

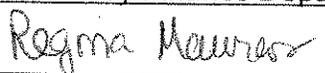
City of Prosser, WA  
601 7<sup>th</sup> Street  
Prosser, WA 99350

CITY COUNCIL  
WORK SESSION AGENDA  
7:00 P.M.  
TUESDAY, MARCH 4, 2014

1. CALL TO ORDER
2. PLEDGE OF ALLEGIANCE
3. ROLL CALL
4. MAYOR AND CITY COUNCIL REPORTS AND COMMENTS
5. DISCUSSION ITEMS
  - a.) Boys & Girls Club Youth of the Year Presentation (*Zebbie Castilleja, Boys & Girls Club*)
  - b.) Boys & Girls Club Quarterly Report (*Chris Cisneros, Boys & Girls Club*)
  - c.) Prosser Shoreline Master Program Update (*Steve Zetz, City Planner*) ..... *Page 2*
  - d.) Ethics Policy (*Regina Mauras, Finance Director*) ..... *Page 116*
  - e.) WATV on Public Streets Ordinance (*Mayor Warden*) ..... *Page 128*
6. ADD ON ITEMS
7. ADJOURNMENT

CITY OF PROSSER, WASHINGTON

**AGENDA BILL**

<u>Agenda Title:</u> Review and Discuss the Prosser Shoreline Master Program Update.		<u>Meeting Date:</u> March 4, 2014 Work Session	
<u>Department:</u> Planning	<u>Director:</u> Paul Warden	<u>Contact Person:</u> Steve Zetz Howard Saxton	<u>Phone Number:</u> (509) 786-8212
<u>Cost of Proposal:</u> The Shoreline Master Program update is funded by the grant awarded to the city by the Department of Ecology.		<u>Account Number:</u>	
<u>Amount Budgeted:</u> NA		<u>Name and Fund#</u>	
<u>Reviewed by Finance Department:</u> 			
<u>Attachments to Agenda Packet Item:</u> 1. Shoreline Master Program Update 2. State Environmental Policy Checklist			
<u>Summary Statement:</u> <p>The Shoreline Master Program (SMP) Update is mandated by the State. After nearly two years, the SMP is now in final form. The Planning Commission, after holding a public hearing, has recommended that Council approve the SMP, as drafted. The next step in the process is for the Council to review the final SMP and either pass a resolution of intent to adopt the SMP (which will be sent to the Department of Ecology for review and comment) or to send the SMP back to Planning Commission for revision.</p> <p>Staff worked with the Department of Ecology and Anchor QEA to pare down the size of the SMP. In most cases the Department of Ecology noted that the majority of the sections in question are required by the State. The final SMP is 96 pages which is smaller than the original version that was first proposed to the Planning Commission.</p> <p>Sections that the Council may wish to review in detail are:</p> <ul style="list-style-type: none"><li>• Reach location and Identification</li><li>• Uses allowed and identified within reaches 16.04.41 (Page 47)</li></ul>			
<u>Consistent with or Comparison to:</u> The SMP Update is mandated by State Law.			

Recommended City Council Action/Suggested Motion:

Review and Discuss the Prosser Shoreline Master Program Update.

Reviewed by Department

Director:

*Paul Wunder*

Date: 2-28-14

Reviewed by City Attorney:

*[Signature]*

Date: 2/27/14

Approved by Mayor:

*Paul E. Wash*

Date: 2-28-14

Today's Date:

February 26, 2014

Revision Number/Date:

File Name and Path:

# City of Prosser

## Draft Shoreline Master Program January 2014

This DRAFT Shoreline Master Plan consists of three elements:

- Section I Amendments to the City of Prosser Comprehensive Plan
- Section II Amendment of City of Prosser Code, Chapter 16.04 Shoreline Management
- Section III Amendment of City of Prosser Code, Chapter 16.10 Critical Areas

**Note:**

Sections I and II are new provisions.

Section III modifies existing code provisions. Changes from the existing code text are indicated in redline underlined format for insertions and ~~strikeouts~~ for deletions.

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## **Section I      Amendment of Comprehensive Plan**

The City of Prosser Comprehensive Plan is hereby amended to revise the Shoreline Management section to replace the text with the following.

### **Shoreline Management**

The City of Prosser (City) recognizes the intent of the voters and the legislature of the State of Washington in adopting the “Shoreline Management Act of 1971” (SMA) and adopts by reference

the finding that the shorelines of the state are among the most valuable and fragile of its natural resources and that there is great concern throughout the state relating to their utilization, protection, restoration, and preservation. In addition, it finds that ever increasing pressures of additional uses are being placed on the shorelines necessitating increased coordination in the management and development of the shorelines of the state.

The SMA's paramount objectives are to protect and restore the valuable natural resources that shorelines represent and to plan for and foster all "reasonable and appropriate uses" that are dependent upon a waterfront location or that offer opportunities for the public to enjoy the state's shorelines. With this clear mandate, the provisions of the SMA established a planning and regulatory program which is initiated at the local level under state guidance.

This cooperative effort balances local and state-wide interests in the management and development of shoreline areas. Local governments are required to plan for shoreline development by developing local shoreline master programs (SMPs). They are also required to regulate such development through a shoreline permit system for substantial development projects.

Local government actions are monitored by the State of Washington Department of Ecology (Ecology), which approves new or amended SMPs, reviews substantial development permits, and approves conditional use permits and variances. The master program is essentially a shoreline comprehensive plan and regulations with a distinct orientation toward shoreline areas and customized to local circumstances. Collectively, the local master programs comprise the State Shoreline Master Program.

The City developed and adopted its first shoreline master program with the help of a citizen advisory group in 1973. The Master Program was subsequently amended several times during the intervening years. For the current comprehensive update, the City has conducted a comprehensive inventory of the natural characteristics, present land uses, and patterns of ownership along the City's shoreline that provides a substantial information base for understanding ecological functions and other considerations for the update of this Master Program. The City, with the involvement of its local citizens, agencies, and interested parties, has developed this Shoreline Master Program to serve as both a planning guide and resource for specific regulations pertaining to development and use of the shorelines in City of Prosser. Included is a description of the goals, objectives, policies, environments designations, use regulations, and provisions for administration including variances and conditional uses.

Prosser shorelines consist of the Yakima River shoreline. This includes floodways, land within 200 feet of the ordinary high water mark (OHWM) of the waterways; floodplains up to 200 feet from the floodway edge; and associated wetlands. The City has chosen to include the minimum shoreline jurisdiction required according to the State law (RCW 90.58.030).

## **Shoreline Goals and Policies**

### **Goal: Shoreline Use Element**

**SH1 Ensure appropriate conservation and development of the City of Prosser's shorelines by allowing those uses which are water-dependent, as well as other development which provides an opportunity for a substantial number of people to enjoy the shorelines. This should be done in a manner which will achieve an orderly balance of shoreline uses that improves the quality of the environment.**

### **Policies**

- SH1.1 Ensure that all uses and developments do not result in a net loss of shoreline ecological functions.
- SH-1.2 Accommodate water-dependent and associated water-related uses that are the highest priority for shorelines unless protection of the existing natural resource values of such areas precludes such uses.
- SH-1.3 Accommodate water-related and water-enjoyment uses that are compatible with ecological protection and restoration objectives are the second highest priority.
- SH1.4 Limit non-water-oriented uses to those locations where access to the water is not practical or where the non-water-oriented use contributes to the objectives of the SMA in providing ecological restoration and public access.
- SH-1.5 Reserve the shoreline areas for uses which allow optimal uses for future generations by recognition and of potential long-term benefits to the public, and discouragement of short-term gain or convenience.
- SH-1.6 Provide site development performance standards and other appropriate criteria to developers indicating acceptable standards to be achieved.
- SH-1.6 Allow multiple uses of shoreline areas where integration of compatible uses or activities is feasible.

SH-1.9 Allow uses, on a specified interim basis, which are not shoreline related, if not permanent and if not requiring permanent modifications of natural shorelines.

SH- 1.10 Respect private property owner's rights when drafting development regulations for use of the shorelines.

**Goal: Shoreline Economic Development Element**

**SH-2 Give priority to those industrial, commercial, and recreational developments that are particularly dependent on their location on the City of Prosser's shoreline. Encourage development that will provide the public with an opportunity to enjoy the shorelines. No net loss of ecological function is envisioned in the implementation of this goal.**

**Policies**

SH-2.1. Minimize the adverse effects of new commercial, industrial, and recreational development upon the physical environment and natural processes, through careful siting and design.

SH-2.2 Locate commercial and industrial development as infill in areas already developed as a first priority, so long as such areas have not reached their functional capacity.

SH 2.3. Locate new commercial, industrial, and recreational activities in areas with existing public services as a second priority.

SH 2.4 Provide for effective flood protection for the City of Prosser.

**Goal: Circulation Element**

**SH-3 Develop safe, convenient, and diversified shoreline circulation systems to assure efficient movement of goods and people with minimum disruptions to the shoreline environment and minimum conflict between the different users.**

**Policies**

SH-3.1 Locate and design major circulation systems well away from the shoreline, except for necessary crossings, so that natural shorelines remain substantially unmodified.

SH-3.2 Encourage existing corridors for transportation facilities along shorelines to better accommodate public access to the shoreline and provide safe overcrossings to shoreline public access facilities.

SH 3.3 Encourage joint uses of any necessary roads.

SH 3.4 Encourage alternate modes of transportation such as pedestrian and bicycle to the shoreline.

**Goal: Restoration and Conservation Element**

**SH-4 Assure protection, preservation, and restoration of City of Prosser's, fragile and scenic nonrenewable resources, while encouraging the best management practices to assure no net loss of shoreline ecological functions.**

**Policies**

SH-4.1 Existing natural resources should be conserved through regulatory and non-regulatory means that may include:

- Implementation of the Comprehensive Plan, local development regulations, and state, tribal, and federal programs;
- Regulation of development within the shoreline jurisdiction;
- Ecologically sound design;
- Restoration programs; and
- Education programs.

SH-4.2 Provide for the use of shoreline and floodplain-related resources without harming other natural systems or the overall quality of the natural environment.

SH-4.3 Effectively manage natural features and resources as well as scenic vistas, parkways, and habitats of rare or endangered species.

SH-4.4 Preserve the scenic and aesthetic qualities of shorelines, floodplains, and vistas.

SH-4.5 Provide for restoration of degraded ecological functions through appropriate regulations including emphasis on non-water-dependent uses and as part of publicly-funded facilities.

**Goal: Public Access Element**

**SH-5 Ensure safe, convenient, and diversified access for the public to the publicly-owned shorelines of the City of Prosser and assure that the intrusions created by public access will recognize the rights of private property owners, and will not adversely affect fragile natural areas.**

**Policies**

SH-5.1 Public access should be provided consistent with the existing character of the shoreline and with consideration of opportunities and constraints for physical and visual access, as well as consideration of ecological functions and public safety.

- SH-5.2 Public access to and along the water's edge should be available throughout publicly-owned shoreline areas, although direct physical access to the water's edge may be restricted to protect shoreline ecological values.
- SH-5.3 Future developments and redevelopments shall not adversely affect existing public access, and should provide new opportunities for the public to reach, touch, and enjoy the water's edge.
- SH-5.4 Locate, design, develop and maintain public access in a manner that enhances the natural environment.
- SH-5.5 Purchase, or otherwise make available to the public, shoreline properties if their value for public use merits such action.
- SH-5.6 Existing highway and railroad corridors along shorelines should better accommodate public access to the shoreline and provide safe overcrossings to shoreline public access facilities.
- SH-5.7 Coordinate shoreline public access with local, state, and federal agencies.
- SH-5.8 Respect and protect the enjoyment of private rights in shoreline property when considering public access development.

**Goal: Recreational Element**

**SH-6 Provide additional opportunities for diverse forms of public recreation and improvement of present facilities.**

**Policies**

- SH-6.1 Identify, obtain, preserve, and protect areas with high values for recreation.
- SH-6.2 Consider allowing recreational uses as part of private development where compatible with other uses and activities.
- SH-6.3 Provide a balanced choice of recreational opportunities, including those requirements of the elderly and the physically challenged.
- SH-6.4 Cultivate innovative and cooperative techniques among public agencies and private persons or groups which increase and diversify recreation opportunities.

- SH-6.5 Allow compatible recreational uses including bicycle and foot paths in transportation and utility corridors where feasible.
- SH-6-6 Locate, design, and operate recreation facilities in a manner consistent with the purpose of the environment designation in which they are located so that no net loss of shoreline ecological functions or ecosystem-wide processes result.
- SH-6.7 Coordinate with local, state, and federal agencies so that shoreline recreational developments are consistent with the City and Regional Parks Recreation, Open Space and Trails Plan.

**Goal: Historical/Cultural Element**

**SH-7 Protect, preserve, and encourage restoration of those sites and areas on the shoreline which have significant historical, cultural, educational, or scientific value.**

**Policies**

- SH-7.1 Identify historic, cultural, and archaeological resources within the shoreline in cooperation with federal, state, local, and tribal agencies.
- SH-7.2 Plan for preservation of significant historic, scientific, and educational areas of the shoreline while providing for public use and enjoyment of such areas.
- SH-7.3 Preserve for the public benefit, with opportunity for appropriate public utilization, significant historic, scientific, and educational areas of the shoreline.
- SH-7.4 Ensure that the review and construction of development permits includes professional assessment of historic, cultural, and archaeological resources and that such resources are preserved or conserved in compliance with applicable laws.

**Goal: Flood Hazard Element**

**SH-8 To minimize flood hazards to human life and to property while enhancing the ecological processes of the shoreline.**

**Policies**

- SH-8.1 Manage flood protection through implementation of the City's Comprehensive Plan, stormwater regulations, and the regional flood hazard control plans for the Yakima River.
- SH-8-2 Protect existing development and restore floodplain and channel migration functions to the extent feasible.

- SH-8.3 Integrate bioengineering and/or soft engineering approaches where feasible into local and regional flood control measures, infrastructure, and related capital improvement projects.
- SH-8.4 Prohibit development within the floodplains associated with the City's shorelines that would individually or cumulatively result in an increase to the risk of flood damage while preserving the rights of individual property owners.
- SH-8.5 Support measures to increase the natural functions of floodplains including flood storage, off-channel habitat, associated wetlands, and buffers of native vegetation.

## **Section II      Amendment of City of Prosser Code Title 16.04 Shoreline Management**

The City of Prosser Code Chapter 16.04 Shoreline Management is hereby amended to adopt the following and replace the existing chapter in its entirety.

### **16.04 Shoreline Management**

#### **16.04.1 Purpose**

- A. The City adopts the goals and principles of the Shoreline Management Act (SMA) as provided in RCW 90.58.020.
- B. The shoreline is one of the most valuable and fragile of the City's natural resources.
- C. There is a clear and urgent demand for a planned, rational, and concerted effort, jointly performed by federal, state, and local governments, to prevent the inherent harm in an uncoordinated and piecemeal development within the City's shoreline jurisdiction.
- D. The City's shoreline policies are intended to protect against adverse effects to the public health, to the land and its vegetation and wildlife, and to the waters of the state and their aquatic life, while generally protecting public rights of navigation and corollary rights incidental thereto.
- E. These policies are intended to preserve the public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines to the greatest extent feasible consistent with the overall best interest of the state, the City, and the people generally. To this end, uses shall be preferred which are consistent with control of pollution, prevention of damage to the natural environment, or are unique to or dependent upon use of the state's shoreline.

#### **16.04.2 Shoreline Master Program Elements**

The Shoreline Master Program consists of the following elements:

- A. Comprehensive Plan Policies Shoreline Element.
- B. Regulations in City of Prosser Code (PMC) Chapter 18.08 Shoreline Management Regulations.
- C. Critical Area Regulations in PMC Chapters 16.10 through 16.60 as herein amended.
- D. The Shoreline Restoration Element of the Shoreline Master Plan on file in the office of the City Clerk and made available for examination by the general public, shall not be considered to contain regulations but shall be utilized as a guideline for capital improvements planning by the City and other jurisdictions undertaking ecological restoration activities within Shoreline Management Act jurisdiction.

- E. The Shoreline Environment Overlay Map on file in the office of the City Clerk and made available for examination by the general public.

### **16.04.3 Definitions**

A. "A" Definitions:

- 1) "Administrator" means the city administrator or the administrator's designee who has been charged with the responsibility of administering this title.
- 2) "Agriculture" or "Agricultural activities" means agricultural uses and practices including, but not limited to: Producing, breeding, or increasing agricultural products; rotating and changing agricultural crops; allowing land used for agricultural activities to lie fallow (plowed and tilled, but left unseeded); allowing land used for agricultural activities to lie dormant as a result of adverse agricultural market conditions; allowing land used for agricultural activities to lie dormant because the land is enrolled in a local, state, or federal conservation program, or the land is subject to a conservation easement; conducting agricultural operations; maintaining, repairing, and replacing agricultural equipment; maintaining, repairing, and replacing agricultural facilities, provided that the replacement facility is no closer to the shoreline than the original facility; and maintaining agricultural lands under production or cultivation.
- 3) Agricultural equipment and agricultural facilities includes, but is not limited to:
  - a. The following used in agricultural operations: Equipment; machinery; constructed shelters, buildings, and ponds; fences; upland finfish rearing facilities; water diversion, withdrawal, conveyance, and use equipment and facilities including but not limited to pumps, pipes, tapes, canals, ditches, and drains;
  - b. Corridors and facilities for transporting personnel, livestock, and equipment to, from, and within agricultural lands;
  - c. Farm residences and associated equipment, lands, and facilities; and
  - d. Roadside stands and on-farm markets for marketing fruit or vegetables.
- 1) "Aquaculture" means the culture or farming of food fish, shellfish, or other aquatic plants and animals.
- 2) "Average grade level" means the average of the natural or existing topography of the portion of the lot, parcel, or tract of real property which will be directly under the proposed building or structure: In the case of structures to be built over water, average grade level shall be the elevation of the ordinary high water mark. Calculation of the average grade level shall be made by averaging the ground elevations at the midpoint of all exterior walls of the proposed building or structure;

B. "B" Definitions:

- 3) "Bioengineering" means the use of biological elements, such as the planting of vegetation, often in conjunction with engineered systems, to provide a structural shoreline stabilization measure with minimal negative impact to the shoreline ecology.
- 4) "Boating facility" for the purposes of the Shoreline Master Program means any public or private facility for mooring, storing, or transfer of materials from vessels on the water, such as docks and piers, including on-land related facilities such as approaches and ramps and includes any private and publicly accessible launch sites or facilities. A boating facility does not include on-land accessory facilities such as parking or storage.
- 5) "Buffer" means an area adjacent to a critical area that, functions to avoid loss or diminution of the ecologic functions and values of the critical area. Specifically, a buffer may:
  - a. Preserve the ecologic functions and values of a system, including but not limited to providing microclimate conditions, shading, input of organic material and sediments, room for variation and changes in natural wetland, river, or stream characteristics, providing for habitat for lifecycle stages of species normally associated with the resource; and
  - b. Physically isolate a critical area such as a wetland, river, or stream from potential disturbance and harmful intrusion from surrounding uses using distance, height, visual and/or sound barriers, and generally including dense native vegetation, but also may include man-made features such as fences and other barriers;
  - c. Act to minimize risk to the public from loss of life, well-being, or property damage resulting from natural disasters such as from landslide or flooding.
- 6) "Building height in Shoreline Management Act jurisdiction" only means the vertical distance between average grade and the highest part of the coping of a flat roof, or the deck line of a mansard roof, or the average height of the highest gable of a pitched or hipped roof. The height of a stepped or terraced building is the maximum height of any segment of the building.
- 7) "Bulkhead" means a structure of timber, concrete, steel, rock or similar substance located parallel to the shore, which has as its primary purpose to contain and prevent the loss of soil by erosion, wave, or current action.

C. "C" Definitions:

- 1) "Channel migration zone" means the area along a river within which the channel(s) can be reasonably predicted to migrate over time as a result of natural and normally occurring hydrological and related processes when considered with the characteristics of the river and its surroundings. For the purpose of this code the CMZ excludes areas separated from the active river channel by legally existing artificial structures that are likely to restrain channel

migration, including but not limited to flood control facilities, transportation facilities, and structures built above or constructed to remain intact through the one hundred-year flood.

- 2) "Cumulative impacts" are the results of incremental actions when added to past, present, and reasonably foreseeable future actions. Cumulative impacts can be deemed substantial and subject to mitigation conditions even though they may be comprised of individual actions having relatively minor impacts.

D. "D" Definitions:

- 3) "Dredging" is the removal of earth, sand, gravel, silt, or debris from below the OHWM of any river, stream, pond, lake or other water body and beneath the area of seasonal saturation of any wetland.

E. "E" Definitions:

- 1) "Ecological function" means the work performed or role played by the physical, chemical, and biological processes that contribute to the maintenance of the aquatic and terrestrial environments that constitute an element of a natural ecosystem.

F. "F" Definitions:

- 1) "Fair market value" means the open market bid price for conducting construction the work, using the equipment and facilities, and purchase of the goods, services and materials necessary to accomplish the development. This would normally equate to the cost of hiring a contractor to undertake the development from start to finish, including the cost of labor, materials, equipment and facility usage, transportation and contractor overhead and profit. The fair market value of the development shall include the fair market value of any donated, contributed, or found labor, equipment, or materials.
- 2) "Feasible" means that an action, such as a development project, mitigation, or restoration requirement, meets all of the following conditions:
  - a. The action can be accomplished with technologies and methods that have been used in the past in similar circumstances, or studies or tests have demonstrated in similar circumstances that such approaches are currently available and likely to achieve the intended results;
  - b. The action provides a reasonable likelihood of achieving its intended purpose; and
  - c. The action does not physically preclude achieving the project's primary intended legal use.
  - d. In cases where these guidelines require certain actions unless they are infeasible, the burden of proving infeasibility is on the applicant. In determining an action's infeasibility,

the City may weigh the action's relative public costs and public benefits, considered in short- and long-term time frames.

- 3) "Fill" means earth or any other substance or material placed in or on the ground, including earth retaining structures.
- 4) "Floodway" means the channel of a river or other watercourse and the adjacent land areas that either:
  - a. Has been established in Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps (FIRM) or floodway maps; or
  - b. Consists of those portions of a river valley lying waterward from the outer limits of a watercourse upon which flood waters are carried during periods of flooding that occur with reasonable regularity, although not necessarily annually, said floodway being identified, under normal conditions, by changes in surface soil conditions or changes in types or quality of vegetative ground cover condition, topography, or other indicators of flooding that occurs with reasonable regularity, although not necessarily annually.
  - c. Regardless of the method used to identify the floodway, the floodway shall not include those lands that can reasonably be expected to be protected from flood waters by flood risk reduction devices maintained by or maintained under license from the federal government, the state, or a political subdivision of the state.

G. "G" Definitions:

- 1) "Geotechnical report or geotechnical analysis" means a scientific study or evaluation conducted by a qualified expert that includes a description of the ground and surface hydrology and geology; estimates of susceptibility to erosion, sliding, earthquake, or other geological events; and the extent of risk to the health and safety of persons and property. Such a report shall include conclusions and recommendations regarding the effect of the proposed development on geologic conditions, the adequacy of the site to be developed, the impacts of the proposed development, alternative approaches to the proposed development, and measures to mitigate potential site-specific and cumulative geological and hydrological impacts of the proposed development, including the potential adverse impacts to adjacent and down-current properties. Geotechnical reports shall conform to accepted technical standards and must be prepared by qualified professional engineers or geologists who have professional expertise about the regional and local geology and processes.

H. "H" Definitions:

- 1) High Water Mark – see "Ordinary High Water Mark"

I. "I" Definitions:

- 1) "In-stream structures" function for the impoundment, diversion, or use of water for hydroelectric generation and transmission (including both public and private facilities), flood control, irrigation, water supply (both domestic and industrial), recreation, or fisheries enhancement

J. "L" Definitions:

- 1) "Local utility" means public or private utilities normally servicing a neighborhood or defined subarea in the City, e.g., telephone exchanges; sanitary sewer; stormwater facilities; distribution lines, electrical distribution less than fifty five (55) kV, telephone, cable TV, etc.

K. "M" Definitions:

- 1) "Marina" means any commercial or club-owned facility consisting of docks or piers serving five or more vessels or a shared moorage serving a subdivision serving ten or more vessels.
- 2) "Mining" means the removal of sand, gravel, soil, minerals, and other earth materials for commercial and other uses.
- 3) "Mixed use" within an area subject to the jurisdiction of the Shoreline Management Act means a combination of compatible uses within one development, in which water-oriented and non-water-oriented uses are included.
- 4) "Multiple use" means a combination of compatible uses within one development, and may include commercial, multi-family, and recreation uses among others.

L. "N" Definitions:

- 1) ) ) "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 the applicable master program, or amendments thereto, or upon annexation, but which does not conform to present regulations or standards of the program.
- 2) "No net loss of ecological functions" is the maintenance of existing ecological processes and functions at the level that existed at the time of approval of relevant policies and regulations.
  - a. No net loss of ecological functions on the level of the City means that the ecological processes and functions are maintained within a watershed or other functional catchment area. Regulations may result in localized cumulative impacts or loss of some localized ecological processes and functions, as long as the ecological processes and functions of the system are maintained. Maintenance of system ecological processes and functions may require compensating measures that offset localized degradation.

- b. On a project basis, no net loss means that permitted use or alteration of a site will not result in on-site or off-site deterioration of the existing condition of ecological functions that existed prior to initiation of use or alterations as a direct or indirect result of the project.
  - c. No net loss is achieved both through avoidance and minimization of adverse impacts as well as compensation for impacts that cannot be avoided. Compensation may include on-site or off-site restoration of ecological functions to compensate for localized degradation.
- 3) "Non-Water-Dependent Use" means those uses which are not water-dependent.
  - 4) "Non-Water-Oriented Use" means those uses which are not water-dependent, water-related, or water-enjoyment.

M. "O" Definitions:

- 1) "Open space" means an area that is intended to provide light and air, view, use or passage of persons or animals which is almost entirely unobstructed by buildings, paved areas, or other man-made structures and is designed or preserved for environmental, habitat, scenic or recreational purposes.
- 2) "Ordinary high water mark" (or OHWM) means the mark on all lakes and streams that will be found by examining the beds and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland and vegetation, as that condition existed on June 1, 1971, for all lands under the jurisdiction of the Shoreline Management Act, or for other lands on the effective date of the relevant provisions of this code, or as it may naturally change thereafter, or as it may change thereafter in accordance with permits issued by the City or other authorized jurisdictions. In any area where the ordinary high water mark cannot be found, it shall be defined in accordance with WAC 173-22-030, generally the line of the mean higher high tide in areas adjoining salt water, and the line of mean high water in areas adjoining freshwater.

N. "P" Definitions:

- 1) "Pier" means docks and similar structures consisting of a fixed or floating platform extending from the shore over the water. This definition does not include overwater trails.
- 2) "Public access" means physical and/or visual approach to and along the shoreline available to the general public.

O. "R" Definitions:

- 1) "Recreation areas or facilities" means any privately or publicly owned passive or active facility that provides for activities undertaken for pleasure or relaxation and for the refreshment of the mind and body that takes place in the outdoors or in a facility dedicated to the use including walking, fishing, photography, viewing, and bird-watching and may include parks, playgrounds, sports fields, paths and trails, beaches, or other recreation areas or facilities.

P. "S" Definitions:

- 1) "Shorelands or shoreland areas" means those lands under the jurisdiction of the Shoreline Management Act extending landward for two hundred (200) feet in all directions as measured on a horizontal plane from the ordinary high water mark; floodways and contiguous floodplain areas landward two hundred (200) feet from such floodways; and all wetlands and river deltas associated with the streams, lakes, and tidal waters that are subject to the provisions of the Shoreline Management Act RCW 90.58.030; the same to be designated as to location by the Department of Ecology.
- 2) "Shoreline areas" mean all "shorelines of the state" and "shorelands."
- 3) "Shoreline Stabilization" means structural and nonstructural methods to address erosion impacts to property and dwellings, businesses, or structures caused by natural processes, such as currents, floods, tides, wind, or wave action.
- 4) "Should" means, in areas that are subject to the provisions of the Shoreline Management Act RCW 90.58.030; that a particular action is required unless there is a demonstrated, compelling reason, based on policy of the Shoreline Management Act and this chapter, against taking the action. The Administrator, in consultation with Ecology, shall make the determination about whether or not an applicant has demonstrated that there is a compelling reason against taking an action.

Q. "W" Definitions:

- 1) "Water-dependent use" means a use or portion of a use which cannot exist in a location that is not adjacent to the water and which is dependent on the water by reason of the intrinsic nature of its operations.
- 2) "Water-enjoyment use" means a recreational use or other use that facilitates public access to the shoreline as a primary characteristic of the use; or a use that provides for enjoyment or recreational use of the shoreline for a substantial number of people as a general characteristic of the use and which through location, design, and operation ensures the public's ability to enjoy the visual and physical qualities of the shoreline. In order to qualify as a water-enjoyment use, the use must be open to the general public and the

shoreline-oriented space within the project must be devoted to the specific aspects of the use that fosters shoreline enjoyment.

- 3) "Water-oriented use" means a use that is water-dependent, water-related, or water-enjoyment, or a combination of such uses.
- 4) "Water-related use" means a use or portion of a use which is not intrinsically dependent on a waterfront location, but whose economic viability is dependent upon a waterfront location because:
  - a. The use has a functional requirement for a waterfront location such as the arrival or shipment of materials by water or the need for large quantities of water; or
  - b. The use provides a necessary service supportive of the water-dependent uses and the proximity of the use to its customers makes its services less expensive and/or more convenient.
- 5) "Wetlands" or "wetland areas means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from nonwetland areas to mitigate the conversion of wetlands. For identifying and delineating a regulated wetland, the methodology specified by the Department of Ecology shall be utilized.
- 6) "Wetlands, Associated jurisdictional wetlands are those wetlands that are in proximity to and either influence or are influenced by shoreline areas" subject to the Shoreline Management Act.
- 7) "Wetland identification and delineation" Identification of wetlands and delineation of their boundaries pursuant to this chapter shall be done in accordance with WAC 173-22-035 and the approved federal wetland delineation manual and applicable regional supplements.

