

24.40.020 Critical areas.

A. Applicability. Critical areas include the following areas and ecosystems: wetlands, areas with a critical recharging effect on aquifers used for potable water, fish and wildlife habitat conservation areas, frequently flooded areas, and geologically hazardous areas.

B. The city of Edmonds critical area ordinance, as codified in Chapters 23.40 through 23.90 ECDC (dated May 3, 2016, Ord. 4026 ~~and as amended by Ord. 4106 and Ord. XXXX~~), is herein adopted as a part of this program, except for the specific subsections list below in subsection (C) of this section. All references to the city of Edmonds critical area ordinance in this program are for this specific version. As a result of this incorporation of the Edmonds critical area ordinance, the provisions of Chapters 23.40 through 23.90 ECDC, less the exceptions listed in subsection (C) of this section, shall apply to any use, alteration or development within shoreline jurisdiction whether or not a shoreline permit or written statement of exemption is required. In addition to the critical area regulations in Chapters 23.40 through 23.90 ECDC (Appendix B of this master program), the regulations identified in this section also apply to critical areas within shoreline jurisdiction. Where there are conflicts between the city of Edmonds critical area ordinance and this shoreline master program, provisions of the shoreline master program shall prevail.

C. Exceptions. The specific provisions of the critical area ordinance listed below shall not apply to development within shoreline jurisdiction.

1. General Provisions.

a. ECDC 23.40.130(D), Monitoring Program.

b. ECDC 23.40.210, Variances.

~~2. Wetlands.~~

~~a. ECDC 23.50.010(B), Wetland Ratings.~~

~~b. ECDC 23.50.040(F)(1), Standard Buffer Widths.~~

~~c. ECDC 23.50.040(F)(2), Required Measures to Minimize Impacts to Wetlands.~~

~~d. ECDC 23.50.040(K), Small, Hydrologically Isolated Wetlands.~~

~~3. Geologically Hazardous Areas.~~

a. ECDC 23.80.040(B)(1) and (2), allowed activities in geologically hazardous areas.

D. Development Limitations.

1. All uses, modifications and activities on sites containing marine shorelines, environmentally sensitive areas and/or critical areas must comply with all applicable local, state, and federal laws pertaining to development in these areas unless in conflict with the provisions of this master program.

2. The site must be specifically designed so that hazards from or impact on the environmentally sensitive area and/or critical areas will be mitigated.

3. Mitigation Sequencing. In order to comply with subsection (D)(2) of this section, a shoreline permit applicant or project proponent shall demonstrate all reasonable efforts have been taken to provide sufficient mitigation such that the activity does not have significant adverse impacts. Mitigation shall occur in the following prioritized order:

a. Avoiding the impact altogether by not taking a certain action or parts of an action.

b. Minimizing impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology or by taking affirmative steps, such as project redesign, relocation, or timing to avoid or reduce impacts.

- c. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment to the historical conditions or the conditions existing at the time of the initiation of the project.
- d. Reducing or eliminating the impact or hazard over time by preservation and maintenance operations during the life of the action.
- e. Compensating for the impact by replacing, enhancing, or providing substitute resources or environments.

4. Monitoring Program. Mitigation plans shall include a program for monitoring construction and for assessing a completed project. A protocol shall be included outlining the schedule for site monitoring (for example, monitoring shall occur in years one, two, three, five, seven, and 10 after site construction), and how the monitoring data will be evaluated to determine if the performance standards are being met. A monitoring report shall be submitted as needed to document milestones, successes, problems, and contingency actions of the compensation project. The compensation project shall be monitored for a period necessary to establish that performance standards have been met, but not for a period less than 10 years.

5. Long-Term Protection of Mitigation Sites. The city shall require documentation that a mitigation site has been permanently preserved from future development or alteration that would be inconsistent with the functions of the mitigation. The documentation may include, but is not limited to, a conservation easement, deed restriction or other agreement between the applicant and the owner of a mitigation site. Such documentation shall be recorded with the Snohomish County auditor.

