

**Title 10**

**WATERFRONT AND SHORELINE**

**Chapters:**

**10.05 Port Facilities**

**10.10 Shoreline Management**



**Chapter 10.05****PORT FACILITIES**

## Sections:

- 10.05.010 Watercraft.
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- 10.05.050 Inspection and enforcement.
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- 10.05.070 Length of vessel.
- 10.05.080 Use restrictions.
- 10.05.090 Violation – Civil penalty.
- 10.05.100 Town floats and boat launch.
- 10.05.110 *Repealed.*

**10.05.010 Watercraft.**

The words “boat” or “vessel”, as used in this chapter, shall mean and apply to every type of watercraft. [Ord. 337 § 1, 1968.]

**10.05.020 Moorage facilities.**

Moorage facilities of the town of La Conner shall be limited to 24 hours’ duration at any one time for all boats. There shall be a minimum of 48 hours’ time lapse or interval between reberthing by the same vessel; provided, however, designated authorities may issue a permit to any vessel to berth for a longer period of time than specified in this section, where, in their opinion, good cause exists for the issuance of such permit. [Ord. 337 § 2, 1968.]

**10.05.030 Town docks.**

It shall be unlawful for any person or persons, firm or corporation to park, store, stand, tie, or leave for a period of time greater than one hour, any automobile, truck, or other vehicle or conveyance on any town dock, it being the purpose and intention hereof to reserve the town docks for the use of public loading and unloading purposes, and not for storage or parking purposes. [Ord. 337 § 3, 1968.]

**10.05.040 Damage.**

Any person who shall destroy, deface, or damage any town dock, slip or float or any part of either, shall be guilty of a violation of this chapter, and, in addition to prosecution therefor, shall be required to repair same, or if the damage is repaired by the town, the person causing such damage shall

be required to reimburse the town for all expenses incurred as a result of damage to the dock, slip or float, and equipment. [Ord. 337 § 4, 1968.]

**10.05.050 Inspection and enforcement.**

The code enforcement officer or persons appointed by the mayor shall make periodic inspection of moorage facilities and shall enforce this chapter. [Ord. 1015 § 3, 2008; Ord. 337 § 5, 1968.]

**10.05.060 Doubling-up.**

It shall be unlawful for any vessel to raft, double-up or tie one vessel to another on or to the public docks and floats belonging to the town of La Conner. [Ord. 1015 § 3, 2008; Ord. 639 § 2, 1993; Ord. 601, 1991. Formerly 10.05.080]

**10.05.070 Length of vessel.**

It shall be unlawful for any vessel of more than 45 feet in length to tie up to the public docks owned by the town of La Conner without the approval of the town. [Ord. 1015 § 3, 2008; Ord. 639 § 3, 1993; Ord. 601, 1991. Formerly 10.05.090]

**10.05.080 Use restrictions.**

(1) It shall be unlawful without prior approval from the town of La Conner for the operator of any vessel, other than pleasure craft under 45 feet in length, to:

- (a) Tie up at any town float or dock; or
- (b) Use the town launch facility or its floats.

(2) It shall be unlawful for any vessel to be repaired, serviced, refueled or worked on at any public dock in a way that could create the potential for danger to the public, environmental impact, fire, or damage to dock or other vessels.

(3) Use of town moorage and dock facilities shall be subject to Chapter 79A.25 RCW. [Ord. 1015 § 3, 2008; Ord. 639 § 4, 1993; Ord. 601, 1991. Formerly 10.05.100]

**10.05.090 Violation – Civil penalty.**

Any person found guilty of a violation of this chapter shall be guilty of a civil infraction and subject to civil penalty as set forth and established in Chapter 1.15 LCMC. [Ord. 1015 § 3, 2008; Ord. 839 § 23, 2001; Ord. 337 § 6, 1968. Formerly 10.05.060]

**10.05.100**

**10.05.100 Town floats and boat launch.**

For fees, see LCMC 3.60.095. [Ord. 1015 § 3, 2008; Ord. 824 § 1, 2001; Ord. 726 § 1, 1998; Ord. 639 § 1, 1993; Ord. 601, 1991. Formerly 10.05.070]

**10.05.110 Violation – Penalty.\***

*Repealed by Ord. 839.* [Ord. 639 § 5, 1993; Ord. 601, 1991.]

\*See LCMC 10.05.090.

**Chapter 10.10**

**SHORELINE MANAGEMENT<sup>1</sup>**

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1. Code Reviser’s Note: Ord. 926 adopts this codification of the La Conner Shoreline Master Program.

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## La Conner Municipal Code

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### Article I. General Provisions

#### 10.10.005 Title.

This chapter shall be known and may be cited as the “shoreline master program.” [Ord. 705 § 2(1), 1997.]

#### 10.10.010 Purpose.

The purpose of this chapter is to update the shoreline master program to enable the town to manage its shorelines in accordance with Chapter

90.58 RCW and Chapter 173-16 WAC and to adopt goals, policies, and regulations designed to promote the health, safety, and general welfare of the people of La Conner.

All shoreline development shall be consistent with the Shoreline Management Act, this shoreline master program and with applicable sections of the town’s land use zoning ordinances, including the Uniform Development Code, FEMA flood control and management codes and regulations, the State Environmental Policy Act, and other applicable local, state and federal laws and regulations. [Ord. 705 § 2(2), 1997.]

#### 10.10.015 Findings.

(1) There are approximately 9,300 feet of shoreline in La Conner adjacent to the Swinomish Channel, a navigable waterway.

(2) Approximately 1,600 feet of the shoreline is within the historic preservation district.

(3) The town of La Conner finds that its shorelines are a valuable resource having statewide significance which should be protected and used in the best interest of private and public entities while protecting private property rights and allowing public access to the greatest extent feasible.

(4) Ordinance 705, adopting the La Conner Shoreline Master Program, was adopted on November 18, 1997.

(5) Ordinance 792, amending Ordinance 705 was adopted on November 14, 2000. [Ord. 705 § 2(3), 1997.]

#### 10.10.020 Definitions.

##### A

“Accessory use” means any structure or use incidental and subordinate to a primary use or development.

“Accretion” means the growth of a beach by the addition of material transported by wind and/or water.

“Act” means Chapter 90.58 RCW, the Shoreline Management Act of 1971, as amended.

“Adjacent lands” means lands adjacent to the shorelines of the state (outside of shoreline jurisdiction).

“Appurtenance” means a structure or development which is necessarily connected to the use and enjoyment of a single-family residence and is located landward of the ordinary high water mark

and also of the perimeter of a wetland. Normal appurtenances include a garage, deck, driveway, utilities, fences, and grading which does not exceed 250 cubic yards and which does not involve placement of fill in any wetland or waterward of the ordinary high water mark.

“Archaeological” means having to do with the scientific study of material remains of past human life and activities.

“Average grade level” means the average of the natural or existing topography of the portion of the lot, parcel, or tract of real property which will be directly under the proposed building or structure before development. In the case of structures to be built over water, average grade level shall be the elevation of the ordinary high water mark. Calculation of the average grade level shall be made by averaging the lowest and highest existing elevation points on the lot, parcel or tract of real property.

## B

“Backshore” means the accretion or erosion zone, located landward of the line of ordinary high tide, which is normally wetted only by storm tides. It may take the form of a more or less narrow storm berm (ridge of wave-heaped sand and/or gravel) under a bluff or it may constitute a broader complex of berms, marshes, meadows, or dunes landward of the line of ordinary high tide. It is part of the littoral drift process along its seaward boundary.

“Berm” means a linear mound or series of mounds of sand and/or gravel generally paralleling the water at or landward of the line of ordinary high tide; also, a linear mound used to screen an adjacent activity, such as a parking lot, from transmitting excess noise and glare.

“Best management practice (BMP)” means physical, structural, and/or managerial practices that, when used singly or in combination, prevent or reduce pollution of water, and/or have been approved by the Department of Ecology.

“Biofiltration system” means a stormwater or other drainage treatment system that utilizes as a primary feature the ability of plant life to screen out and metabolize sediment and pollutants. Typically, biofiltration systems are designed to include grassy swales, retention ponds, and other vegetative features.

“Biota” means the animals and plants that live in a particular location or region.

“Boat launch or ramp” means graded slopes, slabs, pads, planks, or rails used for launching boats by means of a trailer, hand, or mechanical device.

“Boating facilities” means water-dependent facilities provided for boat moorage, launch, or service such as marinas, wet and dry moorage, boat launch ramps, floats and accessory uses.

“Breakwater” means an offshore structure aligned parallel to shore, sometimes shore-connected, that provides protection from waves.

“Buffer area” means a parcel or strip of land that is designed and designated to permanently remain vegetated in an undisturbed and natural condition to protect an adjacent aquatic or wetland site from upland impacts, to provide habitat for wildlife, and to afford limited public access.

“Bulkhead” means a solid or open pile wall erected generally parallel to and near the ordinary high water mark for the purpose of protecting adjacent uplands from waves or current action.

## C

“CFR” means Code of Federal Regulations.

“Channel” means an open conduit for water either naturally or artificially created, but does not include artificially created irrigation, return flow, or stockwater channels.

“Clean Water Act” means the primary federal law providing water pollution prevention and control; previously known as the Federal Water Pollution Control Act. (33 USC 1251 et seq.)

“Clearing” means the destruction or removal of vegetative ground cover, shrubs and trees including, but not limited to, root material removal and/or topsoil removal.

“Commercial” means activities and facilities conducted or constructed for profit and which serve the needs and convenience of residents and visitors. Commercial includes wholesale, retail, service and business trades.

“Community structure” means a building, dock, or other structure which is intended for the common use of the residents of a particular subdivision or community. It is not intended to serve as a public facility.

“Conditional use” means a use, development, or substantial development which is classified as a conditional use or is not classified within the master program.

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“Covered moorage” means boat moorage, with or without walls, that has a roof to protect a vessel.

### D

“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 the Shoreline Management Act at any stage of water level.

“Dock” means a structure designed to float upon the water which abuts the shoreline and is used as a landing or moorage place for commercial, industrial, and recreational purposes.

“Dredge material/spoil” means the material removed by dredging.

“Dredging” means excavation or displacement of the bottom or shoreline of a waterbody.

### E

“Emergency” means 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 the master program. Emergency construction is construed narrowly as that which is necessary to protect property from the elements.

“Enhancement” means alteration of an existing wetland or habitat to improve or increase its characteristics and processes without degrading other existing environmental functions. Enhancements are to be distinguished from wetland/habitat creation or restoration projects.

“Environmentally sensitive areas” means those areas with especially fragile biophysical characteristics and/or with significant environmental resources as identified in a scientifically documented inventory accomplished as part of a SEPA/NEPA process or other recognized assessment. Environmentally sensitive areas may or can include but are not limited to unstable bluffs, wildlife habitat areas, fish breeding, rearing or feeding areas, wetlands, estuaries, and dunes.

“Erosion” means the wearing away of land by the action of natural forces.

“Exempt development” means developments set forth in WAC 173-27-040 and RCW 90.58.030

(3)(e), 90.58.140(9), 90.58.147, 90.58.355, and 90.58.515 which are not required to obtain a substantial development permit but which must otherwise comply with applicable provisions of the Shoreline Management Act and this shoreline master program.

“Exemption” means authorization from the town which establishes that an activity is exempt from substantial development requirements under WAC 173-27-040, but subject to regulations of the Shoreline Management Act and the La Conner Shoreline Master Program.

“Extreme low tide” means the lowest line on the land reached by a receding tide.

### F

“Fair market value” means the open market bid price, excluding sales tax, for conducting the work, using equipment and facilities, and purchase of goods, services and materials necessary to accomplish the development. This would normally equate to the cost of hiring a contractor to undertake the development from start to finish, including the cost of labor, materials, equipment and facility usage, transportation and contractor overhead and profit. The fair market value of the development shall include the fair market value of any donated, contributed or found labor, equipment or materials.

“Float” means floating platform structures, anchored or held by pilings.

“Floating home” means a structure designed and operated substantially as a permanently based overwater residence. Floating homes are not vessels and lack adequate self-propulsion and steering equipment to operate as a vessel. They are typically served by permanent utilities and semipermanent anchorage/moorage facilities.

“Floodplain,” as defined by the Federal Emergency Management Agency Town of La Conner Flood Insurance Study, means the relatively flat area or lowlands adjoining the channel of a river, stream, watercourse, or other similar body of water, which has been or may be covered with floodwater.

“Foreshore” means, in general terms, the beach between mean higher high water and mean lower low water.

### G

“Gabions” means structures composed of masses of rocks, rubble or masonry held tightly

together usually by wire mesh so as to form blocks or walls. Sometimes used on heavy erosion areas to retard wave action or as foundations for breakwaters or jetties.

“Grading” means the physical manipulation of the earth’s surface and/or drainage pattern in preparation for an intended use of activity.

“Groin” (also referred to as a “spur dike” or “rock weir”) means a barrier-type structure extending from the backshore or stream bank into a water body for the purpose of the protection of a shoreline and adjacent upland by influencing the movement of water and/or deposition of materials.

## H

“Habitat” means the place or type of site where a plant or animal naturally or normally lives and grows.

“Harbor line (inner and outer)” means lines set by the Washington State Department of Natural Resources delineating their harbor management areas.

“Height” means the distance measured from the average grade level, before development, to the highest point of a structure; provided, that television antennas, chimneys, and similar appurtenances shall not be used in calculating height, except where such appurtenances obstruct the view of the shoreline of a substantial number of residences on areas adjoining such shorelines; provided further, that temporary construction equipment is excluded in this calculation.

“Houseboats” are licensed and designed for use as a mobile residential structure with detachable utilities or facilities, anchoring and the presence of adequate self-propulsion and steering equipment to operate as a vessel.

## I

“Industrial” means light to medium manufacturing, fabrication, research, wholesale trade and distribution businesses, and their associated offices, which are largely devoid of nuisance and hazards, and which include processing and handling of products, the storage of finished or semi-finished goods.

“Intertidal” means the vertical zone between average high and average low tides. The intertidal zone of a stationary structure or bank is subject to alternate wetting and drying.

## L

“Littoral” means living on, or occurring on, the shore.

“Littoral drift” means the mud, sand, or gravel material moved parallel to the shoreline in the nearshore zone by waves and currents.

“Liveaboard vessel” means a vessel used as an overwater residence for a period exceeding two months in any one calendar year.

## M

“Marina” means a boat basin offering dockage and other services for small marine craft which may consist of a system of piers, buoys, or floats to provide moorage for 10 or more boats.

“Mitigation” means the process of avoiding, reducing, or compensating for the environmental impact(s) of a proposal.

“Multifamily dwelling” means a building containing two or more dwelling units, including but not limited to duplexes, apartments, and condominiums.

## N

“NEPA” means National Environmental Policy Act.

“Nonconforming development” means a shoreline use or structure which was lawfully constructed or established prior to the effective date of the applicable SMA/SMP provision, and which no longer conforms to the applicable shoreline provisions.

“Non-water-oriented use” means any use which does not meet the definition of water-dependent, water-related or water-enjoyment.

Normal Maintenance or Repair. “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 within a reasonable period after decay or partial destruction except where repair involves total replacement which is not common practice or causes substantial adverse effects to the shoreline resource or environment.

“Normal protective bulkhead” means a bulkhead, common to single-family residences, constructed at or near the ordinary high water mark to protect an existing single-family residence, and

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which sole purpose is for protecting land from erosion, not for the purpose of creating new land.

### O

“Office” means office space and required parking, etc., including high-tech or e-commerce research and development and professional offices.

“Ordinary high water mark (OHWM)” means 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 uplands, 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 of Ecology; 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.

### P

“Pier” means a structure built on a fixed platform above the water which abuts the shoreline and is used as a landing or moorage place for commercial, industrial and recreational purposes.

“Primary use” means the use(s), permitted or conditional, for which a lot, development or structure, or the major portion thereof (more than 50 percent), is designed or actually employed. The primary use(s) will be calculated based on the building square footage by use of a development.

### R

“RCW” means Revised Code of Washington.

“Residential development” means development which is primarily devoted to or designed for use as a dwelling(s).

“Restoration” means to revitalize or reestablish characteristics and processes of a wetland or habitat diminished or lost by past alterations, activities, or catastrophic events.

“Riparian” means of, on, or pertaining to the banks of a river.

“Riprap” means a layer, facing, or protective mound of stones placed to prevent erosion, scour, or sloughing of a structure or embankment; also, the stone so used.

“Runoff” means water that is not absorbed into the soil but rather flows along the ground surface following the topography.

### S

“Secondary use – multifamily residential” means a multifamily residential use that is subordinate (49 percent or less of all uses) to the primary use(s) of the property, such as commercial. “Secondary use – multifamily residential” will be calculated based on the Uniform Development Code residential conditional use definition, LCMC 15.35.030.

“Secondary use – residential” means a residential use that is subordinate (49 percent or less of all uses) to the primary use(s) of the property, such as commercial. “Secondary use – residential” will be calculated based on the Uniform Development Code residential conditional use definition, LCMC 15.35.030.

“SEPA” means State Environmental Policy Act. SEPA requires state agencies, local governments, and other lead agencies to consider environmental factors when making most types of permit decisions, especially for development proposals of a significant scale.

“Shorelands or shoreland areas” means those lands extending landward for 200 feet in all directions as measured on a horizontal plane from the ordinary high water mark.

“Shoreline environment designation” means the categories of shorelines established by the town to provide a uniform basis for applying policies and use regulations within distinctively different shoreline areas. La Conner’s shorelines are designated in the following environments: urban commercial, urban industrial, urban mixed use, historic commercial and aquatic.