#### **16.04.4 Shoreline Environment Designations**

Shoreline areas are classified into specific environment designations based on the existing use pattern, the biological and physical character of the shoreline, and the goals and aspirations of the

community as expressed through the City of Prosser Comprehensive plan. Lands not designated are assigned an Urban Conservancy environment designation.

#### **16.04.5 Shoreline Agribusiness**

- A. **Purpose.** The purpose of this district is to designate land within shoreline jurisdiction best suited for commercial or industrial agricultural businesses, including agriculture and agricultural products processing and to preserve land best suited for eventual urban development.
- B. **Designation Criteria.** The Shoreline Agribusiness Environment is designated in those areas within the City limits and Urban Growth Area designated in the Comprehensive Plan as Agribusiness.
- C. **Management Policies.**
  - 1) Priority is given to water-dependent uses. Second priority is given to water-related and water-enjoyment uses. Non-water-oriented uses are allowed where they do not conflict with or limit opportunities for water oriented uses or on sites where there is no direct access to the shoreline, and where public access and ecological restoration are provided.
  - 2) Policies and regulations assure no net loss of shoreline ecological functions as a result of new development. Where applicable, new development shall include environmental cleanup and restoration of the shoreline in accordance with any relevant state and federal laws.
  - 3) Visual or physical public access to shorelines will be required as a condition of development where appropriate.
  - 4) Aesthetic objectives should be implemented by means such as sign control regulations, appropriate development siting, screening, and maintenance of natural vegetative buffers.

#### **16.04.6 Shoreline Agri-Tourism**

- A. **Purpose.** The purpose of this district is to designate land within shoreline jurisdiction best suited for commercial and other uses that attracts and serves visitors to the agricultural amenities of the region, including but not limited to the agriculture, wineries, microbreweries, limited agriculture-related manufacture, processing and sale; resorts, hotels, and other lodging facilities; and restaurants.
- B. **Designation Criteria.** The Shoreline Agri-Tourism Environment is designated in those areas within the city limits and Urban Growth Area designated as Agri-Tourism.
- C. **Management Policies.**
  - 1) Priority is given to water-dependent uses. Second priority is given to water-related and water-enjoyment uses. Non-water-oriented uses are allowed where they do not conflict with

or limit opportunities for water oriented uses or on sites where there is no direct access to the shoreline and where public access and ecological restoration are provided.

- 2) Policies and regulations assure no net loss of shoreline ecological functions as a result of new development. Where applicable, new development shall include environmental cleanup and restoration of the shoreline in accordance with any relevant state and federal laws.
- 3) Visual and/or physical public access will be required as a condition of development.
- 4) Aesthetic objectives should be implemented by means such as sign control regulations, appropriate development siting, screening, and maintenance of natural vegetative buffers.

### **16.04.7 Shoreline Commercial Environment**

- A. **Purpose.** The Shoreline Commercial designation is intended to accommodate various commercial operations located in the shoreline jurisdiction. The designation is suitable for existing and future high intensity water-oriented uses and water-oriented commercial uses. A more limited range of commercial uses is appropriate in the shoreline, as compared to the wide range of uses allowed elsewhere in the City. Commercial development that enhances visual and physical public access to the shoreline is encouraged.
- B. **Designation Criteria.** The Commercial Environment is designated in those areas within the city limits and Urban Growth Area designated in the Comprehensive Plan for commercial development.
- C. **Management Policies.**
  - 1) Priority is given to water-dependent uses. Second priority is given to water-related and water-enjoyment uses. Non-water-oriented uses are allowed where they do not conflict with or limit opportunities for water-oriented uses or on sites and in conjunction with providing public access and ecological restoration.
  - 2) Policies and regulations assure no net loss of shoreline ecological functions as a result of new development. Where applicable, new development shall include environmental cleanup and restoration of the shoreline in accordance with any relevant state and federal laws.
  - 3) Visual and/or physical public access will be required as a condition of development.
  - 4) Aesthetic objectives should be implemented by means such as sign control regulations, appropriate development siting, screening, and maintenance of natural vegetative buffers.

### **16.04.8 Shoreline Industrial Environment**

- A. **Purpose.** The purpose of the Shoreline Industrial Environment is to provide for industrial activities where infrastructure such as transportation, utilities, and other services exist or are

planned to support such uses, and where sites are not adjacent to commercially-navigable waters.

B. **Designation Criteria.** The Industrial Environment is designated for areas within the city limits or Urban Growth Area designated for industrial development in the Comprehensive Plan.

C. **Management Policies.**

- 1) Priority is given to water-dependent and water-related uses in that order of preference. Non-water-oriented uses are appropriate because of the limited range of potential water-dependent uses; however, a limited range of uses should be allowed within shoreline jurisdiction.
- 2) To be approved, non-water-oriented uses on sites adjacent to the water must provide public benefit in the form of ecological enhancement and public access.
- 3) No net loss of shoreline ecological functions shall result from development of a site. Where applicable, new development shall include environmental cleanup and restoration of the shoreline in accordance with any relevant state and federal laws.
- 4) Physical public access should be required as provided for in appropriate policies and regulations of this program.
- 5) Aesthetic objectives of this program should be implemented by means such as sign control regulations, appropriate development siting, height limits, screening, and and maintenance of natural vegetative buffers

#### **16.04.9 Shoreline Residential Environment**

A. **Purpose.** The purpose of the Shoreline Residential Environment is to maintain areas which are currently primarily residential or intended for residential use. This designation will maintain the intended character of different residential areas designated by the comprehensive plan and provide a variety of residential opportunities. The density and character of development will require consistency in terms of open space, bulk, scale, and intensity of use with the provisions of the Comprehensive Plan and current zoning. This designation also provides appropriate public access and recreational uses.

B. **Designation Criteria.** The Shoreline Residential Environment is appropriate for those areas of the City's shorelines with a residential designation in the Comprehensive Plan and are characterized predominantly by residential development.

C. **Management Policies.**

- 1) Standards for density or minimum frontage width, setbacks, lot coverage limitations, buffers, shoreline stabilization, vegetation conservation, critical area protection, and water quality shall be set to maintain no net loss of shoreline ecological functions.

- 2) New residential developments shall provide public access where appropriate.

### **16.04.10 Recreation Environment**

- A. **Purpose.** The Recreation Environment is intended to provide areas for recreational and public access opportunities along Prosser's shorelines. It is an appropriate designation for areas occupied by recreational purposes such as parks and marinas. An additional purpose is to maintain and restore ecological functions to the area and preserve open space within the City.
- B. **Designation Criteria.** The Recreation Environment is designated in those areas where public and private lands are devoted or designated for recreation use including parks and open space and water-dependent uses such as marinas which provide recreational moorage.
- C. **Management Policies.**
  - 1) Recreation development must balance the goal of enhancing recreational use of the shoreline and the goal of ecological stewardship ensuring no net loss of ecological function.
  - 2) Expanded recreational opportunities on the shoreline shall emphasize water-dependent and water-related uses including, but not limited to, boating, swimming, walking, hiking, and recreational sports.
  - 3) Recreational opportunities shall be accessible by all.
  - 4) Park management shall encourage ecological stewardship including, but not limited to, such measures as setting activity areas away from the water's edge and planting and maintaining native vegetation buffers along the water.

### **16.04.11 Urban Conservancy Environment**

- A. **Purpose.** The purpose of the Urban Conservancy Environment is to protect and restore ecological functions of open space, flood plain and other sensitive lands where they exist in the city while allowing a limited range of compatible uses.
- B. **Designation Criteria.** The Urban Conservancy Environment is designated in those areas of Prosser with a high level of ecologic functions with open space, flood plains or other sensitive areas that should not be more intensively developed;
- C. **Management policies.**
  - 1) Uses that preserve the natural character of the area or promote preservation of open space, flood plain or sensitive lands either directly or over the long term should be the primary allowed uses.
  - 2) Uses that result in restoration of ecological functions should be allowed if the use is otherwise compatible with the purpose of the environment and the setting.

- 3) standards for shoreline stabilization measures, vegetation conservation, water quality, and shoreline modifications should ensure that new development does not result in a net loss of shoreline ecological functions or further degrade other shoreline values.
- 4) Public access and public recreation objectives should be carefully controlled to avoid ecological impacts..
- 5) Water-oriented uses should be given priority over nonwater-oriented uses.

### **16.04.12 Aquatic Environment**

- A. **Purpose.** The purpose of the Aquatic Environment is to protect, restore, and manage the unique characteristics and resources of the areas waterward of the ordinary high water mark (OHWM).
- B. **Designation Criteria.** The Aquatic Environment is defined as the area waterward of the ordinary high water mark of all streams, rivers, and other water bodies constituting shorelines of the state, together with their underlying lands and their water column; but does not include associated wetlands and other shorelands shoreward of the ordinary high water mark. This designation is not found on the Shoreline Environment Map, but shall be assigned based on the description above.
- C. **Management Policies.**
  - 1) Water-dependent uses and a limited range of water-oriented uses are allowed in the Aquatic Environment, subject to provision of shoreline ecological enhancement and public access.
  - 2) New over-water structures are allowed only to serve water-dependent uses, public access, or ecological restoration and should be limited to the minimum necessary to support the structure's intended use.
  - 3) Transportation and utility facilities and Essential Public Facilities may be allowed for which no alternative location is feasible.
  - 4) Ecological enhancement is an allowed and preferred use.

### **16.04.20 General Standards**

This section shall apply to all development activities within the shoreline.

#### **16.04.21 Shorelines of Statewide Significance**

- A. **Applicability.** The Shoreline Management Act of 1971 designated certain shoreline areas as shorelines of statewide significance. Within the City of Prosser's jurisdiction, the Yakima River is a shoreline of statewide significance. Shorelines thus designated are important to the entire state. Because these shorelines are major resources from which all people in the state derive

benefit, the City gives preference to uses which favor long-range goals and support the overall public interest.

- B. **Decision Criteria.** Every project located on a Shoreline of Statewide Significance, shall address the following in all permit reviews, in addition to other criteria provided by this program:

Recognize and protect the statewide interest, including recognizing the following statewide interests specific to the Yakima River:

- 1) Preserve the natural character of the shoreline and protect the resources and ecology of the shoreline:
  - a. Protect and preserve existing diversity of vegetation and habitat values, wetlands, and riparian corridors associated with shoreline areas.
  - b. Preserve and restore ecological functions, particularly those associated with endangered species, commercial and recreational fisheries, and tribal fishing rights.
- 2) Result in long-term over short-term benefit:
  - a. Promote water-oriented uses, particularly water-enjoyment uses.
  - b. Evaluate the short-term economic gain or convenience of developments relative to potential long-term impairments to the natural shoreline and preserve resources and values for future generations.
- 3) Increase public access to publicly-owned areas of the shorelines and increase recreational opportunities for the public in the shoreline:
  - a. Promote recreational use and public access, including boat launches.
  - b. Retain and enhance public access to the shoreline, including passive enjoyment, recreation, fishing, and other enjoyment of the shoreline and public waters consistent with the enjoyment of property rights of adjacent lands.
  - c. Give priority to developing a system of continuous and parallel paths and trails along the shoreline and connecting to uplands to enhance access to the community as a whole.
  - d. Reserve areas for water-enjoyment uses, restaurants with outside seating, and lodging and related uses that enhance the community's economic base while providing opportunities for the public to access and enjoy the shoreline.

#### **16.04.22 No Net Loss of Ecological Functions**

- A. Shoreline land uses and activities that may have adverse impacts on the environment should be minimized during all phases of development (e.g., design, construction, management, and use)

to ensure no net loss of ecological functions and processes. Permitted uses are designed and conducted to minimize, in so far as practical, any resultant damage to the ecology and environment (RCW 90.58.020). Shoreline ecological functions that shall be protected include, but are not limited to, fish and wildlife habitat, food chain support, and water temperature maintenance. Shoreline processes that shall be protected include, but are not limited to, water flow; erosion and accretion; infiltration; ground water recharge and discharge; sediment delivery, transport, and storage; large woody debris recruitment; organic matter input; nutrient and pathogen removal; and stream channel formation/maintenance.

- B. An application for any permit or approval shall demonstrate all reasonable efforts have been taken to provide sufficient mitigation such that the activity does not result in net loss of ecological functions. Mitigation shall occur in the following prioritized order:
  - 1) Avoiding the adverse impact altogether by not taking a certain action or parts of an action, or moving the action.
  - 2) Minimizing adverse impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology and engineering, or by taking affirmative steps to avoid or reduce adverse impacts.
  - 3) Rectifying the adverse impact by repairing, rehabilitating, or restoring the affected environment.
  - 4) Reducing or eliminating the adverse impact over time by preservation and maintenance operations during the life of the action.
  - 5) Compensating for the adverse impact by replacing, enhancing, or providing similar substitute resources or environments. Preference shall be given to measures that replace the impacted functions on-site or in the immediate vicinity of the impact. However, alternative compensatory mitigation within the watershed that addresses limiting factors or identified critical needs for shoreline resource conservation based on watershed or comprehensive resource management plans may be authorized.
  - 6) Monitoring the adverse impact and taking appropriate corrective measures.
- C. Applicants for permits have the burden of proving that the proposed development is consistent with the criteria set forth in the Shoreline Master Program and the SMA, including demonstrating all reasonable efforts have been taken to provide sufficient mitigation such that the activity does not result in net loss of ecological functions.

### **16.04.23 Critical Areas within Shoreline Jurisdiction**

- A. Critical Areas within the shoreline jurisdiction shall be regulated in accordance with the following provisions of PMC Chapter 16.10 Critical Areas, as amended by Section III of this ordinance:

## CRITICAL AREAS

### Sections:

16.10 Critical Areas Protection—General Provisions

16.20 Wetlands

16.30 Critical Aquifer Recharge Areas

16.40 Frequently Flooded Areas

16.50 Geologically Hazardous Areas

16.60 Fish and Wildlife Habitat Conservation Areas

### **16.04.24 Shoreline Vegetation Conservation**

- A. In addition to the Critical Areas standards of PMC Chapter 16.20, the following shall apply to development on the shoreline:
- 1) A vegetation management plan shall be required for all Critical Area buffer areas with degraded native vegetation within SMA jurisdiction to include:
    - a. Maintain adequate cover of native vegetation including trees and understory. If a portion of the buffer has been cleared, or if tree cover is substantially less than a native climax vegetation community, supplemental plantings shall be required.
    - b. Provide a dense screen of trees at the perimeter of the buffer to provide and protect ecological functions and reduce proximity impacts such as light and glare from adjacent areas.
    - c. Provide a plan for control of invasive weeds, and removing existing invasive species for new plantings.
    - d. Provide a monitoring and maintenance plan. This provision may be waived for single family residential lots.
- B. In cases where approved development results in unavoidable adverse impacts to existing shoreline vegetation, mitigation shall be required to ensure that there will be no net loss of the ecological functions. Mitigation shall take place on-site to the maximum extent feasible. Mitigation plans shall be completed before initiation of other permitted activities, unless a phased or concurrent schedule assuring completion prior to occupancy has been approved.

- C. Lawns and other non-native vegetation maintained within shoreline jurisdiction shall minimize use of chemical fertilizers, pesticides, herbicides, or other similar substances. Such chemical treatments should generally not be applied within 10 feet of the OHWM and shall be applied in accordance with manufacturer's recommendations. Applications in solid time release form shall be preferred over liquid or concentrate application. Best Management Practices (BMPs) shall be implemented in all chemical applications.
- D. Aquatic weed management by prevention is the first priority. Where active removal or destruction is necessary, it should be the minimum required to allow water-dependent activities to continue, minimize negative impacts to native plant communities, and include appropriate handling or disposal of weed materials.
  - 1) Aquatic weed control shall only occur when native plant communities and associated habitats are threatened or where an existing water dependent use is restricted by the presence of weeds. Aquatic weed control shall occur in compliance with all other applicable laws and standards.
  - 2) The control of aquatic weeds by derooting, rotovating, or other method which disturbs the bottom sediment or benthos, shall be considered development for which a shoreline permit is required, unless it will maintain existing water depth for navigation in an area covered by a previous permit for such activity, in which case it shall be considered normal maintenance and repair and therefore exempt from the requirement to obtain a shoreline permit.
  - 3) Use of herbicides to control aquatic weeds shall be prohibited except where no reasonable alternative exists and weed control is demonstrated to be in the public's interest. A conditional use permit, and compliance with applicable federal and state laws shall be required.

#### **16.04.25 Public Access**

- A. All developments requiring shoreline substantial development or conditional use permits, and all residential subdivision or development of more than four (4) lots or non-single family residential development, shall provide public access to the shoreline subject to the conditions in criteria (1) and (2) below:
  - 1) Alternatives to on-site public access may be approved in cases where the applicant demonstrates that one or more of the following provisions apply:
    - a. Unavoidable health or safety hazards to the public would accompany public access that cannot be avoided by application of alternative design features or other solutions.
    - b. Inherent security requirements of the use cannot be satisfied through the application of alternative design features.

- c. The cost of providing the access, easement, or an alternative amenity, or mitigating the impacts of public access, is unreasonably disproportionate to the total long-term cost of the proposed development.
  - d. Unacceptable environmental harm will result from the public access that cannot be mitigated.
  - e. Significant undue and unavoidable conflict between access provisions and the proposed use and/or adjacent uses would occur and cannot be mitigated.
  - f. Public access is provided by a public entity through implementation of a public access plan incorporated into its master plan, developed through a public participation process and incorporated into this program.
- 2) Based on documentation provided by the applicant, the City shall determine that all reasonable alternatives have been exhausted, including, but not limited to:
- a. Limiting the size or placement of public access facilities;
  - b. Regulating access by such means as maintaining a gate and/or limiting hours of use;
  - c. Designing separation of uses and activities (e.g., fences, terracing, use of one-way glazing, hedges, landscaping, etc.); and
  - d. Providing for access at a site geographically separated from the proposal including contribution to regional trail or public access plans.
- B. The following activities generally are not required to provide public access, except as determined on a case-by-case basis as part of development review:
- 1) Single family development of four (4) or fewer units
  - 2) Minor additions or changes to an existing use that does not change the configuration of the existing use or add substantial facilities.
  - 3) Resource uses including agriculture.
  - 4) Ecological restoration or enhancement activities not associated with a development.
- C. Specific provisions for public access shall be evaluated on a case-by-case basis to ensure that they are of the kind, quality, and scope to provide a substantial public benefit with respect to the Shoreline Management Act's objectives and do not create a disproportionate impact on landowners.
- D. The amount of public access required shall depend on the proposed use(s) and the following criteria:

- 1) Any development or use that creates increased demand for public access to the shoreline shall provide public access to mitigate this impact.
  - 2) Any development or use that interferes with an existing public access way shall provide public access to mitigate this impact.
  - 3) Uses and developments that utilize public aquatic lands shall provide public access consistent with maintaining the use and public safety. Public access shall be provided on over-water structures not devoted to water-dependent use, except when accessory to single family use.
  - 4) New or expanded flood control facilities with public funding, shall provide public access, preferably through trails along or on top of the facility.
  - 5) Public roads or other public facilities parallel to or crossing shorelines may be required to provide public access.
  - 6) Public utilities within the shoreline, other than distribution facilities, shall provide public access consistent with maintaining the use and public safety.
- E. Public access shall consist of a physical improvement in the form of a walkway, trail, bikeway, corridor, viewpoint, park, deck, observation tower, pier, boat-launching ramp, dock or pier area, or other area serving as a means of view and/or physical approach to public waters and may include interpretive centers and displays. Public access improvements shall meet the following location and design criteria:
- 1) Public access shall be provided as close (horizontally and vertically) as feasible to the water's edge to provide the general public with opportunity to reach, touch, view, and enjoy the water's edge, provided that public access does not adversely affect sensitive ecological features or lead to an unmitigated reduction in ecological functions.
  - 2) If open space is provided along the shoreline in the form of Critical Area buffers, and public access can be provided in a manner that will not result in a loss of ecological function, a public pedestrian access walkway along and parallel to the waterfront of the property is the preferred design. The walkway shall be set back from sensitive features and may provide only limited and controlled access to the water's edge. Fencing may be provided to control damage to plants and other sensitive features and shall provide for wildlife movement. Soft surface trails and limited width should be specified where appropriate to reduce impacts to ecologically sensitive resources.
  - 3) Public access shall be connected directly to the nearest public street; shall include provisions for handicapped and physically impaired persons where feasible, and where additional impact on ecological functions will not occur.

- 4) Design shall minimize intrusions of privacy for both site users and public access users by avoiding locations adjacent to windows and/or outdoor private open spaces or by screening or other separation techniques.
  - 5) Design shall provide for the safety of users, including the control of offensive conduct through Crime Prevention through Environmental Design or CPTED principles including public visibility, or provision of specific oversight. The Administrator may authorize public access to be temporarily closed to develop a program to address offensive conduct. If offensive conduct cannot be reasonably controlled, alternative facilities may be approved as a permit revision.
  - 6) Public amenities appropriate to the use of the public access space shall be provided. These amenities can include, but are not limited to, benches, picnic tables, public docks, and sufficient public parking.
  - 7) Public restrooms and facilities for animal waste may be required as part of public access amenities for developments by public entities or commercial developments that attract a substantial number of persons.
- F. Public access shall be maintained over the life of the use or development. Future actions by the applicant successors in interest or other parties shall not diminish the usefulness or value of the public access provided.
- 1) Required public access sites shall be fully developed and available for public use at the time of occupancy of the use or activity or in accordance with provisions for guaranteeing installation through a performance assurance.
  - 2) Public access provisions shall be recorded as an easement or a dedication to the public on the face of a plat or short plat. Said recording with the County Auditor's Office shall occur at the time of building permit approval or plat recordation, whichever comes first.
  - 3) Maintenance of the public access shall be the responsibility of the owner unless specifically accepted by a public or non-profit agency.
  - 4) The minimum width of public access easements shall be 15 feet, unless the Administrator determines that undue hardship would result. In such cases, easement width may be reduced only to the minimum extent necessary to relieve the hardship. Width of the trail improved surface shall be 10 ft unless local conditions or ecological sensitivity warrants wider or narrower width. Pervious material is encouraged for all trails.
  - 5) Public access shall be available to the public during daytime hours or business hours unless specific exceptions are granted through the substantial development permit process where safety hazards or security issues to users or adjacent uses are substantiated.

- 6) Public access signs bearing the standard state-approved logo or other approved design shall be installed and maintained by the applicant and owner. The sign(s) must indicate the public's right of access and hours of access, and shall be installed in conspicuous locations at public access sites. Signs may display restrictions of public access as approved by a specific condition of permit approval.
- G. Public access afforded by shoreline street ends, public utilities, and rights-of-way shall be preserved, maintained, and enhanced pursuant to RCW 35.79.035.
- H. Public access for new and substantially altered development shall incorporate the location and design criteria provided for specific reaches in Section 18.08.340 of this program.

### **16.04.26 Signs**

- A. All signs shall be located and designed to be compatible with the aesthetic quality of the existing shoreline and adjacent land and water uses. Signs shall minimize interference with vistas, viewpoints, and visual access to the shoreline.
- B. Except where no feasible location outside of SMA jurisdiction is available, signs placed in SMA jurisdiction should be limited to public information signs directly relating to a shoreline use or activity, water navigational signs, and legally-required highway and railroad signs necessary for operation, safety, and direction.
- C. Over-water signs or signs on floats or pilings are prohibited except for warning and hazard signs installed by a public entity.
- D. Lighted signs shall be hooded, shaded, or aimed so that lighting will not result in glare when viewed from public access facilities or watercourses.
- E. Conceptual sign plans shall be submitted for review and approval at the time of shoreline permit application and shall be utilized in future review of sign permits for the property.

### **16.04.27 Archaeological and Historic Resources**

- A. Owners of property containing identified or probable historical, cultural, or archaeological sites are encouraged to coordinate well in advance of application for development to assure that appropriate agencies such as the Washington State Department of Archaeology and Historic Preservation, affected tribes, and historic preservation groups have ample time to assess the site and identify the potential for cultural resources.

- B. Prior to approval of development in an area of known or probable cultural resources, the City shall require a site assessment by a qualified professional archaeologist or historic preservation professional and ensure review by qualified parties. Conditions of approval may require preservation or conservation of cultural resources as provided by applicable federal, state and local statutes. All permits issued for development in areas known to be archaeologically significant shall provide for monitoring of any development activity for previously unidentified cultural resources.
- C. If historical, cultural, or archaeological sites or artifacts are discovered in the process of development, work on that portion of the site shall be stopped immediately, the site secured, and the find reported as soon as possible to the Administrator. The property owner also shall notify the Washington State Department of Archaeology and Historic Preservation and affected tribes. The Administrator may provide for a site investigation by a qualified professional and may require avoidance or conservation of the resources in coordination with appropriate agencies. All shoreline permits shall contain a special provision notifying permittees of this requirement. Failure to comply with this requirement shall be considered a violation of the shoreline permit and shall subject the permittee to legal action as specified in these provisions and PMC Chapter 19.07.
- D. All developments proposed for location adjacent to historical sites, which are registered on the local, state, or national historic register shall be located and designed so as to be complimentary to the historic site..

#### **16.04.28 Water Quality, storm water, and nonpoint pollution**

- A. All shoreline development shall comply with the applicable requirements of the City's Comprehensive Plan, Stormwater Management Performance Standards, and best management practices and the Eastern Washington Stormwater Manual to prevent impacts to water quality and stormwater quantity that would result in a net loss of shoreline ecological functions, or a significant impact to aesthetic qualities, or recreational opportunities.
- B. Stormwater management structures including ponds, basins, and vaults shall be located outside of SMA jurisdiction where possible and as far from the water's edge as feasible and shall minimize disturbance of vegetation buffers. Low impact development (LID) facilities that do not substantially change the character of the shoreline, such as vegetation filter strips, grass-lined swales, vegetated bioretention, and infiltration facilities, are encouraged for development allowed in SMA jurisdiction.

- C. Use of pesticides, herbicides, and fertilizers in or near the land/water interface shall be restricted by employing native vegetation where feasible and by strict control of application. Aerial application within SMA jurisdiction is prohibited unless as part of a public agency program for control of noxious species, specific pests for quarantine, public health purposes, or for a crisis exemption.

### **16.04.29 Boat and Vessel Facilities**

- A. All boating uses, development, and facilities shall protect the rights of navigation and shall demonstrate that they result in no net loss of ecological functions and may be required to provide on-site and off-site mitigation.
- B. Shared moorage serving single family use consisting of docks and piers with more than four berths, commercial moorage available to the general public, and moorage related to clubs or other groups not associated with a particular residential development are regulated as marinas under section 16.04.53.
- C. Joint-use/shared docks and piers with four (4) or fewer berths or any number of mooring buoys are regulated under this Section.
- D. Boating facilities shall:
- 1) Avoid braided or meandering river channels where the channel is subject to change in alignment or on point bars or other accretion beaches;
  - 2) Avoid areas where shoreline modification is required for approach and other upland facilities;
  - 3) Not be located where adverse impact upland riparian or nearshore habitat for aquatic species is not avoided or adequately mitigated ;
  - 4) Not adversely affect flood channel capacity or create a flood hazard;
  - 5) Not be located where water depths for vessels are not adequate without dredging;
  - 6) Not be located in areas where wave action caused by boating use would increase erosion rates on shorelines; and
  - 7) Require a Conditional Use Permit at sites downstream of the Bureau of Reclamation Dam.
- E. Boating facilities, except those accessory to single family residences, shall provide public access in accordance with Section 16.04.25 of this program and shall be located and designed such that existing public access to public shorelines is not obstructed nor made hazardous.

- F. All in- and over-water structures shall be constructed of materials that will not adversely affect water quality or aquatic plants and animals over the long term. Wood treated with creosote, pentachlorophenol or other similarly toxic materials is prohibited. Docks generally shall be constructed of untreated materials, such as untreated wood, approved plastic composites, concrete, or steel.
- G. Vessels shall be restricted from extended mooring on waters of the state except as allowed by state regulations, a lease or other permission is obtained from the state and impacts to navigation and public access are mitigated.
- H. Boat Launches:
- 1) Boat launches accessory to single family and multi-family residential uses are prohibited.
  - 2) Private boat launches shall be allowed only for water-dependent uses and marinas and only when it is demonstrated that public boat launches will not feasibly serve the use. Rail and track systems are preferred over concrete ramps when feasible.
  - 3) New public boat launches for general public use, or expansion of public boat launches by adding launch lanes shall be approved only by Conditional Use and shall demonstrate that:
    - a. They are located downstream of accretion shoreforms, or on stable banks where no or minimal current deflections will be necessary.
    - b. Water depths are adequate to avoid the need for dredging and eliminate or minimize potential loss of shoreline ecological functions or other shoreline resources from offshore or foreshore channel dredging.
    - c. Adjacent residential properties will not be adversely affected by adverse proximity impacts such as noise, light, and glare, or scale and aesthetic impacts. Fencing or landscape areas may be required to provide a visual screen.
    - d. Exterior lighting will prevent glare, and will avoid illuminating nearby residential property to unreasonably infringe on the use and enjoyment of such property. Methods of controlling spillover light include, but are not limited to, limits on height of supports, limits on light levels of fixtures, light shields, and screening.
    - e. Exterior lighting will not adversely impact aquatic species.
    - f. Adequate provisions are made for restroom, sewage, and solid waste disposal facilities in compliance with applicable health regulations.
    - g. Access and parking shall not produce traffic hazards, shall not result in excessive noise or other impacts, shall minimize traffic impacts on nearby streets, and shall include adequate parking for boat trailers. Parking on public streets may be allowed for peak

periods if it is demonstrated that such parking will not adversely impact through traffic or residential uses.

