

CHAPTER 11

Administration

Introduction

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.

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11.01 Minimum Application Requirements

11.01 A. 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.

11.01 B. A complete application for an exemption, substantial development, conditional use, or variance permit shall contain, at a minimum, the following information; provided that the Administrator may vary or waive these requirements on a case-by-case basis. The Administrator may require additional specific information depending on the nature of the proposal and the presence of sensitive ecological features or issues related to compliance with other city or town requirements.

11.01 B. 1. Applicant/Proponent Information

11.01 B. 1. a. The name, address and phone number of the applicant/proponent, applicant's representative, and /or property owner if different from the applicant/proponent.

11.01 B. 1. b. The applicant/proponent should be the owner of the property or the primary proponent of the project and not the representative of the owner or primary proponent.

11.01 B. 2. Property Information

11.01 B. 2. a. The property's physical address and identification of the section, township and range to the nearest quarter, quarter section or latitude and longitude to the nearest minute. All applications for projects located in open water areas away from land shall provide a longitude and latitude location.

11.01 B. 2. b. Identification of the name of the shoreline (waterbody) that the site of the proposal is associated with.

11.01 B. 2. c. A general description of the property as now exists including its size, dimensions, land use, vegetation, landforms, other physical and ecological characteristics, existing improvements and existing structures.

11.01 B. 2. d. A general description of the vicinity of the proposed project including identification of the surrounding land uses, structures and improvements, intensity of development and physical characteristics.

11.01 B. 2. e. A vicinity map showing the relationship of the property and proposed development or use to roads, utilities, water and sewer, existing developments and uses on adjacent properties.

11.01 B. 3. Site Plans

Site plan(s) identifying *existing* conditions and *proposed developments* consisting of photographs, text, maps and elevation drawings, drawn to an appropriate scale to clearly depict all relevant information that may include the following: The Administrator may require more specific detailed information prepared by a qualified professional, if additional information is required to confirm or add detail to the application.

11.01 B. 3. a. Parcel Boundary and Dimensions. The boundary of the parcel(s) of land upon which the development is proposed. A survey may be required where substantial questions exist regarding the location of property lines or other important features.

11.01 B. 3. b. OHWM. The ordinary high water mark of all water bodies located adjacent to or within the boundary of the project. For any development where a determination of consistency with the applicable regulations requires a precise location of the ordinary high water mark (e.g. structure setback), the mark shall be located precisely on the ground and the biological and hydrological basis for the location as indicated on the plans shall be noted in the development plan. Where the ordinary high water mark is neither adjacent to or within the boundary of the project, the plan shall indicate the distance and direction to the nearest ordinary high water mark of a shoreline.

11.01 B. 3. c. Topography. Existing and proposed land contours. The contours shall be at intervals sufficient to accurately determine the existing character of the property and the extent of proposed change to the land that is necessary for the development. Areas within the boundary that will not be altered by the development may be indicated as such and contours approximated for that area. The use of cross-sectional drawing and 3-Dimensional drawings or imagery may also be used to provide elevation information.

11.01 B. 3. d. Critical Areas. Existing critical areas must be identified together with any supporting information consistent with the reporting requirements found below.

11.01 B. 3. d. 1) Critical Areas Report.

If the administrator determines that the site of a proposed development potentially includes, or is adjacent to, critical area(s), a critical areas report may be required. When required, the expense of preparing the critical areas report shall be borne by the applicant. The content, format and extent of the critical areas report shall be approved by the administrator.

- i. The requirement for critical areas reports may be waived by the administrator if there is substantial evidence that:
 - (a) There will be no alteration of the critical area(s) and/or the required buffer(s);
 - (b) The proposal will not impact the critical area(s) in a manner contrary to the purpose, intent and requirements of this ordinance and the comprehensive plan; and,
 - (c) The minimum standards of this chapter will be met.

- ii. No critical area report is required for proposals that are exempt from the provisions of this chapter as set forth in Section 11.12 herein.
- iii. Critical area reports shall be completed by a qualified professional who is knowledgeable about the specific critical area(s) in question, and approved by the administrator.
- iv. At a minimum, a required critical areas report shall contain the following information:
 - (a) Applicant's name and contact information; permits being sought, and description of the proposal;
 - (b) A copy of the site plan for the development proposal, drawn to scale and showing:
 - (1) Identified critical areas, buffers, and the development proposal with dimensions;
 - (2) Limits of any areas to be cleared; and
 - (3) A description of the proposed stormwater management plan for the development and consideration of impacts to drainage alterations;
 - (c) The names and qualifications of the persons preparing the report and documentation of any fieldwork performed on the site;
 - (d) Identification and characterization of all critical areas, wetlands, water bodies, and buffers adjacent to the proposed project area;
 - (e) An assessment of the probable cumulative impacts to critical areas resulting from the proposed development of the site;
 - (f) An analysis of site development alternatives;
 - (g) A description of reasonable efforts made to apply mitigation sequencing to avoid, minimize, and mitigate impacts to critical areas;
 - (h) A mitigation plan (11.01 B. 3. h.), as needed, in accordance with the mitigation requirements of this chapter, including, but not limited to:
 - (1) The impacts of any proposed development within or adjacent to a critical area or buffer on the critical area; and
 - (2) The impacts of any proposed alteration of a critical area or buffer on the development proposal, other properties and the environment;
 - (i) A discussion of the performance standards applicable to the critical area and proposed activity;
 - (j) Financial guarantees to ensure compliance; and
 - (k) Any additional information required for specific critical areas as listed in subsequent sections of this chapter.
- v. The administrator may request any other information reasonably deemed necessary to understand impacts to critical areas.