“Shoreline jurisdiction” is the term describing all of the geographic areas covered by the SMA, related rules and the applicable master program; also, such areas within the town’s authority under the SMA.

“Shorelines” means all of the water areas of the state, including reservoirs, and their associated shorelands, together with the lands underlying them, except shorelines of statewide significance.

“Shorelines Hearings Board (SHB)” means a six-member quasi-judicial body, created by the SMA, which hears appeals by any aggrieved party

on the issuance of a shoreline permit and appeals by local government on Ecology approval of master programs, rules, regulations, guidelines or designations under the SMA.

**Shorelines of Statewide Significance.** In La Conner, that area in the Swinomish Channel, between the Burlington Northern Railway trestle to the north and a line running east/west and connecting Navigation Light No. 13 with the northeasternmost point of the jetty as it abuts McGlenn Island, lying waterward of the extreme low tide is considered to be a shoreline of statewide significance. The adjacent tidelands landward of the Channel's extreme low tide line and upland areas within the town's shoreline jurisdiction are not shorelines of statewide significance.

“Shorelines of the state” means the total of all shorelines and shorelines of statewide significance within the state.

“Sign” means a board or other display containing words and/or symbols used to identify or advertise a place of business or to convey information. Excluded from this definition are signs required by law and the flags of national and state governments.

“Single-family residence (SFR)” 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.

“Site area” includes all improved DNR-leased lands, fee lands, and improved public areas within the shoreline jurisdiction.

“SMA” means the Shoreline Management Act of 1971, Chapter 90.58 RCW, as amended.

“Structure” means a permanent or temporary edifice or building, or any piece of work artificially built or composed of parts joined together in some definite manner, whether installed on, above or below the surface of the ground or water, except for vessels.

“Substantial development” means any development of which the total cost or fair market value exceeds the value established in RCW 90.58.030 under the definition of substantial development (excluding sales tax), or any development which materially interferes with the normal public use of the water or shorelines of the state; except as specifically exempted pursuant to RCW

90.58.030(3)(e) and WAC 173-27-040 (See LCMC 10.10.425 et seq.)

“Substantial development permit” means authorization for any substantial development or revision to a substantial development granted by the town under the provisions of the shoreline master program and Chapter 90.58 RCW.

## U

“Upland” means the dry land area above and landward of the OHWM.

## V

“Variance” means a means to grant relief from the specific bulk, dimensional or performance standards specified in the master program. It is not a means to vary a use of a shoreline.

“Vessel” means ships, boats, barges, or any other floating crafts which are designed and used for navigation and do not interfere with the normal public use of the water.

## W

“WAC” means Washington Administrative Code.

“Water-dependent use” means a use or portion of a use which cannot exist in a location that is not adjacent to the water and which is dependent on the water by reason of the intrinsic nature of its operations.

“Water-enjoyment use” means a recreational use or other use that facilitates public access to the shoreline as a primary characteristic of the use; or a use that provides for recreational use or aesthetic enjoyment of the shoreline for a substantial number of people as a general characteristic of the use and which through location, design, and operation ensures the public's ability to enjoy the physical and aesthetic qualities of the shoreline. In order to qualify as a water-enjoyment use, the use must be open to the general public and the shoreline-oriented space within the project must be devoted to the specific aspects of the use that fosters shoreline enjoyment.

“Water-oriented use” means a use that is water-dependent, water-related, or water-enjoyment, or a combination of such uses.

“Water-related use” means a use or portion of a use which is not intrinsically dependent on a water-

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front location but whose economic viability is dependent upon a waterfront location because:

(a) The use has a functional requirement for a waterfront location such as the arrival or shipment of materials by water or the need for large quantities of water; or

(b) The use provides a necessary service supportive of the water-dependent uses and the proximity of the use to its customers makes its services less expensive and/or more convenient.

“Wetlands” means areas that are inundated or saturated by surface water or ground water 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 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.

## Z

“Zoning” means to designate by ordinance, including maps, areas of land reserved and regulated for specific land uses. [Ord. 984 §§ 2 – 5, 2007; Ord. 954, 2005; Ord. 828 §§ 1, 2, 2001; Ord. 792 § 1, 2000; Ord. 705 § 2(4), 1997.]

### 10.10.025 Applicability.

This shoreline master program shall apply to all shorelines within the town’s corporate limits and development and use thereof by any and all persons.

The town’s jurisdiction under this shoreline master program encompasses those areas defined as shorelines of the state, the entire length of the shoreline within its boundaries and 200 feet landward from the ordinary high water mark (OHWM) of the Swinomish Channel. These areas are shown on the shoreline environment designation map attached to the ordinance codified in this chapter as Appendix A, and available in the office of the city clerk. [Ord. 705 § 2(5), 1997.]

## Article II. Shoreline Environment Designations

### 10.10.030 Established.

There are five shoreline environment designations in La Conner: urban commercial, urban industrial, historic commercial, public use and aquatic. See shoreline map, Appendix A, attached to the ordinance codified in this chapter and available in the office of the city clerk. [Ord. 705 § 2(6), 1997.]

### 10.10.035 Designation criteria.

(1) The urban commercial “A” environment is that shoreline area extending on the south from Caledonia Street north to approximately 80 feet south of Commercial Street, and on the east at a point 200 feet landward of the OHWM and at the west at the OHWM of the Swinomish Channel. On the north, from a point 100 feet north of Morris Street to South Pearle Jensen Way between the OHWM of the Swinomish Channel on the west and a point 200 feet landward of the OHWM. It is an area of high-intensity land use including public, commercial uses, and residential use by conditional use permit, as well as water-oriented and port activities. The purpose of this environment is to ensure optimum utilization of existing urban commercial shorelines for a variety of uses, with priority given to water-dependent, water-related, and water-enjoyment uses.

(2) The urban commercial “B” environment is that shoreline area extending on the south from Sherman Avenue north to Caledonia Street, and on the east at a point 200 feet landward of the OHWM and at the west at the OHWM of the Swinomish Channel. It is an area of high-intensity land use including public, commercial uses, and a higher density residential use by conditional use permit, as well as water-oriented and port activities. The purpose of this environment is to ensure optimum utilization of existing urban commercial shorelines for a variety of uses, with priority given to water-dependent, water-related, and water-enjoyment uses.

(3) The urban industrial environment is that shoreline area extending from the southern and westernmost town boundary north to Sherman Avenue; and from Sherman Avenue, west from the OHWM of the Swinomish Channel and east to the west edge of the Conner Way right-of-way to its southern terminus, hence east from the OHWM of the Swinomish Channel on the west to a point 200

feet landward to the southern boundary of the town. In the north from South Pearle Jensen Way north to the northernmost town boundary between the OHWM of the Swinomish Channel (including the north and south basins of the Port of Skagit County) on the west and a point 200 feet landward of the OHWM. It is an area of high-intensity light industrial land use, including port and water-oriented activities. The purpose of this environment is to ensure optimum utilization of existing urban industrial shorelines for a variety of uses, with priority given to water-dependent, water-related, and water-enjoyment uses.

(4) The historic commercial environment is that shoreline area extending from approximately 80 feet south of Commercial Street on the south to a point 100 feet north of Morris Street between the OHWM of the Swinomish Channel on the west and a point 200 feet landward of the OHWM. It is also an area of high-intensity land use including public, commercial, and residential use by conditional use permit. The purpose of this environment is to ensure optimum utilization of the shorelines in this area while preserving structures of historic significance along the waterfront, allowing as much public access as practicable in conjunction with a variety of water-enjoyment uses, and ensuring redevelopment is accomplished in such a way as to minimize any adverse impact on the aquatic and historic environment.

(5) The public use environment is that shoreline area extending 200 feet landward of the OHWM of the Swinomish Channel on the east side of Third Street, starting from Dunlap Street for the first 100 feet, and then starting again approximately 230 feet from Dunlap Street for approximately 515 feet. Also included is the property 200 feet landward of the OHWM of the Swinomish Channel from the intersection of Sherman Avenue and Conner Way known as Pioneer Park, and also Totem Park, Jordan Street end, Calhoun Street end, Washington Street end, Morris Street end, Caledonia Street end, Benton Street, Public Boat Launch on Sherman Street end, and the Post Office complex. The purpose of this environment is to ensure optimum utilization of existing public uses for public purposes.

(6) The aquatic environment includes all submerged lands waterward of the OHWM along the shoreline of the town of La Conner to the middle of the channel. Uses and activities that depend on contiguous access from the shoreline such as marinas, docks, outfalls, floats, and ramps are prevalent in this area. The purpose of this environment is to ensure protection of marine resources while allowing as much water-dependent use as possible and keep a clear navigation channel. [Ord. 984 § 6, 2007; Ord. 878 §§ 1, 2, 2003; Ord. 792 § 1, 2000; Ord. 705 § 2(6.A), 1997.]

**10.10.040 Uses in shoreline environments.**

Use/Activity	ENVIRONMENT					
	Urban Commercial A	Urban Commercial B	Urban Industrial	Historic Urban	Public Use	Aquatic
Aquaculture	X	X	P	X	X	P
Marina/Boating Facilities	P	P	P	P	P	P
Boardwalks/Floats	P	P	P	P	P	P
Clearing/Grading	P	P	P	P	P	X
<b>Commercial Uses and Activities:</b>						
Non-water-oriented	C	C	C	C	X	X
Non-water-oriented accessory uses	C	C	C	C	X	X
Water-dependent	P	P	P	P	X	P
P – May be allowed subject to permit conditions and provisions in SMP C – May be allowed as a conditional use X – Prohibited						

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Use/Activity	ENVIRONMENT					
	Urban Commercial A	Urban Commercial B	Urban Industrial	Historic Urban	Public Use	Aquatic
Water-enjoyment	P	P	P	P	X	P
Water-related	P	P	P	P	X	P
Dock/Piers	P	P	P	P	P	P
Dredging	NA	NA	NA	NA	NA	P
Houseboats	X	X	X	X	X	X
Liveaboard Vessels* *Permitted in adjacent aquatic environment	C	C	C	C	C	C
Hazardous Waste Cleanup	P	P	P	P	P	P
<b>Industrial Uses and Activities:</b>						
Non-water-oriented	C	C	C	C	X	X
Non-water-oriented accessory uses	C	C	C	C	X	C
Water-dependent	C	C	P	C	X	C
Water-enjoyment	C	C	P	C	X	C
Water-related	C	C	P	C	X	C
<b>Parking:</b>						
Accessory	P	P	P	P	P	X
Over water	X	X	X	X	X	X
Primary	X	X	X	X	X	X
<b>Public Uses and Activities:</b>						
Non-water-oriented	C	C	C	C	C	X
Non-water-oriented accessory uses	C	C	C	C	C	C
Water-enjoyment	P	P	P	P	P	P
Water-related	P	P	P	P	P	P
Public Access	P	P	P	P	P	P
Recreation	P	P	P	P	P	P
<b>Residential Uses and Activities:</b>						
Primary single-family residences	X	X	X	X	X	X
Primary multifamily residences	X	C	X	X	X	X
Secondary single-family residences	C	C	X	C	X	X
Secondary multifamily residences	C	C	X	C	X	X
<b>Shoreline Stabilization:</b>						
Beach restoration	P	P	P	P	P	X
Bioengineering	P	P	P	P	P	X
Bulkheads	P	P	P	P	P	X
P – May be allowed subject to permit conditions and provisions in SMP C – May be allowed as a conditional use X – Prohibited						

Use/Activity	ENVIRONMENT					
	Urban Commercial A	Urban Commercial B	Urban Industrial	Historic Urban	Public Use	Aquatic
Dikes/levees	P	P	P	P	P	X
<b>Signs:</b>						
Off-premises	X	X	X	X	C	X
On-premises	P	P	P	P	P	P
Traffic/highway control/scenic vistas/navigation	P	P	P	P	P	P
Utilities (Primary) (except those utilities as provided for in LCMC 10.10.095 et seq.)	X	X	X	X	X	X
P – May be allowed subject to permit conditions and provisions in SMP C – May be allowed as a conditional use X – Prohibited						

[Ord. 984 § 7, 2007; Ord. 828 § 2, 2001; Ord. 792 § 1, 2000; Ord. 705 § 2(6.A), 1997.]

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**10.10.045 Management policies.**

(1) Priority shall be given to “water-dependent,” “water-related,” and “water-enjoyment” uses over other uses. Uses that derive no benefit from a water location (e.g., non-water-oriented uses) should be discouraged, unless there are overriding public interests consistent with the policies of this program and the Shoreline Management Act that are served by accommodating such uses.

(2) Visual and physical public access should be encouraged. Where possible, industrial and commercial facilities should be designed to permit pedestrian waterfront activities. Planning for the acquisition of land for permanent public access to the water in the urban environment should be encouraged and implemented.

(3) Aesthetic considerations should be actively promoted by means such as sign control regulations, appropriate development siting, screening and architectural standards.

(4) In order to make maximum use of the available shoreline resource and to accommodate future water-oriented uses, the redevelopment and renewal of urban shoreline areas should be encouraged.

(5) Dredging and filling activities shall be conducted with minimum impact on marine habitat in the Swinomish Channel and during those times authorized by appropriate agencies.

(6) Uses in the aquatic environment shall not block navigation channels or restrict access to sections of the shoreline.

(7) Uses should be compatible with the natural shoreline environment and have minimal impact on the natural resources associated with the Swinomish Channel. [Ord. 828 § 2, 2001; Ord. 792 § 1, 2001; Ord. 705 § 2(6.B), 1997.]

### **Article III. Master Program Elements – Goals, Policies and Regulations**

**10.10.050 Generally.**

As required by RCW 90.58.100(2) under the Shoreline Management Act, the following elements have been considered in the preparation of this master program for the shorelines of La Conner: shoreline use, public access, economic development, circulation, conservation, recreational, and historical/cultural. More than one element may apply to a given development proposal. [Ord. 705 § 2(7), 1997.]

**Article III-A. Shoreline Use Element****10.10.055 Generally.**

The following uses and modification activities are included under the shoreline use element: residential development, utilities, boating facilities, flood control management, and shoreline protection structures within the shoreline jurisdiction. Commercial and industrial development is addressed under the economic development element. The remaining uses described above can be found under their respective elements. [Ord. 705 § 2(7.1), 1997.]

**10.10.060 Goals.**

(1) Establish and implement policies and regulations for shoreline use consistent with the Shoreline Management Act of 1971. These policies and regulations should insure that land uses in shoreline areas are compatible with existing shoreline environment designations and will be sensitive to and not degrade habitat, ecological systems and other shoreline resources.

(2) Identify and reserve shoreline and water areas with unique attributes for specific long-term uses including historic, commercial, industrial, residential, recreational, public, open space uses, and natural resource conservation.

(3) Insure that proposed shoreline uses do not infringe upon the rights of others or upon the rights of private ownership.

(4) Encourage shoreline uses which enhance their specific areas or employ innovative features for purposes consistent with this program.

(5) Encourage joint-use activities in proposed shoreline developments.

(6) Encourage restoration of shoreline areas that have been degraded or diminished in ecological values and functions as a result of past development activities, or catastrophic events. [Ord. 705 § 2(7.1.A), 1997.]

**10.10.065 General policies.**

(1) Public input into the decision-making process for shoreline use should be encouraged.

(2) Multiple use of sites and structures where compatible with water-oriented uses for maximum utilization of the existing developed shoreline should be encouraged.

(3) Ongoing cooperative planning between the town, the Port of Skagit County, the Swinomish

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Tribe, Skagit County, state and federal agencies to protect and enhance the shoreline of the Swinomish Channel should be encouraged. [Ord. 705 § 2 (7.1.B), 1997.]

### 10.10.070 Residential development – Generally.

A substantial development permit must be obtained for all nonexempt residential development within shoreline jurisdiction (including multifamily residences, subdivisions, short plats, and nonexempt accessory structures). (Note: In the town of La Conner the fair market value or cost does not include applicable state sales tax.) [Ord. 705 § 2(7.1.1), 1997.]

### 10.10.075 Residential development – Goals.

(1) Discourage residential development as a primary use inside the 200-foot shoreline jurisdiction.

(2) Require public access in those areas where residential use is permitted. [Ord. 828 § 2, 2001; Ord. 792 § 1, 2000; Ord. 705 § 2(7.1.1.A), 1997.]

### 10.10.080 Residential development – Policies.

(1) Residential development should be permitted only where there are adequate provisions for utilities, drainage, and transportation access and circulation.

(2) The overall density of development, lot coverage and height of structures should be appropriate to the physical capabilities of the site and as set forth in the Uniform Development Code.

(3) Residential development should provide adequate setbacks and natural buffers from the water and ample open space between structures to provide space for outdoor recreation, protect natural features, preserve views and minimize use conflicts.

(4) Residential development should be designed so as to preserve existing shoreline vegetation, aquatic and wildlife habitat, control erosion, and protect water quality, shoreline aesthetic characteristics, views and public use of the shoreline and the water.

(5) Residential development should provide dedicated and improved public access to the shoreline in a manner which is appropriate to the site and the nature and size of the development (see LCMC 10.10.210 et seq.).

(6) Residential development should not cause significant adverse impacts to or result in the displacement of other nearby shoreline uses.

(7) Liveaboard vessels should be encouraged to moor in marinas with adequate water and sanitary facilities to accommodate them.

(8) Preference should be given to joint-use community piers and docks. [Ord. 828 § 2, 2001; Ord. 705 § 2(7.1.1.B), 1997.]

### 10.10.085 Residential development – Regulations.

(1) No residential lots or sites shall be created for which shoreline protection structures, such as bulkheads will be required. Development on existing lots shall be sited so that no shoreline protection structures will be required.

(2) All residential structures, accessory uses and facilities shall be arranged and designed so as to reasonably preserve views and vistas to and from shorelines and water bodies and be compatible with the aesthetic values of the area.

