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Chapter 5 Administrative Procedures

5.1 Administrative Authority and Responsibility

1. The Director of the Clallam County Department of Community Development or his/her designee (the Administrator) is vested with authority to administer this Shoreline Master Program and to:
 - a. Recommend to the Hearing Examiner approval, approval with conditions, or denial of any shoreline permit applications or revisions in accordance with the policies and regulations of this Program and the provisions of the Clallam County Code;
 - b. Grant written permit exemptions from shoreline substantial development permit requirements of this Program;
 - c. Determine compliance with the State Environmental Policy Act (Chapter 43.21C RCW; Chapter 197-11 WAC);
 - d. Make administrative decisions and interpretations of the policies and regulations of this Program and the Shoreline Management Act;
 - e. Provide technical and administrative assistance to the Hearing Examiner as required for effective and equitable implementation of this Program and RCW 90.58;
 - f. Provide a summary report of the shoreline permits issued in the past calendar year to the Clallam County Board of County Commissioners;
 - g. Investigate, develop, and propose amendments to this Program as deemed necessary to more effectively and equitably achieve its goals and policies;
 - h. Seek remedies for alleged violations of this Program, the provisions of RCW 90.58, or of conditions of any approved shoreline permit issued by the County;
 - i. Coordinate information with affected agencies; and
 - j. Forward any decision on any shoreline permit, conditional use permit or variance to the Washington State Department of Ecology for filing or action.
2. The Clallam County Hearing Examiner is vested with authority to:
 - a. Approve, condition, or deny shoreline substantial development permits, variance permits, and conditional use permits after considering the findings and recommendations of the Administrator;
 - b. Decide local administrative appeals of the Administrator's actions and interpretations, as provided in this Program and the County Code; and
 - c. Conduct public hearings on appeals of the Administrator's actions, interpretations, and decisions.

3. The Clallam County Board of Commissioners is vested with the authority to approve any revisions or amendments to this Program in accordance with the applicable requirements of RCW 90.58 and the Washington Administrative Code chapter 173-26.

5.2 Abatement

1. Structures or development on shorelines considered by the Administrator to present a hazard or other public nuisance to persons, properties, or natural features may be abated by the County under the applicable provisions of the Uniform Code for the Abatement of Dangerous Buildings, 1997 Edition or successor as adopted by Clallam County, or by other appropriate means.

5.3 Burden of Proof

1. Permit applicants/proponents have the burden of proving that the proposed development is consistent with the criteria set forth in RCW 90.58 and this Program.

5.4 Conditional Use Permit Criteria

1. The purpose of a conditional use permit is to allow greater flexibility in administering the use regulations of this Program in a manner consistent with the policies of RCW 90.58.020. In authorizing a conditional use, special conditions may be attached to the permit by the Administrator or the Department of Ecology to control any undesirable effects of the proposed use. Final authority for conditional use permit decisions rests with the Department of Ecology.
2. Uses specifically classified or set forth in this Program as conditional uses and unlisted uses may be authorized provided the applicant/proponent can demonstrate all of the following:
 - a. That the proposed use will be consistent with the policies of RCW 90.58.020 and this Program.
 - b. That the proposed use will not interfere with normal public use of public shorelines.
 - c. That the proposed use of the site and design of the project will be compatible with other permitted uses within the area.
 - d. That the proposed use will not cause adverse effects to the shoreline environment in which it is to be located.
 - e. That the public interest suffers no substantial detrimental effect.
3. In the granting of all conditional use permits, consideration shall be given to the cumulative environmental 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 sum of the conditional uses and their impacts should also remain consistent with the policies of RCW 90.58.020 and should not produce a significant adverse effect to the shoreline ecological functions and processes or other users.

5.5 Exemptions from Shoreline Substantial Development Permit Process

1. Activities and uses that are exempt from the requirement to obtain a shoreline substantial development permit are listed in RCW 90.58.030(3)(e) and WAC 173-27-040.

