V. PERMITS AND DECISIONS

20.25E.150 Shoreline Project Permits, Approvals and Exemptions

A. Scope. Sections LUC 20.25E.150 through 20.25E.200 establish the criteria the City will use in making a decision on a shoreline permit application.

B. Applicability. This section 20.25E.150 applies to all applications for shoreline project permits and exemptions.

C. Review Criteria for all Shoreline Applications.

1. All development within the shoreline shall be consistent with the Shoreline Management Act, Chapter 90.58 RCW, and the SMP.

2. No permit shall be issued for any new or expanded building or structure of more than 35 feet above average finished grade level.

D. Filing Permits with Department of Ecology/Attorney General – Content Required.

1. Process I and II Permits. Pursuant to WAC 173-27-130, the Director shall send the following information to the Department of Ecology and the Attorney General's Office upon the City's final decision on a Shoreline Process I or Process II permit:

a. A copy of the complete application, and when the project has been modified in the course of the local review process, plans or text shall be provided that clearly indicates the final approval plans;

b. Findings and conclusions that establish the basis for the decision, including, identification of shoreline environment designation, applicable master program policies and regulations, and consistency of the project with the decision criteria for the applicable shoreline permit type;

c. A copy of the environmental checklist and SEPA determination, if applicable;

d. The City's final decision on the project; and

e. The permit data sheet required by WAC 173-27-190.

2. Process III Permits. Pursuant to WAC 173-27-050, the Director shall send the Letter of Exemption to the Department of Ecology and the Attorney General's Office upon the City's final decision on a Shoreline Process III Exemption from

the Shoreline Substantial Development Permit when the proposed development is subject to one or more of the following federal permit requirements:

a. A U.S. Army Corps of Engineers section 10 permit under the Rivers and Harbors Act of 1899; or

b. A section 404 permit under the Federal Water Pollution Control Act of 1972.

E. Revisions to Issued Shoreline Process I and II Permits and Approvals.

1. Processing. There are two ways to amend a previously approved Shoreline Substantial Development Permit, Conditional Use Permit or Variance approval.

a. Process as a new permit or approval consistent with the terms of LUC 20.25E.100 through 20.25E.120 and LUC 20.25E.170 through 20.25E.190; or

b. Process as a Shoreline Revision consistent with the terms of paragraph E.2 of this section. Except as provided in paragraph E.2 of this section, an amendment to a previously approved project or decision is treated as a new application.

2. Shoreline Revisions.

a. Scope of Authority. An amendment to a previously approved project or decision may be reviewed as a Shoreline Revision if determined to be within the scope and intent of the original permit by meeting all of the following criteria:

i. No additional over-water construction is involved except that pier, dock, or float construction may be increased by 500 square feet or 10 percent from the provisions of the original permit, whichever is less;

ii. Ground area coverage and height of each structure may be increased a maximum of 10 percent from the provisions of the original permit;

iii. The revised permit does not authorize development to exceed height, lot coverage, setback, or any other requirements of the SMP except as authorized under a variance granted in the original permit or a part thereof;

iv. Additional or revised landscaping is consistent with conditions (if any) attached to the original permit and with the SMP;

v. The use authorized pursuant to the original permit is not changed; and,

vi. No substantial adverse environmental impact will be caused by the project revision.

b. Limitation on Authority.

i. If the sum of the revision and any previously approved revisions violate the provisions of this section, a new permit shall be required.

ii. This revision process shall not be used to extend the expiration deadlines of LUC 20.25E.250.C or to authorize substantial development beyond the time limits of the original permit.

c. Decision Criteria.

i. The Director may approve or approve with modifications a Shoreline Revision if:

(A) The applicant has carried the burden of proof that the Shoreline Revision is within the scope and intent of the original permit pursuant to paragraph E.2 of this section; and

(B) The applicant has demonstrated that the proposal complies with the SMA, the SMP, and the BCC.

ii. In all other cases, the Director shall deny the application for Shoreline Revision.

d. Conditioning a Shoreline Revision. The Director may attach conditions to the Shoreline Revision as necessary to assure consistency of the project with the SMA, the SMP, and the BCC.