(3) Storm drainage and treatment facilities shall be required by the town for proposals involving any dwelling. 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.

(4) Prior to issuance of a building permit, short plat or shoreline development approval, the developer shall submit adequate plans for preservation of shore vegetation and for erosion control during and after construction which would result in permanent shoreline stabilization. Such plans shall be a part of the shoreline permit.

(5) The shoreline setback for new multifamily residential development shall be a minimum of 25 feet landward of the OHWM.

(6) Public access easements shall be a minimum of 12 feet in width and shall be in compliance with public access requirements and standards contained in LCMC 10.10.210 et seq.

(7) Accessory uses that are not appurtenances shall be reasonable in size and purpose, and be compatible with on-site and adjacent structures, uses and natural features.

(8) Liveaboard vessels may be moored in the La Conner waterfront subject to rent/lease agreements with owners/lessees of adjacent property and consistent with all applicable local and state

regulations, including health regulations pertaining to water supply and sewage disposal and the Department of Natural Resource's lease requirements. When connection to existing sewage disposal facilities is not practicable, the routine use of off-site pumpout facilities shall be required and subject to written verification. Under no circumstances shall sewage effluent from such uses be discharged into the waters of the Swinomish Channel. [Ord. 705 § 2(7.1.1.C), 1997.]

**10.10.090 Residential development – Prohibited.**

(1) New residential development is prohibited in the urban industrial environment.

(2) Floating homes and houseboats are prohibited. [Ord. 705 § 2(7.1.1.D), 1997.]

**10.10.095 Utilities (accessory) – Generally.**

Accessory utilities are small distribution systems connected directly to the uses along the shoreline, for example, power, telephone, cable, water and sewer lines, including stormwater drainage systems. Accessory utilities do not include primary utilities that produce, transmit, carry, store, process or dispose of electric power, gas, water, sewage, communications, and similar services. The term "primary utilities" in this document refers to such activities as solid waste handling facility, sewage treatment plants and, power generating (except generators that are needed for emergency purposes) or transfer facilities or high-tension utility lines. [Ord. 705 § 2(7.1.2), 1997.]

**10.10.100 Utilities (accessory) – Goals.**

(1) Minimize the impact of La Conner's utility services on the Swinomish Channel and its shorelands.

(2) Primary utilities should be discouraged from locating along the Swinomish Channel and its shorelands. [Ord. 705 § 2(7.1.2.A), 1997.]

**10.10.105 Utilities (accessory) – Policies.**

Utilities necessary to serve shoreline uses should be properly installed to protect the shoreline and water from contamination and degradation. [Ord. 705 § 2(7.1.2.B), 1997.]

**10.10.110 Utilities (accessory) – Regulations.**

(1) In shoreline areas, utility transmission lines, pipelines and cable shall be placed underground

unless demonstrated to be infeasible. Further, such lines shall utilize existing rights-of-way, corridors and/or bridge crossings whenever possible and provide for compatible multiple use.

(2) Primary utilities are prohibited within the town's shoreline jurisdiction provided that outfalls requiring shoreline location may be allowed as conditional uses. [Ord. 705 § 2(7.1.2.C), 1997.]

**10.10.115 Boating facilities – Goals.**

(1) Encourage joint or cooperative use of boating facilities, including marinas, wet and dry moorages, boat launch ramps, floats, and related accessory uses to avoid cumulative adverse effects on the waterway, such as overcrowding and pollution.

(2) Provide quality docks, floats, and boat launches for public use.

(3) Encourage safe access to boating facilities.

(4) Ensure no boating facility poses a hazard to navigation.

(5) Require best management practices to control runoff and prevent pollution into the channel that may affect fisheries resources and adversely impact the waterway. [Ord. 705 § 2(7.1.3.A), 1997.]

**10.10.120 Boating facilities – Policies.**

(1) Boating facilities should be located, designed and operated to minimize adverse effects upon and provide maximum feasible protection and enhancement of all forms of aquatic, littoral or terrestrial life including animals, fish, shellfish, birds and plants, their habitats and their migratory routes.

(2) The use of marinas, docks or floats for other than water-dependent, water-related or emergency uses should be discouraged.

(3) The use of boat launching ramps and dry storage of recreational boats or other new technologies should be encouraged as favorable alternatives to sheltered, year-round wet moorage of watercraft.

(4) Boating facilities should be located and designed so their structures and operations will not unreasonably impair shoreline views.

(5) New marina facilities should be designed to accommodate public access and enjoyment of the shoreline including provisions for walkways, view points, restroom facilities and other recreational uses according to the scale of the facility.

(6) Foreshore marinas, wherever possible, should use open-type construction (floating break-

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water and/or open pile work) to prevent degradation of fish and/or shellfish resources and habitat.

(7) Installation and maintenance of sewage disposal (pumpout) facilities should be required and available in convenient locations to all users of marina facilities.

(8) Oil collection sites should be available in convenient locations to all users of marina facilities. [Ord. 705 § 2(7.1.3.B), 1997.]

### 10.10.125 Boating facilities – Regulations – Generally.

(1) Boating facility development and/or renovations shall comply with all applicable local, state, and federal agency policies and regulations.

(2) The town shall require and utilize the following information in its review of marina proposals:

(a) Existing natural shoreline and backshore features and uses, bathymetric contours (one-foot increments);

(b) Geohydraulic processes and flushing characteristics, volume, rates, and frequencies;

(c) Biological resources and habitats for the backshore, foreshore and aquatic environments;

(d) Area of surface waters appropriated, and leased areas;

(e) Site orientation; exposure to wind, waves, flooding or tidal/storm surges; type and extent of shore defense works or shoreline stabilization and flood protection necessary;

(f) Impact upon existing and created demand for shoreline and water uses including public access and recreation and views;

(g) The regional need for additional facilities; and

(h) Facility design, including sewage disposal, water quality controls, provisions for the prevention and control of fuel spillage and a landscaping plan.

(3) Accessory uses at marinas or public launch ramps shall be limited to those necessary for marina operations or which provide physical or visual shoreline access to substantial numbers of the general public. Accessory uses shall be consistent in scale and intensity with the marina and/or launch ramp and surrounding uses.

(4) Shoreline permits for marinas shall be conditioned to require boater education addressing boater impacts on water quality and other shoreline resources as well as boater safety.

(5) Storm drainage and treatment facilities shall be required. 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. [Ord. 705 § 2(7.1.3.C), 1997.]

### 10.10.130 Boating facilities – Location.

(1) Deteriorated urban waterfront areas in need of restoration and where channel depths are such that commercial activity is no longer feasible shall be given priority consideration for potential marina sites.

(2) Marinas and public launch ramps shall locate on stable shorelines where water depths are adequate to eliminate or minimize the need for offshore or foreshore channel construction dredging, maintenance dredging, spoil disposal, filling, or other harbor and channel maintenance activities.

(3) When new sites are considered, sufficient evidence must be presented to show that existing marinas are inadequate and cannot be expanded to meet regional demand.

(4) When located in designated Port of Skagit County marine port areas, marinas shall not extend waterward of the outer harbor line.

(5) Boating facilities shall be sited to prevent any adverse impacts on existing aquatic resources and environments. Criteria to be considered for siting should include, but not be limited to, size and depth of the water body, tidal flushing action in the project area, size of the facility and projected intensity of use, fuel handling, pump-out or sewer hook-ups, expected changes in adjacent land uses that could result in additional water quality impacts. [Ord. 705 § 2(7.1.3.D), 1997.]

### 10.10.135 Boating facilities – Design/renovation/expansion.

(1) Marina design shall provide thorough flushing of all enclosed water areas and shall not restrict the movement of aquatic life requiring shallow water.

(2) Marina design shall minimize interference with geohydraulic processes and disruption of existing shore forms and navigation.

(3) Boating facilities shall be designed so their structures, other features and operations will be aesthetically compatible with or will enhance existing shoreline features and uses. Boating facilities

shall mitigate for adverse development impacts on site and to adjacent properties.

(4) Marina design shall incorporate maximum public access and water-oriented uses.

(5) Location of fueling stations on docks, floats and/or shore shall be considered on an individual basis and recommendations will be made as to their location by the appropriate regulatory agencies.

(6) Approval of general construction methods and timing, etc., must be obtained from the Washington State Department of Fish and Wildlife.

(7) All signs shall adhere to local, state, and federal policies and regulations for signs. Signs incorporating pumpout logos shall be provided identifying the location of waste disposal facilities, if available.

(8) Public access, both visual and physical, shall be an integral part of all marina development and design commensurate with the particular proposal and must include the following:

(a) Marinas and public launch ramps shall be designed so that existing or potential public access along beaches is not unnecessarily blocked nor made dangerous and public use of waters below the ordinary high water mark is not unduly impaired.

(b) Covered moorage in marinas shall not be constructed where visual access from public access and/or significant numbers of residences is blocked. [Ord. 705 § 2(7.1.3.E), 1997.]

#### **10.10.140 Boating facilities – Construction and materials.**

(1) Dredging in channel waters for boating facilities shall be limited to the minimum necessary for new entrance channels to reach basins dredged out of dry land areas; for deepening water as necessary in existing and proposed berthing areas; and for maintenance dredging.

(2) Landfill in water bodies or wetlands to create usable land space for accessory marina uses is prohibited.

(3) Shoreline embankments of all boating facilities shall be stabilized both landward and waterward of the OHWM both during and after construction. [Ord. 705 § 2(7.1.3.F), 1997.]

#### **10.10.145 Boating facilities – Parking and storage.**

(1) Overwater and primary parking facilities are prohibited in shoreline jurisdiction.

(2) Short-term loading areas may be located at ramps or near berthing areas. Long-term parking, paved storage and dry moorage areas shall be located away from berthing areas and at a minimum of 50 feet from the OHWM.

(3) To the maximum extent possible, marinas and accessory uses shall share parking facilities, with marina usage given preference.

(4) The following parking requirements shall apply:

(a) Boat moorage, slip, or storage (public, private or pleasure): one-half space per slip, excluding transient moorage. [Ord. 705 § 2(7.1.3.G), 1997.]

#### **10.10.150 Boating facilities – Circulation.**

(1) Marinas and launch ramps shall be located where access streets are adequate to handle the traffic load generated by the facility and shall be designed to minimize other circulation and access conflicts.

(2) Collector roads between marinas and arterial routes shall have all-weather surfacing, and meet standards for width, safety, alignment, sign distance, grade and intersection controls.

(3) Ingress-egress, as well as the use and enjoyment of the water on adjoining property, shall not be unduly restricted or impaired. [Ord. 705 § 2 (7.1.3.H), 1997.]

#### **10.10.155 Boating facilities – Utilities.**

(1) Where moorage is offered in new, expanded or renovated existing marinas, pump-out, holding and/or treatment facilities shall be provided for sewage contained on boats and/or vessels. Such facilities shall be located so as to be conveniently available to all boats. The responsibility for the adequate collection and dumping of marina originating sewage, solid waste and petroleum waste is that of the marina operator.

(2) All marinas shall provide restrooms. They shall be kept clean and be located within 200 feet from a dock or pier; there shall be one toilet and hand washing facility for each sex per 50 moorage sites; signs shall be posted so that the restrooms are easily identifiable to the public.

(3) All pipes, plumbing, wires and cables at a marina site shall be placed at or below ground and dock levels where feasible. [Ord. 705 § 2(7.1.3.I), 1997.]

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### 10.10.160 Boating facilities – Management and operations.

(1) Marinas shall have adequate facilities and establish posted operational procedures for fuel handling and storage in order to prevent and minimize accidental spillage and for the containment, recovery and mitigation of spilled petroleum, sewage, and toxic products.

(2) Marina operators shall post the following signs where they are readily visible to all marina users:

(a) Regulations pertaining to handling and disposal of waste, sewage and toxic materials;

(b) Regulations prohibiting the use of marine toilets while moored unless these toilets are self-contained or have an approved treatment device; and

(c) Regulations prohibiting the disposal of fish and shellfish cleaning wastes, scrap fish, viscera or unused bait in or near the marina waters.

(3) Garbage or litter receptacles shall be provided and maintained by the marina operator at several locations convenient to users in sufficient numbers to properly store all solid waste generated on site. This should include separate receptacles for waste oil and other potentially hazardous or toxic waste.

(4) The dock facilities shall be equipped with adequate lifesaving equipment such as life rings, hooks and ropes.

(5) At least 10 percent of total slips shall be provided for “transient moorage” (less than two-week stay) when the marina is owned, operated, or franchised by a governmental agency.

(6) The discharge of sewage and/or toxic material from boats and/or shore installations shall be prohibited. Toxic material, herein defined as any material damaging marine life, includes but is not limited to paints, varnishes, non-biodegradable detergents, and petroleum.

(7) No commercial and/or shellfish processing discharge or discarding of unused bait, scrapfish, or viscera will be permitted within any marina.

(8) Washington State Water Quality Standards shall be strictly adhered to at all times.

(9) Owners and operators of marinas shall make all reasonable efforts to protect marine life and habitat during construction and/or operation of any marina. [Ord. 705 § 2(7.1.3.J), 1997.]

### 10.10.165 Boating facilities – Covered moorage.

(1) Marina developers shall provide a detailed plan for covered moorage development before permits are granted. Such a plan must indicate:

(a) Covered moorage location, size and general design;

(b) Impact on shoreline views in the marina and from adjacent private and public properties; and

(c) That the structures will be built to conform to the town building code, withstand stresses from storms and weather or damage by fire, and that exterior wall and roof coverings shall be of noncombustible or fire-retardant treated material and so certified or labeled.

(2) The maximum height for covered moorage is 25 feet above the extreme high tide level. [Ord. 705 § 2(7.1.3.K), 1997.]

### 10.10.170 Flood control management – Goals.

To protect wildlife, human life, health and property from damage due to flooding. [Ord. 705 § 2(7.1.4.A), 1997.]

### 10.10.175 Flood control management – Policies.

(1) Flood management planning should be undertaken in a coordinated manner among affected property owners and public agencies and should consider the entire floodplain system. Off-site erosion, accretion or flood damage that might occur as a result of stabilization or protection structures or activities should be considered.

(2) Flood hazard management planning should fully consider nonstructural approaches to minimizing flood damage.

(3) Flood management works should be located, designed constructed and maintained to provide:

(a) Protection of human life and property;

(b) Protection of the physical integrity of the shore process corridor and other properties which may be damaged by interruptions of the geohydraulic system;

(c) Protection of water quality and natural groundwater movement;

(d) Protection of fish, vegetation and other life forms and their habitat vital to the aquatic food chain;

(e) Protection of recreation resources and aesthetic values.

(4) In design of publicly financed or subsidized works, consideration should be given to providing public pedestrian access to the shoreline for low intensity outdoor recreation. [Ord. 705 § 2(7.1.4.B), 1997.]

**10.10.180 Flood control management – Regulations.**

(1) The town shall require and utilize the following information during its review of shoreline flood management projects and programs:

(a) Existing shoreline stabilization and flood protection works within the area;

(b) Physical, geological, and hydrological soil characteristics of the area;

(c) Biological resources and predicted impact to fish, vegetation and animal habitat associated with shoreline ecological systems;

(d) Predicted impact upon area shore and hydraulic processes, adjacent properties and shoreline and water uses;

(e) Analysis of alternative flood protection measures both structural and nonstructural.

(2) The town shall require professional design of flood protection works where such projects may cause interference with normal channel geohydraulic processes, leading to erosion of other upstream and downstream shoreline properties, or adverse effects to shoreline resources and uses.

(3) Diking, floodwalls and similar structures may be permitted subject to applicable agency standards.

(4) Flood protection measures shall be planned and constructed based on a state-approved flood control management plan and in accordance with the National Flood Insurance Program.

(5) Development and redevelopment within shoreline jurisdiction shall comply with the applicable requirements of the town’s stormwater management program. [Ord. 705 § 2(7.1.4.C), 1997.]

**10.10.185 Shoreline protection structures – Goals.**

(1) Protect the shoreline from erosion and related property damage.

(2) Allow only those shoreline protection structures that require low maintenance and avoid impacts to the natural environment, unique hydrology, historic features and surrounding properties.

[Ord. 705 § 2(7.1.5.A), 1997.]

**10.10.190 Shoreline protection structures – Policies.**

(1) Natural solutions such as protective berms, beach enhancement or vegetative stabilization are strongly preferred over structural defense works or materials such as steel, wood, or concrete, because the former have less adverse and cumulative impacts on shore features and habitats.

(2) The use of armored structural revetments (riprap) and bulkheads should be limited to situations where it can be demonstrated that nonstructural solutions, such as bioengineering, setbacks and buffers or any combination thereof, will not provide sufficient shoreline stabilization.

(3) Shoreline protection structures should be located, designed, and constructed primarily to prevent damage to existing development. New development requiring bulkheads and/or similar protection should be discouraged.

(4) Affected property owners and public agencies should be encouraged to coordinate bulkhead or riprap development for an entire drift sector or homogeneous reach in order to avoid exacerbating erosion on adjacent properties.

(5) Bulkheads/revetments should not be approved as a solution to geophysical problems such as mass slope failure, sloughing, landslides, etc., caused by factors other than bank erosion.

(6) Shoreline protection structures should be designed, improved and maintained to provide public access whenever possible.

(7) The construction and maintenance of shoreline protection structures should avoid loss or reduction of shoreline environmental resource values. If a loss or reduction cannot be avoided, mitigation should be provided. [Ord. 705 § 2(7.1.5.B), 1997.]

**10.10.195 Shoreline protection structures – Regulations – Generally.**

(1) Applicability. Uses and activities related to shoreline protection structures which are identified as separate use activities in this program, such as flood control management, residential development, commercial development and industry, are subject to the regulations for those uses in addition to the standards for bulkheads and revetments (riprap) established in this section.