2. Exemptions shall be construed narrowly. Only those developments that meet the precise terms of one or more of the listed exemptions in RCW 90.58.030(3)(e) may be granted exemptions from the substantial development permit process.
3. An exemption from the substantial development permit process is not an exemption from compliance with RCW 90.58 or this Program, or from any other regulatory requirements. To be authorized, all uses and developments must be consistent with the policies and provisions of this Program and RCW 90.58.
4. A use or development that is listed as a conditional use pursuant to this Program, or is an unlisted use or development, must obtain a conditional use permit even if the development or use does not require a substantial development permit.
5. When a development or use is proposed that does not comply with the bulk, dimensional and/or performance standards of the Program, such development or use shall only be authorized by approval of a shoreline variance even if the development or use does not require a substantial development permit.
6. The burden of proof that a development or use is exempt is on the applicant/proponent of the exempt development/use.
7. 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.
8. Exempt activities shall not be conducted until a statement of exemption has been obtained from the Administrator.
9. All statements of exemption shall be in writing on forms attached to this Program (Exhibit B). As appropriate, statements of exemptions shall contain conditions and/or mitigating measures of approval to achieve consistency and compliance with the provisions of the Program and RCW 90.58. The granting of a statement of exemption shall constitute a valid authorization to engage in the activity or development.
10. The Administrator's actions on the issuance of a statement of exemption or a denial are subject to appeal pursuant to the appeal provisions listed in this chapter.
11. No statement of exemption is required for emergency development pursuant to WAC 173-14-040(1)(d).
12. Whenever the exempt activity also requires a U.S. Army Corps of Engineers Section 10 permit under the Rivers and Harbors Act of 1899 or a Section 404 permit under the Federal Water Pollution Control Act of 1972, a copy of the written statement of exemption shall be sent to the applicant/proponent and Ecology pursuant to WAC 173-27-050.

5.6 Expiration of Permits and Permit Exemptions

1. The following time requirements shall apply to all permit exemptions, substantial development permits, and to any development authorized pursuant to a variance permit or conditional use permit:
 - a. Construction shall be commenced or, where no construction is involved, the use or activity shall be commenced within two (2) years of the effective date of the permit or permit exemption, provided that the Administrator may authorize a single extension

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 the Department of Ecology.

- b. Authorization to conduct development activities shall terminate five (5) years after the effective date of a permit or permit exemption; provided that the Administrator 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 the Department of Ecology.

5.7 Extensions - Notice to Ecology

1. The Administrator shall notify the Department of Ecology in writing of any change to the effective date of a substantial development permit, variance permit, or conditional use 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 or permit exemption other than those authorized by this section shall require a new permit application.

5.8 Fees

1. Required fees for all shoreline substantial development permits, shoreline conditional use permits, shoreline variances, statements of exemption, appeals, pre-application conferences and other required approvals shall be paid to the County at the time of application in accordance with the Clallam County Consolidated Fee Schedule in effect at that time.

5.9 Initiation of Development

1. Development pursuant to a shoreline substantial development permit, shoreline variance, or conditional use shall not begin and shall not be authorized until twenty one (21) days after the "date of filing" or until all review proceedings before the Shoreline Hearings Board have terminated.
2. "Date of filing" of a substantial development permit is the date of actual receipt of the decision by the Department of Ecology. The "date of filing" for a shoreline variance or shoreline conditional use permit shall mean the date the permit decision rendered by the Department of Ecology is transmitted by the Department of Ecology to the County and the applicant/proponent.

5.10 Inspections

1. Whenever it is necessary to make an inspection to enforce any of the provisions of this Program, or whenever the Administrator has reasonable cause to believe that there exists in any building, or upon any premises, any condition that constitutes a violation of this Program, the Administrator shall take any action authorized by law. The Clallam County Prosecuting Attorney shall provide assistance to the Administrator in obtaining administrative search warrants or other legal remedies when necessary.

5.11 Minimum Permit Application Requirements

1. A complete application for a substantial development, conditional use, or variance permit shall contain, as a minimum, all of the information required in any applicable section of this

Program, all of the information required in Clallam County Code Chapter 26.10.310, and any other information the Administrator deems pertinent, including at a minimum:

