibited in this Master Program may not be authorized as a conditional use.

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12-20-060

## Variances

- A. The purpose of a variance is strictly limited to granting relief from specific bulk, dimensional, or performance standards set forth in this Master Program where there are extraordinary or unique circumstances relating to the 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.
- B. Variances 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 exist and that the public interest shall suffer no substantial detrimental effects.
- C. Variances for development and/or uses proposed landward of the ordinary high water mark and/or landward of any wetland may be authorized provided the applicant demonstrates all of the following:
  - 1. The strict application of the bulk, dimensional, or performance standards of this Master Program precludes, or significantly interferes with, reasonable use of the property.
  - 2. The hardship described in (1) above 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.
  - 3. 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 this Master Program.
  - 4. The design of the project will not cause adverse impacts to the shoreline environment.
  - 5. The variance will not constitute a grant of special privilege not enjoyed by other properties in the area.
  - 6. The variance requested is the minimum necessary to afford relief.
  - 7. The public interest will suffer no substantial detrimental effect.
- D. Variances for development and/or uses proposed waterward of the ordinary high water mark and/or within any wetland may be authorized provided the applicant demonstrates all of the following:
  - 1. The strict application of the bulk, dimensional, or performance standards of this Master Program precludes all reasonable use of the property.
  - 2. The hardship described in (1) above 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.
  - 3. 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 this Master Program.
  - 4. The design of the project will not cause adverse impacts to the shoreline environment.
  - 5. The variance will not constitute a grant of special privilege not enjoyed by other properties in the area.
  - 6. The variance requested is the minimum necessary to afford relief.
  - 7. The public interest will suffer no substantial detrimental effect.

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- 8. The public rights of navigation and use of the shorelines will not be adversely affected.
- E. In granting variances, the Planning Commission shall consider the cumulative impact of additional requests for like action in the area. For example, if variances were granted for 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 produce substantial adverse effects to the shoreline environment.
- F. Variances from the use regulations of this master program are prohibited.

## **12-30 EXEMPTIONS FROM THE SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT PROCESS**

### 12-30-010      General

- A. An exemption from the substantial development permit process is not an exemption from compliance with the Shoreline Management Act or this Master Program, or from any other regulatory requirement. To be authorized, all uses and developments must be consistent with the policies and regulatory provisions of this Master Program and the Shoreline Management Act. A statement of exemption shall be obtained for exempt activities consistent with the provisions of 12-30-020.
- B. Exemptions shall be construed narrowly. Only those developments that meet the precise terms of one or more of the listed exemptions may be granted exemptions from the substantial development permit process.
- C. The burden of proof that a development or use is exempt is on the proponent of the exempt development action.
- D. If any part of a proposed development is not eligible for exemption, then a substantial development permit is required for the entire project. Exemptions shall not be issued for a series of inter-dependent actions that in sum would require a permit, i.e., a project cannot be submitted in a piece-meal fashion to avoid the requirement for a substantial development permit.
- E. A development or use that is listed as a conditional use pursuant to this Master Program or is an unmentioned use, must obtain a conditional use permit even if the development or use does not require a substantial development permit.
- F. When a development or use is proposed that does not comply with the bulk, dimensional and/or performance standards of this Master Program, such development or use shall only be authorized by approval of a shoreline variance even if the development or use does not require a substantial development permit.
- G. All statements of exemption issued for development or use within shoreline jurisdiction shall include written findings prepared by the Administrator, including compliance with bulk and dimensional standards, policies, and regulations of this Master Program. The Administrator may attach conditions to the approval of exempt developments and/or uses as necessary to assure consistency of the project with the Shoreline Management Act and the Master Program.
- H. Before issuing a Letter of Exemption, the Shoreline Administrator shall review the Master Program to determine if the proposed development requires a Shoreline Conditional Use Permit and/or a Shoreline Variance. It may be necessary for the Shoreline Administrator to conduct a site inspection to ensure that the proposed development meets the exemption criteria. Application information shall include the same items as for a Substantial Development Permit unless otherwise waived by the Administrator.

