

No. 41557-7-II

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

HAL MOORE and MELANIE MOORE; and
LESTER KRUEGER and BETTY KRUEGER,

Appellants,

v.

STEVE'S OUTBOARD SERVICE, and
STEVEN LOVE and MARY LOU LOVE,

Respondents.

APPELLANTS' REPLY BRIEF

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I. INTRODUCTION

An unpermitted commercial business operated in a residential area is a nuisance *per se*. If the Lower Court is not reversed, this Court will sustain admitted illegal activity within shorelines of state-wide significance, a result contrary to public policy and statutory requirements.

II. ARGUMENT

The County did not issue a shoreline permit or exemption decision. It also did not waive Shoreline Management Act (“SMA”) permitting requirements or decide that the new structures erected by Respondents are not regulated “development” under that law. To the extent the trial court’s ruling is read to include such determinations, it is based on mere speculation which is not substantial evidence.¹ The trial court should have concluded that Respondents failed to obtain a shoreline permit, and thus, SOS’s operations constitute nuisance *per se*.

A. Respondents’ Unlawful Failure to Comply with SMA Permitting Requirements for the Engine Shop is a Nuisance *per se*.

1. Appellants Adequately Pled and Raised Nuisance *per se*.

Respondents argue for the first time that nuisance *per se* was not

¹ Respondents’ Brief underscores just how uncertain they are about the County’s shoreline permitting in their vague statements and calls for speculation: (1) Love testified that he personally was not aware whether a permit had been issued (p.20); (2) The County either issued a shorelines permit, or it determined no shorelines permit was needed (p.20); (3) County records are ambiguous (p.21); (4) the carport replacement “may or may not be” development under the SMA (p.26).

adequately plead.² Respondents' Br. at 19. Nuisance *per se* was briefed and argued to the Trial Court without objection. See CP 136-37, 141, 143 (Reply argument); CP 164-176 (Plaintiffs' closing argument). The issue cannot be raised for the first time on appeal. RAP 2.5(a); *Brundridge v. Fluor Fed. Servs., Inc.*, 164 Wn.2d 432, 441, 191 P.3d 879 (2008).

2. County Records Do Not Contain a Shoreline Permit Which Evidences That the Required Permit Was Not Issued.

Respondents state, “[t]he County either issued a Shorelines permit, or it determined that no Shorelines permit was needed,” which calls for a guess as to what may have occurred. Mere speculation or conjecture cannot be the basis for either finding. *E.g., Johnson v. Aluminum Precision Prods., Inc.*, 135 Wn. App. 204, 208-09, 143 P.3d 876 (2006). Respondents failed to rebut the Appellants' evidence that County records did not show a permit was issued and they failed to produce a permit. See *State v. N.M.K.*, 129 Wn. App. 155, 162, 118 P.3d 368 (2005) (Evidence Rule (“ER”) 803(a)(10) allows admission of evidence that an event or matter was *not* recorded in public records to show that it did not occur or did not exist); ER 803(a)(7) (allowing admission of evidence that a matter

² The Complaint includes facts to support any nuisance claim, public or private, including nuisance *per se*, because it alleges that Respondents' failure to comply with permitting requirements for operation of the engine shop significantly interferes with Appellants' use and enjoyment of life and use of their property. Complaint ¶¶ 17-18, 25-26. Here, the “concise statement of the claim and the relief sought” complies with Washington's liberal notice pleading rules. *Pacific NW Shooting Park Ass'n v. City of Sequim*, 158 Wn.2d 342, 352, 144 P.3d 276 (2006); CR 8(a).

is not included in business records, kept in accordance with the provisions of RCW 5.45, to prove the nonoccurrence or nonexistence of the matter); Karl B. Tegland, *Washington Practice: Courtroom Handbook on Washington Evidence*, 409-10 (2005). See also, *United States v. Keplinger*, 776 F.2d 678, 689-90 (7th Cir. 1985) (stating that proof of absence of records that would ordinarily exist if a particular event had occurred is properly admitted to show that the event did not occur).

Respondents contend that violation of a permit is not by itself a nuisance but miss the point that they have no shoreline permit. Obtaining necessary permits is not a mere technicality. By not obtaining a shoreline permit, Respondents circumvented an entire body of important regulations intended to protect waters of state-wide significance and jurisdictional uplands. If SOS had gone through the required process, there would have been a preapplication meeting, State Environmental Policy Act review, adjoining property owners would have been required to be notified and allowed the opportunity to comment, a public hearing would have been held in front of the Hearing Examiner, and that decision could have been appealed by the Applicant or a public citizen/neighbor. Importantly, noise, traffic, fumes, parking, access, stormwater, etc. would have been required to be addressed or mitigated. If these procedures had been followed, it is possible that this litigation could have been avoided because

the commercial use was precluded or otherwise found “not appropriate.” It is up to agencies with jurisdiction to pass on a use, not a property owner, as contended by Respondents in their Brief, pp.25-26. The Superior Court ruling ignores this very important public process by side-stepping the fact that SOS did not obtain the required permits.

a. The County Did Not Issue a Decision That No Shorelines Permit is Required.

Respondents guess that there was a shoreline permit decision “issued” without notice, which could have been appealed. The record is devoid of any such decision having been made and the proper inference is that no permit decision was issued. *Keplinger*, 776 F.2d at 689-90.

An application for a shoreline permit is a Type III (quasi-judicial) process. Mason County Code (“MCC”) 15.03.015(c)(3)(C); MCC 15.03.030(10). Any final decision must be in writing, noticed and set forth procedures for administrative appeal. MCC 15.07.050. There is no “final decision” concerning shoreline permitting for the engine shop or containing the required information.³

Because a shorelines decision to approve or deny a permit was not made, RCW 90.58.120 is inapplicable. Nor were Appellants required to

³ Even the County planners stated that they “have to assume” what may have happened between the time Respondents applied for a shoreline permit, when they were issued a building permit, and then subsequently withdrew the shoreline application. (Ex. 7, Case Activity Listing). To prove the County made a shoreline permitting, Respondents would have had to either locate such documentation, or call a planner with knowledge to so testify.

file a Land Use Petition Act appeal in the absence of any decision, although that would not preclude a nuisance claim. *See Grundy v. Thurston County*, 155 Wn.2d 1, 5, 7-8, 117 P.3d 1089 (2005) (LUPA appeal of shoreline decision not required for nuisance claim).

b. The Engine Repair Shop is Not Exempt.

Respondents appear to concede that they have no shorelines permit, by arguing extensively that the business is exempt from SMA permit requirements either because it is not a “development” or it is a “home occupation.” However, the operations are not exempt, and a shoreline permit is required. Appellants’ Opening Br. at 22-30. Even if not, a written shoreline exemption is a required land use approval, WAC 173-27-040, 173-27-050(3), and none was obtained.

First, Respondents argue that the new metal building repair shop for which permits originally were sought to “enlarge existing business” (Ex. 1) does not “alter the natural shorelines,” and is not “development” under the SMA. Respondents’ Br. at 25-27. Replacing a carport with a two-story garage and adding an additional, new 8’x15’ storage shed on the property,⁴ both of which are used to run Respondents’ business, plainly constitute “development” under the SMA because they are “construction

⁴ Respondents claim, without citation, that the second building is “temporary and movable,” and thus does not require any type of permit. There is no exemption under the SMA for “temporary” buildings. RCW 90.58.030(3)(a) includes projects of a temporary or permanent nature within the definition of “development.”

or exterior alteration of structures.” RCW 90.58.030(3)(a). Although projects that interfere with the “normal public use” of surface waters or shorelines *also* are defined as development in the statute,⁵ they are one of at least ten different activities so described. Respondents cite no authority for the proposition that construction or exterior alteration of structures also must interfere with “normal public use of the surface of the waters,” to constitute “development.” None exists. Nor is there any legal support for the statement that construction within the shoreline environment is not “alteration” of the natural shorelines if an existing structure is replaced with a new one (or two, as in this case). “Development” under the SMA, whether “substantial”⁶ or otherwise, necessarily involves alteration of the natural shorelines. *See* RCW 90.58.030(3)(a) and (3)(e). A comparison of the “before and after” photographs speak for themselves, evidencing a significant alteration of the site from a residential property into one for an engine business. *Compare* Ex. 15 with Ex. 27; *see also* Exs. 15-17.⁷

Respondents’ assertion that the County could have made an

⁵ Respondents make the absurd statement that there is no legal authority discussing whether exterior alteration of a structure is “development” under the SMA. Respondents’ Br. at 26-27. The statutory definition clearly states that such activity constitutes “development.”

⁶ Respondents argue that Appellants did not prove the value of the structures as exceeding \$5000. But Appellants’ claim is based on Respondents’ failure to obtain any shoreline permits. If the structures are worth less than \$5000, Respondents would have submitted evidence to support their defense that a Shoreline Substantial Development Permit was not, in fact, required. However, even if so, a shoreline exemption would still be required. WAC 173-27-040; -050(3).

⁷ Attached in Appendix.

exception to SMA permitting requirements via application of MCC 7.04.032, is contrary to state law. In *Biggers v. City of Bainbridge Island*, 162 Wn.2d 683, 695, 169 P.3d 14 (2007), the Washington Supreme Court discussed the primary role of the State with respect to shoreline regulation:

Neither the history of article XVII, section 1 nor its interpretation by the courts of this state suggests it allows local governments permit authority over shoreline development in violation of state law or policies.

There is no authority for local governments to waive SMA permitting requirements, which would undermine the broad public purposes of the Act.

Second, Respondents surmise the engine repair business might have been determined to be exempt from SMA permitting as a “home occupation.” Respondents did not obtain any permit for a “home occupation.” See MCC 17.03.021 (home occupations require special use permit). Thus, not only is the argument without any evidentiary support and based on speculation,⁸ but it stretches the bounds of credulity to believe the County would have determined a commercial business, operated from buildings outside the dwelling itself, that includes a business sign and for which Respondents have devised a complicated

⁸ Respondents argue there was no appeal of a County decision to classify the use as a “home occupation.” Respondents’ Br. at 28. As discussed above, pp.4-5, the County did not make any appealable land use decision. The absence of any shoreline permit or permitting decision in the public records is proof no permit was issued and no exemption decision was made. *Keplinger*, 776 F.2d at 689-90

“parking” strategy for their customers (*e.g.*, **RP 214-218, RP 238-245**) meets the limited definition of “home occupation” in MCC 7.16.040(1). The Code requires the business to be operated “within a dwelling which is the residence”; it does not allow operations to take place within “appurtenant structures,” built for a business expansion. *See* Ex. 1; MCC 7.04.040(1). The Code prohibits business parking⁹ and signs, but the Loves provide customer parking and installed a sign.

Finally, Respondents claim that a single-family residence is exempt, as are “appurtenant structures,” and assert without proof that the County exempted the engine repair shop on this basis.¹⁰ It is the use, however, that controls. MCC 7.16.005 requires shoreline permits for all commercial development in the urban or rural shoreline environments. It is beyond dispute that SOS is a commercial business.

Hood Canal has special protection under the SMA as waters of statewide significance. State interests of preserving and protecting the natural character of the shoreline take precedence over local interests. *See Samson v. City of Bainbridge Island*, 149 Wn. App. 33, 39-40, 202 P.3d

⁹ The Code disallows “parking and signs.” MCC 7.16.040(1). That Respondents did not construct a parking lot is irrelevant, except with respect to the resulting dangerous highway conditions. Respondents admit that the Loves have an area for customers to pull off the highway and park. Respondents Br. at 30.

¹⁰ An “accessory building” in the Neighborhood Residential zone must be “clearly incidental to the residential use of the lot.” MCC 17.07.120(G). Love’s outbuildings are not “accessory buildings.”

334 (2009). That the County erred in failing to issue a SMA permit for the Respondents' engine repair business does not excuse the permitting requirements which exist to protect the fragile shoreline environment from degradation so that many will be able to enjoy the waters of the state for years to come. *See, e.g., Tiegs v. Watts*, 135 Wn.2d 1, 14, 954 P.2d 988 (1998) (that government ignores a nuisance is not a defense). For these reasons, and as discussed in Appellants' opening brief at p. 22-26, 28-30, Respondents' engine repair shop business is illegally operating within the shoreline environment without required shoreline permits, injuring Appellants to the extent that an injunction must issue to restrain a nuisance *per se*.

3. Respondents' Customers Have no Choice but to Park in the Highway Right-of-Way in Violation of Law.

Respondents do not deny that customers of the SOS engine shop park within the right of way, in violation of Section 9 of the Department of Transportation permit which requires sufficient distance between buildings so that the right of way is not required for customers. (Ex. 9). They argue that such violations are not of consequence, because: (1) they do not *require* their customers to park in the right of way, (2) other people park along the highway; and (3) there has never been a traffic accident.

Whether the Loves direct their customers to park in the right of

way is irrelevant. There is not enough room on the property to accommodate customers, such that they have no choice but to park in the right of way, resulting in a violation of the plain terms of the permit. *See* Ex. 9.¹¹ Other vehicles parked along the highway are also irrelevant; the only relevant inquiry is whether Respondents are complying with the terms of their permit. They all but admit they are not. *See* Respondents' Br. at 30. Appellants need not prove there has been a highway accident or traffic violation to establish nuisance. Well-grounded fear of potential hazards, as here, is sufficient. *Park v. Stolzheise*, 24 Wn.2d 781, 798, 167 P.2d 412 (1946) ("The question is, not whether the fear is founded in science, but whether it exists; not whether it is imaginary, but whether it is real, in that it affects the movements and conduct of men").

No statute authorizes parking on the shoulder of a highway, whether limited access or not in violation of a State access permit. In fact, RCW 46.04.197 declares "the entire width between the boundary lines of every way publicly maintained" is to be open for "vehicular travel" – not parking. Respondents do not have the unfettered ability to use the right-of-way as a de facto parking lot. It is an accident waiting to happen, causing Appellants significant fear, and is a nuisance *per se*, because

¹¹ Thomas Adams is a friend and considers Mr. Love his "guru." **RP 201**. He observed SOS customers parking in the right-of-way. **RP 221:22-23**. So have customers Ann Holt (**RP 256**) and Richard Wanzoch (**RP 287:13-15**). *See also* Exs. 16-20.

rendering passage and use of a state highway dangerous.¹² One of Respondents' witnesses, Mr. Carr, described using the access for SOS as "kind of scary." **RP 243:19-21, 244:1-8; 249:25.**

4. Repetitive, Frequent Sounds From Repair and Testing Engines is a Prohibited Public Disturbance Noise.

The Mason County noise ordinance, MCC Chapter 9.36, prohibits "public disturbance noises" within Class A "Environmental Designation for Noise Abatement" or EDNAs. The following sounds are public disturbance noises: "the creation of frequent, repetitive or continuous sounds in connection with the starting, operation, repair, rebuilding or testing of any ... internal combustion engine." MCC 9.36.120(3).

The only evidence required to show a noise ordinance violation is: (1) location within a Class A EDNA; (2) engine testing noises that are frequent, repetitive or continuous; and (3) interference with the peace, comfort and repose of the community. Substantial evidence in the record shows these factors are met, as continuous "revving" of engines startles Appellants, drives them indoors, and makes it difficult for them to talk on the phone or watch television.¹³ No decibel level is established for public disturbance noises; no noise measurements are required. A violation of

¹² See discussion of the substantial evidence of the impacts resulting from highway permit violations, at pages 12-15, 31-32 and 42-44 of Appellants' Opening Brief.

¹³ See discussion of the substantial evidence of the impacts resulting from noise ordinance violations, at pages 12-15, 30-32, and 40-41 of Appellants' Opening Brief

the noise ordinance, by its terms unreasonably disturbs or interferes with the peace and comfort, and is a nuisance *per se*. MCC 9.36.120(3).

B. The Business Interferes with Appellants' Reasonable Use and Enjoyment.

1. Appellants Proved Nuisance by a Preponderance of the Evidence.

Respondents focus on the number of witnesses that testified for each side.¹⁴ The preponderance of the evidence standard is not a contest to see who can call the most witnesses, however. *State v. Harris*, 74 Wash. 60, 62, 132 P. 735 (1913). Applying the 51% preponderance of the evidence rule, Appellants' testimony and the exhibits in the record supports a determination a nuisance exists. *See Gallamore v. City of Olympia*, 34 Wash. 379, 386, 75 P. 978 (1904). Substantial evidence shows Respondents' illegal operations "either annoys, injures or endangers [Appellants'] comfort, repose, health or safety." *See* RCW 7.48.120; RCW 7.48.010. Appellants are not required to call any expert witnesses to testify regarding the impact of Love's business on their enjoyment of life and property.

2. Experiences of Persons Not Similarly Situated or Highly Interested Are Not Determinative.

Respondents' witnesses testified they did not experience the effects of the engine repair business to the same degree as Appellants, but this

¹⁴ Respondents digress into issues irrelevant to the determination of whether impacts of the SOS engine repair shop disturb or annoy Respondents, including allegations of "retaliation," and the Kruegers' plans for development of their property. Respondents' Br. at 21-22. The trial court ignored this irrelevant testimony in its ruling.

does not, in and of itself, support a determination that a nuisance is not present. While an objective test is applied (*Riblet v. Ideal Cement Co.*, 57 Wn.2d 619, 622, 358 P.2d 975 (1961)), it matters not that there are differing opinions regarding the level of disturbance. The trial court's failure to include any "findings" on essential facts necessary to support its judgment, including the impact of the unpermitted business operations on Appellants, evidences that no objective test was applied. See *Stevens v. King County*, 36 Wn.2d 738, 745, 220 P.2d 318 (1950). Moreover, "when the conditions giving rise to a nuisance are also a violation of statutory prohibition, those conditions constitute a nuisance *per se*, and the issue of the reasonableness of the defendant's conduct and the weighing of the relative interests of the plaintiff and defendant is precluded because the Legislature has, in effect, already struck the balance in favor of the innocent party." *Tiegs v. Boise Cascade Corp.*, 83 Wn.App. 411, 418, 922 P.2d 115 (1996).

Respondents mention credibility, but the Trial Court entered no explicit findings on credibility. Love presented cumulative testimony from friends and customers. Love's friends and neighbors were far from objective "ordinary persons." They are highly interested in keeping Love's business because they depend on him or have a bone to pick with Appellants.

James David is a neighbor. **RP 122.** Hood Canal is not his principal residence. **RP 123:6-7.** He resides on the canal a total of eight weeks per year, mostly on weekends or in the summer. **RP 123:12-16; 131:13-24.** He has a lease arrangement with Mr. Love. **RP 132-33.** He receives money from SOS's use of his property. *Ibid.* He can hear the motors "but it is a business." **RP 123; 132:9-10.** Elliot Gordon is a neighbor. He has a conflict with Mr. Krueger regarding a proposed development in the neighborhood which he calls "a pattern of harassment towards me" He feels harassed by the Kruegers. **RP 176:8-11; RP 183-84. RP 176:4-18.** He can hear the motors "revving up. **RP 151:5-9; 162:14-16.** He does not live year round on the Canal. **RP 162:4-6.** The Loves watch his house when he is gone in the winter. *Id.* Bill Jacobs, a neighbor, comes to Hood Canal "about one-half the time over the last six years." **RP 139:13-19; 139:11-12.** He can hear engine noise from SOS' operations which reminds him that a business is there. **RP 142:12-17; RP 146:17.** George Carr is a customer. **RP 238:7-8.** He is only on-site five or ten minutes. **RP 234:9-10.** He views SOS as a "valuable service." **RP 251:12-15; 23-24.** Customer Robert Sigley's (**RP 276:25; 277:1**) cabin is on the canal "well beyond the scope of this [SOS operations]." **RP 280:24-25; 281:1-4.** He is only at the cabin in the summer "a couple of days at a time." **RP 281:14-21.**

The testimony of Love's witnesses cannot form the basis for an objective nuisance test, or "reasonable person" standard, because they are not subject to the same impact as Appellants due to proximity to the shop and duration of exposure to the impacts and are not objective. Whether the engine shop is "well-kept" or "nice looking" is irrelevant because Appellants did not raise aesthetic impacts.

