

Appendix B – Administration

B.1 Introduction

There is hereby established an administrative system designed to assign responsibilities for implementation of the Master Program and Shoreline Permit and Shoreline Exemption review, to prescribe an orderly process by which to review proposals and permit or exemption applications, and to ensure that all persons affected by this Master Program are treated in a fair and equitable manner.

B.2 Program Administrator

The Yarrow Point Town Planner, or his/her designee, (the “Shoreline Administrator”) is vested with the overall responsibility for administering the Shoreline Management Act and this Master Program. The Shoreline Administrator has the authority to approve, approve with conditions, or deny shoreline permit revisions in accordance with the policies and provisions of this Master Program and with the authority to grant exemptions from Shoreline Substantial Development Permits in accordance with the policies and provisions of this Master Program.

The duties and responsibilities of the Shoreline Administrator shall include:

- Preparing and using application forms deemed essential for the administration of this Master Program.
- Advising interested citizens and applicants of the goals, policies, regulations, and procedures of this Master Program.
- Making administrative decisions and interpretations of the policies and regulations of this Master Program and the Shoreline Management Act.
- Collecting applicable fees, as established by the Town.
- Determining that all applications and necessary information and materials are provided.
- Conducting field inspections, as necessary.
- Reviewing, insofar as possible, all provided and related information deemed necessary for appropriate applications needs.
- Determining if a Shoreline Substantial Development Permit, Shoreline Conditional Use Permit or Shoreline Variance is required.
- Providing copies of permit applications to relevant staff and agencies for review and comment.
- Conducting a thorough review and analysis of Shoreline Exemption applications;
- Submitting Shoreline Variance, Shoreline Conditional Use and Shoreline Substantial Development Permit applications and written recommendations and findings on such permits to the Town Council for consideration and action.
- Assuring that proper notice is given to appropriate persons and the public for all hearings.
- Providing technical and administrative assistance to the Town Council as required for effective and equitable implementation of this program and the Act.
- Investigating, developing, and proposing amendments to this Master Program as deemed necessary to more effectively and equitably achieve its goals and policies.

- Seeking remedies for alleged violations of this program, the provisions of the Act and this Master Program, or of conditions of any approved shoreline permit issued by the Town of Yarrow Point.
- Acting as the primary liaison between local and state agencies in the administration of the Shoreline Management Act and this Master Program.
- Forwarding shoreline permits to the Department of Ecology for filing or action.

B.3 Shoreline Permit or Exemption General Process

Any person(s) who wishes to conduct substantial development within the geographical jurisdiction of this Master Program shall apply to the Town of Yarrow Point through the Administrator for a Shoreline Permit or Shoreline Exemption. A Shoreline Permit or Shoreline Exemption is considered the last local governmental approval prior to issuance of a building permit. If a proposal involves state or federal governmental approvals, these approvals shall be in place prior to the Town's issuance of a building and/or site development permit.

Type of Shoreline Permit or Shoreline Exemption	Decision Type	Decision Maker	Decision Timeframe	Appeal Authority
EXEMPTION	Administrative	Shoreline Administrator	Not to exceed 60 days, unless additional information is required.	Town Council, then Shoreline Hearings Board
SHORELINE SUBSTANTIAL DEVELOPMENT (SDP)	Quasi-Judicial	Town Council	Not to exceed 120 days, unless additional information is required.	Shoreline Hearings Board
SHORELINE VARIANCE	Quasi-Judicial	Town Council	Not to exceed 120 days, unless additional information is required.	Shoreline Hearings Board
SHORELINE CONDITIONAL USE	Quasi-Judicial	Town Council	Not to exceed 120 days, unless additional information is required.	Shoreline Hearings Board

The applicant must complete the necessary application forms provided by the Administrator for Shoreline Substantial Development Permit, Shoreline Exemption, Shoreline Conditional Use Permit and Shoreline Variance Permit, in accordance with WAC 173-27-180.

