**Chapter 18.21  
SHORELINE MASTER PROGRAM**

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**18.21.010 Purpose.**

The purpose of this chapter is to regulate development in shoreline areas as required by the Shoreline Management Act, as it now exists or hereinafter amended, to protect these areas and their functions and values in a manner that also allows reasonable use of private property. This chapter is intended to:

(a)    Implement the Omak comprehensive plan and the requirements of the Shoreline Management Act;

(b)    Protect shoreline areas, in accordance with the Shoreline Management Act and through the application of the goals and policies in the comprehensive plan and implementation of the regulations contained herein in consultation with state and federal agencies and other qualified professionals;

(c)    Protect the general public, resources and facilities from injury, loss of life, property damage or financial loss due to flooding, erosion, landslides, or steep slopes failure within the shoreline area;

(d)    Protect unique, fragile and valuable elements of the shoreline environment, including ground and surface waters, wetlands, and fish and wildlife and their habitats;

(e)    Prevent cumulative adverse environmental impacts within the shoreline area to water quality and availability, wetlands, and fish and wildlife habitat;

(f)    Provide flexibility and attention to site-specific characteristics, so as to ensure reasonable use of property; and

(g)    Provide appropriate guidance and protection measures for addressing the needs and concerns associated with shorelines areas that help define the quality of life in Omak. (Ord. 1859 § 1 (Exh. A) (part), 2018).

**18.21.020 Applicability.**

These shoreline regulations shall apply as an overlay to zoning and other land use regulations established by the city. Critical areas lying within the shoreline area shall comply with the regulations established herein.

(a)    All land uses and/or development permit applications on all lots or parcels within the city that lie within shoreline jurisdiction as designated in the city of Omak comprehensive plan (see shorelines element and Map A12 in the map appendix) shall comply with the provisions of this chapter. No action shall be taken by any person that results in any alteration of any shoreline area except as consistent with the purposes, objectives and intent of this chapter.

(b)    These shoreline regulations shall apply concurrently with review conducted under the State Environmental Policy Act (SEPA), as locally adopted. Any conditions required pursuant to this chapter shall be included in the SEPA review and threshold determination. (Ord. 1859 § 1 (Exh. A) (part), 2018).

**18.21.030 General provisions.**

(a)    In the event of any conflict between these regulations and any other regulations, that which provides greater protection to shoreline area(s) shall apply. The provisions contained herein shall be the minimum requirements and shall be liberally interpreted to serve the purposes of this chapter.

(b)    References to the Omak Municipal Code (“OMC”), the Revised Code of Washington (“RCW”), the Washington Administrative Code (“WAC”), the city of Omak comprehensive plan (including maps, addendums, and appendices thereto), or to any other external law, rule, or regulation will be considered a reference to the most current version of each.

(c)    The administrator shall be responsible for making interpretations of the meaning of the provisions of this chapter in the event interpretations are required to give meaning to the provisions of this chapter consistent with the purposes of this chapter and to correct (1) any inaccurate internal cross-references; or (2) any external citations to laws or regulations.

(d)    This chapter repeals and replaces any previously approved city shoreline master program. (Ord. 1859 § 1 (Exh. A) (part), 2018).

**18.21.040 Definitions.**

This chapter lists the official (legal) definitions of terms used in this chapter. As used in this chapter, unless the context requires otherwise, the following definitions and concepts apply:

**“A”**

“Accessory Structure or Use” See Section [18.08.003](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1808.html#18.08.003).

“Accessory utility” means local transmission and collection lines, pipes, and conductors associated with water, sewer, gas, telephone, cable TV, or similar utilities, or with irrigation systems, and other similar facilities intended to serve a development or an individual use, including access roads and appurtenant structures necessary to facilitate the utility use.

“Act” means Shoreline Management Act of 1971, Chapter [90.58](https://www.codepublishing.com/cgi-bin/rcw.pl?cite=90.58) RCW, as amended.

“Administrative authority” shall, in the context of these regulations, mean the city of Omak.

“Administrator” See Section [18.08.005](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1808.html#18.08.005).

“Advertising Devices” See Section [18.08.021](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1808.html#18.08.021).

“Agricultural equipment” and “agricultural facilities” include, but are not limited to: (a) the following used in agricultural operations: equipment; machinery; constructed shelters, buildings, and ponds; fences; upland finfish-rearing facilities; water diversion, withdrawal, conveyance, and use equipment and facilities including, but not limited to, pumps, pipes, taps, canals, ditches, and drains; (b) corridors and facilities for transporting personnel, livestock, and equipment to, from, and within agricultural lands; (c) farm residences and associated equipment, lands, and facilities; and (d) roadside stands and on-farm markets for marketing fruit or vegetables.

“Agricultural land” means those specific land areas on which agriculture activities are conducted as of the date of adoption of this chapter pursuant to these guidelines as evidenced by aerial photography or other documentation.

“Agricultural products” includes, but is not limited to, horticultural, viticultural, floricultural, vegetable, fruit, berry, grain, hops, hay, straw, turf, sod, seed, and apiary products; feed or forage for livestock; Christmas trees; hybrid cottonwood and similar hardwood trees grown as crops and harvested within twenty years of planting; and livestock including both the animals themselves and animal products including, but not limited to, meat, upland finfish, poultry and poultry products, and dairy products.

“Agriculture” See Section [18.08.023](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1808.html#18.08.023).

“Animal feeding operation” or “AFO” means a lot or facility (other than an aquatic animal production facility) where the following conditions are met:

(a)  Animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of forty-five days or more in any twelve-month period, and crops, vegetation forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

“Appurtenance” means development that is necessarily connected to the use and enjoyment of single-family residences and is located landward of the OHWM and/or the perimeter of a wetland. Appurtenances include a garage, deck, driveway, utilities, fences, installation of a septic tank and drainfield and grading which do not exceed the threshold established in local SEPA or building regulations, whichever is less, and which do not involve placement of fill in any wetland, floodway, floodplain or waterward of the ordinary high-water mark.

“Aquaculture” is the farming of aquatic organisms including fish, mollusks, crustaceans and aquatic plants. Farming implies some sort of intervention in the rearing process to enhance production, such as regular stocking, feeding, protection from predators and so forth.

“Aquifer Recharge Area” See Section [18.20.210](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1820.html#18.20.210).

“Archaeological resource/site” means archaeological and historic resources that are either recorded at the State Historic Preservation Office and/or by local jurisdictions or have been inadvertently uncovered, are located on city of Omak shorelands and including, but not limited to, submerged and submersible lands and the bed of the rivers within the state’s jurisdiction, that contain archaeological objects. Archaeological sites located both in and outside shoreline jurisdiction are subject to Chapters [27.44](https://www.codepublishing.com/cgi-bin/rcw.pl?cite=27.44) (Indian graves and records) and [27.53](https://www.codepublishing.com/cgi-bin/rcw.pl?cite=27.53) RCW (Archaeological sites and records) and development or uses that may impact such sites shall comply with Chapter [25-48](https://www.codepublishing.com/cgi-bin/wac.pl?cite=25-48) WAC as well as the provisions of this chapter. “Significant” is that quality in American history, architecture, archaeology, engineering, and culture that is present in districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association, and:

(a) That are associated with events that have made a significant contribution to the broad patterns of our history; or

(b) That are associated with the lives of significant persons in our past; or

(c) That embody the distinctive characteristics of a type, period or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or

(d) That have yielded, or may be likely to yield, information important in history or prehistory.

“Associated wetlands” is synonymous with “wetlands” or “wetland areas” and means wetlands that are in proximity to lakes, rivers or streams that are subject to the SMA and either influence or are influenced by such waters. Factors used to determine proximity and influence include, but are not limited to: location contiguous to a shoreline water body, formation by tidally influenced geohydraulic processes, presence of a surface connection including through a culvert or tide gate, location in part or whole within the floodplain of a shoreline, periodic inundation, and/or hydraulic continuity.

“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; provided, that in the case of structures to be built over water, average grade level shall be the elevation of ordinary high water. Calculation of the average grade level shall be made by averaging the ground elevations at the center of all exterior walls of the proposed building or structure.

**“B”**

“Bed and Breakfast” See Section [18.08.061](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1808.html#18.08.061).

“Best Available Science” See Section [18.20.210](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1820.html#18.20.210).

“Best Management Practices” See Section [18.20.210](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1820.html#18.20.210).

“Boating facilities” means developments and uses that support access to shoreline waters for purposes of boating.

“Buffer” means a strip of land established to protect one type of land use from another with which it is incompatible.

“Buffer, shoreline use (Zone 2)” means an area that is contiguous to and protects a critical area that is required for the continued maintenance, functioning, and/or structural stability of a critical area.

“Buffer, shoreline vegetation (Zone 1)” means the vegetation area adjacent to a shoreline that separates and protects the shoreline aquatic area from adverse impacts associated with adjacent land uses.

“Buffer, wetland” means the vegetation area adjacent to a wetland that separates and protects the wetland aquatic area from adverse impacts associated with adjacent land uses.

“Building (Structure)” See Section [18.08.079](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1808.html#18.08.079).

“Bulk storage” means nonportable storage of bulk products in fixed tanks.

“Bulkhead” means a structure erected generally parallel to and near the OHWM for the purpose of protecting adjacent uplands from waves or current action.

**“C”**

“CAFO” means a concentrated agricultural feeding operation, as defined by [40](http://www.law.cornell.edu/cfr/cfr.php?title=40) CFR  [122.23](http://www.law.cornell.edu/cfr/text/40/122.23).

“Campground (RV Park)” See Section [18.08.097](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1808.html#18.08.097).

“CARA” means critical aquifer recharge area.

“Channel migration zone (CMZ)” means the area along a river within which the channel(s) can be reasonably predicted to migrate over time as a result of natural and normally occurring hydrological and related processes when considered with the characteristics of the river and its surroundings.

“Clearing” means the destruction or removal of vegetation ground cover, shrubs and trees including, but not limited to, root material removal and/or topsoil removal.

“Commercial use” means facilities used or established to provide goods, merchandise or services for compensation or exchange, excluding facilities for the growth, production, or storage of agricultural products.

“Community boating facilities” including docks, piers, ramps, etc., are typically designed and constructed to serve all or a significant component of the members of a residential development, which typically include waterfront property owners and often include nonwaterfront property owners. A homeowner’s association usually owns a shoreline tract(s) or easement(s) providing for the potential placement of the facilities; and is responsible for the ownership and maintenance of the facilities. Where the shoreline is owned by a public entity and the entity has authorized the facilities, then the multiple upland property owners of a residential development would also be considered community boating facilities.

“Community joint-use recreational dock” means a dock intended for the common use of the residents of adjoining parcels or subdivision, shore subdivision, or community located on adjacent uplands. A community joint-use recreational dock shall not be a commercial endeavor and shall not for the purpose of serving the public.

“Critical Areas” See Section [18.20.210](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1820.html#18.20.210).

“Critical Areas Report” See Section [18.20.210](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1820.html#18.20.210).

“Cumulative impacts” means the impact on the environment resulting from the incremental impact of an action when added to other past, present, and reasonably foreseeable future actions regardless of who undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

**“D”**

“Density” See Section [18.08.157](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1808.html#18.08.157).

“Development” means a use consisting of the construction or exterior alteration of structures; dredging; drilling; dumping; filling; removal of any sand, gravel, or minerals; bulkheading; driving of piling; placing of obstructions; or any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters of the state subject to Chapter [90.58](https://www.codepublishing.com/cgi-bin/rcw.pl?cite=90.58) RCW at any stage of water level. “Development” does not include dismantling or removing structures if there is no other associated development or re-development.

“Development regulations” means the controls placed on development or land uses by the city of Omak, including, but not limited to, zoning ordinances, critical areas ordinances, all portions of this chapter, other than goals and policies approved or adopted under Chapter [90.58](https://www.codepublishing.com/cgi-bin/rcw.pl?cite=90.58) RCW, planned unit development ordinances, subdivision ordinances, and binding site plan ordinances, together with any amendments thereto.

“Dike” means an artificial embankment or revetment normally set back from the bank or channel in the floodplain for the purpose of keeping floodwaters from inundating adjacent land.

“Dock” means all platform structures or anchored devices in or floating upon water bodies to provide moorage for pleasure craft or landing for water-dependent recreation including but not limited to floats, swim floats, float plane moorages, and water ski jumps. Excluded are launch ramps.

(a) Private Docks. Over-water structures are constructed and utilized for private moorage by a single residential waterfront property owner; or an upland property owner adjacent to publicly owned shoreline where the public entity has authorized the placement of a private dock.

(b) Joint-use docks are constructed and utilized by two or more contiguous residential waterfront property owners. Joint-use dock facilities may also serve one waterfront property owner and one or more contiguous upland property owners; or may consist of two or more upland property owners adjacent to publicly owned shoreline, where the public entity has authorized the placement of a joint-use dock.

(c) Community docks are typically designed and constructed to serve all or a significant component of the members of a residential development, which typically include waterfront property owners and often include nonwaterfront property owners. A homeowner’s association usually owns a shoreline tract(s) or easement(s) providing for the potential placement of the dock facilities; and is responsible for the ownership and maintenance of the facilities. Where the shoreline is owned by a public entity and the entity has authorized dock facilities, the dock facilities for multiple upland property owners of a residential development would also be considered community dock facilities.

(d) Public docks are constructed and utilized for use by the general public, typically owned and managed by a public agency and may include a boat ramp.

“Dredge material disposal” means the disposal of material excavated waterward of the ordinary high-water mark according to the DNR disposal procedures manual.

“Dredging” means the removal, displacement, and disposal of unconsolidated earth material such as silt, sand, gravel, or other submerged material from the bottom of water bodies or from wetlands.

“Dwelling, Multi-Unit” See Section [18.08.171](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1808.html#18.08.171).

“Dwelling, Single-Unit” See Section [18.08.173](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1808.html#18.08.173).

“Dwelling Unit” See Section [18.08.177](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1808.html#18.08.177).

**“E”**

“Ecological functions” or “shoreline functions” means the work performed or role played by the physical, chemical, and biological processes that contribute to the maintenance of the aquatic and terrestrial environments that constitute the shoreline’s natural ecosystem. See WAC [173-26-201](https://www.codepublishing.com/cgi-bin/wac.pl?cite=173-26-201)(2)(c).

“Ecological restoration and/or enhancement” means an intentional activity that initiates, accelerates, or is intended to recover ecosystem functions with respect to their health, integrity and sustainability. The practice of ecological restoration and/or enhancement includes a wide scope of projects including, but not limited to: erosion control, reforestation, removal of nonnative species and weeds, revegetation of disturbed areas, daylighting streams (e.g., culvert/pipe removal, bring an artificially underground stream to the surface), reintroduction of native species, as well as habitat and range improvement for targeted species.

“Ecologically intact” shorelines means those shoreline areas that retain the majority of their natural shoreline functions, as evidenced by the shoreline configuration and the presence of native vegetation. Generally, but not necessarily, ecologically intact shorelines are free of structural shoreline modifications, structures, and intensive human uses. In forested areas, they generally include native vegetation with diverse plant communities, multiple canopy layers, and the presence of large woody debris available for recruitment to adjacent water bodies.

“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.

“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” is construed narrowly as that which is necessary to protect property from the elements (RCW [90.58.030](https://www.codepublishing.com/cgi-bin/rcw.pl?cite=90.58.030)(3)(e)(iii)).

“Exempt, Single-Family” See “Residential development.”

“Exempt, substantial development” means any development of which the total cost or fair market value, whichever is higher, does not exceed six thousand four hundred sixteen dollars[1](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1821.html" \l "258) or dollar value as amended by the State of Washington Office of Financial Management, if such development does not materially interfere with the normal public use of the water or shorelines of the state, and any development which does not meet the definition of substantial development contained herein.

“Experimental aquaculture” means an aquaculture project that uses methods or technologies that are unprecedented or unproven in the state of Washington.

**“F”**

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

“Feasible” means, for the purpose of this chapter, that an action, such as a development project, mitigation, or preservation requirement, meets all of the following conditions:

(a) The action can be accomplished with technologies and methods that have been used in the past in similar circumstances, or studies or tests have demonstrated in similar circumstances that such approaches are currently available and likely to achieve the intended results;

(b) The action provides a reasonable likelihood of achieving its intended purpose; and

(c) The action does not physically preclude achieving the project’s primary intended legal use. In cases where this chapter requires certain actions unless they are infeasible, the burden of proving infeasibility is on the applicant. In determining an action’s infeasibility, the city may weigh the action’s relative public costs and public benefits, considered in the short- and long-term time frames.

“Feedlot” means an enclosure or facility used or capable of being used for feeding livestock hay, grain, silage, or other livestock feed, a confined area or structure for feeding, breeding or holding livestock for eventual sale or slaughter and in which animal waste accumulates faster than it can naturally dissipate without creating a potential for a health hazard, particularly with regard to surface and groundwater; but not including barns, pens or other structures used in a dairy operation or structures on farms holding livestock primarily during winter periods.

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

“Fish and Wildlife Habitat Conservation Areas” See Section [18.20.210](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1820.html#18.20.210).

“Floats” means a detached, anchored structure that is free to rise and fall with water levels including any floating, anchored platform or similar structure, used for boat mooring, swimming or similar recreational activities, that is not anchored or accessed directly from the shoreline.

“Flood control works” means all development on rivers and streams designed to retard bank erosion, to reduce flooding of adjacent lands, to control or divert stream flow, or to create a reservoir, including but not limited to revetments, dikes, levees, channelization, dams, vegetative stabilization, weirs, flood and tidal gates. Excluded are water pump apparatus.

“Floodplain” See Section [18.08.195](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1808.html#18.08.195).

“Floodplain management” means a long-term program to reduce flood damages to life and property and to minimize public expenses due to floods through a comprehensive system of planning, development regulations, building standards, structural works, and monitoring and warning systems.

“Floodway” means the area that has been established in 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 devises maintained by or maintained under license from the federal government, the state, or a political subdivision of the state.

“Frequently Flooded Area” See Section [18.20.210](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1820.html#18.20.210).

“Frontage, shoreline” is the distance measured along the ordinary high-water mark.

“Future flow floodplain” means the channel of the stream and that portion of the adjoining flood plain that is necessary to contain and discharge the base flood flow at build-out without any measurable increase in flood heights.

**“G****”**

“Geologically Hazardous Areas” See Section [18.20.210](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1820.html#18.20.210).

“Geotechnical report” or “geotechnical analysis” means a scientific study or evaluation conducted by a qualified expert that includes a description of the ground and surface hydrology and geology, the affected land form and its susceptibility to mass wasting, erosion, and other geologic hazards or processes, conclusions and recommendations regarding the effect of the proposed development on geologic conditions, the adequacy of the site to be developed, the impacts of the proposed development, alternative approaches to the proposed development, and measures to mitigate potential site-specific and cumulative geological and hydrological impacts of the proposed development, including the potential adverse impacts to adjacent and down-current properties. Geotechnical reports shall conform to accepted technical standards and must be prepared by qualified professional engineers or geologists who have professional expertise about the regional and local shoreline geology and processes.

“Grade” (adjacent ground elevation) is the lowest point of elevation of the finished surface of the ground, paving, or sidewalk within the area between the building and the property line or, when the property line is more than five feet from the building, between the building and a line five feet from the building (per International Building Code).

“Grading” means the movement or redistribution of the soil, sand, rock, gravel, sediment, or other material on a site in a manner that alters the natural contour of the land.

“Guest house” means a small living unit accompanying the main residence permitted on a lot of minimum size or larger for the purpose of housing guests, friends, and relatives and having its own kitchen and toilet facilities. The total floor area of such a unit shall be a minimum of five hundred square feet and not exceed fifty percent of the total area of the main residence. The main residence shall be occupied by the property owner.

“Guidelines” means the state of Washington’s adopted Shoreline Master Program Guidelines (Chapter [173-26](https://www.codepublishing.com/cgi-bin/wac.pl?cite=173-26) WAC, as amended).

**“H”**

“Habitat” See Section [18.08.215](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1808.html#18.08.215).

“Hard shoreline stabilization” means shore erosion control practices using hardened structures that armor and stabilize the shoreline landward of the structure from further erosion including, but not limited to, bulkheads, rip-rap, jetties, groins, breakwaters, and stone reinforcement.

“Height, building” means the distance measured from average grade level to the highest point of a structure; provided, that television antennas, chimneys, and similar appurtenances shall not be used in calculating height, except where such appurtenances obstruct the view of the shoreline of a substantial number of residences on areas adjoining such shorelines, or this chapter specifically requires that such appurtenances be included; provided further, that temporary construction equipment is excluded in this calculation.

“Historic site” means those sites that are eligible to be listed or are listed on the Washington Heritage Register, National Register of Historic Places, or any locally developed historic registry formally adopted by the responsible local government.

“Hotel” See Section [18.08.245](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1808.html#18.08.245).

**“I****”**

“Industrial use” means a use including manufacturing, processing, warehousing, storage, distribution, shipping and other related uses.

“Inns, lodges and guest ranches” means establishments for housing and providing either organized entertainment (both active and passive) or recreational opportunities for stays, generally, several nights in duration. This type of facility either provides all recreational opportunities on-site or as part of an organized or duly licensed and/or permitted recreational activity on public or private lands in the vicinity of the inn, lodge or guest ranch.

“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.

**“L”**

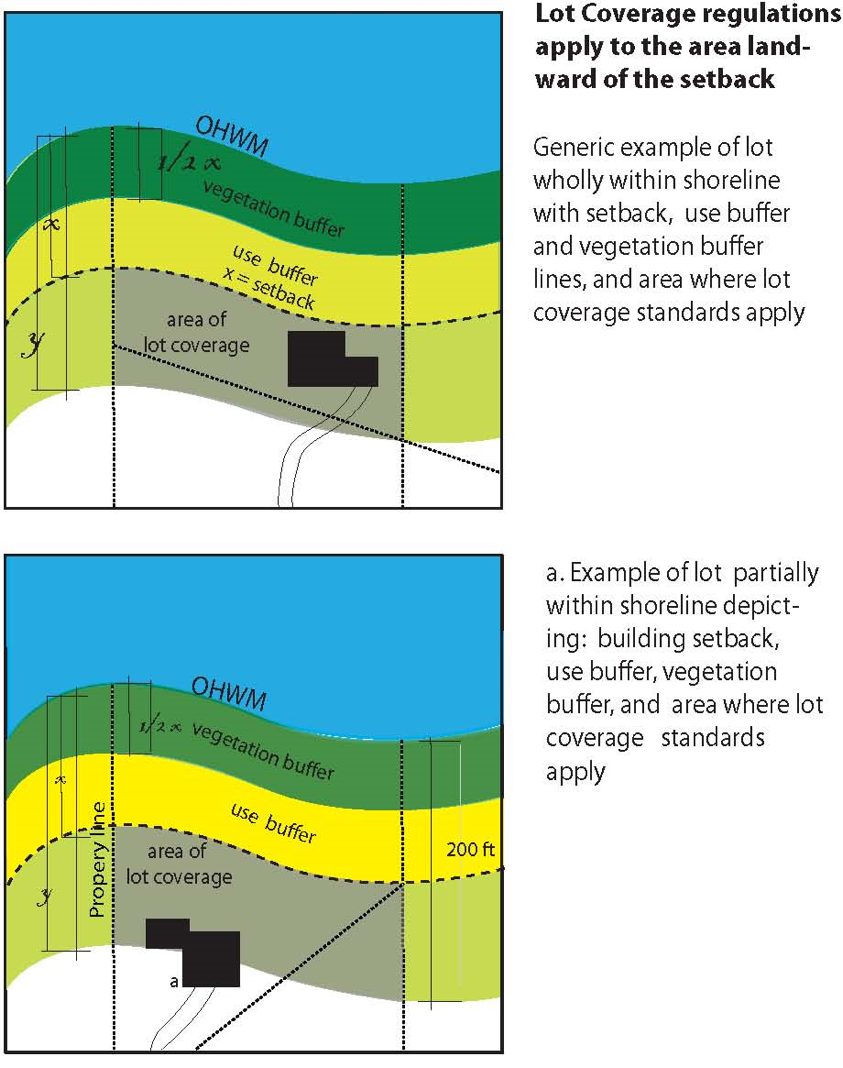
“Land use, high impact” or “high-intensity land use” means land use that includes the following uses or activities: commercial, urban, industrial, institutional, retail sales, residential (more than one unit/acre), high-intensity new agriculture (dairies, nurseries, greenhouses, raising and harvesting crops requiring annual tilling, raising and maintaining animals), high-intensity recreation (golf courses, ball fields), and hobby farms.

“Land use, low impact” means land use that includes the following uses or activities: forestry (cutting of trees only), low-intensity open space (hiking, bird-watching, preservation of natural resources, etc.), unpaved trails, utility corridor without a maintenance road and little or no vegetation management.

“Land use, medium impact” means land use that includes the following uses or activities: residential (one unit/acre or less), moderate-intensity open space (parks with biking, jogging, etc.), conversion to moderate-intensity agriculture (orchards, hay fields, etc.), paved trails, building of logging roads, utility corridor or right-of-way shared by several utilities and including access/maintenance road.

“Landfill” means a disposal site or part of a site at which waste is placed in or on land and which is not a landspreading disposal facility, or as otherwise defined by the city of Omak. The most stringent definition shall apply.

“Large woody debris” or “LWD” means all wood greater than four inches in diameter naturally occurring or artificially placed in streams, including branches, stumps, logs and logjams.

“Litter container” means a container provided on public or private property for temporary disposal of wastepaper, used beverage or food containers, and other small articles of rubbish, trash, or garbage by users of the site. Every litter container shall be closed with a well-fitting lid or designed to reasonably prevent its contents from becoming litter.

“Local government” means any county, incorporated city or town or tribal corporation which contains within its boundaries any lands or waters subject to the Shoreline Management Act.

“Lot coverage, shoreline” means that portion of a lot which, when viewed directly from above, would be covered by building(s) and/or structure(s) and/or impervious surfaces. The portion of the lot covered by the roof projection or eaves beyond the wall of the building(s) and/or structure(s) is not included as lot coverage in shoreline areas.

“Lot width” means the horizontal distance between the side lot lines measured at right angles to the line comprising the depth of the lot at a point midway between the front lot line and the rear lot line.

**“M”**

“Manufacturing, heavy” means industrial enterprises and activities which possess potential nuisance or hazard components or place exceptional demands upon public facilities and services. Such facilities generally involve manufacturing, assembly, fabrication and processing, bulk handling, storage, warehousing, and heavy trucking activity and normally require sites of larger size to accommodate these uses.

“Manufacturing, light” means a manufacturing use in which goods are produced without using heavy machinery such as machine loaders, foundry machinery, metal, presses, etc., and without chemically processing materials. Light manufacturing activities include but are not limited to the following activities:

(a) Manufacture, assembly, finishing, and/or packaging of small items from component parts. Examples include but are not limited to pottery, clothing, assembly of clocks, electrical appliances, or medical equipment.

(b) Production of items made from materials derived from plants or animals, including but not limited to leather, pre-milled wood, paper, wool or cork; or from textiles, semi-precious or precious metals or stones, or plastics.

