

## CHAPTER 17.81 – SHORELINE MANAGEMENT PERMIT PROCEDURES

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## **SECTION ONE: AUTHORITY AND PURPOSE**

### **17.81.010 Authority.**

This Chapter contains the Shoreline Master Program administrative procedures of the City of Blaine as adopted pursuant to and under the authority of the Shoreline Management Act, Chapter 90.58 RCW and WAC 173-26 (Part IV).

### **17.81.020 Purpose.**

The purposes for which this Chapter has been developed include the following:

- A. To further the goals of the Shoreline Management Act.
- B. To provide administrative procedures of the processing of exemptions, permits, conditional permits, variances and appeals under the Shoreline Master Program.
- C. To adopt the Shoreline Master Program by reference.

### **17.81.030 Permit Procedure.**

- A. The Planning Commission of the City of Blaine is vested with the authority to hold public hearings, make final decisions on permit applications and establish permit conditions related to shoreline management within the City of Blaine pursuant to this Chapter. The Planning Commission shall hear and decide on substantial development permits, conditional use permits, and variances regulated under the Program.
- B. The Community Development Director of the City of Blaine, or his or her designee, shall be the Administrator of rules and regulations pertaining to shoreline management contained in or referenced in this Chapter and the Program and may prepare and require the use of such forms as are essential to its administration.
- C. The City Council shall make final decisions on all shoreline permits that are directly related to a permit for which the City Council is the final review authority, such as but not limited to preliminary plats and planned unit developments. In these instances the Planning Commission shall hold a public hearing and make a recommendation to the City Council pursuant to the consolidated review process contained in Section 17.06.
- D. A shoreline permit shall be applied for on forms provided by the Administrator. At a minimum, such applications shall include the following information:
  - 1. The name, address and phone number of the applicant;
  - 2. The name, address and phone number of the applicant's representative;
  - 3. The name, address and phone number of the property owner, if different than the applicant;
  - 4. The address, location and legal description of the property that is the subject of the proposed development;
  - 5. The name of the shoreline (water body) that the site of the proposed development is associated with;
  - 6. A general description of the subject property as it now exists including its use, physical and ecological characteristics, improvements and structures;
  - 7. A general description of the vicinity of the proposed project including identification of the adjacent uses, structures and improvements, intensity of development and physical and ecological characteristics;
  - 8. A vicinity map showing the relationship of the property and proposed development or use to roads, utilities, existing developments and uses on adjacent properties;
  - 9. A description of the proposed development, including a description of anticipated

- impacts to on-site vegetation, topography and natural systems and processes;
10. A site plan or plans showing the existing and proposed conditions of the property, including showing the locations of the property boundary, the ordinary high water mark, any critical areas, existing and proposed development, existing vegetation, proposed vegetation alterations and landscaping, existing and proposed site contours, and existing and proposed structures;
  11. A statement describing the anticipated impacts of the proposed development on views, critical areas, and shoreline functions and processes;
  12. A statement explaining how the proposed development is consistent with the policies of the Shoreline Management Act, and the applicable goals, policies and regulations of the Shoreline Master Program;
  13. The signature of the applicant and the property owner;
  14. Additional information as determined necessary by the Administrator;
  15. The Administrator may waive components of the above permit requirements with the issuance of a waiver letter based upon a written request by the applicant.
  16. 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.

- E. The applicant shall complete the application form, return the application to the Community Development Services Department along with the following:
  1. A listing of the names and addresses of owners of property within three hundred feet from the proposed development;
  2. A completed SEPA environmental checklist, if required; and
  3. Payment of the appropriate fees.
- F. Upon receipt of a properly completed application, the Administrator shall provide for permit processing and notification consistent with WAC 173-27-110 and pursuant to the permit administration procedures contained in Chapter 17.06 BMC.
- G. At a minimum, a thirty (30) day comment period shall be provided following notification prior to consideration of the matter and final action by the Planning Commission.
- H. Notice of the final action on a permit application, whether it is an approval, a denial or a revision, shall be provided to the applicant and all parties of record and shall be filed with the Department of Ecology in the manner set forth in WAC 173-27-~~090~~120.

#### 17.81.045 Special procedures for WSDOT projects.

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

**17.81.040 Substantial Development Permit Criteria.**

- A. A Shoreline Substantial Development Permit shall be granted only if the development is consistent with the intent of the Shoreline Management Act and determined consistent with the Blaine Shoreline Master Program.
- B. Consistency with the Blaine Shoreline Master Program shall include consistency with the applicable goals, policies and regulations contained in the Shoreline Master Program and compliance with all applicable provisions of this Chapter.