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12-30-020

Exemptions Listed. The following activities shall be considered exempt from the requirement to obtain a shoreline substantial development permit. A Statement of Exemption shall be required for those activities listed in 12-30-020 B and C.

- A. Any development of which the total cost or fair market value, whichever is higher, does not exceed \$5,000, if such development does not materially interfere with the normal public use of the water or shorelines of the state. For purposes of determining whether or not a permit is required, the total cost or fair market value shall be based on the value of development that is occurring on shorelines of the state. The total cost or fair market value of the development shall include the fair market value of any donated, contributed, or found labor, equipment, or materials. The dollar amount shall be adjusted for inflation every five years, as specified in WAC 173-27-040(2)(a).
- B. 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, including but not limited to its size, shape, configuration, location, and external appearance, within one year after decay or partial destruction, except when repair causes substantial adverse effects to shoreline resources or environment. Replacement of a structure or development may be authorized as repair when 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 environment. Repair or replacement of shoreline stabilization structures shall meet the requirements of section 8-30 of this Master Program.
- C. Construction of a biotechnical shoreline stabilization or beach nourishment erosion control projects associated with a single family residence when the project has been approved by the Department of Fish and Wildlife. Per Section 8-30 of this Master Program, construction of a bulkhead or riprap at or near the ordinary high water mark shall require a Shoreline Conditional Use Permit and must demonstrate that the proposed bulkhead or riprap is the most natural protective system that is feasible on the site. Such modifications must be for protecting land from erosion, not for the purpose of creating dry land. See the Shoreline Stabilization section of Chapter 8, Shoreline Modifications, for additional requirements.
- D. 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 which requires immediate action within a time too short to allow full compliance with the Shoreline Management Act or this 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 Administrator 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 which would have been required, absent an emergency, shall be obtained. All emergency construction shall be consistent with the policies of the Shoreline Management Act and this 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. A written statement from a qualified expert may be required to verify that an emergency exists.
- E. Construction and practices normal or necessary for farming, irrigation, and ranching activities, including agricultural service roads and utilities on shorelands, construction of a barn or similar agricultural structure, and the construction and maintenance of irrigation structures including but not limited to head gates, pumping facilities, and irrigation channels: Provided, That a feedlot of any size, all processing plants, other activities of a commercial nature, alteration of the contour of the shorelands by leveling or filling other than that which results from normal cultivation, shall not be considered normal or necessary farming or ranching activities. A feedlot shall be an enclosure or facility used or capable of being used for feeding livestock hay, grain, silage, or other livestock feed, but shall not include land for growing crops or vegetation for livestock feeding and/or grazing, nor shall it include normal livestock wintering operations.

