



**PLANNING COMMISSION AGENDA
SPECIAL MEETING**

March 30, 2010, 7:00 p.m.
Multipurpose Room/Council Chamber
Burien City Hall, 400 SW 152nd Street
Burien, Washington 98166

**This meeting can be watched live on Burien Cable Channel 21 or
streaming live and archived video on www.burienmedia.org**

I. ROLL CALL

**II. AGENDA
CONFIRMATION**

III. PUBLIC COMMENT PUBLIC COMMENT WILL NOT BE TAKEN THIS EVENING.

**IV. APPROVAL OF
MINUTES** None

V. OLD BUSINESS Discussion and Possible Recommendation: Shoreline Master Program Update

VI. NEW BUSINESS a. None

**VII. PLANNING
COMMISSION
COMMUNICATIONS**

VIII. DIRECTOR'S REPORT

IX. ADJOURNMENT

Future Agendas (Tentative) April 13-To be determined
April 27-To be determined

Jim Clingan (Vice Chair)
Rebecca McInteer

Planning Commissioners
Joe Fitzgibbon (Chair)
Rachel Pizarro

Janet Shull

David Johanson

From: Public Council Inbox
Sent: Tuesday, March 23, 2010 4:52 PM
To: Scott Greenberg; David Johanson; Susan Coles
Subject: FW: Lake Burien
Attachments: AN OPEN LETTER TO THE CITIZENS OF BURIEN about their lake.doc; borissieverts.vcf

Fyi...

-----Original Message-----

From: Boris Sieverts [mailto:borissieverts@gmx.de]
Sent: Tuesday, March 23, 2010 2:54 AM
To: Public Council Inbox
Subject: Lake Burien

Dear City Council of Burien,

It is nearly a year ago now, that my father and I visited Burien, when my father was invited to come to your place to speak and discuss about the role of places like Burien in bigger agglomerations, that are in the process of working on their identity and character. We were quite impressed by the efforts that the community had done so far, until we got to know about a lake, that noone had spoken about before, although it obviously was the biggest potential in the struggle of the city for quality and character. At the time I was so irritated by the fact that noone did anything to bring that lake back to the city, that I made some notes that I finally brought into the form of an open letter to the Citizens of Burien. I would be happy if you could publish it in the one or the other form.

Sincerely,

Boris Sieverts
Büro für Städtereisen
Pellenzstr. 6
50823 Köln
Germany
borissieverts@gmx.de

MAR 23 2010

AN OPEN LETTER TO THE CITIZENS OF BURIEN about their lake

CITY OF BURIEN

written from notes after a visit in Burien on July 2nd 2009 on the occasion of my father Thomas Sieverts speaking in Burien.

I remember the unbelievable story of an invisible lake in the center of a town called Burien. There was no public access to the lake, but my father and I were introduced to one of the "owners" of the lake and she invited us to take a bath. She was talking about the good quality of the water that is due to the common not use of motorboats of the neighbouring properties and the renouncement of fertilizer in the gardens, which I found really impressive. She then said that when the lake would get a public access, all this would be gone. I wondered about that argument, because, apart from the bewildering strong conviction of a lack of responsibility of her common citizens that it showed, there are of course ways of controlling water pollution at public accesses, be it by neighbourhood control, by closing hours at night, by park wardens, by the arrangement of a public bath with attendants or other solutions, which she obviously had not even thought about.

The second line of her argumentation was, that if the lake would get a public access, the values of their properties would fall and then they would pay less taxes which could not be in the interest of the municipality, a fairly absurd way of thinking, which I will come back to later.

And the third line of her argumentation was, that there are enough lakes nearby. When I asked her, what nearby means, she talked of distances, that are only practicable by car, and of course this is a deep and profound difference, if you can walk from your own city center, maybe with an ice cream in your hands, in just 5 minutes to such a wonderful nature spot or if you have to go back home to get the car and drive there. As my father and I had just been shown before, Burien has made a big effort to become an urban, pedestrian friendly, sustainable and atmospheric place. I could only understand the inaccessibility of the lake as a kind of relict of other times, when there was maybe less citizen spirit or so, which I don't know.

When we got to know, that there would be a property to sell in the near future, and that if the city administration would buy it, they could get a public access, we looked at that property and it was just perfect in its position to the city center as well as in size and character.

Talking about the issue with council members, we got the impression that they were not willing to face the people that live around the lake and try to keep it exclusively their's. What, under these circumstances, did all the embellishments and structural improvements of the city center, that we had just been shown, mean? Were they just covering the real scandal of what was happening in this town?

To give away the unique chance of a public access to the lake after all these efforts would at least heavily affect everything that you, the citizens of Burien have done and reached for in the past years. The fact, that the vacant lot in question is just on the perfect location seen from the city center (you could even have a nice pedestrian's connection through the alley between 152nd and 153rd street, that leads right on the spot), to me was like a sign from above that this is a chance to fight for, because it will never come again.

I am convinced that, if it would be well managed, the neighbours of the lake won't be seriously harmed by a public access (except maybe that they have to give up the idea that the lake is "theirs", which in fact it is not) and that at the same time the overall image and value of Burien as a whole (not only in the city center) would rise remarkably. Close to Cologne, where I live, there is a small town called Haltern. It is close to a lake. A couple of years ago they changed their name to "Haltern am See" (Haltern on the lakeside). Property prices have nearly doubled since then!

The degree of hypocrisy of those who keep the lake for themselves now and thereby pretend to do it for the best of nature and the city of Burien is hard to bear. Municipalities need money to invest in the quality of life in their boundaries. For no tax money in the world, Burien will be able to invest in such a good improvement in the quality of life of its inhabitants as a public access to the lake on that spot

would mean. And for the nature argument: Public access must not necessarily mean pollution, there are enough good examples for that. People are a part of nature too. They must not deprive themselves from it just at places where it hurts them most! The inhabitants of the lake are the best example for that!

Lake Burien has enough space for everybody, those who live there and those who come to visit!!!

Imagine future Burien citizens talking about their childhood: "On summer evenings we got ice cream on main street, left the store by the backdoor terrace and went down the alley to the lake. There was a charming little boardwalk, a meadow, huge trees and a house to change clothes. It had all been there for decades. My parents said, that there were times when no one knew about it. Can you imagine?"

As far as I know there is a state law, that says that all water surfaces belong to the state and are thereby public property. If, because of the given fact that the whole shoreline is already private properties, that law is partially without consequence in reality, that is one thing. But if there is a chance and a public will to change that unhappy state of things by the legal and legitimate act of a municipality buying a property, and that process is heavily impeded by certain people, that former unhappy but maybe legitimate state of things finally loses its legitimacy and comes even close to illegality, because it actively tries to cross what the law wants.

I remember the mayor saying, that the municipality could probably even get funding from a state park program for the acquirement of a public access. But she was afraid of facing the influential people that live around the lake. I really liked her, but what kind of municipality is this, where a few influential people can deprive a whole town of one of its greatest treasures?

Imagine you and some others buy a house. Now the others place themselves around that house in a way that you can no longer reach it. If you ask them to let you pass, they say no. Then one of them sells his property. You try to buy it, to get access to your house in the middle, but those who have placed themselves around it do everything for that you can not buy the property that you would need to get to your house in the middle. During all that time they use the house in the middle for themselves. Isn't that robbery or at least something close to robbery? The house in the middle is the lake and you are the public. The lake is (also) yours. Don't let them steal it from you!

Get the municipality to buy the property in question!

Collect fundings and donations to buy it yourselves for the use of everyone!

Apply to the social responsibility of the Van Dyke foundation, that is the actual owner!

Start an idea competition on the future of Lake Burien and Burien on the lakeside!

Köln, Germany, March 2010

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RECEIVED

MAR 24 2010

CITY OF BURIEN

Jane S. Kiker
kiker@ekwlaw.com

March 24, 2010

*Via Facsimile (205) 248-5539
Email and U.S. Mail*

Planning Commission
City of Burien
400 SW 152nd Street, Suite 300
Burien, WA 98166

Re: Lake Burien Shore Club: Letter Report By Cooke Scientific, re City's Proposed SMP Update

Dear Planning Commission:

Attached please find a letter to the Lake Burien Shore Club from local wetlands ecologist Sarah Spear Cooke, Ph.D., of Cooke Scientific, along with Ms. Cooke's resume. The Shore Club asked Ms. Cooke to provide comments on the City's proposed Shoreline Master Program (SMP) public access policies with respect to Lake Burien, in light of her own review of available data and her independent field investigation regarding the Lake and its wetland areas. Ms. Cooke's report documents the paucity of scientific information relied upon by the City and its consultants in including the public access policies in the Draft SMP Update, and supports the Shore Club's position that the introduction of public access to Lake Burien is not supported by relevant (and available) science/data respecting the Lake's critical areas and wildlife habitat.

Ms. Cooke's letter supplements earlier comments submitted by this office on behalf of the Shore Club, as well as the aquatic resources report, prepared by limnologist Rob Zisette of Herrera Environmental Consultants, Inc., and submitted March 17, 2010.

EGLICK KIKER WHITED PLLC

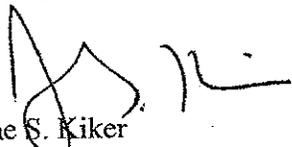
March 24, 2010

Page 2

The Shore Club thanks you for your consideration of the attached.

Respectfully,

EGLICK KIKER WHITED PLLC



Jane S. Kiker

Attorney for Lake Burien Shore Club

cc: Client

Attachments: Cooke Scientific: Review of City of Burien's Draft SMP
Curriculum Vita, Sarah Spear Cooke, Certified Wetland Professional, Cooke
Scientific



COOKE SCIENTIFIC

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WWW.COOKESSCIENTIFIC.COM

March 23, 2010

Attn: Don Warren, President & Lake Steward
Lake Burien Shore Club
Burien, WA

RE: Review of the City of Burien's Draft Shoreline Master Plan (SMP) as it applies to Public Access for Lake Burien

Dear Mr. Warren:

The Lake Burien Shore Club is concerned that the Draft Shoreline Master Program (SMP) adopts a policy of public access for Lake Burien without an investigation into the impacts it might have on the Lake ecosystem and water quality. The Shore Club asked me, in my capacity as a professional wetlands scientist, to review the portions of the Draft SMP amendments pertaining to Lake Burien, and to determine what data, if any, exists to support the City's proposed public access policies. As detailed below, my review and analysis of the existing data and my own field investigation lead me to the conclusion that there is insufficient information to support adoption of these policies and that such adoption would likely be inconsistent with the level of protection required to maintain the sensitive lake, its adjacent wetlands, streams, and associated wildlife, in sound ecological health.

Findings Summary

It is apparent that the Burien Shoreline Master Program Update relies on the following reports generated by City's Consultants:

- * Shoreline Inventory (Grette Associates 2008)
- * Shoreline Analysis and Characterization (Grette Associates 2008)
- * Cumulative impacts Analysis (Grette Associates 2009)
- * Shoreline Restoration Plan (Grette Associates 2009)

These documents do not reflect analysis of existing data and conditions with respect to Lake Burien as is required under the Shoreline Management Act (SMA) and outlined in the Shoreline Management Plan Guidelines adopted by the Department of Ecology (WAC 173-26-201, Comprehensive Process to Prepare or Amend Shoreline Master Programs, Section 3C and D).

The City is proposing public physical access to the Lake without studying the impacts to the Lake functions that could result, and therefore, without addressing measures necessary to mitigate such impacts. The Draft SMP is therefore, not in

compliance with the Shoreline Management Act (SMA) (RCW 890.58), and SMP Guidelines (WAC 173-26, Part III). The SMA and SMP Guidelines require current scientific-based or a "Best Available Science" (BAS) -based characterization of shoreline ecological functions, adoption of a no-net-loss policy with respect to these ecological functions, recognition of potential consequences from proposed management actions, and adoption of appropriate mitigation measures.

Focusing primarily on the Lake's wetland functions. I have reviewed all the documents and web-based resources listed in the reference section at the end of this document in addition to undertaking the personal communications listed there. I also conducted reconnaissance field research at the Lake and its wetlands on March 3, 2010. Most of the wetlands information I have reviewed (and gathered) is notably not referenced in the City's or its consultant's characterization and resultant analysis. The Lake's aquatic resources, and potential impacts to them from the proposed public access, were finally addressed in a report by limnologist Rob Zisette of Herrera Environmental Consultants, which was submitted to the Planning Commission by the Shore Club on March 17, 2010. This report concluded that providing public access to Lake Burien could have adverse and unintended impacts on its ecological well-being in terms of the introduction of invasive, non-native plant and animal species, and the potential for water quality degradation.

Analysis

- 1. Proposed SMP Policies are not based on current and best available science.** In reading the four reports listed above which formed the basis for the Draft SMP Update, it is apparent that very little attempt was made to find the available data for the Lake, let alone do additional studies required by the SMA and SMP guidelines. Rather, the City's consultant team stated that they only needed to comply with the characterization of the Lake found in the City's Municipal Code and Comprehensive Plan. In my own discussions with Department of Ecology scientists, (Pers. Comm. With Eric Stockdale, March 2010), it has been made clear that an SMP developed without analysis of current lake conditions and functions (e.g., water quality, hydrology, and wildlife habitat) would be unlikely to survive Ecology's mandatory SMP review process.

There is little evidence that Grette staff reviewed existing Lake data or coordinated their recommendations with any other scientists with expertise of the Lake. The SMP guidelines specifically identify this collaboration as being essential to the characterization and impact assessment for developing the SMP. King County has an on-line report that covers ten years of study data and analysis of the Lake. There is only one apparent reference to other studies in the Grette reports and this is regarding phosphorus concentrations in the Lake. This data likely comes from the King County Lake Report, although it is not listed in the bibliography. The Coastal Atlas (Wa. DOE Web resource 2010) similarly is not referenced and it shows the quality of Lake Burien to be excellent, in stark

contrast to all other lakes in the urban corridor. The Lake shore is completely surrounded by private property and no residents report seeing Grette staff on their properties to collect data.

As part of the impact analysis, it is important to know what wildlife currently exists on the lake. No wildlife censuses were done as part of the lake characterization and there was no attempt to collect existing data from King County and/or local residents regarding the Lake's resident birds, migratory birds, mammals, fish, amphibians, reptiles or insects. The residents and a local fish expert, Richard Streater, have identified trout, bass, sunfish and perch, yet the City in their Municipal Code, Comprehensive Plan, and Draft SMP state there are no fish in the Lake. As discussed below, shore residents regularly observe eagles, hawks, and heron preying on fish in the Lake. The Lake Steward has not been contacted by anyone from the City's consultant team, despite the fact that he has a significant amount of data after years of monitoring the Lake.

- 2. Lake Reconnaissance and other data discoveries.** In addition to reviewing and analyzing existing data respecting Lake Burien, I visited the Lake on March 3, 2010; met with shore residents and circumnavigated the shoreline in a boat. I took photographs, recorded vegetation types, shoreline characteristics, water visibility, the presence of invasive plant species: aquatic, wetland, and upland plant and animal taxa. I ran the wetland data through the Wetland Rating form for Western Washington (Hruby 2004) and I took notes on birds and fish and reptiles. A neighbor showed me photos of the painted turtles that lay eggs on her beach, and there are reports that red slider turtles may also be present. There are bullfrogs and Cascade frogs, and crayfish in the Lake. None of this information is included in Grette's Shoreline Inventory or Shoreline Analysis and Characterization. One wonders how Grette developed the Impact Analysis without being aware of the wildlife and water quality of the Lake.

