

CITY OF ROY, WASHINGTON

SUBSTITUTE ORDINANCE NO. 966

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ROY,
PIERCE COUNTY, WASHINGTON, AMENDING THE ROY CITY CODE
TITLE 12, *SHORELINE MASTER PROGRAM*, TO UPDATE
REGULATIONS FOLLOWING PERIODIC REVIEW.**

WHEREAS, the City of Roy adopted its Shoreline Master Program (SMP) in 2012 by Ordinance No. 836; and

WHEREAS, the Shoreline Management Act (SMA), RCW 90.58.080(4), requires each SMP be reviewed, and revised if needed, on an eight-year schedule established by the Legislature; and

WHEREAS, municipalities within Pierce County must complete their reviews and adopt needed amendments by June 30, 2019; and

WHEREAS, with the assistance of a grant from the Department of Ecology, the City of Roy has undertaken a periodic review of its SMP to ensure the SMP stays current with changes in laws and rules, and remains consistent with other City plans and regulations, and is responsive to changed circumstances, new information and improved data; and

WHEREAS, the Planning Commission adopted and carried out a public participation plan involving interested persons and entities in the review process; and

WHEREAS, after considering public comment, the Planning Commission passed Resolution No. 2018-02 recommending approval of proposed SMP periodic review amendments; and

WHEREAS, following notice published in the Nisqually Valley News, the Roy City Council held a public hearing on August 13, 2018, and considered public comment on the proposed amendments; **and**

WHEREAS, the City Council has determined that the City's SMP, as amended, will be consistent with the goals, objectives and policies of the City's Comprehensive Plan; and

WHEREAS, the City Council has determined that the SMP, as amended, will promote, rather than detract from, the public health, safety, morals and general welfare; and

WHEREAS, the City Council has determined that the SMP, as amended, will comply with the Shoreline Management Act and Shoreline Master Program Guidelines and fulfill all applicable Periodic Review requirements;

NOW THEREFORE, be it ordained by the City Council of the City of Roy, Washington **Section 1.** That Roy City Code subsection 12-3-B.7. is hereby amended as follows:

Chapter 3: General Shoreline Provisions

B. Policies and Regulations

7. Restoration

a) Applicability

Restoration refers to the reestablishment or upgrading or impaired ecological shoreline processes or functions. The following goals and policies are intended to guide actions that are designed to achieve improvements in shoreline ecological functions over time in shoreline areas where such functions have been degraded. The overarching purpose is to achieve overall improvements over time when compared to the condition upon adoption of the master program, as detailed in the Shoreline Analysis Report. Restoration is distinct from mitigation measures necessary to achieve no net loss of shoreline functions and the City's commitment to plan for restoration will not be implemented through regulatory means.

b) Policies

1. Reclaim and restore areas, which are degraded biologically and aesthetically to the greatest extent feasible while maintaining appropriate use of the shoreline.
2. Increase quality, width and diversity of native vegetation in protected corridors adjacent to riparian and lake habitats to provide safe migration pathways for fish and wildlife, food, nest sites, shade, perches, and organic debris. Strive to control non-indigenous plants or weeds that are proven harmful to native vegetation or habitats.
3. Continue to work collaboratively with other jurisdictions and stakeholders to implement the WRIA 11 Plan.
4. Seek funding where possible for various restoration actions and programs from local sources and by working with other WRIA 11 jurisdictions and stakeholders to seek federal, state, grant and other funding opportunities.
5. Develop a public education plan to inform private property owners in the shoreline zone and in the remainder of the City about the effects of land

management practices and other unregulated activities (such as vegetation removal, pesticide/herbicide use, car washing) on fish and wildlife habitats.

6. Where feasible, protect, enhance, and encourage the restoration of lake and stream areas and wetlands throughout the contributing basin where functions have been lost or compromised.

c) Regulations

1. Projects taking place on lands that are brought into shoreline jurisdiction due to a shoreline restoration project that caused a landward shift of the OHWM may apply to the City's Shoreline Administrator for relief from the SMP development standards and use regulations under the provisions of RCW 90.58.580. Any relief granted shall be strictly in accordance with the limited provisions of RCW 90.58.580, including the specific approval of the Department of Ecology, and consistent with criteria and procedures in WAC 173-27-215.

