

CITY OF KENNEWICK  
ORDINANCE NO. 5927

AN ORDINANCE RELATING TO THE SHORELINE MASTER PROGRAM UPDATE AND AMENDING SECTIONS 18.68.040, 18.68.050, 18.68.060, 18.68.110, 18.68.120, 18.68.130, 18.68.230, 18.68.240, 18.68.250, 18.68.255, 18.68.280 and 18.68.285 OF THE KENNEWICK MUNICIPAL CODE AND SECTION 1.040 AND 1.120 OF APPENDIX A-2 CHAPTER 1 CRITICAL AREAS – GENERAL PROVISIONS AND SECTION 2.010 OF APPENDIX A-2 CHAPTER 2 CRITICAL AREAS – WETLANDS

THE CITY COUNCIL OF THE CITY OF KENNEWICK, WASHINGTON, DO ORDAIN AS FOLLOWS:

**Section 1.** Section 18.68.040 of the Kennewick Municipal Code, be, and the same hereby is, amended to read as follows:

**18.68.040: - Definitions.**

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

- (1) *Applicant* means a person who files an application for permit under this Chapter and who is the owner of the land on which the proposed activity would be located, a contract purchaser, or the authorized agent of such a person.
- (2) *Archaeological and Historic Resources* means an archaeological object, archaeological site or a historic archaeological resource as defined below:
  - (a) *Archaeological Object* means an object that comprises the physical evidence of an indigenous and subsequent culture, including material remains of past human life, including monuments, symbols, tools, facilities, and technological by-products; or
  - (c) *Archaeological Site* means a geographic locality in Washington, including but not limited to, submerged and submersible lands and the bed of the sea within the state's jurisdiction, that contains archaeological objects; or
  - (b) *Historic Archaeological Resources* means those properties which are listed in or eligible for listing in the Washington state register of historic places (RCW 27.34.220) or the national register of historic places as defined in the national historic preservation act of 1966 (Title 1, Sec. 101, Public Law 89-665; 80 Stat. 915; 16 U.S.C. Sec. 470) as now or hereafter amended.
- (3) *Average Grade Level* means the average of the natural or existing topography of the portion of the lot, parcel, or tract of real property which will be directly under the proposed building or structure. In the case of structures to be built over water,

average grade level shall be the elevation of the ordinary high water mark. Calculation of the average grade level shall be made by averaging the ground elevations at the midpoint of all exterior walls of the proposed building or structure.

- (4) *Best Management Practices* or *BMPs* means conservation practices or systems of practices and management measures that:
  - (a) Control soil loss and reduce water quality degradation caused by high concentrations of nutrients, animal waste, toxics, and sediment;
  - (b) Minimize adverse impacts to surface water and ground water flow and their circulation patterns, and to the chemical, physical, and biological characteristics of wetlands;
  - (c) Protect trees and vegetation designated to be retained during and following site construction; and
  - (d) Provide standards for proper use of chemical herbicides.
- (5) *Boating Facilities* includes: Marinas, both backshore and foreshore, dry storage and wet-moorage types; boat launch ramps; covered moorage; boat houses; mooring buoys; and marine travel lifts, but excludes docks serving four or fewer single-family residences (see definition of "Private Docks").
- (6) *Channel Migration Zone (CMZ)* means the area within which a river channel is likely to migrate and occupy over a specified time period (e.g., 100 years).
- (7) *Commercial* or *Commercial Development* means those facilities involved in a wholesale or retail business or service. They range from office buildings, hotels, motels, grocery markets, shopping centers, restaurants, gift shops and private or public indoor recreation facilities. Excluded from this category are residential or agriculture, and industry.
- (8) *Critical Area* means any area classified in RCW 36.70A and in Appendix A-2 as ecologically sensitive or hazardous areas, including, but not limited to: Wetlands, critical aquifer recharge areas, frequently flooded areas, geologically hazardous areas, and fish and wildlife habitat conservation areas. Fish and wildlife habitat conservation areas" do not include such artificial features or constructs as irrigation delivery systems, irrigation infrastructure, irrigation canals, or drainage ditches that lie within the boundaries of and are maintained by a port district or an irrigation district or company. Natural watercourses such as streams and rivers that carry irrigation water are not considered to be an artificial feature.
- (9) *Development* means any activity consisting of construction or exterior alteration of structures, earth movement, dredging, drilling, dumping, filling, excavation, driving of piles, bulk heading, placing of obstructions, clearing of vegetation, or construction of anything which interferes with the normal public use of the surface of the waters overlying lands subject to this Chapter. Development does not include the following activities:
  - (a) Interior building improvements;

- (b) Exterior structure maintenance activities, including painting and roofing as long as it does not expand the existing footprint of the structure;
  - (c) Routine landscape maintenance of established, ornamental landscaping, such as lawn mowing, pruning and weeding;
  - (d) Maintenance of the following existing facilities that does not expand the affected area: septic tanks (routine cleaning); wells; and individual utility service connections
  - (e) Dismantling or removing any structures if there is no other associated development or re-development.
- (10) *Ecological Functions or Shoreline Functions* means the work performed or role played by the physical, chemical, and biological processes that contribute to the maintenance of the aquatic and terrestrial environments that constitute the shoreline's natural ecosystem.
- (11) *Ecological Restoration* means the reestablishment or upgrading of impaired ecological shoreline processes or functions. This may be accomplished through measures including, but not limited to, revegetation, removal of intrusive shoreline structures and removal or treatment of toxic materials. Restoration does not imply a requirement for returning the shoreline area to aboriginal or pre-European settlement conditions [WAC 173-26-020(27)].
- (12) *Ecosystem-Wide Processes* means the suite of naturally occurring physical and geologic processes of erosion, transport, and deposition; and specific chemical processes that shape landforms within a specific shoreline ecosystem and determine both the types of habitat and the associated ecological functions.
- (13) *Feasible* means that an action, such as a development project, mitigation, or preservation requirement, meets all of the following conditions:
- (a) The action can be accomplished with technologies and methods that have been used in the past in similar circumstances, or studies or tests have demonstrated in similar circumstances that such approaches are currently available and likely to achieve the intended results;
  - (b) The action provides a reasonable likelihood of achieving its intended purpose; and
  - (c) The action does not physically preclude achieving the project's intended legal use.
- In cases where this Chapter requires certain actions unless they are infeasible, the burden of proving infeasibility is on the applicant.
- (14) *Fill or Landfill* means the addition of soil, sand, rock, gravel, sediment, earth retaining structure, or other material to an area waterward of the ordinary high water mark, in wetlands, or on shorelands in a manner that raises the elevation or creates dry land.
- (15) *Fish and Wildlife Habitat Conservation Area (FWHCA)* means a type of critical area that serves to sustain needed habitats and species for the functional integrity

of the ecosystem, and which, if altered, may reduce the likelihood that the species will persist over the long term. These areas may include, but are not limited to, rare or vulnerable ecological systems; communities; and habitat or habitat elements including seasonal ranges, breeding habitat, winter range, and movement corridors; and areas with high relative population density or species richness. These areas do not include such artificial features or constructs as irrigation delivery systems, irrigation infrastructure, irrigation canals, or drainage ditches that lie within the boundaries of and are maintained by a port district or an irrigation district or company. Natural watercourses such as streams and rivers that carry irrigation water are not considered to be an artificial feature.

- (16) *Habitat Enhancement* means actions performed within an existing shoreline, critical area or buffer to intentionally increase or augment one or more ecological functions or values. Actions include, but are not limited to, increasing aquatic and riparian plant diversity or cover, increasing structural complexity, installing environmentally compatible erosion controls, or removing non-indigenous plant or animal species.
- (17) *Height* is measured from average grade level to the highest point of a structure: Provided, that television antennas, chimneys, and similar appurtenances shall not be used in calculating height, except where such appurtenances obstruct the view of the shoreline of a substantial number of residences on areas adjoining such shorelines; provided further, that temporary construction equipment is excluded in this calculation.
- (18) *Hydraulic Project Approval (HPA)* means a construction permit issued by the Washington Department of Fish and Wildlife for work that will use, divert, obstruct, or change the natural flow or bed of any of the salt or fresh waters of the state.
- (19) *Industrial Use or Industrial Development* means any activity that is involved in the production, processing, manufacturing, fabrication, or assembling of goods and materials, including the storage of material used in the industrial process, including warehousing, wash-down facilities, blacksmithing, welding, wholesale bakery, recycling facilities and distribution centers (KMC 18.09.1010). Industrial Uses or Developments include the following categories:
  - (a) Water-dependent (e.g., container shipping by water);
  - (b) Water-related (e.g., boat transfer areas for boat repair); and
  - (c) Non-water-oriented (Manufacturing facility).
- (20) *Joint Use Community Recreational Facilities* is defined as a use that could be for either public or private group use, including use by a private club. The private group could restrict access to community recreational facilities to group members only.
- (21) *Marina* is a facility that provides launching, storage, supplies, moorage, and other accessory services for four or more pleasure and/or commercial water craft.

- (22) *Mitigation or Mitigate* means to avoid, minimize, or compensate for adverse impacts of development to shorelines. Mitigation actions, in order of preference, include:
- (a) Avoiding the impact altogether by not taking a certain action or parts of an action;
  - (b) Minimizing impacts by limiting the degree of magnitude of the action and its implementation by using appropriate technology or by taking affirmative steps to avoid or reduce impacts such as project redesign, relocation, or timing;
  - (c) Rectifying the impact by repairing, rehabilitating or restoring the affected environment;
  - (d) Reducing or eliminating the impact over time by preservation and maintenance operations;
  - (e) Compensating for the impact by replacing, enhancing, or providing substitute resources or environments; and
  - (f) Monitoring the impact and the compensation projects and taking appropriate corrective measures.

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

- (23) *Mixed-Use or Mixed-Use Development* means a combination of uses within the same building or site as a part of an integrated development project with functional interrelationships and coherent physical design. Mixed-use developments, which incorporate non-water-oriented uses, must include water dependent use(s), and provide significant public benefit with respect to the Shoreline Management Act's objectives such as providing public access and ecological restoration, except for commercial uses whose site is physically separated from the shoreline by another property or public right-of-way, or if the site's navigability is severely limited, the non-water-oriented commercial use shall provide a significant public benefit with respect to the Shoreline Management Act's objectives such as providing public access and ecological restoration. Finally, Mixed-Use Developments should reduce use conflicts by first giving preference to water dependent uses, then to water-related uses and water enjoyment uses, lastly to non-water-oriented. The City has determined the Clover Island High Intensity Special Area Plan with associated standards meets this definition.
- (24) *Non-Water-Oriented Uses* are those uses that are not water-dependent, water-related, or for water-enjoyment.
- (25) *Ordinary High Water Mark* means the point on all water bodies that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in

respect to vegetation as that condition exists on June 1, 1971, as it may naturally change thereafter, or as it may change thereafter in accordance with permits issued by the City or state or federal agencies: provided that in any area where the ordinary high water mark cannot be found, the ordinary high water adjoining fresh water shall be the line of mean high water.

- (26) *Person* means an individual, partnership, corporation, association, organization, cooperative, public municipal corporation, or district, or agency of the state or local governmental unit however designated.
- (27) *Planning Official* means the City Official for the City of Kennewick Planning Department or other City staff granted the authority to act on behalf of the Planning Official.
- (28) *Private Docks* means docks serving four or less residential units. It does not include docks that serve semi-private facilities such as a yacht club or other private membership organization, these types of docks fall under the definition of "boating facilities."
- (29) *Public Access* means the ability of the general public to reach, touch, and enjoy the water's edge, to travel on the waters of the State, and to view the water and the shoreline from adjacent locations.
- (30) *Recreational Uses* includes the following three categories:
  - (a) Water-dependent (e.g., boating facilities, fishing pier, swim rafts) (see also definition of "Recreation Facilities" and "Water-dependent" below);
  - (b) Water-enjoyment, (e.g. paths leading to the dock, parks, shoreline educationally themed are water enjoyment) (see also definition of "Recreation Facilities" and "Water-enjoyment" below); and
  - (c) Non-water-oriented. Non-water-oriented recreational uses are further divided into three subcategories based on their relative impact to the shoreline environment (see also "Water-related" and "Non-water-oriented" definitions below):
    - (i) High Intensity recreational uses require substantial development/land modification or large areas of fertilized lawn. Such uses may include but are not limited to camp grounds, sport courts (e.g., tennis/basketball), golf courses, sport fields (e.g., ball park), aquatic centers, or skateboard parks;
    - (ii) Moderate Intensity recreational uses are typified by formal parks for passive recreation requiring some modification of natural conditions, limited paving and often including accessory structures (e.g., picnic shelters, restrooms, viewing galleries, gazebos, and playground equipment; and
    - (iii) Low Intensity recreational uses are passive in nature (e.g., walking, photography, wildlife viewing) and require very minimal alteration of natural conditions. Such uses/modifications may include, but are

not limited to, non-motorized, non-impervious surface trails, vista points, wildlife viewing areas, picnic tables, and benches.

- (31) *Recreation Facilities* are facilities such as parks, trails and pathways, campgrounds, and swim rafts that provide a means for relaxation, play, or amusement.
- (32) *Restoration* or *Restore* means the reestablishment or upgrading of impaired ecological shoreline processes or functions. This may be accomplished through measures including, but not limited to, re-vegetation, removal of intrusive shoreline structures and removal or treatment of toxic materials. Restoration does not imply a requirement for returning the shoreline area to aboriginal or pre-European settlement conditions.
- (33) *Riparian* means the area alongside a waterbody: stream, river, lake, pond, bay, sea, and ocean. Riparian areas are sometimes referred to by different names: riparian ecosystems, riparian habitats, riparian corridors, or riparian zones.
- (34) *Riparian Management Zone (RMZ)* means a delineable area defined in a land use regulation; often synonymous with riparian buffer. The RMZ is the area that has the potential to provide full riparian functions. In many forested regions of the state this area occurs within one 200-year site-potential tree height measured from the edge of the stream channel. In situations where a channel migration zone is present, this occurs within one site-potential tree height measured from the edges of the channel migration zone. In non-forest zones the RMZ is defined by the greater of the outermost point of the riparian vegetative community or the pollution removal function, at 100-feet.
- (35) *Shall* means a mandate; the action must be done.
- (36) *Should* means that the particular action is required unless there is a demonstrated, compelling reason, based on policy of the Shoreline Management Act and this Chapter, against taking the action.
- (37) *Shorelands* or *Shoreland Areas* means: Those lands extending landward for 200 feet in all directions as measured on a horizontal plane from the ordinary high water mark; floodways and contiguous floodplain areas landward 200 feet from such floodways; and all wetlands and river deltas associated with the streams, lakes, and tidal waters which are subject to the provisions of the Shoreline Management Act and this Chapter; the same to be designated as to location by Ecology.
- (38) *Shoreline Master Program* means the comprehensive shoreline plan for the City and associated land use regulations together with maps, diagrams, charts or other descriptive material and text, developed in accord with RCW 90.58.020.
- (39) *Shoreline Stabilization—Replacement* means the construction of a new structure to perform a shoreline stabilization function of an existing structure which can no longer adequately serve its purpose. Additions to or increases in size of existing shoreline stabilization measures shall be considered new structures.