(c) Production or bottling of beverages for human consumption, including but not limited to beer, wine and soft drinks.

“Manure lagoon” means a waste treatment impoundment, in which manure is mixed with sufficient water to provide a high degree of dilution for the primary purpose of reducing pollution potential through biological activity.

“May” means an action is acceptable, provided it conforms to the provisions of this chapter.

“Mineral prospecting” means to excavate, process, or classify aggregate using hand-held mineral prospecting tools and mineral prospecting equipment.

“Mineral Resource Lands” See Section [18.20.210](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1820.html#18.20.210).

“Mining” means the act of extracting from the earth minerals and/or ores via open pit, shaft, leaching, hydraulic, or other methods, except dredging and sand and gravel. Note that mining activities are subject to zoning regulation and approval processes; however, prospecting and exploration activities that are conducted with minimal disturbance of the subject property are not considered mining and are not restricted by zoning. Surface mining operations are also regulated by the Department of Natural Resources.

“Mitigation” See Section [18.20.210](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1820.html#18.20.210).

“Mitigation plan” means a written report or authorization (by a state or federal agency) prepared by a qualified professional identifying environmental goals and objectives of the compensation proposed and including:

(a) A description of the anticipated impacts to the critical areas and the mitigating actions proposed and the purposes of the mitigation measures, including the site selection criteria; identification of compensation goals; identification of resource functions; and dates for beginning and completion of site mitigation construction activities. The goals and objectives shall be related to the functions and values of the impacted critical area;

(b) A review of the most current, accurate, and complete scientific and technical information supporting the proposed mitigation and a description of the report author’s experience to date in restoring or creating the type of critical area proposed; and

(c) An analysis of the likelihood of success of the compensation project.

(d) The mitigation plan shall include measurable specific criteria for evaluating whether or not the goals and objectives of the mitigation project have been successfully attained and whether or not the requirements of this title have been met.

(e) The mitigation plan shall include written specifications and descriptions of the mitigation proposed, such as: the proposed construction sequence, timing, and duration; grading and excavation details; erosion and sediment control features; a planting plan specifying plant species, quantities, locations, size, spacing, and density; and measures to protect and maintain plants until established. These written specifications shall be accompanied by detailed site diagrams, scaled cross-sectional drawings, topographic maps showing slope percentage and final grade elevations, and any other drawings appropriate to show construction techniques or anticipated final outcome.

“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 must include a water-dependent use(s) and provide a significant public benefit with respect to the Shoreline Management Act’s objectives such as providing public access and ecological restoration, except as provided for in WAC [173-26-241](https://www.codepublishing.com/cgi-bin/wac.pl?cite=173-26-241)(3)(d).

“Monitoring” means evaluating the impacts of development on the environment (which may include biology, geology, hydrology, hydraulics, and other factors related to safety and shoreline ecological function) and determining how well any required mitigation measures are functioning through the monitoring period. Monitoring may also include collection and analysis of data by various methods for the purpose of understanding and documenting changes in natural ecosystems and features; and does also include gathering baseline data.

“Motel” See Section [18.08.315](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1808.html#18.08.315).

“Multifamily dwelling (residence)” means a single building, or portion thereof, designed for or occupied by three or more families living independently of each other in separate dwelling units on one lot of record and, for the purpose of this code, includes triplexes, fourplexes, apartment buildings, and residential condominiums.

“Municipal uses” means those uses and facilities in support of local government functions and services. For the purposes of this chapter, recreational uses and utility facilities are excluded.

“Must” means an action is required.

**“N”**

“Natural resource lands” means lands designated as agricultural lands, forest lands, or mineral resource lands, as required by the Growth Management Act, RCW [36.70A.170](https://www.codepublishing.com/cgi-bin/rcw.pl?cite=36.70A.170).

“Nonconforming structure, shoreline (legal)” means an existing structure built in conformance with the requirements in place at the time of construction or prior to the effective date of the adoption of this chapter that could not be built under the terms of this chapter or any amendment thereto.

“Nonconforming use” means an existing use allowed in conformance with the requirements in place at the time of initiation or prior to the effective date of the adoption of this chapter that could not be built under the terms of this chapter or any amendment thereto.

“Nonexempt Single-Family Residence” See “Residential development.”

“Nonstructural shoreline stabilization” means areas and activities including building setbacks, groundwater management, and planning and regulatory measures to avoid the need for structural stabilization, vegetation stabilization and bioengineered stabilization.

“Non-water-oriented use” means a use that is not a water-dependent, water-related, or water-enjoyment use.

“Normal maintenance” means those usual acts to prevent a decline, lapse, or cessation from a lawfully established condition.

“Normal protective bulkhead” means 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.

“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.

**“O”**

“Official map of shorelines” means all maps adopted as part of the shoreline section of the city of Omak comprehensive plan and this chapter delineating the geographic boundaries of all designated water bodies in Omak coming under the jurisdiction of the Shoreline Management Act of 1971.

“OFM” means the Office of Financial Management of the State of Washington.

“Open Space” See Section [18.08.343](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1808.html#18.08.343).

“Ordinary high water mark” means on all lakes, streams, and tidal water, that mark that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation as that condition exists on June 1, 1971, as it may naturally change thereafter, or as it may change thereafter in accordance with permits issued by a local government or the department; provided, that in any area where the ordinary high water mark cannot be found, the ordinary high water mark adjoining fresh water shall be the line of mean high water.

“Over-water structures” means any structure located waterward of the OHWM. Common examples include, but are not limited to, docks, piers and bridges.

**“P”**

“Permit” See Section [18.08.371](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1808.html#18.08.371).

“Person” means an individual, partnership, corporation, association, organization, cooperative, public or municipal corporation, or agency of the state or local governmental unit however designated.

“Placer mining” means the mining (by panning or dredging) of alluvial (waterborne) or glacial deposits of precious metals or minerals, usually in stream beds or valleys adjacent to uplands rich in these minerals.

“Primary utilities” means transmission, collection, production, or treatment facilities that are generally regional or areawide in scope and provide the primary service to a large area and may or may not be connected directly to the uses along the shoreline. Utilities include primary transmission facilities related to a hydropower and communications, and distribution or collection systems for water, sewer mains, gas and oil pipelines, and wastewater and water treatment plants.

“Priority Habitat” See Section [18.20.210](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1820.html#18.20.210).

“Priority species” means a species requiring protective measures and/or management guidelines to ensure its persistence at genetically viable population levels and designated as a priority species by the Washington Department of Fish and Wildlife.

“Provisions” means policies, regulations, standards, guideline criteria or shoreline designations.

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

“Public trust doctrine” means a legal principle derived from English common law. The essence of the doctrine is that the waters of the state are a public resource owned by and available to all citizens equally for the purposes of navigation, conducting commerce, fishing, recreation and similar uses, and that this trust is not invalidated by private ownership of the underlying land. The doctrine limits public and private use of tidelands and other shorelands to protect the public’s right to use the waters of the state.

**“Q”**

“Qualified Professional” See Section [18.20.210](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1820.html#18.20.210).

**“R”**

“Recreation, low-intensity” means recreation that does not require developed facilities other than unpaved trails and can be accommodated without change to the area or resource other than development of trails and placement of litter containers and directional and interpretive signs. Examples are hiking, shore fishing, and bicycling.

“Recreational development” means the modification of the natural or existing environment to accommodate recreation. This includes clearing land, earth modifications, structures and other facilities such as parks, camps, camping clubs, launch ramps, golf courses, viewpoints, trails, public access facilities, public parks and athletic fields, hunting blinds, wildlife enhancement (wildlife ponds are considered excavation), and other low-intensity use outdoor recreation areas.

“Recreational uses” means uses which offer activities, pastimes, and experiences that allow for the refreshment of mind and body. Examples include, but are not limited to, parks, camps, camping clubs, launch ramps, golf courses, viewpoints, trails, public access facilities, public parks and athletic fields, hunting blinds, and other low-intensity use outdoor recreation areas. Recreational uses that do not require a shoreline location, or are not related to the water, nor provide significant public access are considered non-water-oriented. For example, a recreation use solely offering indoor activities would be considered non-water-oriented.

“Residential development” means one or more buildings, structures or portions thereof that are designed and used as a place for human habitation. Included are single, duplex or multifamily dwellings, apartment/condominium buildings, mobile homes, short and long divisions of land and other structures that serve to house people:

(a) Exempt single-family residential: construction on shorelands by an owner, lessee, or contract purchaser of a single-family residence for his own use or the use of his family.

(b) Nonexempt single-family dwellings (e.g., seasonal or year-round rentals), development of a single-family unit not lived in by owner or his/her own family.

(c) Multifamily residential: can include duplex, three or more residential units, apartments, townhomes, and condominiums.

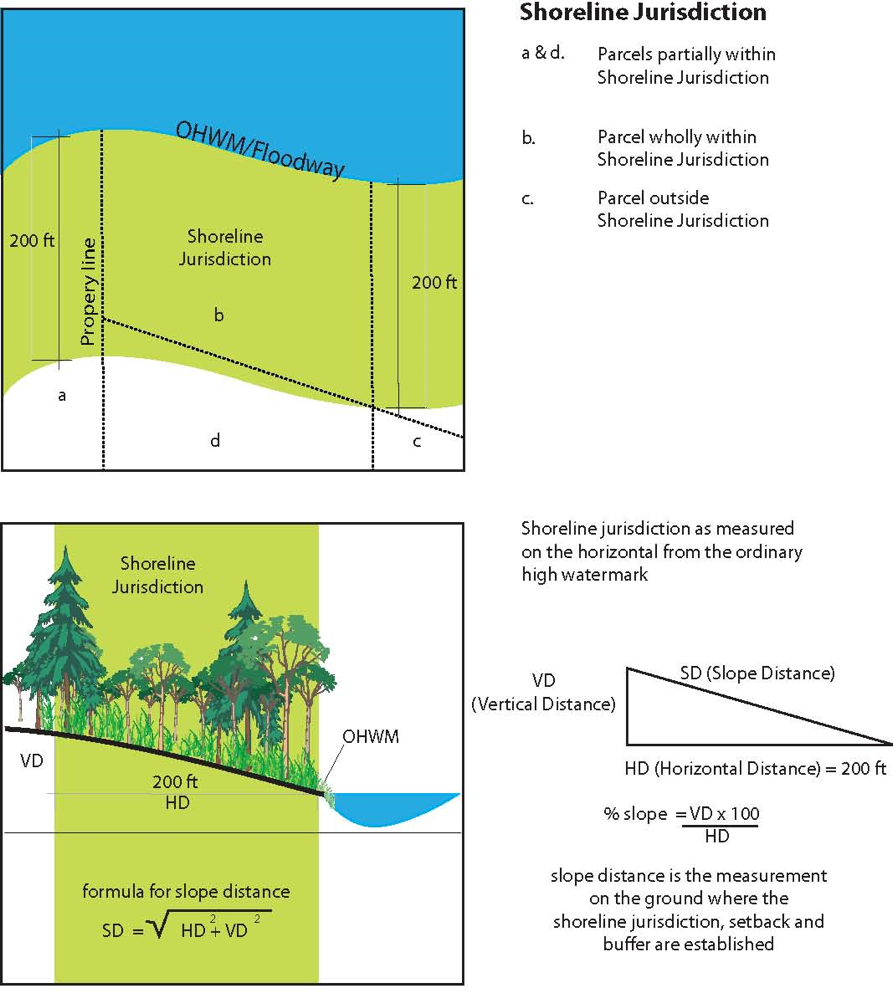
“Responsible official” means the duly elected mayor or city administrator of the city of Omak or their designee.

“Restore, Restoration or Ecological Restoration” See Section [18.20.210](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1820.html#18.20.210).

“Riparian Area” See Section [18.20.210](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1820.html#18.20.210).

“Riprap” means broken stone or other hardening material placed along the shoreline of a lake, river, or stream to prevent erosion or provide stability.

**“S”**

“Sanitary landfill” means a disposal facility or part of a facility at which solid waste is permanently placed in or on land and which is not a landspreading disposal facility.

“Seasonal” means a temporary use, the duration of which is related to an identifiable climatic, cultural, or recreational period. (i.e., summer, winter, fall, spring, Christmas, ski season).

“Shoreline Ecological Function” See “Ecological function.”

“Shoreline frontage” means the land measured in linear feet along the OHWM of a lake, river, or stream subject to this chapter.

“Shoreline jurisdiction” or “shoreline area” means that area lying within two hundred feet on a horizontal plane from the OHWM of the Okanogan River.

“Shoreline master program” or “SMP” means the shoreline section of the land use element of the city of Omak comprehensive plan and this chapter and the use regulations together with maps, diagrams, charts, or other descriptive material and text, a statement of desired goals, and standards developed in accordance with the policies enunciated in Chapter [90.58](https://www.codepublishing.com/cgi-bin/rcw.pl?cite=90.58) RCW.

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

“Shoreline of tribal significance” means any shoreline area within the Colville Indian Reservation.

“Shoreline permit” means a shoreline substantial development permit, a shoreline conditional use, or a shoreline variance, or any combination thereof issued by Omak pursuant to Chapter [90.58](https://www.codepublishing.com/cgi-bin/rcw.pl?cite=90.58) RCW.

“Shoreline setback” means the required minimum distance between the ordinary high water mark and the outer-most vertical plane of any building, structure, device, fence, swimming pool, landscaped or graded area, or other improvement causing a disturbance to the natural landscape.

“Shorelines” means all of the water areas of the state, including reservoirs, and their associated shorelands, together with the lands underlying them; except:

(a) Shorelines of statewide significance;

(b) Shorelines on segments of streams upstream of a point where the mean annual flow is twenty cubic feet per second or less and the wetlands associated with such upstream segments; and,

(c) Shorelines on lakes less than twenty acres in size and wetlands associated with such small lakes.

“Shorelines of statewide significance” in Omak means:

(a) The Okanogan River; and

(b) Those wetlands associated with the river.

“Shorelines of the state” are the total of all “shorelines” and “shorelines of statewide significance” within the state.

“Short Subdivision” See Sections [17.08.150](https://www.codepublishing.com/WA/Omak/html/Omak17/Omak1708.html#17.08.150) and [17.08.155](https://www.codepublishing.com/WA/Omak/html/Omak17/Omak1708.html#17.08.155).

“Significant vegetation removal” means the removal or alteration of trees, shrubs, and/or ground cover by clearing, grading, cutting, burning, chemical means, or other activity that causes significant ecological impacts to functions provided by such vegetation. The removal of invasive or noxious weeds does not constitute significant vegetation removal. Tree pruning, not including tree topping, where it does not affect ecological functions, does not constitute significant vegetation removal.

“Soft shoreline stabilization” means shore erosion control and restoration practices using only plantings or organic materials to restore, protect or enhance the natural shoreline environment.

“Solid Waste” See Section [18.08.457](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1808.html#18.08.457).

“Special event” means any event (excluding those events allowed through the festival permitting process) that happens for more than three consecutive days per event and no more than twice a year.

“Special event camping” means any ten or more recreational vehicles, tents, or temporary structures designed for temporary habitation, or any combination thereof, limited to the duration of the special event (whether related to a special event or not) and one week before and one week after.

“Structural shoreline stabilization” means shore erosion control practices using hardened structures that armor and stabilize the shoreline landward of the structure from further erosion; examples include bulkheads, concrete walls, riprap, jetties, groins, breakwaters, stone reinforcement.

“Structure” See Section [18.08.478](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1808.html#18.08.478).

“Subdivision, Long” See Section [17.08.170](https://www.codepublishing.com/WA/Omak/html/Omak17/Omak1708.html#17.08.170).

“Substantial accessory use facilities” include but are not limited to rest rooms, recreation halls and gymnasiums, commercial services, access roads, and parking areas associated with recreational development.

“Substantial development” shall mean any development of which the total cost or fair market value exceeds eight thousand-five-hundred-four dollars ($8,504)[[1]](#footnote-1) or dollar value as amended by the State of Washington Office of Financial Management, or any development which materially interferes with the normal public use of the water or shorelines of the state.

“Substantially degrade” means cause significant ecological impact.

**“T”**

“Temporary” means having a specific, short-term duration. See “Seasonal.”

“Temporary sign” means a sign not intended to be permanently installed.

“Temporary use” means a use that is limited in scope, duration, and frequency.

**“U”**

“Upland,” when used as an adjective, means outside of the shoreline area.

“Uplands” means those lands outside of the shoreline area and not under shoreline jurisdiction.

“Urban growth area” means a boundary set in an attempt to control urban sprawl by encouraging the area inside the boundary to be used for higher density urban development and the area outside is used for lower density development.

“Use (development)” means the activity or purpose for which land or structures or combination of land and structures are designed, arranged, occupied, or maintained together with any associated site improvement. This definition includes the construction, erection, placement, movement or demolition of any structure or site improvement and any physical alteration to land itself including any grading, leveling, paving or excavation. “Use” also means any existing or proposed configuration of land, structures, and site improvements, and the use thereof.

**“V”**

“Variance, shoreline” means an adjustment in the application of the bulk, height and setback regulations of this chapter to a particular piece of property, in a situation where the property, because of special circumstances found to exist on the land, is deprived as a result of the imposition of the shoreline regulations of privileges commonly enjoyed by other properties in the same vicinity and shoreline designation. A variance shall be limited to only that adjustment necessary to remedy the disparity in privilege. A variance shall not be used to convey special privileges not enjoyed by other properties in the same vicinity and zone and subject to the same restrictions. Economic hardship is not grounds for a variance.

“Vegetation conservation” includes activities to prevent the loss of plant communities that contribute to the ecological functioning of shoreline areas. Vegetation conservation deals with the protection of existing diverse plant communities along the shorelines, aquatic weed control, and the restoration of altered shorelines by reestablishing natural plant communities as a dynamic system that stabilizes the land from the effects of erosion.

“Visual Public Access” See “Public access.”

**“W”**

“Water quality” means the physical characteristics of water within shoreline jurisdiction, including water quantity, hydrological, physical, chemical, aesthetic, recreation-related, and biological characteristics. Where used in this chapter, the term “water quantity” refers only to development and uses regulated under this chapter and affecting water quantity, such as impermeable surfaces and stormwater handling practices. Water quantity, for purposes of this chapter, does not mean the withdrawal of groundwater or diversion of surface water pursuant to RCW [90.03.250](https://www.codepublishing.com/cgi-bin/rcw.pl?cite=90.03.250) through [90.03.340](https://www.codepublishing.com/cgi-bin/rcw.pl?cite=90.03.340).

“Water-dependent use” means a use or 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 marinas, water intake systems and sewer outfalls.

“Water-enjoyment use” means a recreational or similar use facilitating public access to the shoreline as a primary character 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 character of use and which, through location, design and operation, assures the public’s ability to enjoy physical and aesthetic qualities of the shoreline. In order to qualify as a water-enjoyment use, the use must be open to the public and the shoreline-oriented space within the project must be devoted to the specific aspects of the use that foster enjoyment. Primary water-enjoyment uses may include, but are not limited to, parks, piers and other improvements facilitating public access to shorelines of the state; and general water-enjoyment uses may include but are not limited to restaurants, museums, aquariums, scientific/ecological reserves, resorts, and mixed-use commercial; provided, that such uses conform to the above water-enjoyment requirements and the provisions of this chapter.

“Water-oriented use” means any one or combination of water-dependent, water-related or water-enjoyment uses.

“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:

(a) The use has a functional requirement for a waterfront location such as the arrival or shipment of materials by water or the need for large quantities of water; or

(b) The use provides a necessary service supportive of the water-dependent uses and the proximity of the use to its customers makes its services less expensive and/or more convenient. Water-related uses may include fish hatcheries.

“Watershed restoration project” means a public or private project authorized by the sponsor of a watershed restoration plan that implements the plan or a part of the plan and consists of one or more of the following activities:

(a) A project that involves less than ten miles of stream reach, in which less than twenty-five cubic yards of sand, gravel, or soil is removed, imported, disturbed or discharged, and in which no existing vegetation is removed except as minimally necessary to facilitate additional plantings;

(b) A project for the restoration of an eroded or unstable stream bank that employs the principles of bioengineering, including limited use of rock as a stabilization only at the toe of the bank, and with primary emphasis on using native vegetation to control the erosive forces of flowing water; or

(c) A project primarily designed to improve fish and wildlife habitat, remove or reduce impediments to migration of fish, or enhance the fishery resource available for use by all of the citizens of the state; provided, that any structure, other than a bridge or culvert or in-stream habitat enhancement structure associated with the project, is less than two hundred square feet in floor area and is located above the ordinary high-water mark of the stream.

“Watershed restoration plan” means a plan, developed or sponsored by the Department of Fish and Wildlife, the Department of Ecology, the Department of Natural Resources, the Department of Transportation, a federally recognized Indian tribe acting within and pursuant to its authority, a city, a county, or a conservation district, that provides a general program and implementation measures or actions for the preservation, restoration, re-creation, or enhancement of the natural resources, character, and ecology of a stream, stream segment, drainage area, or watershed for which agency and public review has been conducted pursuant to Chapter [43.21C](https://www.codepublishing.com/cgi-bin/rcw.pl?cite=43.21C) RCW, the State Environmental Policy Act.

“Wetlands” See Section [18.20.210](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1820.html#18.20.210).

“Woody debris” means all wood naturally occurring or artificially placed in streams, including branches, stumps, logs and logjams.

Words used in the present tense shall include the future; the singular shall include the plural and the plural the singular; the word “shall” is mandatory and not permissive.

Definitions for terms requiring definitions not found herein shall be determined from the following sources, and if a conflict should arise between sources, such definition shall be established in the following priority:

(a) Chapter [90.58](https://www.codepublishing.com/cgi-bin/rcw.pl?cite=90.58) RCW and Chapters [173-26](https://www.codepublishing.com/cgi-bin/wac.pl?cite=173-26), [173-27](https://www.codepublishing.com/cgi-bin/wac.pl?cite=173-27), and [173-22](https://www.codepublishing.com/cgi-bin/wac.pl?cite=173-22) WAC.

(b) Black’s Law Dictionary by Henry Campbell Black, 3rd Edition, Publisher’s Editorial Staff, St. Paul, West Publishing Company 1933, and subsequent amendments thereto.

(c) Webster’s New Collegiate Dictionary, G. & C. Merriam Company, Springfield, Massachusetts, U.S.A., and subsequent amendments thereto. (Ord. 1859 § 1 (Exh. A) (part), 2018).

**18.21.050 Exemptions.**

(a) Application and Interpretation of Exemptions.

(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 requirements for a substantial development permit.

(2) An exemption from the substantial development permit process is not an exemption from compliance with the SMA or this chapter, nor from any other regulatory requirements. A development or use that is listed as a conditional use pursuant to 18.21.070 Table 3 herein or is an unlisted use must obtain a conditional use permit even though the development or use does not require a substantial development permit. 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.

(3) The burden of proof that a development or use is exempt from the permit process is on the applicant.

(4) 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.

(5) The city 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 chapter.

(b) 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  eight thousand five hundred four (8,504) dollars, if such development does not materially interfere with the normal public use of the water or shorelines of the state. 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](https://www.codepublishing.com/cgi-bin/rcw.pl?cite=90.58.030)(2)(d). 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. 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 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. 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](https://www.codepublishing.com/cgi-bin/rcw.pl?cite=90.58) RCW, these regulations, or the local master program, obtained. All emergency construction shall be consistent with the policies of Chapter [90.58](https://www.codepublishing.com/cgi-bin/rcw.pl?cite=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 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;

(6) Construction or modification of navigational aids such as channel markers and anchor buoys;

(7) 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](https://www.codepublishing.com/cgi-bin/rcw.pl?cite=90.58) RCW. 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. Construction authorized under this exemption shall be located landward of the ordinary high-water mark;

(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 groundwater 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 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](https://www.codepublishing.com/cgi-bin/rcw.pl?cite=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](https://www.codepublishing.com/cgi-bin/rcw.pl?cite=90.58.550);

(13) The process of removing or controlling aquatic noxious weeds, as defined in RCW [17.26.020](https://www.codepublishing.com/cgi-bin/rcw.pl?cite=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](https://www.codepublishing.com/cgi-bin/rcw.pl?cite=43.21C) RCW;

(14) Watershed restoration projects as defined herein. 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 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;

(15) 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](https://www.codepublishing.com/cgi-bin/rcw.pl?cite=77.55) RCW and

(C) The city has determined that the project is substantially consistent with the shoreline section of the comprehensive plan and this chapter. The city shall make such determination in a timely manner and provide it by letter to the project proponent;

(D) Fish habitat enhancement projects that conform to the provisions of RCW [77.55.181](https://www.codepublishing.com/cgi-bin/rcw.pl?cite=77.55.181) are determined to be consistent with local shoreline goals, policies and regulations, as follows:

(i) In order to receive the permit review and approval process created in this section, a fish habitat enhancement project must meet the criteria of subsections (b)(16)(D)(i)(a) and (b) of this section:

a. A fish habitat enhancement project must be a project to accomplish one or more of the following tasks:

1. Elimination of human-made fish passage barriers, including culvert repair and replacement;

2. Restoration of an eroded or unstable streambank employing the principles of bioengineering, including limited use of rock as a stabilization only at the toe of the bank, and with primary emphasis on using native vegetation to control the erosive forces of flowing water; or

3. Placement of woody debris or other in-stream structures that benefit naturally reproducing fish stocks;

b. The Department of Fish and Wildlife shall develop size or scale threshold tests to determine if projects accomplishing any of these tasks should be evaluated under the process created in this section or under other project review and approval processes. A project proposal shall not be reviewed under the process created in this section if the department determines that the scale of the project raises concerns regarding public health and safety; and

c. A fish habitat enhancement project must be approved in one of the following ways:

1. By the Department of Fish and Wildlife pursuant to Chapter 77.95 (Salmon Enhancement Program) or 77.100 (Volunteer Fish and Wildlife Enhancement Program) RCW;

2. By the sponsor of a watershed restoration plan as provided in Chapter [89.08](https://www.codepublishing.com/cgi-bin/rcw.pl?cite=89.08) RCW;

3. By the department as a Department of Fish and Wildlife-sponsored fish habitat enhancement or restoration project;

4. Through the review and approval process for the jobs for the environment program;

5. Through the review and approval process for conservation district-sponsored projects, where the project complies with design standards established by the conservation commission through interagency agreement with the United States Fish and Wildlife Service and the Natural Resource Conservation Service;

6. Through a formal grant program established by the legislature or the Department of Fish and Wildlife for fish habitat enhancement or restoration; and

7. Through other formal review and approval processes established by the legislature;

(E) Fish habitat enhancement projects meeting the criteria of subsections (b)(16)(D)(i)(a) and (b) of this section are expected to result in beneficial impacts to the environment. Decisions pertaining to fish habitat enhancement projects meeting the criteria of subsections (b)(16)(D)(i)(a) and (b) of this section and being reviewed and approved according to the provisions of this section are not subject to the requirements of RCW [43.21C.030](https://www.codepublishing.com/cgi-bin/rcw.pl?cite=43.21C.030)(2)(c).

