

# Ordinance No. 3056

["Beginning July 1, 1998"]

(Amending or Repealing Ordinances)

Repealed by Ord. 3458

ORDINANCE NO. 3056

AN ORDINANCE of the City of Kent, Washington, adopting the City's amended Shoreline Master Program as approved and enacted by the Department of Ecology on June 16, 1992, establishing a new Title 11 to the Kent City Code, and implementing the Administrative and Enforcement sections of the Shoreline Master Program as a new Chapter 11.04 of the Kent City Code.

WHEREAS, the Washington State Legislature has mandated that the City of Kent develop a Shoreline Master Program pursuant to the Shoreline Management Act, RCW 90.58 et seq.; and

WHEREAS, the Shoreline Management Act authorizes the Department of Ecology to adopt, approve, amend, and adjust the City's Shoreline Master Program; and

WHEREAS, the Department of Ecology adopted and approved the City's Shoreline Master Program on April 9, 1974 and subsequently approved revisions to the Program on December 8, 1978, April 10, 1979, and December 10, 1980; and

WHEREAS, the City of Kent has submitted a further revision to its Shoreline Master Program to the Department of Ecology for review and approval; and

WHEREAS, after providing all required public notice and after conducting all required public hearings, the Department of

*City of Kent 220-4th Ave South Kent, Wa. 98032*

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Ecology has approved the City of Kent's latest revision to its Shoreline Master Program; and

WHEREAS, the City's latest revision became effective, under the Department of Ecology's rulemaking authority, on July 16, 1992, and officially codified as Section 173-19-2511 of the Washington Administrative Code; and

WHEREAS, it is in the best interests of the City of Kent and its citizens and landowners that the administrative and enforcement sections of the City's Shoreline Master Program become codified as part of the Kent City Code in order to more adequately insure compliance with the City's current Shoreline Master Program as approved and adopted by the Department of Ecology; NOW, THEREFORE

THE CITY COUNCIL OF THE CITY OF KENT, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. The City of Kent's amended Shoreline Master Program, as enacted by the State of Washington Department of Ecology in WAC 173-19-2511 is hereby adopted. A copy of the amended Shoreline Master Program shall be filed with the City Clerk and made available for public inspection.

Section 2. There shall be established a new Title Eleven to the Kent City Code, which shall be entitled, "Environmental Management."

Section 3. Chapter 11.01 of the Kent City Code is hereby reserved.

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Section 4. Chapter 11.02 of the Kent City Code is hereby reserved.

Section 4. Chapter 11.03 of the Kent City Code is hereby reserved.

Section 5. There is established a new Chapter 11.04 to the Kent City Code, which shall be entitled, "Shoreline Master Program":

11.04.020. ADMINISTRATION.

A. Purpose. There is hereby established an administrative system designed to assign responsibilities for implementation of the Master Program and Shoreline Permit review, to prescribe an orderly process by which to review proposals and permit applications, and to ensure that all persons affected by this Master Program are treated in a fair and equitable manner.

B. Substantial Development. Any person wishing to undertake substantial development within the shoreline shall apply to the Administrator for a shoreline substantial development permit.

1. Development is defined by RCW 90.58.030(d) to mean a use consisting of the construction or exterior alteration of structures; dredging; drilling; dumping; filling; removal of any sand, gravel, or minerals; bulkheading; driving of piling; placing of obstructions; or any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to the Shoreline Management Act ("Act") at any state of water level.

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2. Substantial development is any development of which the total cost or fair market values exceeds two thousand five hundred dollars (\$2,500.00) or which materially interferes with the normal public use of the water or shorelines of the state, except for those developments listed in WAC 173-14-040.

C. Exemptions. Certain developments are exempt from the requirement to obtain a substantial development permit. Such developments may still require a variance or conditional use permit, and all development within the shoreline is subject to the requirements of the Shoreline Master Program, regardless of whether a substantial development permit is required. Developments which are exempt from requirement for a substantial development permit are described at RCW 90.58.030(3)(e) and WAC 173-14-040. Whenever a development is determined to be exempt from the requirement for a substantial development permit and the development is subject to a U.S. Army Corps of Engineers Section 10 or Section 404 Permit, the Administrator shall prepare a Letter of Exemption in accordance with WAC 173-14-115, and shall transmit a copy to the applicant and the Washington State Department of Ecology.

NOTE: EXEMPTION FROM SUBSTANTIAL DEVELOPMENT PERMIT REQUIREMENTS DOES NOT CONSTITUTE EXEMPTION FROM THE POLICIES AND USE REGULATIONS OF THE SHORELINE MANAGEMENT ACT, THE PROVISIONS OF THIS MASTER PROGRAM, AND OTHER APPLICABLE CITY, STATE OR FEDERAL PERMIT REQUIREMENTS.

D. Permit Process.

1. Forms. The Administrator shall provide the necessary application forms for shoreline substantial development, variance and conditional use permits.

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2. Public notice. Upon receipt of a proper application for a permit, the Administrator shall instruct the applicant to publish notices thereof at least once a week on the same day of the week for two consecutive weeks in a newspaper of general circulation within the area in which the development is proposed. An affidavit of publication shall be transmitted by the applicant to the local government and affixed to the application. In addition to publishing, the applicant will be required to provide additional notice by one of the following methods: (1) mailing notice to the latest recorded real property owners as shown by the records of the county assessor within at least three hundred feet of the boundary of the property upon which the substantial development is proposed, (2) posting of the notice in a conspicuous manner on the property upon which the project is to be constructed, or (3) any other manner deemed appropriate by the Administrator to accomplish the objectives of reasonable notice to adjacent landowners and the public. All such notices shall include a statement that within thirty days of the final publication of notice, any interested person may submit his/her views upon the application in writing to the Administrator or notify the Administrator of his/her desire to receive a copy of the action taken upon the application. All persons who notify the Administrator of their desire to receive a copy of the final order shall be notified in a timely manner of the action taken upon the application.

3. Application review. The Administrator shall make decisions on applications for substantial development permits, and recommendations on applications for conditional use or variance permits based upon: (1) the policies and procedures of the Shoreline Management Act and related sections of the Washington Administrative Code; and (2) the Kent Shoreline Master Program.

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4. Administrator action. The Administrator shall make decisions on applications for substantial development permits.

All such decisions shall be in writing, and shall be issued no sooner than 45 days from the time of the application.

5. Public hearings. The Administrator shall schedule a public hearing before the Kent Hearing Examiner on an application for a conditional use or variance permit. Notices of the hearing shall include a statement that any person may submit oral or written comments on the application at the hearing. The minimum time from the date of application to the date of the hearing is 45 days.

6. Hearing Examiner action. The Hearing Examiner shall review an application for a permit and make decisions regarding permits based upon: (1) the Kent Shoreline Master Program; (2) the policies and procedures of the Shoreline Management Act (ch. 90.58 RCW) and related sections of the Washington Administrative Code; (3) written and oral comments from interested persons; and (4) the comments and findings of the Administrator. The Hearing Examiner will issue a written decision within fourteen days from the date of the hearing.

7. State review. Within eight (8) days of the issuance of the written decision, the Administrator shall transmit copies of the action taken and the application materials to the Washington State Department of Ecology and the State Attorney General. The applicant shall also be notified of the action taken. Where a substantial development permit and a conditional use or variance permit are required for a development, the actions taken on all permits will be filed concurrently with the Department of Ecology and the State Attorney General. Conditional use or

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variance permits must be approved by the Department of Ecology before they can become effective. The department shall transmit its final decision on such permits within thirty days of the date of submittal. Upon receipt of Ecology's decision, the Administrator shall notify all persons having requested notification of the decision.

8. Action on Permit. Development pursuant to a permit shall not begin and is not authorized until thirty (30) days from the date of filing the approved permit with the Department of Ecology and the Attorney General, provided all review and appeal proceedings initiated within 30 days of the date of such filing have been terminated. In the case of a variance or conditional use permit, the "date of filing" means the date the Department of Ecology's final order on the permit is transmitted to the city.

9. Duration of permits. Permits may be issued with termination dates of up to five years. Construction or substantial progress toward completion must begin within two years after approval of the permits. The Administrator may authorize a single extension before the end of either of these time periods, with prior notice to parties of record and the Department of Ecology, for up to one year based on reasonable factors.

10. Compliance with permit conditions. When permit approval is based on conditions, such conditions shall be satisfied prior to occupancy or use of a structure or prior to commencement of a nonstructural activity.



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E. Appeals.

1. Local appeals. Any decision made by the Administrator on a substantial development permit, or by the Hearing Examiner on a conditional use or variance permit may be appealed by the applicant, private or public organization or individual, to the City Council. Such appeal must be filed with the City Clerk and the Administrator within ten days of the decision being appealed, and must be accompanied by the required filing fee.

2. Shoreline Hearings Board. After the local appeals process has been exhausted, persons aggrieved by the grant, denial, rescission or modification of a permit may file a request for review by the Shoreline Hearings Board in accordance with the review process established by RCW 90.58.180 and Ch. 173-14 WAC, and with the regulations of the Shoreline Hearings Board contained in Ch. 461-08 WAC. The request for review must be filed with the Hearings Board within 30 days of the date of filing of the local permit decision with the Department of Ecology.

F. Variance Permits.

1. Purpose. The purpose of a variance permit is strictly limited to granting relief from specific bulk, dimensional or performance standards set forth in the Master Program, and where there are extraordinary or unique circumstances relating to the property such that the strict implementation of the Master Program would impose unnecessary hardships on the applicant or thwart the Shoreline Management Act policies as stated in RCW 90.58.020. Construction pursuant to a variance permit shall not begin nor can construction be authorized except as provided in RCW 90.58.020. In

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all instances, extraordinary circumstances shall be shown and the public interest shall suffer no substantial detrimental effect.

2. Application. The application process for a variance permit is described in section 11.04.020(D) above.

3. Criteria. Variance permits may be authorized provided the applicant can demonstrate all of the following:

a. That the strict requirements of the bulk, dimensional, or performance standards set forth in the Master Program preclude or significantly interfere with a reasonable use of the property not otherwise prohibited by the Master Program.

b. That the hardship described above is specifically related to the property, and is the result of unique conditions such as irregular lot shape, size or natural features and the application of the Master Program, and not, for example, from deed restrictions or the applicant's own actions.

c. That the design of the project will be compatible with other permitted activities in the area and will not cause adverse effects to adjacent properties or the shoreline environment.

d. That the variance permit will not constitute a grant of special privilege not enjoyed by the other properties in the area, and will be the minimum necessary to afford relief.

e. That the public interest will suffer no substantial detrimental effect.

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f. Variance permits for development that will be located either waterward of the ordinary high water mark or within marshes, bogs or swamps, as defined in this Master Program, may be authorized only if the applicant can demonstrate items a-e of this section, and: (1) that the strict application of the standards set forth in this Master Program preclude a reasonable permitted use of the property; and (2) the public rights of navigation and use of the shorelines will not be adversely affected by the granting of the variance.

g. In the granting of all variance permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if variances were granted to other developments in the area where similar circumstances exist, the total of the variances should also remain consistent with the policies of ch. 90.58 RCW and should not produce substantial adverse effects on the shoreline environment.

G. Conditional Use Permits.

1. Purpose. The purpose of a conditional use permit is to allow greater flexibility in varying the application of the use regulations of the master program in a manner consistent with the policies of RCW 90.58.020; provided that, conditional use permits should also be granted in a circumstance where denial of the permit would result in a thwarting of the state policies listed in RCW 90.58.020. In authorizing a conditional use, special conditions may be attached to the permit by the City or the Department of Ecology to prevent undesirable effects of the proposed use. Uses which are specifically prohibited by the Master Program may not be authorized with approval of a conditional use permit.

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2. Application. The application process for a conditional use permit is described in section 11.04.020(D) above.

3. Classification. Uses are classified as conditional uses if they are (1) designated as such elsewhere in this Master Program or (2) consistent with the underlying shoreline environment designation in which proposed, but not classified as permitted uses in Section 6, Specific Shoreline Use Policies and Performance Standards.

4. Criteria. Uses classified as conditional uses may be authorized provided that the applicant can demonstrate all of the following:

a. That the proposed use will be consistent with the policies of RCW 90.58.020 and the policies of the Kent Master Program.

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

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

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

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

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5. Other Impacts. In the granting of all conditional use permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if conditional use permits were granted to other developments in the area where similar circumstances exist, the total of the conditional uses should also remain consistent with the policies of ch. 90.58 RCW and should not produce substantial adverse effects on the shoreline environment.

6. Additional Authorization. Uses which are not classified or set forth in the master program may be authorized as conditional uses, provided the applicant can demonstrate, in addition to the criteria set forth in section 11.04.020(G)(4) above, that extraordinary circumstances preclude reasonable use of the property in a manner consistent with the use regulations of the program.

7. Certain Uses Prohibited. Uses which are specifically prohibited by this program may not be authorized.

8. Cumulative Impacts. In granting any conditional use permit, consideration shall be given to the cumulative impact of additional requests for like actions in the area.

H. Nonconforming Development. Nonconforming development shall be defined and regulated according to the provisions of WAC 173-14-055.

11.04.040. ENFORCEMENT.

A. Violations.

1. It is a violation of the Kent Shoreline Master Program for any person to initiate or maintain or cause to be initiated or maintained the use of any structure, land or property within the shorelines of the City of Kent without first obtaining the permits or authorizations required for the use by this Chapter.

2. It is a violation of this Chapter for any person to use, construct, locate, or demolish any structure, land or property within shorelines of the City of Kent in any manner that is not permitted by the terms of any permit or authorization issued pursuant to this Chapter, provided that the terms or conditions are explicitly stated on the permit or the approved plans.

3. It is a violation of this Chapter to remove or deface any sign, notice, complaint or order required by or posted in accordance with this Chapter or Chapter 12.12A.

4. It is a violation of this Chapter to misrepresent any material fact in any application, plans or other information submitted to obtain any shoreline use or development authorization.

5. It is a violation of this Chapter for anyone to fail to comply with the requirements of this Chapter.

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B. Duty to Enforce.

1. It shall be the duty of the Administrator to enforce this Chapter. The Administrator may call upon the police, fire, health or other appropriate City departments to assist in enforcement.

2. Upon presentation of proper credentials, the Administrator or duly authorized representative of the Administrator may, with the consent of the owner or occupier of a building or premises, or pursuant to a lawfully issued inspection warrant, enter at reasonable times any building or premises subject to the consent or warrant to perform the duties imposed by the Shoreline Master Program or this Chapter.

3. The Shoreline Master Program shall be enforced for the benefit of the health, safety and welfare of the general public, and not for the benefit of any particular person or class of persons.

4. It is the intent of the Shoreline Master Program to place the obligation of complying with its requirements upon the owner, occupier or other person responsible for the condition of the land and buildings within the scope of this Program.

5. No provision of or term used in the Program is intended to impose any duty upon the City or any of its officers or employees which would subject them to damages in a civil action.

C. Investigation and Notice of Violation.

1. The Administrator or his/her representative shall investigate any structure, premises or use which the Administrator reasonably believes does not comply with the standards and requirements of the Shoreline Master Program.

2. If after investigation the Administrator determines that the Program's standards or requirements have been violated, the Administrator shall serve a Notice of Violation on the owner, tenant or other person responsible for the condition. The Notice of Violation shall provide:

a. A description of the specific nature, extent and time of violation and the damage or potential damages; and

b. A notice that the violation or the potential violation must cease and desist or, in appropriate cases, the specific corrective action to be taken within a given time; and

c. A notice that the required corrective action shall include, if appropriate, but shall not be limited to, mitigating measures such as restoration of the area and replacement of damaged or destroyed trees.

3. The Notice shall be served upon the owner, tenant or other person responsible for the condition by personal service, registered mail, or certified mail with return receipt requested, addressed to the last known address of such person. If, after a reasonable search and reasonable efforts are made to obtain service, the whereabouts of the person or persons is unknown or



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service cannot be accomplished and the Administrator makes an affidavit to that effect, then service of the Notice upon such person or persons may be made by:

a. Publishing the Notice once each week for two (2) consecutive weeks in the City's official Newspaper; and

b. Mailing a copy of the Notice to each person named on the notice of violation by first class mail to the last known address if known, or if unknown, to the address of the property involved in the proceedings.

4. A copy of the Notice shall be posted at a conspicuous place on the property, unless posting the notice is not physically possible.

5. The Administrator may mail, or cause to be delivered to all residential and/or nonresidential rental units in the structure or post at a conspicuous place on the property, a notice which informs each recipient or resident about the Notice of Violation, Stop Work Order or Emergency Order and the applicable requirements and procedures.

6. A Notice or an Order may be amended at any time in order to:

a. Correct clerical errors, or

b. Cite additional authority for a stated violation.

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D. Effective Date. Any notice of violation issued under this Chapter which contains an order to cease and desist shall be effective immediately upon receipt by the person to whom the Notice is directed.

E. Time to Comply.

1. When calculating a reasonable time for compliance, the Administrator shall consider the following criteria:

a. The type and degree of violation cited in the Notice;

b. The stated intent, if any, of a responsible party to take steps to comply;

c. The procedural requirements for obtaining a permit to carry out correction action;

d. The complexity of the correction action, including seasonal considerations, construction requirements and the legal prerogatives of landlords and tenants; and

e. Any other circumstances beyond the control of the responsible party.

2. Unless a request for remission or mitigation of the penalty before the Administrator is made in accordance with Section 11,04.040(H) below, the Notice of Violation shall become the final order of the Administrator. A copy of the Notice shall be filed with the Department of Records and Elections of King

County. The Administrator may choose not to file a copy of the Notice or Order if the Notice or Order is directed only to a responsible person other than the owner of the property.

F. Cease and Desist Work Order. Whenever a continuing violation of the Shoreline Master Program will materially impair the Director's ability to secure compliance with the Program, or when the continuing violation threatens the health or safety of the public, the Director may issue a Cease and Desist Order specifying the violation and prohibiting any work or other activity at the site. A failure to comply with the Cease and Desist Order shall constitute a violation of the Shoreline Master Program.

G. Emergency Order. Whenever any use or activity in violation of this Code threatens the health and safety of the occupants of the premises or any member of the public, the Administrator may issue an Emergency Order directing that the use or activity be discontinued and the condition causing the threat to the public health and safety be corrected. The Emergency Order shall specify the time for compliance and shall be posted in a conspicuous place on the property, if posting is physically possible. A failure to comply with an Emergency Order shall constitute a violation of the Shoreline Master Program.

Any condition described in the Emergency Order which is not corrected within the time specified is hereby declared to be a public nuisance and the Administrator is authorized to abate such nuisance summarily by such means as may be available. The cost of such abatement shall be recovered from the owner or person responsible or both in the manner provided by law.

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H. Review of Penalty by the Administrator.

1. Any person incurring a penalty imposed in a notice of violation issued by the Administrator pursuant to Section 8.3 may obtain a review of the penalty by making application for remission or mitigation of the penalty within fifteen (15) days after service of the notice. When the last day of the period so computed is a Saturday, Sunday or federal or City holiday, the period shall run until five p.m. (5:00 p.m.) on the next business day. The application shall be in writing, and upon receipt of the application, the Administrator shall notify all persons served with the Notice of Violation and the complainant, if any, of the date, time and place set for the review, which shall be not less than ten (10) nor more than twenty (20) days after the application is received, unless otherwise agreed by all persons served with the Notice of Violation. Before the date set for the remission or mitigation hearing incurring a penalty in the Notice of Violation may submit any written material to the Administrator for consideration at the review.

2. The review will consist of an informal review meeting held at the Planning Department offices. A representative of the Administrator who is familiar with the case and the applicable ordinances will attend. The Administrator's representative will explain the reasons for the Administrator's issuance of the Notice and will listen to any additional information presented by the persons attending. At or after the review, the Administrator may remit or mitigate the penalty only upon a demonstration of extraordinary circumstances, such as the presence of information or factors not considered in setting the original penalty. The Administrator may also choose to continue to review to a date certain for receipt of additional information.

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3. The Administrator shall issue an Order of the Director containing the decision on the penalty within seven (7) days of the date of the completion of the review and shall cause the same to be mailed by regular first class mail to the person or persons named on the Notice of Violation, mailed to the complainant, if possible, and filed with the Department of Records and Elections of King County.

I. Extension of Compliance Date. The Administrator may grant an extension of time for compliance with any Notice or Order whether pending or final, upon the Administrator's finding that substantial progress toward compliance has been made and that the public will not be adversely affected by the extension.

An extension of time may be revoked by the Administrator if it is shown that the conditions at the time the extension was granted have changed, the Administrator determines that a party is not performing corrective actions as agreed, or if the extension creates an adverse effect on the public. The date of revocation shall then be considered as the compliance date.

J. Appeal of Civil Penalty.

1. Right of Appeal. Persons incurring a penalty imposed by the City may appeal the same to the Shorelines Hearings Board.

2. Timing of Appeal. Appeals shall be filed within thirty days of receipt of the Notice of Violation unless an application for remission or mitigation is made to the Administrator. If such appeal is made, appeals must be filed

within thirty days of receipt of the Administrator's decision regarding the remission or mitigation.

K. Civil Penalty.

1. Additional Relief. In addition to any other sanction or remedial procedure which may be available, any person violating or failing to comply with any of the provisions of this Chapter shall be subject to a cumulative penalty in the amount of one thousand dollars (\$1,000). Each permit violation or each day of continued development without a required permit shall constitute a separate violation.

2. Persons Incurring Penalty. Any person who, through an act of commission or omission procures, aids or abets in the violation shall be considered to have committed a violation for the purposes of the civil penalty.

3. Penalties Due. Penalties imposed by this section shall become due and payable thirty days after receipt of notice imposing the same unless application for remission or mitigation is filed. Whenever an application for remission or mitigation is made, penalties shall become due and payable thirty days after receipt of the Administrator's decision regarding the remission or mitigation. Whenever an appeal of a penalty is filed, the penalty shall become due and payable upon completion of all review proceedings and upon issuance of a final decision confirming the penalty in whole or in part.

4. Enforcement of Penalty. The penalty imposed by this section shall be collected by civil action brought in the name of the City. The Director shall notify the City Attorney in

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writing of any penalty owed the City and not paid within thirty days after it becomes due and payable, and the City Attorney shall, with the assistance of the Administrator, take appropriate action to collect the penalty.

5. Mitigation of Penalty. The violator may show as full or partial mitigation of liability:

a. That the violation giving rise to the action was caused by the willful act, or neglect, or abuse of another; or

b. That correction of the violation was commenced promptly upon receipt of the notice thereof, but that full compliance within the time specified was prevented by inability to obtain necessary materials or labor, inability to gain access to the subject structure, or other condition or circumstance beyond the control of the defendant.


L. Criminal Penalties. In addition to incurring the civil liability under Section 8.11 above, any person found to have wilfully engaged in activities in violation of the Shore Master Program shall be guilty of a gross misdemeanor, and shall be punished pursuant to RCW 90.58.220 by a fine of not less than twenty-five nor more than one thousand dollars (\$25.00-\$1,000.00) or by imprisonment for not more than ninety days, or by both such fine and imprisonment: PROVIDED, that the fine for the third and all subsequent violations in any five year period shall not be less than five hundred nor more ten thousand dollars (\$500.00-\$10,000.00).

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M. Additional Relief. Any person who violates any provision of this Chapter or permit issued pursuant thereto shall be liable for all damage to public or private property arising from such violation, including the cost of restoring the affected area to its condition prior to violation. The Administrator may request that the City Attorney shall bring suit for damages on behalf of the City under this section. The Administrator may also seek legal or equitable relief to enjoin any acts or practices and abate any condition which constitutes or will constitute a violation of the Shoreline Master Program when civil or criminal penalties are inadequate to effect compliance.

Section 6. Severability. The provisions of this ordinance are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this ordinance, or the invalidity of the application thereof to any person or circumstances shall not affect the validity of the remainder of this ordinance, or the validity of its application to other persons or circumstances.

Section 7. Effective Date. This ordinance shall take effect and be in force thirty (30) days from the time of its final approval and passage as provided by law.

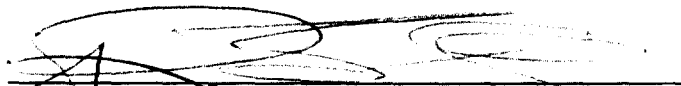
  
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DAN KELLEHER, MAYOR

ATTEST:

  
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BRENDA JACOBBER, CITY CLERK



APPROVED AS TO FORM:


  
\_\_\_\_\_  
ROGER A. LUBOVICH, CITY ATTORNEY

PASSED the 21 day of July, 1992.

APPROVED the 22 day of July, 1992.

PUBLISHED the 24 day of July, 1992.

I hereby certify that this is a true and correct copy of Ordinance No. 3056, passed by the City Council of the City of Kent, Washington, and approved by the Mayor of the City of Kent hereon indicated.