3. Transmittal to Department of Ecology/Attorney General.

a. The Director shall send a copy of the final City action on a Shoreline Revision to the Department of Ecology and the Attorney General's Office in conformance with WAC 173-27-100(5).

b. If the revision to the original permit involves a conditional use or variance which was conditioned by the Department of Ecology, the revision shall be submitted to the Department of Ecology for the

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department's approval, approval with conditions, or denial. The revision shall indicate that it is being submitted under the requirements of WAC 173-27-100(6). Persons having requested notice of the Director's decision shall be notified.

4. Effective Date. The Shoreline Revision is effective immediately upon the Director's decision or, when appropriate under paragraph E.4.ii of this section, upon the Department of Ecology's action.

5. Commencement of Activity. Construction undertaken pursuant to that portion of a revised shoreline permit is at the applicant's sole risk until expiration of the appeal deadlines. If an appeal is successful in proving that an amendment is not within the scope and intent of the original permit, the decision on appeal shall have no bearing on the entitlements contained in the original permit.

20.25E.160 Shoreline Substantial Development Permits.

A. Substantial Development Permit Required.

A shoreline substantial development permit is required for all development within the shoreline jurisdiction, except those activities set forth in LUC 20.25E.170. Criteria for obtaining a shoreline substantial development permit shall be as set forth in Chapter 173-27 WAC and LUC 20.25E.150 and 20.25E.160.

B. Applicability.

The provisions of this section apply to each application for a shoreline substantial development permit. Substantial development shall not be undertaken on shorelines without first obtaining a shoreline substantial development permit as provided in this section.

C. Purpose.

A shoreline substantial development permit is the mechanism by which the City administers its Shoreline Master Program in a manner consistent with the policies of the Shoreline Management Act.

D. Decision Criteria. The Director may approve or approve with modifications a Shoreline Substantial Development Permit if:

1. The proposal is consistent with the policies and procedures of the Shoreline Management Act;

2. The proposal is consistent with the provisions of Chapter 173-27 WAC;

3. The proposal is consistent with the SMP;

4. The proposal will be served by adequate public facilities including streets, fire protection, and utilities;

5. The proposal is consistent with the Bellevue Comprehensive Plan; and

6. The proposal complies with applicable requirements of the Bellevue City Code.

E. Special Shoreline Report Process.

1. Purpose. A special shoreline report is a mechanism by which [setbacks, moorage, and shoreline stabilization requirements of this part and the impervious surface standards set forth in LUC 20.20.010 may be modified for a specific proposal. The report is intended to provide flexibility for sites or proposals providing unique design, or protection of shoreline area functions and values, not anticipated by this part, and to ensure that strict implementation of certain requirements will not thwart the policy enumerated in RCW 90.58.020. The extent and complexity of information required in a special shoreline report will vary, depending on the scope, complexity, and magnitude of impact on the shoreline area and shoreline setbacks associated with the proposed development. The special shoreline report must demonstrate that the proposal with requested modifications leads to equivalent or better protection of shoreline ecological functions and values than would result from the application above enumerated requirements. Where the proposal involves restoration of existing conditions in exchange for a reduction in the regulated shoreline setback on a site, the special shoreline report must demonstrate a net increase in certain critical area functions.

2. Review Process. Requests for modifications to the requirements of this part through a special shoreline report shall be processed through a shoreline substantial development permit. Where additional permits are required for the underlying use or activity, the permits may be consolidated or merged pursuant to the provisions of LUC 20.25E.100.C.6.

3. Limitation on modifications. The special shoreline report may not be used to modify sections of the Land Use Code outside of Part 20.25E LUC unless otherwise expressly permitted. The special shoreline report may not be used to modify the definitions contained in Part 20.25E LUC or Chapter 20.50 LUC, or any other provision of this part that expressly prohibits modification. The special

shoreline report may not be used to modify the shoreline below the ordinary high water mark as defined in RCW 90.58.030(2)(c), the floodway as defined in RCW 90.58.030(2)(b), or within any wetland as defined in RCW 90.58.030(2)(h). Additional limitations on modifications for specific shoreline area may be found in the sections of this part addressing specific use performance standards.