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- F. Construction by an owner, lessee, or contract purchaser of a single family residence for their own use or for the use of their family, which residence does not exceed a height of 35' above average grade level and which meets all other state and local requirements. "Single family residence" means a detached dwelling designed for and occupied by one family, including those structures and developments within a contiguous ownership which are a normal appurtenance. An appurtenance is necessarily connected to the use and enjoyment of a single family residence and is located landward of the ordinary high water mark and outside the perimeter of any wetland or buffer. Normal appurtenances include a garage, deck, driveway, utilities, fences, and a swimming pool. Grading is addressed under Clearing and Grading, Section 8-10 of Chapter 8.
- G. Construction of a dock, including a community dock, designed for pleasure craft only, for the private noncommercial use of the owners, lessee, or contract purchaser of a single family and multi-family residences. A dock is a landing and moorage facility for watercraft and does not include recreational decks, storage facilities, or other appurtenances, but does include a walkway to bridge emergent vegetation. This exemption applies if the fair market value of the dock does not exceed \$10,000, but if subsequent construction having a fair market value exceeding \$2,500 occurs within five years of completion of the prior construction, the subsequent construction shall be considered substantial development for the purpose of this Master Program.
- H. Operation, maintenance, or construction of canals, waterways, drains, reservoirs, or other facilities that now exist or are hereafter created or developed as part of an irrigation system for the primary purpose of making use of system waters, including return flow and artificially stored ground water from the irrigation of lands.
- I. 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.
- J. Operation and maintenance of any system of dikes, ditches, drains, or other facilities existing on June 4, 1975, which were created, developed, or utilized primarily as a part of an agricultural drainage or diking system.
- K. Any project with a certification from the governor pursuant to Chapter 80.50 RCW in regard to energy facilities to meet state demands.
- L. Site exploration and investigation activities that are prerequisite to preparation of an application for development authorization under this Master Program, if all of the following conditions are met:
  - 1. The activity does not interfere with the normal public use of the surface waters.
  - 2. 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.
  - 3. The activity does not involve the installation of any structure, and upon completion of the activity the vegetation and land configuration of the site are restored to conditions existing before the activity.
  - 4. A private entity seeking development authorization under this section first posts a performance bond or provides other evidence of financial responsibility to the City to ensure that the site is restored to pre-existing conditions.
- M. 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 applicable to weed control that are recommended by a final environmental impact statement published by the Department of Agriculture or the Department of Ecology jointly with other state agencies under Chapter 43.21C RCW.
- N. Watershed restoration projects as defined in WAC 173-27-040. The City shall review the projects for consistency with the Master Program in an expeditious manner and shall issue its decision along with any conditions within 45 days of receiving all materials necessary to review the request

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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.

- O. A public or private project, the primary purpose of which is to improve fish or wildlife habitat or fish passage, when all of the following apply:
  - 1. The project has been approved in writing by the Department of Fish and Wildlife as necessary for the improvement of the habitat or passage and appropriately designed and sited to accomplish the intended purpose.
  - 2. The project has received hydraulic project approval by the Department of Fish and Wildlife pursuant to Chapter 77.55 RCW.
  - 3. The Shoreline Administrator has determined that the project is consistent with this Master Program. The City shall make such determination in a timely manner and provide it by letter to the project proponent.

## 12-40 ASSURANCE DEVICE

12-40-010 In appropriate circumstances, the decision maker approving the permit may require a reasonable performance assurance device to assure compliance with the provisions of the Shoreline Management Act, the Master Program, any permit conditions, and the permit application as approved.

- A. The assurance device may be a bond, assignment of funds, or other readily-accessible source of funds in a form acceptable to the City Attorney. Interest from any interest-bearing form of assurance device will accrue to the benefit of the depositor.
- B. The assurance device shall specify the date and time by which the work which it guarantees shall be completed. The assurance device shall specify the date and time by which the City can negotiate the device to obtain the funds to do the work it guarantees. In all cases, the date and time for negotiation shall be at least 60 days after the deadline for the completion of the work.
- C. Amount of Assurance Device. The Shoreline Administrator shall determine the amount of the assurance device as follows:
  - 1. For a performance device the amount will be 150% of the cost of the work or improvements covered by the assurance device based on estimated costs immediately following the expiration of the device together with the City's cost of obtaining funds from the assurance device and administering the project.
  - 2. For a maintenance device the amount will not be less than 20% of the cost of replacing the material covered by the assurance device based on estimated costs on the last day covered by the device together with the City's cost of obtaining funds from the assurance device and administering the project.
  - 3. In each case where the City requires or allows an applicant to establish an assurance device, the owner of the subject property shall give the City a signed notarized irrevocable license to run with the property to allow the employees, agents, or contractors of the City to go on the subject property for the purpose of inspecting and, if necessary, doing the work or making the improvements covered by the assurance device. The applicant shall file this license with the Administrator.
- D. Release of Assurance Device
  - 1. After the work or improvements covered by a performance assurance device have been completed to the satisfaction of the City, or at the end of the time covered by a maintenance assurance device, the applicant may request the City to release the device.
  - 2. The City shall release such device as expeditiously as possible after receipt of a request

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for release, if the work or maintenance time period is finished.