I. New moorage to serve a single family residence may be allowed only if:

- 1) An applicant demonstrates that existing facilities (boat launches and public and private marinas) are not reasonably available to meet demand.
- 2) The lot does not have access to shared moorage in an existing subdivision and there is no homeowners association or other corporate entity capable of developing shared moorage.
- 3) In cases where new dock or pier is approved, the City may require an agreement to share with nearby residences with water frontage and provide for expansion to serve such additional users.

J. A dock or pier serving a single family residence shall meet the following standards:

- 1) Length: A dock or pier (gangway and pier supported or floating structure combined) shall be long enough to obtain an adequate operating depth without disturbing the natural condition of the river bottom. Maximum length is thirty feet (30') unless a depth of six feet (6') cannot be obtained. In such circumstances the dock may be extended until the water depth reaches a point of six feet (6') in depth at ordinary low water, or to a maximum of forty feet (40'), whichever is reached first. The dimensional standards may be adjusted as required by the City in consultation with state and federal agencies if such adjustment will better preserve ecological functions.
- 2) The maximum area of over water coverage is 160 square feet.
- 3) To prevent damage to shallow water habitat, an access ramp shall bridge the distance between the shore and piers or floats and shall extend at least the distance between ordinary high water and extreme low water.
- 4) Piers and ramps shall be no more than four (4) feet in width.
- 5) Grating, or clear translucent material, shall cover the entire surface area of the pier and ramp. The open area of grating shall have a minimum of fifty percent (50%) open. Clear translucent material shall have greater than ninety percent (90%) light transmittance as rated by the manufacturer.
- 6) Floats shall not exceed a width of eight (8) feet. Flotation materials shall be permanently encapsulated to prevent breakup into small pieces and dispersal in water (e.g., rectangular float tubs). Grating for light penetration shall cover one hundred percent (100%) of the surface area of the float. The open area of the grating shall be no less than fifty percent (50%), as rated by the manufacturer.
- 7) Covered moorage is prohibited.

- 8) The bottom of the fascia boards on the pier or bottom of the landward edge of the ramp shall be at least two (2) feet above the horizontal plane of the OHWM.
  - 9) Floats shall be constructed and attached so that they do not ground out on the bottom of the river. Float stops, tubs, or similar structures may be used. A minimum of one (1) foot of elevation above the substrate is required.
  - 10) Pile spacing shall be the maximum feasible to minimize shading and avoid a "wall" effect that would block or baffle wave patterns, currents, littoral drift, or movement of aquatic life forms, or result in structure damage from driftwood impact or entrapment. Minimum pile spacing is eighteen (18) feet on the same side of any component of the overwater structure.
  - 11) Piling diameter shall be sized to use the minimum possible while meeting the structural requirements of expected loads. Generally, piling shall not exceed eight (8) inches in diameter.
  - 12) The dock shall be built with materials that do not leach preservatives or other materials. No treated wood of any kind shall be used on any overwater structure (float, pier, or ramp). No paint, stain, or preservative shall be applied to the overwater structure.
  - 13) Boat lifts or watercraft lifts (e.g., jet ski lifts) are included in the maximum allowable area of 160 square feet for over water structures and may be approved if the City and other permitting agencies find that the proposed boat lift minimizes structure cover, maximizes light penetration, and maximizes depth.
- K. Shared residential docks and piers shall generally meet the standards for single family docks above, except that the number of floats and the size of piers and other facilities may be increased to serve additional slips to provide one moorage space per residence served.
- L. Docks and piers shall be set back a minimum of ten (10) feet from side property lines, except that joint-use facilities may be located closer to, or upon, a side property line when agreed to by contract or covenant with the owners of the affected properties. This agreement shall be recorded with the County Auditor and a copy filed with the shoreline permit application.
- M. Moorage related to subdivision:
- 1) New subdivisions shall contain a restriction on the face of the plat prohibiting individual docks. A site for community or shared moorage shall be designated on the plat and owned in undivided interest by property owners within the subdivision. Shared moorage facilities shall be available to lots with water frontage in the subdivision. The over-water area of the dock shall be made available to other lots and the public for community access and may be required to provide public access depending on the scale of the facility.
  - 2) Approval of a shared moorage for a subdivision shall be subject to the following criteria:

- a. There is no reasonably available public or private moorage that can serve the moorage needs of the residences or the subdivision.
  - b. Shared moorage to serve new development shall be limited to the amount of moorage needed to serve lots with water frontage. One moorage space per lot may not be presumed.
  - c. The size of a dock must consider the use of mooring buoys for some or all moorage needs and the use of all or part of the dock to allow tender access to mooring buoys.
  - d. Public access shall be provided in all shared docks utilizing public aquatic lands that accommodate five (5) or more vessels.
- 3) If a community or shared dock is not developed at the time of subdivision, a community association shall be established with the authority to levy assessments within the subdivision to construct and maintain a community dock in the future. The failure of a subdivision to develop a community or shared dock shall not affect the prohibition on individual docks.
- N. Multi-family residences, hotels, motels, and other commercial developments proposing to provide moorage facilities shall meet the criteria for a marina. Use of the moorage must be open to the general public on the same basis as residents or occupants and shall provide public access. If approved, no more than one joint-use moorage facility may be provided for a parcel or development.
- O. Applications for docks or piers serving single commercial or industrial enterprises shall demonstrate that:
- 1) The facility serves a water-dependent use;
  - 2) The facility is the minimum size required to serve the proposed use, provided that provisions for expansion or future joint use may be provided; and
  - 3) The facility minimizes impacts to the extent feasible. Where impacts are unavoidable, the facility mitigates impacts to navigation, aquatic habitat, upland habitat, public access to the water for recreation, fishing, and similar use, and public access to publicly accessible lands below the OHWM.
- P. Commercial or industrial moorage facilities shall demonstrate that:
- 1) The dock or pier shall be the minimum length required to serve the use.
  - 2) Access from the shore to piers or floats shall minimize water cover in order to minimize impacts to shallow water habitat,
  - 3) Piers and ramps shall be elevated to provide the maximum feasible light penetration.

- 4) Grating, or clear translucent material, shall be utilized to the maximum extent feasible to provide light penetration.
- 5) Floats shall be constructed and attached so that they do not ground out on the bottom of the river.
- 6) Pile spacing shall be the maximum feasible to minimize shading and avoid a "wall" effect that would block or baffle wave patterns, currents, littoral drift, or movement of aquatic life forms, or result in structure damage from driftwood impact or entrapment.
- 7) Pile diameter shall be minimized while meeting structural requirements.
- 8) Covered structures may be permitted only to serve a water-dependent use where it is demonstrated that adequate upland sites are not feasible, and it is demonstrated that the area covered is the minimum necessary to serve the use.

### **16.04.30 Shoreline Modification Regulations**

- A. In considering an application for a shoreline modification, the decision maker shall make findings that the following general principles are met. Appropriate studies by qualified professionals shall be required to document compliance.
  - 1) Shoreline modifications shall only be allowed where it can be demonstrated that the proposed activities are necessary to support or protect an allowed use or structure or are necessary to allow a water-dependent use, or are necessary for shoreline mitigation, enhancement, or restoration purposes.
  - 2) Modifications shall only be allowed when impacts are avoided, minimized, and mitigated to assure no net loss of shoreline ecological functions. The adverse effects, as well as the number and extent of shoreline modifications, shall be minimized;
  - 3) The individual and cumulative effects of shoreline modification shall not result in a net loss of ecological functions. Preference shall be given to those types of shoreline modifications that have a lesser impact on ecological functions. Mitigation of identified impacts resulting from shoreline modifications is required. Ecological impacts shall be avoided and mitigated in accordance with the mitigation sequence in Section 16.04.022.B of this program and WAC 173-26-201 (2)(e) as it now exists, or as it may be hereafter amended.

### **16.04.31 Shoreline Stabilization**

- A. New development, including subdivision, shall be located and designed to avoid the need for future shoreline stabilization to the maximum extent feasible. New lots shall not be created by subdivision that require shoreline stabilization in order for reasonable development to occur. New development on steep slopes shall be set back sufficiently to ensure that shoreline

stabilization is unlikely to be necessary during the life of the structure. Proposed development that would require shoreline stabilization which would cause significant impacts to adjacent or down-current properties and shoreline areas shall not be allowed. In all cases, compliance with this criterion shall be documented by geotechnical analysis by qualified professionals.

- B. The construction of shoreline protection for the primary purpose of retaining or creating dry land that is not specifically authorized as a part of the permit is prohibited.
- C. Shoreline stabilization shall be designed and constructed to avoid stream channel direction modification, realignment, and straightening or result in increased channelization of normal stream flows.
- D. New or enlarged structural shoreline stabilization measures for an existing primary structure, including residences, shall not be allowed unless there is conclusive evidence, documented by a geotechnical analysis that the structure is in danger from shoreline erosion caused by natural processes rather than from upland conditions such as poorly managed stormwater or vegetation removal. Normal sloughing, erosion of steep bluffs, or shoreline erosion itself, without a scientific or geotechnical analysis, is not demonstration of need. The geotechnical analysis shall evaluate on-site drainage issues and address drainage problems away from the shoreline edge before considering structural shoreline stabilization. The erosion control structure shall not result in a net loss of shoreline ecological functions.
- E. Alternatives for shoreline stabilization shall be based on the following hierarchy of preference:
  - 1) No action (allow the shoreline to retreat naturally), increase building setbacks, and relocate structures.
  - 2) Stabilization constructed of natural materials incorporating measures such as soft shore protection and bioengineering, including beach nourishment, protective berms, or vegetative stabilization.
  - 3) Soft-shore stabilization, as described above, in combination with rigid works, as described below, constructed as a protective measure.
  - 4) Rigid works constructed of artificial materials such as riprap or concrete.
- F. Shoreline stabilization may be permitted to protect a water-dependent development, or single-family residences, when all of the conditions below have been demonstrated to apply and are documented by report prepared by a qualified professional:
  - 1) The erosion is not being caused by upland conditions, such as the loss of vegetation and improper management of drainage.
  - 2) Nonstructural measures, such as placing the development further from the shoreline, planting vegetation, or installing on-site drainage improvements, are not feasible or not sufficient.

- 3) The need to protect primary structures from damage due to erosion is demonstrated through a geotechnical report.
  - 4) The stabilization structure shall not result in a net loss of shoreline ecological functions.
  - 5) Where a geotechnical analysis confirms a need to prevent potential damage to a primary structure, but the need is not as immediate as three years, the analysis may still be used to justify more immediate authorization for shoreline stabilization using bioengineering approaches.
- G. Shoreline stabilization may be permitted to protect an existing non-water-dependent development when all of the conditions below are met as documented by report by a qualified professional:
- 1) The erosion is not being caused by upland conditions, such as the loss of vegetation and drainage.
  - 2) Nonstructural measures, planting vegetation, or installing on-site drainage improvements, are not feasible or not sufficient.
  - 3) The need to protect primary structures from damage due to erosion is demonstrated through a geotechnical report.
  - 4) The affected structure cannot be feasibly located or relocated outside of the area affected by natural shoreline erosion processes.
  - 5) The stabilization structure will not result in a net loss of shoreline ecological functions.
  - 6) Where a geotechnical analysis confirms a need to prevent potential damage, but the need is not as immediate as three years, the analysis may still be used to justify more immediate authorization for shoreline stabilization using bioengineering approaches.
- H. Shoreline protection for the restoration of ecological functions or hazardous substance remediation projects pursuant to Chapter 70.105D RCW, shall meet the conditions below and be documented by a qualified professional:
- 1) Nonstructural measures, planting vegetation, or installing on-site drainage improvements, are not feasible or not sufficient.
  - 2) The erosion control structure will not result in a net loss of shoreline ecological functions.
- I. Replacement of an existing shoreline stabilization structure with a similar structure is permitted if there is a demonstrated need to protect existing primary uses, structures, or public facilities (e.g., roads, bridges, railways, and utility systems) from erosion caused by stream undercutting or wave action. The existing shoreline stabilization structure must be removed from the shoreline as part of the replacement activity. The following conditions must be met and documented by a qualified professional:

- 1) An existing shoreline stabilization structure may be replaced with a similar structure if there is a demonstrated need to protect principal uses or structures from erosion caused by stream geohydraulic processes.
  - 2) The replacement structure should be designed, located, sized, and constructed to assure no net loss of ecological functions.
  - 3) Replacement walls or bulkheads shall not encroach waterward of the ordinary high water mark or existing structure unless the residence was occupied prior to January 1, 1992, and overriding safety or environmental concerns exist. In such cases, the replacement structure shall abut the existing shoreline stabilization structure.
  - 4) Soft shoreline stabilization measures that provide restoration of shoreline ecological functions may be permitted waterward of the ordinary high water mark.
  - 5) For purposes of this subsection, "replacement" means the construction of a new structure to perform a shoreline stabilization function of an existing structure which can no longer adequately serve its purpose. Additions to or increases in size of existing shoreline stabilization measures shall be considered new structures.
- J. A publicly-funded shoreline stabilization project shall include appropriate provisions for public access to the shoreline, not create barriers to public access if in existence, and incorporate ecological restoration measures if feasible.
- K. Bioengineered projects shall be designed by a qualified professional in accordance with best available science and shall incorporate a variety of native plants, unless demonstrated infeasible for the particular site.
- L. Gabions (wire mesh filled with concrete or rocks) shall not be used in bulkhead construction where alternatives more consistent with this program are feasible, because of their limited durability and the potential hazard to shore users and the shoreline environment.

### **16.04.32 Breakwaters, Jetties, and Groins**

- A. Breakwaters, jetties, rock weirs, and groins shall only be permitted by conditional use for navigational purposes, water dependent industry, and marinas where water-dependent uses are located waterward of the OHWM or to protect existing public facilities such as bridges.
- B. Breakwaters, jetties, rock weirs, and groins may be approved only if analysis by a qualified professional demonstrates that they are needed to protect existing or proposed facilities and if natural processes such as erosion and accretion processes, riparian habitat, channel migration, and floodplain functions will not be adversely affected or are mitigated by a specific program implemented over the lifespan of the effect.

- C. The design of new breakwaters, groins, and jetties shall incorporate provisions for public access and public fishing if such access is feasible and safe.

### **16.04.33 Flood Hazard Management**

- A. New or substantially altered structural flood hazard reduction measures, such as dikes, levees, berms and similar flood control structures, shall be consistent with basin-wide flood control strategies in regional flood hazard management plans.
- B. Flood control structures shall be permitted for the following purposes only, as documented through a geotechnical or geofluvial analysis:
  - 1) They are necessary to protect existing development.
  - 2) Non-structural flood hazard reduction measures are infeasible.
  - 3) Impacts to ecological processes and functions, priority fish and wildlife species and habitats, and the aquatic food chain can be successfully mitigated to assure no net loss of functions.
  - 4) Measures are consistent with an adopted comprehensive flood hazard management plan that evaluates cumulative impacts to the watershed system.
- C. Public access shall be provided in accordance with public access policies and regulations of this program. If the project is publicly funded the design must provide appropriate public access to the shoreline, improve public access to the shoreline, and provide ecological restoration where feasible.
- D. Dike and levee design shall, to the maximum extent feasible be:
  - 1) Limited in size to the minimum height required to protect adjacent lands from the predicted flood stage as identified in the applicable comprehensive flood control management plan or as required by FEMA for dike recertification.
  - 2) Placed landward of Fish and Wildlife Conservation Area and Wetland buffers unless there is no other feasible alternative to reduce flood hazard to existing development.
  - 3) Located and designed so as to protect and restore the natural character of the stream, avoid the disruption of channel integrity and provide the maximum opportunity for natural floodway functions to take place. Design must consider including levee setbacks to allow for more natural function of floodplains, channel migration zones, off channel habitat, and associated wetlands directly interrelated and interdependent with the stream.
  - 4) Incorporate appropriate vegetation management.
- E. All flood protection measures shall demonstrate that downstream flooding will not be increased and the integrity of downstream ecological functions will not be adversely affected, including disruption of natural drainage flows and stormwater runoff.

- F. Removal of materials from the river channel for flood management purposes may be allowed only as part of an adopted integrated flood control management program that demonstrates that other flood hazard reduction strategies would not be effective in the absence of gravel removal.

#### **16.04.34 Clearing and Grading, Fill**

- A. Clearing and grading activities in shoreline areas shall be allowed only in association with a permitted shoreline development and shall be limited to the minimum extent necessary to accommodate shoreline development. Clearing and grading shall retain natural features and functions, including natural topography, to the maximum extent feasible. Excavation waterward of the OHWM or within wetlands shall be considered dredging for purposes of this Program.
- B. Fill is restricted in wetlands or Fish and Wildlife Habitat Conservation Areas in accordance with Critical Areas regulations.
- C. Fill may not be placed in floodways. Fill may be placed in other flood hazard areas only where it is demonstrated that adverse impacts to hydrogeologic processes will be avoided and the provisions of PMC Chapter 15.20 are met.
- D. Fill below, or waterward, of the ordinary high water mark for any use except ecological restoration requires a conditional use permit. Fill may be placed below OHWM only when it is demonstrated as necessary to:
  - 1) Accomplish an aquatic habitat restoration plan;
  - 2) Correct the adverse results of a past shoreline modification that has disrupted natural stream geomorphic conditions and adversely affected aquatic or terrestrial habitat;
  - 3) Provide for cleanup and disposal of contaminated sediments as part of an interagency environmental clean-up plan;
- E. Expand or alter transportation facilities of statewide significance currently located on the shoreline and then only upon a demonstration that alternatives to fill are not feasible.

#### **16.04.35 Dredging and Dredge Material Disposal**

- A. Dredging shall be permitted only:
  - 1) For flood control purposes, as part of an adopted regional flood control plan;
  - 2) In conjunction with a water-dependent use of water bodies or adjacent shorelands where channel modification is essential to the water dependent use;
  - 3) As part of an approved habitat improvement project;
  - 4) In conjunction with a bridge, navigational structure, or wastewater treatment facility for which there is a documented public need and where other sites or methods are not feasible.

- B. New dredging shall be permitted only where it is demonstrated by a report by a qualified professional that it will avoid adverse impacts to water quality, Fish and Wildlife Habitat Conservation Areas and other Critical Areas, flood holding capacity, natural drainage and water circulation patterns, significant plant communities, and public access to shorelines. When such impacts are unavoidable, they shall be minimized and mitigated such that they result in no net loss of ecological functions.
- C. During a low water season, removal of a portion of an accretion point bar below OHWM but above the water level at the time of operation may be permitted as a Conditional Use for flood control purposes as follows:
- 1) It is identified as an element of an adopted integrated flood control management program that demonstrates that other flood hazard reduction strategies would not be effective in the absence of material removal.
  - 2) Specific studies accompanying the application must demonstrate that no adverse flood, erosion, or other environmental impacts would occur either upstream or downstream of extraction sites, including the natural processes of gravel transportation for the river system as a whole.
- D. Dredge material disposal shall be permitted only at locations where it is demonstrated by analysis by a qualified professional that the disposal will not result in significant or ongoing adverse impacts to water quality, Critical Areas, flood holding capacity, natural drainage and water circulation patterns, prime agricultural land, or public access to shorelines. When such impacts are unavoidable, they shall be minimized and mitigated such that they result in no net loss of functions.
- E. Disposal of dredge material within Fish and Wildlife Habitat Conservation Areas (FWHCA), wetlands, within a floodplain, or within a river's channel migration zone shall be allowed only where alternative disposal sites are not feasible. In the limited instances where it is allowed, such disposal shall require a conditional use permit. Applicants shall demonstrate that:
- 1) The proposed dredge materials disposal site is subject to an approved use under this program that:
    - a. Is an element of an approved restoration plan for aquatic or upland fish and wildlife habitat.
    - b. Will create, expand, rehabilitate, or enhance a beach that provides public recreation opportunities and is permitted under this program.
    - c. If on private land, the site will ultimately be suitable for a use permitted by this program or will be subject to buffer or other open space restrictions.
  - 2) The smallest possible land area is affected.

- 3) Sites will be adequately screened from view of local residents or passersby on public right-of-ways to the maximum extent practicable (e.g. combination of fencing and vegetation).
- 4) Sites will be revegetated with appropriate native species as soon as possible to retard erosion and restore wildlife habitat and other critical areas functions.
- 5) Shoreline ecological functions and processes will be preserved, including protection of riparian buffers and surface and ground water.

### **16.04.36 In-Stream Structures**

- A. In-stream structures may be allowed only when the public benefits of such facilities clearly outweigh any loss of ecological processes and functions, and only when an analysis of alternatives demonstrates that the proposed location and design would result in less adverse impact than alternative locations and designs. Docks, piers and marinas are not regulated as "in-stream structures" under this section of the SMP.
- B. In-stream structures may be approved only for:
  - 1) Water-dependent use where the in-stream structure is essential to operation of the use.
  - 2) A project that has received Governor's certification pursuant to chapter 80.50 RCW.
  - 3) A project that has received approval and licensing by the Federal Energy Regulatory Commission.
  - 4) Projects that are part of the Bureau of Reclamation Yakima River Project.
- C. All in-stream structures shall demonstrate that they result in no net loss of ecological functions and detail all mitigation measures, include detailed mitigation plans, timetables for implementation and a monitoring program.
- D. In-stream structures and their support facilities shall be located and designed to minimize the need for shoreline stabilization structures. When shoreline stabilization structures are demonstrated as necessary, they shall be approved in accordance with Section 16.04.030 Shoreline Stabilization.
- E. In-stream structures and associated facilities shall avoid, and where avoidance is not feasible shall mitigate, adverse land use impacts including impacts to public access facilities, publicly owned lands or waters used for recreation, and public and private recreation facilities. Impacts to be avoided include the visual impact of the structure or facilities, the intrusion of roads or utility corridors into undeveloped area used for recreation, noise, and visual impacts from reduced water flows.

- F. In-stream structures shall be designed and constructed to provide public access to and along the shoreline, in accordance with the public access policies and regulations contained in this Section 16.04.024. Existing public access and recreational opportunities should be retained, enhanced, or replaced.

#### **16.04.40 Development Standards and Use Regulations**

- A. Shoreline uses are preferred that are unique to or dependent upon uses of the state's shoreline areas and are consistent with the control of pollution and prevention of damage to the natural environment,
- B. All shoreline uses shall demonstrate that they result in no net loss of ecological processes and functions through incorporation of features or mitigation, including off-site mitigation to protect the land and its vegetation and wildlife.
- C. All shoreline uses shall protect the public's health, safety, and welfare, and the property rights of others while implementing the policies of the Shoreline Management Act.

#### **16.04.41 Permitted Use Table**

- A. The following table determines which shoreline uses are allowed or prohibited in each shoreline environment.
- B. Land uses allowed are subject to the preference for water-oriented uses and subject to specific criteria for uses and shoreline modification included in these regulations.
- C. Uses allowed in the Aquatic Environment are those allowed in the adjacent upland environment and limited to water-dependent use, ecological enhancement, and those transportation and utility facilities and Essential Public Facilities for which no alternative location is feasible.
- D. Land uses in the underlying zoning that require a conditional use permit in the underlying zoning district, require a shoreline conditional use permit.
- E. If a use is prohibited in the underlying zoning district, it is also prohibited in shoreline management act jurisdiction.
- F. KEY: X= Prohibited, P= Permitted, CU= Conditional Use Permit, PA=Permitted only as an accessory to a permitted use, Z = Permitted subject to underlying zoning.
- G. A use is considered unclassified when it is not listed in the in the Shoreline Modifications and Uses Regulations and is allowed in underlying zoning. A proposed unclassified use may be authorized as a conditional use provided that the applicant can demonstrate consistency with the requirements of this Master Program and the requirements for conditional uses.

<b>Use</b>	<b>Agribusiness</b>	<b>Agri-Tourism</b>	<b>Commercial</b>	<b>Industrial</b>	<b>Residential</b>	<b>Recreation</b>	<b>Urban Conservancy</b>
<b>Resource</b>							
Aquaculture	CU	CU	CU	CU	CU	X	X
Agriculture, except for dairying, poultry raising, and livestock	P	P	X	X	X	X	X
Dairying; poultry raising; livestock; and labor camps	X	X	X	X	X	X	X
Mining	X	X	X	CU	X	X	X
<b>Residential</b>	X	X	X	X	X	X	X
One single family dwelling per lot	Z	Z	Z	Z	P	CU	CU
Duplex	X	X	X	X	Z	X	X
Multifamily	X	Z	X	X	Z	X	X
Mobile home park	X	X	X	X	Z	X	X
Accessory Dwelling Unit (RCW 43.63A.215)	X	X	X	X	P	X	X
Bed and breakfast	X	Z	X	X	CU	X	X
Home occupation	X	X	X	X	Z	X	X
<b>Public and Quasi Public Uses</b>							
Boat launches	CU	CU	CU	CU	CU	CU	CU
Public recreational facilities	P	P	P	P	P	P	CU
Private recreational facilities	P	P	P	P	CU	P	X
Campgrounds	X	CU	CU	X	X	X	X
Golf courses	CU	X	X	X	CU	X	CU
Trails hard surface	P	P	P	P	P	P	CU
Trails soft surface	P	P	P	P	P	P	P
Commercial recreation: Fitness centers/sport clubs	X	X	P	X	X	X	X
Commercial amusement facilities	X	X	X	X	X	X	X
Civic and community buildings	CU	CU	CU	CU	CU	CU	X
Public or private schools	CU	CU	CU	CU	CU	CU	X
Government offices	CU	CU	CU	CU	CU	CU	X
Nursery school and day care center	X	X	Z	X	CU	X	X
Family day care center (RCW 35.63.185)	X	X	P	X	P	X	X

<b>Use</b>	<b>Agribusiness</b>	<b>Agri-Tourism</b>	<b>Commercial</b>	<b>Industrial</b>	<b>Residential</b>	<b>Recreation</b>	<b>Urban Conservancy</b>
Museums	CU	CU	CU	CU	CU	CU	X
Nursing homes, homes for the aged	X	X	Z	X	X	X	X
Hospitals and health care facilities	X	X	CU	X	X	X	X
Churches	CU	CU	CU	CU	CU	CU	X
Irrigation facilities, dams, canals, etc.	CU	CU	CU	CU	CU	CU	CU
Essential public facilities	CU	CU	CU	CU	CU	CU	CU
<b>Commercial/Retail</b>	X	X	X	X	X	X	X
Marine sales, service, and rental	X	P	P	X	X	X	X
Marina	X	CU	CU	X	CU	X	X
Bakeries, barber and beauty shops, etc.	X	P	P	X	X	X	X
Commercial laundry and dry cleaning	X	X	CU	X	X	X	X
Retail uses	X	P	P	X	X	X	X
Restaurants	X	P	P	CU	X	X	X
Drinking establishments	X	P	P	PA	X	X	X
Hotel and motel	X	P	P	X	X	X	X
Banqueting halls	X	P	P	X	X	X	X
Resort	X	P	P	X	X	X	X
Recreation vehicle parks	X	X	Z	X	X	X	X
Theaters and amphitheatres	X	P	P	X	X	X	X
Veterinarians and kennels	X	X	X	X	X	X	X
Offices serving a permitted use	P	P	P	P	P	P	X
Offices as a primary use	X	X	X	X	X	X	X
Printing and publishing	X	X	Z	X	X	X	X
On-site hazardous waste treatment and storage	X	X	X	X	X	X	X
Nurseries and greenhouses	P	CU	X	CU	X	X	X
Lumber and building materials	X	X	P	CU	X	X	X
Automotive, truck, RV sales and service	X	X	X	X	X	X	X
Gasoline service station	X	X	X	X	X	X	X
<b>Industrial</b>							

<b>Use</b>	<b>Agribusiness</b>	<b>Agri-Tourism</b>	<b>Commercial</b>	<b>Industrial</b>	<b>Residential</b>	<b>Recreation</b>	<b>Urban Conservancy</b>
Water-dependent industrial	Z	Z	X	P	X	X	X
Water-related industrial	Z	Z	X	P	X	X	X
Water-oriented industrial	Z	Z	X	P	X	X	X
Agriculture products processing	P	X	X	P	X	X	X
Wineries, including sales	P	P	P	P	X	X	X
Microbreweries	P	P	P	P	X	X	X
Municipal and utility yards	X	X	X	CU	X	X	X
Solid waste processing or disposal	X	X	X	X	X	X	X
Hazardous materials processing or disposal	X	X	X	X	X	X	X
Commercial moving and storage	X	X	X	X	X	X	X
Vessel repair	X	X	X	P	X	X	X
Equipment supply, repair, service	X	X	X	X	X	X	X
Manufacturing, other than food processing	X	X	X	P	X	X	X
Sale of Items manufactured on-site	P	P	X	P	X	X	X
Industrial and scientific research laboratories	X	X	X	P	X	X	X
Petroleum, coal, fuel storage distribution	X	X	X	X	X	X	X
Junk or salvage yards	X	X	X	X	X	X	X
Solid waste processing or disposal	X	X	X	X	X	X	X
Hazardous materials processing or disposal	X	X	X	X	X	X	X
Warehouses, storage, distribution	X	X	X	P	X	X	X
<b>Transportation</b>							
Roads and railroads serving shoreline uses	P	P	P	P	P	P	P
Roads and railroads NOT serving shoreline uses	CU	CU	CU	CU	CU	CU	CU
Park-and-Ride lots	X	X	X	X	X	X	X
Parking areas and facilities serving a primary use within the shoreline	P	P	P	P	P	P	P
Parking areas and facilities NOT serving a primary use within the shoreline	X	X	X	X	X	X	X

<b>Use</b>	<b>Agribusiness</b>	<b>Agri-Tourism</b>	<b>Commercial</b>	<b>Industrial</b>	<b>Residential</b>	<b>Recreation</b>	<b>Urban Conservancy</b>
Parking as a principal use	X	X	X	X	X	X	X
<b>Utilities</b>							
Public and private utility distribution serving shoreline uses, water, sewer, electrical, gas, and communication	P	P	P	P	P	P	CU
Public and private utility distribution serving uses within the city	P	P	P	P	P	P	CU
Utility facilities serving uses not within the City	CU	CU	CU	CU	CU	CU	CU
Electrical transmission of greater than 50 Kilovolts	CU	CU	CU	CU	CU	CU	CU
Gas transmission larger than 6 inches in diameter	CU	CU	CU	CU	CU	CU	CU
Oil or other pipelines	CU	CU	CU	CU	CU	CU	CU
Utility buildings (pump stations, etc.)	CU	CU	CU	CU	CU	CU	CU
Electrical substations	CU	CU	CU	CU	X	X	X

### 16.04.42 Shoreline Bulk Standards

The following table determines bulk standards in each shoreline environment.

