

CHAPTER 8 ADMINISTRATIVE PROCEDURES

8.1 Administration

The intent of this section is to distinguish the duties, roles and responsibilities of the City of Gig Harbor's Administrator, Hearing Examiner, Planning Commission, City Council and State Department of Ecology and State Shoreline Hearings Board for administering and implementing the Shoreline Master Program.

8.1.1 General

The purpose of establishing this administrative system is to describe responsibilities for implementation of the Master Program and shoreline permit review, to prescribe an orderly process by which to review proposals and permit applications, and to ensure that all persons affected by this Master Program are treated in a fair and equitable manner.

8.1.2 Administrator

The Administrator, or his/her designee, shall have overall responsibility for administration of the Shoreline Master Program in the City as described in this section.

The duties and responsibilities of the Administrator shall include:

- 1) Establishing the procedures and preparing forms deemed essential for the administration of this program;
- 2) Advising interested citizens and applicants of the goals, policies, regulations, and procedures of this program;
- 3) Making administrative decisions and interpretations of the policies and regulations of this Program and the Shoreline Management Act (SMA or the

Act); the Administrator shall consult with the Department of Ecology when issuing any formal written interpretations to insure consistency with the purpose and intent of Chapter 90.58 RCW and the applicable guidelines. Ecology shall be provided with 30-days from receipt of the city's "request for comments" to submit formal comments to the city on any interpretation.

- 4) Collecting applicable fees;
- 5) Determining that all applications and necessary information and materials are provided to the public. The Joint Aquatic Resource Application (JARPA) or other application forms deemed appropriate by the Administrator may be used for making application for the required shoreline permits and shoreline permit exemptions. The JARPA may be accessed on-line at:
www.epermitting.wa.gov/site/alias_resourcecenter/jarpa/9983/jarpa.aspx
- 6) Making field inspections, as necessary;
- 7) Enforcing compliance with this program and permit conditions as applicable;
- 8) Reviewing, insofar as possible, all submitted information deemed necessary for appropriate application needs;
- 9) Determining if a Statement of Exemption, Shoreline Substantial Development Permit, Conditional Use Permit or Variance Permit is required;
- 10) Preparing Statements of Exemptions that identify a project's consistency with the Master Program and the Act and attaching conditions to ensure such consistency;
- 11) Conducting a thorough review and analysis of Shoreline Substantial Development Permit applications, making written findings and conclusions, and recommending approval, approval with conditions, or denial of such permits to the Hearing Examiner;
- 12) Submitting Variance and Conditional Use Permit Applications and making written recommendations and findings on such permits to the Hearing Examiner for his/her consideration and official action. The Administrator shall assure that all relevant information and testimony regarding the application is made available to the Hearing Examiner during his/her review;
- 13) Filing Hearing Examiner decisions on Shoreline Substantial Development, Variance and Conditional Use Permits with the Department of Ecology.
- 14) Assuring that proper notice is given to appropriate persons and the public for all hearings;

- 15) Providing a summary report of the decisions on shoreline permits, shoreline permit exemptions and enforcement actions issued during the past calendar year to the City Council in February of each year. The report should include findings and conclusions on significant administrative determinations and appeals, identification of problem areas and recommendations on how the Master Program can be improved. Informing the citizens of the purposes, goals, policies, and regulations of this program and any changes or amendments thereto;
- 16) Investigating, developing, and proposing amendments to this program as deemed necessary to more effectively and equitably achieve its goals and policies;
- 17) Seeking remedies for alleged violations of this program, the provisions of the act, or of conditions of any approved shoreline permit or statement of exemption issued by the City;
- 18) Coordination of information with affected agencies.

8.1.3 Hearing Examiner

The Gig Harbor Office of the Hearing Examiner shall be responsible for hearing and making final decisions for the City on the following matters:

- 1) Shoreline Substantial Development Permits;

The Examiner shall issue a preliminary decision on Shoreline Conditional Use and Shoreline Variance Permits with final authorization of such permits with Ecology.

8.1.4 Planning Commission

The Gig Harbor Planning Commission shall be responsible for hearing and making recommendations for action to the City Council on the following types of matters:

- 1) Amendments to the Shoreline Master Program; and,
- 2) Reviewing this Program not less than once every eight years, beginning on or before June 30, 2019 and every eight years thereafter to evaluate the cumulative effects of all authorized development on shoreline conditions. The City's Interlocking Software Permit System shall be used as a mechanism to document all approved shoreline permits and shoreline permit exemptions,

whether a written exemption is required or not, to monitor compliance with all conditions of approval imposed upon the permits and evaluate the cumulative effects of all authorized development on shoreline conditions. This process should involve coordination with State resource agencies, affected tribes, and other interested parties.

8.1.5 City Council

The Gig Harbor City Council shall be responsible for making final determinations on amendments to the Shoreline Master Program, for review and approval by Ecology, which shall be adopted by ordinance. The Council shall enter findings and conclusions setting forth the factors it considered in reaching its decision.

8.1.6 County Tax Assessor

As provided for in RCW 90.58.290, the restrictions imposed upon the use of real property through the implementation of the policies and regulations of the Act and this Master Program shall be duly considered by the County Assessor and the County Board of Equalization in establishing the fair market value of such properties.

8.1.7 State Department of Ecology

The duties and responsibilities of the Washington State Department of Ecology shall include, but are not limited to the following:

- 1) Reviewing and approving Master Program and subsequent amendments prepared by the City of Gig Harbor pursuant to WAC 173-26-120 (State Process for Approving/Amending Shoreline Master Programs);
- 2) Final authority to approve, condition or deny Shoreline Conditional Use Permits and Shoreline Variance Permits filed by the City of Gig Harbor.

8.1.8 State Shoreline Hearings Board

The duties and responsibilities of the Washington State Shoreline Hearings Board shall include:

- 1) Hearing appeals on shoreline permit decisions issued by local government and the Department of Ecology, and appeals on those shoreline penalties jointly

issued by local government and Ecology, or issued by Ecology alone for violations of the SMA. The Board is not affiliated with any other unit of government.

8.2 Types of Shoreline Permits

Any person wishing to undertake substantial development (as defined in Chapter 2) or exempt development (per WAC 173-27-040 and SMP Section 8.2.2) within the shoreline jurisdiction of the Master Program shall apply to the Administrator for shoreline permit(s) and/or a Statement of Exemption if required pursuant to WAC 173-27-050. This section describes the various types of shoreline permits and permit review process.