4. Use of science and technical information required. The special shoreline report shall use scientifically valid methods and studies in the analysis of shoreline area data and field reconnaissance including the most current, accurate and complete scientific and technical information as outlined in RCW 90.58.100. The special shoreline report shall evaluate the proposal and all probable impacts to shoreline areas in accordance with the provisions of the Shoreline SMP.

5. Submittal requirements.

a. Specific Proposal Required. A special shoreline report must be submitted as part of an application for a specific development proposal. In addition to the requirements of this section, additional information may be required for the permit applicable to the development proposal.

b. Minimum Report Requirements. The special shoreline report shall be prepared by a qualified professional and shall at minimum include the content identified in this paragraph. The Director may waive any of the report requirements where, in the Director's discretion, the information is not necessary to assess the impacts of the proposal and the level of protection of shoreline ecological functions and values accomplished. At a minimum, the report shall contain the following:

i. The lake classification and environment designation as outlined in the City of Bellevue GIS mapping.

ii. Identification and classification of all shoreline setbacks and any critical areas and critical area buffers on the site and abutting properties.

iii. Identification of each regulation or standard of this code proposed to be modified;

iv. A vegetative cover and habitat analysis, including existing aquatic vegetation, setbacks and upland area. (Use of the Bellevue Urban Wildlife Habitat Functional Assessment Model is required if credit is

sought for wildlife habitat functions outside the shoreline setback and aquatic area.);

v. An assessment of the probable cumulative impacts to shoreline area resulting from development of the site and the proposed development;

vi. An analysis of the level of protection of shoreline ecological functions and values provided by the regulations or standards of this code, compared with the level of protection provided by the proposal. The analysis shall include:

(1) A discussion of the functions and values currently provided by the aquatic zone, shoreline setback and shoreline upland area on the site and their relative importance to the ecosystem in which they exist;

(2) A discussion of the functions and values likely to be provided by the shoreline setback on the site through application of the regulations and standards of this Code over the anticipated life of the proposed development;

(3) A discussion of the functions and values likely to be provided by the shoreline setback and upland area on the site through the modifications included in the proposal over the anticipated life of the proposed development;

(4) A discussion of the mitigation requirements applicable to the proposal pursuant to relevant performance and mitigation standards, and a recommendation for additional or modified mitigation, if any; and

(5) Any additional information required for the specific use as specified in the sections of this part addressing that use.

c. Additional Report Submittal Requirements.

i. Unless otherwise provided, a special shoreline report may be supplemented by or composed, in whole or in part, of any reports or studies required by other laws and regulations or previously prepared for and applicable to the development proposal site, as approved by the Director.

ii. Where a project requires a special shoreline report and a mitigation or restoration plan, the mitigation or restoration plan may be included with the special shoreline report, and may be considered in determining compliance with the applicable decision criteria, except as set forth in paragraph E.5.c.iv of this section.

iii. The applicant may consult with the Director prior to or during preparation of the special shoreline report to obtain approval of modifications to the required contents of the report where, in the judgment of a qualified professional, more or less information is required to adequately address the potential shoreline area impacts and required mitigation.

iv. Proposals to reduce the regulated shoreline setbacks below those required by this part shall include the following information in addition to the minimum special shoreline report contents described in paragraph E.5.b of this section. The restoration proposed to improve existing function included in the proposal must be separate from any impact mitigation proposal:

(1) The specific restoration actions proposed and the specific regulated setback dimensions proposed.

(2) The functions that will be enhanced by the restoration actions, addressing at minimum: habitat, hydrologic, vegetative and (where applicable) stream process functions.

(3) Functions that will be provided outside of the reduced regulated setback dimension proposed by the project, if any (for example, vegetation and habitat preservation, stormwater quality and quantity controls or low impact development features).

(4) The relative importance of the enhanced functions to the ecosystem in which they exist.