- (40) *Shorelines* means all of the water areas of the State, including reservoirs, and their associated wetlands, together with the lands underlying them, except:
- (a) Shorelines of state-wide significance (see definition below);
  - (b) Shorelines on segments of streams upstream of a point where the mean annual flow is 20 cubic feet per second or less and the wetlands associated with such upstream segments; and
  - (c) Shorelines on lakes less than 20 acres in size and wetlands associated with such small lakes.
- (41) *Shorelines of State-Wide Significance* means those shorelines of the State defined in RCW 90.58.030(2)(e) including:
- (a) Those lakes, whether natural, artificial or a combination thereof, with a surface acreage of 1,000 acres or more measured at the ordinary high water mark;
  - (b) Those natural rivers or segments located east of the crest of the Cascade Range downstream of a point where the annual flow is measured at 200 cubic feet per second or more, or those portions of rivers east of the crest of the Cascade Range downstream from the first 300 square miles of drainage area, whichever is longer; and
  - (c) Those shorelands associated with (a) and (b) of this subsection.
- (42) *Shorelines of the State* are the total of all "shorelines" and "shorelines of state-wide significance" within the State.
- (43) *Shoreline Modification* means those actions that modify the physical configuration or qualities of the shoreline area, usually through the construction of a physical element such as a levee, breakwater, pier, weir, dredged basin, fill, bulkhead, or other shoreline structure. They can include other actions, such as clearing, grading, or application of chemicals.
- (44) *Shoreline Stabilization Replacement* means the construction of a new structure to perform a shoreline stabilization function of an existing structure which can no longer adequately serve its purpose. Additions to, or increases in, size of existing shoreline stabilization measures shall be considered new structures.
- (45) *Site-Potential Tree Height* means the average maximum height of the tallest dominant trees for a given age and site class.
- (46) *Structure* means that which is built or constructed. A structure is an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner, which requires an approval (KMC 18.09.2040).
- (47) *Substantial Development* means any development of which the total cost or fair market value exceeds the defined amount contained in RCW 90.58.030(3)(e), or any development which materially interferes with the normal public use of the water or shorelines of the State. Under current law, the dollar threshold will be recalculated every five years by the Office of Financial Management (OFM).



OFM will post updated dollar thresholds in the Washington State Register. The Legislature can change the dollar threshold at any time.

- (48) *Water-Dependent Use* means a use or a portion of a use which cannot exist in any other location and is dependent on the water by reason of the intrinsic nature of its operations. Examples of water-dependent uses may include, but are not limited to, boat docks, boat fueling stations, instream structures, fishing, boat launching, swimming, and water intake and outfall discharges/pipes.
- (49) *Water-Enjoyment Use* means a recreational use or other use that facilitates public access to the shoreline as a primary characteristic of the use; or a use that provides for recreational use or aesthetic enjoyment of the shoreline for a substantial number of people as a general characteristic of the use and which through location, design, and operation ensures the public's ability to enjoy the physical and aesthetic qualities of the shoreline. In order to qualify as a water-enjoyment use, the use must be open to the general public and the shoreline-oriented space within the project must be devoted to the specific aspects of the use that fosters shoreline enjoyment (as defined in WAC 173-26-020). Water-enjoyment uses may include, but are not limited to:
- (a) Parks with activities enhanced by proximity to the water;
  - (b) Trails, and other improvements that facilitate public access to shorelines of the State;
  - (c) Restaurants with water views and public access improvements;
  - (d) Retail establishments with water views and public access improvements;
  - (e) Museums with an orientation to shoreline topics;
  - (f) Scientific/ecological reserves;
  - (g) Resorts with uses open to the public and that provide public access to the shoreline; and
  - (h) Any combination of those uses listed above.
- (50) *Water-Oriented Use* means a use that is water-dependent, water-related, or water-enjoyment, or a combination of such uses.
- (51) *Water-Related Use* means a use or portion of a use which is not intrinsically dependent on a waterfront location but whose economic viability is dependent upon a waterfront location because:
- (a) The use has a functional requirement for a waterfront location such as the arrival or shipment of materials by water or the need for large quantities of water; or
  - (b) The use provides a necessary service supportive of the water-dependent uses and the proximity of the use of its customers makes its services less expensive and/or more convenient.

(Ord. 5927 Sec. 1, 2021; Ord. 5281 Sec. 1, 2009)

**Section 2.** Section 18.68.050 of the Kennewick Municipal Code, be, and the same hereby is, amended to read as follows:

**18.68.050: - Special Policy Goals—Shorelines of Statewide Significance.**

In recognition of the Columbia River, a Shoreline of Statewide Significance, the following Special Policy Goals listed in order of preference have been established for use in implementing the City's Shoreline Regulations. Preference shall be given to uses which:

- (1) Recognize and protect 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 shorelines;
- (5) Maintain and enhance public access to the shorelines;
- (6) Increase recreational opportunities for the public on the shorelines;
- (7) Promote and enhance public interest;
- (8) Protect public rights of navigation;
- (9) Preserve and protect culturally significant features; and
- (10) Provide, whenever feasible, all necessary accommodations to enhance the participation and enjoyment of persons with special needs.

(Ord. 5927 Sec. 2, 2021; Ord. 5281 Sec. 1, 2009)

**Section 3.** Section 18.68.060 of the Kennewick Municipal Code, be, and the same hereby is, amended to read as follows:

**18.68.060: - Goals—Shoreline Development Elements.**

The following goals have been developed in response to various elements of shoreline development and are provided to guide implementation of this Chapter:

- (1) Economic Development Element. Encourage economic development, with emphasis on water-oriented commercial and recreational uses in a manner that will provide for the orderly development of Clover Island and areas adjacent to the Corps of Engineer's levee in a harmonious manner which accentuates and enhances Lake Wallula.
- (2) Public Access Element. On Clover Island, improve public access to designated areas of Lake Wallula for recreational uses as indicated in the Clover Island High Intensity Special Area Plan Standards (Appendix A-6). Maintain areas along Columbia Park, the levee and Duffy's Pond by which the public can reach Lake Wallula and Duffy's Pond for fishing, viewing and other public access purposes. Maintain access to the park and levee using pedestrian and bicycle bridges.
- (3) Recreational Element. Enhance the recreational facilities potential of the shorelines. Clover Island recreational uses should complement existing and

proposed developments. Maintain and enhance recreational facilities along Columbia Park and the levee to provide diversification in recreational uses.

- (4) Circulation Element. Circulation to the levee and the Clover Island causeway should be improved for ease of access and should include adequate off-street parking facilities to serve the people who will be using area for recreational and commercial purposes. Maintain and enhance, where appropriate, circulation and access within Columbia Park.
- (5) Shoreline Use Element. Assure that the various land uses are compatible and aimed toward maximum utilization without diminishing the quality of the environment. Shorelines abutting the levee area should take advantage of the presence of Lake Wallula and should be oriented in a manner to coordinate lakefront uses and non-lakefront uses.
- (6) Conservation Element. Enhance the aesthetic characteristics and environmental functions and values of the levee, Duffy's Pond, Clover Island and Columbia Park areas and take necessary steps to conserve the natural setting of those shoreline areas which are presently in an undeveloped state in order to protect and preserve the biodiverse habitats found in these shoreline/riparian areas for the wildlife that use them.
- (7) History, Scientific and Cultural Element. Establish areas on or near the levee and Columbia Park which will have a cultural, educational, historical or scientific value and protect these areas in a proactive and substantive way.
- (8) Flood Prevention Element. Assure that, whenever feasible, steps are taken to prevent and/or minimize the risk of flood and associated flood damages to property and land uses.

(Ord. 5927 Sec. 3, 2021; Ord. 5281 Sec. 1, 2009)

**Section 4.** Section 18.68.110 of the Kennewick Municipal Code, be, and the same hereby is, amended to read as follows:

**18.68.110: - General Shoreline Master Program Provisions.**

- (1) Applicability. The provisions of this section shall apply to all shorelines within the City, regardless of Environment Designations assigned in Section 18.68.070 of this Chapter. The provisions of this section shall apply to all proposed new development and uses.
- (2) General Provisions.
  - (a) Archaeological and Historic Resources.
    - (i) Applicability. The provisions of this subsection apply to archaeological and historic resources located within shoreline jurisdiction that are either recorded at the State Department of Archaeology and Historic Preservation and/or by local jurisdictions or those that are inadvertently discovered. Archaeological sites within shoreline jurisdiction are subject to 27.44 RCW and 27.53

RCW and development or uses that may impact such sites shall comply with Chapter 25-48 WAC as well as the provisions of this Chapter.

- (ii) Principles. Due to the limited and irreplaceable nature of the resource(s), the objective of this section is to prevent the destruction of, or damage to, any site having historic, cultural, scientific, or educational value as identified by the appropriate authorities, including affected Indian tribes, and the State Department of Archaeology and Historic Preservation.
- (iii) Standards. The following standards shall apply to development in shoreline jurisdiction:
  - (A) Developers and/or property owners shall immediately stop work and notify the Planning Department, the State Department of Archaeology and Historic Preservation, and affected Indian tribes if archaeological resources are uncovered during excavation.
  - (B) Permits for development in areas documented to contain archaeological resources shall require a site inspection or evaluation by a professional archaeologist in coordination with affected Indian tribes as well as permits required by the Washington State Department of Archaeology and Historic Preservation, prior to holding the public hearing or issuing a substantial development permit, shoreline conditional use permit or shoreline variance.
  - (C) Consultation with the Washington State Department of Archaeology and Historic Preservation (DAHP) is highly recommended prior to applying for a permits. Because shoreline areas are locations of significant cultural resources, in most instances, a cultural resource survey will be required under SEPA, Executive Order 05-05 and/or Section 106 to ensure the protection of existing.

(b) Critical Areas.

- (i) Applicability. Pursuant to the provisions of RCW 90.58.090(4), as amended by ESHB 1933, this Shoreline Master Program provides for management of critical areas designated as such pursuant to RCW 36.70A.170(1)(d) and required to be protected pursuant to WAC 173-26-221(2) and (3) and RCW 36.70A.060(2) that are located within shorelines of the State. Policies and regulations that are adopted under this Chapter shall be:
  - (A) Consistent with the specific provisions of 173-26-221(2) WAC and 173-26-221(3) WAC and the policies and goals of this Chapter; and

- (B) Provide a level of protection to critical areas within the shoreline area that is at least equal to that provided by the Kennewick Shoreline Critical Areas Regulations in Appendix A-2.
- (ii) Principles. The following are objectives of the provisions of this subsection:
    - (A) In addressing issues related to critical areas, the most current, accurate, and complete scientific and technical information available will be used;
    - (B) In protecting and restoring critical areas within shoreline jurisdictions, the full spectrum of planning and regulatory measures shall be integrated;
    - (C) Existing ecological functions and ecosystem-wide processes shall be protected and restoration of degraded ecological functions and enhancement of ecosystem-wide processes shall be encouraged; and
    - (D) Human uses and values that are compatible with other objectives of this Chapter shall be encouraged, such as public access and aesthetic values, provided they do not significantly adversely impact ecological functions.
  - (iii) Standards. The following standards shall apply to development in shoreline jurisdiction:
    - (A) Where critical areas are identified within shoreline jurisdiction, all proposed uses and development shall be subject to the administrative provisions of this Chapter, and shall comply with the development standards required by critical areas regulations in Appendix A-2;
    - (B) Applicants for proposed development within or adjacent to critical areas within shoreline jurisdiction shall demonstrate compliance with critical areas regulations in Appendix A-2 as part of shoreline or other permit reviews, and submit all relevant documentation with the permit application(s); and
    - (C) Applicants for proposed development within or adjacent to critical areas within shoreline jurisdiction shall demonstrate compliance with KMC 18.72 Clearing and Grading in as part of shoreline Substantial Development Permit or other permit reviews, and submit all relevant documentation.
  - (iv) Exceptions. The provisions of Kennewick Critical Areas Regulations do not extend Shoreline Jurisdiction beyond the limits specified in this Shoreline Master Program. For regulations addressing critical area buffer areas that are outside Shoreline Jurisdiction, see Kennewick Critical Areas Regulations in KMC 18.59 through 18.63.

- (c) Geologically Hazardous Areas.
  - (i) Applicability. The provisions of this section apply to geologic hazards within the shoreline jurisdiction.
  - (ii) Standards. Development in designated geologically hazardous areas located in shoreline jurisdiction shall be regulated in accordance with the following:
    - (A) Development shall comply with Appendix A-2, Chapter 5, of this Chapter;
    - (B) New development or the creation of new lots that would cause foreseeable risk or adverse impacts from geological conditions to people or improvements during the life of the development shall be prohibited;
    - (C) New development that would require structural shoreline stabilization over the life of the development shall be prohibited. For Clover Island High Intensity Environment, structural shoreline stabilization, as necessary, shall be accompanied by habitat enhancement to improve riparian and nearshore habitat functions. Exceptions may also be made for the limited instances where stabilization is necessary to protect allowed uses where no alternative locations are available and no net loss of ecological functions will result as found in Section 18.68.120(3)(a). Proposed stabilization measures shall recognize the principles found in WAC 173-26-231(3)(a)(ii) and shall conform to standards found in WAC 173-26-231(3)(a)(iii)(A—F); and
    - (D) Where no alternatives, including relocation or reconstruction of existing structures, are found to be feasible, and less expensive than the proposed stabilization measure, stabilization structures or measures to protect existing residential structures may be allowed in strict conformance with the requirements of WAC 173-26-231 and then only if there is no net loss of ecological functions.
- (d) Flood Hazard Reduction.
  - (i) Applicability. The provisions of this subsection apply to actions taken to reduce flood damage or hazard and to uses, development, and shoreline modifications that may increase flood hazards in shoreline jurisdiction.
  - (ii) Principles. The following are objectives of the provisions of this subsection:
    - (A) Where feasible, preference shall be given to non-structural flood hazard reduction measures over structural measures;