8.2.1 Shoreline Substantial Development Permit

A. Permit required

A permit is required for any development with a total cost or fair market value exceeding seven thousand forty-seven dollars (\$7,047) (or the value as amended or adjusted for inflation per RCW 90.58.030 [3] [e]) or any development which materially interferes with the normal public use of the water or shorelines of the state, except those exempted developments set forth in WAC 173-27-040 (Developments Exempt from Substantial Development Permit Requirements) (also see Section 8.2.2).¹

B. Purpose

The purpose of a Shoreline Substantial Development Permit is to provide a review process for proposed substantial developments to ensure consistency with the Master Program and the Act.

¹ Visit the City of Gig Harbor's web site for current information on the dollar threshold amount.

C. Process

An open record decision hearing by the City of Gig Harbor's Hearing Examiner is required for a Substantial Development Permit. The Administrator's responsibilities are set forth in GHMC 19.05.002 (Responsibility of director/administrator for hearing). Public notice of complete application, date of public hearing and final decision is required as set forth in GHMC Title 19. The Administrator shall notify the Department of Ecology and the Attorney General of the permit decision. (See Section 8.5.2 for more information).

D. Administrator review criteria

The Administrator must review the permit for consistency with applicable regulations and comprehensive plan, as set forth in GHMC19.04.001 (Determination of consistency).

E. Hearing Examiner review criteria

A Substantial Development Permit shall be granted by the Hearing Examiner only when the development is consistent with the following, as established in WAC 173-27-150:

- 1) The policies and procedures of the act;
- 2) The provisions of this regulation; and
- 3) The applicable master program adopted or approved for the area; provided, that where no master program has been approved for that area, the development shall be reviewed for consistency with the provisions of chapter 173-26 WAC, and to the extent feasible, any draft or approved master program which can be reasonably ascertained as representing the policy of the local government.

Local government may attach conditions to the approval of permits as necessary to assure consistency of the project with the act and the local master program.

8.2.2 Exemptions from Substantial Development Permit

An exemption from the Substantial Development Permit process is not an exemption from compliance with the SMA or the Master Program, or from any other

regulatory requirements. To be authorized, all uses and developments must be consistent with the policies and provisions of the Master Program and the SMA.

A development or use that is listed as a conditional use pursuant to the Master Program, or is an unlisted use, must obtain a Conditional Use Permit even though the development or use does not require a Substantial Development Permit.

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.

Exemptions shall be construed narrowly. Only those developments that meet the precise terms of one or more of the listed exemptions may be granted exemption from the Substantial Development Permit process.

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

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.

The City may attach conditions to the approval of exempted developments and/or uses as necessary to assure consistency of the project with the Master Program and the Act.

The following developments shall not require Substantial Development Permits:

a) Any development of which the total cost or fair market value, whichever is higher, does not exceed seven thousand forty-seven dollars (\$7,047),² if such development does not materially interfere with the normal public use of the water or shorelines of the state. The dollar threshold established in this subsection must be adjusted for inflation 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. For purposes of determining whether or not a permit is required, the total cost or fair market value shall be based on the

² Visit the City of Gig Harbor's web site for current information on the dollar threshold amount.

value of development that is occurring on shorelines of the state as defined in RCW 90.58.030 (2)(c). The total cost or fair market value of the development shall include the fair market value of any donated, contributed or found labor, equipment or materials;

b) Normal maintenance or repair of existing structures or developments, including damage by accident, fire or elements. "Normal maintenance" includes those usual acts to prevent a decline, lapse, or cessation from a lawfully established condition. "Normal repair" means to restore a development to a state comparable to its original condition, including but not limited to its size, shape, configuration, location and external appearance, within a reasonable period after decay or partial destruction, except where repair causes substantial adverse effects to shoreline resource or environment. Replacement of a structure or development may be authorized as repair where such replacement is the common method of repair for the type of structure or development and the replacement structure or development is comparable to the original structure or development including but not limited to its size, shape, configuration, location and external appearance and the replacement does not cause substantial adverse effects to shoreline resources or environment;

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

d) Emergency construction necessary to protect property from damage by the elements. An "emergency" is an unanticipated and imminent threat to public health, safety, or the environment which requires immediate action within a time too short to allow full compliance with this chapter. Emergency construction does not include development of new permanent protective structures where none previously existed. Where new protective structures are deemed by the administrator to be the

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

e) 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;

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

g) 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 RCW. "Single-family residence" means a detached dwelling designed for and occupied by one family including those structures and developments within a contiguous ownership which are a normal appurtenance. 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. Normal appurtenances include a garage no larger than 24 x 36 feet (864 square feet); 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. Local circumstances may dictate additional interpretations of normal appurtenances which shall be set forth and regulated within the applicable master program. Construction authorized under this exemption shall be located landward of the ordinary high water mark;

h) Construction of a dock, including a community dock, designed for pleasure craft only, for the private noncommercial use of the owner, lessee, or contract purchaser of single-family and multiple-family residences. A dock is a landing and moorage facility for watercraft and does not include recreational decks, storage facilities or other appurtenances. This exception applies if either:

(i) In salt waters, the fair market value of the dock does not exceed two thousand five hundred dollars; or

(ii) In fresh waters the fair market value of the dock does not exceed:

(A) Twenty-two thousand five hundred dollars for docks that are constructed to replace existing docks, are of equal or lesser square footage than the existing dock being replaced; or

(B) Eleven thousand two hundred dollars for all other docks constructed in fresh waters.

However, if subsequent construction occurs within five years of completion of the prior construction, and the combined fair market value of the subsequent and prior construction exceeds the amount specified above, the subsequent construction shall be considered a substantial development for the purpose of this chapter.

For purposes of this section salt water shall include the tidally influenced marine and estuarine water areas of the state including the Pacific Ocean, Strait of Juan de Fuca, Strait of Georgia and Puget Sound and all bays and inlets associated with any of the above;

i) 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;

j) 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;

k) 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;

l) Any project with a certification from the governor pursuant to chapter 80.50 RCW;

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

(i) The activity does not interfere with the normal public use of the surface waters;

(ii) 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;

(iii) 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;

(iv) 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

(v) The activity is not subject to the permit requirements of RCW 90.58.550;

n) 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;

o) Watershed restoration projects as defined herein. Local government 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.

(i) "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 streamreach, 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 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.

(ii) "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;

p) A public or private project that is designed to improve fish or wildlife habitat or fish passage, when all of the following apply:

(i) The project has been approved in writing by the department of fish and wildlife;

(ii) The project has received hydraulic project approval by the department of fish and wildlife pursuant to chapter 77.55 RCW; and

(iii) The local government has determined that the project is substantially consistent with the local shoreline master program. The local government shall make such determination in a timely manner and provide it by letter to the project proponent.