(5) A description of the net gain in functions by the restoration actions in the reduced regulated setback area and the proposal, compared to the functions that would be preserved under standard setback provisions of the SMP without restoration.

d. Incorporation of Previous Study. Where a valid special shoreline report or report for another agency with jurisdiction over the proposal has been prepared within the last five years for a specific site, and where the

proposed land use activity and surrounding site conditions are unchanged, previous report may be incorporated into the required special shoreline report. The applicant shall submit an assessment detailing any changed environmental conditions associated with the site.

6. Decision Criteria – Proposals to Modify Performance Standards or Reduce a Shoreline Setback. The Director may approve, or approve with modifications, a proposal to modify a performance standard or shoreline setback on a site where the applicant demonstrates:

i. The proposal includes plans for restoration of shoreline aquatic area, setback or upland area such that there is a measurable net gain in overall shoreline and critical area functions;

ii. The proposal includes plans for restoration of degraded setback or shoreline area such that there is a measurable net gain in the most important shoreline aquatic or habitat functions on the site;

iii. The proposal includes a net gain in stormwater quality function by the shoreline setback or by elements of the development proposal outside of the reduced regulated shoreline setback;

iv. Adequate resources to ensure completion of any required restoration, mitigation and monitoring efforts;

v. The modifications and performance standards included in the proposal are not detrimental to the functions and values of shoreline setbacks and critical areas off-site; and

vi. The resulting development is compatible with other uses and development in the same land use district.

7. Assurance devices. The Director may require assurance devices to ensure that any conditions of approval are fully implemented. Assurance devices shall be posted in accordance with LUC 20.40.490.

8. City technical review**.** The City may require the applicant to pay for technical review of the special shoreline report and related proposal by a consultant retained by the City to assist in determining compliance with paragraph E of this section.

F. Effective Date. The decision of the Director is the final decision of the City on a Shoreline Substantial Development Permit, and is effective on the date of actual receipt by the Department of Ecology of the final decision of the Director on the permit.

G. Commencement of Activity.

Construction pursuant to an effective Shoreline Substantial Development Permit shall not begin and is not authorized until 21 days from the date of filing as defined in RCW 90.58.140(6) and WAC 173-27-130(6), or until all Shoreline Hearings Board petition for review proceedings initiated within 21 days from the date of filing have been terminated; except as provided in RCW 90.58.140(5)(a) and (b).

20.25E.170 EXEMPTIONS FROM SHORELINE SUBSTANTIAL DEVELOPMENT PERMITS—LETTER OF EXEMPTION REQUIRED.

A. Purpose. Issuance of a letter of exemption is the mechanism by which the City administers the SMP for minor projects in a manner consistent with the policies of the SMA.

B. Letter of Exemption Required. Development described in paragraph B of this section shall not require Shoreline Substantial Development Permits so long as they are consistent with the policy and procedures of the Shoreline Management Act, Chapter 173-27 WAC, the SMP, and applicable requirements of this the BCC. Criteria for obtaining a shoreline letter of exemption are as set forth in Chapter 173-27 WAC, LUC 20.25E.150, and LUC 20.25E.170.

C. Letters of Exemption from the Shoreline Substantial Development Permit Requirements Shall be Issued for the Following:

1. Any development of which the total cost or fair market value, whichever is higher, does not exceed $5000 or as subsequently adjusted for inflation under WAC 173-27-040(2)(a), 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*. The total cost or fair market value of the development shall include the fair market value of any donated, contributed or found labor, equipment or materials;

2. Normal maintenance or repair of existing structures or developments, including damage by accident, fire or elements. “Normal maintenance” includes those usual acts to prevent a decline, lapse, or cessation from a legally established condition. “Normal repair” means to restore a development to a state comparable to its original condition, including but not limited to its size, shape, configuration, location and external appearance, within a reasonable period after decay or partial destruction, except where repair causes substantial adverse effects to shoreline

resource or environment. Replacement of a structure or development may be authorized as repair where such replacement is the common method of repair for the type of structure or development and the replacement structure or development is comparable to the original structure or development including but not limited to its size, shape, configuration, location and external appearance and the replacement does not cause substantial adverse effects to shoreline resources or environment. Replacement of existing pilings in the same location shall constitute "normal repair" under this section. Although such normal repair or replacement is exempt from the substantial development permit process, certain limitations may apply to the repair or replacement of nonconforming structures, shoreline stabilization measures and moorage. See LUC 20.25E.020 (nonconforming development), LUC 20.25E.080.G (shoreline stabilization), and LUC 20.25E.080.F (moorage regulations);

