

Subject: Resolution #699 – Intent to Adopt the Ruston Shoreline Master Program

Dept. Origin: Planning Commission

Prepared by: Jennifer Robertson

For Agenda of: March 19, 2019

Exhibits: Resolution #699 and Attached Shoreline Master Program

Proposed Council Action:

Approve Resolution #699

Concurred by Mayor:	Initial & Date
Approved/form by City Atty:	<u>JSR/3-13-19</u>
Approved by Planning Director:	_____
Approved by Department Head:	_____

INFORMATION / BACKGROUND

The State of Washington under the Shoreline Management Act¹ has mandated that the City of Ruston update the Ruston Shoreline Master Program. WAC 173-26-090 requires periodic review of Shoreline Master Programs (SMP) at least every eight years with Ruston’s due in 2019. Over the past year, the Ruston Planning Director Rob White has worked with the Planning Commission to prepare an updated Shoreline Master Program as required by the Shoreline Management Act.

Since August, Ruston’s staff reviewed the list of updates provided by Ecology, (detailed in the attached *SMP Periodic Review Checklist: Analysis and Recommendation*), and also prepared the *Draft SMP Edits* document (also attached). The Planning Commission’s first work session was August 1, 2018. On December 12, 2018, the Planning Commission reviewed the drafts and directed staff to make minor changes which were considered at a public hearing on January 16, 2019. Following the public hearing on the *Draft SMP Edits* document, the Planning Commission recommended approval. Staff then forwarded the SMP to Ecology for another review. Ecology had only one minor change which was made and is reflected in the version before the Council.

The requirements of the Shoreline Management Act² mandate that the City’s proposed Shoreline Master Program must be approved by the State Department of Ecology prior to taking effect. Before approval, the Director of the Department of Ecology must formally conclude that the proposed Shoreline Master Program, when implemented over its planning horizon (typically 20 years), will result in “no net loss of ecological functions necessary to sustain shoreline natural functions.”

¹ Chapter 90.58 RCW.

² RCW 90.58.090.

Thus, in order to fully implement the SMP in Ruston, approval by the Department of Ecology is a prerequisite.³ The review process by the Department of Ecology includes a minimum 30-day comment period. The review process at Ecology has been averaging three to six months for other jurisdictions. Therefore, rather than pass the SMP by ordinance with an uncertain effective date, staff is recommending that the Council instead adopt a resolution expressing its intent to adopt the attached SMP and directing staff to submit the SMP draft for approval by the Department of Ecology. After review and approval by Ecology, staff will bring back the SMP in final ordinance form for consideration and adoption by the City Council.

FISCAL CONSIDERATION

N/A

BOARD OR COMMITTEE RECOMMENDATION

The Planning Commission recommends **approval** of the updated Shoreline Master Program for the City of Ruston.

RECOMMENDATION / MOTION

It is recommended that Council approve Resolution #699.

MOTION: I move to approve Resolution #699 to express the Council's intent to adopt the updated Shoreline Master Program upon the State Department of Ecology's approval, directing the Ruston Planning Director to submit the updated Shoreline Master Program to the Department of Ecology for review, and directing the City Clerk to place the Shoreline Master Program onto the Council agenda for adoption by Ordinance after such approval is granted.

³ RCW 90.58.090.

RESOLUTION NO. 699

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RUSTON, WASHINGTON, EXPRESSING THE INTENT TO ADOPT AN UPDATE OF THE SHORELINE MASTER PROGRAM AND AUTHORIZING THE SUBMITTAL OF THIS PROPOSED SHORELINE MASTER PROGRAM UPDATE TO THE WASHINGTON STATE DEPARTMENT OF ECOLOGY.

WHEREAS, the State of Washington under the Shoreline Management Act (Chapter 90.58 RCW) has mandated that the City of Ruston update the Ruston Shoreline Master Program; and

WHEREAS, the requirements of the Shoreline Management Act (RCW 90.58.090) mandate that the City’s proposed Shoreline Master Program must be approved by the State Department of Ecology (DOE) prior to taking effect; and

WHEREAS, before approval, the Director of DOE must formally conclude that the proposed Shoreline Master Program, when implemented over its planning horizon (typically 20 years), will result in “no net loss of ecological functions necessary to sustain shoreline natural functions”; and

WHEREAS, the City Planning Commission has been studying and working on the Shoreline Master Program Update since 2018; and

WHEREAS, the Planning Commission held three public meetings, including one public hearing, as follows: Work Study Sessions: August 1, 2018 and December 5, 2018, PC Public Hearing Date: January 16, 2019; and

WHEREAS, the Ruston Planning Commission and Ruston Staff have conducted a careful review of the most current, accurate and complete scientific information available regarding the

shorelines within the jurisdiction of Ruston, and concluded that the proposed Shoreline Master Program, when implemented over the next 20 years, will result in no net loss of ecological functions; and

WHEREAS, the SEPA Responsible Official has issued a Determination of Nonsignificance on January 7, 2019 which has not been appealed; and

WHEREAS, in accordance with RCW 36.70A.106, this amending ordinance was sent on to the State Department of Commerce with a request for expedited review comment; and

WHEREAS, the State Department of Commerce acknowledged receipt of the ordinance and granted expedited review on January 22, 2019; and

WHEREAS, the required number of days have passed since the ordinance was sent to the Department of Commerce and no comments were returned; and

WHEREAS, the City of Ruston sent the draft Shoreline Master Program to the Department of Ecology to obtain comments of the updated Plan prior to the public hearing; and

WHEREAS, shortly after submission of the Ruston Shoreline Master Program to the Department of Ecology, on December 12, 2018, the Department provided the City of Ruston with required modifications to the City's Shoreline Master Program; and

WHEREAS, the City made the modifications in accordance with the Department of Ecology's input; and

WHEREAS, on January 16, 2019 the Planning Commission considered the Department of Ecology's required modifications and held a public hearing on this issue with the revisions included in the public hearing draft; and

WHEREAS, following the hearing and deliberations on the required modifications, the Planning Commission unanimously recommended approval of the same; and

WHEREAS, the updated draft was transmitted to the Department of Ecology following the public hearing; and

WHEREAS, shortly after submission of the Ruston Shoreline Master Program to the Department of Ecology, on March 13, 2019, the Department provided the City of Ruston with one additional required modification to the City's Shoreline Master Program which was limited to the removal of a single duplicative reference; and

WHEREAS, the City has made that minor change in the version that is in front of the City Council for approval and direction to send to DOE for formal review and approval; and

WHEREAS, the updated Shoreline Master Program is attached as Exhibit "A"; and

WHEREAS, the Ruston City Council agrees with the Planning Commission's recommendation to approve the updated Shoreline Master Program;

NOW, THEREFORE, BE IT RESOLVED, BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF RUSTON, WASHINGTON, AS FOLLOWS:

Section 1. Statement of Intent to Adopt the Ruston Shoreline Master Program

Update. The Ruston City Council hereby declares that it intends to adopt Exhibit "A" as Ruston's Shoreline Master Program upon approval from the Washington State Department of Ecology.

Section 2. Direction to Transmit to Ecology. The Ruston City Planning Director is hereby authorized and directed to submit the Ruston Shoreline Master Program Update (including this Resolution and all other required submittal documents) to the Washington State Department of Ecology for final review and approval.

Section 3. Direction to City Clerk. Upon receipt of approval for the Ruston Shoreline Master Program Update from DOE, the City Clerk is hereby directed to place the Ruston Shoreline Master Program onto the Council Agenda for formal adoption by Ordinance.

RESOLVED this 19th day of March, 2019.

APPROVED:

Bruce Hopkins, Mayor

ATTEST/AUTHENTICATED:

Judy Grams, City Clerk

FILED WITH THE CITY CLERK: _____
PASSED BY THE CITY COUNCIL: _____
RESOLUTION NO.: 699



Draft Shoreline Master Program (SMP) Edits

Last Updated: **March 12, 2019**

Please note that all draft language in this document is **highlighted in yellow**, with deleted language shown in **strike-out** and proposed language shown **underlined**. For a detailed explanation of specific changes please refer to the associated document titled "**Ecology Checklist: Analysis and Recommendations**" within the Planning Commission packet materials for the December 12, 2018 public meeting.

Chapter 15.01 - SHORELINE MASTER PROGRAM

15.01.010 - Introduction.

The Ruston Shoreline Master Program (SMP) update fulfills the requirements of the Washington State Shoreline Management Act (SMA) and associated guidelines "to prevent the inherent harm in an uncoordinated and piecemeal development of the state's shorelines." The SMP balances local needs, interests and character with the general public's interests in protecting key shoreline environments and important resources. The overarching goal is meant to strike a balance among private ownership, public access, and public protection of the state's shorelines.

The SMA establishes a broad policy preference for shoreline uses that protect water quality and the natural environment, that depend on proximity to the shoreline, and preserve and enhance public access and public recreational opportunities. New uses and developments will follow regulations established by a set of goals and policies designed to avoid and/or mitigate for impacts to the environment while protecting property rights. Existing legally established uses and developments are allowed to continue as "grandfathered."

The SMA Guidelines require that an SMP result in "no net loss" of shoreline ecological functions. This SMP accomplishes that requirement through its goals, policies, and regulations noted above providing restoration program and enhancement incentives to offset the cumulative impacts of new shoreline uses and developments over time.

- (a) Purpose and Intent. The purposes of this Shoreline Master Program are:
 - (1) To promote the health, safety, and general welfare of the community by providing long range, comprehensive policies and effective, reasonable regulations for development, use, and restoration of Ruston's shorelines; and
 - (2) To manage shorelines in a positive, effective, balanced and equitable manner consistent with requirements established by the Shoreline Management Act (the Act) contained in the Revised Code of Washington (RCW) 90.58, and the State Shoreline Guidelines in Washington Administrative Code (WAC) 173-26.
 - (3) To maintain the ecological functions of Ruston's shorelines.
- (b) Title. This document shall be known and cited as "The Ruston Shoreline Master Program," referred to herein as the "SMP," or the "Program."
- (c) Applicability.

- (1) All proposed uses and development, as defined in RMC 15.01.020 (the definitions section of this Program) occurring within the shoreline jurisdiction (see RMC 15.01.010 for a description of the jurisdiction) shall comply with this Program, WAC 173-26 and 27 and RCW 90.58. This Program regulates all uses and developments within the shoreline jurisdiction whether or not a shoreline permit is required. This Program will regulate all development proposed after the effective date of the Program.
 - (2) For the purposes of this SMP, shoreline uses and developments shall be classified as follows:
 - (A) Permitted uses and developments - these are allowed uses and development that are consistent with this Program and RCW 90.58.030. Such uses/development shall require a shoreline substantial development permit, a shoreline conditional use permit, a statement that the use/development is exempt from a shoreline substantial development permit, or a determination that an exempt use/development is consistent with this Program during land use / building permit review. Development within the shoreline jurisdiction that does not meet the bulk or dimensional standards of this Program shall require a shoreline variance.
 - (B) Prohibited uses and developments - uses and developments that are inconsistent with this Program and/or RCW 90.58 and which cannot be allowed through any shoreline permit or variance.
 - (3) This Program shall apply to:
 - (A) All of the lands and waters of Ruston that meet the definition of shorelines of the state in RMC 15.01.020 and RCW 90.58.030. This includes all areas waterward of the OHWM extending to Ruston's legal in-water jurisdictional boundary and any areas landward of the OHWM that meet the definition of shorelands in RMC 15.01.020; and
 - (B) Every person, individual, firm, partnership, association, organization, local or state governmental agency, public or municipal corporation, or other entity proposing or undertaking any new use and/or development in the Ruston shoreline jurisdiction.
 - (4) Existing lawfully established uses and developments are not subject to regulations of this Program until or unless there is a change in use or development. Shoreline property owners are encouraged to consult the Planning Department to determine if a proposed use or development activity requires review under this Program.
 - (5) The provisions of this Program shall not apply to lands held in trust by the United States for Indian Nations, tribes or individuals.
- (d) Authority. This Shoreline Master Program is adopted under the authority granted by RCW 90.58 and WAC 173-26.
- (e) Shoreline Jurisdiction.
- (1) The policies and regulations of this Program shall apply to all shorelands within Ruston as defined in RMC 15.01.020 and RCW 90.58.030.
 - (2) Ruston determines the extent of shoreline jurisdiction on a case-by-case basis in conjunction with a development proposal, permit request, or request for statement of exemption. The landward extent of shoreline jurisdiction is measured from the OHWM and includes associated wetlands. The OHWM shall be determined based on site-specific observation and assessment using accepted protocols and criteria in accordance with RCW 90.58.030(2) and WAC 173-22-040.
 - (3) No streams or wetlands meeting the definition of "shoreline" are included within Ruston limits as of adoption of this Program.
- (f) Governing Principles.

- (1) The goals, policies and regulations of this Program are informed by the Governing Principles in the policy statements of RCW 90.58.
 - (2) Any inconsistencies between this Program and the Act must be resolved in accordance with the Act.
 - (3) Regulatory or administrative requirements of this Program must not unconstitutionally infringe upon private property rights or result in an unconstitutional taking of private property.
 - (4) The territorial jurisdictions of the SMP planning function and regulatory function are legally distinct. The planning function may, and in some circumstances must, look beyond the territorial limits of the shoreline jurisdiction.
 - (5) The policies and regulations established by the Program must be integrated and coordinated with the Ruston Comprehensive Plan and the development regulations in the Ruston Municipal Code (RMC).
 - (6) Protecting the shoreline environment is an essential statewide policy goal, consistent with other statewide policy goals in WAC 173-26. This Program protects shoreline ecology from impairments in the following ways:
 - (A) By including regulations and regulatory incentives designed to protect shoreline ecological functions, and restore impaired ecological functions where such functions have been identified; and
 - (B) By including policies and regulations that require mitigation of adverse impacts in a manner that ensures no net loss of shoreline ecological functions in a manner that is consistent with RCW 90.58 and WAC 173-26-201(2)(e)(i).
 - (C) By including policies and regulations that require consideration of cumulative impacts of anticipated and reasonable future development in a manner that ensures no net loss of shoreline ecological functions.
- (g) Relationship to Plans, Policies and Regulations.
- (1) Uses, alterations and developments regulated by this Program are subject to applicable provisions of the Ruston Municipal Code (RMC), the Ruston Comprehensive Plan, the Shoreline Management Act (RCW 90.58), the Growth Management Act (RCW 36.70A), State Environmental Policy Act (RCW 43.21C and WAC 197-11), and other local, state and federal laws.
 - (2) This Program shall be implemented according to the definitions contained in RMC 15.01.020. Where definitions contained in this Program conflict or differ from definitions contained in other sections of the RMC, these definitions shall prevail.
 - (3) Unless otherwise stated, where this Program makes reference to any RCW, WAC, or other federal, state or local law or regulation, the most recent amendment or current edition shall apply.
 - (4) In the event the regulations of this Program differ from other applicable Ruston policies or regulations, the more restrictive provisions shall apply.
- (h) Critical Areas Regulations. There are no identified critical areas within Ruston's shoreline jurisdiction.
- (i) Effective Date. This Program and all amendments thereto shall become effective 14 days from the date of the Department of Ecology's written notice of final action.
- (j) Liberal Construction. In accordance with RCW 90.58.090, this Program is exempt from the rule of strict construction; therefore this Program shall be liberally construed to give full effect to its goals, policies and regulations.

- (k) Severability. If any section or provision of this Program is declared invalid such declaration shall not affect the validity of this Program as a whole.

