

CHAPTER 6

ADMINISTRATION

6.1 APPLICABILITY

6.1.1 PURPOSE

This Chapter establishes the permit review procedure for shoreline permits, in accordance with the Shoreline Management Act, Chapter 90.58 RCW and Chapter 173-27 WAC. All proposed uses, modifications and development occurring within the shoreline jurisdiction must conform to Chapter 90.58 RCW, the Shoreline Management Act, and this Master Program, regardless of whether a shoreline permit, letter of exemption, shoreline variance, or shoreline conditional use permit is required.

The Shoreline Management Act's provisions are intended to provide for the management of all development and uses within its jurisdiction, whether or not a shoreline permit is required. Many activities that may not require a substantial development permit, such as clearing vegetation or construction of a residential bulkhead, can, individually or cumulatively, adversely impact adjacent properties and natural resources, including those held in public trust. The City of Mountlake Terrace has the authority and responsibility to enforce Master Program regulations on all uses and development in the shoreline jurisdiction area.

The policy goals of the act, implemented by the planning policies of this Master Program, may not be achievable by development regulation alone. Planning policies should be pursued through the regulation of development of private property only to an extent that is consistent with all relevant constitutional and other legal limitations (where applicable, statutory limitations such as those contained in Chapter 82.02 RCW and RCW 43.21C.060) on the regulation of private property. The City of Mountlake Terrace shall use its established permit review process to assure that proposed regulatory or administrative actions do not unconstitutionally infringe upon private property rights.

6.1.2 PERMITS REQUIRED FOR SUBSTANTIAL DEVELOPMENT IN SHORELINE JURISDICTION

- A. No use, modification, or development shall be undertaken in the shoreline jurisdiction of the City except those which are consistent with the policies of the Shoreline Management Act of 1971, as amended, and the applicable policies, guidelines, and regulations of the Master Program.
- B. A “substantial development” means any development of which the total cost or fair market value exceeds seven thousand forty seven dollars (\$7,047), beginning September 2, 2017 and as periodically adjusted under RCW 98.58.030 (3)(e), or any development which materially interferes with the normal public use of the water or shorelines of the state.

6.1.3 EXEMPTIONS FROM SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT PROCESS – APPLICATION AND INTERPRETATION

- A. Developments exempt from shoreline permits or local review, and developments not subject to SMA, are listed in WAC 173-27-044 and WAC 173-27-045, respectively.
- B. Exemptions shall be construed narrowly. Only those developments that meet the precise terms of one or more of the exemptions listed in this chapter and WAC 173-27-040 may be granted exemption from the substantial development permit requirements
- C. An exemption from the substantial development permit process is not an exemption from compliance with SMA or the Master Program, or from any other regulatory requirements. To be authorized, all uses and developments must be consistent with the policies and provisions of this Master Program and the SMA.
- D. When a development or use is proposed that does not comply with the bulk, dimensional and performance standards of the Master Program, such development or use can only be authorized by approval of a variance.
- E. A development or use, which is listed as a conditional use pursuant to this Master Program, must obtain a conditional use permit even though the development or use does not require a substantial development permit.
- F. The burden of proof that a development or use is exempt from the substantial development permit process is on the applicant.
- G. If any part of a proposed development is not eligible for exemption, then a substantial development permit is required for the entire proposed development project.
- H. For unlisted uses, the Administrator may make a written determination that the proposal has functions and characteristic sufficiently similar to other listed uses and apply the same review and approval procedure to such use; otherwise a conditional use permit must be obtained.
- I. The City of Mountlake Terrace may attach conditions to the approval of exempted developments and/or uses as necessary to assure consistency of the project with the Shoreline Management Act and this Master Program.

6.1.4 EXEMPTIONS FROM SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT REQUIREMENTS

The following developments shall not, consistent with WAC 173-27-040, require a substantial development permit. A letter of exemption, per WAC 193-27-050 and this chapter, may be required for some projects.

- A. Any development of which the total cost or fair market value, whichever is higher, does not exceed seven thousand, forty-seven dollars (\$7,047), if such development does not materially

interfere with the normal public use of the water or shorelines of the state. The dollar threshold must be adjusted for inflation by the office of financial management every five years, last on September 2, 2017, and consistent with WAC 173-27-040(2)(a). The total cost or fair market value shall be based on the value of development shall include the fair market value of any donated, contributed, or found labor, equipment, or materials.

- B. Normal maintenance or repair of existing structures or developments, including damage by accident, fire, or elements.
 - 1. "Normal maintenance" includes those usual acts to prevent a decline, lapse, or cessation from a lawfully established condition.
 - 2. "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 shoreline resource or environment.
 - 3. 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.
- C. Construction of the normal protective bulkhead common to single-family residences.
 - 1. A "normal protective" bulkhead includes those structural and nonstructural developments installed at or near, and parallel to, the ordinary high water mark for the sole purpose of protecting an existing single-family residence and appurtenant structures from loss or damage by erosion.
 - 2. A normal protective bulkhead is not exempt if constructed for the purpose of creating dry land. When a vertical or near vertical wall is being constructed or reconstructed, not more than one cubic yard of fill, per one foot of wall height, may be used as backfill.
 - 3. When an existing bulkhead is being repaired by construction of a vertical wall fronting the existing wall, it shall be constructed no further waterward of the existing bulkhead than is necessary for construction of new footings. When a bulkhead has deteriorated such that an ordinary high water mark has been established by the presence and action of water landward of the bulkhead then the replacement bulkhead must be located at or near the actual ordinary high water mark.

