Chapter 141 – SHORELINE ADMINISTRATION

141.10 User Guide

No change to section

141.20 Administrative Responsibilities in General

No change to section

141.30 Review Required

1. The Shoreline Management Act (SMA) establishes three types of shoreline permits: substantial development permit, conditional use permit, and variance permit. Proposals for development and activities within shoreline jurisdiction may require more than one type of permit – or none.

Substantial development permits (SDPs) are required for all developments (unless specifically exempt under 173-27-040) that meet the legal definition of substantial development under WAC 90.58.030.Conditional use permits (CUPs) allow greater flexibility in applying use regulations of a Shoreline Master Program. A CUP is needed if a proposed use is listed as a conditional use in a shoreline environment designation, or if the SMP does not address the use. A CUP must meet the CUP criteria found in WAC 173-27-160.

Variance permits are used to allow a project to deviate from an SMP’s dimensional standards (e.g., setback, buffers, height, or lot coverage requirements). A variance proposal must meet variance criteria found in WAC 173-27-170.

2. Within the shoreline jurisdiction, as described in KZC 83.90, development shall be allowed only as authorized in a shoreline substantial development permit, shoreline conditional use permit or shoreline variance permit, unless specifically exempted from obtaining such a permit under KZC 141.40. A development that is exempt from a permit under Chapter 83 KZC may still need to obtain other development permits.

3. Chapter 83 KZC specifies which permit is required. Enforcement action by the City or Department of Ecology may be taken whenever a person has violated any provision of the Shoreline Management Act or any City of Kirkland shoreline master program provision, or other regulation promulgated under the Shoreline Management Act. Procedures for enforcement action and penalties shall be as specified in WAC 173-27-240 through 173-27-310, which are hereby adopted by this reference.

4. Where a proposed development activity encompasses shoreline and non-shoreline areas, a shoreline substantial development permit or other required permit must be obtained before
any part of the development, even the portion of the development activity that is entirely confined to areas outside of shorelines jurisdiction, can proceed.

141.40 Exemption from Permit Requirements

1. General – Proposals identified under WAC 173-27-040 are exempt from obtaining a shoreline substantial development permit; however, a shoreline variance or shoreline conditional use may still be required. Proposals that are not permitted under the provisions of Chapter 83 KZC shall not be allowed under an exemption. Applicants shall have the burden to demonstrate that the proposal complies with the requirements for the exemption sought as described under WAC 173-27-040. A proposal that does not qualify as an exemption may still apply for a shoreline substantial development permit. Applicants also have the burden of proof to show that exempt proposals meet the applicable standards in Chapter 83 KZC.

2. Special Provisions – The following provides additional clarification on the application of the exemptions listed in WAC 173-27-040:

a. Residential Appurtenances

1) Normal appurtenances to a single-family residence, referred to in Chapter 83 KZC as a detached dwelling unit on one (1) lot, are included in the permit exemption provided in WAC 173-27-040(2)(g). For the purposes of interpreting this provision, normal appurtenances shall include those listed under WAC 173-14-040(2)(g) as well as tool sheds, greenhouses, swimming pools, spas, accessory dwelling units and other accessory structures common to a single-family residence located landward of the OHWM and the perimeter of a wetland.

2) Normal appurtenant structures to a single-family residence, referred to in Chapter 83 KZC as a detached dwelling unit on one (1) lot, are included in the permit exemption provided in WAC 173-27-040(2)(c) for structural and nonstructural shoreline stabilization measures. For the purposes of interpreting this provision, normal appurtenant shall be limited to the structures listed under WAC 173-14-040(2)(g).

b. Normal Maintenance or Repair of Existing Structures or Developments – Normal maintenance or repair of existing structures or developments, including some replacement of existing structures, is included in the permit exemption provided in WAC 173-27-040(2)(b). For the purposes of interpreting this provision, the following replacement activities shall not be considered a substantial development:

1) Replacement of an existing hard structural shoreline stabilization measure with a soft shoreline stabilization measure consistent with the provisions contained in KZC 83.300.