  
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BRENDA JACOBER, CITY CLERK

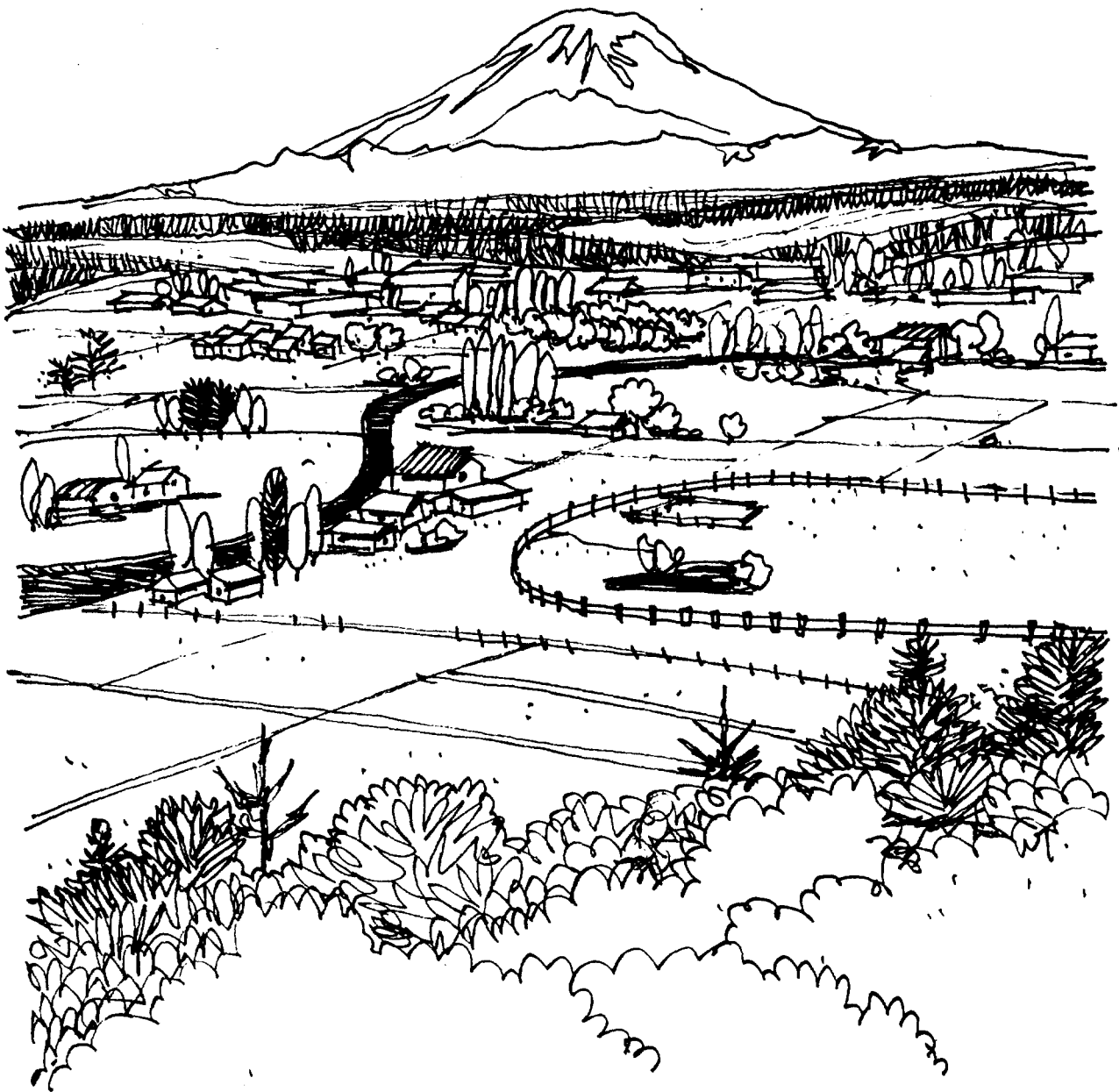
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CITY OF KENT

*Ord  
3056*

**SHORELINE MASTER PROGRAM**



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**CITY OF KENT**

**SHORELINE MASTER PROGRAM**

The preparation of this report was financially aided through a grant from the Washington State Department of Ecology with funds obtained from the National Oceanic and Atmospheric Administration, and appropriated for Section 306 of the Coastal Zone Management Act of 1972.

Prepared by:

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Graphics by:

Wichada Trepoonpon

June, 1992

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# 1.0 INTRODUCTION

## 1.1 THE SHORELINE MASTER PROGRAM

The Shoreline Management Act (Ch. 90.58 RCW) provides for the management and protection of the state's shoreline resources by planning for reasonable and appropriate uses. The Act sets up a joint planning effort by state and local governments, and imposes on local governments the responsibility to develop and implement a local Shoreline Master Program.

This document is the Shoreline Master Program for the City of Kent. The goals, policies and regulations in this program apply to activities in all lands and waters within the City of Kent which are under the jurisdiction of the Shoreline Management Act. All proposed uses and activities within the shoreline jurisdiction (including activities that are exempt from substantial development permit requirements) should be reviewed for compliance with the goals, general and specific policies, and use regulations found in the Program.

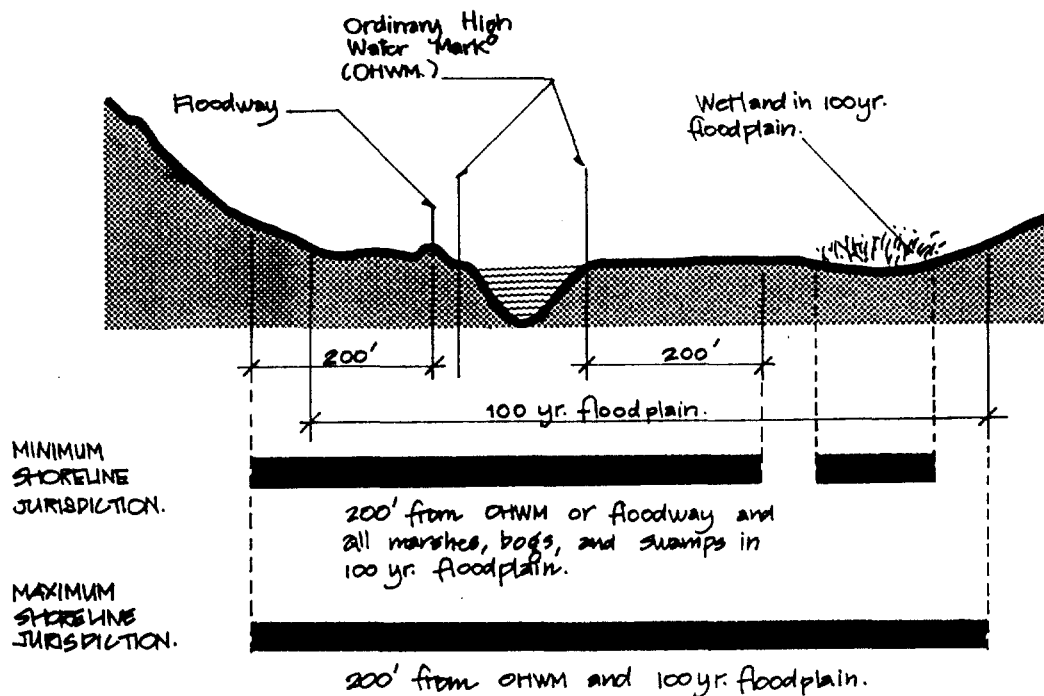


Figure 1.1 Lands and waters under the jurisdiction of the Shoreline Management Act.

The Shoreline Master Program must be applied consistently with state law and regulations. Users of the program should consult the State Shoreline Management Act (Chapter 90.58 RCW), and the sections of the Washington Administrative Code related to the Act, since these contain requirements that may apply to shoreline activity, regardless of whether the requirements are contained in the Master Program. Users should also be aware of other applicable federal, state and local laws that may apply to activities within the shoreline.

## **1.2 CONTENT OVERVIEW**

Section 2.0 of this Program contains the definitions that apply throughout the Program, unless otherwise indicated by context. The different Environment designations, and the policies and guidelines for each Environment, are described in Section 3.0. The Elements of the Program are found in Section 4.0; the elements consist of general goals, objectives and policies that apply to all activities within the shoreline jurisdiction. General Performance Standards are contained in Section 5.0. Specific Use Policies and Performance Standards are included in Section 6.0. Section 7.0, Administration, describes the process for issuing substantial development permits, conditional uses and variances, and the appeals process for such permits. Section 8.0 includes describes the enforcement process.

## **1.3 SHORELINE RESOURCES IN KENT**

The Green River is the most visible shoreline resource in Kent. The river has always been a focal point for inhabitants of the Green River Valley. Prior to white settlement of the area, tribes and bands of the Coast Salish people traveled the river in cedar canoes. Native villages were located along the river and its reaches, and the river basin provided plentiful resources in the form of fish, waterfowl, mammals, roots and berries. Winter villages dotted the river's shoreline, with houses of cedar bark.

When white settlers arrived, they also utilized the river as a road through the densely-vegetated valley, and laid claim to the land along the river's shores.

Kent's initial Shoreline Inventory of the Green River was completed by the Kent Planning Department in November of 1972. This Inventory revealed that 15% of the Shoreline was in residential use, 37% in agricultural use and 41% undeveloped, with the remaining 7% in other uses. By 1980, the percentages had not changed substantially. In 1991, the City was preparing to update its city-wide land use inventory, and the results of the inventory will no doubt reflect the continued urbanization of the Green River Valley since 1980.

## **1.4 CHARACTERISTICS OF THE GREEN RIVER**

The Green River is the major shoreline resource in Kent. The river has a very gentle slope (less than 0.1%) and the adjacent soils are of high quality for agricultural and recreational uses and poor for industrial and urban sites. Most of the River has been diked or rip-rapped and the resultant steep banks allow for few beaches except at low water. Water flow averages 6,500 cubic feet per second in the winter and 1,700 c.f.s. in the summer, depending upon regulation of the Howard Hanson Reservoir upstream. The river provides habitat for a variety of mammals, birds, reptiles, amphibians and fish. Most of the trees have been logged, but some deciduous and coniferous trees remain along the shoreline, and a variety of shrubs and grasses line the entire shore.

## 1.5 ASSOCIATED RESOURCES

It is important to remember that there are other resources that fall within the jurisdiction of the Act. Streams with a mean annual flow of 20 cubic feet per second or more; lakes greater than 20 acres in size; and all "associated wetlands." The statutory definition of associated wetlands includes many resources not ordinarily thought of as wetlands. Lands extending 200 feet from the ordinary high water mark of any jurisdictional lake or stream are defined as wetlands, as are marshes, bogs and swamps (what are ordinarily thought of as wetlands), river deltas, floodways and floodplains associated with such lakes and streams. The Master Program must be consulted with regard to such resources when they are associated with the Green River, or to any other jurisdictional stream or lake within Kent.

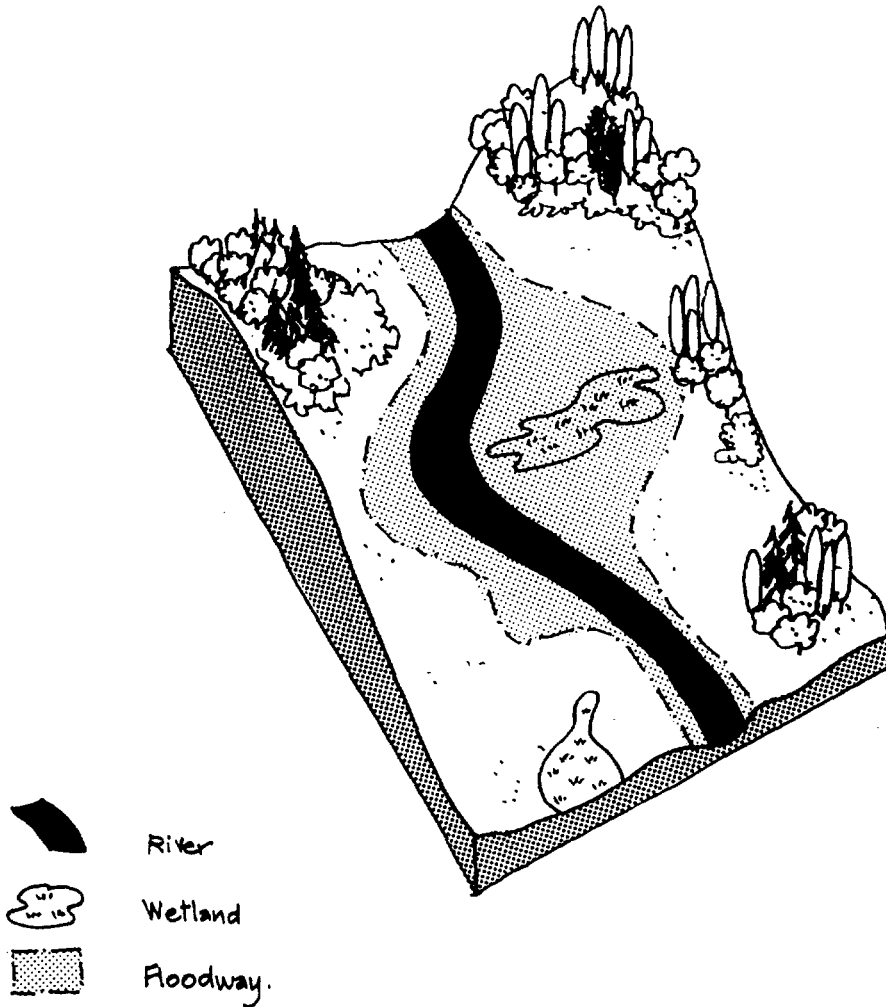


Figure 1.2 Jurisdiction includes the river and associated shoreline resources.



## 2.0 DEFINITIONS

The following definitions apply throughout this Program, unless otherwise indicated.

### **Accessory use**

Any structure or use incidental and subordinate to a primary use or development.

### **Act**

The Shoreline Management Act, Chapter 90.58 RCW.

### **Administrator**

The Kent Planning Director, or his/her designee.

### **Agriculture**

The use of land for agriculture purposes, including farming, dairying, pasturage, horticulture, floriculture, viticulture, apiaries, and animal and poultry husbandry, and the necessary accessory uses for storing produce; provided, however, that the operation of any such accessory use shall be incidental to that of normal agricultural activities and provided further that the above uses shall not include the commercial feeding of garbage or refuse to swine or other animals.

### **Aquaculture**

The culture or farming of aquatic animals and plants.

### **Average grade level**

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; provided that in the case of structures to be built over water, average grade level shall be the elevation of ordinary high water.

### **Building**

Any structure having a roof supported by columns or walls used or intended to be used for the shelter or enclosure of persons, animals or property of any kind.

### **Building setback line**

Unless otherwise indicated within this Program, the line which establishes the limits of all buildings, fencing and impervious surfaces along the shoreline.

### **Channel improvement**

Enlargement of a natural stream's discharge capacity by means of straightening, making "cutoffs", cleaning vegetation, widening, or deepening, and thereby decreasing flood stages.

**Circulation**

Those means of transportation which carry passengers or goods to, from, over, or along a corridor.

**Commercial development**

Commercial developments are those uses which are involved in wholesale and retail trade or business activities.

**Conditional use**

A use, development, or substantial development which is classified as a conditional use or is not classified within the applicable master program. (WAC 173-14-030(4))

**Conservancy environment**

A designation for areas with valuable natural, cultural, or historical resources (see Section 3.0).

**Corridor**

A circulation right-of-way and the area immediately adjacent to it.

**Development**

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

**Dike**

An embankment to prevent flooding by a stream or other waterbody.

**Dock**

A fixed or floating platform extending from the shore over the water.

**Dredging**

The removal of earth from the bottom or banks of a body of water for the purpose of deepening a navigational channel, obtaining bottom materials, or for flood control.

**Earth material**

Any rock, natural soil or fill, and/or any combination thereof.

**Economic development**

A development which provides a service, produces a good, retails a commodity, or engages in any other use of activity for the purpose of making financial gain.

**Elements**

Major aspects of land and water use for which goals are written as part of a Shoreline Master Program.

**Environments**

Designations given specific shoreline areas based on the existing development pattern, the biophysical capabilities and limitations, and the goals and aspirations of local citizenry, as part of a Master Program.

**Excavate**

To remove earth material mechanically.

**Fair market value**

The expected price at which the development can be sold to a willing buyer. For developments which involve nonstructural operations such as dredging, drilling, dumping or filling, the fair market value is the expected cost of hiring a contractor to perform the operation; or where no such value can be calculated, the total of labor, equipment use, transportation, and other costs incurred for the duration of the permitted project.

**Flood control**

Any undertaking for the conveyance, control, and dispersal of flood waters caused by abnormally high direct precipitation or stream overflow.

**Floodplain**

A term synonymous with the hundred-year floodplain, meaning that land area susceptible to being inundated by stream derived waters with a one percent chance of being equaled or exceeded in any given year. The limit of this area shall be based upon flood ordinance regulation maps or a reasonable method which meets the objectives of the Shoreline Management Act.

**Groin**

A barrier-type structure extending from the backshore into the water across the beach. The purpose of a groin is to interrupt sediment movement along the shore.

**Hearing Examiner (Land Use)**

A person appointed by the City Administrator to conduct public hearings on applications outlined in the City ordinance creating the Hearing Examiner, and who prepares a record, findings of fact and conclusions on such applications.

**Landfill**

The placement of soil, sand, rock gravel or other material to create new land along the shoreline below the OHWM, or on upland areas in order to raise the elevation.

**Landscaping**

Vegetative ground cover including shrubs, trees, flower beds, grass, ivy and other similar plants and including tree bark and other materials which aid vegetative growth and maintenance.

**Marina**

A use providing moorages for pleasure craft which also may include boat launching facilities, storage, sales and other services.

**Marshes, bogs and swamps**

Lands transitional between terrestrial and aquatic systems where saturation with water is the dominant factor determining plant and animal communities and soil development. For the purposes of this definition, these areas must have one or more of the following attributes: (a) at least periodically, the land supports predominantly hydrophytes; and/or (b) the substrate is predominantly undrained hydric soil. Hydrophytes include those plants capable of growing in water or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content. Hydric soils include those soils which are wet long enough to periodically produce anaerobic conditions, thereby influencing the growth of plants.

**Master Program**

The comprehensive shoreline use plan for the City of Kent, and the use regulations, together with maps, diagrams, charts or other descriptive material and text, a statement of desired goals and standards developed in accordance with the policies enunciated in Section 2 of the Act.

**Mining**

The removal of naturally occurring materials from the earth for commercial, industrial, or construction use.

**Mixed-use development**

Development that combines water-dependent with water-enjoyment uses and/or non-water-oriented uses.

**Moorage**

Any device or structure used to secure a vessel for temporary anchorage, but which is not attached to the vessels. Examples of moorage are docks or buoys.

**Multiple-use**

The combining of compatible uses within one development.

**Non-conforming structure**

A structure or portion thereof which was lawfully erected or altered and maintained, but which no longer conforms to the policies and regulations of this Master Program.

**Non-water-oriented use**

A use which has little or no relationship to the shoreline. Examples include professional offices, multifamily residential development, and mini-storage facilities.

**One-hundred-year flood**

The maximum flood expected to occur during a one-hundred-year period.

**Open space**

A land area allowing view, use or passage which is almost entirely unobstructed by buildings, paved areas, or other man-made structures.

**Ordinary high water mark**

"Ordinary high water mark" on all lakes, streams, and tidal water is that mark that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation; as that condition exists on June 1, 1971 or as it may naturally change thereafter: PROVIDED, that in any area where the ordinary high water mark cannot be found, the ordinary high water mark adjoining salt water shall be the line of mean higher high tide, and the ordinary high water mark adjoining fresh water shall be the line of mean high water. (RCW 90.58.030(2)(b)).

**Over-water structure**

Any structure projecting over the ordinary high water mark.

**Parking space or parking stall**

A parking space is any off-street space intended for the use of vehicular parking with ingress or egress to the space easily identifiable.

**Permit**

Any substantial development, variance or conditional use permit, or revision authorized by the Act. (WAC 173-14-030(13))

**Pier**

A general term including docks and similar structures consisting of a fixed or floating platform extending from the shore over the water.

**Pollutant**

Any substance that has been or may be determined to cause or tend to cause injurious, corrupt, impure, or unclean conditions when discharged to surface water, air, ground, sanitary sewer system, or storm drainage system.

**Port**

A center for water-borne traffic.

**Public access**

A means of physical approach to and along the shore-line available to the general public. This may also include visual approach.

**Railroad**

A surface linear passageway with tracks for train traffic.

**Recreation**

The refreshment of body and mind through forms of play, amusement, or relaxation. The recreational experience may be active, such as boating, fishing, and swimming, or may be passive such as enjoying the natural beauty of the shoreline or its wildlife.

**Revegetation**

The planting of vegetation to cover any land areas which have been disturbed during construction. This vegetation shall be maintained to insure its survival and shall be consistent with planting requirements of the Kent Landscape Code.

**Riprap**

Broken stone placed on shoulders, slopes, or other such places to protect them from erosion.

**Riverfront lot**

Any lot or land parcel which is adjacent to the Green River, a scenic and recreation road/drive, a riverfront road or a riverfront park.

**Riverfront park**

A publicly-owned open space which lies along the Green River, along a scenic and recreational road/drive, or along a riverfront road.

**Riverfront road**

A public street or road which lies alongside the Green River and which has no major development between it and the river.

**Road**

A linear passageway, usually for motor vehicles.

**Scenic and recreational roads/drives**

1. Frager Road throughout its length within the City of Kent.
2. Russell Road from the eastern end of the proposed Russell Woods Park as designated in the Green River Corridor Plan north to the point where it leaves the River (approximately at 200th Street).

**Shoreline jurisdiction**

All geographic areas covered by the Act, related rules, and the Kent Master Program.

**Shorelines**

All water areas of Kent and their associated wetlands, together with the lands underlying them, except: (i) shorelines of state-wide significance; (ii) shorelines on segments of streams upstream of a point where the mean annual flow is twenty cubic feet per second or less and the wetlands associated with such upstream segments, and (iii) shorelines on lakes less than twenty acres in size and wetlands associated with such lakes.

**Shorelines of the state**

The total of all "shorelines" and "shorelines of state-wide significance" within the state.

**Shorelines of state-wide significance**

Shorelines of the state which meet the criteria for shorelines of statewide significance contained in RCW 90.58.030(e). Within Kent, the shorelines of the Green River are shorelines of state-wide significance.

**Signs-advertising**

A sign which directs attention to a business, commodity or service, or entertainment sold or offered elsewhere than on the premises and only incidently on the premises.

**Signs-directional and informational**

A sign designated to guide or direct pedestrians or vehicles.

**Site**

Any lot or parcel of land or contiguous combination thereof, under the same ownership, on which development is proposed.

**Slope**

An inclined ground surface. The inclination is expressed as a ratio or horizontal distance to vertical distance.

**Structure**

That which is built or constructed; an edifice or building of any kind or any piece of work composed of parts jointed together in some definite manner and includes posts for fences and signs, but does not include mounds of earth or debris.

**Subdivision**

A parcel of land divided into two or more parcels.

**Substantial development**

Any development of which the total cost or fair market value exceeds two thousand five hundred dollars, or any development which materially interferes with the normal public use of the water or shorelines of the state, except for those uses excepted from the definition of substantial development by RCW 90.58.030(3)(e)(i)-(xi).

**Truck maneuvering area**

An area of a site used by trucks for turning and backing or for access to loading/unloading areas.

**Unique and fragile areas**

An area of special environmental significance for wildlife habitat, threatened plant communities, and/or natural scenic quality. The geographic boundaries of these areas shall be officially mapped.

**Upland**

The area above and landward of the ordinary high water mark.

**Urban**

An area of basically high intensity and diverse land use, including residential, commercial, industrial, agricultural and recreational development.

**Urban environment**

A designation for areas of high intensity land use, including residential, commercial and industrial development (see Section 3).

**Use or use activity**

An activity or purpose for which land or premises or a building thereon is designed, arranged, intended, or for which it is occupied or maintained, let or leased.

**Utilities**

Services which produce and carry electric power, sewage, communications, petroleum products, oil, natural gas, water, etc.

**Variance**

A means of granting relief from specific bulk, dimensional or performance standards set forth in the applicable master program, and not a means to vary from the permitted uses of a shoreline.

**Water-dependent use**

A use which requires direct contact with the water and cannot exist at a non-water location due to the nature of the use. Examples include ship cargo terminal loading areas, ferry terminals, aquaculture and marinas.

**Water-enjoyment use**

Recreational uses or other uses facilitating public access to the shoreline as a primary characteristic of the use, and uses that provide for aesthetic enjoyment of the shoreline for a substantial number of people as a general character of the public's ability to enjoy the physical and aesthetic qualities of the shoreline. Examples include parks, piers, museums, and educational/scientific reserves.

**Water-oriented use**

A use which is a water-dependent, water-related, or water-enjoyment use.

**Water-related use**

A use which is not intrinsically dependent on a waterfront location but whose operation cannot occur economically without a waterfront location. Examples include warehousing of goods transported by water, seafood processing plants, hydroelectric generating plants, and oil refineries where transport is by tanker.

**Wetlands or wetland areas**

Those lands extending landward for two hundred feet in all directions as measured on a horizontal plane from the ordinary high water mark; and all marshes, bogs, swamps, floodways, river deltas, and floodplains associated with streams, lakes and tidal waters which are subject to the provisions of Ch. 90.58 RCW.



### **3.0 ENVIRONMENTS**

State regulations require local governments to categorize shoreline areas by different environmental designations. WAC 173-16-040 states that "the environmental designation to be given any specific area is to be based on the existing development pattern, the biophysical capabilities and limitations of the shoreline being considered for development and the goals and aspirations of local citizenry." State regulations recommend a classification system composed of four distinct environments: natural, conservancy, rural and urban.

The current Shoreline Master Program environmental designations were developed in 1972 and amended in 1978 and 1980, in accordance with the state criteria for classification. Kent's shoreline is classified Conservancy, Rural and Urban (see maps, page ).

Any development in the shoreline must be consistent with the environmental designation in which it is located.

#### **3.1 CONSERVANCY ENVIRONMENT**

The Conservancy designation is intended to protect, conserve and manage natural resources and historic and cultural areas, to achieve sustained resource utilization and to provide recreational benefits.

In Kent, all uses but recreation are prohibited in the Conservancy Environment. Recreational uses in the Conservancy Environment shall be consistent with the following guidelines contained in WAC 173-16-040(4)(b)(ii):

The objective in designating a conservancy environment is to protect, conserve and manage existing natural resources and valuable historic and cultural areas in order to ensure a continuous flow of recreational benefits to the public and to achieve sustained resource utilization.

The conservancy environment is for those areas which are intended to maintain their existing character. The preferred uses are those which are nonconsumptive of the physical and biological resources of the area. Nonconsumptive uses are those uses which can utilize resources on a sustained yield basis while minimally reducing opportunities for other future uses of the resources in the area. Activities and uses of a nonpermanent nature which do not substantially degrade the existing character of an area are appropriate uses for a conservancy environment. Examples of uses that might be predominant in a conservancy environment include diffuse outdoor recreation activities, timber harvesting on a sustained yield basis, passive agricultural uses such as pasture and range lands, and other related uses and activities.