4. Beach nourishment and bioengineered erosion control projects may be considered a normal protective bulkhead when any structural elements are consistent with the above requirements and when the project has been approved by the Department of Fish and Wildlife.
- D. Emergency construction necessary to protect property from damage by the elements.
1. An "emergency" is an unanticipated and imminent threat to public health, safety, or the environment which requires immediate action within a time too short to allow full compliance with this Chapter. As a general matter, flooding or other seasonal events that can be anticipated and may occur but that are not imminent are not an emergency.
 2. Emergency construction does not include development of new permanent protective structures where none previously existed.
 3. Where new protective structures are deemed by the administrator to be the appropriate means to address the emergency situation, upon abatement of the emergency situation the new structure shall be removed or any permit which would have been required, absent an emergency, pursuant to Chapter 90.58 RCW, these regulations, or the local Master Program, obtained.
 4. All emergency construction shall be consistent with the policies of Chapter 90.58 RCW and the local Master Program.
- E. Construction or modification of navigational aids such as channel markers and anchor buoys.
- F. Construction on shorelands by an owner, lessee or contract purchaser of a single-family residence for their own use or for the use of their family, which residence does not exceed a height of thirty-five feet (35) above average grade level, is located landward of the OHWM and which meets all requirements of the state agency or local government having jurisdiction thereof, other than requirements imposed pursuant to Chapter 90.58 RCW.
1. "Single-family residence" means a detached dwelling designed for and occupied by one family including those structures and developments within a contiguous ownership which are a normal appurtenance.
 2. An "appurtenance" is necessarily connected to the use and enjoyment of a single-family residence and is located landward of the ordinary high water mark and the perimeter of a wetland. Normal appurtenances include a garage; deck; driveway; utilities; fences; installation of a septic tank and drainfield and grading which does not exceed two hundred fifty (250) cubic yards and which does not involve placement of fill in any wetland or waterward of the ordinary high water mark.

- G. 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 a single-family or multiple-family residences.
1. A dock, for this exception, is a landing and moorage facility for watercraft and does not include recreational decks, storage facilities, or other appurtenances.
 2. This exception applies if, in fresh waters (Lake Ballinger), the fair market value of the dock constructed to replace the existing dock does not exceed twenty two thousand five hundred dollars (\$22,500), and the replacement is of equal or lesser square footage than the existing dock or pier, provided that if the value of subsequent construction that occurs within five (5) years of completion of the prior construction, has a combined value that exceeds the fair market value specified in this subsection, the subsequent construction shall be considered a substantial development for the purpose of this chapter. The allowed replacement cost is based on valuation updates, as amended through WAC 173-27-040.
 3. This exception applies to all other docks constructed in fresh water that do not exceed a fair market value of eleven thousand two hundred dollars (\$11,200), pursuant to RCW 90.58.030(3).
- H. Operation, maintenance, or construction of canals, waterways, drains, reservoirs, or other facilities that now exist or are hereafter created or developed as a part of an irrigation system for the primary purpose of making use of system waters, including return flow and artificially stored ground water from the irrigation of lands.
- I. The marking of property lines or corners on state-owned lands, when such marking does not significantly interfere with normal public use of the surface of the water.
- J. Operation and maintenance of any system of dikes, ditches, drains, or other similar drainage or utility facilities existing on September 8, 1975, which were created, developed or utilized primarily as a part of an agricultural drainage or diking system.
- K. Any project with a certification from the governor pursuant to Chapter 80.50 RCW.
- L. Site exploration and investigation activities that are prerequisite to preparation of an application for development authorization under this Chapter 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 any 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 this section first posts a performance bond or provides other evidence of financial responsibility to the local jurisdiction to ensure that the site is restored to preexisting conditions; and
 - e. The activity is not subject to the permit requirements of RCW 90.58.550.
- M. The process of removing or controlling aquatic noxious weeds, as defined in RCW 17.26.020, through the use of an herbicide or other treatment methods applicable to weed control that are recommended by a final environmental impact statement published by the Department of Agriculture or the Department of Ecology jointly with other state agencies under Chapter 43.21C RCW.
- N. Watershed restoration projects as defined herein. The Administrator shall review the projects for consistency with the Master Program in an expeditious manner and shall issue its decision along with any conditions within forty-five days of receiving all materials necessary to review the request for exemption from the applicant. No fee may be charged for accepting and processing requests for exemption for watershed restoration projects as used in this section.
- 1. “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:
 - a. 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;
 - b. 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 the primary emphasis on using native vegetation to control the erosive forces of flowing water; or
 - c. 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 instream habitat enhancement structure associated with the project, is less than two hundred square feet in floor area and is located above the ordinary high water mark of the stream.
 - 2. “Watershed restoration plan” means a plan, developed or sponsored by the Department of Fish And Wildlife, the Department of Ecology, the Department of Natural Resources, the Department of Transportation, a federally recognized Indian tribe acting within and pursuant to its authority, a city, a county, or a conservation district that provides 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 for which agency and public review has been conducted pursuant to Chapter 43.21C RCW, the State Environmental Policy Act.

- O. A public or private project that is designed 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;
 - b. The project has received hydraulic project approval by the Department of Fish and Wildlife pursuant to Chapter 77.55 RCW; and
 - c. The City has determined that the project is substantially consistent with the local shoreline Master Program. The City shall make such determination in a timely manner and provide it by letter to the project proponent.