For more than 60 years, shore residents have tracked wildlife use of the lake and environs and recently have been taking bird census data, some using Audubon Guidelines. Priority species, including bald eagles, osprey, and blue heron use this lake for perching and feeding. These species are observed regularly. Although not documented in the City's record, the residents give first hand reports of this. I saw both blue heron and bald eagles the day I visited. Lake residents have identified over 80 different species of birds. Long-term residents report bird sightings have increased since the development of the third runway and filling of many of the wetlands at SeaTac. An animal inventory was compiled by the residents and included bats, mice, rats, voles, shrews, raccoons, weasels, opossums, squirrels (grey), and a historic sighting of otter in the 90's.

There are existing patches of undisturbed wetlands scattered around the Lake, especially in the northeast corner in front of the Ruth Dykeman Center. This area has a large aquatic plant community dominated by hardstem bulrush (a native plant), with an associated riparian corridor that leads to the outlet and Burien Creek which has both upland and wetland components. The other lakeshore vegetation patches are both herb and shrub dominated, ranging from 1/5 to 1/2 of

the lakeshore frontage of a particular lot. The herbaceous patches are dominated by soft rush and yellow-flag iris, but native rushes, grasses and sedges can also be found. There are scattered sandy beaches around the Lake and resident reports indicate that turtles nest on most.

The Lake water quality is remarkably good, according to the Department of Ecology Coastal Atlas and King County Lake Monitoring Data, as well as the analysis recently prepared by Rob Zisette at Herrera Environmental Consultants. The only motors allowed in the Lake are electric. The lake residents do not move their boats from Lake Burien to outside lakes and back. This means that there are few to no opportunities for invasive weeds to be introduced into the Lake. Mr. Zisette's limnology report addresses the ecosystem effects of introduction of invasive species, plant and animal.

The Lake residences are on sewer so there is no septic effluent leaching into the Lake, a common occurrence in other lakes throughout the County. There were no algal blooms, and I could see the bottom in areas where the depth is reported to be at least 10 feet (King County Web site bathymetry). There appear to be only a few patches of pond lily (as seen on aerial photographs from the summer). I saw no algae, milfoil or elodea (common noxious aquatic weeds in urban lakes)

The Lake is currently entirely developed with residences, with the exception of the Ruth Dykeman parcel in the northeast corner. The dominant activity on the Lake is by personal boats, most using electric motors. Electric motors make very little wake as they tend to move very slowly through the water. Additionally, the local residents and Lake Steward monitor the Lake for any irregular activity. Residents for the most part, keep their dogs from the Lake, so there is no dog fecal matter entering the lake and according to residents there is relatively little disturbance of the birds by dogs or cats.

3. SMP Public Access provisions should not be adopted in absence of required scientific support and analysis

Based on my research and observations, I find Lake Burien to be in surprisingly good condition for an urban lake and the water quality, habitat, and the number of species of wildlife present are not matched in the urban setting. In a case such as this, public access would result in (potentially irreparable) impacts to the ecosystem. It would be unwise to introduce public access which could upset the current balance, especially without investigating what the potential impacts might be.

References

- City of Burien, Washington. December 2009. Ordinance 528. City of Burien, Burien Comprehensive Plan Update.
- City of Burien 2003. Burien Municipal Code. Chapter Title 19.
- Grette Associates. 2008 City of Burien Shoreline Master Program Update Shoreline Inventory.

Grette Associates. 2008 City of Burien Shoreline Master Program Update
Shoreline Analysis and Characterization.

Grette and Associates. 2009 City of Burien Shoreline Master Program Update
Cumulative Impacts Analysis.

Grette and Associates. 2009 City of Burien Shoreline Master Program Update
Shoreline Restoration Plan.

King County Water Quality in Lakes report. 1998 – 2004. Lake testing
<http://your.kingcounty.gov/dnrp/wlr/water-resources/small-lakes/data/lakepage.aspx?SiteID=43>

King County. 2009. Lake Burien Lake Characterization. Web resource
<http://your.kingcounty.gov/dnrp/wlr/water-resources/small-lakes/data/lakepage.aspx?SiteID=43>

Sheldon, D., T. Hruby, P. Johnson, K. Harper, A. McMillan, T. Granger, S. Stanley, and E. Stockdale. March 2005. Wetlands in Washington State - Volume 1: A Synthesis of the Science. Washington State Department of Ecology. Publication #05-06-006. Olympia, WA.

Washington State. Revised Code of Washington *RCW 36.70A.172. Growth Management ACT.*

Washington State. 1972. Revised Code of Washington 90.58. Shoreline Management ACT.

Washington State. 2003. (WAC 173-26, Part III) Shoreline Master Program Guidelines

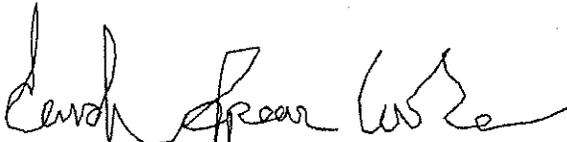
Washington State Department of Ecology. 2010. The Coastal Atlas. Web resource. <https://fortress.wa.gov/ecy/coastalatlus/viewer.htm>

Washington State Department of Ecology, U.S. Army Corps of Engineers Seattle District, and U.S. Environmental Protection Agency Region 10. March 2006. Wetland Mitigation in Washington State – Part 1: Agency Policies and Guidance (Version 1). Washington State Department of Ecology Publication #06-06-011a. Olympia, WA.

Personal communications

Erik Stockdale, Washington State Department of Ecology, Bellevue staff. Staff assigned to review the Burien SMP. March 3 and 11.

Richard Streater, fishing lures author and fish expert. March 2010



Sarah Spear Cooke
Certified Wetland Professional and Fellow
Society of Wetland Scientists



Cooke Scientific

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Sarah Spear Cooke, Ph.D.

Wetlands Ecologist, Soil Scientist, Plant Ecologist and Taxonomist

Expertise

- Wetlands creation, restoration, and enhancement , CAD design and implementation
- Wetlands delineation and delineation methodology instruction
- Invasive weed identification and development of control strategies, control manuals, and field oversight of control efforts
- Ordinary High Water Mark (OHWM) determinations and instruction.
- Regulatory and Permitting Assistance, on local, state and national levels
- Wetland Functional Evaluation, including the "SAM" method and a botanical expert on the development of the State wetland manual
- Masters in Botanical taxonomy, Doctorate in Botany and soils, specializing in wetland plants
- Author *A Field Guide to the Common Wetland Plants of Western Washington & Northwestern Oregon*, published by the Seattle Audubon Society
- Certified soil scientist (hydric soils), soils mapping and classification
- Watershed Analysis
- Rare plant surveys and mapping
- Mine reclamation ecology and uplands restoration

Dr. Cooke has 24 years of experience in wetlands ecological research and environmental consulting, and 27 years of experience in ecological and geological research, in the Pacific Northwest. She specializes in habitat creation, restoration and enhancement projects, both in design and implementation. She excels in permitting assistance on the local, state, and national level. She was a co-senior investigator for the Puget Sound Wetland and Stormwater Management Research Program, a 10-year systematic wetland ecosystem study conducted under the auspices of the Environmental protection Agency, The US Geological Survey, Washington State, and King County in Washington State. Dr. Cooke's areas of expertise include: wetland and stream inventories, delineation, restoration/mitigation designs, baseline studies, permitting, and monitoring programs; weed identification and control; rare plant surveys and vegetation mapping; soil assessments; watershed analysis; and environmental assessments in the region. She has more experience in developing assessment methodologies than any other private wetlands consultant in the PNW. She has extensive experience in classroom instruction of wetlands ecology, restoration ecology and implementation, delineation protocols, functional assessment, weed identification and control, hydric soils, and wetland plant identification. She has 16 years experience in managing multidisciplinary teams, supervising subcontractors, and generating reports, and marketing from a consulting perspective. She currently teaches restoration ecology and implementation, wetland botany, and weed ecology and control at Portland State University. She is a former instructor for the Wetland Certification Program at the University of Washington and Wetland

Ecology and Science for the graduate program at the Evergreen State College. She has been teaching classes for the Coastal Training Program through the Washington State Department of Ecology for eight years and has taught wetland Delineation for the US Army Corps of Engineers. She is also the senior author/editor of the *A Field Guide to the Common Wetland Plants of Western Washington & Northwestern Oregon*. And the Semi Quantitative Wetlands and Buffer Functional Assessment Method used since 2001 by most wetland practitioners.

Education

Ph.D., University of Washington, Dissertation title: The Edaphic Ecology of Two Northwest American Composite Species. Major: Botany, Geology, and Soils; minor Statistics, Plant Physiology, and Genetics
M.S., Plant Taxonomy, University of Washington, 1987.
Honors Degree, Geobotany, McGill University, 1979.
B.S., Biology and Geology, McGill University, 1979.
Undergraduate studies in Biology and Geology at Purdue University 1974-76.

Experience

- Self-employed, Cooke Scientific. Seattle Washington. Projects include wetland mitigation (restoration, enhancement, and creation), wetland delineations, weed identification and control, wetland inventories, wetland functional assessments, wetland and sensitive areas permitting (federal, state and local jurisdictions), rare plant surveys, vegetation and soil mapping, environmental evaluations, environmental impact statements, watershed analysis, and mine reclamation, third party regulatory review for various small jurisdictions. 1998-present.
- Western Washington Representative, Washington State Noxious Weed Board. 2005 to present. Chair, Standards committee. Developed a methodology for inventorying weeds used by County Weed boards in Wa.
- Instructor, Habitat Restoration, and Mitigation. Wetland Training Institute. Syllabus development, classroom instruction, and field trips. Spring 2010.
- Instructor, PNW Winter Twig ID. Coastal Training Program, Washington State Department of Ecology, classroom instruction, and field trips. 2007-present
- Instructor, Grass, Sedge and Rush ID in PNW. Coastal Training Program, Washington State Department of Ecology, classroom instruction, and field trips. 6-class contract, 2004-present.
- Instructor, Washington State Wetland Rating System in Western Washington. Coastal Training Program, Washington State Department of Ecology, classroom instruction, and field trips. 6-class contract, 2005-2006.
- Instructor, Weeds of the Pacific Northwest. Portland State University, Portland, Oregon. Syllabus development, classroom instruction, and field trips. Summer 2004.
- Development Advisory Team. Washington State Wetland Rating for Western Washington. Washington State Department of Ecology. 2002-2004.
- President Pacific Northwest Chapter Society of Wetland Scientists. May 1999- May 2000. Executive Vice President SWS PNW Chapter 1998-1999.
- Development Advisory Team. Washington State Functional Assessment Method. Washington State Department of Ecology. 1996-1998.
- Instructor, WNPS Native Plant Stewardship program, King, Snohomish, Pierce Counties, Washington Native Plant Society, Syllabus development, classroom instruction, Fall 1996- present.
- Instructor, Hydric soils class, University of Washington, College of Forest Resources, Center for Urban Horticulture. 1998, 2006.

- Instructor, Habitat Restoration, and Mitigation. Portland State University, Portland, Oregon. Syllabus development, classroom instruction, and field trips. Fall 1998- 2008.
- Owner, Cooke Scientific Services, Inc. Seattle, Washington. Principal Scientist and President of company. Projects include wetland mitigation (restoration, enhancement, and creation), wetland delineations, wetland inventories, wetland functional assessments, wetland and sensitive areas permitting (federal, state and local jurisdictions), rare plant surveys, vegetation and soil mapping, environmental evaluations, environmental impact statements, watershed analysis, and mine reclamation in upland and wetland areas. 1995-2003.
- Instructor, Wetland Plants of the Pacific Northwest; Winter trees and shrubs; and Grasses, Sedges, and Rushes. Portland State University, Portland, Oregon. Syllabus development, classroom instruction, and field trips. Spring 1998- present.
- Principal Scientist, wetlands Group, Pentec Environmental Inc., Edmonds, Washington. Started, marketed, and managed the wetlands group. Projects included wetland mitigations (restorations, enhancements and creations), wetland delineations, wetland inventories, wetland functional assessments, wetland and sensitive areas permitting (federal, state and local jurisdictions), rare plant surveys, vegetation and soil mapping, environmental evaluations, environmental impact statements, watershed analysis, mine reclamation in upland and wetland areas. 1990 – 1995.
- Instructor, University of Washington, Extension Services, Wetland Certification Program. Wetland Science and Ecological Processes. . Syllabus development, classroom instruction, and field trips. 1994-1996.
- Instructor, University of Washington, Extension Services, Wetlands Flora of Western Washington. Syllabus development, classroom instruction, and field trip. 1990-1996.
- Long-term Research Co-manager, Puget Sound Wetlands and Stormwater Management Research Program. Experimental design, implementation, and coordination of a five-year total ecosystem survey and monitoring study. 1987-1996.
- Project Coordinator, Senior Editor and Author. US Environmental Protection Agency/Washington Native Plant Society. A Field Guide to the Wetland Flora of Pacific Northwest Project. Grant writing, project management, technical coordination, and writing the grass, sedge, and rush sections of book. 1992-1997.
- Instructor, Washington State Department of Ecology, Wetland and Riparian Restoration, a workshop for agency staff and consultants. Co-development of syllabus, text, class instruction for the vegetation portion of the workshop. 1993.
- Co-instructor, Hydric Soils workshop. University of Washington Center for Urban Horticulture, College of Forest Resources. 1992.
- Instructor, Hydric Soils, Processes and Characteristics. University of Washington Extension Services. Development of syllabus, text, classroom instruction, and class field trip. 1992.
- Co-instructor, Wetlands Ecology. The Evergreen State College, Masters of Environmental Science. Co-development of syllabus and co-instructor for wetlands ecology, management, and regulatory policy class. 1991.
- Instructor, Interagency Wetlands Delineation Agency Training/USACOE, EPA, SCS, Fish, and Wildlife Service. Taught vegetation and soils methodology (1987 and 1989 methodologies).
- Field Biologist/Soil Scientist, King County Wetlands Inventory. Paper inventory, development of field assessment protocol, manager field-inventory. 1990.

- Professional Botanist, Washington Native Plant Society. Research, teaching workshops related to the native flora, establishment, and curator of the plant species distribution library. 1989.
- Senior Wetlands Ecologist, Shapiro and Associates. Wetland delineation, plant identification, vegetation analysis, soils assessment, aerial photo interpretation, and report writing, with emphasis on wetlands problems, and toxic waste. 1988.
- Botany and Soils Consultant and Subcontractor, Raedeke Associates. Plant identification, vegetation analysis, soils assessment, and aerial interpretation with emphasis on wetlands problems. 1986-1987.
- Team Member, Cedar River Watershed Long-term Wetlands Monitoring Project, Seattle City Light. Design and implementation of vegetation and soils aspects of the study, and air photo interpretation. 1988.