11.01 B. 3. e. Vegetation. A general representation of the width, location, and character of vegetation found on the site

11.01 B. 3. f. Structures. The dimensions and locations of all *existing* and *proposed* structures and improvements including but not limited to; buildings, paved or graveled areas, roads, utilities, septic tanks and drainfields, material stockpiles or surcharge, and stormwater management facilities.

11.01 B. 3. g. Landscaping plans. Where applicable, a landscaping plan for the project.

11.01 B. 3. h. Mitigation plans. Where applicable, plans for development of areas on or off the site as mitigation for impacts associated with the proposed project shall be included and contain information consistent with the requirements as follows.

11.01 B. 3. h. 1) Mitigation Requirements. The applicant shall avoid all impacts that degrade the functions and values of critical areas. If alteration is unavoidable, all adverse impacts to critical areas and buffers resulting from the proposal shall be mitigated in accordance with an approved critical areas report and SEPA documents. Mitigation shall be on-site, when possible, and sufficient to maintain the functions and values of the critical area, and to prevent risk from a hazard posed by a critical area.

i. Mitigation sequencing. Applicants shall demonstrate that all reasonable efforts have been examined with the intent to avoid and minimize impacts to critical areas. When an alteration to a critical area is proposed, such alteration shall be avoided, minimized, or compensated for in the following order of preference:

(a) Avoiding the impact altogether by not taking a certain action or parts of an action;

(b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps, such as project redesign, relocation, or timing, to avoid or reduce impacts;

(c) Rectifying the impact to wetlands, critical aquifer recharge areas, frequently flooded areas, and habitat conservation areas by repairing, rehabilitating, or restoring the affected environment to the historical conditions or the conditions existing at the time of the initiation of the project;

(d) Minimizing or eliminating the hazard by restoring or stabilizing the hazard area through engineered or other methods;

(e) Reducing or eliminating the impact or hazard over time by preservation and maintenance operations during the life of the action;

(f) Compensating for the impact to wetlands, critical aquifer recharge areas, frequently flooded areas, and habitat conservation areas by replacing, enhancing, or providing substitute resources or environments; and

(g) Monitoring the hazard or other required mitigation and taking remedial action when necessary.

ii. Mitigation plan. When mitigation is required, the applicant shall submit for approval a mitigation plan as part of the critical area report. The mitigation plan shall include:

(a) A written report identifying mitigation objectives, including:

- (1) A description of the anticipated impacts to the critical areas and the mitigating actions proposed and the purposes of the compensation measures, including the site selection criteria; identification of compensation objectives; identification of critical area functions and values; and dates for beginning and completion of site compensation construction activities;
- (2) A review of the best available science supporting the proposed mitigation and a description of the report authors experience to date in critical areas mitigation; and
- (3) An analysis of the likelihood of success of the compensation project.

(b) Measurable criteria for evaluating whether or not the objectives of the mitigation plan have been successfully attained and whether or not the requirements of this chapter have been met.

(c) Written specifications and descriptions of the mitigation proposed, including, but not limited to:

- (1) The proposed construction sequence, timing, and duration;
- (2) Grading and excavation details;
- (3) Erosion and sediment control features;
- (4) A planting plan specifying plant species, quantities, locations, size, spacing, and density; and
- (5) Measures to protect and maintain plants until established.

(d) A program for monitoring construction of the compensation project, and for assessing the completed project and its effectiveness over time. The program shall include a schedule for site monitoring and methods to be used in evaluating whether performance standards are being met. A monitoring report shall be submitted as needed to document milestones, successes, problems, and contingency actions of the compensation project. The compensation project shall be monitored for a period necessary to establish that performance standards have been met, but not for a period less than five (5) years.

(e) Identify potential courses of action, and any corrective measures to be taken if monitoring or evaluation indicates project performance standards are not being met.

11.01 B. 3. i. Fill Specifications. Quantity, source and composition of any fill material that is placed on the site whether temporary or permanent.

11.01 B. 3. j. Dredge material. Quantity, composition and destination of any excavated or dredged material.

11.01 B. 3. k. Views. Where applicable, photographs taken from various vantages that depict the current quality of views from surrounding uses and public areas, including photographs taken of the shoreline from the water's edge and across the water body where feasible and appropriate.

11.01 B. 3.1. Area of Variance. On all variance applications the plans shall clearly indicate where development could occur without approval of a variance, the physical features and circumstances on the property that provide a basis for the request, and the location of adjacent structures and uses.

11.01 B. 4. Shoreline permits shall be applied for on forms provided by the jurisdiction.

11.01 B. 5. Critical areas reports and mitigation management plan(s) as required pursuant to other applicable sections of this program.

11.01 B. 6. Where applicable, accompanying critical area mitigation plans in accordance with Section 11.01 B. 3. d.

11.01 B. 7. A list of all property owners and their mailing addresses within 300 ft of the proposed development boundaries.

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11.02 Pre-application Conference

11.02 A. Prior to filing a permit application for a shoreline exemption, substantial development permit, variance or conditional use permit decision, the applicant shall contact the jurisdiction to schedule a pre-application conference which shall be held prior to filing the application, provided that such meetings shall not be required for development activities associated with shoreline restoration projects, agriculture, commercial forestry, or the construction of a single family residence.