6.1.5 LETTER OF EXEMPTION

- A. The Administrator is hereby authorized to grant or deny requests for letters of exemption from the shoreline substantial development permit requirement for uses and developments with shorelines that are specifically listed in this Master Program. The letter of exemption shall indicate the specific exemption of this Program that is being applied to the development, and shall provide a summary of the Administrator's analysis of the consistency of the project with this Master Program and the Act. As appropriate, such letters of exemption may contain conditions and/or mitigating measures of approval to achieve consistency and compliance with the provisions of this Master Program and the Shoreline Management Act. A denial of an exemption shall be in writing and shall identify the reason(s) for the denial. The Administrator's actions on the issuance of a letter of exemption or a denial are subject to appeal pursuant to the appeal procedures per this Chapter.
- B. A letter of exemption shall be prepared addressed to the applicant/proponent and the Washington State Department of Ecology, pursuant to the requirement of WAC 173-27-050 when the project is subject to one or more of the following Federal permitting 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.)

- C. Apart from the activities listed in B of this section, no letter of exemption shall be required for other uses or developments exempt pursuant to this Master Program unless the Administrator has cause to believe a substantial question exists as to qualification of the specific use or development for the exemption, an applicant requests a letter of exemption, or the Administrator determines there is a likelihood of adverse impacts to shoreline ecological functions.

6.1.6 NONCONFORMING USE AND DEVELOPMENT STANDARDS

- A. "Nonconforming use or development" means a shoreline use or development which was lawfully constructed or established prior to the effective date of the Act or this Master Program, or amendments thereto, but which does not conform to present regulations or standards of this Master Program. In such cases, the following standards shall apply:
 - 1. Structures that were legally established and are used for a conforming use, but which are nonconforming with regard to setbacks, buffers or yards; area; bulk; height or density may be maintained and repaired and may be enlarged or expanded provided that said enlargement does not increase the extent of nonconformity.
 - 2. Uses and developments that were legally established and are nonconforming with regard to the use regulations of the Master Program may continue as legal nonconforming uses. Such uses shall not be enlarged or expanded.
 - 3. A use which is listed as a conditional use, but which existed prior to adoption of the Master Program or any relevant amendment and for which a conditional use permit has not been obtained, shall be considered a nonconforming use.
 - 4. A structure for which a variance has been issued shall be considered a legal nonconforming structure and the requirements of this section shall apply as they apply to preexisting nonconformities.
- B. Existing nonconforming residential structures are conforming, so long as they were legally established. Redevelopment, expansion, and replacement is allowed, subject to the provisions shoreline use, modification policies, and regulations of this Master Program.
- C. A nonconforming structure which is moved any distance must be brought into conformance with the Master Program and the Act;
- D. If a nonconforming structure is intentionally modified and the cost of the proposed development exceeds fifty (50) percent of the building valuation of the original structure, it shall be required to meet all applicable standards in the Master Program and Title 19.
- E. If a nonconforming structure is unintentionally damaged to an extent not exceeding seventy-five (75) percent of the building valuation of the original structure, it may be reconstructed to those configurations existing immediately prior to the time the structure was damaged, provided that application is made for the permits necessary to restore the structure within six months of the

date the damage occurred, all permits are obtained, the reconstruction meets all applicable building codes and the restoration is completed within two years of permit issuance.

- F. A nonconforming use may be re-established as the same nonconformance, except that any nonconforming use that is discontinued for a period of six (6) continuous months shall not be re-established. Any nonconforming use of a building which is discontinued for a total of one (1) year (twelve (12) months) over a three (3) year period shall not be allowed to continue as the nonconforming use.
- G. An undeveloped lot, tract, parcel, site, or division of land located landward of the ordinary high water mark which was established prior to the effective date of the Act or the Master Program, but which does not conform to the present lot size standards, may be developed if permitted by other land use regulations of the local government and so long as such development conforms to all other requirements of the Master Program and the Act.

6.2 DEVELOPMENT EVALUATION PROCESS AND CRITERIA

There are two types of decisions required in the development evaluation process. Most are judgmental decisions which call for the Administrator to weigh the project against the policies of the Master Program and arrive at some conclusion regarding its compatibility with those policies. Since this type of decision contains a built-in element of flexibility, by its very nature, the Variance procedure is not applicable to these decisions.

The second type of decision is a factual determination wherein the project is weighed against the standards set forth in Chapter 5, Use and Modifications Policies and Regulations. Where there are special circumstances arising out of site considerations, the Variance procedure would provide relief to the property owner as appropriate. The Variance procedure is applicable to this type of decision since there is little or no latitude available to the deciding authority in the application of Use Regulations: the use is either allowed or not allowed; a standard is either met or not met. In the case of a negative answer in such circumstances, the applicant may apply for a Variance and, upon meeting the requirements for such Variance as spelled out in WAC 173-27-170, may receive approval to depart from the established regulations of the plan.

A “no” ruling on any of the judgmental questions would be sufficient grounds for denial of the requested permit. A “no” ruling on a factual determination would lead to the Variance procedure; a “no” ruling from the Variance procedure would also be sufficient grounds for permit denial. Appeal from a permit denial would follow the steps outlined in the Shoreline Management Act (Chapter 90.58 RCW).

Processing of permits or exemptions shall follow the procedures established in this Master Program and Chapter 173-27 WAC.

6.2.1 REVIEW CRITERIA FOR DEVELOPMENT

No authorization to undertake use, modification or development in the City of Mountlake Terrace shoreline jurisdiction shall be granted unless upon review, the use, modification, or development is

determined to be consistent with the policy and provisions of the Shoreline Management Act and the City of Mountlake Terrace Shoreline Master Program, Chapter 16.10 MTMC and Chapter 18 MTMC, as applicable.