Awards

- International fellow. Society of Wetland Scientists. Dr. Cooke was one of three internationally scientists recognized by the SWS for our contributions to Wetland Science. 2003.
- Elected President, Society of Wetland Scientists, Pacific Northwest Chapter. 1999-2000.
- Best Paper Award. International Serpentine Conference, Society of Serpentine Ecology. 1999.
- Sigma Xi, Forestry Society. Elected to be a member of the Washington State Chapter of Sigma Xi, the professional Foresters Society. 1994.
- Member of Society of Wetland Scientists
- Member Society for Ecological Restoration
- Member Association of State Wetland Managers
- Member Sigma Xi
- Member Ecological Society of America
- Member Consulting Soils Scientists of America

Professional Affiliations

RECEIVED

MAR 23 2010

CITY OF BURIEN

Andrew Ryan
16525 Maplewild Ave SW
Burien, WA 98166
206-248-1822

15 March 2010

The Burien Planning Commission
Burien City Council
c/o Susan Coles, Community Development Department Assistant
The City of Burien
400 SW 152nd Street
Burien, WA 98166

To the Burien City Council and Burien Planning Commission,

I would like to make the following comments on the Shoreline Management Plan that the Planning Commission is currently working.

My intent in this letter is to focus on SMP **Section 20.30.040 Shoreline Vegetation Conservation** Outlined below are pertinent paragraphs from the SMP (bolded) that I am concerned about followed by my comments.

2. Regulations

b. Alterations within the shoreline vegetation conservation buffer shall only be allowed through approval of a vegetation management plan. The plan shall be prepared by qualified professional and shall be consistent with the provisions of this chapter and BMC Chapter 19.40.

Please reference the definition of alterations provided below:

Chapter VI – Definitions provides the following

20.40.000 Alteration means any human activity which results or is likely to result in an impact upon the existing condition of a critical area. Alterations include, but are not limited to,..... cutting, pruning, topping, trimming, relocating or removing vegetation or any other human activity which results or is likely to result in an impact to existent vegetation, hydrology, wildlife or wildlife habitat.

Commentary:

Cutting, pruning, trimming, relocating and removing vegetation are normal activities most private property owners assume to be a basic right of property ownership. Given Paragraph 2(b) above, and it's definition, it appears that property owners under this jurisdiction can not perform one single normal yard maintenance function without having to hire a qualified professional develop a vegetation management plan (criteria and frequency for which is undefined). Not

only does this put additional financial burden on the property owner to fund vegetation plan, it will deter property owners from maintaining the "visual access" goal in areas such as the Indian Trail.

I would suggest that the 2(b) be reworded as follows:

b. Alterations within the shoreline vegetation conservation buffer resulting from new construction, or modifications of a nature requiring permits, shall.....

c. Within a shoreline riparian buffer as set forth in BMC 20.30.050 alterations shall comply with the following;

ii. At least 75% of the buffer area shall be vegetated; and

Commentary:

One has to assume that this only applies to new development as recommended above. This can not possibly be retroactive to existing properties. Additionally, if the structure were to possibly cover more than 25% of the property, this is physically impossible. This also makes no allowances for pathways or appurtenant structures.

Recommended Revisions:

Following new development, 50% of remaining open (w/o- primary structure) property shall be vegetated, and

iii. Where vegetation is proposed within the buffer it shall be provided at a density to mimic natural conditions; and

Commentary:

Again one has to assume that this relates to new development and that this regulation does not require property owners to change what already exists. What does "mimic natural conditions" mean. as this is very nebulous and varies throughout the area. Additionally this significantly minimizes rights normally associated w/ property ownership. There should be alternatives (alternate plantings) that accomplish the same goal. This is not a "no net loss" provision, this is clearly aimed at substantial but not proven enhancements at the property owners expense.

Recommended Revisions:

iii. Where vegetation is proposed within the buffer it shall be provided the same functionality as to at a density to mimic natural conditions; and

iv. Vegetation shall consist of mix of native trees, shrubs and ground cover; and

Commentary:

This denies the property owner the right to plant normal ornamentals, vegetables, fruit trees, etc.. Is there any science that indicates native plants provide better ecological functions than other plant types?

Recommended Revisions:

iv. Vegetation shall perform same ecological function as a consist-of mix of native trees, shrubs and ground cover; and

v. When *alterations* are proposed within a buffer, the end result shall be no loss of vegetated areas; and

Commentary:

This would appear to be a potential physical impossibility. If a vacant lot is fully covered in vegetation, as some currently are, building of any type of structure removes area that was vegetated. There is absolutely no way there could be no loss of vegetation. This would also negate any possibility of the property owner to include a trail to access the waterfront as all remaining property would need to be vegetated.

Recommended Revisions:

v. When *alterations* are proposed within a buffer, remaining areas should be vegetated to the most reasonable amount practical, the end result shall be no loss of vegetated areas; and

vi. Vegetation management plans should place emphasis on providing plantings within a 20 foot wide area parallel and adjacent to the shoreline; and

Commentary:

This is the area that provides the location for property owners water-related activities. This is the area where we typically have our picnics, play horsehoes, keep our beach toys and boats, etc, etc, etc.. This requirement removes one of the significant benefits of living on and enjoying shoreline property ownership.

Recommended Revisions:

Delete this in it's entirety

vii. Lawn is a prohibited vegetation in the shoreline buffer due to its limited functional benefits and need for chemical and fertilizer application; and

Commentary:

Agree that chemicals related to lawn care are a problem that needs to be addressed, but forcing property owners to remove their lawns surely cannot be the intent of this

regulation. Surely this must apply to new development only: Does this apply to the whole 200 foot buffer?

Recommended Revisions:

vii. For new development, ~~Lawn~~ is a prohibited.....

e. All clearing, grading and vegetation removal shall be the minimum necessary except for the removal of noxious and invasive vegetation. Hand equipment should be used when feasible.

Commentary: none

Recommended Revisions:

~~Hand equipment should be used when feasible.~~

f. In accordance with existing regulations, only noxious weeds shall be removed from the Lake Burien 30 foot wetland or wetland buffer without approval of the Shoreline Administrator. Replacement of non-native vegetation may be allowed through approval of a vegetation management plan as prescribed in section g.

Commentary: This is more reasonable than but inconsistent w/ h below. Additionally it should be limited to new development, not existing configuration.

Recommended Revisions:

~~f. In accordance with existing regulations, only noxious weeds shall be removed from the Lake Burien 30 foot wetland or wetland buffer without approval of the Shoreline Administrator. Replacement of non-native vegetation may be allowed through approval of a vegetation management plan as prescribed in section g~~

g. The Director may establish minimum standards for vegetation management plans. At a minimum, vegetation management plans shall comply with the following;

i. Describe the area to be disturbed and the proposed vegetation to be altered; and

Commentary: Again this should only apply to new development plus I think the City Manager has enough to do w/o monitoring weeds and vegetation. It would be a waste of taxpayer dollars to hire a vegetation manager.

Recommended Revisions:

g. For new development, t The Director may establish minimum standards for vegetation management

This would apply to all of i - iii

ii. Outline specific actions or methods that will be used to minimize impacts to the ecological functions and values; and

iii. Indicate how existing shoreline vegetation will be preserved and protected; and

Commentary:

Recommended Revisions:

Applicable to new development only

iv. Describe measures that will be used or enacted that will ensure any alteration and required vegetation will be maintained for the duration of the use or development; and

Commentary:

Applicable to new development only

Recommended Revisions:

iv. For new development or modifications of a nature requiring permits, describe.....:

h. Hand removal of noxious weeds or invasive vegetation may be allowed without approval of a vegetation management plan as prescribe in section g, following a consultation with the shoreline administrator or his or her designee.

Commentary:

This requirement is unreasonable and unworkable. Puts ridiculous requirements on both property owners and city manager. Requirement as written is totally impractical. In general, property owners have done a very good job of environmental stewardship over the last few decades, and definitely don't need "Big Brother" telling us how, when, and where we pull weeds.

Recommended Revisions:

~~Hand r~~Removal of noxious weeds or invasive vegetation may be allowed without approval of a vegetation management plan as ~~prescribe in section g, following a consultation with the shoreline administrator or his or her designee~~

I respectfully request you consider the reasonableness, practicality, and impact to the property owners as you continue your review of this important document..

Thank you
Andrew Ryan

RECEIVED

MAR 23 2010

To-The Planning Commission

To-the City Council

From Chestine Edgar

Re-The Burien Comprehensive Plan, Corrections that need to be made; The SMP

March 23, 2010

CITY OF BURIEN

I am requesting that the following changes be made to the Comprehensive Plan and the Shoreline Master Plan documents that are being created based on the Best Available Science that is supposed to be in the Comprehensive Plan

1. Lake Burien has always been a Class 2 wetland in the Comprehensive plan from 1997 to 2009. In am requesting that the section in Chapter 4, Wetlands that states the Lake Burien is a wetland according to the King County rating scale add the words- Class 2 wetlands. Additionally, I am requesting that the SMP documents that were created based on the Comprehensive Plan comply with that plan and show Lake Burien as a Class 2 wetland. The city's historical records and documents support my request.

a. In 1980-81, King County classified all of their major wetlands with the King County wetland rating system. Lake Burien was designated as Class 2 wetlands (King County, 8-18-81). Also, the Lake Burien Creek was identified as a Class 2 stream. Lake Burien remained Class 2 wetlands until Burien became a city. When Burien incorporated in 1993, the city kept the King County Class 2 wetlands rating on Lake Burien. From Burien's adoption of its first Comprehensive Plan in 1997 until the most recent update to the Comprehensive Plan in December 2009, Lake Burien has always been classified as Class 2 wetlands according to the King County Rating Scale.

During the past 30 years, the wetlands designation of Lake Burien has always been a Class 2. In 2003, the City of Burien created their Critical Areas Ordinance and added a fourth designation (not supported by any science) to their wetlands rating scale and arbitrarily changed the wetlands designation of Lake Burien from a Class 2 to a Class 4 wetlands, again with no supporting scientific evidence. This was in complete conflict with the Comprehensive Plan. Currently, the Comprehensive Plan shows Lake Burien as wetlands based on the King County rating scale.

b. It is important that the change I am requesting happen now because once the Shoreline Master Program is adopted, it will become the CAO for critical shorelines. King County, the Burien Comprehensive Plan and the Grette Technical Documents, Nov. 2009/Draft all show Lake Burien to be Class 2 wetlands. The SMP requires that there be agreement with the Comprehensive Plan as well as best current science. Lake Burien is Class 2 wetlands.

2. Based on the Comprehensive Plan, the buffer on Lake Burien needs to be changed in the Shoreline Master Plan and its supporting technical documents.

a. When King County classified Lake Burien in 1980; the buffer that was required by the county was 50'. That buffer requirement stayed in place until 2003. In 2003, when Burien adopted its CAO (creating their own rating scale, designating Lake Burien as Class 4 wetlands, but included a map that still identified it as Class 2 wetlands) the buffer was changed to a default 30' buffer regardless of property characteristics. **However according to the Comprehensive Plan Policy, this new buffer was not in compliance with the Comprehensive Plan because in the Comprehensive Plan, Lake Burien was still Class 2 wetlands on the King County rating scale.**

b. It seems only logical that a buffer of no less than the historical one of 50' be allowed. In viewing most of the developed properties on Lake Burien, it appears that their setback and buffer are 50' or more on the sites. I am not an expert on buffers and setbacks but it appears that 50' was the standard number used. To make it greater than 50' would turn almost every home on Lake Burien into a non conforming structure and that makes no sense. The Dept. Of Ecology will probably need to be consulted on this issues. However, I am requesting that a re-examination of the buffer issue happen before a buffer is set in the SMP document. Also, I am requesting that a correction on the buffer be made in all of the Shoreline Master Plan documents.

3. The Lake Burien Residential Zoning Area has always been Low Density because it is located in a sensitive/critical area (actually two areas-Wetlands and Aquifer Recharge Area). Additionally, the area is already characterized by single family residential development at four houses per acre or less-see Pol RE1.5, page 2-8 of the Burien Plan.

a. In 1980-81 when King County rated the lakes, it also created zoning areas and stated that sensitive areas would get a low density rating to ensure adequate protection of the sensitive area. Burien's Comprehensive Plan, created in 1997, had the same low density provision in it. This provision has been carried forward into the current Comprehensive Plan most recently updated in December, 2009.

Lake Burien has always been a Low Density Zoning Area because it is located in a sensitive/critical area. Additionally, the area has always been characterized by 4 or less houses/units per acre. The City of Burien has tried to mess around with the lot size and buffer to increase density on Lake Burien. But the fact remains that by both King County policy and the Burien Comprehensive Plan policy, Lake Burien has always been a Low Density Zoning Area.

b. In June 2010, the city (when the Plan comes up for review) should correct its map to reflect that Lake Burien and the houses immediately adjacent to the lake are a low density residential area.

c. The Pol REC 1.5, page 2-8 requires that The Cumulative Impacts Document(from SMP documents) analysis be redone to examine the environmental implications of imposing a medium density lot size into a low density area. Only after that analysis is completed, should a buffer be recommended and decided on for the Burien SMP.

d..In June 2010, the Burien Planning Commission may want discuss the issues of lot size, zoning and impervious surface allowed and how that applies to the Comprehensive Plan for Lake Burien.

Conclusion- Until the above corrections are made, the Burien SMP will be out of compliance with the Burien's Comprehensive Plan. I urgent you to attend to these changes immediately.

*Attachment - Residential Neighborhoods,
Burien Comprehensive Plan,
Pol RE 1.5*

Residential Neighborhoods

Goal RE.1

Provide a variety of attractive, well-designed housing choices that reinforce the character of the neighborhoods and meet the needs of existing and future City residents.

Pol. RE 1.1 The planned densities in single family neighborhoods should match the land use map.

Pol. RE 1.2 The planned densities for single family development should encourage a lower development potential in areas with development constraints.

Discussion: Within the City, potential development constraints include, but are not limited to, critical areas, such as areas along the coastline that are susceptible to landslides, areas with wetlands or areas prone to flooding; areas with stormwater drainage problems; exposure to exterior noise levels that exceed an Ldn of 55 dBA; or deficiencies in the type or level of services necessary for urban development, such as transportation facilities (roadway and pedestrian), sewer, or water.

Pol. RE 1.3 Any existing single-family lot that was legally subdivided or legally created prior to enactment of subdivision statutes prior to incorporation or annexation shall be considered a legally conforming lot for building purposes, providing the size of the lot was not reduced by more than 50 percent through acquisition for public purposes, and on such lots new homes may be built and existing houses may be expanded and remodeled, provided that applicable setbacks, lot coverage, critical area restrictions, design review requirements (if any), height limits and other applicable regulations in the zoning code are met.

Pol. RE 1.4 When determining buildable lot size for residential development, the area of a lot covered by water (including but not limited to lakes or the Puget Sound) shall not be included in the calculation.

Pol. RE 1.5 The *Low Density Residential Neighborhood* designation will provide for low-density residential development. Development within this designation includes existing neighborhoods that are zoned for four units per acre or less.

✓ **Allowed Uses and Description:** The *Low Density Residential Neighborhood* designation allows single family residential uses and their accessory uses at a density of 4 units per acre or less, due to the constraints posed by critical areas. This policy may be implemented by more than one zoning category, based on the ability of the land and public facilities to support development. Development standards, for such items as impervious surfaces, streetscapes, sidewalks and stormwater drainage,

may vary within each zoning category based on the existing character of the area.