3. Construction of the normal protective bulkhead common to single-family residences. A "normal protective bulkhead" includes those structural and nonstructural developments installed at or near, and parallel to, the ordinary high water mark for the sole purpose of protecting an existing single-family residence and appurtenant structures from loss or damage by erosion. A normal protective bulkhead is not exempt if constructed for the purpose of creating dry land. When a vertical or near vertical wall is being constructed or reconstructed, not more than one cubic yard of fill per one foot of wall may be used as backfill. When an existing bulkhead is being repaired by construction of a vertical wall fronting the existing wall, it shall be constructed no further waterward of the existing bulkhead than is necessary for construction of new footings. When a bulkhead has deteriorated such that an ordinary high water mark has been established by the presence and action of water landward of the bulkhead then the replacement bulkhead must be located at or near the actual ordinary high water mark. Beach nourishment and bioengineered erosion control projects may be considered a normal protective bulkhead when any structural elements are consistent with the requirements of this paragraph and when the project has been approved by the department of fish and wildlife. See LUC 20.25E.080.G for additional provisions regarding shoreline stabilization measures;

4. Emergency construction necessary to protect property from damage by the elements. An "emergency" is an unanticipated and imminent threat to public health, safety, or the environment which requires immediate action within a time too short to allow full compliance with this chapter. The Director, or the designee thereof, shall designate when such an action constitutes an emergency action consistent with Chapter 173-27-040(2)(d). Emergency construction does not include development of new permanent protective structures where none

previously existed. Where new protective structures are deemed by the Director to be the appropriate means to address the emergency situation, upon abatement of the emergency situation the new structure shall be removed or any permit which would have been required, absent an emergency, pursuant to chapter 90.58 RCW, these regulations, or the SMP, obtained. All emergency construction shall be consistent with the policies of chapter 90.58 RCW and the SMP. As a general matter, flooding or other seasonal events that can be anticipated and may occur but that are not imminent are not an emergency;

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 or 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 existing grade. "Single-family residence" means a detached dwelling designed for and occupied by one family including those structures and developments within a contiguous ownership which are a normal appurtenance. An "appurtenance" is necessarily connected to the use and enjoyment of a single-family residence and is located landward of the ordinary high water mark and the perimeter of a wetland. Under the SMP, normal appurtenances include a garage; deck; driveway; utilities; fences; shed; raised garden bed; hot tub/spa 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. Construction of a dock, including a community dock, designed for pleasure craft only, for the private noncommercial use of the owner, lessee, or contract purchaser of single-family and multiple residence(s). This exception applies if the

dock does not exceed $10,000, but if subsequent construction having a fair market value exceeding $2,500 occurs within five years of completion of the prior construction, the subsequent construction shall be considered a substantial development for the purpose of this paragraph. A dock is a landing and moorage facility for watercraft and does not include recreational decks, storage facilities or other appurtenances;

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

10. 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;

11. 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;

12. Any project with certification from the governor pursuant to Chapter 80.50 RCW;

13. Site exploration and investigation activities that are prerequisite to preparation of an application for development authorization under Chapter 173-27 WAC and the SMP, if:

a. The activity does not interfere with the normal public use of the surface waters;

b. The activity has 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 shall first posts a performance bond or maintenance assurance device pursuant to LUC 20.40.490 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;

14. The process of removing or controlling aquatic noxious weeds, as defined in RCW 17.26.020, through the use of an herbicide or other treatment methods applicable to weed control that are recommended by a final environmental impact statement published by the department of agriculture or the department of ecology jointly with other state agencies under chapter 43.21C RCW;

15. Watershed restoration projects as defined herein. The City shall review the projects for consistency with the SMP in an expeditious manner and shall issue its decision on the Letter of Exemption along with any conditions within forty-five days of receiving all materials necessary to review the request for exemption from the applicant. No fee shall be charged for accepting and processing requests for exemption for watershed restoration projects as defined in paragraph C.15 of this section.