6.2.2 SUBSTANTIAL DEVELOPMENT PERMITS

- A. A substantial development permit shall be required for all proposed use and development of shorelines unless the proposal is specifically exempt per this chapter.
- B. In order for a substantial development permit to be approved, the Administrator must find that the proposal is consistent with the following criteria:
 - 1. All regulations of the Master Program appropriate to the shoreline designation (see Chapter 3) and the type of use, modification or development proposed (see Chapters 4 and 5) shall be met, except those bulk and dimensional standards that have been modified by an approval of a shoreline variance.
 - 2. All policies of the Master Program appropriate to the shoreline designation and the type of use, modification or development proposed shall be considered and substantial compliance demonstrated.
- C. The City may grant relief from shoreline master program development standards and use regulations resulting from shoreline restoration projects within urban growth areas consistent with criteria and procedures in WAC 173-27-215.

6.2.3 CONDITIONAL USE PERMITS

- A. The purpose of a conditional use permit is to provide greater flexibility in the administering of use regulations of this Master Program in a manner consistent with the policies of RCW 90.58.020. In authorizing a conditional use, special conditions may be attached to the permit by the City or the Department of Ecology to prevent undesirable effects of the proposed use and/or to assure consistency of the project with the Shoreline Management Act and this Master Program. With provisions to control undesirable effects, the scope of uses within each of the four Environments can be expanded to include a greater range of uses.
- B. Uses classified as subject to the issuance of a conditional use permit can be permitted only by meeting such performance standards that make the use compatible with other permitted uses within that area.
- C. Conditional use permits shall be granted only after the applicant can demonstrate all of the following:
 - 1. That the proposed use is consistent with the policies of RCW 90.58.020 and this Master Program;
 - 2. The use will cause no unreasonably adverse effects on the environment or other existing or potential uses which are allowed outright in the subject environment;

3. The use will not interfere with the normal public use of public shorelines;
 4. Design of the site will be compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and the Master Program;
 5. The proposed use will not be contrary to the general intent of the Master Program, and shall also comply with WAC 173-27-160.
 6. That the public interest suffers no substantial detrimental effect.
- D. Uses which are not specifically identified as an allowed use or uses which are specifically prohibited by this Master Program may not be authorized as conditional uses.
- E. 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.
- F. All applications for conditional uses approved by the City of Mountlake Terrace shall be forwarded to the Department of Ecology, pursuant to WAC 173-27-200, for final approval or disapproval. No approval shall be considered final until acted upon by the Department of Ecology.

6.2.4 VARIANCES

Variances deal with specific requirements of the Master Program, and their objective is to grant relief when there are practical difficulties or unnecessary hardship if the strict letter of the Master Program were carried out. The applicant must show that if he or she complies with the provisions of the Master Program he or she cannot make any reasonable use of his or her property. The fact that he or she might make a greater profit by using their property in a manner contrary to the intent and provisions of the Program is not sufficient reason for variance approval.

- A. The purpose of a variance permit is strictly limited to granting relief from specific bulk, dimensional or performance standards set forth in this Master Program where there are extraordinary circumstances relating to the physical character or configuration of property such that the strict implementation of this Master Program will impose unnecessary hardships on the applicant or thwart the policies set forth in RCW 90.58.020. Variances from the use regulations of this Master Program are prohibited.
- B. Variances will be granted in circumstances where the denial of the permit would result in a thwarting of the policy enumerated in RCW 90.58.020. In all instances the applicant must demonstrate that extraordinary circumstances exist and that the public interest shall suffer no substantial detrimental effect.

- C. Variance permits for development and/or uses that will be located landward of the ordinary high water mark (OHWM) may be authorized provided the applicant can demonstrate all 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 lawful, reasonable use of the property;
 2. The hardship which serves as the basis for granting the variance is specifically related to the property of the applicant and does not apply generally to other property in the vicinity in the same Environment;
 3. 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 this Master Program, and not, for example, from deed restrictions or the applicant's own actions or those of a predecessor in title;
 4. The variance, if granted, will be in harmony with the general purposes and intent of the Master Program, and shall also comply with WAC 173-27-170;
 5. 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;
 6. That the variance will not constitute a grant of special privilege not enjoyed by the other properties in the area;
 7. That the variance requested is the minimum necessary to afford relief; and
 8. That the public interest will suffer no substantial detrimental effect; if more harm will be done to the area by granting the variance than would be done to the applicant by denying it, the variance shall be denied.
- D. Variance permits for development and/or uses that will be located waterward of the ordinary high water mark (OHWM) may be authorized provided the applicant can demonstrate all of the following:
1. 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;
 2. That the proposal is consistent with the variance permit criteria established above; and
 3. That the public rights of navigation and use of the shorelines will not be adversely affected.
- E. In the granting of all variance permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example if variances were granted to other developments and/or uses in the area where similar circumstances exist the total of the

variances shall also remain consistent with the policies of RCW 90.58.020 and shall not cause substantial adverse effects to the shoreline environment.

- F. All applications for variances approved by the City of Mountlake Terrace shall be forwarded to the Department of Ecology, pursuant to WAC 173-27-200, for final approval or disapproval. No approval shall be considered final until acted upon by the Department of Ecology.
- G. The City may grant relief from shoreline master program development standards and use regulations resulting from shoreline restoration projects within urban growth areas consistent with criteria and procedures in WAC 173-27-215.

6.2.5 APPLICATION FOR SUBSTANTIAL DEVELOPMENT PERMIT

Applications for a permit required by RCW 90.58.140(2) shall be made in substantially the form provided for in Chapter 173-27 WAC. Such forms shall be supplied by and submitted to the Community and Economic Development Department.