- a. The name, address, and phone number of the applicant/proponent, applicant's representative, and/or property owner if different from the applicant/proponent.
 - b. The property address and identification of the section, township and range to the nearest quarter, quarter section, or longitude and latitude to the nearest minute.
 - c. The name of the shoreline (water body) that the site of the proposal is associated with.
 - d. A general description of the property as it exists at the time of application including its use, physical and ecological characteristics, improvements and structures.
 - e. A general description of the project vicinity including adjacent uses, structures and improvements, development intensity, and physical characteristics.
 - f. A vicinity map showing the relationship of the property and proposed development or use to roads, utilities, existing developments and uses on adjacent properties.
 - g. A site plan and/or engineered drawings identifying existing conditions, consisting of photographs, text, maps and elevation drawings, drawn to an appropriate scale to clearly depict all required information.
 - h. Location of the ordinary high water mark of all water bodies within or adjacent to the project boundary. For any development that requires a precise location of the ordinary high water mark, the applicant/proponent shall provide a survey and describe the biological and hydrological basis for the location as indicated on the plans. Where the ordinary high water mark is neither adjacent to nor within the boundary of the project, the plan shall indicate the distance and direction to the ordinary high water mark of the adjacent shoreline.
 - i. Existing land contours at intervals sufficient to accurately determine the existing character of the property. Areas within the project boundary that will not be altered by the development may be indicated as such and contours approximated for that area.
 - j. A summary characterization of the effects of the project on existing ecological functions and processes in the vicinity of the project. If the project is likely to have adverse effects on shoreline ecological functions or processes, a mitigation plan shall be provided demonstrating measures that will be taken to offset impacts.
 - k. On all variance applications, the plans shall clearly indicate where development could occur without approval of a variance, the physical features and circumstances on the property that provide a basis for the request, and the location of adjacent structures and use.
2. Where other approvals or permits are required for a use or development that does not require an open record hearing, such approvals or permits shall not be granted until a shoreline approval or permit is granted. All shoreline approvals and permits shall include written findings prepared by the Administrator documenting compliance with bulk and dimensional standards and other policies and regulations of this Program.

5.12 Grandfathered Use/Development

1. Legally established uses, buildings, structures and/or lots of record that do not meet the specific standards of this Program are considered legal, grandfathered (conforming) uses/developments. Grandfathered uses/developments are classified as follows:
 - a. Existing, Permitted, or Vested: The use, building, structure, or lot was existing on the effective date of initial adoption of the Program (August 5, 1976), or any subsequent amendment thereto, or was authorized under a permit or approval issued, or is otherwise vested to the Program; or
 - b. Variance: A structure for which a variance has been issued; or
 - c. Conditional: The existing use is designated as a conditional use under this Program and existed prior to the adoption of this Program or the adoption of an applicable amendment hereto and which has not obtained a conditional use permit.
2. Grandfathered uses/developments may continue as long as they remain otherwise lawful, and meet all of the requirements of this section.
3. Except for single family residential developments, any grandfathered structures that are expanded, enlarged or relocated, must obtain a variance or be brought into conformance with this Program and RCW 90.58. Any grandfathered development that is moved any distance must be moved to comply with the bulk and dimensional requirements of this Program.
4. If a legal, grandfathered use/development is discontinued or abandoned for a period of more than eighteen (18) months, the grandfathered rights shall expire and any subsequent use shall be conforming.
5. Normal maintenance and repair of a grandfathered structure may be allowed in accordance with this chapter, other provisions of this Program, and Clallam County Code Chapter 33.43.
6. If a New single-family residential development on lots whose dimensions do not allow a residence to be constructed outside the standard shoreline buffer may be allowed without a variance in accordance with the provisions in Chapter 4, Section 4.2.
7. Rebuilding After Minor Damage: If a grandfathered residential structure or appurtenant structure sustains structural damage due to fire, flood or other natural disaster, but the extent of damage is less than seventy-five percent (75%) of the replacement cost of the structure, the structure may be reconstructed upon its original site and to the configuration existing immediately prior to the damage, provided that:
 - a. The structure is located outside of geologically hazardous areas as defined in this Program. If the structure is within a geologically hazardous area, the Administrator may allow the reconstruction if the proponent provides a geotechnical evaluation by a qualified professional which indicates the structure will be safe for a period of 75 years. The geotechnical study shall conform the applicable provisions in Section 4.2;
 - b. Structures located within the floodway shall not be rebuilt within the floodway;
 - c. The structure may not be expanded, horizontally or vertically, except that the Administrator may allow vertical expansion up to the height limits provided for in Section 3.8.3 in exchange for a ten percent (10%) reduction in the structure footprint;