a. "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:

    i. A project that involves less than 10 miles of streamreach, in which less than 25 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;

    ii. 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

    iii. 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 instream 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.

b. "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 RCW, the State Environmental Policy Act;

16. A public or private project that is designed to improve fish or wildlife habitat or fish passage. The City shall review the projects for consistency with the SMP in an expeditious manner and shall issue its decision on the Letter of Exemption along with any conditions within forty-five days of receiving all materials necessary to review the request for exemption from the applicant. No fee shall be charged for accepting and processing requests for exemption for a public or private project that is designed to improve fish or wildlife habitat or fish passage when all of the following criteria have been met:

a. The project has been approved in writing by the department of fish and wildlife;

b. The project has received hydraulic project approval by the department of fish and wildlife pursuant to chapter 77.55 RCW; and

c. The project is substantially consistent with the SMP as demonstrated by compliance with the requirements set forth in WAC 173-27-040(2)(p)(iii).

D. 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 exemptions listed in paragraph C of this section may be granted exemption from the substantial development permit process. 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.

2. Regulatory compliance required. An exemption from the substantial development permit process is not an exemption from compliance with the SMA, the SMP, or other City of Bellevue ordinances or permit regulations. To be authorized, all uses and developments must be consistent with the policies and provisions or the SMA and the SMP.

3. Burden of Proof. The applicant bears the burden of proof that a development or use is exempt from the substantial development permit process.

4. Conditioning a Letter of Exemption. The Director may attach conditions to the letter of exemption for developments and/or uses as necessary to assure consistency of the project with the SMA, the SMP, and the BCC.

E. Effective Date. The letter of exemption is effective immediate upon final decision by the Director.

F. Commencement of Activity. Construction or activity undertaken pursuant to an effective letter of exemption is at the applicant's own risk until the expiration of the appeals deadline to Superior Court described in LUC 20.25E.130.B.

20.25E.180 SHORELINE CONDITIONAL USE PERMIT.

A. Applicability and Scope.

This section applies to each application for a shoreline conditional use permit. This section establishes the procedure and criteria that the City will use in making a decision upon an application for a shoreline conditional use permit. Criteria for obtaining a shoreline conditional use permit shall be as set forth in Chapter 173-27 WAC and LUC 20.25E.150 and 20.25E.180.

B. Limitation on Filing

An application for a shoreline conditional use permit will not be accepted for filing unless accompanied by a complete application for a shoreline substantial development permit. Refer to LUC 20.25E.160.

C. Purpose.

A shoreline conditional use permit is a mechanism by which the City may both provide more control and allow greater flexibility in administering the shoreline master program in a manner consistent with the policies of the SMA. The City may permit certain uses to be established or may require special conditions on development or on the use of land to insure that designated uses or activities are compatible with other uses in the same land use district and in the vicinity of the subject property.

D. Decision Criteria.

1. The City may approve or approve with modifications an application for a shoreline conditional use permit if:

a. The proposed use is consistent with RCW 90.58.020 and the SMP;

b.

c. The proposed use will not interfere with the normal public use of public shorelines;

d. The proposed use of the site and design of the project is compatible with other authorized uses within the area and with uses planned for the area under the Bellevue Comprehensive Plan and SMP;

e. The proposed use will cause no significant adverse effects to the shoreline environment in which it is to be located;

f. The public interest suffers no substantial detrimental effect;

g. The proposed use will be served by adequate public facilities including streets, fire protection, and utilities;

h. The proposed use is consistent with the Bellevue Comprehensive Plan; and,

i. The proposed use complies with the applicable requirements of the Bellevue City Code.

2. Consideration of Cumulative Impacts. In the granting of all conditional use permits, the City shall also consider the cumulative impacts of additional requests for like actions in the area. For example, if conditional use permits were granted for other development in the area where similar circumstances exist, the total of the conditional uses shall also remain consistent with the policies of RCW 90.58.020 and shall not produce substantial adverse effects to the shoreline environment.