(2) Exemptions. The Shoreline Management Act only exempts the construction of a normal protective bulkhead common to an existing single-family residence from the substantial development permit requirement. However, these structures are required to comply with all the policies, prohibitions and development standards of this master program and of this section. To qualify for the exemption from the shoreline substantial development permit requirement, and to assure that such bulkheads will be consistent with this program, a statement of exemption should be obtained from the town before commencing construction of any bulkhead. (See Article IV of this chapter, Administration and Enforcement, for a general discussion of exemptions). WAC-173-27-040(2)(c) states that "A normal protective bulkhead is not exempt if it is constructed for the purpose of creating dry land."

(3) Bulkheads and revetments may be allowed only when evidence is presented which conclusively demonstrates that one of the following conditions exist:

(a) Serious wave erosion threatens an established use or existing building(s) on upland property;

(b) Bulkheads/revetments are necessary to the operation and location of water-dependent and water-related activities consistent with this master program; provided, that all alternatives have proven infeasible (i.e., use relocation, use design, non-structural shore stabilization options) and that such bulkheads meet other policies and regulations of this chapter; or

(c) Use of natural materials and processes and nonstructural solutions to bank stabilization are unworkable in protecting existing development.

(4) Shoreline protection structure design and development shall conform to all other applicable state and federal agency policies and regulations including the State Department of Fish and Wildlife criteria governing the design of bulkheads and revetments.

(5) Natural materials and processes such as protective berms, drift logs, brush or vegetative stabilization shall be utilized to the maximum extent possible.

(6) Shoreline protection structure proposals must ensure passage of surface and/or groundwater.

(7) Gabions (wire mesh filled with concrete or rocks) shall not be used in bulkhead construction where alternatives more consistent with this program are feasible, because of their limited durability and the potential hazard to shore users and the shoreline environment.

(8) Shoreline protection structures must be in support of an allowable shoreline use that is in conformance with the provisions of this master program unless it can be demonstrated that such structures are necessary and in the public interest for the maintenance of shoreline environmental resources.

(9) Shoreline protection structures are prohibited for any purpose if they will cause significant adverse erosion or beach starvation.

(10) Riprap material shall consist of clean quarried rock, free of loose dirt and any pollutants, and shall be of sufficient size and weight to prevent movement by wave or current action. Tires, automobile bodies, scrap metal, paper products, and scrap concrete and other inappropriate solid waste materials, shall not be used for riprap.

(11) Where on-site environmental conditions allow, vegetation shall be integrated into the riprap design to reduce erosion, provide cover, shade and habitat and improve the natural appearance of the shoreline.

(12) All forms of shoreline protection structures shall be constructed and maintained in a manner that does not reduce water quality and/or fisheries habitat. [Ord. 705 § 2(7.1.5.C), 1997.]

**10.10.200 Shoreline protection structures – Location.**

(1) Bulkheads shall be permitted only where local physical conditions such as foundation bearing material, surface and subsurface drainage are suitable for such alterations.

(2) On all shorelines, bulkheads shall be located generally parallel to the natural shoreline. In addition:

(a) For sloping or bluff shores, bulkheads shall be placed as far landward as is feasible;

(b) On bank shorelines where no other bulkheads are adjacent, the construction of a bulkhead shall be as close to the bank as possible;

(c) Bulkheads may tie in flush with existing bulkheads on adjoining properties.

(3) Replacement bulkheads/revetments may be located immediately in front of and abutting (sharing a common surface) an existing bulkhead/revet-

ment on the same property provided that replacement bulkheads/revetments shall not be authorized abutting an abandoned or neglected bulkhead/revetment or a bulkhead/revetment in serious disrepair.

(4) When an existing bulkhead is being repaired by construction of a vertical wall fronting an existing wall, it shall be constructed no further waterward of the existing bulkhead than is necessary for construction of new footings.

(5) 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. [Ord. 705 § 2(7.1.5.D), 1997.]

#### **10.10.205 Shoreline protection structures – Design.**

(1) Bulkheads/revetments shall be sited and designed consistent with appropriate engineering principles.

(2) When a bulkheads/revetment is required at a public access site, provision for safe access to the water shall be incorporated into bulkhead/revetment design.

(3) Bulkheads/revetments shall be designed for the minimum dimensions necessary to adequately protect the development.

(4) Stairs or other permitted structures may be built into a bulkhead/revetment but shall not extend waterward of it.

(5) Bulkheads shall be designed to permit the passage of surface or groundwater without causing ponding or saturation of retained soil/materials.

(6) Fill behind bulkheads/revetments shall be limited to an average of one cubic yard per running foot of wall any filling in excess of this amount shall be considered landfill and shall be subject to the provisions for landfill and the requirement for obtaining a shoreline substantial development permit.

(7) Bulkhead/revetment design shall include and provide improved access to public shorelines whenever possible and appropriate.

(8) When permitted, the siting and design of revetments shall be performed using appropriate engineering principles, including guidelines of the U.S. Soil Conservation Service and the U.S. Army Corps of Engineers.

(9) If an armored revetment is employed, the following design criteria shall be met:

(a) The size and quantity of the material shall be limited to only that necessary to withstand the estimated energy intensity of the hydraulic system.

(b) Filter cloth must be used to aid drainage and help prevent settling.

(c) The toe reinforcement or protection must be adequate to prevent a collapse of the system from channel scouring or wave action for the anticipated life of the project.

(10) The bulkhead/revetment area shall be restored as nearly as possible to preproject condition including replanting with native species and maintenance until the newly planted vegetation is established. [Ord. 705 § 2(7.1.5.E), 1997.]

### **Article III-B. Public Access/View Protection Element**

#### **10.10.210 Public access – Goals.**

(1) Provide, protect and enhance a public access system that is both physical and visual, utilizing, but not limited to, lands which increase the amount and diversity of public access to the state's shorelines and adjacent areas, and is consistent with the character of the natural shoreline, private rights and public safety.

(2) Develop a comprehensive public access plan that incorporates public access into new shoreline development and unifies individual public access elements into an organized system which could provide a unique physical and visual access to the waterfront, benefit navigation in the channel, provide wave protection to existing structures, and enhance fire protection. [Ord. 705 § 2(7.2.1.A), 1997.]

#### **10.10.215 Public access – Policies.**

(1) Public access should be considered in the review of all private and public developments (including land division) with the exception of the following:

(a) Existing dwelling units.

(b) Where deemed inappropriate due to health, safety and environmental concerns.

(2) Public access should be provided as close as possible to the water's edge without adversely affecting a sensitive environment and should be safely accessible to physically disabled persons.

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(3) Shorelines owned or leased by the town of La Conner should be limited to water-dependent uses or public recreational uses, otherwise such shorelines should remain protected open space.

(4) Public access afforded by shoreline street ends, public utilities and rights-of-way should be preserved, maintained and enhanced.

(5) Public access should be designed to provide for public safety and to minimize potential impacts to private property and individual privacy.

(6) There should be a physical separation or other means of clearly delineating public and private space in order to avoid unnecessary user conflict. [Ord. 705 § 2(7.2.1.B), 1997.]

### 10.10.220 Public access – Regulations.

(1) Consideration of appropriate and reasonable provisions for public access shall be given in the review process of all shoreline substantial development and conditional use permits. Conditions requiring reasonable and appropriate public access shall be attached to any substantial development or conditional use permit that authorizes a use or activity that:

(a) Will increase demand for public access to the shorelines of the town.

(b) Will block or discourage use of an existing public access way.

(c) Will interfere with a public use of waters or lands subject to the public trust doctrine.

(d) Proposes to allow uses or activities that are not consistent with the policies of this program concerning preference for water-oriented uses, unless such uses are included in a development that qualifies as a water-enjoyment use by providing an opportunity for a significant number of people to enjoy the shorelines of the town.

(2) The impact, required public access conditions, and how the conditions address the impact shall be kept in the applicable shoreline permit file.

(3) Public access need not be provided where one or more of the following conditions can be demonstrated by the applicant:

(a) Unavoidable health or safety hazards to the public exist which cannot be prevented by any practical means;

(b) Inherent security requirements of the use cannot be satisfied through the application of alternative design features or other solutions;

(c) The cost of providing the access, easement or an alternative amenity is unreasonably dis-

proportionate to the long-term cost of the proposed development;

(d) Unacceptable environmental harm will result from the public access which cannot be mitigated; or

(e) Significant undue and unavoidable conflict between any access provisions and the proposed use and/or adjacent uses would occur and cannot be mitigated.

Provided, that the applicant has first demonstrated and the town has determined in its findings that all reasonable alternatives have been exhausted, including but not limited to:

(a) Regulating access by such means as maintaining a gate and/or limiting hours of use;

(b) Designing separation of uses and activities (e.g., fences, landscaping, etc.); and

(c) Developing provisions for access at a site geographically separated from the proposal such as a street end, vista or trail system.

(4) Development uses and activities shall be designed and operated to avoid blocking, reducing, or adversely interfering with the public's physical and visual access to the water and shorelines where required.

(5) Public access provided by shoreline street ends, public utilities and rights-of-way shall not be diminished.

(6) Public access sites shall be connected directly to the nearest public street and shall include provisions for barrier-free access where feasible.

(7) Required public access sites shall be fully developed and available for public use at the time of occupancy of the use or activity.

(8) Public access easements and permit conditions shall be recorded on the deed of title and/or on the face of a plat or short plat as a condition running contemporaneous with the authorized land use, at a minimum. Said recording with the county auditor's office shall occur at the time of permit approval.

(9) Width of public access easements shall be five feet or greater, unless the town's hearing examiner determines that undue hardship would result. In such cases, easement width may be reduced only to the minimum extent necessary to relieve the hardship.

(10) The standard state approved logo or other approved signs that indicate the public's right of access and hours of access shall be constructed, installed and maintained by the applicant in con-

spicuous locations at public access sites. In accordance with subsection (3) of this section, signs may control or restrict public access as a condition of permit approval.

(11) Future actions by the applicant successors in interest or other parties shall not diminish the usefulness or value of the public access provided. [Ord. 828 § 2, 2001; Ord. 705 § 2(7.2.1.C), 1997.]

#### **10.10.225 View protection – Goals.**

(1) Protect the visual quality of the town's shoreline.

(2) Maintain view corridors to and from the Swinomish Channel and adjacent shoreland features. [Ord. 705 § 2(7.2.2.A), 1997.]

#### **10.10.230 View protection – Policies.**

(1) Development uses and activities on or near the shoreline should protect the public's visual access to the water.

(2) Public views from the shoreline upland areas should be enhanced and preserved. [Ord. 705 § 2(7.2.2.B), 1997.]

#### **10.10.235 View protection – Regulations.**

(1) Shoreline uses and activities shall be designed and operated to provide visual access to the water and shorelines.

(2) Public lands such as street ends, rights-of-way and utilities shall provide visual access to the water and shoreline in accordance with RCW 35.79.035 and 36.87.130.

(3) Development on or over the water shall be constructed as far landward as possible to avoid interference with views from surrounding properties to the shoreline and adjoining waters.

(4) Development on the water shall be constructed of nonreflective materials that are compatible in terms of color and texture with the surrounding area.

(5) Visual access shall be maintained, enhanced and preserved on shoreline street ends, public utilities and rights-of-way and within the following identified "view corridors": Sherman Street end, Caledonia Street end, Commercial Street end, Calhoun Street end, Benton Street end, Washington Street end, Morris Street end, Jordan Street end, between First and Second Streets – the stairway at Benton Street, and Calhoun Street end on the south side of the Civic Garden Club. [Ord. 705 § 2(7.2.2.C), 1997.]

### **Article III-C. Economic Development Element**

#### **10.10.240 Goals.**

(1) Insure healthy, orderly economic growth by encouraging those economic activities which will be an asset to the economy and which result in the least possible adverse effect on the quality of the shoreline and surrounding environment.

(2) Protect current economic activity that is consistent with the objectives of the SMP, and provide for environmentally sensitive new development.

(3) Ensure that any economic activity taking place along the shoreline operates without significantly harming the quality of the site's environment or adjacent shorelands.

(4) Encourage new economic development to locate in areas already developed with similar uses which are consistent with this master program.

(5) Limit new shoreline industrial and commercial development to that which is classified as water-dependent, water-related, or water-enjoyment. Uses which derive no benefit from a water location (non-water-oriented uses) are discouraged unless there are overriding public interests consistent with the policies of this program and the Shoreline Management Act that are served by accommodating such uses. [Ord. 828 § 2, 2001; Ord. 792 § 1, 2000; Ord. 705 § 2(7.3.A), 1997.]

#### **10.10.245 General policies.**

(1) Any economic activity taking place within the La Conner shoreline should be constructed and operated to minimize harm to the quality of the environment of the site or adjacent shorelands.

(2) To the maximum extent practicable, shoreline commercial activities should be limited to those that are classified as water-dependent, water-related or water-enjoyment uses and which have minimum or no adverse effects on the natural or manmade environment and comply with the Uniform Development Code.

(3) Developments that convey the current small town feeling by their activity, scale and design should be encouraged.

(4) The natural and cultural attributes that have made La Conner economically stable should be protected.

(5) Before new commercial/industrial development is permitted within the shoreline, it is the proponent's responsibility to demonstrate that upland

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areas are not feasible for the intended economic activity. [Ord. 705 § 2(7.3.B), 1997.]

### 10.10.250 Regulations.

(1) Uses and activities located in the urban industrial area shall contribute to the economic diversity and social health of the community and in a broader local economy.

(2) Diversity of uses shall be encouraged in the urban industrial area.

(3) Any new development or redevelopment of properties adjacent to the shoreline shall comply with the policies and performance standards of this shoreline master program and the guidance in the Washington State Department of Ecology Shorelines and Coastal Zone Management Program Shoreline Public Access Handbook. It shall also be consistent with the town's harbor area plan and parks plan (as adopted), relating to visual and pedestrian access along the Channel. In furtherance of these policies, public access along the Channel shall be accomplished by enhancing and improving existing public areas or establishing new areas to create a series of public access viewpoints and pathways. [Ord. 828 § 2, 2001; Ord. 792 § 1, 2000; Ord. 705 § 2(7.3.C), 1997.]

### 10.10.255 Commercial uses and activities – Policies.

(1) New commercial development located in shoreline areas should be limited to those with water-oriented uses and activities as defined herein. Commercial development in shoreline areas should be encouraged in descending order of preference as follows:

- (a) Water-dependent uses;
- (b) Water-related uses; and
- (c) Water-enjoyment uses.

Non-water-oriented development which is not accessory to a water-oriented use may be allowed only as a conditional use.

(2) Commercial development should be prohibited over water unless the use is water-dependent.

(3) New commercial development along the shoreline should be encouraged to locate in those areas with existing consistent commercial uses.

(4) Commercial development should be encouraged to utilize existing transportation corridors and minimize the number of access/egress points which should be designed to minimize potential conflicts.

(5) Commercial development should provide physical or visual access to the shoreline or other opportunities for the public to enjoy the shorelines of La Conner.

(6) Multiple use concepts which include open space and recreation should be encouraged in commercial developments.

(7) The location of commercial development along shorelines should insure the protection and preservation of natural areas or systems identified as having geological, ecological, biological or cultural significance.

(8) Commercial development within the shoreline area overlapping with the Commercial Transitional Zone must jointly comply with this shoreline master program and the provisions of Chapter 15.36 LCMC. [Ord. 878 § 3, 2003; Ord. 828 § 2, 2001; Ord. 705 § 2(7.3.1.A), 1997.]

### 10.10.260 Commercial uses and activities – Regulations.

The following provisions shall apply to commercial uses (those uses which are involved in wholesale, retail, service, and/or business trade). They shall not apply to residential, boating facility or other uses existing or allowed in commercial areas.

(1) The town shall require and utilize the following information in its review of commercial development proposals:

- (a) Nature of the commercial activity (e.g., water-dependent, water-related, water-enjoyment, non-water-oriented) including a breakdown of specific components;
- (b) Need for shoreline location;
- (c) Special considerations for enhancing the relationship of the activity to the shoreline;
- (d) Provisions for public visual and physical access to the shoreline; and
- (e) Provisions to ensure that the development will not cause adverse negative environmental impacts.

(2) Commercial developments that are water-oriented may be permitted provided the development meets all the criteria of this shoreline master program and related zoning ordinances. Non-water-dependent commercial developments may be allowed by conditional use permit where it can be demonstrated that:

- (a) A water-oriented use is not reasonably expected to locate on the proposed site.

(b) The proposed use does not usurp or displace land currently occupied by a water-oriented use and will not interfere with adjacent water-oriented uses.

(c) The proposed use will be of appreciable public benefit by increasing public use, enjoyment or access to the shoreline.

(d) Commercial development within the shoreline jurisdiction but not adjacent to the waterfront shall provide for water-enjoyment uses and satisfy public access policies by employing design elements such as walkways parallel to sidewalks, landscaping and benches.

(e) Commercial development on the landward side of First Street, or on land which does not abut the water, which is not water-dependent or water-related shall be subject to the following requirements:

(i) On-site parking shall not be located seaward of buildings, and adequate street access shall be provided.

(ii) A landscaping plan shall be submitted with shoreline permit applications.

(3) Commercial development shall be designed and maintained in a neat, orderly and environmentally compatible manner, consistent with the character and features of the surrounding area. Setbacks, height restrictions, landscaping, screening, parking, and applicable sections of the Uniform Development Code shall apply.

(4) Public sidewalks and adjoining private areas open to the public should be designed to create a physically and visually continuous pedestrian route along the First Street shoreline.