~~E. Wetlands. Wetlands are those areas, designated in accordance with WAC 173-22-035, that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation adapted for life in saturated soil conditions. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from nonwetland areas to mitigate the conversion of wetlands.~~

~~1. Wetlands shall be rated according to the Washington Department of Ecology wetland rating system, as set forth in the Washington State Wetland Rating System for Western Washington: 2014 Update (Ecology-Publication No. 14-06-029, or as revised and approved by Ecology), which contains the definitions and methods for determining whether the criteria below are met:~~

~~a. Category I. Category I wetlands are: (i) relatively undisturbed estuarine wetlands larger than one acre; (ii) wetlands of high conservation value that are identified by scientists of the Washington Natural Heritage Program/DNR; (iii) bogs; (iv) mature and old-growth forested wetlands larger than one acre; (v) wetlands in coastal lagoons; (vi) interdunal wetlands that score eight or nine habitat points and are larger than one acre; and (vii) wetlands that perform many functions well (scoring 23 points or more). These wetlands: (i) represent unique or rare wetland types; (ii) are more sensitive to disturbance than most wetlands; (iii) are relatively undisturbed and contain ecological attributes that are impossible to replace within a human lifetime; or (iv) provide a high level of functions.~~

~~b. Category II. Category II wetlands are: (i) estuarine wetlands smaller than one acre, or disturbed estuarine wetlands larger than one acre; (ii) interdunal wetlands larger than one acre or those found in a mosaic of wetlands; or (iii) wetlands with a moderately high level of functions (scoring between 20 and 22 points).~~

~~c. Category III. Category III wetlands are: (i) wetlands with a moderate level of functions (scoring between 16 and 19 points); (ii) can often be adequately replaced with a well-planned mitigation project; and (iii) interdunal wetlands between one-tenth and one acre. Wetlands scoring between 16 and 19 points generally have been disturbed in some ways and are often less diverse or more isolated from other natural resources in the landscape than Category II wetlands.~~

~~d. Category IV. Category IV wetlands have the lowest levels of functions (scoring fewer than 16 points) and are often heavily disturbed. These are wetlands that we should be able to replace, or in some cases to improve. However, experience has shown that replacement cannot be guaranteed in any specific case. These wetlands may provide some important functions, and should be protected to some degree.~~

~~e. Illegal Modifications. Wetland rating categories shall not change due to illegal modifications made by the applicant or with the applicant's knowledge.~~

~~2. Development in designated wetlands within shoreline jurisdiction shall be regulated in accordance with the following:~~

~~a. Buffer Requirements. The following buffer widths have been established in accordance with the best available science. They are based on the category of wetland and the habitat score as determined by a qualified wetland professional using the Washington State Wetland Rating System for Western Washington: 2014 Update (Ecology Publication No. 14-06-029, or as revised and approved by Ecology). The adjacent land use intensity is assumed to be high.~~

~~i. For wetlands that score five points or more for habitat function, the buffers in subsection (E)(2)(b) of this section can be used if both of the following criteria are met:~~

~~(A) A relatively undisturbed, vegetated corridor at least 100 feet wide is protected between the wetland and any other priority habitats as defined by the Washington State Department of Fish and Wildlife.~~

~~The corridor must be protected for the entire distance between the wetland and the priority habitat by some type of legal protection such as a conservation easement.~~

~~Presence or absence of a nearby habitat must be confirmed by a qualified biologist. If no option for providing a corridor is available, subsection (E)(2)(b) of this section may be used with the required measures in subsection (E)(2)(c) of this section alone.~~

~~(B) The measures in subsection (E)(2)(c) of this section are implemented, where applicable, to minimize the impacts of the adjacent land uses.~~

~~ii. For wetlands that score 3 to 4 habitat points, only the measures in subsection (E)(2)(c) of this section are required for the use of subsection (E)(2)(b) of this section.~~

~~iii. If an applicant chooses not to apply the mitigation measures in subsection (E)(2)(c) of this section, or is unable to provide a protected corridor where available, then subsection (E)(2)(d) of this section must be used.~~