- d. No degree of relocation will occur, except that move of the structure further landward from the ordinary high water mark is allowed and encouraged;
 - e. The submittal of applications for permits necessary to restore the development is begun within six (6) months of the damage. The Administrator may waive this requirement in situations with extenuating circumstances such as resolution of an estate, or widespread economic or natural disaster;
 - f. The reconstruction is commenced within two (2) years of the issuance of permits. Administrator may allow a one (1) year extension.
8. Rebuilding After Major Damage: If a legal, grandfathered structure sustains structural damage due to fire, flood or other natural disaster, but the extent of damage is equal to or more than seventy-five percent (75%) of the replacement cost of the structure, it shall not be repaired or reconstructed unless it is done to conform to the development requirements of this Program, unless a variance is issued by the Board of Adjustment or Hearing Examiner.
9. Expansion/Enlargement without a Conditional Use Permit or Shoreline Variance – Single Family Residential:
- a. Enlargements, expansions or additions that increase the total footprint of an existing grandfathered residence and/or appurtenant structure(s) by up to ten percent (10%) shall be allowed provided that:
 - i. The expansion or addition does not adversely affect critical areas or significantly impair the ability of a substantial number of people to view the shoreline; and
 - ii. The structure is located landward of the ordinary high water mark; and
 - iii. No lateral or waterward enlargement or expansion beyond the existing structure’s foundation walls will occur.
 - b. Enlargements, expansions or additions that increase the total footprint of an existing grandfathered residence or appurtenant structure(s) more than ten percent (10%) but no more than twenty-five percent (25%) or increase the structure height up to the limits allowed by this Program shall be allowed provided that:
 - iv. The expansion or addition does not adversely affect critical areas or significantly impair the ability of a substantial number of people to view the shoreline; and
 - v. The structure is located landward of the ordinary high water mark; and
 - vi. No lateral or waterward enlargement or expansion beyond the existing structure’s foundation walls will occur.
10. Expansion/Enlargement with a Conditional Use Permit – Single Family Residential:
- a. Enlargements, expansions or additions that increase the total footprint of an existing grandfathered residence or appurtenant structure(s) more than twenty-five percent (25%), or an expansion/enlargement occurs laterally or landward, but not waterward, may be allowed as a conditional use if the conditional use permit criteria are met.
11. Expansion/Enlargement with a Shoreline Variance - Single-Family Residential:
- a. Enlargement or expansion of single-family residences that extends waterward beyond the existing residential foundation walls, further into a buffer or critical area, further into the

minimum required sideyard setback, or that increases the structure height above the limits established by this Program shall require a variance.

12. Changing an Existing Grandfathered Use:

- a. A grandfathered structure that is being or has been used for a use that does not conform to this Program may be used for a different non-conforming use only upon the approval of a conditional use permit, provided all the following criteria are met:
 - i. No reasonable alternative conforming use is practical because of the configuration of the structure and/or the property;
 - ii. The proposed use will be at least as consistent with RCW 90.58 and this Program and as compatible with the uses in the area as the preexisting use;
 - iii. The use or activity is enlarged, intensified, increased or altered only to the minimum amount necessary to achieve the intended functional purpose;
 - iv. The structure(s) associated shall not be expanded in a manner that increases the encroachment into buffers established by this Program, or other areas where new structures, development or use would not be allowed;
 - v. The change in use, remodel or expansion will not create adverse impacts to shoreline ecological functions and/or processes;
 - vi. Commercial or mixed-use developments may be expanded or enlarged within the existing building footprint as a conditional use.

5.13 Notice of Application and Permit Application Review

1. Public notice requirements shall occur in accordance with Clallam County Code Chapter 26.10 and the following:
 - a. Type I permits (Statements of Exemption) shall not require notice of application or open record hearing consistent with Clallam County Code Chapter 26.10.210. However, if a Type I permit is not categorically exempt under SEPA, then a notice may be required.
 - b. The County shall issue a notice of application on all Type II and Type III project permit applications in accordance with Clallam County Code Chapter 26.10.410.
2. Permit application review shall occur in accordance with Clallam County Code Chapter 26.10.340.