(F) A hydraulic project approval permit is required for projects that meet the criteria of this subsection and are being reviewed and approved under this section. An applicant shall use a joint aquatic resource permit application form developed by the Office of Regulatory Assistance to apply for approval under this chapter. On the same day, the applicant shall provide copies of the completed application form to the Department of Fish and Wildlife and to the city. The city shall accept the application as notice of the proposed project. The Department of Fish and Wildlife shall provide a fifteen-day comment period during which it will receive comments regarding environmental impacts. Within forty-five days, the Department shall either issue a permit with or without conditions, deny approval, or make a determination that the review and approval process created by this section is not appropriate for the proposed project. The Department shall base this determination on identification during the comment period of adverse impacts that cannot be mitigated by the conditioning of a permit. If the Department determines that the review and approval process created by this section is not appropriate for the proposed project, the Department shall notify the applicant and the appropriate local governments of its determination. The applicant may reapply for approval of the project under other review and approval processes.

(i) Any person aggrieved by the approval, denial, conditioning, or modification of a permit under this section may formally appeal the decision to the Hydraulic Appeals Board pursuant to the provisions of this chapter.

(G) The city may not require permits or charge fees for fish habitat enhancement projects that meet the criteria of subsections (b)(16)(D)(i)(a) and (b) of this section and that are reviewed and approved according to the provisions of this section. (Ord. 1859 § 1 (Exh. A) (part), 2018).

(16) 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.

**18.21.052 Shoreline substantial development permits.**

(a) A shoreline substantial development permit shall be required for all development of shorelines, unless the proposal is specifically exempt per Section [18.21.050](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1821.html#18.21.050). Application requirements are contained in Chapter [19.05](https://www.codepublishing.com/WA/Omak/html/Omak19/Omak1905.html#19.05).

(b) In order to be approved, the decision maker must find that the proposal is consistent with the following criteria:

(1) All regulations of this chapter appropriate to the shoreline designation and the type of use or development proposed shall be met, except those bulk and dimensional standards that have been modified by approval of a shoreline variance under Section [18.21.056](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1821.html#18.21.056).

(2) All policies of the shoreline element of the comprehensive plan appropriate to the shoreline area designation and the type of use or development activity proposed shall be considered and substantial compliance demonstrated.

(3) For projects located on shorelines of statewide significance, the policies in the shoreline element related to such shorelines shall also be adhered to.

(c) The administrator may attach conditions to the approval of permits as necessary to assure consistency of the project with the Act and this chapter.

(d) Fees for shoreline substantial development permits shall be as set forth in the fee schedule adopted by the city council. (Ord. 1859 § 1 (Exh. A) (part), 2018).

**18.21.054 Shoreline Conditional use permits.**

(a) Uses which are specifically prohibited by this chapter may not be authorized as a conditional use.

(b) Uses specifically classified or set forth in this chapter as conditional uses shall be subject to review and condition by the administrator.

(c) Other uses which are not classified or set forth in this chapter 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 this chapter.

(d) Conditional Use Permit Review Criteria.

(1) The purpose of a conditional use permit is to provide a system within the master program which allows flexibility in the application of use regulations in a manner consistent with the policies of RCW [90.58.020](https://www.codepublishing.com/cgi-bin/rcw.pl?cite=90.58.020). In authorizing a conditional use, special conditions may be attached to the permit by the city of Omak or the Department of Ecology to prevent undesirable effects of the proposed use and/or to assure consistency of the project with the Act and the local master program.

(2) Uses which are classified or set forth in this chapter as conditional 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](https://www.codepublishing.com/cgi-bin/rcw.pl?cite=90.58.020) and the city shoreline master program;

(B) That the proposed use will not interfere with the normal public use of public shorelines;

(C) That the proposed use of the site and design of the project are compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and this chapter;

(D) That the proposed use will 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.

(e) 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](https://www.codepublishing.com/cgi-bin/rcw.pl?cite=90.58.020) and shall not produce substantial adverse effects to the shoreline environment.

(f) Fees for shoreline conditional use permits shall be as set forth in the fee schedule adopted by the city council. (Ord. 1859 § 1 (Exh. A) (part), 2018).

**18.21.056 Shoreline Variances.**

(a) The purpose of a variance is to grant relief to specific bulk or dimensional requirements set forth in this chapter and any associated standards appended to this chapter such as critical areas buffer requirements where there are extraordinary or unique circumstances relating to the property and/or surrounding properties such that the strict implementation of this chapter would impose unnecessary hardships on the applicant/proponent or thwart the policy set forth in RCW [90.58.020](https://www.codepublishing.com/cgi-bin/rcw.pl?cite=90.58.020). Use restrictions may not be varied.

(b) Variance permits should be granted in circumstances where denial of the permit would result in a thwarting of the policy enumerated in RCW [90.58.020](https://www.codepublishing.com/cgi-bin/rcw.pl?cite=90.58.020). In all instances, the applicant must demonstrate that extraordinary circumstances exist and the public interest will suffer no substantial detrimental effect.

(c) Variance permits for development and/or uses that will be located landward of the ordinary high water mark (OHWM), as defined in RCW [90.58.030](https://www.codepublishing.com/cgi-bin/rcw.pl?cite=90.58.030)(2)(c), and/or landward of any wetland as defined in RCW [90.58.030](https://www.codepublishing.com/cgi-bin/rcw.pl?cite=90.58.030)(2)(h), may be authorized provided the applicant can demonstrate all of the following:

(1) That the strict application of the bulk, dimensional or performance standards set forth in this chapter precludes, or significantly interferes with, reasonable use of the property;

(2) That the hardship described in subsection (c)(1) of this section is specifically related to the property, and is the result of unique conditions such as irregular lot shape, size, or natural features and the application of the master program, and not, for example, from deed restrictions or from the applicant’s own actions;

(3) 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, shoreline element and this chapter and will not cause adverse impacts to the shoreline environment;

(4) That the variance will not constitute a grant of special privilege not enjoyed by the other properties in the area;

(5) That the variance requested is the minimum necessary to afford relief; and

(6) That the public interest will suffer no substantial detrimental effect.

(d) Variance permits for development and/or uses that will be located waterward of the ordinary high water mark (OHWM), as defined in RCW [90.58.030](https://www.codepublishing.com/cgi-bin/rcw.pl?cite=90.58.030)(2)(c), or within any wetland as defined in RCW [90.58.030](https://www.codepublishing.com/cgi-bin/rcw.pl?cite=90.58.030)(2)(h), may be authorized provided the applicant can demonstrate all of the following:

(1) That the strict application of the bulk, dimensional or performance standards set forth in this chapter precludes all reasonable use of the property;

(2) That the proposal is consistent with the criteria established under subsections (c)(1) through (6) of this section; and

(3) That the public rights of navigation and use of the shorelines will not be adversely affected.

(e) 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](https://www.codepublishing.com/cgi-bin/rcw.pl?cite=90.58.020) and shall not cause substantial adverse effects to the shoreline environment.

(f) Variances from the use regulations of this chapter are prohibited.

(g) In authorizing a variance, special conditions may be attached to the permit by the city of Omak or the Department of Ecology to prevent undesirable effects of the proposed use and/or to assure consistency of the project with the Shoreline Management Act and this chapter.

(h) On all variance applications, the plans shall clearly indicate where development could occur without approval of a variance, the physical features and circumstances on the property that provide a basis for the request, and the location of adjacent structures and uses.

(i) Fees for shoreline variances shall be as set forth in the fee schedule adopted by the city council. (Ord. 1859 § 1 (Exh. A) (part), 2018).

**18.21.060 General regulations.**

(a) General.

(1) Regulation of private property to implement any shoreline goals such as public access and protection of ecological functions must be consistent with all relevant constitutional and other legal limitations. These include, but are not limited to, property rights guaranteed by the United States Constitution and the Washington State Constitution, applicable federal and state case law, and state statutes.

(2) Rights reserved or otherwise held by Indian tribes pursuant to treaties, executive orders, or statutes, including the right to hunt, fish, gather, and the right to reserved water, shall not be impaired or limited by any action taken or authorized by the city under this chapter, and all rights shall be accommodated.

(3) All development or use activity which occurs within the areas coming under the jurisdiction of this chapter and the Shoreline Management Act (SMA), whether it requires a permit or not, must be consistent (in design, development and operation) with the intent of the SMA, conform to Chapter [90.58](https://www.codepublishing.com/cgi-bin/rcw.pl?cite=90.58) RCW (SMA), this chapter, adopted comprehensive plans, all applicable local regulations (including current zoning, subdivision, SEPA, critical areas, flood damage prevention or hazard reduction, health, sanitation, and building ordinances or codes), and any applicable state and federal regulations.

(4) Emergency construction may be permitted subject to WAC [173-27-040](https://www.codepublishing.com/cgi-bin/wac.pl?cite=173-27-040)(2)(d) (“Developments exempt from substantial development permit requirement”), when, as determined by Okanogan County emergency services or other formally designated local official in consultation with the shoreline administrator, that life and/or property is in danger. Emergency construction must be consistent with the policies of Chapter [90.58](https://www.codepublishing.com/cgi-bin/rcw.pl?cite=90.58) RCW and this chapter and with the regulations for shoreline modifications (subsections (b), (c) and (e) of this section and Sections [18.21.070](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1821.html#18.21.070)(f), (i) and (s)). Prior to emergency construction, the landowner must agree that, upon abatement of the emergency situation, any new structure shall be removed or any permit which would have been required, absent an emergency, pursuant to Chapter [90.58](https://www.codepublishing.com/cgi-bin/rcw.pl?cite=90.58) RCW, Chapter [173-27](https://www.codepublishing.com/cgi-bin/wac.pl?cite=173-27) WAC, or this chapter, shall be obtained. Mitigation pursuant to consultation with appropriate resource agencies shall be required for any permit issued after an emergency action. Regular flooding or other seasonal events that can be anticipated and may occur but that are not imminent are not an emergency.

(5) The provisions of this chapter do not require modification of or limitations on agricultural activities legally underway on agricultural lands as of the date of adoption of this chapter.

(6) All shoreline and shoreland uses and activities shall be located and designed to minimize or prevent the need for shoreline stabilization measures, flood protection works, filling and/or substantial site re-grading. The use of car bodies, scraps of building materials, tires, asphalt or concrete from street work, or any discarded pieces of equipment, appliances or other debris for the stabilization of shorelines is prohibited. This prohibition shall not preclude the use of recycled/repurposed materials where the applicant has demonstrated the use of such used materials is equivalent to similar new materials. See regulations in subsections (b), (c) and (e) of this section and Sections [18.21.070](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1821.html#18.21.070)(f), (i) and (s) for specific shoreline stabilization regulations and standards.

(7) The disposal or dumping of solid waste is strictly prohibited in all shoreline areas, except in litter containers, which shall be regularly emptied, with the contents collected for transportation to an approved sanitary landfill or transfer station.

(8) Dumping and/or burning of residential, commercial, industrial or municipal yard waste within the Zone 1 vegetation buffer is prohibited in all shoreline designations.

(9) Where no other feasible alternative exists or the alternative would result in unreasonable and disproportionate cost, bridges, utility lines, and other public utility and transportation structures may be allowed within the channel migration zone or floodway. Where such structures are allowed, mitigation shall address impacted functions and processes throughout the affected water body, including effects upstream and downstream of the project site, and shall be adequate to ensure no net loss of shoreline ecological function. Impacts to views and vistas must also be mitigated.

(10) No development designed for human habitation (e.g., houseboats, floating homes or cantilever type construction) is permitted on or over water.

(11) All shoreline development shall be conducted so as to minimize the effects on water quality from the addition of suspended solids, leaching of contaminants, or disturbances to habitat, and shall be consistent with this chapter as well as the requirements of applicable regulatory agencies, including but not limited to the Washington Departments of Ecology and of Fish and Wildlife and the U.S. Army Corps of Engineers.

(12) 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, shoreline 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 habitats and species.

(13) All uses and activities, including those exempt from the requirement to obtain a shoreline substantial development permit, shall adhere to all required setbacks and other development standards, and shall retain all required buffers, in accordance with the provisions of this chapter unless the use or activity is granted a variance.

(14) No new development shall be allowed in wetlands, shoreline vegetation conservation areas or their buffers without following mitigation sequencing as regulated by Section [19.05.037](https://www.codepublishing.com/WA/Omak/html/Omak19/Omak1905.html#19.05.037)(b).

(15) All clearing and grading activities shall be limited to the minimum necessary for the allowed or permitted development and shall comply with the provisions of 18.21.060 Tables 1 and 2 and the regulations in subsections (b) and (c) of this section.

(16) The city shall give preference to biological or mechanical means rather than herbicides or insecticides for weed and pest control in shoreline areas. When agricultural chemicals, fertilizers and other spray materials are used, provisions shall be made to minimize their entry into any body of water by following guidance found in Eastern Washington Stormwater Manual and seeking guidance provided by Washington State Department of Agriculture. Spraying over open water is prohibited except to control known risks to public health or as approved by the state for treatment of aquatic weeds. Herbicides and pesticides shall not be applied or allowed to directly enter water bodies or wetlands unless approved for such use by the appropriate agencies.

(17) All shoreline uses and activities shall comply with the Stormwater Management Manual for Eastern Washington (Washington Department of Ecology Publication 04-10-076, as amended). Specific requirements include, but are not limited to:

(A) Solid and liquid wastes, untreated effluents, oil, chemicals, and other hazardous materials shall not be allowed to enter any body of water or to be discharged onto land. Equipment for the transportation, storage, handling, or application of such materials shall be maintained in a safe and leak-proof condition. If there is evidence of leakage, the further use of such equipment shall be suspended until the deficiency has been satisfactorily corrected.

(B) All shoreline uses and activities in all shoreline designations, both during construction and for the life of the project, shall use stormwater best management practices to minimize any increase in surface water runoff and to control, treat, and release surface water runoff so that receiving water quality and shoreline ecological functions are not adversely affected. Such measures may include but are not limited to low impact development, dikes, catch basins, settling ponds, oil/water separators, grassy swales, interceptor drains, and landscaped buffers. All measures shall be adequately maintained to ensure proper functioning over time. The Stormwater Management Manual for Eastern Washington (Washington Department of Ecology Publication 04-10-076, as amended) shall provide the preferred guidance for surface water runoff best management practices.

(18) All shoreline areas to be disturbed by proposed individual uses and developments in all shoreline designations which cause adverse environmental impacts to occur to shoreline functions shall be restored in compliance with an approved mitigation management plan as found in Section [19.05.037](https://www.codepublishing.com/WA/Omak/html/Omak19/Omak1905.html#19.05.037)(f) and be subject to posting a reclamation bond. Vegetation from the recommended list (comprehensive plan Appendix B) or other species authorized by the city shall be used. Planting of nonnative plant species shall be prohibited in Zone 1 buffer areas. Plants that may compromise shoreline values shall be prohibited. The permit application submittal shall identify the size, location, and species of plants that will be used. The owner, manager, agency or developer maintaining the facility/parcel shall also be responsible for maintaining the vegetation until it is established. See subsection (e) of this section, Vegetation Conservation, for specific regulations and standards.

(19) Any vacation of right-of-way within the shoreline must comply with RCW [35.79.035](https://www.codepublishing.com/cgi-bin/rcw.pl?cite=35.79.035), “Limitations on vacations of streets abutting bodies of water—Procedure,” as it now exists and hereinafter amended.

(20) All shoreline modification activities not in support of an existing conforming use or other allowed use are prohibited, unless it can be demonstrated that such activities are necessary to protect primary structures and in the public interest or are for the maintenance, restoration or enhancement of shoreline ecological functions.

(21) Shoreline modifications shall result in no net loss of shoreline ecological functions. The number and extent of shoreline modifications shall be limited to the minimum required.

(22) Only shoreline modifications that are appropriate to the specific type of shoreline and environmental conditions shall be allowed. Preference shall be given to those types of shoreline modifications that have a lesser impact on ecological functions. For example, planting vegetation that will stabilize the shoreline is preferred rather than a concrete bulkhead.

(23) Ecological impacts of shoreline modifications shall be mitigated in conformance with the regulations contained herein.

(24) All shoreline modification activities must conform to this chapter.

(b) Clearing and Grading.

(1) Clearing and grading shall be addressed and identified in the permit or exemption application for the shoreline use or activity with which they are associated.

(2) Clearing or grading within required Zone 1 vegetation and Zone 2 use buffers and/or wetland buffers shall comply with the requirements of subsections (b) and (d) of this section and 18.21.060 Tables 1 and 2.

(3) No clearing or grading shall be initiated before the permit, exemption or variance approval is issued.

(4) Existing native riparian vegetation shall be retained whenever possible.

(5) Grading Permits.

(A) A grading permit issued by the city shall be required in the following situations:

(i) Where more than fifty cubic yards of material will be moved within a shoreline area for any reason;

(ii) Any clearing or grading within building setbacks or buffers; or

(iii) Where clearing and grading will modify a percentage of a site’s shoreline area landward of the building setback that is greater than the percentage as specified in 18.21.060 Table 1.

(B) An increase of up to twenty-five percent cleared and graded area may be permitted through the submittal of a critical areas report and mitigation plan that demonstrates the grading and clearing will not impact the shoreline ecological function or value.

| **18.21.060 Table 1 Shoreline Clearing and Grading Standards1** | |
| --- | --- |
| **Shoreline Designation** | **Percent of site located within shoreline jurisdiction that may be cleared and/or graded** |
| High-Intensity | 60% |
| Shoreline Residential | 50% |
| Urban Conservancy | 15% |
| Shoreline Recreation | 50% |
| Aquatic | N/A |

1    The standards in the table provide for the maximum percentage that may be cleared outside of vegetation and use buffers.

2    The percentages represent the maximum allowable with an increase of up to twenty-five percent permitted subject to critical areas report and mitigation management plan that considers present ecological function, cumulative impacts of the development and restoration opportunities, both on and off site; does not include clearing within the Zone 1 or Zone 2 buffers.

(6) In its review of clearing and grading proposals, the city shall require and utilize a clearing and grading plan that addresses species removal, replanting, irrigation, stormwater control (including runoff from structures and pervious surfaces), erosion and sedimentation control, and plans for protecting shoreline resources and results in no net loss of ecological function.

(7) Grading of a development site shall not alter natural drainage patterns in a manner that would increase the rate or quantity of surface runoff. Such grading activities shall require a grading plan compliant with stormwater best management practices.

(8) Immediately upon completion of the construction or maintenance activity, remaining cleared areas shall be restored to a naturalistic condition using compatible, self-sustaining vegetation in accordance with subsection (e) of this section, Vegetation Conservation.

(9) Clearing by hand-held equipment of invasive nonnative vegetation on the State Noxious Weed List is permitted in shoreline areas provided the disturbed area is promptly replanted with vegetation from the recommended list (comprehensive plan Appendix B) or if the site will fully revegetate with plants that will support healthy shoreline function on its own within three growing seasons.

(10) All shoreline development and activity shall use applicable BMPs from Eastern Washington Stormwater Management to minimize increases in surface water runoff that may result from clearing and grading activity.

(11) Soil stabilization associated with clearing and grading shall, whenever feasible, use bioengineering or other soft stabilization techniques.

(12) Any significant placement of materials from off of the site, or substantial creation or raising of dry upland, shall be considered filling and shall comply with the fill provisions of subsection (c) of this section, Fill.

(13) Clearing and grading that is not part of an allowed and permitted shoreline use shall require a conditional use permit except on properties physically separated from the shoreline by another developed property or developed public right-of-way.

(c) Fill.

(1) The city shall require and use the following information in its review of fill proposals and the applicant shall submit the following on their permit or exemption application:

(A) Proposed use of the fill area.

(B) Physical characteristics, such as chemical and biological composition if appropriate, depending on where it is to be placed or will be subject to inundation.

(C) Source of the fill material.

(D) Method of placement and compaction.

(E) Location of fill relative to existing drainage patterns and wetlands.

(F) Location of the fill perimeter relative to the ordinary high-water mark.

(G) Perimeter erosion control or stabilization measures.

(H) Type of surfacing and runoff control devices.

(2) Fill waterward of the ordinary high-water mark or in wetlands shall only be permitted as a conditional use in all shoreline designations, and only when necessary for one of the following purposes:

(A) Water-dependent use;

(B) Public access;

(C) Cleanup and disposal of contaminated sediments as part of an interagency 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 then only upon a demonstration that alternatives to fill are not feasible, mitigation action, environmental restoration, beach nourishment or enhancement project;

(F) Fill in wetlands must comply with the wetlands provisions of this chapter and shall result in no net loss of wetland area in functions including lost time when the wetland does not perform the function and is subject to mitigation in this chapter.

(3) Pier or pile support shall be utilized whenever feasible in preference to filling. Fills for approved road, bridge or navigational structure development in floodways or wetlands shall be permitted only if pile or pier supports are proven infeasible.

(4) Fills are prohibited in floodplains except where it can be clearly demonstrated that the geohydraulic characteristics and floodplain storage capacity will not be altered to cause increased flood hazard or other damage to life or property in excess of accepted standards provided by state and/or federal agencies.

(5) Fills are prohibited in floodways.

(6) Fills shall be permitted only when it is demonstrated that the proposed action will not:

(A) Result in significant damage to water quality or fish and wildlife habitat;

(B) Adversely affect natural drainage and circulation patterns or significantly reduce flood water capacities;

(C) Affect slope stability; or

(D) Otherwise, damage shoreline or aquatic resources.

(7) Placing fill in water bodies or wetlands to create usable land for shoreline development is prohibited and shall not be used to calculate parcel size proposed for subdivision.

(8) Fills shall be designed, constructed, and maintained to prevent, minimize, and control all material movement, erosion, and sedimentation from the affected area. Perimeters of permitted fill projects shall be designed and constructed with silt curtains, vegetated buffer areas, or other methods, and shall be adequately sloped to prevent erosion and sedimentation both during initial fill activities and afterwards. Such containment practices shall occur during the first growing season following completion of the fill and shall be maintained until self-sustaining. The design shall incorporate natural-appearing and self-sustaining control methods unless they can be demonstrated to be infeasible due to existing environmental conditions such as currents and weather.

(9) Fill materials shall be sand, gravel, rock, soil, or similar materials. Use of polluted dredge spoils, solid waste, and sanitary landfill materials is prohibited.

(10) Fills shall be designed to allow surface water penetration into groundwater supplies where such conditions existed prior to fill. Fills shall not be permitted in aquifer recharge areas if they would have the effect of preventing percolation of the water.

(11) The timing of fill construction shall be regulated to result in no net loss of shoreline ecological functions, including water quality and aquatic life.

(12) Fill on dry land shall not result in substantial changes to patterns of surface water drainage from the project site and onto adjacent properties; within shoreline areas; into aquatic areas; or onto steep slopes or other erosion hazard areas.

(d) Nonwetland Setbacks and Buffers (For Wetland Buffers See Section [18.21.080](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1821.html#18.21.080)(f)).

(1) Shoreline buffers[4](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1821.html" \l "261) in shoreline areas shall be comprised of a vegetation and use buffers as follows:

(A) Zone 1—Vegetation Buffer. The area one-half the distance of the setback (setbacks are listed in 18.21.060 Table 2) in all shoreline areas is designated as a vegetation buffer. The vegetation buffer serves as restrictive protection zone for all shoreline functions and values in general and fish and wildlife habitat specifically. In these areas, existing native vegetation or vegetation from the recommended list (comprehensive plan Appendix B) must be maintained and protected, except as provided for in public access—view corridor provisions (Section [18.21.070](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1821.html#18.21.070)(n)), general regulations (subsection (a) of this section), and clearing and grading (subsection (b) of this section).

(B) Zone 2—Use Buffer. The area between the Zone 1 vegetation buffer and setback line (setbacks are listed in 18.21.060 Table 2) in all shoreline areas is designated as Zone 2 use buffer. In these areas, removal of existing native vegetation shall be limited as provided in 18.21.060 Table 1 and uses limited to low-intensity recreation, agricultural, accessory residential uses and accessory water-dependent and accessory water-related commercial uses.

(2) Measurement.

(A) All setbacks and Zone 1 vegetation buffers[5](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1821.html" \l "262) shall be measured on a horizontal plane from the ordinary high-water mark (OHWM) unless otherwise noted in 18.21.060 Table 2.

(B) Zone 2 use buffers shall be measured on a horizontal plane from the landward side of the vegetation buffer.

(C) Use of Parallel Shoreline Designations. Parallel shoreline designations have been used throughout most of the community where the waterfront property is either owned by a public entity, lies on the waterward side of the levee or is comprised of an undevelopable steep slope. These areas are designated as urban conservancy with the intent of providing maximum protection to the immediate waterfront[6](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1821.html" \l "263). Where parallel shoreline designations have been applied in shoreline jurisdiction, the landward (higher-intensity) shoreline designation’s Zone 1 vegetation buffer shall be a minimum of fifteen feet on a horizontal plane from the OHWM or the landward edge of the urban conservancy designation, whichever is greater. The Zone 2 use buffer is measured on a horizontal plane from the landward edge of required Zone 1 vegetation buffer. Where the urban conservancy designation extends landward beyond the required Zone 2 use buffer, the landward edge of the urban conservancy designation shall be the extent of the Zone 2 use buffer.

(D) All nonwetland buffers shall be measured on a horizontal plane from the ordinary high-water mark.

(3) All buffers, lot frontage and lot coverage requirements shall be as set forth in 18.21.060 Table 2 except as follows or noted as exempt in subsection (d)(3)(E) of this section:

(A) Standard shoreline setbacks and/or Zone 1 or 2 buffers and/or lot coverage may be reduced by using procedures set forth in subsections (d)(3)(B) and (C) of this section. Lot coverage may be increased by using subsection (d)(3)(D) of this section, Administrative Lot Coverage Increase.

(B) Administrative Buffer Width Averaging. The total required shoreline buffer (Zone 1 plus Zone 2) width may be modified by the administrator for existing lots of record in place at the time of adoption of this program by averaging buffer widths based on a critical areas report and mitigation management plan prepared by a qualified professional and submitted by the applicant. A SEPA document may also be required depending on SEPA requirements found in Chapter [197-11](https://www.codepublishing.com/cgi-bin/wac.pl?cite=197-11)WAC and Chapter [19.05](https://www.codepublishing.com/WA/Omak/html/Omak19/Omak1905.html#19.05). Buffer width averaging shall only be allowed where the applicant demonstrates all of the following:

(i) The project site and adjoining area contain variations in sensitivity due to existing physical characteristics or the character of the buffer varies in slope, soils, or vegetation;

(ii) The width averaging shall not adversely affect the project site and adjoining area and buffer’s functional value;

(iii) The total area contained within the buffer after averaging is no less than that contained within the standard buffer prior to averaging unless a standard reduction is permitted through an administrative reduction as specified in administrative buffer reduction (subsection (d)(3)(C) of this section);

(iv) The minimum buffer width at its narrowest point shall not be less than seventy-five percent of the buffer width established under 18.21.060 Table 2;

(v) Sites which have had buffer widths reduced or modified by any prior action administered by the local government are not eligible for the provisions of this section. Sites which utilize this provision are not eligible for any future buffer width reductions, under any provisions of this program, except as administered as a Type III permit under Section [19.05.020](https://www.codepublishing.com/WA/Omak/html/Omak19/Omak1905.html#19.05.020).