~~iv. The buffer widths in subsection (E)(2)(b) and (d) of this section assume that the buffer is vegetated with a native plant community appropriate for the ecoregion. If the existing buffer is unvegetated, sparsely vegetated, or vegetated with invasive species that do not perform needed functions, the buffer should either be planted to create the appropriate plant community or the buffer should be widened to ensure that adequate functions of the buffer are provided.~~

~~b. Wetland Buffer Requirements If the Measures in Subsection (E)(2)(c) of This Section Are Implemented and Corridor Provided.~~

Wetland Category	Buffer Width (in Feet) Based on Habitat Score			
	3-4	5	6-7	8-9
Category I: Based on total score	75	105	165	225
Category I: Bogs and wetlands of high conservation value	190			225

Wetland Category	Buffer Width (in Feet) Based on Habitat Score			
	3-4	5	6-7	8-9
Category I: Coastal Lagoons	150		165	225
Category I: Interdunal	-			225
Category I: Forested	75	105	165	225
Category I: Estuarine	150 (buffer width not based on habitat score)			
Category II: Based on score	75	105	165	225
Category II: Interdunal wetlands	110		165	225
Category II: Estuarine	110 (buffer width not based on habitat score)			
Category III (all)	60	105	165	225
Category IV (all)	40			

~~c. Required Measures to Minimize Impacts to Wetlands. Measures are required, if applicable to a specific proposal.~~

Disturbance	Required Measures to Minimize Impacts
Lights	<ul style="list-style-type: none"> • Direct lights away from wetland
Noise	<ul style="list-style-type: none"> • Locate activity that generates noise away from wetland • If warranted, enhance existing buffer with native vegetation plantings adjacent to noise source • For activities that generate relatively continuous, potentially disruptive noise, such as certain heavy industry or mining, establish an additional 10-foot heavily vegetated buffer strip immediately adjacent to the out wetland buffer
Toxic runoff	<ul style="list-style-type: none"> • Route all new, untreated runoff away from wetland while ensuring wetland is not dewatered • Establish covenants limiting use of pesticides within 150 feet of wetland • Apply integrated pest management
Stormwater runoff	<ul style="list-style-type: none"> • Retrofit stormwater detention and treatment for roads and existing adjacent development • Prevent channelized flow from lawns that directly enters the buffer • Use low impact development techniques (per PSAT publication on LID techniques)
Change in water regime	<ul style="list-style-type: none"> • Infiltrate or treat, detain, and disperse into buffer new runoff from impervious surfaces and new lawns
Pets and human disturbance	<ul style="list-style-type: none"> • Use privacy fencing or plant dense vegetation to delineate buffer edge and to discourage disturbance using vegetation appropriate for the ecoregion

Disturbance	Required Measures to Minimize Impacts
	Place wetland and its buffer in a separate tract or protect with a conservation easement
Dust	Use best management practices to control dust

~~d. Wetland Buffer Requirements If the Measures in Subsection (E)(2)(c) of This Section Are Not Implemented or Corridor Not Provided.~~

Wetland Category	Buffer Width (in Feet) Based on Habitat Score			
	3-4	5	6-7	8-9
Category I: Based on total score	100	140	220	300
Category I: Bogs and wetlands of high conservation value	250			300
Category I: Coastal lagoons	200		220	300
Category I: Interdunal	-			300
Category I: Forested	100	140	220	300
Category I: Estuarine	200 (buffer width not based on habitat score)			
Category II: Based on score	100	140	220	300
Category II: Interdunal wetlands	150		220	300
Category II: Estuarine	150 (buffer width not based on habitat score)			
Category III (all)	80	140	220	300
Category IV (all)	50			

~~e. Additions to structures existing within wetlands and/or wetland buffers may be permitted pursuant to ECDC 23.50.040(I). Additions to structures within wetlands will also require state and federal approval.~~

FE. Geologically Hazardous Areas. Development in designated geologically hazardous areas shall be regulated in accordance with the following:

1. New development or the creation of lots should not be allowed that would cause foreseeable risk from geological conditions to people or improvements during the life of the development.
2. New development should not be allowed that would require structural shoreline stabilization over the normal, useful life of the development. Exception may be made for instances where stabilization is necessary to protect allowed uses where no alternative locations are available and no net loss of ecological functions will result. The stabilization measures shall conform to ECDC 24.50.020, Shoreline stabilization.
3. 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 primary residential structures may be all in conformance with ECDC 24.50.020 requirements and then only if no net loss of ecological functions will result.