15.01.020 - Definitions.

The following are definitions for terms used within this Master Program:

"Act" means the Washington State Shoreline Management Act, Chapter 90.58 RCW (WAC 173-26-020).

"Active use area" means the portion of a vegetation enhancement area that has no specific vegetation requirements.

"Agriculture" means the act of cultivating land, raising crops, and/or feeding, breeding, and raising livestock; farming.

"Amendment" means a revision, update, addition, deletion, and/or re-enactment of the Ruston Shoreline Master Program (WAC 173-26-020).

"Aquaculture" means the cultivation of aquatic animals and plants, especially fish, shellfish, and seaweed, in natural or controlled marine or freshwater environments.

"Associated wetland" means wetlands that are in proximity to and either influence or are influenced by tidal waters or a lake, river or stream that are subject to the Shoreline Management Act.

"Average grade level" means the average of the natural or existing topography of the portion of the lot, parcel, or tract of real property which will be directly under the proposed building or structure: In the case of structures to be built over water, average grade level shall be the elevation of the ordinary high water mark. Calculation of the average grade level shall be made by averaging the ground elevations at the midpoint of all exterior walls of the proposed building or structure (WAC 173-27-030).

"Backfill" means the placement of earth material behind a retaining wall or structure.

"Bank" means a rise or slope at the edge of a body of water or water course.

"Benthic" means the sediment surface and subsurface layers providing habitat for the micro-organisms of Commencement Bay.

"Berm" means a constructed area of compacted earth that has been artificially mounded or placed against a wall or structure.

"Bioengineering" or "bio-stabilization" means the practice of using natural materials to stabilize shorelines and prevent erosion as an alternative to bulkheads. This may include use of rocks, bundles of stems, root systems, or other living plant material, fabric, or other soil stabilization techniques. Bioengineering projects often include fisheries habitat enhancement measures in project design (e.g., anchored logs, root wads, etc.).

"Boathouse" means a structure designed for the storage of vessels and not used as a residence or dwelling unit. Boathouses are to be distinguished from houseboats.

"Boating facilities" means a facility designed for use by boats such as, but not limited to, boat ramps, boat lifts, docks, and floats.

"Boat launch" or "boat ramp" means a slab, pad, rail, or graded slope specifically constructed and used for launching boats or other vessels.

"Boat lift" means a structure used for periodic lifting or lowering of vessels from the water for the purpose of dry berthing and/or maintenance.

"Breakwater" means an off-shore structure, either floating or not, that may or may not be connected to the shore, such structure being designed to absorb and/or reflect back into the water body the energy of the waves.

"Buffer" means a critical area or natural system buffer as designated by regulations in **RMC 25.01.070 RMC 30.70 Critical Areas Definitions.**

"Building setback" means the minimum required distance between a structure and a lot line, easement, or shoreline setback, into which space a structure or the foundation of a building shall not extend.

"Bulkhead" means a vertical or nearly vertical structure placed parallel to the shoreline at or near the OHWM for purposes of armoring the shoreline and protecting structures from effects of erosion caused by wind or waves. Bulkheads generally consist of concrete, timber, steel, rock, or other material resistant to erosion.

"Bulkhead alternative" means a measure to achieve shoreline stabilization other than a wall or solid structure, erected at or above OHWM. Bulkhead alternatives provide for beach restoration and protection of property during storms, and may consist of large rocks or revetments integrated with vegetation and other materials. (see also bio-engineering/bio-stabilization).

"Clearing" means removal of vegetation or other organic plant matter by physical, mechanical, chemical, or any other means.

"Commercial (business)" means the purchase, sale, offering for sale, or other transaction involving the handling or disposition of articles, services, substances or commodities in office buildings, offices, structures or premises.

"Compatible" means uses or activities capable of existing together or in the vicinity of one another without disharmony or without generating effects or impacts that are disruptive to the normal use and enjoyment of surrounding property.

"Conservation" means the careful, prudent, and planned management of a natural resource to preserve ecological and shoreline functions and to prevent exploitation, destruction, or neglect.

"Covered moorage/canopy" means boat or other vessel moorage, without walls, that has a roof or canopy to protect the vessel(s).

"Critical habitat" means those areas in Ruston that are wetlands, streams, or fish and wildlife habitat conservation areas.

"Development" means 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 that interferes with the normal public use of the surface of the waters overlying lands subject to the SMA (RCW 90.58) at any state of water level (WAC 173-27-030). **"Development" does not include dismantling or removing structures if there is no other associated development or re-development.**

"Dock" means a fixed or floating platform structure anchored in and/or floating upon a water body and connected to land to provide moorage or landing for waterborne vessels and/or water-dependent recreation uses.

"Dredging" means the removal, displacement, and/or disposal of unconsolidated material such as sand, silt, gravel or other submerged materials, for purposes of modifying the bottom elevation of a water body, ditch, or wetland.

"Ecological functions" or "shoreline functions" means the work performed or role played by the physical, chemical, and biological processes that contribute to the maintenance of the aquatic and terrestrial environments that constitute the shoreline's natural ecosystem. See WAC 173-26-201(2)(c) (WAC 173-26-020).

"Ecosystem-wide processes" means the suite of naturally occurring physical and geologic processes of erosion, transport, and deposition; and specific chemical processes that shape landforms within a specific shoreline ecosystem and determine both the types of habitat and the associated ecological functions (WAC 173-26-020).

"Excavation" means the removal of earth material from other than within a water body.

"Exempt developments" are those 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 act and the local master program (WAC 173-27-030). Conditional Use, Variance, or other permits may also still be required even though the activity does not require a Shoreline Substantial Development Permit.

"Fair market value (synonymous with replacement cost) of a development" means the open market bid price for conducting the work, using the equipment and facilities, and purchase of the goods, services and materials necessary to accomplish the development. This would normally equate to the cost of hiring a contractor to undertake the development from start to finish, including the cost of labor, materials, equipment and facility usage, transportation and contractor overhead and profit. The fair market value of the development shall include the fair market value of any donated, contributed or found labor, equipment or materials (WAC 173-27-030).

"Feasible" means that an action, such as a development project, mitigation, or preservation requirement, meets all of the following conditions:

- (a) The action can be accomplished with technologies and methods that have been used in the past in similar circumstances, or studies or tests have demonstrated in similar circumstances that such approaches are currently available and likely to achieve the intended results;
- (b) The action provides a reasonable likelihood of achieving its intended purpose; and
- (c) The action does not physically preclude achieving the project's primary intended legal use. In cases where these guidelines require certain actions unless they are infeasible, the burden of proving infeasibility is on the applicant. In determining an action's infeasibility, the reviewing agency may weigh the action's relative public costs and public benefits, considered in the short- and long-term time frames (WAC 173-26-030). See reasonable alternative.

"Fill" means the addition of soil, sand, rock, gravel, sediment, earth retaining structure, or other material to an area waterward of the OHWM, in wetlands, or on shorelands in a manner that raises the elevation or creates dry land (WAC 173-26-020).

"Floodway" means the area that has been established in effective federal emergency management agency flood insurance rate maps or floodway maps. The floodway does not include lands that can reasonably be expected to be protected from flood waters by flood control devices maintained by or maintained under license from the federal government, the state, or a political subdivision of the state.

"Float" means a structure that is moored, anchored, or otherwise secured in a water body and which is not connected to the shoreline.

"Footprint" means a two-dimensional outline of a structure or building where it intersects or covers the ground surface, including upper story eaves and cantilevers where they cover or overhang the ground surface.

"Forest practices" means any activity conducted on or directly pertaining to forest land, (as defined by RCW 76.09.020(14)), and relating to growing, harvesting or processing timber.

"Grading" means the movement or redistribution of the soil, sand, rock, gravel, sediment, or other material on a site in a manner that alters the natural contour of the land (WAC 173-26-020).

"Hard structural shoreline stabilization," also referred to as "shoreline armoring" or "bulkhead", refers to the use of a solid, essentially vertical wall constructed of concrete, wood, or other material for the purpose of resisting shoreline erosion caused by wind or waves.

"Hearings Board" means the Shoreline Hearings Board established by the SMA.

"Height" is measured from average grade level 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, or the applicable master program specifically requires that such appurtenances be included; provided further, that temporary construction equipment is excluded in this calculation (WAC 173-27.030).

"Houseboat" means a vessel that is designed or used as a place of residence without a means of self-propulsion and steering equipment or capability.

"Industrial uses" means a use that includes the assembly, production, or storage of finished or semi-finished materials or components into a finished or semi-finished product.

"Landward" means to or toward the land in a direction away from the water body.

"Maintenance" means those usual acts to prevent a decline, lapse or cessation from a lawfully established condition or use.

"Mining" means the act, process, or industry of extracting ores, coal, or other minerals from mines.

"Mini-storage" means fully-enclosed commercial storage facilities, available to the general public and used solely for the storage of personal property.

"Moorage structure" means any structure or device, including, but not limited to, docks, moorage piles and buoys placed at or below the OHWM and designed to provide for the moorage of boats or other watercraft or vessels.

"Mooring buoy" means a floating object anchored to the bottom of a water body that provides tie-up capabilities for vessels.

"Multifamily residential development" means a dwelling, apartment, townhouse and similar structures containing two or more attached residential units. Multifamily shall not include cottage housing or accessory dwelling units.

"Native shoreline vegetation" means vegetation comprised of plant species, other than noxious weeds, that are indigenous to the Pacific Northwest and that reasonably could have been expected to naturally occur on the site.

"Natural or existing topography" means the topography of the lot, parcel, or tract of real property immediately prior to any site preparation or grading, including excavation or filling (WAC 173-27-030).

~~"Nonconformance or nonconforming use" means any use, improvement or structure established in conformance with Ruston's Shoreline Master Program in effect at the time of establishment that no longer conforms to the range of uses permitted in the site's current zone and/or designation or to the current development standards of the Program due to changes in the Program or its application to the subject property.~~

"Nonconforming use" means an existing shoreline use that was lawfully established prior to the effective date of the act or the applicable master program, but which does not conform to present use regulations due to subsequent changes to the master program.

"Nonconforming development" or "nonconforming structure" means an existing structure that was lawfully constructed at the time it was built but is no longer fully consistent with present regulations such as setbacks, buffers or yards; area; bulk; height or density standards due to subsequent changes to the master program.

"Nonconforming lot" means a lot that met dimensional requirements of the applicable master program at the time of its establishment but now contains less than the required width, depth or area due to subsequent changes to the master program.

"Nonwater-oriented uses" means those uses that are not water-dependent uses, water-related uses or water-enjoyment uses (WAC 173-26-020). Examples of nonwater-oriented uses include professional offices, automobile sales or repair shops, mini-storage facilities, department stores, gas stations, and athletic fields.

"Ordinary high water mark (OHWM)" means the mark on all lakes, streams, and tidal water is that mark that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation as that condition exists on June 1, 1971, as it may naturally change thereafter, or as it may change thereafter in accordance with

permits issued by a local government or the department. Provided, that in any area where the ordinary high water mark cannot be found, the ordinary high water mark adjoining saltwater shall be the line of mean higher high tide and the ordinary high water mark adjoining fresh water shall be the line of mean high water. (RCW 90.58.030(2)(c)).

"Preferred shoreline uses" are identified in the Act as uses which are consistent with control of pollution and prevention of damage to the natural environment, or are unique to or dependent upon use of the state's shoreline. Alterations of the natural condition of the shorelines of the state, in those limited instances when authorized, shall be given priority for ports, shoreline recreational uses including but not limited to parks, marinas, piers, and other improvements facilitating public access to shorelines of the state, industrial and commercial developments which are particularly dependent on their location on or use of the shorelines of the state and other development that will provide an opportunity for substantial numbers of the people to enjoy the shorelines of the state. (RCW 90.58.020)

"Primary structure" means the structure associated with the principal use of the property. If more than one structure is associated with the principal use of the property, the one with the highest assessed value shall be considered the primary structure.

"Priority species" means any species designated by the Washington Department of Fish and Wildlife (WDFW) as requiring protective measures for their survival due to population status, sensitivity to habitat alteration, and/or recreational, commercial, or tribal importance, often but not exclusively referring to salmonid species. Priority species include state endangered, threatened, sensitive, and candidate species; animal aggregations (e.g., heron colonies, bat colonies) considered vulnerable; and species of recreational, commercial, or tribal importance that are vulnerable. See WAC 173-27-030.

"Provisions" means policies, regulations, standards, guidelines, criteria, or environment designations (WAC 173-26-020).

"Public access" means the public's ability to get to and use the state's public waters, the water/land interface and associated public shoreline area. It includes physical access that is either lateral (areas paralleling the shore) or perpendicular (an easement or public corridor to the shore), and/or visual access facilitated by scenic roads and overlooks, viewing towers and other public sites or facilities.

"Public interest" means the interest shared by the citizens of the state or community at large in the affairs of government, or some interest by which their rights or liabilities are affected including, but not limited to, an effect on public property or on health, safety, or general welfare resulting from a use or development (WAC 173-27-030).

"Radio, television towers, and wireless communication facilities" means any staffed or unstaffed facility for the transmission and/or reception of radio frequency (RF) signals through electromagnetic energy usually consisting of an equipment shelter or cabinet, a support tower or other structure used to achieve the necessary elevation, and the transmission and reception devices or antenna.

"Reasonable alternative" means an action or proposal that is capable of being carried out, taking into consideration the overall project purposes, needs and objectives. In determining what is a "reasonable alternative" to a proposed development, alteration or activity, the Shoreline Administrator may consider the purpose, effectiveness, engineering, feasibility, commercial availability of technology, best management practices, safety and cost of the alternative action or proposal.

"Recreational facility" means land and/or structures used for active or passive recreation.

"Repair" means to restore to a state comparable to the original condition after deterioration or partial destruction.

"Replacement" means to rebuild using new materials.

"Restoration, or ecological restoration" means the re-establishment or upgrading of impaired ecological shoreline processes or functions. This may be accomplished through measures including, but not limited to, re-vegetation, removal of intrusive shoreline structures and removal or treatment of toxic materials. Restoration does not imply a requirement for returning the shoreline area to aboriginal or pre-European settlement conditions (WAC 173-26-020).

"Revetment" means a sloped wall constructed of riprap or other suitable material placed on stream banks or other shorelines to retard bank erosion and minimize lateral stream movement. A revetment typically slopes away from the water and has a rough or jagged face. These features differentiate it from a bulkhead, which is a vertical structure.

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

"Sediment" means material settled from suspension in a liquid medium.

"Setback" means the minimum required distance between a structure and a specified line such as a lot, easement or buffer line that is required to remain free of structures.

"Shorelands, also referred to as shoreland areas," means those lands extending landward for 200 feet in all directions as measured on a horizontal plane from the OHWM; floodways and contiguous floodplain areas landward 200 feet from such floodways; and all wetlands and river deltas associated with the streams, lakes, and tidal waters that are subject to the provisions of this Program; the same to be designated as to location by the Department of Ecology (RCW 90.58.030).

"Shoreline Administrator" means, unless otherwise specified, the Mayor or his designee.

"Shoreline conditional use" means a use specifically designated as a shoreline conditional use in the SMP or a use that is not classified within the SMP.

"Shoreline environment designation" means the categories of shorelines of the state established by this Program to differentiate between areas whose features imply differing objectives regarding their use and future development.

"Shoreline jurisdiction" means all "shorelines of the state" and "shorelands" as defined by this Program and RCW 90.58.