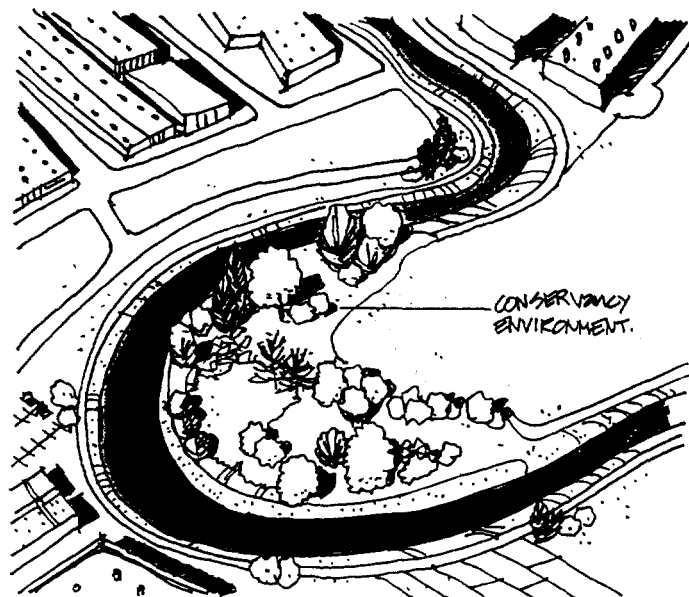


Figure 3.1                      Conservancy Environment located northwest of S. 190th Street and 62nd Ave. S.

The designation of conservancy environments should seek to satisfy the needs of the community as to the present and future location of recreational areas proximate to concentrations of population, either existing or projected. For example, a conservancy environment designation can be used to complement city, county or state plans to legally acquire public access to the water.

The conservancy environment would also be the most suitable designation for those areas which present too severe biophysical limitations to be designated as rural or urban environments. Such limitations would include areas of steep slopes presenting erosion and slide hazards, areas prone to flooding, and areas which cannot provide adequate water supply or sewage disposal.

### 3.2 RURAL ENVIRONMENT

The purpose of the Rural designation is to protect agricultural land from urban expansion, restrict intensive development along undeveloped shorelines of the Green River, function as a buffer between urban areas, and maintain open spaces and opportunities for recreational uses along the Green River.

Uses within areas designated as Rural in Kent shall be consistent with the following guidelines contained in WAC 173-16-040(4)(b)(iii):

The rural environment is intended to protect agricultural land from urban expansion, restrict intensive development along undeveloped shorelines, function as a buffer between urban areas, and maintain open spaces and opportunities for recreational uses compatible with agricultural activities.

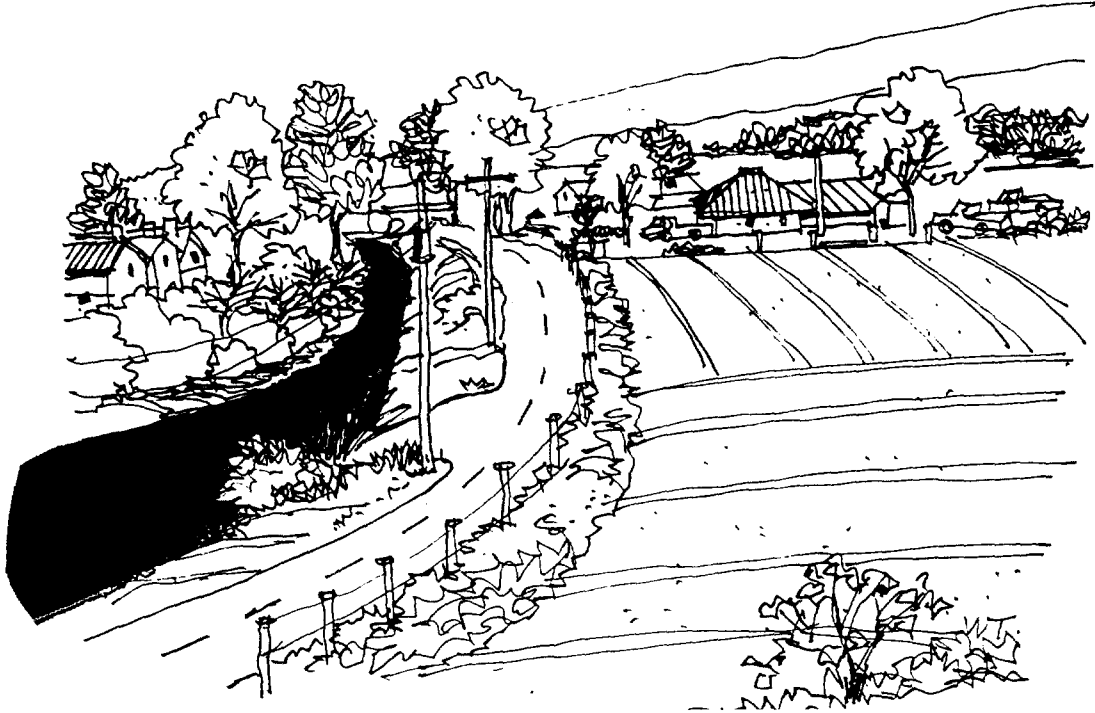


Figure 3.2 The rural environment is intended to protect agricultural land from urban expansion.

The rural environment is intended for those areas characterized by intensive agricultural and recreational uses and those areas having a high capability to support active agricultural purposes, or which have agricultural potential should be maintained for present and future agricultural needs. Designation of rural environments should also seek to alleviate pressures of urban expansion on prime farming areas.

New developments in a rural environment are to reflect the character of the surrounding area by limiting residential density, providing permanent open space and by maintaining adequate building setbacks from water to prevent shoreline resources from being destroyed for other rural types of uses.

Public recreation facilities for public use which can be located and designed to minimize conflicts with agricultural activities are recommended for the rural environment. Linear water access which will prevent overcrowding in any one area, trail systems for safe nonmotorized traffic along scenic corridors and provisions for recreational viewing of water areas illustrate some of the ways to ensure maximum enjoyment of recreational opportunities along shorelines without conflicting with agricultural uses. In a similar fashion, agricultural activities should be conducted in a manner which will enhance the opportunities for

shoreline recreation. Farm management practices which prevent erosion and subsequent siltation of water bodies and minimize the flow of waste material into water courses are to be encouraged by the master program for rural environments.



Figure 3.3 Non-motorized trails and water access can be designed to avoid conflicts with adjacent agricultural uses.

### 3.3 URBAN ENVIRONMENT

The Urban designation is intended to permit multiple water-dependent or water-related uses to achieve optimum utilization of the City's shorelines, while managing development so that it enhances and maintains the shorelines for public enjoyment and use.

WAC 173-16-040(4)(b)(iv) includes the following guidance regarding the Urban Environment:

The objective of the urban environment is to ensure optimum utilization of shorelines within urbanized areas by providing for intensive public use and by managing development so that it enhances and maintains shorelines for a multiplicity of urban uses

The urban environment is an area of high-intensity land-use including residential, commercial, and industrial development. The environment does not necessarily include all shorelines within an incorporated city, but is particularly suitable to those areas presently subjected to extremely intensive use pressure, as well as areas planned to accommodate urban expansion. Shorelines planned for future urban expansion should present few biophysical limitations for urban activities and not have a high priority for designation as an alternative environment.

Because shorelines suitable for urban uses are a limited resource, emphasis should be given to development within already developed areas, and particularly to water-dependent industrial and commercial uses requiring frontage on navigable waters.

In the master program, priority is also to be given to planning for public visual and physical access to water in the urban environment. Identifying needs and planning for the acquisition of urban land for permanent public access to the water in the urban environment should be accomplished in the master program. To enhance waterfront and ensure maximum public use, industrial and commercial facilities should be designed to permit pedestrian waterfront activities. Where practicable, various access points ought to be linked to nonmotorized transportation routes, such as bicycle and hiking paths.

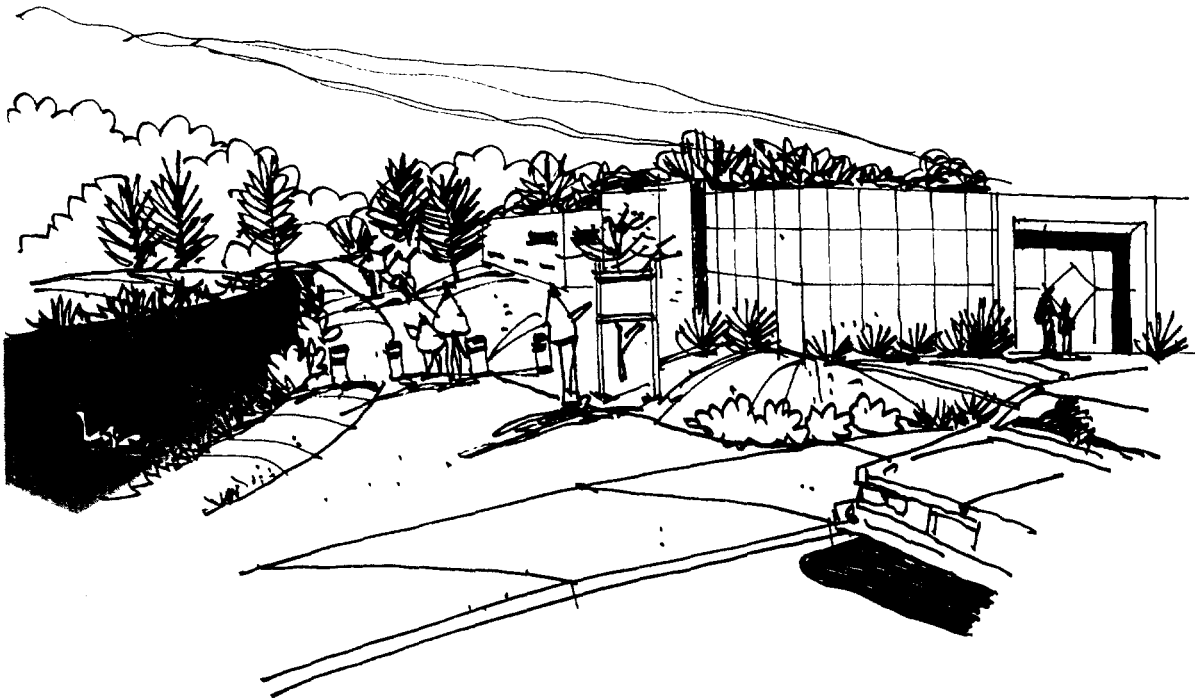


Figure 3.4                      Recreational trails and water access can be combined with private development.

## 4.0 ELEMENTS

The elements of the Shoreline Master Program consist of goals, objectives and policies that apply to all uses in the shoreline. The Shoreline Management Act lists seven elements which should be included in every local shoreline program: (a) economic development; (b) public access; (c) recreation; (d) circulation; (e) shoreline use; (f) conservation; and (g) a historic, cultural, scientific and educational element. Local master programs should also address any other appropriate elements, and the Kent Shoreline Master Program also includes an element addressing flood protection.

### 4.1 ECONOMIC DEVELOPMENT ELEMENT

This is an element for the location and design of industries, transportation facilities, port facilities, tourist facilities, commercial and other developments that are particularly dependent on shoreline locations, as well as addressing development in general.

**GOAL:** Development of the shorelines should be limited to uses which are water-oriented, and which are compatible with protection and enhancement of the shoreline.

**Objective 1:** Encourage the location of shoreline-dependent recreation and open space uses along the shoreline as part of any development along the Shoreline.

**Policy:**

1. Support an application for current use taxation for those private recreation and open space developments along the shoreline through Chapter 84.34 RCW.

**Objective 2:** Permit development of the shoreline only if it enhances the environmental qualities of the shoreline, recognizing that it is these same qualities that provide an amenity of incalculable economic value to the citizens of Kent.

**Policies:**

1. The City should review all building permits issued for development along the shorelines to assure that they are not in conflict with the other goals, objectives and policies.

2. Shoreline developments should be designed to enhance scenic views.
3. Potential long-term effects on the shoreline should take precedence over short-term economic gain or convenience in development.

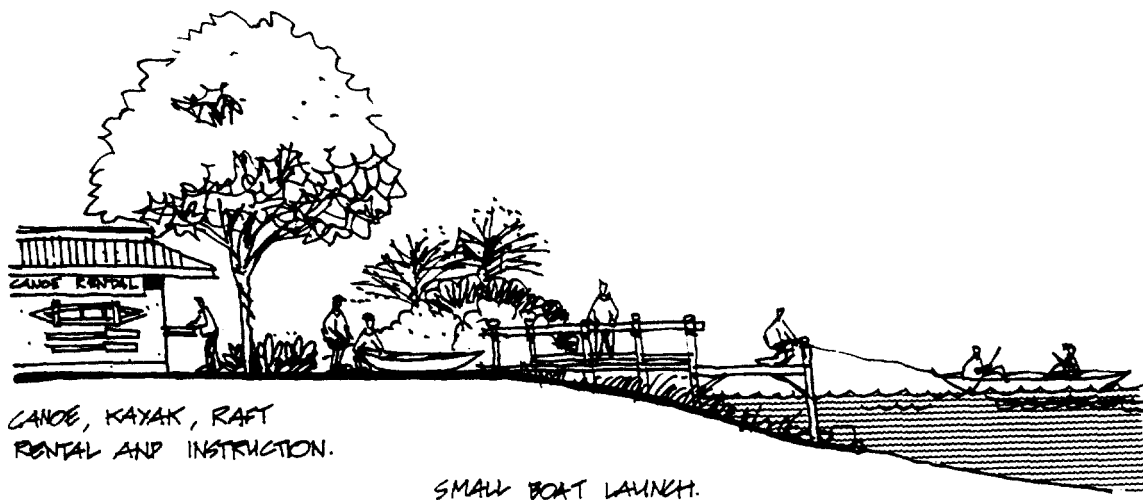


Figure 4.1 Water-dependent or water-related uses can encourage public recreation.

**Objective 3:** Plan development of all land contiguous to the water's edge so that public access and use of the shoreline are enhanced.

**Policies:**

1. Water-dependent and water-related economic development should be located in shoreline areas where other economic development already exists.
2. Water-dependent and water-related economic activities and uses should minimize and cluster the water-dependent portions of development along the shoreline. Those portions that are not water-dependent should be located upland.
3. Water-dependent or water-related economic development should be designed to allow reasonable public access to and along the water's edge.

**Objective 4:** Shoreline development should be planned to protect and enhance public use of the waterway.

**Policy:**

1. Permit over-water structures only when in the public interest.

## 4.2 PUBLIC ACCESS ELEMENT

This is an element for assessing the need for providing public access to shoreline areas.

**GOAL:** The shoreline should be available to the public.

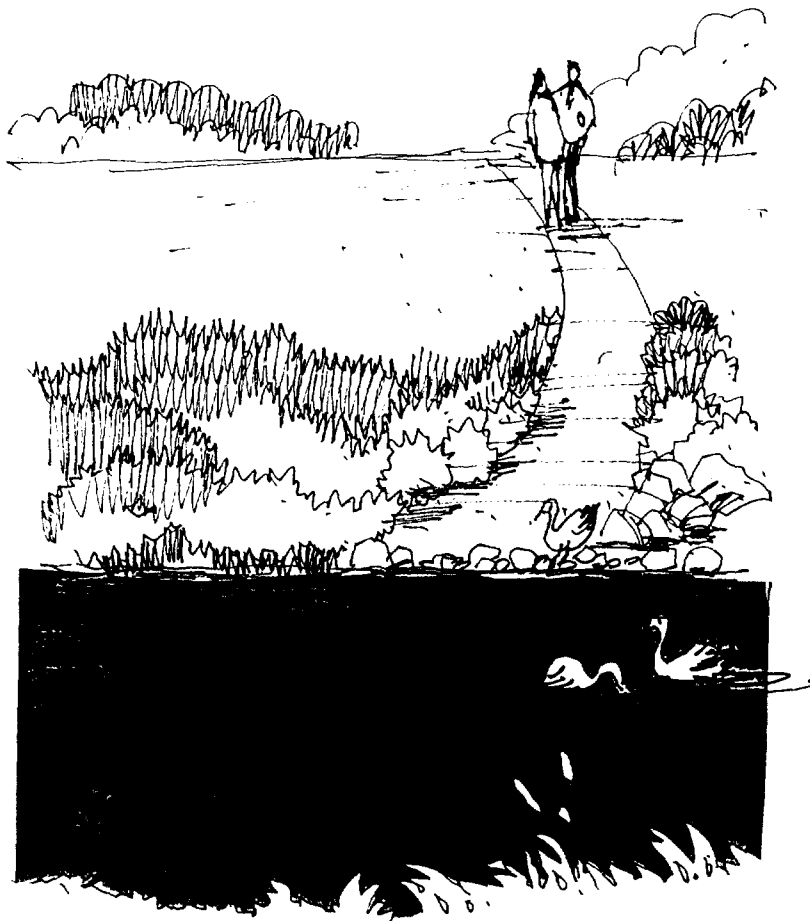


Figure 4.2 Improved public access to the river's edge.

**Objective 1:** Provide improved public access to the river's edge.

**Policies:**

1. The City and/or other government agencies when feasible should acquire and develop property to provide public access to the water's edge at a minimum of one access point per mile.



2. Publicly-owned shoreline areas should provide public access to the water's edge where feasible.
3. When substantial modifications or additions are proposed to substantial developments, the developer should be required to provide for public access to and along the water's edge if physically feasible.
4. Provision should be made for public access to and along the water's edge in new substantial shoreline developments.
5. Access points should be developed for diversified recreational use.
6. Parking should be provided to serve public access points and should be designed to have a minimum impact on the natural environment.
7. Access points should be designed and screened to create the minimum objectionable impact on the adjoining property.

**Objective 2:** Provide a continuous trail system along the shoreline where feasible while protecting private property rights.

**Policies:**

1. Public non-motorized trails should be provided connecting access points.
2. The shoreline trail system should be designed to avoid conflict with private property rights and to create the minimum objectionable impact on the adjoining property.

**Objective 3:** Provide dike setbacks for river level access parks.

**Policy:**

1. The City and/or other governmental agencies should acquire and develop property to provide river level access areas by dike setbacks.

**Objective 4:** Any development adjacent to private property should be designed so as to screen and protect against intrusions from the public activities.

**Policy:**

1. The Shoreline Administrator should review all public access developments to insure that the rights and privacy of the adjoining property owners are protected.

**4.3 CIRCULATION ELEMENT**

This is an element for assessing the location and extent of existing and proposed major thoroughfares, transportation routes, terminals and other public facilities and correlating those facilities with the shoreline use elements.

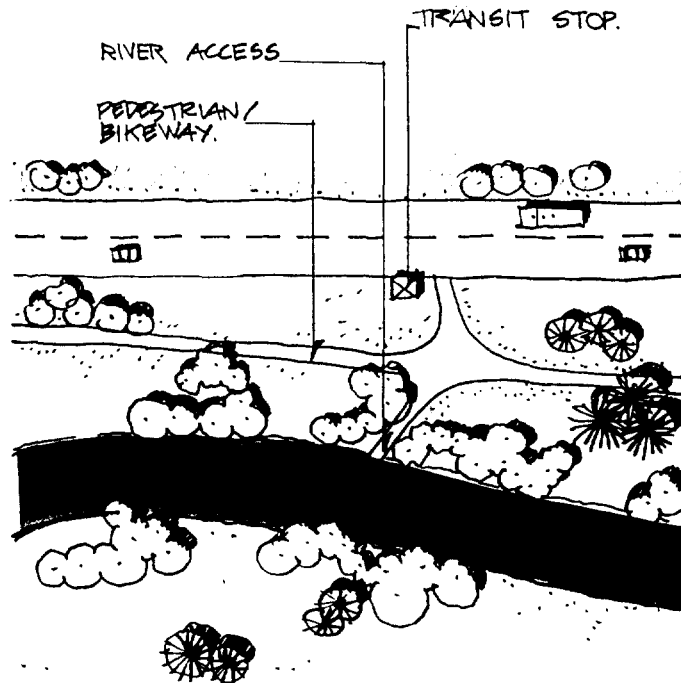


Figure 4.3 Public transit connections to shoreline access points.

**GOAL:** Non-motorized and pedestrian circulation along and across the shoreline should be provided in a manner which protects and enhances the shoreline.

**Objective 1:** Provide connections for public transportation at shoreline access points.

**Policy:**

1. The City should assist in facilitating access by public transportation to recreation areas on the shoreline.

**Objective 2:** Restrict motor vehicle traffic in shoreline areas.

**Policies:**

1. Motor vehicle traffic should be restricted to existing two-lane roadways, except for limited bridge crossings for major freeways.
2. Motorized vehicles are not to be used on the trail system.
3. Shoreline roadways should be planned and developed as scenic boulevards for slow-moving traffic and river public access.
4. Alternative access routes located on the upland side of a non-water-oriented riverfront development should be planned for or required in order to reduce unnecessary traffic along the river corridor.
5. Through traffic should be planned, designed and re-routed to avoid adversely affecting the recreational and environmental qualities of the river corridor.

**Objective 3:** Minimize construction of motorized cross-river arterials.

**Policy:**

1. The City and/or other governmental agencies should actively explore alternatives to additional cross-river arterials.

**Objective 4:** Provide a continuous trail system along the entire shoreline.

**Policies:**

1. The City should develop and implement in an orderly manner a plan of acquisition, lease, and donation of land for trails.
2. The trail system should be separated from the roadway.
3. The trail system should have connections to other trails in the region.
4. Access points to and along the shorelines should be linked by a system of trails.

5. To assist in developing a trails system, incentives should be offered to property owners in exchange for larger setbacks, easements or other benefits to a trail system.
6. The trail system should be included on all new or expanded motorized river crossings. Whenever practical, existing crossings should be modified to accommodate the trail system.
7. Provide trail system bridges where needed.
8. Private roads and developments should be designed to avoid conflict with, or adverse impacts on the trail system.

#### **4.4 RECREATION ELEMENT**

This is an element for the preservation and expansion of recreational opportunities through programs of acquisition, development and various means of less-than-fee acquisition.

**GOAL: Public recreation opportunities should be maximized.**

**Objective 1:** Provide a regional riverfront park system along the shoreline.

**Policies:**

1. The City's Parks and Recreation Department should take action to interest state, federal and county government in the City's Action Program to acquire and develop a regional riverfront park system.
2. A minimum 25% of the total linear riverfront footage should be in areas available to the public for recreation. This may include City, County, State and privately-owned recreational facilities open to the public.
3. Any public development adjacent to private property should be designed to protect the rights and privacy of the private property owners.
4. A trail system should be provided along the entire shoreline.
5. The areas between the waterline and setback levees should be acquired and dedicated as public recreation sites.

**Objective 2:** Provide a series of larger parks interspersed along the narrow linear park which would provide diverse recreational opportunities for the region.

**Policies:**

1. Provide larger parks for river access, interpretive natural areas, picnic areas, open play areas, quiet natural areas, restrooms, parking, etc.
2. Employ diking setbacks at favorable locations to provide larger river level parks.



Figure 4.4 Diverse recreational opportunities.

**Objective 3:** Provide public fishing areas along the shoreline.

**Policy:**

1. The City should acquire property and should encourage the State Department of Wildlife to acquire property to provide fishing areas and accesses.

**Objective 4:** Encourage private water-oriented recreational development which is open to the public in areas located outside the public park areas.

**Policy:**

1. Non-motorized recreational boating facilities should be encouraged as long as they are compatible with other uses and the natural environment.

## 4.5 SHORELINE USE ELEMENT

This is an element for considering:

1. The pattern of distribution and location requirements of land uses on shorelines and adjacent areas, including, but not limited to, housing, commerce, industry, transportation, public buildings and utilities, agriculture, education and natural resources.
2. The pattern of distribution and location requirements of water uses including, but not limited to, aquaculture, recreation, and transportation.

**GOAL:** Uses which are non-water-oriented, or which may adversely affect the shoreline, should be minimized.

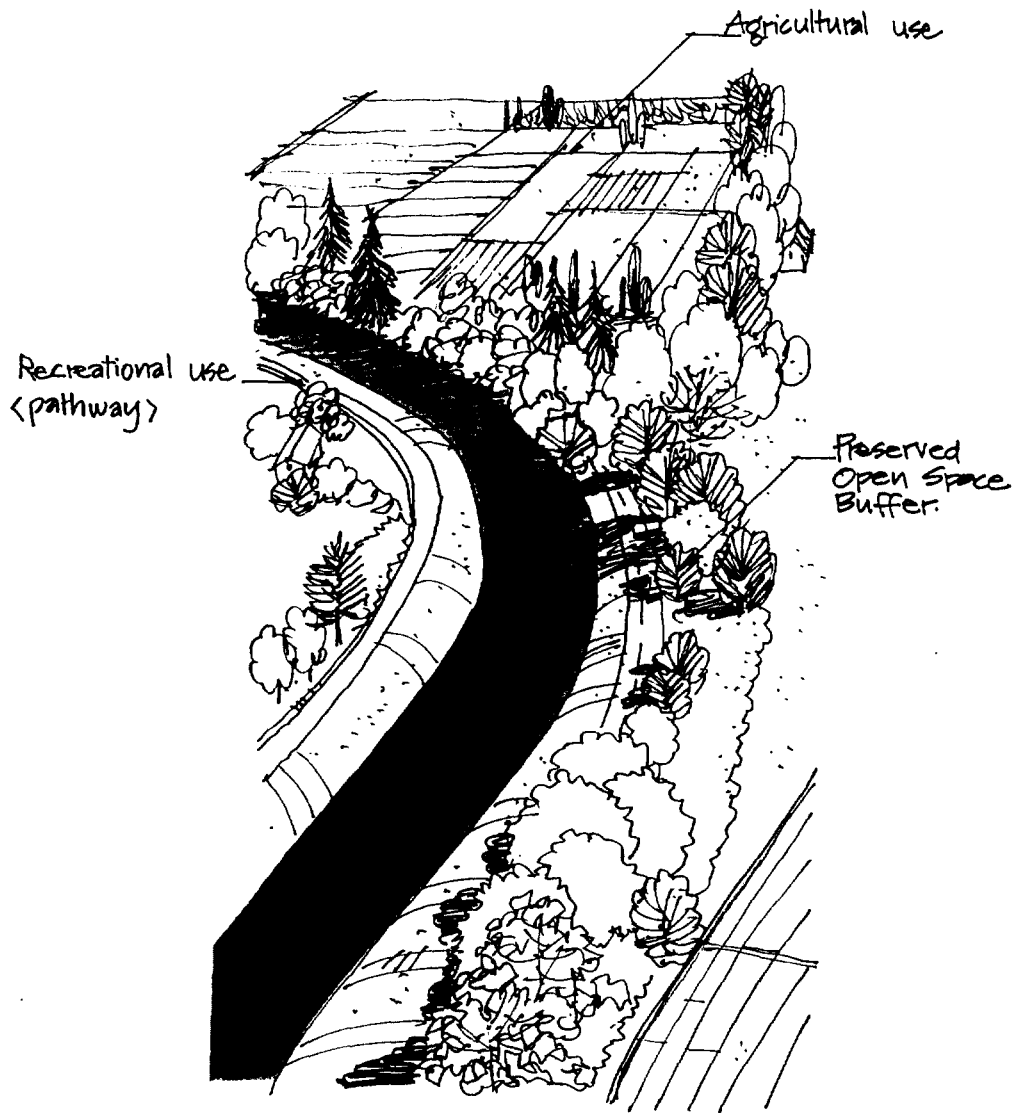


Figure 4.5 Uses which enhance the natural amenities of the shoreline.