**17.81.050 Conditional Use Permit Criteria.**

- A. The purpose of a conditional use permit is to allow greater flexibility in varying the application of the use regulations of the Program in a manner consistent with the policies of RCW 90.58.020: ~~PROVIDED that, conditional use permits may also be granted in a circumstance where denial of the permit would result in a thwarting of the policy enumerated in RCW 90.58.020.~~ In authorizing a conditional use, special conditions may be attached by the City or the Department of Ecology to prevent undesirable effects of the proposed use.
- B. Uses which are classified or set forth in the Program as conditional uses may be authorized provided the applicant can demonstrate all of the following:
  - 1. That the proposed use is consistent with the policies of RCW 90.58.020 and the provisions of the Program;
  - 2. That the proposed use will not interfere with the normal public use of public shorelines;
  - 3. That the proposed use of the site and design of the project is compatible with other permitted uses within the area;
  - 4. That the proposed use will cause no ~~unreasonable significant~~ adverse effects to the shoreline environment in which it is to be located; and
  - 5. That the public interest suffers no substantial detrimental effect.
- C. Other uses which are not classified or set forth in the Program may be authorized as conditional uses provided the applicant can demonstrate, in addition to the criteria set forth in Section 17.81.050(B), that extraordinary circumstances preclude reasonable use of the property in a manner consistent with the use regulations of the Program.
- D. Uses which are specifically prohibited and named by the Program may not be authorized as a conditional use.
- E. In the granting of any conditional use permits, consideration shall be given to the cumulative impact of additional requests for like action in the area such that if conditional use permits were granted for other developments in the area where similar circumstances exist, the total of the conditional uses shall remain consistent with the policies of RCW 90.58.020 and shall not produce substantial adverse effects to the shoreline environment.

**17.81.060 Variance Permit Criteria.**

- A. The purpose of a variance permit is strictly limited to granting relief from specific bulk, dimensional or performance standards set forth in the Program where there are extraordinary or unique circumstances relating to the property such that the strict

implementation of the Program will impose unnecessary hardships on the applicant or thwart the policies set forth in RCW 90.58.020.

- B. Variance permits shall be granted only in a circumstance where denial of the permit will result in a thwarting of the policy enumerated in RCW 90.58.020, and where extraordinary circumstances are shown and where the public interest suffers no substantial detrimental effect.
- C. Variance permits may be authorized provided the applicant demonstrates all of the following:
  - 1. That the hardship described above 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 Program, and not from deed restrictions, the actions of the applicant or other similar circumstance;
  - 2. That the design of the project is compatible with other permitted activities in the area and will not cause adverse effects to adjacent properties or the shoreline environment;
  - 3. That the requested variance permit does not constitute a grant of special privilege not enjoyed by other properties in the area, and is the minimum necessary to afford relief;
  - 4. That the public rights of navigation and use of the shorelines will not be adversely affected;
  - 5. That the public interest will suffer no substantial detrimental effect, and
  - 6. For developments and/or uses located landward of the OHWM or outside of a wetland, that the strict application of the bulk, dimensional or performance standards set forth in the Program creates a hardship and precludes or significantly interferes with a reasonable use of the property not otherwise specifically prohibited by the Program; or,
  - 7. For developments and/or uses located waterward of the OHWM or within a wetland, that the strict application of the bulk, dimensional or performance standards set forth in the Program creates a hardship and precludes all reasonable use of the property not otherwise specifically prohibited by the Program;
- D. In the granting of any variance permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area such that if variances were granted to other developments in the area where similar circumstances exist the total of the variances shall remain consistent with the policies of RCW 90.58.020 and shall not produce substantial adverse effects on the shoreline environment.
- E. ~~Requests for varying the use to which a shoreline area is to be put are not requests for variances, but rather requests for conditional uses. Such requests shall be evaluated using the criteria set forth in Section 17.81.050 of the Program. Variances from the use regulations of this Program are prohibited.~~

#### **17.81.070 Permit Conditions.**

- A. In granting, revising or extending a shoreline permit or shoreline exemption, the City may attach such conditions, modifications, or restrictions thereto regarding the location, character, and other features of the proposed development deemed necessary to assure that the development will be **generally** consistent with the permit criteria set forth in, Sections 17.81.040, .050 and .060 of this Chapter, with the provisions of the State

Environmental Policy Act, RCW 43.21C, with the applicable goals, policies and regulations of the Blaine Shoreline Master Program and to meet the intent of RCW 90.58.020.