- E. Use of Proceeds - Notice to Applicant. If during the period of time covered by a maintenance assurance device or after the date by which the required work or improvements are to be completed under a performance assurance device, the Administrator determines that the work or improvements have not been complied with, he/she shall notify the applicant. The notice must include the following information:
  - 1. The work that must be done or the improvement that must be made to comply with the requirements and permit assurance device.
  - 2. The amount of time that the applicant has to commence and complete the required work or improvements.
  - 3. That, if the work or improvements are not commenced and completed within the time specified, the City will use the proceeds of the assurance device to have the required work or improvements completed.
- F. Use of Proceeds - Work by the City. If the work or improvements covered by the assurance device are not completed within the time specified in the notice given under subsection E above, the City shall obtain the proceeds of the device and do the work or make the improvements covered by the device. The City may either have employees of the City do the work or make the improvements or have a contractor do the work or make the improvements.
- G. Use of Proceeds - Refund of Excess, Charge for All Costs. The property owner is responsible for all costs incurred by the City in doing the work and making the improvements covered by the assurance device. The City shall release or refund any proceeds of a performance device after subtracting all costs for doing the work covered by the device and the costs of obtaining the proceeds of the device. The owner of the subject property shall reimburse the City for any amount expended by the City that exceeds the proceeds of the device. The City shall have a lien against the subject property for the amount of any excess.
- H. Itemized Statement. In each case where the City uses any of the proceeds of the device, it shall give the owner of the subject property an itemized statement of all proceeds and funds used.

## 12-50 PERMIT REVOCATION

12-50-010 This section applies to requests or decisions to revoke shoreline substantial development permits, shoreline conditional use permits, and shoreline variances.

12-50-020 The Planning Commission shall have the power to revoke or modify approved shoreline substantial development permits, shoreline conditional use permits, and shoreline variances.

### 12-50-030 Decision Procedure for Revocation

- A. City staff or any other persons who are aggrieved by activities undertaken under a shoreline permit may request in writing that the Planning Commission revoke or modify the permit.
- B. The Administrator shall schedule a public hearing for the next Planning Commission meeting where the review can be accommodated and the required notice given.
- C. Notice of Public Hearing
  - 1. The administrator shall publish a notice of revocation hearing at least ten days before the hearing date.
  - 2. At least ten days before the hearing date, the Administrator shall mail notice of the hearing to the party to whom the permit was issued, the owner of the property for which the permit was issued, the person or persons who requested revocation of the permit, and any persons who requested notice of the hearing in writing.

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3. The notice shall include the following information:
  - a. The name of the permit holder and, if applicable, the project name.
  - b. The street address of the subject property and a description of the property in terms sufficient to identify the location.
  - c. A brief description of the issues.
  - d. The date, time, and place of the public hearing.
  - e. A statement of the right of any person to participate in the public hearing by providing written statements before or at the hearing, and orally at the hearing.
- D. The Planning Commission shall hold a public hearing before deciding whether to revoke or add conditions to the permit or variance. Any person may submit written statements or speak at the hearing. The duration of public comments may be equitably limited. At the hearing, members of the Planning Commission may request such additional information as is reasonably necessary to evaluate whether the permit or variance should be revoked.
- E. After the public hearing has concluded, the Planning Commission shall decide whether to revoke, modify, or add conditions to the permit.
  1. The verbal decision may be announced at the same public meeting as the public hearing or at another public meeting.
  2. The decision shall be based on the decision criteria in subsection 12-50-040, below.
  3. If the Planning Commission decides to revoke the permit, they may require restoration or reclamation of the property and may set time limits for the completion of these activities.
  4. The Planning Commission shall adopt written findings of fact and conclusions which support the decision and any required conditions.
- F. Within seven days of the date of the adoption of the decision, a Notice of Decision and the findings of fact and conclusions shall be mailed by the Administrator to the permit holder, the property owner, the Department of Ecology, and the person who requested revocation of the permit.
- G. Effect of Decision
  1. The decision of the Planning Commission may be appealed to the City Council as provided for in Chapter 20.11 of the Moses Lake Municipal Code. The decision of the City Council is the final decision of the City.
  2. The decision of the City Council to uphold or overturn the Planning Commission's decision on the revocation may be appealed to the Washington State Shorelines Hearing Board as provided in RCW 90.58.180 and WAC 461-08.
  3. If the Planning Commission revokes the permit, all activity authorized by the permit shall immediately cease, unless the Planning Commission grants a period of time to complete the activity or reclaim the site, or a court authorizes continued operation during an appeal.