No general test exists for determining whether a nuisance has been established. *Crawford v. Central Steam Laundry*, 78 Wash. 355, 357, 139 P. 56 (1914). A court must consider specific facts of each case, including evidence of discomfort suffered by the plaintiff. *Id.*

The trial court's apparent determination that the Appellants should not have been experiencing fear due to the dangerous situation caused by encroaching vehicles on the Highway is contrary to *Stolzheise*, 24 Wn.2d at 798, which ruled that fears – imaginary or not - must be recognized by courts in ruling on nuisance claims. The *Park* court also ruled that, just because some people might be able to endure disruptive conditions better than the complaining party, does not mean there is no nuisance. *Id.* at 799.

The trial court ignored Appellants' fears and physical discomfort from residing full-time directly across the street from the SOS business, and held them to an improper, unreasonable standard, requiring them to "harden" themselves to the disruptive, annoying impacts of an engine

repair shop in a residential neighborhood along Hood Canal. This is error.

3. The Engine Shop is Inappropriately Located With Different Impacts Than Residential Uses.

Incompatible commercial uses located unreasonably and unnecessarily in a residential neighborhood constitute a nuisance. *Brady v. City of Tacoma*, 145 Wash. 351, 360-61, 259 P. 1089 (1927). To prevent nuisance, the operations of a particular business must be similar to other businesses in the area, and must take place on a sufficiently-sized lot to accommodate the operations. *Id.* The reasonableness of a business depends on the character of the neighborhood in which it is located. *See Haan v. Heath*, 161 Wash. 128, 132, 296 P. 816 (1931) (ruling that location of defendants' business in a residential district deprived the plaintiffs of the comfort and repose to which they are entitled).

Respondents claim "this is a mixed-use area; there are numerous businesses of varying sizes as well as residences all along the road," and criticize Ms. Krueger for testifying that it is not appropriate to operate an engine repair shop in the residential zone. The area is zoned residential and is "high end" residential. **RP 16:2; RP 40:3-6**. None of the few other businesses emanate noise of such intensity that it can be heard indoors; they are pocket retail businesses selling goods, a typical situation in rural areas. None emanate smoke, fumes or noise, or have parking issues resulting in encroachment into the Highway. Further, the inadequate size

of the SOS lot to keep business impacts on-site results in a nuisance. *See Brady, supra*, 145 Wash. at 360-61.

The noise and fumes from the engine shop are different than ordinary road or boating noise to be expected in a residential neighborhood and is an atypical business in a residential area. **RP 17:7-4**. While not constant, the noise is very high intensity. Appellants' Opening Brief, pp.12-14. The noise is not a slight discomfort or inconvenience. The operation of leaf blowers, motorcycles and boating activities do not result in a startle reflex as experienced when Love revs engines. *See* Opening Brief, p.31. Even Mr. Jacobs testified he is startled by the engine revving noise. (**RP 142**). There is also no comparison between the occasional residential package or propane deliveries and the hundreds of engine deliveries with boats and trailers to the business and encroachment onto the Highway due to the insufficient size of the lot. *See Tieg, supra*, 135 Wn.2d at 14.

The facts of the cases cited by Respondents are distinguishable from this case, where Appellants retired to Hood Canal to enjoy the beauty and serenity of the shoreline environment but have been unreasonably annoyed, injured and disturbed by the improper location and operation of the engine repair shop. The preponderance of the evidence supports a determination of nuisance, based on Appellants' testimony and exhibits.

The trial court erred in not so concluding.

4. Deference to a Trier of Fact Does Not Require Upholding Erroneous Legal Determinations or Rulings Unsupported by Substantial Evidence.

Appellants agree that reviewing courts defer to the trier of fact. But the trial court made erroneous determinations based on facts it “found” in ruling there was no nuisance, which determinations are legal conclusions reviewed *de novo*. See *Rasmussen v. Bendotti*, 107 Wn. App. 947, 954, 29 P.3d 56 (2001). Where findings are not supported by substantial evidence and/or if they do not justify the court’s conclusions, the reviewing court need not defer to the Trial Court’s judgment. See *Croton Chem. Corp. v. Birkenwald, Inc.*, 50 Wn.2d 684, 685, 314 P.2d 622 (1957); *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 819, 828 P.2d 549 (1992).

Respondents’ citation to *Lauridsen v. Lewis*, 50 Wash. 605, 608-09, 97 P. 663 (1908) is misleading and inaccurate; this Court is not bound to accept the trial court’s “findings” as verities. The question is the sufficiency of the facts to sustain the trial court’s determinations. *Lauridsen*, 50 Wash. at 607. As discussed above, the trial court’s conclusion that the evidence does not support a finding of nuisance is legal error and should be reversed.

C. Appellants’ Nuisance *per se* Claim is Not a Damages Claim Under the SMA.

A person may seek monetary damages and/or injunctive relief to redress a nuisance. RCW 7.48.020; *see also* RCW 7.48.010; RCW

7.48.120. On the other hand, a claim for damages resulting from a violation of the SMA is based on RCW 90.58.230, and is an entirely separate claim from nuisance *per se*. A private litigant may seek damages for both types of claims, but may only seek injunctive relief for a nuisance.

Appellants need not prove damages to support a claim of nuisance *per se*; only a showing of *injury or annoyance* is required. *E.g.*, *Davis v. Taylor*, 132 Wn.App. 515, 519-20, 132 P.3d 783 (2006) (injunction entered against nuisance farming operations). It would be nonsensical to require a showing of damages for a nuisance *per se* claim where a litigant seeks only injunctive relief. All damages claims were abandoned at trial, as Ms. Krueger and Ms. Moore testified they were only seeking injunctive relief. **RP 68** (Krueger); **RP 106:6-7; 106:6-24** (Moore); **RP 3** (Motion Hearing, 10/25/10). No evidence of damages was presented. The Lower Court acknowledged the relief sought was injunctive, not damages (CP 114), but when ruling on fees erred in bringing in RCW 90.58.230 which addresses damages. *See* **RP 6-7** (10/25/10 Hearing), citing to Closing Argument language that damages could have been allowed under both nuisance statutes and the SMA, but “Plaintiffs are not necessarily seeking damages.”

The attorney’s comments in the Closing Argument are not evidence. *State v. French*, 101 Wn.App. 380, 390, 4 P.3d 857 (2000). They do not change the intent of the Appellants to seek only injunctive relief.

Appellants presented no evidence of the diminution in value of their homes, medical expenses, or any other showing for a monetary award. Without evidence of damages, how could the trial court even consider awarding damages? *E.g., Harmony at Madrona Park Owners Assn. v. Madison Harmony Development, Inc.*, 160 Wn.App. 728, 253 P.3d 101 (2011).

Evidence of Respondents' failure to obtain shoreline permits was offered to support the request for an injunction for nuisance *per se*, not damages. *See* RCW 90.58.210 (private citizens may not seek injunctive relief under the SMA). Respondents fail to discern the difference between a SMA claim for damages (abandoned) and a nuisance *per se* claim based on evidence of failure to comply with SMA permitting requirements.

D. Respondents are not Entitled to Attorney's Fees

1. Appellants Abandoned a Request for Damages Including an SMA Claim and the Trial Court Addressed Injunctive Relief Only.

The sole remedy requested at trial was injunctive relief, not damages under RCW 90.58.230. *See* **RP 3-4** (10/25/10 Motion Hearing). Counsel for Respondents conceded to the Trial Court "one of the causes of action was **nuisance** by way of violation of the Shoreline Management Act." **RP 6** (10/25/10 Hearing) (Emphasis supplied). The Trial Court's ruling acknowledged the limited request for relief, denying the request for injunction without a statement concerning damages. **CP 114-15**. There is

no authority to award attorneys fees for defending a mere nuisance claim. *E.g., Seattle School Dist. No. 1 of King County v. State*, 90 Wn.2d 476, 540, 585 P.2d 71 (1978). Respondents contend that if Appellants prevailed they would have sought attorney fees, but their claim to pursue only injunctive relief belies that assertion.

2. The Block-Billing Records Are Insufficient.

There is no legal basis to award fees, but in addition, the amount of the fee award was abuse of discretion because it is unreasonable and unsupported by sufficient billing records. *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983). Respondents cite a number of cases concerning “flat fees,” pro bono representation and public interest cases,¹⁵ but entirely miss the requirement that either the billing records or the trial court’s decision must evidence the reasonableness of the fees. *See Estrada v. McNulty*, 98 Wn. App. 717, 723-24, 988 P.2d 492 (1999) (court could not review reasonableness of flat fee with inadequate findings on the basis of the fee).

Regardless of whether a flat fee is charged, there must be a showing that the fees are reasonable under case law and the Rules of Professional Conduct. The block-billing records cannot support a fee award of over \$36,000 that meets the factors in *Bowers v. Transamerica Title Insurance Co.*, 100 Wn.2d 581, 675 P.2d 193 (1983) and RPC

¹⁵ Mr. Love was not represented *pro bono*, and this is not a “public interest” case.

1.5(a).¹⁶ The records do not include sufficient information on hours reasonably spent defending the nuisance claim, duplicated effort/unproductive time, the amount of potential recovery, or time spent on unsuccessful or unrelated claims. *See Bowers*, 100 Wn.2d at 596; RPC 1.5(a). Nor was there evidence that Mr. Love could not afford an attorney, contrary to the bare assertions in Respondents' Br. at 46-47.

Respondents admit that they did not segregate amounts for time spent responding to a citation issued by the Department of Fish and Wildlife for a dock extension. Respondents' Br. at 47-48. But they do not address the fact that the citation was issued by the State, based on different facts and legal theories, and not an issue in the nuisance lawsuit.¹⁷ The two unrelated matters should have been segregated. *Hensley v. Eckerhart*, 461 U.S. 424, 435 (1983) (segregation required for different claims based upon different facts and legal theories). The trial court judge commented that she could not segregate issues intertwined with "other nuisance theories" (**RP 15-16**), but the dock citation is wholly unrelated to the nuisance claims. The fees billed for the WDFW citation should have been separated from those incurred defending the nuisance claims. *Kastanis v.*

¹⁶ The case was not complex or lengthy, and did not require a high level of skill to defend, further warranting denial of the requested fees. *E.g., Matter of Estate of Niehenke*, 117 Wn.2d 631, 818 P.2d 1324 (1991).

¹⁷ Mere mention of the unrelated WDFW matter by witnesses at trial does not: (1) make the citation issue part of the case, nor (2) intermingle the defense of the two separate matters to the extent that they are "inseparable."

Educational Employees Credit Union, 122 Wn.2d 483, 501-02, 859 P.2d 26 (1994) (no finding that claims were inseparable).

3. The Trial Court's Ruling is Unsupported.

Respondents' Supplemental Brief merely quotes the Trial Court Memorandum Opinion on attorney fees and is not argument. Appellants focus, then on the Lower Court's oral ruling and Respondents' core brief.

The trial court must provide an adequate record upon which to review a fee award. *Mahler v. Szucs*, 135 Wn.2d 398, 435, 957 P.2d 632 (1998). Such record must show that the court met its obligation to decide what is a reasonable award of fees, without relying solely on the attorney's billing records. *Nordstrom, Inc. v. Tampourlos*, 107 Wn.2d 735, 744, 733 P.2d 208 (1987). Here, no findings or conclusions were entered, and the trial court's oral ruling on attorneys' fees confirms that the award was virtually a rubber-stamp of Respondents' billing records. See **RP 15-16** (11/12/10 Hearing), **RP 24** (12/06/10 Hearing). Although the judge stated that she would have to "go through the billings essentially line by line" (**RP 8**), she accepted declarations of counsel, unsupported by time records. She allowed over 148 hours for a two-day simple nuisance case with no expert witness testimony.¹⁸ The oral ruling contains no discussion of the reasonableness of the fee, considering the level of skill required, the

¹⁸ The Court allowed 67.25 hours for Mr. Finlay and approximately 80.8 hours for Eisenhower and Carlson (\$20,213 divided by \$250/hr), for a total of 148.05 hours.

amount of the potential recovery, and awards in similar cases. 100 Wn.2d at 596. This Court cannot determine whether the exercise of the trial court's discretion was "manifestly unreasonable or based upon untenable grounds or reasons." *Brand v. Department of Labor and Industries of State of Wash.*, 139 Wn.2d 659, 674, 989 P.2d 1111 (1999).

The requirement in CR 41 and CR 52(a) to enter findings and conclusions, or provide a record sufficient for review cannot be waived. *Peoples Nat'l Bank of Washington v. Birney's Enterprises, Inc.*, 54 Wn. App. 668, 670, 775 P.2d 466 (1989) (where formal findings on critical events were not made, reviewing court stated it had to do what the attorney should have done: "sort out findings from the trial court's oral remarks"). Respondents had a burden to ensure appropriate findings and conclusions were entered. *Just Dirt, Inc. v. Knight Excavating, Inc.*, 138 Wn. App. 409, 416, 157 P.3d 431 (2007).¹⁹ They should have known an inadequate record would leave them vulnerable on appeal. *Id.* at 416; *see also Hensley*, 461 U.S. at 437. The record does not support a determination the fee award was reasonable, if even allowable.

¹⁹ None of the cases cited by Respondents shift the burden to the non-prevailing party to ensure a complete record for a fee award exists. They involved: (1) cases in which the record was sufficient for review without formal findings, or (2) evidentiary or procedural objections that a party failed to make, but which did not impact the appellate court's ability to review the trial court's ruling. In *Unifund CCR Partners v. Sunde*, WL2811335 (Div. II 2011), the court could easily determine the award of \$1,150 was reasonable for four years of debt collection efforts, despite that the "typical" requirement of findings of fact was not satisfied.

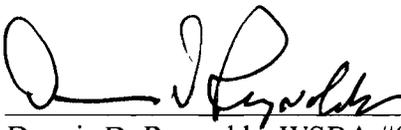
E. Respondents are Not Entitled to Attorneys' Fees on Appeal

Rules of Appellate Procedure (RAP) 18.1(a) provides that a party may recover reasonable attorney fees on review if "applicable law" grants the party the right to recover such fees. Like the claims at trial, this appeal does not involve SMA damages. There is no legal basis to award fees for a mere negligence claim. *See Seattle School Dist. No. 1*, 90 Wn.2d at 540.

III. CONCLUSION

This Court should grant the appeal and rule that a nuisance *per se* or public or private nuisance (RCW 7.48.130; .150) is established, and further order that no attorney fees or costs are properly awarded to Respondents. This Court should remand for (1) entry of an order of abatement or injunction to restrain any commercial activity, and (2) entry of an order vacating the award of attorney fees and costs.

RESPECTFULLY SUBMITTED this 2nd day of November, 2011.

By 
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CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of November, 2011, I caused the original and one copy of the document to which this certificate is attached to be delivered for filing via hand delivery to:

Clerk of Court
Court of Appeals, Division II
950 Broadway, Suite 300
Tacoma, WA 98402
(253) 593-2970, tel

I further certify that on this 2nd day of November, 2011, I caused a copy of the document to which this certificate is attached to be delivered to the following via e-mail and U.S. Mail:

Bruce J. Finlay, WSBA #18799
P.O. Box 3
Shelton, WA 98584-0003
(360) 432-1778, tel
(360) 462-1779, fax
brucef@hctc.com, email

Declared under penalty of perjury under the laws of the State of Washington at Bainbridge Island, Washington this 2nd day of November, 2011.



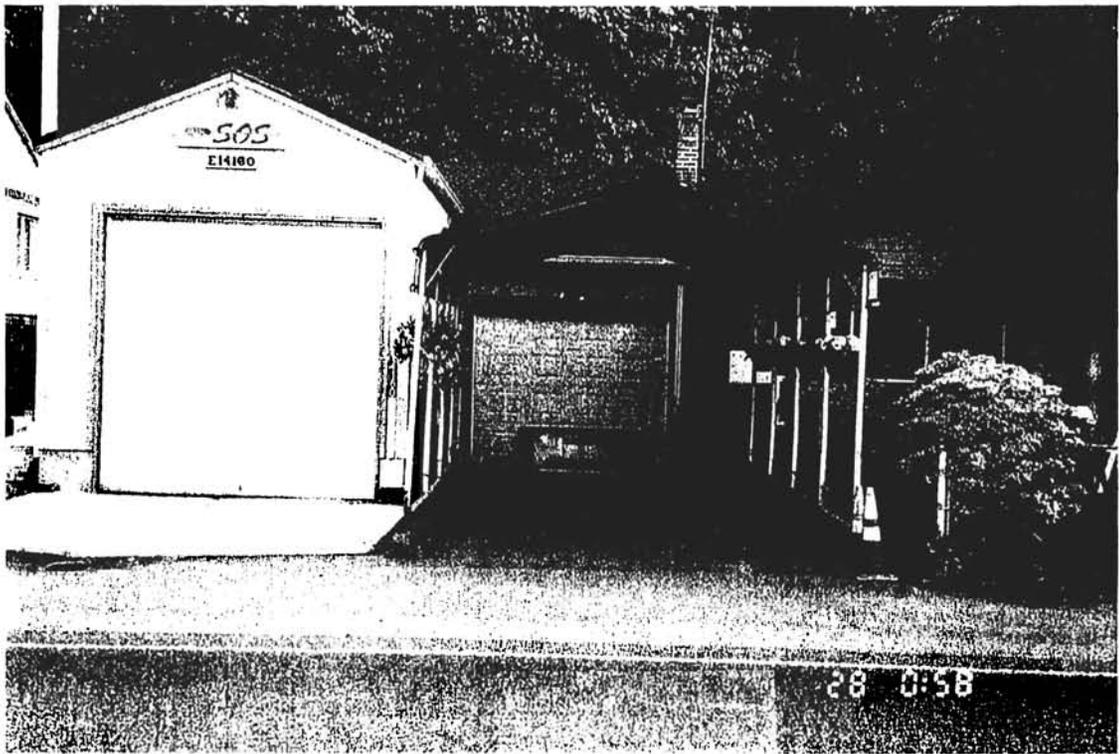
Christy Reynolds
Legal Assistant

**APPENDIX
TO APPELLANTS' REPLY BRIEF**

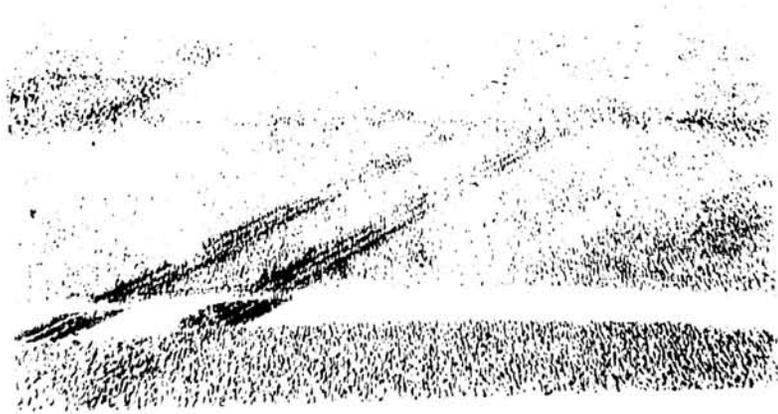
MOORE AND KRUEGER V. STEVE'S OUTBOARD, ET AL.
No. 41557-7-II

- 1) EXHIBIT 15
- 2) EXHIBIT 16
- 3) EXHIBIT 17
- 4) EXHIBIT 27
- 5) STATE STATUTES
- 6) LOCAL ORDINANCES
- 7) REGULATIONS