- (B) In managing flood hazards within shoreline jurisdiction, the full spectrum of planning and regulatory measures shall be integrated;
  - (C) Flood hazard reduction measures shall, with appropriate mitigation sequencing, result in no net loss of ecological functions;
  - (D) Where feasible, efforts to return stream corridors to more natural hydrological conditions shall be encouraged; it is recognized that seasonal flooding is an essential natural process;
  - (E) When evaluating alternate flood control measures, removal or relocation of structures in floodprone areas shall be considered; and
  - (F) Encourage planning for and facilitating removal of restrictions to off channel hydrological connections consistent with actions identified in the Shoreline Restoration Plan (Appendix A-4 to this Chapter).
- (iii) Standards. The following standards shall apply to development in shoreline jurisdiction:
- (A) Development in flood plains shall not significantly or cumulatively increase flood hazard nor be inconsistent with Shoreline Critical Areas Regulations in Appendix A-2 and the Flood Damage Prevention Ordinance KMC 18.66. New development or new uses in shoreline jurisdiction, including the subdivision of land, shall not be established when it would be reasonably foreseeable that the development or use would require structural flood hazard reduction measures;
  - (B) Where frequently flooded areas are identified as a Critical Area within shoreline jurisdiction, all proposed uses and development shall be subject to administrative provisions of this Chapter, and shall comply with development standards required by Shoreline Critical Areas Regulations in Appendix A-2, and the Flood Damage Prevention Ordinance KMC 18.66;
  - (C) New structural flood hazard reduction measures shall be allowed in shoreline jurisdiction only when it can be demonstrated by scientific and engineering analysis that they are necessary to protect existing development, that nonstructural measures are not feasible, that impacts to ecological functions can be successfully mitigated so as to assure no net loss, and that appropriate vegetation conservation actions will be undertaken consistent with WAC 173-26-221(5). Structural flood hazard reduction measures shall be consistent with KMC 18.66;

- (D) New structural flood hazard reduction measures shall be placed landward of wetlands and vegetation conservation areas, and shall comply, as applicable, with Shoreline Critical Areas Regulations, Appendix A-2, Flood Damage Prevention Ordinance KMC 18.66, WAC 173-26-221(3)(c)(iii) and the provisions of this Chapter;
  - (E) New structural flood hazard reduction measures, such as dikes and levees, shall be designed to include and improve public access pathways unless public access improvements would cause unavoidable health or safety hazards to the public, inherent and unavoidable security problems, unacceptable and unmitigable significant ecological impacts, unavoidable conflict with the proposed use, or a cost that is disproportionate and unreasonable to the total long-term cost of the development;
  - (F) Removal of gravel for flood management purposes shall be consistent with Shoreline Critical Areas Regulations, Appendix A-2, KMC 18.66 and the provisions of this Chapter, and shall be allowed only after a biological and flood management study demonstrates the extraction has a long-term benefit to flood hazard reduction, does not result in a net loss of ecological functions, and is part of a comprehensive flood management solution.
  - (G) The director may use additional flood information that is more restrictive or detailed than that provided in the flood insurance study conducted by the Federal Emergency Management Agency (FEMA) to designate frequently flooded areas, including data on channel migration, historical data, high water marks, photographs of past flooding, location of restrictive floodways, maps showing future build-out conditions, maps that show riparian habitat areas, or similar information.
- (e) Public Access.
- (i) Applicability. The provisions of this subsection apply to development in shoreline jurisdiction.
  - (ii) Principles. The following are the objectives of the provisions of this subsection:
    - (A) The public interest shall be promoted with regard to rights to access waters held in public trust by the State while protecting private property rights and public safety;
    - (B) The rights of navigation and space necessary for water-dependent uses shall be protected;
    - (C) To the greatest extent feasible consistent with the overall best interest of the State and the people generally, the public's



opportunity to enjoy the physical and aesthetic qualities of shorelines of the State, including views of the water, shall be protected; and

- (D) Uses and the location, design, and construction of development in the shoreline jurisdiction shall, whenever feasible, minimize interference with the public's use of the water.
- (iii) Standards. The following standards shall apply to development in the shoreline jurisdiction:

- (A) All new development by public entities, including local government, port districts, state agencies, and public utility districts, shall include public access measures as part of each development project, unless such access is shown to be incompatible for safety, security, or impact to the shoreline environment reasons.

For Clover Island, public access must be consistent with the Clover Island High Intensity Special Area Plan Standards (see Appendix A-6). Planned public access improvement specified by the pathways identified in Appendix A-6-2 exhibit (Public Access) shall be made within 12 months of build out of the following lots, as specified in the Appendix A-6-3 (Building Heights) exhibit:

- (I) West and northwest (Causeway and "notch") and adjacent interior pathways will be completed proportionately within 12 months of Parcels A, B and C and Lot 1 completing build out;
  - (II) North shoreline pathway (from west edge of Lot 2, and Lots 3 through 11, 30, and 31) will be completed proportionately within 12 months of Lots 2 through 5 completing build out; and
  - (III) South shoreline and interior pathway (due south of "notch") will be completed within 12 months of eastern half of Lot 15 and Lots 16 through 18 completing build out.
  - (IV) Public access shall be provided along the south shoreline for eastern lot 13 through western half of Lot 15 as provided for in permitted Yacht Club development.
  - (V) Long-term shoreline pathway around east end of island (Lots 29 through 32) shall be phased in with any proposed improvements on those lots and/or shoreline stabilization occurring on Clover Island.
- (B) New structural public flood hazard reduction measures, such as dikes and levees, shall dedicate and improve public access

pathways unless public access improvements would cause unavoidable health or safety hazards to the public, inherent and unavoidable security problems, unacceptable and unmitigable significant ecological impacts, unavoidable conflict with the proposed use, or a cost that is disproportionate and unreasonable to the total long-term cost of the development;

- (C) All new development for water enjoyment, and water-related and non-water-dependent uses and for subdivisions of land into more than four parcels or sections of leased lands, shall include dedicated and improved public access proposal measures and which shall be recorded with final site plan, unless such access is shown to be incompatible for reasons of safety, security, or impact to the shoreline environment, or where such measures are shown to be infeasible or alternative measures are shown to be more desirable. In determining the infeasibility, undesirability, or incompatibility of public access in a given situation, the applicant shall analyze and propose alternative methods of providing public access, such as off-site improvements, viewing platforms, separation of uses through site planning and design, and restricting hours of public access. The City Planning Official will then consider these alternative methods in a final permit decision.

For the Clover Island High Intensity Environment, developments and uses shall maintain and, where specified, enhance public access and view corridors consistent with the Clover Island High Intensity Special Area Plan Standards (Appendix A-6);

- (D) All new development shall comply with the 35 feet height limitation, except for development provided in the Clover Island High Intensity Environment, where the development shall be consistent with the Clover Island High Intensity Special Area Plan Standards. Building or structures more than 35 feet above the ordinary high water mark in the Urban Conservancy and Aquatic Environments shall be processed through a Conditional Use Permit.

For the Clover Island High Intensity Environment, the City has determined that development will not obstruct views for a substantial number of residences on the adjoining state shoreline, as the existing levee currently blocks the entire shoreline view for existing residences. This is also true for the other residences south of the levee that extends along the entire shoreline of Segments D and E (Appendix A-1) For the Clover Island High Intensity Environment, the view corridors and viewpoints established in the Clover Island High Intensity

Special Area Plan Standards (Appendix A-6-1) will be preserved, and development will remain within the established heights.

The Clover Island High Intensity Special Area Plan Standards will serve the public interest by providing economic development, enhancing public access, maintaining specified on-island view corridors, and providing for enhanced aquatic and riparian habitat. Therefore, areas specified in the Clover Island High Intensity Special Area Plan Standards that exceed 35 feet in height on the island are allowed through the Substantial Development Permit process, consistent with other established standards for view, public access and habitat enhancement (see Appendix A-6).

Specifically, according to WAC 173-27-160, the City has determined that, for the Clover Island High Intensity Environment, as specified in the City-adopted master plan and Clover Island High Intensity Special Area Plan Standards (Appendix A-6), that the:

- (I) Proposed uses are consistent with the policies of RCW 90.58.020 and the Shoreline Master Program;
  - (II) Proposed uses will not interfere and will actually enhance the normal public use of public shorelines;
  - (III) Proposed uses and design of the project are compatible with other authorized uses within the area and with uses planned for the area under the City's Comprehensive Plan and Shoreline Master Program;
  - (IV) Proposed uses will cause no significant adverse effects and actually will enhance the shoreline environment in which it is to be located;
  - (IV) Public interest will suffer no detrimental impacts and actually will benefit from the planned improvements; and
  - (VI) Cumulative impacts are addressed in Appendix A-5.
- (E) As part of any master plan or proposal, other than those specified in the Clover Island High Intensity Special Area Plan Standards, for structures over 35 feet in height, an applicant shall be required to submit a view analysis and cumulative impacts analysis that reviews residential obstruction(s) to allow the City to determine whether development under the master plan or proposal obstructs a substantial number of residences (RCW 90.58.320). Structures over 35 feet, other than those specified in the Clover Island High Intensity Special Area Plan Standards, shall be approved only through a Conditional Use

Permit process according to Section 18.68.240 of this Chapter and WAC 173-27-160. Designs shall protect visual access to the water from onshore. Shoreline view corridors shall be protected through incorporation of appropriate design (e.g., modulation of building heights and massing) and location of new development. Potential impacts to views shall be minimized through location and orientation of development on the subject property. The applicant shall:

- (I) Incorporate a view analysis using photographs, videos, photo-based simulations, or computer-generated simulations. The view analysis shall assess and portray visual access from mainland residences adjoining the shoreline. In all cases, photographs, videos, land use, land cover, or other sources of information shall be no older than 12 months prior to submittal of the application. All photographic, video or simulated view representations will employ equipment that produces imagery with an angle of view equivalent to that achievable with a 35 mm "normal" camera lens, i.e., an angle of view of about 50°.

To document any possible obstruction of existing or potential residential views by proposed development in the Urban Conservancy Environment designation, a minimum of three pictures shall be taken from residences or potential residential lots at a radius of 400 feet from the proposed development at equal distances from each other and toward the shoreline;

- (II) Ensure that the view analysis is cumulative in nature by including vacant existing parcels of record as well as existing structures. Vacant parcels of record shall be assumed to be developed and, as such, their structures to be in compliance with the 35-foot height limitation as established through photographs, videos, photo-based simulations, or computer-generated simulations;
- (IV) If demonstrated through photographs, videos, photo-based simulations, or computer-generated simulations that the proposed development will obstruct less than 30 percent of the view of the shoreline enjoyed by a substantial number of residences on areas adjoining such shorelines, then the development may be considered through the conditional use process;
- (IV) In consideration of the potential view obstruction resulting from the proposed structure, side yard setbacks may need to be increased. No side yard setbacks shall be reduced to accommodate the proposed structure; and

- (V) To address "overriding considerations of the public interest" the applicant shall provide a cumulative impacts analysis that documents the public benefits served by issuance of a Conditional Use Permit. The analysis shall address such considerations as cumulative view obstruction results of height adjustments (within a 1,000-foot radius) of the proposed development combined with those of other developments that exceed the 35-foot height limitation, environmental benefits (enhancement or restoration), public access/open space benefits, and economic benefits. The cumulative impact analysis shall address overall views that are lost, compromised, and/or retained; available view corridors; and surface water views lost, compromised, and/or retained.
  - (F) Public access improvements shall not result in a net loss of shoreline ecological functions; and
  - (G) Signage shall be in conformance with Section 18.68.130(3)(i) of this Chapter and the zoning code (KMC 18.24). All signs shall be located and designed to minimize interference with view corridors and visual access to the shoreline.
- (f) Shoreline Vegetation Conservation, Restoration, and Enhancement.
- (i) Applicability. Vegetation conservation includes activities to protect, restore or enhance vegetation along or near shorelines that contribute to ecological functions and wildlife value. The provisions of this subsection apply to all proposed development and uses in shoreline jurisdiction.
  - (ii) Principles. The following are the objectives of the provisions of this subsection:
    - (A) Scientific and technical information shall be used in addressing issues related to vegetation conservation;
    - (B) In protecting and restoring vegetation within shoreline jurisdiction, the full spectrum of planning and regulatory measures shall be integrated; and
    - (C) Existing ecological functions and ecosystem-wide processes shall be protected, and restoration of degraded ecological functions and ecosystem-wide processes shall be encouraged;
  - (iii) Standards. The following standards shall apply to development in shoreline jurisdiction:
    - (A) The design, construction and location of proposed new development and uses shall follow those goals, policies and guidelines set out in the Shoreline Critical Areas Ordinance (Appendix A-2);

- (B) The design, construction and location of proposed new development and uses shall, wherever feasible, avoid and minimize the removal or damage of existing native vegetation and, where this is not feasible, the applicant shall provide mitigation which ensures no net loss of the functions and values of the removed shoreline vegetation;
  - (C) At a minimum, the Applicant shall consult shoreline management assistance materials provided by Ecology and Management Recommendations for Washington's Priority Habitats, prepared by the Washington State Department of Fish and Wildlife, where applicable;
  - (D) Selective pruning of trees for safety and view protection may be allowed, establishing up to a 50-percent total view corridor. In the case where another view corridor has been specified in federal and/or state permits as beneficial for aquatic and terrestrial species, these provisions would apply. No topping shall be allowed unless approved by the Planning Official. The removal and control of noxious weeds is authorized. Removal of noxious weeds and/or invasive species shall be incorporated in vegetation management plans, as necessary, to facilitate establishment of a stable community of native plants;
  - (E) Vegetation removal not associated with a development permit application requires the submittal and approval of a mitigation and management plan prepared by a qualified biologist, and must be consistent with the provisions of this section; and
  - (F) Clover Island High Intensity - Vegetation planting for the aquatic and shoreline habitat enhancement plan, shall be consistent with the native vegetation and planting specifications provided in the Clover Island High Intensity Special Area Plan Standards (Appendix A-6-4) and consistent with provisions in applicable federal and state permits.
  - (G) The preservation of dead trees and the creation of standing snags during shoreline vegetation management efforts shall be emphasized due to their importance to wildlife and ecological function. Where feasible, standing snags and dead trees must be preserved and protected. Creation and/or preservation of snags may contribute to mitigation plans developed to offset other shoreline vegetation removal.
- (g) Water Quality, Stormwater, and Nonpoint Pollution.
- (i) Applicability. The provisions of this subsection apply to all development and uses in shoreline jurisdiction that affect water quality.

- (ii) Principles. The following are the objectives of the provisions of this subsection:
  - (A) Impacts to water quality and stormwater quantity that would result in a net loss of shoreline ecological functions, a significant impact to aesthetic qualities, or recreational opportunities, shall be prevented wherever feasible; and
  - (B) Shoreline management provisions and other regulations that address water quality and stormwater quantity, including public health, stormwater, and water discharge standards, shall be integrated as feasible into permits issued under this Chapter.
- (iii) Standards.
  - (A) All development activities approved under this Shoreline Master Program shall be designed and maintained consistent with the City's Stormwater Management Plan and Engineering Design Standards. Stormwater control and discharges shall be in compliance and maintained according to the Ecology Stormwater Manual for Eastern Washington.
  - (B) Shoreline use and development shall minimize the need for chemical fertilizers, pesticides or other similar chemical treatments to prevent contamination of surface and ground water and/or soils and adverse effects on shoreline ecological functions and values.
  - (C) All development in shoreline jurisdiction must meet all applicable local, state, and federal water quality protection standards and requirements and prevent impacts to water quality and storm water quantity that would result in a net loss of shoreline ecological functions and prevent significant impacts to aesthetic qualities or recreational opportunities.