12-50-040 Criteria for Revocation. The Planning Commission may revoke or modify a permit if it finds that one or more of the following criteria are met:

- A. The permit approval was obtained by fraud.
- B. The permit is being exercised contrary to the terms or conditions of approval or in violation of law.

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- C. The use or activity for which approval was granted is being exercised so as to be detrimental to the public health, safety, or welfare.

## 12-60 NON-CONFORMING DEVELOPMENT

12-60-010 Non-conforming development is a shoreline use or structure which was lawfully constructed or established prior to the effective date of the Shoreline Management Act or the applicable local Master Program, or amendments thereto, but which does not conform to present regulations or standards of the Master Program or policies of the Shoreline Management Act. In such cases, the standards of this section shall apply.

12-60-020 Non-conforming uses. Non-conforming uses include shoreline uses which were lawfully established prior to the effective date of the Shoreline Management Act or the Master Program, or amendments thereto, but which would not be approved based on present regulations of the Master Program or policies of the Act. An example is a commercial use within an area designated for residential uses. The continuation of a non-conforming use is subject to the following standards:

- A. Non-conforming development may be continued provided that it is not enlarged, intensified, or altered in any way which increases its nonconformity.
- B. Change of ownership, tenancy, or management of a non-conforming use shall not affect its non-conforming status under this Master Program, provided that the use does not change or intensify.
- C. Additional development of any property on which a non-conforming use exists shall conform to this Master Program.
- D. A non-conforming use shall not be changed to another non-conforming use, regardless of the conforming or non-conforming status of the building or structure in which it is housed; unless the new use would be housed in the existing building, the building footprint would not increase, and the new use and any related site changes would not negatively impact shoreline ecological functions.
- E. If a non-conforming use is converted to a conforming use, no non-conforming use may be resumed.
- E. A non-conforming use or development which is moved any distance must be brought into conformance with this Master Program and the Shoreline Management Act.
- F. If a non-conforming use is discontinued for twelve consecutive months or for twelve months during any two-year period, any subsequent use shall be conforming; it shall not be necessary to show that the owner of the property intends to abandon such non-conforming use in order for the non-conforming rights to expire.
- G. Non-conforming uses that are destroyed by fire, explosion, flood, or other casualty may be restored or replaced, provided that the following are met:
  - 1. The reconstruction process is commenced within 18 months of the date of the damage and is completed within three years of the issuance of permits.
  - 2. The reconstruction does not expand, enlarge, or otherwise increase the non-conformity
  - 3. The development shall conform to this Master Program.
  - 4. This provision does not apply to bulkheads.
- H. Non-conforming uses may be maintained, repaired, renovated, or remodeled so long as non-conformance with the standards and regulations of this Master Program is not increased, except that any change, enlargement, repair, or replacement of bulkheads must conform to the Shoreline Stabilization section of Chapter 8, and the use regulations in Table 9.2.

# City of Moses Lake Shoreline Master Program

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- I. Uses that are non-conforming with respect to zoning provisions shall also comply with the non-conforming use provisions of Moses Lake Municipal Code Title 18.