Fish habitat enhancement projects that conform to the provisions of RCW 77.55.181 are determined to be consistent with local shoreline master programs, as follows:

(A) In order to receive the permit review and approval process created in this section, a fish habitat enhancement project must meet the criteria under (p)(iii)(A)(I) and (II) of this subsection:

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

- Elimination of human-made fish passage barriers, including culvert repair and replacement;
- Restoration of an eroded or unstable stream bank employing the principle 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
- Placement of woody debris or other instream structures that benefit naturally reproducing fish stocks.

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

(II) A fish habitat enhancement project must be approved in one of the following ways:

- By the department of fish and wildlife pursuant to chapter 77.95 or 77.100 RCW;
- By the sponsor of a watershed restoration plan as provided in chapter 89.08 RCW;
- By the department as a department of fish and wildlife-sponsored fish habitat enhancement or restoration project;
- Through the review and approval process for the jobs for the environment program;
- 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;

- Through a formal grant program established by the legislature or the department of fish and wildlife for fish habitat enhancement or restoration; and
- Through other formal review and approval processes established by the legislature.

(B) Fish habitat enhancement projects meeting the criteria of (p)(iii)(A) of this subsection are expected to result in beneficial impacts to the environment. Decisions pertaining to fish habitat enhancement projects meeting the criteria of (p)(iii)(A) of this subsection and being reviewed and approved according to the provisions of this section are not subject to the requirements of RCW 43.21C.030 (2)(c).

(C)(I) A hydraulic project approval permit is required for projects that meet the criteria of (p)(iii)(A) 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 each appropriate local government. Local governments 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.

(II) 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.

(D) No local government may require permits or charge fees for fish habitat enhancement projects that meet the criteria of (p)(iii)(A) of this subsection

and that are reviewed and approved according to the provisions of this section.

q) 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.

8.2.3 Statement of Exemption

A. Statement required

A Statement of Exemption must be obtained from the Administrator for a development activity or use that is exempt from a Substantial Development Permit and subject to the provisions of WAC 173-27-050. Exempt development does not require a Substantial Development Permit, but may require a Conditional Use Permit or Variance Permit pursuant to WAC 173-27-040(1)(b). Pursuant to WAC 173-27-050, a Statement of Exemption is required when a development is determined by the Administrator to be exempt from the Substantial Development Permit requirements and the development is subject to one or more of the following federal permit requirements:

- 1) A U.S. Army Corps of Engineers Section 10 Permit under the Rivers and Harbors Act of 1899; (The provisions of Section 10 of the Rivers and Harbors Act generally apply to any project occurring on or over navigable waters. Specific applicability information should be obtained from the Corps of Engineers.); or
- 2) A Section 404 Permit under the Federal Water Pollution Control Act of 1972. (The provisions of Section 404 of the Federal Water Pollution Control Act generally apply to any project which may involve discharge of dredge or fill material to any water or wetland area. Specific applicability information should be obtained from the Corps of Engineers.).

B. No Net Loss Analysis

- 1) In all instances involving a formal shoreline permit exemption as addressed pursuant to Subsection 8.2.3.A above, or, in the alternative, an informal determination that a development proposal is exempt from the formal exemption process, a no net loss analysis shall be provided to the city for review in a format approved by the Planning Department. Exempt

developments that cause a net loss of ecological functions and processes shall be subject to the requirements of Section 6.2.2 and shall mitigate project impacts consistently with the requirements of Subsection 6.2.2.3-6.

C. Purpose

The purpose of a Statement of Exemption is to verify that the action is exempt, ensure the development is in compliance with the Master Program and the Act, and to provide an itemization of SMP requirements to the applicant.

D. Process

The Administrator shall prepare a Statement of Exemption which includes:

- 1) The specific exemption provision from WAC 173-27-040 (Developments Exempt from Shoreline Substantial Development Permit Requirement) that is being applied to the development.
- 2) A summary of the Administrator's analysis of the consistency of the project with the Master Program and the Act.
- 3) Itemization of the Program's requirements and other requirements applicable to the proposed project in conjunction with other permit processes.

The Administrator may attach conditions to the approval of exempted developments and/or uses as necessary to assure consistency of the project with the Act and the Master Program. According to State guidelines, the burden of proof that a development activity or use is exempt from the permit process is on the applicant.

8.2.4 Shoreline Conditional Use Permit

A. Permit required

The circumstances for which a Conditional Use Permit is required are described in Table 7-1 Shoreline Modification Matrix, in Table 7-2 Shoreline Use Matrix, and in the regulatory requirements in Chapter 7.

B. Purpose

The purpose of a Shoreline Conditional Use Permit is to allow a case-by-case review of certain uses which may have a greater potential for impacts if permitted without project-specific conditions. In authorizing a Shoreline Conditional Use Permit, special conditions may be attached to the permit by the Hearing Examiner or Ecology.

C. Process

An open record decision hearing by the City of Gig Harbor's Hearing Examiner is required for a Conditional Use Permit. The Administrator's responsibilities are set forth in GHMC 19.05.002. Public notice of completed application, date of public hearing and final decision is required as set forth in GHMC Title 19. Ecology is the final approving authority for Conditional Use Permits. (See section 8.5.2 for more information.)

D. Administrator review criteria

The Administrator must review the permit for consistency with applicable regulations and comprehensive plan, as set forth in GHMC 19.04.001 (Determination of consistency).

E. Hearing Examiner review criteria

The criteria below shall constitute the minimum criteria for review and approval of a Conditional Use Permit. Uses classified as conditional uses, and those uses not specifically listed and not prohibited by the regulations of this SMP, may be authorized provided that the applicant can demonstrate all of the following:

- 1) That the proposed use will be consistent with the policies of RCW 90.58.020 and the master 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 authorized uses within the area and with uses planned for the area under the Comprehensive Plan and Shoreline Master Program;
- 4) That the proposed use will cause no significant adverse effects to the shoreline environment in which it is to be located;

- 5) That the public interest suffers no substantial detrimental effect;
- 6) That consideration has been 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 (Legislative Findings) and shall not produce substantial adverse effects to the shoreline environment.

Uses which are specifically prohibited by the Master Program may not be authorized pursuant to the criteria listed above (1-6).

Uses which are not classified or set forth in the Master Program may be authorized as conditional uses provided the applicant can demonstrate consistency with the requirements of this section.

The Hearing Examiner may attach conditions to the approval of permits as necessary to assure consistency of the proposal with the above criteria.