(5) Light industrial uses shall be allowed if approved under the provisions of LCMC 15.36.030, Transitional Commercial Zone conditional uses. [Ord. 878 § 5, 2003; Ord. 828 § 2, 2001; Ord. 792 § 1, 2000; Ord. 705 § 2(7.3.1.B), 1997.]

#### **10.10.265 Industrial uses and activities – Generally.**

All shoreline environments in which it is possible to locate industrial/office uses/activities shall be restricted to water-oriented industrial/office uses (such as industrial facilities for processing, manufacturing, storage of finished and semi-finished products, wholesale/retail outlets or showrooms, warehousing and offices) and to public access. [Ord. 828 § 2, 2001; Ord. 792 § 1, 2000; Ord. 705 § 2(7.3.2), 1997.]

#### **10.10.270 Industrial uses and activities – Policies.**

(1) Industrial uses may incorporate whole-sale/retail outlets or showrooms for sales of products manufactured, assembled, or produced on and warehoused on the premises provided that they occupy no more than 49 percent of the gross floor area of the industrial space.

(2) Industrial or office use which is neither water-dependent nor water-related may be authorized when such use incorporates features in the site design that assure it will comply with the definition of water-enjoyment use by providing an opportunity for a substantial number of people to enjoy the shorelines of the town.

(3) Joint use of piers, cargo handling, storage, parking and other accessory facilities among private or public entities should be strongly encouraged in waterfront industrial areas. [Ord. 828 § 2, 2001; Ord. 792 § 1, 2000; Ord. 705 § 2(7.3.2.A), 1997.]

#### **10.10.275 Industrial uses and activities – Regulations.**

(1) Accessory industrial development which does not require a shoreline location shall be located upland of the water-dependent portions of the development where feasible.

(2) New/existing public access shall be required/maintained where safe and practical in accordance with LCMC 10.10.210 et seq.

(3) Existing industrial development on shorelines which is neither water-dependent nor water-related may be permitted as a conditional use to expand inland from existing structures. Waterward expansion of existing non-water-oriented industry is prohibited.

(4) The developer must comply with all state laws which apply to environmental impacts.

(5) Water-dependent industry shall be located and designed to minimize the need for initial and/or continual dredging, filling, spoil disposal and other harbor and channel maintenance activities.

(6) Piers, moorages, slips, floats and launching facilities may be permitted accessory to industrial development, provided:

(a) The facility will serve an existing or approved water-dependent or water-related use; and

(b) The facility does not constitute a hazard to navigation.

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(7) The developer must provide a plan for storage and disposal of industrial waste. The town may require a performance bond in an amount that reflects a reasonable estimate of the anticipated cleanup effort.

(8) At new or expanded port and/or industrial developments, the best available facilities practices and procedures shall be employed for the safe handling of fuels and toxic or hazardous materials to prevent them from entering the water and optimum means shall be employed for prompt and effective cleanup of those spills that do occur.

(9) Port authorities and industries are encouraged to recycle dredged material when feasible in areas suitable for disposal of such materials for agricultural, forestry storage-stockpiling or beautification purposes, with the intent of restoring natural vegetation or transfer for agricultural, forestry or landscaping purposes. Such materials may be spread on existing resource lands or may be used to create new agricultural resource land only if dredge spoils are not contaminated with heavy metals or other toxins and such use complies with local, state and federal requirements.

(10) All new or expanded upland industrial development shall be set back and buffered from adjacent shoreline properties which are used for nonindustrial purposes. Buffers shall be of adequate width, height, and plant and soil composition to protect shorelines and such other properties from visual or noise intrusion, minimize erosion and protect water quality. New or expanded industrial development shall be setback and buffered from the shoreline per town ordinances except those water-dependent portions of the development which require direct access to the water or shoreline and any adverse impacts are minimized.

(11) Display and other exterior lighting shall be designed, shielded, and operated to minimize glare, avoid illuminating nearby properties and prevent hazards for public traffic.

(12) Stormwater best management practices as adopted by the town shall be followed.

(13) Ship and boat building and repair yards shall employ best management practices (BMPs) found in the Puget Sound Water Quality Technical Manual as adopted by the town.

(14) All provisions for public access to the shoreline proposed or required by the terms of a permit shall be consistent with the town's harbor

area plan and parks plan (as adopted). [Ord. 828 § 2, 2001; Ord. 792 § 1, 2000; Ord. 705 § 2(7.3.2.B), 1997.]

### **10.10.280 Public uses and activities – Generally.**

The purpose of this environment is to ensure optimum utilization of existing public uses for public purposes. [Ord. 792 § 1, 2000; Ord. 705 § 2(7.3.3), 1997.]

### **10.10.285 Public uses and activities – Policies.**

(1) Public access provided by shoreline street ends, public utilities and rights-of-way shall not be diminished.

(2) Shorelines owned or leased by the town of La Conner should be limited to water-dependent uses or public recreational uses, otherwise such shorelines should remain protected open space.

(3) The use of shoreline street ends and publicly owned lands for public access and development of recreational opportunities should be encouraged. [Ord. 792 § 1, 2000; Ord. 705 § 2(7.3.3.A), 1997.]

### **10.10.290 Public uses and activities – Regulations.**

(1) Public lands such as street ends, rights-of-way and utilities shall provide visual access to the water and shoreline in accordance with RCW 35.79.035 and 36.87.130.

(2) Public access provided by shoreline street ends, public utilities, and rights-of-way shall not be diminished.

(3) Shorelines owned or leased by the town of La Conner shall be limited to water-dependent uses or public recreational uses, otherwise such shorelines shall remain protected open space.

(4) Public access afforded by shoreline street ends, public utilities and rights-of-way shall be preserved, maintained and enhanced. [Ord. 828 § 2, 2001; Ord. 792 § 1, 2000; Ord. 705 § 2(7.3.3.B), 1997.]

## **Article III-D. Circulation Element**

### **10.10.295 Transportation – Goals.**

(1) Provide safe, reasonable and adequate circulation systems to shorelines where routes will have the least possible adverse effect on unique or

fragile shoreline features and existing ecological systems, while contributing to the functional and visual enhancement of the shoreline.

(2) Encourage provisions for various modes of travel with some freedom of choice and multiple-use corridors where compatible.

(3) Protect, manage and enhance those characteristics of shoreline roadway corridors that are unique or have historic significance, or great aes-

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thetic quality, for the benefit and enjoyment of the public. [Ord. 705 § 2(7.4.1.A), 1997.]

#### **10.10.300 Transportation – Policies.**

(1) Trucks and heavy equipment should be routed around shoreline areas to the maximum extent possible.

(2) New development within the shoreline jurisdiction should be required to contribute to multi-modal transportation, such as pedestrian boardwalks, trails, and bicycle lanes.

(3) Trail and bicycle paths should be encouraged along shorelines where they are compatible with the natural character, resources and ecology of the shoreline. [Ord. 705 § 2(7.4.1.B), 1997.]

#### **10.10.305 Transportation – Regulations.**

(1) Transportation facilities and services shall utilize existing transportation corridors whenever possible, provided that facility additions and modifications will not adversely impact shoreline resources and are otherwise consistent with this program.

(2) Joint use of transportation corridors within shoreline jurisdiction for roads, utilities, and non-motorized forms of transportation shall be required.

(3) The following regulation applies to shoreline street and road ends: RCW 37.79.035 and 35.87.130 prohibits the town from vacating any town street or road which abuts a body of salt or fresh water unless the street or road is not currently used or suitable for boat moorage or launching site or for a park, viewpoint, recreation, education or other public purposes.

(4) New transportation facilities shall be located and designed to prevent or minimize the need for shoreline protective measures such as riprap or other bank stabilization, landfill, bulkheads, groins, jetties or substantial site grading.

(5) Shoreline transportation facilities shall be sited and designed to avoid steep or unstable areas and fit the existing topography in order to minimize cuts and fills. If cuts and fills are necessary they shall be designed at the normal angle of repose or less.

(6) Cut, fill and sidecast slopes shall be protected from erosion by mulching, seeding, compacting, riprapping, benching or other suitable means.

(7) All transportation facilities shall be designed, constructed and maintained to contain and

control all debris, overburden, runoff, erosion and sediment generated from the affected areas.

(8) All new roads shall be adequately set back from water bodies and shall provide buffer areas of compatible, self-sustaining vegetation where feasible. [Ord. 705 § 2(7.4.1.C), 1997.]

#### **10.10.310 Parking – Goals.**

(1) Encourage parking in upland areas as much as possible.

(2) Provide parking as an accessory use to a permitted shoreline use only where it will have the least possible adverse affect on natural shoreline resources. [Ord. 705 § 2(7.4.2.A), 1997.]

#### **10.10.315 Parking – Policies.**

(1) Off-street parking facilities sufficient for the proposed activity should be required. In those cases where parking is not available, such as South First Street, alternate parking areas should be encouraged in upland areas.

(2) Parking facilities should be located and designed to minimize adverse impacts including those related to stormwater run-off, water quality, visual qualities, public access, and vegetation and habitat maintenance.

(3) Cooperative use of parking facilities should be encouraged, such as between businesses whose peak hours do not coincide. [Ord. 705 § 2(7.4.2.B), 1997.]

#### **10.10.320 Parking – Regulations.**

(1) Parking within the shoreline jurisdiction shall directly serve a permitted or conditional shoreline use.

(2) Parking in a shoreline jurisdiction shall directly serve a permitted or conditional shoreline use.

(3) Parking facilities shall be designed and landscaped to minimize adverse impacts upon adjacent shoreline and abutting properties.

(4) Parking facilities serving new development on the shoreline shall not be located waterward from the principal building being served, except when the parking facility is within or beneath the structure and adequately screened, or in cases when an alternate orientation would have less adverse impact on the shoreline.

(5) Parking facilities for shoreline activities shall provide safe and convenient identified pedes-

### 10.10.325

trian circulation within the parking area and to the shorelines.

(6) Parking facilities shall provide adequate facilities to control surface water runoff to avoid contaminating water bodies using the best available technologies and maintenance programs to assure proper functioning of such facilities over time. [Ord. 705 § 2(7.4.2.C), 1997.]

## Article III-E. Conservation Element

### 10.10.325 Goals.

(1) Encourage conservation of renewable resources of the shorelines while preserving, protecting and restoring those unique and nonrenewable resources or features of the shorelines.

(2) Reclaim and restore degraded areas while maintaining appropriate use of the shoreline.

(3) Maintain natural aquatic flora and fauna of the shoreline and prevent infestation of non-native invasive plants harmful to the waterway.

(4) Protect and enhance water quality and fisheries resources.

(5) Protect the shoreline and its waters from degradation due to contaminants such as petroleum products, chemicals, heavy metals, solid or human waste, or soil sediments from erosion. [Ord. 705 § 2(7.5), 1997.]

### 10.10.330 Environmentally sensitive areas and wetlands (critical areas) – Generally.

Critical areas in this shoreline master program refer to jurisdictional wetlands, fish and wildlife habitat in the Swinomish Channel, the areas identified by FEMA in the 100-year floodplain, and geologically hazardous areas within the 200-foot shoreline jurisdiction. [Ord. 705 § 2(7.5.1), 1997.]

### 10.10.335 Environmentally sensitive areas and wetlands (critical areas) – Policies.

(1) Unique, rare and fragile natural and man-made features as well as scenic vistas and wildlife habitats should be preserved and protected from unnecessary degradation or interference.

(2) Shorelines that are identified as hazardous for or sensitive for development should be discouraged from intensive development. [Ord. 705 § 2(7.5.1.A), 1997.]

### 10.10.340 Environmentally sensitive areas and wetlands (critical areas) – Regulations.

(1) All shoreline uses and activities shall be located, designed, constructed and managed to minimize adverse affects on the following natural features:

(a) Estuaries;

(b) Fish, shellfish and wildlife habitats, migratory routes and spawning areas;

(c) Kelp beds, eelgrass beds, herring spawning areas and smelt spawning areas;

(d) Accretion shore forms;

(e) Natural or manmade scenic vistas or features; and

(f) Unstable bluffs.

(2) When a development site encompasses environmentally sensitive areas, these features should be left intact and maintained as open space or buffers. All development should be set back from these areas to prevent hazardous conditions and property damage, as well as to protect valuable shore features.

(3) Areas with either an existing or high potential for aquaculture activities shall be protected from degradation by other types of uses which are located or are proposed to be located on adjacent uplands.

(4) The Swinomish Channel, adjacent to La Conner, though not generally recognized as spawning habitat for salmon, steelhead, herring, smelt or other fish, does provide an important migratory corridor and rearing habitat for these species. As such, all shoreline development shall adhere to appropriate fisheries and wildlife guidelines and waterways should be protected from invasive non-native vegetation. [Ord. 705 § 2(7.5.1.B), 1997.]

### 10.10.345 Water quality – Policies.

(1) All shoreline uses and activities should be located, designed, constructed and maintained to minimize adverse impacts to water quality and fish and wildlife resources including spawning, nesting, rearing, feeding areas and migratory routes.

(2) The town should require reasonable setbacks, buffers or storage basins to achieve the objective of lessening negative impacts on water quality.

(3) All measures for controlling erosion or floodwaters should be located, designed, constructed and maintained so that net off-site impacts

related to water do not degrade the existing water quality.

(4) All measures for treatment of surface water runoff for the purpose of maintaining and/or enhancing water quality should be conducted on-site before it impacts waters off-site.

(5) Dredging and filling activities should be conducted to minimize the effect on water quality through the addition of suspended solids, leaching of contaminants, or disturbance of habitats and should be consistent with appropriate agency requirements (e.g., the State Department of Fish and Wildlife, U.S. Army Corps of Engineers). [Ord. 705 § 2(7.5.2.A), 1997.]

#### **10.10.350 Water quality – Regulations.**

(1) All shoreline development shall comply with the applicable requirements of the stormwater management sections of the Uniform Development Code, including applicable requirements outlined in the adopted Stormwater Management Manual for the Puget Sound Basin (The Technical Manual).

(2) All shoreline development, both during and after construction, shall minimize any increase in surface runoff through control, treatment and release of surface water runoff so that the receiving water quality and shore properties and features are not adversely affected.

(3) The use of time-release fertilizer and herbicide shall be preferred over liquid or concentrate application for lawns or landscaped areas grown within the shoreline jurisdiction.

(4) Solid and liquid wastes and untreated effluents shall not be allowed to enter any bodies of water or to be discharged onto the land.

(5) The release of oil, chemicals, heavy metals or hazardous materials onto or into the water is prohibited. Equipment for the transportation, storage, handling or application of such materials shall be maintained in a safe and leakproof condition. If there is evidence of leakage, further use of such equipment shall be suspended until the deficiency has been satisfactorily corrected. [Ord. 705 § 2(7.5.2.B), 1997.]

#### **10.10.355 Clearing and grading – Policies.**

(1) Clearing and grading shall be limited to the minimum necessary to accommodate shoreline development.

(2) All clearing and grading activities should be designed and conducted to minimize the degradation of water quality, sedimentation, and impacts to wildlife habitat.

(3) Cleared and disturbed sites remaining after completion of construction should be promptly replanted with native vegetation or other approved species.

(4) All clearing and grading activities should be designed with the objective of maintaining natural diversity in vegetation species, age, and cover density.

(5) A clearing and grading plan that addresses vegetation removal, replanting, irrigation, erosion and sedimentation control, and other methods of riparian corridor protection should be required. [Ord. 705 § 2(7.5.3.A), 1997.]

#### **10.10.360 Clearing and grading – Regulations.**

(1) All clearing and grading activities shall be limited to the minimum necessary for the intended development, including residential development.

(2) Clearing and grading activities may only be permitted landward of required setbacks when associated with a permitted shoreline development; provided, that upon completion of construction remaining cleared areas shall be replanted with native vegetation or other approved species. Replanted areas shall be maintained such that within three years time the vegetation is fully reestablished.

(3) Normal nondestructive pruning and trimming of vegetation for maintenance purposes shall not be subject to these clearing and grading regulations. In addition, clearing invasive non-native shoreline vegetation or plants listed on the State Noxious Weed List is permitted in shoreline locations if native vegetation is promptly reestablished in the disturbed area. [Ord. 705 § 2(7.5.3.B), 1997.]

#### **10.10.365 Environmental impacts – Policies.**

Adverse impacts of shoreline uses and activities on the environment should be minimized during all phases of development (e.g., design, construction, management, and use). [Ord. 705 § 2(7.5.4.A), 1997.]

#### **10.10.370 Environmental impacts – Regulations.**

(1) The location, design, construction and management of all shoreline uses and activities shall

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protect the quality and quantity of surface and ground water adjacent to the site and shall adhere to the guidelines, policies, standards and regulations of applicable water quality management programs and regulatory agencies.

(2) All shoreline uses and activities shall utilize effective measures to minimize any increase in surface runoff and to control, treat and release surface water runoff so that receiving water quality and shore properties and features are not adversely affected. Such measures may include but are not limited to dikes, catch basins or settling ponds, installation and required maintenance of oil/water separators, grassy swales, interceptor drains and landscaped buffers.

(3) All shoreline developments and uses shall utilize effective erosion control methods during both project construction and operation.

(4) All shoreline uses and activities shall be located, designed, constructed and managed to minimize adverse impacts to fish and wildlife resources, including spawning, nesting, rearing and habitat areas and migratory routes.

(5) All shoreline development uses shall be located, designed, constructed and managed to minimize interference with beneficial natural shoreline processes such as water circulation, sand and gravel movement, erosion and accretion.

(6) Land clearing, grading, filling and alteration of natural drainage features and land forms shall be limited to the minimum necessary for development. Surface drainage systems or substantial earth modifications involving greater than 500 cubic yards of material shall be professionally designed to prevent maintenance problems or adverse impacts on shoreline features.