GF. Critical Saltwater Habitats.

1. Development shall not intrude into or over critical saltwater habitats except when all of the conditions below are met:

- a. The public's need for such an action or structure is clearly demonstrated and the proposal is consistent with protection of the public trust, as embodied in RCW 90.58.020.
- b. Avoidance of impacts to critical saltwater habitats by an alternative alignment or location is not feasible or would result in unreasonable and disproportionate cost to accomplish the same general purpose.
- c. The project, including any required mitigation, will result in no net loss of ecological functions associated with critical saltwater habitat.
- d. The project is consistent with the state's interest in resource protection and species recovery.

2. Private, noncommercial docks for individual residential or community use may be allowed; provided, that:

- a. Avoidance of impacts to critical saltwater habitats by an alternative alignment or location is not feasible;
- b. The project, including any required mitigation, will result in no net loss of ecological functions associated with critical saltwater habitat.

3. Where inventory of critical saltwater habitat has not been completed, all overwater and nearshore developments in marine and estuarine waters shall be required to conduct a habitat assessment of the site and adjacent beach sections to assess the presence of critical saltwater habitats and functions.

HG. Critical Freshwater Habitats. Existing hydrological connections into and between water bodies, such as streams and wetlands, shall be maintained. Obstructed channels shall be reestablished as a condition of non-water-dependent uses, where feasible.

HH. Additional Authority. In addition to any other authority the city may have, the city is hereby authorized to condition or deny a proposed use, modification or activity or to require site redesign because of hazards associated with the use, modification or activity on or near an environmentally sensitive and/or critical area, and/or the effect of the proposal on the environmentally sensitive area and/or critical area. [Ord. 4072 § 1 (Att. A), 2017].

Chapter 24.70

NONCONFORMING DEVELOPMENT

Sections:

- 24.70.000 Purpose.
- 24.70.010 Nonconforming uses.
- 24.70.020 Nonconforming development, building and/or structure.
- 24.70.030 Nonconforming lots.
- 24.70.040 Nonconforming signs.
- 24.70.050 Nonconforming local public facilities.

24.70.010 Nonconforming uses.

A. Nonconforming uses are shoreline uses which were lawfully established prior to the effective date of the Shoreline Management Act or this master program, or amendments thereto, but which do not conform to present regulations or standards of this master program or policies of the Act.

B. A use which is listed as a conditional use but which existed prior to adoption of this 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 this master program to the site and for which a conditional use permit has not been obtained shall be considered a nonconforming use.

C. A nonconforming use may continue, unless required to be abated by subsection (D) of this section, but it may not be expanded in any way, including additional lot areas, floor area, height, number of employees, equipment, or hours of operation, except as otherwise provided in ECDC 24.70.050.

D. Lapse of Time.

1. If a nonconforming use is discontinued for six consecutive months or for 12 months during any two-year period, any subsequent use shall be conforming. It shall not be necessary to show that the owner of the property intends to abandon such nonconforming use in order for the nonconforming rights to expire. Uses such as agricultural or aquaculture, which vary seasonally, shall be deemed abandoned if the seasonal use is not utilized during one full season consistent with the traditional use.

2. If a nonconforming use ceases because its building is damaged in excess of 75 percent of its replacement cost, the use may be reestablished if, but only if, an application for a building permit which vests as provided in ECDC 19.00.015, et seq., is filed within six-eighteen months of the date such damage occurred. After the application has been filed, only one 180-day extension may be granted.