5.14 Notice of Decision, Reconsideration, and Appeal

1. A notice of decision for action on a shoreline substantial development permit, shoreline variance, or shoreline conditional use permit shall be provided to the applicant/proponent and any party of record in accordance with the procedures of Clallam County Code Chapter 26.110 and at least ten (10) days prior to filing such decisions with the Department of Ecology pursuant to WAC 173-27-130. Decisions filed with the Department of Ecology shall contain all of the following information:
 - a. A copy of the complete application;
 - b. Findings and conclusions that establish the basis for the decision, including but not limited to identification of shoreline environment designation, applicable Program

- policies and regulations, and the consistency of the project with appropriate review criteria for the type of permit(s);
- c. The final decision of the local government;
 - d. Where applicable, local government shall also file the applicable documents required by SEPA, or in lieu thereof, a statement summarizing the actions and dates of such actions taken under RCW Chapter 43.21C; and
 - e. When the project has been modified in the course of the local review process, plans or text shall be provided that clearly indicate the final approved plan.
2. A notice of decision for shoreline statements of exemption shall be provided to the applicant/proponent and any party of record. Such notices shall also be filed with the Department of Ecology, pursuant to the requirements of WAC 173-27-050 when the project is subject to one or more of the following federal permitting requirements:
 - a. 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
 - b. 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).
 3. This Program shall only establish standing for parties of record for shoreline substantial development permits, shoreline variances, or shoreline conditional use permits. Standing as a party of record is not established by this Program for exempt actions; provided that, in such cases standing may be established through an associated permit process that provides for public notice and provisions for parties of record.
 4. The applicant/proponent or any party of record may request reconsideration of any final action by the decision maker within ten (10) days of notice of the decision. Such requests shall be filed on forms supplied by the County. Grounds for reconsideration must be based upon the content of the written decision. The decision maker is not required to provide a written response or modify his/her original decision. He/she may initiate such action as he/she deems appropriate. The procedure of reconsideration shall not preempt or extend the appeal period for a permit or affect the date of filing with the Department of Ecology, unless the applicant/proponent requests the abeyance of said permit appeal period.
 5. Appeals to the Shoreline Hearings Board of a decision on a shoreline substantial development permit, shoreline variance, or shoreline conditional use permit may be filed by the applicant/proponent or any aggrieved party pursuant to RCW 90.58.180 within twenty-one (21) days of filing the final decision by Clallam County with the Department of Ecology.

5.15 Permit Application Review

1. Determinations of the Administrator regarding the geographic applicability of this Program, permit exemptions and application submittal requirements shall be processed as Type I decisions pursuant to Clallam County Code Chapter 26.10.

2. Applications for substantial development permits, conditional use permits and variances shall be processed as Type III decisions pursuant to Clallam County Code Chapter 26.10.
3. Whenever the Administrator issues a determination or recommendation and/or conditions of approval on a proposal which will result in the denial or substantial alteration of a proposed action, such determinations will be provided in writing stating the relationship(s) between the ecological factors, the proposed action and the condition(s).

5.16 Permit Conditions

1. In granting, revising, or extending a shoreline permit, the Administrator may attach such conditions, modifications, or restrictions thereto regarding the location, character, and other features of the proposed development deemed necessary to assure that the development will be consistent with the policy and provisions of RCW 90.58 and this Program as well as the supplemental authority provided in RCW 43.21C as applicable. In cases involving unusual circumstances or uncertain effects, a condition may be imposed to require monitoring with future review or reevaluation to assure conformance with RCW 90.58 and this Program.

5.17 Permits and Permit Exemptions - Effective Date

1. The effective date of a shoreline permit or permit exemption shall be the date of the last action required on the shoreline permit or permit exemption and all other government permits and approvals that authorize the development to proceed, including all administrative and legal actions on any such permit or approval.
2. It is the responsibility of the project proponent to inform the Administrator of the permit applications filed with agencies other than Clallam County and of any related administrative and legal actions on any permit or approval. If no notice of the permits or approvals is given to the Administrator prior to the date established by the shoreline permit, permit exemption, or the provisions of this section, the expiration of a permit shall be based on the shoreline permit or permit exemption.