(7) All shoreline developments shall be located, constructed and operated so as not to be a hazard to public health and safety.

(8) All development activities shall be located and designed to minimize or prevent the need for shoreline defense and stabilization measures and flood protection works such as bulkheads, other bank stabilization, landfills, levees, dikes, groins, jetties or substantial site regrades.

(9) Navigation channels shall be kept free of hazardous or obstructing uses and activities.

(10) Herbicides and pesticides shall not be applied or allowed to directly enter water bodies unless approved for such use by appropriate agen-

cies (State Department of Agriculture or Ecology, U.S. Department of Agriculture, Environmental Protection Agency). [Ord. 705 § 2(7.5.4.B), 1997.]

### Article III-F. Recreation Element

#### 10.10.375 Goals.

(1) Coordinate with the town's public works department and the county department of parks and recreation and the Washington State Parks and Recreation Commission to optimize opportunities for water-oriented recreation.

(2) Integrate recreational elements into public access and conservation planning.

(3) Encourage state and local government to acquire additional shoreline properties for public recreational uses (e.g., develop street ends into marine parks for public recreational use).

(4) Consider both active and passive recreational needs of a wide range of users when planning for safe recreational areas. [Ord. 705 § 2 (7.6.A), 1997.]

#### 10.10.380 Policies.

(1) The location and design of shoreline recreational developments should relate to local population characteristics, density and special activity demands.

(2) Acquisition priorities should consider these needs, demands, and special opportunities as well as public transit access and access for the physically impaired.

(3) Shoreline areas with a potential for providing recreation or public access opportunities should be identified for this use and, if possible, acquired by lease or purchased at a fair market value and incorporated into the public park or open space system.

(4) The linkage of shoreline parks, recreation areas and public access points as linear systems, such as pedestrian walkways or easements should be encouraged.

(5) Recreational developments should be located, designed and operated to be compatible with and minimize adverse impacts on environmental quality and valuable natural features as well as on adjacent and surrounding land and water uses.

(6) The use of shoreline street ends and publicly owned lands for public access and development of recreational opportunities should be encouraged.

(7) Pathways along the shoreline should be located, designed and maintained to protect bank stability.

(8) Insure that recreation developments and plans recognize the primacy of preserving natural character, resources and ecology of the shoreline. [Ord. 705 § 2(7.6.B), 1997.]

**10.10.385 Regulations.**

(1) The town shall consult with state and county health agencies regarding regulations which apply to recreation facilities within the shorelines of the town.

(2) Substantial accessory use facilities, such as restrooms, commercial services, access roads and parking areas shall be setback from the OHWM, to the extent feasible, unless it can be shown that such facilities are essentially shoreline dependent. These areas may be linked to the shoreline by walkways.

(3) In approving shoreline recreational developments, the town shall ensure that the development will maintain, enhance or restore desirable shoreline features including unique and fragile areas, scenic views and aesthetic values. Project dimensions, location, intensity of use, parking, setbacks, screening, landscaping, and other requirements as outlined in the Uniform Development Code shall be met.

(4) No recreational buildings or structures shall be built over water, except water-oriented and/or public access structures such as piers, docks, bridges, or viewing platforms may be permitted.

(5) Recreational developments shall make adequate provisions, where feasible, for:

- (a) Vehicular and pedestrian access;
- (b) Proper water, solid waste, and sewage disposal methods;
- (c) Security and fire protection;
- (d) The prevention of overflow and trespass onto adjacent properties, including but not limited to landscaping, fencing and posting of property; and
- (e) Buffering of such development from adjacent private property. [Ord. 705 § 2(7.6.C), 1997.]

**Article III-G. Historic/Cultural Element**

**10.10.390 Goals.**

(1) Identify, protect, preserve and restore important archaeological, historical, and cultural sites

located in the shorelands of La Conner for educational, scientific, and enjoyment of the general public.

(2) Acquire historic/cultural sites through purchase or gift to ensure their protection and preservation.

(3) Encourage educational projects and programs that foster a greater appreciation of the importance of shoreline management, maritime activities, maritime history and environmental conservation.

(4) Support the Swinomish Tribal Community in the recovery and disposition of any indigenous artifacts associated with the Tribe that may be identified as a result of development within the town of La Conner. [Ord. 705 § 2(7.7.A), 1997.]

**10.10.395 Policies.**

(1) Identified historic sites and structures should be preserved and protected for the public benefit, especially those on the National or State Historic Register.

(2) The vitality of the historic preservation district should be promoted by encouraging full, active use of land and structures, including multiple or spatially overlapping uses where compatible.

(3) Areas and facilities determined to be of historic, cultural and educational value by the State Office of Archeology and Historic Preservation should be made accessible to the public.

(4) Protect for scientific and educational purposes sites containing artifacts, by observing state law regarding notification of appropriate authorities, including the Swinomish Tribal Community. [Ord. 705 § 2(7.7.B), 1997.]

**10.10.400 Regulations.**

(1) All shoreline permits shall contain provisions which require developers to immediately stop work and notify the town if any phenomena of possible archaeological interest is uncovered during excavations. In such cases, the developer shall provide for a site inspection and evaluation by a professional archaeologist to ensure that all possible valuable archaeological data is properly salvaged.

(2) Permits issued in areas with known potential to contain archaeological artifacts and data shall include a requirement that the developer provide for a site inspection and evaluation by an archaeologist. The developer shall provide resultant findings to the town which shall, in conjunction with af-

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affected parties, review the project for probable adverse impacts before any work on the site begins. Significant archaeological data or artifacts shall be recovered before work resumes or begins on a project.

(3) Significant archaeological and historic resources shall be permanently preserved for scientific study, education and public observation. When the town determines that a site has significant archaeological, natural scientific or historical value, a substantial development permit shall not be issued which would pose a threat to the site. The town and the state may require that development be postponed for a reasonable period of time in such areas to allow investigations of public acquisition potential and/or retrieval and preservation of significant artifacts.

(4) In the event that unforeseen factors constituting an emergency as defined in RCW 90.58.030 necessitate rapid action to retrieve or preserve artifacts or data identified above, the project may be exempted from the permit requirement of these regulations. The town shall notify appropriate agencies, such as the Swinomish Tribe, the State Department of Ecology, the State Attorney General's Office and the State Historic Preservation Office of such a waiver in a timely manner.

(5) Archaeological sites located both in and outside the shoreline jurisdiction are subject to Chapter 27.44 RCW (Indian Graves and Records) and Chapter 27.53 RCW (Archaeological Sites and Records) and shall comply with Chapter 25-48 WAC as well as the provisions of this master program.

(6) Archaeological excavations may be permitted subject to the provisions of this program.

(7) Identified historical or archaeological resources shall be considered in park, open space, public access, and site planning with access to such areas designed and managed so as to give maximum protection to the resource and surrounding environment. [Ord. 705 § 2(7.7.C), 1997.]

### Article IV. Administration and Enforcement

#### 10.10.405 Generally.

An administrative system is hereby established to assign responsibilities for implementing the master program and shoreline permit review, to prescribe an orderly process by which to review proposals and permit applications, and to ensure

that all persons affected by this master program are treated in a fair and equitable manner. [Ord. 705 § 2(8.1), 1997.]

#### 10.10.410 Administrator.

(1) The planning director, hereinafter known as the administrator, is vested with authority to:

(a) Administer the shoreline master program;

(b) Grant statements of exemption from shoreline substantial development permit requirements;

(c) Issue permits for limited utility extensions and bulkheads without a public hearing;

(d) Recommend approval or denial of a shoreline substantial development permit revision to the hearing examiner; and

(e) Determine compliance with Chapter 43.21C RCW, the State Environmental Policy Act (SEPA).

(2) The duties and responsibilities of the administrator shall include:

(a) Establishing procedures and preparing forms for program administration.

(b) Advising interested citizens and applicants of the goals, policies, regulations, and procedures, including appeal procedures and filing requirements, of this program and any amendments thereto.

(c) Making administrative decisions and interpretations of the policies and regulations of this program and the Shoreline Management Act.

(d) Ensuring that applicable fees are collected.

(e) Ensuring applications are complete before beginning the review process.

(f) Making field inspections as necessary.

(g) Determining if a shoreline substantial development or conditional use permit, variance, or exemption is required.

(h) Conducting a thorough review and analysis of shoreline substantial development or conditional use permit, and variance applications, making written findings and conclusions, and submitting reports of findings and conclusions on such permits to the town hearing examiner for consideration and official action. The administrator shall ensure that all relevant information and testimony regarding the application is made available to the hearing examiner.

(i) Ensuring that proper notice is given to appropriate persons and the public for all hearings.

(j) Providing technical and administrative assistance to the hearing examiner as required.

(k) Preparing a notice of action for the mayor's signature upon a decision by the hearing examiner to approve, approve with conditions or deny an application (notice of action form at Appendix B, attached to the ordinance codified in this chapter and available in the office of the city clerk.)

(l) Providing a summary report of the shoreline management permits issued during the past calendar year to the town council in January of each year. The report should include identification of problem areas and recommendations on improvements or proposed amendments.

(m) Investigating, developing, and proposing amendments to this program as deemed necessary to more effectively and equitably achieve its goals and policies.

(n) Seeking remedies for alleged violations of this program, the provisions of the Act, or of conditions of any approved shoreline permit issued by the town.

(o) Interagency coordination, including filing documents with appropriate agencies. [Ord. 705 § 2(8.2), 1997.]

#### **10.10.415 Hearing examiner.**

The hearing examiner, in accordance with Chapter 15.12 LCMC, is vested with authority to:

(1) Approve, approve with conditions, or deny shoreline substantial development permits, conditional use permits and variances after considering the findings and recommendations of the administrator and all relevant information and testimony presented at a public hearing.

(2) May require any applicant granted a shoreline permit to post a bond or other acceptable security with the town conditioned to ensure that the applicant and/or his successors in interest shall adhere to the approved plans and all conditions attached to the shoreline permit. Such bonds or securities shall have a face value of at least 150 percent of the estimated development cost including attached conditions. Such bonds or securities shall be approved as to form by the town attorney. [Ord. 705 § 2(8.3), 1997.]

#### **10.10.420 Planning commission and town council.**

(1) The planning commission is vested with authority to review and make recommendations on

any proposed amendments or revisions to this master program to the town council.

(2) The town council, hereinafter known as the council, is vested with authority to:

(a) Approve any revisions or amendments to the master program in accordance with the requirements of the Shoreline Management Act and related regulations.

(b) Review and act upon any recommendations of the administrator and planning commission for amendments to or revisions of this program. The council shall enter findings and conclusions setting forth the factors it considered in reaching its decision. To become effective any amendments to the program must be reviewed and approved by the Department of Ecology, pursuant to RCW 90.58.190 and Chapter 173-27 WAC. [Ord. 705 § 2(8.4), 1997.]

#### **10.10.425 Substantial development – Applicability.**

Any person wishing to undertake substantial development or exempt development on shorelines shall apply to the town of La Conner for a shorelines permit or statement of exemption. [Ord. 705 § 2(8.5), 1997.]

#### **10.10.430 Substantial development – Permit required.**

A substantial development shall not be undertaken within the jurisdiction of the Shoreline Management Act, Chapter 90.58 RCW and this shoreline master program unless a shoreline substantial development permit has been obtained and the appeal period has been completed and any appeals have been resolved and/or the applicant given permission to proceed by the proper authority. [Ord. 705 § 2(8.5.A), 1997.]

#### **10.10.435 Substantial development – Defined.**

“Substantial development” means any development of which the total cost or fair market value, whichever is higher, exceeds the value\* established in RCW 90.58.030 under the definition of substantial development, or any development which materially interferes with the normal public use of the water or shorelines of the state. [Ord. 954, 2005; Ord. 705 § 2(8.5.B), 1997.]

\*A local interpretation by the town of La Conner of the value; does not include sales tax.

**10.10.440 Developments exempt from substantial development permit requirement (RCW 90.58.030, WAC 173-27-040).**

(1) Application and Interpretation of Exemptions.

(a) Exemptions shall be construed narrowly. This means that 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 this SMP, nor from any other regulatory requirements, such as the State Environmental Policy Act (SEPA) and the Uniform Development Code (UDC). To be authorized, all uses and developments must be consistent with the policies and provisions of this SMP and the SMA. When a development or use is listed as a conditional use pursuant to the SMP, a conditional use permit is required 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 this SMP, 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) The town may attach conditions to the approval of exempted developments and/or uses as necessary to assure consistency of the project with the SMA and SMP.

(2) The following developments shall not require substantial development permits (note: where dollar thresholds are established for a substantial development permit, such dollar amounts shall not include applicable state sales tax):

(a) Any development of which the total cost or fair market value, whichever is higher, does not exceed the value established in RCW 90.58.030 under the definition of substantial development, if such development does not materially interfere with the normal public use of the water or shorelines of the state. 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 the 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 the shoreline resource 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 it is 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 land-

ward of the bulkhead then the replacement bulkhead must be located at or near the actual ordinary high

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water mark. Beach nourishment and bio-engineered 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 the shoreline master program. 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 this shoreline master program. All emergency construction shall be consistent with the policies of Chapter 90.58 RCW and this shoreline 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, by or under the authority of the coast guard or a designated

port management authority, of navigational aids such as channel markers and anchor buoys.

(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 35 feet above average grade level and which meets all requirements of the state agency or local government having jurisdiction thereof. “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 250 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 owners, 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 \$2,500; or

(ii) In fresh waters, the fair market value of the dock does not exceed \$10,000, but if subsequent construction having a fair market value exceeding \$2,500 occurs within five years of completion of the prior construction, the subsequent construction shall be considered a substantial development for the purpose of this shoreline master program.

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

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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 ground water 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 June 4, 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 shoreline master program, 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 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 pre-existing conditions.

(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 Agricul-

ture or the Department of Ecology jointly with other state agencies under Chapter 43.21C RCW

(o) Watershed restoration projects as defined herein. The town shall review the projects for consistency with this shoreline master program in an expeditious manner and shall issue its decision along with any conditions within 45 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 10 miles of stream reach in which less than 25 cubic yards of sand, gravel, or soil is removed, imported, disturbed or discharged, and in which no existing vegetation is removed except as minimally necessary to facilitate additional plantings;

(B) A project for the restoration of an eroded or unstable stream bank that employs the principles of bioengineering, including limited use of rock as a stabilization only at the toe of the bank, and with 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 200 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, the primary purpose of which is 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 as necessary for the improvement of the habitat or passage and appropriately designed and sited to accomplish the intended purpose.

(ii) The project has received hydraulic project approval by the Department of Fish and Wildlife pursuant to Chapter 75.20 RCW; and

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

(3) Hazardous Substance Remedial Actions. The procedural requirements of Chapter 90.58 RCW shall not apply to a project for which a consent decree, order or agreed order has been issued pursuant to Chapter 70.105D RCW or to the Department of Ecology when it conducts a remedial action under Chapter 70.105D RCW. The Department of Ecology shall, in consultation with the town, assure that such projects comply with the substantive requirements of Chapter 90.58 RCW, Chapter 173-26 WAC and this shoreline master program. [Ord. 954, 2005; Ord. 910 § 1, 2003; Ord. 705 § 2(8.5.C), 1997.]

#### **10.10.445 Substantial development – Letter of exemption.**

(1) The town shall prepare a letter of exemption, addressed to the applicant and the Department of Ecology, whenever a development is determined by the town 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 projects 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 (LCMC 10.10.440) that is being applied to the development and provide a summary of the town's analysis of the consistency of the project with the master program and the Act.

(3) The town may specify other developments not described within subsection (1) of this section as requiring a letter of exemption prior to commencement of the development. [Ord. 705 § 2(8.5.D), 1997.]

#### **10.10.450 Substantial development – Undertaken prior to the effective date of the Shoreline Management Act.**

Substantial development undertaken on the shorelines of the state prior to the effective date of the Act shall not require a permit except under the following circumstances:

(1) When the activity was unlawful prior to the effective date of the Act (June 1, 1971).

(2) When there has been an unreasonable period of dormancy in the project between its inception and June 1, 1971.

(3) When the development is not completed within two years after June 1, 1971.

(4) Substantial development undertaken prior to June 1, 1971, shall not continue without a permit into other phases that were not part of the plan being followed at the time construction commenced.

(5) When a change in the area subject to the jurisdiction of the Act has occurred as a result of a determination of jurisdiction by the Department of Ecology based on the provisions of RCW 90.58.030(2)(d) or (e), the effective date of the Act shall be the date the Department provides written notice of the change to the local government(s) in which the affected area is located. [Ord. 705 § 2(8.5.E), 1997.]

**10.10.455 Nonconforming use and development standards.**

The following definitions and standards shall apply:

(1) “Nonconforming use or development” means a shoreline use or development which was lawfully constructed or established prior to June 1, 1971, or the applicable master program, or amendments thereto, but which does not conform to present regulations or standards of the program.

(2) Structures that were legally established and are used for a conforming use and are nonconforming with regard to setbacks, buffers or yards; area, bulk, height or density may be maintained and repaired and may be enlarged or expanded provided that said enlargement does not increase the extent of nonconformity by further encroaching upon or extending into areas where construction or use would not be allowed for new development or uses.

(3) Uses and developments that were legally established and are nonconforming with regard to the use of the master program may continue as legal nonconforming uses. Such uses shall not be enlarged or expanded, except that nonconforming single-family residences that are located landward of the ordinary high water mark may be enlarged or expanded in conformance with applicable bulk and dimensional standards by the addition of space to the main structure or by the addition of normal appurtenances as defined in WAC 173-27-040(2)(g) upon approval of a conditional use permit.