APPENDIX A-1







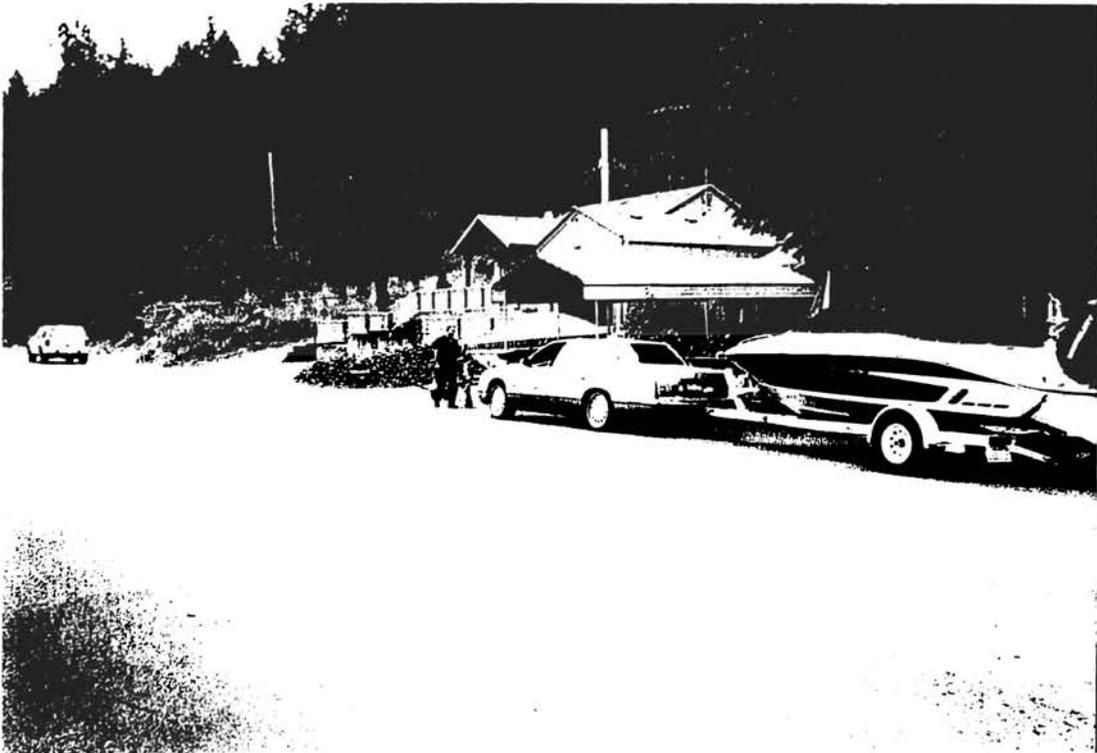
APPENDIX A-2







APPENDIX A-3



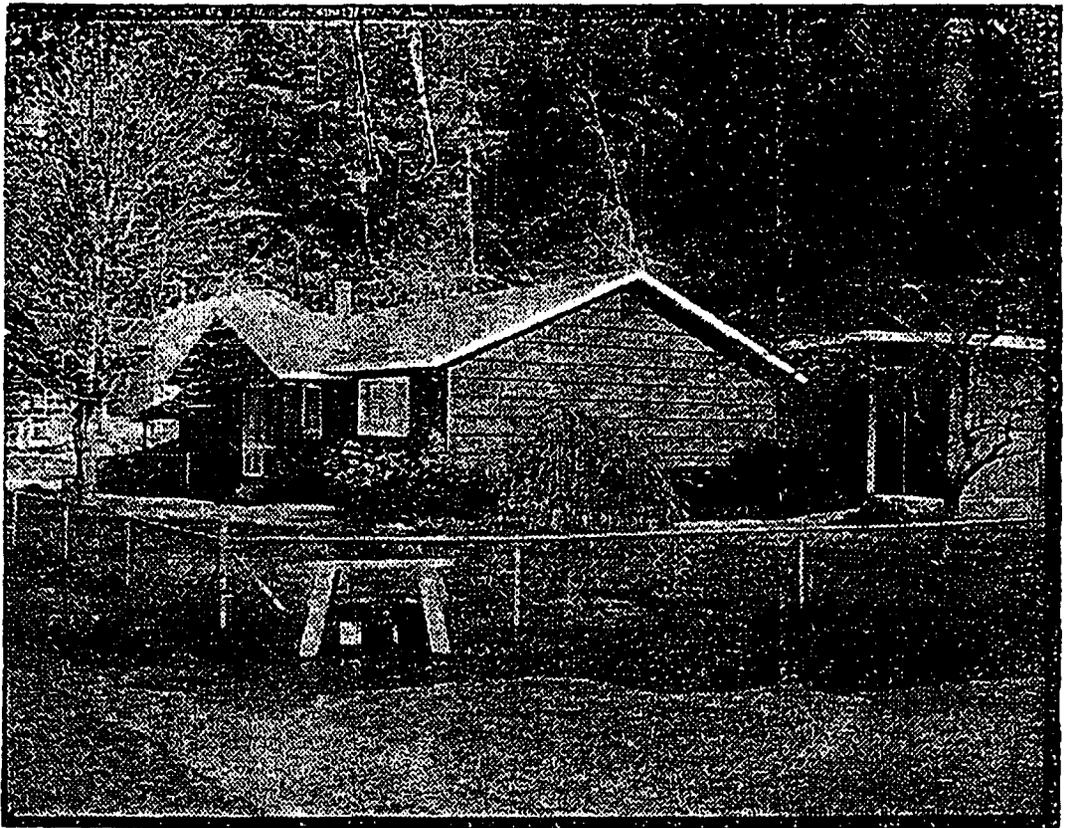


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APPENDIX A-4

Pla Exhibit # 27



APPENDIX A-5



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[RCWs](#) > [Title 7](#) > [Chapter 7.48](#) > [Section 7.48.010](#)

Beginning of Chapter << [7.48.010](#) >> [7.48.020](#)

RCW 7.48.010
Actionable nuisance defined.

The obstruction of any highway or the closing of the channel of any stream used for boating or rafting logs, lumber or timber, or whatever is injurious to health or indecent or offensive to the senses, or an obstruction to the free use of property, so as to essentially interfere with the comfortable enjoyment of the life and property, is a nuisance and the subject of an action for damages and other and further relief.

[Code 1881 § 605; 1877 p 126 § 610; 1868 p 144 § 599; 1854 p 207 § 406; RRS § 943.]

Notes:

- Crimes
 - malicious mischief: Chapter [9.61](#) RCW.
 - public nuisance: RCW [9.66.010](#).





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[RCWs > Title 7 > Chapter 7.48 > Section 7.48.020](#)

[7.48.010](#) << [7.48.020](#) >> [7.48.030](#)

RCW 7.48.020

Who may sue — Judgment for damages — Warrant for abatement — Injunction.

Such action may be brought by any person whose property is, or whose patrons or employees are, injuriously affected or whose personal enjoyment is lessened by the nuisance. If judgment be given for the plaintiff in such action, he or she may, in addition to the execution to enforce the same, on motion, have an order allowing a warrant to issue to the sheriff to abate and to deter or prevent the resumption of such nuisance. Such motion shall be allowed, of course, unless it appear on the hearing that the nuisance has ceased, or that such remedy is inadequate to abate or prevent the continuance of the nuisance, in which latter case the plaintiff may have the defendant enjoined.

[1994 c 45 § 5; 1891 c 50 § 1; Code 1881 § 606; 1877 p 126 § 611; 1869 p 144 § 560; 1854 p 207 § 406; RRS § 944.]

Notes:

Findings — Declaration -- Severability -- 1994 c 45: See notes following [RCW 7.48.140](#).





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[RCWs](#) > [Title 7](#) > [Chapter 7.48](#) > [Section 7.48.130](#)

[7.48.120](#) << [7.48.130](#) >> [7.48.140](#)

RCW 7.48.130

Public nuisance defined.

A public nuisance is one which affects equally the rights of an entire community or neighborhood, although the extent of the damage may be unequal.

[Code 1881 § 1236; 1875 p 79 § 2; RRS § 9912.]

Notes:

Crimes, nuisances: Chapter [9.66](#) RCW.

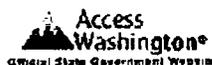



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[RCWs](#) > [Title 7](#) > [Chapter 7.48](#) > [Section 7.48.140](#)
[7.48.130](#) << [7.48.140](#) >> [7.48.150](#)
RCW 7.48.140
Public nuisances enumerated.

It is a public nuisance:

(1) To cause or suffer the carcass of any animal or any offal, filth, or noisome substance to be collected, deposited, or to remain in any place to the prejudice of others;

(2) To throw or deposit any offal or other offensive matter, or the carcass of any dead animal, in any watercourse, stream, lake, pond, spring, well, or common sewer, street, or public highway, or in any manner to corrupt or render unwholesome or impure the water of any such spring, stream, pond, lake, or well, to the injury or prejudice of others;

(3) To obstruct or impede, without legal authority, the passage of any river, harbor, or collection of water;

(4) To obstruct or encroach upon public highway, private ways, streets, alleys, commons, landing places, and ways to burying places or to unlawfully obstruct or impede the flow of municipal transit vehicles as defined in RCW 46.04.355 or passenger traffic, access to municipal transit vehicles or stations as defined in *RCW 9.91.025(2)(a), or otherwise interfere with the provision or use of public transportation services, or obstruct or impede a municipal transit driver, operator, or supervisor in the performance of that individual's duties;

(5) To carry on the business of manufacturing gun powder, nitroglycerine, or other highly explosive substance, or mixing or grinding the materials therefor, in any building within fifty rods of any valuable building erected at the time such business may be commenced;

(6) To establish powder magazines near incorporated cities or towns, at a point different from that appointed by the corporate authorities of such city or town; or within fifty rods of any occupied dwelling house;

(7) To erect, continue, or use any building, or other place, for the exercise of any trade, employment, or manufacture, which, by occasioning obnoxious exhalations, offensive smells, or otherwise is offensive or dangerous to the health of individuals or of the public;

(8) To suffer or maintain on one's own premises, or upon the premises of another, or to permit to be maintained on one's own premises, any place where wines, spirituous, fermented, malt, or other intoxicating liquors are kept for sale or disposal to the public in contravention of law;

(9) For an owner or occupier of land, knowing of the existence of a well, septic tank, cesspool, or other hole or excavation ten inches or more in width at the top and four feet or more in depth, to fail to cover, fence or fill the same, or provide other proper and adequate safeguards: PROVIDED, That this section shall not apply to a hole one hundred square feet or more in area or one that is open, apparent, and obvious.

Every person who has the care, government, management, or control of any building, structure, powder magazine, or any other place mentioned in this section shall, for the purposes of this section, be taken and deemed to be the owner or agent of the owner or owners of such building, structure, powder magazine or other place, and, as such, may be proceeded against for erecting, contriving, causing, continuing, or maintaining such nuisance.

[1994 c 45 § 2; 1955 c 237 § 1; 1895 c 14 § 1; Code 1881 § 1246; RRS § 9813.]

Notes:

***Reviser's note:** The reference to RCW 9.91.025(2)(a) appears to be erroneous. Reference to RCW 9.91.025(2) was apparently intended.

Findings -- Declaration -- 1994 c 45: "The legislature finds that it is important to the general welfare to protect and preserve public safety in the operation of public transportation facilities and vehicles, in order to protect the personal safety of both passengers and employees. The legislature further finds that public transportation facilities and services will be utilized more fully by the general public if they are assured of personal safety and security in the utilization.

The legislature recognizes that cities, towns, counties, public transportation benefit areas, and other municipalities that offer public transportation services have the independent authority to adopt regulations, rules, and guidelines that regulate conduct in public transportation vehicles and facilities to protect and preserve the public safety in the operation of the vehicles and facilities. The legislature finds that this act is not intended to limit the independent authority to regulate conduct by these municipalities. The legislature, however, further finds that this act is necessary to provide statewide guidelines that regulate conduct in public transportation vehicles and facilities to further enhance the independent regulatory authority of cities, towns, counties, public transportation benefit areas, and any other municipalities that offer public transportation services." [1994 c 45 § 1.]

Severability -- 1994 c 45: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1994 c 45 § 6.]

Crimes

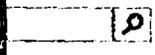
malicious mischief: Chapter 9.61 RCW.

nuisance: Chapter 9.66 RCW.

Devices simulating traffic control signs declared public nuisance. RCW 47.36.180.



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RCW 7.48.150

Private nuisance defined.

Every nuisance not included in the definition of RCW [7.48.130](#) is private.

[Code 1881 § 1237; 1875 p 70 § 3; RRS § 9915.]





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[90.58.020](#) << [90.58.030](#) >> [90.58.040](#)

RCW 90.58.030
Definitions and concepts.

As used in this chapter, unless the context otherwise requires, the following definitions and concepts apply:

(1) Administration:

- (a) "Department" means the department of ecology;
- (b) "Director" means the director of the department of ecology;
- (c) "Hearings board" means the shorelines hearings board established by this chapter;

(d) "Local government" means any county, incorporated city, or town which contains within its boundaries any lands or waters subject to this chapter;

(e) "Person" means an individual, partnership, corporation, association, organization, cooperative, public or municipal corporation, or agency of the state or local governmental unit however designated.

(2) Geographical:

(a) "Extreme low tide" means the lowest line on the land reached by a receding tide;

(b) "Floodway" means the area, as identified in a master program, that either: (i) Has been established in federal emergency management agency flood insurance rate maps or floodway maps; or (ii) consists of those portions of a river valley lying streamward from the outer limits of a watercourse upon which flood waters are carried during periods of flooding that occur with reasonable regularity, although not necessarily annually, said floodway being identified, under normal condition, by changes in surface soil conditions or changes in types or quality of vegetative ground cover condition, topography, or other indicators of flooding that occurs with reasonable regularity, although not necessarily annually. Regardless of the method used to identify the floodway, the floodway shall not include those lands that can reasonably be expected to be protected from flood waters by flood control devices maintained by or maintained under license from the federal government, the state, or a political subdivision of the state;

(c) "Ordinary high water mark" on all lakes, streams, and tidal water is 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 exists on June 1, 1971, as it may naturally change thereafter, or as it may change thereafter in accordance with permits issued by a local government or the department: PROVIDED, That in any area where the ordinary high water mark cannot be found, the ordinary high water mark adjoining salt water shall be the line of mean higher high tide and the ordinary high water mark adjoining fresh water shall be the line of mean high water;

(d) "Shorelands" or "shoreland areas" means those lands extending landward for two hundred feet in all directions as measured on a horizontal plane from the ordinary high water mark; floodways and contiguous floodplain areas landward two hundred feet from such floodways; and all wetlands and river deltas associated with the streams, lakes, and tidal waters which are subject to the provisions of this chapter; the same to be designated as to location by the department of ecology.



(i) Any county or city may determine that portion of a one-hundred-year-flood plain to be included in its master program as long as such portion includes, as a minimum, the floodway and the adjacent land extending landward two hundred feet therefrom.

(ii) Any city or county may also include in its master program land necessary for buffers for critical areas, as defined in chapter 36.70A RCW, that occur within shorelines of the state, provided that forest practices regulated under chapter 76.09 RCW, except conversions to nonforest land use, on lands subject to the provisions of this subsection (2)(d)(ii) are not subject to additional regulations under this chapter;

(e) "Shorelines" means all of the water areas of the state, including reservoirs, and their associated shorelands, together with the lands underlying them; except (i) shorelines of statewide significance; (ii) shorelines on segments of streams upstream of a point where the mean annual flow is twenty cubic feet per second or less and the wetlands associated with such upstream segments; and (iii) shorelines on lakes less than twenty acres in size and wetlands associated with such small lakes;

(f) "Shorelines of statewide significance" means the following shorelines of the state:

(i) The area between the ordinary high water mark and the western boundary of the state from Cape Disappointment on the south to Cape Flattery on the north, including harbors, bays, estuaries, and inlets;

(ii) Those areas of Puget Sound and adjacent salt waters and the Strait of Juan de Fuca between the ordinary high water mark and the line of extreme low tide as follows:

(A) Nisqually Delta – from DeWolf Bight to Tatsolo Point,

(B) Birch Bay – from Point Whitehorn to Birch Point,

(C) Hood Canal – from Tala Point to Foulweather Bluff,

(D) Skagit Bay and adjacent area -- from Brown Point to Yokeko Point, and

(E) Padilla Bay – from March Point to William Point;

(iii) Those areas of Puget Sound and the Strait of Juan de Fuca and adjacent salt waters north to the Canadian line and lying seaward from the line of extreme low tide;

(iv) Those lakes, whether natural, artificial, or a combination thereof, with a surface acreage of one thousand acres or more measured at the ordinary high water mark;

(v) Those natural rivers or segments thereof as follows:

(A) Any west of the crest of the Cascade range downstream of a point where the mean annual flow is measured at one thousand cubic feet per second or more,

(B) Any east of the crest of the Cascade range downstream of a point where the annual flow is measured at two hundred cubic feet per second or more, or those portions of rivers east of the crest of the Cascade range downstream from the first three hundred square miles of drainage area, whichever is longer;

(vi) Those shorelands associated with (i), (ii), (iv), and (v) of this subsection (2)(f);

(g) "Shorelines of the state" are the total of all "shorelines" and "shorelines of statewide significance" within the state;

(h) "Wetlands" means areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from nonwetland areas to mitigate the conversion of wetlands.

(3) Procedural terms:

(a) "Development" means a use consisting of the construction or exterior alteration of structures; dredging; drilling; dumping; filling; removal of any sand, gravel, or minerals; bulkheading; driving of piling; placing of obstructions; or any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to this chapter at any state of water level;

(b) "Guidelines" means those standards adopted to implement the policy of this chapter for regulation of use of the shorelines of the state prior to adoption of master programs. Such standards shall also provide criteria to local governments and the department in developing master programs;

(c) "Master program" shall mean the comprehensive use plan for a described area, and the use regulations together with maps, diagrams, charts, or other descriptive material and text, a statement of desired goals, and standards developed in accordance with the policies enunciated in RCW 90.58.020. "Comprehensive master program update" means a master program that fully achieves the procedural and substantive requirements of the department guidelines effective January 17, 2004, as now or hereafter amended;

(d) "State master program" is the cumulative total of all master programs approved or adopted by the department of ecology;

(e) "Substantial development" shall mean any development of which the total cost or fair market value exceeds five thousand dollars, or any development which materially interferes with the normal public use of the water or shorelines of the state. The dollar threshold established in this subsection (3)(e) must be adjusted for inflation by the office of financial management every five years, beginning July 1, 2007, based upon changes in the consumer price index during that time period. "Consumer price index" means, for any calendar year, that year's annual average consumer price index, Seattle, Washington area, for urban wage earners and clerical workers, all items, compiled by the bureau of labor and statistics, United States department of labor. The office of financial management must calculate the new dollar threshold and transmit it to the office of the code reviser for publication in the Washington State Register at least one month before the new dollar threshold is to take effect. The following shall not be considered substantial developments for the purpose of this chapter:

(i) Normal maintenance or repair of existing structures or developments, including damage by accident, fire, or elements;

(ii) Construction of the normal protective bulkhead common to single family residences;

(iii) Emergency construction necessary to protect property from damage by the elements;

(iv) Construction and practices normal or necessary for farming, irrigation, and ranching activities, including agricultural service roads and utilities on shorelands, and the construction and maintenance of irrigation structures including but not limited to head gates, pumping facilities, and irrigation channels. A feedlot of any size, all processing plants, other activities of a commercial nature, alteration of the contour of the shorelands by leveling or filling other than that which results from normal cultivation, shall not be considered normal or necessary farming or ranching activities. A feedlot shall be an enclosure or facility used or capable of being used for feeding livestock hay, grain, silage, or other livestock feed, but shall not include land for growing crops or vegetation for livestock feeding and/or grazing, nor shall it include normal livestock wintering operations;

(v) Construction or modification of navigational aids such as channel markers and anchor buoys;

(vi) Construction on shorelands by an owner, lessee, or contract purchaser of a single family residence for his own use or for the use of his or her family, which residence does not exceed a height of thirty-five feet above average grade level and which meets all requirements of the state agency or local government having jurisdiction thereof, other than requirements imposed pursuant to this chapter;

(vii) Construction of a dock, including a community dock, designed for pleasure craft only, for the private noncommercial use of the owner, lessee, or contract purchaser of single and multiple family residences. This exception applies if either: (A) In salt waters, the fair market value of the dock does not exceed two thousand five hundred dollars; or (B) in fresh waters,

the fair market value of the dock does not exceed ten thousand dollars, but if subsequent construction having a fair market value exceeding two thousand five hundred dollars occurs within five years of completion of the prior construction, the subsequent construction shall be considered a substantial development for the purpose of this chapter;

(viii) 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 groundwater for the irrigation of lands;

(ix) 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;

(x) Operation and maintenance of any system of dikes, ditches, drains, or other facilities existing on September 8, 1975, which were created, developed, or utilized primarily as a part of an agricultural drainage or diking system;

(xi) 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 a structure, and upon completion of the activity the vegetation and land configuration of the site are restored to conditions existing before the activity;

(D) A private entity seeking development authorization under 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~~;

(xii) The process of removing or controlling an aquatic noxious weed, as defined in RCW ~~17.26.020~~, through the use of an herbicide or other treatment methods applicable to weed control that are recommended by a final environmental impact statement published by the department of agriculture or the department jointly with other state agencies under chapter ~~43.21C~~ RCW.