Section 2. That Roy City Code subsection 12-6-D.2. is hereby amended as follows:

Chapter 6: Administration

D. Exemptions

2. The following list outlines ~~twelve (12) eleven (11)~~ exemptions that shall not be considered substantial developments for the purpose of this SMP:
 - a. Any development of which the total cost or fair market value, whichever is higher, does not exceed ~~seven thousand forty seven (\$7,047) five thousand seven hundred eighteen (\$5,718)~~ dollars, if such development does not materially interfere with the normal public use of the water or "shorelines of statewide significance." The Office of Financial Management must adjust the dollar threshold established in this subsection for inflation every five years, beginning July 1, 2007, based upon changes in the consumer price index during that time period. The total cost or fair market value of the development shall include the fair market value of any donated, contributed or found labor, equipment or materials;
 - b. Normal maintenance or repair of existing structures or developments, including damage by accident, fire, or elements. "Normal maintenance" includes those usual acts to prevent a decline, lapse, or cessation from a lawfully established condition. "Normal repair" means to restore a development to a state comparable to its original condition within a reasonable period after decay or partial destruction, except where repair causes substantial adverse effects to the shoreline resource or environment. Replacement of a structure or development may be authorized as repair where such replacement is the

common method of repair for the type of structure or development and the replacement structure or development is comparable to the original structure or development including, but not limited to, its size, shape, configuration, location and external appearance and the replacement does not cause substantial adverse effects to shoreline resources or environment;

- c. Construction of a normal protective bulkhead common to single-family residences. A "normal protective bulkhead" includes those structural and nonstructural developments installed at or near, and parallel to the OHWM for the sole purpose of protecting an existing single-family residence and appurtenant structures from loss or damage by erosion. A normal protective bulkhead is not exempt if constructed for the purpose of creating dry land. When a vertical or near vertical wall is being constructed or reconstructed, not more than one cubic yard of fill per one foot of wall may be used as backfill. When an existing bulkhead is being repaired by construction of a vertical wall fronting the existing wall, it shall be constructed no further waterward of the existing bulkhead than is necessary for construction of new footings. When a bulkhead has deteriorated such that an OHWM has been established by the presence and action of water landward of the bulkhead, then the replacement bulkhead must be located at or near the actual OHWM. Sediment nourishment and bioengineered erosion control projects may be considered a normal protective bulkhead when any structural elements are consistent with the above requirements and when the project has been approved by the Washington Department of Fish and Wildlife;
- d. Emergency construction necessary to protect property from damage by the elements. An "emergency" is an unanticipated and imminent threat to public health, safety, or the environment, which requires immediate action within a time too short to allow full compliance with the SMA or this SMP. Emergency construction does not include development of new permanent protective structures where none previously existed. Where new protective structures are deemed by the Shoreline Administrator to be the appropriate means to address the emergency, upon abatement of the emergency the new structure shall be removed or any permit which would have been required, absent an emergency, pursuant to the SMA and this SMP, obtained. All emergency construction shall be consistent with the policies of the SMA and this SMP. As a general matter, flooding or other seasonal events that can be anticipated and may occur but that are not imminent are not an emergency;
- e. Construction by an owner, lessee, or contract purchaser of a single-family residence for their own use or for the use of their family, which residence does not exceed a height of thirty-five (35) feet above average grade level and meets all requirements of the City, other than requirements imposed pursuant to the SMA. "Single-family residence" means a detached dwelling designed for and occupied by one family including those structures and developments within a

contiguous ownership, which are a normal appurtenance. An "appurtenance" is necessarily connected to the use and enjoyment of a single-family residence and is located landward of the OHWM and the perimeter of a wetland. Normal appurtenances include a garage, deck, driveway, utilities, fences, installation of a septic tank and drainfield, and grading which does not exceed two hundred fifty cubic yards and which does not involve placement of fill in any wetland or waterward of the OHWM. Construction authorized under this exemption shall be located landward of the OHWM and shall be subject to required setbacks;

- f. The marking of property lines or corners on state owned lands, when such marking does not significantly interfere with the normal public use of the surface waters;
- g. Any project with certification from the Governor pursuant to Chapter 80.50 RCW.
- h. Site exploration and investigation activities that are prerequisite to preparation of an application for development authorization under this chapter, if:
 - i. The activity does not interfere with the normal public use of the surface waters;
 - ii. The activity will have no significant adverse impact on the environment including but not limited to fish, wildlife, fish or wildlife habitat, water quality, and aesthetic values;
 - iii. The activity does not involve the installation of any structure, and upon completion of the activity the vegetation and land configuration of the site are restored to conditions existing before the activity;
 - iv. A private entity seeking development authorization under this section, first posts a performance bond or provides other evidence of financial responsibility to the local jurisdiction to ensure that the site is restored to preexisting conditions.
- i. The process of removing or controlling aquatic noxious weeds, as defined in RCW 17.26.020, through the use of an herbicide or other treatment methods applicable to weed control that are recommended by a final environmental impact statement published by the Department of Agriculture or Ecology jointly with other state agencies under chapter 43.21C RCW;
- j. Watershed restoration projects as defined in WAC 173-27-040(o)(i). The Shoreline Administrator shall review the projects for consistency with the SMP in an expeditious manner and shall issue its decision along with any conditions within forty-five (45) days of receiving all materials necessary to review the request for exemption from the applicant. No fee may be charged for accepting and processing requests for exemption for watershed restoration projects.
- k. A public or private project that is designed to improve fish or wildlife habitat or