E. Effective Date. Not withstanding the provisions of LUC 20.25E.100 through 20.25E.130, a Shoreline Conditional Use permit is not effective until it is approved by the Department of Ecology as required by WAC 173-27-200.

F. Appeals of Department of Ecology Final Decisions. Appeals of the Department of Ecology decision to grant, deny or rescind a Shoreline Conditional Use Permit shall be in accordance with RCW 90.58.180.

G. Commencement of Activity.

Development shall not commence and is not authorized until a Shoreline Conditional Use Permit is approved by the Department of Ecology or until all review proceedings before the Shoreline Hearings Board are terminated if the proceedings were initiated within 21 days of the date of receipt as defined in RCW 90.58.140(6).

H. Revisions to an Approved Shoreline Conditional Use Permit.

Revisions to a previously approved Shoreline Conditional Use permit shall be processed in accordance with LUC 20.25E.150.E and WAC 173-27-100.

I. Merger with Binding Site Plan.

1. General. The applicant may request that the site plan approved with the shoreline conditional use permit constitute a Binding Site Plan pursuant to Chapter 58.17 RCW.

2. Survey and Recording Required. If a site plan is approved as a Binding Site Plan, the applicant shall provide a recorded survey depicting all lot lines and shall record the approved site plan and survey with the King County Department of Records and Elections, or its successor entity. No document shall be presented for recording without the signature of each owner of the subject property.

3. Effect of Binding Site Plan. Upon the approval and recording of a Binding Site Plan the applicant may develop the subject property in conformance with the approved and recorded Binding Site Plan and without regard to lot lines internal to the subject property. Any sale or lease of lots or parcels within the subject property shall be subject to the approved and recorded Binding Site Plan and the requirements of state law.

J. Periodic review.

The City may impose periodic review requirements as a condition of permit approval.

K. Modification/Revocation.

1. Modification. The City may initiate a modification to an approved shoreline conditional use permit. A modification will be processed through Shoreline Process I decision pursuant to LUC 20.25E.110. Through the modification procedure, the Hearing Body may delete, modify or impose additional conditions upon finding that the use for which such approval was granted has been intensified, changed or modified by the property owner or by person(s) who control the property without approval so as to significantly impact surrounding land uses.

2. Revocation. The Hearing Body may revoke an approved permit through Shoreline Process I decision pursuant to LUC 20.25E.110. An approved permit may be revoked only upon a finding that:

a. The use for which the approval was granted has been abandoned for a period of at least one year;

b. Approval of the permit was obtained by misrepresentation of material fact; or

c. The permit is being exercised contrary to the terms of approval

20.25E.190 Variance to the Shoreline Master Program.

A. Applicability and Scope.

This section applies to each application for a shoreline variance. This section establishes the procedures and criteria that the City will use in making a decision upon an application for a shoreline variance to the provisions of the Shoreline Master Program. Criteria for obtaining a shoreline variance shall be as set forth in Chapter 173-27 WAC and LUC 20.25E.150 and 20.25E.190.

B. Limitation on Filing.

An application for a shoreline variance will not be accepted for filing unless accompanied by a complete application for a shoreline substantial development permit. Refer to 20.25E.160.

C. Purpose.

The purpose of a variance to the SMP is strictly limited to granting relief to specific bulk, dimensional or performance standards set forth in the SMP where there are extraordinary or unique circumstances relating to the property such that strict implementation of the standards would impose unnecessary hardships on the applicant or thwart the policies of the SMA.

D. Decision Criteria.

1. The City may approve or approve with modifications an application for a shoreline variance to the SMP if:

a. Denial of the variance would result in thwarting the policy of RCW 90.58.020;

b. The applicant has demonstrated extraordinary circumstances and the public interest will suffer no substantial detrimental effect;

c. The strict application of the bulk, dimensional or performance standards of the SMP preclude, or significantly interferes with, reasonable use of the property;

d. The hardship described in paragraph E.1.c 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 SMP, and not, for example, deed restrictions or the applicant's own actions;

e. The design of the project is compatible with other authorized uses within the area and with uses planned for the area under the Bellevue Comprehensive Plan and SMP and will not cause adverse impacts to the shoreline environment;

f. The variance does not constitute a grant of special privilege not enjoyed by the other properties in the area, and is the minimum necessary to afford relief; and

g. If the variance permits development and/or uses that will be located either waterward of the ordinary high water mark as defined in RCW 90.58.030(2)(c), or within any wetland as defined in RCW 90.58.030(2)(h), may be authorized provided the applicant can demonstrate compliance with the following additional criteria that:

i. The strict application of the bulk, dimensional or performance standards of the SMP precludes <u>all</u> reasonable use of the property, and

ii. The public rights of navigation and use of the shorelines will not be adversely affected by the granting of the variance.