B.3.1 Permit Process

A completed application and documents for all shoreline permits shall be submitted to the Shoreline Administrator for processing and review. Any deficiencies in the application or documents shall be corrected by the applicant prior to further processing. Application fees in an amount established by the Yarrow Point Fees Resolution shall be collected at the time of application.

The burden of proof that a proposed development is consistent with the approval criteria and Master Program policies and regulations rests with the applicant.

The Shoreline Administrator shall make recommendations in the case of Shoreline Substantial Development Permits, Shoreline Conditional Use Permits, and Shoreline Variances. The Shoreline Administrator shall make decisions in the case of Shoreline Exemptions or requests for revisions to approved permits.

B.3.2 Planning Commission/Town Council Review

The Yarrow Point Planning Commission shall review each application for a Shoreline Substantial Development Permit, Shoreline Conditional Use Permit and Shoreline Variance, and forward a recommendation to the Yarrow Point Town Council. The Yarrow Point Town Council shall conduct a Public Hearing in order to make the final decision at the local level for Shoreline Substantial Development Permits, Shoreline Conditional Use Permits, and Shoreline Variances. Such applications may be approved, approved with conditions, or denied.

The decision of the Town Council shall be the final decision of the Town of Yarrow Point on all applications heard before them, unless appealed, and the Council shall render a written decision including finding, conclusions, and a final order, and transmit copies of the decision within thirty (30) working days of the final decision to the following: the Applicant, the Washington State Department of Ecology, the Washington State Attorney General, parties of record, and appellants.

B.3.3 Public Hearings

A public hearing shall be scheduled for each application for a Shoreline Substantial Development Permit, Shoreline Conditional Use Permit, or Shoreline Variance. The hearing shall be set for a regularly scheduled Town Council meeting following submittal of a complete application and allowing for the thirty (30) day mandatory Notice of Application. The minimum allowable time required from the date of complete application to the Public Hearing shall be sixty (60) days. Any interested person may submit his or her written views upon the application to the Town within the thirty (30) day notification period, may request to be notified of the decision, or may participate in the Public Hearing by providing testimony.

B.3.4 Washington State Department of Ecology Review

Following Town approval of a Shoreline Conditional Use Permit or Shoreline Variance, the Town shall submit the permit to the Department of Ecology for Ecology's approval, approval

with conditions, or denial. Ecology shall render and transmit to the Town and the applicant its final decision approving, approving with conditions, or disapproving the permit within thirty (30) days of the date of submittal by the Town pursuant to WAC 173-27-110.

The Town shall provide timely notification of the Department of Ecology's final decision to those interested persons having requested notification from the Town pursuant to WAC 173-27-130.

B.4 Shoreline Substantial Development Permits

- A. Substantial development as defined by RCW 90.58.030 shall not be undertaken by any person on the shorelines of the state without first obtaining a Shoreline Substantial Development Permit from the Town of Yarrow Point, unless the use or development is specifically identified as exempt from a Shoreline Substantial Development Permit per RCW 90.58 or by WAC 173-27.
- B. The Town Council may grant a Shoreline Substantial Development Permit only when the development proposed is consistent with the policies and procedures of RCW.90.58; the provisions of WAC 173-27; and this Program.

B.5 Exemptions from Shoreline Substantial Development Permits

- A. Uses and developments that are not considered substantial developments pursuant to RCW 90.58 and WAC 173-27-040 shall not require a Shoreline Substantial Development Permit, but shall conform to the policies and regulations of this Program.
- 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 exemption from the Shoreline Substantial Development Permit process.
- C. An exemption from the Shoreline Substantial Development Permit process is not an exemption from compliance with the Shoreline Management Act or this Shoreline Master Program, nor from any other regulatory requirements. To be authorized, all uses and developments must be consistent with the policies and provisions of this Shoreline Master Program and the Shoreline Management Act. A development or use that is listed as a conditional use pursuant to this Shoreline Master Program or is an unlisted use, must obtain a Shoreline Conditional Use Permit even though the development or use does not require a Shoreline Substantial Development Permit. When a development or use is proposed that does not comply with the bulk, dimensional and performance standards of this Shoreline Master Program, such development or use can only be authorized by approval of a Shoreline Variance.
- D. The burden of proof that a development or use is exempt from the permit process is on the applicant.
- E. If any part of a proposed development is not eligible for exemption, then a Shoreline Substantial Development Permit is required for the entire proposed development project.