(Ord. 5927 Sec. 4, 2021; Ord. 5281 Sec. 1, 2009)

**Section 5.** Section 18.68.120 of the Kennewick Municipal Code, be, and the same hereby is, amended to read as follows:

**18.68.120: - Shoreline Modifications.**

- (1) Applicability. The provisions of this section apply to all shoreline modifications within shoreline jurisdiction.
- (2) Principles. The following are the objectives of the provisions of this section:
  - (a) Shoreline modifications for the Clover Island High Intensity Environment shall be consistent with the Clover Island High Intensity Special Area Plan Standards (Appendix A-6-4) and shoreline stabilization standards established in Section 18.68.120(3)(a);

- (b) Structural shoreline modifications shall be allowed only where they are demonstrated to be necessary to support or protect an allowed structure, a legally existing shoreline use that is in danger of loss or substantial damage, or are necessary for reconfiguration of the shoreline for mitigation or enhancement purposes;
  - (c) Shoreline modifications shall be allowed only when appropriate to the specific type of shoreline and environmental conditions for which they are proposed;
  - (d) Shoreline modifications, individually and cumulatively, shall not result in a net loss of ecological functions; preference shall be given to shoreline modifications that have a lesser impact on ecological functions, and mitigation shall be required for identified adverse impacts resulting from shoreline modifications;
  - (e) Where applicable, scientific and technical information shall be used in planning for shoreline modifications;
  - (f) Restoration or enhancement of ecological functions shall be encouraged where feasible and appropriate, while accommodating permitted uses, and all feasible measures to protect ecological functions and ecosystem-wide processes shall be incorporated. For the Clover Island High Intensity Environment, enhancement shall be consistent with the Clover Island High Intensity Special Area Plan Standards (Appendix A-6) and provisions in applicable federal and state permits; and
  - (g) Significant ecological impacts shall be mitigated as defined in this Chapter and according to the mitigation sequence in Appendix A-2.
- (3) Standards for Specific Shoreline Modifications.
- (a) Shoreline Stabilization.
    - (i) Shoreline stabilization measures include the following:
      - (A) Structural ("stabilization structures") and nonstructural methods to address erosion impacts to property and dwellings, businesses, or structures caused by natural processes, such as current, flood, tides, wind, or wave action; and
      - (B) Nonstructural methods including building setbacks, relocation of the structure to be protected, ground water management, planning and regulatory measures to avoid the need for structural stabilization.
    - (ii) New development, including newly created parcels, shall be designed and located to prevent the need for future shoreline stabilization, based upon hydrological or geotechnical analysis.
    - (iii) New development on steep slopes or bluffs shall be set back according to the requirements indicated in Appendix A-2 to ensure



that shoreline stabilization is unlikely to be necessary during the life of the structure, as demonstrated by a geotechnical analysis.

- (iv) New development that would require shoreline stabilization which causes significant impacts to adjacent or down-current properties and shoreline areas is prohibited.
- (v) New structural stabilization measures shall not be allowed except when necessary as demonstrated in the following manner:
  - (A) To protect existing primary structures, new or enlarged stabilization structures for an existing primary structure, including residences, shall not be allowed unless there is conclusive evidence documented by a geotechnical analysis that the structure is in danger of failing within three years from shoreline erosion caused by currents, or waves.

Normal sloughing, or shoreline erosion itself, without a geotechnical analysis, is not demonstration of need. In order to demonstrate need, the geotechnical analysis shall evaluate on-site drainage issues and address drainage problems away from the shoreline edge before considering structural measures. The erosion control structure with appropriate mitigation shall not result in a net loss of ecological functions;

- (B) New stabilization structures in support of new non-water-dependent or water-dependent development shall be allowed when consistent with the Clover Island High Intensity Special Area Plan Standards (Appendix A-6) or when all of the following conditions apply: the erosion is not being caused by upland conditions such as the loss of vegetation and drainage; nonstructural measures such as placing the development further from the shoreline, planting vegetation, or installing on-site drainage improvements, are not feasible or sufficient; need is demonstrated by a geotechnical analysis that damage must be caused by natural processes such as currents, and waves; and the erosion control structure and appropriate mitigation will not result in a net loss of shoreline ecological functions;
- (C) New stabilization structures in support of projects for the restoration of ecological functions or hazardous substance remediation projects pursuant to Chapter 70.105D RCW shall be allowed when consistent with the Clover Island High Intensity Special Area Plan Standards (Appendix A-6) or when all of the following conditions apply: Nonstructural measures, planting vegetation, or installing on-site drainage improvements are not feasible or sufficient; and the erosion control structure and appropriate mitigation will not result in a net loss of shoreline ecological functions;

- (D) Shoreline stabilization shall be constructed to minimize damage to fish habitats and to maintain safe navigational movement. Biotechnical and soft methods shall be prioritized as the preferred method of bank stabilization, unless analysis demonstrates that such measures are infeasible. For the Clover Island High Intensity Environment shoreline stabilization below the OHWM to protect existing or planned upland water-dependent facilities specified in the plan or applicable federal and state permits shall be accompanied by habitat enhancement, including anchored brush piles or ballasted root wads or other specified measures. Open-piling construction is preferable in lieu of the solid type;
  - (E) Bulkheads shall be designed to permit the passage of surface or ground water without causing ponding or saturation of retained soil or materials. Adequate toe protection (proper footings, a fine retention mesh, etc.) shall be provided to ensure bulkhead stability without relying on additional riprap; and
  - (F) Bulkheads shall be designed to be of the minimum dimensions necessary. When a bulkhead is required at a public access site with planned water access, provision for safe access to the water shall be incorporated into its design.
- (vi) Replacement of existing stabilization structures shall be based on demonstrated need to protect uses or structures from erosion caused by currents, or waves:
- (A) The replacement structure shall be designed, located, sized and constructed to assure no net loss of ecological functions, and, if located in the Clover Island High Intensity Environment, to also achieve improved aquatic and riparian habitat function.
  - (B) Waterward encroachment of a replacement structure shall be allowed for residences occupied prior to January 1, 1992; and then only if there are overriding safety or environmental concerns and then replacement structure shall abut the existing shoreline stabilization structure and must still comply with applicable federal and state permit provisions.
  - (C) For Clover Island High Intensity Environment replacement structures must be consistent with the Clover Island High Intensity Special Area Plan Standards (Appendix A-6-4) and applicable federal and state permit provisions, including anchored brush piles or ballasted root wads and native riparian vegetation plantings and other specified measures, or for soft shoreline stabilization measures that provide restoration of ecological functions.

- (D) Soft shoreline stabilization measures that provide restoration or enhancement of shoreline ecological functions may be permitted waterward of the ordinary high water mark. Additionally, if the development is located in the Clover Island High Intensity Environment, the soft shoreline stabilization measures shall be consistent with the Clover Island High Intensity Special Area Plan Standards.
- (vii) Geotechnical reports prepared pursuant to this section that address the need to prevent potential damage to a structure shall address the necessity for shoreline stabilization by estimating time frames and rates of erosion and shall report on the urgency associated with the specific situation. As a general matter, hard armoring solutions shall not be authorized except when a report confirms that there is a significant possibility that such a structure will be damaged within three years as a result of shoreline erosion in the absence of such hard armoring measures, or where waiting until the need is that immediate, would foreclose the opportunity to use measures that avoid impacts on ecological functions. Where the geotechnical report confirms a need to prevent potential damage to a structure, but the need is not as immediate as three years, that report may still be used to justify more immediate authorization to protect against erosion using soft measures.
- (viii) Shoreline stabilization structures shall be limited to the minimum size necessary. Soft approaches shall be used unless demonstrated not to be sufficient to protect structures, dwellings, and businesses. Where feasible, ecological restoration or enhancement, and public access improvements shall be incorporated into the project. Public access shall be required as part of publicly financed shoreline erosion control measures except where such access is determined to be infeasible because of incompatible uses, safety, security, or harm to ecological functions. For the Clover Island High Intensity Environment, enhancements shall be consistent with the Clover Island High Intensity Special Area Plan Standards (Appendix A-6) and applicable federal and state permit provisions, including anchored brush piles or ballasted root wads and native riparian vegetation plantings, and other specified measures, applicable federal and state permit provisions, including anchored brush piles or ballasted root wads and native riparian vegetation plantings and other specified measures.
- (ix) For conditions of erosion or mass wasting due to upland conditions, projects must be consistent with standards set out in KMC 18.68.110(2)(b)(iii)(C).
- (x) Riprapping and other bank stabilization measures shall be located, designed and constructed to avoid the need for channelization of

streams and to protect, as feasible, the natural character of the streamway.

- (xi) Where flood protection measures such as levees are planned, they shall be placed landward of the streamway, including associated swamps and marshes and other wetlands directly inter-related and inter-dependent with the stream proper.
- (xii) Where shoreline stabilization is allowed, it shall consist of "soft," flexible, and/or natural materials or other bioengineered approaches unless a geotechnical analysis demonstrates that such measures are infeasible.
- (xiii) Publicly financed or subsidized shoreline erosion control measures shall not restrict appropriate public access to the shoreline, except where such access is determined to be infeasible because of incompatible uses, safety, security, or harm to ecological functions. Where feasible, ecological restoration and public access improvements shall be incorporated into the project.

(b) Piers, Viewing Platforms, and Docks.

- (i) The following standards shall apply to new piers, viewing platforms and docks:
  - (A) New piers, viewing platforms, and docks are allowed in the Clover Island High Intensity Environment consistent with the Clover Island High Intensity Special Area Plan Standards (Appendix A-6) to provide for existing and future water-dependent uses and subject to approval and conditions of federal and state permits addressing aquatic and riparian habitat, and consistent with the Shorelines Critical Areas Appendix A-2 requirements;
  - (B) New piers, viewing platforms and docks are allowed for public and commercial purposes. Docks serving four or less residential units are prohibited;
  - (C) New piers and docks are allowed only for water-dependent uses or public access;
  - (D) New piers and docks are restricted to the minimum size necessary to serve a proposed water-dependent use (based upon a needs analysis provided by the Applicant). For Clover Island High Intensity environment, the minimum width for piers, docks and ramps shall be six feet and the maximum width shall be 12 feet;
  - (E) New piers and docks are permitted only when specific need is demonstrated; and
  - (F) Water-related and water-enjoyment uses may be allowed as part of mixed-use development on over-water structures where

they are clearly auxiliary to, and in support of, water-dependent uses, provided the minimum size requirement needed to meet the water-dependent use is not violated (WAC 173-26-231(3)(b)).

- (ii) The use of floating docks shall be encouraged in those areas where scenic values are high and where conflicts with recreational boaters and fishermen will not be created.
- (iii) Open-pile piers shall be encouraged where shore trolling is important, where there is significant littoral drift and where scenic values will not be impaired. Piers and viewing platforms for the Clover Island High Intensity Environment shall be consistent with the Clover Island High Intensity Special Area Plan Standards and applicable federal and state construction standards and/or requirements. Pilings shall be permitted only when needed as a structural part of floating docks and to minimize the impact of local high winds on the structures. Pilings shall be structurally sound and cured prior to placement in the water. Creosote treated pilings are prohibited. Pilings employed in piers or any other structure shall have a minimum vertical clearance of two feet above the OHWM. The minimum number of pilings necessary shall be used in piers or viewing platforms.
- (iv) Priority shall be given to the use of public piers, viewing platforms and docks. Cooperative use of these facilities is encouraged.
- (v) New structures will be preferentially placed in developed areas to avoid degradation of habitat.
- (vi) Location, design and construction of all piers, viewing platforms and docks shall result in no net loss of ecological processes and functions, and avoid, minimize and mitigate for ecological impacts. Construction materials and light transmission standards must be consistent with applicable state and federal requirements, and be based upon the most current, accurate, and complete scientific and technical information available. Piers, viewing platforms, and docks proposed in the Clover Island High Intensity Environment shall be consistent with the Clover Island High Intensity Special Area Plan Standards and applicable federal and state construction standards and/or requirements and other specified measures, including the following:
  - (A) New overwater structures must not be located on or within 50 feet of existing native aquatic vegetation;
  - (B) New overwater structures must be located in water sufficiently deep to prevent the structure from grounding out at the lowest low water;

- (C) New pier, ramp or dock grating surfaces must provide for a 40-percent minimum open area;
  - (D) Flotation material must be encapsulated with a shell that prevents breakup or loss of flotation material, and cannot be located where it impedes fish passage;
  - (E) Replacement of existing covered boat facilities (boat garages, covered moorage) shall be composed of clear translucent materials that have a minimum 25 percent light transmittance in either the roof material or exposed wall; and
  - (F) Night lighting must be oriented to minimize illumination of surrounding waters.
- (vii) Storage of fuel, oils and other toxic materials is prohibited on docks and piers except in portable containers that are provided with secondary containment.
- (c) Fill.
- (i) Location, design and construction of shoreline fills or cuts shall protect existing ecological values or natural resources and ensure that significant alteration of local currents will not occur nor create a hazard to adjacent life, property, and natural resources. Shoreline fills shall be avoided in critical areas or shoreline buffers, except for habitat enhancement as provided for in the Clover Island High Intensity Special Area Plan Standards, and applicable federal and state permit provisions including native riparian vegetation plantings and other specified measures. When unavoidable, or buffers are not involved, they should be minimized, and designed and located so that there will be no significant damage to and no net loss of existing ecological functions; ecosystem-wide processes and natural resources shall be protected.
  - (ii) Fills waterward of the ordinary high water mark shall be allowed by Substantial Development Permit in the Clover Island High Intensity Environment for ecological enhancement as provided for in the Clover Island High Intensity Special Area Plan Standards and applicable federal and state permit provisions, or by Conditional Use Permit when necessary to support the following uses:
    - (A) Water-dependent uses;
    - (B) Public access;
    - (C) Cleanup and disposal of contaminated sediments as part of an intra-agency environmental cleanup plan;
    - (D) Disposal of dredged material considered suitable under, and conducted in accordance with, the Dredged Material Management Program of the Department of Natural Resources;

- (E) Expansion or alteration of transportation facilities of statewide significance currently located on the shoreline and that demonstrate that alternatives to fill are not feasible;
  - (F) A mitigation action;
  - (G) Environmental restoration or enhancement; and
  - (H) Beach nourishment or enhancement.
- (iii) All perimeters of fills shall be provided with vegetation, bioengineered approaches or other mechanisms for erosion prevention.
  - (iv) Fill materials shall be of such quality that they will not adversely affect water quality.
- (d) Breakwaters, Jetties, Weirs, and Groins.
    - (i) Structures shall be designed, located and constructed with appropriate mitigation in such a way as to assure no net loss of ecological functions. The effect on public access and aesthetic values of the shoreline shall be considered in the design and location of structures.
    - (ii) Structures waterward of the ordinary high water mark shall be allowed only for water-dependent uses, public access, shoreline stabilization, or other specific public purpose.
    - (iii) A shoreline Conditional Use Permit shall be required for all structures except shoreline protection/restoration/enhancement projects and only allowed when demonstrated that no feasible alternative is available. Mitigation sequencing shall be provided to ensure no net loss of shoreline ecological functions and processes and shall be demonstrated by submittal of Mitigation Management Plan.
  - (e) Dredging and Dredge Material Disposal.
    - (i) Dredging and dredge material disposal shall be done in a manner which avoids or otherwise minimizes significant ecological impacts. Impacts which cannot be avoided shall be mitigated.
    - (ii) New development siting and design shall avoid the need for new and maintenance dredging.
    - (iii) Dredging for the purposes of establishing, expanding, or relocating or reconfiguring navigation channels and basins shall be allowed where necessary to assure safe and efficient accommodation of existing navigational uses. In such cases, significant ecological impacts shall be minimized and mitigation provided for any unavoidable impacts.