[2010 c 107 § 3; 2007 c 328 § 1; 2003 c 321 § 2; 2002 c 230 § 2; 1996 c 265 § 1. Prior. 1995 c 382 § 10; 1995 c 255 § 5; 1995 c 237 § 1; 1987 c 474 § 1; 1986 c 292 § 1; 1982 1st ex.s. c 13 § 2; 1980 c 2 § 3; 1979 ex.s. c 84 § 3; 1975 1st ex.s. c 182 § 1; 1973 1st ex.s. c 203 § 1; 1971 ex.s. c 286 § 3.]

Notes:

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW ~~1.08.015(2)(k)~~.

Intent – Retroactive application – Effective date -- 2010 c 107: See notes following RCW ~~36.70A.480~~.

Finding -- Intent -- 2003 c 321: "(1) The legislature finds that the final decision and order in *Everett Shorelines Coalition v. City of Everett and Washington State Department of Ecology*, Case No. 02-3-0009c, issued on January 9, 2003, by the central Puget Sound growth management hearings board was a case of first impression interpreting the addition of the shoreline management act into the growth management act, and that the board considered the appeal and issued its final order and decision without the benefit of shorelines guidelines to provide guidance on the implementation of the shoreline management act and the adoption of shoreline master programs.

(2) This act is intended to affirm the legislature's intent that:

(a) The shoreline management act be read, interpreted, applied, and implemented as a whole consistent with decisions of the shoreline[s] hearings

board and Washington courts prior to the decision of the central Puget Sound growth management hearings board in *Everett Shorelines Coalition v. City of Everett and Washington State Department of Ecology*,

(b) The goals of the growth management act, including the goals and policies of the shoreline management act, set forth in RCW 36.70A.020 and included in RCW 36.70A.020 by RCW 36.70A.480, continue to be listed without an order of priority; and

(c) Shorelines of statewide significance may include critical areas as defined by RCW 36.70A.030(5), but that shorelines of statewide significance are not critical areas simply because they are shorelines of statewide significance.

(3) The legislature intends that critical areas within the jurisdiction of the shoreline management act shall be governed by the shoreline management act and that critical areas outside the jurisdiction of the shoreline management act shall be governed by the growth management act. The legislature further intends that the quality of information currently required by the shoreline management act to be applied to the protection of critical areas within shorelines of the state shall not be limited or changed by the provisions of the growth management act." [2003 c 321 § 1.]

Finding -- Intent -- 2002 c 230: "The legislature finds that the dollar threshold for what constitutes substantial development under the shoreline management act has not been changed since 1986. The legislature recognizes that the effects of inflation have brought in many activities under the jurisdiction of chapter 90.58 RCW that would have been exempted under its original provisions. It is the intent of the legislature to modify the current dollar threshold for what constitutes substantial development under the shoreline management act, and to have this threshold readjusted on a five-year basis." [2002 c 230 § 1.]

Severability -- Effective date -- 1995 c 255: See RCW 17.26.900 and 17.26.901.

Severability -- 1986 c 292: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1986 c 292 § 5.]

Intent -- 1980 c 2; 1979 ex.s. c 84: "The legislature finds that high tides and hurricane force winds on February 13, 1979, caused conditions resulting in the catastrophic destruction of the Hood Canal bridge on state route 104, a state highway on the federal-aid system; and, as a consequence, the state of Washington has sustained a sudden and complete failure of a major segment of highway system with a disastrous impact on transportation services between the counties of Washington's Olympic peninsula and the remainder of the state. The governor has by proclamation found that these conditions constitute an emergency. To minimize the economic loss and hardship to residents of the Puget Sound and Olympic peninsula regions, it is the intent of 1979 ex.s. c 84 to authorize the department of transportation to undertake immediately all necessary actions to restore interim transportation services across Hood Canal and Puget Sound and upon the Kitsap and Olympic peninsulas and to design and reconstruct a permanent bridge at the site of the original Hood Canal bridge. The department of transportation is directed to proceed with such actions in an environmentally responsible manner that would meet the substantive objectives of the state environmental policy act and the shorelines management act, and shall consult with the department of ecology in the planning process. The exemptions from the state environmental policy act and the shorelines management act contained in RCW 43.21C.032 and 90.58.030 are intended to approve and ratify the timely actions of the department of transportation taken and to be taken to restore interim transportation services and to reconstruct a

permanent Hood Canal bridge without procedural delays." [1980 c 2 § 1; 1979 ex.s. c 84 § 1.]



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[90.58.130](#) << [90.58.140](#) >> [90.58.143](#)

RCW 90.58.140

Development permits — Grounds for granting — Administration by local government, conditions — Applications — Notices — Rescission — Approval when permit for variance or conditional use.

*** CHANGE IN 2011 *** (SEE [5192-S.SL](#)) ***

(1) A development shall not be undertaken on the shorelines of the state unless it is consistent with the policy of this chapter and, after adoption or approval, as appropriate, the applicable guidelines, rules, or master program.

(2) A substantial development shall not be undertaken on shorelines of the state without first obtaining a permit from the government entity having administrative jurisdiction under this chapter.

A permit shall be granted:

(a) From June 1, 1971, until such time as an applicable master program has become effective, only when the development proposed is consistent with: (i) The policy of RCW [90.58.020](#); and (ii) after their adoption, the guidelines and rules of the department; and (iii) so far as can be ascertained, the master program being developed for the area;

(b) After adoption or approval, as appropriate, by the department of an applicable master program, only when the development proposed is consistent with the applicable master program and this chapter.

(3) The local government shall establish a program, consistent with rules adopted by the department, for the administration and enforcement of the permit system provided in this section. The administration of the system so established shall be performed exclusively by the local government.

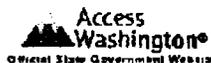
(4) Except as otherwise specifically provided in subsection (11) of this section, the local government shall require notification of the public of all applications for permits governed by any permit system established pursuant to subsection (3) of this section by ensuring that notice of the application is given by at least one of the following methods:

(a) Mailing of the notice to the latest recorded real property owners as shown by the records of the county assessor within at least three hundred feet of the boundary of the property upon which the substantial development is proposed;

(b) Posting of the notice in a conspicuous manner on the property upon which the project is to be constructed; or

(c) Any other manner deemed appropriate by local authorities to accomplish the objectives of reasonable notice to adjacent landowners and the public.

The notices shall include a statement that any person desiring to submit written comments concerning an application, or desiring to receive notification of the final decision concerning an application as expeditiously as possible after the issuance of the decision, may submit the



comments or requests for decisions to the local government within thirty days of the last date the notice is to be published pursuant to this subsection. The local government shall forward, in a timely manner following the issuance of a decision, a copy of the decision to each person who submits a request for the decision.

If a hearing is to be held on an application, notices of such a hearing shall include a statement that any person may submit oral or written comments on an application at the hearing.

(5) The system shall include provisions to assure that construction pursuant to a permit will not begin or be authorized until twenty-one days from the date of receipt as provided in subsection (6) of this section; or until all review proceedings are terminated if the proceedings were initiated within twenty-one days from the date of receipt as defined in subsection (6) of this section except as follows:

(a) In the case of any permit issued to the state of Washington, department of transportation, for the construction and modification of SR 90 (I-90) on or adjacent to Lake Washington, the construction may begin after thirty days from the date of filing, and the permits are valid until December 31, 1995;

(b) Construction may be commenced no sooner than thirty days after the date of the appeal of the board's decision is filed if a permit is granted by the local government and (i) the granting of the permit is appealed to the shorelines hearings board within twenty-one days of the date of receipt, (ii) the hearings board approves the granting of the permit by the local government or approves a portion of the substantial development for which the local government issued the permit, and (iii) an appeal for judicial review of the hearings board decision is filed pursuant to chapter 34.05 RCW. The appellant may request, within ten days of the filing of the appeal with the court, a hearing before the court to determine whether construction pursuant to the permit approved by the hearings board or to a revised permit issued pursuant to the order of the hearings board should not commence. If, at the conclusion of the hearing, the court finds that construction pursuant to such a permit would involve a significant, irreversible damaging of the environment, the court shall prohibit the permittee from commencing the construction pursuant to the approved or revised permit until all review proceedings are final. Construction pursuant to a permit revised at the direction of the hearings board may begin only on that portion of the substantial development for which the local government had originally issued the permit, and construction pursuant to such a revised permit on other portions of the substantial development may not begin until after all review proceedings are terminated. In such a hearing before the court, the burden of proving whether the construction may involve significant irreversible damage to the environment and demonstrating whether such construction would or would not be appropriate is on the appellant.

(c) If the permit is for a substantial development meeting the requirements of subsection (11) of this section, construction pursuant to that permit may not begin or be authorized until twenty-one days from the date of receipt as provided in subsection (6) of this section.

If a permittee begins construction pursuant to subsections (a), (b), or (c) of this subsection, the construction is begun at the permittee's own risk. If, as a result of judicial review, the courts order the removal of any portion of the construction or the restoration of any portion of the environment involved or require the alteration of any portion of a substantial development constructed pursuant to a permit, the permittee is barred from recovering damages or costs involved in adhering to such requirements from the local government that granted the permit, the hearings board, or any appellant or intervener.

(6) Any decision on an application for a permit under the authority of this section, whether it is an approval or a denial, shall, concurrently with the transmittal of the ruling to the applicant, be transmitted to the department and the attorney general. A petition for review of such a decision must be commenced within twenty-one days from the date of receipt of the decision. With regard to a permit other than a permit governed by subsection (10) of this section, "date of receipt" as used herein refers to the date that the applicant receives written notice from the department that the department has received the decision. With regard to a permit for a variance or a conditional use, "date of receipt" means the date a local government or applicant receives the written decision of the department rendered on the permit pursuant to subsection (10) of this section. For the purposes of this subsection, the term "date of receipt" has the same meaning as provided in RCW 43.21B.001.

(7) Applicants for permits under this section have the burden of proving that a proposed substantial development is consistent with the criteria that must be met before a permit is

granted. In any review of the granting or denial of an application for a permit as provided in RCW 90.58.180 (1) and (2), the person requesting the review has the burden of proof.

(8) Any permit may, after a hearing with adequate notice to the permittee and the public, be rescinded by the issuing authority upon the finding that a permittee has not complied with conditions of a permit. If the department is of the opinion that noncompliance exists, the department shall provide written notice to the local government and the permittee. If the department is of the opinion that the noncompliance continues to exist thirty days after the date of the notice, and the local government has taken no action to rescind the permit, the department may petition the hearings board for a rescission of the permit upon written notice of the petition to the local government and the permittee if the request by the department is made to the hearings board within fifteen days of the termination of the thirty-day notice to the local government.

(9) The holder of a certification from the governor pursuant to chapter 80.50 RCW shall not be required to obtain a permit under this section.

(10) Any permit for a variance or a conditional use by local government under approved master programs must be submitted to the department for its approval or disapproval.

(11)(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 the following procedures:

(i) The public comment period under subsection (4) of this section shall be twenty days. The notice provided under subsection (4) of this section shall state the manner in which the public may obtain a copy of the local government decision on the application no later than two days following its issuance;

(ii) The local government shall issue its decision to grant or deny the permit within twenty-one days of the last day of the comment period specified in (i) of this subsection; and

(iii) 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:

(i) Is categorically exempt under chapter 43.21C RCW for one or more of the following: Natural gas, electricity, telephone, water, or sewer;

(ii) Will serve an existing use in compliance with this chapter; and

(iii) Will not extend more than twenty-five hundred linear feet within the shorelines of the state.

[2010 c 210 § 36; 1995 c 347 § 309; 1992 c 105 § 3; 1990 c 201 § 2; 1988 c 22 § 1; 1984 c 7 § 368; 1977 ex.s. c 368 § 1; 1975-76 2nd ex.s. c 51 § 1; 1975 1st ex.s. c 182 § 3; 1973 2nd ex.s. c 19 § 1; 1971 ex.s. c 288 § 14.]

Notes:

Intent -- Effective dates -- Application -- Pending cases and rules -- 2010 c 210: See notes following RCW 43.21B.001.

Finding -- Severability -- Part headings and table of contents not law -- 1995 c 347: See notes following RCW 36.70A.470.

Finding -- Intent -- 1990 c 201: "The legislature finds that delays in substantial development permit review for the extension of vital utility services to existing and lawful uses within the shorelines of the state have caused hardship upon existing residents without serving any of the purposes and policies of the shoreline management act. It is the intent of this act to provide a more expeditious permit review process for that limited category of utility extension activities only, while fully preserving safeguards of public review and appeal rights regarding permit applications and decisions." [1990 c 201 § 1.]

Severability – 1984 c 7: See note following RCW 47.01.141.



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[90.58.200](#) << 90.58.210 >> [90.58.220](#)

RCW 90.58.210

Court actions to ensure against conflicting uses and to enforce — Civil penalty — Review.

(1) Except as provided in RCW [43.05.060](#) through [43.05.080](#) and [43.05.150](#), the attorney general or the attorney for the local government shall bring such injunctive, declaratory, or other actions as are necessary to ensure that no uses are made of the shorelines of the state in conflict with the provisions and programs of this chapter, and to otherwise enforce the provisions of this chapter.

(2) Any person who shall fail to conform to the terms of a permit issued under this chapter or who shall undertake development on the shorelines of the state without first obtaining any permit required under this chapter shall also be subject to a civil penalty not to exceed one thousand dollars for each violation. Each permit violation or each day of continued development without a required permit shall constitute a separate violation.

(3) The penalty provided for in this section shall be imposed by a notice in writing, either by certified mail with return receipt requested or by personal service, to the person incurring the same from the department or local government, describing the violation with reasonable particularity and ordering the act or acts constituting the violation or violations to cease and desist or, in appropriate cases, requiring necessary corrective action to be taken within a specific and reasonable time.

(4) The person incurring the penalty may appeal within thirty days from the date of receipt of the penalty. The term "date of receipt" has the same meaning as provided in RCW [43.21B.001](#). Any penalty imposed pursuant to this section by the department shall be subject to review by the shorelines hearings board. Any penalty imposed pursuant to this section by local government shall be subject to review by the local government legislative authority. Any penalty jointly imposed by the department and local government shall be appealed to the shorelines hearings board.

[2010 c 210 § 39; 1995 c 403 § 637; 1986 c 292 § 4; 1971 ex.s. c 286 § 21.]

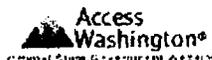
Notes:

Intent -- Effective dates -- Application -- Pending cases and rules -- 2010 c 210: See notes following RCW [43.21B.001](#).

Findings -- Short title -- Intent -- 1995 c 403: See note following RCW [34.05.328](#).

Part headings not law -- Severability -- 1995 c 403: See RCW [43.05.903](#) and [43.05.904](#).

Severability -- 1986 c 292: See note following RCW [90.58.030](#).





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RCW 90.58.230

Violators liable for damages resulting from violation — Attorney's fees and costs.

Any person subject to the regulatory program of this chapter who violates any provision of this chapter or 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 violation. The attorney general or local government attorney shall bring suit for damages under this section on behalf of the state or local governments. Private persons shall have the right to bring suit for damages under this section on their own behalf and on the 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 prevailing party.

[1971 ex.s. c 286 § 23.]



APPENDIX A-6

Mason County, Washington, Code of Ordinances >> Title 7 - SHORELINE MANAGEMENT* >>
Chapter 7.04 - GENERAL PROVISIONS >>

Chapter 7.04 - GENERAL PROVISIONS

Sections:

7.04.010 - Title.

7.04.020 - Purpose.

7.04.030 - Application of regulations.

7.04.031 - Application of regulations—Lands and waters.

7.04.032 - Adjacent lands.

7.04.033 - Developments and uses subject to several regulatory sections.

7.04.034 - Unspecified uses.

7.04.010 - Title.

This title shall be known and may be cited as "The Mason County Shoreline Master Program."

(Ord. 178-02 Attach. B (part), 2002; amended March 1, 1988; adopted August 12, 1975).

7.04.020 - Purpose.

This title is intended to carry out the responsibilities given Mason County by the Shoreline Management Act of 1971 (RCW 90.58). The actual purpose of these regulations is thus the same as the purpose of the act itself, which is summarized and paraphrased as follows:

The shorelines of Mason County are among the most valuable and fragile of its natural resources and there is great concern relating to their utilization, protection, restoration and preservation. In addition, ever increasing pressures of additional uses are being placed on the shorelines, necessitating increased coordination in the management and development of the shorelines of the state. Unrestricted construction on privately owned or publicly owned shorelines is not in the best public interest; therefore regulation is necessary in order to protect the public interest associated with the shorelines, while, at the same time, recognizing and protecting private property rights, public rights of navigation and corollary rights incidental thereto consistent with the public interest.

The master program provides for the management of the shorelines by fostering all reasonable and appropriate uses. These regulations are intended to protect against adverse effects on the public health, on the land and its vegetation and wildlife, and the waters and their aquatic life. The public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the state shall be preserved to the greatest extent feasible consistent with the overall best interest of the state and the people generally. To this end, uses shall be preferred which are consistent with control of pollution and prevention of damage to the natural environment, or are unique to or dependent upon use of the state's shorelines. Alterations of the natural condition of the shorelines of the state, in those limited instances when authorized, shall be given priority for single family residences, ports, shoreline recreational uses, including but not limited to, parks, marinas, piers, and other improvements facilitating public access to shorelines of the state, industrial and commercial development which are particularly dependent on their location on or use of the shorelines of the state and other development that will provide an opportunity for substantial numbers of people to enjoy the shorelines of the state.

Permitted uses in the shorelines of the state shall be designed and conducted in a manner to minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline area and any interference with the public's use of the water (RCW 90.58.020).

(Ord. 178-02 Attach. B (part), 2002; amended March 1, 1988; adopted August 12, 1975)

7.04.030 - Application of regulations.

These regulations shall apply to all the lands and waters which are designated in WAC 173-18, WAC 173-20, and WAC 173-22 to be under the jurisdiction of the Shoreline Management Act of 1971.

(Ord. 178-02 Attach. B (part), 2002; amended March 1, 1988; adopted August 12, 1975)

7.04.031 - Application of regulations—Lands and waters.