5.18 Permit Revisions

1. A permit revision is required whenever the applicant/proponent proposes substantive changes to the design, terms or conditions of a project from that which is approved in the permit. Changes are substantive if they materially alter the project in a manner that relates to its conformance to the terms and conditions of the permit, this Program or RCW 90.58. Changes that are not substantive in effect do not require a permit revision.
2. An application for a revision to a shoreline permit shall be submitted to the Administrator. The application shall include detailed plans and text describing the proposed changes. The County decision maker that approved the original permit may approve the request upon a finding that the proposed changes are within the scope and intent of the original permit, and are consistent with this Program and RCW 90.58.
3. “Within the scope and intent of the original permit” means all of the following:
 - a. No additional overwater construction is involved except that a pier, dock or floating structure may be increased by ten percent (10%) over that approved under the original permit;

- b. Ground area coverage and/or height may be increased a maximum of ten percent (10%) over that approved under the original permit provided that the revised permit does not authorize development to exceed the height, lot coverage, setback or any other requirements of this Program except as authorized under a variance granted for the original development;
 - c. Additional or revised landscaping is consistent with any conditions attached to the original permit and with this Program;
 - d. The use authorized pursuant to the original permit is not changed; and
 - e. The revision will not cause adverse environmental impacts beyond those originally authorized in the permit.
4. Revisions to shoreline permits may be authorized after the original permit authorization has expired. Revisions made after the expiration of the original permit shall be limited to changes that are consistent with this Program and that would not require a permit under this Program. If the proposed change is a substantial development as defined by this Program, then a new permit is required. The provisions of this paragraph shall not be used to extend the time requirements or to authorize substantial development beyond the time limits or scope of the original permit.
 5. A new permit shall be required if the proposed revision and any previously approved revisions in combination would constitute development beyond the scope and intent of the original permit.
 6. Upon approval of a permit revision, the decision maker shall file with the Department of Ecology a copy of the revised site plan and a detailed description of the authorized changes to the original permit, together with a final ruling and findings supporting the decision based on the requirements of this section. In addition, the decision maker shall notify parties of record of the action.
 - a. If the proposed revision is to a development for which a shoreline conditional use or variance was issued, the decision maker shall submit the revision to the Department of Ecology for approval with conditions or denial, and shall indicate that the revision is being submitted under the requirements of this paragraph. Under the requirements of WAC 173-27-110(6), the Department of Ecology shall render and transmit to the decision maker and the applicant/proponent its final decision within fifteen (15) days of the date of the Department of Ecology's receipt of the submittal from the decision maker. The decision maker shall notify parties on record of the Department of Ecology's final decision. Appeals of a decision of the Department of Ecology shall be filed in accordance with the provisions of WAC 173-27-110(8).

5.19 Pre-application Meeting

1. In accordance with Clallam County Code Chapter 26.10.230, all prospective applicants for Type I – III permits may apply for an optional pre-application meeting. Pre-application meetings are strongly encouraged.
2. As stated in Clallam County Code Chapter 26.10.230(2), the purpose of the pre-application meeting is to provide the applicant with the best available information regarding the application requirements and development information necessary for review prior to expenditure of the application fees and scheduling of the application review process.

5.20 Public Hearings

1. Public hearings shall occur in accordance with Clallam County Code Chapter 26.10.
2. Public hearing requirements for permit appeals shall be processed according to Clallam County Code Chapter 26.10 Part Six, provided that appeals of a determination regarding a statement of exemption shall occur in accordance with Clallam County Code Chapter 26.10.600. The fee for such appeal shall be as set forth in the Clallam County fee schedule and must be paid by the appellant at the time of filing the appeal.