2. Consideration of Cumulative Impacts. In the granting of all variance approvals, the City shall also consider the cumulative impacts of additional requests for like actions in the area. For example, if variance approvals were granted for other development and/or uses in the area where similar circumstances exist, the total of the variance approvals shall also remain consistent with the policies of RCW 90.58.020 and shall not produce substantial adverse effects to the shoreline environment.

3. Limitation on Authority. The Director may not grant a variance to:

a. The provisions of LUC 20.10.440 or Part 20.25E LUC establishing the allowable uses in each land use district or environment designation;

b. The provisions of LUC 20.25E.100 through 20.25E.140, the provisions or LUC 20.25E.150 through 20.25E.200, or any other procedural or administrative provision of the Land Use Code (including the definitions);

c. Any provisions of the Land Use Code within the primary approval jurisdiction of another decisionmaker as established by the BCC; or

d. Any provision of the Land Use Code which, by the terms of the Code, is not subject to a variance.

E. Effective Date. Not withstanding the provisions of LUC 20.25E.100 through 20.25E.130, a Shoreline Variance approval is not effective until it is approved by the Department of Ecology as required by WAC 173-27-200.

F. Appeals of Department of Ecology Final Decisions.

Appeals of the Department of Ecology decision to grant, deny or rescind a Shoreline Variance approval shall be in accordance with RCW 90.58.180.

G. Commencement of Activity.

Development shall not commence and is not authorized until a Shoreline Variance is approved by the Department of Ecology or until all review proceedings before the Shoreline Hearings Board are terminated if the proceedings were initiated within 21 days of the date of receipt as defined in RCW 90.58.140(6).

20.25E.200 Amendments to the Text of the Shoreline Master Program.

A. Scope.

This section establishes the procedure and criteria that the City will use in deciding to amend the text of the Shoreline Master Program.

B. Applicability.

This section applies to each amendment of the text of the Shoreline Master Program.

C. Purpose.

An amendment to the text of the Shoreline Master Program is a mechanism by which the City may bring its Shoreline Master Program into conformity with the Shoreline Management Act, the Department of Ecology's Shoreline Guidelines (Chapter 173-26 WAC), the Bellevue Comprehensive Plan, or respond to changing conditions or needs of the City.

D. Who May Initiate.

1. The City Council, the Planning Commission, or the Director, with the concurrence of either body, may initiate and amendment to the text of the Shoreline Master Program.

2. Although the Planning Commission is generally the advisory body for amendments to the Shoreline Master Program, the City Council may amend the text of the Shoreline Master Program without prior review or recommendation from the Planning Commission, provided a public process is undertaken in accordance with Chapter 173-26 WAC.

E. Applicable Procedure.

The City will process an amendment to the text of the Shoreline Master Program using Land Use Process IV (LUC 20.35.400 through 20.35.450). The Planning Commission is generally the advisory body.

F. Decision Criteria.

The City may approve or approve with modifications a proposal to amend the text of the Shoreline Master Program if:

1. The amendment is consistent with the Shoreline Management Act, Chapter 90.58 RCW, the Department of Ecology's Shoreline Guidelines, Chapters 173-26 and 173-27 WAC;

2. The amendment is consistent with the Bellevue Comprehensive Plan;

3. The amendment enhances the public health, safety, or welfare; and

4. The amendment is not contrary to the best interest of the citizens and property owners of the City of Bellevue.

G. Effective Date. A master program, segment of a master program, or an amendment to a master program shall become effective when approved by the Department of Ecology pursuant to RCW 90.58.090.

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