11.02 B. The purpose of the pre-application conference is to review and discuss the application requirements with the prospective applicant and provide initial comments on the development proposal. The pre-application conference shall be scheduled by the jurisdiction, at the request of an applicant, and shall be held in a timely manner, within thirty (30) days from the date of the applicant's request. Pre-application meetings may take place via telephone or through email contact. If either of the later methods are used, the administrator shall print the correspondences and/or document the meeting in a memo or staff report to be placed in the project file.

11.02 C. Information presented at or required as a result of the pre-application conference shall be valid for a period of one-hundred-eighty (180) days following the pre-application conference. An applicant wishing to submit a permit application more than one-hundred-eighty (180) days following a pre-application for the same permit application may be required to schedule another pre-application conference at the discretion of the administrator. If changes in physical or biological conditions or regulatory environment changes have been implemented, another pre-application meeting should be requested by the administrator.

11.02 D. At or subsequent to a pre-application conference, the jurisdiction may issue a preliminary determination that a proposed development is not permissible under applicable policies or regulatory enactments. In that event, the applicant shall have the option to appeal the preliminary determination to the appropriate hearing body as provided for in the administrative procedures code for the city or town.

11.03 Plan Review

11.03 A. A plan review shall be conducted to determine if the application is complete. Plan review shall determine if adequate information is provided in or with the application in order to begin processing the application and that all required information and materials have been supplied in sufficient detail to begin the application review process. All information and materials required by the application form must be submitted. All studies supporting the application or information that addresses anticipated impacts of the proposed development must be submitted. A notice of completion of incompleteness shall be prepared and submitted to applicant within 28 days of receipt of materials.

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11.03 B. The purpose of the plan review is to ensure adequate information is contained in the application materials to demonstrate consistency with this Program, applicable comprehensive plans, development regulations and other applicable regulations. City or town staff will coordinate the involvement of agencies responsible for the review of the proposed development.

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11.04 Application Vesting

11.04 A. An application shall become vested on the date a determination of completeness is made and all fees have been paid. Thereafter the application shall be reviewed under the codes, regulations and other laws in effect on the date of vesting; provided, in the event an applicant substantially changes his/her proposed development after a determination of completeness, as determined by the administrator, the application shall not be considered vested until a new determination of completeness on the changes is made. An application shall only be considered vested for a period of 180 days unless such application has been pursued in good faith or a permit has been issued; except the administrator is authorized to grant one or more extensions for additional time periods not exceeding 180 days each. The extension shall be requested in writing and a justifiable cause demonstrated.

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11.05 Notice of Application

11.05 A. Within fourteen days after issuing a determination of completeness, the administrator shall issue a notice of application. The notice shall include, but not be limited to the following:

11.05 A. 1. A description of the proposed project action, a list of permits required for the application, and if applicable, a list of any studies requested;

11.05 A. 2. The identification of other required permits not included in the application, to the extent known by the Administrator;

11.05 A. 3. The identification of existing environmental documents which evaluate the proposed development and the location where the application and any studies can be reviewed;

11.05 A. 4. A statement of the public comment period, which shall be thirty days following the date of the notice of application, and a statement of the right of any person to comment on the application, receive notice of and participate in any hearings, and request a copy of the decision once made, and a statement of any appeal rights;

11.05 A. 5. The date, time, location and type of hearing, if applicable and scheduled at the date of the notice of application;

11.05 A. 6. Any other information determined by the administrator to be appropriate.

11.05 B. Informing the public

11.05 B. 1. The notice of application shall be mailed to the latest recorded real property owners as shown by the records of the county assessor within at least three hundred feet of the boundary of the property upon which the development is proposed;

11.05 B. 2. In addition to mailing the notice of application, the Administrator may require the notice to be posted on the subject property for the duration of the public comment period, where the Administrator finds that such additional notice may be of benefit for the public. The applicant shall be responsible for posting and maintaining the posting throughout the entire public comment period. The applicant shall obtain the notice of application sign(s) from the Administrator upon payment of all applicable fees. The sign location and condition shall be the responsibility of the applicant until the sign(s) are returned to the Administrator. After the public comment period, the applicant shall sign an affidavit of posting before a notary public, using the form adopted by the city or town, and file the affidavit of posting with the Administrator, together with a photograph of the notice of application sign(s) posted at the site. Any necessary replacement of the notice of application sign(s) and post(s) shall be the sole responsibility of the applicant.

11.05 C. The notice of application is not a substitute for any required notice of a public hearing.

11.05 D. A State Environmental Policy Act (SEPA) threshold determination may be issued for a proposal concurrent with the notice of application.

11.05 E. Notice of application and SEPA determination will be published in the local official newspaper of record.

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11.06 Limited Administrative Review

11.06 A. Limited administrative review shall be used when the proposed development is subject to clear, objective and nondiscretionary standards that require the exercise of professional judgment about technical issues and the proposed development is exempt from the State Environmental Policy Act (SEPA). Included within this type of review are single-family building permits accessory dwelling units and other appurtenant development. The Administrator may approve, approve with conditions, or deny the application after the date the application is accepted as complete, without public notice. The decision of the Administrator is final. There is no administrative appeal of a limited administrative review decision.

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11.07 Full Administrative Review

11.07 A. Full administrative review shall be used when the proposed development is subject to objective and subjective standards that require the exercise of limited discretion about non-technical issues and about which there may be limited public interest. The proposed development may or may not be subject to SEPA review. Included within this type of review are applications for, shoreline exemptions which require a letter of exemption, administrative shoreline substantial development permits, administrative shoreline conditional use permits, short subdivisions, multifamily, commercial, and industrial and/or office building permits.