- (iv) Maintenance dredging of established navigation channels and basins is restricted to maintaining previously dredged and/or existing authorized location, depth, and width.
  - (v) Dredging for fill materials shall not be allowed, except when the material is necessary for the restoration of ecological functions, and is associated with a MTCA or CERCLA habitat restoration project or is approved through a shoreline Conditional Use Permit for use in any other significant habitat enhancement project. When allowed, fill material must be placed waterward of the ordinary high water mark.
  - (vi) Dredging of materials suitable for shoreline restoration or other activities to benefit shoreline resources may be allowed, provided the activity is done in a manner which avoids or otherwise minimizes ecological impacts.
  - (vii) Disposal of dredge material on shorelands, wetlands or within a channel migration zone shall be discouraged and is allowed only by shoreline Conditional Use Permit.
- (f) Signage.
- (i) Off-premises signs shall not be permitted on the shorelines.
  - (ii) Signs shall be mounted flush to the buildings they represent, and shall not extend above the roofline.
  - (iii) Flashing, moving, or animating signs shall not be permitted, unless required by law for air and water navigation.
  - (iv) Each use shall be permitted one square foot of sign for each five feet of the building frontage.
  - (v) Vistas and viewpoints shall not be degraded and visual access to the water from such vistas shall not be impaired by the placement of signs. All signs shall be located and designed to minimize interference with view corridors and visual access to the shoreline.
  - (vi) When feasible, signs shall be constructed against existing buildings to minimize visual obstructions of the shoreline and water bodies.
  - (vii) No signs shall be placed on trees, other natural features, or public utility poles.
- (g) Shoreline Habitat and Natural Systems Restoration and Enhancement Projects.
- (i) Shoreline habitat and natural systems enhancement projects, including those activities proposed and conducted specifically for the purpose of establishing, restoring, or enhancing habitat for listed species in shorelines, are encouraged, provided such projects' primary purpose is clearly enhancing or restoring the shoreline natural character and ecological functions. The project shall address legitimate enhancement or restoration needs and priorities and



facilitate implementation of the restoration plan (Appendix A-4) developed pursuant to WAC 173-26-201(2)(f) and the Clover Island High Intensity Special Area Plan Standards (Appendix A-6) and with applicable federal and state permit provisions.

- (ii) For the Clover Island High Intensity Environment, implementation of the aquatic, nearshore and riparian habitat enhancement plan, as provided in the Clover Island High Intensity Special Area Plan Standards shall accompany new development. Accompany means within 12 months of completion of a new development project, enhance the shoreline next to the new development consistent with the Clover Island High Intensity Special Area Plan Standards (Appendix A-6-4). Enhancement work will be conducted within the work window specified in applicable federal and state permits (typically late fall/winter time period).

(Ord. 5927 Sec. 5, 2021; Ord. 5281 Sec. 1, 2009)

**Section 6.** Section 18.68.130 of the Kennewick Municipal Code, be, and the same hereby is, amended to read as follows:

**18.68.130: - Shoreline Uses.**

- (1) Applicability. The provisions of this section apply to specific common uses and types of development to the extent they occur within shoreline jurisdiction. All uses and development must be consistent with the Shoreline Master Program.
- (2) General Use Provisions.
  - (a) Principles. The following are objectives of the provisions of this section:
    - (i) Uses that are consistent with the control of pollution and prevention of damage to the natural environment, or are unique to or dependent upon uses of the State's shoreline areas, are preferred. Preference shall be given first to water-dependent uses, second to water-related uses and third to water-enjoyment uses;
    - (ii) The location, design and construction of new development in shoreline areas shall be done in a way that protects the public's health, safety, and welfare, as well as the land and its vegetation and wildlife, and protects property rights while implementing the policies of the Shoreline Management Act; and
    - (iii) Permitted uses shall result in no net loss of ecological functions associated with the shorelines.
  - (b) Conditional Uses.
    - (i) Purpose. The purpose of this section is to define the types of uses and development that require a shoreline Conditional Use Permit pursuant to RCW 90.58.100(5). Conditional Use Permits may be required for a variety of purposes, including:

- (A) To effectively address unanticipated uses that are not classified in this Shoreline Master Program as described in WAC 173-27-030;
  - (B) To address cumulative impacts; and
  - (C) To provide the opportunity to require specially tailored environmental analysis or design criteria for types of use or development that may otherwise be inconsistent with a specific environment designation within this Shoreline Master Program or with the Shoreline Management Act policies.
- (ii) Applicability. The following types of uses and development may require a Conditional Use Permit (see Section 18.68.240 for application process):
- (A) Uses and development that may or will significantly impair or alter the public's use of the water areas of the State;
  - (B) Uses and development which, by their intrinsic nature, may have a significant ecological impact on shoreline ecological functions or shoreline resources depending on location, design, and site conditions;
  - (C) Specific shoreline uses identified in this Chapter as requiring a Conditional Use Permit; and
  - (D) The height limit for all uses shall be 35 feet in the Aquatic and Urban Conservancy Environments, and for the Clover Island High Intensity Environment, the heights provided in the Clover Island High Intensity Special Area Plan Standards (Appendix A-6). Proposed Uses may be able to exceed this limit through the Conditional Use process as described in Section 18.68.240.
- (c) Prohibitions.
- (i) Aquaculture activities are prohibited in shorelands.
  - (ii) Agriculture activities are prohibited in shorelands.
- (d) Nonconforming Development or Nonconforming Structures. “Nonconforming development” or “nonconforming structure” means an existing structure that was lawfully constructed at the time it was built but is no longer fully consistent with present regulations such as setbacks, buffers or yards; area; bulk; height or density standards due to subsequent changes to the master program. When such development or structure exists, the following standards shall apply:
- (i) Nonconforming development may be continued and maintained, repaired, renovated, or structurally altered, provided that it is not enlarged, intensified, increased, or altered in any way which increases its nonconformity, except to enhance views from upland areas including streets, to enhance public access, or to contribute to

protection, enhancement, restoration, or rehabilitation of or mitigation for impacts to critical areas or their buffers;

- (ii) A nonconforming development which is moved any distance must be brought as closely as possible into conformance with the Shoreline Master Program and the Act;
  - (iii) If a nonconforming development is damaged to an extent not exceeding 75 percent of the replacement cost of the original development, it may be reconstructed to those configurations existing immediately prior to the time the development was damaged, provided that application is made for the permits necessary to restore the development within six months of the date the damage occurred, all permits are obtained and the restoration is completed within two years of permit issuance;
  - (iv) 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.
- (e) Nonconforming Uses. "Nonconforming use" means an existing shoreline use that was lawfully established prior to the effective date of the act or the applicable master program, but which does not conform to present use regulations due to subsequent changes to the master program. When such use exists, the following standards shall apply:
- (i) If a nonconforming use is discontinued for 12 consecutive months or for 12 months during any two-year period, the nonconforming rights shall expire and any subsequent use shall be conforming. A use authorized pursuant to subsection (6) of this section shall be considered a conforming use for purposes of this section;
  - (ii) A structure which is being or has been used for a nonconforming use may be used for a different nonconforming use only upon the approval of a Conditional Use Permit. A Conditional Use Permit may be approved only upon a finding that:
    - (A) No reasonable alternative conforming use is practical;
    - (B) The proposed use will be at least as consistent with the policies and provisions of the Act and the Shoreline Master Program and as compatible with the uses in the area as the preexisting use; and
    - (C) In addition such conditions may be attached to the permit as are deemed necessary to assure compliance with the above findings, the requirements of the Shoreline Master Program

and the Shoreline Management Act and to assure that the use will not become a nuisance or a hazard.

- (iii) Uses and developments that were legally established and are nonconforming with regard to the use regulations of the Shoreline Master Program may continue as legal nonconforming uses. Such uses shall not be enlarged or expanded.
  - (iv) A use which is listed as a conditional use but which existed prior to adoption of the Shoreline Master Program or any relevant amendment and for which a Conditional Use Permit has not been obtained shall be considered a nonconforming use. A use which is listed as a conditional use but which existed prior to the applicability of the Shoreline Master Program to the site and for which a Conditional Use Permit has not been obtained shall be considered a nonconforming use.
- (f) Nonconforming Lots. “Nonconforming lot” means a lot that met dimensional requirements of the applicable master program at the time of its establishment but now contains less than the required width, depth or area due to subsequent changes to the master program. When such lots exist, the following standards shall apply:
- (i) An undeveloped lot, tract, parcel, site, or division of land located landward of the ordinary high water mark which was established in accordance with City zoning requirements prior to the effective date of the Act and this Shoreline Master Program but which does not conform to the present lot size standards may be developed if permitted by other City land use regulations and so long as such development conforms to all other requirements of the applicable Shoreline Master Program and the Act;
- (g) Shoreline Uses Table.
- (i) The shoreline uses table identifies the level of approval required for the specific shoreline uses described in this Chapter.
  - (ii) Buffers shall be maintained in accordance with Critical Areas Appendix A-2, Chapter 6 or any other Chapters of this Appendix A-2 as appropriate within shoreline jurisdiction.
  - (iii) Building setbacks are measured landward from the edges of all critical area buffers or from the edges of all critical areas, if no buffers are required according to Appendix A-2, Section 1.220.
  - (iv) To provide flexibility in the application of use regulations in a manner consistent with RCW 90.58.020, a Conditional Use Permit may be provided with special conditions, as applicable (see Sections 18.68.130(2)(b) and 18.68.240)
  - (v) Bulk, dimensional and performance standard exceptions are made through the variance process.

- (vi) Reasonable Use. Where project proponents would seek a "Reasonable Use" exception to their proposal, they shall seek exception process and relief through the conditional use or variance process.

	<b>Clover Island High Intensity</b>	<b>Urban Conservancy</b>	<b>Aquatic</b>
	<i>Permit</i>	<i>Permit</i>	<i>Permit</i>
<b>Boating Facilities</b>			
Water-dependent	SDP	SDP	SDP
Water-oriented	SDP	CUP	Prohibited
<b>Commercial</b>			
Water-dependent	SDP	SDP	SDP
Water-related and water-enjoyment	SDP	SDP	CUP
Non-water-oriented	SDP	CUP	Prohibited
<b>Industrial</b>			
Water-dependent	Prohibited	Prohibited in ED map Sections A—D/CUP Section E	Prohibited in ED map Sections A—D/CUP Section E
Water-related and water-enjoyment	Prohibited	CUP only Section E	CUP
Non-water-oriented	Prohibited	CUP only Section E	Prohibited
In-stream Structures	SDP for uses that improve ecological functions CUP for all other uses	CUP	CUP
<b>Historic, Educational and Recreational</b>			
Water-dependent	SDP	SDP	SDP
Water-related and water-enjoyment	SDP	SDP	CUP
Water-enjoyment - walkways and trails	SDP	SDP	CUP
Non-water-oriented(5)	SDP	CUP	Prohibited
<b>Residential Development</b>			
Multi-Family Residential Development	SDP	Prohibited	Prohibited
Single-Family and Duplex	Prohibited	Prohibited	Prohibited

<b>Transportation</b> Motorized (includes public transit)	SDP	SDP	CUP
<b>Capital Facilities and Utilities</b> All Utilities; Water Supply Utilities; Signage	SDP	SDP	CUP
<b>Fill</b>	SDP	SDP	CUP
<b>Dredging Disposal of Dredge Material in Shoreline Jurisdiction</b>	CUP	CUP	CUP
	<b>Clover Island High Intensity</b>	<b>Urban Conservancy</b>	<b>Aquatic</b>
	Permit	Permit	Permit
<i>Boating Facilities</i>			
Water-dependent	SDP	SDP	SDP
Water-oriented	SDP	CUP	Prohibited
<b>Commercial</b>			
Water-dependent	SDP	SDP	SDP
Water-related and water-enjoyment	SDP	SDP	CUP
Non-water-oriented	SDP	CUP	Prohibited
<b>Industrial</b>			
Water-dependent	Prohibited	Prohibited in ED map Sections A—D/CUP Section E	Prohibited in ED map Sections A—D/CUP Section E
Water-related and water-enjoyment	Prohibited	CUP only Section E	CUP
Non-water-oriented	Prohibited	CUP only Section E	Prohibited
In-stream Structures	SDP for uses that improve ecological functions CUP for all other uses	CUP	CUP
<b>Historic, Educational and Recreational</b>			
Water-dependent	SDP	SDP	SDP

Water-related and water-enjoyment	SDP	SDP	CUP
Water-enjoyment - walkways and trails	SDP	SDP	CUP
Non-water-oriented(5)	SDP	CUP	Prohibited
<b>Residential Development</b>			
Multi-Family Residential Development	SDP	Prohibited	Prohibited
Single-Family and Duplex	Prohibited	Prohibited	Prohibited
<b>Transportation</b> Motorized (includes public transit)	SDP	SDP	CUP
<b>Capital Facilities and Utilities</b> All Utilities; Water Supply Utilities; Signage	SDP	SDP	CUP
<b>Fill</b>	SDP	SDP	CUP
<b>Dredging Disposal of Dredge Material in Shoreline Jurisdiction</b>	CUP	CUP	CUP

1. SDP = Substantial Development Permit
2. CUP = Conditional Use Permit. Uses not specifically identified may be considered through the CUP application process (see Section 18.68.240).
- (3) Standards for Specific Shoreline Uses. Permit process, height limit, and setback requirements for uses in each shoreline environment designation shall be in accordance with the shoreline use table in Section 18.68.130 and as stated in the following sections:
  - (a) Boating Facilities and Marinas. For the purposes of this Chapter, "boating facilities" includes marinas, boat storage and launch ramp development, and accessory uses.
    - (i) For the water dependent portion of the boating facilities, Substantial Development Permits shall be required in the Clover Island High Intensity, Urban Conservancy and Aquatic Environments.
    - (ii) Non-water-oriented portions of boating facilities shall require Substantial Development Permits in the Clover Island High Intensity Environment consistent with the Clover Island High Intensity Special Area Plan Standards, and Conditional Use Permits in the

Urban Conservancy Environment. Such uses shall be prohibited in the Aquatic Environment.