Use	Agribusiness	Agri-Tourism	Commercial	Industrial	Residential	Recreation	Urban Conservancy
<b>Fish and Wildlife Conservation Area Buffer from OHWM If not established by Table 16.04.043</b>							
Water Dependent Use <sup>1</sup>	NA	NA	NA	NA	NA	NA	NA
Water Related Use	100	150	150	150	50 <sup>2</sup>	50	200
Water Enjoyment Use	100	150	150	150	50 <sup>2</sup>	50	200
Non-Water-Oriented Use	150	150	150	150	50 <sup>2</sup>	50	200
<b>Building Setback from Critical Areas Vegetation Buffer</b>	15	15	15	15	15	15	25
<b>Building Setback from OHWM if no Critical Areas Vegetation Buffer is required</b>							
Water Dependent Use <sup>1</sup>	NA	NA	NA	NA	NA	NA	NA5
Water Related Use	25	25	25	25	50 <sup>2</sup>	25	25
Water Enjoyment Use	75	75	75	75	50 <sup>2</sup>	75	75
Non-Water-Oriented Use	100	100	100	100	50 <sup>2</sup>	100	150
<b>Maximum Height</b>	35	35	35	35	35	35	25
<b>Maximum Impervious Surface outside of Critical Area Buffers<sup>3</sup></b>							
Water Dependent Use <sup>4</sup>	NA	NA	NA	NA	NA	NA	NA5
Water Related Use	70%	70%	70%	50%	50%	40%	NA5
Water Enjoyment Use	50%	50%	50%	50%	50%	40%	NA5
Non-Water-Oriented Use	40%	40%	40%	40%	50%	20%	NA5

Use	Agribusiness	Agri-Tourism	Commercial	Industrial	Residential	Recreation	Urban Conservancy
Minimum Lot Size	As established by underlying zoning						
Minimum Lot Width	As established by underlying zoning						
Minimum Lot Depth	As established by underlying zoning						
Front Setback	As established by underlying zoning						
Street Setback	As established by underlying zoning						
Side Setback	As established by underlying zoning						
Rear Setback	As established by underlying zoning						
Density	As established by underlying zoning						

*Table Notes:*

1. No vegetated buffer or building setback is required for those elements of a Water-Dependent Use that requires direct access to the water. Other elements of the use are subject to the buffer standards for water-related uses.
2. Does not apply to area within Critical Areas Vegetation buffer, which is normally 0% impervious, does not include impervious area of required public access facilities or private trails.
3. Building setbacks may be adjusted to the average of existing setbacks of the two lots on either side of the subject lot, provided that Critical Areas buffers are complied with.
4. No impervious surface limit applies to those elements of a Water-Dependent Use that requires direct access to the water. Other elements of a water dependent use not requiring direct access to the water are subject to the impervious standards for water-related uses.
5. Applies to all Shoreline Environmental Designations: Standards for Transportation and utility facilities are determined by specific conditions at the time of approval of new facilities or expansion of existing facilities.

### 16.04.43 Shoreline Reach Performance Standards

The following table determines performance standards for each shoreline reach.

Code Reach	Inventory Reach	Shoreline Environment Designation	Public Access Guidelines	Riparian Buffers
A	Reach 1a	Residential	<p>Opportunities for public access along the river are limited due to existing residences, short of future redevelopment at a density that would trigger requirements.</p> <p>A trail system could follow the road with visual access to the water through gaps in the vegetation cover.</p>	30 foot riparian buffer with provision for minimum 10 foot buffer adjacent to existing structures, largely to control runoff including waterborne fertilizers, pesticides and herbicides
B	Reaches 1a and 1b	<p>Parallel</p> <p>From Byron Road to Water: Recreation</p> <p>From Road Inland: Industrial</p>	<p>Public access trail along the water adjacent to the road.</p> <p>Use of the road for vehicular traffic may be phased out as alternative access is provided to future subdivisions and sections of the existing roadway are narrowed and used exclusively as a trail.</p>	Riparian buffer ends at the edge of the maintained portion of the road
C	Reach 2a part	Recreation	Public access is one feature to be included in management of the park. Trails generally should retain vegetation buffers with managed access points to the water's edge.	Maintain and enhance buffer as part of a park management plan, except at boat launch ramp
D	Reach 2a part	Residential	Opportunities for public access along the river are limited due to existing residences, short of future redevelopment at a density that would trigger requirements.	50 foot riparian buffer
E	Reach 2b	Commercial	Public access area is mandatory if future use is not water dependent.	30 foot riparian buffer, or 10 feet from the top of a 40% slope higher than 10 feet

Code Reach	Inventory Reach	Shoreline Environment Designation	Public Access Guidelines	Riparian Buffers
F	Reach 2a part	Residential	Opportunities for public access are limited to improvements to existing street ends due to the retention of existing single family lots under existing zoning.	30 foot riparian buffer, or 10 feet from the top of a 40% slope higher than 10 feet
G	Reach 3a part	Industrial	Informal public access available along the existing alley and provides visual access. This may be formalized and enhanced for better public viewing experience.	No buffer – water-dependent use USBR Dam
H	Reach 3a part	Recreation	Public access is one feature to be included in management of the park. Visual access should be provided at the top of the slope with managed access points to the water's edge.	Maintain and enhance buffer as part of a park management plan
I	Reach 3a part	Residential	Opportunities for public access are limited to improvements to existing street ends due to the retention of existing single family lots under existing zoning.	30 foot riparian buffer, or 15 feet from the top of a 40% slope higher than 10 feet
J	Reach 3b	Industrial	Public access area is mandatory if future use is non-water dependent or if existing use expands substantially. Public access should consist of a trail paralleling the water at the top of the bluff. Access to the water's edge may be considered if it will not adversely affect ecological functions.	30 foot riparian buffer, or 25 feet from the top of a 40% slope higher than 10 feet
K	Reach 3c part	Agri-Business	Public access area is mandatory if future use is non-water dependent. Public access should consist of a trail paralleling the water at the top of the bluff. Access to the water's edge may be considered if it will not adversely affect ecological functions.	Extent of floodplain or 25 feet from top of slope, not to exceed shoreline jurisdiction
L	Reach 4a part	Agri-Business	Public access area is mandatory if future use is non-water dependent. Public access should consist of a trail paralleling the water at the top of the bluff. Access to the water's edge may be considered if it will not adversely affect	Extent of floodplain plus 25 feet from top of slope, not to exceed shoreline jurisdiction

Code Reach	Inventory Reach	Shoreline Environment Designation	Public Access Guidelines	Riparian Buffers
M	Reach 4a part	Residential	<p>ecological functions.</p> <p>Public access area is mandatory if future use is more than 4 units, or non-water dependent Public access should consist of a trail paralleling the water at the top of the bluff. Access to the water's edge may be considered if it will not adversely affect ecological functions.</p>	60 feet or 15 feet from top of slope
N	Reach 4a	Industrial	Public access area is mandatory if future use is non-water dependent or if existing use expands substantially. Public access should consist of a trail paralleling the water at the top of the bluff. Access to the water's edge may be considered if it will not adversely affect ecological functions.	Extent of floodplain plus 25 feet from top of slope, not to exceed shoreline jurisdiction
O	Reach 4b	Industrial	Public access would need to be carefully controlled to avoid adverse impacts to the largest area of relatively intact riparian habitat in the city.	Extent of floodplain plus 25 feet from top of slope, not to exceed shoreline jurisdiction
P	Reach 5a part	Residential	Public access area will be implemented in subdivisions of more than 5 lots, a continuous trail system located behind the critical area buffer parallel to the shoreline to provide common use by residents and the public..	From the north-south extension of S. Moore Road to the east-west extension of W North River Road -- 65 foot riparian buffer North of the east-west extension of W North River road - 30 foot riparian buffer
Q	Reach 5c	Agri-Tourist	Public access area will be implemented in future development consisting of a continuous trail system located behind the critical area buffer located parallel to the shoreline to provide common use by users within the development and the public..	75 foot riparian buffer
R	Reach 5d	Residential	This single family lot would not be required to provide public access.	50 foot riparian buffer
S	Reach 6a	Public Land	Public access should be carefully controlled to avoid adverse impacts to this relatively intact	200 foot riparian buffer

Code Reach	Inventory Reach	Shoreline Environment Designation	Public Access Guidelines	Riparian Buffers
T	Reach 6b	Agribusiness	<p>riparian habitat.</p> <p>Public access area is mandatory if future use is non-water dependent and should consist of a trail paralleling the water at the top of the bluff. Access to the water's edge may be considered if it will not adversely affect ecological functions.</p>	100 foot riparian buffer to 25 feet above top of slope

## **16.04.50 Shoreline Use Performance Standards**

### **16.04.51 Agriculture**

- A. This Program shall not restrict lawfully existing agriculture activities that have not been discontinued for more than five (5) years. An agricultural use shall not be considered discontinued if it is allowed to lie fallow in which it is plowed and tilled but left unseeded; allowed to lie dormant as a result of adverse agricultural market conditions; or allowed to lie dormant because the land is enrolled in a local, state, or federal conservation program.
- B. All new agricultural activities and facilities are governed by this Program and shall observe the Critical Area standards and buffer requirements of this Program except for replacement of agricultural facilities, provided that the replacement facility is no closer to the shoreline than the original facility.
- C. Agricultural activities shall follow recognized best management practices that improve or maintain water quality and quantity, reduce soil erosion, maintain, or improve soil conditions, and provide for wildlife habitat. The applicant is encouraged to coordinate with the County Conservation District and the Natural Resources Conservation Service in the development of best management practices for their agricultural activity.
- D. Low Intensity Livestock Activities are those involving less than one (1) Animal Management Unit (AMU) per acre of managed pasture and are preferred within the shoreline outside of buffers.
- E. New intensive agricultural activities such as animal feeding operations/concentrated animal feeding operations (AFO/CAFOs) are prohibited.
- F. Row cropping requiring intensive application of fertilizers, animal waste, herbicides, and pesticides shall be located outside of shoreline areas, unless the proposed use is within an established agricultural area and no alternative agricultural activity is feasible. New intensive agricultural activities shall be implemented in accordance with a farm conservation plan including a monitoring program that assures no net loss of ecological functions.
- G. The construction of a barn or similar agricultural structure is exempt from obtaining a substantial development permit, but shall comply with the regulations of the program.

### **16.04.52 Aquaculture**

- A. Aquacultures is a preferred water-dependent use but may be permitted only if impacts to ecological resources and existing land uses can be mitigated.

- B. No aquatic species shall be introduced into City waters without prior written approval of the appropriate state or federal regulatory agency for the species proposed for introduction. Such approval(s) shall be submitted in writing to the City as part of the shoreline permit application.
- C. Fish net-pens shall not occupy more than one-quarter (1/4) surface acre of water, excluding booming and anchoring equipment and shall be located greater than one (1) mile from all other aquaculture facilities.
- D. No processing of any aquaculture product, except for the sorting or culling of the cultured species and the washing or removal of surface materials or species after harvest, shall occur in or over the water. All other processing activities and facilities shall be located on land.
- E. Periodic operational monitoring by a City-approved consultant (unless otherwise provided for) may be required, at the applicant's expense, and shall continue until adequate information is available to determine the success of the project and/or the magnitude of any probable significant adverse environmental impacts.
- F. Aquaculture structures and activities that are not water-dependent (including but not limited to, warehouses for storage of products, parking and loading facilities) shall be located landward of the OHWM and landward of water dependent portions of the project, and shall minimize detrimental impacts to the shoreline.

### **16.04.53 Marinas**

- A. These provisions apply to all vessel moorage facilities serving 5 or more vessels.
- B. Proposals for new marinas must provide sufficient evidence that existing public boat launches, dry storage, and moorage is not adequate to meet regional demand for recreational boating and that development of new marinas would result in fewer environmental impacts than expansion of existing facilities.
- C. In order to protect shoreline ecological functions, efficiently use shoreline space and minimize consumption of water surfaces. Boat facilities in order of preference are as follows:
  - 1) Upland dry land boat storage with a launch mechanism.
  - 2) Mooring buoys with a small lighter dock to provide access to the buoy.
  - 3) In-water mooring docks. These may be approved only where it is demonstrated that more preferred options are not feasible, or it can be demonstrated that in-water mooring docks

would result in fewer impacts to shoreline ecological functions or enhance public use of the shoreline.

- D. Applications for marinas with in-water moorage may be approved as a Conditional Use if it is demonstrated that:
- 1) Public navigation will not be impeded.
  - 2) The location will not result in displacement of wetlands or interrupt natural processes, erosion, or deposition.
  - 3) Water depths are adequate without initial or maintenance dredging.
  - 4) The location will not require shoreline armoring to compensate for fluvial processes.
  - 5) The location will not reduce existing public use of the water or shoreline including fishing, swimming and boating.
  - 6) Adverse water quality impacts will not result from inadequate flushing of moorage or enclosed water areas.
  - 7) Impacts to riparian buffers and nearshore aquatic habitat will be minimized. Impact minimization may require provision of upland buffers with limited corridors for movement between upland and in-water facilities.
  - 8) Setbacks from adjacent non-commercial properties are adequate to attenuate proximity impacts such as noise, light, and glare, and may address scale and aesthetic impacts. Fencing or landscape areas may be required to provide a visual screen.
  - 9) Facilities including piers, floats, boat launches, and other elements will be located and designed to minimize changes in hydraulic and fluvial processes, minimize potential flood hazards, and to not limit channel migration in areas where such processes are not currently constrained.
  - 10) Exterior lighting will avoid illuminating nearby properties used for non-commercial purposes and to prevent hazards for public traffic. Methods of controlling spillover light include, but are not limited to, limits on height of structure, limits on light levels of fixtures, light shields and screening.
  - 11) Exterior lighting will not adversely impact aquatic species.
  - 12) Adequate provisions are made for restroom, sewage, and solid waste disposal facilities in compliance with applicable health regulations.
  - 13) Access and parking shall not produce traffic hazards, shall not result in excessive noise or other impacts, and shall minimize traffic impacts on nearby streets.

14) On-site parking supply shall be adequate to meet peak demands. Location of parking shall be in accordance with parking standards in this program.

- E. Covered moorage is prohibited.
- F. Marinas shall provide public access amenities over public aquatic lands equivalent to a minimum 10 percent of over-water coverage and shall provide public walkway access to a public street and may be required to provide public parking including handicapped access.

#### **16.04.54 Commercial Development**

A. New commercial uses and developments are subject to the following use preference:

- 1) Water-Dependent Uses: Water-dependent commercial uses shall be given preference over water-related and water-enjoyment and non-water-oriented commercial uses. Prior to approval of water-dependent uses, the City shall review a proposal for design, layout, and operation of the use and shall make specific findings that the use qualifies as a water-dependent use. Water-dependent commercial uses shall provide public access in a manner that will not interfere with the water-dependent aspects of the use. The portion of a site not required for water-dependent use may include multiple use, approved non-water-oriented uses, ecological restoration, and public access.
- 2) Water-Related Uses: Water-related commercial uses shall not be approved if they displace existing viable water-dependent uses. Prior to approval of a water-related commercial use, review of the design, layout, and operation of the use shall confirm that the use has a functional requirement for a waterfront location, or the use provides a necessary service supportive of water-dependent uses, and/or the proximity of the use to its customers makes its services less expensive and/or more convenient. Multiple use development within 100 feet of the OHWM shall reserve the ground level for water-oriented use to the extent feasible.
- 3) Water-Enjoyment Uses: Water-enjoyment commercial uses shall not be approved if they displace existing viable water-dependent or water-related uses or if they occupy space designated for water-dependent or water-related use identified in a substantial development permit or other approval. Prior to approval of a water-enjoyment use, review of the design, layout, and operation of the use shall confirm that the use facilitates public access to the shoreline, or the use provides for aesthetic enjoyment of the shoreline for a substantial number of people as a primary characteristic of the use. In order to qualify as a water-enjoyment use, the use must be open to the general public and the shoreline-oriented space within the project must be devoted to the specific aspects of the use that fosters shoreline enjoyment.

- 4) Non-Water Oriented Uses: Non-water-oriented commercial uses may be permitted where:
- a. Located on a site physically separated from the shoreline by another private property in separate ownership or a public right-of-way such that access for water-oriented use is precluded, or
  - b. On a site where navigability is severely limited such that water-dependent use is not feasible, or
  - c. The use will be part of a multiple use project that provides significant public benefit with respect to the objectives of the SMA including public access and ecological restoration; or
  - d. The use will be part of a mixed use project including water-dependent and non-water-oriented uses.

B. All non-water dependent uses shall provide significant public benefit with respect to the objectives of the SMA by:

- 1. Restoring ecological functions in aquatic and upland environments that will provide native vegetation buffers according to the provisions of the Restoration Element of this Program and other relevant plans and policies including the WRIA 37 Salmon Restoration Plans; and
- 2. Providing public access in a manner consistent with ecological restoration and associated buffers.

C. Commercial development in the shoreline shall meet the criteria of no-net-loss of ecological functions and the preferred sequence for mitigation of impacts as provided in Section 16.04.022.B of this Program. The use shall be located and designed to maintain required buffers and maintain or enhance shoreline ecological functions including shoreline geomorphic processes, water quality, fish and wildlife habitat, and the aquatic food chain in general. Only water-dependent elements of a proposal may encroach on required vegetated buffers and those must retain as much of the buffer as possible while accommodating the use.

D. Over-water structures, or other structures waterward of the OHWM, are allowed only for those portions of water-dependent commercial uses that require over-water facilities as an essential feature of their function or for public recreation and public access facilities. Design of over-water structures or structures beyond the OHWM shall demonstrate that they will not interfere with

normal stream geomorphic processes, require additional future shoreline stabilization, or interfere with navigation or normal public use of the water.

- E. All new or expanded commercial uses shall take into consideration the scenic and aesthetic qualities of the shoreline and compatibility with adjacent uses. They shall make adequate provisions such as location of structures, location of parking and other facilities, landscape screening, fences, and other measures to protect the privacy and enjoyment of adjacent land uses and open space areas.
- F. Accessory development or uses that do not require a shoreline location such as parking, service buildings or areas, access roads, utilities, signs, and storage of materials shall be located outside of SMA jurisdiction wherever feasible. Siting within SMA jurisdiction should be limited to facilities required to serve approved water-oriented uses and/or developments and should be located inland away from the land/water interface and landward of water-oriented developments.
- G. Signs for all development and uses shall comply with the City of Prosser Sign Code and this Program.

### **16.04.55 Industrial**

- A. New industrial use and development is subject to the following use preference:
  - 1) Water-Dependent Uses: Water-dependent industrial uses shall be given preference over water-related and water-enjoyment industrial uses. Prior to approval of water-dependent uses, the City shall review a proposal for design, layout, and operation of the use and shall make specific findings that the use qualifies as a water-dependent use. Water-dependent industrial uses shall provide public access in a manner that will not interfere with the water-dependent aspects of the use. The portion of a site not required for water-oriented use may include multiple use, approved non-water-oriented uses, ecological restoration, and public access.
  - 2) Water-Related Uses: Water-related industrial uses shall not be approved if they displace existing viable water-dependent uses. Prior to approval of a water-related industrial use, review of the design, layout, and operation of the use shall confirm that the use has a functional requirement for a waterfront location, or the use provides a necessary service supportive of the water-dependent uses, and/or the proximity of the use to its customers makes its services less expensive and/or more convenient. Mixed use development within 100 feet of the OHWM that incorporates water-dependent use may not include non-water-oriented uses at the ground level.

- 3) Non-Water-Oriented Uses: Non-water-oriented industrial uses are likely to be most common in Prosser and may be permitted where the use is:
- a. Located on a site physically separated from the shoreline by another private property in separate ownership or a public right-of-way, or other public facility, or are isolated from the water by a substantial difference in topography; or
  - b. On a site where navigability is severely limited such that water-dependent use is not feasible; or
  - c. Part of a mixed use project that provides significant public benefit with respect to the objectives of the SMA.
- B. Industrial development in the shoreline shall meet the criteria of no-net-loss of ecological functions and the preferred sequence for mitigation of impacts as provided in Section 16.04.022.B of this Program. Only water-dependent elements of a proposal may encroach on required Critical Area buffers.
- C. All non-water-dependent uses shall provide significant public benefit with respect to the objectives of the SMA by:
- 1) Restoring ecological functions both in aquatic and upland environments that will provide native vegetation buffers according to the Critical Areas regulations, the Restoration Plan of this Program and other plans and policies including the WRIA 37 Salmon Restoration Plans; and
  - 2) Providing public access consistent with the criteria and standards of Section 16.04.025.
- D. Accessory development or use that does not require a shoreline location such as parking, service buildings or areas, access roads, utilities, signs, and storage of materials shall be located outside of SMA jurisdiction wherever feasible. Siting within SMA jurisdiction should be limited to facilities required to serve approved water-oriented uses and/or developments and should be located inland away from the land/water interface and landward of water-oriented developments.
- E. All new or expanded industrial developments shall take into consideration the scenic and aesthetic qualities of the shoreline and compatibility with adjacent uses, including public use of the water. They shall make adequate provisions such as location of structures, location of parking and other facilities, landscape screening, fences, and other measures to protect the privacy and enjoyment of adjacent land uses.
- F. Public access to the shoreline shall be provided in accordance with the standards in Section 16.04.025, provided said access does not compromise the integrity or operation of the use,

does not threaten the safety and welfare of the general public, does not interfere with an existing adjacent use, and does not compromise existing ecological functions. In cases where on-site public access is not provided, alternative off-site facilities may be provided in accordance with provisions of this program.

- G. Signs for all development and uses must comply with the Prosser Sign Code and this Program.

### **16.04.56 Recreation**

- A. Recreation facilities within SMA jurisdiction are preferred that are water-oriented or provide public access to the water.
- B. Recreation facilities and activities are permitted when they do not displace water-dependent uses and are consistent with existing water-related and water-enjoyment uses. State-owned shorelines shall be recognized as particularly adapted to providing wilderness beaches, ecological study areas, and other recreational uses for the public in accordance with RCW 90.58.100(4).
- C. Recreation development in the shoreline shall meet the criteria of no-net-loss of ecological functions and the preferred sequence for mitigation of impacts as provided in Section 16.04.022.B of this Program. The use shall be located and designed to maintain or enhance shoreline ecological functions. The use or development shall be located and designed to maintain required buffers and maintain or enhance shoreline ecological functions including shoreline geomorphic processes, water quality, fish and wildlife habitat, and the aquatic food chain in general. Only water-dependent elements of a proposal may encroach on required vegetated buffers.
- D. Development of public recreation facilities shall implement, where applicable, the elements within the City Parks and Recreation Plan.
- E. The highest priority for recreational development on the shoreline shall be to provide the maximum possible amount of public access to the shoreline as follows:
  - 1) Water-dependent recreation such as fishing, swimming, boating, and wading.
  - 2) Water-related recreation as picnicking, hiking, and walking should be located near the shoreline.
  - 3) Non-water-related recreation facilities shall be located inland. Recreational facilities with large grass areas, such as playing fields and facilities with extensive impervious surfaces, shall be located as far from the water as feasible.
- F. New over-water structures for recreation use shall be allowed only when:
  - 1) They accommodate water-dependent recreation use or facilities, or

- 2) They allow opportunities for substantial numbers of people to enjoy the shorelines of the state, and
  - 3) They are not located in or adjacent to areas of exceptional ecological sensitivity, especially aquatic and wildlife habitat areas, and
  - 4) No net loss of ecological functions will be achieved.
- G. Private recreation uses and facilities that utilize public aquatic lands shall provide public access as provided in Section 16.04.025 or shall provide improved, compensating public access at other locations.
- H. Motorized vehicular access including the use of all-terrain and off-road vehicles in the shoreline area is prohibited, except for boat launching and maintenance activities and except where specific areas for such use are set aside and controlled by a public entity.

### **16.04.57 Residential Development**

- A. Single-family residential development is a priority use on the shoreline when developed in a manner consistent with control of pollution and prevention of damage to the natural environment.
- B. Residential development in the shoreline shall meet the criteria of no-net-loss of ecological functions in Section 16.04.22 of this program and the preferred sequence for mitigation of impacts as provided in Section 16.04.022.B of this program. The use shall be located and designed to maintain required buffers and maintain or enhance shoreline ecological functions including shoreline geomorphic processes, water quality, fish and wildlife habitat, and the aquatic food chain in general.
- C. New residential development shall cluster dwelling units to provide as little alteration to the natural environment as feasible and shall utilize low impact development (LID) techniques to reduce physical and visual impacts on shorelines.
- D. Multi-family residential use is not a priority for location on the shoreline under the Shoreline Management Act and is subject to the preference for water-dependent and water-oriented use. It therefore must meet requirements for providing public benefit through ecological restoration and public access. Multi-family development may not be approved if it displaces existing water-dependent uses. Multi-family development uses may be permitted only where it provides significant public benefit with respect to the objectives of the SMA by:
- 1) Restoration of ecological functions both in aquatic and upland environments that shall provide native vegetation buffers according to the standards provided for Critical Areas or in accordance with the Restoration Element of this document; and
  - 2) Provision of public access is required in accordance with PMC 16.04.024.

- E. Over-water residences are prohibited.
- F. New residential development shall assure that the development will not require shoreline stabilization. Prior to approval, geotechnical analysis of the site and shoreline characteristics shall demonstrate that shoreline stabilization is unlikely to be necessary, setbacks from steep slopes, bluffs, landslide hazard areas, seismic hazard areas, and riparian erosion areas shall be sufficient to protect structures during the life of the lots, and impacts to adjacent, downslope, or down-current properties is not likely to occur during the life of lots created.
- G. New residential development shall meet all Critical Area provisions of this program. Filling of, or into, water bodies or their associated wetlands for the purpose of subdivision or multi-family construction shall be avoided. New subdivisions, short plats, and large lots shall preserve the required buffer in a protective tract, public or private land trust dedication, or similarly preserved through an appropriate permanent protective mechanism. In cases where Critical Areas are placed in separate tracts, each lot owner within the subdivision, short plat, or other land division shall have an undivided interest in the tract(s) or protective mechanism created.
- H. Residential developments, including subdivisions, and planned unit developments of five (5) or more lots/units shall provide "improved public access" for all residents of the development and the general public, in compliance with public access standards contained in Section 16.04.025.
- I. All new divisions of land shall record a prohibition on new private individual docks on the face of the plat. An area reserved for shared moorage may be designated if it meets all requirements of this program.

### **16.04.58 Transportation Facilities**

#### **A. Roads and Bridges:**

- 1) Development of new roads or substantially expanded existing roads shall demonstrate the need for a shoreline location and that no feasible upland alternative outside the shoreline is available.
- 2) Roads shall cross shoreline areas by the shortest, most direct route feasible to minimize impacts, unless such route would cause significant adverse impacts based on specific local features.
- 3) The project configuration, design, and related features will minimize alteration of Critical Area buffers, will fit the existing topography as much as feasible, and will minimize alterations to the natural or existing topography.
- 4) New transportation facilities shall be located and designed to avoid the need for shoreline stabilization where feasible. Where demonstrated to be necessary to protect an existing facility that is in imminent danger of loss or substantial damage, new or expanded structural

shore stabilization shall provide mitigation of impacts resulting in no net loss of shoreline ecological functions. In cases where substantial shore stabilization is required, relocation of facilities further from the shoreline may be required.

- 5) New or expanded roads will provide public access in accordance with Section 16.04.025 and where they afford scenic vistas, pedestrian viewpoints will be provided.
- 6) Wetlands shall be avoided whenever feasible. If avoidance is not feasible, bridges shall be utilized when crossing wetlands to avoid obstructing movement of surface and groundwater unless it can be demonstrated that fill and compensatory mitigation will produce equal or greater ecological functions.
- 7) Road crossings of streams shall utilize bridges rather than culverts to the maximum extent feasible.
- 8) Private access roads or driveways providing ingress and egress for individual single-family residences or lots shall be limited to the minimum allowed by the Fire Code.
- 9) Bridges shall be designed and built of sufficient lateral and vertical clearance to allow the unimpeded passage of flood flows and debris. In wide streamways, bridges shall employ the maximum length of clear spans feasible with pier supports that produce the minimum deflection feasible. Bridge approaches in floodways of any stream shall be constructed on open piling or other measures to allow free water movement.
- 10) Landscape planting may be provided along all shoreline roads, parking, and turnout facilities when appropriate, and where provision of irrigation is not necessary to support landscaping to:
  - a. Provide buffers between pedestrian and auto users;
  - b. Enhance the shoreline driving experience; and
  - c. Enhance and complement potential views of shoreline areas.
- 11) The City shall not vacate any public right-of-way in a shoreline location until adopting a Comprehensive Public Access plan for the area showing that the subject right-of-way cannot be used as a contributing element in that plan. The City shall vacate a public right-of-way abutting a body of water only in compliance with RCW 35.79.035, which allows vacations of streets abutting bodies of water only when:
  - a. The vacation will enable acquisition of the property for public purposes;
  - b. The street or alley is not suitable for certain purposes (e.g., port, park, education); or
  - c. The vacation will enable implementation of a public access plan.