3. The right of reestablishment of use described in subsection (D)(2) of this section shall not apply if:

a. The building or structure was damaged or destroyed due to the unlawful act of the owner or the owner's agent; or

b. The building is damaged or destroyed due to the ongoing neglect or gross negligence of the owner or the owner's agent.

c. In the event that subsection (D)(3)(a) or (b) of this section applies, the nonconforming use shall be abated if damage exceeds 25 percent of replacement cost. "Replacement cost" shall be determined as proved in ECDC 24.70.020.

E. A nonconforming use shall not be changed to another nonconforming use, regardless of the conforming or nonconforming status of the building or structure in which it is housed. [Ord. 4072 § 1 (Att. A), 2017].

24.70.020 Nonconforming development, building and/or structure.

A. Nonconforming development means a shoreline development which was lawfully constructed or established prior to the effective date of the Shoreline Management Act or this master program, or amendments thereto, but which does not conform to present regulations or standards of the program.

B. A nonconforming building is one which once met bulk zoning standards and the site development standards applicable to its construction, but which no longer conforms to such standards due to the enactment or amendment of the zoning ordinance of the city of Edmonds or the application of such ordinance in the case of a structure annexed to the city. Subject to the other provisions of this section, an accessory building that is not an accessory dwelling unit shall be presumptively nonconforming if photographic or other substantial evidence conclusively demonstrates that the accessory building existed on or before January 1, 1981. In the case of a property that was annexed after January 1, 1981, then the date shall be that of the effective date of the annexation of the city of Edmonds. Such presumption may be overcome only by clear and convincing evidence.

C. A structure for which a variance has been issued shall be considered a legal nonconforming structure and the requirements of this section shall apply as they apply to preexisting nonconformities.

D. A nonconforming development, building and/or structure which is moved any distance must be brought as closely as practicable into conformance with this master program.

E. Nonconforming development, building and/or structure may be maintained and continued, unless required to be abated elsewhere in this chapter or section; provided, that it is not enlarged, intensified, increased, or altered in any way which increases its nonconformity except as expressly provided in subsections (F) through (L) of this section.

F. Historic Buildings and Structures. Nothing in this section shall prevent the full restoration by reconstruction of a building or structure which is either listed on the National Register of Historic Places, the Washington State Register of Historic Places, the Washington State Cultural Resource Inventory, or the Edmonds register of historic places, or is listed in a council approved historical survey meeting the standards of the State Department of Archaeology and Historic Preservation. "Restoration" means reconstruction of the historic building or structure with as nearly the same visual design appearance and materials as is consistent with full compliance with the State Building Code and consistent with the requirements of Chapter 20.45 ECDC, Edmonds Register of Historic Places. The reconstruction of all such historic buildings and structures shall comply with the life safety provisions of the State Building Code.

G. If a nonconforming development, building and/or structure is destroyed or damaged to an extent not exceeding 75 percent replacement cost at the time of destruction, it may be restored to its former size, shape and lot location as existing immediately prior to the time the structure was damaged, so long as restoration is either:

1. Completed within one year of the date of damage; or
2. Completed within one year of the date of issuance of all required permits, so long as applications for such permits are vested within ~~six~~ eighteen months of the date of damage and are pursued in a timely manner.

H. Determination of replacement costs and the level of destruction shall be made by the building official and shall be appealable as Type II staff decision under the provisions of Chapter 20.06 ECDC.

I. The right of restoration described in subsection (E) of this section shall not apply if:

1. The development, building and/or structure was damaged or destroyed due to the unlawful act of the owner or the owner's agent; or
2. The development, building and/or structure is damaged or destroyed due to the ongoing neglect or gross negligence of the owner or the owner's agents.

J. Residential Buildings in Commercial Zones. Existing nonconforming buildings in commercial zones in use solely for residential purposes, or structures attendant to such residential use, may be remodeled or reconstructed without regard to the limitations of subsections (D), (E) and (G) of this section, if, but only if, the following conditions are met:

1. The remodel or reconstruction takes place within the footprint of the original building or structure. "Footprint" shall mean an area equal to the smallest rectangular area in a plane parallel to the ground in which the existing building could be placed, exclusive of uncovered decks, steps, porches, and similar features; and provided, that the new footprint of the building or structure shall not be expanded by more than 10 percent and is found by the city staff to be substantially similar to the original style and construction after complying with current codes.