2) Replacement of pier or dock materials consistent with the provisions contained in KZC 83.270 through 83.290.

141.45 Developments not required to obtain shoreline permits or local reviews
1. Requirements to obtain a substantial development permit, conditional use permit, variance, letter of exemption, or other review to implement the Shoreline Management Act do not apply to the following:

a. Remedial actions. Pursuant to RCW 90.58.355, any person conducting a remedial action at a facility pursuant to a consent decree, order, or agreed order issued pursuant to chapter 70.105D RCW, or to the department of ecology when it conducts a remedial action under chapter 70.105D RCW.

b. Boatyard improvements to meet NPDES permit requirements. Pursuant to RCW 90.58.355, any person installing site improvements for storm water treatment in an existing boatyard facility to meet requirements of a national pollutant discharge elimination system storm water general permit.

c. WSDOT facility maintenance and safety improvements. Pursuant to RCW 90.58.356, Washington State Department of Transportation projects and activities meeting the conditions of RCW 90.58.356 are not required to obtain a substantial development permit, conditional use permit, variance, letter of exemption, or other local review.

d. Projects consistent with an environmental excellence program agreement pursuant to RCW 90.58.045.

e. Projects authorized through the Energy Facility Site Evaluation Council process, pursuant to chapter 80.50 RCW.

141.50 Pre-Submittal

No change to section

141.60 Applications

1. Who May Apply – Any person may, personally or through an agent, apply for a decision regarding property he/she owns, or primary proponent of a project under WAC 173-27-180(1).

2. How to Apply – The applicant shall file the following information with the Planning and Building Department:

a. A complete application, with supporting affidavits, on forms provided by the Planning and Building Department. Alternatively, the applicant may use the joint aquatic resources permit application form;

b. Any information or material that is specified in the provisions of Chapter 83 KZC; and

c. Any additional information or material that the Planning Official specifies at the pre-submittal meeting.
3. Fee – The applicant shall submit the fee established by ordinance with the application.

141.70 Procedures

1. Substantial Development Permit

a. General

1) Applications for a shoreline substantial development permit shall follow the procedures for a Process I permit review pursuant to Chapter 145 KZC, except as otherwise provided in this section.

2) If the proposal that requires a substantial development permit is part of a proposal that requires additional approval through Process IIA or Process IIB under Chapter 150 KZC or Chapter 152 KZC, respectively, the entire proposal will be decided upon using that other process.

3) If the proposal that requires a substantial development permit is part of a proposal that requires additional approval through the Design Review Board (DRB) under Chapter 142 KZC, the design review proceedings before the DRB shall be conducted in accordance with Chapter 142 KZC.

b. Notice of Application and Comment Period

1) In addition to the notice of application content established in Chapter 145 KZC, notice of applications for shoreline substantial development permits must also contain the information required under WAC 173-27-110.

2) The minimum notice of application comment period for shoreline substantial development permits shall be no fewer than 30 days. However, the minimum comment period for applications for shoreline substantial development permits for limited utility extensions and bulkheads, as described by WAC 173-27-120, shall be 20 days.

c. Burden of Proof

1) WAC 173-27-140 establishes general review criteria that must be met.

2) WAC 173-27-150 establishes that a substantial development permit may only be granted when the proposed development is consistent with all of the following:

a) The policies and procedures of the Shoreline Management Act;

b) The provisions of Chapter 173-27 WAC;

c) Chapter 83 KZC.

d. Decision
1) At the time of a final decision, after all local permit administrative appeals or reconsideration periods are complete and the permit documents are amended to incorporate any resulting changes, the Planning Official shall mail a copy of the decision, staff advisory report and permit data transmittal sheet to the applicant and Department of Ecology, pursuant to RCW 90.58.140 and WAC 173-27-130. The permit decision shall be sent to the Department of Ecology by return receipt requested mail. The permit shall state that construction pursuant to a permit shall not begin or be authorized until 21 days from the date that the Department of Ecology received the permit decision from the City as provided in RCW 90.58.140; or until all review proceedings are terminated if the proceedings were initiated within 21 days from the date of filing as defined in RCW 90.58.140. “Date of filing” is the date that the Department of Ecology received the City’s permit decision. The Department of Ecology must notify the City and the applicant of the actual date of filing.