Designation Criteria: Properties designated *Low Density Residential Neighborhood* should reflect the following criteria:

- ✓ 1. The area is already generally characterized by single family residential development at four units per acre or less; and
2. Relative to other residential areas within the City, the area is characterized by lower intensity development as shown on Map LU-2.
- ✓ 3. The land is designated as a potential landslide hazard area, steep slope area, or wetland on the City of Burien's Critical Areas Map,
4. The existing and planned public facilities for the area cannot adequately support a higher density.
5. The area is subject to existing impacts from high levels of airport-related noise.

Discussion: Portions of the City that contain critical areas are appropriate for a lower level of residential density to protect those critical areas from impact associated with higher density development. Lower density development is appropriate to protect the critical areas and those functions that they serve including but not limited to the natural habitat and promoting the overall public health, safety and welfare. In addition, lower density residential development is often more compatible with high levels of airport-related noise than higher density residential development. For example, currently within the city, the northeastern area is subjected to high levels of airport-related noise, yet maintains good neighborhood quality. Applying lower density development potentials to such areas will help to preserve the existing quality of the neighborhoods and protect critical areas. (Amended, Ord. 445, 2005)

Pol. RE 1.6 The *Moderate Density Residential Neighborhood* land use category will provide primarily single family residential uses in neighborhoods suitable for this type of development, where community improvements and facilities that are normally necessary for development can be provided. Development within this designation includes existing neighborhoods that have been platted at an average of five to six units per acre.

Allowed Uses and Description: The *Moderate Density Residential Neighborhood* designation allows for single family residential uses, their accessory uses and public and semi-public uses. The maximum residential density shall not exceed six units per net acre.

To retain the existing character of development in the neighborhoods classified as *Moderate Density Residential Neighborhood*, the City's zoning code will specify appropriate density and dimension standards that include floor area ratios (FARs) in addition to lot coverage, setbacks and height. Development standards for impervious surfaces, streetscapes, sidewalks and stormwater drainage, may vary within each zoning category based on the existing character of the area.

Discussion: There are specific concerns about increasingly large home sizes within the City's moderate density neighborhoods. The zoning code will need to include measures that adequately restrict homes from becoming massive structures that cover almost an entire lot and are out of character with the surrounding residential development.

Designation Criteria: Properties designated for Moderate Density Residential Neighborhood uses should generally reflect all of the following criteria:

1. The area is already characterized by primarily single family residential uses at greater than four units per acre.
2. The existing or committed public facilities are adequate to support residential development at this density.
3. The area does not have significant amounts of critical areas.
4. The area is designated Urban on Figure 2 LU-2 (Application of this designation outside of the area delineated as Urban, shall be limited to five units per acre).

Pol. RE 1.7 The *Low and High Density Multifamily Neighborhood* designations should provide for the location of stable and attractive multifamily development near transit, employment, shopping and recreation facilities.

Compatibility between these uses and adjacent single family development is provided through the City's design guidelines. Recreation facilities, including a park or open space, is required as an integral part of any multifamily development. Public facilities, especially pedestrian access to activity centers, are a requirement for development. In addition, adequate services and facilities (such as sewer, water and roadway capacity) must be provided concurrent with development before the upper density limit is reached. Developments within these designations include existing multifamily dwellings at an average of 8 to 48 units per acre.

**CITY OF BURIEN, WASHINGTON
MEMORANDUM**

DATE: March 25, 2010

TO: Planning Commission

FROM: Scott Greenberg, AICP, Community Development Director
David Johanson, AICP, Senior Planner

SUBJECT: March 30, 2010 Planning Commission Meeting

Introduction

The March 30, 2010 Planning Commission meeting is a continuation of your discussion on the Shoreline Master Program (SMP). Your packet includes “meeting notes” from your informal meeting on March 16, 2010 and a revised SMP draft for review, discussion and possible action. The revised draft is also available on the City web site and at City Hall free of charge.

The revised draft dated March 25, 2010 includes all of the changes directed by the Planning Commission in your previous meetings. All changes to the November 2009 Shoreline Advisory Committee Draft are shown in ~~strikeout text~~ (deletions) and underlined text (additions). Following discussion and any additional changes to the new draft, the Commission may want to pass a recommendation to the City Council. If you are ready, we have provided two separate motions below that you could use at your meeting.

Outstanding Issues and Information Requests

We have not received formal direction from the Commission on several sections or topics. In those cases, we have modified the draft to include our recommendation. Of course, these can be changed to reflect final Commission direction. These sections and topics are:

- **20.30.075 Piers, Docks and Floats (now “Over-Water Structures”).** At your March 9th and 16th meetings we had proposed more detailed regulations to reflect Washington State Department of Fish and Wildlife (WDFW) guidelines. Following your discussion on March 16, we believe that including these detailed WDFW guidelines in our local shoreline master program (SMP) could make the SMP outdated if WDFW changes their guidelines. Therefore, we have removed the dimensional details (such as # of floats, size of docks, etc.) and changed the section to refer to “over-water structures.”
- **20.30.025 Critical Areas.** At your March 16th meeting, we proposed changes related to the draft wetland regulations, and distributed Appendix 8-C related to buffer widths. These proposed changes have been incorporated into the new draft.

Commissioner Clingan asked for additional information on several items. These will be addressed at your meeting.

- **Designated view corridors.** We were asked to provide a definition or description of a designated view corridor as it relates to protection and enhancement of visual access (20.20.015 Public Access, Policies PA-11 and PA-12). The location of these public views is based on the location and design of designated visual and physical public access areas. Therefore we recommend that these areas be specifically determined as part of a future public access plan (see Motion #2 below).
- **Non-conforming homes and undeveloped lots.** We were asked to provide the number of homes that would become non-conforming due to the new buffer and setback requirements, and the number of undeveloped lots in the shoreline area. We are still working on this and will provide the information at your meeting.

Possible Motions

We have provided several motions below. Motion #1 would recommend approval of the SMP to the City Council. If the Commission does not make any changes to the draft, Motion 1A is appropriate.

Motion 1A. I move to recommend to the City Council approval of the draft Shoreline Master Program dated March 30, 2010.

If the Commission makes changes to the draft, Motion 1B is appropriate.

Motion 1B. I move to recommend to the City Council approval of the draft Shoreline Master Program dated March 30, 2010, with the changes approved at the March 30, 2010 Planning Commission meeting..

Motion #2 is separate and would recommend that a public access plan be prepared after the SMP is in effect.

Motion 2. I move to recommend to the City Council that a public access plan be prepared after the new Shoreline Master Program is in effect.

City of Burien

BURIEN PLANNING COMMISSION MEETING

March 16, 2010

7:00 p.m.

City Council Chambers

MEETING NOTES

Planning Commission Members Present:

Joe Fitzgibbon, Jim Clingan, Janet Shull

Absent:

Rebecca McInteer, Rachel Pizarro

Others Present:

David Johanson, senior planner; Scott Greenberg, planning director; Nicole Faghin, Reid Middleton, Inc.

Roll Call

Because a quorum was not present, the meeting was not officially called to order. Chair Fitzgibbon began the informal discussion at 7:00 p.m. and presided.

Agenda Confirmation

Absent a quorum, no action to approve the agenda was taken.

Public Comment

Chair Fitzgibbon explained that the commission could not take public comment without a quorum.

Approval of Minutes – None

Old Business

- A. Shoreline Master Program Update: Discussion and Possible Recommendation

The discussion began with item 21F. Senior planner David Johanson noted that staff was not recommending a change to the proposed policy language. The commissioners concurred with the language as proposed.

With regard to item 21G, Mr. Johanson said the policy language was taken from the Comprehensive Plan. He said the suggestion was made to replace the word “waterfront” with “publicly owned street ends.” He stressed that absent a significant change in the

meaning or intent from what is in the Comprehensive Plan, staff suggests against making changes.

Commissioner Shull agreed with the recommendation of staff not to change “waterfront” to “publicly owned street ends” in every instance where the term appears in the policies. Commissioner Clingan concurred. Chair Fitzgibbon agreed with the notion of being consistent with the Comprehensive Plan language, but suggested “publicly owned street ends” could in some cases be clearer.

With regard to 21H, Chair Fitzgibbon suggested the language of the first sentence should be consistent with the Comprehensive Plan. He supported the addition of “protects private property rights and individual privacy” in paragraph (a). Commissioner Clingan agreed. Commissioner Shull agreed as well but said it was not absolutely necessary to add the language given that the concept is in one of the overarching goals.

Mr. Johanson called attention to paragraph (b) and said the only exception staff had to the proposed additional language was the phrase “when used in a manner that results in no net loss of shoreline ecological function,” noting that the phrase is repeated often throughout the document; adding it to (b) would not be of any particular benefit. Mr. Johanson also informed the Commission that staff was not in favor of striking out “any new parking that is developed would be.”

Chair Fitzgibbon suggested (b) should read “Ensuring that public parking is available and limited to a level appropriate to the capacity of the public access site, and is harmonious with the surrounding neighborhood.” He said both new and existing parking should be harmonious with the neighborhood. Commissioners Shull and Clingan concurred.

Mr. Johanson said staff agreed with the suggested language in paragraph (d). The commissioners agreed. Commissioner Shull observed that the first “and” could be eliminated.

Mr. Johanson suggested the proposed additional language for (e) would not be beneficial since the entire section is talking about street ends. Commissioner Shull agreed and proposed that the new language would not be helpful at all. She recommended against including it.

Chair Fitzgibbon suggested (e) should read “Installing limited trail improvements and enhancements in city rights-of-way to allow access to the water.” Commissioner Shull said she could support that language.

Commissioner Clingan asked what “installing limited trail improvements” would consist of. Mr. Johanson said that would be one way the City could manage its street ends. Commissioner Clingan said he wondered where the trails at the street ends would go but said he could live with the language suggested by Chair Fitzgibbon.

Commissioner Shull allowed that in light of the overarching policy language paragraph (e) may belong somewhere else. Mr. Johanson pointed out that item 21L talks about promoting a coordinated system of connected pathways, sidewalks, passageways between buildings, beach walks, and shoreline access points, which pretty well captures the intent of paragraph (e).

Community Development director Scott Greenberg commented that all of the subsections of 21H refer solely to street ends. Paragraph (e) talks about how people get from street ends to the water. Use of the word “limited” implies that major trail systems or connections are not what are being called for.

Chair Fitzgibbon said if that is the case, “Installing limited trail improvements and enhancements in city rights-of-way to allow access to the water” would provide the most clarification. Commissioners Shull concurred.

Mr. Johanson asked if “city rights-of-way” should be used in all instances where the phrase “waterfront street end” is used. Commissioner Shull took a step back and said she would prefer to use “waterfront street end” given that that is the specific type of access talked about in the section. Commissioner Clingan concurred.

In the final analysis, the conclusion was that (e) should be left as worded.

With regard to paragraph (f), Mr. Johanson said the suggestion of staff was to have it read “Minimizing the potential impacts associated with their use on adjacent private property, including but not limited to protecting individual privacy and ensuring public safety.” The commissioners agreed with the proposal.

Mr. Johanson suggested paragraph (g) should read “Developing a street ends plan that promotes waterfront access and public safety.” Chair Fitzgibbon concurred.

Commissioner Shull noted that “public safety” had been added to (f) and as such having it in (g) would be redundant. She allowed that including the phrase would not cause any harm.

Mr. Greenberg said the recommendation of staff was not to use the suggested language changes for item 21I, consistent with the commission’s previous discussion regarding “shoreline” and “waterfront.” The commissioners agreed.

Mr. Greenberg pointed out that the original language of item 21J talked about both existing and future visual access to the shorelines. The proposed language change would apply only to existing visual shoreline access. He said staff was recommending against making that change.

Commissioner Clingan said he had been mildly entertained by the visual aspect references in the document. He said visual access requires designated view corridors, which is not something the law would allow the City to require across private property.

Nicole Faghin with Reid Middleton explained that a visual corridor or visual access would apply only where there is designated public access, either visual or physical. The first step would be to determine if public access has been applied to a property. If it had been, the second step would be to determine if it is physical or visual. So it would need to be determined if a property is in the realm of being considered something that might have public access applied to it.

Chair Fitzgibbon suggested that if the word “City’s” were to be deleted from 21J, the applicability of the policy would be expanded. Mr. Greenberg said the word is intended to clarify which shoreline is specifically being referenced.

There was agreement to leave the language as originally written.

With regard to item 21K, Mr. Greenberg suggested that to make the proposed revision would change the tone of the policy. He added that using only the words “preserved” and “preserving” would be inconsistent with state law that talks about enhancing public access to the shorelines. He said the recommendation of staff was to not change the language from the original drafting. The commissioners agreed.

Moving on to item 21L, Mr. Johanson said the recommendation of staff was not to make the proposed wording change.

Commissioner Clingan agreed, suggesting that the additional language would be redundant. Commissioner Shull agreed as well, as did Chair Fitzgibbon who added that “on publicly owned lands” could preclude the City from options property owners may at some point actually want.

Mr. Johanson explained that the intent of item 21M is to make it clear there is policy language and a permitting process in place to address how bring about access as part of a subdivision should one be proposed. He said access just does not happen on its own; it is usually associated with some other permit application.

Mr. Greenberg said there was no proposal to change the language of 21N. He said staff did not oppose having a plan for public access, pointing out that the City has plans for streets, bicycle and pedestrian paths, capital improvement plans, parks and open space plans. A public access plan would fit into the realm of functional plans that help implement policy language. The City Council would need to add the creation of a public access plan to the work program at some future time. There is no requirement to include such a plan in the Shoreline Master Program.

Commissioner Shull said she would like to see the commission suggest to the council that creating a public access plan should be added as a work program item. Mr. Greenberg said staff would review the issue and come back with a recommendation as to whether it should be policy language as part of the Shoreline Master Program or a separate work program item.

Mr. Greenberg pointed out that item 23 applies to SW 172nd Street and the suggestion made was to add the term “historically significant community” to the regulation. He said staff could find no instance in which making the revision would actually change the regulation, so was recommending not adding the term.

Chair Fitzgibbon said he could empathize with the concern but suggested the Shoreline Master Program is not the appropriate place to deal with the issue.

Mr. Greenberg said there were no recommendations for specific changes to items 24 through 27.

Commissioner Clingan suggested that the issue of access that is at the heart of item 24 was addressed by the commission on March 9. If access becomes an issue down the road, the impact on Lake Burien will be addressed appropriately.

Chair Fitzgibbon concurred and added that the commission is not in a position to determine whether or not access will be good or bad relative to Lake Burien. It would be inappropriate to include in the Shoreline Master Program a statement indicating that there will never be access to Lake Burien, or that there definitely will be access to Lake Burien. If the issue of access arises at some point, it will need to be evaluated according to the standards and state law.

Commissioner Shull agreed.

With regard to items 25, 25A, 26 and 27, Chair Fitzgibbon said the issues raised are not questions the commission has been asked to answer. In each case, the answers would come as part of a formal process at a later time.

Turning to item 28, Mr. Greenberg explained that the comment refers to 20.30.035.2 and subparagraphs (a), (b) and (c). He said the suggestion is that the subparagraphs should be clarified so that the existing property along SW 172nd Street will not be impacted or disturbed in any way in order to provide physical or visual access to the water. The criteria in (a), (b) and (c) apply to shorelines of the state and inside the shoreline jurisdiction. He said staff was recommending that the draft language be retained.