These regulations shall apply to every person, firm, corporation, local and state governmental agencies and other non-federal entities which would develop, use, or own lands, wetlands, or waters under the control of the master program.

(Ord. 178-02 Attach. B (part), 2002; amended March 1, 1988; adopted August 12, 1975)

7.04.032 - Adjacent lands.

The purpose of this section is to discuss the coordination of development of lands adjacent to shorelines with the policies of the master program and the shoreline management act.

A development undertaken without obtaining the applicable shoreline permits or which is inconsistent with the regulations of the master program, is unlawful. On the other hand, a use or development which is to some extent inconsistent with a policy plan may not be unlawful, but may be denied or conditioned on the basis of its inconsistency with the plan. These principles apply to the regulation of shoreline and adjacent lands:

- (1) Part of the property is inside the shoreline, part is outside, and all of the development is outside the shoreline. No shoreline permit is required because all of the "development" lies outside the shoreline. However, uses and actions within the shoreline, though they do not constitute "development," must be consistent with the regulations of the act and shoreline program. Change of use within shoreline jurisdiction may require a conditional use permit.
- (2) Part of the property is in the shoreline, part is outside, and all or part of the development is proposed within the shoreline. A permit is required for "development" within the shorelines. In addition, uses and other actions within the shorelines must comply with master program regulations. Furthermore, when the development proposal consists of a single, integrated project and a shoreline permit is required due to development within the shorelines, review and approval of development outside the shorelines may be postponed until shoreline permit review is accomplished if the public interest would be served by such a review sequence. Finally, although development conditions may be attached to developments within shorelines, conditions may not be attached, pursuant to the shoreline management act, to aspects of a development lying outside the shorelines.

(Ord. 178-02 Attach. B (part), 2002; amended March 1, 1988; adopted August 12, 1975)

7.04.033 - Developments and uses subject to several regulatory sections.

Some proposed developments, or uses will be subject to more than one regulatory section of this program. For example, a proposed marina may be subject to regulations concerning "Dredging, Landfilling, Marinas," etc. A proposed development must be reviewed for consistency with the regulations of each applicable section.

(Ord. 178-02 Attach. B (part), 2002; amended March 1, 1988; adopted August 12, 1975)

7.04.034 - Unspecified uses.

This program does not attempt to identify or foresee all conceivable shoreline uses or types of development. When a use or development is proposed which is not readily classified within an existing use or development category, the unspecified use must be reviewed as a conditional use and performance standards relating to the most relevant category shall be used.

(Ord. 178-02 Attach. B (part), 2002; amended March 1, 1988; adopted August 12, 1975)

Mason County, Washington, Code of Ordinances >> Title 7 - SHORELINE MANAGEMENT* >>
Chapter 7.16 - PROJECT CLASSIFICATIONS >>

Chapter 7.16 - PROJECT CLASSIFICATIONS

Sections:

- 7.16.003 - General.
- 7.16.005 - Definitions.
- 7.16.010 - Agriculture.
- 7.16.020 - Aquaculture.
- 7.16.030 - Forest management practices.
- 7.16.040 - Commercial development.
- 7.16.050 - Marinas.
- 7.16.060 - Mining.
- 7.16.070 - Outdoor advertising, signs and billboards.
- 7.16.080 - Residential development.
- 7.16.090 - Utilities.
- 7.16.100 - Ports and water-related industry.
- 7.16.110 - Shoreline modification activities—Bulkheads.
- 7.16.120 - Shoreline modification activities—Breakwaters, jetties and groins.
- 7.16.130 - Landfill.
- 7.16.140 - Dredging.
- 7.16.150 - Flood protection and shoreline stabilization.
- 7.16.160 - Transportation facilities.
- 7.16.170 - Piers and docks.
- 7.16.180 - Archaeological areas and historic sites.
- 7.16.190 - Recreational development.

7.16.003 - General.

Development proposals that propose to locate along the shoreline are categorized within each shoreline designation as "permitted," "conditional uses," or "prohibited." This priority system determines the proposal's administrative requirements and encourages activities that are compatible with each shoreline designation.

During application review, the basic element or intent of a proposed development will guide in the determination of the proposal's particular use activity. When a proposal contains two or more use activities, including accessory uses, the most restrictive category will be applied to the entire proposal.

(Ord. 178-02 Attach. B (part), 2002; amended March 1, 1988; adopted August 12, 1975)

7.16.005 - Definitions.

Permitted. Those uses that are preferable and meet the policies of the particular shoreline designation, but because of their dollar value require a substantial development permit or any development which materially interferes with the normal public use of the water or shorelines of the state.

Conditional Use. A conditional use permit is intended to allow for flexibility and the exercise of judgment in the application of regulations in a manner consistent with the policies of the shoreline management act and this master program. While not prohibited, these uses are an exception to the general rule. Criteria used for judging conditional uses are outlined in Chapter 7.28.

Prohibited. Some developments and uses are viewed as inconsistent with the definition, policies or intent of the shoreline environmental designation. For the purposes of this program, these uses are not considered appropriate and are not allowed, including by conditional use or variance.

Project Classification Table

| Environment Designation | Urban | Rural | Conservancy | Natural |
|--|-------|-------|----------------|----------------|
| Agriculture | P | P | P | C |
| Commercial Feedlots | X | C | X | X |
| Aquaculture | | | | |
| non-floating | P | P | P | C |
| floating | C | C | C | C |
| gravel enhancement projects > 1,000 c.y. | C | C | C | C |
| Forest Practices | P/X | P | P | C |
| Commercial | | | | |
| Water dependent | P | C | C ² | X ¹ |
| non-water dependent/with waterfront | C | C | C ² | X |
| non-water dependent without waterfront | P | C | C ² | X |
| Marinas | C | C | C ¹ | X ¹ |
| Mining | C | C | C | X |
| Outdoor Advertising | P | P | P | X |
| Residential—single family | E | E | E | X |
| duplex | P | P | C | X |
| multi-family | C | C | X | X |
| nonconforming development | E/V | E/V | E/V | X |
| accessory living quarters | P | P | P | X |
| Ports | | | | |
| water dependent | P | C | C | X ¹ |
| non-water dependent | C | C | C | X |
| Bulkheads | P | P | P | X |

| | | | | |
|--|---|---|---|----------------|
| Breakwaters, Jetties, Groins | C | C | C | X ¹ |
| Shore Defense Works (flood protection and stabilization) | P | P | C | C |
| Diking | C | C | C | C |
| Landfill | | | | |
| water dependent--upland | P | P | C | X |
| water dependent--beyond OHWM | C | C | X | X |
| non-water dependent--upland | C | C | C | X |
| non-water dependent--beyond OHWM | X | X | X | X |
| sanitary landfill / solid waste disposal site | X | X | X | X |
| Dredging | | | | |
| water dependent | P | P | C | X ¹ |
| non-water dependent | C | C | C | X ¹ |
| Transportation | P | C | C | C |
| Piers and Docks | P | P | C | X |
| Marine rails / boat ramps | P | P | C | X |
| mooring buoys | E | E | E | E |
| Boat house on land | P | P | P | X |
| Boat house over water / *Covered moorage | C | C | X | X |
| Archaeological / Historic Sites | P | P | P | C |
| Recreation | | | | |
| campgrounds | C | C | C | C |
| parks | P | P | C | C |

P=Permitted

C=Conditional Use

X=Prohibited

E=Substantial Development Permit Exempt

* Permitted only in marinas.

Note: This matrix is a guide only. The classifications can be found in the appropriate section.

¹ Prohibited when upland is designed conservancy, natural or in biological wetlands

² See conservancy definition

(Ord. 178-02 Attach. B (part), 2002: amended March 1, 1988, adopted August 12, 1975)

7.16.010 - Agriculture.

- (a) Definition. "Agriculture" means the cultivation of soil, production of crops or raising of livestock. Agricultural practices include any activity whether for commercial or recreational use directly pertaining to production of food, fiber or livestock including but not limited to cultivation, harvest, grazing, animal waste storage and disposal, fertilization, suppression or prevention of diseases and insects. Excluded from this definition are transportation of products, related commercial or industrial uses such as wholesale and retail sales or final processing.
- (b) Policies.
- (1) Soils that are well suited for agriculture, resource protection and open space should be protected from non-agricultural uses.
 - (2) Erosion control measures should conform to guidelines and standards established by the USDA Soil Conservation Service.
 - (3) Animal keeping areas should, when possible, be located outside the shoreline management area. When located in the shoreline management areas, they should be separated from water bodies by vegetated buffer strips.
 - (4) Proper maintenance and runoff practices should be employed to preclude contamination of surface water with animal waste, to prevent the transmission of waterborne diseases to both human and livestock populations, and to preserve vegetative cover and soil absorptive capacity.
 - (5) Siting practices which prevent contamination of watercourses and the destruction and erosion of vegetation and soil should be encouraged.
 - (6) Buffer zones of permanent vegetation should be encouraged between agricultural land and associated water bodies to retard surface runoff, reduce siltation, and promote quality habitats for fish and wildlife.
 - (7) Livestock waste should be disposed of in a manner that will prevent surface or ground water contamination.
 - (8) Commercial feedlots should be restricted from locating on shorelines unless they can satisfactorily demonstrate that they will cause no adverse environmental impacts.
 - (9) Pesticides should be used, handled, and disposed of in accordance with provisions of the Washington State Pesticides Application Act (RCW 17.21) and the Washington State Pesticide Act (RCW 15.57) to prevent contamination and sanitation problems.
 - (10) Maintaining vegetative cover in areas subject to flooding should be encouraged.
 - (11) Perennial wetlands should be encouraged for use in treatment of tillage runoff, provided no adverse impacts to the receiving wetland would occur.
- (c) Use Regulations.
- (1) The use of tanks and troughs for animal watering is encouraged; allowing animals direct, unrestricted access to surface water is not permitted.
 - (2) Surface water drainage and runoff shall be diverted away from animal confinement and waste storage sites.
 - (3) Animal confinement areas shall be graded to slope away from surface water.
 - (4) Gutters and downspouts shall be installed on roofs to prevent excess water from entering animal confinement areas. The roof water will be transported by county approved methods to appropriate streams.
 - (5) Perennial wetlands shall not be used as animal containment sites.
 - (6) Confinement areas shall be located away from perennial and intermittently flowing streams. A fenced buffer of permanent vegetation at least one hundred feet in width shall be maintained between such areas and water bodies.
 - (7) Waste storage sites with the exception of manure lagoons shall be covered and contained with impermeable material. Manure lagoons shall be set back two hundred feet from all surface water and diked to withstand the one hundred-year base flood with three feet of overboard.

- (A) Vegetation along the water's edge shall be left with minimum disturbance except for construction of bridges and large culverts.
 - (B) Reforestation shall occur within eighteen months after completion of harvesting unless land is intended for other use. Density of planting shall be three hundred fifty trees per acre of a commercial species.
 - (6) In a conservancy environment, for streams of less than fifteen feet in width, no more than twenty-five percent of the lineal stream frontage of any single ownership may be clear cut in any calendar year. No clear cut shall be longer than one thousand five hundred stream feet.
- (Ord. 178-02 Attach. B (part), 2002; amended March 1, 1988; adopted August 12, 1975).

7.16.040 - Commercial development.

- (a) Definition. "Commercial development" means uses and facilities that are involved in wholesale or retail trade or business activities. Water dependent commercial uses are those commercial activities that cannot exist in other than a waterfront location and are dependent on the water by reason of the intrinsic nature of its operation.
 - (1) Home Occupation. A business conducted within a dwelling which is the residence of the principal practitioner. A home occupation may be reviewed as a residential use provided it complies with all applicable county ordinances and no alteration is made to the exterior of the residence or site which would alter the character of the site as a residential property including parking and signs. Home occupations which require more than five thousand dollars in exterior development costs require a substantial development permit.
 - (2) Cottage Industry. Small scale commercial or industrial activities on residential properties performed in the residence or building accessory thereto. The principal practitioner must reside on the property. Cottage industries are considered as residential use and minor commercial development and are not substantial development under this master program, provided they do not alter the character of the site as a residential property and wholesale and retail trade are minimal. Cottage industries must comply with all applicable county ordinances and require a conditional use permit.
- (b) Policies.
 - (1) Commercial development on shorelines should be encouraged to provide physical and/or visual access to the shoreline, and other opportunities for the public to enjoy the shoreline
 - (2) Multiple use concepts which include open space and recreation should be encouraged in commercial developments.
 - (3) Commercial development should be aesthetically compatible with the surrounding area. Structures should not significantly impact views from upland properties, public roadways or from the water.
 - (4) The location of commercial developments along shorelines should ensure the protection of natural areas or systems identified as having geological, ecological, biological, or cultural significance.
 - (5) Commercial developments should be encouraged to be located inland from the shoreline area unless they are dependent on a shoreline location. Commercial developments should be discouraged over water or in marshes, bogs, swamps and floodplains.
 - (6) New commercial development in shorelines should be encouraged to locate in those areas with existing commercial development that will minimize sprawl and the inefficient use of shoreline areas.
 - (7) Parking facilities should be placed inland, away from the immediate water edge and recreational beaches.
 - (8) Commercial development should be designed and located to minimize impacts of noise and/or light generated by the development upon adjacent properties. Commercial developments which generate significant noise impacts should be discouraged.
- (c) Use Regulations.
 - (1) The county shall utilize the following information in its review of commercial development proposals:
 - (A) Nature of the activity;
 - (B) Need for shore frontage;
 - (C) Special considerations for enhancing the relationship of the activity to the shoreline;
 - (D) Provisions for public visual or physical access to the shoreline;
 - (E) Provisions to ensure that the development will not cause severe adverse environmental impacts;
 - (F) Provisions to mitigate any significant noise impacts;
 - (G) Provisions to mitigate light or glare impacts.
 - (2)

Commercial development may be permitted on the shoreline in the following descending order of priority: water dependent, water related and water oriented. Non-water related, non-water dependent and non-water oriented developments in an urban and rural environment may be permitted by substantial development permit when:

- (A) The parcel of land to be developed is a minimum of one hundred feet from OHWM and is located on the upland side of a public roadway, railroad right-of-way or government controlled property.
- (3) Parking and loading areas shall be located well away from the immediate water's edge and beaches, unless there is no other practical location for parking. Perimeters of parking areas shall be landscaped to minimize visual impacts to the shorelines, roadways and adjacent properties subject to approval by public works and/or department of transportation. Permit application shall identify the size, general type and location of landscaping. Design of parking and loading areas shall ensure that surface runoff does not pollute adjacent waters or cause soil or beach erosion. Design shall provide for storm water retention. Parking plans shall be reviewed by Mason County department of public works for compliance with all applicable county ordinances. Creation of parking areas by landfilling beyond OHW mark or in biological wetlands is prohibited.
- (4) Those portions of a commercial development which are not water dependent are prohibited over the water.
- (5) Water supply and waste facilities shall comply with the strictest established guidelines, standards and regulations.
- (6) New commercial developments shall be located adjacent to existing commercial developments whenever possible.
- (7) New or expanded structures shall not extend more than thirty-five feet in height above average grade level.
- (8) Commercial developments adjacent to aquaculture operations shall practice strict pollution control procedures.
- (9) Commercial developments shall be located and designed to minimize noise impacts on adjacent properties.

(Ord. 178-02 Attach. B (part), 2002; amended March 1, 1988; adopted August 12, 1975)

Commercial Development

| | Urban | Rural | Conservancy | Natural |
|--|-------|--------|-------------|---------|
| Shore setbacks from the OHWM* | | | | |
| Primary Structures: | | | | |
| Water Dependent | 15' | 50' | 50' | X |
| Non-water Dependent | 50' | 75' | 100' | X |
| * Water dependent commercial structures may be constructed over the water if this is a functional requirement. No variance from setback is required. | | | | |
| Accessory Uses (including parking)* | 50' | 100' | 150' | X |
| * Water dependent commercial structures may be constructed over the water if this is a functional requirement. No variance from setback is required. | | | | |
| Side Yard Setbacks ¹ | 5-25' | 15-25' | 20-30' | X |
| Site coverage by | 70% | 50% | 20% | X |

| | | | | |
|--|-----|-----|-----|---|
| structures, roads, parking and primary uses | | | | |
| Height Limit | 35' | 35' | 35' | X |

X = Prohibited Use

¹ Side yard setbacks will be increased depending upon the height of the building. Buildings shall have a setback of five feet plus five feet for every ten feet or fraction thereof in height over fifteen feet.
(Ord. 178-02 Attach. B (part), 2002; amended March 1, 1988; adopted August 12, 1975).

7.16.050 - Marinas.

- (a) Definition. "Marina" means a commercial moorage with or without dry storage facility for over ten pleasure or commercial craft excluding canoes, kayaks and rowboats. Goods or services related to boating may be sold commercially. Uses associated with marinas shall conform to the regulations for these uses.
- (b) Policies.
 - (1) Marinas and boat launching facilities should be located in areas where parking and access to the facility can be accommodated without causing adverse impacts upon adjacent properties or endanger public safety.
 - (2) Proposals should be planned and developed where regional and local evidence of substantial need exists.
 - (3) Shallow water embankments should not be considered for overnight or long-term moorage facilities.
 - (4) New construction should be aesthetically compatible with the existing surroundings and not degrade existing views.
 - (5) Marinas and public launch ramps are preferred rather than the development of individual docks and piers for private, non-commercial pleasure craft.
 - (6) In locating marinas, special plans should be made to protect the fish, shellfish, and other biological resources that may be harmed by construction and operation of the facility.
 - (7) Special attention should be given to the design and development of operational procedures for fuel handling and storage in order to minimize accidental spillage and provide satisfactory means for handling those spills that do occur.
- (c) Use Regulations.
 - (1) Marinas that provide overnight or long-term moorage shall not be located in areas with commercial aquacultural harvest.
 - (2) Marinas shall be compatible with the general aesthetic quality of the shoreline area where they are located.
 - (3) Marinas and their accessory facilities shall be located, designed, constructed and operated to minimize adverse effects on fish, shellfish, wildlife and other biological resources, water quality, and existing geo-hydraulic shoreline processes.
 - (4) Marinas shall be located, designed, constructed and operated so as to not substantially or unnecessarily interfere with the rights of adjacent property owners, nor interfere with adjacent water uses.
 - (5) Parking and loading areas shall be located well away from the immediate water's edge and beaches, unless there is no other practical location for parking. Perimeters of parking areas shall be landscaped to minimize visual impacts to the shorelines, roadways and adjacent properties subject to approval by public works and/or department of transportation. Permit application shall identify the size, general type and location of landscaping. Design of parking and loading areas shall ensure that surface runoff does not pollute adjacent waters or cause soil or beach erosion. Design shall provide for storm water retention, shall comply with the Mason County parking ordinance, and shall be reviewed by Mason County department of public works for compliance with all applicable county ordinances. Creation of parking areas by landfilling beyond OHW mark or in biological wetlands is prohibited.
 - (6) Provisions shall be made to facilitate the orderly circulation of vehicles and pedestrians in the vicinity of the marina.
 - (7) Provisions shall be made to facilitate the orderly launching, retrieval and storage of boats.
 - (8)

- (F) No stagnant or standing water shall be allowed to collect and remain on the site except as a transient part of a sedimentation collection and removal system specified in the reclamation plan.
 - (14) Permit Application. (Refer to Section 7.13.050) Applications for mining projects shall provide the following information for permit review:
 - (A) Description of the materials to be mined, quantity and quality by type, the total deposit, lateral extent and depth, depth of overburden and amount of materials to be mined.
 - (B) Description of mining technique and list of equipment to be utilized.
 - (C) Cross section plans which indicate present and proposed elevation and/or extraction levels and show the maximum mining depth.
 - (D) Site plans which show existing drainage patterns and all proposed alterations of topography, proposed means of handling surface runoff, and preventive controls for erosion and sedimentation.
 - (E) A mining plan showing scheduling (seasonal, phasing and daily operations); storage, usage and deposition of overburden, excavation material and tailings; location and dimensions of stockpiling areas; screening, buffers and fencing; locations of building, equipment, machinery, and structures.
 - (F) A reclamation plan.
 - (15) Mining Operations. All phases and activities of mining operations shall be carried out in a manner so that the operator shall not significantly affect adjacent shoreline areas.
 - (16) Public Access. Some form of public access to the shoreline for private non-commercial recreational purposes shall be afforded in a manner compatible with mining and accessory facilities and uses. Such public access may be restricted and shall be consistent with the protection of the health, safety, and welfare of the public.
 - (17) Subject to the performance standards, mining is a conditional use in urban, rural and conservancy environments.
 - (18) Mining is a prohibited use in a natural environment.
- (Ord. 178-02 Attach. B (part), 2002; amended March 1, 1988; adopted August 12, 1975)*

7.16.070 - Outdoor advertising, signs and billboards.