**Objective 1:** Promote agricultural and other open space uses.

**Policy:**

1. Support applications for current use taxation for those agricultural and open space uses along the shoreline through Chapter 84.34 RCW.

**Objective 2:** Promote uses which preserve and enhance the natural amenities of the shorelines.

**Policies:**

1. Uses and activities in unique or fragile areas should be discouraged unless measures can be satisfactorily undertaken to mitigate all related adverse impacts.
2. Preference should be given to those uses or activities which enhance the natural amenities of the shorelines and wetlands and which depend on a shoreline location or provide public access to the shoreline.

**Objective 3:** Promote diverse recreational development and use.

**Policies:**

1. The City should encourage the incorporation of public recreational uses into shoreline developments.
2. Multiple uses of shorelines, especially recreational uses, should be planned, where location and integration of compatible uses or activities are feasible.

**Objective 4:** Provide and plan for the long-range relocation of existing non-recreation, non-open space and non-water-related uses.

**Policy:**

1. Those uses or activities identified as non-recreational, non-open space and non-water-oriented should be encouraged to relocate.



## 4.6 CONSERVATION ELEMENT

This is an element for the preservation of the natural shoreline resources, considering such characteristics as scenic vistas, parkways, estuarine areas for fish and wildlife protection, beaches and other valuable natural or aesthetic features.

**GOAL:** Natural resources of the shoreline should be preserved and restored.

**Objective 1:** Preserve and restore the remaining natural resources of the shoreline such as wildlife habitats, fishery resources, wetlands, beaches, natural vegetation and other fragile elements.



Figure 4.6 Wetlands provide habitat for wildlife.

**Policies:**

1. Aquatic habitats and spawning grounds should be protected, improved and increased.
2. Wildlife habitats should be protected, improved, and increased.
3. Wetlands should be protected and restored.
4. Stream bed disturbance should be avoided or minimized.

5. Additional riverbank protection (wet side) should be sloped to allow escapement of fish after high water.

**Objective 2:** Preserve areas of scenic and aesthetic qualities of the shoreline.

**Policy:**

1. Prohibit development in unique and fragile areas.

**Objective 3:** Prevent further deterioration of water quality and require water quality improvement.

**Policies:**

1. No untreated effluent or other pollutants should be discharged into the river.
2. The City and other government agencies should aggressively enforce all governmental water quality regulations.

**Objective 4:** Promote the restoration of the shoreline to a natural aspect.

**Policies:**

1. Streambank protection works (wet side) should be limited to those areas where existing structures are endangered by bank erosion.
2. Encourage the re-establishment of natural vegetation along the shoreline.
3. Prevent the cutting of trees and natural vegetation along the river unless necessary for public safety or public access and levee maintenance.

## **4.7 HISTORICAL/CULTURAL ELEMENT**

**GOAL:** Preserve features of archaeological, historical, cultural and educational significance.

**Objective 1:** Identify features of archaeological, historical, cultural and educational value.

**Policy:**

1. Encourage local institutions to discover, assess and catalog historic and cultural sites.

**Objective 2:** Encourage and provide for the preservation, restoration, development and interpretation of historical, cultural and educational sites.

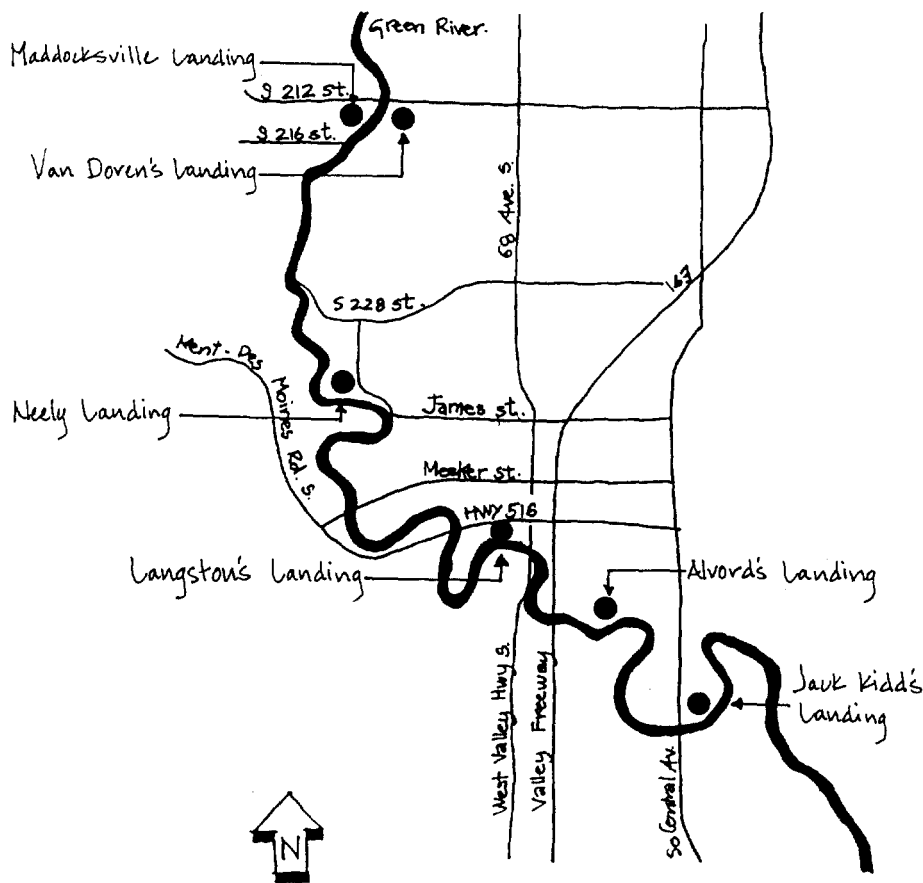


Figure 4.7 Riverboat landings are of historical significance.

**Policies:**

1. Shoreline areas having archaeological, historical, cultural, educational or scientific value should be designated, acquired, protected, and restored.

2. Access to historic and cultural sites should be made available to the general public, when consistent with the protection of the sites.
3. Public and private cooperation should be encouraged in site preservation and protection.
4. Information in the form of signs or other interpretation of historic and cultural features should be provided, when consistent with the protection of the features.

**Objective 3:** Prevent the destruction of features of potential archaeological, historical, cultural and educational significance.

**Policies:**

1. The City may restrict the development of suspected significant sites and newly discovered sites for up to two months so that their significance can be determined.
2. Significant sites should be a high priority for acquisition by the City.

## **4.8 FLOOD CONTROL ELEMENT**

This is an element for the location and design of flood control works on the shorelines.

**GOAL:** Ensure future flood control works are in the public benefit.

**Objective 1:** Investigate the necessity of proposed flood control works.

**Policy:**

1. A flood control project proposal should be based on a thorough analysis of the potential impacts on the shoreline, and an examination of alternative measures, for example, control or reduction of surface water runoff.

**Objective 2:** Require that flood control works are designed for multiple uses.

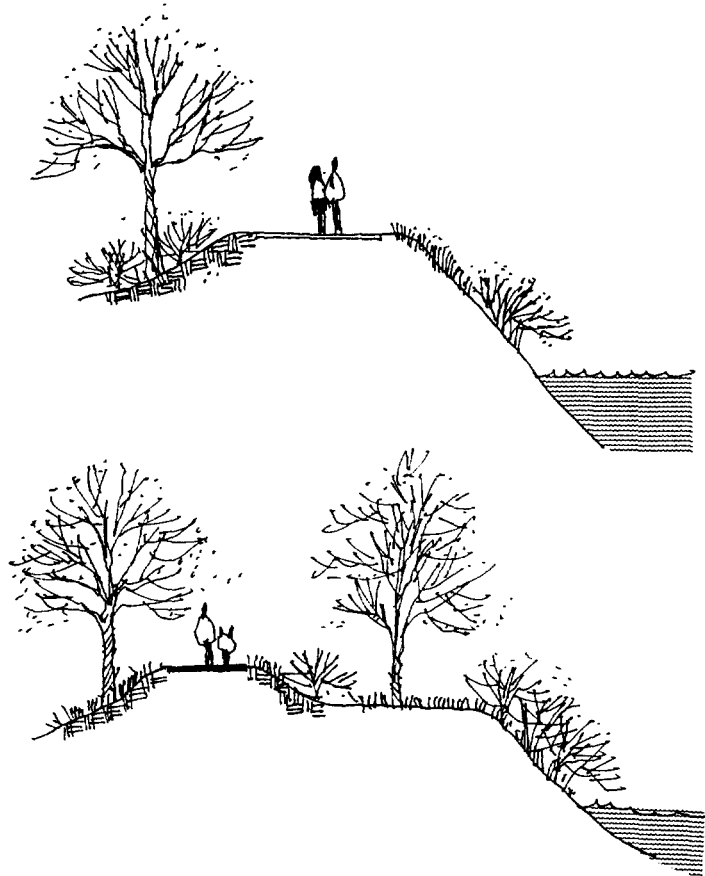


Figure 4.8 Flood control works can be combined with public access and open space buffers.

**Policies:**

1. Public access to the flood control works should be acquired prior to construction.
2. Flood control projects should be designed to maximize open space elements which are not subject to extensive flood damage, such as parks and agriculture.
3. Flood control projects should be designed to provide diverse public recreational opportunities, such as fishing, swimming, boating, birdwatching, viewing, etc.
4. Flood control works should be designed and managed to avoid or minimize negative impacts, and enhance and restore the natural environment and wildlife habitat.
5. Flood control projects should be designed, landscaped and planted to maximize a natural shoreland appearance, fish and wildlife habitat values, public access, and public recreation.

## 5.0 GENERAL PERFORMANCE STANDARDS

General performance standards apply to all activities and uses within the shoreline. These standards carry out the policies expressed in the Elements of the Kent Shoreline Master Program and the policies found in the Shoreline Management Act.

### 5.1 SHORELINES OF STATE-WIDE SIGNIFICANCE

The Shoreline Management Act of 1971 designated certain shoreline areas as shorelines of state-wide significance. These are shorelines which benefit all people in the state, and therefore, preference is to be given to uses which favor public and long-range goals. Within Kent, the Green River and its associated wetlands are considered a shoreline of state-wide significance.

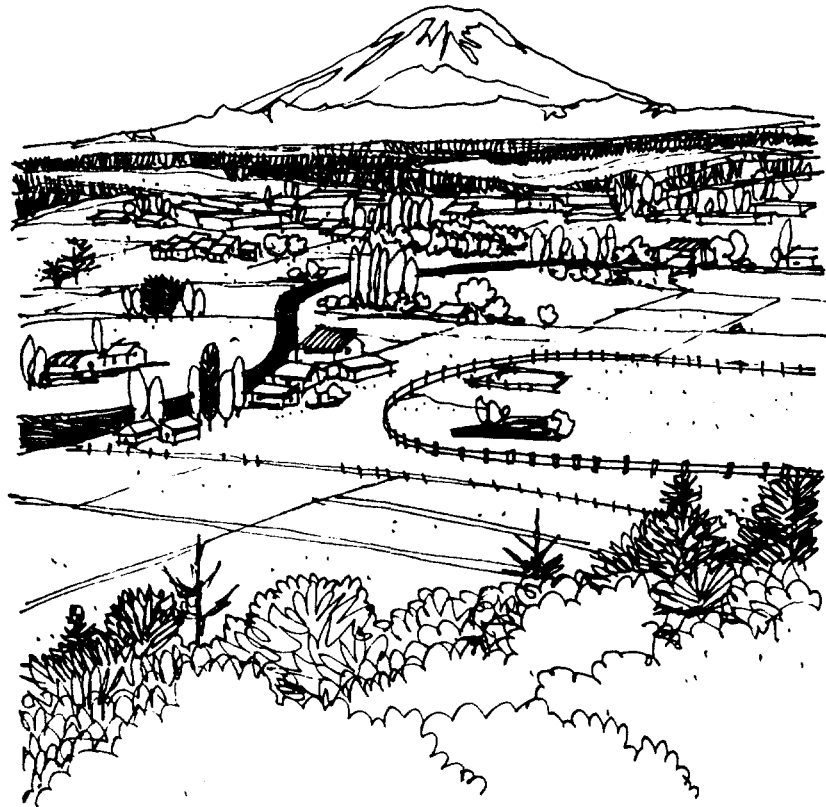


Figure 5.1 The Green River - Shoreline of State-Wide Significance.

RCW 90.58.020 requires that local governments, in developing master programs for shorelines of state-wide significance, give preference to the following uses, in the descending order of preference:

1. Recognize and protect the state-wide interest over local interest.
2. Preserve the natural character of the shoreline.
3. Result in long-term over short-term benefit.
4. Protect the resources and ecology of the shoreline.
5. Increase public access to publicly owned areas of the shorelines.
6. Increase recreational opportunities for the public on the shoreline.

The following development guidelines shall be applied to proposals in shorelines of statewide significance, in addition to any other applicable performance standards in this Program:

**Recognize and protect the state-wide interest over local interest**

1. Solicit comments and opinions from groups and individuals representing state-wide interests by circulating proposed master program amendments and uses for review and comment by state agencies, adjacent jurisdictions' citizen advisory committees, and state-wide interest groups.
2. Recognize and take into account state agencies' policies, programs and recommendations in developing and administering use regulations.
3. Solicit comments, opinions and advice from individuals with expertise in ecology, oceanography, geology, limnology, aquaculture and other scientific fields pertinent to shoreline management.

**Preserve the natural character of the shoreline**

1. Designate and administer shoreline environments and use regulations to minimize damage to the ecology and environment of the shoreline, and to enhance and restore degraded natural resources.
2. Where intensive development already occurs, upgrade and redevelop those areas to reduce their adverse impact on the environment and to accommodate future growth rather than allowing high intensity uses to extend into low intensity use or underdeveloped areas.
3. Ensure that where commercial timber-cutting is allowed as provided in RCW 90.58.150, reforestation will be possible and accomplished as soon as practicable.
4. Protect and preserve existing marshes, bogs and swamps and riparian corridors associated with shoreline areas.

**Result in long-term over short-term benefit**

1. Evaluate the short-term economic gain or convenience of developments relative to the long-term and potentially costly impairments to the natural shoreline.
2. Preserve shorelines of state-wide significance for future generations, and restrict or prohibit development that would damage shoreline resources.
3. Encourage restoration of the natural character of the shoreline in developed areas.
4. Actively promote aesthetic considerations when contemplating new development, redevelopment of existing facilities or the general enhancement of shoreline areas.

**Protect the resources and ecology of the shoreline**

1. Leave undeveloped those areas which contain unique or fragile natural resources.
2. Prevent erosion and sedimentation that would alter the natural function of the water system. In areas where erosion and sediment control practices will not be effective, excavations or other activities which increase erosion are to be severely limited.
3. Restrict or prohibit public access into areas when necessary to protect the resources and ecology of the shoreline.
4. Minimize development activity that will interfere with the natural functioning of the shoreline ecosystem.
5. All shoreline development should be located, designed, constructed and managed to avoid disturbance of and minimize adverse impacts to fish and wildlife resources, including migratory routes, spawning, nesting, rearing, and habitat areas. Wildlife habitats and sanctuaries should be included as part recreational developments.
6. Preserve environmentally sensitive areas for use as open space or buffers.
7. Encourage the restoration of presently degraded wetland areas.



**Increase public access to publicly owned areas of the shorelines**

1. Give priority to developing paths and trails to shoreline areas.
2. Locate development landward of the ordinary high water mark to that access is enhanced.

**Increase recreational opportunities for the public on the shoreline**

1. Plan for and encourage development of facilities for recreational use of the shorelines.
2. Reserve areas for lodging and related facilities on uplands well away from the shorelines with provisions for non-motorized access to the shorelines.

**5.2 ARCHAEOLOGICAL AND HISTORIC RESOURCES**

1. No development shall be undertaken with regard to a site or structure that has probable historical, scientific, or archaeological significance until an evaluation of the site or structure has been made by an authority judged competent in such matters by the City of Kent. The City shall identify a competent authority within one month of discovery of the site or structure.

**5.3 CLEARING AND GRADING**

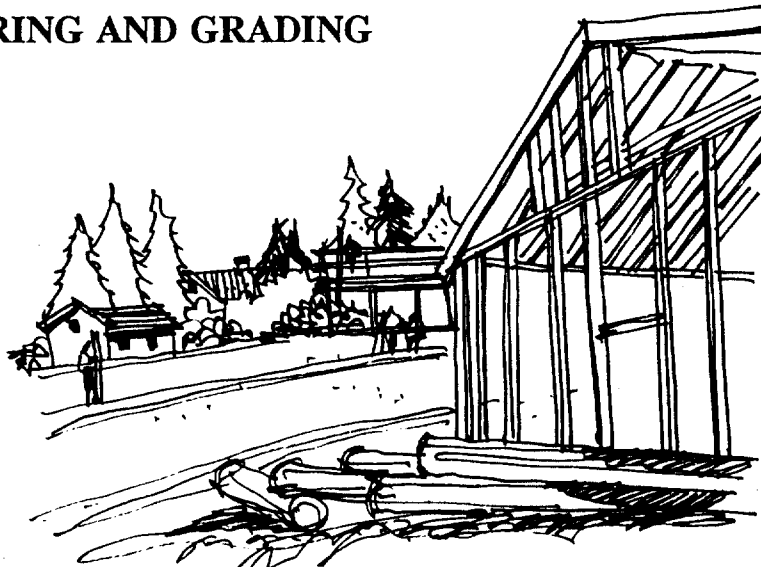


Figure 5.2 Clearing and Grading shall be minimized.

1. All clearing and grading activities shall be limited to the minimum necessary for the intended development.
2. Clearing and grading activities shall be allowed only when associated with a permitted shoreline development. Upon completion of construction, remaining cleared areas shall be replanted with native vegetation or other plantings approved by the Administrator.
3. No cutting, damage, or removal of trees over four (4) inches in caliper (as measured twelve (12) inches above their mean ground elevation) will be permitted prior to the submittal and approval of a site-specific tree plan and mitigation proposal. The tree plan must be drawn to scale, and shall indicate the precise location of all trees of four-inch caliper on the shoreline portion of the site in relation to proposed development. The mitigation proposal must provide for the replacement and maintenance of any trees removed. The developer may be required to replace trees at a greater than 1:1 ratio.
4. Uses shall avoid adversely affecting any other natural vegetation in the shoreline unless necessary for public safety or public access, or otherwise clearly in the public benefit. Normal pruning and trimming of vegetation for maintenance purposes shall not be subject to this regulation. Clearing of invasive non-native shoreline vegetation or plants listed on the state noxious weed list is permitted in the shoreline if native vegetation is promptly re-established in the disturbed area.

## 5.4 ENVIRONMENTAL IMPACTS

1. The location, design, construction and management of all shoreline development shall protect the quality and quantity of surface and ground water adjacent to the site and shall adhere to the guidelines, policies, standards and regulations of applicable water quality management programs and regulatory agencies.
2. All shoreline development shall utilize effective erosion control methods during project construction and operation.

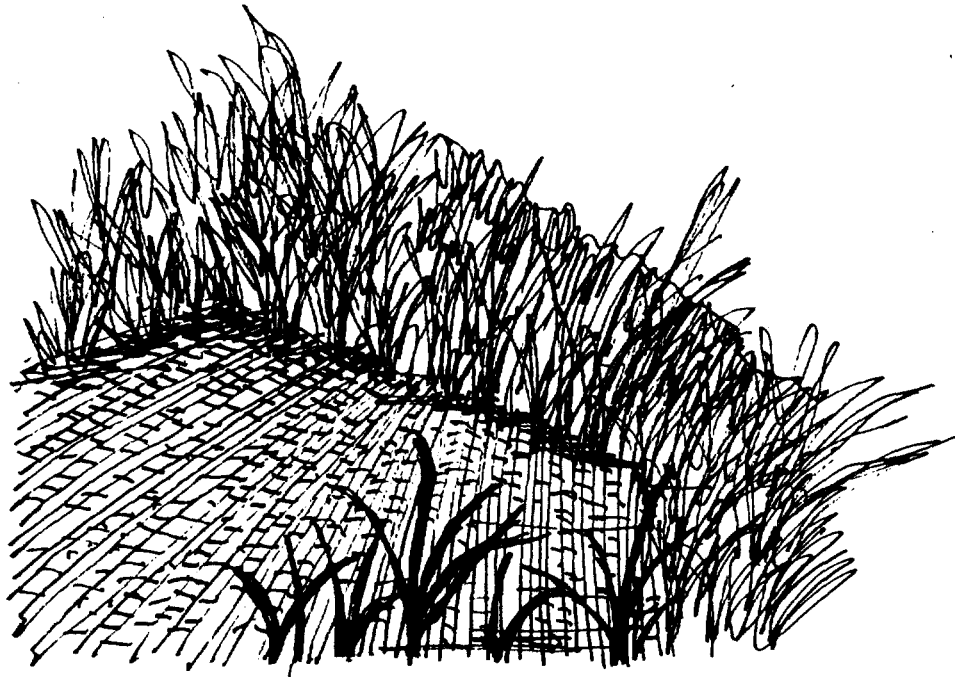


Figure 5.4 A natural fiber mat stabilizes slopes and allows natural vegetation to permeate.

3. All shoreline development shall be located, designed, constructed and managed to avoid disturbance of and minimize adverse impacts to fish and wildlife resources, including spawning, nesting, rearing and habitat areas and migratory routes. Where a development cannot avoid such disturbance or impact, the developer shall be required to mitigate the impacts of such disturbance or impact.

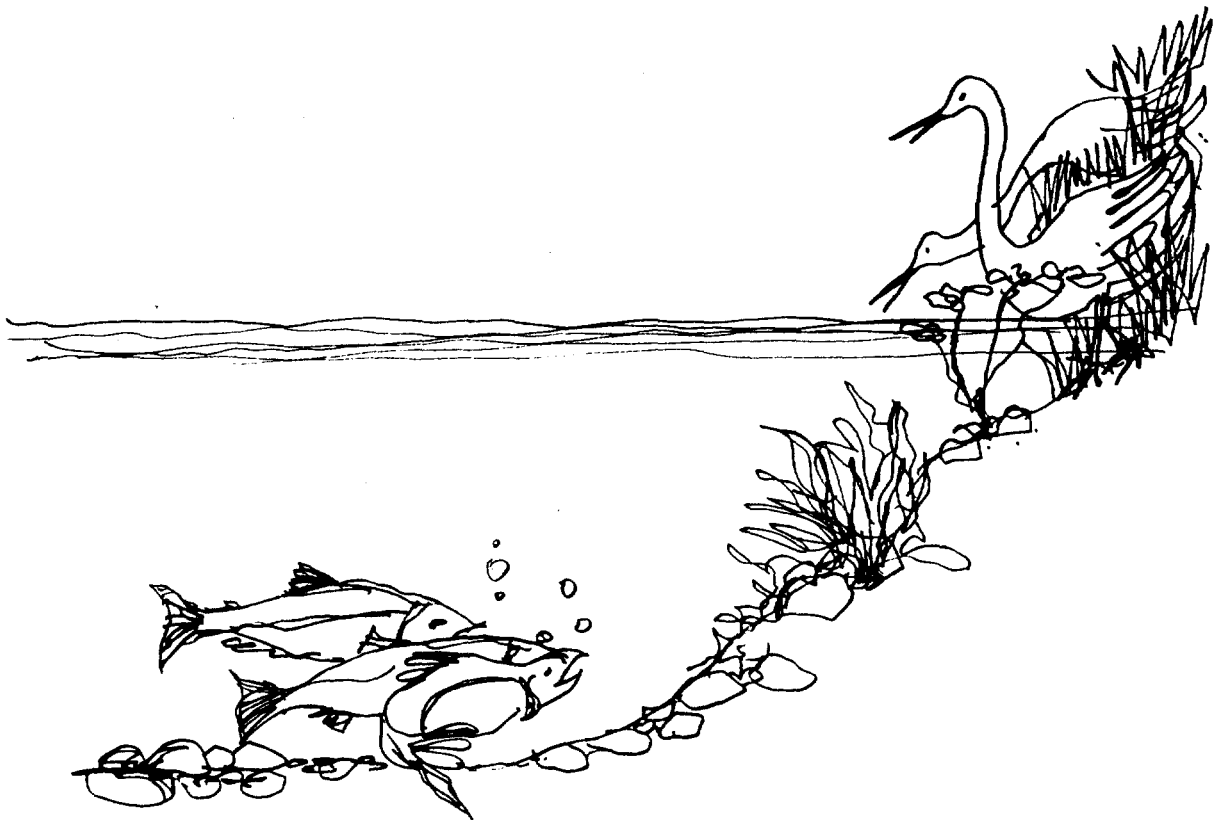


Figure 5.5 Impacts to wildlife habitats shall be minimized.