Commissioner Shull agreed with the recommendation of staff.

Commissioner Clingan said the concern relative to SW 172nd Street is that the improvements planned for the south side of the street could trigger the access issue. There are some open right-of-way areas that are the cause for concern for some citizens. However, the areas are surrounded by private property and are not set to be developed. He agreed the language should be left as it is in the draft. Chair Fitzgibbon was in agreement with Commissioner Clingan.

Mr. Greenberg suggested there was nothing relative to items 29 and 30 that would justify making a change to the draft language. The commissioners agreed.

Mr. Johanson said staff did not have any objections to the proposed wording change for item 30A, but noted that it is repetitive and would not add much to the goal. Commissioner Clingan agreed. Chair Fitzgibbon also agreed but added that while redundant he would not object to leaving it in; when the time comes to look at the plan in full, it could be determined that some of the redundant language could be eliminated.

It was agreed to leave in the proposed additional language.

With regard to item 30B, Mr. Johanson called the attention of the commissioners to item 69 and suggested policy REC 2 should read “Favorable consideration should be given to proposals which complement their environment and surrounding land and water uses and result in no net loss of ecological function.” He said the phrase “leave the natural areas undisturbed and protected” could limit possibilities.

Mr. Greenberg noted that item 69 is part of the recreation element, though there are public access aspects involved vis-a-vis parks, recreational facilities and open spaces.

Chair Fitzgibbon favored the proposed language for item 69 but asked if staff was suggesting the same language for item 30B.

Commissioner Shull said it was her understanding staff was suggesting not making the changes proposed for the first part of item 30B and changing the last part of item 30B to read the same as the proposed language for item 69. Mr. Johanson said that was the intention of staff. Commissioner Shull suggested the proposed language change for the first part of item 30B was not necessary because in all instances where the policy will be applied the City will have to consider the designation of the shoreline environment.

The commissioners supported the recommendation of staff.

Commissioner Shull called attention to a letter the commission received subsequent to the March 9 meeting. She observed that the letter referred to some existing Comprehensive Plan language related to SPA-2, the Ruth Dykeman Center. In short, the existing Comprehensive Plan policy language is clear in saying that public access to the water is prohibited. She said she was surprised to find out that language exists. Mr. Johanson said staff is looking into that policy language to determine if it is consistent with the Shoreline Management Act and the state guidelines. Help has been sought from the Department of Ecology and there should be an answer before the next commission meeting. If it is determined that the existing language is inconsistent, it will need to be changed through the proper process.

Mr. Johanson said the issue with the proposed wording change to item 30C is the addition of the word “public.” He said the recommendation of staff was not to make the change.

Chair Fitzgibbon expressed the view that the change would not add much value to the section or yield better protections for private property. Commissioners Clingan and Shull agreed.

Mr. Johanson said staff was not recommending the proposed change to item 30D. The commissioners unanimously agreed.

Mr. Johanson said staff agreed with the suggestion to change “facility” to “facilities” in the first part of item 30E, but did not agree with the suggested wording change to the rest of the section. The commissioners agreed.

Mr. Johanson noted that beginning with item 30F the focus was on the circulation element. He commented that there is an inherent conflict associated with providing circulation systems; it is not possible in every case to absolutely protect privacy. While the objective makes sense and is something the City strives to do, the proposed wording will not resolve every conflict. He said staff was recommending no change to the original wording of item 30F. The commissioners accepted the suggestion of staff.

With regard to item 30G, Mr. Johanson reminded the commissioners that one of the overarching policies is to protect private property rights and suggested the proposed language revision was not needed. The commissioners concurred.

Mr. Johanson said staff agreed with the proposed language for item 30H. Commissioner Shull said it would be a hard sell to convince public transit agencies to provide public transit to every little street end in the city.

Chair Fitzgibbon suggested the policy is moot given how unlikely it is that Metro would add a new bus route to serve places like Maplewild Avenue. He said, however, that he could support the recommendation of staff. Commissioner Clingan agreed.

Turning to item 30I, Mr. Johanson said the recommendation of staff was to have it read “Parking in shoreline areas should directly serve a permitted shoreline use. Parking developed for public access points should be limited to the number of spaces consistent with the capacity of those public access points and should be designed to protect private property rights.”

Commissioner Shull said she would prefer to see the last part of the section read “and is harmonious with the surrounding neighborhood.” Private property rights are protected by law, and the focus should be on parking areas that will fit the local neighborhood. The other commissioners concurred with the suggestion.

Mr. Johanson said staff was not recommending any change to item 30J. Chair Fitzgibbon said he could support adding “harmonious with the neighborhood.” Commissioner Shull agreed with the sentiment but suggested that it did not need to be repeated in each policy. Commissioner Clingan agreed.

Mr. Greenberg said the focus of item 30K is the notion of having efficient parking in the shoreline area. The proposed language would change the meaning and have it apply only to parking facilities on public land. He said staff was recommending no change.

Commissioner Shull proposed that making the change would trigger the loss of the value of the policy, which encourages shared parking and minimizing impervious surface area. Chair Fitzgibbon and Commissioner Clingan agreed.

Mr. Greenberg explained that item 30L is policy language relating to utility facilities and is in the circulation element because of the utilities that exist in public rights-of-way. He said staff was recommending not making the proposed change. The commissioners concurred with staff.

Mr. Greenberg noted that item 31 deals with public access regulations. He said section 20.30.035(2.a) states that public access provided by shoreline street ends, rights-of-way and other public lands shall provide, maintain and enhance visual access to the water and shoreline in accordance with RCW 35.79.035. He noted that the commenter mentioned that the section of the RCW only concerns limitations on vacations of streets abutting bodies of water. The section talks about maintaining, enhancing and preserving access and connects back to state law. He said the recommendation of staff was to leave the regulation unchanged, and the commissioners agreed.

Mr. Johanson pointed out that item 31A had been addressed at an earlier meeting of the commission. With regard to item 31B, he pointed out that the language of paragraphs (a) and (b) was taken directly from the Comprehensive Plan. For the sake of consistency, the action taken with regard to item 21C should apply to (a); he said staff was not recommending any change to that paragraph. The recommendation of staff was accepted by the commissioners.

Mr. Johanson said (b) refers to Policy PA-4 and recommended eliminating “on private lands” and approving the balance of the proposed wording change. The commissioners agreed with the staff recommendation.

With regard to (c), Mr. Johanson said the recommendation of staff was to retain the original language. He pointed out that the City has always been reticent to get into the business of regulating views. The commissioners offered no opposing views.

Mr. Johanson said in light of the previous discussions with the commission, staff was recommending no change to paragraph (a) of item 31C. The commission accepted the recommendation.

Mr. Johanson proposed not making the suggested wording change to paragraph (b). Chair Fitzgibbon stressed the need to be consistent with the existing policy language, but said that did not mean the City should encourage the broadening of roadway shoulders, especially in the shoreline. Mr. Johanson pointed out that roadway shoulders can be used for bike lanes.

Commissioner Shull said when she thinks of visual access to outstanding scenic areas she thinks of roadside pullovers. She said she associates the broadening of road shoulders more with safe walking and biking areas. She said she could agree to retaining the original language.

Mr. Greenberg suggested the language could be broadened to refer to visual access being provided along city rights-of-way in an appropriate manner. The commissioners said they could support revising the language in that way.

With regard to paragraph (c), Mr. Johanson recommended keeping the existing Comprehensive Plan language. The commissioners concurred.

Mr. Johanson noted that paragraph (d) had been covered in previous discussions.

The commissioners agreed with the recommendation of staff not to change the language of paragraph (h).

Mr. Johanson read to the commission section 20.30.085(2.h) that is referenced by item 31D. He explained that the issue was discussed in detail by the Shoreline Advisory Committee. The notion of hand-carried watercraft was brought forward as a way to limit the possibility of introducing invasive species to Lake Burien. He said staff was not recommending any changes to the language. The commissioners agreed with staff.

Item 31E was discussed earlier in the meeting.

Mr. Johanson directed the attention of the commission to items 67 and 68, which he noted both related to public access. He noted that the comments relative to policy ALL 5 and PA 3 had been addressed already. He commented that the issue relative to REC 3 also had been dealt with.

With regard to item 83, Mr. Johanson commented that the issue is related to the topic of the number of lots in a subdivision that could trigger public access. He said there are approximately 90 lots within the shoreline jurisdiction around Lake Burien. To determine the implications of access and lot capacity, staff looked at the existing lot sizes and applied the buildable lands capacity methodology. The zoning around the lake is RS-7,200, which means the minimum lot size is 7,200 square feet. Multiplying the minimum times five yields 36,000 square feet, which is the amount of land that would be required to get a five-lot subdivision. However, it must be kept in mind that access tracts, stormwater tracks and the like do not count toward the total lot area. On average, about 10 percent of the land area is needed for access-related items, which means that approximately 40,000 square feet is needed to achieve five lots. There are four lots on Lake Burien that meet that criteria based on lot area alone, and Mr. Johanson showed the commissioners aerial photos of each one with the lot configurations outlined.

Mr. Johanson called attention to item 86 and the concern about private property liability when public access points are open to unregulated public access. He referenced RCW 4.24.210 that states that anyone who allows people to recreate on their properties without charging them for the privilege is not liable for any injuries, absent an obvious hazard that was previously known to the property owner.

Ms. Faghin brought the attention of the commission to the topic of bulkheads and other shoreline stabilization structures, beginning with item 39. She suggested that while the comment is a good one, the issue has been addressed sufficiently. She recommended against making any change. There was agreement not to make a change.

With regard to item 39A, Ms. Faghin said the issue in paragraph (a) deals with normal maintenance and repair of bulkheads. She said the concern is not being inconsistent with the exemption language of 20.35.025(4).

Mr. Johanson clarified that the language of 20.35.025(4) is taken straight from the WAC. The commissioners agreed that no change was warranted. With regard to paragraph (b) he said staff did not object to the proposed language change relative to minimizing the transmission of wave energy, and the commissioners agreed to allow the proposed wording.

Docks, piers and floats were addressed next. Ms. Faghin provided the commissioners with copies of proposed language revisions to section 20.30.075. She said one comment received pointed out inconsistencies in the definition. She said staff concurred and was suggesting use of the term “overwater structures” to refer to docks, piers, floats and rafts.

Ms. Faghin noted that items 41 and 44 both talk about the need for more information about repairing and replacing docks. She said staff took the existing section and broke it into three separate parts: general regulations for public and private overwater structures; repair and replacement of existing public and private piers and docks; and recreational floats and swim platforms, both repairs and new.

Ms. Faghin said the only major change to 20.30.075 is the use of the term “overwater structures.” In the regulation section, no changes are recommended to paragraphs (a), (b), (c), (d), (e), (f) and (g), except for substituting the term “overwater structures.” For paragraph (h), new development standards are introduced specific to how big the docks and piers can be that can be rebuilt. As proposed, there are size limitation standards for docks used by a single-family residence, joint-use docks shared between two properties, and docks shared by three or more residential units. New development standards also are outlined that address how wide a dock can be under the regulations handed down by the Department of Fish and Wildlife, which is 4 feet wide for the first 30 feet and 6 feet wide for the next 30 feet, with no more than two additional fingers a maximum of 2 feet wide, and ramps no more than 4 feet wide.

Ms. Faghin said there was a comment about grating, or structure types that allow light to penetrate. According to the Department of Fish and Wildlife, Lake Burien is not a

salmon-bearing lake, so there is no requirement from them for grating. Accordingly, staff will not be requiring grating on Lake Burien.

Ms. Faghin said staff has included a development standard relative to pilings consistent with the Department of Fish and Wildlife. The department limits pilings to 5 feet in diameter and allows only steel or untreated wood. The spacing of pilings is predicated on limiting the total number of pilings in the water.

With regard to repair and replacement, Ms. Faghin said the recommendation of staff is to impose the standards that apply to the construction of new docks if 50 percent or more of a dock is to be replaced, and to use different standards where less than 50 percent of a dock is to be replaced. If all that needs to be done is replacement of the decking, the recommendation is that for docks that are 8 feet or wider should have grated decking to accommodate light penetration.

Ms. Faghin said the recommended regulations for floats and swim platforms would limit the total number of new structures on Lake Burien to two, limit the size of each to 150 square feet, require that they be located in 15 feet or deeper water up to 200 feet from the ordinary high water mark, and require that they be fully encapsulated. Any repair or replacement of floats and swim platforms would have to follow the development standards for docks and piers.

Mr. Johanson said staff was not expecting feedback on the new language until the next meeting.

With regard to shoreline designations and buffers, Mr. Johanson called attention to item 2. He shared with the commissioners a map showing the proposed Shoreline Residential and Urban Conservancy designations. One comment made was in regard to an area along Maplewild Avenue near the slide where there is a lot of intact vegetation and low-intensity residential uses that are set back from the water; the request was to protect the area by designating it Urban Conservancy. He said there are in fact houses along that stretch along with some vegetation, but not enough to warrant the Urban Conservancy designation. The commissioners were unanimous in not wanting to see the designation changed from Shoreline Residential.

Mr. Johanson said a comment was also received regarding the area near the Duffy property in which a different shoreline designation was requested. He said there are buildings in the area and a substantial amount of vegetation compared to other areas, but said staff was not recommending a change from Shoreline Residential.

Mr. Johanson said the third request was in regard to the private beach that is owned in common by the Shorewood Community Club. The argument made was that the conditions of the area match the criteria for Urban Conservancy. Mr. Johanson noted, however, that the size of the piece, the fact that it is surrounded by and is residential in nature, staff believes the Shoreline Residential designation is appropriate.

Commissioner Shull said she agreed wholeheartedly with staff regarding the first site. With regard to the second two properties, however, she said the comments had some merit. She agreed, however, with the notion that the small size of the two sites would argue against having a designation different from their neighboring properties.

Chair Fitzgibbon argued against breaking up the different designations and applying a different one for each reach. He agreed with Commissioner Shull that the argument could be made for Urban Conservancy for the second and third sites.

Commissioner Shull asked if the comments relative to the second and third sites had been run by the City's state Department of Ecology representative. Mr. Johanson said they had not and that he would do that. He added that for the community beach site, if designated Urban Conservancy the existing use would not be permitted.

Mr. Greenberg pointed out that according to the shoreline permit matrix, 20.30.001, there are only three differences between Shoreline Residential and Urban Conservancy: cell towers are a conditional use in Shoreline Residential and prohibited in Urban Conservancy; community beach is not a permitted use under Urban Conservancy; and residential multifamily requires a substantial development permit in Shoreline Residential and a conditional use in Urban Conservancy for areas zoned single family. There are differences between the two zones when it comes to development standards.

Commissioner Clingan said he would argue against changing the shoreline designations. Commissioner Shull agreed. Chair Fitzgibbon said his preference would be to edit the matrix to make community beach a conditional use under Urban Conservancy and to redesignate the second and third sites.

Mr. Johanson said a comment was made about the need to base the buffer width for the Urban Conservancy designation on science, which would mean at least 100 feet, preferably 150 feet. The draft table calls for a buffer of 50 feet. He pointed out that there is only one portion of the Urban Conservancy area that is not also a steep slope critical area, which also has vegetation management standards. A 100-foot buffer would fall either in the critical area or the shoreline buffer.

The commissioners were in agreement not to seek an increase in the buffer width.