(C) Administrative Buffer Reduction. The administrator shall have the authority to reduce buffer widths established in 18.21.060 Table 2 on a case-by-case basis; provided, that the general standards for avoidance and minimization in Section [19.05.037](https://www.codepublishing.com/WA/Omak/html/Omak19/Omak1905.html#19.05.037)(b) shall apply, based on a critical areas report, mitigation management plan and SEPA document prepared by a qualified professional and submitted by the applicant, and when the applicant demonstrates to the satisfaction of the administrator that all of the following criteria have been met:

(i) The buffer reduction shall not result in a net loss of functions of the habitat buffer.

(ii) The maximum buffer width reduction allowed shall not exceed twenty-five percent total required buffer established in 18.21.060 Table 2.

(iii) The buffer width reduction is contingent upon the submittal and approval of a critical areas report, mitigation management plan and SEPA document in conformance with Sections [19.05.030](https://www.codepublishing.com/WA/Omak/html/Omak19/Omak1905.html#19.05.030) and [19.05.037](https://www.codepublishing.com/WA/Omak/html/Omak19/Omak1905.html#19.05.037).

(iv) Sites which have had buffer widths reduced or modified by any prior action administered by the local government are not eligible for the provisions of this section. Sites which utilize this provision are not eligible for any future buffer width reductions, under any provisions of this program, except as administered under Section [18.21.056](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1821.html#18.21.056).

(v) In cases where there is less than twenty-five feet of existing riparian vegetation, the width of the buffers may be reduced, subject to the buffer width averaging (subsection (d)(3)(B) of this section) or administrative buffer reduction (subsection (d)(3)(C) of this section) standards established above. To support a claim that the buffer should be reduced, a planting plan shall be submitted in combination with a mitigation management plan (Section [19.05.037](https://www.codepublishing.com/WA/Omak/html/Omak19/Omak1905.html#19.05.037)) and SEPA document prepared by a qualified professional and submitted by the applicant. The administrator’s decision may be based on, but is not limited to, photographs of existing site conditions and opinions of qualified professionals. In no case shall the Zone 1 buffer be decreased to less than ten feet or the total slope of the bank, whichever is greater. There is an exception for the water-dependent portion of the development which is allowed to be located directly adjacent to the OHWM.

(D) Administrative Lot Coverage Increase. The administrator shall have the authority to increase the lot coverage allowance in 18.21.060 Table 2 on a case-by-case basis; provided, that the general standards for avoidance and minimization in Section [19.05.037](https://www.codepublishing.com/WA/Omak/html/Omak19/Omak1905.html#19.05.037) shall apply, and when the applicant demonstrates to the satisfaction of the administrator that all of the following criteria have been met:

(i) The increase in lot coverage will not increase surface water runoff, either onto other properties or toward the shoreline.

(ii) The applicant is implementing best management techniques for the parcel’s stormwater handling.

(iii) No net loss of ecological functions and values will occur.

(iv) Sites which have had lot coverage increased or modified by any prior action administered by the local government are not eligible for the provisions of this section. Sites which utilize this provision are not eligible for any future lot coverage increases, under any provisions of this program, except as administered under Section [18.21.056](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1821.html#18.21.056), Variances.

(E) Activities Exempt from Nonwetland Buffers and Setbacks. The following development activities are not subject to buffers and setbacks; provided, that they are constructed and maintained in a manner that minimizes adverse impacts on shoreline ecological functions, these exceptions do not eliminate the proponent’s need to apply mitigation sequencing or the need to provide mitigation for development’s impacts; and provided further, that they comply with all the applicable regulations herein:

(i) Water-Dependent Development. Those portions of approved water-dependent development that require a location directly adjacent to the ordinary high water mark of streams, rivers, lakes, ponds, associated wetlands, and/or within their associated buffers.

(ii) Modifications Necessary for Agency or Court Compliance. Modifications to existing development that are necessary to comply with environmental requirements of any state or federal agency or court, when otherwise consistent with this chapter; provided, that the administrator determines that:

a. The facility cannot meet the dimensional standard and accomplish the state, federal or court ordered modifications necessary to bring it into compliance;

b. The facility modifications are located, designed, and constructed to meet specified required modification standards necessary while complying with mitigation sequencing and minimizing damage to ecological functions and values of the critical area and/or shoreline; and

c. The modification follows necessary provisions for nonconforming development and uses.

(iii) Shared Moorage. Shared moorages shall not be subject to side yard setbacks when located on or adjacent to a property line shared in common by the project proponents and where appropriate easements or other legal instruments have been executed providing for ingress and egress to the facility.

(F) Nonwetland Buffer Exemption Criteria. As determined by the administrator, for development proposed on sites separated from the shoreline by intervening and lawfully created public roads, railroads, or an intervening parcel under separate ownership (e.g., city of Omak), the requirements of this code for a vegetation buffer may be waived. For the purposes of this section, the intervening lots/parcels, roads, or other substantial improvements shall be found to:

(i) Separate the subject upland property from the water body due to their width or depth;

(ii) Substantially prevent or impair delivery of most ecological functions from the subject upland property to the water body;

(iii) Be greater than twenty feet in width, measured horizontally and perpendicular from the OHWM of the shoreline; and

(iv) Be in separate ownership which has not been subdivided in the last five years and the applicant does not have a vested interest in the waterward intervening parcel; and

(v) Be developed; the buffer exemption shall not be allowed if the intervening parcel is not developed.

(e) Vegetation Conservation.

(1) Restoration or enhancement of any shoreline area that has been disturbed or degraded shall use plant materials from the recommended list (comprehensive plan Appendix B) or other species approved by agencies or organizations operating within the jurisdiction, such as the Departments of Ecology, County Extension, Fish and Wildlife or the Native Plant Society.

(2) Stabilization of erosion-prone surfaces along shorelines shall primarily use vegetative, nonstructural means and shall comply with the provisions of subsection (e) of this section and Section [18.21.070](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1821.html#18.21.070)(s). More intensive measures may be permitted providing the project will result in no net loss in shoreline function.

(3) Vegetation removal that would be likely to result in significant soil erosion or the need for structural shoreline stabilization measures is prohibited. This does not preclude the removal of noxious weeds, provided a mitigation management plan is submitted and approved.

(4) Weed abatement shall comply with all provisions of this chapter.

(5) Nondestructive pruning and trimming of vegetation for maintenance purposes shall be permitted in compliance with view corridor provisions of Section [18.21.070](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1821.html#18.21.070)(n).

(6) Permits issued for projects in ecologically degraded areas shall include a condition that appropriate shoreline vegetation shall be planted or enhanced to contribute to the restoration of ecological processes and functions.

(7) If weather does not permit immediate restoration of disturbed areas, replanting shall be completed during the next planting season, and the soil shall be protected until replanting is complete.

(8) If necessary, a temporary sterile cover crop (e.g., a sterile nonpersistent member of the grass family such sterile Triticale, barley, or oats) shall be planted to prevent erosion during the establishment period; said cover crop shall be maintained until the permanent vegetation is sufficiently established to prevent erosion.

(9) Replanted areas shall be maintained until desired vegetation is well established (a minimum of three years). In the case of transportation, utility, or other capital facility construction, the agency or developer constructing the facility shall also be responsible for maintaining the vegetation until it is established.

| **18.21.060 Table 2 Shoreline Development Standards**  All uses and activities must comply with all applicable standards for the shoreline designation where the use or activity will occur. All development standards are subject to modification based on a site-specific assessment, but in no case shall the standards be reduced greater than twenty-five percent of the standards stated below without the approval of a shoreline variance. | | | | | |
| --- | --- | --- | --- | --- | --- |
| **Standards** | **Aquatic** | **Shoreline Recreation** | **Urban Conservancy** | **Shoreline Residential** | **High-Intensity** |
| **Zone 1 + 2 Combined Vegetation and Use Buffer Width and Setback** | | | | | |
| Non-Water-Dependent or Oriented Uses and Activities | N/A | 80' | 100' | 50' | 30'1 |
| Water-Oriented Uses and Activities | N/A | 30' | 30' | 30' | 25' |
| Water-Dependent Uses and Activities2 | N/A | 0' | 0' | 0' | 0' |
| **Zone 1 Vegetative Buffer Width**3 | | | | | |
| Non-Water-Dependent or Oriented Uses and Activities | N/A | 40' | 50' | 25' | 15' |
| Water-Oriented Uses and Activities | N/A | 15' | 15' | 15' | 12.5' |
| Water-Dependent Uses and Activities | N/A | 0' | 0' | 0' | 0' |
| % of Vegetation Buffer That May Be Altered for View Corridor4 | N/A | 20% | 10% | 25% | 30% |
| **Zone 2 Use Buffer Width**5 | | | | | |
| Non-Water-Dependent or Oriented Uses and Activities | N/A | 40' | 50' | 25' | 15' |
| Water-Oriented Uses and Activities | N/A | 25' | 40' | 15' | 12.5' |
| Water-Dependent Uses and Activities | N/A | 0' | 0' | 0' | 0' |
| **Zone 2 Use Buffer Allowed Alterations** | | | | | |
| % of Use Buffer That May Be Altered in Total for Allowed Uses and View Corridors | N/A | 40% | 20% | 50% | 60% |
| **Dimensions/Lot Coverage Requirements** | | | | | |
| Minimum Lot Size (Acres)6 | N/A | 1 | 1 | 5,000 sq ft | 2,500 sq ft |
| Minimum Water Frontage7 | N/A | 100' | 100' | 50' | 50' |
| Maximum Lot Coverage | N/A | 30% | 40% | 45% | 60% |
| Side Yard Setbacks | N/A | 10' | 10' | 5' | 0'8 |
| **Maximum Structure Height**9 | | | | | |
| Non-Water-Oriented Uses and Activities | N/A | 35' | 35' | 35' | 35' |
| Water-Oriented Uses and Activities | N/A | 25' | 25' | 25' | 35' |
| Water-Dependent Uses and Activities | 10' | 20' | 20' | 20' | 35' |

1    Measured from the top of the bank.

2    The setback may be reduced to zero feet for those water-dependent uses (e.g., boat launches) that require location adjoining the water, but in all cases, such a setback shall be limited to the smallest area possible.

3    The Zone 1 vegetation buffer is fifty percent of the particular use setback and is measured on a horizontal plane from the OHWM.

4    Percent of shoreline that may be altered is the given percentage or thirty feet for every one hundred feet in shoreline frontage for view corridor, whichever is less. See Section [18.21.070](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1821.html#18.21.070)(n)(2), View Corridor Provisions, for more guidelines.

5    The area between the vegetation buffer and setback intended for low impact uses and activities subject to standards. Use buffer measured on a horizontal plane from the landward edge of the vegetation buffer.

6    Minimum lot size may be increased based on applicable comprehensive plan and zoning regulations, but in no case shall be reduced without the approval of a variance. In addition, minimum lot size only applies to lots or parcels created subsequent to the date of adoption of this chapter; lots existing at the time of adoption shall be considered existing conforming parcels.

7    Minimum water frontage (measured along OHWM) only applies to lots or parcels created subsequent to the date of adoption of this chapter; lots existing at the time of adoption shall be considered existing conforming parcels.

8    Zero lot lines may be allowed through submittal of a development plan as part of a permit process (such as a building permit, PD, long plat, binding site plan, etc.) as long as views of the shoreline from upland properties or rights-of-way are maintained and the cumulative side yard setbacks meet or exceed twenty feet.

9    Height limitations do not apply to bridges, transmission lines, water crossings and related appurtenances.

(Ord. 1859 § 1 (Exh. A) (part), 2018).

**18.21.070 Use and designation specific regulations.**

The following use and designation specific regulations are in addition to the general regulations contained in Section [18.21.060](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1821.html#18.21.060):

(a) Accessory Utilities.

(1) Sites disturbed for utility installation shall be stabilized during and immediately following construction to avoid adverse impacts from erosion.

(2) Sites disturbed for utility installation shall be replanted using native species from the recommended list (comprehensive plan Appendix B), with a diversity and type similar to or better than that which originally occurred on the site. Questions about appropriate diversity, plant type, and plant species shall be directed to agencies with expertise, such as the Departments of Ecology and Fish and Wildlife.

(3) Accessory utilities shall be placed landward of the permitted use setback requirements found in [18.21.060](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1821.html#18.21.060) Table 2. If feasible, utility lines shall be placed underground. Where lines must be placed aboveground, consideration shall be given to the maintenance of trees in the vicinity of the lines, and the utility line located to eliminate the need for topping or pruning trees.

(4) Existing rights-of-way and corridors shall be used whenever possible to accommodate the location of utilities. Except where no other feasible alternative exists, accessory utilities that require continued maintenance (i.e., electrical transmission lines that require removal of undergrowth) shall not be placed in Zone 1 or 2 buffers between OHWM and structure setback.

(5) Accessory utilities should not obstruct views or vistas that may alter the visual character of the shoreline environment and its associated water body. Measures to conceal or shield accessory utilities in the shoreline from the water or to protect important viewsheds or vistas from the shoreline may be required as conditions for building and development permits.

(6) Aesthetic measures such as material and color selections to mitigate visual impacts including, but not limited to, light pollution, glare, visual obstructions of views and vistas may be required by the administrator.

(7) Permanent stormwater management systems located in shoreline jurisdiction or serving property within the shoreline shall be designed using best management practices ensuring water quality treatment in compliance with the Stormwater Management Manual for Eastern Washington to prevent stormwater runoff from degrading or adding to the pollution of recipient waters or adjacent properties.

(8) Maintenance of storm drainage facilities on private property shall be the responsibility of the property owner(s). This responsibility and the provision for maintenance shall be clearly stated on any recorded subdivision, short plat, or binding site plan map, building permit, property conveyance documents, maintenance agreements and/or improvement plans.

(b) Agriculture.

(1) New agricultural activities on lands that did not have agricultural activities in place at the time of adoption of this chapter; conversion of agricultural lands or the development of nonagricultural activities on agricultural lands; and uses in support of agricultural activities are governed by the provisions of this chapter and subject to the following criteria:

(A) Nonagricultural land[7](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1821.html" \l "264) converted to an agricultural use shall preserve preexisting riparian habitat and will have a buffer strip of native vegetation no less than the Zone 1 vegetation buffer setback for the shoreline designation where it is located. Said buffer will be established and maintained along shorelines to protect shoreline ecological functions. Disturbance of ground in Zone 2 of the use buffer is subject to lot coverage standards (see [18.21.060](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1821.html#18.21.060) Table 2).

(B) Uses and activities shall be consistent with regulations specific to the shoreline designation and critical area (if applicable) in which the site is located, including regulations in [18.21.060](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1821.html#18.21.060) Tables 1 and 2, Sections [18.21.060](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1821.html#18.21.060)(a) and (e), 18.21.070 Table 3 and subsection (b) of this section.

(C) Nothing in this section limits or changes the terms of the current exception to the definition of substantial development. A substantial development permit shall be required for all agricultural development not specifically exempted by the provisions of RCW [90.58.030](https://www.codepublishing.com/cgi-bin/rcw.pl?cite=90.58.030)(3)(e), as it now exists or hereinafter amended.

(c) Aquaculture. Aquaculture is prohibited in all shoreline designations.

(d) Archaeological, Cultural, Educational, Historic and Scientific Resources. The following regulations apply to all shoreline uses and activities in all shoreline designations and on all sites within shoreline jurisdiction having archaeological, cultural, or historic resources that are recorded at the Washington Department of Archaeology and Historic Preservation (DAHP) and/or with local jurisdictions, including the city, the Confederated Tribes of Colville Reservation (CCT) and affected Indian tribes and bands; or that have been or may be inadvertently uncovered.

(1) Archaeological sites are subject to the National Historic Preservation Act, as amended ([16](http://www.law.cornell.edu/uscode/text/16) USC [470](http://www.law.cornell.edu/uscode/text/16/470)), Chapters [27.44](https://www.codepublishing.com/cgi-bin/rcw.pl?cite=27.44) (Indian Graves and Records) and [27.53](https://www.codepublishing.com/cgi-bin/rcw.pl?cite=27.53) RCW (Archaeological Sites and Resources), and Chapter [25-48](https://www.codepublishing.com/cgi-bin/wac.pl?cite=25-48) WAC (Archaeological Excavation and Removal Permit).

(2) The Okanogan River Valley has been identified by the DAHP and/or the CCT as having a high probability of containing significant archaeological and historic resources shall be considered the suspected location of historic, cultural, or archaeological resources.

(3) Known or Suspected Historic, Cultural, and Archaeological Sites.

(A) Notification of DAHP or CCT and, if required, preparation of an evaluation and a report meeting the minimum reporting standards of the DAHP or Colville (as appropriate). Such a report shall be prepared by a cultural resource management professional who meets the qualification standards promulgated by the National Park Service and published in [36](http://www.law.cornell.edu/cfr/text/36) CFR Part [61](http://www.law.cornell.edu/cfr/text/36/part-61) and shall be required before the start of any ground disturbance work in any area known to contain archaeological, cultural, or historic resources, regardless of whether a shoreline permit or exemption is required.

(B) Upon receipt of application for a shoreline permit or request for a statement of exemption for development on properties within two hundred feet of a site known to contain an historic, cultural or archaeological resource(s), the local government with jurisdiction shall require an evaluation and a report meeting the minimum reporting standards of the DAHP, Colville (as appropriate), prepared by a cultural resource management professional who meets the qualification standards promulgated by the National Park Service and published in [36](http://www.law.cornell.edu/cfr/text/36) CFR Part [61](http://www.law.cornell.edu/cfr/text/36/part-61); provided, that the provisions of this section may be waived if the administrator determines that the proposed development activities do not include any ground disturbing activities and will not impact a known historic, cultural or archaeological site.

(C) The fee for the services of the cultural resource management professional shall be paid by the applicant. The applicant shall submit a minimum of five copies of the site assessment (or electronic equivalent) to the administrator for distribution to the applicable parties for review.

(4) If the evaluation identifies the presence of significant historic, cultural, or archaeological resources, a cultural resource management plan (CRMP) shall be prepared by a cultural resource management professional who meets the qualification standards promulgated by the National Park Service and published in [36](http://www.law.cornell.edu/cfr/text/36) CFR Part [61](http://www.law.cornell.edu/cfr/text/36/part-61). The fee for the services of the cultural resource management professional shall be paid by the applicant. In the preparation of such plans, the cultural resource management professional shall solicit comments from the DAHP, the History and Archeology Department of the CCT, and any Indian or First Nations tribes or bands known to be affected. Comments received shall be incorporated into the conclusions and recommended conditions of the CRMP to the maximum extent practicable. The applicant shall submit a minimum of five copies (and an electronic equivalent) of the CRMP to the administrator for distribution to the applicable parties for review.

(5) The recommendations and conclusions of the CRMP shall be used to assist the administrator in making final administrative decisions concerning the presence and extent of historic, cultural, and archaeological resources and appropriate mitigating measures. The administrator shall consult with the DAHP, the History and Archeology Department of the CCT, and any affected Indian or First Nations tribes or bands prior to approval of the CRMP.

(6) The administrator may reject or request revision of the conclusions reached in a CRMP when the administrator can demonstrate that the assessment is inaccurate or does not fully address the historic, cultural, and archaeological resource management concerns involved.

(7) Upon receipt of a complete development permit application in an area of known or suspected historic, cultural, or archaeological resources, the city shall notify and request a recommendation from appropriate agencies, including the DAHP, the CCT, and any Indian or First Nations tribes or bands known to be affected. Recommendations of such agencies and other affected persons shall be duly considered and adhered to whenever feasible. Notification shall include the following information:

(A) The date of application, the date of notice of completion of the application, and the date of the notification;

(B) A site map including the street address, tax parcel number, township, range, and section of the proposed project area;

(C) A description of the proposed project action and a list of the project permits included in the application, and, if applicable, a list of any studies requested by the local government with jurisdiction;

(D) The identification of other permits not included in the application, to the extent known by the local government with jurisdiction;

(E) The identification of existing environmental documents that evaluate the proposed project and, if not otherwise stated on the document providing notice of application, the location where the application and any studies can be reviewed;

(F) Any other information determined appropriate by the local government with jurisdiction;

(G) A statement indicating those development regulations that will be used for project mitigation or a determination of consistency, if they have been identified at the time of notice;

(H) A statement of the limits of the comment period and the right of each agency to comment on the application consistent with the requirements of Chapter [19.05](https://www.codepublishing.com/WA/Omak/html/Omak19/Omak1905.html#19.05), request a copy of the decision once made, and appeal a decision when allowed by law;

(I) In granting shoreline permits or statements of exemption for development on properties within five hundred feet of a site known to contain an historic, cultural or archaeological resource(s), the local government with jurisdiction may attach conditions to provide sufficient time and/or conditions for consultation with the DAHP, the CCT, and any affected Indian or First Nations tribes or bands, and to ensure that historic, cultural, and archaeological resources are properly protected, or for appropriate agencies to contact property owners regarding purchase or other long-term arrangements. Provision for the protection and preservation of historic, cultural, and archaeological sites shall be incorporated to the maximum extent practicable. Permit or other requirements administered by the DAHP pursuant to Chapters [27.44](https://www.codepublishing.com/cgi-bin/rcw.pl?cite=27.44) and [27.53](https://www.codepublishing.com/cgi-bin/rcw.pl?cite=27.53) RCW may apply in addition to the provisions of this chapter.

(8) Inadvertent Discovery.

(A) All shoreline permits shall contain provisions requiring that, whenever historic, cultural or archaeological sites or artifacts are discovered in the process of development in shoreline areas, all work on that portion of the development site shall be stopped immediately, the site secured, and the find reported as soon as possible to the DAHP and administrator.

(B) Upon notification of such find, the property owner shall notify the DAHP, the History and Archaeology Department of the CCT, and any Indian or First Nations tribes or bands known to be affected. Notification to agencies shall include the information specified for notification under subsection (d)(3) of this section (Known or Suspected Historic, Cultural, and Archaeological Sites).

(C) Upon notification of such find, the administrator shall conduct a site investigation to determine the significance of the discovery. Based upon the findings of the site investigation and consultation with the parties listed above, the administrator may require that an immediate evaluation be conducted or may allow stopped work to resume. The evaluation shall meet the minimum reporting standards of the DAHP and shall be conducted by a cultural resource management professional who meets the qualification standards promulgated by the National Park Service and published in [36](http://www.law.cornell.edu/cfr/text/36) CFR Part [61](http://www.law.cornell.edu/cfr/text/36/part-61) to determine the presence of significant historic, cultural, or archaeological resources. The fee for the services of the cultural resource management professional shall be paid by the landowner or responsible party. The applicant shall submit a minimum of five copies of the evaluation and accompanying report to the administrator for distribution to the applicable parties for review.

(D) If an evaluation is required, the area of inadvertent discovery shall be stabilized, contained or otherwise protected until the evaluation is completed. The evaluation shall be distributed to the DAHP, the History and Archaeology Department of the CCT, and any Indian or First Nations tribes or bands known to be affected for a thirty-day review period or, in the case of inadvertent discovery of human remains, a thirty-day review period to determine the significance of the discovery. If the above-listed agencies or governments have determined that the site is not significant, or if the above-listed agencies or governments have failed to respond within the applicable review period following receipt of the site assessment, stopped work may resume.

(E) Upon receipt of a positive determination of a site’s significance, the administrator may invoke the provisions for known sites, above, for a cultural resource management plan.

(9) The requirements of this section shall not apply where an applicant has obtained an approved archaeological excavation and removal permit from the DAHP pursuant to WAC [25-48-060](https://www.codepublishing.com/cgi-bin/wac.pl?cite=25-48-060); provided, that the applicant must adhere to the requirements of said approved permit.

(e) Boating Facilities.

(1) When establishing regulation of motorized versus nonmotorized uses, whether by Okanogan County, the Colville Confederated Tribes or the city of Omak, hours and other limitations on boating use of waters in and near Omak, the regulations shall be based, in part, on protection of shoreline functions and values.

(2) Mitigation for any adverse development impacts of boating facilities shall be required. On-site mitigation shall be preferred; however, in cases in which meaningful on-site mitigation is not feasible, off-site mitigation may be allowed. In such instances a mitigation management plan shall be required, and shall specify a suitable mitigation site. Adverse development impacts to adjacent properties shall not be allowed.

(3) New boating facilities shall be consistent with the applicable local comprehensive and recreation plans. When new sites are considered, sufficient evidence must be presented to show that existing boat launches and river access sites are inadequate and cannot be expanded to meet regional demand.

(4) For commercial and public boating facilities, the perimeter of parking and storage areas shall be landscaped to provide a visual and noise buffer between adjoining dissimilar uses or scenic areas, using primarily native, self-sustaining vegetation from the recommended list (comprehensive plan Shorelines Appendix B). Landscaping along the waterward side shall also be required. The permit application submittal shall identify the size, location, and species of plants that will be used.

(5) Boating facilities shall be located where no or minimal shoreline stabilization will be necessary and where water depths are adequate to eliminate or minimize the need for offshore or foreshore channel construction dredging, maintenance dredging, spoil disposal, filling, beach enhancement, and other maintenance activities.

(6) When plastics and other nonbiodegradable materials are used in boating facilities, precautions shall be taken to ensure their containment.

(7) Boating facility design shall minimize interference with geohydraulic processes and disruption of existing shore forms.

(8) Parking facilities serving a boating facility shall be located outside shoreline jurisdiction, or, if that is not feasible, shall be located landward of the Zone 2 use buffer ([18.21.060](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1821.html#18.21.060) Table 2).

(9) Boating facilities including navigation aids shall be positioned so as not to be a hazard to navigation.

(10) Boating facilities shall provide public access in accordance with subsection (n) of this section, Public Access.

(11) Boating facilities shall be located and designed so their structures and operations will be aesthetically compatible with the area visually affected and will not unreasonably impair shoreline views. Use of natural nonreflective materials is encouraged.

(12) The city shall request technical assistance from agencies with jurisdiction and/or knowledge, including but not limited to the Washington Departments of Ecology, Fish and Wildlife, and Health, U.S. Army Corps of Engineers and Colville Tribes; and shall make available to those agencies the shoreline inventory and characterization (comprehensive plan Shorelines Appendix A) and maps developed as part of the shoreline chapter in the land use element of the Omak comprehensive plan. The city shall consider the comments received from those agencies before making a decision on whether or not to approve the permit, and any conditions or modifications required.

(13) Overwater structures shall prohibited.

(14)  New pier or dock construction shall be prohibited.

(A) Float-Specific Regulations.

(i) No more than one float shall be permitted for each shoreline lot.

(ii) Floats shall not significantly interfere with navigation or with public use of shorelines. No portion of the float shall be placed more than eighty feet from the OHWM by the point at which the depth of the water exceeds seven feet during high water. Floats may be prohibited where necessary to protect navigation or public use of the water body.