12) In order to improve public access to the shoreline the City may acquire and/or retain abandoned or unused road or railroad rights-of-way for public access to and/or along the water.

B. Non-Motorized Facilities:

- 1) Non-motorized facilities shall comply with provision for public access facilities in Section 16.04.025.
- 2) Trails shall be developed consistent with adopted city and regional system plans.
- 3) Non-motorized facilities shall avoid sensitive features of the shoreline to the extent feasible, including wetlands and fish and wildlife habitat. Facilities shall be placed outside of, or in the outer portions of buffers. Elevated walkways shall be utilized where feasible to cross wetlands and streams.

C. Railroads:

- 1) Railroad improvements requiring right-of-way expansion within the shoreline shall demonstrate that there is no feasible alternative outside of shoreline jurisdiction.
- 2) Expansion of existing railroad facilities within existing rights-of-way (additional track or other features) must demonstrate the need for a shoreline location and that no feasible upland alternative outside shoreline jurisdiction is feasible. New tracks shall be placed upland of existing tracks if feasible and may require relocation of existing tracks.
- 3) The project shall be designed to minimize alteration of Critical Area buffers, to fit the existing topography as much as feasible, and minimize alterations to the natural or existing topography.
- 4) Wetlands shall be avoided whenever feasible. Bridges shall be utilized when crossing wetlands to avoid obstructing movement of surface and groundwater unless it can be demonstrated that fill and compensatory mitigation will produce equal or greater ecological functions.
- 5) Criteria for road crossings of streams and shoreline stabilization shall apply to railroads.

D. Parking:

- 1) Parking facilities in shorelines are not a preferred use and shall be allowed only as necessary to support an authorized use. Parking facilities shall be located outside shoreline jurisdiction where possible. Parking in shoreline jurisdiction shall directly serve a permitted shoreline use and shall be located outside of Critical Area buffers and as far from the water/land interface as possible.

- 2) Parking facilities serving individual buildings on the shoreline shall be located landward from the principal building being served. The only exceptions to this would be when the parking facility is within or beneath the structure and adequately screened, or in cases when an alternate location would have less environmental impact on the shoreline and in all cases is prohibited over the water.
- 3) Parking facilities shall be designed and landscaped to minimize adverse impacts upon adjacent shoreline and abutting properties. Landscaping shall comply with PMC Title 18, Zoning, Section 16.04.24 Shoreline Vegetation Conservation and in addition, landscaping between parking areas and public access shall provide effective screening within three (3) years of project completion.

### **16.04.59 Utilities**

- A. New or substantially expanded utilities serving uses within the City may be located within shoreline jurisdiction only if:
  1. The facility is needed within the shoreline jurisdiction to support permitted shoreline activities; and
  2. No feasible upland alternative exists based on analysis of system options that assess the potential for alternative routes outside shoreline jurisdiction or is set back further from the land/water interface.
- B. Regional facilities that serve uses outside the City and all electric transmission facilities with a capacity greater than 50 kW shall demonstrate, based on an analysis of alternative routes and technology, that:
  1. No upland alternative is feasible,
  2. Utilization of existing corridors is not feasible, including expansion or replacement of existing facilities, if new corridors are proposed,
  3. A location within designated industrial environments or existing transportation corridors is not feasible,
  4. The proposal has the least feasible adverse impact on the natural environment, and
  5. The location and design of the facility has the least feasible change in the existing character of the shoreline views enjoyed by residences or from public access facilities, and will not obstruct scenic views.
- C. Linear facilities consisting of pipelines, sewers, cables and other facilities roughly parallel to the shoreline shall be discouraged except where no other feasible alternative exists. At the time of replacement of such facilities that are close to their lifespan, or when such facilities are expanded, relocation outside of the shoreline may be required as if they were new facilities.

When permitted, design shall assure that maintenance of the facilities does not result in a net loss of shoreline ecological functions or significant impacts to other shoreline resources and values.

- D. Utilities shall be located and designed to avoid significant natural, historic, archaeological, or cultural sites to the maximum extent feasible, and mitigate unavoidable impacts.
- E. Utilities, where permitted, shall meet the following design criteria:
  - 1) Facilities should occupy as little of the shoreline as feasible. Utility installation parallel to the shoreline should be avoided to the maximum extent feasible. Utilities shall cross the shoreline area by the shortest, most direct route, unless such route would cause substantial significant environmental damage.
  - 2) Utilities shall be located and designed to minimize alterations to the natural environment and fit the existing topography as much as possible.
  - 3) Facilities shall be located and designed to minimize introducing elements that change the existing character of the shoreline views enjoyed by residences or from public access facilities, or obstruct scenic views.
  - 4) Utility crossings of water bodies shall be attached to bridges or located in other existing facilities, if feasible. If new installations are required to cross water bodies or wetlands they should avoid disturbing banks and streambeds and shall be designed to avoid the need for shoreline stabilization. Crossings shall be tunneled or bored where feasible. Installations shall be deep enough to avoid failures or need for protection due to exposure due to stream bed mobilization, aggregation, or lateral migration. Underwater utilities shall be placed in a sleeve if feasible to avoid the need for excavation in the event of the need for maintenance or replacement.
- F. New electrical distribution lines within the shoreline shall be placed underground. Distribution lines that cross water or other critical areas may be allowed to be placed above ground if:
  - 1) Underground installation would substantially disrupt ecological functions and processes of water bodies and wetlands, and horizontal drilling or similar technology that does not disturb the surface is not feasible;
  - 2) Visual impacts are minimized to the extent feasible; and
  - 3) If overhead facilities require that native trees and other vegetation in a Critical Areas buffer cannot be maintained in a natural condition, compensatory mitigation is provided on- or off-site.

- G. Stormwater, wastewater, or water supply pump stations, and stormwater discharge facilities such as dispersion trenches, level spreaders, and outfalls may be located in the shoreline jurisdiction if:
  - 1) Due to topographic or other physical constraints there are no feasible locations for these facilities outside the shoreline;
  - 2) The facility minimizes and compensates for impacts to Critical Area buffers; and
  - 3) Any discharge facility is designed and maintained to prevent erosion or other adverse impacts.
- H. Construction shall be designed to protect the shoreline against erosion, uncontrolled or polluting drainage, and other factors detrimental to the environment, both during and after construction.
- I. Roadways or other facilities to access utility installations within Critical Area buffers shall be no wider than needed to construct, maintain, or repair the utility.
- J. Facilities involving buildings, such as pump stations, electrical substation, or other facilities, shall be permitted as a conditional use and shall be in scale with surrounding development, and architecturally compatible and landscaped to assure compatibility with natural features, public access facilities, and adjacent uses.
- K. Public Access: Utility development shall provide for compatible, multiple use of sites and rights-of-way through coordination with local government agencies. Such uses include shoreline access points, trail systems, and other forms of recreation and transportation, providing such uses will not unduly interfere with utility operations, endanger public health and safety, or create a significant and disproportionate liability for the owner.

#### **16.04.60 Shoreline Administration**

##### **16.04.61 Procedure**

- A. All shoreline permits shall be processed in accordance with PMC Title 19 Administration of Development Regulations.

##### **16.04.62 Coordination with Other Agencies**

- A. The City will coordinate on issues relating to ecological conditions, functions, and processes and on wetland and ordinary high water delineations with the Department of Ecology, the Department of Natural Resources, and the Department of Fish and Wildlife as well as other

agencies with permit authority over a project to the extent that agencies are timely in their response and coordination does not unduly extend review times.

- B. Interpretation of the provisions of this program shall be in accordance with PMC 19.01.090 provided that the Administrator shall consult with the Department of Ecology when there is a lack of clear guidance in this Master Program or WAC 173-26, the Shoreline Guidelines to insure that any formal written interpretations are consistent with the purpose and intent of chapter 90.58 RCW and the applicable guidelines. The provisions of RCW 34.05.328, and the policy goals set forth in WAC 173-26-176 and 173-26-181 should be used to assist in interpretation of any ambiguous provisions and reconciliation of any conflicting provisions.
- C. All references to statutes or to provisions of the Washington Administrative Code (WAC) shall be as those provisions are as now existing or as hereafter may be amended.

### **16.04.63 Development Compliance**

- A. All uses and developments within the jurisdiction of the Shoreline Management Act shall be planned and carried out in a manner that is consistent with the Shoreline Master Program and the policies of the SMA as required by RCW 90.58.140(1), regardless of whether a shoreline permit, statement of exemption, shoreline variance, or shoreline conditional use permit is required. The City shall assure compliance with the provisions of the Shoreline Master Program for all permits and approvals processed by the City.
- B. Regulation of private property to implement any Program goals, such as public access and protection of ecological functions, must be consistent with all relevant constitutional and other legal limitations. These include, but are not limited to, property rights guaranteed by the United States Constitution and the Washington State Constitution, applicable federal and state case law, and state statutes, such as RCW 34.05.328 and 43.21C.060. An applicant requesting specific accommodation of constitutional or other legal limits in the application of standards and criteria of this Program must do so in application materials. The decision maker shall address such requests in specific findings.
- C. The policies and provisions of this program and RCW 90.58 including the permit system, shall apply to all nonfederal developments and uses undertaken on federal lands and on lands subject to nonfederal ownership, lease or easement, even though such lands may fall within the external boundaries of a federal ownership.

- D. Compliance with the provisions of this chapter does not constitute compliance with other federal, state, and local regulations and permit requirements that may be required (for example, Hydraulic Permit Act [HPA] permits, U.S. Army Corps of Engineers Section 404 permits, Washington State Department of Ecology Water Quality Certification [Section 401] National Pollution Discharge Elimination System permits). The applicant is responsible for complying with these requirements, apart from the process established in this chapter.

#### **16.04.64 Shoreline Overlay**

- A. Shoreline regulations shall apply as an overlay and in addition to development regulations, including, but not limited to, zoning, environmental regulations, development standards, subdivision regulations, and other regulations established by the City.
- B. Allowed uses shall be governed by both the zoning regulations in PMC Title 18 and this program. The most restrictive provisions of applicable zoning district and Shoreline Environmental designation shall apply.
- C. Allowed uses shall be limited by the general polices and specific regulations regarding use preferences for water-dependent and water-oriented uses. Allowed uses may be specified and limited in specific shoreline permits. In the case of non-conforming development, the use provisions of this code shall be applied to any change of use, including occupancy permits.
- D. In the event of any conflict between shoreline policies and regulations and any other regulations of the City, shoreline policies and regulations shall prevail unless other regulations provide greater protection of the shoreline natural environment and aquatic habitat.
- E. All regulations applied within the shoreline shall be liberally construed to give full effect to the objectives and purposes for which they have been enacted. Shoreline Master Program policies, found in the City's Comprehensive Plan, establish intent for the shoreline regulations in addition to RCW 90.58 and Chapter 173 of the Washington Administrative Code (WAC), WAC 173-26 and WAC 173-27 all as now existing or as hereafter may be amended.

#### **16.04.65 Non-Conformities**

- A. The provisions of PMC Subsections 18.66.010 through 18.66.030 referencing nonconforming lots, structures, and uses are adopted by reference as part of this program, subject to the definition in PMC 16.04.2.L and additional provisions below.

B. Any expansion of a nonconforming use, building, or structure within Shoreline Management Act jurisdiction shall meet the following additional criteria:

- 1) The expansion or enlargement will not increase its degree of nonconformity in relation to the provisions of the Shoreline Master Program; and
- 2) The expansion or enlargement will not result in enlargement of the building footprint or impervious area in a Critical Area buffer or extends further toward the water unless necessary to meet minimum standards of life-safety codes; and
- 3) The expansion or enlargement will not result in a net loss of ecological functions;

#### **16.04.66 Exemption from Substantial Development Permit**

A. A substantial development permit shall be required for all proposed use and development of shorelines unless the proposal is specifically exempt pursuant to RCW 90.58.140(1).

B. The following shall not be considered substantial developments for the purpose of this Master Program and are exempt from obtaining a Shoreline Substantial Development Permit (SSDP), provided that any additional exemptions established by legislative amendment of the statute shall constitute exemptions without amendment to this code. An exemption from an SSDP is not an exemption from compliance with the SMA or the Shoreline Master Program, or from any other regulatory requirements. A use or development exempt from a Shoreline Substantial Development Permit may require a Conditional Use Permit or a variance:

- 1) Governor's Certification: Any project with a certification from the Governor pursuant to Chapter 80.50 RCW Energy Facilities – Site Locations.
- 2) Projects Valued at \$5,000 or less: Any development of which the total cost or fair market value does not exceed five thousand dollars (\$5,000.00), if such development does not materially interfere with the normal public use of the water or shorelines of the state. The \$5,000 level is subject to adjustment for inflation by the office of financial management every five years. As of July 26, 2012, the adjusted cost is six thousand four hundred sixteen dollars (\$6,416).
- 3) Maintenance and Repair: Normal maintenance or repair of existing structures or developments, including damage by accident, fire, or elements.
  - a. "Normal maintenance" includes those usual acts to prevent a decline, lapse, or cessation from a lawfully established condition.
  - b. "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 a reasonable period after decay or partial destruction,

except where repair causes substantial adverse effects to the shoreline resource or environment.

- c. Replacement of a structure or development may be authorized as repair where such replacement is the common method of repair for the type of structure or development and the replacement structure or development is comparable to the original structure or development including, but not limited to, its size, shape, configuration, location, and external appearance and the replacement does not cause substantial adverse effects to shoreline resources or environment.
- 4) Emergency Construction: Emergency construction necessary to protect property from damage by the elements.
- a. 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 for full compliance with the Shoreline Master Program.
  - b. Emergency construction does not include development of new permanent protective structures where none previously existed. Where new protective structures are deemed 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, pursuant to chapter 90.58 RCW, 173 -27 WAC or this Shoreline Program shall be obtained.
  - c. All emergency construction shall be consistent with the policies of chapter 90.58 RCW and the Shoreline Master Program.
  - d. In general, flooding or other seasonal events that can be anticipated and may occur, but that are not imminent, are not an emergency.
- 5) Agricultural Construction or Practices: Construction and practices normal or necessary for farming, irrigation, and ranching activities, including agricultural service roads and utilities on shorelands, and the construction and maintenance of irrigation structures, including but not limited to head gates, pumping facilities, and irrigation channels. 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.
- 6) Construction of Single-Family Residence and Accessory Buildings: Construction on shorelands by an owner, lessee, or contract purchaser of a single family residence for his own use or for the use of his family, which residence does not exceed a height of 35 feet above average grade level as defined in WAC 173-27-030, and which meets all

requirements of the State agency or local government having jurisdiction thereof, other than requirements imposed pursuant to this Section.

- a. "Single family" residence means a detached dwelling designed for and occupied by one (1) 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 OHWM and the perimeter of a wetland.
  - b. Construction authorized under this exemption shall be located landward of the OHWM.
- 7) **Construction of Non-Commercial Docks:** Construction of a dock, including a community dock designed for pleasure craft only, for the private noncommercial use of the owner, lessee, or contract purchaser of single and multi-family residences. This exception applies if:
- a. The fair market value of the dock does not exceed ten thousand dollars (\$10,000.00); however, if subsequent construction having a fair market value exceeding two thousand five hundred dollars (\$2,500.00) occurs within five (5) years of completion of the prior construction, the subsequent construction shall require a substantial development permit; and
  - b. A dock is a landing and moorage facility for watercraft and does not include recreational decks, storage facilities, or other appurtenances.
  - c. The dock meets all requirements of this code.
- 8) Construction Authorized by the Coast Guard: Construction or modification, by or under the authority of the Coast Guard or a designated port management authority, of navigational aids such as channel markers and anchor buoys.
- 9) Operation, Maintenance, or Construction Related to Irrigation: 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 groundwater for the irrigation of lands.
- 10) Marking of Property Lines on State-Owned Lands: The marking of property lines or corners on State-owned lands when such marking does not interfere with the normal public use of the surface of the water.
- 11) Operation and Maintenance of Agricultural Drainage or Dikes: 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.

- 12) Activities Necessary for Permit Application: Site exploration and investigation activities that are prerequisites to preparation of an application for development authorization under the Shoreline Master Program, if:
- a. The activity does not interfere with the normal public use of the surface waters;
  - b. 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;
  - c. The activity does not involve the installation of a structure, and upon completion of the activity the vegetation and land configuration of the site are restored to conditions existing before the activity;
  - d. A private entity seeking development authorization under the Shoreline Master Program first posts a performance bond or provides other evidence of financial responsibility to the Administrator to ensure that the site is restored to pre-existing conditions; and
  - e. The activity is not subject to the permit requirements of RCW 90.58.550.
- 13) Removal or Control of noxious Weeds: The process of removing or controlling an aquatic noxious weed, 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.
- 14) Watershed Restoration Projects: Watershed restoration projects as defined below:
- a. "Watershed restoration project" means a public or private project authorized by the sponsor of a watershed restoration plan that implements the plan or a part of the plan and consists of one or more of the following activities:
    - (i) A project that involves less than ten (10) miles of stream reach, in which less than twenty five (25) cubic yards of sand, gravel, or soil is removed, imported, disturbed, or discharged, and in which no existing vegetation is removed except as minimally necessary to facilitate additional plantings.
    - (ii) A project for the restoration of an eroded or unstable stream bank that employs the principles of bioengineering, including limited use of rock as a stabilization only at the toe of the bank, and with primary emphasis on using native vegetation to control the erosive forces of flowing water.
    - (iii) A project primarily designed to improve fish and wildlife habitat, remove or reduce impediments to migration of fish, or enhance the fishery resource available for use by all of the citizens of the State, provided that any structure other than a bridge or culvert or in-stream habitat enhancement structure associated with the project is less than two hundred (200) square feet in floor area and is located above the OHWM of the stream.

- b. "Watershed restoration plan" means a plan developed or sponsored by a state department, a federally recognized Indian tribe, a City, or a conservation district, for which agency and public review has been conducted pursuant to chapter 43.21C RCW, the State Environmental Policy Act. The watershed restoration plan generally contains a general program and implementation measures or actions for the preservation, restoration, re-creation, or enhancement of the natural resources, character, and ecology of a stream, stream segment, drainage area, or watershed.

15) Projects to Improve Fish and Wildlife Passage or Habitat: 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:

- a. 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.
- b. The project has received hydraulic project approval by the Department of Fish and Wildlife pursuant to chapter 77.55 RCW.
- c. The Administrator has determined that the project is consistent with this Master Program.

16) Hazardous Substance Remediation: Hazardous substance remedial actions pursuant to WAC 173-27-040(3).

17) Projects on Lands Not Subject to Shoreline Jurisdiction Prior to Restoration: Actions on land that otherwise would not be under the jurisdiction of the Shoreline Management Act except for a change in the location of OHWM or other criteria due to a shoreline restoration project creating a landward shift in the ordinary high water mark that brings the land under the jurisdiction of the SMA approved in accordance with PMC 16.04.072 Restoration Project Relocation of OHWM.

18) All of the above exemptions are subject to the following regulations:

- 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 exemptions from the substantial development permit process.
- b. The burden of proof that a development or use is exempt is on the applicant/proponent of the exempt development action.
- c. If any part of a proposed development is not eligible for exemption, then a substantial development permit is required for the entire project.

### **16.04.67 Exemption Procedures**

- A. A project requiring an additional permit and subject to an exemption to a shoreline substantial development permit shall be reviewed under the criteria of the underlying permit with an

additional finding recorded by the Administrator addressing the grounds under which the permit is exempt.

- B. Any person claiming exemption from the permit requirements of this Master Program as a result of the exemptions specified in this Section may make application for an exemption certificate to the Administrator in the manner prescribed by the City.
- C. Any project for which Ecology is designated as the coordinating agency for the state with regard to permits issued by the U.S. Army Corps of Engineers shall make application for an exemption certificate to the Administrator in the manner prescribed by the City. The City shall transmit an exemption certificate addressed to the applicant and the department, whenever a development is subject to one or more of the following federal permit requirements:
  - 1) A U.S. Army Corps of Engineers Section 10 permit under the Rivers and Harbors Act of 1899; (The provisions of section 10 of the Rivers and Harbors Act generally apply to any project occurring on or over navigable waters. Specific applicability information should be obtained from the Corps of Engineers.); or
  - 2) A Section 404 permit under the Federal Water Pollution Control Act of 1972. (The provisions of Section 404 of the Federal Water Pollution Control Act generally apply to any project which may involve discharge of dredge or fill material to any water or wetland area. Specific applicability information should be obtained from the Corps of Engineers.)
  - 3) The letter shall 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.
- D. The City may attach conditions to the approval of exempted developments and/or uses as necessary to assure consistency of any project with the Shoreline Management Act and the Shoreline Master Program.

#### **16.04.68 Land Division:**

- A. Prior to approval of any land division, such as short subdivisions, preliminary long plats, and boundary line adjustments within shoreline jurisdiction, the City shall document compliance with bulk and dimensional standards as well as with policies and regulations of the Shoreline Master Program and attach appropriate conditions and/or mitigating measures to such approvals to ensure the design, development activities, and future use associated with such lands are consistent with the Shoreline Master Program.

### **16.04.69 Approval Criteria**

- A. In order to approve any development within SMP jurisdiction, the City must find that a proposal is consistent with the following criteria as well as the criteria of PMC Chapter 19.04:
- 1) All use regulations of the Shoreline Master Program appropriate to the shoreline designation and the type of use or development proposed shall be met, particularly the preference for water-oriented uses. If a non-water-oriented use is approved, the decision maker shall enter specific findings documenting why water-oriented uses are not feasible.
  - 2) All bulk and dimensional regulations of the Shoreline Master Program appropriate to the shoreline designation and the type of use or development proposed shall be met, except those bulk and dimensional standards that have been modified by approval of a shoreline variance.
  - 3) All policies of the Shoreline Master Program appropriate to the shoreline area designation and the type of use or development activity proposed shall be considered and compliance demonstrated, subject to liberal construction to give full effect to the objectives and purposes for which they have been enacted.

### **16.04.70 Written Findings Required**

- A. All permits or statements of exemption issued for development or use within shoreline jurisdiction shall include written findings prepared by the decision maker addressing compliance with policies and regulations of the Shoreline Master Program. The decision maker may attach conditions to the approval of exempt developments and/or uses as necessary to assure consistency of the project with the SMA and this Program.

### **16.04.71 Construction Permit Compliance**

- A. For all development within shoreline jurisdiction, the Building Official shall not issue a construction permit for such development until compliance with the Shoreline Master Program has been documented. If a shoreline substantial development permit is required, no permit shall be issued until all comment and appeal periods have expired. Any permit issued by the Building Official for such development shall be subject to the same terms and conditions that apply to the shoreline permit.

## **16.04.72 Restoration Project Relocation of OHWM**

The City may grant relief from Shoreline Master Program development standards and use regulations in accordance with RCW 90.58.580 Shoreline restoration projects — Relief from shoreline master program development standards and use regulations.

## **16.04.73 Shoreline Permit Application Procedures**

- A. In addition to the public notice requirements of PMC Chapter 19.03, the following notice shall be provided for each application for a shoreline management substantial development, conditional use, or variance permit.
- 1) Within fourteen (14) days after the City has made a determination of completeness on the project permit application the city shall issue public notice including:
    - a. The date of application, the date of the notice of completion for the application, and the date of the notice of application;
    - b. 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 under RCW 36.70B.070, RCW 36.70B.090, and WAC 173-27-180 as now existing or as hereafter may be amended;
    - c. The identification of other permits not included in the application to the extent known by the local government;
    - d. 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;
    - e. A statement of the public comment period, which shall be not less than thirty (30) days following the date of notice of application,
    - f. A statement 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. Public comments shall be accepted at any time prior to the closing of the record of an open record hearing, if any, or, if no open record hearing is provided, prior to the decision on the project permit;
    - g. The date, time, place, and type of hearing, if applicable and scheduled at the date of notice of the application;
    - h. 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
    - i. Any other information determined appropriate by the Administrator.

- 2) Public notice shall include:
  - a. 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 (300) of the boundary of the property upon which the development is proposed.
  - b. Posting of Project Site.
  - c. Publication shall be in accordance with PMC 19.03 notwithstanding the classification of the project pursuant to Chapter 19.01. If an open record public hearing is required, a notice shall be provided at least fifteen (15) days prior to the hearing.

#### **16.04.74 Surety Devices**

- A. The Administrator may require the applicant to post a surety device in favor of the City to assure full compliance with any terms and conditions imposed on any shoreline permit. Said surety device shall be in an amount to reasonably assure the City that any deferred improvement will be carried out within the time stipulated and in accordance with approved plans.

#### **16.04.75 Conditional Use**

- A. The objective of a conditional use provision is to provide more control and flexibility for implementing the regulations of the Master Program. With provisions to control undesirable effects, the scope of allowed uses can be expanded. In authorizing a conditional use, special conditions may be attached to the permit by local government or the Department of Ecology to prevent undesirable effects of the proposed use and/or to assure consistency of the project with the act and the local master program.
  - 1) Uses which are classified or set forth in the applicable master program as conditional uses may be authorized provided that the applicant demonstrates all of the following:
    - a. That the proposed use is consistent with the policies, regulations and standards 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; and
    - e. That the public interest suffers no substantial detrimental effect.
  - 2) In the granting of all conditional use permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if conditional use

permits were granted for other developments in the area where similar circumstances exist, the total of the conditional uses shall also remain consistent with the policies of RCW 90.58.020 and shall not produce substantial adverse effects to the shoreline environment.

- 3) 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.
- 4) Uses which are specifically prohibited by the master program may not be authorized pursuant to either subsection (a.) or (b.) of this Section.

### **16.04.76 Variances:**

- A. A development may be granted which is at variance with the criteria established in the SMP where, owing to special conditions pertaining to the specific piece of property, the literal interpretation and strict application of the criteria established in the SMP would cause undue and unnecessary hardship or practical difficulties. A variance may be required for a use that does not require a substantial development permit but which may not be approved because it does not comply with the provisions of the SMP.
- B. Decision Criteria: The fact that the applicant might make a greater profit by using his property in a manner contrary to the intent of the Master Program is not, by itself, sufficient reason for a variance. The Board of Adjustment must find each of the following:
  - 1) 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;
  - 2) That the hardship described in (1) of this subsection is specifically related to the property, and is the result of unique conditions such as irregular lot shape, size, or natural features and the application of the master program, and not, for example, from deed restrictions or the applicant's own actions;
  - 3) 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;
  - 4) That the variance will not constitute a grant of special privilege not enjoyed by the other properties in the area;
  - 5) That the variance requested is the minimum necessary to afford relief; and
  - 6) That the public interest will suffer no substantial detrimental effect.

## 16.04.77 Time Requirements for Shoreline Permits

- A. 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 authorized under the Shoreline Master Program.
- B. No construction pursuant to such permit shall begin or be authorized and no building, grading, or other construction permits or use permits shall be issued by the City until twenty-one (21) days from the date a substantial development permit was filed with the Department of Ecology and the Attorney General, or until all review proceedings are completed as were initiated within the twenty-one (21) days of the date of filing. Filing shall occur in accordance with RCW 90.58.140(6) and WAC 173-27-130 as now existing or as hereafter may be amended.
- C. No permits and construction pursuant to a conditional use permit or variance shall begin or be authorized until twenty-one (21) days from the date of notification of approval by the Department of Ecology, or until all review proceedings are completed as were initiated within the twenty-one (21) days of the date of filing. Filing shall occur in accordance with RCW 90.58.140(6) and WAC 173-27-130 as now existing or as hereafter may be amended.
- D. Unless a different time period is specified in the shoreline permit as authorized by RCW 90.58.143, construction activities, or a use or activity for which a permit has been granted pursuant to this Master Program, must be commenced within two (2) years of the effective date of a shoreline permit, or the shoreline permit shall terminate and a new permit shall be necessary. However, the Administrator may authorize a single extension for a period not to exceed one (1) year based on reasonable factors if a request for extension has been filed with the City before the expiration date and notice of the proposed extension is given to parties of record and the Department of Ecology. Construction activities or commencement of construction means that construction applications must be submitted, permits must be issued, and foundation inspections must be approved and completed.
- E. A permit authorizing construction shall extend for a term of no more than five (5) years after the effective date of a shoreline permit, unless a longer period has been specified pursuant to RCW 90.58.143 and Subsection F of this Section. If an applicant files a request for an extension prior to expiration of the shoreline permit, the Administrator shall review the permit and upon a showing of good cause may authorize a single extension of the shoreline permit for a period of up to one year. Otherwise said permit shall terminate. Notice of the proposed permit extension shall be given to parties of record and the Department of Ecology. To maintain the validity of a

shoreline permit, it is the applicant's responsibility to maintain valid construction permits in accordance with adopted Building Codes.