New Business - None

Director's Report - None

Adjournment

The meeting ended at 9:46 p.m.



Department of Ecology Coastal Zone Atlas, 2007

City of Burien

Shoreline Master Program

SMA Grant No. G0800116

Planning Commission DRAFT

March 2010

ReidMiddleton

Burien Shoreline Master Program

March 2010

Title 20

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Chapter I. User's Guide

20.10.001 Overview of State Shoreline Management Act

The State of Washington's Shoreline Management Act (RCW 90.58) was passed by the Legislature in 1971 and adopted by the public in a 1972 referendum. The following is an excerpt from the Shoreline Management Act stating Washington State's policy regarding shorelines.

RCW 90.58.020 - The legislature finds that the shorelines of the state are among the most valuable and fragile of its natural resources and that there is great concern throughout the state relating to their utilization, protection, restoration, and preservation. In addition it finds that ever increasing pressures of additional uses are being placed on the shorelines necessitating increased coordination in the management and development of the shorelines of the state. The legislature further finds that much of the shorelines of the state and the uplands adjacent thereto are in private ownership; that unrestricted construction on the privately owned or publicly owned shorelines of the state is not in the best public interest; and therefore, coordinated planning is necessary in order to protect the public interest associated with the shorelines of the state while, at the same time, recognizing and protecting private property rights consistent with the public interest. There is, therefor, a clear and urgent demand for a planned, rational, and concerted effort, jointly performed by federal, state, and local governments, to prevent the inherent harm in an uncoordinated and piecemeal development of the state's shorelines.

It is the policy of the state to provide for the management of the shorelines of the state by planning for and fostering all reasonable and appropriate uses. This policy is designed to insure the development of these shorelines in a manner which, while allowing for limited reduction of rights of the public in the navigable waters, will promote and enhance the public interest. This policy contemplates protecting against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life, while protecting generally public rights of navigation and corollary rights incidental thereto.

Permitted uses in the shorelines of the state shall be designed and conducted in a manner to minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline area and any interference with the public's use of the water.

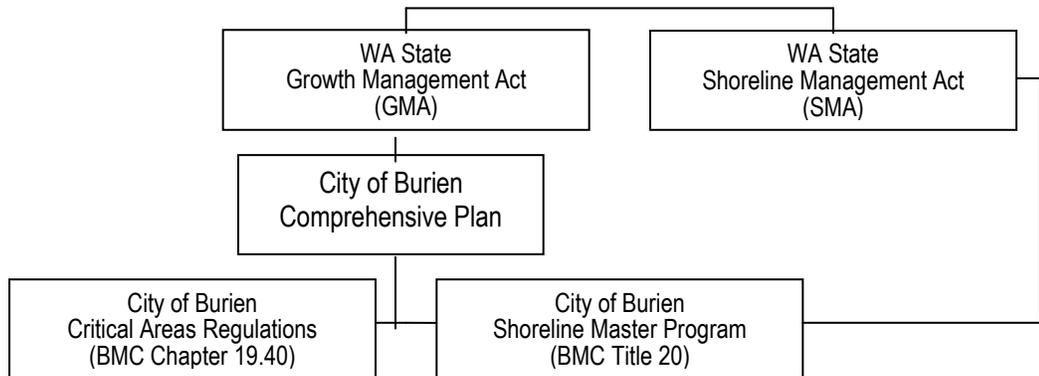
The goal of the Shoreline Management Act (SMA) is to "prevent the inherent harm in uncoordinated and piecemeal development of the state's shorelines." It establishes statewide policy to provide for management of the shorelines by planning for and fostering all reasonable and appropriate uses in an environmentally responsible manner. The state conceived the concept of preferred uses in an effort to protect shoreline functions and values and foster reasonable use and economic development of shoreline areas. Towards this end, the SMA establishes a broad policy directive giving

preference to shoreline uses that:—

- Protect the quality of water and the natural environment
- Depend on proximity to the shoreline (“water oriented uses”)
- Preserve and enhance public access or increase recreational opportunities for the public along shorelines.

In 1995, the Legislature amended the Growth Management Act (GMA) and the Shoreline Management Act (SMA) to partially integrate the two statutes. The amendments incorporated the goals and policies of the SMA as the 14th goal of the GMA, specifically designating the goals and policies of a local shoreline master program as a segment of the jurisdiction’s development regulations (RCW 36.70A.480). The diagram below indicates the relationship.

Figure 1: Relationship of Shoreline Master Program to GMA



The SMA is administered through a cooperative program between local governments and the Department of Ecology (Ecology), whereby local communities prepare a Shoreline Master Program (SMP) that is adopted under guidelines established by Ecology. The SMP serves to regulate development along shorelines of the state and establish a comprehensive vision of how the shoreline areas will be used and developed over time.

The SMP is a comprehensive use plan for local shoreline areas that includes desired goals and policies consistent with SMA policy (RCW 90.5 8.020); maps, diagrams and charts or other descriptive material and text; use and development regulations; and administrative procedures for the shoreline permitting process. The Ecology SMP guidelines (WAC 173-26) establish general goals and policies, and standards and criteria for regulations. The SMP is based on state guidelines, but tailored to the specific conditions and needs of individual communities. The SMP is also meant to be a comprehensive vision of how the shoreline area will be used and developed over time.

Under the SMA, the shoreline jurisdiction includes all water areas of the state, the lands underlying them, and areas that are 200 feet landward of the ordinary high water mark (OHWM) of waters that have been designated as “shorelines of statewide significance” or “shorelines of the state.” These designations were established in 1971, and are described in RCW 90.58.030. Generally, “shorelines of statewide significance” include marine waters below extreme low water, rivers west of the Cascade Range that have a mean annual flow of 1,000 cubic feet per second (cfs) or greater, rivers east of the Cascade Range that have a mean annual flow of 200 cfs or greater, and freshwater lakes with a surface area of 1,000 acres or more. “Shorelines of the state” are generally described as all marine shorelines and shorelines of all other streams or rivers having a mean annual flow of 20 cfs or greater and lakes with a surface area greater than 20 acres.

20.10.005 City of Burien Shoreline Jurisdiction

Although there are a number of waterbodies, including streams, lakes and marine shorelines, within the City of Burien, only two are regulated under the SMA. The shoreline jurisdiction within the city limits of the City of Burien includes approximately five miles of marine shoreline along Puget Sound and Lake Burien. There are no “shorelines of the state” associated with rivers or streams in the city. The portions of Puget Sound within the city limits are defined as “shorelines of statewide significance” waterward of the line of extreme low tide (RCW 90.5 8.030(2)(e)(iii)). The marine shoreline has been given a special status because they are considered a major resource from which all people in the state derive benefit.

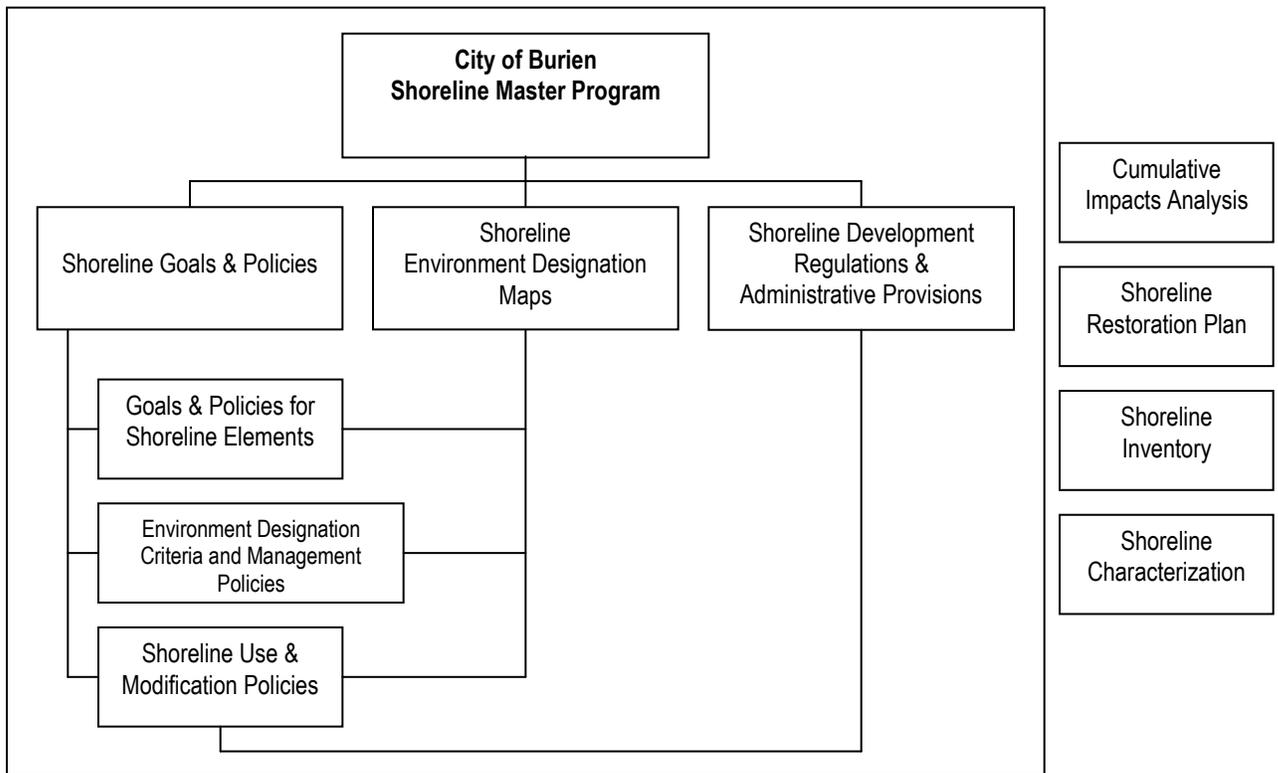
Under the SMA, the shoreline area to be regulated under the City’s SMP must include marine waters and shorelands, defined as the upland area within 200 feet of the OHWM, as

well as any associated wetlands (RCW 90.5 8.030). All proposed uses and development occurring within shoreline jurisdiction must conform to Chapter 90.58 RCW, the Shoreline Management Act, and this Shoreline Master Program.

20.10.010 Components of Burien Shoreline Master Program

The City of Burien Shoreline Master Program was originally adopted at the time of the City’s incorporation in 1993. Under new shoreline master program guidelines adopted by Ecology in 2004, cities within King County are required to update their local shoreline master programs.

Figure 2: Structure of City of Burien Shoreline Master Program



20.10.015 Amendments and State Role

The City of Burien Shoreline Master Program may be amended when new information is obtained, local circumstances change, or shoreline management approaches are improved. The city will follow procedures identified in BMC 19.65.080 for Type 4 Legislative Decision which allow for public notice and hearing, review and recommendation by the Shoreline Administrator and the City Planning Commission with formal approval given by the City Council. After local adoption, all amendments to the City of Burien Shoreline Master Program must be approved by the Washington State Department of Ecology before they can be locally in effect.

Appeals of approved amendments to the Burien Shoreline Master Program are under the jurisdiction of the Central Puget Sound Growth Management Hearings Board. Appeals involving a shoreline permit are under the jurisdiction of the State of Washington Shorelines Hearings Board.

Chapter II. General Goals and Policies

20.20.001 Purpose

The Shoreline Master Program goals and policies of this chapter reflect the aspirations and concerns that Burien citizens and stakeholders expressed about the City's shorelines during community and Shoreline Advisory Committee meetings. These goal and policy statements, along with the shoreline land use map, are the foundation for specific guidelines concerning how to regulate and manage activities occurring within the City's shoreline jurisdiction.

The goals and policies of this element apply to all water bodies and shorelands that meet the definitions set forth in RCW 90.58.030 unless otherwise specifically stated in the goal or policy. Burien's shorelines includes those lands extending landward for two hundred feet in all directions as measured on a horizontal plane from the ordinary high water mark; floodways and contiguous floodplain areas landward two hundred feet from such floodways; and all wetlands and river deltas associated with the streams, lakes, and tidal waters. Water bodies in Burien that meet the applicable definitions include Puget Sound waterward to mid channel and Lake Burien.

20.20.005 General Goals and Policies

Goal ALL

Develop, implement, and maintain a Shoreline Master Program that results in no net loss of shoreline ecological functions and processes, balances public and private interests in the shoreline, and considers other relevant programs.

- Pol. ALL 1 The Shoreline Master Program shall result in no net loss of shoreline ecological functions and processes.
- Pol. ALL 2 Regulation and management of Burien's shorelines should be guided by ongoing and comprehensive science.
- Pol. ALL 3 The City should be proactive in managing activities within the shoreline jurisdiction.
- Pol. ALL 4 Implement an adaptive management approach to respond to changes and to ensure continued effectiveness.
- Pol. ALL 5 The Shoreline Master Program should balance private use and enjoyment of tidelands and adjacent lands with the greater public benefit that shorelines provide, while recognizing the rights of individuals to use and develop private property in a manner consistent with City and other applicable regulations.

- Pol. ALL 6 When Shoreline Master Program regulations are developed and applied, they should consider site-specific characteristics.

- Pol. ALL 7 Regulation and management of the City’s shorelines should be coordinated with relevant local, state, federal, and other programs. Such programs include, but are not limited to, those administered by: City of Seattle, City of Normandy Park, City of SeaTac, King County, Washington Department of Ecology, Washington Department of Fish and Wildlife, Washington Department of Natural Resources, Puget Sound Partnership, United States Army Corps of Engineers, Muckleshoot Tribe, Puyallup Tribe, and Water Resource Inventory Area 9.

- Pol. ALL 8 Consider an incentive base system to encourage redevelopment projects to comply with accepted shoreline best management practices and standards.

20.20.010 Economic Development Element

Goal ED

Insure healthy, orderly economic growth by allowing those economic activities which will be an asset to the local economy and which result in the least possible adverse effect on the quality of the shoreline and surrounding environment.

- Pol. ED 1 Protect the beauty and function of the natural environment to maintain a community where workers want to live and work.

- Pol. ED 2 Promote actions ensuring a clean and attractive community.

20.20.015 Shoreline Public Access Element

Goal PA

Increase and enhance public access to shoreline areas, consistent with the natural shoreline character, private property rights, and public safety.

- Pol. PA 1 Developments, uses, and activities on or near the shoreline should not impair or detract from ~~the public~~^{2s} access to the water.

- Pol. PA 2 Publicly owned shorelines should be limited to water dependent or public recreational uses, otherwise such shorelines should remain protected open space.

- Pol. PA 3 Public access to the City’s shorelines should be designed to provide for public safety and to minimize potential impacts to private property and individual privacy.

Pol. PA 4 Public access should be provided as close as possible to the water's edge with no net loss of shoreline ecological function without adversely affecting a sensitive environment and should be designed for handicapped and physically impaired persons.

Pol. PA 5 The City should seek opportunities to develop new public access areas in locations dispersed throughout the shoreline. Highest priority should be placed on reaches without existing public access. Mechanisms to obtain access to the shoreline include:

- a. Tax title properties;
- b. Donations of land and waterfront areas; and
- c. Acquisition using grants and bonds.

Pol. PA 6 The vacation or sale of street ends, other public right of ways and tax title properties that abut shoreline areas shall be prohibited. The City should protect these areas for public access and public viewpoints.