11.07 B. This review procedure under full administrative review shall be as follows:

11.07 B. 1. Upon the completion of the public comment period and the comment period required by SEPA, if applicable, the Administrator may approve, approve with conditions, or deny the application. The Administrator shall mail the notice of decision to the applicant and all parties of record. The decision shall include:

11.07 B. 1. a. A statement of the applicable criteria and standards in the development codes and other applicable law;

11.07 B. 1. b. A statement of the findings of the review authority, stating the application's compliance or noncompliance with each applicable criterion, and assurance of compliance with applicable standards;

11.07 B. 1. c. The decision to approve or deny the application and, if approved, conditions of approval necessary to ensure the proposed development will comply with all applicable laws;

11.07 B. 1. d. A statement that the decision is final unless appealed as provided in 11.15 (A) of this Program. The appeal closing date shall be listed. The statement shall describe how a party may appeal the decision.

11.07 B. 1. e. A statement that the complete application file including findings, conclusions and conditions of approval, if any, is available for inspection. The notice shall list the name and telephone number of the Administrator's representative to contact to arrange inspection.

11.07 B. 2. The decision may be appealed to the Board of Adjustment or City/Town Council pursuant to the process established in 11.15(A) of this Program.

11.08 Quasi-judicial review of applications

11.08 A. Quasi-judicial review shall be used when the development or use proposed under the application requires a public hearing before a hearing body. This type of review shall be used for shoreline conditional use permits, shoreline variances, shoreline substantial development permits¹ and other similar applications.

11.08 B. The review procedure under quasi-judicial review shall be as follows:

11.08 B. 1. A quasi-judicial review process requires an open record public hearing before the appropriate hearing body.

11.08 B. 2. The public hearing shall be held after the completion of the public comment period and the comment period required by SEPA, if applicable.

11.08 B. 3. At least ten days before the date of a public hearing the Administrator shall issue public notice of the date, time, location and purpose of the hearing.

11.08 B. 4. At least ten days before the date of the public hearing, the Administrator shall issue a written staff report, integrating the SEPA review and threshold determination and recommendation regarding the application(s), shall make available to the public a copy of the staff report for review and inspection, and shall mail a copy of the staff report and recommendation to the applicant or the applicant's designated representative. The Administrator shall make available a copy of the staff report, subject to payment of a reasonable charge, to other parties who request it.

11.08 B. 5. Public hearings shall be conducted in accordance with the rules of procedure adopted by the hearing body. A public hearing shall be recorded. If for any reason, the hearing cannot be completed on the date set in the public notice, it may be continued during the public hearing to a specified date, time and location, without further public notice required.

11.08 B. 6. Within ten working days after the hearing body adopts their final decision, the hearing body shall issue a written decision regarding the application(s).

11.08 B. 7. The hearing body may approve, approve with conditions or deny the application and shall mail the notice of its decision to the Administrator, Ecology, applicant, the applicant's designated representative, the property owner(s), and any other parties of record. The decision shall include:

11.08 B. 7. a. A statement of the applicable criteria, standards and law;

11.08 B. 7. b. A statement of the findings of fact the hearing body made showing the proposal does or does not comply with each applicable approval criterion and assurance of compliance with applicable standards;

11.08 B. 7. c. A statement that the decision is final unless appealed pursuant to section 11.16 (A) of this Program. The appeal closing date shall be listed;

¹ - hearing is only required when Administrator determines that the public interest would be served, e.g. large projects affecting shorelines of state-wide significance.

11.09 Legislative review of applications

11.09 A. Legislative review shall be used to review and amend this master program.

11.09 B. Legislative review shall be conducted as follows:

11.09 B. 1. Legislative review requires at least one public hearing before the planning commission and one public meeting before the Legislative authority of the jurisdiction.

11.09 B. 2. The application shall contain all information and material requirements required by the appropriate application form.

11.09 B. 3. At least ten days before the date of the first planning commission hearing the Administrator shall issue public notice of the date, time, location and purpose of the hearing. The notice shall include notice of the SEPA threshold determination issued by the Administrator.

11.09 B. 4. At least ten days prior to the hearing the Administrator shall issue a written staff report, integrating the SEPA review and threshold determination and recommendation regarding the application(s), shall make available to the public a copy of the staff report for review and inspection, and shall mail a copy of the staff report and recommendation to the applicant or the applicant's designated representative, and planning commission members. The Administrator shall make available a copy of the staff report, subject to a reasonable charge, to other persons who request it.

11.09 B. 5. Following the public hearing and in accordance with RCW 36.70.630, the recommendation of the planning commission shall be forwarded to the legislative authority of the jurisdiction. Upon receiving the recommendation from the planning commission, the legislative authority shall set a public meeting to consider the proposal, at which the board may either accept or reject the recommendation.

11.09 B. 6. The legislative authority must hold a public hearing to consider any changes to the recommendation of the planning commission. The legislative authority may approve, approve with conditions, deny or remand the proposal back to the planning commission for further review after such public hearing. The final decision of the legislative authority shall be adopted by resolution.

11.09 B. 7. The final decision of the legislative authority shall be in writing and include:

11.09 B. 7. a. A statement of the applicable criteria and law;

11.09 B. 7. b. A statement of the findings indicating the application's or proposed development's compliance or noncompliance with each applicable approval criterion;

11.09 B. 7. c. The decision to approve, condition or reject the planning commission recommendation or remand for further review;

11.09 B. 7. d. A statement that the decision is final unless appealed pursuant to the process in Section 11.15 of this Chapter. The appeal closing date shall be listed.