8.2.5 Shoreline Variance Permit

A. Permit required

A Shoreline Variance Permit is required when an applicant seeks relief from specific bulk, dimensional or performance standards set forth in this Master Program, including Section 6.2.5-Critical Areas.

B. Purpose

The purpose of a Shoreline Variance Permit is to grant relief from specific bulk, dimensional or performance standards set forth in this Master Program only where there are extraordinary or unique circumstances relating to the physical character or configuration of the property such that the strict implementation of the Master Program would impose unnecessary hardships on the applicant or thwart the SMA policies (see RCW 90.58.020 Legislative Findings).

C. Process

An open record decision hearing by the City of Gig Harbor's Hearing Examiner is required for a Variance Permit. The Administrator's responsibilities are set forth in GHMC 19.05.002. Public notice of complete application, date of public hearing and

final decision is required as set forth in GHMC Title 19. Ecology is the final approving authority for Variance Permits. (See Section 8.5.2 for more information).

D. Administrator review criteria

The Administrator must review the permit for consistency with applicable regulations and comprehensive plan, as set forth in GHMC19.04.001.

E. Hearing Examiner review criteria

The criteria below shall constitute the minimum criteria for review and approval of a Shoreline Variance Permit.

- 1) Variance Permits should be granted in circumstances where denial of the permit would result in a thwarting of SMA policy enumerated in RCW 90.58.020 (Legislative Findings). In all instances the applicant must demonstrate that extraordinary circumstances shall be shown and the public interest shall suffer no substantial detrimental effect.
- 2) Variance Permits for development that will be located landward of the ordinary high water mark and/or landward of any wetland may be authorized provided the applicant can demonstrate all of the following:
 - a) That the strict application of the bulk, dimensional or performance standards set forth in the Master Program precludes, or significantly interferes with a reasonable use of the property not otherwise prohibited by this SMP;
 - b) 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 the Master Program, and not, for example, from deed restrictions or the applicant's own actions;
 - c) 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 and Shoreline Master Program and will not cause adverse impacts to the shoreline environment;
 - d) That the variance will not constitute a grant of special privilege not enjoyed by the other properties in the area;
 - e) That the variance requested is the minimum necessary to afford relief; and

- f) That the public interest will suffer no substantial detrimental effect.
- 3) Variance Permits for development and/or uses that will be located waterward of the ordinary high water mark or within any wetland may be authorized provided the applicant can demonstrate all of the following:
 - a) That the strict application of the bulk, dimensional or performance standards set forth in this SMP precludes all reasonable use of the property not otherwise prohibited by this SMP;
 - b) That the proposal is consistent with the criteria established under subsection (2)(b) – (2)(f); and
 - c) That the public rights of navigation and use of the shorelines will not be adversely affected.
- 4) 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 SMA policies (see RCW 90.58.020 Legislative Findings) and shall not cause substantial adverse effects to the shoreline environment.
- 5) Variances from the permitted use regulations of the Master Program are prohibited.

8.3 Application Requirements

Prior to submitting a complete application for a Shoreline Substantial Development, Shoreline Conditional Use or Shoreline Variance Permit, the applicant may request a pre-application meeting pursuant to the requirements of GHMC 19.2.001 - Optional Pre-Application Conference. This will enable the applicant to become familiar with the requirements of the Program, other applicable regulations, and the permitting process. A pre-application form, cover letter describing the nature of the proposal, site plan drawing, list of questions and concerns, and other applicable documents pertinent to the project are required to initiate the pre-application process.

To apply for a Statement of Exemption, Substantial Development, Shoreline Conditional Use or Shoreline Variance Permit, obtain the applicable permit form from the Planning Department. Application forms identify the necessary

information to be submitted with the application and applicable permit fees. A complete application shall address all applicable requirements of WAC 173-27-180 (Application requirements for substantial development, conditional use and variance permit).

8.4 Public Notice Requirements

8.4.1 Shoreline Substantial Development, Conditional Use and Variance Permits

Upon submittal of a complete application for Substantial Development, Shoreline Conditional Use or Shoreline Variance Permits, the Administrator shall follow the procedures prescribed in GHMC 19.02.004 and 19.03.001 (Public Notice of Application).

A notice of public hearing pursuant to GHMC 19.03.003 and notice of final decision pursuant to GHMC 19.02.007 and 19.05.008 shall be made for each application unless withdrawn by the applicant or determined to have expired by the City pursuant to GHMC 19.02.006.

8.4.2 Statement of Exemption

The Administrator shall transmit the Statement of Exemption to the applicant and to all parties of record and property owners within three hundred feet (300) of the site and shall also include a notice of appeal of an administrative decision to the Hearing Examiner pursuant to a Type II Permit as provided in GHMC Title 19.

8.5 Shoreline Substantial Development, Conditional Use and Variance Permit Process

8.5.1 Public Hearing by the Hearing Examiner

A public hearing shall be held by the Hearing Examiner regarding an application for a Shoreline Substantial Development, Shoreline Conditional Use or Shoreline Variance Permit. The public hearing should be held at the earliest possible date after the thirty (30) day public comment period has ended. The Hearing Examiner shall review the application and related information and make a decision to approve, approve with conditions, or deny the application for a Shoreline Substantial Development, Shoreline Conditional Use or Shoreline Variance Permit. The Hearing Examiner shall review an application for a Substantial Development, Conditional Use or Variance Permit using the following information:

- 1) The application;
- 2) Applicable SEPA documents;
- 3) Written and oral comments from interested persons;
- 4) Information and comment from other City departments;
- 5) Evidence presented at the public hearing;
- 6) The findings, conclusions and recommendations of the Administrator.

8.5.2 Ecology Review

A. Submittal requirements

Ecology shall be notified of any Substantial Development, Conditional Use or Variance Permit decisions made by the Hearing Examiner, whether it is an approval or denial. The notification shall occur after all local administrative appeals, including reconsideration requests provided by GHMC 19.05.010 related to the permit have concluded or the opportunity to initiate such appeals has lapsed. When

a Substantial Development Permit and either Conditional Use or Variance Permit are required for a development, the submittal of the permits shall be made concurrently. The Administrator shall file the following, via return receipt requested mail, with the Department of Ecology and Attorney General:

- 1) A copy of the complete application per WAC 173-27-180;
- 2) Findings and conclusions that establish the basis for the decision including but not limited to identification of shoreline environment designation, applicable Master Program policies and regulations and the consistency of the project with appropriate review criteria for the type of permit(s);
- 3) The final decision of the City;
- 4) The permit data sheet per WAC 173-27-990;
- 5) Affidavit of public notice; and
- 6) Where applicable, the Administrator shall also file the applicable documents required by the State Environmental Policy Act (RCW 43.21C).