- (a) Policies
 - (1) Wherever feasible, outdoor advertising, signs and billboards should not be placed in such a manner as to degrade or impair visual access to the shoreline and water. Location or placement should be on the upland side of transportation routes unless it can be shown that views will not be obstructed.
 - (2) All outdoor advertising, signs and billboards shall comply with state and county regulations.
 - (3) Wherever feasible, outdoor advertising signs and advertising shall be placed on or against existing buildings to allow maximum visibility of shoreline and water areas.
 - (4) In conservancy environment: where feasible, permitted signs shall be located on the upland side of transportation routes parallel or adjacent to shoreline and water areas.
- (b) Use Regulations.
 - (1) In an Urban (Industrial, Commercial and Residential) or Rural Environment.
 - (A) Outdoor advertising, signs and billboards shall be on premise.
 - (B) Sign supports shall be durable. Sign design and support shall be compatible with the environment. Flashing lights shall be prohibited. Lighted signs shall be permitted for public services remaining open after sundown. Such lighting shall be hooded or shaded so that direct light of lamps will not result in glare when viewed from the surrounding property or rights-of-way.
 - (C) Temporary or obsolete outdoor advertising, signs and billboards shall be removed within ten days of elections, closures of business or termination of any other intended function.
 - (2) Conservancy Environment.
 - (A) Outdoor advertising and signs shall be on premise. Billboards are prohibited. Highway signs giving directions to scenic routes, trails, picnic areas, boat launching sites, scenic sites and unique points of interest shall also be permitted.
 - (B) Signs and outdoor advertising shall not exceed fifteen square feet in size and shall not project more than six feet above road level. Sign design and support shall be compatible with the environment. Illuminated signs shall not be permitted unless warranted by safety factors. Flashing signs are prohibited.
 - (C) Temporary or obsolete outdoor advertising, signs and billboards shall be removed within ten days of elections, closures of business or termination of any other intended function.

- (3) Natural Environment.
 - (A) Only temporary, on premise, advertising signs are permitted. Billboards are prohibited.
 - (B) Directional signs to viewpoints or for trails and signs describing unique points of interest shall be permitted.
 - (C) Permitted signs shall not exceed four square feet in size and shall not project more than six feet above road level. Sign design and support shall be compatible with the environment. Lighted signs are prohibited unless warranted by safety factors.
 - (D) Where feasible, permitted signs shall be located on the upland side of transportation routes parallel or adjacent to shoreline and water areas. Placement of signs shall not degrade or obstruct view areas.
 - (E) Temporary or obsolete outdoor advertising, signs and billboards shall be removed within ten days of elections, closures of business or termination of any other intended function.

(Ord. 178-02 Attach. B (part), 2002; amended March 1, 1988; adopted August 12, 1975).

7.16.080 - Residential development.

- (a) Definition. The development of land or construction or placement of dwelling units for the purpose of residential occupancy.

This chapter shall apply to all single family and multi-family dwellings, and any other accessory structure, including decks, garages and fences.

Although a substantial development permit is not required for construction on wetlands by an owner, lessee or contract purchaser of a single-family residence for his own use or the use of his family, such construction and all normal appurtenant structures must otherwise conform to this master program. Construction greater than thirty-five feet high requires a substantial development permit.

- (b) Policies.
 - (1) Over-water residential development should not be permitted.
 - (2) Sewage disposal facilities, as well as water supply facilities, should be provided in accordance with appropriate state and local health regulations. Storm drainage facilities should be separated, not combined with sewage disposal systems.
 - (3) Residential development in geologically hazardous areas or in areas subject to flooding should not be permitted.
 - (4) Residential development in shoreline areas should be designed to preserve natural drainage courses.
 - (5) Subdivisions should maintain usable waterfront areas for the common use of all property owners within the development.
 - (6) Residential development on shorelines and wetlands should be planned with minimum adverse environmental and visual impact. Structures should be designed and located to not significantly block views of adjacent residences.
 - (7) Residential developments created after the effective date of this program should provide adequate common access to the shoreline and open space along the shoreline for all residents of the development. The access and open space should be of adequate size to provide for recreation land to ensure against interference with adjacent properties.
 - (8) A variety of housing types on land should be encouraged, provided that they are consistent with the environment designation criteria.
 - (9) Residential structures should be located to minimize obstruction of views of the water from upland areas. The intent of this policy is to encourage the retention of views in and through new residential developments. This policy is not intended to prohibit residential development of a shoreline lot simply because it may impact or eliminate views from upland property.
 - (10) Residential development along shorelines should be designed and sited to make shoreline protection measures unnecessary.
 - (11) New residential development should be encouraged to cluster dwelling units in order to preserve natural features, minimize physical and visual impacts and reduce utility and road costs.
 - (12) The overall density of development, lot coverage and height of structures should be appropriate to the physical capabilities of the site. Particular attention should be given to the preservation of water quality and shoreline aesthetic characteristics. Density should be consistent with density provisions of local plans, codes, and ordinances.
- (c) Use Regulations.
 - (1) Residential development over the water is prohibited.
 - (2)

- "Submerged lands" (biological wetlands and those lands waterward of the ordinary high water) within the boundaries of any waterfront parcel shall not be used to compute required lot area, lot dimensions and required yards. Portions of land lying within marshes, bogs and swamps may be included as open space.
- (3) Subdivision proposals shall identify areas of natural vegetation, storm water retention and erosion control measures.
 - (4) Landfill for residential development which results in the creation of new dry land waterward of OHWM or in biological wetlands is prohibited. Fill necessary for a normal erosion control bulkhead is exempt. Land fill in biological wetlands (excluding bogs, marshes, swamps, marine and estuarine shore) may be permitted. Such filling may be considered as a conditional use; provided the applicant can demonstrate the following: (A) extraordinary or unique circumstances relating to the property exist which require the proposed shoreline location; and (B) no viable alternative using a different method or structural solution exists.
 - (5) Landfilling in flood hazard areas other than a floodway is allowed only for flood protection of a structure(s).
 - (6) Storm drainage facilities shall be separate from sewage disposal transport facilities and include provisions to prevent uncontrolled and untreated direct entry of surface water runoff into receiving waters. Storm drainage facilities shall include, but not be restricted to vegetated swales, retention ponds and artificial and natural wetlands; provided no adverse impacts to the receiving wetlands would occur and shall be subject to Mason County approval.
 - (7) Subdivision developments and planned unit developments shall provide areas sufficient to ensure usable access to and along the shoreline area for all residents of the development except where the shoreline topography does not permit the same.
 - (8) In order to preserve aesthetic characteristics, no fence or wall shall be erected, placed or altered nearer to the water than the building setback line, unless it is under thirty inches in height.
 - (9) Each shoreline environment has a setback requirement for structures from the ordinary high water mark. (See chart at end of this section.) Uncovered porches, decks or steps may project into the required setback area, provided such structures are no higher than thirty inches above average grade excluding railings required for reasons of public safety. The setback in each environment may be increased or decreased by the administrator in the following ways:
 - (A) Increased Setback Requirements. The setbacks may be increased if the building area or setback area has a slope greater than forty percent, severe instability, or the average setback of the two adjacent residences is greater than the setback requirement for that environment. In such cases, the setback shall be determined by drawing an imaginary line between the roof lines of adjacent residences; provided the minimum distance required by reason of slope or instability shall be required. If there is no residence on an adjacent lot, the next lot with a residence will be considered, up to one hundred fifty feet away. If there is no adjacent residence within one hundred fifty feet, the minimum default setback shall be assumed on that side of the proposed residence. In the urban environment, a residence setback over one hundred twenty feet from the line of ordinary high water will not be considered in determining the setback and the default setback will be used at fifteen feet.

In cases of a pronounced curved shoreline or point, the setback shall be established by determining proportionate setback distances from the OHWM of adjacent residences.

Setback for any structure greater than thirty inches above average grade shall be behind this common line (see figure).
 - (B) Decreased Setback Requirements. The setback may be relaxed; provided, that at least one existing residence adjacent (within fifty feet) to the proposed structure infringes on the setback. In such cases, the setback shall be determined in the same manner described under "Increased Setback Requirement" where applicable. This shall not be construed to allow residential development over water or to allow a reduction of the default setback in cases of pronounced cove or indented shoreline. Setback relaxation is subject to approval by the shoreline administrator (see illustration attached to Ord. 178-02).

Further deviation from setback requirements shall require a variance.
 - (10) Clustering of residential dwellings in all environments except natural is allowed. The number of clustered lots or residential units in the shoreline area shall not exceed the number of units which results from multiplying the total acres (minus submerged lands) in the shoreline area by the density allowed in the specific environment.
 - (11) Proposed residential developments adjacent to a water body supporting aquaculture operations shall install drainage and storm water treatment measures facilities to prevent any adverse impact to aquaculture operations. Such measures shall include but not be restricted

to vegetated swales, retention ponds and use of artificial or natural wetlands; provided no adverse impacts to the receiving wetlands would occur. Measures utilized shall be subject to Mason County approval.

- (12) Multi-family residences are permitted in the urban environment, subject to a maximum projected output of one thousand five hundred seventy gallons of sewage per acre per day.
 - (13) If marshes, bogs, swamps or other fragile features are located on a development site, clustering of residential units shall be required in order to avoid any development in such areas.
 - (14) Storm drainage facilities shall be required by the county for residential development projects excluding a single-family residence. Facilities shall include but not be restricted to vegetated swales, retention ponds and use of artificial or natural wetlands; provided no adverse impacts to the receiving wetlands would occur and are subject to Mason County approval.
 - (15) Lots created prior to the adoption of this ordinance which do not meet the minimum lot size may be used for a single-family residence when all of the following criteria can be met:
 - (A) A permit for an on-site disposal system which meets all current codes for setbacks and sizing, has been granted by the environmental health section.
 - (B) All side yard and shore yard setbacks can be met.
 Exceptions from these criteria would require a variance permit.
 - (16) Only one dock or pier is permitted in a new subdivision, planned unit development, or short plat, when lot frontages on the shoreline do not exceed an average of one hundred fifty feet. Prior to plat approval, a usable area with access shall be set aside for the pier or dock, unless no suitable area exists.
 - (17) Construction of new dwellings shall be required to comply with current sewage system setback and design standards as per WAC 248-96.
 - (18) Expansion of existing dwellings shall require strict compliance with current sewage system setback and design standards as per WAC 248-96.
 - (19) Normal maintenance and repair of non-conforming structures shall be allowed, provided no material expansion is involved.
 - (20) Residential development is prohibited within a floodway.
 - (21) Residential developers and individuals shall be required to control erosion during construction. Removal of vegetation should be minimized and any areas disturbed should be restored to prevent erosion and other environmental impacts.
 - (22) Waste materials from construction shall not be left on or adjacent to shorelines.
 - (23) Kokanee Area Only. No building on slopes greater than twenty percent will be allowed.
- (d) Accessory Living Quarters.
- (1) Definition. "Accessory living quarters" means separate living quarters, attached or detached from the primary residence which contain less habitable area than the primary residence.
 - (2) Policy. Accessory living quarters for the use of guests, employees or immediate family members should be allowed as a substantial development, when minimal impact would occur to the surrounding area. The cumulative impact of like structures on neighboring properties must be considered.
 - (3) Use Regulations. Accessory living quarters may be allowed subject to meeting the following criteria:
 - (A) Only one accessory living quarter per lot. In an urban environment, a lot must be one and one-half the size required for a single family residence which totals eighteen thousand seven hundred and fifty square feet.
 - (B) Strict compliance with current sewage setback and design standards as per WAC 248-76-090.
 - (C) Minimal impact on surrounding properties from view blockage, traffic, parking and drainage.
 - (D) Compliance with setback criteria set forth in table in this section.
 - (E) Accessory living quarters shall require a substantial development and shall not exceed one thousand square feet.

Residential Development

| | Shoreline Designation (X=Prohibited) | | | |
|----------------------------|--------------------------------------|-------|-------------|---------|
| Regulation | Urban | Rural | Conservancy | Natural |
| 1. Shore setbacks, in feet | | | | |

| (From OHWM or front of bulkhead. Side yard setbacks shall apply to sides.) | | | | |
|--|-----|-----|-----|---|
| a. Single family, duplex | 15 | 25 | 50 | X |
| b. Multi-family structures less than 35' high | 30 | 50 | NA | X |
| c. Multi-family structures over 35' high | 50 | 100 | NA | X |
| 2. Side yard setbacks (in feet) | | | | |
| a. Single family, duplex | 5 | 10 | 25 | X |
| b. Multi-family structures less than 35' high | 20 | 20 | X | X |
| c. Multi-family structures more than 35' high | 30 | 30 | X | X |
| 3. Height limits in feet | | | | |
| a. 0-49 feet from OHWM | 35 | 30 | 25 | X |
| b. 50-100 feet from OHWM | 45 | 40 | 30 | X |
| 4. Site coverage for:* | | | | |
| a. Single family, duplex | 60% | 50% | 15% | X |
| b. Multi-family structures | 40% | 40% | 15% | X |
| * Site coverage shall include all impermeable surfaces. | | | | |

| | | | | |
|---|---|---|-----------|----|
| 5. Minimum lot size (per residential unit) | 12,500 square feet | 20,000 square feet | 5 acres** | X |
| Primary residence and accessory structure (one per lot maximum) | 18,750 square feet | 20,000 square feet | 5 acres** | X |
| Duplex | 1,570 gallons sewage per acre per day maximum | 785 gallons sewage per acre per day maximum | 5 acres** | X |
| Multi-family | 1,570 gallons sewage per acre per day maximum | 785 gallons sewage per acre per day | NA | NA |
| 6. Minimum lot width measures at OHWM and at building setback | 50' | 100' | 200' | |

** one residential unit is allowed per two hundred lineal feet in the shoreline jurisdiction area.

(Ord. 178-02 Attach. B (part), 2002; amended March 1, 1988; adopted August 12, 1975).

7.16.090 - Utilities.

(a) Policies.

- (1) If possible, power distribution and telephone lines should be placed under ground in any new residential, commercial, public, or view area near the shores of a water body.
- (2) High voltage transmission lines should be placed in the water only when there is no reasonable alternative.
- (3) The possibility of making use of public utility rights-of-way to provide additional public access to lakes, streams, or saltwater should not be overlooked when granting such rights-of-way. Planning for location of towers, substations, valve clusters, etc., so as not to obstruct such access should be pursued.

(b) Use Regulations.

- (1) Discharges from sewage treatment plants shall not be allowed into Totten Inlet regardless of the environmental designation.
- (2) Any excavation for a utility line must be restored to pre-project configuration, replanted with native species and provided with maintenance care until the newly planted area is established.

(Ord. 178-02 Attach. B (part), 2002; amended March 1, 1988; adopted August 12, 1975).

7.16.100 - Ports and water-related industry.

- (a) Definition. Ports are centers for water-borne traffic and as such have become gravitational points for industrial/manufacturing firms. Heavy industry may not specifically require a waterfront location, but is attracted to port areas because of the variety of transportation available.

(b) Policies.

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Chapter 9.36 - NOISE CONTROL >>

Chapter 9.36 - NOISE CONTROL

Sections:

- 9.36.010 - Declaration of policy.
- 9.36.020 - Findings.
- 9.36.030 - Definitions.
- 9.36.040 - Identification of environments.
- 9.36.050 - Unlawful sounds.
- 9.36.060 - Maximum permissible sound levels--General application.
- 9.36.070 - Deviations.
- 9.36.080 - Daytime exemption.
- 9.36.090 - Daytime residential exemption.
- 9.36.100 - Other exemptions.
- 9.36.110 - Proviso.
- 9.36.120 - Public disturbance noises.
- 9.36.130 - Motor vehicle noise performance standards.
- 9.36.140 - Motor vehicle noise exemptions.
- 9.36.150 - Enforcement of motor vehicle noise standards.
- 9.36.160 - Watercraft noise standards.
- 9.36.170 - Watercraft noise exemptions.
- 9.36.180 - Enforcement of watercraft noise standards.
- 9.36.190 - Instrumentation.
- 9.36.200 - Ambient conditions.
- 9.36.210 - Measurement equipment preparation and use.
- 9.36.220 - Equipment variation allowances.
- 9.36.230 - Close proximity exhaust system sound level measurement procedure.
- 9.36.240 - Watercraft sound level measurement procedure.
- 9.36.250 - Measurement of sound--Measurements deemed accurate--When
- 9.36.260 - Receiving properties within more than one district.
- 9.36.270 - Authority of sheriff.
- 9.36.280 - Duties of sheriff.
- 9.36.290 - Commercial and industrial noise enforced by state.
- 9.36.300 - Enforcement by qualified personnel.
- 9.36.310 - Civil penalty.
- 9.36.320 - Misdemeanor.
- 9.36.330 - Abatement proceedings--Legal relief.
- 9.36.340 - Ordinance additional to other law.
- 9.36.350 - Severability.

9.36.010 - Declaration of policy.

It is the express intent of the board of county commissioners to minimize the exposure of citizens to adverse effects of excessive noise and to protect, promote and preserve the public health and welfare, by controlling the level of noise in a manner which promotes the use, value and enjoyment of property, sleep and repose, and the quality of the environment.

(Ord 54-89 § 1, 1989)

9.36.020 - Findings.

The board of county commissioners hereby finds that residential and recreational noise is an acute problem in Mason County, requiring administration of this resolution on a twenty-four-hour basis by qualified law enforcement personnel.

(Ord. 54-89 § 2, 1989)

9.36.030 - Definitions.

All technical terminology used in this chapter, not defined in this chapter, shall be interpreted in conformance with the American National Standards Institute Specifications, Section 1.1-1960 and Section 1.4-1971.