(iii) No float shall have more than one hundred square feet of surface area.

(iv) All multifamily residences proposing to provide floats shall be limited to a single shared float; provided, that the administrator may authorize more than one shared float if, based on conditions specific to the site, a single float would be inappropriate for reasons of safety, security, or impact to the shoreline environment, and if the additional float or floats will have no net impact on shoreline ecological resources.

(f) Bulkheads.

(1) All bulkheads are also subject to the provisions of Sections [18.21.060](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1821.html#18.21.060), subsections (f) and (s) of this section, and Section [18.21.080](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1821.html#18.21.080).

(2) New or enlarged bulkheads for an existing principal structure or use, including residences and accessory structures, shall not be allowed unless there is conclusive evidence, documented by a geotechnical report prepared according to the local jurisdiction’s standards for a critical areas report for geologically hazardous areas, that the principal structure is in danger from shoreline erosion caused by currents or waves. Normal sloughing, or shoreline erosion itself, without a scientific or geotechnical analysis, is not demonstration of need. The geotechnical analysis shall evaluate on-site drainage issues and address drainage in a manner that does not degrade shoreline function before considering structural shoreline stabilization. The project design and analysis shall also evaluate vegetation enhancement as a means of reducing undesirable erosion. The geotechnical analysis shall demonstrate that the stabilization measure chosen is the least intrusive means that will be sufficient to achieve stabilization. The geotechnical analysis shall evaluate impacts that could pose stabilization problems to neighboring properties.

(3) An existing bulkhead may be replaced with a similar structure if there is a demonstrated need to protect principal uses or structures from erosion caused by currents or waves. In this case, demonstration of need does not necessarily require a geotechnical report; need must, however, be demonstrated using documentable information sources. The replacement structure shall be designed, located, sized, and constructed to ensure no net loss of ecological functions. Replacement bulkheads shall not encroach waterward of the ordinary high-water mark or existing structure unless the residence was occupied prior to the date of adoption of this chapter, and there are overriding safety or environmental concerns. In such cases, the replacement structure shall abut the existing stabilization structure. The administrator may permit vegetative stabilization that restores ecological functions waterward of the ordinary high-water mark.

(g) Commercial Uses and Activities.

(1) Commercial development permitted in shoreline areas are, in descending order of preference:

(A) Water-dependent uses;

(B) Water-related uses;

(C) Water-enjoyment uses; and

(D) Non-water-oriented uses.

(2) The administrator shall require and use the following information in his or her review of commercial development proposals:

(A) Consistency with local comprehensive plan and zoning;

(B) Specific nature of the commercial activity;

(C) Need for shoreline frontage; determination if use qualifies as water-dependent, water-related or water-enjoyment;

(D) Provisions for public visual and/or physical access to the shoreline;

(E) Provisions to ensure that the development will not result in loss of shoreline functions including conditions for ecological restoration;

(F) Measures for enhancing the relationship of the use to the shoreline, including aesthetics and landscaping; and

(G) The shoreline inventory and characterization (comprehensive plan Appendix B) and accompanying maps.

(3) Non-water-oriented commercial uses are prohibited in all shoreline designations unless they meet two or more of the following criteria:

(A) The use entails the reuse of an existing structure or developed area;

(B) The subject property is designated and zoned for commercial development in the city’s comprehensive plan and zoning code;

(C) 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

(D) 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.

(E) In areas designated or zoned for commercial use, non-water-oriented commercial development may be allowed if the site is physically separated from the water by property under separate ownership (city of Omak) or public right-of-way.

(4) Commercial development shall be designed and maintained in a neat, orderly, and environmentally compatible manner, consistent with the character and features of the surrounding area.

(5) All commercial loading and service areas shall be located on the upland (landward) side of the commercial structure to the maximum extent practical or provisions shall be made to separate and screen the loading and service areas from the shoreline.

(6) Commercial developments where landscaping is proposed shall be landscaped to visually enhance the shoreline area and contribute to shoreline functions and values, using primarily native, self-sustaining vegetation. Plants from the recommended list (comprehensive plan Appendix B) are preferred. The permit application submittal shall identify the size, location, and species of plants that will be used.

(7) Water-related and water-dependent commercial development on private and public lands shall be required to consider incorporating public access and ecological restoration as mitigation for impacts to shoreline functions and values unless public access cannot be provided which does not result in significant interference with operations or hazards to life or property; where commercial use is proposed for location on land in public ownership, public access shall be required. Refer to subsection (n) of this section and WAC [173-26-221](https://www.codepublishing.com/cgi-bin/wac.pl?cite=173-26-221)(4) for public access provisions. Any intended public access facilities must be platted, or incorporated into a binding site plan, improved, and maintained and in compliance with local comprehensive planning and shoreline recreational access planning.

(h) Flood Hazard Prevention Projects.

(1) Purpose. It is the purpose of this section to promote the public health, safety, and general welfare; reduce the annual cost of flood insurance; and minimize public and private losses due to flood conditions in specific areas by provisions designed:

(A) To protect human life and health;

(B) To minimize expenditure of public money and costly flood control projects;

(C) To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;

(D) To minimize prolonged business interruptions;

(E) To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets, and bridges located in areas of special flood hazard;

(F) To help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future flood blight areas;

(G) To ensure that potential buyers are notified that property is in an area of special flood hazard;

(H) To ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

(2) Methods of Reducing Flood Losses. In order to accomplish its purposes, this section includes methods and provisions for:

(A) Restricting or prohibiting uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;

(B) Requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;

(C) Controlling the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel flood waters;

(D) Controlling filling, grading, dredging, and other development which may increase flood damage; and

(E) Preventing or regulating the construction of flood barriers that unnaturally divert floodwaters or may increase flood hazards in other areas.

(3) Lands to Which This Section Applies ([44](http://www.law.cornell.edu/cfr/text/44) CFR [59.22](http://www.law.cornell.edu/cfr/text/44/59.22)(a)). This chapter shall apply to all areas of special flood hazards within the shoreline jurisdiction of the city of Omak, Washington.

(4) Basis for Establishing the Areas of Special Flood Hazard ([44](http://www.law.cornell.edu/cfr/text/44) CFR [60.3](http://www.law.cornell.edu/cfr/text/44/60.3)(c)(1) and (d)(2)). The areas of special flood hazard identified by the Federal Insurance Administration in a scientific and engineering report entitled “The Flood Insurance Study for Omak, Washington” to be completed, and any revisions thereto, with an accompanying flood insurance rate map (FIRM), and any revisions thereto, are hereby adopted by reference and declared to be a part of this chapter. The flood insurance study and the FIRM will be on file at 2 N. Ash when completed. The best available information for flood hazard area identification as outlined in Section [18.21.080](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1821.html#18.21.080) shall be the basis for regulation until a new FIRM is issued that incorporates data utilized under said section.

(5) Abrogation and Greater Restrictions. This section is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this chapter and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

(6) Interpretation. In the interpretation and application of this chapter, all provisions shall be:

(A) Considered as minimum requirements;

(B) Liberally construed in favor of the governing body; and

(C) Deemed neither to limit nor repeal any other powers granted under state statutes.

(7) Warning and Disclaimer of Liability. The degree of flood protection required by this section is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by manmade or natural causes. This section does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This section shall not create liability on the part of the city, any officer or employee thereof, or the Federal Insurance Administration, for any flood damages that result from reliance on this section or any administrative decision lawfully made hereunder.

(8) Use of Other Base Flood Data (in A and V Zones) ([44](http://www.law.cornell.edu/cfr/text/44) CFR [60.3](http://www.law.cornell.edu/cfr/text/44/60.3)(b)(4)). When base flood elevation data has not been provided (in A or V zones) in accordance with subsection (h)(4) of this section, Basis for Establishing the Areas of Special Flood Hazard, the administrator shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a federal, state or other source, in order to administer this section and Section [18.21.080](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1821.html#18.21.080)(d), Frequently Flooded Areas.

(9) Alteration of Watercourses ([44](http://www.law.cornell.edu/cfr/text/44) CFR [60.3](http://www.law.cornell.edu/cfr/text/44/60.3)(b)(6)).

(A) Notify adjacent communities and the Department of Ecology prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration.

(B) Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished.

(10) Interpretation of FIRM Boundaries. Make interpretations, where needed, as to exact location of the boundaries of the areas of special flood hazards (e.g., where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation. Such appeals shall be granted consistent with the standards of Section 60.6 of the Rules and Regulations of the National Flood Insurance Program ([44](http://www.law.cornell.edu/cfr/text/44) CFR [59](http://www.law.cornell.edu/cfr/text/44/part-59) through [44](http://www.law.cornell.edu/cfr/text/44/part-44) CFR 76).

(11) General Standards. In all areas of special flood hazards within shoreline jurisdiction, the standards of this section and Sections [18.21.060](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1821.html#18.21.060)(a), General Regulations, and [18.21.080](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1821.html#18.21.060)(c), Frequently Flooded Areas, are required.

(A) Development in floodplains should not significantly or cumulatively increase flood hazards or be inconsistent with comprehensive flood hazard management plans adopted pursuant to Chapter [86.12](https://www.codepublishing.com/cgi-bin/rcw.pl?cite=86.12) RCW.

(B) New development or new uses in shoreline jurisdiction, including the subdivision of land, should not be permitted when it would be reasonably foreseeable that the development or use would require structural flood hazard reduction measures within the channel migration zone or floodway.

(C) The following uses and activities may be appropriate and/or necessary within the channel migration zone or floodway:

(i) Actions that protect or restore the ecosystem-wide processes or ecological functions.

(ii) Existing and ongoing agricultural practices; provided, that no new restrictions to channel movement occur.

(iii) Mining when conducted in a manner consistent with subsection (k) of this section, Mining Uses and Activities, the shoreline designation, and with the provisions of WAC [173-26-241](https://www.codepublishing.com/cgi-bin/wac.pl?cite=173-26-241)(3)(h).

(iv) Bridges, utility lines, and other public utility and transportation structures where no other feasible alternative exists or the alternative would result in unreasonable and disproportionate costs. Where such structures are allowed, mitigation shall address impacted functions and processes in the affected shoreline.

(v) Repair and maintenance of an existing nonagricultural legal use; provided, that channel migration is not further limited and that the new development includes appropriate protection of ecological functions.

(vi) Development in incorporated municipalities and designated urban growth areas, as defined in Chapter [36.70A](https://www.codepublishing.com/cgi-bin/rcw.pl?cite=36.70A) RCW, where structures exist that prevent active channel movement and flooding.

(vii) Measures to reduce shoreline erosion; provided, that it is demonstrated that the erosion rate exceeds that which would normally occur in a natural condition, that the measure does not interfere with fluvial hydrological and geomorphological processes normally acting in natural conditions, and that the measure includes appropriate mitigation of impacts to ecological functions associated with the river or stream.

(D) Allow new structural flood hazard reduction measures in shoreline jurisdiction only when it can be demonstrated by a scientific and engineering analysis that they are necessary to protect existing development; that nonstructural measures are not feasible; that impacts on ecological functions and priority species and habitats can be successfully mitigated so as to assure no net loss; and that appropriate vegetation conservation actions are undertaken consistent with this chapter, and WAC [173-26-221](https://www.codepublishing.com/cgi-bin/wac.pl?cite=173-26-221)(5).

(E) Structural flood hazard reduction measures shall be consistent with adopted comprehensive flood hazard management plans approved by the Department of Ecology.

(F) Place new structural flood hazard reduction measures landward of the associated wetlands, and designated vegetation conservation areas, except for actions that increase ecological functions, such as wetland restoration; provided, that such flood hazard reduction projects be authorized if it is determined that no other alternative to reduce flood hazard to existing development is feasible. The need for, and analysis of feasible alternatives to, structural improvements shall be documented through a geotechnical analysis.

(G) Require that new structural public flood hazard reduction measures, such as dikes and levees, 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 unmitigated significant ecological impacts, unavoidable conflict with the proposed use, or cost that is disproportionate and unreasonable to the total long-term cost of the development.

(H) Require that the removal of gravel for flood management purposes be consistent with an adopted flood hazard reduction plan and with the provisions of Chapter [173-26](https://www.codepublishing.com/cgi-bin/wac.pl?cite=173-26) WAC and subsections (i) (Dredging and Dredge Material Disposal) and (k) (Mining Uses and Activities) of this section; and be allowed only after a biological and geomorphological study shows that 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.

(i) Dredging and Dredge Material Disposal. Dredging and dredge material disposal are prohibited within the shoreline areas of Omak.

(j) Industrial Uses and Activities.

(1) Industrial developments permitted in shoreline areas are, in descending order of preference:

(A) Water-dependent uses;

(B) Water-related uses;

(C) Water-enjoyment uses; and

(D) Non-water-oriented uses.

(2) New non-water-oriented industrial development shall be prohibited in all shoreline designations except when:

(A) The use entails reuse of an existing structure or existing developed site;

(B) 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

(C) 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.

(D) In areas designated or zoned for industrial use, non-water-oriented industrial uses may be allowed if the site is physically separated from the shoreline by another property or public right-of-way.

(3) The administrator shall require and use the following information in his or her review of industrial development proposals:

(A) Consistency with local comprehensive plans and zoning;

(B) Specific nature of the industrial activity;

(C) Need for shoreline frontage;

(D) Provisions for public visual and/or physical access to the shoreline;

(E) Provisions to ensure that the development will not result in loss of shoreline functions or reduction in shoreline values;

(F) Measures for enhancing the relationship of the use to the shoreline, including aesthetics and landscaping; and

(G) The shoreline inventory and characterization (comprehensive plan Appendix A) and accompanying maps.

(4) Industrial development 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](https://www.codepublishing.com/cgi-bin/wac.pl?cite=173-26-221)(4).

(5) Industrial development and redevelopment are encouraged to locate where environmental cleanup and restoration of the shoreline area can be incorporated.

(6) Where industrial development is allowed, it shall be located, designed, or constructed in a manner that assures no net loss of shoreline ecological functions and such that it does not have significant adverse impacts to other shoreline resources and values.

(7) Industrial development shall be designed and maintained in a neat, orderly, and environmentally compatible manner, consistent with the character and features of the surrounding area. To that end, the administrator may, following a public hearing, adjust the project dimensions and increase required setbacks established in [18.21.060](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1821.html#18.21.060) Table 2 and/or prescribe reasonable use-intensity and screening conditions. Need and special considerations for landscaping and buffer areas shall also be subject to review and approval.

(8) New over-water construction for industrial uses is prohibited unless it can be shown to be essential to a water-dependent industrial use.

(9) All loading and service areas shall be located on the upland (landward) side of the industrial facility or provisions shall be made to separate and screen the loading and service areas from the shoreline, unless such provisions are infeasible due to the specific nature of the water-dependent industrial use or the proposed circulation poses a safety hazard to existing traffic patterns.

(10) Industrial development on private and public lands 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 [173-26-241](https://www.codepublishing.com/cgi-bin/wac.pl?cite=173-26-241)(3)(f). Where industrial use is proposed for location on land in public ownership, public access shall be required. Any intended public access facilities must be platted, or incorporated into a planned development or binding site plan, improved, and maintained in compliance with local comprehensive planning and shoreline recreational access planning.

(11) Industrial developments shall be landscaped to visually enhance the shoreline area and contribute to shoreline functions and values, using primarily native, self-sustaining vegetation. Plants from the recommended list (comprehensive plan Appendix B) are preferred. Plants that may compromise shoreline values shall be prohibited. The permit application submittal shall identify the size, location, and species of plants that will be used.

(12) Drainage and surface runoff from industrial developments shall be controlled so that pollutants will not be carried into water bodies.

(k) Mining Uses and Activities.

(1) Mineral prospecting and placer mining are allowed subject to compliance with the current edition of the Washington State Department of Fish and Wildlife’s Gold and Fish pamphlet; all other prospecting and placer mining activities at different times or locations, or with different equipment than allowed in WDFW Gold and Fish pamphlet, shall be prohibited.

(2) All mining not meeting the definition of mineral prospecting or placer mining shall be prohibited in all shoreline designations.

(l) Municipal Uses and Activities (Includes All Local Governments). Municipal uses are those in support of local government functions and services (e.g., public schools, city hall, maintenance facilities, hospitals, etc.). For the purposes of this section, recreational uses and utility facilities are excluded and shall comply with applicable sections.

(1) Non-water-oriented municipal uses will be permitted in shoreline areas only when no other feasible location is available, and only in compliance with standards in this chapter including bulk and dimensional standards established in [18.21.060](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1821.html#18.21.060)Table 2 and shall be in compliance with the clearing and grading section.

(2) The administrator shall require and use the following information in his or her review of municipal use proposals:

(A) Specific nature of the proposed activity;

(B) Need for shoreline location, including minimizing portion of use within shoreline jurisdictions;

(C) Other locations considered and the reasons for choosing a shoreline site;

(D) Provisions for public visual and/or physical access to the shoreline;

(E) Provisions to ensure that the development will not result in loss of shoreline functions or reduction in shoreline values;

(F) Measures for enhancing the relationship of the use to the shoreline, including aesthetics and landscaping; and

(G) The Shoreline Inventory and Characterization (comprehensive plan Appendix A) and maps developed as part of this chapter.

(3) Municipal uses shall be designed and maintained in a neat, orderly, and environmentally compatible manner, consistent with the character and features of the surrounding area, and result in no net loss of shoreline function. To that end, the administrator may, following a public hearing, adjust the project dimensions and increase required setbacks established in [18.21.060](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1821.html#18.21.060) Table 2 and screening conditions. Need and special considerations for landscaping and buffer areas shall also be subject to review and approval.

(4) All loading and service areas shall be located on the upland (landward) side of the principal structure or provisions shall be made to separate and screen the loading and service areas from the shoreline.

(5) Municipal uses shall be landscaped to visually enhance the shoreline area and contribute to shoreline functions and values, using primarily native, self-sustaining vegetation. Plants from the recommended list (comprehensive plan Appendix B) are preferred. Plants that may compromise shoreline values shall be prohibited. The permit application submittal shall include a landscape plan identifying the size, location, and species of plants that will be used.

(6) Drainage and surface runoff from municipal uses shall be controlled so that pollutants will not be carried into water bodies complying with the Eastern Washington Stormwater Manual.

(7) Public access facilities must be provided, dedicated, improved, and maintained as part of any shoreline municipal use.

(m) Parking.

(1) Any new and expanded parking area in a shoreline area shall directly serve an existing (legal at the time of adoption of this chapter) shoreline use.

(2) All parking shall be prohibited over water.

(3) Parking facilities in shorelines are not a preferred use and shall be allowed only as necessary to support an authorized use.

(4) Parking facilities shall prevent surface water runoff from contaminating water bodies, using the best available technology and best management practices, including compliance with current Eastern Washington Stormwater Manual standards, and a maintenance program to assure proper functioning over time of any stormwater facilities required to comply with this regulation.

(5) New commercial and industrial parking facilities, necessary to support an authorized use, in shoreline areas shall be sited in compliance with bulk and dimensional standards of [18.21.060](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1821.html#18.21.060) Table 2, comply with clearing and grading standards and be designed to minimize visual, pedestrian, and other transportation network impacts as well as to minimize environmental impact on shoreline resources.

(6) Commercial parking facilities shall be adequately screened and landscaped along the waterward side with plants from the recommended list (comprehensive plan Appendix B). Where a flood levee exists, it shall be considered screening.

(7) Parking facilities that will serve more than one use, such as recreational use on weekends and commercial use on weekdays, shall be allowed and preferred to single use parking facilities.

(n) Public Access (Physical and Visual).

(1) Physical Access—Regulations.

(A) For the purpose of this chapter, the city of Omak comprehensive plan and parks, recreation and open plans shall be considered the official public access plans. Additional recreation plans approved by the city council may be used to supplement public access provisions of the comprehensive plan for this chapter, provided said plans are not in conflict with the regulations herein.

(B) Development, uses, and activities shall be designed and operated to avoid unnecessarily impairing or detracting from the public’s physical or visual access to the water and shorelines.

(C) Public access sites shall be dedicated to a public or nonprofit entity unless a formal homeowners association or other legal entity exists or will be established to ensure the long-term viability of the access.

(D) Provisions for public or community access to the shoreline shall be incorporated into the shoreline development proposal for any action requiring such access unless the applicant demonstrates that such access is infeasible because at least one of the following provisions applies:

(i) Unavoidable health or safety hazards to the public exist which cannot be prevented by any practicable means;

(ii) Inherent security requirements of the use cannot be satisfied through the application of alternative design features, such as fencing or limiting hours of use or other solutions;

(iii) Unacceptable environmental harm will result from the public access which cannot be mitigated;

(iv) Significant undue and unavoidable conflict between the proposed access and adjacent uses would occur and cannot be mitigated;

(v) In determining that public access (physical and/or visual) is infeasible the shoreline administrator and applicant shall ensure that all reasonable alternatives have been evaluated, including but not limited to:

a. Regulating access by such means as limiting hours of use to daylight hours;

b. Designing separation of uses and activities, i.e., fences, terracing, hedges, landscaping, signage, etc.;

c. Provision of an access at a site physically separated from the proposal such as a nearby street end, providing off-site public access improvements such as building a shoreline view point or establishment or providing improvements to a trail system;

(E) Dedication and improvement of physical public access shall be required as part of all shoreline development by public entities, including local governments, port districts, state agencies, and public utility districts, with the following exceptions:

(i) Where an approved public access plan developed as part of a regulatory licensing process is submitted. Said public access plan must provide adequate public access to the shoreline, based on a needs analysis. Said public access facilities shall be developed, improved, and maintained as part of an approved shoreline recreation plan and installed in a timely manner in coordination with the approved shoreline development.

(ii) Where more effective public access to the shoreline can be achieved through implementation of the adopted recreation plan of the local government with jurisdiction, the public entity proposing the development may contribute proportionally to implementation of the recreation plan in lieu of providing public access on site, unless on-site improvements are part of the public access plan.

(iii) Where the community makes a finding that no additional public access is required consistent with local comprehensive plans;

(F) Dedication and improvement of public physical access shall be required in all shoreline areas as follows:

(i) As part of commercial boating facilities designed to serve the public or located on and adjoining publicly owned uplands.

(ii) As part of all new water-enjoyment, water -related and water-dependent commercial and industrial development, where consistent with local comprehensive plans and subsections (g) and (j) of this section and provided the intended use does not pose a safety threat to the general public.

(iii) As part of all primary utility development on public land. The requirement may be waived when an approved public access plan has been adopted as part of a regulatory licensing process. Said public access plan must provide adequate public access, based on a needs analysis.

(iv) As part of all subdivisions of land into more than five parcels, when consistent with local comprehensive and recreational public access plans.

(v) As part of new structural public flood hazard reduction measures, such as dikes and levees.

(vi) As part of publicly financed or subsidized shoreline erosion control measures, where feasible, incorporate ecological restoration and public access improvements into the project, except where such access is determined to be infeasible because of incompatible uses, safety, security, or harm to ecological functions. These shoreline erosion measures shall not restrict existing public access to the shoreline;

(G) Adjoining short plats totaling more than eight parcels and submitted within five years of each other by the same applicant shall be subject to public access dedications if consistent with locally adopted plans;

(H) The scope and scale of public access shall be commensurate with the scale of the proposed land use action and the need for public physical and visual access opportunities in the vicinity of the proposed action;

(I) In all cases, the minimum width of shoreline public access easements shall be ten feet, unless the administrator determines that undue hardship would result. In such cases, easement or right-of-way widths may be reduced by no more than twenty-five percent only to the extent necessary to relieve the demonstrated hardship;

(J) Where there is an irreconcilable conflict between water-dependent shoreline uses or physical public access and maintenance of views from adjacent properties, the water-dependent uses and physical public access shall have priority, unless there is a compelling reason to the contrary;

(K) Public access sites shall be connected directly to a public street by way of a right-of-way or easement dedicated, improved, and maintained for public use. This requirement may be modified if the cost would be disproportionate to the scale of the proposed land use action;

(L) Where feasible, and in accordance with the Americans with Disabilities Act (ADA), public access sites shall be made barrier-free for people with disabilities;

(M) Required public access sites shall be developed and available for public use at the time of occupancy of the use or activity; or in accordance with other provisions for guaranteeing installation through a monetary performance assurance;

(N) Public access facilities shall be maintained over the life of the use or development. Future actions by successors in interest or other parties shall not diminish the usefulness or value of required public access areas and associated improvements;

(O) Public access easements shall be recorded on the deed of title and/or on the face of the plat or short plat as conditions running in perpetuity. Said recording with the Okanogan County auditor’s office shall occur at the time of permit approval. Future actions by the applicant, successors in interest, or other parties shall not diminish the usefulness or value of the public access provided;

(P) The standard state-approved logo or other approved signs that indicate the public’s right of access and hours of access shall be installed and maintained by the owner. Such signs shall be posted in conspicuous locations at public access sites.

(2) View Corridor—Regulations.

(A) View corridors shall comply with provisions for vegetation management and buffer requirements for the shoreline designation for the project site. View corridors shall be allowed up to the percentage listed in [18.21.060](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1821.html#18.21.060) Table 2 but limited to a width of thirty feet for every one hundred linear feet of shoreline; in no case shall a view corridor be approved that will result in a view corridor greater than thirty feet in width paralleling the shoreline.

(B) View corridors may be allowed, subject to the provisions of this section, to provide the general public and property owners with opportunities for visual access to water bodies associated with shoreline lots.

(C) Vegetation removal that would be likely to result in significant soil erosion or the need for structural shoreline stabilization measures is prohibited.

(D) Prior to removing vegetation for a view corridor, the owner of the shoreline parcel on which vegetation alterations are proposed must submit:

(i) A signed application;

(ii) A scaled graphic which demonstrates the area and extent of the view corridor (width and depth), showing existing vegetation and proposed alterations; and

(iii) A graphic and/or site photos for the entire shoreline frontage, which demonstrate that the building site and proposed or existing structure do not, or will not when constructed, have a view of the water body, taking into account site topography and the location of shoreline vegetation on the parcel.

(E) In creating a view corridor, removal of vegetation shall be limited to the minimum necessary to preserve or enhance views. In no case shall the view corridor exceed the provisions found in [18.21.060](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1821.html#18.21.060) Table 2.

(i) The following standards apply:

a. View corridors are not allowed in the urban conservancy designations unless associated with an existing use.

b. View corridor widths are established as percentages in [18.21.060](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1821.html#18.21.060) Table 2 but in no case shall exceed a width greater than thirty feet. A maximum width of thirty feet running parallel to the water’s edge is permitted per one hundred linear feet of shoreline in all designations (excluding urban conservancy, where view corridors are prohibited).

c. Pruning of native trees shall not exceed thirty percent of a tree’s limbs.

d. “Topping” of native trees is prohibited.

e. Shrubs shall not be pruned to a height of less than six feet.

f. Removal or pruning of vegetation waterward of the ordinary high-water mark is prohibited.

g. Once a view corridor or other shoreline access corridor has been established, no additional vegetation pruning for the view corridor is authorized except as may be permitted to maintain the approved view corridor from the regrowth of pruned limbs.

h. On any site on which a buffer has been reduced or modified, a view corridor will be allowed only when a critical areas report (Section [19.05.030](https://www.codepublishing.com/WA/Omak/html/Omak19/Omak1905.html#19.05.030)(e)) can clearly establish that fragmentation of fish and wildlife habitat will not occur, and that there will be no net loss of shoreline ecological functions.