"Shoreline modifications" means those actions that modify the physical configuration or qualities of the shoreline area, usually through the construction of a physical element such as a dike, breakwater, pier, weir, dredged basin, fill, bulkhead, or other shoreline structure. They can include other actions, such as clearing, grading, or application of chemicals (WAC 173-26-020).

"Shoreline stabilization" means actions taken to prevent or mitigate erosion impacts to property, dwellings, businesses, or structures caused by shoreline processes such as currents, floods, tides, wind or wave action. Shoreline stabilization includes, but is not limited to, structural armoring approaches such as bulkheads, bulkhead alternatives and nonstructural approaches such as bio-engineering.

"Shorelines" means all of the water areas within Ruston and their associated shorelands together with the lands underlying them, except:

- (a) Shorelines of statewide significance;
- (b) Shorelines on segments of streams upstream of a point where the mean annual flow is 20 cubic feet per second or less and the wetlands associated with such upstream segments; and
- (c) Shorelines on lakes less than 20 acres in size and wetlands associated with such lakes (RCW 90.58.030(2)(d)).

"Shorelines of statewide significance" means those shorelines described in RCW 90.58.030(2)(e) that are within Ruston, which is limited to those portions of Commencement Bay which are located seaward of the line of extreme low tide.

"Shorelines of the state" are the total of all "shorelines" and "shorelines of statewide significance" within Ruston. Please also see definitions for shorelands (RMC 15.01.020.(A)(74)) and shorelines of the state (RCW 90.58.030(2)(c)).

"Shoreline variance" is a means to grant relief from the specific bulk, dimensional or performance standards in the SMP. A shoreline variance is not a means to vary a use of a shoreline.

"Single-family residence" means a residential structure with one dwelling unit that is constructed on a permanent foundation. Single-family residences are detached from other single-family dwellings except that accessory apartments may be attached to a single-family residence.

"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 ground or water, except for vessels.

"Substantial development" means any development that meets the requirements of RCW 90.58.030(3)(e).

"Transportation use" means a use whose primary purpose is the movement and circulation of people, goods, and services. This includes, but is not limited to, public roads, rails, parking areas, non-motorized travel corridors, trails, and similar features.

"Vegetation enhancement area" means an area immediately landward of the OHWM in which existing trees and native vegetation are preserved or native vegetation is restored and in which up to 25 percent by area of preserved and/or restored vegetation can be comprised of noninvasive, non-native vegetation.

"Vessel" means ships, boats, barges, personal watercraft, or any other floating craft that are designed and used for navigation and do not interfere with the normal public use of the water (WAC 173-27-030).

"Water-dependent use" means a use or portion of a use that cannot exist in a location that is not adjacent to the water and that is dependent on the water by reason of the intrinsic nature of its operations. Water-dependent uses are preferred uses of the shoreline according to the Act.

"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 (WAC 173-26-020).

"Water-oriented use" means a use that is water-dependent, water-related, or water-enjoyment, or a combination of such uses (WAC 173-26-020).

"Water-related use" means a use or portion of a use that is not intrinsically dependent on a waterfront location but whose economic viability is dependent upon a waterfront location because:

- (a) The use has a functional requirement for a waterfront location such as the arrival or shipment of materials by water or the need for large quantities of water; or
- (b) The use provides a necessary service supportive of the water-dependent uses and the proximity of the use to its customers makes its services less expensive and/or more convenient (WAC 173-26-020).

"Water quality" means the physical characteristics of water within shoreline jurisdiction, including water quantity, hydrological, physical, chemical, aesthetic, recreation-related, and biological characteristics. Where used in this chapter, the term "water quantity" refers only to development and uses regulated under this chapter and affecting water quantity, such as impermeable surfaces and storm water handling practices. Water quantity, for purposes of this chapter, does not mean the withdrawal of groundwater or diversion of surface water pursuant to RCW 90.03.250 through 90.03.340 (WAC 173-26-020).

15.01.030 - Master Program element goals.

- (a) General Master Program Goal. Recognize the necessary cleanup and restoration of the former ASARCO site and guide Ruston in future development of its shoreline environment. Future development should include water-dependent, water-related, or water-oriented uses which contribute to the economic vitality and character of Ruston, and provide public access to the shoreline.
- (b) Shoreline Use Element Goals.
 - (1) Establish and implement policies and regulations for land use consistent with the Shoreline Management Act of 1971. These policies and regulations insure that the overall land use patterns in shoreline areas are compatible with the high intensity shoreline environment designation and will be sensitive to and not degrade habitat, and ecological systems and other shoreline resources.
 - (2) Identify and reserve shoreline and water areas with unique attributes for specific long-term uses, economic development, and recreational and open-space uses.
 - (3) Insure that proposed shoreline uses are distributed, located and developed in a manner that will maintain or improve the health, safety and welfare of the public when such uses occupy shoreline areas.
 - (4) Insure that activities and facilities are located on the shorelines in such a manner as to retain or improve the quality of the environment as it is designated for that area.
 - (5) Insure that proposed shoreline uses do not infringe upon the rights of others or upon the rights of private ownership.
 - (6) Encourage shoreline uses which enhance their specific areas or employ innovative features for purposes consistent with this program.
 - (7) Encourage joint-use activities in proposed shoreline developments.
 - (8) As stated in RCW 90.58.020, designated shorelines of state-wide significance (SSWS) are of value to the entire state and should be protected and managed. In order of preference, the priorities are to:
 - (A) Recognize and protect the statewide over local interest;
 - (B) Preserve the natural character of the shoreline;
 - (C) Result in long-term over short-term benefit;
 - (D) Protect the resources and ecology of shorelines;
 - (E) Increase public access to publicly owned areas of shorelines; and
 - (F) Increase recreational opportunities for the public in the shoreline.
 - (9) Encourage restoration of shoreline areas that have been degraded or diminished in ecological values and functions as a result of past action, activities, or catastrophic events.
 - (10) Insure that planning, zoning and other regulatory and nonregulatory programs governing lands adjacent to the shoreline jurisdiction are consistent with the SMA.
- (c) Economic Development Element Goals.
 - (1) Encourage healthy, orderly economic growth by allowing those economic activities which will be an asset to Ruston and which result in the least possible adverse effect on the quality of the shoreline and surrounding environment.
 - (2) Protect economic activity and potential for activity that is consistent with the objectives of the SMP, and provide for environmentally sensitive new development.
 - (3) Develop, as an economic asset, the recreational industry along the shoreline in a manner that would enhance the public enjoyment of the shoreline.

- (4) Cooperate with private business in the overall management and/or development of the shoreline.
 - (5) Encourage new economic development to locate in areas already developed with similar uses which are consistent with this master program.
 - (6) Insure that an economic activity taking place along the shoreline operates without harming the quality of the site's environment or adjacent shorelands.
 - (7) Encourage new shoreline commercial and residential development that incorporates water dependent, water related, or water enjoyment uses and discourages and/or prohibits non-water oriented uses which are not necessary to a preferred use.
 - (8) Proposed economic use of the shoreline should be consistent with Ruston's Comprehensive Plan. Conversely, upland uses on adjacent lands outside of immediate SMA jurisdiction (in accordance with RCW 90.58.340) should be consistent with the purpose and intent of this Master Program as they affect the shoreline.
- (d) Circulation Element Goals.
- (1) Provide a safe, reasonable, and adequate circulation system to the shoreline where routes will have the least possible adverse effect on fragile shoreline features and existing ecological systems, while contributing to the functional and visual enhancement of the shoreline.
 - (2) Locate land circulation development which is not shoreline dependent as far from the land-water interface as feasible to reduce interference with either natural shorelines or other appropriate shoreline uses and to avoid creating barriers between adjacent uplands and the shoreline.
 - (3) Acquire and develop physical and visual public access where topography, view, and natural features warrant, as a result of new transportation development in shoreline areas (e.g., turnouts, rest areas).
 - (4) Protect, manage and enhance those characteristics of shoreline roadway corridors that are unique, have historic significance, or great aesthetic quality for the benefit and enjoyment of the public.
- (e) Conservation Element Goals.
- (1) Reclaim and restore areas which are biologically and aesthetically degraded to the extent feasible while maintaining appropriate use of the shoreline.
 - (2) Insure that utilization of a resource takes place with the minimum adverse impact to the natural systems and quality of the shoreline environment.
 - (3) Preserve the cultural resources found in the scenic and aesthetic quality of shoreline areas and vistas to the greatest extent feasible.
- (f) Public Access Element Goals.
- (1) Provide and protect a public access system that is both physical and visual which increases the amount and diversity of public access to the State's shorelines and adjacent areas, consistent with the natural shoreline character, private property rights, economic development, 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.
- (g) Recreation Element Goals.
- (1) Insure proposed recreational uses are of a safe and healthy nature.
 - (2) Encourage optimal recreational opportunities in shoreline areas that can reasonably tolerate peak use periods of active, passive, competitive or contemplative uses without destroying the integrity and character of the shoreline.

- (3) Integrate recreational elements into public access and conservation planning.
- (4) Consider both active and passive recreational needs and development of recreational areas.
- (h) Historic/Cultural Element Goals.
 - (1) Identify, protect, preserve and restore important archaeological, historical, and cultural site for educational, scientific, and enjoyment of the general public.
 - (2) Encourage educational projects and programs that foster a greater appreciation of the importance of shoreline management, maritime activities, environmental conservation, and maritime history.

15.01.040 - Shoreline management policies.

(a) General Policies.

- (1) Archaeological, Historic and Cultural Resource Policies.
 - (A) Ruston should work with tribal, state, federal and other local governments to identify significant local historic, cultural and archaeological sites consistent with applicable state and federal laws protecting such information from general public disclosure. Such sites should be protected, preserved and/or restored for study, education and/or public enjoyment to the maximum extent possible.
 - (B) When a new use or development is proposed adjacent to an identified historic, cultural or archaeological site, it should be designed and operated to be compatible with continued protection of the historic, cultural or archaeological site.
 - (C) Owners of property containing identified historic, cultural or archaeological sites should coordinate with appropriate tribes, and agencies such as the Washington State Department of Archaeology and Historic Preservation. Ample time should be allowed to assess the site and make arrangements to preserve historical, cultural and archaeological values.
 - (D) Shoreline use and development should not significantly and negatively impact, destroy, or damage any site having historic, cultural, scientific or educational value.
 - (E) Development plans for public open spaces, trails, or recreation lands should incorporate measures for historic, cultural and archaeological resource preservation, restoration, and education whenever compatible and possible.
- (2) Critical Areas and Environmental Protection Policies.
 - (A) New shoreline uses and developments should occur in a manner that maintains existing natural shorelines and assures no net loss of shoreline ecological functions and processes.
 - (B) New shoreline uses and developments should be designed and conducted in accordance with the regulations of this Program to minimize damage to the ecology and environment. These regulations are designed to protect shoreline ecological functions and processes. Shoreline ecological functions that should be protected include, but are not limited to, fish and wildlife habitat, conservation and recovery of threatened or endangered species, food chain support and water temperature maintenance. Shoreline processes that should be protected include, but are not limited to, water flow; infiltration; groundwater recharge and discharge; sediment delivery, transport, and storage; organic matter input; and nutrient and pathogen removal.
 - (C) In assessing the potential for net loss of ecological functions, both project-specific and cumulative impacts should be considered in accordance with WAC 173-26-186(8)(d).
 - (D) New shoreline uses and developments should be designed to be consistent with the Second Amendment to the U.S. Environmental Protection Agency Consent Decree, adopted June 29, 2006, (a copy of which can be obtained from the Ruston Clerk's Office),

to help maintain the integrity of the cap upon the ASARCO Superfund cleanup site, and prevent the leaching of arsenic into the waters of Commencement Bay.

- (3) Flood Hazard Reduction Policies.
 - (A) Flood hazard reduction should be managed through Ruston's Comprehensive Plan and applicable development regulations.
 - (B) New development within the floodplains associated with Ruston's shorelines that would individually or cumulatively increase the risk of flood damage should be discouraged.
 - (C) Nonstructural flood hazard reduction measures should be given preference over structural measures. When necessary, structural flood hazard reduction measures should be accomplished in a manner that assures no net loss of ecological functions and ecosystem-wide processes. Nonstructural measures include setbacks, land use controls prohibiting or limiting development in areas that are historically flooded, stormwater management plans, or biomechanical measures.
- (4) Public Access Policies.
 - (A) Public access to shorelines should be incorporated into all private development projects, and publicly sponsored shoreline development projects when public health and safety concerns can be adequately addressed and when shoreline ecological functions and/or processes can be adequately protected.
 - (B) The design of all public shoreline access areas should attempt to minimize potential impacts to private property.
- (5) Restoration and Enhancement Policies.
 - (A) Ruston should participate in cooperative restoration efforts and programs between local, state, and federal public agencies, tribes, nonprofit organizations, and landowners to improve shorelines with impaired ecological functions and/or processes.
 - (B) Restoration actions should improve shoreline functions, processes and/or features that meet the needs of important plant, wildlife and fish species.
 - (C) Restoration should be integrated with and should support other natural resource management efforts in Pierce County, and in the greater Puget Sound region.
 - (D) Priority should be given to restoration actions that meet the goals contained in the restoration element of this Program.
- (6) Shoreline Use Policies.
 - (A) The following uses/developments should be given preference for locating within the shoreline jurisdiction when they are consistent with Ruston's zoning regulations and located, designed, and maintained in a manner that is consistent with this Program:
 - (i) Water-dependent and water-related uses and developments; and
 - (ii) Public uses and developments that provide physical and/or visual access to the shoreline for substantial numbers of people.
 - (B) Ruston should reserve areas for protection and restoration of ecological functions to control pollution, protect public health, and prevent damage to the environment.
 - (C) Nonwater-oriented uses/developments should be limited to those shoreline locations where water-oriented uses are inappropriate.
 - (D) Nonwater-oriented uses/developments should be allowed only when they demonstrably contribute to the objectives of the Shoreline Management Act.

- (E) Ruston should encourage activities that promote high intensity use of the shoreline that will compliment the economic development goals of the comprehensive plan. Examples of uses that should be encouraged include commercial, hotel, and multifamily developments.
- (8) Shoreline Vegetation Conservation Policies.
 - (A) New shoreline uses and developments should be planned and designed to retain or replace shoreline vegetation with the overall purpose of achieving no net loss of the ecological functions performed by the vegetation. Important functions of shoreline vegetation include, but are not limited to:
 - (i) Providing shade necessary to maintain water temperatures required by salmonids and other aquatic biota;
 - (ii) Providing organic inputs necessary for aquatic life, including providing food in the form of various insects and other benthic macro invertebrates;
 - (iii) Stabilizing banks, minimizing erosion and sedimentation, and reducing the occurrence/severity of landslides;
 - (iv) Reducing sediment input into Commencement Bay by minimizing erosion, aiding infiltration, retaining runoff, and managing stormwater from roads and upland areas;
 - (v) Improving water quality by preventing wind mixing, and facilitating infiltration and vegetative uptake of nutrients and pollutants; and
 - (vi) Providing habitat for wildlife, including connectivity for travel and migration corridors.
 - (8) Site Planning Policies.
 - (A) New shoreline uses and developments should be designed in a manner that directs land alteration to the least sensitive portions of the site to maximize vegetation conservation; minimize impervious surfaces and runoff; protect riparian, nearshore and wetland habitats; protect fish and wildlife and their habitats; protect archaeological, historic and cultural resources; and preserve aesthetic values.
 - (B) Low Impact Development (LID) stormwater management practices are encouraged where site conditions allow in order to minimize impervious surface area and surface runoff in accordance with the Low Impact Development: Technical Guidance Manual for Puget Sound, by Puget Sound Action Team and WSU 2005, and Ruston's stormwater management policies and regulations.
 - (9) Water Quality, Stormwater and Nonpoint Pollution Policies.
 - (A) New shoreline uses and developments are encouraged to be located, constructed, operated, and maintained to prevent water quality and storm water quantity impacts that would adversely affect shoreline ecological functions, or cause significant impact to shoreline aesthetics or recreational opportunities.
 - (B) New shoreline uses and developments should be designed and operated to minimize the need for chemical fertilizers, pesticides or other chemical treatments to prevent contamination of surface and ground water and/or soils and minimize adverse effects on shoreline ecological functions.
 - (C) New shoreline uses and developments are encouraged to minimize impervious surface and incorporate low impact development stormwater management techniques where reasonable to minimize surface water runoff and prevent water quality degradation.
 - (D) Point and non-point source pollution should be managed on a comprehensive, basin-wide basis to protect water quality and support the efforts of shoreline property owners to maintain shoreline ecological functions.
 - (b) Shoreline Modification Policies.