5.21 Remedies

1. The Clallam County Prosecuting Attorney, or Administrator, where authorized, shall bring such injunctive, declaratory, or other actions as are necessary to ensure that no uses are made of the shorelines of the state located within Clallam County in conflict with the provisions of this Program, RCW 90.58, or other regulations adopted pursuant thereto, and to otherwise enforce the provisions of this Program.
2. Any person subject to the regulatory provisions of this Program or RCW 90.58 who violates any provision thereof, or permit or permit condition issued pursuant thereto, shall be liable for all damage to public or private property arising from such violation, including the cost of restoring the affected area to its conditions prior to violation. The Clallam County Prosecuting Attorney shall bring suit for damages under this section on their own behalf and on the behalf of all persons similarly situated. If liability has been established for the cost of restoring an area affected by a violation, the court shall make provision to assure that restoration will be accomplished within a reasonable time at the expense of the violator. In addition to such relief, including money damages, the court in its discretion may award attorney's fees and costs of the suit to the prevailing party.
3. A person who fails to conform to the terms of a substantial development permit, conditional use permit, or variance issued under RCW 90.58.140, who undertakes a development or use on shorelines of the state without first obtaining a permit, or who fails to comply with a cease and desist order, may be subject to a civil penalty. The penalty shall be imposed pursuant to the procedure set forth in WAC 173-27-280 and become due and recovered as set forth in WAC 173-27-290(3) and (4). Persons incurring a penalty may appeal the same to the Shoreline Hearings Board or the Clallam County Board of County Commissioners pursuant to WAC 173-27-290(1) and (2).

5.22 Rescission and Modification

1. Any shoreline permit granted pursuant to this Program may be rescinded or modified upon a finding by the Hearing Examiner that the permittee or his/her successors in interest have not complied with conditions attached thereto. A specific monitoring plan may be required as a condition of a permit with specific reporting requirements. If the monitoring plan is not implemented, the permittee may be found to be non-compliant. The results of a monitoring plan may show a development to be out of compliance with specific performance standards, which may be the basis for findings of non-compliance.
2. The Administrator shall initiate rescission or modification proceedings by serving written notice of non-compliance to the permittee or his/her successors and notifying parties of record at the original address provided in application review files.

3. The Hearing Examiner shall hold a public hearing no sooner than fifteen (15) days following such service of notice, unless the applicant/proponent files notice of intent to comply and the Administrator grants a specific schedule for compliance. If compliance is not achieved, the Administrator shall schedule a public hearing before the Hearing Examiner. Upon considering written and oral testimony taken at the hearing, the Hearing Examiner shall make a decision in accordance with the above procedure for shoreline permits.
4. These provisions do not limit the Administrator, the Prosecuting Attorney, the Department of Ecology, or the Attorney General from administrative, civil, injunctive, declaratory or other remedies provided by law, or from abatement or other remedies.

5.23 Revisions Following Expiration of Original Permit or Permit Exemption

1. Revisions to permits and permit exemptions may be authorized after original permit or permit exemption authorization has expired; provided that this procedure shall not be used to extend the original permit or permit exemption time requirements or to authorize substantial development after the time limits of the original permit or permit exemption.

5.24 Satisfaction of Conditions Required Prior to Occupancy or Use

1. When permit or permit exemption approval is based on conditions, such conditions shall be satisfied prior to occupancy or use of a structure or prior to commencement of a non-structural activity; provided that an alternative compliance limit may be specified in the permit or permit exemption.

5.25 State Environmental Policy Act (SEPA) Compliance

1. Whenever an application for shoreline substantial development permit, shoreline variance, shoreline conditional use permit, or statement of exemption is subject to the rules and regulations of SEPA (RCW 43.21C), the review requirements of SEPA, including time limitations, shall apply, where applicable.
2. Applications for shoreline permit(s) or approval(s) that are not categorically exempt shall be subject to environmental review by the responsible official of Clallam County pursuant to the State Environmental Policy Act (WAC 197-11).
3. As part of SEPA review, the responsible official may require additional information regarding the proposed development in accordance with WAC 197-11.
4. Failure of the applicant/proponent to submit sufficient information for a threshold determination to be made shall be grounds for the responsible official to determine the application incomplete.

5.26 Substantial Development Permit Criteria

1. To be authorized, all uses and developments shall be planned and carried out in a manner that is consistent with this Program and the policy of the Act as required by RCW 90.58.140(1), regardless of whether a shoreline permit, statement of exemption, shoreline variance, or shoreline conditional use permit is required.

5.27 Third-party Review

1. The Administrator shall determine when third-party review shall be required. Third-party review requires any technical studies or inventories provided by the project proponent to be reviewed by an independent third party, paid for by the project proponent, but hired by the Administrator. A qualified professional shall conduct third-party review. The Administrator shall require third party review when he/she determines that such review is necessary to adequately evaluate a proposal's potential impacts and accordance with the relevant provisions of this Program.