- F. The Town's Shoreline Administrator may attach conditions to the approval of exempted developments and/or uses as necessary to assure consistency of the project with the Shoreline Management Act and this Shoreline Master Program.
- G. Before determining that a proposal is exempt, the Town's Shoreline Administrator may conduct a site inspection to ensure that the proposal meets the exemption criteria. The exemption granted may be conditioned to ensure that the activity is consistent with the Master Program and the Shoreline Management Act.
- H. Following review and approval, the Town's Shoreline Administrator shall issue a Letter of Exemption for each proposal exempt from a Shoreline Substantial Development Permit.

B.7 Shoreline Variances

- A. The Town Council is authorized to grant a variance from the performance standards of this Program only when all of the criteria enumerated in WAC 173-27-170 are met.
- B. The purpose of a variance is to grant relief to specific bulk or dimensional requirements set forth in this Program where there are extraordinary or unique circumstances relating to the property such that the strict implementation of this Program would impose unnecessary hardships on the applicant/property owner or thwart the policies set forth in RCW 90.58.020.
- C. Shoreline 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, extraordinary circumstances shall be shown and the public interest shall suffer no substantial detrimental effect.
- D. The burden of proving that a proposed variance meets the criteria in WAC 173-27-170 shall be on the applicant. Absence of such proof shall be grounds for denial of the application.
- E. In the granting of all variances, consideration shall be given to the cumulative environmental impact of additional requests for like actions in the area. For example, if variances were granted to other developments in the area where similar circumstances exist, the total of the variances should also remain consistent with the policies of RCW 90.58.020 and should not produce significant adverse effects to the shoreline ecological functions or other users.
- F. A variance from Town development code requirements shall not be construed to mean a shoreline variance from SMP use regulations and vice versa.
- G. Variances may not be used to permit a use or development that is specifically prohibited.

B.8 Shoreline Conditional Use Permit

- A. The Town Council is authorized to issue Shoreline Conditional Use Permits only when all the criteria enumerated in WAC 173-27-160 are met.
- B. The burden of proving that a proposed shoreline conditional use meets the criteria in WAC 173-27-160 shall be on the applicant. Absence of such proof shall be grounds for denial of the application.
- C. The Town Council is authorized to impose conditions and standards to enable a proposed shoreline conditional use to satisfy the conditional use criteria.

B.9 Administration – General Standards

Unless otherwise stated, this Master Program shall be administered according to the standards and criteria in RCW 90.58 and WAC 173-27.

B.10 Revisions to Permits

- A. A permit revision is required whenever the applicant/property owner proposes substantive changes to the design, terms or conditions of a use or development from those as approved in the existing and approved 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 existing and approved permit, this Program or the Act. Changes that are not substantive in effect do not require a permit revision.
- B. An application for a revision to a shoreline permit shall be submitted to the Shoreline Administrator. The application shall include detailed plans and text describing the proposed changes. The Shoreline Administrator shall review and process the request in accordance with the requirements of WAC 173-27-100.

B.11 Appeals

- A. Appeals of the final decision of the Town with regard to shoreline management shall be governed by the provisions of RCW 90.58.180.
- B. Appeals to the Shoreline Hearings Board of a decision on a Shoreline Substantial Development Permit, Shoreline Variance or Shoreline Conditional Use Permit may be filed by the applicant/property owner or any aggrieved party pursuant to RCW 90.58.180.
- C. The effective date of the Town's decision shall be the date of filing with the Department of Ecology as defined in RCW 90.58.140.