## 12-60-030

Non-Conforming Structures. Non-conforming structures are those which were lawfully constructed or placed prior to the effective date of the Shoreline Management Act or Master Program, or amendments thereto, and are conforming in regard to use but which do not conform to present bulk, height, dimensional, setback, or density requirements. Non-conforming structures may continue, and may be maintained as follows:

- A. A non-conforming structure that is damaged may be restored to those configurations existing immediately prior to the time it was damaged, provided that the following are met:
  - 1. The reconstruction process is commenced within 18 months of the date of the damage.
  - 2. Reconstruction is completed within two years of permit issuance.
  - 3. The reconstruction does not expand, enlarge, or otherwise increase the non-conformity, except as provided in subsection B below.
- B. A building or structure, non-conforming as to the bulk, dimensional, or density requirements of this Master Program, may be added to or enlarged if such addition or enlargement conforms to the regulations of the shoreline environment in which it is located. In such cases, such addition or enlargement shall be treated as a separate building or structure in determining conformity to all of the requirements of this Master Program.
- C. Non-conforming structures may be maintained, repaired, renovated, or remodeled so long as non-conformance with the standards and regulations of this Master Program is not increased, except that any change, enlargement, repair, or replacement of bulkheads must conform to the Shoreline Stabilization section of Chapter 8, and the use regulations in Table 9.2.

## 12-60-040

Non-Conforming Lots. An undeveloped single family residential lot, tract, parcel, or site which was legally established prior to the effective date of the Master Program but which cannot be developed with the present buffer standards may be developed so long as such development conforms to all other requirements of the Master Program and Shoreline Management Act. See Section 7-100-030 of this Master Program for regulations regarding buffers for existing lots.

## 12-60-050

Duration of Permits. The duration of permits shall be consistent with WAC 173-27-090.

## 12-60-060

### Initiation of Development

- A. Each permit for a Substantial Development, Shoreline Conditional Use or Shoreline Variance, issued by local government shall contain a provision that construction pursuant to the permit shall not begin and is not authorized until twenty-one (21) days from the date of receipt with Ecology as defined in RCW 90.58.140(6) and WAC 173-27-130, or until all review proceedings initiated within twenty-one (21) from the date of receipt of the decision, except as provided in RCW 90.58.140(5)(a) and (b). The date of receipt for a Substantial Development Permit means that date the applicant receives written notice from Ecology that it has received the decision. With regard to a permit for a Shoreline Variance or a Shoreline Conditional Use, date of receipt means the date a responsible local government or applicant receives the written decision of Ecology.
- B. Permits for Substantial Development, Shoreline Conditional use, or Shoreline Variance may be in any form prescribed and used by the City including a combined permit application form. Such forms will be supplied by the City.
- C. A permit data sheet shall be submitted to Ecology with each shoreline permit. The permit data sheet form shall be consistent with WAC 173-27-990.

# City of Moses Lake Shoreline Master Program

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12-60-070

Review Process

- A. After the City's approval of a Shoreline Conditional Use or Variance Permit, the City shall submit the permit to the Department of Ecology for approval, approval with conditions, or denial. Ecology shall render and transmit to the City and the applicant its final decision approving, approving with conditions, or disapproving the permit within thirty days of the date of submittal by the City pursuant to WAC 173-27-110.
- B. The Department of Ecology shall review the complete file submitted by the City on Shoreline Conditional Use or Variance Permits and any other information submitted or available that is relevant to the application. Ecology shall base its determination to approve, approve with conditions or deny a conditional use permit or variance on consistency with the policy and provisions of the SMA and, except as provided in WAC 173-27-210, the criteria in WAC 173-27-160 and 173-27-170.
- C. The City shall provide timely notification of the Department of Ecology's final decision to those interested persons having requested notification from local government pursuant to WAC 173-27-130.