5.28 Transfer of Permits

1. An approved substantial development permit, conditional use permit, or variance permit may be transferred from the original project proponent to any successor in interest to the project proponent provided that all of the conditions and requirements of the approved permit or variance shall continue in effect as long as the use or activity is pursued or the structure exists unless the terms of the substantial development permit, conditional use permit, or variance permit are modified in accordance with the relevant provisions of this Program.

5.29 Unclassified Uses

1. Other uses not specifically classified or set forth in this Program may be authorized as conditional uses provided the applicant/proponent can demonstrate that the proposal will satisfy the criteria set forth in this chapter, and that the use clearly requires a specific site location on the shoreline not provided for under the Program, and extraordinary circumstances preclude reasonable use of the property in a manner consistent with the use regulations of this Program.
2. Variances will be granted in any circumstance where denial would result in a thwarting of the policy enumerated in RCW 90.58.020. In all instances extraordinary circumstances shall be shown and the public interest shall suffer no substantial detrimental effect.
3. Variances may be authorized, provided the applicant/proponent can demonstrate all of the following:
 - a. That the strict application of the bulk or dimensional criteria set forth in this Program precludes or significantly interferes with a reasonable permitted use of the property;
 - b. That the hardship described above is specifically related to the property, and is the result of conditions such as irregular lot shape, size, or natural features and the application of this Program, and not, for example, from deed restrictions or the applicant's/proponent's own actions;
 - c. That the design of the project will be compatible with other permitted activities in the area and will not cause adverse impacts on adjacent properties or the shoreline environment;
 - d. That the variance authorized does not constitute a grant of special privilege not enjoyed by the other properties in the area, and will be the minimum necessary to afford relief;
 - e. That the public interest will suffer no significant adverse impacts;

- f. That the public rights of navigation and use of the shorelines will not be materially interfered with by the granting of the variance; and
 - g. Mitigation is provided to offset unavoidable adverse impacts caused by the proposed development or use.
4. In the granting of all variances, consideration shall be given to the cumulative environmental impact of additional requests for like actions in the area. For example, if variances were granted to other developments in the area where similar circumstances exist, the total of the variances should also remain consistent with the policies of RCW 90.58.020 and should not produce significant adverse effects to the shoreline ecological functions and processes or other users.
 5. Other factors that may be considered in the review of variance requests include the conservation of valuable natural resources and the protection of views from nearby roads, surrounding properties and public areas. In addition, variance requests based on the applicant's/proponent's desire to enhance the view from the subject development may be granted where there are no likely detrimental effects to existing or future users, other features or shoreline ecological functions and/or processes, and where reasonable alternatives of equal or greater consistency with this Program are not available. In platted residential areas, variances shall not be granted that allow a greater height or lesser shore setback than what is typical for the immediate block or area.
 6. Permits and/or variances applied for or approved under other County codes shall not be construed as shoreline permits under this Program.

5.30 Violations and Penalties

1. In addition to incurring civil liability under Clallam County Code Title 20 and RCW 90.58.210, pursuant to RCW 90.58.220 any person found to have willfully engaged in activities on shorelines of the state in violation of the provisions of RCW 90.58 or of this Program, or other regulations adopted pursuant thereto, shall be punished by:
 - a. A fine of not less than twenty-five dollars (\$25) or more than one thousand dollars (\$1,000);
 - b. Imprisonment in the County jail for not more than ninety (90) days; or
 - c. Both such fine and imprisonment; provided that, the fine for the third and all subsequent violations in any five (5) year period shall not be less than five hundred dollars (\$500) nor more than ten thousand dollars (\$10,000). Provided further that fines for violations of RCW 90.58.550, or any rule adopted thereunder, shall be determined under RCW 90.58.560.
2. Any person who willfully violates any court order or regulatory order of injunction issued pursuant to this Program shall be subject to a fine of not more than five thousand dollars (\$5,000), imprisonment in the County jail for not more than ninety (90) days, or both.

5.31 Master Program Amendments

1. Pursuant to RCW 90.58.190 and RCW 36.70A.280, a decision by the Clallam County Board of County Commissioners to amend this Program shall not constitute a final appealable decision until the Department of Ecology has made a decision to approve, reject, or modify the

proposed amendment. Following the decision of the Department of Ecology regarding the proposed amendment, the decision may be appealed to the Western Washington Growth Management Hearings Board.

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