6.2.6 PERMITS FOR CONDITIONAL USES AND VARIANCES

Pursuant to RCW 90.58.100(5), the City shall have the authority to issue or deny and submit to the Department of Ecology for approval or disapproval, permits for variances and conditional use as regulated by this chapter and the Master Program.

6.2.7 MINIMUM APPLICATION REQUIREMENTS

A complete application for substantial development, conditional use, or variance permit shall contain as a minimum, the following information, consistent with Chapter 173-27-180 WAC.

- A. The name, address and phone number of the applicant. The applicant should be the owner of the property or the primary proponent of the project and not the
- B. The name, address and phone number of the applicant's representative if other than the applicant.
- C. The name, address and phone number of the property owner, if other than the applicant.
- D. Location of the property. This shall, at a minimum, include the property address and identification of the section, township and range to the nearest quarter, quarter section or latitude and longitude to the nearest minute. All applications for projects located in open water areas away from land shall provide a longitude and latitude location.
- E. Identification of the name of the shoreline (water body) that the site of the proposal is associated with. This should be the water body from which jurisdiction of the act over the project is derived.

- F. A general description of the proposed project that includes the proposed use or uses and the activities necessary to accomplish the project.
- G. A general description of the property as it now exists including its physical characteristics and improvements and structures.
- H. A general description of the vicinity of the proposed project including identification of the adjacent uses, structures and improvements, intensity of development and physical characteristics.
- I. A site development plan consisting of maps and elevation drawings, drawn to an appropriate scale to depict clearly all required information, photographs and text which shall include:
 - 1. The boundary of the parcel(s) of land upon which the development is proposed.
 - 2. The ordinary high water mark of all water bodies located adjacent to or within the boundary of the project. This may be an approximate location provided, that for any development where a determination of consistency with the applicable regulations requires a precise location of the ordinary high water mark the mark shall be located precisely and the biological and hydrological basis for the location as indicated on the plans shall be included in the development plan. Where the ordinary high water mark is neither adjacent to or within the boundary of the project, the plan shall indicate the distance and direction to the nearest ordinary high water mark of a shoreline. The precise location of the ordinary high water mark shall be field verified by the City of Mountlake Terrace and/or the Department of Ecology.
 - 3. Existing and proposed land contours. The contours shall be at intervals sufficient to accurately determine the existing character of the property and the extent of proposed change to the land that is necessary for the development. Areas within the boundary that will not be altered by the development may be indicated as such and contours approximated for that area.
 - 4. Existing critical areas.
 - 5. A general indication of the character of vegetation found on the site.
 - 6. The dimensions and locations of all existing and proposed structures and improvements including but not limited to; buildings, paved or graveled areas, roads, utilities, septic tanks and drainfields, material stockpiles or surcharge, and stormwater management facilities.
 - 7. Where applicable, a landscaping plan for the project.

8. Where applicable, plans for development of areas on or off the site as mitigation for impacts associated with the proposed project shall be included and contain information consistent with the requirements of this section.
9. Quantity, source and composition of any fill material that is placed on the site whether temporary or permanent.
10. Quantity, composition and destination of any excavated or dredged material.
11. A vicinity map showing the relationship of the property and proposed development or use to roads, utilities, existing developments and uses on adjacent properties.
12. Where applicable, a depiction of the impacts to views from existing residential uses and public areas.
13. On all variance applications the plans shall clearly indicate where development could occur without approval of a variance, the physical features and circumstances on the property that provide a basis for the request, and the location of adjacent structures and uses.

6.2.8 NOTICE OF APPLICATION

All notices of application for a shoreline substantial development permit shall be substantially consistent with WAC 173-27-110 and MTMC 18.05.400.

- A. A notice of application shall be provided within fourteen days after the determination of completeness of application, The notice shall be consistent with content per WAC 173-27-110(2) including a statement of public comment period, which shall be not less than thirty days following the date of notice of application;
- B. Notice to the general public and property owners in the vicinity of such application is given by at least one of the following methods:
 1. Mailing of the notice to the latest recorded real property owners as shown by the records of the county assessor within at least three hundred feet of the boundary of the property upon which the development is proposed;
 2. Posting of the notice in a conspicuous manner on the property upon which the project is to be undertaken; or
 3. Any other manner deemed appropriate by the City to accomplish the objectives of reasonable notice to adjacent landowners and the public.

4. If an open record predecision hearing, as defined in RCW [36.70B.020](#), is required for the requested project permits, the notice of application shall be provided at least fifteen days prior to the open record hearing.
- C. The notification system shall provide for timely notification of individuals and organizations that request such notice in writing.
- D. The notification system shall provide notice to all agencies with jurisdiction per Chapter [43.21C](#) RCW and to all other agencies that request, in writing, any such notice.

6.2.9 SPECIAL PROCEDURES AND NOTICES FOR LIMITED UTILITY EXTENSIONS AND BULKHEADS

- A. An application for a substantial development permit for a limited utility extension or for the construction of a bulkhead or other measures to protect a single-family residence and its appurtenant structures from shoreline erosion shall be subject to all of the requirements of this Chapter except that the following time periods and procedures shall be used:
 - a. The public comment period shall be twenty (20) days. The notice provided shall state the manner in which the public may obtain a copy of the local government decision on the application no later than two (2) days following its issuance;
 - b. The local government shall issue its decision to grant or deny the permit within twenty one (21) days of the last day of the comment period specified in subsection 1.a of this section; and
 - c. If there is an appeal of the decision to grant or deny the permit to the local government legislative authority, the appeal shall be finally determined by the legislative authority within thirty days.
- B. For purposes of this section, a limited utility extension means the extension of a utility service that:
 - a. Is categorically exempt under Chapter 43.21C RCW for one or more of the following:
Natural gas, electricity, telephone, water, or sewer;
 - b. Will serve an existing use in compliance with this Chapter; and
 - c. Will not extend more than two thousand five hundred (2,500) linear feet within the shorelines of the state.