- (1) Boat Launch Ramps and Rails Policies.
 - (A) Ruston should assess regional needs for public boat launches so they can be co-located with other compatible water-dependent uses.
 - (B) New or expanded public launch ramps and rails should only be sited where they have no negative impact on critical areas or habitat with which priority species have a primary association.
 - (C) New private boat launch ramps and rails should be discouraged.
- (2) Docks, Floats, Mooring Buoys and Boat Lift Policies.
 - (A) New public and private docks, floats, mooring buoys and lifts should be designed and constructed with appropriate mitigation as required by this Program to ensure no net loss of ecological functions.
 - (B) The type, design, and location of docks, floats, mooring buoys and lifts should be consistent with applicable state and federal regulations and compatible with the area in which they are located. Ruston should consider shoreline characteristics, shoreline functions and processes, wind and wave action, water depth, aesthetics, and adjacent land and water uses when assessing compatibility.
- (3) Dredging Policies.
 - (A) Dredging should only be allowed in the following circumstances:
 - (i) When needed to facilitate ecological restoration or enhancement;
 - (ii) When needed to construct facilities for public access, water-dependent transportation, or water-oriented public recreation.
 - (B) New development should be sited and designed to avoid the need for maintenance dredging.
 - (C) When allowed, dredging should be planned and operated to minimize adverse impacts to shoreline ecology, to existing shoreline uses, and to minimize interference with navigation.
 - (D) Dredging for the primary purpose of obtaining fill material to create uplands is not allowed.
- (4) Filling and Excavation Policies.
 - (A) Fill and excavation should be allowed only in association with a permitted use/development and where allowed should be the minimum necessary to accommodate the proposed use.
 - (B) Filling and excavation should not be allowed where structural shoreline stabilization would be needed to prevent the fill from eroding.
 - (C) The perimeter of fill and excavation activities should be designed to avoid or eliminate erosion and sedimentation impacts, both during initial fill and excavation activities and over time.
 - (D) When allowed, filling and excavation should be conducted so that water quality, habitat, hydrology, and drainage patterns are not adversely affected.
 - (E) Excavation waterward of OHWM shall be considered dredging and shall be subject to the dredging policies and regulations of this Program.
- (5) Shoreline Stabilization Policies.
 - (A) Proposed shoreline stabilization projects should not jeopardize the integrity of the existing riprap armoring used to cap the ASARCO Superfund cleanup site along the shoreline, or conflict with the requirements of the U.S. Environmental Protection Agency Consent Decree, (or its amendments), regarding methods of construction used to prevent leaching of arsenic into the waters of Commencement Bay.

- (B) New developments should be designed and located to avoid the need for new stabilization measures.
 - (C) Bulkheads and other forms of hard structural shoreline stabilization should be discouraged. Bulkhead alternatives that implement bioengineering and bio-stabilization methods should be used where reasonable.
 - (D) Shoreline stabilization including bulkheads and bulkhead alternatives should be located, designed, and maintained to minimize adverse effects on shoreline ecology, including effects on the project site and adjacent properties over time. Probable effects of proposed shoreline stabilization on ongoing shoreline processes and functions should be fully evaluated for consistency with this Program.
 - (E) Shoreline stabilization should be located and designed to fit the physical character of a specific shoreline reach, which may differ substantially from adjacent reaches.
 - (F) Shoreline stabilization should not interfere with existing or future public access to public shorelines or with other appropriate shoreline uses.
 - (G) Shoreline stabilization projects on public lands should be designed to accommodate multiple use, restoration, and/or public access, provided that safety and ecological protection are fully addressed.
 - (H) Failing, harmful, unnecessary, or ineffective shoreline stabilization structures should be removed, and shoreline ecological functions should be restored using bulkhead alternatives.
 - (I) Where existing legally established bulkheads are substantially repaired or replaced, property owners should make reasonable efforts to incorporate bioengineering and fisheries habitat enhancement design elements to minimize adverse effects on shoreline functions.
- (c) Residential Use Policies.
- (1) New residential developments should be encouraged to protect, enhance, and restore shoreline ecological functions using low impact development stormwater management techniques and other conservation measures.
 - (2) New residential developments shall provide public access to the shoreline.
 - (3) New residential developments shall not be comprised of single-family or duplex dwelling-unit types.
- (d) Recreational Use Policies.
- (1) Public recreational development should be located on public lands to facilitate the public's ability to reach, touch, and enjoy the water's edge, to travel on the waters of the state, and to view the water and the shoreline.
 - (2) Public recreational development should incorporate public education regarding shoreline ecological functions and processes, the effect of human actions on the environment and the role of the public in shoreline management.
 - (3) Public recreational development should be located where existing infrastructure (utilities and roads) is adequate, or may be provided without significant damage to shoreline features commensurate with the number and concentration of anticipated users.
 - (4) Public recreational development should use low impact development stormwater management techniques and other methods that protect, enhance, and restore shoreline ecological functions where reasonable.
- (E) Transportation Use Policies.

1. New public transportation uses and facilities should be located outside of the shoreline jurisdiction unless alternative locations are infeasible or the transportation facility is required to serve water-dependent public uses.
2. When required, new transportation uses and facilities should be planned to fit the topographical characteristics of the shoreline and to minimize alterations to the shoreline environment.
- (3) When existing public transportation uses and facilities located within shoreline jurisdiction require maintenance or other improvements to address public health and safety, the maintenance/improvement should be designed and implemented to minimize additional impacts on the shoreline environment and consideration should be given to correcting past impacts caused by the transportation facility.
- (4) Public transportation development should use low impact development stormwater management techniques and other methods that protect, enhance, and restore shoreline ecological functions where reasonable.
- (5) Water-dependent transportation facilities such as ferry and cruise ship terminals should be encouraged.

(F) Utility Use Policies.

1. New public or private utilities should be located inland from the land/water interface, preferably outside of shoreline jurisdiction, unless:
 - (a) They have a water-dependent component such as a water intake or outfall; or
 - (b) Water crossings are unavoidable; or
 - (c) Other locations are infeasible; or
 - (d) They are required for authorized shoreline uses consistent with this Program.
2. Utilities should be located and designed to avoid public recreation and public access areas and significant natural, historic, archaeological or cultural resources.
- (3) Development of pipelines and cables, particularly those running roughly parallel to the shoreline, and development of facilities that may require periodic maintenance that would disrupt shoreline ecological functions, should be discouraged except where no other reasonable alternative exists.
- (4) When existing utilities located within shoreline jurisdiction require maintenance or other improvements to address public health and safety, the maintenance/improvement should be designed and implemented to minimize additional impacts on the shoreline environment and consideration should be given to correcting past impacts caused by the utility.
- (5) Public utility development should use low impact development stormwater management techniques and other methods that protect, enhance, and restore shoreline ecological functions where reasonable.

15.01.050 - Environment designation policies and regulations.

- (a) General. In order to plan and effectively manage shoreline resources and to provide a uniform basis for applying policies and use regulations within distinctively different shoreline areas, a system of categorizing shoreline areas is required by the Shoreline Management Act. Environmental designations are based on existing development patterns, physical capabilities and limitations, as well as community aspirations.
- (b) Shoreline Designation and Official Shoreline Map. In areas located upland of the ordinary high water mark, the Ruston shoreline is designated as "high intensity". In areas located waterward of the ordinary high water mark, the Ruston shoreline is designated as "aquatic". The shoreline jurisdiction is delineated on a map, hereby incorporated as a part of this Program that shall be known as the Official Shoreline Map.

The Official Shoreline Map is for planning purposes only. The map does not necessarily identify or depict the actual extent of shoreline jurisdiction or all associated wetlands. The lateral extent of the shoreline jurisdiction shall be determined on a case-by-case basis based on the location of the OHWM, floodway and/or the presence of associated wetlands. The landward extent so determined may extend beyond that depicted on the Official Shoreline Map.

Areas within the shoreline jurisdiction that are not mapped and/or designated are automatically assigned an "urban conservancy" designation until the shoreline can be re-designated through a master program amendment.

The official shoreline map is on file with the City Clerk, and a copy is also located in RMC 1(5)01.100.

(c) High Intensity Environment Standards.

- (1) Purpose. The purpose of the high intensity environment designation is to provide for commercial and recreational uses; high density residential uses in some locations; and public land uses while seeking opportunities for protection and restoration of ecological functions.
- (2) Designation Criteria. The high intensity designation is appropriate for areas that currently support or are planned for high intensity water-oriented uses including commercial, recreation, transportation or residential development.
- (3) Rationale. High intensity designated areas are zoned for commercial and multifamily residential uses. Existing and planned uses in the high intensity designation represent a variety of water-oriented and nonwater-oriented uses such as retail businesses, hotels, restaurants, recreational uses, marinas, and multifamily residential uses.
- (4) Management Policies—Uses.
 - (A) Give priority to water-oriented uses over nonwater-oriented uses. First priority should be given to water-dependent uses. Second priority should be given to water-related uses and third priority to water-enjoyment uses. Nonwater-oriented uses shall only be allowed if they are part of mixed use development where the primary use is (1) water dependent or (2) water related, or (3) in conjunction with a water-enjoyment use on sites where there is no access to water.
 - (B) Encourage uses that enhance ecological functions and/or enhance opportunities for the public use and enjoyment of the shoreline; new development shall not cause a net loss of shoreline ecological functions.
- (5) Management Policies—Design Elements.
 - (A) Ensure that, where applicable, improvements within this district are reviewed for compatibility and consistency with all standards codified within the zoning code, including, but not limited to, height, setbacks, outdoor lighting, signs, and landscaping and screening standards.
 - (B) Encourage designs that incorporate conservation and restoration elements, such as restoration of intertidal habitat, shoreline vegetation, and enhancement of public access.
- (6) Management Policies—Public Access.
 - (A) Each site shall plan for a public pedestrian walkway system along the high intensity waterfront utilizing a combination of natural beaches, pathways, piers, wharves, street ends, sidewalks, stairways, or other improvements. Each proposal for development shall provide continuous public access from the nearest public right-of-way and extending along the site's entire shoreline frontage which is developed in accordance with the shoreline public access use requirements located elsewhere in this Program.
 - (B) Each site shall provide designs that enhance pedestrian traffic without impeding vehicular traffic through the use of paving textures, fencing, landscaping, and signage that make a greater distinction between automobile traffic and pedestrian circulation systems.

(7) Development Regulations—Uses.

(A) Permitted Uses.

- (i) Commercial.
- (ii) Hotels.
- (iii) Advertising and signs which comply with Ruston's sign code (RMC 2(5)01.100), provided that only instructional signs as defined by RMC 2(5)01.100(d)(5)(P) may be allowed waterward of the OHWM. No signs shall be permitted waterward of any public access way which runs parallel to the shoreline, except incidental signs.
- (iv) Recreational Facilities.
- (v) Multifamily Residential Development.
- (vi) Scientific, Cultural and Educational Facilities.
- (vii) Water-dependent transportation facilities such as cruise terminals and public ferry terminals.
- (viii) Utilities in support of a water-dependent, water-related, or water-enjoyment use, or those which no reasonable alternative location exists.
- (ix) Boating Facilities.
- (x) Shoreline modifications such as boat launches, breakwaters, docks, piers, floats, filling and excavation, dredging, and various methods of shoreline stabilization described in this Program all subject to the regulations contained within RMC 15.01.060 and RMC 15.01.070.
- (xi) Ecological Restoration.
- (xii) Public Access.
- (xiii) Filling and grading which complies with RMC 15.01.070(B).

(B) Conditional Uses. A limited range of nonwater-oriented development, open to the general public, while not preferred, may also be authorized as a conditional use provided said development:

- (i) Conforms with the criteria set forth for conditional uses set forth in RMC 15.01.080;
- (ii) Is designed and located in a manner which capitalizes on shoreline views and is compatible with water-oriented uses;
- (iii) Makes provisions for the public access and enjoyment of the shoreline consistent with this Master Program; and
- (iv) Is part of a mixed-use development or the parcel is separated from the water. (See WAC 173-26-211(5)(d)(ii)(A)).

(C) Prohibited Uses.

- (i) Agriculture.
- (ii) Aquaculture.
- (iii) Forest practices.
- (iv) Industrial uses.
- (v) Mining.
- (vi) Mini-storage.
- (vii) Radio, television towers, and wireless communication facilities.

- (viii) Parking as a primary use.
 - (ix) Single-family residences.
- (8) Development Regulations—Setbacks.
 - (A) All structures shall be set back at least 50 feet from the OHWM to allow room for urban level high intensity public access and associated amenities and vegetation, except that:
 - (B) Developments consisting of water-dependent scientific, historical, cultural, or educational research uses, public access, water-oriented recreation and ecological restoration are not required to meet shoreline setback requirements, nor are piers, ramps, or docks.
- (9) Development Regulations—Height.
 - (A) No permit shall be issued pursuant to this chapter [Chapter 90.58 RCW] 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 a master program does not prohibit the same and then only when overriding considerations of public interest will be served.
- (10) Development Regulations—General Standards.
 - (A) All developments shall comply with applicable zoning standards found in RMC Title 25 such as, but not limited to, height, setbacks, lot coverage, outdoor lighting, signs, fences, landscaping and screening, and parking.
 - (B) All developments shall comply with any applicable Master Development Plan.
- (d) Aquatic Environment Standards.
 - (1) Purpose. The purpose of the aquatic environment designation is to protect, restore, and manage the unique characteristics and resources of the areas waterward of the ordinary high-water mark.
 - (2) Designation Criteria. The aquatic environment designation is appropriate for all areas within Ruston that are located waterward of the ordinary high water mark.
 - (3) Management Policies.
 - (A) Allow new over-water structures only for water-dependent uses, public access, or ecological restoration.
 - (B) The size of new over-water structures should be limited to the minimum necessary to support the structure's intended use.
 - (C) In order to reduce the impacts of shoreline development and increase effective use of water resources, multiple-use of over-water facilities should be encouraged.
 - (D) All developments and uses on navigable waters or their beds should be located and designed to minimize interference with surface navigation, to consider impacts to public views, and to allow for the safe, unobstructed passage of fish and wildlife, particularly those species dependent on migration.
 - (E) Uses that adversely impact the ecological functions of critical saltwater and freshwater habitats should not be allowed except where necessary to achieve the objectives of RCW 90.58.020, and then only when their impacts are mitigated according to the sequence described in WAC 173-26-201-(2)(e) as necessary to assure no net loss of ecological functions.
 - (F) Shoreline uses and modifications should be designed and managed to prevent degradation of water quality and alteration of natural hydrographic conditions.
 - (4) Development Regulations—Uses.
 - (A) Permitted Uses.