(ii) The following additional requirements apply:

a. Plants that represent a hazard to safety, security, or shoreline ecological functions may be replaced with plants from the recommended list (comprehensive plan Shoreline Appendix B), provided a mitigation plan is submitted and approved. The mitigation plan must meet the standards of the city for a mitigation plan for critical fish and wildlife habitat.

b. Nonnative or invasive species may be replaced with plants from the recommended list (comprehensive plan Shoreline Appendix B), provided a mitigation management plan is submitted and approved. The mitigation plan must meet the standards of Section [19.05.037](https://www.codepublishing.com/WA/Omak/html/Omak19/Omak1905.html#19.05.037).

c. All developments proposing a view corridor shall provide a mitigation plan that will need to be approved by the administrator. The mitigation plan must meet the standards found in this section and Section [19.05.037](https://www.codepublishing.com/WA/Omak/html/Omak19/Omak1905.html#19.05.037).

(F) Trimming and removal of trees to provide or enhance visual access shall be limited to the requirements found in this section and [18.21.060](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1821.html#18.21.060) Table 1 as well as shoreline modification standards found in Sections [18.21.060](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1821.html#18.21.060)(b), (c) and (e) and subsections (f) and (s) of this section.

(G) Removal of diseased, damaged or stressed trees for the purpose of forest stewardship and conservation, property protection, or fire safety is subject to approval through a shoreline exemption.

(o) Utilities.

(1) Utility development shall be located within public rights-of-way or existing infrastructure corridors whenever possible and be coordinated with government agencies to provide for compatible multiple uses.

(2) Utilities shall be located and designed to avoid damage or degradation to shoreline ecological functions including wetlands, marshes, bogs and other swamps; important wildlife areas; and other unique and fragile areas.

(3) Underwater pipelines which transport material intrinsically harmful to aquatic life or potentially injurious to water quality, including sewer lines, shall be provided with automatic shut-off valves at each end of the underwater segments.

(4) Sites disturbed for utility installation shall be stabilized during and immediately following construction to avoid adverse impacts from erosion and shoreline ecological function, including protection of water quality using best management practices.

(5) Sites disturbed for utility installation shall be replanted using native species from the recommended list (comprehensive plan Appendix B), with a diversity and type similar to or better than that which originally occurred on the site. Questions about appropriate diversity, plant type, and plant species shall be directed to agencies with expertise, such as the Departments of Ecology and Fish and Wildlife.

(6) The placing of utility lines shall not obstruct or hinder physical or visual access to shoreline areas from public rights-of-way or public use areas. Utilities shall be placed landward of the primary structural setback requirements found in [18.21.060](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1821.html#18.21.060) Table 2. Compliance with local health district standards for the placement of on-site sewer systems shall be indicated on pre-application drawings. If feasible, utility lines shall be placed underground. Where lines must be placed aboveground, consideration shall be given to the maintenance of trees in the vicinity of the lines, and the utility line located to eliminate the need for topping or pruning trees.

(7) Except where no other feasible alternative exists, utilities that require continued maintenance and therefore disrupt ecological processes (i.e., electrical transmission lines that require removal of undergrowth) shall not be placed in vegetation conservation areas (between OHWM and structure setback).

(p) Recreation.

(1) Recreation—Use Regulations.

(A) The location, design and operation of shoreline recreational developments shall be primarily related to access, enjoyment and use of the water and shorelines of the state, consistent with the comprehensive plan and recreation plan of the local government with jurisdiction. All such uses shall not result in a net loss of shoreline function.

(B) Commercial recreational development shall comply with the provisions for commercial development in subsection (g) of this section, Commercial Uses and Activities.

(C) Substantial accessory use facilities, such as rest rooms, recreation halls and gymnasiums, commercial services, access roads, and parking areas, shall be set back from the ordinary high water mark as specified in the development standards table ([18.21.060](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1821.html#18.21.060) Table 2), unless it can be shown that such facilities are water-dependent and the planned location will not adversely affect shoreline functions. Such facilities may be linked to the shoreline by walkways.

(D) Shoreline recreational developments shall maintain and, when feasible, enhance or restore desirable shoreline features including those that contribute to shoreline ecological functions and processes, scenic vistas, and aesthetic values. Removal of healthy native vegetation to enhance views shall be allowed only in compliance under Section [18.21.060](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1821.html#18.21.060)(e) and subsection (n) of this section.

(E) Recreational uses shall be designed to complement their environment and surrounding land and water uses.

(F) No recreational buildings or structures shall be built over water, other than water-dependent bridges or viewing platforms.

(G) Each development proposal shall include a landscape plan that uses native or native-compatible self-sustaining vegetation. Removal of on-site native vegetation shall be limited to the minimum necessary for the permitted development or structures.

(H) For recreational uses such as golf courses or parklands that require the use of fertilizers, pesticides, or other chemicals, the applicant shall specify the methods that will be used to ensure that the use complies with all provisions of this master program, including preventing the chemicals from entering adjacent water bodies or wetlands. Chemical-free buffer strips may be required at the discretion of the administrator.

(I) Recreational uses shall provide facilities for nonmotorized access to the shoreline, such as pedestrian and bicycle paths, where those facilities will not result in loss of shoreline ecological functions.

(J) Recreational uses shall include adequate provisions for water supply, sewage, garbage disposal, and fire protection.

(K) Recreational development shall include adequate provisions, such as screening, buffer strips, fences, and signs, to buffer adjacent private property and natural areas and protect the value and enjoyment of those sites.

(L) Trails and paths on steep slopes shall be located, designed, and maintained to protect bank stability.

(M) Recreational uses shall be consistent with local comprehensive plan provisions and zoning regulations and required buffer and use setbacks in [18.21.060](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1821.html#18.21.060) Table 2 and critical area protection regulations in Section [18.21.080](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1821.html#18.21.080).

(N) Nonmotorized recreation trails shall be allowed in the Zone 2 buffer provided they are consistent with the local comprehensive plan and zoning regulations and the regulations contained herein, including standards below. Nonmotorized, nonimpervious surface trails no greater than the minimum width required by state and/or federal statute for the type of facility (e.g., ADA requirements) to provide shoreline access may be allowed in the Zone 1 buffer through the submittal of a vegetation planting plan, mitigation management plan and compliance with mitigation sequencing standards found in Section [19.05.037](https://www.codepublishing.com/WA/Omak/html/Omak19/Omak1905.html#19.05.037), subject to the following minimum standards:

(i) Trail facilities shall, to the extent feasible, be placed on existing road grades, utility corridors, or any other previously disturbed areas;

(ii) Trail facilities shall minimize the removal of trees, shrubs, snags and important habitat features. Vegetation management performed in accordance with best management practices as part of ongoing maintenance to eliminate a hazard to trail users is considered consistent with this standard;

(iii) Viewing platforms, interpretive centers, campsites, picnic areas, benches and their associated access shall be designed and located to minimize disturbance of wildlife and/or critical characteristics of the affected conservation area;

(iv) All facilities shall be constructed with materials complementary to the surrounding environment;

(v) Trail facilities that parallel the shoreline may be located in Zone 2 setback area and as allowed in this chapter and [18.21.060](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1821.html#18.21.060) Table 2, percent alteration of Zone 2;

(vi) Commercial and public trails shall be the minimum width necessary to meet the designed need, but in no case shall they exceed twelve feet in width;

(vii) Private trails shall not exceed five feet in width;

(viii) Trails that provide direct shoreline access (perpendicular or angled to the water) shall not exceed five feet in width and shall be kept to the minimum number necessary to serve the intended purpose;

(ix) Review and analysis of a proposed trail facility shall demonstrate no net loss of ecological functions and values in conformance with this chapter; and

(x) Trail facilities shall not be exempt from special report requirements, as may be required by this chapter.

(O) No recreational uses are allowed that require fill.

(q) Residential Development.

(1) No lot for residential use shall be created that would not accommodate a buildable area, based on the zoning district, comprehensive plan designation and critical areas regulations, that meets the minimum building setback and other standards for the shoreline designation in which the lot is located.

(2) No lots or plats will be approved that do not meet the minimum requirements of this chapter.

(3) Plats and subdivisions shall not rely upon new shoreline stabilization or flood hazard reduction measures that would cause significant impacts to other properties or public improvements or a net loss of shoreline ecological functions.

(4) In its review of proposals for multi-lot and/or multi-unit subdivisions and/or planned developments and other large developments, the city shall require and use information about the impacts of the proposed development on shoreline ecological functions, including the cumulative impacts of exempt uses and activities within the development over time, and ensure there will be no net loss of shoreline function.

(5) All single-family and multi-unit residential developments shall comply with the buffer, setback, bulk and dimensional standards set forth in Section [18.21.060](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1821.html#18.21.060)(d) and [18.21.060](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1821.html#18.21.060) Table 2, and shall be authorized only after approval of a site development plan, indicating the total disturbance footprint as required by this section. The disturbance footprint shall include:

(A) All driveways and parking areas;

(B) Wildfire defensible space;

(C) Building footprint(s);

(D) Water access pathway location and width, not to exceed five feet;

(E) View access corridor, if applies;

(F) Location of storage and staging of materials and equipment during construction;

(G) Location of well and septic systems, if applicable;

(H) Location of public access, joint-use or community recreational facilities; and

(I) Location of accessory utilities.

(6) The construction of home(s) (inside the buffer or utilizing a buffer reduction) shall require preparation of a critical areas report and mitigation management plan as described in Sections [19.05.030](https://www.codepublishing.com/WA/Omak/html/Omak19/Omak1905.html#19.05.030) and [19.05.037](https://www.codepublishing.com/WA/Omak/html/Omak19/Omak1905.html#19.05.037).

(7) Location of the landward boundary of shoreline buffers as specified in [18.21.060](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1821.html#18.21.060) Table 2 shall be approved by the administrator, and marked with permanent or temporary fencing sufficient to prevent any incidental incursion into or disturbance of the buffer by equipment, vehicles, building materials or other means.

(8) Buildings constructed in areas of twenty percent or greater slope, or slide-prone areas, shall conform to the requirements for geologically hazardous areas.

(9) Except for minimal pathways no greater than five feet in width to afford access to allowed boat access or swimming areas or to remove hazard trees as set forth in Sections18.21.060(d) and (e), native plant communities and species in buffers specified in [18.21.060](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1821.html#18.21.060) Table 2 shall not be disturbed for any reason.

(10) New parcels/lots created through land division within jurisdiction of this chapter shall accomplish the following:

(A) Plats and subdivisions as regulated elsewhere in this chapter must be designed, configured and developed in a manner that assures that no net loss of ecological functions results from the plat or subdivision at full build-out of all lots.

(B) Plats and subdivisions as regulated elsewhere in this chapter must be designed, configured and developed in a manner that assures that no need exists for new shoreline stabilization or flood hazard reduction measures that would cause significant impacts to other properties or public improvements or a net loss of shoreline ecological functions. Such review shall require using geotechnical analysis of the site and shoreline characteristics when development is to occur in known or suspected geologically hazardous areas (see Map A11 in the map appendix to the Omak comprehensive plan). New development on steep slopes or bluffs shall be set back sufficiently to ensure that shoreline stabilization is unlikely to be necessary during the life of the structure, as demonstrated by a geotechnical analysis. New development that would require shoreline stabilization which causes significant impacts to adjacent or down-current properties and shoreline areas shall not be allowed.

(C) Plats and subdivisions as regulated elsewhere in this chapter must be designed and configured such that a buildable area is available on each lot in conformance with the comprehensive plan as well as required shoreline and critical area buffer/setbacks, unless a specific, unbuildable lot is being created as a shoreline open space/conservancy lot and is so recorded on the face of the plats.

(r) Signage. The following provisions apply to any commercial or advertising sign directing attention to a business, professional service, community, site, facility, or entertainment; and to temporary and interpretive signs. Highway, public information, and temporary signs are addressed in 18.21.070 Table 3, Use Chart.

(1) All signs shall comply with applicable regulations of the city and any other applicable regulations (e.g., Scenic Vistas Act).

(2) Signs shall be designed and placed so that they are compatible with the aesthetic quality of the existing shoreline and adjacent land and water uses. Except as necessary for safe navigation, moorage, or public safety signs shall be located landward of the required building setback.

(3) All signs shall be located and designed to minimize interference with vistas, viewpoints, and visual access to the shoreline.

(4) No signs shall be placed on trees or other natural features that will permanently damage or kill the tree or feature.

(5) Off-premises and nonappurtenant signs shall not be permitted, with the following exception: Temporary signs and interpretive signs related to shoreline uses and ecological functions shall be allowed where they comply with the other policies of this chapter and, in the case of temporary signs, where adequate provisions are made for timely removal.

(6) No sign shall have a surface area larger than thirty-six square feet.

(7) Lighting of signs shall be prohibited unless the sign is necessary for safe navigation, moorage, or public safety. On-demand lighting shall be used whenever feasible.

(8) Signs shall be located landward of the Zone 1 buffer.

(s) Shoreline Stabilization (See WAC [173-26-231](https://www.codepublishing.com/cgi-bin/wac.pl?cite=173-26-231)(3)(a)(iii)).

(1) New development shall be located and designed to avoid the need for future shoreline stabilization to the extent feasible. Subdivisions shall be reviewed to assure that the lots created will not require shoreline stabilization in order for reasonable development to occur. Such review shall require using geotechnical analysis of the site and shoreline characteristics when development is to occur in known or suspected geologically hazardous areas. New development on steep slopes or bluffs shall be set back sufficiently to ensure that shoreline stabilization is unlikely to be necessary during the life of the structure, as demonstrated by a geotechnical analysis. New development that would require shoreline stabilization which causes significant impacts to adjacent or down-current properties and shoreline areas shall not be allowed.

(2) New structural stabilization measures shall not be allowed[8](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1821.html" \l "265) except to protect an existing primary structure when all of the conditions below apply:

(A) New or enlarged structural shoreline stabilization measures for an existing primary structure, including residences, should not be allowed unless there is conclusive evidence, documented by a geotechnical analysis, that the structure is in danger from shoreline erosion caused by tidal action, currents, or waves. Normal sloughing, erosion of steep bluffs, or shoreline erosion itself, without a scientific or geotechnical analysis, is not demonstration of need. The geotechnical analysis should evaluate on-site drainage issues and address drainage problems away from the shoreline edge before considering structural shoreline stabilization.

(B) The erosion control structure will not result in a net loss of shoreline ecological functions.

(3) New shoreline stabilization for water-dependent development shall not be allowed except when all of the conditions below apply:

(A) The erosion is not being caused by upland conditions, such as the loss of vegetation and drainage.

(B) Nonstructural measures, such as placing the development further from the shoreline, planting vegetation, or installing on-site drainage improvements, are not feasible or not sufficient.

(C) The need to protect primary structures from damage due to erosion is demonstrated through a geotechnical report.

(D) The erosion control structure will not result in a net loss of shoreline ecological functions.

(4) New structural stabilization measures shall not be allowed for the restoration of ecological functions or hazardous substance remediation projects pursuant to Chapter [70.105D](https://www.codepublishing.com/cgi-bin/rcw.pl?cite=70.105D) RCW (as it now exists or hereinafter amended) except when all of the conditions below apply:

(A) Nonstructural measures, planting vegetation or installing on-site drainage improvements are not feasible or not sufficient;

(B) The erosion control structure will not result in a net loss of shoreline ecological functions.

(5) Use of shoreline stabilization measures to create new land is prohibited including creation of new lots that will require shoreline stabilization in order to allow development.

(6) New development should be located and designed to avoid the need for future shoreline stabilization to the extent feasible. Subdivision of land must be regulated to assure that the lots created will not require shoreline stabilization in order for reasonable development to occur using geotechnical analysis of the site and shoreline characteristics. New development on steep slopes or bluffs shall be set back sufficiently to ensure that shoreline stabilization is unlikely to be necessary during the life of the structure, as demonstrated by a geotechnical analysis. New development that would require shoreline stabilization which causes significant impacts to adjacent or down-current properties and shoreline areas should not be allowed.

(7) An existing shoreline stabilization structure may be replaced with a similar structure[9](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1821.html" \l "266) if there is a demonstrated need to protect principal uses or structures from erosion caused by currents or waves.

(A) The replacement structure should be designed, located, sized, and constructed to assure no net loss of ecological functions.

(B) Replacement walls or bulkheads shall not encroach waterward of the ordinary high-water mark or existing structure unless the residence was occupied prior to January 1, 1992, and there are overriding safety or environmental concerns. In such cases, the replacement structure shall abut the existing shoreline stabilization structure.

(C) Soft shoreline stabilization measures that provide restoration of shoreline ecological functions may be permitted waterward of the ordinary high-water mark.

(D) For purposes of this section, “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.

(8) A geotechnical report prepared to address the need to prevent potential damage to a primary structure shall address the city’s standards for a critical areas report (Sections [19.05.030](https://www.codepublishing.com/WA/Omak/html/Omak19/Omak1905.html#19.05.030) and [19.05.037](https://www.codepublishing.com/WA/Omak/html/Omak19/Omak1905.html#19.05.037)) for geologically hazardous areas as well as the issues below.

(9) Geotechnical reports that address the need to prevent potential damage to a primary structure shall address the necessity for shoreline stabilization by estimating time frames and rates of erosion and report on the urgency associated with the specific situation.

(10) Hard armoring solutions shall not be authorized except when a geotechnical report confirms that there is a significant possibility that the primary structure will be damaged within three years as a result of shoreline erosion in the absence of 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 primary structure, but the need is not as immediate as the three years, the report may still be used to justify more immediate authorization to protect against erosion using soft measures.

(11) Shoreline stabilization shall not be allowed for new uses if it would cause a net loss of shoreline ecological functions on the site, or within the watershed; or if it would cause significant ecological impacts to adjacent properties or shoreline areas. Those impacts include accelerated erosion of adjacent properties caused by the stabilization measures.

(12) New uses, including exempt uses, in areas above unstable slopes and moderately unstable slopes shall be set back sufficiently to ensure that shoreline stabilization will not be needed during the life of the structure, as demonstrated by a geotechnical analysis.

(13) Where structural shoreline stabilization measures are shown to be necessary, the extent of the stabilization measures shall be limited to the minimum necessary.

(14) Stabilization measures shall be designed to minimize harm to and as much as possible restore ecological functions. Lost functions shall be mitigated to ensure no net loss of shoreline ecological functions. Soft approaches shall be used unless demonstrated to be insufficient to protect the primary structure or structures.

(15) Where stabilization is necessary to alleviate erosion caused by removal of vegetation, vegetative stabilization measures shall be the only stabilization measures allowed, except where a report by a qualified professional is submitted. See Section [18.21.060](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1821.html#18.21.060)(e), Vegetation Conservation.

(16) Where feasible, ecological restoration and public access improvements shall be incorporated into public projects. 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.

(17) All applicable federal, state, and local permits shall be obtained and complied with in the construction of shoreline stabilization measures. All permits must be issued before any stabilization work takes place.

(t) Transportation.

(1) Transportation development serving non-water-dependent uses should avoid the shoreline area where possible to avert damage to shoreline ecological function. Transportation development serving water-oriented and water-related uses shall be considered as part of that use and subject to the following provisions:

(A) Plan, locate, and design proposed transportation and parking facilities where routes will have the least possible adverse effect on unique or fragile shoreline features, will not result in a net loss of shoreline ecological functions or adversely impact existing or planned water-dependent uses.

(i) New roads or road expansions should not be built within shoreline jurisdiction, unless other options are unavailable and infeasible. Design of roadways through shoreline areas should occupy the most-narrow horizontal profile (road width) possible to convey traffic in a safe manner measured from ditch to ditch or shoulder to shoulder (whichever is narrowest) to minimize the footprint of roadway.

(ii) Stormwater runoff from roadways should be contained using best management practices.

(iii) De-icing, salting, and graveling of roads should be conducted in accordance with best management practices.

(iv) Surfacing materials should not input or erode sediment into waterways.

(B) Transportation and parking plans and projects shall be consistent with the master program public access policies, public access plan, and environmental protection provisions.

(C) Circulation system planning shall include integrated corridors for pedestrian, bicycle, and public transportation where appropriate. Circulation planning and projects should support existing and proposed shoreline uses that are consistent with the master program.

(D) Transportation and circulation systems shall be applied for at same time the primary development permit is being applied for, complying with lot clearing and impervious surface standards found in [18.21.060](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1821.html#18.21.060) Tables 1 and 2.

|  |  |  |
| --- | --- | --- |
| **18.21.070 Table 3 Shoreline Use and Activity Designation-Specific Regulations** | | |
| All uses and activities must comply with all applicable provisions of this chapter, including the general, shoreline modification, use-specific, and shoreline designation-specific regulations. Uses and activities not listed in the Shoreline Use and Activity Chart may be allowed (with a conditional use permit), subject to approval by the administrator, if they comply with the standards in this section and with any regulations that apply to similar uses. All shoreline permits and exemptions are subject to conditions providing for maintenance, enhancement, and/or restoration of shoreline functions. | | |
| A | = | Allowed—requires exemption\*; or substantial development or conditional use permit, depending on fair market value and/or intensity of use or activity. |
| E | = | Exempt from shoreline permitting, but not the regulations contained herein. |
| SDP | = | Shoreline substantial development permit required. |
| CUP | = | Shoreline conditional use permit required. |
| X | = | Prohibited use. |
| S | = | Same as in adjacent shoreline designation landward of the OHWM (applicable to areas designated aquatic only). |
| N/A | = | Not applicable. |
| (a) |  | In the event that there is a conflict between the use(s) identified in 18.21.070 Table 3 and the policies in the shoreline element of the Omak comprehensive plan, the policies shall apply. |
| (b) |  | Aquatic: Water-dependent use only, subject to the use and development regulations of the abutting upland shoreline area designation. |

\*    Exempt uses and activities are defined by statute; see definitions in Section [18.21.040](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1821.html#18.21.040).

| **18.21.070 Table 3 Use and Activity Chart** | | | | | |
| --- | --- | --- | --- | --- | --- |
| **Uses and Activities** | **Aquatic(b)** | **Shoreline Recreation** | **Urban Conservancy** | **Shoreline Residential** | **High-Intensity** |
| **Utilities (Subsections (a) and (o) of This Section)** | | | | | |
| Primary (Subsection (o)of This Section) | CUP | CUP | CUP | SDP | SDP |
| Accessory (Subsection (a) of This Section) | X1 | A | A | A | A |
| **Agriculture (Subsection (b) of This Section)** | | | | | |
| Grazing/Cultivation/Orchards2 | X | A | A | A | A |
| Agricultural Buildings | X | A | A | A | A |
| Feedlots (CAFOS/AFOS) | X | X | X | X | X |
| Conversion from Nonagricultural Land to Agricultural Use | X | SDP | SDP | SDP | SDP |
| **Aquaculture (Subsection (c) of This Section)** | | | | | |
| Floating Net Pen Type and Accessory Structures | X | X | X | X | X |
| Onshore, Confined Types of Facilities and Accessory Structures | X | X | X | X | X |
| **Archaeological, Scientific, Educational and Historic Resources (Subsection (d) of This Section)** | | | | | |
| Archaeological Areas, Scientific, Educational or Historic Sites—Low-Intensity | A | A | A | A | A |
| Archaeological Areas, Scientific, Educational or Historic Sites—High-Intensity | SDP | SDP | SDP | SDP | SDP |
| **Boating Facilities (Subsection (e) of This Section)** | | | | | |
| Piers and Docks | X | X | X | X | X |
| Covered Moorage (Boat Canopies) | X | X | X | X | X |
| Covered Moorage (Boat Garages) | X | X | X | X | X |
| Commercial Wet Moorage | X | X | X | X | X |
| Commercial Dry Boat Storage | S | SDP | X | X | SDP |
| Boat Launch Ramps | | | | | |
| Commercial | S | SDP | X | X | SDP |
| Public | S | SDP | SDP | SDP | SDP |
| Private, Hard-Surfaced for Motorized Water Craft | X | X | X | X | X |
| Private, Low Impact Gravel or Cobble for Hand Launching Water Craft | S | SDP | SDP | SDP | SDP |
| Boat Lifts | X | X | X | X | X |
| Mooring Buoys/Float Plane Moorage Accessory to Permitted Moorage | X | X | X | X | X |
| Floats | S | SDP | CUP | SDP | SDP |
| **Bulkheads (Subsection (f) of This Section)** | | | | | |
| Bulkheads | S | CUP | CUP | CUP | CUP |
| **Commercial (Subsection (g) of This Section)** | | | | | |
| Water-Dependent | CUP3 | SDP | SDP | SDP | SDP |
| Water-Related/Water-Enjoyment | X | SDP | SDP | SDP | SDP |
| Non-Water-Oriented | X | X | X | X | X4 |
| **Flood Hazard Prevention Projects (Subsection (h) of This Section)** | | | | | |
| Flood Hazard Prevention Projects | CUP | CUP | CUP | CUP | CUP |
| **Dredging and Dredge Material Disposal (Subsection (i) of This Section)** | | | | | |
| Dredging | X | X | X | X | X |
| Dredge Material Disposal | X | X | X | X | X |
| **Industrial (Subsection (j) of This Section)** | | | | | |
| Water-Dependent | CUP5 | X | X | X | SDP6 |
| Water-Related | X | X | X | X | SDP |
| Non-Water-Oriented | X | X | X | X | SDP |
| **Mining (Subsection (k) of This Section)** | | | | | |
| Surface Mining7 | X | X | X | X | X |
| Other Mining | X | X | X | X | X |
| Mineral Prospecting and Placer Mining8 | A | A | A | A | A |
| **Municipal (Subsection (l) of This Section)** | | | | | |
| Water-Dependent | SDP | SDP | A | A | A |
| Water-Related/Water-Enjoyment | SDP | SDP | A | A | A |
| Non-Water-Oriented | CUP | CUP | CUP | SDP | SDP |
| **Parking (Subsection (m) of This Section)** | | | | | |
| Parking Appurtenant to Existing Permitted Use | X | SDP | CUP | SDP | A |
| Parking as a Primary Use | X | X | X | X | SDP |
| Commercial Parking | X | X | X | X | SDP |
| **Recreation (Subsection (p) of This Section)** | | | | | |
| High Impact | S | SDP | SDP9 | SDP | SDP |
| Medium Impact | S | SDP | SDP9 | SDP | SDP |
| Low Impact | S | A | A9 | A | SDP |
| High-Intensity (Non-Water-Oriented) | X | SDP | CUP9 | SDP | SDP |
| High-Intensity (Water-Oriented) | S | SDP | SDP9 | SDP | SDP |
| Medium-Intensity | S | A | SDP9 | SDP | A |
| Low-Intensity/Passive | S | A | A9 | A | A |
| **Residential (Subsection (q) of This Section)** | | | | | |
| Exempt Single-Family Dwellings10 | X | A | A | A | A |
| Nonexempt Single-Family Dwellings (e.g., Seasonal or Year-Round Rentals) | X | SDP | X | SDP | SDP |
| Multifamily | X | SDP | X | SDP | SDP |
| Subdivision | SDP | A | SDP | A | A |
| **Signs (Subsection (r) of This Section)** | | | | | |
| Commercial Signs—On-Site Advertising (Private) | X | X11 | X12 | SDP11 | SDP11 |
| Commercial Signs—Off-Site Advertising (Private) | X | X | X | X | X |
| Public Highway, Safety, Directional and Informational Signs (Public) | A | A | A | A | A |
| **Shoreline Stabilization (Subsection (s) of This Section)** | | | | | |
| Dredging and Material Disposal13(Subsection (i) of This Section) | X | X | X | X | X |
| Filling14 (Section [18.21.060](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1821.html#18.21.060)(c)) | S | SDP | SDP | SDP | SDP |
| Clearing and Grading15 (Section [18.21.060](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1821.html#18.21.060)(b)) | X | CUP | CUP | CUP | CUP |
| Bulkheads and Revetments (Subsection (f) of This Section) | S | CUP | CUP | CUP | CUP |
| Shoreline Restoration and Enhancement16 | S | A | A | A | A |
| Hardening, Structural Approaches17 | S | CUP | CUP | CUP | CUP |
| **Transportation (Subsection (t) of This Section)** | | | | | |
| Roads and Railroads | S | SDP | SDP | SDP | SDP |

1    Accessory utilities shall be prohibited except those required to serve a permitted water-dependent use, which shall require a conditional use permit.