6.2.10 ADMINISTRATOR REVIEW

- A. Pursuant to MTMC 18.05.310 Authorities, the Administrator shall have review and decision making authority in regard to Shoreline Management Act permits.
- B. The Administrator shall review an application for a permit based on the following:

1. The application.
 2. The environmental assessment.
 3. Written comments from interested persons.
 4. Information and comments from affected City Departments.
 - a. Conformance with applicable policies and regulations of the Master Program.
- C. The Administrator may require that an applicant furnish information in addition to the information contained in the application.
- D. The Administrator shall issue a decision to approve, approve with conditions or deny the application within the timelines established by this title or Chapter 18.05 MTMC, whichever is applicable.

6.2.11 DECISION AND CONDITIONS TO PERMITS

- A. In granting or extending a permit, the City may attach thereto such conditions, modifications and restrictions regarding the location, character and other features of the proposed development as it finds necessary to make the permit compatible with criteria set forth in this Master Program and the Act. Such conditions may include the requirement to post a performance bond assuring compliance with other permit requirements, terms and conditions.
- B. Issuance of a substantial development permit does not obviate requirements for other federal, state, and city permits, procedures and regulations.
- C. The denial of a permit shall state the criteria and provisions per this Master Program that the application is inconsistent with or not able to meet or mitigate.

6.2.12 NOTICE OF DECISION AND RECONSIDERATION

- A. Notice of Decision. Within five days of a decision on a shoreline substantial development permit, shoreline conditional use permit, or shoreline variance permit, the Administrator shall, per WAC 173-27-030, deliver a copy of the final permit decision to the following:
1. The applicant/proponent;
 2. Any person(s) who have filed a written request for a copy of the decision;
 3. All persons who submitted substantive written comments on the application; and
 4. The Department of Ecology regional office, by return receipt requested mail; and
 5. The Washington State Attorney General.
- B. Contents. The Notice of Decision shall contain the following information:
1. A copy of the complete application;

2. Findings and conclusions that establish the basis for the decision including but not limited to identification of shoreline environment designation(s), applicable Master Program policies and regulations and the consistency of the project with appropriate review criteria for the type of permit(s).
 3. The final decision reached by the City of Mountlake Terrace on the proposal;
 4. A completed permit data sheet in the form provided in WAC 173-27-130, or as hereafter amended.
 5. A statement of the SEPA threshold determination, or in lieu thereof, a statement summarizing the actions and dates of such actions taken under Chapter 43.21C RCW.
 6. The procedures for an appeal of the permit decision or recommendation
- B. Reconsideration.
1. The applicant/proponent or any party of record may request reconsideration of any final action by the Administrator within (10) days of the decision.
 2. Grounds for reconsideration must be based upon the content of the written decision.
 3. The Administrator is not required to provide a written response or modify his/her original decision. He/she may initiate such action as he/she deems appropriate.
 4. The procedure of reconsideration shall not preempt or extend the appeal period for a permit or affect the date of filing with the Department of Ecology, unless the applicant/proponent requests the abeyance of said permit appeal period in writing within ten (10) days of a final action.

6.2.13 OPEN RECORD APPEAL

- A. Pursuant to the procedures and timelines established by Chapter 18.05 MTMC, an open record appeal hearing before the Hearing Examiner shall be held for appeals filed within fourteen (14) days of the decision.
- B. Appeals of a final decision of the City of Mountlake Terrace or the Department of Ecology shall be filed within twenty-one (21) days of the date of filing of the final permit and shall be heard by the Shorelines Hearings Board pursuant to the procedures and timelines of RCW 90.58.180.
- C. Appeals of a revision to a substantial development permit shall be consistent with the revision section of this Chapter.

6.2.14 REVIEW OF GRANTING, DENYING, OR RESCINDING PERMITS BY SHORELINES HEARINGS BOARD

- A. Any party of record aggrieved by the granting, denying, or rescission of a shoreline substantial development permit, conditional use permit, or variance permit may seek review from the

Shorelines Hearings Board by filing an original and one copy of request for the same with the Shorelines Hearings Board within twenty-one (21) days of the date of filing as defined in WAC 173-27-140(6). Said request shall be in the form required by the rules for practice and procedure before the Shorelines Hearings Board.

- B. Concurrently, with the filing of any request for review with the Shorelines Hearings Board, the person seeking review shall file a copy of their request with the Washington State Department of Ecology, the Attorney General, and the City.

6.2.15 RESCISSION OF PERMIT

- A. Any permit granted pursuant to this chapter may be rescinded or modified upon a finding by the Administrator that the permittee has not complied with the conditions of his permit.
- B. The Administrator may initiate rescission and modification proceedings by serving written notice of noncompliance on the permittee.
- C. Before a permit can be rescinded or modified, a public hearing shall be held by the Hearing Examiner no sooner than 10 days following the service of notice upon the permittee. The Community and Economic Development Department shall have the power to prescribe rules and regulations for the conduct of such hearings.