2. All provisions of the State Building and Electrical Codes can be complied with entirely on the site. No nonconforming residential building may be remodeled or reconstructed if, by so doing, the full use under state law or city ordinance of a conforming neighboring lot or building would be limited by such remodel or reconstruction.

3. These provisions shall apply only to the primary residential use on site and shall not apply to nonconforming accessory buildings or structures.

4. A nonconforming residential single-family building may be rebuilt within the defined building envelope if it is rebuilt with materials and design which are substantially similar to the original style and structure after complying with current codes. "Substantial compliance" shall be determined by the city as a Type II staff decision, except that any appeal of the staff decision shall be to the ADB rather than the hearing examiner. The decision of the ADB shall be final and appealable only as provided in ECDC 20.07.006.

K. Subject to the other provisions of this section, an accessory building that is not an accessory dwelling unit shall be presumptively nonconforming if photographic or other substantial evidence conclusively demonstrates that the accessory building existed on or before January 1, 1981. In the case of a property that was annexed after January 1, 1981, then the date shall be that of the effective date of the annexation to the city of Edmonds. Such presumption may be overcome only by clear and convincing evidence.

L. BD5 Zone. The BD5 zone was created in part to encourage the adoption and reuse of existing residential structures for live/work and commercial use as set forth in ECDC 16.43.030(B)(5). In the BD5 zone, conforming and nonconforming buildings may be converted to commercial or other uses permitted by ECDC 16.43.020 and this master program without being required to come into compliance with the ground floor elevation requirements of ECDC 16.43.030(B). [Ord. 4072 § 1 (Att. A), 2017].

Chapter 24.80

ADMINISTRATION – SHORELINE PERMITS

Sections:

- 24.80.000 Purpose.
- 24.80.010 Exemptions from shoreline substantial development permit process.
- 24.80.020 Letter of exemption.
- 24.80.025 [Developments not required to obtain shoreline permits or local reviews.](#)
- 24.80.030 Review criteria for all development.
- 24.80.040 Substantial development permit criteria.
- 24.80.050 Conditional use permit criteria.
- 24.80.060 Variance permit criteria.
- 24.80.070 Minimum application requirements.
- 24.80.080 Notice of application.
- 24.80.090 Special procedures for limited utility extensions and bulkheads.
- 24.80.095 [Shoreline restoration projects – Relief from shoreline master program development standards and use regulations](#)
- 24.80.100 Public hearings.
- 24.80.105 [Special procedures for WSDOT projects.](#)
- 24.80.110 Notice of decision, reconsideration, and appeals.
- 24.80.120 Initiation of development.
- 24.80.130 Revisions.
- 24.80.140 Time requirements of shoreline permits.
- 24.80.150 Administrative authority and responsibility.
- 24.80.160 Compliance.
- 24.80.170 Enforcement.

24.80.010 Exemptions from shoreline substantial development permit process.

A. Application and Interpretation.

1. Exemptions shall be construed narrowly. Only those developments that meet the precise terms of one or more of the listed exemptions may be granted exemption from the substantial development permit process.
2. An exemption from the substantial development permit process is not an exemption from compliance with the Shoreline Management Act or the city of Edmonds shoreline master program, or from any other regulatory requirements. To be authorized, all uses and developments must be consistent with the policies and provisions of this master program and the Shoreline Management Act.
3. When a development or use is proposed that does not comply with the bulk, dimensional and performance standards of the master program, such development or use can only be authorized by approval of a variance.
4. A development or use that is listed as a conditional use pursuant to this master program, or is an unlisted use, must obtain a conditional use permit even though the development or use does not require a substantial development permit.
5. The burden of proof that a development or use is exempt from the permit process is on the applicant.
6. 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.
7. The city of Edmonds may attach conditions to the approval of exempted developments and/or uses as necessary to assure consistency of the project with the Shoreline Management Act and this master program.