4. The application of fertilizers, herbicides and pesticides shall be prohibited within one hundred (100) feet landward of the OHWM. Fertilizers, herbicides and pesticides shall not be applied or allowed to directly enter water bodies or marshes, bogs or swamps.

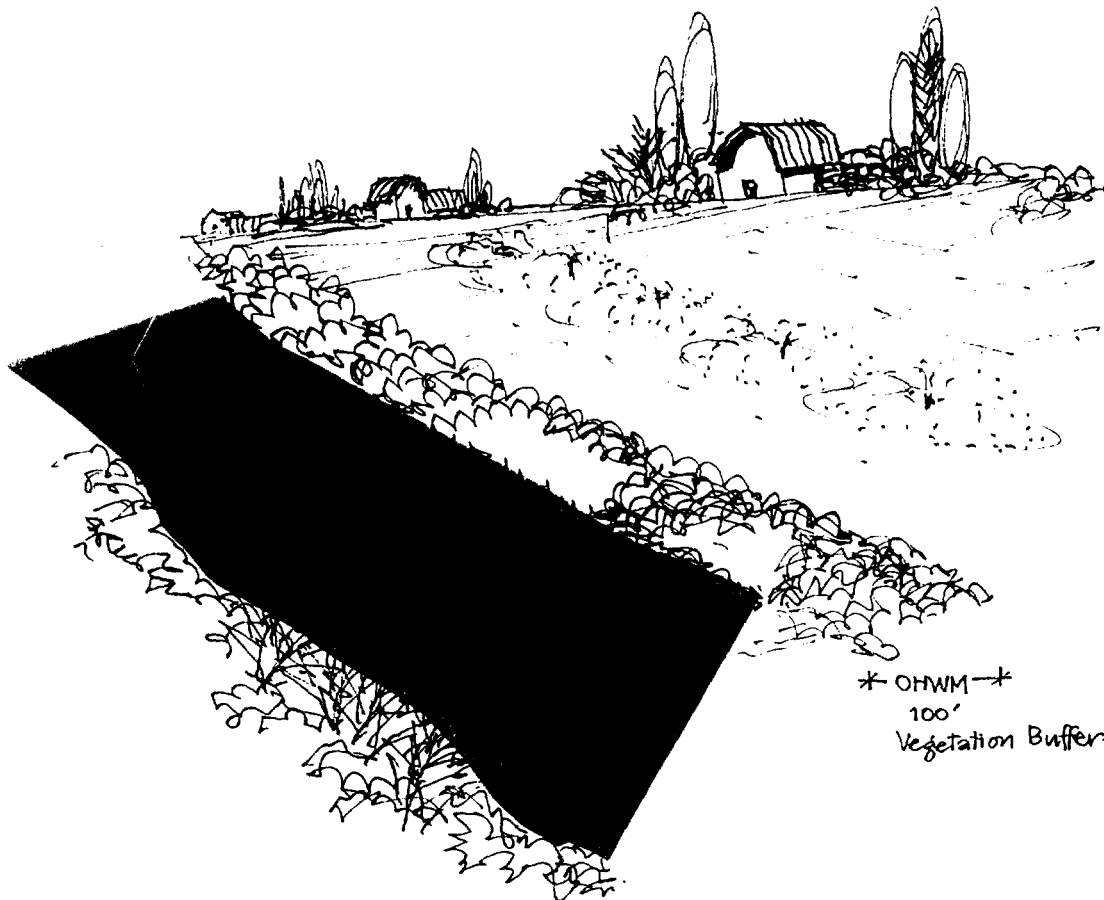


Figure 5.6 Fertilizers, pesticides and herbicides are prohibited within 100 feet of OHWM.

## 5.5 ENVIRONMENTALLY SENSITIVE AREAS

1. Development in or adversely affecting unique and fragile areas is prohibited, unless it can be clearly demonstrated that the values and functions of the areas will increase as a result of the development. The Administrator may require that any mitigation measures associated with such development be fully implemented prior to development.
2. Development located in or that adversely affects sensitive areas, including marshes, bogs, swamps, fish and wildlife habitats, migratory routes, spawning areas, scenic vistas, and unstable bluffs shall be avoided or minimized.

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

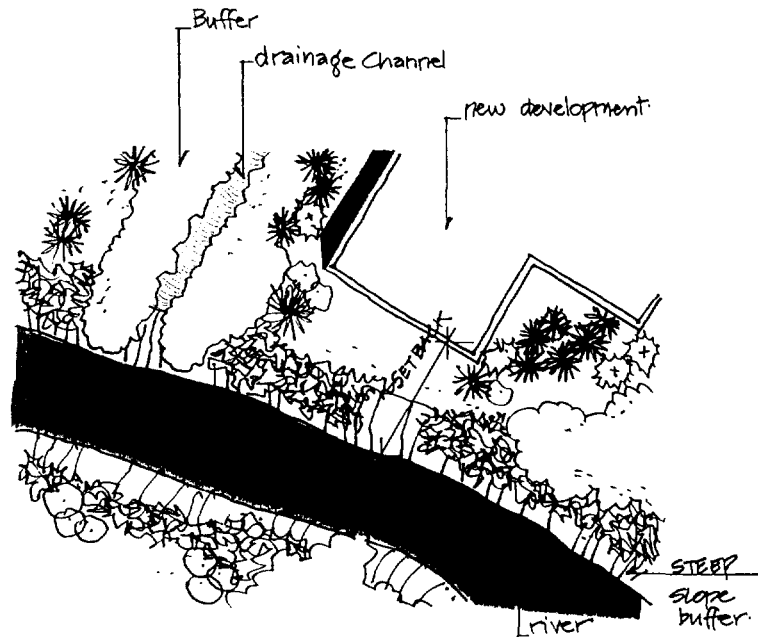


Figure 5.7 Environmentally sensitive areas shall be maintained as open space buffers.

## 5.6 MARSHES, BOGS AND SWAMPS

The following standards shall apply to all marshes, bogs and swamps within the jurisdiction of the Kent Shoreline Master Program. For purposes of this section only, the terms "wetland" and "wetlands" refer to marshes, bogs and swamps.

1. Wetlands within the jurisdiction of the Kent Shoreline Master Program are resources of local and state-wide significance. These wetlands shall be mapped and shall be considered for designation as Conservancy lands.
2. City staff shall consider the impacts of shoreline development on wetlands.
4. Adverse impacts to wetlands shall be avoided, unless it can be shown that the impact is both unavoidable and necessary.
5. Where adverse impacts to wetlands are unavoidable and necessary, the impacts shall be minimized by appropriate mitigation and monitoring. The goal of mitigation is to ensure no overall net loss of wetland

functions, values, types and acreage. Mitigation shall achieve adequate replacement ratios, taking into consideration the unproven nature of enhancement and replacement technologies, and the possibility that the benefits of mitigation may not be immediately available. As a guide, City staff should consider the replacement ratios suggested by the Department of Ecology's Model Wetlands Ordinance (September 1990).

6. Any proposed mitigation or enhancement shall: (1) be contiguous with the affected or altered wetland, unless this would result in a lower replacement ratio of types, functions, values and acreage; and (2) in general, avoid the use of unique and fragile areas, agricultural lands or any other protected areas for mitigation.
7. Where there are wetlands on the site of a proposed development, the Administrator shall require the following:
  - a. A wetlands report prepared at the applicant's expense by a consultant chosen from the City's list of qualified wetlands consultants or otherwise approved by the Administrator.
  - b. The report shall include the following:
    1. A description of the methodology used to conduct the study;
    2. A delineation of any wetlands, including wetland edges, on the site, using the Federal Manual for Identifying and Delineating Jurisdictional Wetlands, 1989;
    3. An identification of the functions, values and types of wetlands on site, and a description of how they relate to wetlands off-site;
    4. A classification of the wetland according to the rating categories described in the King County Wetlands Inventory, 1983;
    5. An assessment of the proposal's potential impacts on the functions and values of the wetlands; and
    6. A mitigation plan, if construction in the wetland or any other impacts or alterations to the wetland are proposed. The plan must identify whether avoidance of the wetland is possible; whether filling is proposed; the replacement ratio; and the specific mitigation and monitoring measures proposed.

- c. In addition to mapping the wetlands and edges, the edges shall be marked in the field.
- d. Upon receipt and verification of the report by City staff and/or the Department of Ecology, City staff shall review the report and the proposed mitigation plan against the regulation in paragraph 6 above. The following buffer and setback areas are recommended, unless alternative buffers and setbacks will, in the opinion of the Shoreline Administrator, provide an equivalent level of protection for wetlands:
  1. Class 1 wetlands - 100-foot undisturbed buffer of native vegetation;
  2. Class 2 wetlands - 50-foot undisturbed buffer of native vegetation;
  3. Class 3 wetlands - 25-foot undisturbed buffer of native vegetation.

For all classes of wetlands, a minimum setback line of 15 feet shall be required from any road, parking area, or other impervious surface, and the edge of the wetland buffer. Other activities that may have an adverse impact on the wetland may be prohibited in the setback area, for example, the use of pesticides or fertilizers.

8. The Shoreline Administrator shall condition shoreline permits in accordance with the results of the process outlined above. All projects which adversely affect wetlands shall require a conditional use permit.
9. Implementation of mitigation plans. City staff shall take any steps necessary to ensure that mitigation plans are fully implemented. Such steps may include, but are not limited to:
  - a. Requiring a cash mitigation bond to be posted by the applicant or other adequate security that will ensure implementation of the mitigation plan;
  - b. Ensuring that the approved mitigation plan and bond are in place prior to any construction plan approval (that is, filling and grading permits, engineering plans, etc.). City staff should also ensure that the mitigation plan is implemented prior to final project approval (for example, issuing the Certificate of Occupancy, final plan approval, etc.);
  - c. Ensuring that there is adequate inspection and monitoring of the mitigation both during and after the construction phase;



- d. Utilizing all available authority to ensure the long-term success of the proposed mitigation, including enforcement or other legal action as necessary; and
- e. Any other appropriate measures.

## 5.7 PUBLIC ACCESS

1. A public access easement or land dedication shall be granted on land located within shoreline jurisdiction, beginning at the OHWM, and extending landward to a point at least fifty (50) feet from the centerline of an existing dike or fifty (50) feet from the OHWM where there is no existing dike, whichever is the greatest distance inland.

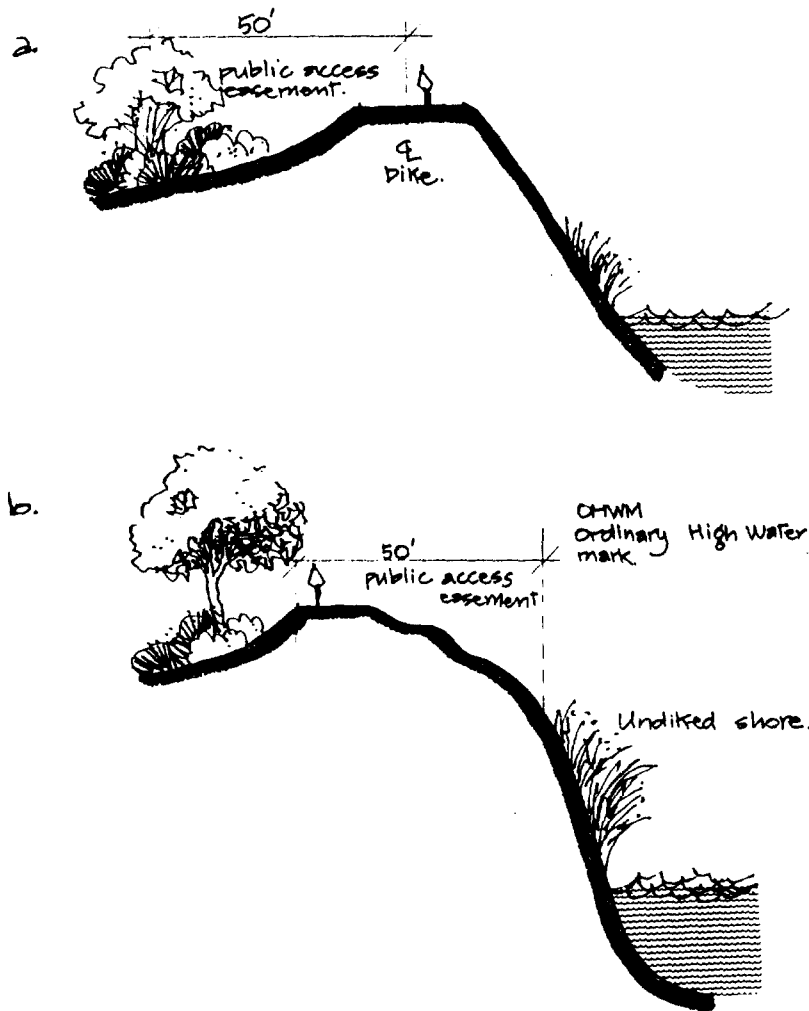


Figure 5.8 Public access easements (a) from the dike or (b) from the OHWM.

2. Public access provided by shoreline street ends, public utilities and rights-of-way shall not be diminished.
3. One twenty (20) foot wide public pedestrian/bicycle access from a public road to the riverfront shall be provided for every one thousand (1,000) feet of river frontage or scenic drive frontage.

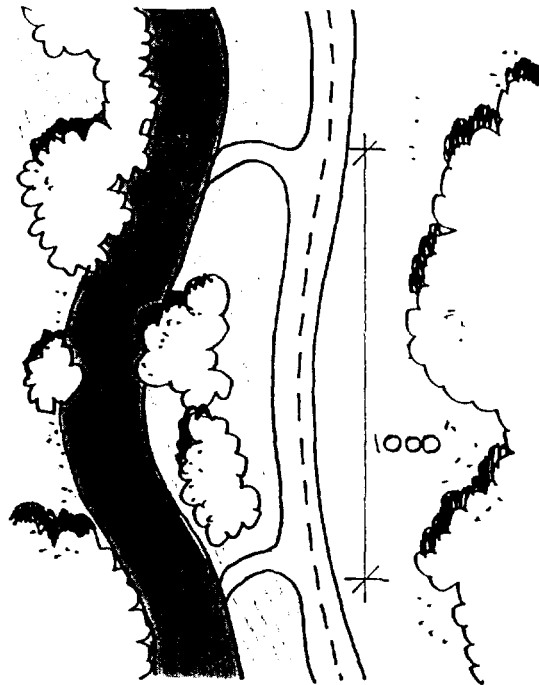


Figure 5.9 Public access to the riverfront shall be provided every 1000 feet.

4. One off-street public parking space shall be provided for every 175 feet of river frontage or scenic drive frontage. Parking shall conform to any applicable standards in this Master Program or other City requirements. In lieu of providing such parking, the Administrator may allow the developer to meet this requirement through payment or by development of additional public access.
5. In review of all shoreline permits, public access in addition to that required above shall be considered. Provisions for such public access, which may include recreational opportunities, shall be incorporated into a shoreline development, unless the applicant demonstrates that one or more of the following provisions apply:

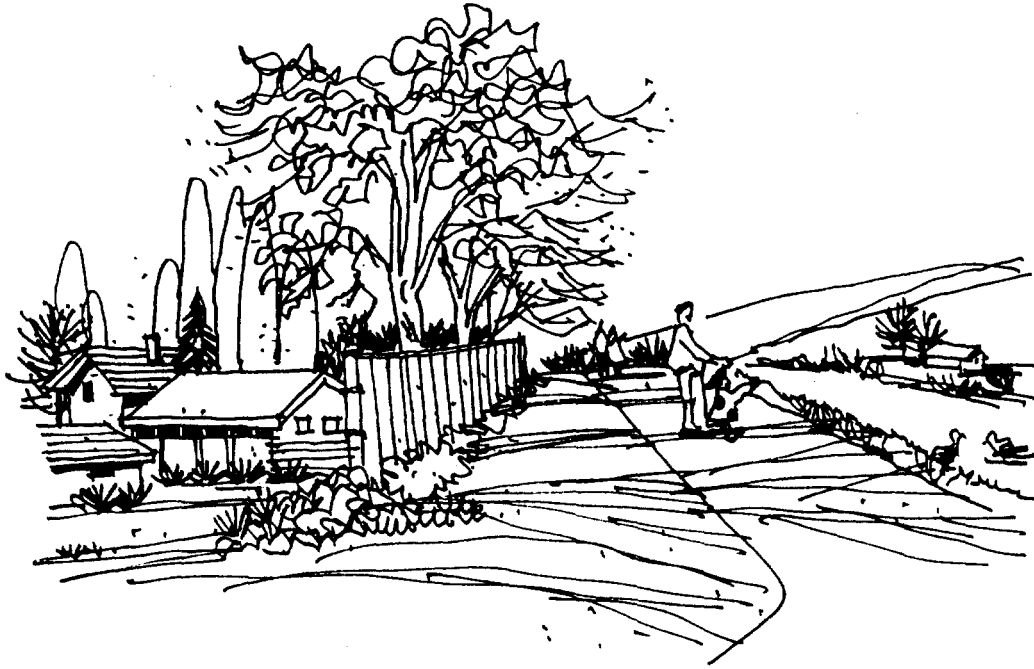


Figure 5.10 Public access.

- a. significant environmental harm will result from the public access, which cannot be mitigated;
  - b. unavoidable health or safety hazards to the public exist which cannot be prevented by any practical means;
  - c. inherent security requirements of the use cannot be satisfied through the application of alternative design features or other solutions;
  - d. the cost of providing the access, easement, or an alternative amenity is unreasonably disproportionate to the total long-term cost of the proposed development;
  - e. significant undue and unavoidable conflict between any access provisions and the proposed use and/or adjacent uses would occur and cannot be mitigated.
6. All public access points shall be provided through an easement, covenant or similar legal agreement recorded with King County.

## 5.8 VIEW PROTECTION

1. Except for existing or future arterial and freeway crossings, the following shall apply: Shoreline development shall avoid blocking, reducing, or adversely interfering with the public's visual access to the

water or shorelines.

2. Visual access shall be provided and maintained in a manner consistent with this Program's requirements for preservation of trees and natural vegetation.
3. Development on or over the water shall be constructed as far landward as possible to avoid interference with views from surrounding properties to the shoreline and adjoining waters.

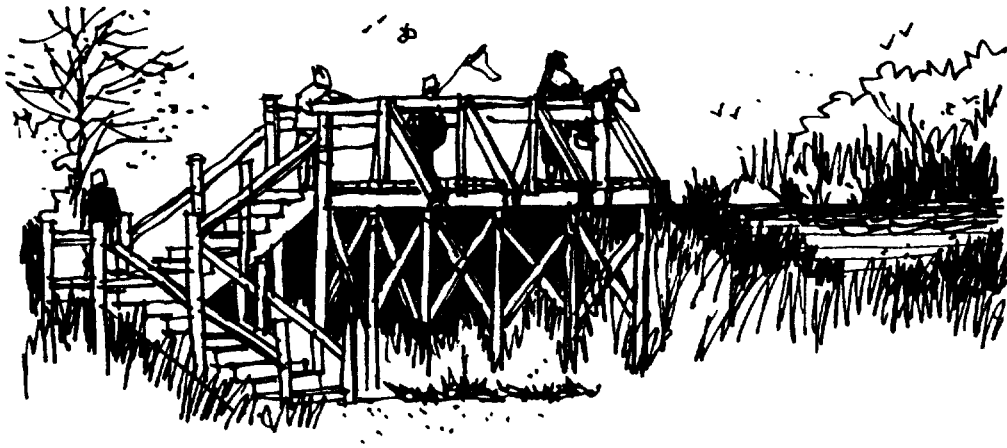


Figure 5.11 Viewing platform.

## 5.8 OTHER STANDARDS

1. Loading docks shall not be located on river-facing sides of buildings.

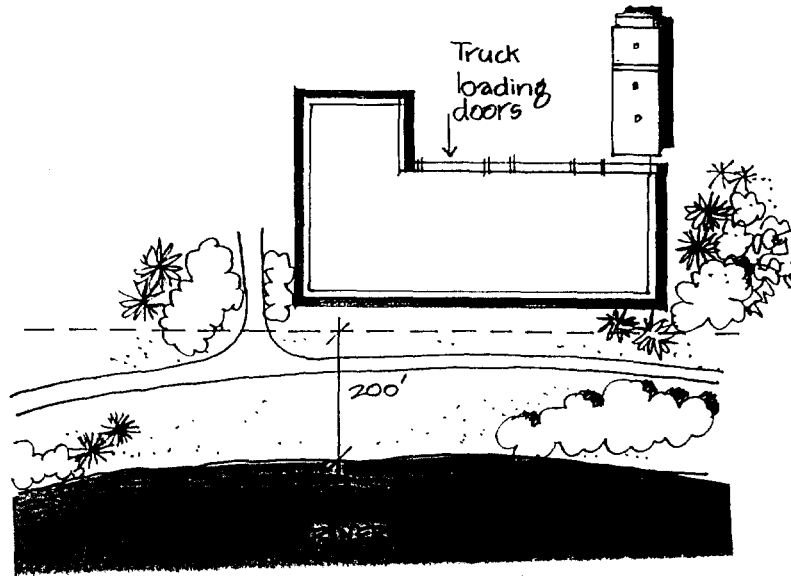


Figure 5.12 Loading docks shall not face the river.

2. Building lengths facing the Green River shall be limited to two hundred (200) feet.

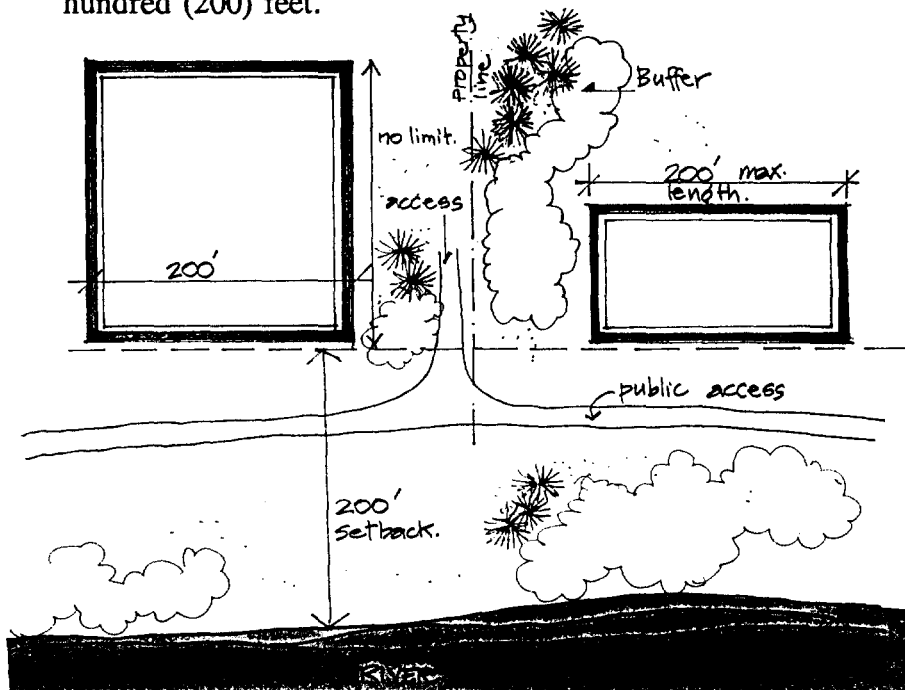


Figure 5.13 Buildings fronting the river are limited to 200 feet in length.

3. Except for bridge structures associated with arterial or freeway river crossings, no structure shall exceed two stories or twenty-five feet in height, except that telephone or transmission poles may be permitted as conditional uses.

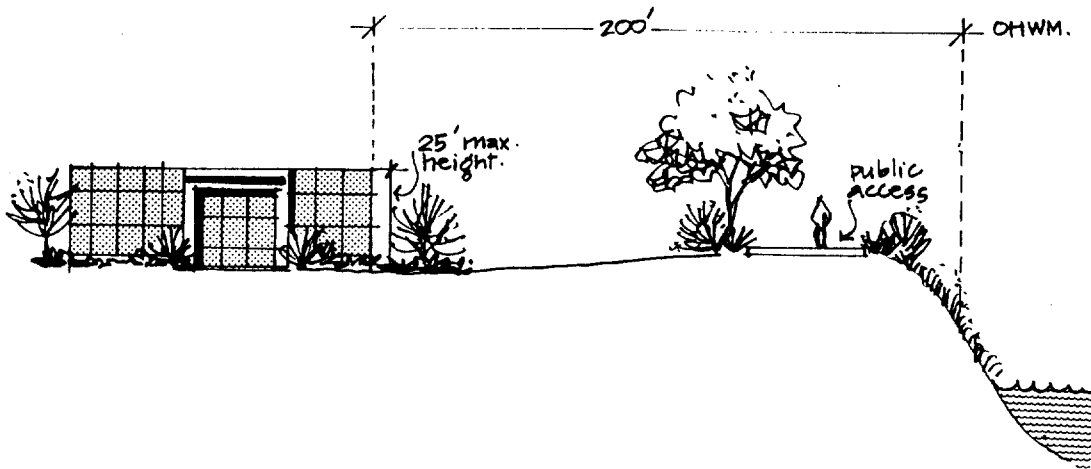


Figure 5.14 Building height is limited to two stories or twenty-five feet.

4. Landscape screening and buffer strips shall be planted so as to be harmonious with those already planted on adjacent properties and consistent with any other applicable landscaping requirements.