- (i) Signs which comply with Ruston's sign code (RMC 25.01.100), provided that only instructional signs as defined by RMC 25.01.100(d)(5)(P) may be allowed waterward of the OHWM. No signs shall be permitted waterward of any public accessway which runs parallel to the shoreline, except incidental signs.
 - (ii) Recreational facilities.
 - (iii) Water-dependent transportation facilities such as cruise terminals and public ferry terminals.
 - (iv) Shoreline modifications such as boat launches, docks, piers, floats, dredging, and various methods of shoreline stabilization described in this Program all subject to the regulations contained within RMC 15.01.060 and RMC 15.01.070.
 - (v) Ecological restoration.
 - (vi) Public access.
- (B) Prohibited Uses.
- (i) Aquaculture.
 - (ii) Industrial uses.
 - (iii) Residential development including floating homes.
 - (iv) Parking.
- (C) Conditional Uses.
- (i) Fill for any use except ecological restoration (see WAC 173-26-231(3)(C)).
 - (ii) Breakwaters (see WAC 173-26-231(3)(d)).
 - (iii) Utilities.

15.01.060 - General Shoreline Regulations.

The general regulations in this chapter shall apply to all new development and uses within Ruston's shoreline jurisdiction unless otherwise stated. These regulations shall only apply within the shoreline jurisdiction, and shall not apply to portions of lots extending further landward than the landward extent of shoreline jurisdiction. Additional regulations pertaining to specific uses and development activities are contained in RMC 15.01.070.

- (a) Archaeological, Historic and Cultural Resources Regulations.
 - (1) Whenever historic, cultural or archaeological sites or artifacts are inadvertently discovered during shoreline development, work on that portion of the development site shall be stopped immediately, the site secured and the discovery reported as soon as possible to the Shoreline Administrator. Upon notification of such find, the property owner shall notify the Washington State Department of Archaeology and Historic Preservation. Based upon the findings of the site investigation and consultation with the historic preservation staff of the Washington State Department of Archaeology and Historic Preservation, the Shoreline Administrator may require that an immediate site assessment be conducted or may allow stopped work to resume.
 - (2) Permits issued in areas with documented archaeological resources shall require a site inspection or evaluation by a professional archaeologist in coordination with affected Indian tribes.
- (b) Environmental Protection and Conservation Regulations
 - (1) Aquatic Weed Control and Noxious Weed Control. Aquatic weed control and noxious weed control may occur when the health and sustainability of native plant communities and

associated habitats are threatened or when a water dependent use is restricted by their presence. Control shall occur in conformance with applicable local, state and/or federal regulations.

- (2) Clearing and Grading. The amount of clearing and grading shall be limited to the minimum necessary to accommodate the allowed use/development. This minimum shall include clearing and grading necessary for landscaping and establishment of a vegetation enhancement area, if required or desired.
- (3) Light and Glare. Exterior lighting shall not shine directly onto the water. Exterior lighting fixtures shall include full cut-off devices (light shields) such that glare or direct illumination onto the lake is minimized. All lighting shall comply with Ruston's outdoor lighting standards as detailed in RMC 25.01.103.
- (4) Mitigation. All new proposals including new shoreline use or development shall mitigate adverse environmental impacts in accordance with this Program and other applicable regulations whether or not the use/development requires or is exempt from a shoreline substantial development permit. Mitigation measures shall be applied in the following sequence of steps listed in order of priority:
 - (A) Avoiding the impact altogether by not taking a certain action or parts of an action;
 - (B) Minimizing impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology or by taking affirmative steps to avoid or reduce impacts;
 - (C) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;
 - (D) Reducing or eliminating the impact over time by preservation and maintenance operations;
 - (E) Compensating for the impact by replacing, enhancing, or providing substitute resources or environments; and
 - (F) Monitoring the impact and the compensation projects and taking appropriate corrective measures.

In determining appropriate mitigation measures applicable to shoreline development, lower priority measures shall be applied only where higher priority measures are determined to be infeasible or inapplicable.

- (5) Unless specifically provided elsewhere within this SMP, over water structures are prohibited.
- (c) Public Access Regulations.
- (1) Physical and/or visual access shall be made available to the public through public parks, rights-of-way and other public lands.
 - (2) Development of public access facilities in, on or over the water shall be constructed using materials that allow light penetration and do not contaminate water. Facilities in, on or over the water shall be of nonreflective materials that are compatible in terms of color and texture with the surrounding area. The underside of over-water facilities shall incorporate reflective materials where necessary to reduce the effects of shadowing.
 - (3) Public access within the high intensity environment shall be at least 50 feet in width, with a surface capable of accommodating multimodal recreational traffic of a least 25 feet in width.
 - (4) Required public access shall include the preservation of shoreline views, the establishment of public access easements to and along the shoreline, enhancement of an adjacent street end or park, or other consideration commensurate with the degree of impact caused by the development.

- (5) Public access is not required if the applicant can demonstrate to the satisfaction of the Shoreline Administrator that constitutional and or statutory limitations would be violated by the provision of such access. Nor is public access required for individual single-family residences which are not part of a development planned for more than four parcels.
- (6) Alternatives to on-site, physical access to the shoreline may be approved if the applicant can demonstrate to the satisfaction of the Shoreline Administrator that one or more of the following conditions exist:
 - (A) Unavoidable health or safety hazards to the public exist which cannot be prevented by any practical means;
 - (B) Access is not feasible due to the configuration of existing parcels and structures, such that access areas are blocked in such a way that cannot be reasonably remedied by the proposed development;
 - (C) Inherent security requirements of the proposed development or use cannot be satisfied through the application of alternative design features or other solutions;
 - (D) The cost of providing on-site access, easement, or an alternative amenity is unreasonably disproportionate to the total long-term cost of the proposed development;
 - (E) Unacceptable environmental harm which cannot be mitigated, such as damage to spawning areas or nesting areas, will result from the public access; or
 - (F) Significant undue and unavoidable conflict between the proposed access and adjacent uses would occur and cannot be mitigated.

Provided further, that the applicant has first demonstrated and the Shoreline Administrator has determined that all reasonable alternatives have been exhausted, including, but not limited to:

 - (G) Regulating access by such means as limiting hours of use to daylight hours, or allowing public access to only a portion of the site.
 - (H) Designing separation of uses and activities, using such means as terracing, hedges, and landscaping.
- (7) When on-site public access is not required in the previous section, alternative shoreline access must result in an equal or greater public benefit. Alternatives may include but are not limited to:
 - (A) Publicly accessible rooftop decks.
 - (B) Off-site public access.
 - (C) A payment in lieu agreement with Ruston in accordance with RCW 82.20.020 (relating to fees associated with development).
- (8) Off-site public access, when required, must meet the same standards and requirements as on-site public access.
- (9) When required, public access sites shall be fully developed and available for public use at the time of occupancy or use of the development or activity, except where the decision maker determines an appropriate mechanism for delayed public access implementation is necessary for practical reasons. If on or over the water, development shall be constructed to minimize interference with physical access along the beach and views from surrounding properties to the shoreline and adjoining waters, including locating structures as far landward as feasible.
- (10) Where on-site physical access is required, the development shall dedicate, improve, and provide maintenance for a public access easement that provides area sufficient to ensure usable access to and along the shoreline for the general public.

- (11) Public access easements shall be designed to accommodate the anticipated intensity of use, generally ranging from a minimum ten-foot-wide easement when perpendicular to the shoreline, to a minimum 50-foot width when parallel with the shoreline. Where deemed necessary to protect environmental functions, the easement shall accommodate an area of native vegetation between the OHWM and the public access walkway/viewpoint. Public access easements shall be located within the shoreline setback. In instances where the public access easement is larger than the shoreline setback, the entire shoreline setback shall be contained within the public access easement.
- (12) Every public access provided in conjunction with an approved permit under this SMP shall be incorporated into a written public access easement agreement, which shall be drafted by the City Attorney, and the final version approved as to form by the City Attorney. Public access easement agreements shall provide that the property owner shall have the responsibility to operate, maintain, repair and reconstruct all public access amenities indefinitely for the benefit of the public. Public access easements and permit conditions shall be recorded against the property in the Pierce County Auditor's Office, and the existence of the public access easement agreement shall be indicated on the deed where applicable or on the face of a plat or short plat, showing the same as a condition running in perpetuity with the land. The City shall record the public access easement agreement with the Auditor's office at the time of permit approval.
- (13) 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 conspicuous locations at public access sites. Signs shall be designed to distinguish between public and private areas. In accordance with the regulations in this section, signs controlling or restricting public access may be approved as a condition of permit approval.
- (14) Future actions by the applicant or other parties shall not diminish the usefulness or value of the public access site.
- (15) Public access sites shall be connected directly to the nearest public area (e.g., street, public park, or adjoining public access easement). Where connections are not currently possible, the site shall be designed to accommodate logical future connections. In either case, the design shall take into consideration the priority placed on protecting physical access along the beach (i.e., boardwalk connections that interfere with physical access along the adjoining beach area are discouraged).
- (16) Public access sites shall be made barrier free for the physically disabled, where feasible, and designed consistent with the Americans with Disabilities Act.
- (17) Public access shall be designed to achieve no net loss of ecological functions. Where impacts are identified, mitigation shall be required.
- (18) Public access facilities shall look and feel welcoming to the public, and not appear as an intrusion into private property.
- (19) Natural elements such as logs, grass, shrubs, and elevation separations are encouraged as means to define the separation between public and private space.
- (20) Furniture used in public access areas shall be appropriate for the proposed level of development, and the character of the surrounding district.
- (21) Ruston may require the installation of benches; bicycle racks; pet waste, garbage and recycling receptacles; educational signage; and other street furniture at shoreline public access points commensurate with the degree of project impact. Where required:
 - (A) Benches shall be set back from a walkway or path so public access users will still have room to pass when the benches are in use. Benches may be built without backs and shall be at least four to five feet in length.
 - (B) Provisions for maintenance shall be required as a condition of permit approval.

- (C) Educational signage shall be used to identify unique natural features, maritime uses and historical landmarks.
- (d) Restoration Regulations.
 - (1) Ecological restoration projects shall be carried out in accordance with a Ruston-approved restoration plan, and in accordance with the policies and regulations of this Program.
 - (2) Voluntary enhancement and restoration of the shoreline not associated with any other development proposal is encouraged and should be accomplished according to a Ruston-approved plan for its design, implementation, maintenance, and monitoring. Restoration or enhancement should result in a net improvement to the shoreline functions.
 - (3) Restoration of native vegetation shall consist of a mixture of trees, shrubs and groundcover and be designed to improve habitat functions.
- (e) Water Quality, Stormwater, and Nonpoint Pollution Regulations.
 - (1) New shoreline uses and developments (and their related construction processes) shall incorporate all known, available, and reasonable methods of preventing, controlling, and treating stormwater to protect and maintain surface and ground water quantity and water quality in accordance this Program and all other applicable laws.
 - (2) Best management practices (BMPs) for controlling erosion and sedimentation and preventing pollutants from entering Commencement Bay shall be implemented for all new uses and developments (and their related construction processes).
 - (3) To avoid water quality degradation in the shoreline jurisdiction, new on-site sewage systems shall be located, designed, and maintained to meet all applicable water quality, utility, and health standards.
 - (4) New structures installed below OHWM or that regularly and frequently come in contact with water shall be constructed of Washington Department of Fish and Wildlife (WDFW)-approved materials.
 - (5) No construction upon, or modification to the shoreline shall be allowed which would jeopardize the integrity of the existing riprap armoring used to cap the ASARCO Superfund cleanup site along the shoreline, or which conflicts with the requirements of the U.S. Environmental Protection Agency Consent Decree, (or its amendments).

15.01.070 - Use and shoreline modification regulations.

These regulations apply to all new development and uses within Ruston's shoreline jurisdiction. The regulations shall only apply within the shoreline jurisdiction and shall not apply to portions of lots extending further landward than the landward extent of the shoreline jurisdiction as specified by RMC 15.01.050(a).

- (a) Dredging Regulations.
 - (1) Dredging may be permitted when necessary to support the following:
 - (A) Public sponsored ecological restoration or enhancement projects; or
 - (B) Ruston-approved restoration and mitigation projects that involve bulkhead removal and/or shoreline vegetation enhancement; or
 - (C) Bio-engineered shoreline stabilization projects, including bio-engineered shoreline stabilization associated with private residential developments.
 - (D) Construction of a public dock for public water-dependent recreational use, provided that the dredging is limited to the minimum needed to accommodate the public dock.

- (E) Construction of a publicly-accessible private dock for water-dependent transportation use, provided that the dredging is limited to the minimum needed to accommodate the dock and expected vessels.
 - (2) Dredging for any purpose other than listed in RMC 15.01.070 may be permitted with a conditional use permit.
 - (3) When permitted, dredging activities must comply with all of the following standards:
 - (A) Alternatives to dredging are infeasible; and
 - (B) The dredging is timed to minimize damage to shoreline ecological functions and aquatic life; and
 - (C) Unavoidable impacts of dredging are mitigated as required by this Program.
 - (4) Dredge material shall be disposed of in legally established upland locations away from the shoreline and shall be coordinated with appropriate agencies, unless the dredge material is utilized in conformance with the Puget Sound Dredged Material Management Program.
 - (5) Dredging for the purpose of obtaining fill materials is prohibited, except when associated with a habitat restoration project which limits the placement of fill materials waterward of the ordinary high water mark.
 - (6) Maintenance dredging of established navigation channels and basins is restricted to maintaining the previously dredged and/or existing authorized location depth and width.
- (b) Filling and Excavation Regulations.
- (1) All filling and excavation activities in the shoreline jurisdiction shall comply with the provisions of this Program and all other applicable Ruston and state requirements.
 - (2) Fill and excavation is allowed only in association with a permitted use. Where allowed, fill and excavation shall be the minimum necessary to accommodate the development.
 - (3) Development that involves fill or excavation within the shoreline jurisdiction shall obtain a shoreline substantial development permit unless exempt by WAC 173.27.040(2).
 - (4) Fill shall be permitted landward of the OHWM only where it is demonstrated that the proposed action will not result in ecological damage to water quality, fish, and/or wildlife habitat; or adversely alter natural drainage patterns.
 - (5) Filling waterward of the OHWM shall only be allowed when necessary to support one or more of the following:
 - (A) Public sponsored ecological restoration or enhancement projects;
 - (B) Ruston-approved restoration and mitigation projects that involve bulkhead removal, shoreline vegetation enhancement and/or shoreline restoration;
 - (C) Bio-engineered shoreline stabilization projects, including bio-engineered shoreline stabilization associated with private residential developments;
 - (D) Publically sponsored nonrestoration projects that provide public access or improve access to the shoreline for a substantial number of people;
 - (E) Construction of docks for public water-dependent recreational or transportation use, provided that the filling and/or excavation are limited to the minimum needed to accommodate the dock;
 - (F) When associated with a permitted or conditional use and as required by state or federal agencies.
 - (G) Fill waterward of the OHWM for any use other than ecological restoration shall require a shoreline conditional use permit.