- (1) "Background sound level" means the level of all sounds in a given environment, independent of the specific source being measured.
- (2) "dB(A)" means the sound level measured in decibels, using the "A" weighing network.
- (3) "EDNA" means the environmental designation for noise abatement, being an area (environment) within which maximum permissible noise levels are established, as defined and described in Section 9.36.040
- (4) "Gross vehicle weight rating (GVWR)" means the value specified by the manufacturer as the loaded weight of a single vehicle.
- (5) "In use" motor vehicle is any motor vehicle which is used on a public highway, except farm vehicles as defined under RCW 46.04.181.
- (6) "Motor vehicle" means any vehicle which is self-propelled, used primarily for transporting persons or property upon public highways and required to be licensed under RCW 46.16.010. (Aircraft, watercraft and vehicles used exclusively on stationary rails or tracks are not motor vehicles as that term is used herein.)
- (7) "Motor vehicle racing event" means any competition between motor vehicles and/or off-highway vehicles under the auspices of a sanctioning body.
- (8) "Motorcycle" means a motor vehicle having a saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground: except that farm tractors shall not be included.
- (9) "Muffler" means a device consisting of a series of chambers or other mechanical designs for the purpose of receiving exhaust gas from an internal combustion engine and effective in reducing sound resulting therefrom.
- (10) "New motor vehicle" means a motor vehicle manufactured after December 31, 1975, whose equitable or legal title has never been transferred to a person who, in good faith, purchases the new motor vehicle for purposes other than resale.
- (11) "New watercraft" means a watercraft with an internal or external combustion engine which has been manufactured after December 31, 1979, and for which the equitable or legal title has never been transferred to a person who, in good faith, purchases the new watercraft and/or engine for purposes other than resale.
- (12) "Noise" or "Sound" means the intensity, duration and character of sounds from any and all sources.
- (13) "Off-highway vehicle" means any self-propelled motor-driven vehicle not primarily used for transporting persons or property upon public highways nor required to be licensed under RCW 46.16.010. The term "off-highway vehicle" shall not include special construction vehicles.
- (14) "Officer" or "law enforcement" means the Mason County sheriff, his deputy or any other law enforcement officer.
- (15) "Operator" means any person who is in actual physical or electronic control of a powered watercraft, motor vehicle, aircraft, off-highway vehicle, or any other engine-driven vehicle.
- (16) "Person" means any individual, firm, association, partnership, corporation or any other entity, public or private.
- (17) "Property boundary" means the surveyed line at ground surface, which separates the real property owned, rented, or leased by one or more persons, from that owned, rented or leased by one or more persons and its vertical extension.
- (18) "Public highway" means the entire width between the boundary lines or every way publicly maintained by the department of highways or any county or city when any part thereof is generally open to the use of the public for purposes of vehicular travel as a matter of right, within the jurisdiction of Mason County.
- (19) "Racing event" means any motor vehicle competition conducted under a permit issued by Mason County or, if such permit is not required, then under the auspices of a recognized sanctioning body.
- (20) "Real property" means an interest or aggregate of rights in land which is guaranteed and protected by local law. For purposes of this chapter, the term "real property" includes a leasehold interest.
- (21) "Receiving property" means real property within which sound originating from sources outside the property is received.

- (22) "Shoreline" means the existing intersection of water with the ground surface or with any permanent, shore-connected facility.
- (23) "Silviculture" is a branch of forestry dealing with the development and care of forests.
- (24) "Sound level" means the weighted sound pressure level measured by the use of a sound level meter and weighted as specified in American National Standards Institute Specifications, Sections 1.4-1971.
- (25) "Sound level meter" means a sound level measuring device, either Type I, S1A, Type II, or S2A, as defined by American National Standards Institute Specifications, Section 1.4-1971.
- (26) "Special construction vehicle" means any vehicle which is designed and used primarily for grading, paving, earth moving, and other construction work; and which is not designed or used primarily for the transportation of persons or property on a public highway; and which is only incidentally operated or moved over the highway.
- (27) "Use" means the nature of the occupancy, the type of activity, or the character and form of improvements to which land is devoted or may be devoted.
- (28) "Warning device" means any device intended to provide public warning of potentially hazardous, emergency or illegal activities, including but not limited to a burglar alarm or vehicle back-up signal, but not including any fire alarm.
- (29) "Watercraft" means any contrivance, excluding aircraft, used or capable of being used as a means of transportation or recreation on water.
- (30) "Waters of the county" including all lakes, rivers, ponds, streams, inland waters, saltwaters and all other surface waters and watercourses within the jurisdiction of Mason County.

(Ord. 54-89 § 3, 1989).

9.36.040 - Identification of environments.

The EDNA (Environmental Designation for Noise Abatement) of any property shall be based on the following typical uses, taking into consideration the present, future, and historical usage, as well as the usage of adjacent and other lands in the vicinity.

- (1) Class A EDNA—Lands where human beings reside and sleep. Class A EDNAs include the following types of property used for human habitation:
 - (A) Residential,
 - (B) Multiple-family living accommodations,
 - (C) Recreational and entertainment (e.g. camps, parks, camping facilities and resorts),
 - (D) Community service (e.g. orphanages, homes for the aged, hospitals, health and correctional facilities);
- (2) Class B EDNA—Lands involving uses requiring protection against noise interference with speech. Class B EDNAs include the following types of property:
 - (A) Commercial living accommodations,
 - (B) Commercial dining establishments,
 - (C) Motor vehicle services,
 - (D) Retail services,
 - (E) Banks and office buildings,
 - (F) Miscellaneous commercial services, property not used for human habitation,
 - (G) Recreation and entertainment, property not used for human habitation (e.g., theaters, stadiums, fairgrounds, and amusement parks).
 - (H) Community services property not used for human habitation (e.g., educational, religious, governmental, cultural and recreational facilities);
- (3) Class C EDNA—Lands involving economic activities of such a nature that higher noise levels than experienced in other areas is normally to be anticipated. Persons working in these areas are normally covered by noise control regulations of the Department of Labor and Industries. Uses typical of Class A EDNAs are generally not permitted within such areas. Class C EDNAs include the following types of property:
 - (A) Storage, warehouse, and distribution facilities,
 - (B) Industrial property used for the production and fabrication of durable and nondurable manmade goods,
 - (C) Agricultural and silvicultural property used for the production of crops, wood products, or livestock;
- (4) The appropriate EDNA for properties involved in any enforcement activity will be determined by the investigation official on the basis of criteria of (1), (2) and (3) of this subsection.

(Ord. 54-89 § 4, 1989).

9.36.050 - Unlawful sounds.

It is unlawful for any person to cause sound, or for any person in possession of property on or off land, to permit sound originating from such property, to intrude into real property owned or occupied by another person, whenever such sound exceeds the maximum permissible sound levels established in the applicable sections of this chapter.

9.36.060 - Maximum permissible sound levels—General application.

Except where the motor vehicle noise standards or the watercraft noise standards in this chapter are applicable, the maximum permissible noise levels are set forth below in the following table and are subject to any applicable deviations or exemptions set forth in Sections 9.36.070 through 9.36.100.

| EDNA OF NOISE SOURCE | EDNA OF RECEIVING PROPERTY | | |
|----------------------|----------------------------|---------|---------|
| | Class A | Class B | Class C |
| Class A | 55 dBA | 57 dBA | 60 dBA |
| Class B | 57 | 65 | 65 |
| Class C | 65 | 70 | 75 |

(Ord. 54-89 § 6, 1989).

9.36.070 - Deviations.

The maximum permissible noise levels set forth in Section 9.36.060 are subject to the following deviations.

At the hour of the day or night the applicable noise limitations in the previous section above may be exceeded for any receiving property by no more than:

- (1) Five dBA for a total of fifteen minutes in any one-hour period; or
- (2) Ten dBA for a total of five minutes in any one-hour period; or
- (3) Fifteen dBA for a total of 1.5 minutes in any one-hour period.

(Ord. 54-89 § 7, 1989).

9.36.080 - Daytime exemption.

The following shall be exempt from the provisions of this chapter between the hours of seven a.m. and ten p.m.:

- (1) Sounds originating from residential property relating to temporary projects for the maintenance or repair of homes, grounds and appurtenances;
- (2) Subject to Ord. 438 Subsection 2, 1975 (Fire Arms), sounds created by the discharge of firearms;
- (3) Sounds created by aircraft engine testing and maintenance not related to flight operations; provided, that aircraft testing and maintenance shall be conducted at remote sites whenever possible;
- (4) Sounds created by the installation or repair of essential utility services;
- (5) Sounds created by blasting.

(Ord. 54-89 § 8, 1989).

9.36.090 - Daytime residential exemption.

The following shall be exempt from the maximum permissible noise levels set forth in Section 9.36.060:

- (1) Sounds originating from temporary construction sites as a result of construction activity;
- (2) Sounds originating from forest harvesting, silvicultural activity, commercial agriculture and aquaculture.

(Ord. 54-89 § 9, 1989)

9.36.100 - Other exemptions.

The following shall be exempt from the maximum permissible noise levels set forth in Section 9.36.060:

- (1) Sounds created by the normal operation of motor vehicles while upon public highways. Such motor vehicles are nevertheless subject to the provisions of Sections 9.36.130 through 9.36.150, pertaining to motor vehicle noise standards;
- (2) Sounds originating from aircraft in flight and sounds that originate at airports which are directly related to flight operations;
- (3) Sounds created by surface carriers engaged in interstate commerce by railroad;
- (4) Sounds created by warning devices not operating continuously for more than five minutes, or bells, chimes, and carillons;
- (5) Sounds created by fire alarms used as such;
- (6) Sounds created by safety and protective devices, such as relief valves, where noise suppression would defeat the intent of the device or is not economically feasible;
- (7) Sounds created by emergency equipment and work or training necessary in the interests of law enforcement or for health, safety, or welfare of the community;
- (8) Sounds originating from motor vehicle racing events at authorized facilities;
- (9) Sounds originating from officially sanctioned parades and other public events;
- (10) Sounds emitted from petroleum refinery boilers during start-up of said boilers; provided, that the start-up operation is performed during the daytime hours whenever possible;
- (11) Sounds created by watercraft; provided, that such watercraft shall comply with Mason County Ord. 83-88 (Motorboats) and Sections 9.36.160 through 9.36.180
- (12) Subject to Ord. 438 Subsection 2, 1975 (Fire Arms), sounds created by the discharge of firearms in the course of hunting at all times;
- (13) Sounds caused by natural phenomena and unamplified human voices;
- (14) Sounds caused by motor vehicles over ten thousand pounds GVW, licensed or unlicensed, when operated off public highways;
- (15) Sounds caused by pigs, cattle, horses, sheep, goats, and poultry whether by commercial or noncommercial activities.

(Ord 54-89 § 10, 1989)

(Ord. No. 34-10, Att. A, 5-4-2010)

9.36.110 - Proviso.

Compliance with the maximum permissible noise levels set forth in this chapter, or exemption from their provisions as provided in this chapter, shall not be construed as an exemption from the provisions of this chapter relating to public disturbances, or as a defense to any prosecution under Section 9.36.120.

(Ord. 54-89 § 11, 1989).

9.36.120 - Public disturbance noises.

It is unlawful for any person to cause, or for any person in possession of real or personal property to allow to originate from the property, sound that is a public disturbance noise. The following sounds are hereby determined to be public disturbance noises:

- (1) Frequent, repetitive, or continuous sounds made by any animal which unreasonably disturbs or interferes with the peace, comfort, and repose of property owners or possessors, except that such sounds made by pigs, cattle, sheep, horses, goats, and poultry, whether from commercial or noncommercial activities; and such sounds made in animal shelters, veterinary hospitals, pet shops, or grooming parlors shall be exempt under this subsection;
- (2) The frequent, repetitive or continuous sounding of any horn or siren attached to a motor vehicle, except as a warning of danger or as specifically permitted or required by law;
- (3) The creation of frequent, repetitive or continuous sounds in connection with the starting, operation, repair, rebuilding or testing of any motor vehicle, motorcycle, off-highway vehicle, or internal combustion engine, within a Class A EDNA, so as to unreasonably disturb or interfere with the peace, comfort, and repose of the community;
- (4) The use of a sound amplifier or other device capable of producing amplified sound upon public streets for the purpose of commercial advertising or sales or for attracting the attention

of the public to any vehicle, structure, to the contents therein, except as permitted by law, and except vendors whose sole method of selling is from a moving vehicle shall be exempt from this subsection;

- (5) The making of any loud and raucous sound within one thousand feet of any school, hospital, sanitarium, nursing or convalescent facility, which unreasonably interferes with the use of such facility, or with the peace, comfort, or repose of persons therein;
- (6) The creation by use of a musical instrument, whistle, sound amplifier, radio, stereo, television or other device capable of producing or reproducing loud and raucous sounds which emanate frequently, repetitively or continuously from any building, structure or property located within a residential area, such as sounds originating from a band session or social gathering.
- (7) Any such other sounds or actions that fall within the definition of Section 9.36.050

(Ord 102-98, 1998; Ord 54-89 § 12, 1989).

9.36.130 - Motor vehicle noise performance standards.

- (a) No person shall operate any motor vehicle or any combination of such vehicles upon any public highway under any conditions of grade, load, acceleration or deceleration in such a manner as to exceed the maximum permissible sound levels for the category of vehicle in Table 1, as measured at a distance of fifty feet (15.2 meters) from the center of the lane of travel within the speed limits specified, under procedures established by the state commission on equipment in WAC Chapter 204.56, "Procedures for Measuring Motor Vehicle Sound Levels."

TABLE 1

**IN-USE MOTOR VEHICLE NOISE PERFORMANCE STANDARDS
Measured @ 50 feet (15.2 Meters)**

| Vehicle Category (type) | Effective Date | Maximum Sound Level, dBA | | |
|---|----------------|-------------------------------|----------------------------|-----------------|
| | | Speed Zones | | Stationary Test |
| | | 45 mph (72 kph) or less | Over 45 mph (72 kph) | |
| Motorcycle | July 1, 1980 | 78 | 82 | N/A |
| Automobiles, light trucks and all motor vehicles 10,000 pounds (4536 kg) GVWR or less | July 1, 1980 | 72 35 mph (56 kph) or less | 78 Over 35 mph (56 kph) | N/A |
| All motor vehicles over 10,000 pounds (4536 kg) GVWR | June 1, 1980 | 86 | 90 | 86 |

- (b) Every motor vehicle operated upon the public highways shall at all times be equipped with an exhaust system and a muffler in good working order and constant operation to prevent excessive or unusual noise.
- (c) No person shall operate a motor vehicle in such a manner as to cause or allow to be emitted squealing, screeching or other such noise from the tires in contact with the ground because of rapid acceleration or excessive speed around corners or other such reason, except that noise resulting from emergency braking to avoid imminent danger shall be exempt from the provision.
- (d) No person shall operate any motor vehicle upon any public highway if the vehicle exhaust system exceeds the maximum permissible sound levels of Table II for the category and year of vehicle, as measured at a distance of twenty inches (0.5 meter) from the exhaust outlet under procedures established by the state commission on equipment in WAC Chapter 204-56, "Procedures for Measuring Motor Vehicle Sound Levels."

TABLE II

IN-USE MOTOR VEHICLE EXHAUST SYSTEM NOISE PERFORMANCE STANDARDS MEASURED @ 20 INCHES (0.5 METER)

- (5) Assisting citizens and county departments in evaluating and reducing the noise impact of their activities;
- (6) Reviewing at least every three years the provisions of this chapter and recommending revisions consistent with technology to reduce noise.

(Ord. 54-89 § 28, 1989).

9.36.290 - Commercial and industrial noise enforced by state.

With the exception of public disturbance, motor vehicle and watercraft noise as treated in Sections 9.36.120, 9.36.130 and 9.36.160, noises created by industrial and commercial sources are to be enforced by the state until local regulations governing such noises are in effect.

(Ord. 54-89 § 29, 1989).

9.36.300 - Enforcement by qualified personnel.

Except as provided in Section 9.36.290, noise complaints may be investigated, and the public disturbance provisions of this chapter may be enforced by the sheriff or any duly appointed deputy sheriff. Subject to Section 9.36.290, the maximum permissible noise level provisions of this chapter may be enforced by the sheriff or any deputy sheriff if qualified to operate a sound level meter.

(Ord. 54-89 § 30, 1989).

9.36.310 - Civil penalty.

In addition to or as an alternative to any other judicial or administrative remedy provided by law or other regulation, resolution, ordinance or this chapter, any person who violates any provision in this chapter, or by each act of commission or omission procures, aids or abets such violation shall be subject to a civil penalty in an amount of thirty dollars for the first such violation. The penalty shall be one hundred dollars for the second such violation and two hundred fifty dollars for the third and each subsequent violation of the same regulation within any one-year period.

(Ord. 54-89 § 31, 1989).

9.36.320 - Misdemeanor.

In addition to or as an alternative to any other judicial or administrative remedy provided by law or other regulation, resolution or ordinance, any person who:

- (1) Violates any provision of this chapter, or by each act of commission or omissions procures, aids, or abets such violation; and who
- (2) Refuses to stop and/or abate such violation when it is reasonably within his power to do so;
- (3) When so requested by a properly identified sheriff, deputy sheriff, or other law enforcement officer; shall be guilty of a misdemeanor and punished as provided in Mason County Ordinance 767.

This section shall be in addition to or alternative to any other penalty provided by law or failure to obey the lawful demands of a law enforcement officer.

(Ord. 54-89 § 32, 1989)

9.36.330 - Abatement proceedings--Legal relief.

Notwithstanding the existence or use of any other remedy, an officer may, through the county prosecuting attorney, seek legal or equitable relief to enjoin any acts or practices or abate any conditions which constitute or will constitute a violation or any provision of this chapter.

(Ord. 54-89 § 33, 1989).

9.36.340 - Ordinance additional to other law.

The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other claim, cause of action or remedy; nor, unless specifically provided, shall it be deemed to repeal, amend or

modify any law, ordinance or regulation relating to noise, but shall be deemed additional to existing legislation and common law on noise.

(Ord. 54-89 § 34. 1989)

9.36.350 - Severability.

If any portion of this chapter to its application to any person or circumstance is held invalid, the remainder of this chapter or its application of any provisions to other persons or circumstances is not affected.

(Ord. 54-89 § 35. 1989)

Mason County, Washington, Code of Ordinances >> Title 17 - ZONING >> Chapter 17.03 - DEVELOPMENT REQUIREMENTS >>

Chapter 17.03 - DEVELOPMENT REQUIREMENTS

Sections:

- 17.03.010 - Permitted uses, generally.
- 17.03.020 - Matrix of permitted uses.
- 17.03.021 - Cottage industries.
- 17.03.024 - Residential uses as special uses.
- 17.03.025 - Provisions for airports.
- 17.03.028 - Essential public facilities.
- 17.03.029 - Accessory dwelling unit requirement.
- 17.03.030 - Development requirements and performance standards.
- 17.03.031 - Binding Site Plan Required in the Belfair UGA (Southern Connection--Long-Term UGA Zone)
- 17.03.032 - Development densities and dimensional requirements.
- 17.03.033 - Performance-based density bonuses.
- 17.03.034 - Classification of land uses established.
- 17.03.035 - Land divisions in resource lands.
- 17.03.036 - Buffer and landscape requirements.
- 17.03.037 - Density transfer and agricultural resource lands.
- 17.03.040 - Off-street parking.
- 17.03.105 - Motor vehicle impound yards.
- 17.03.200 - Intent of sign regulations.
- 17.03.201 - Exemptions to the sign regulations.
- 17.03.202 - Prohibited signs.
- 17.03.203 - Nonconforming signs.

17.03.010 - Permitted uses, generally.

It is the intent of this chapter to provide for the maximum amount of flexibility in the siting of differing types of land uses. For this reason, the performance standards and buffer yard requirements found at Section 17.03.036 have been developed. However, both the comprehensive plan and this chapter recognize that some uses and densities will create inherent conflicts with surrounding land uses, and with the intent of the comprehensive plan. Thus, some uses are prohibited in some areas, and the intensity of some uses (such as residential, expressed in dwelling units per acre, and industrial, expressed in floor area ratio) are restricted in others. Many of the requirements that apply to rural lands have been placed in Chapter 17.04.

(Ord. 108-05 Attach. B (part), 2005).

17.03.020 - Matrix of permitted uses.

The intent of this section is to assist proponents and staff in determining whether a proposed land use is consistent with the applicable policies of the comprehensive plan. Those policies were formed with the intention to allow property owners and project proponents as much flexibility as possible in the use of their property, within the constraints of the Growth Management Act. Therefore, the following matrix identifies the permitted uses in the urban or resource land areas in Mason County; note that the public should consult the specific adopted urban growth area plan for land use designation as permitted or prohibited. Permitted uses, as they apply to rural lands, have been placed in Chapter 17.04. All uses not listed as permitted uses, accessory uses, or special permit uses in the matrix or Chapter 17.04 are prohibited uses.

