

Chapter 22E.050
SHORELINE MANAGEMENT MASTER PROGRAM

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22E.050.010 Adoption.

The city council hereby adopts the 2006 Shoreline Master Plan as an element of, and amendment to, the Marysville Growth Management Comprehensive Plan, subject to the modifications set forth in the Department of Ecology's required changes, which are attached to Ordinance No. 2668 as Attachment B. A copy of the comprehensive plan amendment, entitled the 2006 Shoreline Master Plan, is attached to Ordinance No. 2668 as Exhibit C and is hereby incorporated by this reference. (Ord. 2852 § 10 (Exh. A), 2011).

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22E.050.020 Compliance required.

No developments shall be undertaken on the shorelines of the city except those which are consistent with the policies of this chapter and, after adoption or approval, as appropriate, the applicable guidelines, regulations, or master program.

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22E.050.030 Permit required.

No substantial development shall be undertaken on the shorelines of the city without first obtaining a permit from the city..

22E.050.040 Permit – Fees.

All persons desiring such a permit shall make application by paying a fee as set out in Chapter [22G.030](#) MMC and filing an application with the community development department.

22E.050.050 Application – Form.

Applications for permits shall be made on forms prescribed by the community development department, and shall contain the name and address of the applicant, a description of the development, the location of the development, and any other relevant information deemed necessary by the community development department.

22E.050.060 Review process.

(1) The community development department will review the substantial development permit proposals for consistency with:

(a) ~~(1)~~ The legislative policies stated in RCW 90.58.020, the Shoreline Management Act;

(b) ~~(2)~~ The shoreline management master program of the city of Marysville. (Ord. 2852 § 10 (Exh. A), 2011).

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(2) Conditional Use Permits. The purpose of the conditional use permit is to allow greater flexibility in administering the use regulations of the master program in a manner consistent with the policies of the SMA. Conditional use permits may also be granted in circumstances where denial of the permit would result in a thwarting of the policy enumerated in the SMA. The criteria for granting conditional use permits is the following:

(a) The uses which are classified or set forth in the master program as conditional use permits may be authorized, provided the applicant can demonstrate all of the following:

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i. That the proposed use will be consistent with the policies of the SMA and the policies of the master program;

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ii. That the proposed use will not interfere with the normal public use of public shorelines;

iii. That the proposed use of this site and design of the project will be compatible with other permitted uses within the area;

iv. That the proposed use will cause no unreasonably adverse effects to the shoreline environment designation in which it is to be located;

v. That the public interest suffers no substantial detrimental effect.

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(b) Other uses which are not classified or set forth in the master program may be authorized as conditional uses provided the applicant can demonstrate, in addition to the criteria set forth in Subsection a of this section, that extraordinary circumstances preclude reasonable use of the property in a manner consistent with the use regulations of the master program:

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(c) In the granting of all conditional use permits, consideration shall be given to the cumulative impact of additional requests or like actions in the area.

(3) Variances. The purpose of a variance is strictly limited to granting relief to specific bulk, dimensional, or performance standards set forth in the master program where there are extraordinary or unique circumstances relating to the properties such that the strict implementation of the master program would impose unnecessary hardships on the applicant or thwart the policies set forth in the SMA. The criteria for granting variances shall be consistent with **WAC 173-27-170** and include the following:

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(a) Variances should be granted in a circumstance where denial of the permit would result in a thwarting of the policy enumerated in the SMA. In all instances, extraordinary circumstances should be shown, and the public interest shall suffer no substantial detrimental effect.

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(b) Variances for development that will be located landward of the ordinary high water mark may be authorized provided the applicant can demonstrate all of the following:

- i. That the strict application of the bulk, dimensional, or performance standards as set forth in the master program precludes or significantly interferes with a reasonable permitted use of the property.
- ii. That the hardship is specifically related to the property and is the result of unique conditions, such as irregular lot shape, size, or natural features, in the application of the master program and not, for example, from deed restrictions or the applicant's own actions.
- iii. That the design of the project will be compatible with other permitted activities in the area and will not cause adverse effects to adjacent properties or the shoreline environment designation.
- iv. That the variance authorized does not constitute a grant of special privilege not enjoyed by other properties in the area, and will be the minimum necessary to grant relief.
- v. That the public interest will suffer no substantial detrimental effect.

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(c) Variances for development that will be located waterward of the ordinary high water mark may be authorized provided the applicant can demonstrate all of the criteria specified in Subsection b of this section. The applicant must also demonstrate that the public rights of navigation and use of the shorelines will not be adversely affected by the granting of

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the variance, and that the strict application of the bulk, dimensional or performance standards set forth in the applicable master program precludes all reasonable use of the property.