- (6) Fill or excavation shall not be located where structural shore stabilization will be required to maintain materials placed or removed. Disturbed areas shall be immediately stabilized and re-vegetated, as applicable.
- (c) Boat Launches—Ramps and Rails Regulations.
- (1) Public launch ramps and rails associated with public recreational uses shall be allowed within Ruston's shorelines.
 - (2) A launch ramp or rail shall not be placed or extended to a depth of greater than the minimum depth necessary ~~eight feet~~ below the OHWM.
 - (3) Boat launches shall also include a public restroom and a fish cleaning facility.
- (d) Marinas, Piers, Docks, Floats and Mooring Buoy Regulations.
- (1) Piers, docks, floats and buoys shall be designed and constructed using WDFW-approved methods and materials.
 - (2) Marinas, piers, docks and floats shall provide public access from the nearest right-of-way or existing shoreline access to the most waterward point of the pier, dock, or floats which includes:
 - (A) A public fishing area designed for a minimum occupancy of ten users or one user for every two moorage spaces, whichever is greater. The public fishing area shall also include a fish cleaning facility.
 - (B) Two benches, or other permanently affixed seating for public use.
 - (3) Piers and docks shall only be allowed for water-dependent uses or public access ~~and~~ shall be the minimum size necessary for the intended use.
 - (4) All marinas shall include:
 - (A) Adequate publicly accessible transient moorage space for at least two 32-foot vessels. Said moorage shall be made available for intervals not exceeding four hours. The owner may charge a reasonable hourly rate for use of this moorage.
 - (B) At least ten percent of the total number of moorage slips shall be made available for transient moorage. Said moorage shall not be occupied by a single tenant, vessel or user for more than 14 days at a time.
 - (C) Adequate fire suppression and sewage pump-out facilities.
- (e) Shoreline Stabilization Regulations. This section describes the types of stabilization permitted on all shorelines in Ruston.
- (1) When allowed pursuant to this Program, shoreline stabilization and permitted alternatives, including new, expanded, or replacement bulkhead alternatives and bulkheads, must meet all of the following requirements:
 - (A) Shoreline stabilization shall be designed to be consistent with the U.S. Environmental Protection Agency (EPA) Consent Decree for the ASARCO Superfund Cleanup Site, (including any amendments), which is intended to prevent leaching of arsenic into the waters of Commencement Bay. In the event that any of the standards within this Program conflict with the consent decree, the requirements of the consent decree shall prevail.
 - (B) The impacts must be mitigated such that there is no net loss of shoreline ecological functions. This is achieved by maintaining the required vegetation enhancement area in a vegetated condition, or planting the shoreline vegetation enhancement area in accordance with this Program; and
 - (C) The size of shoreline stabilization structure shall be limited to the minimum necessary to protect the primary structure; and

- (D) The shoreline stabilization is designed by a state licensed professional geotechnical engineer and/or engineering geologist and constructed according to applicable state and federal laws; and
 - (E) The shoreline stabilization is designed and constructed to incorporate natural vegetation and habitat elements wherever reasonable, and constructed and maintained in a manner that does not degrade the water quality of affected waters; and
 - (F) No gabions, motor vehicles, appliances, structure demolition debris, or solid waste of any kind shall be used for shoreline stabilization. Any such objects that may be remnant from replaced shoreline stabilization must be removed from the shoreline and shoreline setback unless doing so would cause damage to the environment; and
 - (G) The shoreline stabilization on shores exposed to significant wave action shall be designed to dissipate wave energy and scouring.
- (2) Bulkhead alternatives and bioengineered shoreline stabilization (also known as bio-stabilization) are the preferred method for stabilizing shorelines and shall be permitted with proof of demonstrated need provided in a technical report prepared by a Washington State licensed engineer and/or a qualified biologist as appropriate. Such alternatives include large rocks, logs, revetments and other natural materials integrated with native vegetation to prevent erosion of land into Puget Sound.
- (3) New or expanded hard structural stabilization may be permitted only when bulkhead alternatives are determined to be infeasible or insufficient and when required:
- (A) To protect an existing structures from shoreline erosion caused by currents or waves (and not caused by normal sloughing, vegetation removal, or poor drainage) when there is a significant possibility that the primary structure will be damaged within three years as a result of shoreline erosion in the absence of armoring measures.
 - (B) For projects whose primary purpose is remediating hazardous substances pursuant to RCW 70.105.
 - (C) For stabilization on public land to facilitate public shoreline access for substantial numbers of people.
- (4) To comply with regulation RMC 15.01.070(e)(3) of this section, the property owner shall provide technical reports that:
- (A) Evaluate the need for structural shoreline stabilization; and
 - (B) Describe alternatives to structural approaches and analyze the environmental effects of each alternative. Geotechnical analysis shall address the necessity of bulkheads or other armoring by estimating time frames and rates of erosion and report on the urgency associated with the specific situation. The geotechnical reports and alternatives analysis shall be prepared by a Washington State licensed engineer, engineering geologist and/or a qualified biologist as appropriate.
- (5) When there is a need for an existing legally-established bulkhead to be replaced, it may be done with bulkhead alternatives or bio stabilization. An existing bulkhead or similar stabilization structure may only be replaced with a structure of similar dimension and location when bulkhead alternatives are demonstrated to be infeasible or inadequate to protect the primary residential structure and the following criteria are met:
- (A) There is a demonstrated need to protect structures from erosion caused by currents or waves and not caused by normal sloughing, vegetation removal, or poor drainage; and
 - (B) The replacement structure shall not encroach waterward of the OHWM or the existing stabilization structure. In such cases, the replacement structure shall abut the landward side of the existing shoreline stabilization structure.

- (6) Existing shoreline stabilization structures that are being replaced shall be removed unless removing the structure will cause more environmental harm than leaving it in place.
 - (7) An existing legally established bulkhead or similar hard shoreline stabilization structure may be repaired and maintained. If the repair or maintenance activity changes the location of the structure or alters any dimension of the structure by more than ten percent, it shall be treated as a new/replacement hard shoreline stabilization structure and the Shoreline Administrator may require mitigation in accordance with this Program.
- (f) Residential Use Regulations.
- (1) Multifamily Residential Standards:
 - (A) Parking. Required parking for residential uses is only allowed within the shoreline jurisdiction when it is located below grade.
 - (B) Height. No permit shall be issued pursuant to this chapter [Chapter 90.58 RCW] 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 a master program does not prohibit the same and then only when overriding consideration of public interest will be served.
 - (C) Setback. All residential structures shall be set back at least 50 feet from the OHWM.
 - (2) Multifamily residential projects shall provide public access along the shoreline.
- (g) Public Recreational Use Regulations.
- (1) Publicly-accessible recreational development on public land is a preferred shoreline use and is permitted when consistent with underlying zoning regulations, this Program, and the Act, including the goal to ensure no net loss of shoreline ecological functions.
 - (2) New publicly accessible recreational activities and facilities proposed within shoreline jurisdiction shall be water oriented, and shall provide physical and/or visual access to the shoreline.
 - (3) The following water-oriented public recreational structures are permitted waterward of the shoreline setback and building setback:
 - (A) Publicly-accessible docks and/or floats allowed pursuant to the requirements of this Program.
 - (B) Publicly-accessible shelters and similar facilities for water enjoyment uses provided that such structures are not located over water and that no structure exceeds 20 feet above existing average grade level.
 - (4) Nonwater-oriented public recreational development, including parking, restrooms and similar facilities, shall be setback at least 50 feet landward of the OHWM where feasible.
 - (5) Public recreational developments shall provide for public nonmotorized connectivity between existing public roads, trails and said development on the shoreline (e.g., pedestrian and/or bicycle paths), unless such access is infeasible due to public health and safety considerations.
 - (6) Public recreational developments shall include landscaping that uses native, self-sustaining vegetation.
- (h) Transportation Regulations. The following regulations for transportation use shall apply to any use or development where transportation infrastructure is, or is proposed to be, a primary land use, including new or expanded roadways, trails, non-motorized facilities and parking facilities.

- (1) New transportation development shall be carried out in a manner that maintains or improves water quality for receiving waters through implementation of state and local stormwater regulations.
 - (2) New transportation facilities and improvements to existing transportation facilities, not including trails, shall be setback at least 50 feet from the OHWM, unless there is no feasible alternative.
 - (3) New roads shall be developed to minimize impacts to surface waters and new culverts shall meet applicable local and state standards.
 - (4) New transportation facilities shall be located and designed to preclude the need for shoreline stabilization where reasonable.
 - (5) Ferry and cruise ship terminals shall meet all the requirements of RMC 15.01.070.
 - (6) Limited food and retail service may be allowed as an accessory use within the waiting area of a publicly or privately owned and operated ferry or cruise ship terminal. Said facilities shall be limited in size to serve passengers and employees.
 - (7) Parking within the shoreline jurisdictions shall be limited to parking facilities that directly serve a permitted shoreline use, such as waterfront regional trails, including on-street parking. Parking as a primary use shall be prohibited.
 - (8) Parking facilities shall be located and designed to minimize adverse environmental impacts including, but not limited to, the following:
 - (A) Stormwater runoff; and
 - (B) Water quality and shoreline habitat; and
 - (C) Visual qualities; and
 - (D) Public access.
 - (9) Parking is prohibited in, on or over water.
- (i) Utilities Regulations.
- (1) Utility regulations shall apply to any use or development where utility infrastructure is required to support the primary land use. Utilities as a primary use are prohibited.
 - (2) Utility facilities shall provide for multiple use of sites and rights-of-way (i.e., trail corridors along underground utility rights-of-way), except in instances where multiple use would unduly interfere with utility operations, endanger public health and safety, or create a significant and disproportionate liability for the owner.
 - (3) When reasonable, new utility lines shall use existing rights-of-way and shall avoid duplication and or construction of new or parallel corridors in all shoreline jurisdictions.
 - (4) Conveyance utilities shall be placed underground or alongside or under bridges except where the presence of bedrock or other obstructions make such placement infeasible. Stormwater conveyance facilities may be open ditch where appropriate and beneficial to water quality.
 - (5) New transmission and distribution facilities shall avoid shoreline setbacks and shoreline jurisdiction wherever possible. Otherwise, such facilities shall only cross areas of shoreline jurisdiction by the shortest, most direct route reasonable, unless such route would cause significant environmental damage.
 - (6) Utility developments shall be located and designed so as to avoid or minimize the need for current or future structural shoreline stabilization.
 - (7) All underwater pipelines transporting liquids intrinsically harmful to aquatic life or potentially injurious to water quality are prohibited, except in situations where no other

reasonable alternative exists. In those limited instances when permitted, automatic shut-off valves shall be provided on both sides of the water body.

- (8) Surface water management facilities, such as an energy dissipater and associated pipes, are allowed in the shoreline setbacks only if the applicant demonstrates, to the satisfaction of the Shoreline Administrator, that:
 - (A) No reasonable alternative exists; and
 - (B) Shoreline functions are not adversely affected or are appropriately mitigated.
- (9) Clearing of vegetation for the installation or maintenance of utilities shall be minimized and disturbed areas shall be restored following project completion.

15.01.080 - Permit criteria and administrative provisions.

(a) Permits—General Regulations.

- (1) To be authorized under this Program, all uses and developments shall be planned and carried out in a manner that is consistent with the SMA, the RMC and this Program regardless of whether a shoreline substantial development permit, statement of exemption, shoreline variance, or shoreline conditional use permit is required.
- (2) Ruston shall not issue any permit for development within the shoreline jurisdiction until approval has been granted pursuant to this Program.
- (3) When a development or use is proposed that does not comply with the bulk, dimensional and/or performance standards of this Program, such development or use may only be authorized by approval of a state-issued shoreline variance even if the development or use does not require a substantial development permit (WAC 173-27-040(l)(a)).
- (4) A new use or development that is unlisted or listed as a "conditional use" pursuant to this Program must obtain a conditional use permit even if the development or use does not require a substantial development permit.
- (5) Issuance of a shoreline substantial development permit, shoreline variance or shoreline conditional use permit does not constitute approval pursuant to any other federal, state or Ruston laws or regulations.
- (6) A complete application for substantial development permits, shoreline conditional use permits, and shoreline variances shall consist of the following materials, and be submitted to the Shoreline Administrator for review:
 - (A) A completed project application form signed by the property owner(s) of the subject property or by a representative authorized to do so by written instrument executed by the owner(s) and filed with the application;
 - (B) A written description of the proposal, (which also addresses the criteria for variance approval when applicable);
 - (C) A property and/or legal description of the site;
 - (D) A site plan drawn to scale which includes:
 - (i) Site boundary, extending from the street frontage (as applicable) to the outer harbor line, all state lease lands (existing and proposed), structures on adjacent properties from OHW to the outer harbor line, tideland leases and ownerships, and harbor line lease areas on adjacent properties;
 - (ii) Property dimensions in the vicinity of project;
 - (iii) Ordinary high water mark (OHWM);
 - (iv) Typical cross-section or sections showing existing ground elevation, proposed ground elevation, height of existing structures and height of proposed structures;

- (v) Where appropriate, proposed land contours using five-foot intervals in water area and ten-foot intervals on areas landward of ordinary high water mark, if development involves grading, cutting, filling, or other alteration of land contours;
 - (vi) Show dimensions and location of existing structures which will be maintained;
 - (vii) Show dimensions and locations of proposed structures, parking and landscaping; and proposed and existing shoreline public access easements;
 - (viii) Identify ~~S~~ source, composition and volume of any fill materials;
 - (ix) Identify ~~C~~ composition and volume of any extracted materials, and identify proposed disposal area;
 - (x) Location of proposed utilities, such as sewer, septic tanks and drain fields, water, gas and electricity, and sewage pump-out facilities if being installed;
 - (xi) Shoreline designation according to this Master Program;
- (E) A landscape plan drawn to scale which includes parking and vehicle use areas; driveways and walkways; buildings and structures, both existing and proposed; all proposed new landscaping; all existing landscaping to be retained; and schematic irrigation plans;
 - (F) A vicinity map;
 - (G) A brief narrative description of the general nature of the improvements and land uses within 1,000 feet in all directions from the development site;
 - (H) The appropriate review fee as determined by the Ruston City Council.
- (b) Permits—Substantial Development.
- (1) Substantial development as defined by RCW 90.58.030 shall not be undertaken by any person on the shorelines of the state without first obtaining a substantial development permit from the Shoreline Administrator.
 - (2) The City Hearing Examiner may grant a substantial development permit only when the development proposed is consistent with the policies and procedures of RCW 90.58; the provisions of WAC 173-27; and this Program. The Shoreline Administrator shall provide the City Hearing Examiner with an analysis of the proposal and a recommendation for denial, approval, or approval with conditions.
 - (3) Substantial development permits require a public hearing and shall be processed as described in RMC Title 19 Administration of Development Regulations, except that:
 - A. Permit review time for projects on a state highway. Pursuant to RCW 47.01.485, the Legislature established a target of 90 days review time for local governments.
 - B. Optional process allowing construction to commence twenty-one days after date of filing. Pursuant to RCW 90.58.140, Washington State Department of Transportation projects that address significant public safety risks may begin twenty-one days after the date of filing if all components of the project will achieve no net loss of shoreline ecological functions.
- (c) Permits—Exemptions from a Substantial Development Permit.
- (1) Uses and developments that are not considered substantial developments shall not require a substantial development permit but shall conform to the policies and regulations of this Program.
 - (2) 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.
 - (3) Exemptions shall be construed narrowly. Only those developments that meet the precise terms of one or more of the listed exemptions may be granted exemptions from the substantial development permit process.