2    Preference shall be given to noncommercial, community and/or personal gardens that may be used for personal use or small-scale market gardens.

3    Limited to water-dependent uses that require an over-the-water location and are allowed in the landward shoreline designation.

4    Unless approved using subsection (g) of this section.

5    Industrial development shall be limited to water-dependent uses that require an over-the-water location and are allowed in the landward shoreline designation.

6    Unless approved using subsection (j) of this section and subject to the following: Industrial development shall be water-dependent, water-related or water-oriented or be physically separated from the shoreline by another property under separate ownership, a flood control structure, or public right-of-way and in no case shall non-water-dependent new industrial development warrant construction of flood protection structures or shoreline stabilization.

7    Unless the subject property has been designated as mineral lands of long-term commercial significance which shall require a conditional use permit.

8    If performed in compliance with current version of WDFW Gold and Fish Pamphlet, all others prohibited.

9    Recreation uses limited to water-oriented uses and activities.

10    RCW [90.58.030](https://www.codepublishing.com/cgi-bin/rcw.pl?cite=90.58.030)(3)(e)(vi). Construction on shorelands by an owner, lessee, or contract purchaser of a single-family residence (inclusive of accessory utilities) for his own use or for the use of his or her 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 this chapter (See WAC [173-26-211](https://www.codepublishing.com/cgi-bin/wac.pl?cite=173-26-211)(5)(a)(ii)(C)).

11    All outdoor advertising, signs and billboards shall be prohibited except:

i.    Those signs necessary to protect the health, safety, and welfare of the public.

ii.    Those necessary to give direction or identify and/or interpret a natural or cultural feature.

iii.    Permitted signs shall not exceed six square feet in surface area.

iv.    Permitted signs shall not exceed six feet in height.

v.    Outdoor lighting of signs in the urban conservancy designation shall be prohibited.

12    Outdoor advertising, signs and billboards are allowed subject to a substantial development permit and shall not exceed thirty-six square feet.

13    All dredging shall be the minimum required to support an existing permitted or proposed allowed use and shall be subject to a conditional use permit.

14    All filling in the shoreline area is prohibited except for fill is limited to the minimum amount required for existing permitted or proposed allowed uses.

15    Clearing and grading that is not part of an allowed and permitted shoreline use shall require a conditional use permit except on properties physically separated from the shoreline by another property or public right-of-way.

16    Restoration and enhancement projects may be exempted if part of an approved recovery plan.

17    Subject to provisions in subsection (s) of this section for shoreline stabilization.

| **18.21.070 Table 4 Guidelines for Establishing Land Use Intensity**  **(To be used in conjunction with this section, city zoning code and development and performance standards)** | |
| --- | --- |
| **Level of Land Use Intensity** | **Types of Land Uses** |
| High | Commercial, industrial, institutional, retail, residential density > 1 du/acre, high-intensity recreation (ball fields, golf courses), highways and paved thoroughfares |
| Moderate | Residential < 1 du/acre, open space with active recreation development and activities, impervious drives serving > 3 du, paved trails, utility corridors and rights-of-way requiring vegetation management and service roads |
| Low | Open space with passive recreation, agriculture, unpaved roads serving < 2 du, unpaved trails, utility corridor without service road or vegetation management |

(Ord. 1859 § 1 (Exh. A) (part), 2018).

**18.21.080 Critical areas in shoreline jurisdiction.**

Critical areas (see Maps A6 to A11 in comprehensive plan map appendix) within shoreline areas shall be protected using the regulations herein unless otherwise specified in this section to assure no net loss of shoreline ecological functions. Identified critical areas within shoreline jurisdiction are limited to aquifer recharge, fish and wildlife habitat and very limited areas designated as flood hazard, and wetlands. All uses and activities within identified critical areas shall require mitigation sequencing (Section [19.05.037](https://www.codepublishing.com/WA/Omak/html/Omak19/Omak1905.html#19.05.037)) and may require a critical areas report and mitigation management plan (Sections [19.05.030](https://www.codepublishing.com/WA/Omak/html/Omak19/Omak1905.html#19.05.030) and [19.05.037](https://www.codepublishing.com/WA/Omak/html/Omak19/Omak1905.html#19.05.037)) depending on proposed impacts and location of project.

(a) General.

(1) This section establishes protection measures for designated critical areas within shoreline jurisdiction. All development or other alterations within, adjacent to, or likely to affect one or more critical areas, whether public or private, shall be subject to review by the administrator for compliance with this chapter. “Adjacent” shall mean any activity located:

(A) On a site immediately adjoining a critical area;

(B) Within a distance equal to or less than the required critical area buffer width and/or building setback, whichever is greater;

(C) Within a distance equal to or less than one-half mile (two thousand six hundred forty feet) from a bald eagle nest;

(D) Within a distance equal to or less than two hundred feet upland from a stream, wetland, or water body;

(E) Within a floodway, floodplain, or channel migration zone; or

(F) Within two hundred feet from a critical aquifer recharge area.

(2) General Provisions.

(A) The presence of any known critical areas on or within one hundred feet of property that is the subject of a development permit shall be identified by the applicant in the application materials submitted to the city.

(B) In carrying out any of the provisions of this section, the city may utilize any available technical resources, with any associated costs being paid for by the applicant, including experts/professionals in a particular field, and maps and/or documents including without limitation the following:

(i) City of Omak comprehensive plan and critical area maps;

(ii) Omak shoreline master program and maps;

(iii) Okanogan County Level I, Level II and Level III Habitat Maps;

(iv) U.S. Fish and Wildlife Service National Wetlands Inventory;

(v) U.S.G.S. 7.5 Minute Series Topographic Quadrangle Maps;

(vi) Aerial photos;

(vii) Approved special reports previously completed for a subject property;

(viii) Natural Resources Conservation Service Soils Survey;

(ix) Federal Wetlands Delineation Manual (1987);

(x) Washington State Wetlands Identification and Delineation Manual (WDOE No. 96-94, March 1997, as amended);

(xi) Washington State Wetlands Rating System for Eastern Washington—Revised (WDOE 14-06-030, as updated);

(xii) Management Recommendations for Washington’s Priority Habitats and Species, May 1991, as amended;

(xiii) Management Recommendations for Washington’s Priority Habitats—Riparian, December 1997, as amended;

(xiv) Priority Habitats and Species List, July 1999, as amended;

(xv) U.S. Army Corps of Engineers (2006). Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Region (Version 2.0), as amended;

(xvi) Wetlands in Washington State—Volume 1: A Synthesis of the Science. Washington State Department of Ecology. Publication No. 05-06-006; and

(xvii) Wetlands in Washington State—Volume 2: Guidance for Protecting and Managing Wetlands. Washington State Department of Ecology. Publication No. 05-06-008.

(3) Special Studies Required. If the administrator determines that the site of a proposed shoreline development potentially includes, or is adjacent to, a critical area(s), the applicant shall be notified in writing that a special study may be required. When required, the expense of undertaking the special study(ies) shall be borne by the applicant. The applicant’s choice of consultant or technical expert and the content, format and extent of the special study(ies) shall be approved by administrator.

(A) The requirement for special studies may be waived by the administrator if there is substantial showing that:

(i) There will be no alteration of the critical area(s) and/or the required buffer(s);

(ii) The proposal will not impact the critical area(s) in a manner contrary to the purpose, intent and requirements of this chapter and the comprehensive plan; and

(iii) The minimum standards of this section will be met.

(B) No special study is required for development proposals that are exempt from the provisions of this section as set forth in Sections [18.20.030](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1820.html#18.20.030), [18.20.040](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1820.html#18.20.040) and [18.20.050](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1820.html#18.20.050).

(C) When required, a special study shall be conducted by a qualified professional who is knowledgeable about the specific critical area(s) in question. In general, any required special study shall contain at least the following information, in addition to any other specific information determined pertinent by the administrator (specific plan and special study requirements are found in applicable critical area sections below):

(i) A map, of a scale no smaller than one-inch equals two hundred feet, showing the existing features on the site, such as topography, vegetation, etc., and including the extent of any critical area(s), and the plan for the proposed activity showing the relationship to the location of the critical area(s);

(ii) A written analysis of the existing critical area(s) and a description of how the proposed development will or will not impact the ecological functions and values of the critical area(s); and

(iii) A description (written and/or graphic) of any proposed mitigation measures/activities to address impacts to the critical area(s).

(4) General Process. The provisions of this section shall be implemented during the applicable review process for the requested shoreline permit approval, in accordance with the provisions of this chapter.

(5) Surety/Bonding. If a development proposal within a designated critical area within shoreline jurisdiction is subject to mitigation, maintenance or monitoring plans, the city of Omak, in a form acceptable to the city attorney, may require an assurance device or surety consistent with the requirements of Chapter [17.46](https://www.codepublishing.com/WA/Omak/html/Omak17/Omak1746.html#17.46).

(6) Permit Conditions. Through the shoreline development review process, the city of Omak shall have the authority to attach such conditions to the granting of any approval under this section as deemed necessary to alleviate adverse impacts to critical area(s) and to carry out the provisions of this chapter. Such conditions of approval may include, but are not limited to the following:

(A) Limitations on minimum lot sizes;

(B) Provisions for additional buffers relative to the intensity of a use or activity;

(C) Requirements and/or restrictions on the construction, size, location, bulk and/or height, etc., of structure(s);

(D) Dedication of necessary easements for utilities, conservation, open space, etc.;

(E) Imposition of easement agreements, sureties, deed restrictions, covenants, etc., on the future use and/or division of land;

(F) Limitations on the removal of existing vegetation;

(G) Additional measures to address issues such as erosion control, stormwater management, filling, grading, etc.;

(H) Development of a plan to create, enhance, or restore damaged or degraded critical area(s) on and/or off site; and

(I) Any monitoring and/or maintenance plans necessary to implement the provisions of this chapter.

(b) Aquifer Recharge Areas. All areas within shoreline jurisdiction in Omak are designated as aquifer recharge based on soil types (See Map A7 in the map appendix to the Omak comprehensive plan). The general regulations in Section [18.21.060](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1821.html#18.21.060) and specific use and activity regulations in Section [18.21.070](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1821.html#18.21.070) are intended to protect these areas.

(1) Development, uses and activities within identified aquifer recharge areas shall comply with the regulations contained in this chapter and be subject to best management practices in compliance with the Eastern Washington Stormwater Management Manual. Any discharges that negatively affect an aquifer recharge area’s water quality are prohibited.

(2) For aquifer recharge areas found inside the shoreline jurisdiction, the following standards for development shall be required in addition to the general provisions of this chapter and the requirements of the underlying zone:

(A) A hydrogeologic study and/or ongoing monitoring may be required to assess impacts of development activities on groundwater resources.

(B) All storage tanks, whether above- or underground, shall be required to be constructed so as to protect against corrosion for the operational life of the tank, to prevent any release of hazardous substances to the ground, groundwaters, or surface waters, and to utilize appropriate containment methods.

(C) Application of pesticides, herbicides and fertilizers within aquifer recharge areas shall comply with timing and rates specified on product packaging.

(D) Vehicle repair and servicing activities must be conducted over impermeable pads and within a covered structure capable of withstanding normally expected weather conditions. Chemicals used in the process of vehicle repair and servicing must be stored in a manner that protects them from weather and provides containment should leaks occur.

(c) Fish and Wildlife Habitat Conservation Areas. Nearly all of the area within shoreline jurisdiction in Omak is designated as fish and wildlife habitat, primarily related to the limited riparian areas immediately adjoining the OHWM of the Okanogan River (See Map A8 in map appendix to Omak comprehensive plan). The shoreline designation applied to these areas—urban conservancy—and the regulations in Section [18.21.060](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1821.html#18.21.060) and specific use and activity regulations in Section [18.21.070](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1821.html#18.21.070) contained in this chapter have been developed to protect these critical areas and ensure no net loss.

(1) Development, uses and activities within or near identified fish and wildlife conservation areas shall comply with the regulations contained in this chapter.

(d) Frequently Flooded Areas. Portions of the area within shoreline jurisdiction in Omak and its UGA are designated as frequently flooded (flood hazard) areas, primarily outside of the corporate limits which are protected by an Army Corps of Engineers certified levee (See Map A10 in map appendix to Omak comprehensive plan). The shoreline designation applied to these areas, excluding unincorporated land within the Colville Reservation, is urban conservancy, and the regulations in Section [18.21.060](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1821.html#18.21.060) and specific use and activity regulations in Section [18.21.070](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1821.html#18.21.070) contained in this chapter have been developed to protect these critical areas and ensure no net loss.

(1) Development, uses and activities within identified frequently flooded areas which are also within shoreline jurisdiction shall comply with the general regulations in this chapter, the specific regulations in this section and be compliant with Chapter [14.28](https://www.codepublishing.com/WA/Omak/html/Omak14/Omak1428.html#14.28).

(2) Standards. In addition to the general provisions of this chapter and the requirements of the underlying zone, frequently flooded areas found inside shoreline jurisdiction, the following minimum standards shall apply to development activities within and adjacent to frequently flooded areas:

(A) All development within frequently flooded areas shall be reviewed under and subject to the requirements of Chapter [14.28](https://www.codepublishing.com/WA/Omak/html/Omak14/Omak1428.html#14.28), Flood Damage Prevention.

(B) Where frequently flooded areas coincide with other designated critical areas, critical areas reports and mitigation plans shall address any combined functions and values.

(C) Structures shall be located outside of frequently flooded areas except where no alternative location exists.

(D) Fill and grading in frequently flooded areas shall only occur upon a determination by a qualified professional that the fill or grading will not block side channels, inhibit channel migration, increase flood hazards to others, or be placed within a defined channel migration zone, whether or not the city has delineated such zones as of the time of application.

(E) Subdivision in frequently flooded areas is subject to the following:

(i) All lots created shall have adequate building space outside flood hazard areas, including the floodway and channel migration zones, and protect the functions and values of frequently flooded areas;

(ii) Plat maps shall indicate the location of the floodway, one-hundred-year floodplain with related elevations where applicable and channel migration zones;

(iii) Subdivisions shall be designed to minimize or eliminate the potential for flood damage; and

(iv) Subdivisions shall provide for stormwater drainage, in accordance with city standards, so as to reduce exposure to flood hazards.

(e) Geologically Hazardous Areas. According to Map A11 in the map appendix to the Omak comprehensive plan there are designated geologically hazardous areas within shoreline jurisdiction in the city of Omak and its adopted urban growth area.

(1) Development, uses and activities within identified geologically hazardous areas shall comply with the regulations contained in Section [18.21.060](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1821.html#18.21.060) and the following:

(A) New development or the creation of new lots that would cause foreseeable risk from geological conditions to people or improvements during the life of the development is prohibited.

(B) New development that would require structural shoreline stabilization over the life of the development is prohibited. Exceptions may 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. The stabilization measures shall conform to WAC [173-26-231](https://www.codepublishing.com/cgi-bin/wac.pl?cite=173-26-231).

(C) 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 allowed in strict conformance with WAC [173-26-231](https://www.codepublishing.com/cgi-bin/wac.pl?cite=173-26-231) requirements, and then only if no net loss of ecological functions will result.

(f) Wetlands. There are limited wetland areas designated within the city of Omak and its urban growth area. Map A9 in the map appendix to the Omak comprehensive plan (based on USF&W Service National Wetlands Inventory) shows that wetlands within shoreline jurisdiction are very limited and primarily directly adjoining the water. Development and activities within or adjoining designated wetlands or associated wetland buffers are limited to those uses authorized by this chapter, and are subject to the provisions of this chapter in general and this section specifically.

(1) Identification and Rating.

(A)    Wetlands shall be identified and delineated by a qualified wetland professional in accordance with WAC [173-22-035](https://www.codepublishing.com/cgi-bin/wac.pl?cite=173-22-035) and designated based on the definitions, methods and standards set forth in the currently approved Federal Wetland Delineation Manual and supplements. The city may use the following information sources as guidance in identifying the presence of wetlands and the subsequent need for a wetland delineation study:

(i) Hydric soils, soils with significant soil inclusions, and “wet spots” identified within the local soil survey;

(ii) National Wetlands Inventory;

(iii) Previous wetland rating evaluation; and

(iv) On-site inspection.

(B) Wetland delineations are valid for five years after such date the administrator shall determine whether a revision or additional assessment is necessary. The wetland boundary and any associated buffer area shall be identified on all plats, maps, plans and specifications submitted for the project. An evaluation of any unrated wetland is necessary when there is a proposed development or activity to be located adjacent to, or within, an area containing a wetland.

(C) Rating. Wetlands shall conducted by a qualified wetland specialist and be rated according to the Washington Department of Ecology wetland rating system, as set forth in the Washington State Wetland Rating System for Eastern Washington (Ecology Publication No. 14-06-030, or as revised and approved by Ecology).

(D) Illegal Modifications. Wetland rating categories shall not change due to illegal modifications made by the applicant or with the applicant’s knowledge or previous owner(s) in cases where the city has started enforcement actions and the owner sells/transfers ownership during the proceedings.

(2) Regulated Activities.

(A) The following activities are subject to the general regulations in this chapter and the specific regulations of this section if they occur in a regulated wetland or its buffer:

(i) The removal, excavation, grading, or dredging of soil, sand, gravel, minerals, organic matter, or material of any kind.

(ii) The dumping of, discharging of, or filling with any material.

(iii) The draining, flooding, or disturbing the water level or water table.

(iv) Pile driving.

(v) The placing of obstructions.

(vi) The construction, reconstruction, demolition, or expansion of any structure.

(vii) The destruction or alteration of wetland vegetation through clearing, harvesting, shading, intentional burning, or planting of vegetation that would alter the character of a regulated wetland.

(viii) Activities that result in:

a. A significant change of water temperature.

b. A significant change of physical or chemical characteristics of the sources of water to the wetland.

c. A significant change in the quantity, timing or duration of the water entering the wetland.

d. The introduction of pollutants.

(B) For any regulated activity, a critical areas report or wetland critical areas report (see Section [19.05.030](https://www.codepublishing.com/WA/Omak/html/Omak19/Omak1905.html#19.05.030)) may be required to support the requested activity.

(3) Exemptions and Allowed Uses in Wetlands.

(A) The following wetlands are exempt from the buffer provisions contained in this chapter and the normal mitigation sequencing process described in Sections [19.05.030](https://www.codepublishing.com/WA/Omak/html/Omak19/Omak1905.html#19.05.030) and [19.05.037](https://www.codepublishing.com/WA/Omak/html/Omak19/Omak1905.html#19.05.037). They may be filled if impacts are fully mitigated based on provisions in Sections [19.05.030](https://www.codepublishing.com/WA/Omak/html/Omak19/Omak1905.html#19.05.030) and [19.05.037](https://www.codepublishing.com/WA/Omak/html/Omak19/Omak1905.html#19.05.037). In order to verify the following conditions, a critical area report for wetlands meeting the requirements in Section [19.05.030](https://www.codepublishing.com/WA/Omak/html/Omak19/Omak1905.html#19.05.030) must be submitted.

(i) All isolated Category III and IV wetlands less than one thousand square feet that:

a. Are not associated with riparian areas or buffer.

b. Are not part of a wetland mosaic.

c. Do not contain habitat identified as essential for local populations of priority species identified by Washington Department of Fish and Wildlife or species of local importance identified on Map A-8 in the map appendix to the Omak comprehensive plan.

d. Are not a vernal pool.

e. Are not an alkali wetland.

f. Do not contain aspen stands.

(B) Activities Allowed in Wetlands. The activities listed below are allowed in wetlands. These activities do not require submission of a critical area or wetland critical area report, except where such activities result in a loss of the functions and values of a wetland or wetland buffer. These activities include:

(i) Conservation or preservation of soil, water, vegetation, fish, shellfish, and/or other wildlife that does not entail changing the structure or functions of the existing wetland.

(ii) The harvesting of wild crops in a manner that is not injurious to natural reproduction of such crops and provided the harvesting does not require tilling of soil, planting of crops, chemical applications, or alteration of the wetland by changing existing topography, water conditions, or water sources.

(iii) Drilling for utilities/utility corridors under a wetland, with entrance/exit portals located completely outside of the wetland buffer; provided, that the drilling does not interrupt the groundwater connection to the wetland or percolation of surface water down through the soil column. Specific studies by a hydrologist are necessary to determine whether the groundwater connection to the wetland or percolation of surface water down through the soil column will be disturbed.

(iv) Enhancement of a wetland through the removal of nonnative invasive plant species. Removal of invasive plant species shall be restricted to hand removal unless permits from the appropriate regulatory agencies have been obtained for approved biological or chemical treatments. All removed plant material shall be taken away from the site and appropriately disposed of. Plants that appear on the Washington State Noxious Weed Control Board list of noxious weeds must be handled and disposed of according to a noxious weed control plan appropriate to that species. Revegetation with appropriate native species at natural densities is allowed in conjunction with removal of invasive plant species.

(v) Educational and scientific research activities.

(vi) Normal and routine maintenance and repair of any existing public or private facilities within an existing right-of-way; provided, that the maintenance or repair does not expand the footprint or use of the facility or right-of-way.

(4) Wetland Buffers.

(A) Buffer Requirements. The standard buffer widths in [18.21.080](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1821.html#18.21.060) Table 2 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 Eastern Washington, as updated.

(i) The use of the standard buffer widths requires the implementation of the measures in [18.21.080](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1821.html#18.21.060) Table 2, where applicable, to minimize the impacts of the adjacent land uses.

(ii) If an applicant chooses not to apply the mitigation measures in [18.21.080](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1821.html#18.21.060) Table 3 then a thirty-three percent increase in the width of all buffers is required. For example, a seventy-five-foot buffer with the mitigation measures would be a one-hundred-foot buffer without them.

(iii) The standard buffer widths 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.

(iv) Additional buffer widths are added to the standard buffer widths. For example, a Category I wetland scoring thirty-two points for habitat function would require a buffer of one hundred fifty feet (seventy-five plus seventy-five).

| **18.21.080 Table 1 Wetland Buffer Requirements** | | | | |
| --- | --- | --- | --- | --- |
|  | **Buffer Width (In Feet) Based on Habitat Score** | | | |
| **Wetland Category** | **3—4** | **5** | **6—7** | **8—9** |
| Category I:  Based on total score | 75 | 90 | 120 | 150 |
| Category I: Forested | 75 | 90 | 120 | 150 |
| Category I: Bogs and wetlands of high conservation value | 190 | | | |
| Category I: Alkali | 150 | | | |
| Category II: Based on total score | 75 | 90 | 120 | 150 |
| Category II: Vernal pool | 150 | | | |
| Category II: Forested | 75 | 90 | 120 | 150 |
| Category III (all) | 60 | 90 | 120 | 150 |
| Category IV (all) | 40 | | | |

| **18.21.080 Table 2 Required Measures to Minimize Impacts to Wetlands**  (Measures are required, where applicable to a specific proposal) | |
| --- | --- |
| **Disturbance** | **Required Measures to Minimize Impacts** |
| Lights | Direct lights away from wetland |
| Noise | 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 outer wetland buffer |
| Toxic runoff | 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 | Retrofit stormwater detention and treatment for roads and existing adjacent development |
| Prevent channelized flow from lawns that directly enters the buffer |
| Use low-intensity development techniques (per PSAT publication on LID techniques) |
| Change in water regime | Infiltrate or treat, detain, and disperse into buffer new runoff from impervious surfaces and new lawns |
| Pets and human disturbance | Use privacy fencing or plant dense vegetation to delineate buffer edge and to discourage disturbance using vegetation appropriate for the ecoregion |
| Place wetland and its buffer in a separate tract or protect with a conservation easement |
| Dust | Use best management practices to control dust |
| Disruption of corridors or connections | Maintain connections to off-site areas that are undisturbed |
| Restore corridors or connections to off-site habitats by replanting |

(v) Increased Wetland Buffer Area Width. Buffer widths shall be increased on a case-by-case basis as determined by the administrator when a larger buffer is necessary to protect wetland functions and values. This determination shall be supported by appropriate documentation showing that it is reasonably related to protection of the functions and values of the wetland. The documentation must include but not be limited to the following criteria:

a. The wetland is used by a plant or animal species listed by the federal government or the state as endangered, threatened, candidate, sensitive, monitored or documented priority species or habitats, or essential or outstanding habitat for those species or has unusual nesting or resting sites such as heron rookeries or raptor nesting trees; or

b. The adjacent land is susceptible to severe erosion, and erosion-control measures will not effectively prevent adverse wetland impacts; or

c. The adjacent land has minimal vegetative cover or slopes greater than thirty percent.

(vi) Buffer averaging to improve wetland protection may be permitted when all of the following conditions are met:

a. The wetland has significant differences in characteristics that affect its habitat functions, such as a wetland with a forested component adjacent to a degraded emergent component or a “dual-rated” wetland with a Category I area adjacent to a lower-rated area.

b. The buffer is increased adjacent to the higher-functioning area of habitat or more sensitive portion of the wetland and decreased adjacent to the lower-functioning or less sensitive portion as demonstrated by a critical areas report from a qualified wetland professional.

c. The total area of the buffer after averaging is equal to the area required without averaging.

d. The buffer at its narrowest point is never less than either three-quarters of the required width or seventy-five feet for Category I and II, fifty feet for Category III and twenty-five feet for Category IV, whichever is greater.