- (iii) Water-dependant uses, as defined by this Shoreline Master Program, may be located within a habitat conservation area or buffer when the applicant or property owner can demonstrate compliance with Appendix A-2, Chapters 1—6.
- (iv) Boating facilities shall be located only at sites with suitable environmental conditions, shoreline configuration, access, and neighboring uses. Such facilities shall meet health, safety, and welfare requirements. All boating facilities shall be permitted and in compliance with all local, state and federal requirements.
- (v) Location, design and construction of new boating facilities shall avoid, when feasible, or otherwise mitigate aesthetic impacts to the shoreline that are derived from natural or cultural features, such as shoreforms, vegetative cover, and historic sites/structures.
- (vi) Boating facilities shall not conflict with existing or planned public access opportunities. Public access is required for new marinas, particularly where water-enjoyment uses are associated with the marina, in accordance with WAC 173-26-221(4) and KMC 18.68.110(2)(e).
- (vii) Boaters are prohibited from living in their vessels (live-aboard). Non-motorized floating homes shall not be permitted.
- (viii) Boating facilities, and associated and accessory uses shall not be allowed if they result in a net loss of shoreline ecological functions.
- (ix) Extended moorage on waters of the State without a lease or permission from appropriate authorities is prohibited, and any significant impacts to navigation and public access shall be mitigated.
- (x) Special attention shall be given to the design and development of operational procedures for fuel handling and storage in order to minimize accidental spillage and provide satisfactory means for handling any spillage that does occur. A "maintenance and spill prevention and control plan" shall be required to be submitted by the applicant in order to get a shoreline permit.
- (xi) In planning for propelled watercraft, assurances shall be made that waste disposal practices meet local and State health regulations, that the crafts are not located over highly productive fish food areas, and that the crafts are located to be compatible with the intent of the designated environments.
- (xii) Marinas for float plane moorage shall be developed in accordance with any guidelines developed by the Washington State Department of Fisheries, Federal Aviation Administration, and U.S. Coast Guard.



(b) Commercial Uses.

- (i) The location, design and construction of commercial uses and redevelopment shall achieve no net loss of shoreline ecological functions. For the Clover Island High Intensity Environment, the proposal shall enhance shoreline ecological functions within 12 months of completion of a new development project, consistent with the Clover Island High Intensity Special Area Plan Standards. Enhancement work will be conducted within the work window specified in applicable federal and state permits (typically late fall/winter time period).
- (ii) Preference shall be given first to water dependent commercial uses, second to water-related uses, and third to water-enjoyment uses.
- (iii) All commercial uses shall provide public access. Refer to WAC 173-26-221(4) and KMC 18.68.110(2)(e) for public access provisions.
- (iv) In areas designated for commercial use, non-water-oriented commercial development may be allowed if the site is physically separated from the shoreline by another property or public right-of-way.

Non-water-dependent commercial uses should not be allowed over water except in existing structures or in the limited instances where they are auxiliary to and necessary in support of water-dependent uses.

Commercial development shall not result in a net loss of shoreline ecological functions or have significant adverse impact to other shoreline uses, resources and values provided for in RCW 90.58.020 such as navigation, recreation, and public access.

Non-water-oriented commercial uses shall not be allowed unless:

- (A) The use is part of a mixed-use project that includes water-dependent uses and provides a significant public benefit with respect to the Shoreline Management Act's objectives such as providing public access and ecological restoration and complies with other applicable use standard(s) as established in this Chapter; or
- (B) Navigability is severely limited at the proposed site; and the commercial use provides a significant public benefit with respect to the Shoreline Management Act's objectives such as providing public access and ecological restoration.

For water-dependent commercial uses, Substantial Development Permits shall be required in the Clover Island High Intensity, Urban Conservancy and Aquatic Environments.

- (v) Non-water-oriented commercial uses shall require Substantial Development Permits in the Clover Island High Intensity Environment consistent with the Clover Island High Intensity Special Area Plan Standards, and Conditional Use Permits for deviations to these standards and in the Urban Conservancy Environment. Non-water-oriented projects shall be consistent with subsections (i) and (iv) above. Non-water-oriented projects shall be prohibited in the Aquatic Environment.
- (vi) A Substantial Development Permit shall be required for water-related and water-enjoyment commercial uses in the Urban Conservancy. A Conditional Use Permit shall be required for uses in the Aquatic Environment, consistent with the following:
  - (A) Pier and dock construction shall be restricted to the minimum size necessary to meet the needs of the proposed water-dependent use. Water-related and water-enjoyment uses may be allowed as part of mixed-use development on over-water structures where they are clearly auxiliary to, and in support of, water-dependent uses and consistent with minimum size requirements needed to meet the water-dependent use (WAC 173-26); and
  - (B) As Part of Mixed-Use, mixed use developments shall comply with other applicable use standard(s) as established in this Chapter.
- (vii) Water-dependent uses, as defined by this Shoreline Master Program, may be located within a habitat conservation area or buffer when the applicant or property owner can demonstrate compliance with Appendix A-2, Chapters 1—6.

Water-related, water enjoyment, and non-water oriented commercial uses shall be required to comply with the critical area regulations, buffer and setback regulations as identified in Appendix A-2.

- (viii) Where commercial use is proposed for location on land in public ownership, public access is required.
- (c) Industrial Uses.
  - (i) Priority shall be given to water-dependent industries which require use of navigable water, and then to other water-oriented industrial uses, over other industrial uses.
  - (ii) New non-water-oriented industrial development shall be prohibited on shorelines except when:
    - (A) The use is part of a mixed-use project that includes water-dependent uses and provides a significant public benefit with respect to the Shoreline Management Act's objectives such as

providing public access and ecological restoration or enhancement; or

(B) Navigability is severely limited at the proposed site; and the industrial use provides a significant public benefit with respect to the Shoreline Management Act's objectives such as providing public access and ecological restoration or enhancement; or

(C) In areas designated for industrial use, non-water-oriented industrial uses may be allowed if the site is physically separated from the shoreline by another property, public right-of-way, or a levee system maintained by or maintained under license from the federal government, the State, or a political subdivision of the State.

(iii) Industrial facilities are prohibited in the Clover Island High Intensity Environment. Industrial facilities are prohibited in the Urban Conservancy and Aquatic Environments, except reconstructed, replaced or new facilities in shoreline segment E (Exhibit 1) where they may be allowed through a Conditional Use Permit. Only the dock/port portion of a facility may be located in the Aquatic Environment.

(iv) The height limit for industrial uses shall be 35 feet. Industrial facilities may be able to exceed this limit through the Conditional Use process as described in Sections 18.68.240 and 18.68.110(2)(e) of this Chapter.

(v) Water-dependent uses, as defined by this Shoreline Master Program, may be located within a habitat conservation area or buffer when the applicant or property owner can demonstrate compliance with critical areas provisions (Appendix A-2).

(vi) The design, location, and construction of industrial uses shall include appropriate mitigation, as necessary, to assure no net loss of ecological functions.

(vii) Applicants for industrial uses shall consider incorporating public access as mitigation for impacts to shoreline resources and values unless public access cannot be provided in a manner that does not result in significant interference with operations or hazards to life or property, as provided in WAC 173-26-221(4). Where a proposed industrial use is on publically owned land, public access shall be required.

(viii) Industrial development and redevelopment will be encouraged to provide environmental cleanup and restoration of the shoreline area as part of the development, as applicable.

(ix) Industrial port facilities will be designed to permit viewing of shoreline areas from view-points, waterfront restaurants, and similar

public facilities which will not interfere with operations or endanger public health and safety.

- (x) The cooperative use of pre-existing docks parking, cargo handling, and water-dependent storage facilities is strongly encouraged in waterfront industrial areas. New additional parking facilities shall be located landward of the pre-existing buildings and development.
- (d) In-stream Structures. For the purposes of this Chapter, "In-stream structure" means a structure placed by humans within a stream or river waterward of the ordinary high water mark that either causes or has the potential to cause water impoundment or the diversion, obstruction, or modification of water flow. In-stream structures may include those for hydroelectric generation, irrigation, water supply, flood control, transportation, utility service transmission, fish habitat enhancement, or other purpose.

In-stream structures shall provide for the protection and preservation, of ecosystem-wide processes, ecological functions, and cultural resources, including, but not limited to, fish and fish passage, wildlife, and water resources, critical areas, hydrogeological processes, and natural scenic vistas. The location and planning of in-stream structures shall give due consideration to the full range of public interests, watershed functions and processes, and environmental concerns, with special emphasis on protecting and restoring or enhancing priority habitats and species.

- (i) Substantial Development Permits shall be required in the Clover Island High Intensity Environment consistent with the Clover Island High Intensity Special Area Plan Standards.
- (ii) Conditional Use Permits shall be required for deviations to the Clover Island High Intensity Special Area Plan Standards and in the Urban Conservancy and Aquatic Environments.
- (iii) In-stream structures shall be sited and designed consistent with appropriate engineering principles, including guidelines of the Natural Resource Conservation Service and the U.S. Army Corps of Engineers and the City of Kennewick Flood Damage Protection Code 18.93 and this Shoreline Master Program.
- (iv) Non-structural and non-regulatory methods to protect, enhance and restore shoreline ecological functions and processes and other shoreline resources shall be encouraged as an alternative to structural flood control works and in-stream structures. Nonregulatory and non-structural methods may include public facility and resource planning, land or easement acquisition, education, voluntary protection and enhancement projects, or incentive programs.
- (iv) In-stream structures shall be constructed and maintained in a manner that does not degrade the quality of affected waters. The

City may require reasonable conditions to achieve this objective such as setbacks, buffers, or storage basins.

- (v) Natural in-stream features such as snags, uprooted trees or stumps shall be left in place unless it can be demonstrated that they are actually causing deleterious bank erosion or higher flood stages which directly threaten human life, property, or infrastructure.
  - (vi) In-stream structures shall allow for normal ground water movement and surface runoff.
  - (vii) In-stream structures shall preserve valuable recreation resources and aesthetic values, such as islands.
  - (ix) No in-stream structure may be constructed without the developer having obtained all applicable federal, state, and local permits and approvals, including, but not limited to, an Hydraulic Project Approval (HPA) from the State Department of Fish and Wildlife.
- (e) Historic, Educational, and Recreational Uses. For the purposes of this Chapter, "historic, educational, and recreational uses" include commercial and public facilities designed and used to make such uses accessible to the public.
- (i) Shoreline recreational development shall be given priority and is primarily related to access to, enjoyment and use of the water and shorelines of the State.
  - (ii) Historic, educational, and recreational uses are allowed in all environments.
  - (iii) Water-dependent uses of the shoreline for historic, educational, and recreational uses are allowed with Substantial Development Permits in all environments. Water-related and water enjoyment uses will be allowed with Substantial Development Permits when consistent with the Clover Island High Intensity Special Area Plan Standards, and in the Urban Conservancy Environment, and by Conditional Use Permit in the Aquatic Environment.
  - (iv) Water-dependent uses of the shoreline, as defined by this Shoreline Master Program, for historic, educational, and recreational uses that require no permanent structures may be located within a habitat conservation area or buffer when the applicant or property owner can demonstrate compliance with Appendix A-2.
  - (v) Water-Oriented and Non-water-oriented projects, as part of a mixed-use project, including the Clover Island High Intensity Special Area Plan Standards, shall comply with setback and buffer standards established in Shoreline Master Program Critical Area Standards, Appendix A-2. Temporary water enjoyment structures with a 30-day or less time limit of placement (such as for boat races) may be

permitted with a ten-foot shoreline setback within Clover Island High Intensity and Urban Conservancy Environment buffers.

- (vi) Walkways and trails provided that those pathways that are generally parallel to the perimeter of the wetland or shoreline may be located in the outer 25 percent of the buffer area. For the Clover Island High Intensity Environment, walkways/boardwalks can be located in the outer 50 percent of the buffer area if they are built on piling and provide mitigation as required in Shoreline Master Program Critical Area Standards, Appendix A-2.
- (viii) Trail width of ten feet maximum is allowed within the buffer area. Water dependent access is allowed within the buffer, consistent with Shoreline Master Program Critical Area Standards, Appendix A-2, and Americans with Disabilities Act (ADA) regulations.
- (viii) The Planning Official has the ability to increase the trail width or modify trail design on a case-by-case basis if:
  - (A) The additional width of the trail is located outside the required buffer, and/or
  - (B) There is an established need for compliance with ADA accessible trail regulation.

In such cases, the trail shall be the minimum size necessary.

- (ix) The location, design and operation of public recreational facilities shall be conducted in a manner consistent with the purpose of the environment designation in which they are located and that assures no net loss of shoreline ecological functions of the shoreline.
- (x) Linkage of shoreline parks and public access points through the use of linear access is encouraged.
- (xi) To avoid wasteful use of the limited supply of recreational shoreland, parking areas shall be located inland away from the immediate edge of the water and recreational beaches. Access should be provided by walkways or other methods.
- (xii) Recreational developments should be of such variety as to consider the diversity of demands from groups in nearby population centers. The supply of recreation facilities should be directly proportional to the proximity of population and compatible with the environment designations.
- (xiii) Facilities for intensive recreational activities shall be provided where sewage disposal and vector control can be accomplished to meet public health standards without adversely altering the natural features attractive for recreational uses.
- (xiv) In locating proposed new open areas which use large quantities of fertilizers and pesticides in their turf maintenance programs,

provisions must be made to prevent these chemicals from entering water. If this type of facility is approved on a shoreline location, provisions shall be made for protection of water areas from drainage and surface runoff. The Planning Official may require a critical areas analysis, stormwater management plan, park management plan, or golf/turf chemical management plan as part of the project permitting review.

- (f) Residential Development.
  - (i) New multi-family residential uses are permitted as a non-water-oriented use within the Clover Island High Intensity Environment consistent with the Clover Island High Intensity Special Area Plan Standards.
  - (ii) New multi-family residential developments are prohibited in Urban Conservancy and Aquatic Environments.
  - (iii) Mixed-use residential development in the Clover Island High Intensity Environment shall require the same buffer limitations as part of its water-oriented or mixed use portion.
  - (iv) The development and appropriate mitigation shall assure no net loss of shoreline ecological functions will result from new residential development.
  - (v) New over-water residences, including floating homes, are prohibited within shoreline jurisdiction.
  - (vi) The maximum density for multi-unit residential development shall not exceed 27 dwelling units per acre.
  - (vii) Single-family and duplex residential developments are prohibited in all environment designations.
- (g) Transportation.
  - (i) Substantial Development Permits shall be required for transportation facilities located in the Clover Island High Intensity and Urban Conservancy Environments. Conditional Use Permits shall be required for transportation facilities in the Aquatic Environment.
  - (ii) Motorized transportation facilities shall comply with setback and buffer standards established in Shoreline Master Program Critical Area Standards, Appendix A-2.
  - (iii) Proposed transportation and parking facilities shall be planned, located, and designed where routes shall have the least possible adverse effect on unique or fragile shoreline features, and with appropriate mitigation will not result in a net loss of shoreline ecological functions or adversely impact existing or planned water-dependent uses.