- (4) The burden of proof that a development or use is exempt from a substantial development permit is on the applicant or property owner proposing the use or development action.
 - ~~(5) The holder of a certification from the Governor pursuant to RCW 80.50 shall not be required to obtain a substantial development permit under this Program.~~
- (d) Permits—Statements of Exemption.
- (1) Whenever a proposed action falls within the exemption criteria of WAC 173-27-040, a request for a statement of exemption shall be submitted to the Shoreline Administrator by the property owner prior to commencing the action.
 - (2) Requests for statements of exemption shall be processed by the Shoreline Administrator as an administrative decision consistent with RMC 19.01.011, and the review and approval criteria set forth in WAC 173-27-040, ~~WAC 173-27-045~~, and WAC 173-27-050.
 - (3) The Shoreline Administrator's decision shall be sent to the applicant and to all real property owners within 300 feet of the subject site.
- (e) Permits—Shoreline Variances.
- (1) The City Hearing Examiner is authorized to grant a shoreline variance from the performance standards of this Program only when all of the criteria enumerated in WAC 173-27-170 are met. The Shoreline Administrator shall process shoreline variance applications in accordance with RMC Title 19 Administration of Development Regulations.
 - (2) The purpose of a variance is to grant relief to specific bulk or dimensional requirements set forth in this Program where there are extraordinary or unique circumstances relating to the property such that the strict implementation of this Program would impose unnecessary hardships on the applicant/property owner or thwart the policies of this Program.
 - (3) In the granting of all shoreline variances, consideration shall be given to the cumulative environmental impact of additional requests for like actions in the area. For example, if variances were granted to other developments in the area where similar circumstances exist, the total of the variances should also remain consistent with the policies of this Program and should not produce significant adverse effects to the shoreline ecological functions or other users.
 - (4) A variance from Ruston development code requirements shall not be construed to mean a shoreline variance from SMP use regulations and vice versa.
 - (5) Variances may not be used to permit a use or development that is specifically prohibited.
- (f) Permits—Conditional Use.
- (1) The City Hearing Examiner is authorized to issue shoreline conditional use permits only when all the criteria enumerated in WAC 173-27-160 are met. The Shoreline Administrator shall process shoreline conditional use permit applications in accordance with RMC Title 19 Administration of Development Regulations.
 - (2) The burden of proving that a proposed shoreline conditional use meets the criteria in WAC 173-27-160 shall be on the applicant. Absence of such proof shall be grounds for denial of the application.
 - (3) The City Hearing Examiner is authorized to impose conditions and standards to enable a proposed shoreline conditional use to satisfy the conditional use criteria.
- (g) Administration—General Standards.
- (1) Unless otherwise stated, this Program shall be administered according to the criteria in RMC Title 19, RCW 90.58 and WAC 173-2(7).

- (2) The Shoreline Administrator shall consult with the Department of Ecology prior to issuing any formal written interpretations, to ensure consistency with the purpose and intent of Chapter 90.58 RCW.
 - (3) The Shoreline Administrator shall document all permit decisions and shoreline exemptions in order to periodically evaluate the cumulative effects of authorized development on shoreline conditions.
- (h) Permit Process—Land Use Decisions.
- (1) Shoreline substantial development permits, statements of exemption, shoreline variances and shoreline conditional use permits shall be subject to all of the applicable requirements of this Program, RCW 90.58 and RMC Title 19.
 - (2) All permit decisions whether approval, conditional approval or denial shall be filed with the Department of Ecology as described in WAC 173-27-130.
- (i) Permit Process—Appeals.
- (1) Appeals of substantial development permits, variances, and conditional uses are considered by the Shoreline Hearings Board and shall be governed by the provisions of RCW 90.58.180.
 - (2) The effective date of the City's decision shall be the date of filing with the Department of Ecology as defined in RCW 90.58.140.
- (j) Nonconforming Use and Development—Alteration and Reconstruction.
- (1) Nonconforming Structures.
 - (A) ~~Reconstruction, replacement, or expansion of existing, legally established nonconforming structure is allowed provided that the addition or reconstruction does not increase the degree of nonconformity. Structures that were legally established and are used for a conforming use but are nonconforming with regard to setbacks, buffers or yards; area; bulk; height or density may continue as legal nonconforming structures and may be maintained and repaired.~~
 - (B) ~~Replacement may be allowed in a different nonconforming location if a determination is made by the City that the new location results in less impact to shoreline functions than replacement in the existing footprint. Nonconforming structures may be enlarged or expanded provided that said enlargement meets the applicable provisions of the master program. In the absence of other more specific regulations, proposed expansion shall not increase the extent of nonconformity by further encroaching upon or extending into areas where construction would not be allowed for new structures, unless a shoreline variance permit is obtained.~~
 - (C) ~~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.~~
 - (D) ~~A structure for which a variance has been issued shall be considered a legal nonconforming structure and the requirements of this section shall apply as they apply to preexisting nonconformities.~~
 - (E) ~~In the absence of other more specific regulations, a structure which is being 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:~~
 - (i) ~~No reasonable alternative conforming use is practical; and~~

(ii) 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 preexisting 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 a hazard.

(F) A nonconforming structure which is moved any distance must be brought as closely as practicable into conformance with the applicable master program and the act.

(G) If a nonconforming development is damaged to an extent not exceeding seventy-five percent of the replacement cost of the original development, it may be reconstructed to those configurations existing immediately prior to the time the development was damaged, provided that application is made for the permits necessary to restore the development within two years of the date the damage occurred.

(2) Nonconforming Uses.

(A) ~~Uses that were legally established prior to the adoption or amendment of this Program and are nonconforming with regard to the use regulations of this Program may continue as legal nonconforming uses. Uses that were legally established and are nonconforming with regard to the use regulations of the master program may continue as legal nonconforming uses.~~

(B) ~~An existing use designated as a conditional use that lawfully existed prior to the adoption or amendment of this Program and which has not obtained a conditional use permit shall be considered a legal nonconforming use and may be continued subject to the provisions of this section without obtaining a conditional use permit. In the absence of other more specific regulations in the master program, such uses shall not be enlarged or expanded, except upon approval of a conditional use permit.~~

(C) ~~Nonconforming uses which are discontinued shall be regulated in accordance with RMC 25.04.120. If a nonconforming use is discontinued for twelve consecutive months or for twelve months during any two-year period, the nonconforming rights shall expire and any subsequent use shall be conforming unless re-establishment of the use is authorized through a conditional use permit which must be applied for within the two-year period. Water-dependent uses should not be considered discontinued when they are inactive due to dormancy, or where the use includes phased or rotational operations as part of typical operations. A use authorized pursuant to subsection (1)(E) of this section shall be considered a conforming use for purposes of this section.~~

(3) Nonconforming Lot.

~~A nonconforming lot may be developed if permitted by other land use regulations of the local government and so long as such development conforms to all other requirements of the applicable master program and the act.~~

(k) Enforcement, Violations and Penalties. The Shoreline Administrator is authorized to enforce the provisions of the Program, including any rules and regulations promulgated thereunder, pursuant to the enforcement provisions of RMC 25.03.

(l) Initiation of Development. Development pursuant to a shoreline substantial development permit, shoreline variance, or shoreline conditional use shall not begin and shall not be authorized until 21 days after the date that the shoreline substantial development permit, shoreline variance, or shoreline conditional use permit has been filed with the Department of Ecology, or until all appeal proceedings before the Shoreline Hearings Board have terminated.

(m) Filing of Permit.

~~After all local permit administrative appeals or reconsideration periods are complete and the permit documents are amended to incorporate any resulting changes, Ruston will mail the permit using return receipt requested mail to the Department of Ecology regional office and the Office of~~

the Attorney General. Projects that require both Conditional Use Permits and or Variances shall be mailed simultaneously with any Substantial Development Permits for the project.

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

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

a. For projects that only require a Substantial Development Permit: the date that Ecology receives the Ruston decision.

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

c. For SDPs simultaneously mailed with a CUP or Variance to Ecology: the date that Ecology's decision on the CUP or Variance is transmitted to the applicant and Ruston.

(n) Permit Revisions.

(1) A permit revision is required whenever the applicant/property owner proposes substantive changes to the design, terms or conditions of a use or development from those as approved in the existing and approved permit. Changes are substantive if they materially alter the project in a manner that relates to its conformance to the terms and conditions of the existing and approved permit, this Program or the Act. Changes that are not substantive in effect do not require a permit revision.

(2) An application for a revision to a shoreline permit shall be submitted to the Shoreline Administrator. The application shall include all the materials for a complete application as described in RMC 15.01.080(A)(6) above. The Shoreline Administrator shall review and process the request in accordance with the requirements of RMC Title 19 and WAC 173-27-100.

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

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

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

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

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

(5) Projects authorized through the Energy Facility Site Evaluation Council process, pursuant to chapter 80.58 RCW.

15.01.090 - Master Program review and amendments.

(a) Master Program Review. This Master Program shall be periodically reviewed and adjustments shall be made as are necessary to reflect changing local circumstances, new information or improved data, and changes in state statutes and regulations. This review process shall be consistent with WAC 173-26 requirements and shall include a local citizen involvement effort and public hearing to obtain the views and comments of the public. The City of Ruston will conduct the periodic review process consistent with requirements of RCW 90.58.080 and WAC 173-26-090.

(b) Amendments to Master Program.

- (1) Any of the provisions of this Master Program may be amended as provided for in RCW 90.58.120 and 90.58.200 and Chapter 173-26 WAC. Amendments or revision to the Master Program, as provided by law, do not become effective until approved by the Washington State Department of Ecology.
- (2) Proposals for shoreline environment re-designation (i.e., amendments to the shoreline maps and descriptions), must demonstrate consistency with the criteria set forth in WAC 173-26 and RMC 15.01.050.

15.01.100 – Moratoria Authority and Requirements

(a) Ruston has authority to adopting a moratorium control or other interim control on development under RCW 90.58.590

(b) Before adopting the moratorium must:

(1) Hold a public hearing on the moratorium or control;

(2) Adopt detailed findings of fact that include, but are not limited to justifications for the proposed or adopted actions and explanations of the desired and likely outcomes;

(3) Notify the department of Ecology of the moratorium or control immediately after its adoption. The notification must specify the time, place, and date of any public hearing.

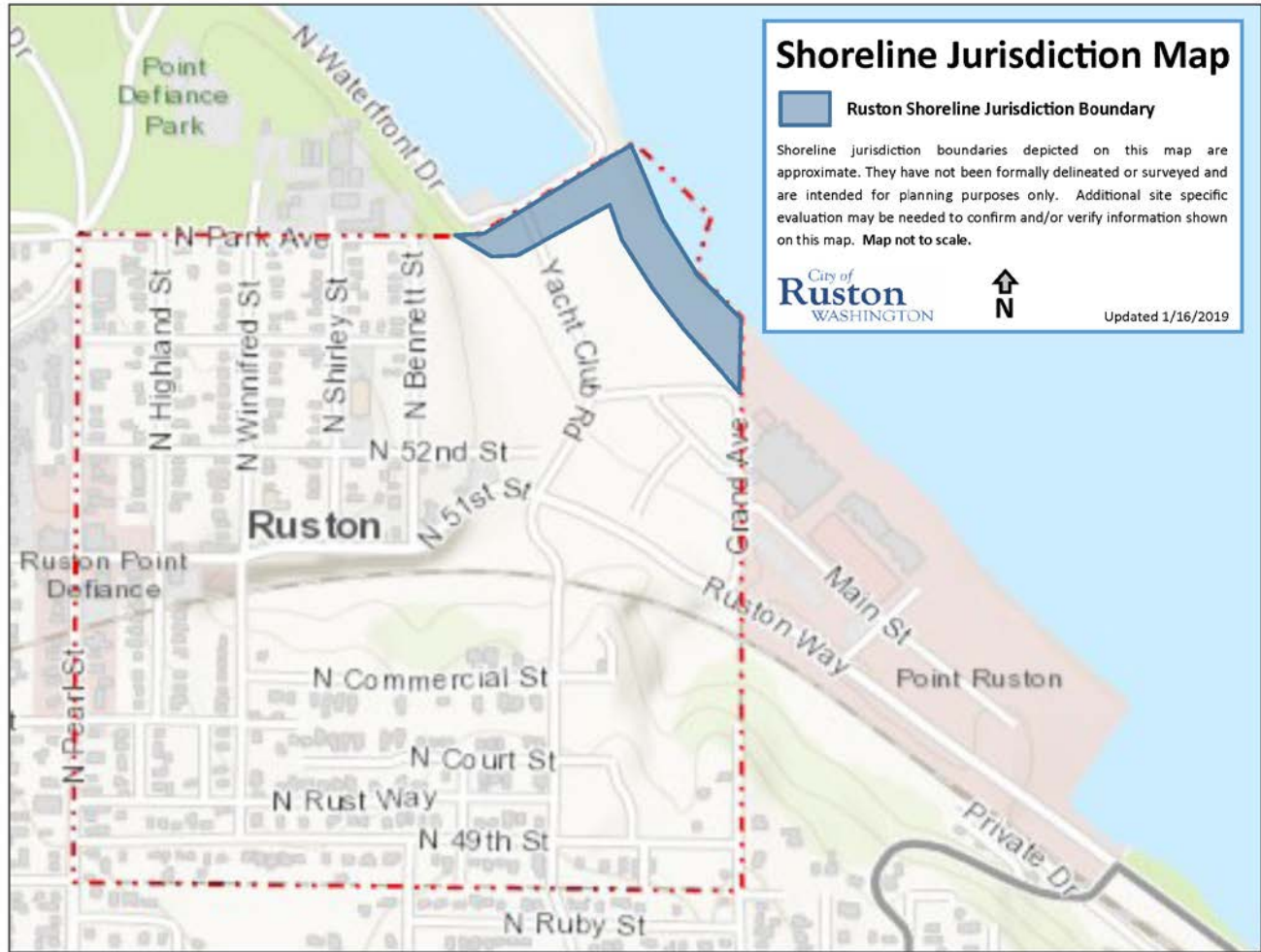
(4) The public hearing must be held within sixty days of the adoption of the moratorium or control.

(c) A moratorium or control adopted under this section may be effective for up to six months if a detailed work plan for remedying the issues and circumstances necessitating the moratorium or control is developed and made available for public review.

(d) A moratorium or control may be renewed for one or more six-month periods if Ruston complies with the requirements in subsection (2) above.

15.01.100 - Shoreline jurisdiction map.

Note to codifier: The following map has been updated and supersedes the existing map.





Shoreline Master Program Periodic Review Checklist: **Analysis and Recommendations**

Last Updated: **March 13, 2019**

Summary:

In order to provide guidance to local governments as to which updates to the Washington Advisory Code (WAC) or the Revised Code of Washington (RCW) might be applicable to a particular jurisdiction, the Department of Ecology (Ecology) provided a comprehensive checklist of changes to assist jurisdictions with their Shoreline Master Program (SMP) periodic review. After having reviewed Ecology's checklist Ruston's staff have determined which items were applicable, and which ones were not, and then drafted proposed updates to Ruston's SMP language as needed. The checklist was then provided to Ecology for their review and comment, and was also reviewed by the Planning Commission at their work study session of December 12, 2018. Since then, staff has updated the Draft SMP Edits document to reflect the requested changes.

Please note that the draft language associated with the proposed changes described below is highlighted in the document titled "**Draft SMP Edits**" with deleted language shown in **strike-out** and proposed language shown **underlined**.