B. Exemptions Listed. The following developments shall not require substantial development permits:

1. Any development of which the total cost or fair market value, whichever is higher, does not exceed \$5,7187,047, 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 must be adjusted for inflation every five years consistent with WAC 173-27-040(2)(a). 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.
2. 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.
3. 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.
4. 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.
5. Construction or modification of navigational aids such as channel markers and anchor buoys.
6. 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 25 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 as defined in ECDC 24.90.010(F). Construction authorized under this exemption shall be located landward of the ordinary high water mark.
7. 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 either:

- a. In salt waters (Puget Sound), the fair market value of the dock does not exceed \$2,500; or
- b. In fresh waters (Lake Ballinger) the fair market value of the dock does not exceed: (A) 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; or (B) \$10,000 ten thousand dollars for all other docks constructed in fresh waters; ~~but-However,~~ if subsequent construction ~~having a fair market value exceeding \$2,500~~ 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 above, the subsequent construction shall be considered a substantial development for the purpose of this chapter.

8. Operation, maintenance, or construction of canals, waterways, drains, reservoirs, or other facilities that now exist or are hereafter created or developed as a part of an irrigation system for the primary purpose of making use of system waters, including return flow and artificially stored ground water from the irrigation of lands.

9. 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.

10. Operation and maintenance of any system of dikes, ditches, drains, or other similar drainage or utility facilities existing on September 8, 1975, which were created, developed or utilized primarily as a part of an agricultural drainage or diking system.

11. Any project with a certification from the governor pursuant to Chapter 80.50 RCW.

12. Site exploration and investigation activities that are prerequisite to preparation of an application for development authorization under this chapter, if:

- a. The activity does not interfere with the normal public use of the surface waters;
- b. 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;
- c. 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;
- d. 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
- e. The activity is not subject to the permit requirements of RCW 90.58.550.

13. 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.

14. Watershed restoration projects as defined in WAC 173-27-040(2)(o). The administrator 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 45 days of receiving all materials necessary to review the request for exemption from the applicant. No fee may be charged for accepting and processing requests for exemption for watershed restoration projects as used in this section.

15. Consistent with WAC 173-27-040, a public or private project designed to improve fish or wildlife habitat or fish passage, that conforms to the provisions of RCW 77.55.181. A public or private project that is designed to improve fish or wildlife habitat or fish passage, when all of the following apply:

- ~~a. The project has been approved in writing by the Department of Fish and Wildlife;~~
- ~~b. The project has received hydraulic project approval by the Department of Fish and Wildlife pursuant to Chapter 77.55 RCW; and~~
- ~~c. The city has determined that the project is substantially consistent with the local shoreline master program. The city shall make such determination in a timely manner and provide it by letter to the project proponent. [Ord. 4072 § 1 (Att. A), 2017].~~

16. The external or internal retrofitting of an existing structure with the exclusive purpose of compliance with 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.

24.80.025 Developments not required to obtain shoreline permits or local reviews

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

- 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.
- E. Projects authorized through the Energy Facility Site Evaluation Council process, pursuant to Chapter 80.50 RCW.

24.80.095 Shoreline restoration projects—Relief from shoreline master program development standards and use regulations.

The city may grant relief from shoreline master program development standards and use regulations resulting from shoreline restoration projects within urban growth areas consistent with criteria and procedures in WAC 173-27-215.

24.80.100 Public hearings.

A. The administrator shall determine whether an application requires a public hearing pursuant to the criteria below no later than 15 days after the minimum public comment period provided by ECDC 24.80.080(B). An open record public hearing shall be required for all of the following:

- ~~1. One or more interested persons has submitted to the administrator, within 15 days of the final publication notice of the application, a written request for such a hearing together with a statement of the reasons for the request; or~~
- 21. The proposal is determined to have a significant adverse impact on the environment and an environmental impact statement is required in accordance with the State Environmental Policy Act; or
- 32. The proposal requires a variance and/or conditional use approval pursuant to this master program; or

34. The use or development requires an open record public hearing for other city of Edmonds approvals or permits; ~~or~~ [Ord. 4072 § 1 (Att. A), 2017].