When the project has been modified in the course of the local review process, plans or text shall be provided to Ecology that clearly indicates the final approved plan.

If Ecology determines that the submittal does not contain all of the documents and information required by this section, Ecology shall identify the deficiencies and notify the City and the applicant in writing. Ecology will not act on Conditional Use or Variance Permit submittals until the material requested in writing is submitted to them.

B. Ecology decision on Conditional Use and Variance Permits

Ecology shall convey to the City and applicant its final decision approving, approving with conditions, or disapproving the permit within thirty days (30) of the date of submittal by the City. The Administrator will notify those interested persons having requested notification of such decision.

Ecology shall base its determination to approve, approve with conditions or deny a Conditional Use Permit or Variance Permit pursuant to WAC 173-27-200.

8.6 Relief from Development Standards and Use Regulations

- 1) The City and Ecology may grant relief from Program development standards and use regulations as set forth below and pursuant to RCW 90.58.580 and WAC 173-27-215 when a shoreline restoration project causes or would cause a landward shift in the ordinary high water mark, resulting in one of the following:
 - a) Land that had not been regulated under this Program being brought into shoreline jurisdiction; or
 - b) Additional regulatory requirements due to a landward shift in required shoreline buffers or other regulations; or
 - c) Application of shoreline master program regulations would preclude or interfere with use of the property permitted by local development regulations, thus presenting a hardship to the project proponent;
- 2) The relief shall be verified by the Administrator and must be the minimum necessary to relieve the hardship; result in a net environmental benefit from the restoration project; and be consistent with the objectives of the restoration project and consistent with this Program.
- 3) Where a shoreline restoration project is created as mitigation to obtain a development permit, the project proponent required to perform the mitigation is not eligible for relief under this section; and
- 4) The application for relief must be submitted to the State Department of Ecology for written approval or disapproval. This review must occur during the department's normal review of a Shoreline Substantial Development, Conditional Use, or Variance Permit. If no such permit is required, then Ecology shall conduct its review when the City provides a copy of a complete application and all supporting information necessary to conduct the review.

8.7 Appeals

Appeals of administrative interpretations and statements of exemption may be made to Gig Harbor's Hearing Examiner. Appeals of any final permit decision may be made to the Shorelines Hearing Board as governed by the procedures established in

RCW 90.58.180 (Appeals from Granting, Denying, or Rescinding Permits) and WAC 461-08 (Practice and Procedure, Review of the Granting, Denying or Rescinding of Substantial Development Permits, Hearings). All appeals of any final permit decision must be made to the Shorelines Hearing Board within twenty-one (21) days of the date of filing concerning the shoreline permit or formal approval to revisions of the permit.

8.8 Time Requirements and Revisions

8.8.1 Construction Timing

Construction pursuant to a Substantial Development Permit shall not begin and is not authorized until twenty-one (21) days after the “date of filing”; provided no appeals have been initiated during this twenty-one (21) day period. “Date of filing” is the date of actual receipt by Ecology of the local government’s decision.

Construction pursuant to a Shoreline Conditional Use Permit or Shoreline Variance Permit shall not begin and is not authorized until twenty-one (21) days after Ecology issues its final decision, provided no appeals have been initiated during this twenty-one (21) day period. “Date of filing” means the date the Ecology decision is transmitted to the local government.

When a local government simultaneously transmits to the department its decision on a shoreline substantial development with its approval of either a shoreline conditional use permit or variance, or both, “date of filing” means the date the decision of the department is transmitted by the department to the local government.

8.8.2 Duration of Permits

The time requirements of this section shall apply to all Substantial Development Permits and to any development authorized pursuant to a Variance or Conditional Use Permit authorized by this chapter. Upon a finding of good cause, based on the requirements and circumstances of the project proposed and consistent with the policy and provisions of the master program and this chapter, local government may adopt different time limits from those set forth in subsections (1) and (2) of this section as a part of action on a Substantial Development Permit.

- 1) Construction activities shall be commenced or, where no construction activities are involved, the use or activity shall be commenced within two (2) years of the effective date of a Substantial Development Permit. However, local government may authorize a single extension for a period not to exceed one (1) year based on reasonable factors, if a request for extension has been filed before the expiration date and notice of the proposed extension is given to parties of record on the Substantial Development Permit and to Ecology.
- 2) Authorization to conduct construction activities shall terminate five (5) years after the effective date of a Substantial Development Permit (see definition of effective date in Chapter 2). However, local government may authorize a single extension for a period not to exceed one (1) year based on reasonable factors, if a request for extension has been filed before the expiration date and notice of the proposed extension is given to parties of record and to the department.

The effective date of a Substantial Development Permit shall be the date of filing as provided in RCW 90.58.140(6) (see definition of effective date in Chapter 2). The permit time periods in subsections (1) and (2) of this section do not include the time during which a use or activity was not actually pursued due to the pendency of administrative appeals or legal actions or due to the need to obtain any other government permits and approvals for the development that authorize the development to proceed, including all reasonably related administrative or legal actions on any such permits or approvals. Revisions to permits under WAC 173-27-100 (also see Section 8.8.3) may be authorized after original permit authorization has expired: provided, that this procedure shall not be used to extend the original permit time requirements or to authorize substantial development after the time limits of the original permit.

Local government shall notify Ecology in writing of any change to the effective date of a permit, as authorized by this section, with an explanation of the basis for approval of the change. Any change to the time limits of a permit other than those authorized by RCW 90.58.143 as amended shall require a new permit application.