(4) A use which is listed as a conditional use but which existed prior to adoption of the master program or any relevant amendment and for which a conditional use permit has not been obtained shall be considered a nonconforming use. A use which is listed as a conditional use but which existed prior to the applicability of the master program to the site and for which a conditional use permit has not been obtained shall be considered a nonconforming use.

(5) A structure for which a variance has been issued shall be considered as a legal nonconforming structure and the requirements of this section shall apply as they apply to pre-existing nonconformities.

(6) A structure which is or has been used for a nonconforming use may be used for a different nonconforming use only upon the approval of a conditional use permit. A conditional use permit may be approved only upon a finding that:

(a) No reasonable alternative conforming use is practical; and

(b) The proposed use will be at least as consistent with the policies and provisions of the Act and the master program and as compatible with the uses in the area as the pre-existing use. In addition, such conditions may be attached to the permit as are deemed necessary to assure compliance with the above findings, the requirements of the master program and the Shoreline Management Act and to assure that the use will not become a nuisance or hazard.

(7) A nonconforming structure which is moved any distance must be brought into conformance with this master program and the Act.

(8) If a nonconforming development is damaged to an extent not exceeding 75 percent replacement cost of the original development, it may be reconstructed to those configurations existing immediately prior to the time the structure development was damaged; provided, that application is made for the permits necessary to restore the development within six months of the date the damage occurred, all permits are obtained and the restoration is completed within two years of permit issuance.

(9) If a nonconforming use is discontinued for 12 consecutive months or for 12 months during any two-year period, any subsequent use shall be conforming. It shall not be necessary to show that the owner of the property intends to abandon such nonconforming use in order for the nonconforming rights to expire. A use authorized pursuant to subsection (6) of this section shall be considered a conforming use for purposes of this section.

(10) An undeveloped lot, tract, parcel, site, or division of land located landward of the ordinary high water mark which was established in accordance with local and state subdivision requirements prior to June 1, 1971, or the applicable master program but which does not conform to the present lot size or density standards may be developed so long as such development conforms to all other requirements of the master program and the Act. [Ord. 705 § 2(8.6), 1997.]

**10.10.460 Permits – Preapplication conference.**

An applicant may request a preapplication conference for development plan review prior to filing an application to discuss the review process and

permit requirements. Any comments concerning the proposed development during the preapplication conference shall not be construed as approval

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or denial of the proposal. [Ord. 705 § 2(8.7.A), 1997.]

#### **10.10.465 Permits – Application forms.**

Application forms for a shoreline substantial development or conditional use permit, exemption, or variance shall be obtained from Town Hall, completed and submitted to the town clerk together with the applicable fee, a completed environmental checklist, and project plans. Application forms shall contain, as a minimum, the information called for in WAC 173-27-180. (JARPA form attached as Appendix C to the ordinance codified in this chapter, and available in the office of the city clerk). [Ord. 705 § 2(8.7.B), 1997.]

#### **10.10.470 Permits – Application requirements.**

A complete application for a substantial development or conditional use permit, or variance shall contain, as a minimum, the following information:

(1) Name, address, and telephone number of property owner of record or certified designated agent, the applicant or applicant representative, developer and the land surveyor and/or registered engineer preparing the plat map.

(2) Location of the property. This shall, at a minimum, include the property address, legal description of the property, identification of the section, township and range to the nearest quarter, quarter section or latitude and longitude to the nearest minute. All applications for projects located in open water areas away from land shall provide a longitude and latitude location.

(3) Identification of the shoreline (water body) that the site of the proposal is associated with.

(4) Shoreline designation according to the SMP and existing zoning classification.

(5) A general description of the proposed project that includes the proposed use or uses and the activities necessary to accomplish the project.

(6) A general description of the property as it now exists including its physical characteristics and improvements and structures.

(7) Aerial photograph, soils map, and topographic map as applicable.

(8) Benchmark elevations provided on a FEMA elevation certificate and certified by a registered engineer architect.

(9) Elevation in relation to mean sea level of the lowest floor (including basement) of all structures

and the extent to which any structure has been floodproofed.

(10) A general description of the vicinity of the proposed project including identification of the adjacent uses, structures and improvements, intensity of development and physical characteristics.

(11) A site development plan consisting of maps and elevations drawings, drawn to an appropriate scale to depict clearly all required information, photographs and text which shall include:

(a) The boundary of the parcel(s) of land upon which the development is proposed, including area in square feet or acres.

(b) The ordinary high water mark of all water bodies located adjacent to or within the boundary of the project. This may be an approximate location; provided, that for any development where a determination of consistency with the applicable regulations requires a precise location of the ordinary high water mark the mark shall be located precisely and the biological and hydrological basis for the location as indicated on the plans shall be included in the development plan. Where the ordinary high water mark is neither adjacent to or within the boundary of the project, the plan shall indicate the distance and direction to the nearest ordinary high water mark of a shoreline.

(c) Existing and proposed land contours. The contours shall be at intervals sufficient to accurately determine the existing character of the property and the extent of the proposed change to the land that is necessary for the development (usually at intervals of five feet). Areas within the boundary that will not be altered by the development may be indicated as such and contours approximated for that area.

(d) Benchmarks and ground elevation at mean sea level when all or a portion of the plat is located in the floodplain and contours with intervals of five feet.

(e) A delineation of all wetland areas that will be altered or used as a part of the development.

(f) A general indication of the character of vegetation found on the site.

(g) The dimensions and locations of all existing and proposed structures and improvements including but not limited to, buildings, paved or graveled areas, roads, utilities, septic tanks and drainfields, material stockpiles or surcharge, and stormwater management facilities. Building loca-

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tion and dimensions should include, gross floor area, architectural elevations, setbacks, cross-sections and specifications of proposed structures.

(h) Where applicable, a landscaping plan for the project.

(i) Where applicable, plans for development of areas on or off the site as mitigation for impacts associated with the proposed project shall be included and contain information consistent with the requirements of this section.

(j) Quantity, source and composition of any fill material that is to be placed on the site, whether temporary or permanent.

(k) Quantity, source and destination of any excavated or dredged material.

(l) A vicinity map showing the relationship of the, existing developments and uses on adjacent properties.

(m) Where applicable, a depiction of the impacts to views from existing residential uses and public areas.

(n) Easements, existing public and private, with location, name and width of any existing street and right-of-way within the area and 200 feet thereof; grades, profiles and cross-sections of proposed streets.

(o) Location of nearest fire hydrants.

(p) Availability and location of utilities including water, sewer, and stormwater drainage.

(q) Parcels of land intended to be dedicated or temporarily reserved for public use or to be reserved in the deeds for the common use of property owners of the property or dedication.

(r) Existing or proposed parking areas.

(s) Pedestrian and vehicular ingress and egress circulation patterns.

(t) Proposed open space and percentage of impervious surface.

(u) Lighting and signs as applicable.

(v) Buffer areas.

(w) On all variance applications the plans shall clearly indicate where development could occur without approval of a variance, the physical features and circumstances on the property that provide a basis for the request, and the location of adjacent structures and uses.

(x) Registered architect/engineer/surveyor stamp and date.

(y) Acknowledged signatures of property owners and notary public stamp as applicable.

(z) Signature block for approval of planning commission and/or town council as applicable.

(12) Evidence of title.

(13) If the proposed development is on lots to be served by a private street, copies of applicable covenants or documents with provisions covering, but not limited to, ingress, egress, utility easements, and maintenance shall be furnished to the town and recorded with the county.

(14) Certification by a registered engineer or architect on a FEMA certificate that the floodproofing methods for any nonresidential structure meet floodproofing criteria must be submitted upon completion of any building and before a certificate of occupancy is issued.

(15) The names and addresses of the latest recorded real property owners as shown by the records of the county assessor within 300 feet of the boundary of the property upon which the substantial development is proposed. [Ord. 705 § 2(8.7.C), 1997.]

### 10.10.475 Permits – Fees.

The town clerk shall affix a file number and date received to the application and plans upon submittal and payment of fees. A fee set by the town council shall be payable to the town clerk at the time of application. There is no fee for maintenance and repair of existing structures. [Ord. 705 § 2(8.7.D), 1997.]

### 10.10.480 Permits – Simultaneous processing.

Unless an applicant for a permit requests otherwise, all submitted applications shall be processed simultaneously to the extent that procedural requirements applicable to these actions permit simultaneous processing. [Ord. 705 § 2(8.7.E), 1997.]

### 10.10.485 Permits – Determination of complete application.

(1) A project permit application is complete when it meets the procedural requirements of this SMP as determined by the planning director and is sufficient for continued processing, even though additional information may be required or project modifications may be undertaken subsequently. The determination of completeness shall not preclude requests for additional information or studies either at the time of the notice of completeness or subsequently if new information is required or sub-

stantial changes in the proposed action occur. A determination of completeness may include the following:

(a) A preliminary determination of those development regulations that will be used for project mitigation.

(b) A preliminary determination of consistency.

(c) Other information as required to process the application.

(2) An application shall be deemed complete if the town does not provide a written determination to the applicant that the application is incomplete within 28 days. [Ord. 705 § 2(8.7.F), 1997.]

#### **10.10.490 Permits – Notice of application received.**

(1) Within 28 days after receiving a project permit application, the planning director shall mail or provide in person, a written determination to the applicant, stating either:

(a) That the application is complete;

(b) That the application is incomplete and what is necessary to make the application complete; or

(c) Other agencies of local, state, or federal governments that may have jurisdiction over some aspect of the application.

(2) Within 14 days after an applicant has submitted additional information identified by the administrator as being necessary for a complete application, the applicant, the public, and agencies determined by the planning director to have jurisdiction over the proposal shall be notified that the application is complete. A notice of application shall be published once in the local newspaper of record and shall include:

(a) The date of application, the date of the notice of completion for the application, and the date of the notice of application.

(b) A description of the proposed project action and a list of the project permits included in the application, and if applicable, a list of any studies requested under RCW 36.70B.070 and 36.70B.090, and WAC 173-27-180.

(c) The identification of other permits not included in the application to the extent known.

(d) The identification of existing environmental documents that evaluate the proposed project, and, if not otherwise stated on the document providing the notice of application, the loca-

tion where the application and any studies can be reviewed.

(e) A statement of the public comment period, which shall be not less than 30 days following the date of notice of application, and statements of the right of any person to comment on the application, receive notice of and participate in any hearings, request a copy of the decision once made, and any appeal rights. The town may accept public comments at any time prior to the closing of the record of an open record predecision hearing, if any, or, if no open record predecision hearing is provided, prior to the decision on the project permit.

(f) The date, time, place and type of hearing, if applicable and scheduled at the date of notice of application.

(g) A statement of the preliminary determination, if one has been made at the time of notice, of those development regulations that will be used for project mitigation and of consistency.

(h) Any other appropriate information.

(3) If an open record predecision hearing is required for the requested project permits, the notice of application shall be provided at least 15 days prior to the open record hearing.

(4) The town shall assure notice to the general public and property owners in the vicinity of such 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 300 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;

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

(5) The town shall provide timely notification to agencies with jurisdiction per Chapter 43.21C RCW, and to individuals, organizations, and agencies that request such notice in writing. [Ord. 705 § 2(8.7.G), 1997.]

#### **10.10.495 Permits – SEPA review.**

The applicant shall complete and submit an environmental checklist to the administrator with the shoreline application for a threshold determination

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of probable impacts on the environment as a result of a proposal. Additional information may be required at an applicant's expense, but not until after initial agency review of the checklist. The administrator, as the town's SEPA official, shall make a threshold determination, prepare, and publish an environmental impact statement in accordance with the SEPA goals, policies, and regulations as contained in Chapter 197-11 WAC, SEPA Rules. A proposal may be SEPA exempt but still require a shoreline permit. [Ord. 705 § 2(8.7.H), 1997.]

### **10.10.500 Permits – Special procedures for limited utility extensions and bulkheads.**

An application for a substantial development permit for a limited utility extension or for the construction of a bulkhead or other measures to protect a single-family residence and its appurtenant structures from shoreline erosion shall be subject to all of the requirements of this master program, except that the following time periods and procedures shall be used:

(1) The public comment period shall be 20 days. The notice provided shall state the manner in which the public may obtain a copy of the town's decision on the application no later than two days following its issuance.

(2) The town shall issue its decision to grant or deny the permit within 21 days of the last day of the comment period specified in subsection (1) of this section.

(3) If there is an appeal of the decision to grant or deny the permit to the town council, the appeal shall be finally determined by the council within 30 days.

(4) For purposes of this section, a limited utility extension means the extension of a utility service that:

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

(b) Will serve an existing use in compliance with the master program; and

(c) Will not extend more than 2,500 linear feet within the shorelines of the state. [Ord. 705 § 2(8.7.I), 1997.]

### **10.10.505 Permits – Public hearing.**

The administrator shall schedule a public hearing before the hearing examiner for shoreline sub-

stantial development, conditional use or variance applications. For the purpose of scheduling a public hearing:

(1) The date of the public hearing shall be set within 14 days after the determination that the application is complete and included in the published notice of application.

(2) The public hearing by the hearing examiner shall be scheduled at least 30 days after the published notice.

(3) Any person(s) who notifies the town of his/her desire to receive a copy of the action taken upon the application or submit their views shall be notified in a timely manner of the action taken upon the application. [Ord. 705 § 2(8.7.J), 1997.]

### **10.10.510 Review criteria – All development.**

(1) No authorization to undertake use or development on shorelines of the state shall be granted by the town unless upon review the use or development is determined to be consistent with the policy and provisions of the Shoreline Management Act, the master program, and SEPA.

(2) No permit shall be issued for any new or expanded building or structure of more than 35 feet above average grade level on shorelines of the state that will obstruct the view of a substantial number of residences on areas adjoining such shorelines except where this master program does not prohibit the same and then only when overriding considerations of the public interest will be served. [Ord. 705 § 2(8.8.A), 1997.]

### **10.10.515 Review criteria – Substantial development permits.**

(1) A substantial development permit shall be granted only when the development proposed is consistent with:

- (a) The policies and procedures of the Act;
- (b) The provisions of this regulation; and
- (c) The town's adopted master program.

(2) The town's hearing examiner may attach conditions to the approval of permits as necessary to assure consistency of the project with the Act and the master program. [Ord. 705 § 2(8.8.B), 1997.]

### **10.10.520 Review criteria – Conditional use permit.**

(1) The purpose of a conditional use permit is to provide a system within the master program which allows flexibility in the application of the use reg-

ulations in a manner consistent with the policies of RCW 90.58.020. In authorizing a conditional use, special conditions may be attached to the permit by the town or the Department of Ecology to prevent undesirable effects of the proposed use or to assure consistency of the project with the Act and the master program.

(2) Uses which are classified or set forth in this master program as conditional uses may be authorized provided the applicant can demonstrate all of the following:

(a) That the proposed use is consistent with the policies of RCW 90.58.020 and this master program;

(b) That the proposed use will not interfere with the normal public use of public shorelines;

(c) That the proposed use of the site and design of the project is compatible with other permitted existing uses within the area and with uses planned for the area under the comprehensive plan and shoreline master program;

(d) That the proposed use will cause no substantial significant adverse effects to the shoreline environment in which it is to be located; and

(e) That the public interest suffers no substantial detrimental effect.

(3) In the granting of all conditional use permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if conditional use permits were granted for other developments in the area where similar circumstances exist, the total of the conditional uses shall also remain consistent with the policies of RCW 90.58.020 and shall not produce substantial adverse effects to the shoreline environment.

(4) Other uses which are not classified or set forth in the master program may be authorized as conditional uses provided the applicant can demonstrate consistency with the requirements of this section and the requirements for conditional uses contained in the master program.

(5) Uses which are specifically prohibited by the master program may not be authorized pursuant to either subsection (1) or (2) of this section. [Ord. 705 § 2(8.8.C), 1997.]

#### **10.10.525 Review criteria – Variances.**

(1) The purpose of a variance is strictly limited to granting relief from specific bulk, dimensional, or performance standards set forth in the master

program where there are extraordinary or unique circumstances relating to the physical character or configuration of property such that the strict implementation of the master program will impose unnecessary hardships on the applicant or thwart the policies set forth in RCW 90.58.020.

(2) Variances should be granted in circumstances where denial of the permit would result in a thwarting of the policy enumerated in RCW 90.58.020. In all instances, the applicant must demonstrate that extraordinary or unique circumstances shall be shown and the public interest shall suffer no substantial detrimental effect.

(3) Variance permits for development and/or uses that will be located landward of the OHWM, as defined in RCW 90.58.030(2)(b) and the master program, and/or landward of any wetland as defined in RCW 90.58.030(2)(h) and the master program, may be authorized provided the applicant can demonstrate all of the following:

(a) That the strict application of the bulk, dimensional or performance standards set forth in the master program precludes, or significantly interferes with, reasonable use of the property;

(b) That the hardship described in subsection (3)(a) of this section is specifically related to the property, and is a result of unique conditions such as irregular lot shape, size, or natural features and the application of the master program, and not, for example, from deed restrictions or the applicant's own actions;

(c) That the design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and shoreline master program and will not cause adverse impacts to the shoreline environment;

(d) That the requested variance does/will not constitute a grant of special privilege not enjoyed by other properties in the area;

(e) That the variance requested is the minimum necessary to afford relief; and

(f) That the public will suffer no substantial detrimental effect.

(4) Variance permits for development and/or uses that will be located waterward of the OHWM, as defined in RCW 90.58.030(2)(B) or within any wetland as defined in RCW 90.58.030(2)(h), may be authorized provided the applicant can demonstrate all of the following:

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(a) That the strict application of the bulk, dimensional or performance standards set forth in the master program precludes all reasonable use of the property;

(b) That the proposal is consistent with the criteria established under subsections (3)(a) through (3)(f) of this section; and

(c) That the public rights of navigation and use of the shorelines will not be adversely affected.