11.09 B. 7. e. A statement that the complete application file, including findings, conclusions and conditions of approval, if any, is available for inspection. The notice shall state the name and telephone number of the city or town representative to contact.

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11.10 Notice of final decision

11.10 A. A notice of final decision on an application shall be issued within one hundred twenty days after the date of the declaration of completeness, unless additional time is required due to environmental review, agency consultations or is needed to complete required studies or reports. In determining the number of days that have elapsed, the following periods shall be excluded:

11.10 A. 1. Any period during which the applicant has been requested by the Administrator to correct plans, perform required studies, or provide additional information or materials. The period shall be calculated from the date the Administrator issues the request to the applicant to, the earlier of, the date the Administrator determines whether the additional information satisfies its request or fourteen days after the date the information has been received by the city or town;

11.10 A. 2. If the Administrator determines the information submitted by the applicant under 11.01 of this Section is insufficient, it shall again notify the applicant of deficiencies, and the procedures of this Section shall apply to the request for information;

11.10 A. 3. Any period during which an environmental impact statement (EIS) is being prepared following a determination of significance pursuant to RCW 43.21C;

11.10 A. 4. Any period for administrative appeals.

11.10 A. 5. Any extension of time mutually agreed upon by the applicant and the Administrator.

11.10 B. The time limit by which the jurisdiction must issue a notice of final decision does not apply if an application:

11.10 B. 1. Requires an amendment to a comprehensive plan or development regulation;

11.10 B. 2. Is substantially revised by the applicant after a determination of completeness has been issued, in which case the time period shall start from the date on which the revised project application is determined to be complete.

11.10 C. If the Administrator is unable to issue its final decision within the time limits provided for in this Chapter, it shall provide written notice of this fact to the applicant. The notice shall include a statement of reasons why the time limits have not been met and an estimated date for issuance of the notice of final decision.

11.10 D. In accordance with state law, the local jurisdiction is not liable for damages which may result from the failure to issue a timely notice of final decision.

11.10 E. The local jurisdiction shall file the final decision with the Department of Ecology in accordance with WAC 173-27-130, as amended.

11.11 Shoreline Substantial Development Permits

11.11 A. A Shoreline Substantial Development Permit shall be required for all development of shorelines, unless the proposal is specifically exempt per Section 11.12 (B).

11.11 B. In order to be approved, the decision maker must find that the proposal is consistent with the following criteria:

11.11 B. 1. All regulations of this Program appropriate to the shoreline designation and the type of use or development proposed shall be met, except those bulk and dimensional standards that have been modified by approval of a shoreline variance under Section 11.14.

11.11 B. 2. All policies of this Program appropriate to the shoreline area designation and the type of use or development activity proposed shall be considered and substantial compliance demonstrated.

11.11 B. 3. For projects located on shorelines of statewide significance, the policies of Chapter 5 shall be also be adhered to.

11.11 C. The responsible local government may attach conditions to the approval of permits as necessary to assure consistency of the project with the Act and this SMP.

11.12 Exemptions from Shoreline Substantial Development Permit Process

11.12 A. Application and Interpretation

11.12 A. 1. An exemption from the substantial development permit process is not an exemption from compliance with the Act or this Program, or from any other regulatory requirements. To be authorized, all uses and developments must be consistent with the policies and regulatory provisions of this Program and the Act. A statement of exemption shall be obtained for exempt activities consistent with the provisions of this section.

11.12 A. 2. Exemptions shall be construed narrowly. Only those developments that meet the precise terms of one or more of the listed exemptions may be granted exemptions from the substantial development permit process.

11.12 A. 3. The burden of proof that a development or use is exempt is on the applicant/proponent of the exempt development action.

11.12 A. 4. If any part of a proposed development is not eligible for exemption, then a substantial development permit is required for the entire project.

11.12 A. 5. A development or use that is listed as a conditional use pursuant to this Program or is an unlisted use, must obtain a conditional use permit even if the development or use does not require a substantial development permit.

Comment [ked2]: Need to consider this when reviewing the use chart...

11.12 A. 6. 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.

11.12 A. 7. All permits or statements of exemption issued for development or use within shoreline jurisdiction shall include written findings prepared by the Administrator, including compliance with bulk and dimensional standards and policies and regulations of this Program. The Administrator may attach conditions to the approval of exempt developments and/or uses as necessary to assure consistency of the project with the Act and the Program.

11.12 B. Exemptions Listed

11.12 B. 1. Any development of which the total cost or fair market value, whichever is higher, does not exceed five thousand seven hundred eighteen dollars (\$5,718) or as amended by the state office of financial management, if such development does not materially interfere with the normal public use of the water or shorelines of the state. For the purposes of determining whether or not a permit is required, the total cost or fair market value shall be based on the value of development that is occurring on shorelines of the state 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.

11.12 B. 2. Normal maintenance or repair of existing structures or developments, including damage by accident, fire or elements. Normal maintenance includes those usual acts to prevent a decline, lapse or cessation from a lawfully established condition. Normal repair means to restore a development to a state comparable to its original condition within a reasonable period after decay or partial destruction except where repair causes substantial adverse effects to the 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 the environment.