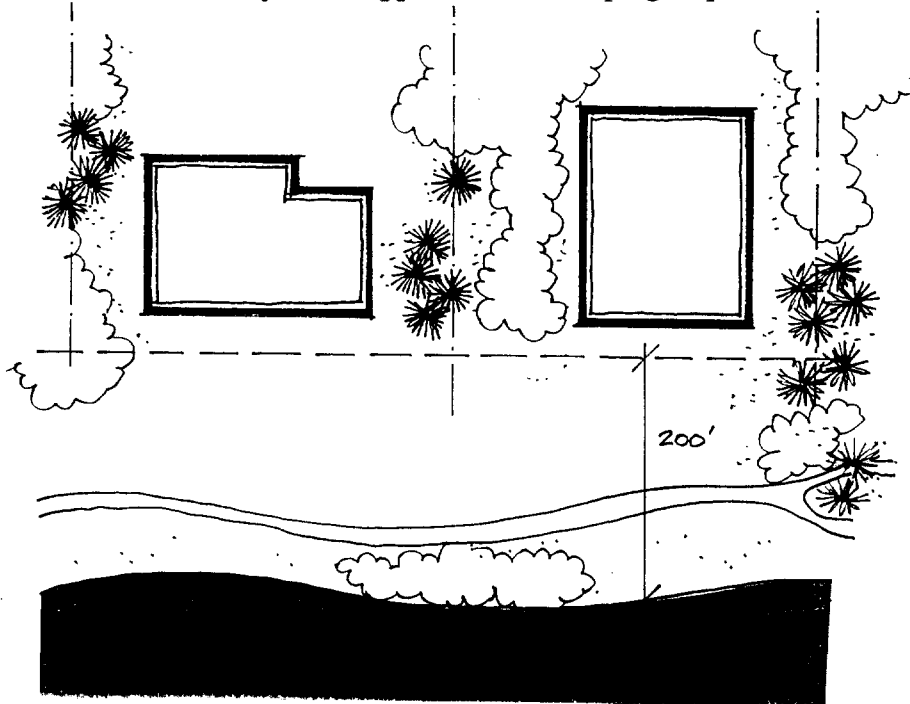


Figure 5.15 Landscape buffers.

5. Any water-dependent portion of the development shall be minimized and clustered along the shoreline.

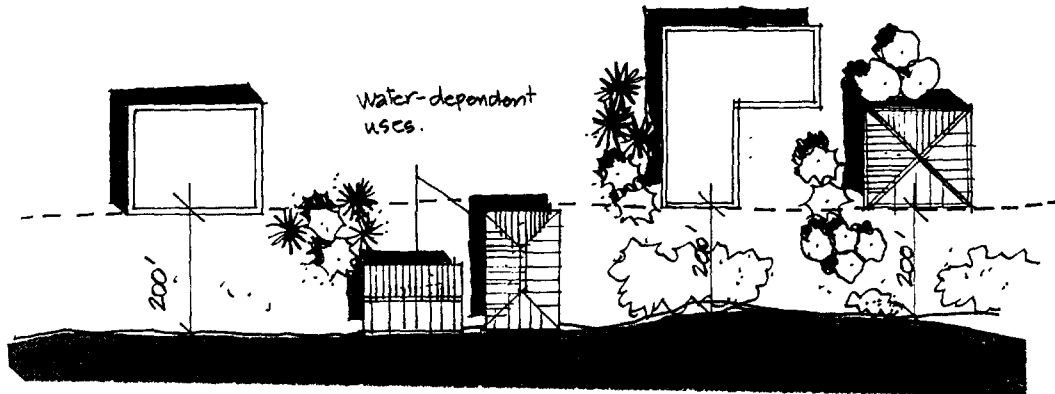


Figure 5.16 Water-dependent uses shall be minimized.

6. Surface drainage facilities such as drainage channels and retention areas shall be designed, where feasible, to be integral parts of any common trail and open space system connections to the riverfront.

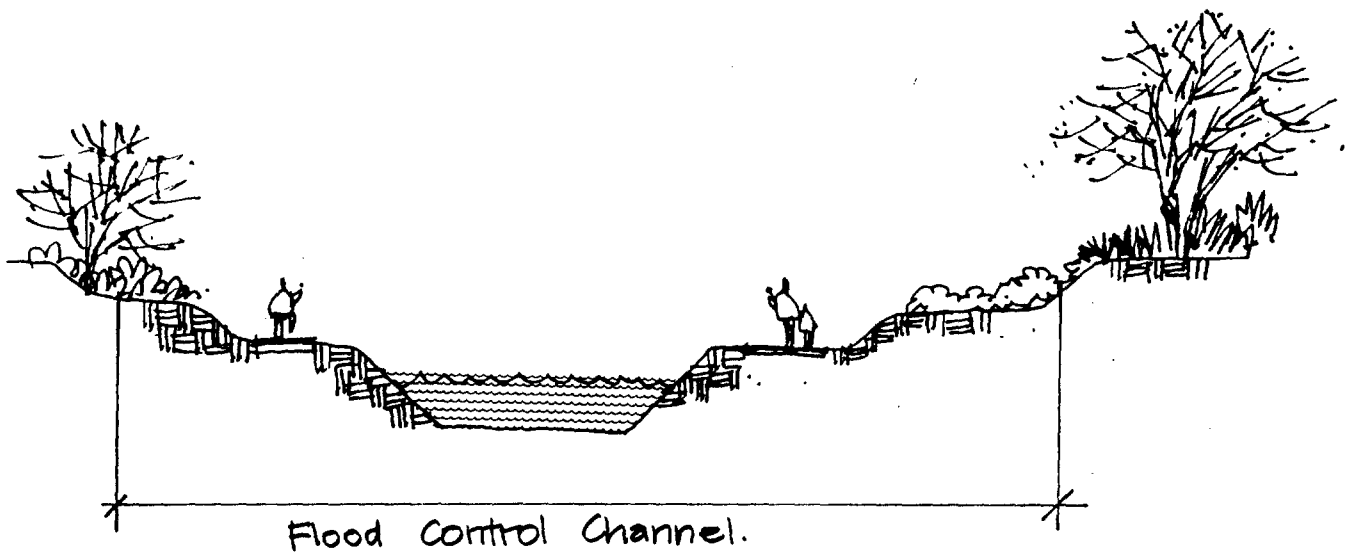


Figure 5.17 Drainage facilities can be integrated into open space systems.

7. There shall be no over-water structure unless it is demonstrated that such structure is needed to protect or promote the public interest, or will enhance public access and enjoyment of the shoreline.

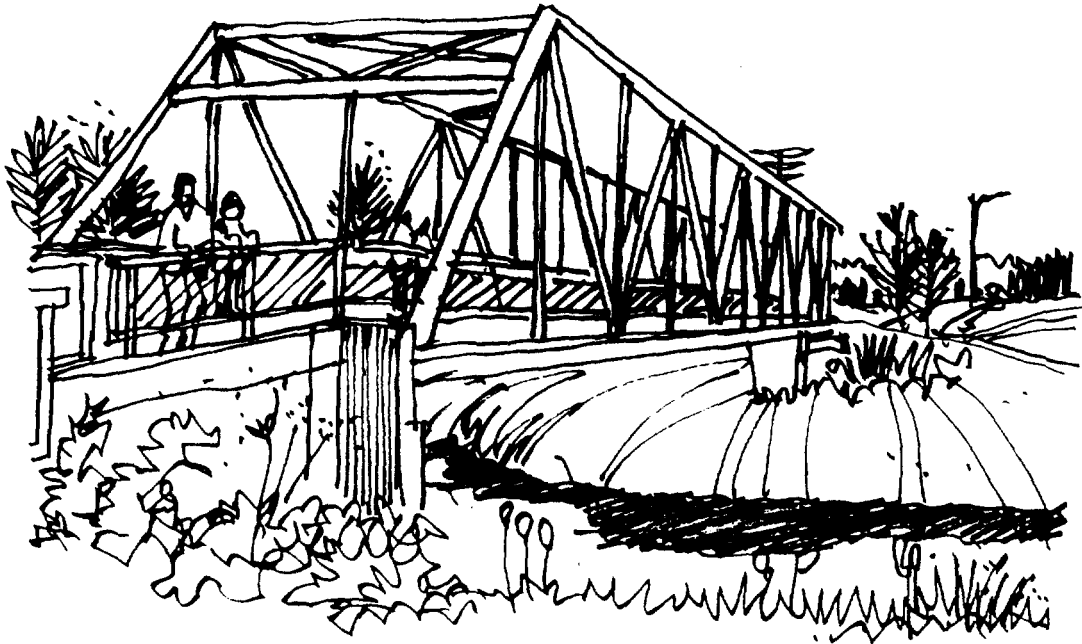


Figure 5.18 The Meeker foot bridge enhances public access along the shoreline.

Where a need for an over-water crossing has been demonstrated, such crossing shall (a) provide or allow for a safe pedestrian access under the bridge wherever the bridge crosses a potential river trail route identified in the Kent Green River Corridor Plan (1980); and (b) in the case of public roads, provide a safe pedestrian river crossing having a width of no less than six (6) feet.



## **6.0 SPECIFIC SHORELINE USE POLICIES AND PERFORMANCE STANDARDS**

### **6.1 AGRICULTURE**

Agriculture includes the cultivation of soil, production of crops, or the raising of livestock.

#### **Policies:**

1. Agricultural lands should be protected from incompatible patterns of development.
2. The scenic beauty of natural shorelines as well as the historic value of many rural agricultural landscapes should be protected in agricultural development.
3. The creation of new agricultural lands by diking, draining or filling marshes, bogs or swamps should be prohibited.

#### **Performance Standards:**

1. Erosion control measures shall conform to guidelines and standards established by the U.S. Soil Conservation Service the U.S. Department of Agriculture.
2. Pesticides shall be used, handled, and disposed of in accordance with the provisions of the Washington State Pesticide Application Act, Ch. 17.21 RCW, and the Washington State Pesticide Act (Ch. 15.57 RCW) to prevent contamination and sanitation problems.
3. Livestock waste shall be disposed of in a manner that will prevent surface or groundwater contamination.
4. Manure lagoons shall maintain a minimum one hundred foot setback from any water body, river, creek, marsh, bog or swamp, and if located in the floodplain shall be constructed to an elevation one foot above the base flood level occurring at the site, and if possible, adequately covered.

5. Manure spreading shall be set back from the shoreline a sufficient distance, no less than twenty five (25) feet from the floodway boundary, edge of a marsh, bog or swamp, or OHWM, whichever is furthest, to prevent animal wastes from entering water bodies or wetlands adjacent to water bodies.

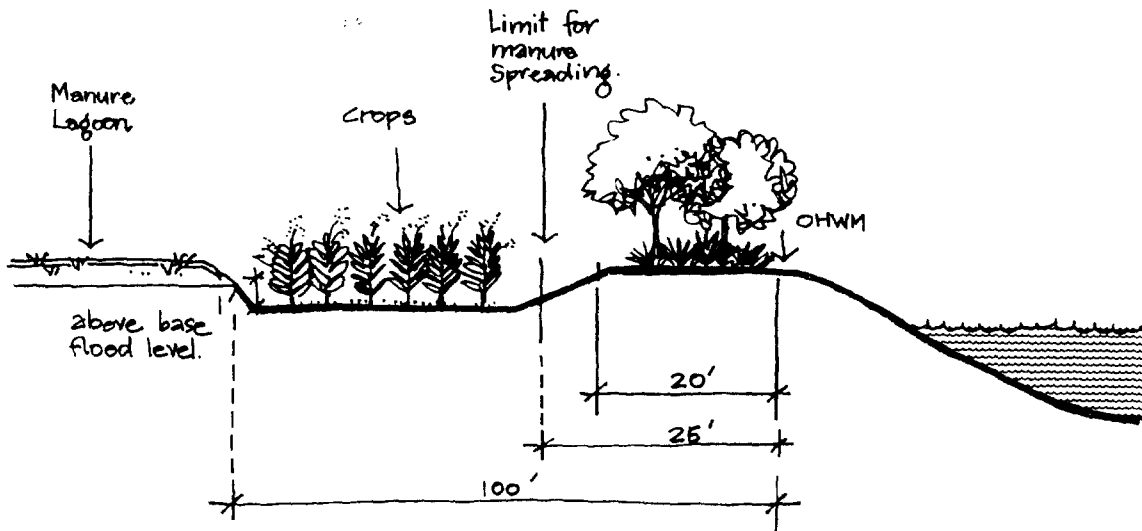


Figure 6.1 Manure lagoons shall be at a minimum 100 feet from OHWM.  
Manure spreading shall not occur within 25 feet of the OHWM.

6. A permanent buffer strip of natural vegetation, or planted permanent native vegetation, no less than twenty (20) feet in width, shall be maintained between any tilled or pasture area and the ordinary high water mark of the river, the edge of any marsh, bog or swamp, or floodway edge, whichever is greater.

## 6.2 AQUACULTURE

Aquaculture includes the farming or culturing of food fish, shellfish or other aquatic plants or animals.

### Performance Standard:

1. All aquaculture shall be permitted only as a conditional use.

### 6.3 COMMERCIAL DEVELOPMENT

Commercial development includes uses and facilities that are involved in wholesale and retail trade or business activities.

**Performance standards:**

1. For commercial uses, the building setback line shall be a minimum distance of two hundred (200) feet from the OHWM. Parking facilities associated with such uses are subject to the setback requirement contained in the specific performance standards for **PARKING FACILITIES**.

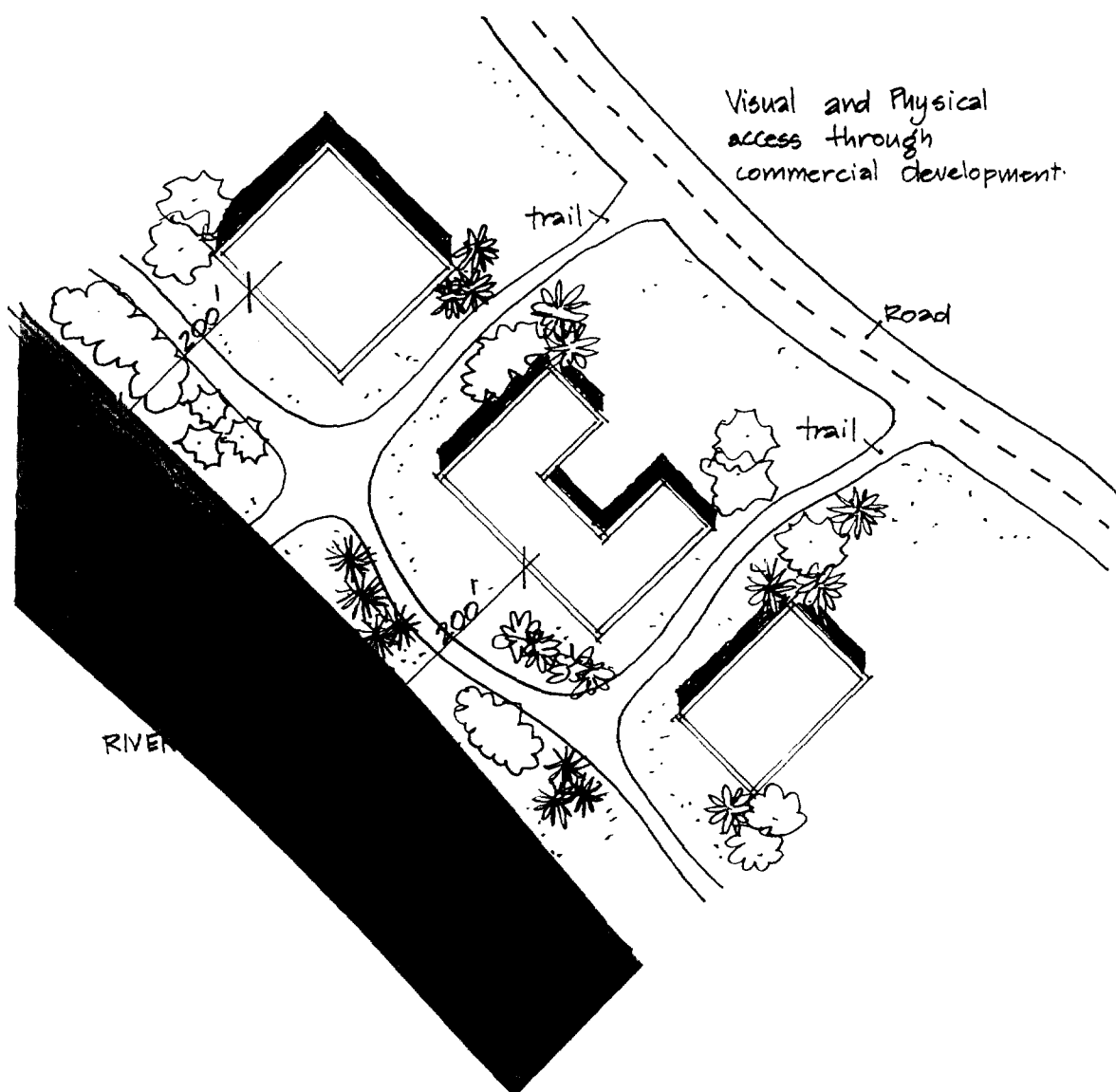


Figure 6.2 Commercial buildings shall be set back a minimum of 200 feet from OHWM.

2. Building setback lines shall take into account the need for visibility of the riverfront park system from public roads at access points.

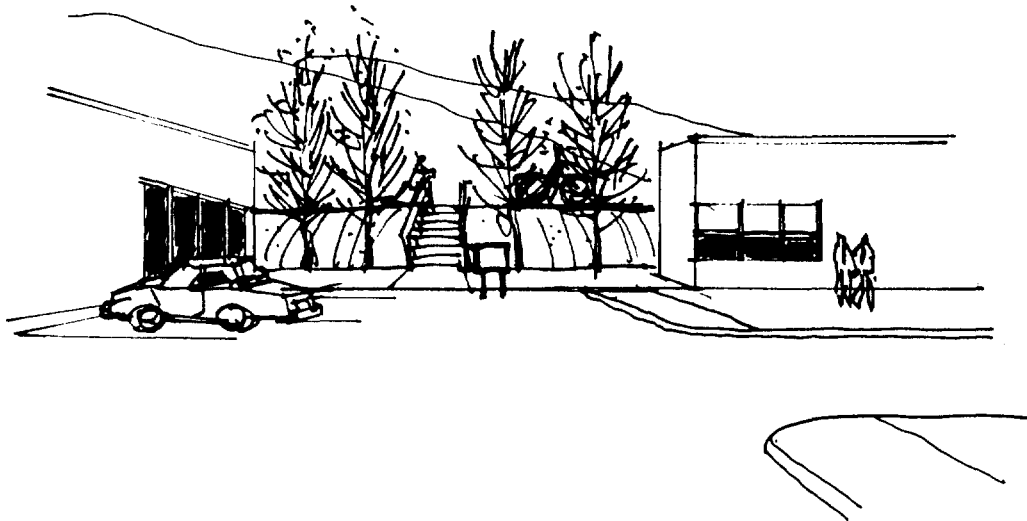


Figure 6.3 Commercial development should be configured to allow visual and physical access to the riverfront park and trail system.

3. The City shall require and utilize the following information in its review of commercial development proposals:
  - a. Whether the activity is water-dependent, water-related, water-enjoyment, non-water-oriented or mixed-use;
  - b. The need for the shoreline location;
  - c. Special considerations for enhancing the relationship of the activity to the shoreline;
  - d. Provisions for public visual and physical access to the shoreline;
  - e. For mixed-use proposals, present alternative mixes of water-oriented and non-water-oriented uses and activities, structural locations, site designs and bulk considerations, alternative enhancements for natural features of the shoreline, physical and visual public access to the shoreline (both public and private spaces) and other considerations which address the goals and policies of the Shoreline Master Program.

4. New commercial developments shall be located adjacent to existing or planned commercial developments which are consistent with the provisions of this Master Program, whenever practicable. Development proposals shall be limited to those uses which can be classified as a water-oriented, or a mixed use of water-oriented and non-water oriented. Non-water-oriented development, while not favored, may be authorized as a conditional use.

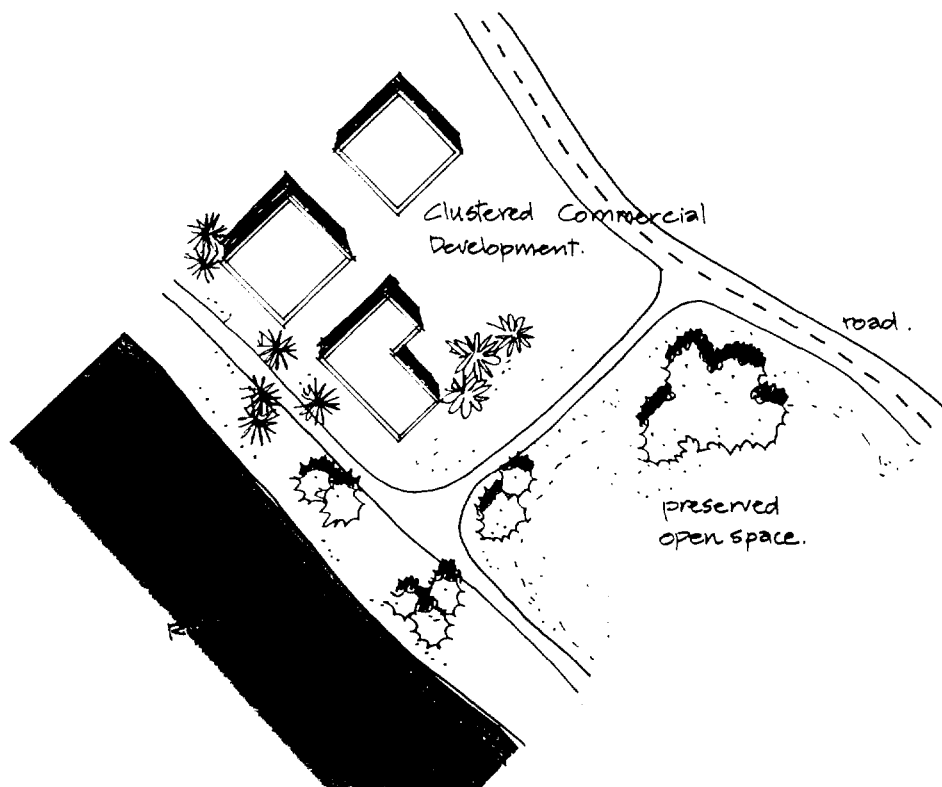


Figure 6.4 New commercial development should be clustered around existing development.

## 6.4 DREDGING

Dredging is the removal of earth, gravel, silt or debris from the bottom of a river, stream or other water body or associated marsh, bog, or swamp.

### Performance Standards:

1. Dredging to obtain bottom materials for the purposes of landfilling is prohibited.
2. A plan for deposit of dredged materials must be approved by the Administrator.

## 6.5 INDUSTRIAL FACILITIES

Industrial facilities include facilities for processing, manufacturing, fabrication or storage of goods.

### Performance Standards:

1. For industrial uses, the building setback line shall be a minimum distance of two hundred (200) feet from the OHWM. Parking facilities associated with such uses are subject to the setback requirement contained in the specific performance standards for Parking Facilities.

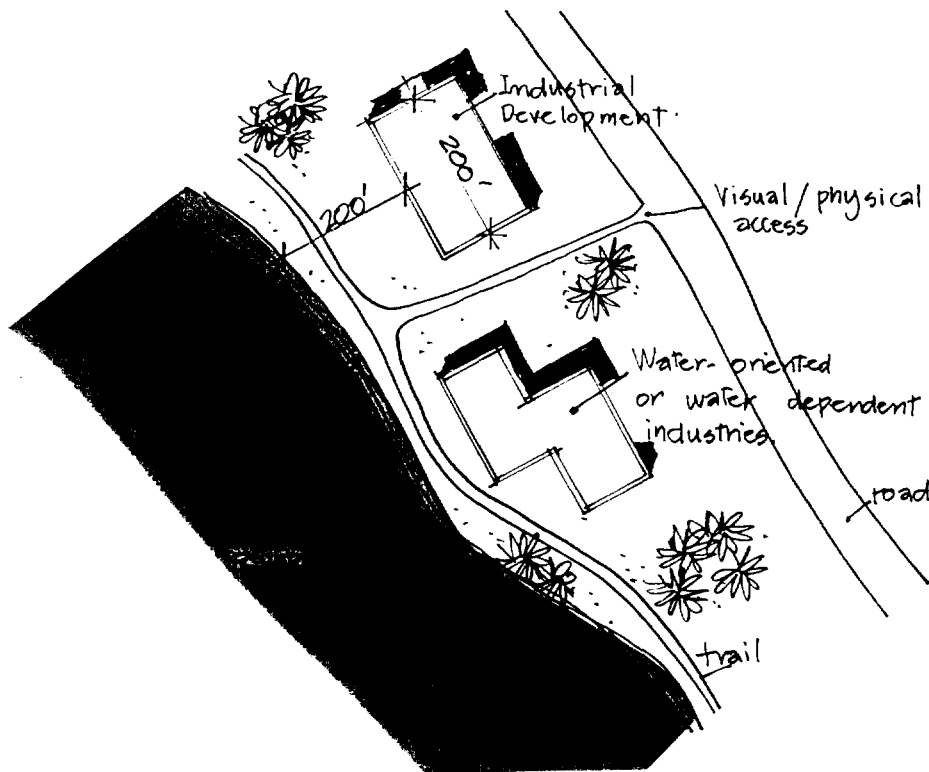


Figure 6.5 Industrial development shall be setback a minimum of 200 feet from the OHWM. Building lengths are limited to 200 feet.

2. Only water-dependent and water-related industries shall be permitted in the shoreline jurisdiction.

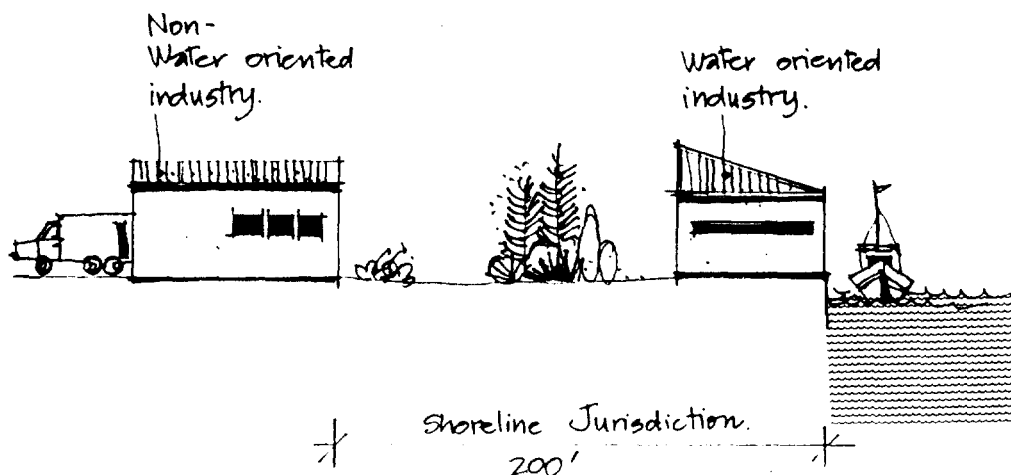


Figure 6.6 Only water-dependent and water related development are permitted within the shoreline jurisdiction.