(d) In granting of all variances, consideration shall be given to the cumulative impact of additional requests or like actions in the area.

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22E.050.070 Notice publication.

Upon receipt of an application for a permit, the city shall cause notice of application to be published at least once a week for two consecutive weeks in a newspaper of general circulation within the city. The second notice shall be published not less than 30 days prior to action by the community development department. The city shall also cause notice of the application to be mailed to each property owner of record within 300 feet of the proposed development. The date of the mailing shall not be less than seven days in advance of the department action.

22E.050.080 Decision.

The following decision making process shall apply to all substantial development, conditional use and variance permits:

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(1) Exemption. Certain developments are exempt from the requirement to obtain a substantial development permit. Such developments still may require a variance or Conditional Use permit, and all development within the shoreline is subject to the requirements of the SMP, regardless of whether a substantial development permit is required. Developments which are exempt from requirement for a substantial development permit are identified in **WAC 173-27-040** or as subsequently amended. Application shall be made to the Community Development Department for shoreline exemption.

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(2) Administrative Action. The community development director shall make a decision on applications for substantial development permits, recommendations on applications for conditional use and variance permits based upon: (1) the Shoreline Master Plan (SMP) for the city; and (2) the policies and procedures of the Shoreline Management Act (SMA) and related sections of the Washington Administrative Code (WAC). In the event the community development director determines the substantial development is consistent with the above criteria, the community development director shall so state in written findings, and such findings shall be filed with the Department of Ecology. In the event the community development director determines the substantial development is inconsistent with the above criteria the application shall be denied. ~~Decisions of the community development director may be appealed on written filing of an appeal by an aggrieved party. Appeals of administrative decisions by the community development director shall be heard by the hearing examiner in accordance with the manner prescribed in Chapter 22G.010 MMC, Article VIII, Appeals, and Chapter 22G.060 MMC. The hearing examiner's decision shall be reviewed by the city council pursuant to MMC 22G.060.130. (Ord. 2852 § 10 (Exh. A),~~

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~~2014). The permit shall issue upon the terms and conditions hereinafter prescribed and as prescribed by the community development director.~~

(3) Hearing Examiner action. The Hearing Examiner shall review an application for a shoreline variance and conditional use permit and make decisions as authorized by this Chapter, and as consistent with the SMP; SMA (RCW 90.58.100(5) and WAC 173-27-160). The permit shall issue upon the terms and conditions hereinafter prescribed by the Hearing Examiner.

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(4) Exceptions - Requirements to obtain shoreline permits or local reviews. Requirements to obtain a substantial development permit, conditional use permit, variance, letter of exemption, or other review to implement the Shoreline Management Act do not apply to the following:

(i) Remedial actions. Pursuant to RCW 90.58.355, any person conducting a remedial action at a facility pursuant to a consent decree, order, or agreed order pursuant to chapter 70.105D RCW, or to the department of ecology when it conducts remedial action under Chapter 70.105D RCW.

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(ii) Boat yard improvements to meet NPDES permit requirements. Pursuant to RCW 90.58.355, any person installing site improvements for storm water treatment in an existing boatyard facility to meet requirements of a national pollutant discharge elimination system storm water general permit.

(iii) WSDOT facility maintenance and safety improvements. Pursuant to RCW 90.58.356, Washington State Department of Transportation projects and activities meeting the conditions of RCW 90.58.356 are not required to obtain a substantial development permit, conditional use permit, variance, letter of exemption, or other local review.

(iv) Projects consistent with an environmental excellence program agreement pursuant to RCW 90.58.045.

22E.050.090 Permit – Issuance. Filing with Department of Ecology

~~In the event, however, no appeal is filed following the filing of the findings of the community development director, and no public hearing is set, then the permit shall issue upon the terms and conditions hereinafter prescribed and as prescribed by the community development director. (Ord. 2852 § 10 (Exh. A), 2014).~~ After all local permit administrative appeals or reconsideration periods are complete and the permit documents are amended to incorporate any resulting changes, the city will mail or digitally send the permit using return receipt for documentation of date of receipt to the Department of Ecology and the Office of the Attorney General. Projects that require both Conditional Use Permits and/or Variances shall be mailed simultaneously with and Substantial Development Permits for the project.