(vii) Averaging to allow reasonable use of a parcel may be permitted when all of the following are met:

a. There are no feasible alternatives to the site design that could be accomplished without buffer averaging.

b. The averaged buffer will not result in degradation of the wetland’s functions and values as demonstrated by a critical areas report from a qualified wetland professional. The total buffer area after averaging is equal to the area required without averaging.

c. The buffer at its narrowest point is never less than either three-quarters of the required width or seventy-five feet for Category I and II, fifty feet for Category III and twenty-five feet for Category IV, whichever is greater.

(B) Measurement of Wetland Buffers. All buffers shall be measured perpendicular from the wetland boundary as surveyed in the field. The buffer for a wetland created, restored, or enhanced as compensation for approved wetland alterations shall be the same as the buffer required for the category of the created, restored, or enhanced wetland. Only fully vegetated buffers will be considered. Lawns, walkways, driveways, and other mowed or paved areas will not be considered buffers or included in buffer area calculations.

(C) Buffers on Mitigation Sites. All mitigation sites shall have buffers consistent with the buffer requirements of this section. Buffers shall be based on the expected or target category of the proposed wetland mitigation site.

(D) Buffer Maintenance. Except as otherwise specified or allowed in accordance with this section, wetland buffers shall be retained in an undisturbed or enhanced condition. In the case of compensatory mitigation sites, removal of invasive nonnative weeds is required for the duration of the mitigation bond.

(E) Impacts to Buffers. A wetland management and mitigation plan shall be required when impacts associated with development within a wetland or wetland buffer are unavoidable, demonstrated by compliance with requirements for the compensation for impacts to buffers outlined in Sections [19.05.030](https://www.codepublishing.com/WA/Omak/html/Omak19/Omak1905.html#19.05.030) and [19.05.037](https://www.codepublishing.com/WA/Omak/html/Omak19/Omak1905.html#19.05.037).

(F) Overlapping Critical Area Buffers. If buffers for two contiguous critical areas overlap (such as buffers for a stream and a wetland), the wider buffer applies.

(G) Allowed Buffer Uses. The following uses may be allowed within a wetland buffer in accordance with the review procedures of this section, provided they are not prohibited by any other applicable law and they are conducted in a manner so as to minimize impacts to the buffer and adjacent wetland:

(i) Conservation and restoration activities. Conservation or restoration activities aimed at protecting the soil, water, vegetation, or wildlife.

(ii) Passive recreation. Passive recreation facilities designed and in accordance with an approved critical area report, including:

a. Walkways and trails; provided, that those pathways are limited to minor crossings having no adverse impact on water quality. They should be generally parallel to the perimeter of the wetland, located only in the outer twenty-five percent of the wetland buffer area, and located to avoid removal of significant trees. They should be limited to pervious surfaces no more than five feet in width for pedestrian use only. Raised boardwalks utilizing nonleaching best practice of nontreated pilings may be acceptable.

b. Wildlife-viewing structures.

(iii) Educational and scientific research activities.

(iv) Normal and routine maintenance and repair of any existing public or private facilities within an existing right-of-way; provided, that the maintenance or repair does not increase the footprint or use of the facility or right-of-way.

(v) The harvesting of wild crops in a manner that is not injurious to natural reproduction of such crops and provided the harvesting does not require tilling of soil, planting of crops, chemical applications, or alteration of the wetland by changing existing topography, water conditions, or water sources.

(vi) Drilling for utilities/utility corridors under a buffer, with entrance/exit portals located completely outside of the wetland buffer boundary; provided, that the drilling does not interrupt the groundwater connection to the wetland or percolation of surface water down through the soil column. Specific studies by a hydrologist are necessary to determine whether the groundwater connection to the wetland or percolation of surface water down through the soil column is disturbed.

(vii) Enhancement of a wetland buffer through the removal of nonnative invasive plant species. Removal of invasive plant species shall be restricted to hand removal. All removed plant material shall be taken away from the site and appropriately disposed of. Plants that appear on the Washington State Noxious Weed Control Board list of noxious weeds must be handled and disposed of according to a noxious weed control plan appropriate to that species. Revegetation with appropriate native species at natural densities is allowed in conjunction with removal of invasive plant species.

(viii) Stormwater management facilities. Stormwater management facilities are limited to stormwater dispersion outfalls and bioswales. They may be allowed within the outer twenty-five percent of the buffer of Category III or IV wetlands only; provided, that:

a. No other location is feasible; and

b. The location of such facilities will not degrade the functions or values of the wetland; and

c. Stormwater management facilities are not allowed in buffers of Category I or II wetlands.

(ix) Nonconforming Uses. Repair and maintenance of nonconforming uses or structures, where legally established within the buffer, provided they do not increase the degree of nonconformity.

(5) Signs and Fencing of Wetlands and Buffers.

(A) Temporary Markers. The outer perimeter of the wetland buffer and the clearing limits identified by an approved permit or authorization shall be marked in the field with temporary “clearing limits” fencing in such a way as to ensure that no unauthorized intrusion will occur. The marking is subject to inspection by the administrator prior to the commencement of permitted activities. This temporary marking shall be maintained throughout construction and shall not be removed until permanent signs, if required, are in place.

(B) Permanent Signs. As a condition of any permit or authorization issued pursuant to this section, the administrator may require the applicant to install permanent signs along the boundary of a wetland or buffer.

(i) Permanent signs shall be made of an enamel-coated metal face and attached to a metal post or another nontreated material of equal durability. Signs must be posted at an interval of one per lot or every fifty feet, whichever is less, and must be maintained by the property owner in perpetuity. The signs shall be worded as follows or with alternative language approved by the administrator:

Protected Wetland Area Do Not Disturb  
Contact city of Omak Regarding Uses, Restrictions, and Opportunities for Stewardship

(ii) The provisions of subsection (f)(5)(A) of this section may be modified as necessary to assure protection of sensitive features or wildlife.

(C) Fencing.

(i) The applicant shall be required to install a permanent fence around the wetland or buffer when domestic grazing animals are present or may be introduced on site.

(ii) Fencing installed as part of a proposed activity or as required in this subsection shall be designed so as to not interfere with species migration, including fish runs, and shall be constructed in a manner that minimizes impacts to the wetland and associated habitat.

(6) Critical area report requirements for wetlands are found in Section [19.05.030](https://www.codepublishing.com/WA/Omak/html/Omak19/Omak1905.html#19.05.030).

(7) Mitigation and compensatory mitigation requirements for wetlands are found in Sections [19.05.030](https://www.codepublishing.com/WA/Omak/html/Omak19/Omak1905.html#19.05.030) and [19.05.037](https://www.codepublishing.com/WA/Omak/html/Omak19/Omak1905.html#19.05.037). (Ord. 1859 § 1 (Exh. A) (part), 2018).

**18.21.090 Shorelines designations map.**

The location and boundaries of the shoreline designations applied in this chapter are established as shown on the map entitled the Omak shorelines map. The shorelines map shall be adopted by ordinance with the ordinance number shown thereon, the date adopted, and shall be signed by the mayor. The signed map shall be maintained on display at City Hall and considered a part of this title.

(a) Interpretation of Shoreline Designations Map. Where uncertainty exists as to the boundaries of shorelines designations as shown on the Omak Shorelines Designation Map, the following rules shall apply:

(1) Boundaries indicated as approximately following the centerlines of streets, highways, or alleys shall be construed as following such centerlines;

(2) Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines;

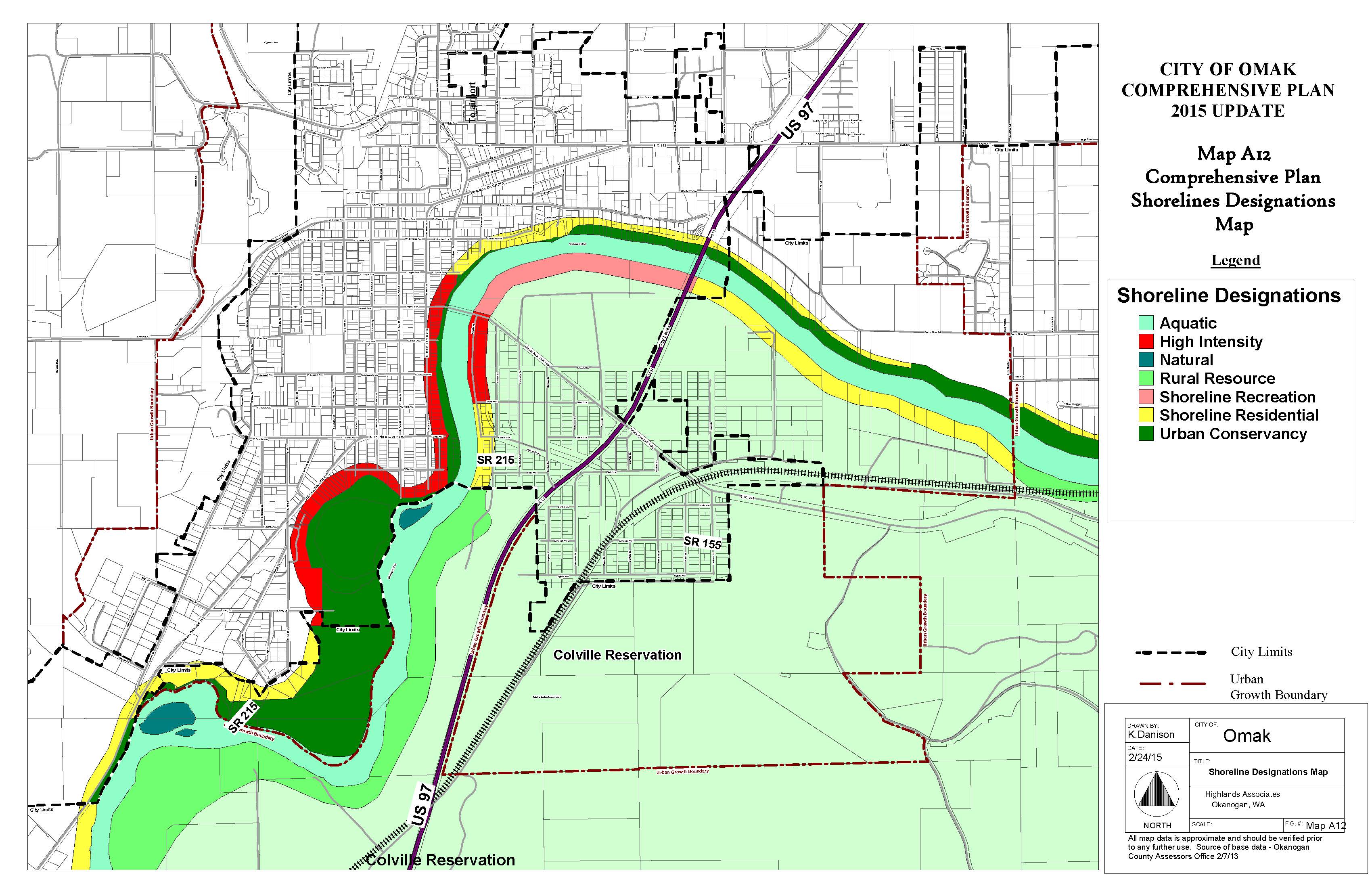
(3) Boundaries indicated as approximately following the corporate limits of the city shall be construed as following the corporate limits of the city;

(4) Boundaries indicated as following shorelines shall be construed as following such shorelines, and in the event of change in the shoreline shall be construed as moving with the actual shoreline; boundaries indicated as approximately following the centerlines of streams, rivers, lakes or other bodies of water shall be construed to follow such centerlines;

(5) Boundaries indicated as parallel to or extensions of features indicated in subsections (a)(1) through (4) of this section shall be so construed. Distances not specifically indicated on the Omak shorelines designation map shall be determined by the scale of the map;

(6) Where physical or cultural features existing on the ground are inconsistent with those shown on the Omak shorelines designation map or in other circumstances not covered by subsections (a)(1) through (5) of this section, the administrator shall interpret the designation boundaries.

(b) Designations of Shorelines in Annexations. Any shoreline areas annexed to the city shall be designated consistent with the comprehensive plan shoreline designation for the area to be annexed. (Ord. 1859 § 1 (Exh. A) (part), 2018).



**18.21.100 Nonconforming structures.**

(a) Structures that were legally established and are used for a use conforming at the time of establishment, but which are nonconforming with regard to setbacks, buffers or yards; area; bulk; height or density established in this chapter, may be maintained and repaired and may be enlarged or expanded upon issuance of a conditional use permit; provided, that no reasonable alternative use is practical and the proposed use will be at least as consistent with the policies and provisions of the Act and this SMP and as compatible with the uses in the area as the preexisting use.

(b) 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.

(c) A nonconforming structure which is moved any distance must be brought into compliance with the regulations in this chapter.

(d) If a nonconforming development is damaged, it may be reconstructed provided the resulting configuration does not increase the nonconformity as it existed immediately prior to the time the development was damaged. An application shall be made for permits necessary to restore the development within one year of the date the damage occurred, all permits are obtained, and the restoration is completed within two years of permit issuance unless otherwise extended.

(e) Nothing in this section shall be deemed to prevent the normal maintenance and repair of a nonconforming structure or its restoration to a safe condition when declared to be unsafe by any official charged with protecting the public safety. (Ord. 1859 § 1 (Exh. A) (part), 2018).

**18.21.105 Nonconforming uses.**

(a) Uses that were lawfully established but are nonconforming with regard to the present regulations of this chapter may continue as legal nonconforming uses. Such uses shall not be enlarged or expanded, except that nonconforming single-family residence uses that are located landward of the OHWM may be enlarged or expanded in conformance with applicable bulk and dimensional standards by the addition of space to the main structure or by the addition of normal appurtenances as defined herein upon approval of a conditional use permit.

(b) A use which is listed as a conditional use, but which existed prior to adoption of this chapter or any relevant amendment and for which a conditional use permit has not been obtained, shall be considered a lawful nonconforming use.

(c) 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:

(1) The proposed use will be at least as consistent with the policies and provisions of the Act and this chapter and as compatible with the uses in the area as the preexisting use. In addition, such conditions may be attached to the permit as are deemed necessary to assure compliance with the above findings, the requirements of this chapter and the Act, and to assure that the use will not become a nuisance or a hazard.

(d) If a nonconforming use is discontinued for twelve consecutive months or for twelve months during any two-year period, the nonconforming rights shall expire and any subsequent use shall be conforming. A use authorized pursuant to subsection (a) of this section shall be considered a conforming use for purposes of this section. (Ord. 1859 § 1 (Exh. A) (part), 2018).

**18.21.110 Nonconforming lots.**

An undeveloped lot, tract, parcel, site, or division of land located landward of the OHWM which was established in accordance with local and state subdivision requirements prior to the effective date of this chapter, but which does not conform to the present lot size standards, may be developed, if permitted by other land use regulations of the city and so long as such development conforms to all other requirements of this chapter and the Act. (Ord. 1859 § 1 (Exh. A) (part), 2018).

**18.21.115 Violations and penalties.**

(a) This part is adopted under RCW [90.58.200](https://www.codepublishing.com/cgi-bin/rcw.pl?cite=90.58.200) and [90.58.210](https://www.codepublishing.com/cgi-bin/rcw.pl?cite=90.58.210) to implement the enforcement responsibilities of the Department and the city under the Shoreline Management Act. The Act calls for a cooperative program between the city and the state. It provides for a variety of means of enforcement, including civil and criminal penalties, orders to cease and desist, orders to take corrective action, and permit rescission. The following should be used in addition to other mechanisms already in place at the local level and does not preclude other means of enforcement.

(b) Policy. These regulations should be used by the city in carrying out enforcement responsibilities under the Act. Enforcement action by the Department or the city may be taken whenever a person has violated any provision of the Act or this chapter or other regulation promulgated under the Act. The choice of enforcement action and the severity of any penalty should be based on the nature of the violation, the damage or risk to the public or to public resources, and/or the existence or degree of bad faith of the persons subject to the enforcement action.

(c) Order to Cease and Desist. The city and/or the Department shall have the authority to serve upon a person a cease and desist order if an activity being undertaken on shorelines of the state is in violation of Chapter [90.58](https://www.codepublishing.com/cgi-bin/rcw.pl?cite=90.58) RCW or this chapter.

(1) Content of Order. The order shall set forth and contain:

(A) A description of the specific nature, extent, and time of violation and the damage or potential damage; and

(B) A notice that the violation or the potential violation cease and desist or, in appropriate cases, the specific corrective action to be taken within a given time. A civil penalty under WAC [173-27-280](https://www.codepublishing.com/cgi-bin/wac.pl?cite=173-27-280) may be issued with the order.

(2) Effective Date. The cease and desist order issued under this section shall become effective immediately upon receipt by the person to whom the order is directed.

(3) Compliance. Failure to comply with the terms of a cease and desist order can result in enforcement actions including, but not limited to, the issuance of a civil penalty.

(d) Civil Penalty.

(1) A person who fails to conform to the terms of a substantial development permit, conditional use permit or variance issued under RCW [90.58.140](https://www.codepublishing.com/cgi-bin/rcw.pl?cite=90.58.140), who undertakes a development or use on shorelines of the state without first obtaining a permit, or who fails to comply with a cease and desist order issued under these regulations may be subject to a civil penalty by local government. The Department may impose a penalty jointly with city, or alone only upon an additional finding that a person:

(A) Has previously been subject to an enforcement action for the same or similar type of violation of the same statute or rule; or

(B) Has been given previous notice of the same or similar type of violation of the same statute or rule; or

(C) The violation has a probability of placing a person in danger of death or bodily harm; or

(D) Has a probability of causing more than minor environmental harm; or

(E) Has a probability of causing physical damage to the property of another in an amount exceeding one thousand dollars.

(2) In the alternative, a penalty may be issued to a person by the Department alone, or jointly with the city for violations which do not meet the criteria of subsection (d)(1)(A) through (E) of this section, after the following information has been provided in writing to a person through a technical assistance visit or a notice of correction:

(A) A description of the condition that is not in compliance and a specific citation to the applicable law or rule;

(B) A statement of what is required to achieve compliance;

(C) The date by which the agency requires compliance to be achieved;

(D) Notice of the means to contact any technical assistance services provided by the agency or others; and

(E) Notice of when, where, and to whom a request to extend the time to achieve compliance for good cause may be filed with the agency.

Furthermore, no penalty shall be issued by the Department until the individual or business has been given a reasonable time to correct the violation and has not done so.

(3) Amount of Penalty. The penalty shall not exceed five hundred dollars for each violation. Each day of violation shall constitute a separate violation.

(4) Aiding or Abetting. Any person who, through an act of commission or omission, procures, aids or abets in the violation shall be considered to have committed a violation for the purposes of the civil penalty.

(5) Notice of Penalty. A civil penalty shall be imposed by a notice in writing, either by certified mail with return receipt requested or by personal service, to the person incurring the same from the Department and/or the local government, or from both jointly. The notice shall describe the violation, approximate the date(s) of violation, and shall order the acts constituting the violation to cease and desist, or, in appropriate cases, require necessary corrective action within a specific time.

(e) Appeal of Civil Penalty.

(1) Right of Appeal. Persons incurring a penalty imposed by the Department or imposed jointly by the Department and the city may appeal the same to the Shorelines Hearings Board. Appeals to the Shorelines Hearings Board are adjudicatory proceedings subject to the provisions of Chapter [34.05](https://www.codepublishing.com/cgi-bin/rcw.pl?cite=34.05) RCW. Persons incurring a penalty imposed by local government may appeal the same to the local government legislative authority.

(2) Timing of Appeal. Appeals shall be filed within thirty days of the date of receipt of the penalty. The term “date of receipt” has the same meaning as provided in RCW [43.21B.001](https://www.codepublishing.com/cgi-bin/rcw.pl?cite=43.21B.001).

(3) Penalties Due.

(A) Penalties imposed under this section shall become due and payable thirty days after receipt of notice imposing the same unless application for remission or mitigation is made or an appeal is filed. Whenever an application for remission or mitigation is made, penalties shall become due and payable thirty days after receipt of the city and/or the Department’s decision regarding the remission or mitigation. Whenever an appeal of a penalty is filed, the penalty shall become due and payable upon completion of all review proceedings and upon the issuance of a final decision confirming the penalty in whole or in part.

(B) If the amount of a penalty owed the Department is not paid within thirty days after it becomes due and payable, the Attorney General, upon request of the Department, shall bring an action in the name of the state of Washington to recover such penalty. If the amount of a penalty owed to the city is not paid within thirty days after it becomes due and payable, the city may take actions necessary to recover such penalty.

(4) Penalty Recovered. Penalties recovered by the Department shall be paid to the State Treasurer. Penalties recovered by the city shall be paid to the local government treasury. Penalties recovered jointly by the Department and the city shall be divided equally between the Department and the city unless otherwise stipulated in the order.

(f) Criminal Penalty. The procedures for criminal penalties shall be governed by RCW [90.58.220](https://www.codepublishing.com/cgi-bin/rcw.pl?cite=90.58.220).

(1) Prosecution. Every person violating any of the provisions of this chapter or the Shoreline Management Act of 1971 shall be punishable upon conviction by the state by a fine not exceeding one thousand dollars, or by imprisonment not exceeding ninety days, or by both such fine and imprisonment, and each day’s violation shall constitute a separate punishable offense.

(g) Injunction. The city attorney may bring such injunctive, declaratory or other actions as are necessary to ensure that no uses are made of the shorelines of the state within the city’s jurisdiction which are in conflict with the provisions and programs of this chapter or the Shoreline Management Act of 1971, and to otherwise enforce provisions of this chapter and the Shoreline Management Act of 1971.

(h) Violators Liable for Damages. Any person subject to the regulatory program of this chapter who violates any provision of this chapter or the provisions of a permit issued pursuant thereto shall be liable for all damages to public or private property arising from such violation, including the cost of restoring the affected area to its condition prior to such violation. The city attorney may bring suit for damages under this subsection on behalf of the city. Private persons shall have the right to bring suit for damages under this subsection on their own behalf and on behalf of all persons similarly situated. If liability has been established for the cost of restoring an area affected by violation, the court shall make provision to assure that restoration will be accomplished within a reasonable time at the expense of the violator. In addition to such relief, including monetary damages, the court in its discretion may award attorney’s fees and costs of the suit to the prevailing party. (Ord. 1859 § 1 (Exh. A) (part), 2018).

**18.21.120 Unauthorized wetlands alterations and enforcement.**

(a) When a wetland or its buffer has been altered in violation of this chapter, all ongoing development work shall stop and the wetland and/or buffer shall be restored. The city shall have the authority to issue a “stop-work” order to cease all ongoing development work and order restoration, rehabilitation, or replacement measures at the owner’s or other responsible party’s expense to compensate for violation of provisions of this section.

(b) Requirement for Restoration Plan. All development work shall remain stopped until a restoration plan is prepared and approved by city. Such a plan shall be prepared by a qualified professional using the currently accepted scientific principles and shall describe how the actions proposed meet the minimum requirements described in this section.

(c) The administrator shall, at the violator’s expense, seek expert advice in determining the adequacy of the plan. Inadequate plans shall be returned to the applicant or violator for revision and resubmittal.

(d) Minimum Performance Standards for Restoration. The following minimum performance standards shall be met for the restoration of a wetland; provided, that if the violator can demonstrate that greater functions and habitat values can be obtained, these standards may be modified:

(1) The historic structure, functions, and values of the affected wetland shall be restored, including water quality and habitat functions.

(2) The historic soil types and configuration shall be restored to the extent practicable.

(3) The wetland and buffers shall be replanted with native vegetation that replicates the vegetation historically found on the site in species types, sizes, and densities. The historic functions and values should be replicated at the location of the alteration.

(4) Information demonstrating compliance with other applicable provisions of this chapter shall be submitted to the administrator.

(e) Site Investigations. The administrator is authorized to make site inspections and take such actions as are necessary to enforce this chapter. The administrator shall present proper credentials and make a reasonable effort to contact any property owner before entering onto private property.

(f) Penalties. Any person, party, firm, corporation, or other legal entity convicted of violating any of the provisions of this section shall be guilty of a misdemeanor.

(1) Each day or portion of a day during which a violation of this chapter is committed or continued shall constitute a separate offense. Any development carried out contrary to the provisions of this chapter shall constitute a public nuisance and may be enjoined as provided by the statutes of the state of Washington. The city may levy civil penalties against any person, party, firm, corporation, or other legal entity for violation of any of the provisions of this chapter. The civil penalty shall be assessed at a maximum rate of one hundred dollars per day per violation.

(2) If the wetland affected cannot be restored, monies collected as penalties shall be deposited in a dedicated account for the preservation or restoration of landscape processes and functions in the watershed in which the affected wetland is located. The city may coordinate its preservation or restoration activities with other cities in the watershed to optimize the effectiveness of the restoration action. (Ord. 1859 § 1 (Exh. A) (part), 2018).

[1](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1821.html" \l "wwfootnote_inline_258) - Dollar value as of September 15, 2012.

[2](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1821.html" \l "wwfootnote_inline_259) - Dollar value as of September 15, 2012.

[3](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1821.html" \l "wwfootnote_inline_260) - The dollar threshold established in this subsection must be adjusted for inflation by the Office of Financial Management every five years, beginning July 1, 2007, based upon changes in the consumer price index during that time period. “Consumer price index” means, for any calendar year, that year’s annual average consumer price index, Seattle, Washington, area, for urban wage earners and clerical workers, all items, compiled by the Bureau of Labor and Statistics, United States Department of Labor. The Office of Financial Management must calculate the new dollar threshold and transmit it to the Office of the Code Reviser for publication in the Washington State Register at least one month before the new dollar threshold is to take effect.

[4](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1821.html" \l "wwfootnote_inline_261) - Shoreline buffers in this chapter shall serve as riparian fish and wildlife habitat buffers.

[5](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1821.html" \l "wwfootnote_inline_262) - Vegetation buffers are required for all shoreline developments in all environments.

[6](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1821.html" \l "wwfootnote_inline_263) - The majority of the waterfront in Omak is occupied by an Army Corps of Engineers approved flood control levee, has been riprapped or otherwise altered.

[7](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1821.html" \l "wwfootnote_inline_264) - Nonagricultural lands are those lands that have not been subject to agriculture uses as defined in Section [18.08.023](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1808.html#18.08.023).

[8](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1821.html" \l "wwfootnote_inline_265) - Except for approved habitat restoration or enhancement projects.

[9](https://www.codepublishing.com/WA/Omak/html/Omak18/Omak1821.html" \l "wwfootnote_inline_266) - Said replacement structure shall be engineered and designed to address the issues of the failure of the existing structure.

1. - The dollar threshold established must be adjusted for inflation by the office of financial management every five years, beginning July 1, 2007, based upon changes in the consumer price index during that time period. “Consumer price index” means, for any calendar year, that year’s annual average consumer price index, Seattle, Washington, area, for urban wage earners and clerical workers, all items, compiled by the Bureau of Labor and Statistics, United States Department of Labor. The Office of Financial Management must calculate the new dollar threshold and transmit it to the Office of the Code Reviser for publication in the Washington State Register at least one month before the new dollar threshold is to take effect. [↑](#footnote-ref-1)