11.12 B. 3. Construction of the normal protective bulkhead common to single family residences. A normal protective bulkhead includes those structural and nonstructural developments installed at or near, and parallel to, the ordinary high water mark for the sole purpose of protecting an existing single family residence and appurtenant structures from loss or damage by erosion. A normal protective bulkhead is not exempt if constructed for the purpose of creating dry land. When a vertical or near vertical wall is being constructed or reconstructed, not more than one (1) cubic yard of fill per one (1) foot of wall may be used for 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 Washington Department of Fish and Wildlife.

11.12 B. 4. Emergency construction necessary to protect property from damage by the elements. An emergency is an unanticipated and imminent threat to public health, safety or the environment that requires immediate action within a time too short to allow full compliance with this Program. 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 that would have been required, absent an emergency, pursuant to RCW 90.58, WAC 173-27 or this Program, shall be obtained. All emergency construction shall be consistent with the policies of RCW 90.58 and this 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.

11.12 B. 5. Construction and practices normal or necessary for farming, irrigation, and ranching activities, including agricultural service roads and utilities, 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 and pipes; provided, that this exemption shall not apply to agricultural activities proposed on land not in agricultural use on December 17, 2003, and further 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.

11.12 B. 6. Construction or modification, by or under the authority of the Coast Guard or a designated port management authority, of navigational aids such as channel markers and anchor buoys.

11.12 B. 7. Construction on shorelands by an owner, lessee, or contract purchaser of a single family residence for their own use or for the use of their family, which residence does not exceed a height of 35 feet above average grade level and that meets all requirements of the State agency or local government having jurisdiction thereof. Single family residence means a detached dwelling designed for and occupied by one (1) family including those structures and developments within a contiguous ownership which are a normal appurtenance as defined in Chapter 2 of this program.

11.12 B. 8. Construction of a dock, including a community dock, designed for pleasure craft only, for the private noncommercial use of the owner, lessee, or contract purchaser of single-family and multiple-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 in fresh waters the fair market value of the dock does not exceed ten thousand dollars (\$10,000), but if subsequent construction having a fair market value exceeding two thousand five hundred dollars (\$2,500) occurs within five years of completion of the prior construction, the subsequent construction shall be considered a substantial development for the purpose of this Shoreline Master Program.

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

11.12 B. 10. The marking of property lines or corners on state-owned lands, when such marking does not significantly interfere with normal public use of the surface of the water;

11.12 B. 11. Operation and maintenance of any system of dikes, ditches, drains, or other facilities existing on September 8, 1975, which were created, developed or utilized primarily as a part of an agricultural drainage or diking system;

11.12 B. 12. Any project with a certification from the governor pursuant to chapter 80.50 RCW, Energy Facilities -Site Locations;

11.12 B. 13. Site exploration and investigation activities that are prerequisite to preparation of an application for development authorization under this chapter, if:

11.12 B. 13. a. The activity does not interfere with the normal public use of the surface waters;

11.12 B. 13. b. 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;

11.12 B. 13. c. The activity does not involve the installation of any structure, and upon completion of the activity the vegetation and land configuration of the site are restored to conditions existing before the activity;

11.12 B. 13. d. A private entity seeking development authorization under this section first posts a performance bond or provides other evidence of financial responsibility to the responsible local government to ensure that the site is restored to preexisting conditions; and

11.12 B. 13. e. The activity is not subject to the permit requirements of RCW 90.58.550, Oil or natural gas exploration in marine waters;

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

11.12 B. 15. Watershed restoration projects as defined below. The responsible 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 exemptions for watershed restoration projects as used in this section.

11.12 B. 15. a. "Watershed restoration project" means a public or private project authorized by the sponsor of a watershed restoration plan that implements the plan or a part of the plan and consists of one or more of the following activities:

11.12 B. 15. a. 1) A project that involves less than ten (10) miles of stream reach, in which less than twenty-five (25) cubic yards of sand, gravel, or soil is removed, imported, disturbed or discharged, and in which no existing vegetation is removed except as minimally necessary to facilitate additional plantings;

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11.12 B. 15. a. 2) 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

11.12 B. 15. a. 3) 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 OHWM of the stream.

11.12 B. 15. b. "Watershed restoration plan" means a plan developed or sponsored by the Washington Departments of Fish and Wildlife, Ecology, or 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

11.12 B. 16. A public or private project that is designed to improve fish or wildlife habitat or fish passage, when all of the following apply:

11.12 B. 16. a. The project has been approved in writing by the State of Washington department of Fish and wildlife;

11.12 B. 16. b. The project has received hydraulic project approval by the State of Washington Department of Fish and Wildlife pursuant to chapter 77.55 RCW; and

11.12 B. 16. c. The responsible 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.

11.12 C. Letters of Exemption

11.12 C. 1. Letters of exemption shall be issued whenever a development is determined to be exempt from the substantial development permit requirements pursuant to WAC 173-27-040 and the development is subject to one or more of the following federal permit requirements:

11.12 C. 1. 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

11.12 C. 1. 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.)

11.12 C. 1. c. The letter shall indicate the specific exemption provision from WAC 173-27-040 that is being applied to the development and provide a summary of the analysis of the consistency of the project with the master program and the act.

11.12 C. 1. d. Exemptions may be conditioned to ensure compliance with the requirements of the SMP

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11.13 Conditional Use Permits

11.13 A. Uses specifically classified or set forth in this Shoreline Master Program as conditional uses shall be subject to review and condition by the responsible local government.

11.13 B. Other uses which are not classified or set forth in this SMP may be authorized as conditional uses provided the applicant can demonstrate consistency with the requirements of this Section and the requirements for conditional uses contained in this SMP.