fish passage, when all of the requirements of WAC 173-27-040(p) apply. No local government may require permits or charge fees for fish habitat enhancement projects that meet the criteria identified in WAC 173-27-040(p) and that are reviewed and approved according to the provisions of this section.

- I. The external or internal retrofitting of an existing structure with the exclusive purpose of compliance with the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.) or to otherwise provide physical access to the structure by individuals with disabilities.

Section 3. That Roy City Code section 12-6-E. is hereby amended as follows:

Chapter 6: Administration

E. Permit Process

1. Applicants shall apply for shoreline substantial development, variance, and conditional use permits on forms provided by the City.
2. Shoreline substantial development permits, shoreline variance permits and shoreline conditional use permits are Type III-A applications and shall be processed and subject to the applicable regulations of Chapter 11-4 RCC.
3. An applicant for a shoreline substantial development permit, who wishes to request a variance and/or conditional use, shall submit the variance and/or conditional use application(s) and the substantial development permit application simultaneously.
4. Public notice. A notice of application shall be issued for all shoreline permit applications as provided for in Chapter 11-4 RCC, excepting that the public comment period for the notice of application for a shoreline permit shall be not less than thirty (30) days, per WAC 173-27- 110(2)(e).
5. Application review. The Shoreline Administrator shall make decisions on shoreline exemptions, and recommendations on applications for conditional use and variance permits based upon: (1) the policies and procedures of the SMA and related sections of the Washington Administrative Code and (2) this SMP.
6. Hearing Examiner action. The Hearing Examiner shall review an application for a shoreline substantial development permit, shoreline variance and shoreline conditional use permit. The Hearing Examiner shall make decisions based upon: (1) this SMP; (2) the policies and procedures of the SMA and related sections of the Washington Administrative Code; (3) written and oral comments from interested persons; (4) reports from the Shoreline Administrator; and (5) Section 1-6A-4 and Chapters 11-4 and 11-8 RCC.
7. Filing with Ecology. All applications for a permit or permit revision shall be submitted to Ecology, as required by WAC 173-27-130 or as subsequently amended. After City approval of a conditional use or variance permit, the City shall submit the permit to

Ecology for the Department's approval, approval with conditions, or denial, as provided in WAC 173-27-200. The Department shall transmit its final decision to the City and the applicant within thirty (30) calendar days of the date of submittal by the City.

8. Hold on Construction. Each permit issued by the City shall contain a provision that construction pursuant to the permit shall not begin and is not authorized until twenty-one (21) days from the date of filing with Ecology, per WAC 173-27-190 or as subsequently amended. "Date of filing" of the City's final decision on substantial development permits differs from date of filing for a conditional use permit or variance. In the case of a substantial development permit, the date of filing is the date ~~that Ecology receives the City's decision. the City transmits its decision on the permit to Ecology.~~ In the case of a variance or conditional use permit, the "date of filing" means the date Ecology's final order on the permit is transmitted to the applicant and City. For site development permits simultaneously mailed with a conditional use permit or variance, the "date of filing" means the date Ecology's final order on the conditional use permit or variance is transmitted to the applicant and City.
9. Duration of permits. Construction, or the use or activity, shall commence within two (2) years after approval of the permits. Authorization to conduct development activities shall terminate within five (5) years after the effective date of a shoreline permit. The Shoreline Administrator may authorize a single extension before the end of either of these time periods, with prior notice to parties of record and Ecology, for up to one (1) year based on reasonable factors.
10. Compliance with permit conditions. When permit approval includes conditions, such conditions shall be satisfied prior to occupancy or use of a structure or prior to commencement of a nonstructural activity. All uses and developments occurring within shoreline jurisdiction shall be compliant with 90.58 RCW.

Section 4. That Roy City Code subsection 12-6-J.2. is hereby amended as follows:

Chapter 6: Administration

J. Nonconforming Use and Development Standards

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

building footprint lying within the above described setback area.