6.2.16 INITIATION OF DEVELOPMENT

- A. Development pursuant to a shoreline substantial development permit, shoreline conditional use permit, or shoreline variance shall not begin and shall not be authorized until twenty-one (21) days after the “date of filing”, or until all review proceedings before the Shorelines Hearings Board have terminated.
- B. Concurrent filing of permits is required if there are separate Substantial Development, Conditional Use Permits, and/or Variances.
- C. Date of Filing.
 - 1. The “date of filing” of a substantial development permit, shoreline conditional use permit, or shoreline variance permit is the date that the Department of Ecology actually receives the local permit decision (WAC 173-27-130).
 - 2. The “date of filing” for a shoreline conditional use permit or a shoreline variance shall mean the date the permit decision rendered by the Department of Ecology is transmitted by the Department to the City of Mountlake Terrace and the applicant/proponent.

6.2.17 REVISIONS IN SUBSTANTIAL DEVELOPMENT PERMITS

- A. A permit revision is required whenever the applicant proposes substantive changes to the design, terms or conditions of a project from that which is approved in the permit. Changes are substantive if they materially alter the project in a manner that relates to its conformance to the

terms and conditions of the permit, the master program and/or the policies and provisions of chapter [90.58](#) RCW. Changes which are not substantive in effect do not require approval of a revision.

When an applicant seeks to revise a permit, the applicant shall provide detailed plans and text describing the proposed changes.

If local government determines that the proposed changes are within the scope and intent of the original permit, and are consistent with the applicable master program and the act, local government may approve a revision.

- B. Where no new substantial development permit is requested pursuant to this section the Department and the Attorney General may release the revised permit prior to the expiration of the 21-day review period established by RCW 90.58.180(2), where the permittee has conclusively shown that such action will avoid undue hardship on the permittee and where the public interest will not suffer thereby.
- C. A revision is required when an applicant proposes substantive changes to the design, terms, or conditions of an approved permit. Changes are “substantive” if they materially alter the project in a manner that relates to its conformance to the terms and conditions of the permit, this Master Program, or the Act. Changes, which the Administrator determines are not substantive, do not require approval of a revision.
- D. “Within the scope and intent of the original permit” means all of the following:
 - 1. No additional over water construction is involved except that pier, dock, or float construction may be increased by five hundred (500) square feet or ten percent (10%) from the provisions of the original permit, whichever is less;
 - 2. Ground area coverage and height may be increased a maximum of ten percent (10%) from the provisions of the original permit;
 - 3. The revised permit does not authorize development to exceed height, lot coverage, setback, or any other requirements of the applicable Master Program except as authorized under a variance granted as the original permit or a part thereof;
 - 4. Additional or revised landscaping is consistent with any conditions attached to the original permit and with the applicable Master Program;
 - 5. The use authorized pursuant to the original permit is not changed; and
 - 6. No adverse environmental impact will be caused by the project revision.
- E. If the sum of the proposed revision and any previously approved revisions do not meet the provisions of subsection 5 of this section, above, an application for a new Shoreline Substantial Permit must be submitted.

- F. If the revision involves a Shoreline Conditional Use Permit or Shoreline Variance, which was conditioned by the Department of Ecology, the revision also must be reviewed and approved by the Department of Ecology. Under the requirements of WAC 173-27-110(6), the Department of Ecology shall render and transmit to the City of Mountlake Terrace and the applicant its final decision with fifteen (15) days of the date of the Department's receipt of the submittal from the City of Mountlake Terrace. The City of Mountlake Terrace shall notify parties of record of the Department's final decision.
- G. Revision approvals, including the revised site plans, a detailed description of the authorized changes, and the final ruling on consistency with this section shall be filed with the Department of Ecology. In addition, the City of Mountlake Terrace shall notify parties of record of the revision.
- H. Revisions to shoreline permits may be authorized after the original authorization has expired under RCW 90.58.143. Revisions made after the expiration of the original permit shall be limited to changes that are consistent with this Master Program and that would not require a permit under this Master Program. If the proposed change is a substantial development as defined by this Master Program, then a new permit is required. The provisions of this paragraph shall not be used to extend the time requirements or to authorize substantial development beyond the time limits or scope of the original permit.
- I. Appeals on revisions shall be in accordance with RCW 90.58.180 and shall be filed within twenty-one days from the date of filing of the City of Mountlake Terrace's action by the Department of Ecology or, when appropriate under subsection E of this section, the date the Department of Ecology's final decision is transmitted to local government and the applicant. Appeals shall be based only upon contentions of noncompliance with the provisions of subsection C of this section. Construction undertaken pursuant to that portion of a revised permit not authorized under the original permit is at the applicant's own risk until the expiration of the appeals deadline. If an appeal is successful in proving that a revision is not within the scope and intent of the original permit, the decision shall have no bearing on the original permit.

6.2.18 TIME REQUIREMENTS OF SHORELINE PERMITS

- A. The following time requirements shall apply to all authorized shoreline substantial development, variances, or conditional use permits:
 - 1. Construction activities shall be commenced or, where no construction activities are involved, the use or activity shall be commenced within two years of the effective date of a permit. Permits authorizing construction shall expire five years after the effective date of the permit.
 - 2. The Administrator may authorize a single extension for a period not to exceed one year based on reasonable factors, if a request for extension has been filed before the expiration date and notice of the proposed extension is given to parties of record and to the department.