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(i) The permit and documentation of the final local decision will be mailed or digitally transferred together with the complete permit application; a findings and conclusions letter; a permit data form (cover sheet); and applicable SEPA documents.

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(ii) Consistent with RCW 90.58.140(6), the state's Shorelines Hearings Board twenty-one day appeal period starts with the filing date, which is defined below:

a. For projects that only require a Substantial Development Permit (SDP): the date that Ecology receives the city decision.

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b. For a Conditional Use Permit (CUP) or Variance (VAR): the date that Ecology's decision on the CUP or Variance is transmitted to the applicant and the City.

—For SDPs simultaneously mailed with a CUP or VAR to Ecology: the date that Ecology's decision on the CUP or VAR is transmitted to the applicant and the City.

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22E.050.100 Signing of permit. Appeals.

~~The mayor and the city clerk shall sign the permit, and upon such the same shall be deemed issued. (Ord. 2852 § 10 (Exh. A), 2011).~~ Shoreline Hearings Board. Any decision made by the community development director on a substantial development permit, or by the Hearing Examiner on a Conditional Use or variance permit shall be final unless an appeal is made. Persons aggrieved by the grant, denial, rescission or modification of a permit may file a request for review to the Shoreline Hearings Board in accordance with the review process established by RCW 90.5.8.180 or as subsequently amended, and with the regulations of the Shoreline Hearings Board contained in Chapter 46-1-08 WAC or subsequently amended. The request for review must be filed with the Hearings Board within twenty-one (21) days of the date of filing.

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22E.050.110 Commencement of construction – Time lapse.

No one who is issued a permit hereunder shall be authorized to commence construction until ~~30~~21 days have elapsed from the date that the permit is filed with the Washington State Department of Ecology, or until all review proceedings are terminated if such proceedings were initiated within said ~~21~~30-day period, per WAC 173-27-190.

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22E.050.120 Time requirements of permit.

The following time requirements shall apply to all substantial development, conditional use and variance permits:

(1) Construction or substantial progress toward construction of a project for which a permit has been granted must be undertaken within two years after the approval of the permit. Substantial progress toward construction shall include, but not be limited to, the letting of bids, making of contracts, and purchase of

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materials involved in development, but shall not include development or uses which are inconsistent with the Shoreline Management Act or the city's master program. In determining the running of the two-year period hereof, there shall not be included the time during which a development was not actually pursued by construction and the pendency of litigation reasonably related thereto made it reasonable not to so pursue; provided, that the ~~city-council-~~community development director may, ~~in its-~~at his/her discretion, extend the two-year time period for a reasonable time based on factors, including the inability to expeditiously obtain other governmental permits which are required prior to the commencement of construction.

(2) If a project for which a permit has been granted has not been completed within five years after the approval of the permit by the city, the ~~city-hearing examiner-~~community development director shall review the permit and, upon a showing of good cause, do either of the following:

- (a) Extend the permit for one year; or
- (b) Terminate the permit.

Provided, that the running of the five-year period shall not include the time during which a development was not actually pursued by construction and the pendency of litigation reasonably related thereto made it reasonable not to so pursue; provided further, that nothing herein shall preclude the city from issuing permits with a fixed termination date less than five years.

22E.050.130 Scope of chapter.

Nothing in this chapter shall authorize the issuance of a permit upon conditions or terms which are specifically contrary to the laws of the state of Washington.

22E.050.140 Burden of proof.

All applicants for permits shall have the burden of proving that a proposed development is consistent with the criteria which must be met before the permit is issued.

22E.050.150 Permit rescinded.

Any permit issued hereunder may be rescinded by the ~~city-council-~~hearing examiner upon a finding that a permittee has not complied with the conditions of a permit, subject however to a hearing as hereinafter provided.

22E.050.160 Rescission – Hearing.

Before such permit is rescinded by the ~~council-~~hearing examiner, the ~~council-~~community development director shall set a date for a public hearing to determine whether the permittee has not complied with the conditions of the permit. This hearing will be ~~held at such time as deemed appropriate by the council, and upon held upon~~ notice to the permittee by mailing such to permittee's address as shown on the application, by posting one notice at the development, and by notice in a newspaper of general circulation within the city at least 10 days prior to the hearing.

22E.050.170 ~~Mayer's~~ Director's authority.