11.13 C. Uses which are specifically prohibited by this SMP may not be authorized as a conditional use.

11.13 D. Conditional Use Permit Review Criteria

11.13 D. 1. The purpose of a conditional use permit is to provide a system within the master program which allows flexibility in the application of use regulations 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 local government or the department to prevent undesirable effects of the proposed use and/or to assure consistency of the project with the act and the local master program.

11.13 D. 2. Uses which are classified or set forth in the applicable master program as conditional uses may be authorized provided that the applicant demonstrates all of the following:

11.13 D. 2. a. That the proposed use is consistent with the policies of RCW 90.58.020 and the master program;

11.13 D. 2. b. That the proposed use will not interfere with the normal public use of public shorelines;

11.13 D. 2. c. 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;

11.13 D. 2. d. That the proposed use will cause no significant adverse effects to the shoreline environment in which it is to be located; and

11.13 D. 2. e. That the public interest suffers no substantial detrimental effect.

11.13 E. In the granting of all Conditional Use Permits, consideration shall be 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 and shall not produce substantial adverse effects to the shoreline environment.

11.14 Variance Review Criteria

11.14 A. The purpose of a variance is to grant relief to specific bulk or dimensional requirements set forth in this Program and any associated standards appended to this Program such as critical areas buffer requirements where there are extraordinary or unique circumstances relating to the property and/or surrounding properties such that the strict implementation of this Program would impose unnecessary hardships on the applicant/proponent or thwart the policy set forth in RCW 90.58.020. Use restrictions may not be varied.

11.14 B. Variance permits should be granted in circumstances where denial of the permit would result in a thwarting of the policy enumerated in RCW 90.58.020. In all instances the applicant must demonstrate that extraordinary circumstances shall be shown and the public interest shall suffer no substantial detrimental effect.

11.14 C. Variance permits for development and/or uses that will be located landward of the ordinary high water mark (OHWM), as defined in RCW 90.58.030 (2)(b), and/or landward of any wetland as defined in RCW 90.58.030 (2)(h), may be authorized provided the applicant can demonstrate all of the following:

11.14. C. 1. That the strict application of the bulk, dimensional or performance standards set forth in the applicable master program precludes, or significantly interferes with, reasonable use of the property;

11.14. C. 2. That the hardship described in (11.14 C. 1.) of this subsection 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;

11.14. C. 3. 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;

11.14. C. 4. That the variance will not constitute a grant of special privilege not enjoyed by the other properties in the area;

11.14. C. 5. That the variance requested is the minimum necessary to afford relief; and

11.14. C. 6. That the public interest will suffer no substantial detrimental effect.

11.12 D. Variance permits for development and/or uses that will be located waterward of the ordinary high water mark (OHWM), as defined in RCW 90.58.030 (2)(b), or within any wetland as defined in RCW 90.58.030 (2)(h), may be authorized provided the applicant can demonstrate all of the following:

11.14. D. 1. That the strict application of the bulk, dimensional or performance standards set forth in the applicable master program precludes all reasonable use of the property;

11.14. D. 2. That the proposal is consistent with the criteria established under Section 11.14 C 1 through 6; and

11.14. D. 3. That the public rights of navigation and use of the shorelines will not be adversely affected.

11.14 E. 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 policies of RCW 90.58.020 and shall not cause substantial adverse effects to the shoreline environment.

11.14 F. Variances from the use regulations of the master program are prohibited.

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11.15 Appeals

11.15 A. Appeals of Shoreline Administrative Decisions

11.15. A. 1. Administrative review decisions by the Administrator, based on a provision of this SMP, may be the subject of an appeal to the Board of Adjustment by any aggrieved person. Such appeals shall be an open record hearing before the Board of Adjustment. Where the responsible local government does not have a Board of Adjustment, the City/Town Council shall hold an open record hearing appeal. Appeals must be submitted within twenty one (21) days after the date of decision or written interpretation together with the applicable appeal fee. Appeals submitted by the applicant or aggrieved person shall contain:

11.15 A. 1. a. The decision being appealed;

11.15 A. 1. b. The name and address of the appellant and his/her interest(s) in the application or proposed development;

11.15 A. 1. c. The specific reasons why the appellant believes the decision to be erroneous, including identification of each finding of fact, each conclusion, and each condition or action ordered which the appellant alleges is erroneous. The appellant shall have the burden of proving the decision is erroneous;

11.15 A. 1. d. The specific relief sought by the appellant; and

11.15 A. 1. e. The appeal fee established by the responsible local government.

11.15 B. Appeals to the Shorelines Hearing Board

11.15. B. 1. Appeals to the Shoreline Hearings Board of a decision on a Shoreline Substantial Development Permit, Shoreline Variance, Shoreline Conditional Use Permit, or a decision on an appeal of an administrative action, may be filed by the applicant or any aggrieved party pursuant to RCW 90.58.180 within twenty-one (21) days of filing the final decision by the responsible local government with Ecology.