- (iv) Circulation system planning shall include systems for pedestrian, bicycle, and public transportation where appropriate. Circulation planning and projects should support existing and proposed shoreline uses that are consistent with this Chapter.
  - (v) Parking facilities in shorelines are not a preferred use and shall be allowed only as necessary to support an authorized use. Environmental and visual impacts of parking facilities shall be minimized.
  - (vi) Whenever feasible, major highways, freeways, and railways should be located away from shorelands, except in port and heavy industrial areas, so that shoreland roads may be reserved for slow-moving recreational traffic.
  - (vii) Transportation and parking plans and projects shall be consistent with the public access policies, public access plan, and environmental protection provisions of this Chapter.
  - (viii) Where feasible, transportation corridors should be located upland to reduce pressures for the use of waterfront sites.
- (h) Capital Facilities and Utilities. Definition: Utilities are services and facilities that produce, convey, store or process such things as power, natural gas, sewage, communications, oil and waste. Capital facilities include wastewater treatment plants, bridges, water reservoirs, electrical substations, and gas regulating stations. On-site utility features serving a primary use such as a water, sewer or gas line to a development are "accessory utilities" and shall be considered part of the use.
- (i) Substantial Development Permits shall be required for utilities within the Clover Island High Intensity and Urban Conservancy Environments. A Conditional Use Permit shall be required for utilities located in the Aquatic Environment.
  - (ii) Utilities supporting water-dependent uses, as defined by this Shoreline Master Program, may be located within a habitat conservation area or buffer when the applicant or property owner can demonstrate compliance with Shoreline Master Program Critical Area Standards (Appendix A-2). Utilities shall also comply with setback and buffer standards established in Appendix A-2.
  - (iii) The design, location, and construction of utility facilities with appropriate mitigation shall be conducted in such a manner as to assure no net loss of shoreline ecological functions, preserve the natural landscape and minimize conflicts with present and planned land and shoreline uses while meeting the needs of future populations in areas planned to accommodate growth.
  - (iv) Utilities shall be located in existing rights-of-way and corridors whenever feasible.



- (v) Utility production and processing facilities, such as power plants and sewage treatment plants, or parts of those facilities that are non-water-oriented, such as pumping stations, are prohibited in shoreline jurisdiction, unless it can be demonstrated that no other feasible option is available. Stormwater outfall infrastructure is allowed.
- (vi) Expansions or upgrades of existing wastewater treatment facility outfalls shall be allowed.
- (vii) Transmission facilities for the conveyance of services, such as power lines, communication cables, and pipelines, shall be located outside of shoreline jurisdiction where feasible, and when necessarily located within the shoreline area shall with appropriate mitigation assure no net loss of shoreline ecological functions.
- (viii) Over-water utility crossings shall be allowed only when no feasible alternative exists.
- (ix) New utilities or the substantial expansion of existing utilities shall:
  - (A) Be located underground or under water, if feasible;
  - (B) Utilize low impact, low profile design and construction methods; and
  - (C) Be consistent with all applicable federal, state and local regulations.
- (x) Maintenance and replacement of existing utilities shall be exempt from subsections (viii)(A) and (viii)(B) above.
- (xi) Transmission facilities for the conveyance of services, such as power lines, cables, and pipelines, shall be located outside of the shoreline area where feasible and when necessarily located within the shoreline area shall assure no net loss of shoreline ecological functions.
- (i) Fill Practices.
  - (i) Substantial Development Permits shall be required for proposed fill projects within the Clover Island High Intensity and Urban Conservancy Environments. A Conditional Use Permit shall be required for proposed fill projects located in the Aquatic Environment.
  - (ii) See Section 18.68.120(3)(c) for additional requirements.
- (j) Dredging and Disposal of Dredge Material Practices.
  - (i) A Conditional Use Permit shall be required for proposed dredge and dredge material disposal projects located in the Clover Island High intensity, Urban Conservancy, and Aquatic Environments.
  - (ii) See Section 18.68.120(3)(e) for additional requirements.

(Ord. 5927 Sec. 6, 2021; Ord. 5281 Sec. 1, 2009)

**Section 7.** Section 18.68.230 of the Kennewick Municipal Code, be, and the same hereby is, amended to read as follows:

**18.68.230: - Application for Substantial Development Permits.**

- (1) An applicant desiring to begin a new substantial development within the shoreline jurisdiction must apply to the Planning Official for a shoreline Substantial Development Permit. The application must comply with Section 18.68.260 of this Chapter.
  - (a) A Substantial Development Permit shall be granted only when the development proposed is consistent with:
    - (i) The policies and procedures of the Shoreline Management Act;
    - (ii) The provisions of this regulation; and
    - (iii) The adopted Shoreline Master Program for Kennewick's shoreline.

- (2) Notice of Application. After filing a proper application, the City must publish notice 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 City. The City must also mail written notice to the Clover Island Yacht Club, Port of Kennewick, Audubon Society, Park and Recreation Commission, and all property owners within 300 feet of the proposed substantial development. The City may require an applicant to give notice at his or her expense.

Any interested person shall be allowed to submit comments regarding the application, or contact the Planning Official to request a copy of the action taken upon the application. All persons who submit their views and all others who notify the Planning Official within 30 days of the last date of publication of the notice are entitled to receive a copy of the action taken upon the application.

- (3) Duties of the Hearing Examiner. The Planning Official shall make recommendations based on this Shoreline Master Program and transmit such recommendations to the Hearing Examiner within a reasonable time after the end of the 30-day notice period. The Hearing Examiner shall consider the proposed substantial development based on information from: the application; written comments from interested parties during the public comment period; independent study of the Planning Department; and views expressed during any public hearing which may be held by the Hearing Examiner. The Hearing Examiner may request additional information. After the review, the

Hearing Examiner shall approve, conditionally approve, or deny permits; provided that if the Hearing Examiner does not wish to follow the recommendations of the Planning Official, it may refer the matter back to the Planning Official for reconsideration. Upon receipt of the further recommendations of the Planning Official the Hearing Examiner shall then adopt the recommendation or consider the matter at its own public hearing. The Hearing Examiner may rescind any permit upon the finding that the applicant has not

complied with the conditions of the permit. All permits entailing a variance or conditional use under the approved Shoreline Master Program shall be submitted to Ecology for its approval or disapproval.

- (4) Notice of Action. The City must notify the following persons in writing of any final approval or denial of a permit:
  - (a) The applicant;
  - (b) Ecology;
    - (i) Notification shall be done using return receipt requested mail.
  - (c) The Washington State Attorney General;
    - (i) Notification shall be done using return receipt requested mail.
  - (d) Any person who has submitted written comments upon the application during the public comment period; and
  - (e) Any person who has written the Planning Department requesting notification.
- (5) Building Permits Delayed. No building permit may be issued within 30 days of issuing a shoreline Substantial Development Permit or until all review proceedings initiated within those 30 days are terminated. Nothing in this permit shall be construed as excusing the applicant from compliance with any local, state, or federal statutes, ordinances or regulations applicable to the proposed substantial development.
- (6) Appeals. Any person aggrieved by the granting, denying, or rescinding of a shoreline development permit may seek review by filing a request for review with the Shorelines Hearings Board, Ecology and the Attorney General within 30 days of receipt of the final order.

(Ord. 5927 Sec. 7, 2021; Ord. 5322 Sec. 64, 2010; Ord. 5281 Sec. 1, 2009)

**Section 8.** Section 18.68.240 of the Kennewick Municipal Code, be, and the same hereby is, amended to read as follows:

**18.68.240: - Application for Conditional Use Permits.**

- (1) The purpose of a Conditional Use Permit is to provide a system within the Shoreline Master Program which allows flexibility in the application of use regulations in a manner consistent with the policies of RCW 90.58.020. In authorizing a conditional use, special conditions may be attached to the permit by the City to prevent undesirable effects of the proposed use and/or to assure consistency of the project with the Act and the local Shoreline Master Program.
- (2) Uses which are classified or set forth in this Shoreline Master Program as conditional uses and unlisted uses may be authorized, provided, that the applicant demonstrates all of the following:

- (a) That the proposed use is consistent with the policies of RCW 90.58.020 and the Shoreline Master Program;
  - (b) That the proposed use shall not interfere with the normal public use of public shorelines;
  - (c) That the proposed use of the site and design of the project is compatible with other authorized uses within the area and with uses planned for the area under the Comprehensive Plan and Shoreline Master Program;
  - (d) That the proposed use shall cause no significant adverse effects to the shoreline environment in which it is to be located; and
  - (e) That the public interest suffers no substantial detrimental effect.
- (3) In the granting of all Conditional Use Permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if Conditional Use Permits were granted for other developments in the area where similar circumstances exist, the total of the conditional uses shall also remain consistent with the policies of RCW 90.58.020 and shall not produce substantial adverse effects to the shoreline environment.
- (4) Other uses which are not classified or set forth in this Shoreline Master Program may be authorized as conditional uses, provided, the applicant can demonstrate consistency with the requirements of this section and the requirements for conditional uses contained in the Shoreline Master Program.
- (5) Uses which are specifically prohibited by the Shoreline Master Program may not be authorized pursuant to either subsection (2) or (3) of this section.
- (6) Conditional Use Permits shall be processed as administrative permit applications with public notice and comment pursuant to KMC Chapter 18.42 and shall meet the approval criteria listed in this section. The Planning Official shall issue the permit and administrative appeals shall be heard by the Hearing Examiner. Non-administrative appeals are heard by the Shoreline Hearings Board.
- (7) All notification shall be in accordance with WAC 173-27-110, WAC 173-27-130 and KMC Section 4.12.090.

(Ord. 5927 Sec. 8, 2021; Ord. 5322 Sec. 65, 2010; Ord. 5281 Sec. 1, 2009)

**Section 9.** Section 18.68.250 of the Kennewick Municipal Code, be, and the same hereby is, amended to read as follows:

**18.68.250: - Application for Variance.**

The purpose of a Variance Permit is strictly limited to granting relief from specific bulk, dimensional or performance standards set forth in this Shoreline Master Program where there are extraordinary or unique circumstances relating to the physical character or configuration of property such that the strict implementation of the Shoreline Master Program shall impose unnecessary hardships on the applicant or thwart the policies set forth in RCW 90.58.020.

Variations may be authorized, provided, the applicant can demonstrate compliance with the following:

- (1) Variance Permits shall be granted in circumstances where denial of the permit would result in a thwarting of the policy enumerated in RCW 90.58.020. In all instances the applicant must demonstrate that extraordinary or unique circumstances exist and the public interest shall suffer no substantial detrimental effect.
- (2) Variance Permits for development and/or uses that will be located landward of the ordinary high water mark, as defined in RCW 90.58.030(2)(b), and/or landward of any wetland as defined in RCW 90.58.030(2)(h), may be authorized, provided, the applicant can demonstrate all of the following:
  - (a) That the strict application of the bulk, dimensional or performance standards set forth in the applicable Shoreline Master Program precludes, or significantly interferes with, reasonable use of the property;
  - (b) That the hardship described in (a) of this subsection 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 Shoreline Master Program, and not, for example, from deed restrictions or the applicant's own actions;
  - (c) That the design of the project is compatible with other authorized uses within the area and with uses planned for the area under the Comprehensive Plan and Shoreline Master Program and will not cause adverse impacts to the shoreline environment;
  - (d) That the variance shall not constitute a grant of special privilege not enjoyed by the other properties in the area; and
  - (e) That the variance requested is the minimum necessary to afford relief.
- (3) Variance Permits for development and/or uses that will be located waterward of the ordinary high water mark, as defined in RCW 90.58.030(2)(b), or within any wetland as defined in RCW 90.58.030 (2)(h), may be authorized, provided, the applicant can demonstrate all of the following:
  - (a) That the strict application of the bulk, dimensional or performance standards set forth in the applicable Shoreline Master Program precludes all reasonable use of the property;
  - (b) That the proposal is consistent with the criteria established under subsection (2)(b) through (e) of this section; and
  - (c) That the public rights of navigation and use of the shorelines will not be adversely affected.
- (4) 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 and/or uses in the area where similar circumstances exist, the total of the variances shall also remain consistent

with the policies of RCW 90.58.020 and shall not cause substantial adverse effects to the shoreline environment.

- (5) Variances from the use regulations of the Shoreline Master Program are prohibited.
- (6) Variance Permits will be processed as administrative permit applications with public notice and comment pursuant to KMC Chapters 18.42 and 18.54, and shall meet the approval criteria listed in Section 18.68.250(2) above. The Planning Official will issue the permit and administrative appeals will be heard by the Hearing Examiner.
- (7) All notification shall be in accordance with WAC 173-27-110, WAC 173-27-130 and KMC Chapter 4.12.090.

(Ord. 5927 Sec. 9, 2021; Ord. 5322 Sec. 66, 2010; Ord. 5281 Sec. 1, 2009)

**Section 10.** Section 18.68.255 of the Kennewick Municipal Code, be, and the same hereby is, amended to read as follows:

**18.68.255: - 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.

(Ord. 5927 Sec. 10, 2021)

**Section 11.** Section 18.68.280 of the Kennewick Municipal Code, be, and the same hereby is, amended to read as follows:

**18.68.280: - Shoreline Exemptions.**

- (1) An exemption from a Substantial Development Permit process is not an exemption from compliance with the Act or this Shoreline Master Program, or from any other regulatory requirements. To be authorized, all uses and developments must be consistent with the policies and regulatory provisions of this Shoreline Master Program and the Act. An exemption from the requirement to obtain a substantial development permit is not an exemption from the requirement to obtain a conditional use permit or variance. The burden of proof that a development or use is exempt from the permit process is on the applicant. If any part of a proposed development is not eligible for exemption, then a substantial development permit is required for the entire proposed development project. The Planning Official may attach conditions to the approval of exempted developments and/or uses as necessary to assure consistency of the project with the Act and this Master Program.