2) When the City issues a permit decision on a substantial development permit along with a shoreline conditional use permit and/or a shoreline variance, the date of filing is the postmarked date that the City mails the permit decision to the Department of Ecology transmits its decision as provided in WAC 173-27-200.

3) An appeal of a shoreline substantial development permit shall be to the State Shorelines Hearings Board and shall be filed within 21 days of the date of filing of the City’s permit decision to the Department of Ecology as set forth in RCW 90.58.180.

e. Effect of Decision – For shoreline substantial development permits, no final action or construction shall be taken until the termination of all review proceedings initiated within 21 days after the filing date which is the date that the Department of Ecology received the permit decision from the City or unless otherwise noted in this section.

f. Complete Compliance Required

1) General – Except as specified in subsection (2) of this section, the applicant must comply with all aspects, including conditions and restrictions, of an approval granted under this chapter authorized by that approval.

2) Exception – Subsequent Modification – WAC 173-27-100 establishes the procedure and criteria under which the City may approve a revision to a permit issued under the Shoreline Management Act and the shoreline master program.

g. Time Limits – Construction and activities authorized by a shoreline substantial development permit are subject to the time limitations of WAC 173-27-090.

2. Conditional Use Permits

a. General – Applications for a shoreline conditional use permit shall follow the procedures for a Process IIA permit review pursuant to Chapter 150 KZC, except as otherwise provided in KZC Chapters 125 PUD, 130 Rezones and 15-65 for Master Plans this section. If the proposal that requires a conditional use permit is part of a proposal that requires additional approval through a Process IIB, the entire proposal will be decided upon using that process.
b. Notice of Application and Comment Period

1) In addition to the notice of application content established in Chapter 150 KZC, notice of applications for shoreline conditional use permits must also contain the information required under WAC 173-27-110.

2) The minimum notice of application comment period for shoreline conditional use permits shall be no fewer than 30 days.

c. Notice of Hearing – The Planning Official shall distribute notice of the public hearing at least 15 calendar days before the public hearing.

d. Burden of Proof

1) WAC 173-27-140 establishes general review criteria that must be met.

2) WAC 172.27-150 establishes general review criteria that must be met for substantial development permits.

3) WAC 173-27-160 establishes criteria that must be met for a conditional use permit to be granted.

4) In addition, the City will not issue a conditional use permit for a use which is not listed as allowable in the shoreline master program unless the applicant can demonstrate that the proposed use has impacts on nearby uses and the environment essentially the same as the impacts that would result from a use allowed by the shoreline master program in that shoreline environment.

e. Decision

1) Once the City has approved After all local permit administrative appeals or reconsideration periods are complete and the permit documents are amended to incorporate any resulting changes, a conditional use permit it will be forwarded to the State Department of Ecology for its review and approval/disapproval jurisdiction under WAC 173-27-200.

2) The permit shall state that construction pursuant to a permit shall not begin or be authorized until 21 days from the date that the Department of Ecology transmits its decision as provided in Chapter 173-200 WAC; or until all review proceedings are terminated if the proceedings were initiated within 21 days from the filing date as defined in RCW 90.58.140.

3) Appeals of a shoreline conditional use permit shall be to the State Shoreline Hearings Board and shall be filed within 21 days of the filing date which is the postmarked date that the City mailed the permit decision to the Department of Ecology, as set forth in RCW 90.58.180.

f. Effect of Decision – For shoreline conditional use permits, no final action or construction shall be taken until the termination of all review proceedings initiated within 21 days from the date Department of Ecology transmits its decision on the shoreline conditional use permit.
g. Complete Compliance Required

1) General – Except as specified in subsection (2)(g)(2) of this section, the applicant must comply with all aspects, including conditions and restrictions, of an approval granted under this chapter in order to do everything authorized by that approval.