(5) In the granting of all variances, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if variances were granted to other developments and/or uses in the area where similar circumstances exist the total of the variances shall also remain consistent with the policies of RCW 90.58.020 and shall not produce/cause substantial adverse effects to the shoreline environment.

(6) Variances from the use regulations of the master program are prohibited. [Ord. 705 § 2 (8.8.D), 1997.]

### **10.10.530 Application review – Administrator action.**

The administrator shall make recommendations to the hearing examiner based upon:

(1) The policies and procedures of the Shoreline Management Act of 1971 and related WAC's as amended.

(2) The La Conner Shoreline Master Program, regulations and amendments thereto.

(3) The La Conner Comprehensive Plan and land use regulations and amendments thereto.

(4) Applicable State Environmental Policy Act (SEPA).

(5) Impact on identified areas of historical and cultural significance.

(6) Findings and conclusions as a result of project review and analysis. [Ord. 705 § 2(8.8.E), 1997.]

### **10.10.535 Hearing examiner review and action.**

(1) The hearing examiner shall review and make decisions on an application for a permit based upon the following:

(a) The application.

(b) Applicable SEPA documents.

(c) Policies and procedures of Chapter 90.58 RCW, the Shoreline Management Act and its supporting WAC's.

(d) The town's shoreline master program and regulations.

(e) Evidence presented at the public hearing.

(f) Written and oral comments from interested persons.

(g) The findings, conclusions and recommendations of the administrator.

(2) The hearing examiner shall hold the public hearing to evaluate the findings, hear and evaluate public input, and approve, approve with conditions, or deny based on said findings, public comment, and criteria in subsections (1)(a) through (1)(g) of this section. The hearing shall be held after the administrator has scheduled a public hearing and notices of same have been published. The applicant shall be notified of the hearing at least of five days prior to the hearing.

(3) The hearing examiner's decision shall be the final on all applications and the hearing examiner shall transmit a written decision including findings, conclusions, and a final order within 10 days to the La Conner shoreline administrator. [Ord. 705 § 2(8.8.F), 1997.]

### **10.10.540 Permits – Substantial development, conditional use or variance.**

(1) Each permit for a substantial development, conditional use or variance issued by the town shall contain a provision that construction pursuant to the permit shall not begin, and is not authorized, until 21 days from the date of filing as defined in RCW 90.58.140(6) and WAC 173-27-130; or until all review proceedings initiated within 21 days from the date of such filing have been terminated, except as provided in RCW 90.58.140(5)(a) and (b), Appeals.

(2) Permits for substantial development, conditional use, or variance shall be on forms provided by the town.

(3) A permit data sheet shall be submitted to the Department of Ecology with each shoreline permit (attached as Appendix D to the ordinance codified in this chapter and available in the office of the city clerk). [Ord. 705 § 2(8.9.A), 1997.]

### **10.10.545 Permits – Filing with Washington State Department of Ecology (DOE) and Attorney General.**

(1) All applications for a permit or a permit revision shall be submitted to the Department of

Ecology upon a final decision by the hearing examiner. A “final decision” is that order or ruling, whether it be an approval or denial, which is established after appeals related to the permit have concluded or the opportunity to initiate such appeals has lapsed.

(2) When a substantial development permit and a conditional use permit or variance are required for a development, the submittal on the permits shall be made concurrently.

(3) Within five working days of final action by the hearing examiner, the town clerk or designee shall submit the following documents and information to the applicant, Department of Ecology and Attorney General:

(a) A copy of the complete application pursuant to WAC 173-27-180.

(b) Findings and conclusions that establish the basis for the decision including but not limited to identification of shoreline environment designation, applicable master program policies and regulations and the consistency of the project with appropriate review criteria for the type of permit(s) as established in WAC 173-27-140 through 173-27-170.

(c) The final decision of the hearing examiner.

(d) The permit data sheet required by WAC 173-27-190.

(e) State Environmental Policy Act (SEPA) documents required by Chapter 43.21 RCW.

(4) When the project has been modified in the course of the local review process, plans or text shall be provided to the Department of Ecology that clearly indicate the final approved plan.

(5) Submittal of substantial development permits, conditional use permits, variances, rescissions and revisions is complete when all of the documents required pursuant to subsections (3) and (4) of this section have been received by the Department of Ecology. If the Department determines that the submittal does not contain all of the documents and information required by this section, the Department shall identify the deficiencies and so notify local government and the applicant in writing. The submittal and permit are void unless and until the material requested in writing is submitted to the Department.

(6) “Date of filing” of a town final decision involving approval or denial of a substantial develop-

ment permit or involving a denial of a variance or conditional use permit, is the date of actual receipt of a completed filing by the Department of Ecology.

(7) “Date of filing” of a permit for a conditional use or variance approved by the town, and such permits which also involve concurrent submittal by the town of a substantial development permit, is the date the Department of Ecology transmits the final decision on the variance or conditional use permit to the town and the applicant.

(8) When a permit has been appealed pursuant to RCW 90.58.180, upon conclusion of all review proceedings, a copy of the final order shall be provided to the town and the Department of Ecology. When the project has been modified in the course of the review proceeding, plans or text shall be provided to the town, consistent with the provisions of WAC 173-27-180, that clearly indicate the final approved plan and the town shall reissue the permit accordingly and submit a copy of the reissued permit and supporting documents consistent with subsection (3) of this section to the Department of Ecology for completion of the file on the permit. [Ord. 705 § 2(8.9.B), 1997.]

#### **10.10.550 Permits – Time requirements.**

(1) The following time limits shall apply to all substantial development, conditional use or variance permits:

(a) Construction shall be commenced or, where no construction is involved, the use or activity shall be commenced within two years of the effective date of the shoreline permit; provided, that the town may authorize a single extension for a period not to exceed one year based on reasonable factors, if a request for extension has been filed before the expiration date and notice of the proposed extension is given to parties of record and the Department of Ecology.

(b) Authorization to conduct development activities shall terminate five years after the effective date of the shoreline permit; provided, that the town may authorize a single extension for a period not to exceed one year based on reasonable factors, if a request for extension has been filed before the expiration date and notice of the proposed extension is given to parties of record and the Department of Ecology.

(2) The effective date of a shoreline permit shall be the date of the last action required on the

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shoreline permit and all other government permits and approvals that authorize the development to proceed, including all administrative and legal actions on any such permit or approval. It is the responsibility of the applicant to inform the town of the pendency of permit applications filed with agencies other than the town and of any related administrative and legal actions on any permit or approval. If no notice of the pendency of other permits or approvals is given to the town prior to the date established by the shoreline permit or the provisions of this section, the expiration of a permit shall be based on the date of the shoreline permit.

(3) When permit approval is based on conditions, such conditions shall be satisfied prior to occupancy or use of the structure or prior to commencement of a nonstructural activity; provided, that an alternative compliance limit may be specified in the permit.

(4) Revisions to permits under WAC 173-27-100 may be authorized after the original permit authorization has expired under subsection (1) of this section; provided, that this procedure shall not be used to extend the original permit time requirements or to authorize substantial development after the time limits of the original permit.

(5) The town shall notify the Department of Ecology in writing of any change to the effective date of a permit, as authorized by this section, with an explanation of the basis for approval of the change. Any change to the time limits of a permit other than those authorized by this section shall require consideration of a new permit application. [Ord. 705 § 2(8.10), 1997.]

### 10.10.555 Permits – Revisions.

A permit revision is required whenever the applicant proposes substantive changes to the design, terms or conditions of a project from that which was approved in the permit. Changes are substantive if they materially alter the project in a manner that relates to its conformance to the terms and conditions of the permit, the master program and/or the policies and provisions of Chapter 90.58 RCW. Changes which are not substantive in effect do not require approval of a revision.

(1) When an applicant seeks to revise a permit, the applicant shall submit detailed plans and text describing the proposed changes to the permit.

(2) Revision Approval. The town council, upon recommendation of the administrator may approve

a revision if it determines that the proposed changes are within the scope and intent of the original permit, and consistent with the master program and the Act. “Within the scope and intent of the original permit” means all of the following:

(a) No additional overwater construction is involved except that pier, dock or float construction may be increased by 500 square feet or 10 percent from the provisions of the original permit, whichever is less.

(b) Ground area coverage and height of any structure may be increased a maximum of 10 percent from the provisions of the original permit.

(c) The revised permit does not authorize development to exceed height, lot coverage, setback, or any other requirements of the master program or town land use regulations, except as authorized under a variance granted as the original permit or a part thereof.

(d) Additional or revised landscaping is consistent with any conditions attached to the original permit and the master program.

(e) The use authorized pursuant to the original permit is not changed.

(f) No substantial adverse environmental impact will be caused by the project revision.

(3) Revisions to permits may be authorized after original permit authorization has expired under WAC 173-27-080(2). The purpose of such revisions shall be limited to authorization of changes which are consistent with this section and which would not require a permit for the development or change proposed under the terms of Chapter 90.58 RCW, this regulation and the master program. If the proposed change constitutes substantial development then a new permit is required; provided, that this subsection shall not be used to extend the time requirements or to authorize substantial development beyond the time limits of the original permit.

(4) New Permit Required. If the sum of the revision and any previously approved revisions under former WAC 173-14-064 or this section violate the provisions in subsection (2) of this section, the town shall require that the applicant apply for a new permit.

(5) Revision Filed. Within five days of the final town action, the revision, including the revised site plan and text consistent with LCMC 10.10.460 et seq. and the final ruling on consistency with this section shall be filed with the Department of Ecol-

ogy. In addition, the town shall notify parties of record of their action.

(6) Conditional Use/Variance Involved. If the revision to the original permit involves a conditional use or variance the town shall submit the revision to the Department of Ecology for the Department's approval, approval with conditions, or denial shall indicate that the revision is being submitted under the requirements of this subsection. When the Department of Ecology transmits its final decision to the town, the town shall notify parties of record of the Department of Ecology's final decision.

(7) Effective Date of Revision. The revised permit is effective immediately upon final action by the town or, when appropriate under subsection (6) of this section upon final action by the Department of Ecology.

(8) Revision Appeal. Appeals shall be in accordance with RCW 90.58.180 and shall be filed within 21 days from the date the Department of Ecology receives the town action or, when appropriate under subsection (6) of this section, the date of the Department of Ecology's final decision is transmitted to the town and the applicant. Appeals shall be based only upon contentions of noncompliance with subsection (2) of this section.

(9) Unauthorized Construction. Construction undertaken pursuant to that portion of a revised permit not authorized under the original permit is at the applicant's own risk until the expiration of the appeals deadline. If an appeal is successful in proving that a revision is not within the scope and intent of the original permit, the decision shall have no bearing on the original permit. [Ord. 705 § 2(8.11), 1997.]

#### **10.10.560 Permits – Rescission.**

If the town finds that a permittee has not complied with the conditions of a permit, the permit may be rescinded after a hearing with proper public notice to the permittee and the public. A permit may also be rescinded by Department of Ecology per RCW 90.58.140(8). [Ord. 705 § 2(8.12), 1997.]

#### **10.10.565 Appeal to State Shorelines Hearings Board.**

Any person aggrieved by the granting, denying, or rescinding of a permit on shorelines of the state pursuant to RCW 90.58.140 may seek review from the Shorelines Hearings Board by filing a petition

for review within time limits established by state law. [Ord. 705 § 2(8.13), 1997.]

#### **10.10.570 Enforcement and penalties.**

Enforcement action by the town may be taken whenever a person has violated any provision of the Act or master program or other regulation promulgated under the Act. The choice of enforcement action and the severity of any penalty should be based on the nature of the violation, the damage or risk to the public or to public resources and/or the existence or degree of bad faith of the persons subject to the enforcement action. As with the permit system, La Conner has primary responsibility for enforcement of the Act and the Master Program under RCW 90.58.050 and WAC 173-17-030 but unlike the permit system Ecology may act alone on enforcement matters if necessary. Ecology and local governments may issue regulatory orders to enforce the SMA. See RCW 90.58.220 and WAC 173-40-180. The regulatory order may notify the violator to: (1) stop the project; (2) obtain a shoreline permit; (3) pay a penalty; (4) mitigate the impact of the project; (5) remove the project; or (6) rescind the existing shoreline permit. Statewide Shoreline Management Act enforcement regulations can be found in Chapter 173-17 WAC. [Ord. 705 § 2(8.14), 1997.]

#### **10.10.575 Order to cease and desist.**

The town or the administrator as its designee shall have the authority to serve upon a person a cease and desist order if an activity being undertaken on shorelines of the state is in violation of Chapter 90.58 RCW or the La Conner Shoreline Master Program.

(1) Content of Order. The order shall set forth and contain:

(a) A description of the specific nature, extent, and time of violation and the damage or potential damage; and

(b) A notice that the violation or the potential violation cease and desist or, in appropriate cases, the specific corrective action to be taken within a given time. A civil penalty under WAC 173-27-280 may be issued with the order.

(2) Effective Date. The cease and desist order issued under this section shall become effective immediately upon receipt by the person to whom the order is directed.

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(3) Compliance. Failure to comply with the terms of a cease and desist order can result in enforcement actions including, but not limited to, the issuance of a civil penalty. [Ord. 705 § 2(8.14.A), 1997.]

### 10.10.580 Civil penalty.

(1) A person who fails to conform to the terms of a permit issued under RCW 90.58.140, who undertakes development or use on shorelines of the state without first obtaining a permit, or who fails to comply with a cease and desist order issued under these regulations may be subject to a civil penalty by the town upon an additional finding that a person:

(a) Has previously been subject to an enforcement action for the same or similar type of violation of the same statute or rule; or

(b) Has been given previous notice of the same or similar type of violation of the same statute or rule; or

(c) The violation has a probability of placing a person in danger of death or bodily harm; or

(d) Has a probability of causing more than minor environmental harm; or

(e) Has a probability of causing physical damage to the property of another in an amount exceeding \$1,000.

(2) In the alternative, a penalty may be issued to a person by the town for violations which do not meet the criteria of subsections (1)(a) through (1)(e) of this section, after the following information has been provided in writing to a person through a technical assistance visit or a notice of correction:

(a) A description of the condition that is not in compliance and a specific citation to the applicable law or rule.

(b) A statement of what is required to achieve compliance.

(c) The date by which the town requires compliance to be achieved.

(d) Notice of the means to contact any technical assistance services provided by the town or others.

(e) Notice of when, where, and to whom a request to extend the time to achieve compliance for good cause may be filed with the town.

(3) Amount of Penalty. The penalty shall not exceed \$1,000 for each violation. Each day of violation shall constitute a separate violation.

(4) Aiding or Abetting. Any person who, through an act of commission or omission procures, aids or abets in the violation shall be considered to have committed a violation for the purposes of the civil penalty.

(5) Notice of Penalty. A civil penalty 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 penalty from the town. The notice shall describe the violation, approximate date(s) of violation, and shall order the acts constituting the violation to cease and desist, or, in appropriate cases, require necessary corrective action within a specific time.

(6) Application for Remission or Mitigation. Any person incurring a penalty may apply in writing within 30 days of receipt of the penalty to the town for remission or mitigation of such penalty. Upon receipt of the application, the town may remit or mitigate the penalty only upon a demonstration of extraordinary circumstances, such as the presence of information or factors not considered in setting the original penalty. [Ord. 705 § 2(8.14.B), 1997.]

### 10.10.585 Right of appeal.

Persons receiving a cease and desist order and/or incurring a penalty imposed by the town may appeal the penalty to the town council for final determination and any person dissatisfied with the decision may appeal to the Shorelines Hearing Board. [Ord. 705 § 2(8.14.C(1)), 1997.]

### 10.10.590 Timing of appeal.

Appeals shall be filed within 10 days of receipt of notice of penalty. [Ord. 705 § 2(8.14.C(2)), 1997.]

### 10.10.595 Penalties due.

(1) Penalties imposed under this section shall become due and payable 30 days after receipt of notice imposing same unless application for remission or mitigation is made or an appeal is filed. Whenever an application of remission or mitigation is made, penalties shall become due and payable 30 days after receipt of the town's decision regarding the remission or mitigation. Whenever an appeal of a penalty is filed, the penalty shall become due and payable upon completion of all review proceedings and upon the issuance of a final decision confirming the penalty in whole or in part.

(2) The town may enforce its cease and desist orders and civil penalty by action in Skagit County superior court and the town may enforce this chapter through any other lawful methods. To the extent the town prevails in any action in a superior or appellate court or before the Shoreline Hearings Board in an enforcement action, it shall receive its attorney fees and costs. [Ord. 705 § 2(8.14.C(3)), 1997.]

**10.10.600 Penalty recovered.**

Penalties recovered by the town shall be paid to the town. [Ord. 705 § 2(8.14.C(4)), 1997.]

**10.10.605 Criminal penalty.**

Procedures for criminal penalties shall be governed by RCW 90.58.220. Any person found to have willfully violated the provisions of Chapter 90.58 RCW, the La Conner Shoreline Master Program, or any rules or regulations adopted pursuant thereto shall be guilty of a gross misdemeanor, and shall be punished by a fine of not less than \$25.00 nor more than \$1,000 or by imprisonment in the county jail for not more than 90 days, or by both; provided, that the fine for the third and all subsequent violations in any five-year period shall be not less than \$500.00 nor more than \$10,000. [Ord. 705 § 2(8.14.D), 1997.]

**10.10.610 Severability.**

If any provision of this master program shall be judged invalid by any court of competent jurisdiction, the remainder shall be severable and not affected by such judgement. [Ord. 705 § 2(9), 1997.]