3. The effective date of a substantial development permit shall be the date of filing as provided for in RCW [90.58.140\(6\)](#). The permit time periods in this section do not include the time during which a use or activity was not actually pursued due to the pendency of administrative appeals or legal actions or due to the need to obtain any other government permits and approvals for the development that authorize the development to proceed, including all reasonably related administrative or legal actions on any such permits or approvals.
- B. Notwithstanding the time limits established above, upon finding of good cause based on the requirements and circumstances of the proposed project and consistent with the policies and provisions of this Master Program and the Shoreline Management Act, the Administrator may set different time limits for a particular substantial development permit as part of the action to approve the permit. The Administrator may also set different time limits on specific conditional use permits or variance permits with the approval of the Department of Ecology. The different time limits may be longer or shorter than those established above but shall be appropriate to the shoreline development or use under review. “Good cause based on the requirements and circumstances of the proposed project” shall mean that the time limits established for the project are reasonably related to the time actually necessary to perform the development on the ground and complete the project that is being permitted, and/or are necessary for the protection of shoreline resources.
- C. The Administrator shall notify the Department of Ecology in writing of any change to the effective date of a permit with an explanation of the basis for approval of the change. Any change to the time limits of a permit other than those authorized above shall require a new permit application.

6.3 AUTHORITY, COMPLIANCE, AND ENFORCEMENT

6.3.1 ADMINISTRATIVE AUTHORITY AND RESPONSIBILITY

- A. Shoreline Administrator. The Shoreline Administrator, or Administrator, shall be the Community and Economic Development Director, or his/her designee, and is vested with the following authority and responsibility to:
1. Have overall administrative responsibility for this Master Program;
 2. Determine if a public hearing should be held on a shoreline permit application by the hearing examiner, pursuant to Chapter 18.05 MTMC.
 3. Grant or deny written letters of exemption from shoreline substantial development permit requirements per the Letter of Exemption section of this chapter;
 4. Authorize, approve, or deny Shoreline Substantial Development Permits, except for those for which a public hearing is required;

5. Make written recommendation to the hearing examiner or city council as appropriate and insofar as possible, in order to assure that all relevant information, testimony, and questions regarding a specific matter are made available during their respective reviews of such matter;
 6. Review and evaluate the records of project actions (permits and exemptions) in shoreline areas and report on the cumulative effects of authorized development of shoreline conditions at a minimum every eight years when this Master Program is updated. The Administrator shall coordinate such review with the Washington State Department of Ecology, Washington State Department of Fish and Wildlife, and other interested parties.
 7. Advise interested citizens and project proponents of the goals, policies, regulations and procedures of this Master Program; and
 8. Make administrative decisions and interpretations of the policies and regulations of this Master Programs and the Shoreline Management Act.
- B. Hearing Examiner. The Hearing Examiner is vested with the authority to:
1. Grant or deny shoreline substantial development permits, conditional use permits, or variances from this Master Program requiring public hearings, pursuant to Chapter 18.05 MTMC.
 2. Decide on appeals of administrative decisions issued by the Administrator of this Master Program in accordance with procedures set forth in Chapter 18.05 MTMC.
 3. City Council. The City of Mountlake Terrace city council is vested with the authority to approve any revisions or amendments to this master program in accordance with the applicable requirements of the Shoreline Management Act and the Washington Administrative Code.

6.3.2 COMPLIANCE

Failure to comply with the conditions of approval associated with a shoreline permit shall cause the permit to immediately become void and any continuation of the use activity shall be considered a violation of this Master Program and a public nuisance subject to enforcement proceedings.

6.3.3 ENFORCEMENT

Procedures for investigation and notice of violation, compliance, and the imposition of penalties for the violation of any requirements of this Master Program shall be consistent with provisions in Chapter 16.10 MTMC, and Part II 173-27 WAC, RCW 90.58.210, and RCW 90.58.220.

6.3.4 CRIMINAL PENALTIES – CIVIL LIABILITY

- A. Any person found to have willfully engaged in activities on the shorelines of the City in violation of this Chapter or the Shoreline Management Act or in violation of the Master Program, rules or regulations adopted pursuant thereto shall be guilty of a gross misdemeanor, and shall be punished by a fine of not less than \$25.00 nor more than \$1,000 or by imprisonment in the county jail for not more than 90 days, or both such fine and imprisonment; provided, that the fine for the third and all subsequent violations in any five-year period shall be not less than \$500.00 nor more than \$10,000.
- B. The City Attorney shall bring such injunctive, declaratory, or other actions as are necessary to insure that no uses are made of the shorelines of the City in conflict with the provisions and programs of this Chapter or the Shoreline Management Act, and to otherwise enforce the provisions of this Chapter and the Shoreline Management Act.
- C. Any person subject to the regulatory program of this Chapter who violates any provision of this Chapter or the provisions of a permit issued pursuant thereto shall be liable for all damage 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 a violation, the court shall make provision to assure that restoration will be accomplished within a reasonable time at the expense of the violator. In addition to such relief, including money damages, the court in its discretion may award attorney's fees and costs of the suit to the private person bringing suit, where he prevails.

6.4 ADMINISTRATION

6.4.1 RULES

The City of Mountlake Terrace Administrator is authorized to adopt such rules as are necessary and appropriate to carry out the provisions of this Master Program.

6.4.2 AMENDMENTS TO THE MASTER PROGRAM

- A. Any of the provisions of this Master Program may be amended as provided for in RCW 90.58.120 and 200 and Chapter 173-26 WAC. Any amendments shall also be subject to the amendment procedures in Chapter 16.10 MTMC.
- B. Amendments or revisions to the Master Program, as provided by law, do not become effective until reviewed and approved by the Department of Ecology pursuant to RCW 90.58.190 and Chapter 173-26 WAC.

6.4.3 REAL PROPERTY ASSESSMENTS

The restrictions imposed by this Chapter shall be considered by the County Assessor in establishing the fair market value of property.

6.4.4 SEVERABILITY

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

6.4.5 CONFLICT OF PROVISIONS

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