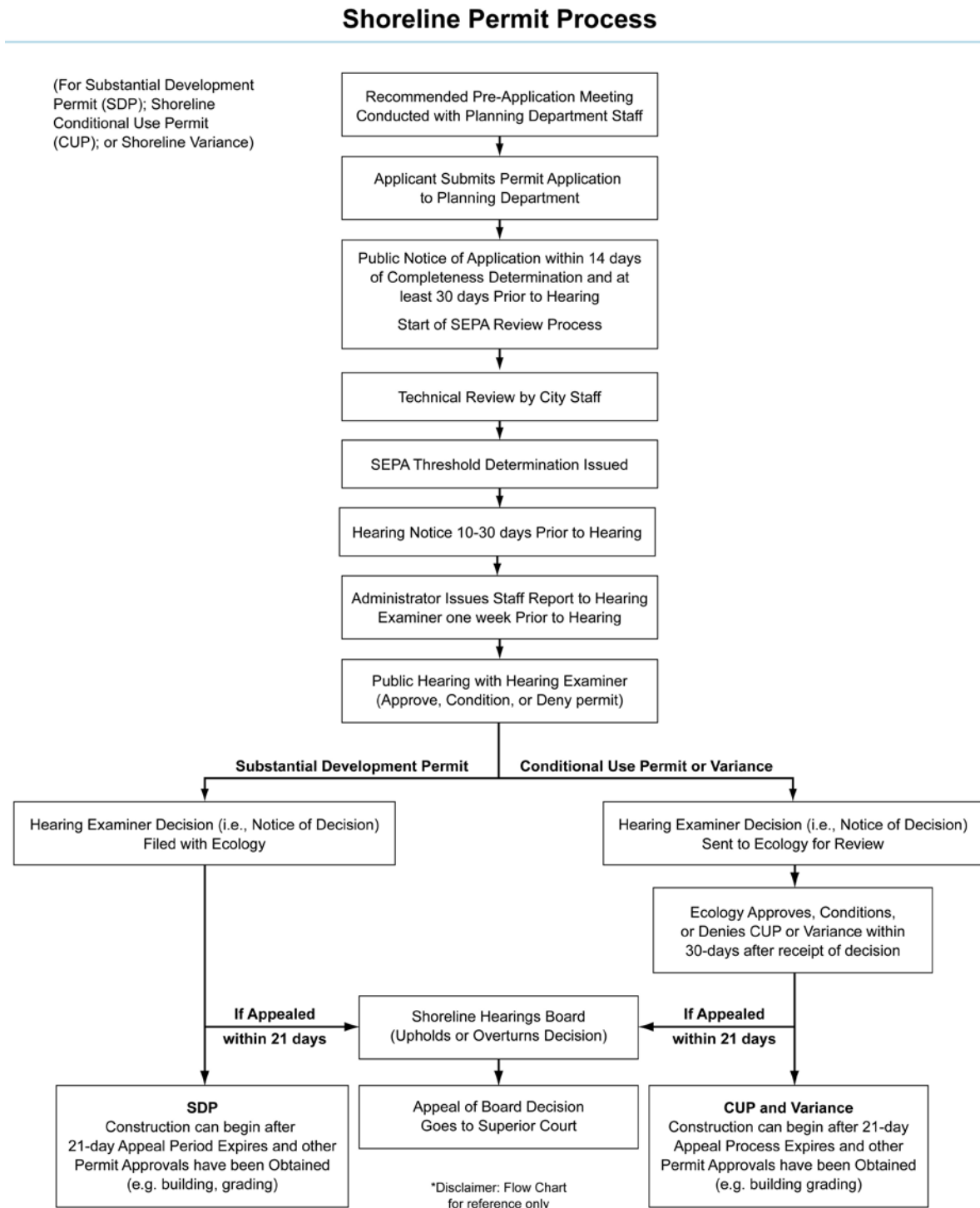
8.8.3 Permit Revision

A permit revision is required whenever an applicant proposes substantive changes to the design, terms or conditions of a project from that which was approved in the permit. When a revision of a permit is sought, the applicant shall submit detailed plans and text describing the proposed changes in the permit and demonstrating compliance with the following minimum standards, consistent with WAC 173-27-100.

- 1) If local government determines that the proposed changes are within the scope and intent of the original permit, and are consistent with the master program and the act, local government may approve a revision.
- 2) Within the scope and intent of the original permit means all of the following:
 - a. No additional over water construction is involved except that pier, dock, or float construction may be increased by five hundred (500) square feet or ten (10) percent from the provisions of the original permit, whichever is less;
 - b. Ground area coverage and height may be increased a maximum of ten (10) percent from the provisions of the original permit;
 - c. The revised permit does not authorize development to exceed height, lot coverage, setback, or any other requirements of the Program except as authorized under a variance granted as the original permit or a part thereof;
 - d. Additional or revised landscaping is consistent with any conditions attached to the original permit and with the Program;
 - e. The use authorized pursuant to the original permit is not changed; and
 - f. No adverse environmental impact will be caused by the project revision.
- 3) Revisions to permits may be authorized after original permit authorization has expired under RCW [90.58.143](#). The purpose of such revisions shall be limited to authorization of changes which are consistent with this section and which would not require a permit for the development or change proposed under the terms of chapter [90.58](#) RCW, this regulation and the local master program. If the proposed change constitutes substantial development then a new permit is required. Provided, this subsection shall not be used to extend the time requirements or to authorize substantial development beyond the time limits of the original permit.
- 4) If the sum of the revision and any previously approved revisions under former WAC [173-14-064](#) or this section violate the provisions in subsection (2) of this section, local government shall require that the applicant apply for a new permit.
- 5) The revision approval, including the revised site plans and text consistent with the provisions of WAC [173-27-180](#) as necessary to clearly indicate the authorized changes, and the final ruling on consistency with this section shall be filed by the city with the Department of Ecology. In addition, local government shall notify parties of record of their action.

- 6) If the revision to the original permit involves a conditional use or variance, local government shall submit the revision to the Department of Ecology for the department's approval, approval with conditions, or denial, and shall indicate that the revision is being submitted under the requirements of this subsection. The department shall render and transmit to local government and the applicant its final decision within fifteen days of the date of the department's receipt of the submittal from local government. Local government shall notify parties of record of the department's final decision.
- 7) The revised permit is effective immediately upon final decision by local government or, when appropriate under subsection (6) of this section, upon final action by the Department of Ecology.
- 8) Appeals shall be in accordance with RCW [90.58.180](#) and shall be filed within twenty-one days from the date of receipt of the local government's action by the Department of Ecology or, when appropriate under subsection (6) of this section, the date the Department of Ecology's final decision is transmitted to local government and the applicant. Appeals shall be based only upon contentions of noncompliance with the provisions of subsection (2) of this section. Construction undertaken pursuant to that portion of a revised permit not authorized under the original permit is at the applicant's own risk until the expiration of the appeals deadline. If an appeal is successful in proving that a revision is not within the scope and intent of the original permit, the decision shall have no bearing on the original permit.

Figure 8-1. Shoreline Permit Process



8.9 Enforcement and Penalties

The Administrator shall follow the procedures prescribed in GHMC 17.07 (Enforcement) to enforce this Program.

8.10 Master Program – Review, Amendments and Adoption

This Master Program shall be periodically reviewed consistent with RCW 90.58.080(4) and adjustments shall be made as are necessary to reflect changing local circumstances, new information or improved data, and changes in State Statutes and regulations. This review process shall be consistent with WAC 173-26-090 requirements and shall include a local citizen involvement effort and public hearing to obtain the views and comments of the public.