- (2) Exemptions shall be construed narrowly. Only those developments that meet the precise terms of one or more of the listed exemptions, found within WAC 173-27-040, may be granted exemption from the substantial development permit process. Consistent with RCW 90.58.030(3)(e) and WAC 173-27-040 (as amended), the following activities shall be considered exempt from the requirement to obtain a shoreline Substantial Development Permit:
- (a) Any development of which the total cost or fair market value, whichever is higher, does not exceed seven thousand forty seven dollars (\$7047.00), if such development does not materially interfere with the normal public use of the water or shorelines of the state. The dollar threshold established in this subsection is 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. For purposes of determining whether or not a permit is required, the total cost or fair market value shall be based on the value of development that is occurring on shorelines of the state as defined in RCW 90.58.030 (2)(c). The total cost or fair market value of the development shall include the fair market value of any donated, contributed or found labor, equipment or materials;
  - (b) Normal maintenance or repair of existing structures or developments, including damage by accident, fire or elements. "Normal maintenance" includes those usual acts to prevent a decline, lapse, or cessation from a lawfully established condition. "Normal repair" means to restore a development to a state comparable to its original condition, including but not limited to its size, shape, configuration, location and external appearance, within a reasonable period after decay or partial destruction, except where repair causes substantial adverse effects to shoreline resource or environment. Replacement of a structure or development may be authorized as repair where such replacement is the common method of repair for the type of structure or development and the replacement structure or development is comparable to the original structure or development including but not limited to its size, shape, configuration, location and external appearance and the replacement does not cause substantial adverse effects to shoreline resources or environment;
  - (c) Construction of the normal protective bulkhead common to single-family residences. A "normal protective" bulkhead includes those structural and nonstructural developments installed at or near, and parallel to, the ordinary high water mark for the sole purpose of protecting an existing single-family residence and appurtenant structures from loss or damage by erosion. A normal protective bulkhead is not exempt if constructed for the purpose of creating dry land. When a vertical or near vertical wall is being constructed or reconstructed, not more than one cubic yard of fill per one foot of wall may be used as backfill. When an existing bulkhead is being repaired by construction of a vertical wall fronting the existing wall, it shall be constructed no further waterward of the existing bulkhead than is necessary for construction of new footings. When a bulkhead has

deteriorated such that an ordinary high water mark has been established by the presence and action of water landward of the bulkhead then the replacement bulkhead must be located at or near the actual ordinary high water mark. Beach nourishment and bioengineered erosion control projects may be considered a normal protective bulkhead when any structural elements are consistent with the above requirements and when the project has been approved by the department of fish and wildlife;

- (d) Emergency construction necessary to protect property from damage by the elements. An "emergency" is an unanticipated and imminent threat to public health, safety, or the environment which requires immediate action within a time too short to allow full compliance with this chapter. Emergency construction does not include development of new permanent protective structures where none previously existed. Where new protective structures are deemed by the administrator to be the appropriate means to address the emergency situation, upon abatement of the emergency situation the new structure shall be removed or any permit which would have been required, absent an emergency, pursuant to chapter 90.58 RCW, these regulations, or the local master program, obtained. All emergency construction shall be consistent with the policies of chapter 90.58 RCW and the local master program. As a general matter, flooding or other seasonal events that can be anticipated and may occur but that are not imminent are not an emergency;
- (e) Construction and practices normal or necessary for farming, irrigation, and ranching activities, including agricultural service roads and utilities on shorelands, construction of a barn or similar agricultural structure, and the construction and maintenance of irrigation structures including but not limited to head gates, pumping facilities, and irrigation channels: Provided, That a feedlot of any size, all processing plants, other activities of a commercial nature, alteration of the contour of the shorelands by leveling or filling other than that which results from normal cultivation, shall not be considered normal or necessary farming or ranching activities. A feedlot shall be an enclosure or facility used or capable of being used for feeding livestock hay, grain, silage, or other livestock feed, but shall not include land for growing crops or vegetation for livestock feeding and/or grazing, nor shall it include normal livestock wintering operations;
- (f) Construction or modification of navigational aids such as channel markers and anchor buoys;
- (g) Construction on shorelands by an owner, lessee or contract purchaser of a single-family residence for their own use or for the use of their family, which residence does not exceed a height of thirty-five feet above average grade level and which meets all requirements of the state agency or local government having jurisdiction thereof, other than requirements imposed pursuant to chapter 90.58 RCW. "Single-family residence" means a detached dwelling designed for and occupied by one family including those structures and developments within a contiguous ownership which



are a normal appurtenance. An "appurtenance" is necessarily connected to the use and enjoyment of a single-family residence and is located landward of the ordinary high water mark and the perimeter of a wetland. On a statewide basis, normal appurtenances include a garage; deck; driveway; utilities; fences; installation of a septic tank and drainfield and grading which does not exceed two hundred fifty cubic yards and which does not involve placement of fill in any wetland or waterward of the ordinary high water mark. Local circumstances may dictate additional interpretations of normal appurtenances which shall be set forth and regulated within the applicable master program. Construction authorized under this exemption shall be located landward of the ordinary high water mark;

- (h) Construction of a dock, including a community dock, designed for pleasure craft only, for the private noncommercial use of the owner, lessee, or contract purchaser of single-family and multiple-family residences. A dock is a landing and moorage facility for watercraft and does not include recreational decks, storage facilities or other appurtenances. This exception applies if in fresh waters the fair market value of the dock does not exceed:
  - (i) Twenty thousand dollars for docks that are constructed to replace existing docks, are of equal or lesser square footage than the existing dock being replaced, and are located in a county, city, or town that has updated its master program consistent with the master program guidelines in chapter 173-26 WAC as adopted in 2003; or
  - (ii) Ten thousand dollars for all other docks constructed in fresh waters.  
However, if subsequent construction occurs within five years of completion of the prior construction, and the combined fair market value of the subsequent and prior construction exceeds the amount specified in either (h)(i) or (ii) of this subsection, the subsequent construction shall be considered a substantial development for the purpose of this chapter.
- (i) Operation, maintenance, or construction of canals, waterways, drains, reservoirs, or other facilities that now exist or are hereafter created or developed as a part of an irrigation system for the primary purpose of making use of system waters, including return flow and artificially stored groundwater from the irrigation of lands;
- (j) The marking of property lines or corners on state-owned lands, when such marking does not significantly interfere with normal public use of the surface of the water;
- (k) Operation and maintenance of any system of dikes, ditches, drains, or other facilities existing on September 8, 1975, which were created, developed or utilized primarily as a part of an agricultural drainage or diking system;

- (l) Any project with a certification from the governor pursuant to chapter 80.50 RCW;
- (m) Site exploration and investigation activities that are prerequisite to preparation of an application for development authorization under this chapter, if:
  - (i) The activity does not interfere with the normal public use of the surface waters;
  - (ii) The activity will have no significant adverse impact on the environment including but not limited to fish, wildlife, fish or wildlife habitat, water quality, and aesthetic values;
  - (iii) The activity does not involve the installation of any structure, and upon completion of the activity the vegetation and land configuration of the site are restored to conditions existing before the activity;
  - (iv) A private entity seeking development authorization under this section first posts a performance bond or provides other evidence of financial responsibility to the local jurisdiction to ensure that the site is restored to preexisting conditions; and
  - (v) The activity is not subject to the permit requirements of RCW 90.58.550;
- (n) The process of removing or controlling aquatic noxious weeds, as defined in RCW 17.26.020, through the use of an herbicide or other treatment methods applicable to weed control that are recommended by a final environmental impact statement published by the department of agriculture or the department of ecology jointly with other state agencies under chapter 43.21C RCW;
- (o) Watershed restoration projects as defined herein. Local government shall review the projects for consistency with the shoreline master program in an expeditious manner and shall issue its decision along with any conditions within forty-five days of receiving all materials necessary to review the request for exemption from the applicant. No fee may be charged for accepting and processing requests for exemption for watershed restoration projects as used in this section. See WAC 173-27-040(2)(o) for relevant definitions, review and approval criteria.
- (p) A public or private project that is designed to improve fish or wildlife habitat or fish passage, when all of the following apply:
  - (i) The project has been approved in writing by the department of fish and wildlife;
  - (ii) The project has received hydraulic project approval by the department of fish and wildlife pursuant to chapter 77.55 RCW; and
  - (iii) The local government has determined that the project is substantially consistent with the local shoreline master program. The local

government shall make such determination in a timely manner and provide it by letter to the project proponent.

Fish habitat enhancement projects that conform to the provisions of RCW 77.55.181 are determined to be consistent with local shoreline master programs. See WAC 173-27-040(2)(p) for relevant definitions, review and process requirements.

- (q) 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.

(Ord. 5927 Sec 11, 2021; Ord. 5281 Sec. 1, 2009)

**Section 12.** Section 18.68.285 of the Kennewick Municipal Code, be, and the same hereby is, amended to read as follows:

**18.68.285: - Developments not Required to Obtain Shoreline Permits or Local Reviews**

- (1) Requirements to obtain a substantial development permit, conditional use permit, variance, letter of exemption, or other review to implement the Shoreline Management Act do not apply to the following:
  - (a) 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;
  - (b) 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;
  - (c) 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;
  - (d) Projects consistent with an environmental excellence program agreement pursuant to RCW 90.58.045; and
  - (e) Projects authorized through the Energy Facility Site Evaluation Council process, pursuant to chapter 80.50 RCW.

(Ord. 5927 Sec. 12, 2021)

**Section 13.** Section 1.040 of Appendix A-2 Chapter 1 Critical Areas – General Provisions, be, and the same hereby is, amended to read as follows:

#### **1.040: Relationship to Other Regulations.**

- (1) These critical area regulations shall apply as an overlay to the City's subdivision and zoning code (Title 17 and 18) and other applicable regulations adopted by the City, including, but not limited to permitting processes, construction standards, building code, shorelines management program, and environmental review (SEPA) procedures. In the case of conflict among regulations, whichever provision or regulation provides the greater protection to the critical area involved shall apply
  - (a) Kennewick Code Title 4 - Administrative Procedures:
    - (i) Chapter 4.08 State Environmental Policy Act implements the State Environmental Policy Act (SEPA) and establishes procedures for public review of impacts of public and private development actions.
    - (ii) Chapter 4.12 Permit Process establishes a mechanism to enable compliance, conformity and consistency of proposed projects with respect to adopted comprehensive plans and development regulations.
  - (b) Kennewick Code Title 5.56 - Public Works Construction Standards
  - (c) Kennewick Code Title 15 - Buildings and Construction. This title provides uniform development and construction standards, primarily through adoption of the Uniform Building Codes by reference.
  - (d) Kennewick Code Title 18 - Zoning Code:
    - (i) Chapter 18.42, Land Use Permits, sets forth procedures and guidelines for review and approval of land use permits, including conditional uses (Chapter 18.42.100) and site plans (Chapter 18.42.110). Contents of the site plans include, but are not limited to, a site plan showing lot lines and dimensions, location of existing and proposed building or improvements, parking lot drainage, landscaping and fencing.
    - (ii) Chapter 18.45, Planned Development Permit, provides a set of flexible standards for development of large parcels of property, provided that the deviation better accommodates the physical conditions of the property.
  - (e) Kennewick Code Title 18.68 - Shoreline Management. Sets forth policy and requirements for protecting and regulating activities within 200 feet of the Ordinary High Water Mark for the City of Kennewick shorelines. The following exceptions to the applicability of this Title in Shoreline Jurisdiction shall apply:
    - (i) If provisions of this Title and other parts of the master program conflict, the provisions most protective of the ecological resource shall apply, as determined by the City.

- (ii) Provisions of this Title that are not consistent with the Shoreline Management Act Chapter, 90.85 RCW, and supporting Washington Administrative Code chapters shall not apply in Shoreline jurisdiction.
- (iii) The provisions of this Title do not extend Shoreline Jurisdiction beyond the limits specified in this SMP.
- (f) State of Washington Department of Ecology - Inspection Procedures for Underground Storage Tanks. This manual sets forth procedures for inspection, installation, monitoring, closure, and site remediation methods for underground storage tanks.
- (2) These critical area regulations shall apply concurrently with review conducted under the State Environmental Policy Act (SEPA), as locally adopted.
- (3) Compliance with the provisions of this Title does not constitute compliance with other federal, state, and local regulations and permit requirements that may be required (for example, Shoreline Substantial Development Permits, Hydraulic Project Approvals permits, Army Corps of Engineers Section 404 permits, National Pollutant Discharge Elimination System permits). The applicant is responsible for complying with these requirements, apart from the process established in this Title. Where applicable, the Planning Director will encourage use of information such as permit applications to other agencies or special studies prepared in response to other regulatory requirements to support required documentation submitted for critical areas review. The City's Shoreline Management Program (KMC 18.68) regulates all activities within the 200 feet of the Columbia River.

(Ord. 5927 Sec. 13, 2021)

**Section 14.** Section 1.120 of Appendix A-2 Chapter 1 Critical Areas – General Provisions, be, and the same hereby is, amended to read as follows:

**1.120: Exception—Reasonable Use.**

This provision does not apply in shoreline jurisdiction. A shoreline variance permit is required. See 18.68.250.

(Ord. 5927 Sec. 14, 2021; Ord. 5206 Sec. 1, 2007)

**Section 15.** Section 2.010(2) of Appendix A-2 Chapter 2 Critical Areas – Wetlands, be, and the same hereby is, amended to read as follows:

**2.010: Designation, Rating and Mapping Wetlands.**

- (2) Wetland Ratings. Wetland Types I—IV shall be rated according to the Department of Ecology’s Washington State Wetland Rating System for Eastern Washington (Ecology 2014, as amended). This document contains definitions and methods for determining if specific criteria are met by a particular wetland. The

City of Kennewick contains few wetland areas and most of these have been subject to disturbance in the past. The City has evaluated the most significant wetland areas that are known within the City Limits and its urban growth boundary under the Ecology Rating System. These include: the wetlands associated with Elliot Lake, Zintel Canyon drainage way, wetlands around 36th and Olympia, and 27th and Washington; and wetlands within Columbia Park and the Columbia River shoreline zone, including Duffy's Pond near Clover Island. These wetlands all classify as Category III Wetlands. This effort leads the City to believe that any additional wetlands that may occur within the City limits will rank as Category III Wetlands or as Category IV wetlands and that it is unlikely that higher quality wetlands occur in the City of Kennewick. Provisions have been provided for Category I and II wetlands, should there be a future determination these exist in Kennewick.

The Washington State Wetland Rating System for Eastern Washington (Ecology 2014) defines Category III wetlands as those wetlands that are: 1) vernal pools that are isolated, and 2) wetlands with a moderate level of functions (scores between 30 and 50 points); and Category IV wetlands are considered to be wetlands that have the lowest level of functions (scores less than 30 points) and are often heavily disturbed.

(Ord. 5927 Sec. 15, 2021)

**Section 16.** This ordinance shall be in full force and effect five days from and after its passage, approval and publication as required by law.

PASSED BY THE CITY COUNCIL OF THE CITY OF KENNEWICK, WASHINGTON, this 21<sup>st</sup> day of September, 2021, and signed in authentication of its passage this 21<sup>st</sup> day of September, 2021.

Attest:

\_\_\_\_\_  
DON BRITAIN, Mayor

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TERRI L. WRIGHT, City Clerk

ORDINANCE NO. 5927 filed and recorded in the office of the City Clerk of the City of Kennewick, Washington this 22<sup>nd</sup> day of September, 2021.

Approved as to Form:

\_\_\_\_\_  
LISA BEATON, City Attorney

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TERRI L. WRIGHT, City Clerk

DATE OF PUBLICATION \_\_\_\_\_