- F. If it is determined that standard time requirements of Subsections D and E should not be applied, the Decision Maker, upon a finding of good cause, may establish shorter time limits, provided that as a part of action on a conditional use or variance permit the approval of the Department of Ecology shall be required. "Good cause" means that the time limits established are reasonably related to the time actually necessary to perform the development on the ground and complete the project that is being permitted.
- G. For purposes of determining the life of a shoreline permit, the effective date of a substantial development permit, shoreline conditional use permit, or shoreline variance permit shall be the date of filing as provided in RCW 90.58.140(6) as now existing or as hereafter may be amended. The permit time periods do not include the time during which a use or activity was not actually pursued due to the pendency of appeals or legal actions, or due to the need to obtain any other government permits and approvals for the development that authorize the development to proceed.
- H. It is the responsibility of the applicant to inform the Administrator of the pendency of other permit applications filed with agencies other than the City, and of any related administrative or legal actions on any permit or approval. If no notice of the pendency of other permits or approvals is given to the City prior to the expiration date established by the shoreline permit or the provisions of this Section, the expiration of a permit shall be based on the effective date of the shoreline permit.
- I. If the granting of a shoreline permit by the City is appealed to the Shoreline Hearings Board, and the Shoreline Hearings Board has approved the granting of the permit, and an appeal for judicial review of the Shoreline Hearings Board decision is filed, construction authorization may occur subject to the conditions, time periods, and other provisions of RCW 90.58.140(5)(b).

#### **16.04.78 Rulings to State**

- A. Any ruling on an application for a substantial development permit under authority of this Master Program, whether it is an approval or denial, shall, with the transmittal of the ruling to the applicant, be filed concurrently with the Department of Ecology and the Attorney General by the Administrator. Filing shall occur in accordance with RCW 90.58.140(6) and WAC 173-27-130 as now existing or as hereafter may be amended.

### **16.04.79 Appeals**

Any person aggrieved by the granting, denying, or rescinding of a permit on shorelines of the state pursuant to RCW 90.58.140 may seek review from the shorelines hearings board by filing a petition for review within twenty-one (21) days of the date of receipt of the decision as provided for in RCW 90.58.140(6) as now existing or as hereafter may be amended. Appeals as provided by PMC 19.01.040 Project permit application framework, may be provided only if initiated by the applicant. If such an appeal is initiated by the applicant, the final decision shall be the city's appeal decision and shall initiate the 21 day period for petition to the shoreline hearings board.

### **16.04.80 Enforcement**

All provisions of this Master Program shall be enforced by the Administrator in accordance with Chapter 19.07 PMC.

### **16.04.81 Rescission of Permits**

- A. Any shoreline permit issued under the terms of this Master Program may be rescinded or suspended upon a finding that a permittee has not complied with conditions of the permit.
- B. Such rescission and/or modification of an issued permit shall be initiated by serving written notice of noncompliance on the permittee, which shall be sent by registered or certified mail, return receipt requested, to the address listed on the application or to such other address as the applicant or permittee may have advised the City; or such notice may be served on the applicant or permittee in person or his agent in the same manner as service of summons as provided by law.
- C. Before any such permit can be rescinded, a public hearing shall be held by the Board of Adjustment. Notice of the public hearing shall be made in accordance with Section 16.04.073 of this program. The decision of the Board of Adjustment shall be the final decision of the City on all rescinded applications. A written decision shall be transmitted to the Department of Ecology, the Attorney General's office, the applicant, and such other departments or boards of the City as are affected thereby and the legislative body of the City.
- D. The Department of Ecology may petition the Shoreline Hearings Board for a rescission of the permit if Ecology is of the opinion that the noncompliance continues to exist thirty (30) days after

the date of the notice, and the local government has taken no action to rescind the permit, as provided by RCW 90.58.140(8).

### **16.04.82 Violations and Penalties**

- A. In addition to the provisions of Chapter 19.07 PMC, every person violating any of the provisions of this Master Program or the Shoreline Management Act of 1971 shall be punishable under conviction by a fine not exceeding one thousand dollars (\$1,000.00), or by imprisonment not exceeding ninety (90) days, or by both such fine and imprisonment, and each day's violation shall constitute a separate punishable offense.
- B. The City Attorney may bring such injunctive, declaratory, or other actions as are necessary to ensure that no uses are made of the Shorelines of the State within the City's jurisdiction which are in conflict with the provisions and programs of this Master Program or the Shoreline Management Act of 1971, and to otherwise enforce provisions of this Section and the Shoreline Management Act of 1971 as now existing or as hereafter may be amended.
- C. Any person subject to the regulatory program of this Master Program who violates any provision of this Master Program or the provisions of a 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 City Attorney shall bring suit for damages under this subsection on behalf of the City. Private persons shall have the right to bring suit for damages under this subsection on their own behalf and on behalf of all persons similarly situated. If liability has been established for the cost of restoring an area affected by 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 monetary damages, the Court in its discretion may award attorney's fees and costs of the suit to the prevailing party.

### **16.04.83 Shoreline Moratorium**

- A. The City Council may adopt moratoria or other interim official controls as necessary and appropriate to implement the provisions of the Shoreline Management Act in accordance with RCW 90.58.590.

#### **16.04.84 Administration Rules Promulgation**

- A. The Administrator is authorized to adopt such rules as are necessary and appropriate to implement this chapter. The director may prepare and require the use of such forms as are necessary to its administration.

#### **16.04.85 Amendments Authorized**

- A. The provisions of the Shoreline Master Program Use Regulations or the Shoreline Environment Map may be amended as provided for in RCW 90.58.120 and 90.58.200 and Chapter 173-26 WAC as now existing or as hereafter may be amended.

#### **16.04.86 Amendments Adopted by City Council**

- A. Adoption of an amendment to the official controls shall be adopted by the City Council by ordinance after a public hearing and report by the planning commission.

#### **16.04.87 Initiation of Amendments**

- A. The Shoreline Use Regulations or Map amendments thereto may be initiated by:
  - 1) The adoption of a motion by the City Council requesting that the planning commission set a matter for hearing and recommendation.
  - 2) The adoption of a motion by the planning commission.
  - 3) Application of one or more owners of property affected by the proposal.
  - 4) A department or agency of the City or governmental entity.

#### **16.04.88 Burden of proof**

- A. Proponents for Shoreline Environment Map redesignations (i.e., amendments to the Shoreline Environment Designation Map) shall bear the burden of proof for demonstrating consistency with the shoreline environment criteria of the master program, Chapter 173-26 WAC as now existing or as hereafter may be amended, and the goals and policies of the City of Prosser Comprehensive Plan.

#### **16.04.89 Transmittal to the Department of Ecology**

- A. Subsequent to final action by the Council adopting or amending the Shoreline Master Program or official control, said Master Program, official control, or amendment thereto shall be submitted

to the Department of Ecology for approval. No such Master Program, official control, or amendment thereto shall become effective until approval by the Department of Ecology is obtained pursuant to RCW 90.58.90 as now existing or as hereafter may be amended.

## Section III Amendment of City of Prosser Code Chapter 16.10

1. Chapter 16.10 CRITICAL AREAS PROTECTION—GENERAL PROVISIONS is amended as follows

### 16.10.120 Exception—Reasonable use.

- A. Except within the jurisdiction of the Shoreline Management Act RCW 90.58, if the application of this title would deny all reasonable use of the subject property, the property owner may apply for an exception pursuant to this Section.

### 16.10.130 General review process.

- B. Critical Areas Present, But No Impact—Waiver. If the planning director determines that there are critical areas within or adjacent to the project area, but that the proposed activity is unlikely to degrade the functions or values of the critical area, the planning director may waive the requirement for a report or other applicable information. A waiver may be granted if there is substantial evidence that all of the following requirements will be met:
1. There will be no alteration of the critical area or buffer;
  2. The development proposal will not impact the critical area in a manner contrary to the purpose, intent, and requirements of this title; and
  3. The proposal is consistent with other applicable regulations and standards.
  4. The Administrator may recognize that ecological functions of buffers are interrupted by permanent man-made features and may recognize such features as the boundary of the buffer. Such features may include public roads, railroads, publicly maintained levees and other existing permanent improvements that substantially interrupt or impair ecological functions performed by buffers in relation to the adjacent wetland or water body. In such cases, the Administrator may recognize that the buffer extends from the edge of the wetland or the ordinary high water mark of a stream to the edge of the area of vegetation management associated with the road, railroad, levee, or similar facility. In the case of private facilities, the Administrator may recognize that existing structures and impervious surfaces provide the effective limit to buffer functions on existing developed sites and recognize such facilities as the boundary of the buffer, provided that upon substantial redevelopment of a site or facility, the Administrator may require reconfiguration of a site or redesign of features to accommodate buffer dimensions as otherwise provided in this chapter. The Administrator may require appropriate studies by a Qualified Professional to determine whether buffer functions are interrupted or substantially impaired by existing facilities.
- D. Within the Jurisdiction of the Shoreline Management Act RCW 90.58, regulations to protect critical areas are intended to be remedial and curative in nature, and to apply retroactively to July 27, 2003.

2. Chapter 16.20 WETLANDS is amended as follows

### 16.20.010 Designation, rating and mapping wetlands.

- A. Designating Wetlands. Wetlands are those areas, designated in accordance with the "Washington State Wetland Identification and Delineation Manual," that are inundated or

saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation adapted for life in saturated soil conditions. All areas within the city of Prosser meeting the wetland designation criteria in the "Identification and Delineation Manual," regardless of any formal identification, are hereby designated critical areas and are subject to the provisions of this title.

- B. Wetland Ratings. Wetlands shall be rated according to the Department of Ecology wetland rating system found in the Washington State Wetland Rating for Eastern Washington (Ecology Publication No. ~~04-06-015, 91-58~~), or as revised by Ecology. This document contains definitions and methods for determining ratings. a. ~~Category I. Category I wetlands are those that meet the following criteria:~~
- ~~i. Documented habitat for federal or state listed endangered or threatened fish, animal, or plant species;~~
  - ~~ii. High quality native wetland communities, including documented Category I or II quality natural heritage wetland sites and sites which qualify as a Category I or II quality natural heritage wetland (defined in the rating system documents);~~
  - ~~iii. High quality, regionally rare wetland communities with irreplaceable ecological functions, including sphagnum bogs and fens, wetlands, or mature forested swamps (defined in the rating system documents); or~~
  - ~~iv. Wetlands of exceptional local significance.~~
- b. ~~Category II. Category II wetlands are those not defined as Category I wetlands and that meet the following criteria:~~
- ~~i. Documented habitats for state listed sensitive plant, fish or animal species;~~
  - ~~ii. Wetlands that contain plant, fish or animal species listed as priority species by the Department of Fish and Wildlife;~~
  - ~~iii. Wetland types with significant functions that may not be adequately replicated through creation or restoration;~~
  - ~~iv. Wetlands possessing significant habitat value based on a score of twenty two or more points in the habitat rating system; or~~
  - ~~v. Documented wetlands of local significance.~~
- c. ~~Category III. Category III wetlands are those that do not satisfy Category I, II or IV criteria, and with a habitat value rating of twenty one points or less.~~
- d. ~~Category IV. Category IV wetlands are those that meet the following criteria:~~
- ~~i. Hydrologically isolated wetlands that are less than or equal to one acre in size, have only one wetland class, and are dominated (greater than eighty percent areal cover) by a single nonnative plant species (monotypic vegetation); or~~
  - ~~ii. Hydrologically isolated wetlands that are less than or equal to two acres in size, and have only one wetland class and greater than ninety percent areal cover of nonnative plant species.~~

**16.20.040 Performance standards—General requirements.**

- A. Activities may only be permitted in a wetland or wetland buffer if the applicant can show that the proposed activity will not degrade the functions and values of the wetland and other critical areas.
- B. Activities and uses shall be prohibited from wetlands and wetland buffers, except as provided for in this title.
- C. Wetland Buffers.

- 1. Standard Buffer Widths. The standard buffer widths presume the existence of a relatively intact native vegetation community in the buffer zone adequate to protect the wetland functions and values at the time of the proposed activity. If the vegetation is inadequate then the buffer width shall be increased or the buffer should be planted to maintain the standard width. Required standard wetland buffers, based on wetland category and land use intensity, are as follows:

<u>WETLAND TYPE</u>	<u>BUFFER</u>
<u>Category I</u>	
Category I 30-36 habitat points	150 feet
Category I 26-29 habitat points	115 feet
Category I 21-25 habitat points	90 feet
Category I >21 habitat points	75 feet
<u>Category II</u>	
Category II 30-36 habitat points	150 feet
Category II 26-29 habitat points	115 feet
Category II 21-25 habitat points	90 feet
Category II >21 habitat points	75 feet
<u>Category III</u>	
Category III 26-29 habitat points	120 feet
Category III 21-25 habitat points	90 feet
Category III >21 habitat points	60 feet
<u>Category IV</u>	
a. Category I.	
High-intensity land use	200 feet;
Low-intensity land use	150 feet.
b. Category II.	
High-intensity land use	150 feet;
Low-intensity land use	100 feet.
c. Category III.	
High-intensity land use	100 feet;
Low-intensity land use	50 feet.
d. Category IV.	

The following measures shall be incorporated into adjacent development:

<u>Type of Potential Disturbance</u>	<u>Required Measures to Minimize Impacts</u>
<u>Lights</u>	<u>Direct lights away from wetland.</u>
<u>Noise</u>	<p><u>Locate activity that generates noise away from wetland.</u></p> <p><u>If warranted, enhance existing buffer with native vegetation plantings adjacent to noise source.</u></p> <p><u>For activities that generate relatively continuous, potentially disruptive noise, such as certain heavy industry or mining, establish an additional 10-foot heavily vegetated buffer strip immediately adjacent to the outer wetland buffer.</u></p>
<u>Toxic runoff</u>	<p><u>Route all new, untreated runoff away from wetland while ensuring wetland is not dewatered.</u></p> <p><u>Establish covenants limiting use of pesticides within 150 feet of wetland.</u></p> <p><u>Apply integrated pest management.</u></p>
<u>Stormwater runoff</u>	<p><u>Retrofit stormwater detention and treatment for roads and existing adjacent development.</u></p> <p><u>Prevent channelized flow from lawns that directly enters the buffer.</u></p> <p><u>Use Low Intensity Development techniques (per Eastern Washington Low Impact Development Guidance Manual, Washington Department of Ecology publication #13-10-036, June 2013 and as may be hereafter amended, supplemented, or replaced.)).</u></p>
<u>Change in patterns or water flow regime</u>	<u>Infiltrate or treat, detain, and disperse into buffer new runoff from impervious surfaces and new lawns.</u>
<u>Pets and human disturbance</u>	<p><u>Use privacy fencing or plant dense vegetation to delineate buffer edge and to discourage disturbance using vegetation appropriate for the ecoregion.</u></p> <p><u>Place wetland and its buffer in a separate tract or protect with a conservation easement.</u></p>
<u>Dust</u>	<u>Use best management practices to control dust.</u>
<u>Disruption of corridors or connections</u>	<p><u>Maintain connections to offsite areas that are undisturbed.</u></p> <p><u>Restore corridors or connections to offsite habitats by replanting.</u></p>

Subsections 2. and 3. are unaffected.

4. Reduction of Wetland Buffer Widths.

- a. The city may allow the standard wetland buffer width to be reduced in accordance with the report and the best available science on a case-by-case basis when it is determined that a smaller area is adequate to protect the wetland functions and values based on site-specific characteristics.
- b. This determination shall be supported by documentation showing that a reduced buffer is adequate based on all of the following criteria:
  - i. Requiring the standard buffer poses an extraordinary hardship on the landowner;
  - ii. The existing buffer area is well vegetated with native species and has less than ten percent slopes; and
  - iii. No direct or indirect short-term or long-term adverse impacts to wetlands will result from the proposed activity.
- c. The city may require long-term monitoring of the buffer and wetland. Subsequent corrective actions may be required if adverse impacts to wetlands are discovered during the monitoring period.
- d. In no case shall the standard buffer width be reduced by more than fifty percent, or the buffer width be less than fifty feet, whichever is greater, unless the applicant demonstrates an acceptable reasonable use as described in Section 16.10.120.
- e. Isolated Category 3 and 4 wetlands less than 1,000 square feet may be exempt from the buffer provisions contained in this Chapter and the normal mitigation sequencing process. They may be displaced if impacts are fully mitigated. Such wetlands:
  - i. Are not associated with riparian areas or buffers.
  - ii. Are not part of a wetland mosaic.
  - iii. Do not contain habitat identified as essential for local populations of priority species identified by the Washington Department of Fish and Wildlife.

**16.20.050 Performance standards—Mitigation requirements.**

G. Mitigation Ratios.

- 1. Acreage Replacement Ratios. The following ratios shall apply to creation or restoration that is in-kind, on-site, the same category, timed prior to or concurrent with alteration, and has a high probability of success. These ratios do not apply to remedial actions resulting from unauthorized alterations; greater ratios shall apply in those cases. These ratios do not apply to the use of credits from a state-certified wetland mitigation bank. When credits from a certified bank are used, replacement ratios should be consistent with the requirements of the bank's certification. The first number specifies the acreage of replacement wetlands and the second specifies the acreage of wetlands altered.

Category I	Six-to-one;
Category II	Three-to-one;
Category III	Two-to-one;

<b>Wetland Mitigation Ratios</b>				
<u>Category and Type of Wetland</u>	<u>Creation or Re-establishment</u>	<u>Rehabilitation</u>	<u>Enhancement</u>	<u>Preservation</u>
<u>Category I: Bog, Natural Heritage Site</u>	<u>Not considered possible</u>	<u>6:1</u>	<u>Case by case</u>	<u>10:1</u>
<u>Category I: Mature Forested</u>	<u>6:1</u>	<u>12:1</u>	<u>24:1</u>	<u>24:1</u>
<u>Category I: Based on Functions</u>	<u>4:1</u>	<u>8:1</u>	<u>16:1</u>	<u>20:1</u>
<u>Category II</u>	<u>3:1</u>	<u>6:1</u>	<u>12:1</u>	<u>20:1</u>
<u>Category III</u>	<u>2:1</u>	<u>4:1</u>	<u>8:1</u>	<u>15:1</u>
<u>Category IV</u>	<u>1.5:1</u>	<u>3:1</u>	<u>6:1</u>	<u>10:1</u>

Note: Impacts to buffers shall be mitigated at a 1:1 ratio. Compensatory buffer mitigation shall replace those buffer functions lost from development.

**3. Chapter 16.60 FISH AND WILDLIFE HABITAT CONSERVATION AREAS is amended as follows:**

**16.60.040 Performance standards—Specific habitats.**

- C. Riparian Habitat Areas. Unless otherwise allowed in this title, all structures and activities shall be located outside of the riparian habitat area.
  - 1. Establishment of Riparian Habitat Areas. Riparian habitat areas shall be established for habitats that include aquatic systems.
  - 2. Riparian Habitat Area Widths. Recommended riparian habitat area widths are shown in the table below. A riparian habitat area shall have the width recommended, unless a greater width is required pursuant to subsection (C)(3) of this Section, or a lesser width is allowed pursuant to subsection (C)(4) of this Section. Widths shall be measured outward, on the horizontal plane, from the ordinary high water mark or from the top of bank if the ordinary high water mark cannot be identified. Riparian areas should be sufficiently wide to achieve the full range of riparian and aquatic ecosystem functions, which include but are not limited to protection of in-stream fish habitat through control of temperature and sedimentation in streams; preservation of fish and wildlife habitat; and connection of riparian wildlife habitat to other habitats.

<b>Riparian Habitat Areas</b>	
<b>Stream Type</b>	<b>Recommended RHA Widths<sup>1</sup></b>

Types 1 and 2—Shorelines of statewide significance (Yakima River)	200 feet
<u>Where specific reach-based buffers are adopted in Title 16.04 Shoreline Management, the reach-based buffers may be employed in lieu of the above.</u>	
Type 3 or other perennial or fish-bearing streams	75 feet
Types 4 and 5	50 feet

City of Prosser  
**Shoreline Master Program (SMP)**  
ENVIRONMENTAL CHECKLIST

**WAC 197-11-960 Environmental checklist.**

**Purpose of checklist:**

The State Environmental Policy Act (SEPA), chapter 43.21C RCW, requires all governmental agencies to consider the environmental impacts of a proposal before making decisions. An environmental impact statement (EIS) must be prepared for all proposals with probable significant adverse impacts on the quality of the environment. The purpose of this checklist is to provide information to help you and the agency identify impacts from your proposal (and to reduce or avoid impacts from the proposal, if it can be done) and to help the agency decide whether an EIS is required.

**Instructions for applicants:**

This environmental checklist asks you to describe some basic information about your proposal. Governmental agencies use this checklist to determine whether the environmental impacts of your proposal are significant, requiring preparation of an EIS. Answer the questions briefly, with the most precise information known, or give the best description you can.

You must answer each question accurately and carefully, to the best of your knowledge. In most cases, you should be able to answer the questions from your own observations or project plans without the need to hire experts. If you really do not know the answer, or if a question does not apply to your proposal, write "do not know" or "does not apply." Complete answers to the questions now may avoid unnecessary delays later.

Some questions ask about governmental regulations, such as zoning, shoreline, and landmark designations. Answer these questions if you can. If you have problems, the governmental agencies can assist you.

The checklist questions apply to all parts of your proposal, even if you plan to do them over a period of time or on different parcels of land. Attach any additional information that will help describe your proposal or its environmental effects. The agency to which you submit this checklist may ask you to explain your answers or provide additional information reasonably related to determining if there may be significant adverse impact.

**Use of checklist for non-project proposals:**

Complete this checklist for non-project proposals, even though questions may be answered "does not apply." IN ADDITION, complete the SUPPLEMENTAL SHEET FOR NONPROJECT ACTIONS (part D).

For non-project actions, the references in the checklist to the words "project," "applicant," and "property or site" should be read as "proposal," "proposer," and "affected geographic area," respectively.

**A. BACKGROUND INFORMATION**

**Proposal Title:** City of Prosser Shoreline Master Program (SMP)

**Property Owner:** City of Prosser

**Proponent:** City of Prosser

**Contact Person:** Steve Zetz, Planner

**Contact Person's Address:** 601 7th Street, Prosser, WA 99350

**Contact Person's Phone:** (509) 786-2332

**Proposal Location:** Citywide and within Urban Growth Area (UGA) within 200 feet of water bodies under the jurisdiction of the Shoreline Management Act, additional floodplain areas, and within "associated wetlands"

**Brief description of the proposal's scope and nature:**

**General description:**

The Shoreline Master Program (SMP) applies across the City and establishes development standards for shoreline development. The State Shoreline Management Act (SMA) requires each jurisdiction with shorelines of the state and shoreline state wide significance to make and update these rules.

The City's SMP must comply with the requirements of the Shoreline Management Act, specifically the guidelines created in 2003. The general goals of the Shoreline Management Act are:

- Protect shoreline natural resources, including "...the land and its vegetation and wildlife, and the water of the state and their aquatic life..."
- Promote public access: "the public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the state shall be preserved to the greatest extent feasible consistent with the overall best interest of the state and the people generally."
- Encourage water-dependent uses: "uses shall be preferred which are consistent with control of pollution and prevention of damage to the natural environment, or are unique to or dependent upon use of the states' shorelines..."

The text of the Shoreline Master Program (SMP) accompanies this determination.

Reference also should be made to the Shoreline Cumulative Effects Analysis which evaluates cumulative impacts of reasonably foreseeable future development on shoreline ecological functions and other shoreline functions fostered by the policy goals of the act (see attached).

**2. Acreage of site:** N/A

**3. Number of dwelling units/buildings to be demolished:** N/A

**4. Number of dwelling units/buildings to be constructed:** N/A

**5. Square footage of buildings to be demolished:** N/A

**6. Square footage of buildings to be constructed:** N/A

**7. Quantity of earth movement (in cubic yards):** N/A

8. Proposed land use: N/A

9. Design features: N/A

10. Other: N/A

## B. Environmental Elements

### 1. Earth

a. General description of the site (circle one): Flat, rolling, hilly, steep slopes, mountainous, other.

**All these features, except mountains, are present in the city and in areas subject to the Shoreline Master Program (SMP).**

b. What is the steepest slope on the site (approximate percent slope)?

**Steep slopes up to approximately 30percent are found in the shoreline. Most land subject to the SMP with steeper slopes is west of the I-82 bridge and east of the I-82 bridge is as the lower slope ranges.**

c. What general types of soils are found on the site (for example, clay, sand, gravel, peat, muck)? If you know the classification of agricultural soils, specify them and note any prime farmland.

**Several primary soil types are located within the shoreline jurisdiction: Esquatzel silt loam, Esquatzel fine sandy loam, Scootenev stony silt loam, and riverwash. The majority of the soil within shoreline jurisdiction consists of Esquatzel silt loam and Esquatzel fine sandy loam which are located on the south bank of the Yakima River on the west side of the city (west of I-82) followed by Scootenev stony silt loam which is also located on the south bank, east of the I-82 bridge.**

**Of the primary soil types located within the shoreline jurisdiction, Esquatzel silt loam and Esquatzel fine sandy loam are classified as prime farmlands if irrigated. The majority of the remaining soils found within the shoreline jurisdiction are not prime farmland. Source: United States Department of Agriculture 2012. Natural Resources Conservation Service (NRCS) Web Soil Survey, data accessed on 1/20/2014:**

**<http://websoilsurvey.nrcs.usda.gov/app/HomePage.htm>**

d. Are there surface indications or history of unstable soils in the immediate vicinity? If so, describe.

**There are some areas of unstable soils in the city. These areas are not changed by the policies within the SMP and are addressed by other programs, such as critical area regulations.**

e. Describe the purpose, type, and approximate quantities of any filling or grading proposed. Indicate source of fill.

**No specific fill or grading is proposed in the SMP. The SMP contains policies and regulations addressing fill within SMA jurisdiction. Impacts of specific projects affected by policies and regulations in the SMP will be addressed by project-level SEPA review if required.**

f. Could erosion occur as a result of clearing, construction, or use? If so, generally describe.

**No specific actions resulting in erosion is proposed in the SMP. The SMP contains policies and regulations addressing fill within SMA jurisdiction and cross references the Critical Areas code and other requirements. Impacts of specific projects affected by policies and regulations in the SMP will be addressed by project-level SEPA review if required.**

g. About what percent of the site will be covered with impervious surfaces after project construction (for example, asphalt or buildings)?

**The SMP will not result in impervious surfaces. The SMP contains policies and regulations addressing impervious surface within SMA jurisdiction and will affect future development projects, largely in a beneficial manner.**

- h. Proposed measures to reduce or control erosion, or other impacts to the earth, if any:

**No specific actions resulting in erosion is proposed in the SMP. The SMP contains policies and regulations addressing erosion within SMA jurisdiction and cross references the Critical Areas code and other requirements. Impacts of specific projects affected by policies and regulations in the SMP will be addressed by project-level SEPA review if required.**

## 2. Air

- a. What types of emissions to the air would result from the proposal (i.e., dust, automobile, odors, industrial wood smoke) during construction and when the project is completed? If any, generally describe and give approximate quantities if known.

**No specific actions resulting in air emissions are proposed in the SMP.**

**The SMP is likely to have little impact on air emissions.**

- b. Are there any off-site sources of emissions or odor that may affect your proposal? If so, generally describe.

**Not relevant to a policy action such as the SMP.**

- c. Proposed measures to reduce or control emissions or other impacts to air, if any:

**None are proposed as part of the SMP. Governed by other regulations.**

## 3. Water

- a. Surface:

1) Is there any surface water body on or in the immediate vicinity of the site (including year-round and seasonal streams, saltwater, lakes, ponds, wetlands)? If yes, describe type and provide names. If appropriate, state what stream or river it flows into.

**Prosser's waterbodies subject to the SMP include the Yakima River and associated wetlands.**

**The Yakima River is considered a shoreline of the state, it drains a basin area of approximately 6,150 miles, and flows into the Columbia River. The Yakima River is designated as a shoreline of statewide significance.**

**The U.S. Fish and Wildlife Service National Wetland Inventory (NWI) documents several wetlands within shoreline jurisdiction in Prosser. These wetlands are primarily located within the floodway of the Yakima River and are characterized as freshwater emergent and freshwater forested/shrub wetlands (source: U.S. Fish and Wildlife Service 2013. National Wetland Inventory data mapper: <http://www.fws.gov/wetlands/Data/Mapper.html> accessed on 10/25/2013).**

2) Will the project require any work over, in, or adjacent to (within 200 feet) the described waters? If yes, please describe and attach available plans.

**No specific actions resulting in such work is proposed in the SMP.**

**The SMP, however, contains policies and regulations addressing work within SMA jurisdiction.**

3) Estimate the amount of fill and dredge material that would be placed in or removed from surface water or wetlands and indicate the area of the site that would be affected. Indicate the source of fill material.

**No specific actions resulting in fill and dredge material is proposed in the SMP. The SMP contains policies and regulations addressing fill within SMA jurisdiction and cross references the Critical Areas code and other requirements.**

**Impacts of specific projects affected by policies and regulations in the SMP are likely to be reduced by those provisions.**

- 4) Will the proposal require surface water withdrawals or diversions? Give general description, purpose, and approximate quantities if known.

**No new withdrawals or diversions are proposed in the SMP. Chandler canal is connected with the Yakima River at Prosser diversion dam. It diverts up to 1,500 cfs of water from the Yakima River to the Chandler Canal into Kennewick Irrigation District's (KID) main canal for the purpose of irrigating land served by KID.**

- 5) Does the proposal lie within a 100-year floodplain? If so, note location on the site plan.

**Floodway and floodplains are included in the shoreline jurisdiction. Managing flooding is one of the goals of the SMP. The SMP contains policies and regulations addressing this element within SMA jurisdiction and cross references the Critical Areas code and other requirements.**

- 6) Does the proposal involve any discharges of waste materials to surface waters? If so, describe the type of waste and anticipated volume of discharge.