Any of the provisions of this Master Program may be amended as provided for in WAC 173-26-100. Amendments or revisions to the Master Program, as provided by law, do not become effective until approved by the Washington State Department of Ecology.

8.11 Nonconforming Uses and Structures

Nonconforming development is a shoreline lot, use or structure which was lawfully constructed or established prior to the adoption of the master program but which does not conform to regulations or standards of this Master Program or the Act. In such cases, the following standards shall apply:

8.11.1 Intent

- 1) Within the shoreline jurisdiction, there may be existing lots, structures, uses of land and structures, and characteristics of use that were lawful before the effective date of the applicable regulations, but that would be prohibited, regulated, or restricted under the terms of this Shoreline Master Program, or a

future amendment thereof. Section 8.11 is intended to allow these nonconformities to continue until they are removed but not to encourage their perpetuation. It is further intended that nonconformities shall not be enlarged upon, expanded, extended or be used as grounds for adding other structures or uses prohibited elsewhere in the same shoreline environment designation.

- 2) Because nonconformities do not conform to the requirements of the regulations within their shoreline environment designations, they are declared by Section 8.11 to be incompatible with the permitted uses in the shoreline environment designations involved. To avoid undue hardship, nothing in Section 8.11 shall be deemed to require a change in the submitted drawings, construction or designated use of any building for which a complete application for a building permit or shoreline permit was made prior to the effective date of the adoption or an amendment to this Shoreline Master Program.

8.11.2 Nonconforming Lots of Record

- 1) Building on Nonconforming Lots of Record. In any shoreline environment designation, notwithstanding limitations imposed by other provisions of the Shoreline Master Program, permitted principal uses and structures and customary accessory buildings may be constructed on any lot that is of record at the effective date of the adoption or of an amendment of the applicable regulations. This provision shall apply even though such lot fails to meet the requirements for area or width, or both, that are applicable in the shoreline environment designation. Such permitted principal uses and structures and accessory buildings may be constructed on such a nonconforming lot provided that all dimensional requirements of the Shoreline Master Program including minimum yard requirements, the maximum height of structures and the maximum coverage by all buildings are complied with.
- 2) Combination of Legally Nonconforming Lots. A property owner of two or more lots that are legally nonconforming as to lot area may request that the lots be combined into one larger lot, even if the resulting lot does not satisfy the existing lot area requirements in the shoreline environment designation, as long as the Administrator determines that the property owner has submitted sufficient evidence to demonstrate that the original lots are legally nonconforming. In addition, the lot combination shall satisfy the requirements of and be processed according to the procedures in GHMC Chapter 16.03 Boundary Line Adjustments, with the exception of GHMC 16.03.003(B). Criteria for approval.

- 3) Dedication of Property to the Public. That portion of a lot remaining after dedication or sale of a portion of the lot to the city or state for street or highway purposes shall be a separate building site, as long as the area of the remaining lot is at least 3,000 square feet.

8.11.3 Nonconforming Use and Structure Review

- 1) Any change to a nonconforming use or nonconforming structure shall be reviewed for compliance with the standards of Section 8.11 and nonconforming review approval shall be obtained prior to the commencement of any such change.
- 2) Any change to a nonconforming use or structure shall comply with the substantive and procedural requirements of the master program.
- 3) Nonconforming review is a Type II project permit application and shall be processed as set forth in GHMC Title 19 with the exception of changes described in GHMC 17.68.035 changes from one nonconforming use to another, which shall be processed as a Type III project permit application as set forth in GHMC Title 19.
- 4) A complete nonconforming review application shall contain the following information:
 - a) A written description of the proposed nonconforming use and/or nonconforming structure change including any plans and drawings which illustrate such change;
 - b) A written statement of justification for approving the nonconforming change pursuant to the regulations contained within Section 8.11.

8.11.4 Nonconforming Uses of Land

- 1) When, before the effective date of the adoption or an amendment of the applicable regulations, a lawful use of land existed that would not be permitted by the regulations thereafter imposed by the Shoreline Master Program, or amendments thereof, the use may be continued so long as it remains otherwise lawful, and shall be deemed a nonconforming use; provided, however, that:

- a) No such nonconforming use shall be expanded in size or extended to occupy a greater area of land than was occupied at the effective date of the adoption or an amendment of such applicable regulations;
 - b) No such nonconforming use shall be moved, in whole or in part, to any portion of the lot or parcel other than that occupied by such use at the effective date of the adoption or an amendment of such applicable regulations;
- 2) Destruction and Discontinuance
- a) If any such nonconforming use of land is discontinued for any reason for a period of more than one year, any subsequent use of land shall conform to the regulations specified by this title for the district in which such land is located. "Discontinued" is defined in Section 8.11.6;
 - b) A nonconforming use that is damaged by fire, act of nature or other causes beyond the control of the owners may be resumed, as long as the use is not discontinued more than one year.
 - c) Any structure occupied by a nonconforming use that is unintentionally destroyed may only be reconstructed to the same or smaller configuration existing immediately prior to the time the structure was damaged or destroyed. The reconstruction shall comply with all applicable building codes in force at the time of replacement. As determined during the nonconforming use and structure review process (see Section 8.11.3), the reconstruction shall comply with all other applicable codes to the maximum extent possible;
 - d) When a structure and premises have a nonconforming use status, the intentional removal, intentional destruction or intentional alteration of the structure shall eliminate the nonconforming use status. Intentional removal, intentional destruction and intentional alteration for the purposes of this subsection is defined as damage and/or alterations valued at more than 50 percent of the replacement value of the structure at the time of damage and/or alterations as determined by the square foot construction cost table in the City's fee schedule;
- 3) No additional structures not conforming to the requirements of the Shoreline Master Program shall be constructed in connection with such nonconforming use of land.

8.11.5 Changes from One Nonconforming Use to Another

- 1) If no structural alterations are made, any nonconforming use of a structure and premises may be changed to another nonconforming use, under the procedures established in GHMC Title 19 for a Type III project permit application. In order to approve such new nonconforming use, the hearing examiner must find that the proposed use is more appropriate for the shoreline environment designation than the existing nonconforming use. The hearing examiner may also require that appropriate conditions and safeguards be imposed on the change from one nonconforming use to another.