The ~~mayer~~ community development director shall have the authority to immediately stop any work under a permit which the ~~mayer~~ community development director believes, in good faith, is not in compliance with the permit and is likely to cause immediate and irreparable harm. Upon such a stop order being issued, the permittee shall immediately cease and desist such portion of the development which is ordered stopped by the ~~mayer~~ community development director, but may continue working on the other portions of the development. As soon as it is practical thereafter, a hearing will be held before the ~~council~~ hearing examiner of the city to determine whether the conditions of the permit were being violated, and if so, whether to cancel the permit or determine what other action should be taken. Notice of hearing shall be in the form and manner prescribed hereinabove as to a hearing on cancellation of a permit.

22E.050.180 ~~Subsequent hearing – Publication of notice. Revisions to permit~~

~~At the city council meeting following the filing of such findings by the hearing examiner, the city council, on its own initiative or on request of an aggrieved party, whether the applicant or any other individual, may set another hearing date by giving notice in the newspaper and by mail in the manner prescribed for the hearing examiner, and at such public hearing determine on the merits whether the development is consistent with the legislative policies stated in RCW 90.58.020, Shoreline Management Act, and the shoreline master program of the city of Marysville. If at such hearing the majority of the council determines that such development satisfies the criteria, then a permit shall be issued upon the terms and conditions hereinafter prescribed and prescribed by the council. (Ord. 2852 § 10 (Exh. A), 2011).~~

When an applicant seeks to revise a substantial development, conditional use or variance permit, the city community development department shall request from the applicant detailed plans and text describing the proposed changes in the permit. If the community development director department determines that the proposed changes are within the scope and intent of the original permit, the revision shall be automatically approved. "Within the scope and intent of the original permit" means the following:

- (1) No additional over-water construction will be involved;
- (2) Lot coverage and height may be increased a maximum of 10 percent from provisions of the original permit; provided, that revisions involving new structures not shown on the original site plan shall require a new permit;
- (3) Landscaping may be added to a project without necessitating an application for a new permit;
- (4) The use authorized pursuant to the original permit is not changed;
- (5) No additional significant adverse environmental impact will be caused by the project revision.

If the revision, or the sum of the revision and any previously approved revisions, will violate the criteria specified above, the city shall require the applicant to apply for a new substantial development, conditional use or variance permit, as appropriate, in the manner provided for herein.

22E.050.190 Revisions to permit: Nonconforming Uses.

The provisions of Chapter 22C.100 MMC, specifically sections 22C.100.010 thru 22C.100.050, relating to nonconforming uses (dated February 2011), Ordinance 2852, Section 10) are incorporated into the Shoreline Master Plan as though fully set forth therein. All references to provisions contained in the Marysville Unified Development Code shall be construed as referring to the Shoreline Master Plan (including shoreline permits), and all references to zoning districts and classifications shall be construed as referring to environments established by the Shoreline Master Plan. Sections 22C.110.10 thru 22C.110.050 dealing with temporary use shall not be considered part of the Shoreline Master Plan.

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22.E.050.200 Streamside protection zone: Documentation of project review actions and changing conditions in Shoreline areas.

(1) Establishment of Zone — Purpose. A streamside protection zone is established along both sides of all of the following streams, or segments thereof, within the city of Marysville: Washington State Department of Fisheries stream numbers 0044 (Quilceda Creek), 0068 (Allen Creek), 0068A, 0073 (Munson Creek), 0073A, 0074 (two tributaries), Ebey Slough.

The purpose of this zone is to provide a buffer area where natural vegetation will be preserved and development will be prohibited, thereby protecting the streams from unnatural modification or intrusion, erosion, siltation and pollution and promoting and preserving natural life cycles of fish and game in and around the streams. Furthermore, this zone will preserve access to the streams for the limited purpose of maintaining the natural characteristics of the streams by approved techniques, and for other limited purposes which will have no adverse environmental impact upon the streams. This zone shall be implemented as an overlay of municipal control and regulation which is applicable in all land use categories and environmental classifications.

(2) Definition of Zone. A streamside protection zone shall extend 25 feet upland from that point in the natural contour where the topography breaks for the streambeds near as may be determined. As a guide in interpreting the definition of this zone, all parties may refer to Figure 4 found on page 79 of the 1981 Marysville Area Draft Comprehensive Plan, as prepared by Snohomish County. In any cases where a break in the natural contour lines cannot be determined, the streamside protection zone shall be measured from the ordinary high water mark, which is defined as follows: That mark that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation as that condition existed on June 1, 1971, or as it may naturally change thereafter; provided, that in any area where the ordinary high water mark cannot be found pursuant to this definition, it shall be the line of mean high water.