2) Exception – Subsequent Modification – WAC 173-27-100 establishes the procedure and criteria under which the City may approve a revision to a permit issued under the Shoreline Management Act and this chapter.

h. Time Limits – Construction and activities authorized by a shoreline conditional use permit are subject to the time limitations under WAC 173-27-090.

3. Variances

a. General – Applications for a shoreline variance permit shall follow the procedures for a Process IIA permit review pursuant to Chapter 150 KZC, except as otherwise provided in this section. If the proposal that requires a shoreline variance is part of a proposal that requires additional approval through a Process IIB, the entire proposal will be decided upon using that other process.

b. Notice of Application and Comment Period

1) In addition to the notice of application content established in Chapter 150 KZC, notice of applications for shoreline variance permits must also contain the information required under WAC 173-27-110.

2) The minimum notice of application comment period for shoreline variance permits shall be no fewer than 30 days.

c. Notice of Hearing – The Planning Official shall distribute notice of the public hearing at least 15 calendar days before the public hearing.

d. Burden of Proof

1) WAC 173-27-140 establishes general review criteria that must be met for shoreline variances.

2) WAC 172.27-150 establishes general review criteria that must be met for substantial development permits.

3) WAC 173-27-170 establishes criteria that must be met for a variance permit to be granted.

e. Decision
1) Approval by Department of Ecology. Once the City has approved a variance permit and after all local permit administrative appeals or reconsideration periods are complete and the permit documents are amended to incorporate any resulting changes, it will be forwarded to the State Department of Ecology for its review and approval/disapproval jurisdiction under WAC 173-27-200.

2) The permit shall state that construction pursuant to a permit shall not begin or be authorized until 21 days from the date that the Department of Ecology transmits its decision as provided in WAC 173-27-200; or until all review proceedings are terminated if the proceedings were initiated within 21 days from the filing date as defined in RCW 90.58.140.

3) Appeals of a shoreline variance permit shall be to the State Shoreline Hearings Board and shall be filed within 21 days of the filing date which is the postmarked date that the City mailed the permit decision to the Department of Ecology transmits its decision, as set forth in RCW 90.58.180.

f. Effect of Decision – For shoreline variance permits, no final action or construction shall be taken until the termination of all review proceedings initiated within 21 days from the date the Department of Ecology transmits its decision on the shoreline variance permit.

g. Complete Compliance Required

1) General – Except as specified in subsection (2) of this section, the applicant must comply with all aspects, including conditions and restrictions, of an approval granted under this chapter as authorized by that approval.

2) Exception – Subsequent Modification – WAC 173-27-100 establishes the procedure and criteria under which the City may approve a revision to a permit issued under the Shoreline Management Act and the shoreline master program.

h. Time Limits – Construction and activities authorized by a shoreline variance permit are subject to the time limitations under WAC 173-27-090.

45. Request for Relief from Standards

a. General – When shoreline stabilization measures intended to improve ecological functions result in shifting the OHWM landward of the pre-modification location, the City may propose to grant relief from additional or more restrictive standards and use regulations resulting from the shift in OHWM, such as but not limited to an increase in shoreline jurisdiction, shoreline setbacks, or lot coverage. Relief may apply to both the subject property and upland lots.

b. Burden of Proof – Relief may be granted when:

1) The proposed relief is the minimum necessary to relieve the hardship;

2) The restoration project will result in a net environmental benefit; and
3) The proposed relief is consistent with the objectives of the City’s restoration plan and shoreline master program.

c. Decision – Approval by Department of Ecology – Once the City has approved a permit it will be forwarded to the State Department of Ecology for its review and approval/disapproval. The application review must occur during the Department of Ecology’s normal review of a shoreline substantial development permit, conditional use permit, or variance. If a permit is not required for the restoration project, the City shall submit separate application and necessary supporting information to the Department of Ecology.