8.11.6 Discontinuance of Nonconforming Uses

- 1) Any structure and premises in or on which a nonconforming use is superseded by a permitted use shall thereafter conform to the use regulations for the shoreline environment designation in which they are located and the nonconforming use may not thereafter be resumed.
- 2) A use is considered discontinued when:
 - a) A permit to change the use of the nonconforming lot or nonconforming structure was issued and acted upon;
 - b) The structure, or a portion of the structure, is not being used for the nonconforming use allowed by the most recent permit;
 - c) The structure is vacant, or the portion of the structure formerly occupied by the nonconforming use is vacant. The use of the structure shall be considered discontinued even if materials from the former use remain or are stored on the property. A multifamily structure with one or more vacant dwelling units is not considered vacant and the use is not considered to be discontinued unless all units in the structure are vacant;
 - d) If a complete application for a permit that would allow the nonconforming use to continue, or that would authorize a change to another nonconforming use, has been submitted before the structure has been vacant for 12 consecutive months, the nonconforming use shall not be considered discontinued unless the permit lapses or the permit is denied.

8.11.7 Uses Permitted under Conditional Use Provisions

- 1) A use that existed before the effective date of the adoption or an amendment of the applicable regulations and that is permitted as a conditional use in the shoreline environment designation in which it is located under the terms of this master program or GHMC Title 17 shall not be deemed a nonconforming use. Such a use shall be considered to exist as a conditional use. The scope of the conditional use shall be governed by the provisions of Section 8.11 unless modified by the hearing examiner in accordance with subsection 8.2.4 of this master program or GHMC Chapter 17.64 Conditional Uses.

8.11.8 Nonconforming Structures

- 1) When a lawful structure existed at the effective date of the adoption or an amendment of the applicable regulations and could not be built under the terms of the current regulations set forth in this Shoreline Master Program, or amendments thereof, by reason of the restrictions on area, lot size or dimension, coverage, height, yards and the location on the lot or other requirements concerning the structure, such structure may be continued as a nonconforming structure so long as it remains otherwise lawful and shall be subject to the following provisions:
 - a) No such nonconforming structure may be altered or remodeled in any way that increases its nonconformity respective to bulk or dimensional standards in effect, but any structure or portion thereof may be altered or remodeled to decrease its nonconformity;
 - b) A nonconforming structure that is damaged by fire, act of nature or other causes beyond the control of the owners may be reconstructed provided the following standards are met:
 - i) The structure is not discontinued for more than 12 consecutive months. The Administrator may grant not more than two (2) one-year extensions based on good cause.
 - ii) In instances where the nonconforming structure is located waterward of the minimum nonconforming structure setback and landward of the OHWM, such structure shall be reconstructed to the same or smaller configuration existing immediately prior to the time the structure was damaged or destroyed, and shall not be required to meet either the minimum nonconforming structure setback or minimum structure

setback standards that apply to non-water dependent uses pursuant to Section 6.2.3.2, Table 6-1.

- iii) In instances where the nonconforming structure is located landward of the minimum nonconforming structure setback and waterward of the minimum structure setback as provided in subsection 6.2.3.2, Table 6-1, such reconstruction shall be allowed, including the reconfiguration of the building footprint within the minimum structure setback area, provided the following standards are met:
 - (1) A minimum nonconforming structure setback is maintained as a vegetation conservation strip per requirements of Section 6.4
 - (2) No increase in building footprint square footage within the minimum structure setback occurs; and
 - (3) The existing setback between the existing, legally nonconforming, principal structure and the OHWM is not decreased.
- iv) The reconstruction shall comply with all applicable building codes in force at the time of replacement. As determined during the nonconforming use and structure review process (see Section 8.11.3), the reconstruction shall comply with all other applicable codes to the maximum extent possible. "Discontinued" is defined in Section 8.11.6; and,
- v) Nonconforming structures located waterward of the OHWM may be reconstructed to those configurations existing immediately prior to the time the structures were damaged.
- c) Any such nonconforming structure or nonconforming portion of a structure that is intentionally damaged, intentionally altered, or intentionally removed may be reconstructed to the same or smaller configuration existing immediately prior to the time the structure was damaged or altered provided the following standards are met:
 - i) The subject property is not located in a Natural shoreline environment designation.
 - ii) Reconstruction shall occur within one (1) year of the time of intentional damage or alteration or not at all. The Administrator may grant not more than two (2) one-year extensions based on good cause.

- iii) In instances where the nonconforming structure is located waterward of the minimum nonconforming structure setback as provided in subsection 6.2.3.2, Table 6-1, and landward of the OHWM, the reconstruction shall comply with the minimum nonconforming structure setback, shall establish a minimum nonconforming structure setback as a vegetation conservation strip per the requirements of Section 6.4, and shall not result in an increase in building square footage within the minimum structure setback.
 - iv) In instances where the nonconforming structure is located within the minimum structure setback, reconstruction shall comply with the requirements of subsection 6.2.3.
 - v) The reconstruction shall comply with all applicable building codes in force at the time of replacement. As determined during the nonconforming use and structure review process (see Section 8.11.3), the reconstruction shall comply with all other applicable codes to the maximum extent possible. Interior-only remodels which do not increase a structure's nonconformity shall not be considered reconstruction as it relates to this section; and,
 - vi) Nonconforming structures located waterward of the OHWM may be reconstructed to those configurations existing immediately prior to the time the structures were intentionally damaged or altered.
- d) Principal residential structures that were legally established but do not meet current standards for setbacks, buffers, or yards; area; bulk; height; or density are considered a conforming structure to the provisions of this master program.
- i) Redevelopment, expansion, change within class of occupancy, or replacement of such principal residential structure shall be consistent with the requirements of the master program including no net loss of shoreline ecological functions.

8.11.9 Repairs and Maintenance

- 1) Repairs may be made to any nonconforming structure or any portion of a structure containing a nonconforming use; provided, they are restricted to the repairs or replacement of structural elements, fixtures, wiring and plumbing required so as to protect occupants and public safety. The need for such repairs or replacements shall be confirmed by the building official.

- 2) Nothing in Section 8.11 shall be deemed to prevent the strengthening or restoration to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting the public safety and upon the order of such official.

8.11.10 Nonconforming Parking, Loading and other Characteristics of Use

- 1) If the characteristics of a use such as off-street parking, off-street loading, lighting or other matters required by the Shoreline Master Program in relation to specific uses of land, structures or premises, with the exception of signs, are not in accordance with the requirements of the Shoreline Master Program, no change that increases the nonconformity with such requirements shall be made in such characteristics of use. Any change that decreases the nonconformity to the requirements of the Shoreline Master Program shall be permitted. Nonconforming signs are regulated under GHMC 17.80.130 Nonconforming signs.

8.11.11 Continuity of Prior Conditions and Variances

- 1) Any valid conditional use or variance granted prior to the effective date of the enactment of this Shoreline Master Program shall be permitted to continue in accordance with such use or variance.