3. Building setback lines shall take into account the need for visibility of the riverfront park system from public roads at access points.
4. New industrial developments shall be located adjacent to existing or planned industrial developments which are consistent with the provisions of this Master Program, whenever feasible.

## 6.6 LANDFILL

Landfill is the placement of soil, sand, rock, gravel or the other material to create new land along the shoreline below the OHWM, or on upland areas in order to raise the elevation.

### Performance Standards:

1. The following information shall be submitted by the applicant for landfill projects:
  - a. Proposed use of the landfill area;
  - b. Physical, chemical, and biological characteristics of the fill material;
  - c. Source of the landfill material;
  - d. Method of placement and compaction;
  - e. Location of the landfill relating to natural or existing drainage patterns;

- f. Location of the landfill relating to the ordinary high water mark, or any marsh, bog, or swamp;
  - g. Perimeter erosion control or stabilization means, and schedule for implementation;
  - h. Type of surfacing and run-off control and treatment devices.
2. Landfills shall be permitted only where it is demonstrated that they will not result in the following:
- a. Reduction in water quality, fish, shellfish, and/or wildlife habitats;
  - b. Adverse alteration to natural drainage and circulation patterns, currents, rivers, and tidal flows, or significant reduction in floodwater capacities; or
  - c. Adverse alteration of geological processes along the shoreline.
3. The fill shall be the minimum necessary to accomplish the proposed use. This use must have shoreline permit approval or an exemption authorization prior to placement. Speculative fills are prohibited.
4. Where existing public access is reduced, equivalent public access shall be provided as part of the project.



## 6.7 MARINAS

Marinas include facilities that provide launching, storage, supplies, moorage and other services for ten (10) or more boats. (See also **PIERS AND DOCKS**).

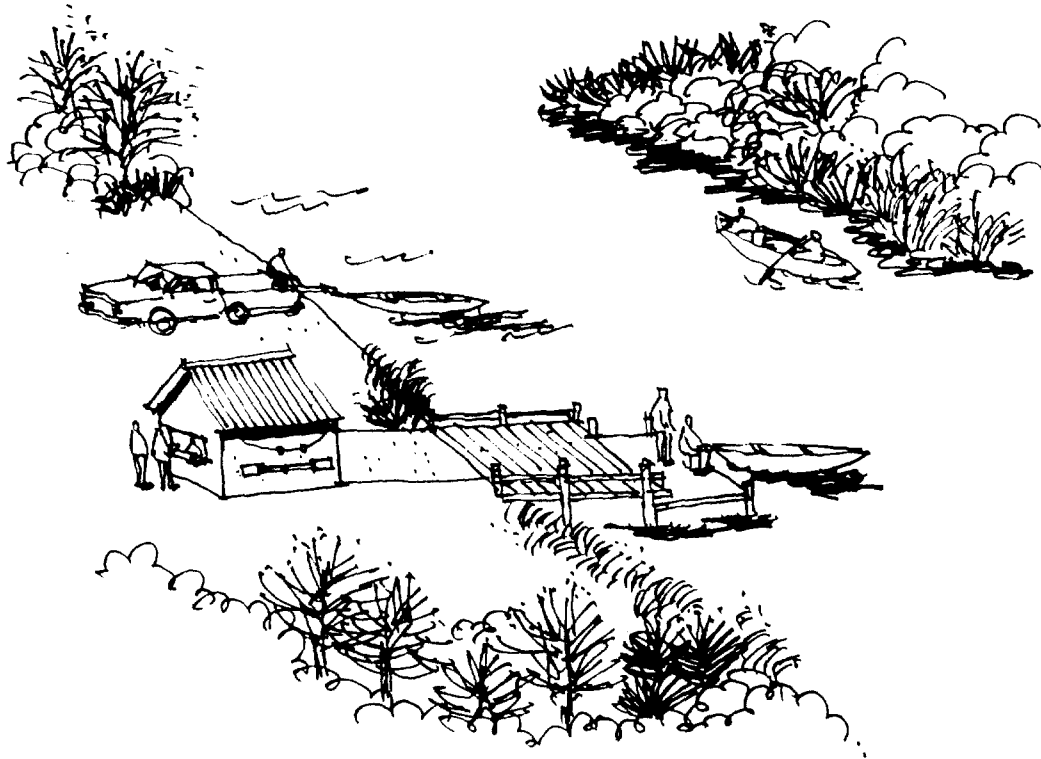


Figure 6.7 Boat launching and associated services and supplies are permitted within the shoreline jurisdiction.

### Performance Standards:

1. Marinas must be approved under Section 15.04.200 of the Kent Zoning Code, Special Use Combining District.
2. Marinas that provide overnight or long-term moorage facilities are prohibited.
3. Marinas shall be located, designed, constructed and operated so as to avoid or minimize adverse effects on fish, wildlife, water quality, scenic views, and adjacent water uses.
4. Marinas must submit a fuel spill prevention and contingency plan to the Administrator for approval.

## 6.8 MINING

Mining is the removal of naturally occurring rock, sand, gravel and minerals from the earth.

Mining is prohibited in the shoreline.

## 6.9 PARKING FACILITIES

Parking facilities are areas for the temporary storage of motor vehicles.

### Performance Standards:

1. Parking facilities shall be allowed only to serve another permitted use.
2. Parking facilities shall be set back a minimum distance of 100 feet inland from the OHWM, or sixty (60) feet inland from the right-of-way of a scenic and recreational drive, or seventy-five (75) feet inland from the centerline of a dike, whichever is greater.

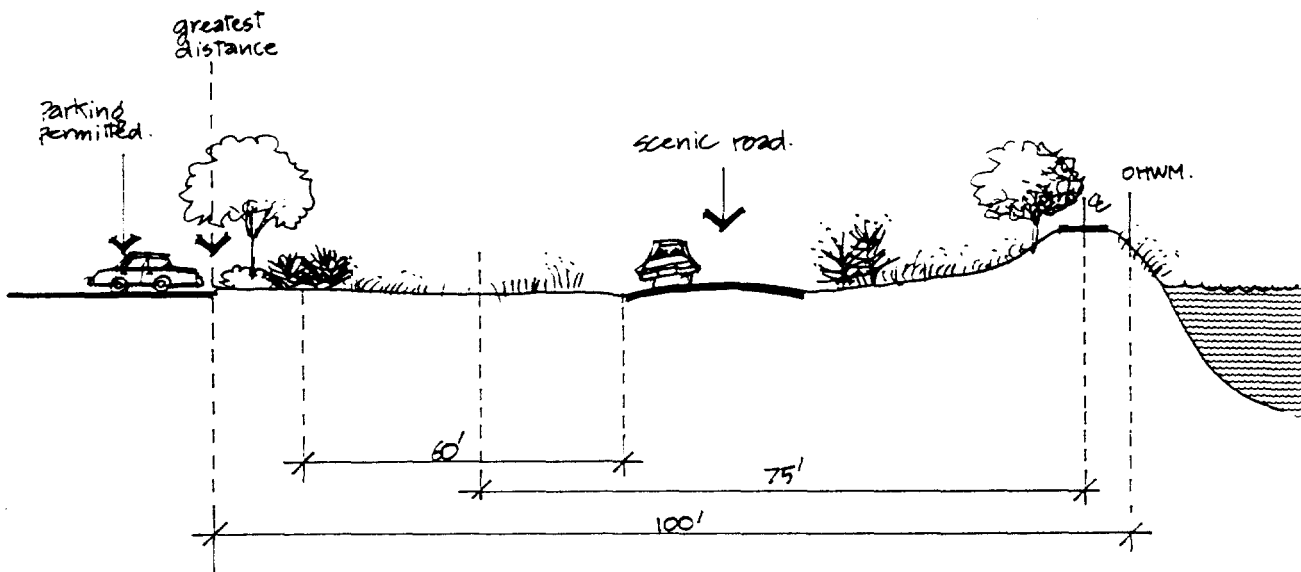


Figure 6.8 Parking is limited to the greatest distance determined by (1) 100 feet from OHWM; (2) 60 feet from scenic road; or (3) 75 feet from centerline of dike.

3. Parking facilities shall be designed and landscaped to minimize adverse impacts and to enhance water quality, wildlife habitat, scenic values and public access. A minimum 50-foot buffer of native vegetation shall be required to screen the parking area. Other design and landscaping requirements may be imposed by the Administrator in order to meet the goals of the Act and the Kent Master Program.

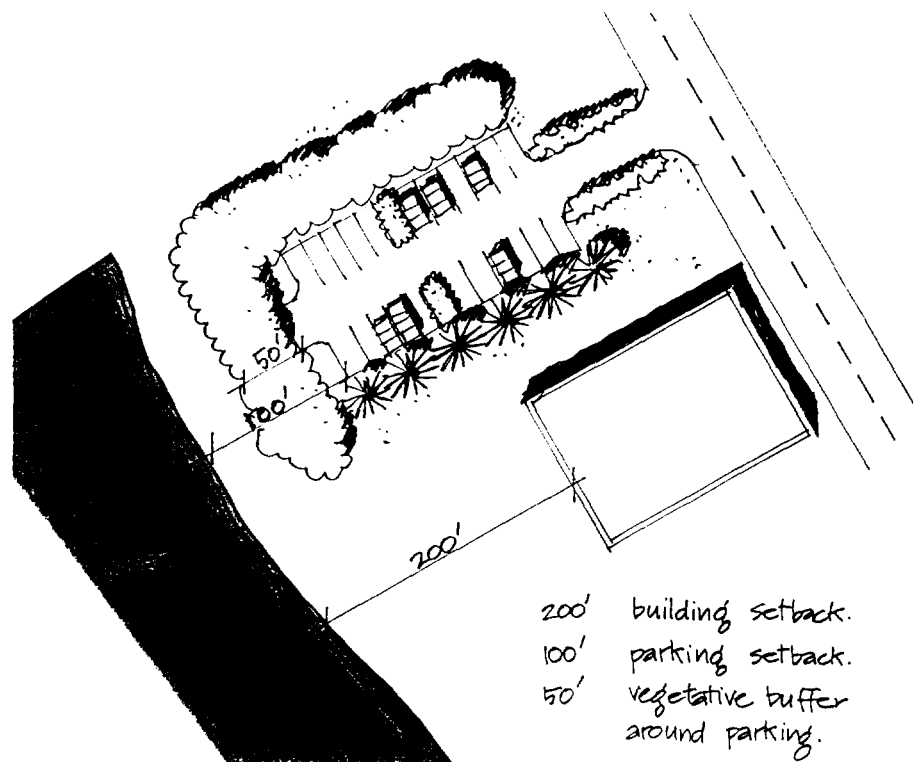


Figure 6.9 A minimum 50 foot buffer of native vegetation is required to screen parking areas.

4. Parking facilities shall provide adequate facilities to control surface water runoff.

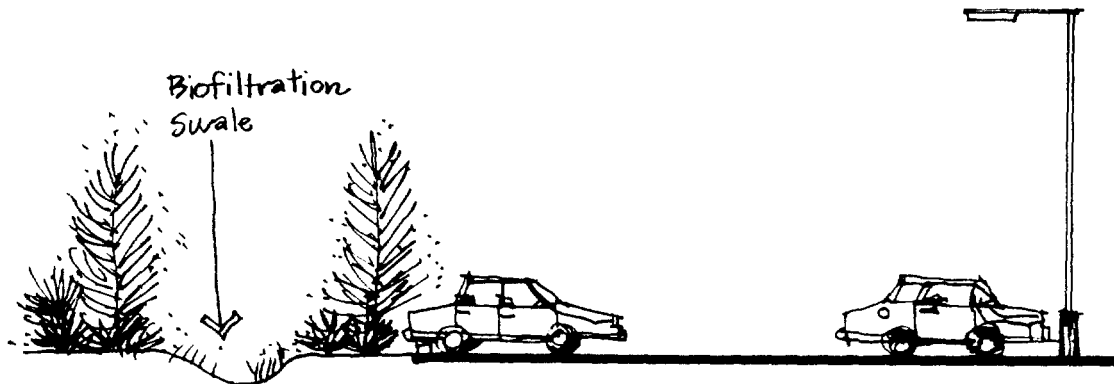


Figure 6.10 Biofiltration swales provide treatment of runoff from parking areas. Lighting should be hooded or directed to minimize glare.

5. Lighting associated with parking facilities shall be beamed, hooded or directed to avoid causing glare on adjacent properties or water bodies.

## 6.10 PIERS AND DOCKS

Piers and docks are structures which abut the shoreline and are used as a landing or moorage place for commercial and pleasure craft. Piers are built on fixed platforms above the water, while docks float upon the water.

### Performance Standards:

1. Piers and docks shall only be allowed as part of another water-dependent use. Such piers and docks shall be the minimum necessary for the purpose and removed at the termination of the use.
2. The design, location and construction of piers and docks shall minimize adverse effects on fish, shellfish, wildlife, water quality, and geohydraulic processes.
3. Piers and docks shall be located, designed and operated to minimize interference with adjacent water uses.

## 6.11 RECREATIONAL FACILITIES

Recreational Facilities provide opportunities for relaxation, play, amusement or contemplation. Recreational facilities include parks, trails, pathways, and areas for passive recreation such as bird watching, photography and aesthetic enjoyment.

### Policies:

1. Recreational facilities should be developed for diverse recreational uses.
2. Recreational facilities should provide public non-motorized trails connecting access points.

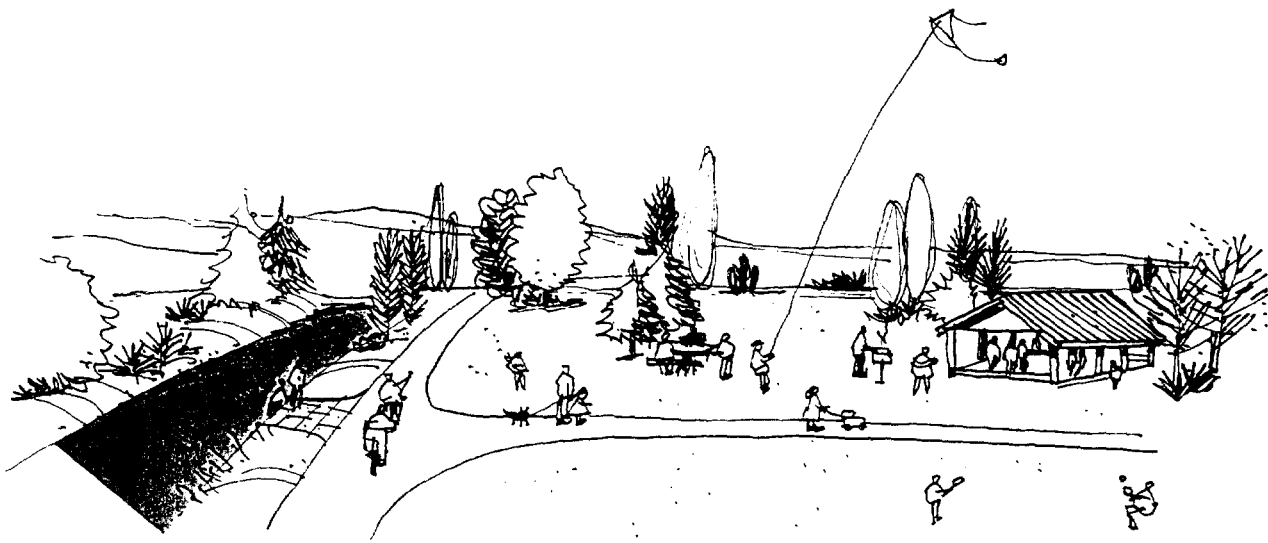


Figure 6.11 Recreational facilities shall include non-motorized trails and access to the water's edge.

3. Recreational facilities should be designed and located to facilitate access by public transportation.
4. Trail systems should be separated from the roadway.
5. Connections to other trails in the region should be provided.
6. Trail linkages between access points to and along the shoreline should be provided.

7. Trail linkages should be provided as part of any new or expanded bridges built for motor vehicles.
8. Trail system bridges should be provided where feasible and environmentally sound.
9. Fishing areas should be provided through City or State acquisition of property.



Figure 6.12 Fishing huts should be encouraged through acquisition of property.

**Performance Standards:**

1. For recreational facilities which are structures, the building setback line shall be located a minimum of 100 feet inland from the ordinary high water mark, or 60 feet from the right-of-way of a scenic and recreational drive, or 75 feet from the centerline of a dike, whichever is the greater distance inland from the river. Parking facilities shall be subject to the setback requirement contained in the specific performance standards for Parking Facilities.
2. Facilities shall be designed to have a minimum impact on the natural environment.
3. Public recreational facilities along the Green River shall provide public access to the water's edge at a minimum of

one access point per mile.

4. Public access to the water's edge shall be provided wherever feasible.
5. Recreational facilities along the Green River shall connect to a trail system along the entire river.
6. Facilities shall be designed to create minimum adverse impact on adjoining property.

## **6.12 RESIDENTIAL DEVELOPMENT**

Residential development means the creation of one or more buildings, structures, lots, parcels or portions thereof which are used or intended to be used for residential occupancy.

### **Performance Standards:**

1. Residential development which exceeds a density of 16 dwelling units per acre shall be a conditional use.
2. The building setback line for residential development shall be located a minimum distance of one hundred (100) feet inland from the ordinary high water mark, or sixty (60) feet inland from the right-of-way of a scenic and recreational drive, or seventy-five (75) feet inland from the centerline of a dike, whichever is greater. Parking facilities associated with residential development are subject to the specific performance standards set forth in the section on Parking Facilities.
3. Residential structures shall not be located on marshes, bogs, or swamps. Where developments contain such areas, they shall be used only for the purpose of parks, open space or recreational activity which is consistent with the preservation of the marsh, bog or swamp.

## **6.13 SHORE DEFENSE WORKS**

Shore defense works include structures and modifications for the purposes of flood protection and stabilizing the banks of streams, including jetties and groins.

**Performance Standards:**

1. Such works shall be limited to those areas where structures are endangered by bank erosion.
2. Such works shall provide for escapement of fish after high water.

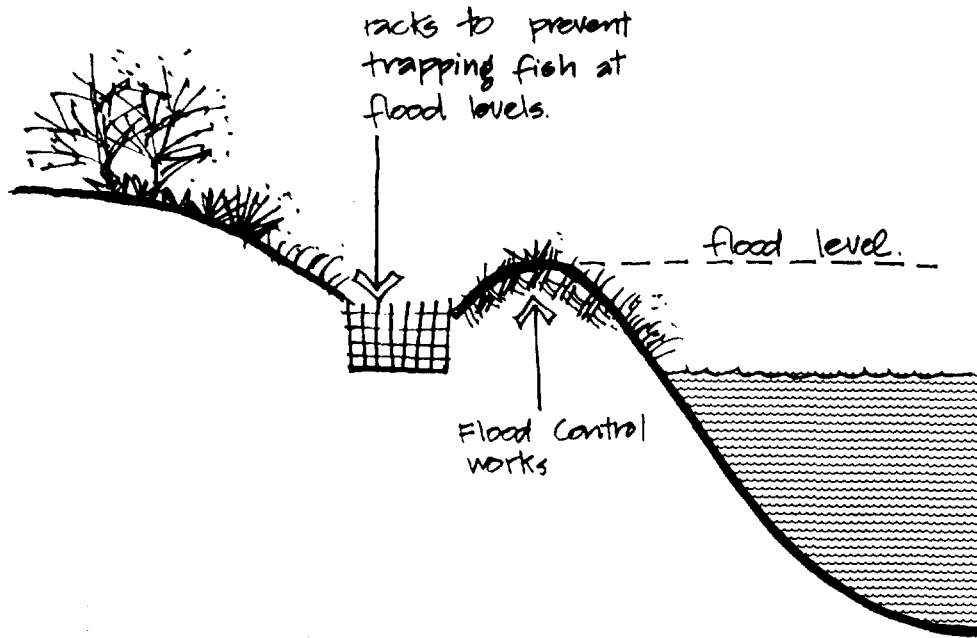


Figure 6.14 Racks can be used in shore defense works to prevent trapping fish after high water.

3. All flood control projects shall:
  - a. avoid or minimize adverse effects on the natural features of the shoreline and on wildlife habitat and movement; and
  - b. be designed, landscaped and planted to maximize a natural shoreline appearance, public access and public recreation.
4. Riprapping shall be allowed only when the Administrator determines that existing structures are threatened. The applicant shall be required to revegetate the area affected by the riprapping.
5. If a dike or levee is altered, the landward sideslope of the dikes or levees shall not exceed 3:1 (three feet horizontal for every one foot vertical).



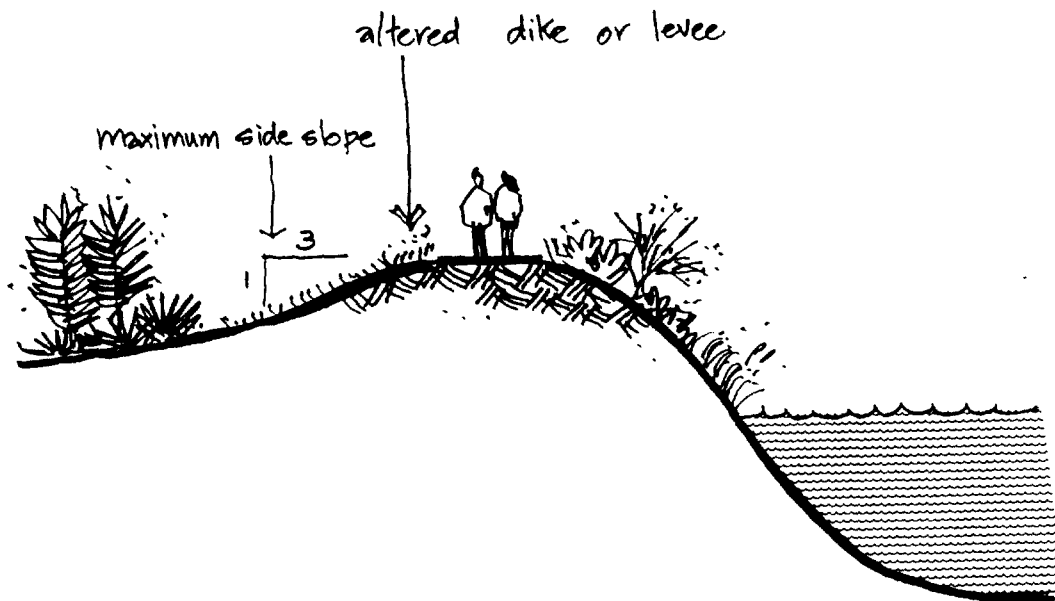


Figure 6.15 Sideslopes of altered dike shall not exceed 3:1.

6. If a dike or levee has been altered, the landward sideslope of the dikes and levees shall be covered with at least twelve (12) inches of topsoil and permanently revegetated.
7. If public funds are used in the construction of flood control works, including dikes, levees, and flood walls, public rights-of-access to such works are required prior to construction.

## 6.14 SIGNS

For the purposes of the Shoreline Master Program, signs include any structure, device, letter, figure, character, poster, picture, trademark or reading matter which is used or designed to announce, declare, demonstrate, display or otherwise identify or advertise, or attract the attention of the public. Signs do not include official notices, direction, warning or information signs authorized by a court, federal, state or municipal authority.

### Policy:

1. Vistas and viewpoints should not be degraded and visual access to the water from such vistas should not be impaired by the placement of signs.

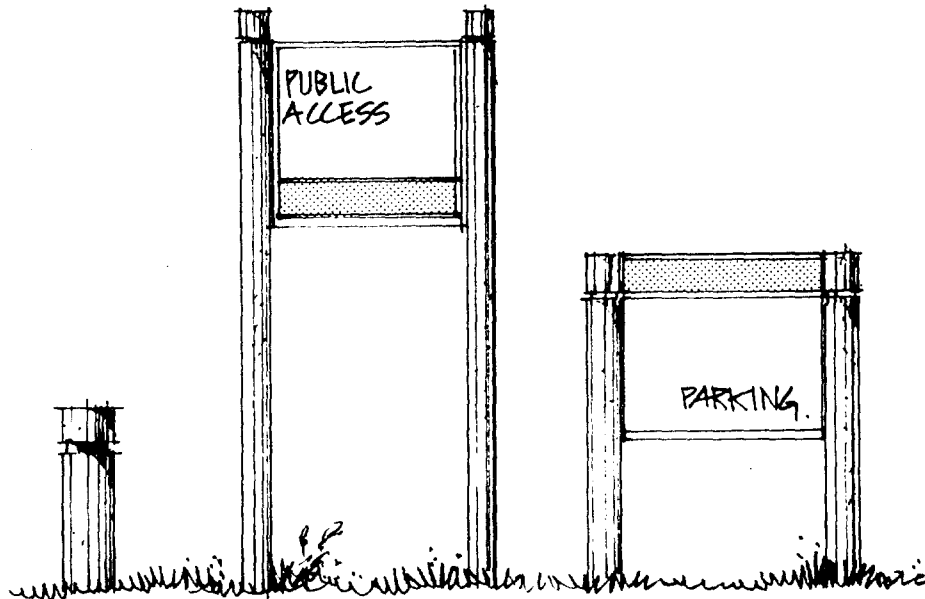


Figure 6.16 Signage should be designed to minimize the impact on vistas and viewpoints.

### Performance Standards:

1. The following signs are prohibited in the shoreline:
  - a. Off-premise signs and billboards;
  - b. Banners, streamers, pennants and balloons;
  - c. Animated, blinking or flashing signs.

2. Lighted signs shall be hooded, shaded, or aimed so that direct light will not result in glare when viewed from surrounding properties or watercourses.

## **6.15 SOLID WASTE DISPOSAL**

Solid waste disposal is prohibited within the shoreline.