(Ord. 108-05 Attach B (part), 2005).

17.03.021 - Cottage industries.

Unless noted by an asterisk (*) any use shown in Figure 17.03.020 is permitted in any development area as a home-based occupation, or as a cottage industry. The activity shall comply with the criteria in RU-524A, and shall be required to obtain a special use permit unless they comply with the following standards:

- (1) Parking areas shall accommodate residents and employees only; any provision for additional parking shall require a special use permit;
- (2) The outdoor storage of merchandise or materials is allowed if they are not visible to the public from off the site;
- (3) A cottage industry shall involve the owner or lessee of the property who shall reside within the dwelling unit, and shall not employ on the premises more than five nonresidents. A temporary increase in the number of employees is permitted to accommodate a business that is seasonal in nature. However, not more than five additional persons shall be employed on a temporary basis (up to six weeks) without a special use permit;
- (4) More than one business may be allowed, in or on the same premises provided that all of the criteria are met for all business combined;
- (5) There shall be no alterations to the outside appearance of the buildings or premises that are not consistent with the residential use of the property, or other visible evidence of the conduct of such cottage industry, other than one sign no larger than twelve square feet.
- (6) No equipment or process shall be used in such home occupations which creates noise, vibration, glare, fumes, odors, or electrical interference detectable to the normal senses off the property;
- (7) The cottage industry shall not create an increase of five percent or more in local traffic.

X=Permitted Use T=permitted only as tourist-related use R=permitted only as resource based use
 S=special use permit required *=not allowed as cottage industry U=consult the specific adopted urban growth area plan and development regulations for land use designation as permitted or prohibited.

[PLEASE NOTE: Rural Land Uses are addressed in Chapter 17.04]

MASON COUNTY
MATRIX OF PERMITTED USES
FIGURE 17.03.020

| Description of Use | Land Use Classification (U) | Urban Growth Areas | Resource Areas | Agricultural Resource Lands |
|--|-----------------------------|--------------------|----------------|-----------------------------|
| Accessory apartment or use | I | X | X | X |
| Adult retirement community | III | X | | |
| Adult day care facility (less than 8) | II | X | | |
| Adult day care facility (greater than 8) | III | X | | |
| Agricultural buildings | I | | X | X |
| Agricultural crops; orchards | I | | X | X |
| Airport* | VI | X | | |
| Ambulance service | V | X | | |

| | | | | |
|--|-------|---|---|---|
| Animal hospital | V | X | | |
| Aquaculture | IV | X | X | X |
| Assisted living facility* | III | X | | |
| Auction house/barn (no vehicle or livestock) | V | X | | |
| Automobile service station* | V | X | | |
| Automobile wash* | V | X | | |
| Automobile, repair | V | X | | |
| Automobile, sales* | V | X | | |
| Bakery | IV | X | | |
| Banks, savings and loan assoc.* | IV | X | | |
| Bed and breakfast | IV | X | | X |
| Bicycle paths, walking trails | II, I | X | X | X |
| Billiard hall and pool hall* | V | X | | |
| Blueprinting and photostating | V | X | | |
| Boat yards* | V | X | | |
| Bowling alley* | II | X | | |
| Buy-back recycling center* | V | X | | |
| Cabinet shops (see Industry, light) | V | X | | |
| Carpenter shops (see Industry, light) | V | X | | |
| Carport (accessory use) | I | X | X | X |
| Cemeteries* | I | X | | |
| Child day care, commercial* | II | X | | |

and petroleum products shall be conducted as set forth in Mason County Resource Ordinance Section 17.01.080(P), Secondary Containment of Hazardous Materials;

- (5) Guard dogs shall not be used.

(Ord. 108-05 Attach. B (part), 2005)

17.03.200 - Intent of sign regulations.

The intent of the sign regulations is to provide minimum standards to safeguard life, health, property and public welfare by regulating and controlling the size, design, construction, location, electrification and maintenance of all signs and sign structures; to preserve and improve the appearance of the county as a place in which to live and as an attraction to nonresidents who come to visit or trade; to encourage sound signing practices as an aid to business and for public information while preventing excessive and confusing sign displays, aesthetic clutter, destruction of the environment and signs that pose a hazard to the public.

(Ord. No. 134-08, 12-16-2008)

17.03.201 - Exemptions to the sign regulations.

The following are not to be regulated as signs or are exempt signs in the development regulations:

- A. The flag, emblem or insignia of a nation or other governmental unit or nonprofit organization subject to the guidelines concerning their use set forth by the government or organization that they represent;
- B. Traffic or other county signs, signs required by law or emergency, railroad crossing signs, legal notices and signs erected by government agencies to implement public policy;
- C. Signs of public utility companies indicating danger or which serve as an aid to public safety or which show the location of underground facilities or of public telephones;
- D. Signs located in the interior of any building or within an enclosed lobby or court of any building or group of buildings, which signs are designed and located to be viewed exclusively by patrons of such use or uses;
- E. Temporary signs or decorations, which are clearly incidental and customary and commonly associated with any national, local or religious holiday;
- F. "No trespassing," "no dumping," "no parking," "private," signs identifying essential public needs (i.e., rest rooms, entrance, exit telephone, etc.) and other informational warning signs, which shall not exceed three square feet; and
- G. Sculptures, fountains, murals, mosaics and design features that do not incorporate advertising or identification.

(Ord. No. 134-08, 12-16-2008)

17.03.202 - Prohibited signs.

The following signs or displays are prohibited in all rural areas of the county and the Shelton UGA:

- A. Roof signs;
- B. Banners or signs over and/or across county roads;
- C. Signs located in county right-of-way, unless otherwise approved with a road-use permit from the public works department. Except for temporary signs in accordance with the following restrictions:
 - (1) Signs shall not be posted in a manner or location, which may cause visual obstruction or visual safety hazard for traffic especially in and around intersections, driveways and other access points.
 - (2) Signs shall not be placed in a location typically used by motor vehicles in a lawful manner (road shoulders).
 - (3) Signs shall not be placed in a location, which may impede pedestrian, bicycle, or handicapped travel or access.
 - (4) Signs shall not be placed within drainage areas and other areas maintained by the county public works department.
 - (5) Signs shall not exceed four square feet in size.
- D. Signs shall not be posted on trees including in county right-of-way.
- E. Animated or flashing signs, provided that changing message center signs may be allowed when the image and/or message remains fixed for at least five seconds and that the only

- animation or appearance of movement allowed is the transition from one message and/or image to another by the scrolling on and/or off of the message and/or image;
- F. Signs which, by reason of their size, location, movement, content, coloring or manner of illumination may be confused with or construed as a traffic control sign, signal or device, or the light of an emergency or radio equipment vehicle, or which obstruct the visibility of traffic or street sign or signal device from the traffic intended to be served by the sign, signal or device;
 - G. Advertising Vehicles. Signs that are attached to or placed on or in a vehicle or trailer parked on public or private property such that the primary use or intent becomes advertising. This provision is not to be construed as prohibiting the identification of a firm or its principal products on a vehicle operating during normal course of business;
 - H. Signs attached to utility poles or any other publicly owned structure;
 - I. Off-premises signs except for temporary signs as allowed in section 17.05.025. An off-premises sign shall not include a sign located on private property, other than the property where the business (business, commodity, service or entertainment conducted, sold or offered) is located provided that:
 - (1) The sign is placed with the property owner's consent;
 - (2) The business does not have frontage on a collector road; and
 - (3) The sign is placed for visibility from the collector road nearest to the business.
 - J. Any county official may confiscate signs wrongfully placed in the right-of-way or off-premises signs located in trees.

(Ord. No. 134-08, 12-16-2008)

17.03.203 - Nonconforming signs.

Nonconforming signs (those that were permanently installed and legally erected prior to the adoption of this Code) shall be allowed to continue in use for up to twenty years from the adoption of this code (December 16, 2008) so long as they are continuously maintained, are not relocated, and are not structurally altered or made more nonconforming in any way.

Signs located in trees shall have until January 1, 2009, to be removed. Signs that aren't removed by January 1, 2009, will be considered a violation subject to fines and enforcement under title 15, chapter 15.13.

Permanent signs located within any part of the county right-of-way shall have until January 1, 2009, to be removed. Signs that aren't removed by January 1, 2009, will be considered a violation subject to fines and enforcement under title 15, chapter 15.13.

Nonconforming signs listed on a historical register shall be allowed to continue so long as they are continuously maintained and are not structurally altered or made more nonconforming in any way, with exception of improving structural integrity.

(Ord. No. 134-08, 12-16-2008)

EXHIBIT A-7


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WAC 173-27-040

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Developments exempt from substantial development permit requirement.

(1) Application and interpretation of exemptions.

(a) Exemptions shall be construed narrowly. Only those developments that meet the precise terms of one or more of the listed exemptions may be granted exemption from the substantial development permit process.

(b) An exemption from the substantial development permit process is not an exemption from compliance with the act or the local master program, nor from any other regulatory requirements. To be authorized, all uses and developments must be consistent with the policies and provisions of the applicable master program and the Shoreline Management Act. A development or use that is listed as a conditional use pursuant to the local master program or is an unlisted use, must obtain a conditional use permit even though the development or use does not require a substantial development permit. 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.

(c) The burden of proof that a development or use is exempt from the permit process is on the applicant.

(d) 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.

(e) Local government may attach conditions to the approval of exempted developments and/or uses as necessary to assure consistency of the project with the act and the local master program.

(2) The following developments shall not require substantial development permits:

(a) Any development of which the total cost or fair market value, whichever is higher, does not exceed five thousand dollars, if such development does not materially interfere with the normal public use of the water or shorelines of the state. The dollar threshold established in this subsection must be adjusted for inflation by the office of financial management every five years, beginning July 1, 2007, based upon changes in the consumer price index during that time period. "Consumer price index" means, for any calendar year, that year's annual average consumer price index, Seattle, Washington area, for urban wage earners and clerical workers, all items, compiled by the Bureau of Labor and Statistics, United States Department of Labor. The office of financial management must calculate the new dollar threshold and transmit it to the office of the code reviser for publication in the *Washington State Register* at least one month before the new dollar threshold is to take effect. For purposes of determining whether or not a permit is required, the total cost or fair market value shall be based on the value of development that is occurring on shorelines of the state as defined in RCW 90.58.030 (2)(c). The total cost or fair market value of the development shall include the fair market value of any donated, contributed or found labor, equipment or materials;

(b) Normal maintenance or repair of existing structures or developments, including damage by accident, fire or elements. "Normal maintenance" includes those usual acts to prevent a decline, lapse, or cessation from a lawfully established condition. "Normal repair" means to restore a development to a state comparable to its original condition, including but not limited to its size, shape, configuration, location and external appearance, within a reasonable period after decay or partial destruction, except where repair causes substantial

adverse effects to shoreline resource or environment. 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. 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. 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 may be used as backfill. 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. 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. 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. Emergency construction does not include development of new permanent protective structures where none previously existed. Where new protective structures are deemed by the administrator to be the appropriate means to address the emergency situation, upon abatement of the emergency situation the new structure shall be removed or any permit which would have been required, absent an emergency, pursuant to chapter 90.58 RCW, these regulations, or the local master program, obtained. All emergency construction shall be consistent with the policies of chapter 90.58 RCW and the local master program. As a general matter, flooding or other seasonal events that can be anticipated and may occur but that are not imminent are not an emergency;

(e) Construction and practices normal or necessary for farming, irrigation, and ranching activities, including agricultural service roads and utilities on shorelands, construction of a barn or similar agricultural structure, and the construction and maintenance of irrigation structures including but not limited to head gates, pumping facilities, and irrigation channels: Provided, That a feedlot of any size, all processing plants, other activities of a commercial nature, alteration of the contour of the shorelands by leveling or filling other than that which results from normal cultivation, shall not be considered normal or necessary farming or ranching activities. A feedlot shall be an enclosure or facility used or capable of being used for feeding livestock hay, grain, silage, or other livestock feed, but shall not include land for growing crops or vegetation for livestock feeding and/or grazing, nor shall it include normal livestock wintering operations;

(f) Construction or modification of navigational aids such as channel markers and anchor buoys;

(g) 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 above average grade level 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. "Single-family residence" means a detached dwelling designed for and occupied by one family including those structures and developments within a contiguous ownership which are a normal appurtenance. An "appurtenance" is necessarily connected to the use and enjoyment of a single-family residence and is located landward of the ordinary high water mark and the perimeter of a wetland. On a statewide basis, 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 cubic yards and which does not involve placement of fill in any wetland or waterward of the ordinary high water mark. Local circumstances may dictate additional interpretations of normal appurtenances which shall be set forth and regulated within the applicable master program. Construction authorized under this exemption shall be located landward of the ordinary high water mark;

(h) Construction of a dock, including a community dock, designed for pleasure craft only, for the private noncommercial use of the owner, lessee, or contract purchaser of single-family and multiple-family residences. A dock is a landing and moorage facility for watercraft and does not include recreational decks, storage facilities or other appurtenances. This exception applies if either:

(i) In salt waters, the fair market value of the dock does not exceed two thousand five hundred dollars; or

(ii) In fresh waters the fair market value of the dock does not exceed ten thousand dollars, but if subsequent construction having a fair market value exceeding two thousand five hundred dollars occurs within five years of completion of the prior construction, the subsequent construction shall be considered a substantial development for the purpose of this chapter.

For purposes of this section salt water shall include the tidally influenced marine and estuarine water areas of the state including the Pacific Ocean, Strait of Juan de Fuca, Strait of Georgia and Puget Sound and all bays and inlets associated with any of the above;

(i) 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 groundwater from the irrigation of lands;

(j) 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;

(k) Operation and maintenance of any system of dikes, ditches, drains, or other facilities existing on September 8, 1975, which were created, developed or utilized primarily as a part of an agricultural drainage or diking system;

(l) Any project with a certification from the governor pursuant to chapter 80.50 RCW;

(m) Site exploration and investigation activities that are prerequisite to preparation of an application for development authorization under this chapter, if:

(i) The activity does not interfere with the normal public use of the surface waters;

(ii) 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;

(iii) 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;

(iv) 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

(v) The activity is not subject to the permit requirements of RCW 90.58.550;

(n) 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;

(o) Watershed restoration projects as defined herein. Local government shall review the projects for consistency with the shoreline 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.

(i) "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 miles of streamreach, in which less than twenty-five 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 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.

(ii) "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;

(p) A public or private project that is designed to improve fish or wildlife habitat or fish passage, when all of the following apply:

(i) The project has been approved in writing by the department of fish and wildlife;

(ii) The project has received hydraulic project approval by the department of fish and wildlife pursuant to chapter 77.55 RCW; and

(iii) The local government has determined that the project is substantially consistent with the local shoreline master program. The local government shall make such determination in a timely manner and provide it by letter to the project proponent.

Fish habitat enhancement projects that conform to the provisions of RCW 77.55.181 are determined to be consistent with local shoreline master programs, as follows:

(A) In order to receive the permit review and approval process created in this section, a fish habitat enhancement project must meet the criteria under (p)(iii)(A)(i) and (ii) of this subsection:

(I) A fish habitat enhancement project must be a project to accomplish one or more of the following tasks:

- Elimination of human-made fish passage barriers, including culvert repair and replacement;

- Restoration of an eroded or unstable streambank employing the principle of bioengineering, including limited use of rock as a stabilization only at the toe of the bank, and with primary emphasis on using native vegetation to control the erosive forces of flowing water; or

- Placement of woody debris or other instream structures that benefit naturally reproducing fish stocks.

The department of fish and wildlife shall develop size or scale threshold tests to determine if projects accomplishing any of these tasks should be evaluated under the process created in this section or under other project review and approval processes. A project proposal shall not be reviewed under the process created in this section if the department determines that the scale of the project raises concerns regarding public health and safety; and

(II) A fish habitat enhancement project must be approved in one of the following ways:

- By the department of fish and wildlife pursuant to chapter 77.95 or 77.100 RCW;

- By the sponsor of a watershed restoration plan as provided in chapter 89.08 RCW;
- By the department as a department of fish and wildlife-sponsored fish habitat enhancement or restoration project;
- Through the review and approval process for the jobs for the environment program;
- Through the review and approval process for conservation district-sponsored projects, where the project complies with design standards established by the conservation commission through interagency agreement with the United States Fish and Wildlife Service and the natural resource conservation service;
- Through a formal grant program established by the legislature or the department of fish and wildlife for fish habitat enhancement or restoration; and
- Through other formal review and approval processes established by the legislature.

(B) Fish habitat enhancement projects meeting the criteria of (p)(iii)(A) of this subsection are expected to result in beneficial impacts to the environment. Decisions pertaining to fish habitat enhancement projects meeting the criteria of (p)(iii)(A) of this subsection and being reviewed and approved according to the provisions of this section are not subject to the requirements of RCW 43.21C.030 (2)(c).

(C)(I) A hydraulic project approval permit is required for projects that meet the criteria of (p)(iii)(A) of this subsection and are being reviewed and approved under this section. An applicant shall use a joint aquatic resource permit application form developed by the office of regulatory assistance to apply for approval under this chapter. On the same day, the applicant shall provide copies of the completed application form to the department of fish and wildlife and to each appropriate local government. Local governments shall accept the application as notice of the proposed project. The department of fish and wildlife shall provide a fifteen-day comment period during which it will receive comments regarding environmental impacts. Within forty-five days, the department shall either issue a permit, with or without conditions, deny approval, or make a determination that the review and approval process created by this section is not appropriate for the proposed project. The department shall base this determination on identification during the comment period of adverse impacts that cannot be mitigated by the conditioning of a permit. If the department determines that the review and approval process created by this section is not appropriate for the proposed project, the department shall notify the applicant and the appropriate local governments of its determination. The applicant may reapply for approval of the project under other review and approval processes.

(II) Any person aggrieved by the approval, denial, conditioning, or modification of a permit under this section may formally appeal the decision to the hydraulic appeals board pursuant to the provisions of this chapter.

(D) No local government may require permits or charge fees for fish habitat enhancement projects that meet the criteria of (p)(iii)(A) of this subsection and that are reviewed and approved according to the provisions of this section.

[Statutory Authority: RCW 90.58.030 (3)(e), 90.58.045,90.58.065 , 90.58.140(9), 90.58.143, 90.58.147, 90.58.200,90.58.355 , 90.58.390, 90.58.515, 43.21K.080, 71.09.250,71.09.342 , 77.55.181, 89.08.460, chapters 70.105D, 80.50 RCW. 07-02-086 (Order 05-12), § 173-27-040, filed 1/2/07, effective 2/2/07. Statutory Authority: RCW 90.58.140(3) and 90.58.200 . 96-20-075 (Order 95-17), § 173-27-040, filed 9/30/96, effective 10/31/96.]



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WAC 173-27-050

No agency filings affecting this section since 2003

Letter of exemption.

Some projects conducted on shorelines of the state also require review and approval by federal agencies. Ecology is designated as the coordinating agency for the state with regard to permits issued by the U.S. Army Corps of Engineers. The following is intended to facilitate ecology's coordination of local actions, with regard to exempt development, with federal permit review.

(1) The local government shall prepare a letter of exemption, addressed to the applicant and the department, whenever a development is determined by a local government to be exempt from the substantial development permit requirements and the development is subject to one or more of the following federal permit requirements:

(a) 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

(b) 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.)

(2) The letter shall indicate the specific exemption provision from WAC [173-27-040](#) that is being applied to the development and provide a summary of the local government's analysis of the consistency of the project with the master program and the act.

(3) Local government may specify other developments not described within subsection (1) of this section as requiring a letter of exemption prior to commencement of the development.

[Statutory Authority: RCW [90.58.140](#)(3) and [90.58.200](#). 96-20-075 (Order 95-17), § 173-27-050, filed 9/30/96, effective 10/31/96.]