- B. Development pursuant to a shoreline permit of any type shall not be authorized nor commenced until 21 days from the “date of filing” or until all review proceedings initiated within the 21 days from the date of such filing have terminated.
- C. Construction authorized pursuant to a shoreline permit of any type shall be commenced or, where no construction is involved, the use or activity shall be commenced within two years from the effective date of the permit as defined in WAC 173-27-090(34) and shall be completed within five years from the effective date; PROVIDED, the City Council may authorize a one-year extension to either or both of these timing requirements- based on reasonable factors, and if the request for extension has been filed before the expiration date, and notice of the proposed extension is given to parties of record on the permit and to the Department of Ecology.
- D. Date of Filing.
- ~~1. The “date of filing” of a final action of the City on a substantial development permit, or on a denial of an application for a variance or conditional use permit, is the date of actual receipt of a completed filing of the action by the Department of Ecology.~~
  - ~~2. The “date of filing” of a variance or conditional use permit approved by the City is the date the Department’s decision on the permit is transmitted to the City and the applicant.~~
1. After all local permit administrative appeals or reconsideration periods are complete and the permit documents are amended to incorporate any resulting changes, the City of Blaine will mail the permit using return receipt requested mail to the Department of Ecology regional office and the Office of the Attorney General. Projects that require both Conditional Use Permits and or Variances shall be mailed simultaneously with any Substantial Development Permits for the project.
    - (i) The permit and documentation of the final local decision will be mailed together with the complete permit application; a findings and conclusions letter; a permit data form (cover sheet); and applicable SEPA documents.
    - (ii) Consistent with RCW 90.58.140(6), the state’s Shorelines Hearings Board twenty-one day appeal period starts with the date of filing, which is defined below:
      - a) For projects that only require a Substantial Development Permit: the date that Ecology receives the City of Blaine decision.
      - b) For a Conditional Use Permit or Variance: the date that Ecology’s decision on the Conditional Use or Variance is transmitted to the applicant and City of Blaine.
      - c) For a Substantial Development Permit simultaneously mailed with a Conditional Use or Variance to Ecology: the date that Ecology’s decision on the Conditional Use or Variance is transmitted to the applicant and the City of Blaine.

#### **17.81.080 Appeals.**

- A. Any person aggrieved by the granting, denying or rescinding by the City of Blaine of a Shoreline Substantial Development Permit, Shoreline Conditional Use Permit or Shoreline Variance Permit may appeal the action of the City to the State Shoreline Hearings

Board by filing a request for review within twenty-one (21) days of the date of filing of the permit. The date of filing is defined in RCW 90.58.140(6). The procedure for filing a request for review is set forth in RCW 90.58.180.

- B. Appeals of decisions and determinations made by the Administrator in the administration of the Program shall be filed and processed consistent with the procedures established under Section 17.06.180 of the Blaine Municipal Code; provided, that the Hearing Examiner shall make the final decision on any such administrative appeal.

#### **17.81.090 Enforcement.**

- A. The enforcement provisions of RCW ~~58.1790.58~~ and WAC 173-27-240 through 173-27-310 shall apply.
- B. The Shoreline Administrator and/or a designated representative shall enforce all provisions of the Master Program. The Shoreline Management Act calls for a cooperative enforcement program between local and state government. It provides for both civil and criminal penalties, orders to cease and desist, orders to take corrective action and permit rescission. The choice of enforcement action and the severity of any penalty should be based on the nature of the violation and the damage or risk to the public or to public resources. The existence or degree of bad faith of the persons subject to the enforcement action, the benefits that accrue to the violator, and the cost of obtaining compliance may also be considered.

#### **17.81.100 Penalties.**

Any person found to have willfully engaged in activities on the City's shorelines in violation of the Shoreline Management Act of 1971 or in violation of the City's Shoreline Master Program, rules or regulations adopted pursuant thereto shall be subject to the penalty provisions of the BMC.

#### **17.81.110 Violations and Subsequent Development and Building Permits.**

No building permit or other development permit shall be issued for any parcel of land developed or divided in violation of this Master Program. All purchasers or transferees of property shall comply with provisions of the Act and this Master Program and each purchaser or transferee may recover damages from any person, firm, corporation, or agent selling, transferring, or leasing land in violation of the Act or this Master Program including any amount reasonably spent as a result of inability to obtain any development permit and spent to conform to the requirements of the Act or this Master Program as well as costs of investigation, suit, and reasonable attorney's fees occasioned thereby. Such purchaser, transferee, or lessor, as an alternative to conforming their property to these requirements, may rescind the sale, transfer, or lease and recover costs of investigation, litigation and reasonable attorney's fees occasioned thereby from the violator.

#### **17.81.120 Public and Private Redress.**

- A. Any person subject to the regulatory program of the Master Program who violates any provision of the Master Program 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.
- B. The City Attorney may bring suit for damages under this section on behalf of the City. Nothing in this section precludes private persons from bringing suit for damages on their own behalf. If liability has been established for the cost of restoring an area affected by violation, the court shall make provisions to assure that restoration will be accomplished within a reasonable time at the expense of the violator.

- C. In addition to such relief, including monetary damages, the court, in its discretion, may award attorneys' fees and costs of the suit to the prevailing party.

**17.81.130 Fees for Permits Obtained After Development**

- A. Triple fees for permits obtained after development. Permits obtained following, rather than prior to, the establishment of a development or use shall be three (3) times the normal amount. This provision is in addition to the enforcement measures contained in this chapter and in the BMC.
- B. Delinquent permit penalties shall be paid in full prior to resuming the use or activity.