Pol. PA 7 Waterfront street ends should be recognized as:

- a. An important community resource that provides visual and physical access to the Puget Sound;
- b. Special use parks which serve the community, yet fit and support the character of the surrounding neighborhoods;
- c. A destination resource, where limited facilities and enhancements are provided.

Pol. PA 8 The City should manage and develop waterfront street ends by:

- a. Supporting their use by residents city-wide, yet ensuring that the street ends and their supporting facilities are developed at a level or capacity which are appropriate to the neighborhood character, promotes safety, protects private property rights and individual privacy, and is consistent with City risk management practices;
- b. Ensuring that public parking is available and limited to a level appropriate to the capacity of the public access site, and that any new parking that is developed would be harmonious with the surrounding neighborhood;
- c. Ensuring that the waterfront street ends are preserved and maintained with limited enhancements, such as places to sit or rest which fit in with the natural environment of the area;
- d. Installing signs that indicate the public's right of access, the rules of use, and penalties for misuse and encourage appropriate use;
- e. Installing limited trail improvements and enhancements to allow access to the water;
- f. Protecting adjacent private property including but not limited to protecting individual privacy and ensuring public safety Minimizing the potential impacts associated with their use on adjacent private property; and

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g. Developing a street ends plan that promotes waterfront access and public safety.

- Pol. PA 9 Waterfront street ends or other shoreline access should be planned in conjunction with the affected neighborhoods. However, the broader community should be notified during the public notification process.
- Pol. PA 10 The City should disseminate information that identifies all locations for public access to the shorelines.
- Pol. PA 11 The public's visual access to the City's shorelines from streets, paths, trails and designated viewing areas should be conserved and enhanced.
- Pol. PA 12 Public views from the shoreline upland areas should be enhanced and conserved, while recognizing that enhancement of views should not be necessarily construed to mean removal of vegetation.
- Pol. PA 13 Promote a coordinated system of connected pathways, sidewalks, passageways between buildings, beach walks, and shoreline access points that increase the amount and diversity of opportunities for walking and chances for personal discoveries.

20.20.020 Recreation Element

Goal REC

Develop a well-maintained, interconnected system of multi-functional parks, recreation facilities, and open spaces that: is attractive, safe, and accessible for all geographic regions and population segments within the City; supports the community's well-established neighborhoods and small town atmosphere; protects private property rights and results in ~~and does not adversely impact~~no net loss of shoreline ecological functions and processes.

- Pol. REC 1 Recreation facilities in the shoreline area should be restricted to those dependent upon a shoreline location, or those benefiting from a shoreline or in-water location that are in the public interest.
- Pol. REC 2 Recreational developments should be located, designed and operated to be compatible with, and minimize adverse impacts on, environmental quality and valuable natural features as well as on adjacent surrounding land and water uses. Favorable consideration should be given to proposals which complement their environment and surrounding land and water uses, and result in no net loss of ecological functions. ~~which leave natural areas undisturbed and protected.~~
- Pol. REC 3 Public information and education programs should be developed and implemented to help ensure that the public is aware of park regulations

and private property rights, and to prevent the abuse of the shoreline and its natural ecological system.

Pol. REC 4 The City shall plan to provide, in coordination with other agencies, a range of park facilities that serve a variety of recreational and open space purposes. Such planning should use the following designations and guidelines to provide such diversity:

1. Mini or Pocket Park

Use Description: Passive recreation or specialized facilities that *may* serve a concentrated or limited population such as children or senior citizens.

Service area: Approximately 1/3 of a mile radius.

Size: No minimum to approximately one acre.

Desirable Characteristics: These parks should be in close proximity to dwellings and or other centers of activity. Mini parks should be designed for intensive use and should be accessible and visible from surrounding area.

Examples: In Burien these types of parks are primarily private parks consisting of beach access for adjacent subdivisions, view appreciation areas (bench or platform), picnic tables and trees in a small area, children's play area, game tables, or planted areas.

Other Considerations: Since maintenance costs of these smaller parks are high relative to their service areas, few jurisdictions are able to meet the desired quantity. This type of park is most suitable to provide unique local needs, such as shore access, or as a consideration in the design of new development. The City should seek a variety of means for financing and maintaining mini-parks, including considering opportunities for community stewardship and grant or private funding.

2. Regional Parks

Use Description: Areas of natural or ornamental quality for outdoor recreation such as picnicking, boating, beach activities, swimming, and trails. Such parks may contain special amenities, facilities or features that attract people from throughout the surrounding region. Such facilities require extensive on-site parking and good access by automobile.

Service area: Approximately 1/2 to 1 hour driving time.

Size: Approximately 90 acres.

Desirable Characteristics: Contiguous to or encompassing significant natural resources.

Examples: Seahurst Park.

3. Special Use Park

Use Description: Specialized or single-purpose recreational activities such as walking and bicycle trails, street ends, or areas that preserve buildings, sites or features of historical significance.

Service area: Variable.

Size: Depends on nature of facility.

Desirable Characteristics: Compatibility with adjacent facilities and uses.

Examples: Examples within Burien shoreline consist primarily of designated view points and historical markers, and waterfront street ends (including those at SW 170th Pl., SW 163rd Pl., and at the intersection of Maplewild Ave. SW and SW 172nd St.).

4. Conservancy Park

Use Description: Conservancy parks are formally designated public resource areas. In such parks the primary management objectives are protection and management of historical, cultural and natural resources, including fish and wildlife habitat areas and may include appropriate passive recreational activities.

Service area: None.

Size: As appropriate for the resource.

Desirable Characteristics: As appropriate for the resource.

Examples: Currently Salmon Creek Ravine is most appropriately classified in this category although its feasibility for including other types of park activities consistent with its character should be evaluated. This category would also apply to any significant formally designated land, protected wetlands or steep slope areas by private or public means.

Pol. REC 5 Access for motorized vessels should be discouraged at Seahurst Park. Access for non-motorized craft should be considered if access for such craft can be provided in an environmentally-sensitive manner.

Pol. REC 6 Where appropriate, recreational developments should make adequate provisions for:

- a. Vehicular and pedestrian access, both on-site and off-site;
- b. Proper water supply and sewage waste disposal methods;

- c. Security and fire protection;
- d. The prevention of overflow and trespass onto adjacent properties, including but not limited to landscaping, fencing and posting of property; and
- e. Buffering of such development from adjacent private property or natural area.

- Pol. REC 7 Trails and pathways on steep shoreline bluffs should be located, designed and maintained to protect bank stability without the need for shoreline armoring.
- Pol. REC 8 Mooring buoys, in general, are beneficial in enabling increased recreational opportunities. However, the City should ensure that their possible negative effects on physical and visual environments are avoided.
- Pol. REC 9 Artificial marine life habitats should be encouraged in order to provide increased aquatic life for recreation. Such habitats should be constructed in areas of low habitat diversity and in consultation with the Department of Fisheries.
- Pol. REC 10 The linkage of shoreline parks, recreation areas and public access points with linear systems, such as hiking paths, bicycle paths, easements and /or scenic drives, should be encouraged.
- Pol. REC 11 Development of recreational facility along City shorelines should implement Low Impact Development techniques whenever feasible.

20.20.025 Circulation Element

Goal CI

Provide safe, reasonable, and adequate circulation systems in the shoreline area that will have the least possible adverse effect on unique or fragile shoreline features and existing ecological systems, while contributing to the functional and visual enhancement of the shoreline.

- Pol. CI 1 Minimize impacts to the topography and other natural characteristics of the shoreline by appropriately locating transportation routes. New roadways for vehicle circulation should be located outside of or minimized within the shoreline area.
- Pol. CI 2 Cross Puget Sound bridges should be prohibited within the Burien shoreline jurisdiction.
- Pol. CI 3 Provide and/or enhance physical and visual public access along shoreline public roads and trails when appropriate given topography, views, natural features, and surrounding land uses.

- Pol. CI 4 Public transit systems should provide service to designated [public parks within the City shoreline public access points](#).
- Pol. CI 5 Wherever practicable, safe pedestrian and bicycle movement on and off roadways in the shoreline area should be encouraged as a means of personal transportation and recreation.
- Pol. CI 6 Parking in shoreline areas should directly serve a permitted shoreline use. [Parking developed for public access points should be limited to the number of spaces consistent with the capacity of those public access points and is harmonious with the surrounding neighborhood.](#)
- Pol. CI 7 Parking facilities should be located and designed to minimize adverse impacts, including those related to: stormwater runoff; water quality; visual qualities; public access; and vegetation and habitat maintenance.
- Pol. CI 8 Parking should be planned to achieve optimum use. Where possible, parking should serve more than one use.
- Pol. CI 9 Utilities are necessary to serve shoreline uses and shall be properly installed so as to protect the shoreline and water from contamination and degradation.
- Pol. CI 10 Utility facilities and right-of-ways should be located outside of the shoreline area to the maximum extent possible. When utility lines require a shoreline location, they should be placed underground.
- Pol. CI 11 Utility facilities should be designed and located in a manner which preserves the natural landscape and shoreline ecology and minimizes conflicts with present and planned land uses.
- Pol. CI 12 Parking for non water dependent uses should be located as far away as feasible from shorelines.

20.20.030 Land Use Element

Goal USE

Provide functional and attractive shoreline uses that are appropriate in scale, configuration, and location, and are sensitive to and do not degrade habitat and ecological systems and other shoreline resources.

- Pol. USE 1 The Shoreline Master Program shall govern the development of all designated shorelines of the City. Lands adjacent to these areas shall be managed in a manner consistent with the Shoreline Master Program.

- Pol. USE 2 The City will strive to ensure that basic community values are reflected in the City's land use and decision making processes, while recognizing the rights of individuals to use and develop private property in a manner consistent with City regulations.

- Pol. USE 3 Ensure the appropriate location, design, and operation of all activities, development, and redevelopment in the shoreline.

- Pol. USE 4 Incentives should be available to encourage the removal and/or reduction of non-conformances.

- Pol. USE 5 If feasible, septic systems should be connected to the sanitary sewer system where connections are available.

- Pol. USE 6 Any existing single-family lot that was legally subdivided or legally created prior to enactment of subdivision statutes prior to incorporation or annexation shall be considered a legally conforming lot for building purposes, providing the size of the lot was not reduced by more than 50 percent through acquisition for public purposes, and on such lots new homes may be built and existing houses may be expanded and remodeled, provided that applicable setbacks, lot coverage, critical area restrictions, design review requirements (if any), height limits and other applicable regulations in the zoning code are met.

- Pol. USE 7 When determining buildable lot size for residential development, the area of a lot covered by water (including but not limited to lakes or the Puget Sound) shall not be included in the calculation.

- Pol. USE 8 The planned densities for single-family development should encourage a lower development potential in areas with development constraints.

- Pol. USE 9 The Low Density Residential Neighborhood designation will provide for low-density residential development. Development within this designation includes existing neighborhoods that are zoned for four units per acre or less.

Allowed Uses and Description: The Low Density Residential Neighborhood designation allows single family residential uses and their accessory uses at a density of 4 units per acre or less, due to the constraints posed by critical areas. This policy may be implemented by more than one zoning category, based on the ability of the land and public facilities to support development. Development standards, for such items as impervious surfaces, streetscapes, sidewalks and stormwater drainage, may vary within each zoning category based on the existing character of the area.

Designation Criteria: Properties designated Low Density Residential Neighborhood should reflect the following criteria:

1. The area is already generally characterized by single-family residential development at four units per acre or less; and
2. Relative to other residential areas within the City, the area is characterized by lower intensity development as shown on Map LU-2.
3. The land is designated as a potential landslide hazard area, steep slope area, or wetland on the City of Burien's Critical Areas Map,
4. The existing and planned public facilities for the area cannot adequately support a higher density.
5. The area is subject to existing impacts from high levels of airport-related noise.

Pol. USE 10 Clustering of housing units may be allowed on lots designated for residential development that contains steep slopes and are located adjacent to an urban environment.

Pol. USE 11 As slope increases, development intensity, site coverage, and vegetation removal should decrease and thereby minimize the potential for drainage problems, soil erosion, siltation and landslides. Slopes of 40 percent or greater should be retained in a natural state, free of structures and other land surface modifications.

1. Single-family homes and detached single-family garages on existing legally established lots are exempted from this restriction, provided that:
 - a. The application of this restriction would deny any appropriate use of this property;
 - b. There is no other appropriate economic use with less impact;
 - c. The proposed development does not pose a threat to public health, safety or welfare on or off the development site;
 - d. Any alterations permitted to the critical area shall be the minimum necessary to allow for economic use of the property;
 - e. An analysis of soils, footings and foundations, and drainage be prepared by qualified professionals, certifying that the proposed activity is safe and will not adversely affect the steep slope hazard area or buffer; and
 - f. There are adequate plans, as determined by the City, for stormwater and vegetation management.
 - g. Short plats or other divisions of an existing legal lot shall only be approved if all resulting lots are buildable under this restriction.
 - h. It is the applicant's responsibility to show that these provisions are met through an appropriate mechanism such as, or similar to, the SEPA process.
2. Short plats or other divisions of an existing legal lot shall only be approved if all resulting lots are buildable under this restriction.

3. It is the applicant's responsibility to show that these provisions are met through an appropriate mechanism such as, or similar to, the SEPA process.

- Pol. USE 12 The City should prohibit development on areas prone to erosion and landslide hazards. Further, the City should restrict development on potentially unstable land to ensure public safety and conformity with existing natural constraints, unless the risks and adverse impacts associated with such development can be appropriately mitigated.
- Pol. USE 13 Land uses on steep slopes should be designed to prevent property damage and environmental degradation, and to enhance open space and wildlife habitat.
- Pol. USE 14 Where there is a high probability of erosion, grading should be kept to a minimum and disturbed vegetation should be restored as soon as feasible. In all cases, the City shall require appropriate site design and construction measures to control erosion and sedimentation.
- Pol. USE 15 City should have development standards that promote the siting of new structures such that they will not require shoreline stabilization and protective measures in the future.
- Pol. USE 16 Shoreline stabilization and protective measures should be limited in number and extent. The use of "soft" stabilization and protective measures, such as vegetation, is preferred over the use of "hard" measures, such as concrete bulkheads.
- Pol. USE 17 Encourage joint-use activities in proposed shoreline developments.
- Pol. USE 18 Wakes generated by vessels operating in the shoreline area should be minimized in order to reduce adverse impacts on the shoreline environment.
- Pol. USE 19 Limit use of pesticides and herbicides within shoreline jurisdiction.
- Pol. USE 20 Development should be designed to minimize impacts to both views of the shoreline and views from the water. Building orientation, height and the creation of view corridors shall be considered in site and structure design.

20.20.035 Conservation Element

Goal CON

Preserve and enhance shoreline natural resources in order to: protect public health, safety, and welfare; maintain the integrity of the natural environment; and preserve the quality of life in Burien.