(3) Restrictions Within Zone. Within the streamside protection zone the following activities shall be prohibited:

- (a) Construction of any structures, permanent or temporary, including fences;

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(b) Construction of any on-site sewage disposal system, or other underground facilities except as provided in subsection (4) of this section;

(c) Grading, filling or other earthwork of any kind;

(d) Grazing or keeping livestock;

(e) Storage, parking, dumping or disposing of any materials, natural or unnatural, including motor vehicles, refuse, garbage, cuttings from trees, lawns and gardens, and animal wastes;

(f) Landscaping, or cutting, removing, trimming or otherwise modifying any natural vegetation which serves the function of providing shade and protection for the streamside or is a source of food or habitat for fish or game;

(g) Relocation of the natural course of the stream, or modification of the flow characteristics thereof.

(4) ~~Developments Allowed Within Zone. Notwithstanding the above, the following developments, land uses and activities are permitted within the streamside protection zone; provided, that a shoreline development permit, if applicable, is first obtained from the city:~~

~~(a) Public and private utility lines and appurtenances, including underground storm drainage facilities;~~

~~(b) Public and private roads, bridges and appurtenances;~~

~~(c) Temporary private roads and bridges for the purpose of providing access to perform stream maintenance services;~~

~~(d) Activities and improvements which are necessary to maintain the natural characteristics of a stream;~~

~~(e) Unimproved trails for recreational purposes and other passive recreational uses;~~

~~(f) Public parks and recreational developments.~~

(5) ~~Rehabilitation Required. The city shall require rehabilitation and replanting of natural protective vegetation within the streamside protection zone on all properties which become subject to the city's regulatory jurisdiction in connection with applications for any of the following:~~

~~(a) Subdivision;~~

~~(b) Binding site plan;~~

~~(c) Short plat;~~

~~(d) Planned residential development;~~

~~(e) Mobile home park;~~

~~(f) Building permit;~~

~~(g) Conditional use permit;~~

~~(h) Shoreline development permit.~~

~~(6) Variances. The city council shall have the authority to grant a variance from the restrictions contained in subsection (3) of this section pursuant to the procedures, filing fees and criteria specified in the shoreline master program of the city of Marysville (omitting any references to the Department of Ecology). If a variance application is merged with a pending shoreline development permit application, the applicant shall pay the city a single fee of \$1,000. No variance shall be granted which is inconsistent with the policies of the Shoreline Management Act of the state of Washington and the master program of the city of Marysville.~~

~~(7) Nonconforming Uses. Any uses, developments or activities existing within the streamside protection zone on the date the zone becomes applicable to the subject property, and which were in full compliance with all codes and regulations of the city or other applicable jurisdiction at the time, shall be regarded as nonconforming uses. The uses, developments and activities may be continued for a period of two years thereafter if properly repaired, maintained and actively utilized. At the end of said period they shall be removed, at the owner's cost, and the streamside protection zone shall be brought into conformity with this section; provided, that grazing or keeping livestock, landscaping, and permanent structures (excluding fences) which constitute nonconforming uses may continue beyond the two-year period in accordance with the terms and provisions of Chapter 22C.100 MMC. No nonconforming use, development or activity within a streamside protection zone shall be replaced, expanded or intensified in any manner whatsoever.~~

~~(8) Exemption. All commercial and industrial uses, developments and activities which abut Ebey Slough and which exist within the streamside protection zone on the effective date of said zone shall be exempt from the restrictions of the zone until one of the following occurs:~~

~~(a) The use, development or activity is terminated, discontinued or abandoned for a period of at least 12 consecutive months; or~~

~~(b) The improvements are destroyed or demolished to an extent where restoration costs would exceed 75 percent of the assessed value; or~~

~~(c) The use of the property is changed to a new occupancy classification under the International Building Code.~~

The City will keep on file documentation of all projects, including applicant submissions and records of decisions, relating to shoreline management provisions in the Shoreline Master Program.

22E.050.210 ~~Violation-Penalty.~~ Amendments to Shoreline Master Program

If the city or ecology determines it necessary, the City will review shoreline conditions and update this SMP within seven years of its adoption.

22E.050.220 Violation – Penalty.

In addition to incurring civil liability, any person found to have willfully engaged in activities on the shorelines within the city in violation of the provisions of this chapter or any of the master programs, rules or regulations adopted pursuant thereto shall be guilty of a misdemeanor and shall be subject to Section MMC 4.02.040 Penalties and enforcement. ~~r, and shall be punished by fine not to exceed \$300.00, or by imprisonment not to exceed 60 days, or by both such fine and imprisonment.~~

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