**No specific discharge is proposed in the SMP. The SMP contains policies and regulations addressing this element within SMA jurisdiction, such as water quality. Discharge is primarily addressed by other regulations.**

b. Ground:

- 1) Will ground water be withdrawn, or will water be discharged to ground water? Give general description, purpose, and approximate quantities if known.

**The potential effects of the proposed SMP are addressed in Subsection C Supplemental Sheet for Non-project Actions. No specific withdrawal or discharge is proposed in the SMP. Impacts of specific projects that may result from policies in the SMP will be addressed by project-level SEPA review.**

- 2) Describe waste material that will be discharged into the ground from septic tanks or other sources, if any (for example: Domestic sewage; industrial; agricultural; etc.). Describe the general size of the system, the number of such systems, the number of houses to be served (if applicable), or the number of animals or humans the system(s) are expected to serve.

**No specific system discharges are proposed in the SMP. The SMP contains policies and regulations addressing this element within SMA jurisdiction. Discharge is primarily addressed by other regulations and by city utilities.**

**Impacts of specific projects that may result from policies in the SMP will be addressed by project-level SEPA review.**

c. Water runoff (including stormwater):

- 1) Describe the source of runoff (including storm water) and method of collection and disposal, if any (include quantities, if known). Where will this water flow? Will this water flow into other waters? If so, describe.

**The potential effects of the plan are addressed in Subsection C Supplemental Sheet for Non-project Actions. No specific source runoff is proposed in the SMP. The SMP contains policies and regulations addressing this element within SMA jurisdiction which are likely to somewhat reduce impacts.**

- 2) Could waste materials enter ground or surface waters? If so, generally describe.

**The potential effects of the plan are addressed in Subsection C Supplemental Sheet for Non-project Actions. The SMP contains policies and regulations addressing this element within SMA jurisdiction which are likely to somewhat reduce impacts.**

- d. Proposed measures to reduce or control surface, ground, and runoff water impacts, if any:

**The SMP contains a range of policies to address runoff as addressed in Subsection C Supplemental Sheet for Non-project Actions. The SMP contains policies and regulations addressing this element within SMA jurisdiction which are likely to somewhat reduce impacts.**

#### 4. Plants

- a. Check or circle types of vegetation found on the site:

deciduous tree: alder, maple, aspen, other

evergreen tree: fir, cedar, pine, other

shrubs

grass

pasture

crop or grain

wet soil plants: cattail, buttercup, bullrush, skunk cabbage, other

water plants: water lily, eelgrass, milfoil, other

other types of vegetation

**A wide range of plants are found in the city.**

- b. What kind and amount of vegetation will be removed or altered?

**The SMP contains a range of policies and regulations addressing vegetation removal and alteration. This addressed in Subsection C Supplemental Sheet for Non-project Actions.**

- c. List threatened or endangered species known to be on or near the site.

**No endangered plants are known to be found in the city.**

- d. Proposed landscaping, use of native plants, or other measures to preserve or enhance vegetation on the site, if any:

**The SMP contains a range of policies and regulations to address vegetation as part of development on a city-wide basis as it affects water. This addressed in Subsection C Supplemental Sheet for Non-project Actions.**

#### 5. Animals

- a. Circle any birds and animals which have been observed on or near the site or are known to be on or near the site:

birds: hawk, heron, eagle, songbirds, other:

mammals: deer, bear, elk, beaver, other:

fish: bass, salmon, trout, herring, shellfish, other:

**Most or all of the species listed are found in the city, except bear and other large predators, and deer and elk.**

**The aquatic areas of the Yakima River throughout Prosser support concentrations of wintering migratory waterfowl, primarily as a resting and feeding area for dabbling ducks, primarily mallard, Canada Goose, Canvasback, Ring-necked Duck, and Wood Duck. With the narrow**

riparian corridor, it is unlikely that nesting takes place.

Several fish species populate the Yakima River within Prosser. Salmonid fish include steelhead (*Oncorhynchus mykiss*) and spring and fall Chinook salmon (*Oncorhynchus tshawytscha*). Coho salmon (*Oncorhynchus kisutch*) were historically present here, and a coho reintroduction program is currently underway in the Yakima River Basin. Bull trout (*Salvelinus confluentus*) were historically present and abundant in upper tributaries of the Yakima River Basin and may now occur in this portion of the river in low numbers. Pacific lamprey (*Lampetra tridentate*) are present but have experienced population decline in recent years. Resident fish include small (*Micropterus dolomieu*) and largemouth bass (*Micropterus salmoides*), northern pikeminnow (*Ptychocheilus oregonensis*), sculpin (*Cottoidea sp.*), mountain whitefish (*Prosopium williamsoni*), white sturgeon (*Acipenser transmontanus*), catfish (*Ictalurus punctatus*), sucker (*Catostomidae sp.*), walleye (*Sander vitreus*), chiselmouth (*Acrocheilus alutaceus*), dace (*Leuciscus leuciscus*), common carp (*Cyprinus carpio*), and various minnow species.

- b. List any threatened or endangered species known to be on or near the site.

**Chinook salmon and steelhead are found in the Yakima River.**

- c. Is the site part of a migration route? If so, explain.

**The Lower Yakima Basin is located in the Pacific Flyway and serves as a resting area for neotropical migrant birds, migratory waterfowl, and shorebirds. The Yakima River is a migration route for anadromous fish.**

- d. Proposed measures to preserve or enhance wildlife, if any:

**The SMP contains policies that address aquatic habitat as addressed in Subsection C Supplemental Sheet for Non-project Actions.**

## 6. Energy and natural resources

- a. What kinds of energy (electric, natural gas, oil, wood stove, solar) will be used to meet the completed project's energy needs? Describe whether it will be used for heating, manufacturing, etc.

**The potential effects of the proposed SMP are addressed in Subsection C Supplemental Sheet for Non-project Actions but are likely to be of limited effect since this element is primarily addressed by other programs.**

- b. Would your project affect the potential use of solar energy by adjacent properties? If so, generally describe.

**The SMP is very unlikely to have such an impact.**

- c. What kinds of energy conservation features are included in the plans of this proposal? List other proposed measures to reduce or control energy impacts, if any:

**None.**

## 7. Environmental health

- a. Are there any environmental health hazards, including exposure to toxic chemicals, risk of fire and explosion, spill, or hazardous waste, that could occur as a result of this proposal? If so, describe.

**The potential effects of the proposed SMP on spills and discharge into surface water are addressed in Subsection C Supplemental Sheet for Non-project Actions. Impacts of specific policies and regulations are likely to be beneficial.**

1) Describe special emergency services that might be required.

**No direct impacts.**

2) Proposed measures to reduce or control environmental health hazards, if any:

**The potential effects of the proposed SMP on spills and discharge into surface water are addressed in Subsection C Supplemental Sheet for Non-project Actions. Impacts of specific policies and regulations are likely to be beneficial.**

b. Noise

1) What types of noise exist in the area which may affect your project (for example: traffic, equipment, operation, other)?

**A wide variety of noise sources and noise levels are found in Prosser's urban environment.**

2) What types and levels of noise would be created by or associated with the project on a short-term or a long-term basis (for example: traffic, construction, operation, other)? Indicate what hours noise would come from the site.

**None.**

3) Proposed measures to reduce or control noise impacts, if any:

**The SMP does not contain specific policies and regulations addressing this element but it is addressed to some extent under other provisions including no net loss of ecological functions.**

## 8. Land and shoreline use

a. What is the current use of the site and adjacent properties?

**Within shoreline jurisdiction boundaries, the City has approximately 200 acres of shoreline along both sides of the Yakima River. Existing uses along the shoreline are a mix of single-family residential, park open space, commercial, agricultural and industrial facilities. Part of the shoreline is currently unimproved.**

b. Has the site been used for agriculture? If so, describe.

**There are some small scale agricultural uses.**

c. Describe any structures on the site.

**A variety of structures are found within the shoreline jurisdiction. Structure types mainly include residential homes, industrial structures, diversion dam and wastewater treatment facility.**

d. Will any structures be demolished? If so, what?

**None. Impacts of specific projects that may result from policies in the SMP will be addressed by project-level SEPA review.**

e. What is the current zoning classification of the site?

**Several zoning classifications are found in Prosser. Within the shoreline jurisdiction in the City limits, land on the north bank of the Yakima River is zoned as Commercial, Thoroughfare (CT), Residential, Medium Density (RM) and Public Facility (PF). The land within shoreline jurisdiction on the south bank of the Yakima River includes Residential, Low Density (RL), Residential, Medium Density (RM), Public Facility (PF), Commercial, Downtown (CD), Industrial, Heavy (IH), Industrial, Light (IL) and Agribusiness (A).**

f. What is the current comprehensive plan designation of the site?

**The Prosser Comprehensive Plan identifies land use within the SMA jurisdiction as low/medium residential, public lands, commercial, agri-tourist, agri-business and industrial. Outside the city limits within the SMA jurisdiction, the majority of land use is residential, light industrial, and parkland.**

g. If applicable, what is the current shoreline master program designation of the site?

**The current shoreline master program designations include the following environments: Shoreline Agribusiness, Shoreline Agri-Tourism, Shoreline Commercial, Shoreline Residential, Shoreline Industrial, Recreation, Urban Conservancy and Aquatic.**

h. Has any part of the site been classified as an "environmentally sensitive" area? If so, specify.

**A variety of areas within Prosser shoreline jurisdiction are classified as environmentally sensitive, particularly critical areas. Prosser has adopted critical area regulations (Title 16) for the following:**

- **CRITICAL AREAS PROTECTION—GENERAL PROVISIONS - PMC 16.10**
- **WETLANDS- PMC 16.20**
- **AQUIFER RECHARGE AREAS - PMC 16.30**
- **FREQUENTLY FLOODED AREAS - PMC 16.40**
- **GEOLOGICALLY HAZARDOUS AREAS - PMC 16.50**
- **FISH AND WILDLIFE HABITAT CONSERVATION AREAS - PMC 16.60**

i. Approximately how many people would reside or work in the completed project?

**None. The SMP will not directly affect population or employment.**

j. Approximately how many people would the completed project displace?

**None. The SMP will not directly affect population or employment.**

k. Proposed measures to avoid or reduce displacement impacts, if any:

**None. The SMP will not directly affect population or employment.**

l. Proposed measures to ensure the proposal is compatible with existing and projected land uses and plans, if any:

**Comprehensive Plan and proposed SMP are consistent. The proposed SMP will not directly affect the adopted land use in the Comprehensive Plan but will provide performance standards for development within SMA jurisdiction.**

## 9. Housing

a. Approximately how many units would be provided, if any? Indicate whether high, middle, or low-income housing.

**None. The SMP will not directly affect housing.**

b. Approximately how many units, if any, would be eliminated? Indicate whether high, middle, or low-income housing.

**None. The SMP will not directly affect housing.**

c. Proposed measures to reduce or control housing impacts, if any:

**None. The SMP will not directly affect housing.**

## 10. Aesthetics

a. What is the tallest height of any proposed structure(s), not including antennas; what is the principal exterior building material(s) proposed?

**Not applicable. No specific structures are proposed in the SMP. Height limits in the SMP are generally consistent with upland zoning.**

- b. What views in the immediate vicinity would be altered or obstructed?

**No specific facilities that would alter views are proposed in the SMP. The proposed increase in maximum height standards for single-family residential use may alter views for some uphill properties. The SMP includes policies and regulations to protect view.**

- c. Proposed measures to reduce or control aesthetic impacts, if any:

**The SMP contains a variety of policies and regulations addressing aesthetics which are largely beneficial.**

## 11. Light and glare

- a. What type of light or glare will the proposal produce? What time of day would it mainly occur?

**Not applicable. No specific lighting is proposed in the SMP. The SMP addresses lighting in a variety of provisions including no net loss of ecological functions.**

- b. Could light or glare from the finished project be a safety hazard or interfere with views?

**Not applicable. The SMP addresses light and glare in a variety of provisions including no net loss of ecological functions. Impacts of specific projects that may result from policies in the SMP will be addressed by project-level SEPA review.**

- c. What existing off-site sources of light or glare may affect your proposal?

**None.**

- d. Proposed measures to reduce or control light and glare impacts, if any:

**The SMP addresses light and glare in a variety of provisions including no net loss of ecological functions.**

## 12. Recreation

- a. What designated and informal recreational opportunities are in the immediate vicinity?

**Recreational uses within the shoreline jurisdictional boundaries include River Park, the dock at the RV park, and an existing trail.**

- b. Would the proposed project displace any existing recreational uses? If so, describe.

**No. The SMP addresses in a variety of provisions including specific provisions for public access.**

- c. Proposed measures to reduce or control impacts on recreation, including recreation opportunities to be provided by the project or applicant, if any:

**The SMP includes specific provisions for public access.**

## 13. Historic and cultural preservation

- a. Are there any places or objects listed on, or proposed for, national, state, or local preservation registers known to be on or next to the site? If so, generally describe.

**None known to exist within shoreline jurisdiction.**

- b. Generally describe any landmarks or evidence of historic, archaeological, scientific, or cultural importance known to be on or next to the site.

**None known to exist within shoreline jurisdiction. The SMP includes specific provisions for cultural resources.**

- c. Proposed measures to reduce or control impacts, if any:

**The SMP includes specific provisions for cultural resources.**

#### 14. Transportation

- a. Identify public streets and highways serving the site, and describe proposed access to the existing street system. Show on site plans, if any.

**There are a wide variety of transportation facilities in the city.**

- b. Is site currently served by public transit? If not, what is the approximate distance to the nearest transit stop?

**There is public transit service to the city.**

- c. How many parking spaces would the completed project have? How many would the project eliminate?

**Not applicable. Parking demand and required supply is not addressed in the SMP.**

- d. Will the proposal require any new roads or streets, or improvements to existing roads or streets, not including driveways? If so, generally describe (indicate whether public or private).

**Not likely. Policies and regulations in the SMP are not likely to change transportation demand and needed facilities as provided for in the Comprehensive Plan.**

- e. Will the project use (or occur in the immediate vicinity of) water, rail, or air transportation? If so, generally describe.

**Uses governed by the SMP are adjacent to the water. To the extent that water-dependent uses are preferred, some increase in water transportation may occur.**

- f. How many vehicular trips per day would be generated by the completed project? If known, indicate when peak volumes would occur.

**The potential effects of the plan on transportation are addressed in Subsection C Supplemental Sheet for Non-project Actions. Policies and regulations in the SMP are not likely to change transportation demand from uses provided for in the Comprehensive Plan.**

- g. Proposed measures to reduce or control transportation impacts, if any:

**Policies and regulations in the SMP are designed to assure that new uses do not interfere with navigation.**

#### 15. Public services

- a. Would the project result in an increased need for public services (for example: fire protection, police protection, health care, schools, other)? If so, generally describe.

**The potential effects of the plan on public services are addressed in Subsection C Supplemental Sheet for Non-project Actions. Policies and regulations in the SMP are not likely to change the types of uses and needed public services provided for in the Comprehensive Plan.**

- b. Proposed measures to reduce or control direct impacts on public services, if any.

**See Subsection C Supplemental Sheet for Non-project Actions. Policies and regulations in the SMP are not likely to change the types of uses and needed public services provided for in the Comprehensive Plan.**

#### 16. Utilities

- a. Circle utilities currently available at the site: electricity, natural gas, water, refuse service, telephone, sanitary sewer, septic system, other.

**A variety of utility facilities are available throughout the city.**

- b. Describe the utilities that are proposed for the project, the utility providing the service, and the general construction activities on the site or in the immediate vicinity which might be needed.

**Policies and regulations in the SMP are not likely to change the types of uses and needed utility services provided for in the Comprehensive Plan.**

### **C. Supplemental Sheet for Non-project Actions**

1. How would the proposal be likely to increase discharge to water; emissions to air; production, storage, or release of toxic or hazardous substances; or production of noise?

**The purpose of the Shoreline Master Program (SMP) is to regulate uses on and adjacent to certain waters.**

**The policies and regulations in the SMP are not likely to produce or discharge emissions or toxins. The SMP addresses water quality and the release of substances to surface water.**

**The SMP does not contain specific detailed standards addressing noise but it is addressed to some extent in a variety of provisions including no net loss of ecological functions.**

**Elements within the SMP that are likely to affect emissions to air, or water include:**

**Section II General Regulations, 16.04.28 Water Quality, Stormwater, and Nonpoint Pollution; and Section III Critical Areas, PMC 16.04.10 through 16.04.60.**

**Noise is likely to be produced by a variety of uses permitted by the SMP in both construction and use. The SMP does not contain specific policies and regulations addressing noise but it is addressed to some extent through other provisions including no net loss of ecological functions.**

Proposed measures to avoid or reduce pollution increases are:

**Performance standards in the code sections above generally would reduce pollutants, in combination with other programs.**

**Programs by other city departments that affect discharge to water and water quality include Critical Areas, clearing and grading, stormwater management, and floodplain development regulations.**

2. How would the proposal be likely to affect plants, animals, fish, or marine life?

**Protection and enhancement of aquatic life and overall ecological function is one of the goals of the SMP. Major provisions that address this issue include:**

**Section III Critical Areas-- Various sections address buffers and setbacks**

**These provisions, together with specific performance standards for Shoreline Uses and Shoreline Modification (Section II), are designed to ensure that new development has minimal effects on aquatic and upland habitat.**

**Provisions for ecological enhancement are provided in the Restoration Plan and would be required for non-water-dependent commercial and industrial uses.**

**See also Cumulative Effects Analysis.**

**Overall, the combined results of the SMP on properties immediately adjacent to shorelines, the critical area regulations that address upstream conditions in watersheds not under SMP**

**jurisdiction, and various restoration activities on shorelines and in watersheds are likely to result in no net loss of ecological functions on Prosser shorelines. Over time, these actions would likely lead to improvements in the ecosystem.**

Proposed measures to protect or conserve plants, animals, fish, or marine life are:

**As indicated above, protection and enhancement of aquatic life and overall ecological function is one of the goals of the SMP and is addressed by a variety of policies and regulations.**

3. How would the proposal be likely to deplete energy or natural resources?

**Energy is used in a variety of public and private projects fostered by the City's Comprehensive Plan and the SMP.**

**Natural resources, such as aggregate and lime, are embodied in concrete and masonry, wood and other building materials.**

**It is not likely that the SMP will have a substantial effect on energy use or natural resources.**

Proposed measures to protect or conserve energy and natural resources are:

**No specific goals or policies in the SMP address energy and natural resources.**

4. How would the proposal be likely to use or affect environmentally sensitive areas or areas designated (or eligible or under study) for governmental protection; such as parks, wilderness, wild and scenic rivers, threatened or endangered species habitat, historic or cultural sites, wetlands, floodplains, or prime farmlands?

**Critical areas are defined by RCW 36.70A.030(5) and WAC 365-196-485 as:**

- **Wetlands;**
- **Areas of critical recharging effect on aquifers used for potable water;**
- **Fish and wildlife habitat conservation areas;**
- **Frequently flooded areas; and**
- **Geologically hazardous areas.**

**SMP, Section III Critical Areas, contains specific buffers and other standards appropriate to shorelines.**

**The SMP encourages shoreline oriented recreation use and recognizes parks as a major resource for public access.**

**Historic or cultural sites are addressed in SMP 16.04.27 Archaeological and Historic Resources.**

**There are no wilderness areas or wild and scenic rivers in the City of Prosser. The SMP is aimed to protect various functions of the Yakima River.**

Proposed measures to protect such resources or to avoid or reduce impacts are:

**The SMP will maintain and enhance protection of environmentally sensitive areas, endangered species habitat, wetlands, and floodplains in the city.**

5. How would the proposal be likely to affect land and shoreline use, including whether it would allow or encourage land or shoreline uses incompatible with existing plans?

**The SMP is intended to influence land uses with the SMA jurisdiction by fulfilling the general goals of the SMA which are:**

- **Protect shoreline natural resources, including "...the land and its vegetation and wildlife, and the water of the state and their aquatic life..."**
- **Promote public access: "the public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the state shall be preserved to the greatest extent feasible consistent with the overall best interest of the state and the people generally."**
- **Encourage water-dependent uses: "uses shall be preferred which are consistent with control of pollution and prevention of damage to the natural environment, or are unique to or dependent upon use of the states' shorelines..."**

**The general patterns of land use on the Prosser shoreline are well established. Most of the shoreline is developed and is less likely to change.**

Proposed measures to avoid or reduce shoreline and land use impacts are:

**The provisions of the SMP are designed to work together to provide a priority to water oriented use and provide performance standards to ensure ecological protection, public access and promote the land use vision in the City's Comprehensive Plan.**

6. How would the proposal be likely to increase demands on transportation or public services and utilities?

**None of the proposed changes in policies in the SMP are likely to increase demands on transportation. Impacts on transportation are likely to be similar to those expected impacts from development encouraged by the Comprehensive Plan and zoning.**

**The SMP also is not likely to change demands for public services and utilities from development impact upon the utility or change current practices.**

Proposed measures to reduce or respond to such demand(s) are:

**No specific measures are proposed in the SMP to reduce demands on transportation, public services and utilities.**

**These issues are addressed in the Comprehensive Plan and other city policies and respond to city-wide trends.**

7. Identify, if possible, whether the proposal may conflict with local, state, or federal laws or requirements for the protection of the environment.

**The proposed changes in policies in the SMP do not conflict with any known local, state, or federal laws or requirements for the protection of the environment and are designed to implement such programs, specifically the requirements of the SMA.**

## D. SIGNATURE

The above answers are true and complete to the best of my knowledge. I understand that the lead agency is relying on them to make its decision.

Signature: 

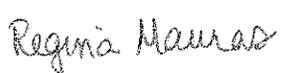
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Name: Ferdouse Oneza  
Oneza & Associates  
1508 44th Ave SW, Unit B  
Seattle, WA 98116  
Phone 509-845-2453

Date Submitted: January 23, 2014

CITY OF PROSSER, WASHINGTON

**AGENDA BILL**

<u>Agenda Title:</u> Review and Discuss Proposed Ordinance 14 - _____ Enacting Prosser Municipal Code 2.09 Establishing a Code of Ethics.		<u>Meeting Date:</u> March 4, 2014 Work Session	
<u>Department:</u> Finance	<u>Director:</u> Regina Mauras	<u>Contact Person:</u> Regina Mauras	<u>Phone Number:</u> (509) 786-8225
<u>Cost of Proposal:</u> \$0		<u>Account Number:</u> n/a	
<u>Amount Budgeted:</u> \$0		<u>Name and Fund#:</u> n/a	
<u>Reviewed by Finance Department:</u> 			
<u>Attachments to Agenda Packet Item:</u>  1. Prosser Municipal Code 2.09: Code of Ethics			
<u>Summary Statement:</u>  While, there are RCW's and some personnel policies which address the ethical responsibilities of elected officials, appointed officials, and other staff, it is important to establish clear expectations. The proposed code section was drafted with this intent. It is also an important component of the City's internal controls.			
<u>Consistent with or Comparison to:</u>  EXISTING ADOPTED OR PREVIOUS PLANS, POLICIES OR ACTIONS TAKEN BY THE COUNCIL			
<u>Recommended City Council Action/Suggested Motion:</u>  Review and Discuss Proposed Ordinance 14 - _____ Enacting Prosser Municipal Code 2.09 Establishing a Code of Ethics.			
<u>Reviewed by Department Director:</u>    Date: 2-27-2014	<u>Reviewed by City Attorney:</u>    Date: 2/27/14	<u>Approved by Mayor:</u>    Date: 2-28-14	
<u>Today's Date:</u>  February 27, 2014	<u>Revision Number/Date:</u>	<u>File Name and Path:</u>	

CITY OF PROSSER, WASHINGTON  
ORDINANCE NO. 14-\_\_\_\_\_

AN ORDINANCE ENACTING PROSSER MUNICIPAL CODE 2.09 ESTABLISHING A CODE OF ETHICS; AND SETTING FORTH ITS EFFECTIVE DATE AND PROVIDING FOR PUBLICATION BY SUMMARY.

WHEREAS, the proper operation of democratic representative government requires that elected and appointed public officers and employees be independent, impartial, and responsible to the people; and

WHEREAS, that government decisions and policy be made in the proper channels of the government structure; that public office not be used for personal gain; and that the public have confidence in the integrity of its government; and

WHEREAS, accordingly it is the purpose of this code to establish ethical standards of conduct for all officers and employees of the city, whether elected or employees, paid or unpaid; to set forth those acts that are incompatible with such standards; to require disclosure of such officers and employees of private financial or other interest matters affecting the city; and to provide effective means for enforcement thereof.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF PROSSER, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Section 2.09.010 of the Prosser Municipal Code is hereby enacted to read as follows:

**2.09.010 Definition**

The following definitions shall apply to this Chapter:

**Beneficial interest.** Any direct or indirect, pecuniary or material benefit, other than a remote interest, accruing to a city officer or employee as a result of a contract, transaction, zoning decision or other matter which is or may be the subject of an official act or act by or with the city, except for such contracts, transactions, zoning decisions or other matters which by their terms and by the substance or their provisions confer the opportunity and right to realize the accrual of similar benefits to all other persons and/or property similarly situated. For purposes of this chapter, a city officer or employee shall be deemed to have an interest in the affairs of:

The city official's or employee's immediate family;

Any person or business entity with whom a contractual relationship, whether oral or written, exists with the city official or employee;

Any business entity in which the city officer or employee is an officer, director, member or employee;

Any business entity in which the city official or employee controls or owns, directly or indirectly, in excess of one percent of the total stock, or an interest totaling \$5,000 or more in value; and

Any person or business entity with whom a contractual relationship, whether oral or written, exists with the city official or employee; provided, however, that a contractual obligation of less than \$500.00, or a commercially reasonable lien made in the ordinary course of business, or a contract for a commercial retail sale, shall not be deemed to create an interest in violation of this code.

**Business entity.** Any corporation, general or limited partnership, sole proprietorship (including a private consultant operation), joint venture, unincorporated association or firm, institution, trust, foundation, or other organization, whether or not organized for profit.

**City agency.** Every department, office, board, council, commission, or committee of the city, or any subdivision thereof,

**City official or employee.** Any person holding a position by election, appointment, or employment in the service of the city or city agency, whether paid or unpaid, including members of any board, committee or commission. So long as the position of city attorney is held by an independent contractor, the term city official or employee shall exclude the position of city attorney.

**Compensation.** Anything of economic value, however designated, which is paid, loaned, advanced, granted, given or transferred for or in consideration of personal services to any person.

**Immediate family.** Any person who is related to the city official or employee as:

A spouse or domestic partner; or

A dependent parent, parent-in-law, child, son-in-law, daughter-in-law; or

A parent, parent-in-law, child, son-in-law, daughter-in-law, sibling, uncle, aunt, cousin, niece, or nephew residing in the household of the city official or employee.

**Official act or action.** Any legislative, administrative, appointive or discretionary act of any city official or employee of the city or committee or commission thereof.

**Person.** Any individual, association, corporation, or other legal entity.

**Remote Interest.**

That of a non-salaried officer of a nonprofit corporation;

That of an employee or agent of a contracting party where the compensation of such employee or agent consists entirely of fixed wages or salary;

That of a landlord or tenant of a contracting party;

That of a holder of less than one percent of the shares of a corporation or cooperative which is a contracting party.

**Section 2.** Section 2.09.020 of the Prosser Municipal Code is hereby enacted to read as follows:

**2.09.020 Responsibilities**

- A. Personal Standards. City officials and employees shall demonstrate and be dedicated to the highest ideals of honor and integrity in all public and personal relationships to merit the respect, trust, and confidence of governing officers, other public officials, employees, and the public. Sometimes the ethical choice is not clear, and when in doubt, assistance and guidance can be sought from department supervisor or manager before acting.
- B. Public Officials. Shall be sensitive and responsive to the rights of the public and its changing needs; shall strive to provide the highest quality of performance and counsel; shall exercise prudence and integrity in the management of funds in their custody and in all financial transactions.
- C. Professional Development. Elected and appointed city officials shall be responsible for maintaining their own competence, for enhancing the competence of their colleagues, and promoting excellence in public service.

**Section 3.** Section 2.09.030 of the Prosser Municipal Code is hereby enacted to read as follows:

**2.09.030 Common Sense**

In observance of this code, as in other conduct, there is no substitute for common sense. Each city official or employee should apply this code with common sense and the attitude of seeking full compliance with the letter and spirit of the rules presented. The code shall act as a general guide to acceptable and appropriate behavior and city officials and employees are expected to comply with its contents. The absence of a specific guideline, practice, or instruction covering a particular situation does not relieve any city official or employee from exercising the highest ethical standards applicable to the circumstance. Assistance and guidance can be sought from the department supervisor or manager, City Administrator, or City Attorney.

**Section 4.** Section 2.09.040 of the Prosser Municipal Code is hereby enacted to read as follows:

## 2.09.040 Conflicts of Interest

**Conflicts of Interest.** There are several situations that could give rise to a conflict of interest. Some common ones are outlined in the sections that follow. A potential conflict of interest exists for city employees who make decisions in their jobs that allow them to give preference or favor a customer or vendor in exchange for anything of personal benefit to themselves, friends, or family. No city official or employee, while holding such office or employment, shall:

- A. Engage in any transaction or activity, which is, or would to a reasonable person appear to be, in conflict with or incompatible with the proper discharge of official duties, or which impairs, or would to a reasonable person appear to impair, the city official's or employee's independence of judgment or action in the performance of their official duties and fail to disqualify himself or herself from official action in those instances where the conflict occurs;
- B. Have a financial or other private interest, other than a remote interest as defined in this chapter, direct or indirect, personally or through a member of his or her immediate family, or business entity, in any matter upon which the city official or employee is required to act in the discharge of his or her official duties, and fail to disqualify himself or herself from acting or participating;
- C. Fail to disqualify himself or herself from acting on any transaction which involves the city and any person who is, or at any time within the preceding 12-month period has been, a private client of his or hers, or of his or her firm or partnership;
- D. Have a financial or other private interest, other than a remote interest as defined in this chapter, direct or indirect, personally or through a member of his or her immediate family, or business entity, in any contract or transaction to which the city or any city agency may be a party, and fail to disclose such interest to the appropriate city authority prior to the formation of the contract or the time the city or city agency enters into the transaction; or
- E. City employees shall not directly or indirectly engage in any outside employment or financial interest which may conflict, in the City's reasonable opinion, with the best interests of the City or interfere with the city employee's ability to perform his/her assigned City position, including, but are not limited to, outside employment which:
  - 1. Prevents the city employee from being available for work beyond normal working hours, such as emergency or peak work periods; or
  - 2. Is conducted during the city employee's work hours; or
  - 3. Utilizes city telephones, computers, supplies, or any other resource, facility or equipment; or
  - 4. May reasonably be perceived by members of the public as a conflict of interest or otherwise discredits public service.