- b. If a nonconforming structure is intentionally modified and the cost of the proposed development exceeds fifty (50) percent of the fair market value of the replacement cost of the original structure, it shall be required to meet all applicable standards in the SMP.
- c. If a nonconforming structure is unintentionally damaged, it may be reconstructed to those configurations existing immediately prior to the time the structure was damaged, provided that application is made for the permits necessary to restore the structure within twelve months of the date the damage occurred, all permits are obtained and the restoration is completed within two years of permit issuance.
- d. A structure for which a variance has been issued shall be considered a legal nonconforming structure and the requirements of this section shall apply as they apply to preexisting nonconformities.
- e. The City's Shoreline Administrator may authorize relocation of a nonconforming structure, provided the structure is brought as closely as practicable into conformance with the applicable provisions of this Shoreline Program. A nonconforming structure that is moved any distance must be brought into conformance with the SMP and the SMA.

Section 5. That Roy City Code section 12-6-Q. is hereby added as follows:

Chapter 6: Administration

Q. Exceptions to Local Review

Requirements to obtain a shoreline substantial development permit, conditional use permit, variance, letter of exemption, or other review to implement the Shoreline Management Act do not apply to the following:

1. Remedial actions. Pursuant to RCW 90.58.355, any person conducting a remedial action at a facility pursuant to a consent decree, order, or agreed order issued pursuant to chapter 70.105D RCW, or to the department of ecology when it conducts a remedial action under chapter 70.105D RCW.
2. Boatyard improvements to meet NPDES permit requirements. Pursuant to RCW 90.58.355, any person installing site improvements for storm water treatment in an existing boatyard facility to meet requirements of a national pollutant discharge elimination system storm water general permit.
3. WSDOT facility maintenance and safety improvements. Pursuant to RCW 90.58.356, Washington State Department of Transportation projects and activities meeting the conditions of RCW 90.58.356 are not required to obtain a substantial development permit, conditional use permit, variance, letter of exemption, or other local review.

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

5. Projects authorized through the Energy Facility Site Evaluation Council process, pursuant to chapter 80.50 RCW.

Section 6. That Roy City Code section 12-6-R. is hereby added as follows:

Chapter 6: Administration

R. Special Procedures for WSDOT Projects

1. Permit review time for projects on a state highway. Pursuant to RCW 47.01.485, the Legislature established a target of 90 days review time for local governments.
2. Optional process allowing construction to commence twenty-one days after date of filing. Pursuant to RCW 90.58.140, Washington State Department of Transportation projects that address significant public safety risks may begin twenty-one days after the date of filing if all components of the project will achieve no net loss of shoreline ecological functions.

Section 7. That the two definitions below in Roy City Code Chapter 12-7 are hereby amended as follows:

Chapter 7: Definitions

Development - A use consisting of the construction or exterior alteration of structures; dredging; drilling; dumping; filling; removal of any sand, gravel, or minerals; bulk heading; 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 of the state overlying lands subject to Chapter 90.58 RCW at any state of water level. Development does not include dismantling or removing structures if there is no other associated development or redevelopment (RCW 90.58.030(3d)).

Substantial Development - Any development of which the total cost or fair market value exceeds five thousand seven hundred and eighteen dollars (~~\$7,047~~)(~~\$5,718~~), or any development, which materially interferes with the normal public use of the water or shorelines of the state. The dollar threshold established in this definition must be adjusted for inflation by the office of financial management every five years, beginning July 1, 2007, based upon changes in the consumer price index during that time period. "Consumer price index" means, for any calendar year, that year's annual average consumer price index, Seattle, Washington area, for urban wage earners and clerical workers, all items, compiled by the Bureau of Labor and Statistics, United States

Department of Labor. The office of financial management must calculate the new dollar threshold and transmit it to the office of the code reviser for publication in the *Washington State Register* at least one month before the new dollar threshold is to take effect (RCW 90.58.030(3)(e)). For purposes of determining whether or not a permit is required, the total cost or fair market value shall be based on the value of development that is occurring on shorelines of the state as defined in RCW 90.58.030 (2)(c). The total cost or fair market value of the development shall include the fair market value of any donated, contributed or found labor, equipment or materials. A list of activities and developments that shall not be considered substantial development is provided in Chapter 8 (WAC 173-27-040(2)(a)).

Section 8. This ordinance shall be in full force and effective five (5) days from and after its passage, approval and publication as provided by law.

Section 9. 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 circumstance shall not affect the validity of the remainder of this ordinance, or the validity of its application to other persons or circumstances.

Section 10. All acts consistent with this ordinance are hereby authorized.

Passed and approved this 13th day of August, 2018.

Rawlin McDaniel, Mayor

Attest:

Approved as to Form:

Debra Dearing
City Clerk-Treasurer

Lisa Marie Roybal Elliott
City Attorney

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