B.12 Initiation of Development

Development pursuant to a Shoreline Substantial Development Permit, Shoreline Variance, or Shoreline Conditional Use Permit shall not begin and shall not be authorized until twenty-one

(21) days after the "date of filing" or until all appeal proceedings before the Shorelines Hearings Board have terminated.

B.13 Nonconforming Use and Development Standards

"Nonconforming use or development" means a shoreline use or development which was lawfully constructed or established prior to the effective date of the Act or this Master Program, or amendments thereto, but which does not conform to present regulations or standards of this Master Program. In such cases, the following standards shall apply:

- A. 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;
- B. Consistent with RCW 90.58.XXX *pending*, residential structures and appurtenant structures that were legally established and are used for a conforming use, but that do not meet standards for the following, shall be considered a conforming structure: setbacks, buffers, or yards; area; bulk; height; or density.
 1. Redevelopment, expansion, change with the class of occupancy, or replacement of the residential structure shall be consistent with this Master Program, including requirements for no net loss of ecological functions.
 2. For purposes of this section, "appurtenant structures" means garages, sheds, and other legally established structures. "Appurtenant structures" does not include bulkheads and other shoreline modifications or over-water structures.
- C. A nonconforming structure which is destroyed by fire or other act of nature (or accident) may be rebuilt to the same or smaller configuration existing immediately prior to the time the structure was destroyed, provided the replacement structure does not warrant new shoreline armoring and that an 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, unless an extension for just cause is granted.
- D. Uses and developments that were legally established and are nonconforming with regard to the use regulations of the Master Program may continue as legal nonconforming uses. 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 Shoreline Conditional Use Permit.

- E. 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 Shoreline 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 Shoreline Conditional Use Permit has not been obtained, shall be considered a nonconforming use.
- F. A structure for which a Shoreline 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. Except that residential structures and their appurtenances which obtained a Shoreline Variance shall be considered conforming structures consistent with B.11.B above.
- G. A structure which is being or has been used for a nonconforming use may not be used for a different nonconforming use.
- H. If a nonconforming use is discontinued for twelve (12) consecutive months or for twelve (12) months during any two (2)-year period, the nonconforming rights shall expire and any subsequent use shall be conforming.
- I. An undeveloped lot, tract, parcel, site, or division of land located landward of the ordinary high water mark which was established prior to the effective date of the Act or the Master Program, but which does not conform to the present lot size standards, may be developed if permitted by other land use regulations of the local government and so long as such development conforms to all other requirements of the Master Program and the Act.

B.14 Enforcement and Penalties

The choice of enforcement action and the severity of any penalty shall be based on the nature of the violation and the damage or risk to the public or to public resources. The existence or degree of bad faith of the persons subject to the enforcement action, benefits that accrue to the violator, and the cost of obtaining compliance may also be considered.

B.14.1 Enforcement

The Shoreline Administrator is authorized to enforce the provisions of this Program, including any rules and regulations promulgated thereunder, pursuant to the enforcement provisions of WAC 173-27 and RCW 90.58.

B.14.2 Penalty

Any person found to have willfully engaged in activities on the Town's shorelines in violation of the Shoreline Management Act of 1971 or in violation of the Town's Master Program, rules or regulations adopted pursuant thereto, is guilty of a gross misdemeanor, and shall be subject to the penalty provisions of RCW 90.58 and WAC 173-27 and any applicable Yarrow Point Ordinance or Code (civil citation penalties and criminal penalties).

B.14.3 Violator's Liability

Any person subject to the regulatory program of the Master Program who violates any provision of the Master Program or permit issued pursuant thereto shall be liable for all damages to public or private property arising from such violation, including the cost of restoring the affected area to its condition prior to such violation. The Attorney General or Yarrow Point Town Attorney shall bring suit for damages under this section on behalf of the Town government. 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 attorneys' fees and costs of the suit to the prevailing party.

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