**Section 5.** Section 2.09.050 of the Prosser Municipal Code is hereby enacted to read as follows:

**2.09.050 Improper Use of Official Position**

No city official or employee, while holding such office or employment, shall:

- A. Use his or her official position for a purpose that is, or would to a reasonable person appear to be, primarily for the private benefit of the city official or employee, rather than primarily for the benefit of the city; or to achieve a private gain or an exemption from duty or responsibility for the city official or employee or any other person;
- B. Use or permit the use of any person, funds, or property under his or her official control, direction, or custody, or of any city funds or city property, for a purpose which is, or to a reasonable person would appear to be, for other than a city purpose; provided, that nothing shall prevent the private use of city property which is available on equal terms to the public generally (such as the use of library books or tennis courts); the use of city property in accordance with municipal policy for the conduct of official city business (such as the use of a city automobile), if in fact the property is used appropriately; or the use of city property for participation of city or city officials or employees in activities of associations of governments or governmental officials;
- C. Except in the course of official duties, assist any person in any city transaction where such city official's or employee's assistance is, or to a reasonable person would appear to be, enhanced by that city official's or employee's position with the city; provided, that this subsection shall not apply to any city official or employee appearing on his or her own behalf or representing himself or herself as to any matter in which he or she has a proprietary interest, if not otherwise prohibited by this chapter or any other applicable ordinance, regulation or statute; or
- D. Regardless of prior disclosure thereof, have a financial interest, direct or indirect, personally or through his or her immediate family, in a business entity doing or seeking to do business with the city, and influence or attempt to influence the selection of, or the conduct of business with, such business entity by the city.

**Section 6.** Section 2.09.060 of the Prosser Municipal Code is hereby enacted to read as follows:

**2.09.060 Acceptance of Gift**

No city official or employee, while holding such office or employment, and for a period of one year following such office or employment, shall solicit or receive any retainer, gift, loan, entertainment, favor, proprietary reward, or other thing of monetary value from any person or entity where the retainer, gift, loan, entertainment, favor, proprietary award, or other thing of monetary value had been solicited, received or given would to a

reasonable person appear to have been solicited, received or given, with intent to give or obtain special consideration or influence as to any action by such city official or employee in his or her official capacity; provided, that nothing shall prohibit contributions to election campaigns which are solicited or received and reported in accordance with applicable law.

- A. Gifts are goods or services that are given by any outside party to a city official or employee but do not include the following items: Items of a minimum value given in connection with sales campaigns or promotions; or employee service, safety, or retirement awards.
- B. City officials or employees who receive, or whose immediate family receives, a gift prohibited by these guidelines, shall report it to his/her supervisor and either return it to the person making the gift or, in the case of perishable gifts, give it to a nonprofit charitable organization.

**Section 7.** Section 2.09.070 of the Prosser Municipal Code is hereby enacted to read as follows:

**2.09.070 Disclosure of Confidential or Privileged Information**

No city official or employee, while holding such office or employment, or at any time after leaving office or employment, shall disclose or use any confidential or privileged information gained by reason of his or her official position for a purpose which is for other than a city purpose; provided, that nothing shall prohibit the disclosure or use of information which is a matter of public knowledge, or which is available to the public on request.

**Section 8.** Section 2.09.080 of the Prosser Municipal Code is hereby enacted to read as follows:

**2.09.080 Financial or Beneficial Interest in City Transaction**

No city official or employee, while holding such office or employment, shall:

- A. Regardless of prior disclosure thereof, hold or acquire a beneficial interest, direct or indirect, personally or through a member of his or her immediate family, in any contract which, in whole or in part, is, or which may be, made by, through, or under the supervision of such city official or employee or which may be made for the benefit of his or her office, or accept, directly or indirectly, any compensation, gratuity, or reward in connection with such contract from any other person or entity beneficially interested therein, in violation of Chapter 42.23 RCW; or
- B. Regardless of prior disclosure thereof, be beneficially interested, directly or indirectly, other than a remote interest, in any contract or transaction which may be made by, through or under the supervision of such city official or employee, in whole or in part, or which may be made for the benefit of his or her official position, or accept, directly or indirectly, any compensation, gratuity or reward in

connection with such contract or transaction from any other person beneficially interested therein, in violation of Chapter 42.23 RCW. This subsection shall not apply to the furnishing of water, other utility services, or other services of the city at the same rates and on the same terms as are available to the public generally, or to any other transaction specifically exempted by Chapter 42.23 RCW.

**Section 9.** Section 2.09.090 of the Prosser Municipal Code is hereby enacted to read as follows:

**2.09.090 Quasi-Judicial Proceedings**

To the extent that this section is inconsistent with Prosser Municipal Code Chapter 19.05, the provisions of Chapter 19.05 shall prevail. No city official or employee, while holding such office or employment, shall:

- A. Participate in or influence any pending quasi-judicial proceeding if the city official or employee has a financial or personal interest in the matter;
- B. Intimidate, harass, discipline or otherwise take any improper action against a member of the public, a city official or employee solely because he or she in good faith has reported a violation of this code of ethics, or any other written city code or policy; or
- C. Induce or direct any city official or employee to make any false statement or representation of any public record or document in willful disregard of the truth of such statement or representation.

**Section 10.** Section 2.09.100 of the Prosser Municipal Code is hereby enacted to read as follows:

**2.09.100 Prohibited Conduct After Leaving City Office or Employment**

- A. No former city official or employee shall, for a period of one year after leaving city office or employment:
  - 1. Assist any person in proceedings involving the agency of the city with which he/she was previously employed, or on a matter in which he/she was officially involved, participated, or acted in the course of duty;
  - 2. Represent any person as an advocate in any matter in which the former city official or employee was officially involved while a city official or employee; or
  - 3. Participate as a competitor in any competitive selection process for a city contract in which he or she assisted the city in determining the project or work to be done or the process to be used.
- B. A city official or employee, who contracts with a former city official or employee for expert or consultant services within one year of the latter's leaving city office

or employment, shall promptly inform the city administrator about the agreement.

- C. The prohibition of subsection A of this section shall not apply to former city officials or employees acting on behalf of a government agency unless such assistance or representation is adverse to the interest of the city.

**Section 11.** Section 2.09.110 of the Prosser Municipal Code is hereby enacted to read as follows:

**2.09.110 Disclosure of Interest**

- A. Any member of the City Council who has a financial interest or personal interest in any proposed legislation before the council shall disclose on the record the nature and extent of such interest. If the member of council would be especially benefited by such legislation, the Council Member shall not participate in the discussion or vote upon such matter.
- B. Any other city official or employee who has a financial or personal interest in any proposed legislative action of the City Council and who participates in the discussion with or gives an official opinion or recommendation to the council shall disclose on the record the nature and extent of such interest.

**Section 12.** Section 2.09.120 of the Prosser Municipal Code is hereby enacted to read as follows:

**2.09.120 Complaints and Investigations**

- A. Any person may file a complaint alleging a violation of this code.
- B. The city will follow the process and terms outlined in City of Prosser Personnel Policy 914.

**Section 13.** Section 2.09.130 of the Prosser Municipal Code is hereby enacted to read as follows:

**2.09.130 Violation and Disciplinary Action**

- A. Violations of this code can result in serious consequences for the City, its credibility, and the confidence of our residents; and can include substantial fines and restrictions on future operations as well as possible fines and prison sentences for individual city officials and employees. Those found in violation of this code are punishable pursuant to applicable collective bargaining agreement up to and including termination and criminal prosecution.
- B. Disciplinary action might also be taken against city officials or employees who condone, permit, or have knowledge of illegal or unethical conduct and do not take corrective action

- C. Disciplinary action might also be taken against city officials or employees who make false statements in connections with the complaint investigation.

**Section 14.** Section 2.09.140 of the Prosser Municipal Code is hereby enacted to read as follows:

**2.09.140 Compliance Review**

- A. A review of ethical behavior will be incorporated into the annual performance review of employees.
- B. Other methods of compliancy review include but are not limited to: regular and unannounced audits, routine debriefing about the outcomes of complex or difficult organization decisions, and recognizing those employees that demonstrate a strong commitment to ethical behavior.

**Section 15.** Section 2.09.150 of the Prosser Municipal Code is hereby enacted to read as follows:

**2.09.150 Inconsistencies.**

Except as provided for in Section 2.09.090, to the extent that the provisions of this Chapter are inconsistent with any other provision of the Prosser Municipal Code or the City's personnel policy, as now existing or as hereafter amended, the more restrictive provision shall prevail. To the extent that the provisions of this Chapter are inconsistent with the provisions of any city-approved collective bargaining agreement, then the provision of the collective bargaining agreement shall prevail. To the extent that any section of this Chapter is inconsistent with another section of this Chapter, then the provisions of the more permissive section of this Chapter shall prevail.

**Section 16.** Section 2.09.990 of the Prosser Municipal Code is hereby enacted to read as follows:

**2.09.990 Severability.**

If any section, subsection, sentence, clause, paragraph, phrase, or word of this chapter should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality thereof shall not affect the validity or constitutionality of any other section, subsection, sentence, clause, paragraph, phrase or word of this chapter.

**Section 17. SEVERABILITY.** The provisions of this ordinance are hereby declared to be severable. If any section, subsection, sentence, clause, or phrase of this ordinance or its application to any person or circumstance is for any reason held to be invalid or unconstitutional, the remainder of this ordinance shall not as a result of said section, sentence, clause, or phrase be held unconstitutional or invalid.

**Section 18.** This ordinance shall take effect five (5) days after passage and publication of an approved summary thereof consisting of the title.

**PASSED** by the City Council and **APPROVED** by the Mayor, this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
**MAYOR PAUL WARDEN**

ATTEST:

\_\_\_\_\_  
**CITY CLERK, RACHEL SHAW**

Approved as to form:

\_\_\_\_\_  
**CITY ATTORNEY, HOWARD SAXTON**

Date of Publication: \_\_\_\_\_

SUMMARY OF ORDINANCE NO. 14-\_\_\_\_\_

of the City of Prosser, Washington

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On the \_\_\_\_ day of \_\_\_\_\_, 2014, the City of Prosser, Washington, passed Ordinance No. \_\_\_\_\_. A summary of the content of said ordinance, consisting of the title, provides as follows:

**AN ORDINANCE ENACTING PROSSER MUNICIPAL CODE 2.09 ESTABLISHING A CODE OF ETHICS; AND SETTING FORTH ITS EFFECTIVE DATE AND PROVIDING FOR PUBLICATION BY SUMMARY.**

The full text of this Ordinance will be mailed upon request.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2014

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CITY CLERK, RACHEL SHAW

CITY OF PROSSER, WASHINGTON

**AGENDA BILL**

<u>Agenda Title:</u> Review, Discuss and Provide Direction to Staff on Proposed Ordinance 14 - ____ Allowing WATV on Public Streets.		<u>Meeting Date:</u> March 4, 2014 Work Session	
<u>Department:</u> Admin	<u>Director:</u> Paul Warden	<u>Contact Person:</u> Paul Warden	<u>Phone Number:</u> (509) 786-8216
<u>Cost of Proposal:</u> \$0		<u>Account Number:</u> n/a	
<u>Amount Budgeted:</u> \$0		<u>Name and Fund#:</u> n/a	
<u>Reviewed by Finance Department:</u>			
<u>Attachments to Agenda Packet Item:</u>			
1. Proposed Ordinance 14 - ____ 2. WATV MRSC Article			
<u>Summary Statement:</u>			
At a Council session last fall (2013), a group of local residents came to ask the Council if it were possible for WATV's to be allowed on city streets. The State legislature passed legislation in effect now to allow such use if cities saw fit. At least one other city (East Wenatchee) has adopted an ordinance allowing street use of WATV in city limits.			
<u>Consistent with or Comparison to:</u>			
EXISTING ADOPTED OR PREVIOUS PLANS, POLICIES OR ACTIONS TAKEN BY THE COUNCIL			
<u>Recommended City Council Action/Suggested Motion:</u>			
Review, Discuss and Provide Direction to Staff on Proposed Ordinance 14 - ____ Allowing WATV on Public Streets.			
<u>Reviewed by Department Director:</u>  Date: 2-28-14	<u>Reviewed by City Attorney:</u>  Date: 2/28/14	<u>Approved by Mayor:</u>  Date: 2-28-14	
<u>Today's Date:</u> February 26, 2014	<u>Revision Number/Date:</u>	<u>File Name and Path:</u>	

**CITY OF PROSSER, WASHINGTON**  
**ORDINANCE NO. 14-\_\_\_\_\_**

**AN ORDINANCE ALLOWING DRIVERS 21 YEARS AND OLDER TO OPERATE WHEELED ALL-TERRAIN VEHICLES ON CITY STREETS WITH A SPEED LIMIT OF 35 MILES PER HOUR OR LESS BY ENACTING CHAPTER 10.60 OF THE CITY OF PROSSER MUNICIPAL CODE. THE ORDINANCE ALSO SETS FORTH THE EFFECTIVE DATE OF THE ORDINANCE AND PROVIDES THAT ITS PROVISIONS ARE SEVERABLE FROM ONE ANOTHER AND PROVIDES FOR PUBLICATION BY SUMMARY.**

**WHEREAS**, RCW 35A.11.020 and RCW 35A.12.190 authorize the City Council to adopt ordinances of all kinds to regulate its municipal affairs and appropriate to the good government of the City; and

**WHEREAS**, The City of Prosser (“City”) is a non-charter code City duly incorporated and operating under the laws of the State of Washington; and; and

**WHEREAS**, On June 28, 2013, the Washington House of Representatives passed ESHB 1632 by a vote of 81-11; and

**WHEREAS**, On June 29, 2013, the Washington Senate passed ESHB 1632 by a vote of 39-5; and

**WHEREAS**, On July 3, 2013, Washington’s Governor signed ESHB 1632; and

**WHEREAS**, On July 28, 2013, ESHB became effective law; and

**WHEREAS**, in passing ESHB 1632, the legislature intend to: (a) Increase opportunities for safe, legal, and environmentally acceptable motorized recreation; (b) decrease the amount of unlawful or environmentally harmful motorized recreation; (c) generate funds for use in maintenance, signage, education, and enforcement of motorized recreation opportunities; (d) advance a culture of self-policing and abuse intolerance among motorized recreationists; (e) cause no change in the policies of any governmental agency with respect to public land; (f) not change any current ORV usage routes; (g) stimulate rural economies by opening certain roadways to use by motorized recreationists which will in turn stimulate economic activity through expenditures on gasoline, lodging, food and drink, and other entertainment purposes; and (h) require all wheeled all-terrain vehicles to obtain a metal tag; and

**WHEREAS**, To be consistent with the legislative intent to ESHB, the City Council of Prosser (“City Council”) finds that it is in the best interests of the City and its citizens to allow licensed drivers who have attained the age of twenty-one years to operate wheeled all-terrain vehicles on all City streets with speed limits of 35 miles per hour or less;

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF PROSSER, WASHINGTON, DO ORDAIN AS FOLLOWS:

**Section 1.** The City Council enacts Prosser Municipal Code section 10.60.010 to read as follows.

**10.60.010 Definitions.**

When used in this chapter, the city defines the words and phrases listed below as follows:

“City” means the City of Prosser, its elected officials, its employees, and its agents.

“City street” means every way, lane, road, street, boulevard, and every way or place in the City open as a matter of right to public vehicular traffic inside the city limits.

“Motorcycle helmet” has the same meaning as provided in RCW 46.37.530.

“Sidewalk” means that property between the curb lines or the lateral lines of a city street and the adjacent property, set aside and intended for the use of pedestrians or such portion of private property parallel and in proximity to a city street and dedicated to use by pedestrians.

“Rules of the road” means all the rules that apply to vehicle or pedestrian traffic as set forth in state statute, rule or regulation.

“Wheeled all-terrain vehicle” means (a) any motorized nonhighway vehicle with handlebars that is 50 inches or less in width, has a seat height of at least 20 inches, weighs less than 1,500 pounds, and has four tires having a diameter of 30 inches or less, or (b) a utility-type vehicle designed for and capable of travel over designated roads that travels on four or more low-pressure tires of 20 psi or less, has a maximum width less than 74 inches, has a maximum weight less than two thousand pounds, has a wheelbase of 110 inches or less, and satisfies at least one of the following: (i) Has a minimum width of 50 inches; (ii) has a minimum weight of at least nine hundred pounds; or (iii) has a wheelbase of over 61 inches. A wheeled all-terrain vehicle is an off-road vehicle for the purposes of chapter 4.24 RCW.

**Section 2.** The City Council enacts Prosser Municipal Code section 10.60.020 to read as follows.

**10.60.020 Use of wheeled all-terrain vehicle on city streets.**

Subject the restrictions and requirements set forth in this Chapter, a person who has attained the age of twenty one years and who has a valid driver’s license issued by the state of the person’s residence may operate a wheeled all-terrain vehicle upon a city street having a speed limit of 35 miles per hour or less.

**Section 3.** The City Council enacts Prosser Municipal Code section 10.60.030 to read as follows.

**10.60.030 Restrictions on use of wheeled all-terrain vehicle on city streets.**

A. A person who operates a wheeled all-terrain vehicle must wear a securely fastened motorcycle helmet while the vehicle is in motion.

B. A person may not operate a wheeled all-terrain vehicle upon state route number 22; however, a person may cross state route number 28 at a controlled intersection if the crossing begins and ends on a city street with a speed limit of 35 miles per hour or less and occurs at an intersection of approximately 90 degrees;

C. A person may not operate a wheeled all-terrain vehicle upon a city street with a speed limit in excess of 35 miles per hour; however, a person may cross a city street with a speed limit in excess of 35 miles per hour at a controlled intersection if the crossing begins and ends on a city street with a speed limit of 35 miles per hour or less and occurs at an intersection of approximately 90 degrees;

D. A person may operate a wheeled all-terrain vehicle upon any city street while being used under the authority or direction of an appropriate agency that engages in emergency management, as defined in RCW 46.09.310, or search and rescue, as defined in RCW 38.52.010, or a law enforcement agency, as defined in RCW 16.52.011, within the scope of the agency's official duties; and

E. Wheeled all-terrain vehicles are subject to chapter 46.55 RCW.

**Section 4.** The City Council enacts Prosser Municipal Code section 10.60.010 to read as follows.

**10.60.040 Equipment requirements of a wheeled all-terrain vehicle.**

A wheeled all-terrain vehicle operated on a city street must comply with the following equipment requirements:

A. Headlights meeting the requirements of RCW 46.37.030 and 46.37.040 and used at all times when the vehicle is in motion;

B. One tail lamp meeting the requirements of RCW 46.37.525 and used at all times when the vehicle is in motion upon a city street; however, a utility-type vehicle, as described under RCW 46.09.310, must have two tail lamps meeting the requirements of RCW 46.37.070(1) and to be used at all times when the vehicle is in motion upon a city street;

C. A stop lamp meeting the requirements of RCW 46.37.200;

D. Reflectors meeting the requirements of RCW 46.37.060;

E. During hours of darkness, as defined in RCW 46.04.200, turn signals meeting the requirements of RCW 46.37.200;

F. Outside of hours of darkness, the operator must comply with RCW 46.37.200

or 46.61.310;

G. A mirror attached to either the right or left handlebar, which must be located to give the operator a complete view of the city street for a distance of at least two hundred feet to the rear of the vehicle; however, a utility-type vehicle, as described under RCW 46.09.310(19), must have two mirrors meeting the requirements of RCW 46.37.400;

H. A windshield meeting the requirements of RCW 46.37.430, unless the operator wears glasses, goggles, or a face shield while operating the vehicle, of a type conforming to rules adopted by the Washington state patrol;

I. A horn or warning device meeting the requirements of RCW 46.37.380;

J. Brakes in working order;

K. A spark arrester and muffling device meeting the requirements of RCW 46.09.470; and

L. For utility-type vehicles, as described under RCW 46.09.310(19), seatbelts meeting the requirements of RCW 46.37.510.

M. Must have an individual seat for each occupant designed to seat a person.

**Section 5.** The City Council enacts Prosser Municipal Code section 10.60.050 to read as follows.

**10.60.050 Registration requirements of a wheeled all-terrain vehicle.**

A wheeled all-terrain vehicle operated on a city street must comply with all the registration requirements of chapter 49.06 RCW.

**Section 6.** The City Council enacts Prosser Municipal Code section 10.60.060 to read as follows.

**10.60.060 Duty to obey traffic-control devices and rules of the road.**

Unless a police officer directs otherwise, a person operating a wheeled all-terrain vehicle must obey all rules of the road that apply to vehicle or pedestrian traffic and must obey the instructions of official traffic-control signals, signs and other control devices applicable to vehicles. A person operating a wheeled all-terrain vehicle upon a city street is subject to all of the duties that Chapter 46.61 RCW et seq. imposes on an operator of a vehicle, except as to those provisions thereof which by their nature can have no application.

**Section 7.** The City Council enacts Prosser Municipal Code section 10.60.070 to read as follows.

**10.60.070 Prohibited Uses.**

A. No person may operate or ride a wheeled all-terrain vehicle in a negligent or unsafe manner, but must operate it with reasonable regard for his or her own safety and for the safety of others.

B. No person may occupy a wheeled all-terrain vehicle unless that person is seated in a seat designed to carry a person. No may tow other devices or persons behind a wheeled all-terrain vehicle.

C. No person may operate a wheeled all-terrain vehicle side-by-side in a single lane of traffic.

**Section 8.** The City Council enacts Prosser Municipal Code section 10.60.010 to read as follows.

**10.60.080 Prohibited areas.**

A. It is unlawful to operate a wheeled all-terrain vehicle on a sidewalk or other area where it is unlawful to operate a motor vehicle.

B. It is unlawful to operate a wheeled all-terrain vehicle in a park, except on a park drive or in a designated parking lot.

C. It is unlawful to operate a wheeled all-terrain vehicle on any bicycle trail or walking path or in any bicycle lane.

**Section 9.** The City Council enacts Prosser Municipal Code section 10.60.010 to read as follows.

**10.60.090 Violation - Penalty.**

A person who violates a provision of this chapter is guilty of a traffic infraction and will be punished by the imposition of a monetary penalty not to exceed \$250.00, exclusive of statutory assessments; provided, that conduct that constitutes a criminal offense may be charged as such and is subject to the maximum penalties allowed for such offenses.

**Section 10.** The City Council enacts Prosser Municipal Code section 10.60.010 to read as follows.

**10.60.990 Severability.**

If any section, subsection, sentence, clause, paragraph, phrase, or word of this chapter should be held to be invalid or unconstitutional by a court of competent jurisdiction, such

invalidity or unconstitutionality thereof shall not affect the validity or constitutionality of any other section, subsection, sentence, clause, paragraph, phrase or word of this chapter.

**Section 11. SEVERABILITY.** The provisions of this ordinance are hereby declared to be severable. If any section, subsection, sentence, clause, or phrase of this ordinance or its application to any person or circumstance is for any reason held to be invalid or unconstitutional, the remainder of this ordinance shall not as a result of said section, sentence, clause, or phrase be held unconstitutional or invalid.

**Section 12.** This ordinance shall take effect five (5) days after passage and publication of an approved summary thereof consisting of the title.

**PASSED** by the City Council and **APPROVED** by the Mayor, this \_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
**MAYOR PAUL WARDEN**

ATTEST:

\_\_\_\_\_  
**CITY CLERK, RACHEL SHAW**

Approved as to form:

\_\_\_\_\_  
**CITY ATTORNEY, HOWARD SAXTON**

Date of Publication: \_\_\_\_\_

SUMMARY OF ORDINANCE NO. 14-\_\_\_\_\_

of the City of Prosser, Washington

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On the \_\_\_\_ day of \_\_\_\_\_, 2014, the City of Prosser, Washington, passed Ordinance No. \_\_\_\_\_. A summary of the content of said ordinance, consisting of the title, provides as follows:

AN ORDINANCE ALLOWING DRIVERS 21 YEARS AND OLDER TO OPERATE WHEELED ALL-TERRAIN VEHICLES ON CITY STREETS WITH A SPEED LIMIT OF 35 MILES PER HOUR OR LESS BY ENACTING CHAPTER 10.60 OF THE CITY OF PROSSER MUNICIPAL CODE. THE ORDINANCE ALSO SETS FORTH THE EFFECTIVE DATE OF THE ORDINANCE AND PROVIDES THAT ITS PROVISIONS ARE SEVERABLE FROM ONE ANOTHER AND PROVIDES FOR PUBLICATION BY SUMMARY.

The full text of this Ordinance will be mailed upon request.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2014

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CITY CLERK, RACHEL SHAW

## All-Terrain Vehicles Renamed and Rolling!

Posted on July 23, 2013 by [Jim Doherty](#)

The 2013 Legislature has significantly changed the statutes relating to the use of all-terrain vehicles (ATVs) and other types of off-road vehicles in the State of Washington. [ESHB 1632](#) (Laws of 2013, 2d Spec. Sess., ch. 23), which goes into effect on July 28th, is going to require jurisdictions to reconsider the use of these vehicles by the public, and to confront safety issues.

In ESHB 1632, the Legislature changed some basic terminology: many of the off-road vehicles commonly referred to as ATVs are now designated under state law as “wheeled all-terrain vehicles” (WATV). The definition of WATV is quite detailed and is found [in subsection 19 of Section 2 \(and 3!\)](#) of the legislation, both amending [RCW 46.09.310](#).

Significantly, ESHB 1632 changes where these vehicles can be allowed to operate. Some cities, towns, and counties may soon get requests from individuals or groups who want their legislative body to allow WATV use on roads with a speed limit of 35 mph or less. It will be up to the legislative body in each jurisdiction to decide whether WATVs will be allowed to operate on those lower speed roads – see [Section 6](#) of the legislation for details. (Note that existing law applies to require that a person operating a WATV on-road must possess a valid driver’s license, although the person is not required to have motor vehicle insurance.)

In cities and towns, operation of WATVs on roads within their jurisdiction with a speed limit of 35 MPH or less is not allowed unless the council, by ordinance, approves.

County decisions regarding WATV use will govern only unincorporated portions of the county. In counties with a population of 15,000 or more, WATVs are not allowed on public roads within the county (not including nonhighway roads and trails) with a speed limit of 35 MPH or less, unless the county legislative authority, by ordinance, approves their use. In counties with a population of less than 15,000, WATVs are specifically allowed on all roadways with a speed limit of 35 MPH or less unless the county legislative body, by ordinance, designates specific roadways within its boundaries to be unsuitable for use by WATVs.

Counties, cities, and towns are required to compile a list of streets open to WATV use or, in counties under 15,000 population, restricted from WATV use – and the list must be public and made accessible from the main page of the jurisdiction’s website (if a jurisdiction has one). WATV users must be able to go to the official website of the jurisdiction and easily see whether or where WATV use is permitted. If a jurisdiction decides to prohibit WATVs from operating on any roads within the jurisdiction, that can be indicated on the website without the need to compile a road list.

Other highlights of the legislation:

- WATV owners will now need to acquire and affix a license, which must be renewed every seven years. There is an additional licensing tab that must be obtained and affixed to the license if the vehicle is operated on a public roadway.
- All WATVs operated on public roads must have designated equipment, such as lights, brake lamp(s), reflectors, rear view mirror, etc., and have documentation of a safety inspection done by a licensed WATV dealer or repair shop – see [Section 7](#) of the bill for details.

- Off road vehicles are now specifically allowed to be operated on any trails, non-highway roads, or highways when engaged in emergency management purposes, in addition to search and rescue operations.
- An owner of a WATV that will be operated on public roads must sign a form releasing the state of any liability and stating that the owner understands that the vehicle was not manufactured for on-road use.
- A county may, by ordinance, designate a road or highway within its boundaries to be suitable for use by off-road vehicles – now regardless of whether that road or highway serves as a connection between a city of less than 3000 population and an off-road vehicle recreation facility.

The legislation contains many other provisions that should be reviewed carefully by local legislative bodies and by those enforcing traffic laws.

When issues regarding WATV use come knocking on your door, we highly recommend that you knock on your legal counsel's door. I hope that we all bring some common sense to the table: should vehicles not designed for public road use be allowed on public roads, and, if so, where? What do your law enforcement officials think? What do your residents think?

Suggestion: residents of your jurisdiction who own and operate WATVs might be confused about these changes. A short update on your web site or in your newsletter about the issues might help avoid some confusion and traffic citations. Until councilmembers or commissioners open roadways to use by WATVs, you might want to remind your residents that WATVs are strictly off-road vehicles until specifically allowed on-road (except in unincorporated areas of counties with a population of 15,000 or less – see comments above).

**Update:** The RCW changes made in this legislation have now been incorporated into the Model Traffic Ordinance through emergency rules ([WSR 13-15-067](#)), effective July 28, 2013.