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Comment [CS5]: Need to add BOA appeals from LUPA to Superior Court

11.16 Reasonable Use Exception

11.16 A. If the application of this chapter would result in denial of all reasonable and economically viable use of a property, then a landowner may seek a reasonable use exception from the standards of this chapter. Reasonable use exceptions shall only apply to legal lots of record established prior to the effective date of this chapter. Reasonable use exceptions are intended as a "last resort" when no plan for mitigation can meet the requirements of this chapter and allow the applicant a reasonable economically viable use of his or her property. Requests for reasonable use exception shall be processed in accordance with the procedures required for an SDP in this Chapter. and shall only be granted under the following conditions:

11.16. A. 1. The application of this chapter would deny all reasonable and economically viable or beneficial uses of the property so that there is no reasonable and economically viable or beneficial use with a lesser impact on the critical area than that proposed; and

11.16. A. 2. The proposed development does not pose a threat to the public health, safety and welfare on or off the site for which the reasonable use exception is sought; and

11.16. A. 3. Any proposed modification to a shoreline area will be the minimum necessary to allow reasonable, economically viable and beneficial use of the property; and

11.16. A. 4. The applicant has requested and been denied a variance under the provisions of Section 11.14 Variance Review Criteria; and

11.16. A. 5. The decision maker may issue, as part of the findings in any decision made under this subsection, conditions of approval, including modifications to the size and placement of structures and facilities to minimize impacts to critical areas and associated buffers. As part of the findings, the decision maker may also specify mitigation requirements that ensure that all impacts are mitigated to the maximum extent feasible.

11.17 Non-Conforming Structures

11.17 A. Structures that were legally established and are used for a use conforming at the time of establishment, but which are nonconforming with regard to setbacks, buffers or yards; area; bulk; height or density established in this SMP may be maintained and repaired and may be enlarged or expanded provided that said enlargement does not increase the extent of nonconformity by further encroaching upon or extending into areas where construction or use would not be allowed for new development or uses.

11.17 B. A structure for which a Variance has been issued shall be considered a legal nonconforming structure and the requirements of this section shall apply as they apply to preexisting nonconformities.

11.17 C. A nonconforming structure which is moved any distance provided it not does increase the nonconforming aspects of the structure.

11.17 D. If a nonconforming development is damaged, it may be reconstructed provided the resulting configuration does not increase the nonconformity as it existed immediately prior to the time the development was damaged. An application shall be made for permits necessary to restore the development within one year of the date the damage occurred, all permits are obtained, and the restoration is completed within two years of permit issuance unless otherwise extended.

11.17 E. Nothing in this section shall be deemed to prevent the normal maintenance and repair of a nonconforming structure or its restoration to a safe condition when declared to be unsafe by any official charged with protecting the public safety.

11.18 Non-Conforming Uses

11.18 A. Uses and developments that were legally established and are nonconforming with regard to the use regulations of the SMP may continue as legal nonconforming uses. Such uses shall not be enlarged or expanded, except that nonconforming single-family residences and water related commercial uses that are located landward of the OHWM may be enlarged or expanded in conformance with applicable bulk and dimensional standards by the addition of space to the main structure or by the addition of normal appurtenances as defined in Chapter 8 upon approval of a Conditional Use Permit.

11.18 B. A use which is listed as a conditional use, but which existed prior to adoption of the SMP or any relevant amendment and for which a Conditional Use Permit has not been obtained, shall be considered a legal nonconforming use.

11.18 C. A structure which is being or has been used for a nonconforming use may be used for a different nonconforming use only upon the approval of a Conditional Use Permit. A Conditional Use Permit may be approved only upon a finding that:

11.18 C. 1. The proposed use will be at least as consistent with the policies and provisions of the Act and the SMP and as compatible with the uses in the area as the preexisting use. In addition, such conditions may be attached to the permit as are deemed necessary to assure compliance with the above findings, the requirements of the SMP and the Act, and to assure that the use will not become a nuisance or a hazard.

11.18 D. If a nonconforming use is discontinued for twelve consecutive months or for twelve months during any two-year period, the nonconforming rights shall expire and any subsequent use shall be conforming. A use authorized pursuant to 11.16 of this Section shall be considered a conforming use for purposes of this section.

11.19 Non-Conforming Lots

11.19 A. An undeveloped lot, tract, parcel, site, or division of land located landward of the OHWM which was established in accordance with local and state subdivision requirements prior to the effective date of this SMP, but which does not conform to the present lot size standards, may be developed, if permitted by other land use regulations of the responsible local government and so long as such development conforms to all other requirements of this SMP and the Act.

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11.20 Violations and Penalties

- 11.20 A. Prosecution: Every person violating any of the provisions of this Master Program or the Shoreline Management Act of 1971 shall be punishable under conviction by a fine not exceeding one thousand dollars (\$1,000.00), or by imprisonment not exceeding 90 days, or by both such fine and imprisonment, and each day's violation shall constitute a separate punishable offense.
- 11.20 B. Injunction: The City/Town Attorney may bring such injunctive, declaratory or other actions as are necessary to insure that no uses are made of the shorelines of the State within the City/Town's jurisdiction which are in conflict with the provisions and programs of this Master Program or the Shoreline Management Act of 1971, and to otherwise enforce provisions of this Section and the Shoreline Management Act of 1971.
- 11.20 C. Violators Liable for Damages: Any person subject to the regulatory program of this Master Program who violates any provision of this Master Program or the provisions of a permit issued pursuant thereto shall be liable for all damages to public or private property arising from such violation, including the cost of restoring the affected area to its condition prior to such violation. The City/Town Attorney may bring suit for damages under this subsection on behalf of the City/Town. Private persons shall have the right to bring suit for damages under this subsection on their own behalf and on behalf of all persons similarly situated. If liability has been established for the cost of restoring an area affected by 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 monetary damages, the Court in its discretion may award attorney's fees and costs of the suit to the prevailing party.