## **6.16 TRANSPORTATION FACILITIES**

Transportation facilities include passageways for motorized vehicles or trains, including but not limited to such devices as bridges, trestles, ramps or culverts.

### **Performance Standards:**

1. New rail lines are prohibited within the shoreline.
2. Along the Green River shoreline:
  - a. roads shall be limited to two lanes;
  - b. roads shall be developed as scenic boulevards for slow-moving traffic;
  - c. roads shall provide a trail system separated from the roadway;
  - d. all lots and buildings must have road access without using scenic and recreational roads as defined by the Green River Corridor Plan;
  - e. development shall not include street connections to scenic and recreational roads;
  - f. development shall not force or encourage traffic from the proposed development to use a scenic or recreational road for access; and
  - g. development shall not force or encourage property outside the proposed development to use a scenic or recreational road for access.

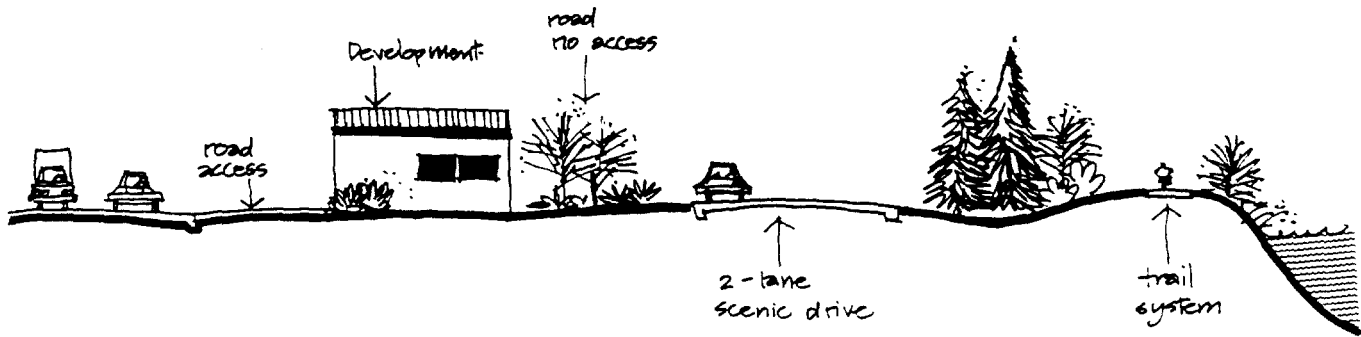


Figure 6.17 Access to and from development shall not include connections to scenic and recreational roads.

3. Whenever feasible, road routes shall make provisions for pedestrian and bicycle traffic.
4. Mechanical apparatus, rather than chemicals, shall be used for brush clearing maintenance unless it is demonstrated that no feasible alternative exists.

## 6.17 UTILITIES

Utilities are services or facilities which produce, transmit, or carry electric power, gas, sewage, communications, water and oil.

### Performance Standards:

1. Utilities shall be installed underground, unless the applicant clearly demonstrates that this is not feasible.
2. Utilities shall be installed adjacent to or within existing utility or circulation easements or rights-of-way whenever feasible.
3. Upon completion of installation or maintenance projects, banks shall be restored to a suitable configuration and stability, replanted with native species, and provided with maintenance care until the newly planted vegetation is established.

## **7.0 ADMINISTRATION**

### **7.1 PURPOSE**

There is hereby established an administrative system designed to assign responsibilities for implementation of the Master Program and Shoreline Permit review, to prescribe an orderly process by which to review proposals and permit applications, and to ensure that all persons affected by this Master Program are treated in a fair and equitable manner.

### **7.2 SUBSTANTIAL DEVELOPMENT**

Any person wishing to undertake substantial development within the shoreline shall apply to the Administrator for a shoreline substantial development permit.

Development is defined by RCW 90.58.030(d) to mean a use consisting of the construction or exterior alteration of structures; dredging; drilling; dumping; filling; removal of any sand, gravel, or minerals; bulkheading; driving of piling; placing of obstructions; or any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to the Act at any state of water level.

Substantial development is any development of which the total cost or fair market values exceeds two thousand five hundred dollars (\$2,500.00) or which materially interferes with the normal public use of the water or shorelines of the state, except for those developments listed in WAC 173-14-040.

### **7.3 EXEMPTIONS**

Certain developments are exempt from the requirement to obtain a substantial development permit. Such developments may still require a variance or conditional use permit, and all development within the shoreline is subject to the requirements of the Shoreline Master Program, regardless of whether a substantial development permit is required. Developments which are exempt from requirement for a substantial development permit are described at RCW 90.58.030(3)(e) and WAC 173-14-040.

Whenever a development is determined to be exempt from the requirement for a substantial development permit and the development is subject to a U.S. Army Corps of Engineers Section 10 or Section 404 Permit, the Administrator shall prepare a Letter of Exemption in accordance with WAC 173-14-115, and shall transmit a copy to the applicant and the Washington State Department of Ecology.

**NOTE:** EXEMPTION FROM SUBSTANTIAL DEVELOPMENT PERMIT REQUIREMENTS DOES NOT CONSTITUTE EXEMPTION FROM THE POLICIES AND USE REGULATIONS OF THE SHORELINE MANAGEMENT ACT, THE PROVISIONS OF THIS MASTER PROGRAM, AND OTHER APPLICABLE CITY, STATE OR FEDERAL PERMIT REQUIREMENTS.

## **7.4 PERMIT PROCESS**

- 7.4.1 The Administrator shall provide the necessary application forms for shoreline substantial development, variance and conditional use permits.
- 7.4.2 Public notice. Upon receipt of a proper application for a permit, the Administrator shall instruct the applicant to publish notices thereof at least once a week on the same day of the week for two consecutive weeks in a newspaper of general circulation within the area in which the development is proposed. An affidavit of publication shall be transmitted by the applicant to the local government and affixed to the application. In addition to publishing, the applicant will be required to provide additional notice by one of the following methods: (1) mailing notice to the latest recorded real property owners as shown by the records of the county assessor within at least three hundred feet of the boundary of the property upon which the substantial development is proposed, (2) posting of the notice in a conspicuous manner on the property upon which the project is to be constructed, or (3) any other manner deemed appropriate by the Administrator to accomplish the objectives of reasonable notice to adjacent landowners and the public.

All such notices shall include a statement that within thirty days of the final publication of notice, any interested person may submit his/her views upon the application in writing to the Administrator or notify the Administrator of his/her desire to receive a copy of the action taken upon the application. All persons who notify the Administrator of their desire to receive a copy of the final order shall be notified in a timely manner of the action taken upon the application.

- 7.4.3 Application review. The Administrator shall make decisions on applications for substantial development permits, and recommendations on applications for conditional use or variance permits based upon: (1) the policies and procedures of the Shoreline Management Act and related sections of the Washington Administrative Code; and (2) the Kent Shoreline Master Program.
- 7.4.4 Administrator action. The Administrator shall make decisions on applications for substantial development permits. All such decisions shall be in writing, and shall be issued no sooner than 45 days from the time of the application.

7.4.5 Public hearings. The Administrator shall schedule a public hearing before the Kent Hearing Examiner on an application for a conditional use or variance permit. Notices of the hearing shall include a statement that any person may submit oral or written comments on the application at the hearing. The minimum time from the date of application to the date of the hearing is 45 days.

7.4.6 Hearing Examiner action. The Hearing Examiner shall review an application for a permit and make decisions regarding permits based upon: (1) the Kent Shoreline Master Program; (2) the policies and procedures of the Shoreline Management Act (ch. 90.58 RCW) and related sections of the Washington Administrative Code; (3) written and oral comments from interested persons; and (4) the comments and findings of the Administrator.

The Hearing Examiner will issue a written decision within fourteen days from the date of the hearing.

7.4.7 State review. Within eight (8) days of the issuance of the written decision, the Administrator shall transmit copies of the action taken and the application materials to the Washington State Department of Ecology and the State Attorney General. The applicant shall also be notified of the action taken. Where a substantial development permit and a conditional use or variance permit are required for a development, the actions taken on all permits will be filed concurrently with the Department of Ecology and the State Attorney General.

Conditional use or variance permits must be approved by the Department of Ecology before they can become effective. The department shall transmit its final decision on such permits within thirty days of the date of submittal. Upon receipt of Ecology's decision, the Administrator shall notify all persons having requested notification of the decision.

7.4.8 Development pursuant to a permit shall not begin and is not authorized until thirty (30) days from the date of filing the approved permit with the Department of Ecology and the Attorney General, provided all review and appeal proceedings initiated within 30 days of the date of such filing have been terminated. In the case of a variance or conditional use permit, the "date of filing" means the date the Department of Ecology's final order on the permit is transmitted to the city.

7.4.9 Duration of permits. Permits may be issued with termination dates of up to five years. Construction or substantial progress toward completion must begin within two years after approval of the permits. The Administrator may authorize a single extension before the end of either of these time periods, with prior notice to parties of record and the Department of Ecology, for up to one year based on reasonable factors.

7.4.10 Compliance with permit conditions. When permit approval is based on conditions, such conditions shall be satisfied prior to occupancy or use of a structure or prior to commencement of a nonstructural activity.

## 7.5 APPEALS

- 7.5.1 Local appeals. Any decision made by the Administrator on a substantial development permit, or by the Hearing Examiner on a conditional use or variance permit may be appealed by the applicant, private or public organization or individual, to the City Council. Such appeal must be filed with the City Clerk and the Administrator within ten days of the decision being appealed, and must be accompanied by the required filing fee.
- 7.5.2 Shoreline Hearings Board. After the local appeals process has been exhausted, persons aggrieved by the grant, denial, rescission or modification of a permit may file a request for review by the Shoreline Hearings Board in accordance with the review process established by RCW 90.58.180 and Ch. 173-14 WAC, and with the regulations of the Shoreline Hearings Board contained in Ch. 461-08 WAC. The request for review must be filed with the Hearings Board within 30 days of the date of filing of the local permit decision with the Department of Ecology.

## 7.6 VARIANCE PERMITS

- 7.6.1 Purpose. The purpose of a variance permit is strictly limited to granting relief from specific bulk, dimensional or performance standards set forth in the Master Program, and where there are extraordinary or unique circumstances relating to the property such that the strict implementation of the Master Program would impose unnecessary hardships on the applicant or thwart the Shoreline Management Act policies as stated in RCW 90.58.020. Construction pursuant to a variance permit shall not begin nor can construction be authorized except as provided in RCW 90.58.020. In all instances, extraordinary circumstances shall be shown and the public interest shall suffer no substantial detrimental effect.
- 7.6.2 Application. The application process for a variance permit is described in section 7.4 above.
- 7.6.3 Criteria. Variance permits may be authorized provided the applicant can demonstrate all of the following:
- a. That the strict requirements of the bulk, dimensional, or performance standards set forth in the Master Program preclude or significantly interfere with a reasonable use of the property not otherwise prohibited by the Master Program.
  - b. That the hardship described above is specifically related to the property, and is the result of unique conditions such as irregular lot shape, size or natural features and the application of the Master Program, and not, for example, from deed restrictions or the applicant's own actions.



- c. That the design of the project will be compatible with other permitted activities in the area and will not cause adverse effects to adjacent properties or the shoreline environment.
- d. That the variance permit will not constitute a grant of special privilege not enjoyed by the other properties in the area, and will be the minimum necessary to afford relief.
- e. That the public interest will suffer no substantial detrimental effect.
- f. Variance permits for development that will be located either waterward of the ordinary high water mark or within marshes, bogs or swamps, as defined in this Master Program, may be authorized only if the applicant can demonstrate items a-e of this section, and:
  - (1) that the strict application of the standards set forth in this Master Program preclude a reasonable permitted use of the property; and
  - (2) the public rights of navigation and use of the shorelines will not be adversely affected by the granting of the variance.
- g. In the granting of all variance permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if variances were granted to other developments in the area where similar circumstances exist, the total of the variances should also remain consistent with the policies of ch. 90.58 RCW and should not produce substantial adverse effects on the shoreline environment.

## **7.7 CONDITIONAL USE PERMITS**

- 7.7.1 Purpose. The purpose of a conditional use permit is to allow greater flexibility in varying the application of the use regulations of the master program in a manner consistent with the policies of RCW 90.58.020; provided that, conditional use permits should also be granted in a circumstance where denial of the permit would result in a thwarting of the state policies listed in RCW 90.58.020. In authorizing a conditional use, special conditions may be attached to the permit by the City or the Department of Ecology to prevent undesirable effects of the proposed use. Uses which are specifically prohibited by the Master Program may not be authorized with approval of a conditional use permit.
- 7.7.2 Application. The application process for a conditional use permit is described in section 7.4 above.
- 7.7.3 Uses are classified as conditional uses if they are (1) designated as such elsewhere in this Master Program or (2) consistent with the underlying shoreline environment designation in which proposed, but not classified as permitted uses in Section 6, Specific Shoreline Use Policies and Performance Standards.

- 7.7.4 Uses classified as conditional uses may be authorized provided that the applicant can demonstrate all of the following:
- a. That the proposed use will be consistent with the policies of RCW 90.58.020 and the policies of the Kent Master Program.
  - b. That the proposed use will not interfere with the normal public use of public shorelines.
  - c. That the proposed use of the site and design of the project will be compatible with other permitted uses within the area.
  - d. That the proposed use will cause no unreasonably adverse effects to the shoreline environment designation in which it is to be located.
  - e. That the public interest suffers no substantial detrimental effect.
- 7.7.5 In the granting of all conditional use permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if conditional use permits were granted to other developments in the area where similar circumstances exist, the total of the conditional uses should also remain consistent with the policies of ch. 90.58 RCW and should not produce substantial adverse effects on the shoreline environment.
- 7.7.6 Uses which are not classified or set forth in the master program may be authorized as conditional uses, provided the applicant can demonstrate, in addition to the criteria set forth in section 7.4 above, that extraordinary circumstances preclude reasonable use of the property in a manner consistent with the use regulations of the program.
- 7.7.7 Uses which are specifically prohibited by this program may not be authorized.
- 7.7.8 In granting any conditional use permit, consideration shall be given to the cumulative impact of additional requests for like actions in the area.

## **7.8 NONCONFORMING DEVELOPMENT**

- 7.8.1 Nonconforming development shall be defined and regulated according to the provisions of WAC 173-14-055.

## **7.9 AMENDMENTS TO THE MASTER PROGRAM**

Any provision of this Master Program may be amended as provided for in chapter 90.58 RCW and chapter 173-19 WAC. Amendments or revisions to the Master Program, as provided by law, do not become effective until approved by the Washington State Department of Ecology.

Proposals for shoreline environment redesignations (i.e., amendments to the shoreline maps and descriptions) must demonstrate consistency with the criteria set forth in WAC 173-16-040 and this program.

## **7.10 SEVERABILITY**

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

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## **8.0 ENFORCEMENT**

### **8.1 VIOLATIONS**

- 8.1.1 It is a violation of the Kent Shoreline Master Program for any person to initiate or maintain or cause to be initiated or maintained the use of any structure, land or property within the shorelines of the City of Kent without first obtaining the permits or authorizations required for the use by this Chapter.
- 8.1.2 It is a violation of this Chapter for any person to use, construct, locate, or demolish any structure, land or property within shorelines of the City of Kent in any manner that is not permitted by the terms of any permit or authorization issued pursuant to this Chapter, provided that the terms or conditions are explicitly stated on the permit or the approved plans.
- 8.1.3 It is a violation of this Chapter to remove or deface any sign, notice, compliant or order required by or posted in accordance with this Chapter or Chapter 12.12A.
- 8.1.4 It is a violation of this Chapter to misrepresent any material fact in any application, plans or other information submitted to obtain any shoreline use or development authorization.
- 8.1.5 It is a violation of this Chapter for anyone to fail to comply with the requirements of this Chapter.

### **8.2 DUTY TO ENFORCE**

- 8.2.1 It shall be the duty of the Administrator to enforce this Chapter. The Administrator may call upon the police, fire, health or other appropriate City departments to assist in enforcement.
- 8.2.2 Upon presentation of proper credentials, the Administrator or duly authorized representative of the Administrator may, with the consent of the owner or occupier of a building or premises, or pursuant to a lawfully issued inspection warrant, enter at reasonable times any building or premises subject to the consent or warrant to perform the duties imposed by the Shoreline Master Program or this Chapter.
- 8.2.3 The Shoreline Master Program shall be enforced for the benefit of the health, safety and welfare of the general public, and not for the benefit of any particular person or class of persons.

- 8.2.4 It is the intent of the Shoreline Master Program to place the obligation of complying with its requirements upon the owner, occupier or other person responsible for the condition of the land and buildings within the scope of this Program.
- 8.2.5 No provision of or term used in the Program is intended to impose any duty upon the City or any of its officers or employees which would subject them to damages in a civil action.

### **8.3 INVESTIGATION AND NOTICE OF VIOLATION**

- 8.3.1 The Administrator or his/her representative shall investigate any structure, premises or use which the Administrator reasonably believes does not comply with the standards and requirements of the Shoreline Master Program.
- 8.3.2 If after investigation the Administrator determines that the Program's standards or requirements have been violated, the Administrator shall serve a Notice of Violation on the owner, tenant or other person responsible for the condition. The Notice of Violation shall provide:
- a. A description of the specific nature, extent and time of violation and the damage or potential damages; and
  - b. A notice that the violation or the potential violation must cease and desist or, in appropriate cases, the specific corrective action to be taken within a given time; and
  - c. A notice that the required corrective action shall include, if appropriate, but shall not be limited to, mitigating measures such as restoration of the area and replacement of damaged or destroyed trees.
- 8.3.3 The Notice shall be served upon the owner, tenant or other person responsible for the condition by personal service, registered mail, or certified mail with return receipt requested, addressed to the last known address of such person. If, after a reasonable search and reasonable efforts are made to obtain service, the whereabouts of the person or persons is unknown or service cannot be accomplished and the Administrator makes an affidavit to that effect, then service of the Notice upon such person or persons may be made by:
- a. Publishing the Notice once each week for two (2) consecutive weeks in the City's official Newspaper; and
  - b. Mailing a copy of the Notice to each person named on the notice of violation by first class mail to the last known

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address if known, or if unknown, to the address of the property involved in the proceedings.

- 8.3.4 A copy of the Notice shall be posted at a conspicuous place on the property, unless posting the notice is not physically possible.
- 8.3.5 The Administrator may mail, or cause to be delivered to all residential and/or nonresidential rental units in the structure or post at a conspicuous place on the property, a notice which informs each recipient or resident about the Notice of Violation, Stop Work Order or Emergency Order and the applicable requirements and procedures.
- 8.3.6 A Notice or an Order may be amended at any time in order to:
- a. Correct clerical errors, or
  - b. Cite additional authority for a stated violation.

#### **8.4 EFFECTIVE DATE**

Any notice of violation issued under this Chapter which contains an order to cease and desist shall be effective immediately upon receipt by the person to whom the Notice is directed.

#### **8.5 TIME TO COMPLY**

- 8.5.1 When calculating a reasonable time for compliance, the Administrator shall consider the following criteria:
- a. The type and degree of violation cited in the Notice;
  - b. The stated intent, if any, of a responsible party to take steps to comply;
  - c. The procedural requirements for obtaining a permit to carry out correction action;
  - d. The complexity of the correction action, including seasonal considerations, construction requirements and the legal prerogatives of landlords and tenants; and
  - e. Any other circumstances beyond the control of the responsible party.

- 8.5.2 Unless a request for remission or mitigation of the penalty before the Administrator is made in accordance with Section 8.8, the Notice of Violation shall become the final order of the Administrator. A copy of the Notice shall be filed with the Department of Records and Elections of King County. The Administrator may choose not to file a copy of the Notice or Order if the Notice or Order is directed only to a responsible person other than the owner of the property.

## **8.6 CEASE AND DESIST WORK ORDER**

Whenever a continuing violation of the Shoreline Master Program will materially impair the Director's ability to secure compliance with the Program, or when the continuing violation threatens the health or safety of the public, the Director may issue a Cease and Desist Order specifying the violation and prohibiting any work or other activity at the site. A failure to comply with the Cease and Desist Order shall constitute a violation of the Shoreline Master Program.

## **8.7 EMERGENCY ORDER**

Whenever any use or activity in violation of this Code threatens the health and safety of the occupants of the premises or any member of the public, the Administrator may issue an Emergency Order directing that the use or activity be discontinued and the condition causing the threat to the public health and safety be corrected. The Emergency Order shall specify the time for compliance and shall be posted in a conspicuous place on the property, if posting is physically possible. A failure to comply with an Emergency Order shall constitute a violation of the Shoreline Master Program.

Any condition described in the Emergency Order which is not corrected within the time specified is hereby declared to be a public nuisance and the Administrator is authorized to abate such nuisance summarily by such means as may be available. The cost of such abatement shall be recovered from the owner or person responsible or both in the manner provided by law.

## **8.8 REVIEW OF PENALTY BY THE ADMINISTRATOR**

- 8.8.1 Any person incurring a penalty imposed in a notice of violation issued by the Administrator pursuant to Section 8.3 may obtain a review of the penalty by making application for remission or mitigation of the penalty within fifteen (15) days after service of the notice. When the last day of the period so computed is a Saturday, Sunday or federal or City holiday, the period shall run until five p.m. (5:00 p.m.) on the next business day. The application shall be in writing, and upon receipt of the application, the Administrator shall notify all persons served with the Notice of Violation and the complainant, if any, of the date, time and place set for the review, which shall be not less than ten (10) nor more than

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twenty (20) days after the application is received, unless otherwise agreed by all persons served with the Notice of Violation. Before the date set for the remission or mitigation hearing incurring a penalty in the Notice of Violation may submit any written material to the Administrator for consideration at the review.

8.8.2 The review will consist of an informal review meeting held at the Planning Department offices. A representative of the Administrator who is familiar with the case and the applicable ordinances will attend. The Administrator's representative will explain the reasons for the Administrator's issuance of the Notice and will listen to any additional information presented by the persons attending. At or after the review, the Administrator may remit or mitigate the penalty only upon a demonstration of extraordinary circumstances, such as the presence of information or factors not considered in setting the original penalty. The Administrator may also choose to continue to review to a date certain for receipt of additional information.

8.8.3 The Administrator shall issue an Order of the Director containing the decision on the penalty within seven (7) days of the date of the completion of the review and shall cause the same to be mailed by regular first class mail to the person or persons named on the Notice of Violation, mailed to the complainant, if possible, and filed with the Department of Records and Elections of King County.

## **8.9 EXTENSION OF COMPLIANCE DATE**

The Administrator may grant an extension of time for compliance with any Notice or Order whether pending or final, upon the Administrator's finding that substantial progress toward compliance has been made and that the public will not be adversely affected by the extension.

An extension of time may be revoked by the Administrator if it is shown that the conditions at the time the extension was granted have changed, the Administrator determines that a party is not performing corrective actions as agreed, or if the extension creates an adverse effect on the public. The date of revocation shall then be considered as the compliance date.

## **8.10 APPEAL OF CIVIL PENALTY**

8.10.1 **Right of Appeal.** Persons incurring a penalty imposed by the City may appeal the same to the Shorelines Hearings Board.

8.10.2 **Timing of Appeal.** Appeals shall be filed within thirty days of receipt of the Notice of Violation unless an application for remission or mitigation is made to the Administrator. If such appeal is made, appeals must be filed within thirty days of receipt of the Administrator's decision regarding the remission or mitigation.



## 8.11 CIVIL PENALTY

- 8.11.1 **Additional Relief.** In addition to any other sanction or remedial procedure which may be available, any person violating or failing to comply with any of the provisions of this Chapter shall be subject to a cumulative penalty in the amount of one thousand dollars (\$1,000). Each permit violation or each day of continued development without a required permit shall constitute a separate violation.
- 8.11.2 **Persons Incurring Penalty.** Any person who, through an act of commission or omission procures, aids or abets in the violation shall be considered to have committed a violation for the purposes of the civil penalty.
- 8.11.3 **Penalties Due.** Penalties imposed by this section shall become due and payable thirty days after receipt of notice imposing the same unless application for remission or mitigation is filed. Whenever an application for remission or mitigation is made, penalties shall become due and payable thirty days after receipt of the Administrator's decision regarding the remission or mitigation. Whenever an appeal of a penalty is filed, the penalty shall become due and payable upon completion of all review proceedings and upon issuance of a final decision confirming the penalty in whole or in part.
- 8.11.4 **Enforcement of Penalty.** The penalty imposed by this section shall be collected by civil action brought in the name of the City. The Director shall notify the City Attorney in writing of any penalty owed the City and not paid within thirty days after it becomes due and payable, and the City Attorney shall, with the assistance of the Administrator, take appropriate action to collect the penalty.
- 8.11.5 **Mitigation of Penalty.** The violator may show as full or partial mitigation of liability:
- a. That the violation giving rise to the action was caused by the willful act, or neglect, or abuse of another; or
  - b. That correction of the violation was commenced promptly upon receipt of the notice thereof, but that full compliance within the time specified was prevented by inability to obtain necessary materials or labor, inability to gain access to the subject structure, or other condition or circumstance beyond the control of the defendant.

## 8.12 CRIMINAL PENALTIES

In addition to incurring the civil liability under Section 8.11 above, any person found to have wilfully engaged in activities in violation of the Shore Master Program shall be guilty of a gross misdemeanor, and shall be punished pursuant to RCW 90.58.220 by a fine of not less than

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twenty-five nor more than one thousand dollars (\$25.00-\$1,000.00) or by imprisonment for not more than ninety days, or by both such fine and imprisonment: PROVIDED, that the fine for the third and all subsequent violations in any five year period shall not be less than five hundred nor more ten thousand dollars (\$500.00-\$10,000.00).

### **8.13 ADDITIONAL RELIEF**

Any person who violates any provision of this Chapter or permit issued pursuant thereto shall be liable for all damage to public or private property arising from such violation, including the cost of restoring the affected area to its condition prior to violation. The Administrator may request that the City Attorney shall bring suit for damages on behalf of the City under this section. The Administrator may also seek legal or equitable relief to enjoin any acts or practices and abate any condition which constitutes or will constitute a violation of the Shoreline Master Program when civil or criminal penalties are inadequate to effect compliance.