4. The city receives a request from any interested person within 14 days of the date of the notice of application and the public hearing request is accompanied by a hearing fee, to be paid by the person(s) requesting the hearing, in the amount of 50 percent the difference between the Type II and Type III application fee.

B. When a public hearing is triggered pursuant to subsection A.4 of this section, the project applicant shall pay the other 50 percent of the difference between the Type II and Type III application fee, on top of the previously paid Type II application fee. The applicant shall pay this fee within 30 days of notice from the city that the fee is due. If the applicant fails to pay the additional fee within the required 30-day period, the application for the project shall be deemed withdrawn. The city shall not schedule the public hearing until the additional fee has been paid. For these public hearings, the cost of the hearing examiner shall be borne by the city.

24.80.105 Special procedures for WSDOT projects.

A. Permit review time for projects on a state highway. Pursuant to RCW 47.01.485, the Legislature established a target of 90 days review time for local governments.

B. Optional process allowing construction to commence twenty-one days after date of filing. Pursuant to RCW 90.58.140, Washington State Department of Transportation projects that address significant public safety risks may begin twenty-one days after the date of filing if all components of the project will achieve no net loss of shoreline ecological functions.

24.80.150 Administrative authority and responsibility.

A. Shoreline Administrator. The shoreline administrator shall be the planning manager or his/her designee and is vested with the following authority and responsibility to:

1. Have overall administrative responsibility for this master program;
2. Determine if a public hearing should be held on a shoreline permit application by the hearing examiner pursuant to ECDC 24.80.100;
3. Grant or deny written permit exemptions from shoreline substantial development permit requirements of this master program;
4. Authorize, approve or deny shoreline substantial development permits, except for those for which a public hearing is required pursuant to ECDC 24.80.100;
5. Make written recommendation to the hearing examiner or city council as appropriate and insofar as possible, in order to assure that all relevant information, testimony, and questions regarding a specific matter are made available during their respective reviews of such matter;
6. Review and evaluate the records of project review actions (permits and exemptions) in shoreline areas and report on the cumulative effects of authorized development of shoreline conditions at a minimum every ~~seven-~~eight years when this master program is updated. The administrator shall coordinate such review with the Washington State Department of Ecology, Washington State Department of Fish and Wildlife, and other interested parties;
7. Advise interested citizens and project proponents of the goals, policies, regulations and procedures of this master program; and
8. Make administrative decisions and interpretations of the policies and regulations of this master program and the Shoreline Management Act.

B. Hearing Examiner. The hearing examiner is vested with the following authority:

1. To grant or deny shoreline substantial development permits requiring public hearings pursuant to ECDC 24.80.100;

2. To grant or deny shoreline conditional use permits under this master program;
3. To grant or deny variances from this master program; and
4. To decide on appeals of administrative decisions issued by the administrator of this master program in accord with procedures set forth in ECDC Title 20.

C. City Council.

1. The Edmonds city council is vested with the authority to approve any revisions or amendments to this master program in accordance with the applicable requirements of the Shoreline Management Act and the Washington Administrative Code.

2. To become effective any amendment to this master program must be reviewed and adopted by the Department of Ecology pursuant to RCW 90.58.190 and Chapter 173-26 WAC. [Ord. 4072 § 1 (Att. A), 2017].

3. The City Council will conduct the periodic review process consistent with the requirements of RCW 90.58.080 and WAC 173-26-090.

24.90.020 Definitions – C to F.

I. “Development” means a use consisting of the construction or exterior alteration of structures; dredging; drilling; dumping; grading; filling; removal of any sand, gravel, or minerals; bulk heading; driving of piling; placing of obstructions; or any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to the act at any stage of water level. “Development” does not include dismantling or removing structures if there is no other associated development or re-development.

GG. “Floodway” means the area that has been established in effective Federal Emergency Management Agency flood insurance rate maps or floodway maps. The floodway does not include lands that can reasonably be expected to be protected from flood waters by flood control devices maintained by or maintained under license from the federal government, the state, or a political division of the state.