March 13, 2019: Revisions Incorporated from Ecology Comments

Ecology Comment Regarding Duplicative WAC Reference RMC 15.01.080(d)(2).

What is the proposed change?

In Ecology's comments on the final draft, (received March 13, 2019), it was requested that a reference to WAC 173-27-045 be deleted as it is unnecessary since a reference is already provided in RMC 15.01.080(o). This revision has been completed as requested.

Where is the change?

Draft language is highlighted in the attached *Draft SMP Edits* document at RMC 15.01.080(d)(2).

January 16, 2019: Revisions Included in Public Hearing Draft

Planning Commission Comment Regarding Boat Ramp Depths RMC 15.01.070(c)(2).

What is the proposed change?

At the December 12, 2018 Planning Commission work study session, discussion occurred regarding how far below the ordinary high water mark boat ramps should be allowed to be constructed. Since the current SMP allows depths of up to 8 feet, which was thought to be too shallow, a suggestion to allow deeper construction of up to 12 feet was made. Staff followed up with the Department of Ecology for a recommendation, which was to delete the reference to a specific depth and instead use the phrase “the minimum necessary”. The draft SMP edits document has been updated to reflect the recommended change.

Where is the change?

Draft language is highlighted in the attached *Draft SMP Edits* document at RMC 15.01.070(c)(2).

Planning Commission Request to Update the SMP Shoreline Jurisdiction Map 15.01.100.

What is the proposed change?

At the December 12, 2018 Planning Commission work study session, it was requested that the SMP Shoreline Jurisdiction Map be updated to remove the outdated aerial photo background and replace it. As requested, staff updated the map and replaced the aerial photo with a standard street view map background instead.

Where is the change?

An updated map has been added in the attached *Draft SMP Edits* document at RMC 15.01.100.

Ecology Draft SMP Edits Comment #1 – Governor’s Exemption

What is the proposed change?

Ecology staff recommends deletion of 15.01.080(c)(5), which provides exemption from substantial development permits for a project when specifically provided for by the Governor. The draft SMP edits document has been updated to reflect the recommended change.

Where is the change?

Draft language is highlighted in the attached *Draft SMP Edits* document at RMC 15.01.080(c)(5).

Ecology Draft SMP Edits Comment #2 – ADA Retrofitting

What is the proposed change?

Ecology staff recommends deletion of 15.01.080(o)(6), because this provision is an exemption from the requirement for an SDP but not from review under the SMP and the SMA. Since the ADA retrofitting exemption is already addressed in the Ruston SMP by citation to WAC 173-27-

040 in 15.05.080(d)(1), this language is not necessary. The draft SMP edits document has been updated to reflect the recommended change.

Where is the change?

Draft language that was originally included in the December 12, 2018 draft SMP edits has been removed and is no longer located at RMC 15.01.080(o)(6).

December 12, 2018: Analysis and Recommendations (Previously Reviewed by Planning Commission)

SMP Periodic Review Checklist Item 2017(a).

What's required?

The Washington State Office of Financial Management (OFM) adjusted the cost threshold for substantial development permits to \$7,047. Cities that include specific cost thresholds in their code need to update to reflect the updated amount.

Is it applicable to Ruston?

No. Ruston's SMP does not provide a specific cost threshold for exempt development, rather it references RCW 90.58.030, so an update is not required.

Where is the change?

No change required.

SMP Periodic Review Checklist Item 2017(b).

What's required?

Ecology amended rules to clarify that the definition of "development" does not include dismantling or removing structures.

Is it applicable to Ruston?

Yes. Since Ruston's SMP definition of "development" does not address dismantling or removing structures, an update is required.

Where is the change?

Draft language is highlighted in the attached *Draft SMP Edits* document at RMC 15.01.020.

SMP Periodic Review Checklist Item 2017(c).

What's required?

Ecology adopted rules that clarify exceptions to local review under the SMA. The rule clarifies that requirements to obtain a substantial development permit, conditional use permit, variance,

letter of exemption, or other review conducted by local government to implement the SMA do not apply to:

- Remedial hazardous substance cleanup actions;
- Boatyard improvements to meet NPDES requirements; and
- Certain WSDOT maintenance and safety projects and activities.

Is it applicable to Ruston?

Yes. Updates to SMP's to include revised exception language is required state-wide.

Where is the change?

Draft language is highlighted in the attached *Draft SMP Edits* document at RMC 15.01.080(o).

SMP Periodic Review Checklist Item 2017(d).

What's required?

Ecology amended rules that clarify permit filing procedures consistent with a 2011 State statute. Amendments to all SMP's state-wide are required to reflect the new permit filing procedure.

Is it applicable to Ruston?

Yes.

Where is the change?

Draft language is highlighted in the attached *Draft SMP Edits* document at RMC 15.01.080(m).

SMP Periodic Review Checklist Item 2017(e).

What's required?

Ecology amended forestry use regulations to clarify that forest practices that only involves timber cutting are not SMA "developments" and do not require Substantial Development Permits.

Is it applicable to Ruston?

No. Ruston's does not have, nor does it anticipate, substantial forestry activities along its shorelines. Language in the State SMP is adequate without modification to Ruston's SMP.

Where is the change?

No change required.

SMP Periodic Review Checklist Item 2017(f).

What's required?

Ecology amended a permit rule in WAC 173-22-070 that addressed lands within federal boundaries to clarify that areas and uses in those areas that are under exclusive federal jurisdiction as established through federal or state statutes are not subject to the jurisdiction of

the SMA. Although the ASARCO Superfund cleanup site is within federal jurisdiction while cleanup is ongoing, according to a discussion with Ecology staff, the site is not permanently under federal jurisdiction and therefore is not subject to this change.

Is it applicable to Ruston?

No. Ecology staff have determined that the ASARCO Superfund site does not fall within their definition of “lands within federal boundaries”.

Where is the change?

No change required.

SMP Periodic Review Checklist Item 2017(g).

What’s required?

Ecology clarified “default” provisions for nonconforming uses and development. Ruston’s existing language is similar but will need to be updated.

Is it applicable to Ruston?

Yes.

Where is the change?

Draft language is highlighted in the attached *Draft SMP Edits* document at RMC 15.01.020 (Definitions), and RMC 15.01.080(j), (Nonconforming Use and Development)

SMP Periodic Review Checklist Item 2017(h).

What’s required?

Ecology adopted rule amendments to clarify the scope and process for conducting periodic reviews of local SMP’s.

Is it applicable to Ruston?

Yes. Ruston’s SMP language is similar but in need of updating.

Where is the change?

Draft language is highlighted in the attached *Draft SMP Edits* document at RMC 15.01.090

SMP Periodic Review Checklist Item 2017(i).

What’s required?

Ecology adopted Shoreline Management Act (SMA) rule amendments creating an optional SMP amendment process that allows for a shared local/state public comment period. Since the process change affects how cities go about amending their SMP’s, the only requirement is that city staff understand the change.

Is it applicable to Ruston?

Yes, it's applicable, but no change is required. Although it was necessary for Ruston's staff to understand the implications of the alternative amendment process described in RCW 173-26-104, it is not necessary to amend Ruston's SMP.

Where is the change?

No change required.

SMP Periodic Review Checklist Item 2017(j).

What's required?

Ecology made a few minor amendments to WAC 173-26-110, the rule that describes what local governments provide to Ecology for final review of SMP amendments. The rule clarifies that submittals may be in digital form, and deleted the requirement to send two paper copies. It clarified that the submittal should include a summary of amendments made in response to public comments. It also clarified that local governments would submit their final periodic review checklist when taking action on the periodic review.

Is it applicable to Ruston?

Yes, it's applicable, but no change is required. Although it was necessary for Ruston's staff to understand the implications of the new submittal standards, it is not necessary to amend Ruston's SMP.

Where is the change?

No change required.

SMP Periodic Review Checklist Item 2016(a).

What's required?

The Legislature created a new shoreline permit exemption for retrofitting existing structures to comply with the Americans with Disabilities Act.

Is it applicable to Ruston?

Yes.

Where is the change?

Draft language is highlighted in the attached *Draft SMP Edits* document at RMC 15.01.080(o)(6)

SMP Periodic Review Checklist Item 2016(b).

What's required?

Ecology updated wetlands critical areas guidance including implementation guidance for the 2014 wetlands rating system.

Is it applicable to Ruston?

Yes, but since Ruston's Critical Areas Ordinance (CAO), (RMC 15.02) already addresses critical areas wetland buffers, amendments to the SMP are not necessary, however, in researching this checklist item it was discovered that the Ruston Zoning Code (RMC 25.01) includes language that should be removed as it is no longer necessary given the specificity of the CAO.

Where is the change?

No change to the SMP is required. However, the zoning code will need to be amended to repeal RMC 25.01.070, (Natural Systems), under a separate code amendment process.

SMP Periodic Review Checklist Item 2015(a).

What's required?

The checklist requires an update to local SMP's to reflect that through amendments to RCW 47.01.485, RCW 90.58.140, and WAC 173-27-125, the Legislature adopted a 90-day target for local review of Washington State Department of Transportation (WSDOT) projects.

Is it applicable to Ruston?

Yes. Ruston's SMP references state codes.

Where is the change?

Draft language is highlighted in the attached *Draft SMP Edits* document at RMC 15.01.080(b)(3)

SMP Periodic Review Checklist Item 2014(a).

What's required?

The checklist requires an update to local SMP's to reflect that the Legislature raised the cost threshold for requiring a Substantial Development Permit (SDP) for replacement docks on lakes and rivers to \$20,000 (from \$10,000).

Is it applicable to Ruston?

No. Ruston's shorelines do not contain lakes or rivers.

Where is the change?

No change required.

SMP Periodic Review Checklist Item 2014(b).

What's required?

The checklist requires an update to local SMP's to reflect that the Legislature created a new definition and policy for floating on-water residences legally established on or before July 1, 2014.

Is it applicable to Ruston?

No. Since Ruston has no existing floating homes, this checklist item is not applicable.

Where is the change?

No change required.

SMP Periodic Review Checklist Item 2012(a).

What's required?

The checklist requires jurisdictions to consider an update to local SMP's to reflect that the Legislature amended the Shoreline Management Act (SMA) to clarify SMP appeal procedures.

Is it applicable to Ruston?

No. Since Ruston's SMP does not provide for specific appeal procedures and instead relies on the language in State codes, there is no need to include new language. Rather, Ruston staff must be aware that the change to the State codes has occurred and is applicable.

Where is the change?

No change required.

SMP Periodic Review Checklist Item 2011(a).

What's required?

The checklist requires jurisdictions to consider an update to local SMP's to reflect that Ecology adopted a rule requiring that wetlands be delineated in accordance with the approved federal wetland delineation manual.

Is it applicable to Ruston?

No. Amendment to WAC 173-22-035 is noted, however, since Ruston's shoreline jurisdiction does not include any critical areas, (because it is entirely within the ASARCO Superfund cleanup site), this checklist item is not applicable. Wetland delineation throughout the entire city will continue to be regulated consistent with Ruston's existing Critical Areas Ordinance (CAO).

Where is the change?

No change required.

SMP Periodic Review Checklist Item 2011(b).

What's required?

The checklist requires jurisdictions to consider an update to local SMP's to reflect that Ecology adopted extensive new rules for new commercial geoduck aquaculture.

Is it applicable to Ruston?

No. Aquaculture is a prohibited use in Ruston's SMP, so updates to geoduck aquaculture are not applicable.

Where is the change?

No change required.

SMP Periodic Review Checklist Item 2011(c).

What's required?

The checklist requires jurisdictions to consider an update to local SMP's to reflect that the Legislature created a new definition and policy for floating homes permitted or legally established prior to January 1, 2011.

Is it applicable to Ruston?

No. Since Ruston has no existing floating homes, this checklist item is not applicable.

Where is the change?

No change required.

SMP Periodic Review Checklist Item 2011(d).

What's required?

The checklist requires jurisdictions to consider an update to local SMP's to reflect that the Legislature authorized a new option to classify existing structures as conforming.

Is it applicable to Ruston?

No. Since all existing structures were removed in the early phases of the ASARCO Superfund site cleanup process, there is no need to amend Ruston's SMP to address them.

Where is the change?

No change required.

SMP Periodic Review Checklist Item 2010(a).

What's required?

The checklist requires jurisdictions to be aware of an update to State regulations that adopted Growth Management Act - Shoreline Management Act clarifications concerning critical areas found in RCW 90.58.610, RCW 36.70A.480 and WAC 173-26-221(2)(a).

Is it applicable to Ruston?

Yes, although it was necessary for Ruston's staff to understand the implications of the change, it is not necessary to amend Ruston's SMP, (in part because Ruston has adopted a CAO, but also because Ruston's shorelines do not include any critical areas).

Where is the change?

No change required.

SMP Periodic Review Checklist Item 2009(a).

What's required?

The checklist requires jurisdictions to consider an update to local SMP's to reflect that the Legislature created new "relief" procedures for instances in which a shoreline restoration project with an Urban Growth Area (UGA) boundary creates a shift in the Ordinary High Water Mark.

Is it applicable to Ruston?

No. Ruston does not have a UGA, so updates specific to them are not applicable.

Where is the change?

No change required.

SMP Periodic Review Checklist Item 2009(b).

What's required?

The checklist requires jurisdictions to consider an update to local SMP's to reflect that Ecology adopted a rule for certifying wetland mitigation banks.

Is it applicable to Ruston?

No. There are no wetland critical areas within Ruston's shoreline. Further, mitigation banking is already adopted as a method of innovative mitigation in Ruston's CAO for use city-wide.

Where is the change?

No change required.

SMP Periodic Review Checklist Item 2009(c).

What's required?

The checklist requires jurisdictions to consider an update to local SMP's to reflect that the Legislature added moratoria authority and procedures to the Shoreline Management Act.

Is it applicable to Ruston?

Yes.

Where is the change?

Draft language is highlighted in the attached *Draft SMP Edits* document at RMC 15.01.100

SMP Periodic Review Checklist Item 2007(a).

What's required?

The checklist requires updating the definition of "floodway."

Is it applicable to Ruston?

Yes.

Where is the change?

Draft language is highlighted in the attached *Draft SMP Edits* document at RMC 15.01.020

SMP Periodic Review Checklist Item 2007(b).**What's required?**

The checklist requires jurisdictions to consider an update to local SMP's to include a list and map of streams and lakes that are within the shoreline jurisdiction.

Is it applicable to Ruston?

Yes, but since Ruston's shoreline jurisdiction does not include any streams or lakes, an amendment to Ruston's SMP is not required.

Where is the change?

No change required.

SMP Periodic Review Checklist Item 2007(c).**What's required?**

The checklist requires jurisdictions to consider an update to local SMP's to reflect that Ecology's rule listing statutory exemptions from the requirement for an SDP was amended to include fish habitat enhancement projects that conform to the provisions of RCW 77.55.181.

Is it applicable to Ruston?

Yes, but since Ruston's SMP simply cites the RCW list of exemptions, no change is needed.

Where is the change?

No change required.

Miscellaneous Code Amendments

- 1) RMC 15.01.020 "Buffer" has been amended to provide reference to the definitions section of the Ruston CAO.
- 2) RMC 15.01.070(d)(3) - Typo was corrected.
- 3) RMC 15.01.080(a)(6) - Miscellaneous amendments to application requirements, i.e. two-foot contours instead of five-foot contours, easements shown on site plan, etc.