- Pol. CON 1 Protect critical areas and shoreline ecological processes and functions through regulatory and non-regulatory means. Protection may include acquisition of key properties, regulation of development, and incentives to encourage ecologically sound design.
- Pol. CON 2 The City shall ensure that uses and development in shoreline areas is compatible with the shoreline environments designated in this Shoreline Master Program. Adherence to these designations will ensure that sensitive habitat, ecological systems, and other shoreline resources are protected.
- Pol. CON 3 The City of Burien's Critical Areas Map shall be used as a reference for identifying the City's critical areas. Other unmapped critical areas do exist throughout the City. Any site containing critical areas are subject to the special development regulations and conditions found in the City's Critical Areas Ordinance.
- Pol. CON 4 Development should be directed toward areas where their adverse impacts on critical areas can be minimized.
- Pol. CON 5 New development or redevelopment should avoid or mitigate additional loss of shoreline ecological functions. Developments should be encouraged to improve ecological functions and restore riparian buffers.
- Pol. CON 6 The City shall maintain a system of development regulations and a permitting system to prevent the destruction of critical areas. Development regulations should at a minimum address wetland protection, aquifer recharge areas important for potable water, fish and wildlife habitat conservation areas, frequently flooded areas, and geologically hazardous areas
- Pol. CON 7 The City shall require permit review approval before any activity or construction is allowed to occur in, adjacent to, or impact a critical area.
- Pol. CON 8 The City shall develop land use regulations to buffer critical areas from the impacts of adjacent land uses.
- Pol. CON 9 The City requires the use of Best Available Science for protecting critical areas within the community pursuant to the Growth Management Act RCW 36.70A.172(1).
- Pol. CON 10 The City should provide education and technical assistance on low-impact development techniques.
- Pol. CON 11 Provide public outreach and education about shoreline ecological functions and processes, and engage the public in stewardship and enhancement activities.

- Pol. CON 12 Encourage minimizing the amount of impervious surfaces in new development through the use of appropriate low-impact development techniques and removing paved areas or using retrofit options in existing developments, where applicable, to minimize runoff.
- Pol. CON 13 The City shall consider the impacts of new development on water quality as part of its environmental review process and require where appropriate any mitigation measures.
- Pol. CON 14 Educate the public on water quality issues and impacts of stormwater flow.
- Pol. CON 15 Educate individuals and households about different ways to reduce pollution.
- Pol. CON 16 If no feasible alternative exists, a limited amount of development may occur on wetlands and floodplains. In these instances, a broad range of site planning techniques should be explored to minimize impacts on these critical areas.
- Pol. CON 17 All wetland functions should be considered in evaluating wetland mitigation proposals, including fish and wildlife habitat, flood storage, water quality, recreation, educational opportunities, and aesthetics.
- Pol. CON 18 The City will protect wetlands by maximizing infiltration opportunities and promoting the conservation of forest cover and native vegetation.
- Pol. CON 19 Mitigation for any adverse impacts on wetlands shall be provided in the same basin within which the impacts occur.
- Pol. CON 20 The City shall consider the impacts of new development on the quality of land, wildlife and vegetative resources as a part of its environmental review process and require any appropriate mitigating measures. Such mitigation may involve the retention of significant habitats.
- Pol. CON 21 The City shall encourage an increase in tree canopies through the addition and the preservation of existing vegetation and use of landscaping as an integral part of development plans.
- Pol. CON 22 The City should require development proposals to include non structural measures to stabilize soils, hillsides, bluffs and ravine sidewalls and to promote wildlife habitat by removing invasive vegetation and retaining or restoring native vegetation.
- Pol. CON 23 The City should consider developing policies that balance the removal of vegetation to preserve and enhance views with the need to retain vegetation to promote slope stability and open space.

- Pol. CON 24 Enhance riparian vegetation to improve shoreline ecological functions and processes where possible.
- Pol. CON 25 The City should maintain and enhance existing species and habitat diversity including fish and wildlife habitat that supports the greatest diversity of native species.
- Pol. CON 26 All development activities shall be located, designed, constructed and managed to avoid disturbance of adverse impacts to fish and wildlife resources, including spawning, nesting, rearing and habitat areas and migratory routes.
- Pol. CON 27 Fish and wildlife habitat should be protected, conserved and enhanced, including:
- a. Habitats for species which have been identified as endangered, threatened, or sensitive by the state or federal government;
 - b. Priority species and habitats listed in the Adopted King County Comprehensive Plan, November 1994;
 - c. Shellfish areas;
 - d. Kelp and eel-grass beds;
 - e. Herring and smelt spawning areas; and
 - f. Wildlife habitat networks designated by the City.
- Pol. CON 28 Fish and wildlife should be maintained through conservation and enhancement of terrestrial, air and aquatic habitats.
- Pol. CON 29 The City should ensure that habitat networks throughout the City are designated and mapped. The network should be of sufficient width to protect habitat and dispersal zones for small mammals, amphibians, reptiles, and birds. These networks should be protected through incentives, regulation and other appropriate mechanisms. Site planning should be coordinated during development review to ensure that connections are made or maintained amongst segments of the network.
- Pol. CON 30 Native plant communities and wildlife habitats shall be integrated with other land uses where possible. Development shall protect wildlife habitat through site design and landscaping. Landscaping, screening, or vegetated buffers required during development review shall retain, salvage and/or reestablish native vegetation whenever feasible. Development within or adjacent to wildlife habitat networks shall incorporate design techniques that protect and enhance wildlife habitat values.
- Pol. CON 31 In order to minimize adverse impacts related to noise, unless prohibited by federal or state law, fish and wildlife habitat conservation areas within the City should be protected from exterior noise levels which exceed 55 dBA Ldn.

- Pol. CON 32 The City shall promote voluntary wildlife enhancement projects which buffer and expand existing wildlife habitat, through educational and incentive programs for individuals and businesses.
- Pol. CON 33 The City shall seek to retain as open space, those areas that provide essential habitat for any rare, threatened or endangered plant or wildlife species.
- Pol. CON 34 The City should maintain, protect and enhance greenbelts riparian corridors and wildlife habit corridors so that the extent and intensity of the built environment is balanced by these natural features.
- Pol. CON 35 The City shall work with property owners to encourage non-purchase options such as conservation easements, current use easements, and development covenants to preserve open space and greenbelts within the city's neighborhoods. The City should also accept donations of properties where public access is anticipated or planned.

20.20.040 Historic, Cultural, Scientific, and Educational Element

Goal HCSE

Identify, protect, preserve, and restore buildings, sites, and areas in the shoreline having historic, cultural, scientific, or educational value for educational purposes, scientific endeavors, and enjoyment by the general public.

- Pol. HCSE 1 The City should protect buildings, sites, and areas in the shoreline having historic, cultural, scientific, or educational value through designation, acquisition by purchase or gift, and incentives for preservation.
- Pol. HCSE 2 Ensure that properties having historic, cultural, scientific, or educational value are protected from undue adverse impacts associated with public or private uses and activities.
- Pol. HCSE 3 The City should consider developing and implementing measures which preserve trees of historical significance.
- Pol. HCSE 4 Encourage educational projects and programs, including signage, that foster a greater appreciation of the importance of buildings, sites, and areas in the shoreline having historic, cultural, scientific, or educational value, as well as of shoreline management and environmental conservation.

20.20.045 Flood Prevention and Minimization Element

Goal FLD

Prevent and minimize flood damage to public and private property by locating development away from flood-prone areas and by protecting and restoring shoreline ecological functions and processes.

- Pol. FLD 1 Discourage new development in shoreline areas that would be harmed by flood conditions, or which would create or intensify flood hazard impacts on other properties.
- Pol. FLD 2 The capacity of natural drainage courses shall not be diminished by development or other activities.
- Pol. FLD 3 New structural flood hazard reduction measures shall only be allowed where demonstrated to be necessary, and when non-structural methods are infeasible and mitigation is accomplished. New structural flood reduction measures shall be located landward of associated wetlands and buffer areas, except where no alternative exists as documented in a geotechnical analysis.
- Pol. FLD 4 Monitor sea level rise and accordingly adjust development standards such building setbacks to minimize flooding potential.

20.20.050 Restoration Element

Goal REST

Restore areas which are ecologically degraded to the greatest extent feasible while maintaining appropriate use of the shoreline.

- Pol. REST 1 Promote restoration actions that are doable, practical, and effective.
- Pol. REST 2 The City shall be a good steward of public lands and should integrate restoration and/or enhancement of fish and wildlife habitats into capital improvement projects whenever feasible.
- Pol. REST 3 Establish incentives that provide opportunities for new development or redevelopment activities in the shoreline to restore impaired ecological functions and processes. Incentives might include, but are not limited to: flexible development standards (e.g. setbacks, height limits, lot coverage), reduced or waiver of permits fees, and tax relief.
- Pol. REST 4 The City shall promote voluntary shoreline enhancement projects through educational and incentive programs for individuals and organizations.

- Pol. REST 5 The City should implement the restoration plan associated with this Shoreline Master Program.
- Pol. REST 6 Improve natural stream and shoreline conditions to an environmental quality level that supports the return and continuation of salmon runs and eliminates fish blockages.
- Pol. REST 7 Stream banks and stream channels should be maintained or restored to their natural condition wherever such conditions or opportunities exist.
- Pol. REST 8 Increase availability of large woody debris and opportunities for recruitment in the nearshore zone.
- Pol. REST 9 Restore degraded shoreline areas with native species.
- Pol. REST 10 The City should investigate partnerships with local environmental groups, city, state or county agencies, or tribes to implement projects and conduct follow-up monitoring and reporting.

Chapter III. Shoreline Environment Designations

20.25.001 Shorelines of Statewide Significance

The State of Washington Shoreline Management Act (SMA) designates certain shoreline areas as shorelines of statewide significance. These shorelines are considered important major resources from which all people in the state derive benefit. The SMA states that local shoreline master programs must give preference to uses which favor public and long-term interests of the people of the state. In the City of Burien, the marine shorelines below the extreme low tide are designated shorelines of statewide significance. The following policies apply to Burien's marine shorelines:

- Recognize and protect the statewide interest over local interest.
- Preserve the natural character of the shoreline.
- Result in long-term over short-term benefit.
- Protect the resources and ecology of the shoreline.
- Increase public access to publicly owned areas of the shoreline.
- Increase recreational opportunities for the public on the shoreline.

20.25.005 Shoreline Environment Designation Map

The shoreline designation map, Figure 3, establishes the general locations of each of the shoreline designations within the City of Burien. This map generally illustrates the extent of shoreline jurisdiction, but is only a depiction that will need to be reviewed and determined on a case by case basis based on the relevant definitions in the SMA. In the event that there are any undesignated shorelines of the state, they will be automatically designated Urban Conservancy under this SMP. If any part of a proposed development or activity is located within shoreline designation, the entire proposal must be reviewed for consistency with the City of Burien's Shoreline Master Program.

20.25.010 Aquatic

1. Purpose

The purpose of the "Aquatic" shoreline environment designation is to protect, restore, and manage the unique characteristics and resources of shoreline areas waterward of the ordinary high water mark. This is accomplished by managing water dependent uses and modifications to:

- Preserve/restore ecological functions of the nearshore area;
- Preserve critical saltwater and freshwater habitat;
- Provide public access and recreation opportunities;
- Assure compatibility between shoreland and aquatic uses.

2. Criteria for Designation

An “Aquatic” shoreline environment designation is assigned to lands waterward of the ordinary high water mark for both saltwater and freshwater bodies of water, including any submerged or inter-tidal areas. For the City of Burien, this designation applies to Lake Burien and all marine (Puget Sound) areas waterward of the ordinary high water mark out to the center of the channel within the City limits. The Aquatic shoreline environment designation includes the water surface together with the underlying lands and the water column.

3. Management Policies

- a. Shoreline uses and modifications should be compatible with the adjoining shoreline environment and designed and managed to prevent degradation of water quality and alteration of natural hydrographic conditions.
- b. New overwater structures should be allowed only for water-dependent uses, public access, or ecological restoration if it can be clearly shown that the cumulative environmental impacts of such structures will not cause significant adverse impacts to protected species.
- c. The size of new overwater structures should be limited to the minimum necessary to support the structure’s intended use and should support multiple use.
- d. All developments and uses on navigable waters or their beds should be located and designed to minimize interference with surface navigation and moorage.
- e. All developments and uses should consider impacts to public views and access and allow for the safe, unobstructed passage of fish and wildlife, particularly those species dependent on migration.
- f. Restoration opportunities associated with project impacts should be encouraged in the aquatic environment.
- g. Uses that adversely impact the ecological functions of critical saltwater and freshwater habitats should not be allowed except where necessary to achieve the objectives of RCW 90.58.020, and then only when their impacts are mitigated according to the sequence described in WAC 173-26-201(2)(e) necessary to achieve no net loss of ecological functions.
- h. Shoreline uses and modifications should be designed and managed to prevent degradation of water quality and alteration of natural hydrographic conditions.

20.25.015 Urban Conservancy

1. Purpose

The purpose of the “Urban Conservancy” shoreline environment designation is to protect and restore ecological functions of open space, floodplains, and other sensitive lands where they exist in urban and developed settings, while allowing a variety of compatible uses. This designation focuses on providing public access for the enjoyment of marine and lake shorelines by allowing the development of public recreational facilities.

2. Criteria for Designation

An “Urban Conservancy” environment designation is assigned to areas within shoreline jurisdiction that are suitable for public access, water-enjoyment recreational uses and active recreation developments. These are areas that are developed at a low density including residences and outdoor recreation.

3. Management Policies

- a. Uses that preserve or restore the natural character of the shoreline area or promote preservation of open space and critical areas should be the primary allowed uses.
- b. Public access and public recreation objectives should be implemented if feasible and wherever any significant ecological impacts can be mitigated.
- c. Water-oriented uses should be given priority over non-water-oriented uses with water-dependent uses given the highest priority.
- d. New development should be designed and located to preclude the need for shoreline armoring, vegetation removal, flood control, and other shoreline modifications.
- e. Standards should be established for shoreline stabilization measures, vegetation conservation, water quality, and shoreline modifications. These standards shall ensure that new development does not result in a net loss of shoreline ecological functions or further degrade other shoreline values.

20.25.020 Shoreline Residential

1. Purpose

The purpose of the “Shoreline Residential” environment designation is to accommodate residential development and appurtenant structures as well provide appropriate public access.

2. Criteria for Designation

A Shoreline Residential environment designation is assigned to shoreline areas that are predominantly single-family or multifamily residential development or are planned and platted for residential development. These are areas that are developed at a moderate density or intensity including residences and outdoor recreation. Low intensity institutional uses may be allowed if their impacts on the shoreline environment are mitigated.

3. Management Policies

- a. Residential and accessory uses, recreation facilities and public access shall be the preferred uses.
- b. Multifamily and multi-lot residential and recreational developments should provide public access and joint use for community recreational facilities.
- c. Water-oriented recreational uses should be allowed.
- d. Any new development or redevelopment should utilize low impact development techniques where feasible.
- e. Standards for building setbacks, lot coverage limitations, riparian buffers, shoreline stabilization, vegetation conservation, critical area protection, and water quality shall be set to assure no net loss of shoreline ecological functions.

20.25.025 Figure 3 Shoreline Environment Designation Map



Chapter IV. Shoreline Uses and Modifications Policies and Regulations

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General Provisions

20.30.001 Figure 4 Shoreline Permit Matrix

Type of Shoreline Permit Required for Shoreline Uses and Modifications*			
	Shoreline Residential	Aquatic	Urban Conservancy
Aquaculture	X	CU ¹	X
Boat Mooring Buoy	N/A	CUP ³	N/A
Boat Ramp	X	X	X
Boat House (covered moorage)	X	X	X
Breakwater & other in-water structures	N/A	X	N/A
Bulkheads	CU	CU	CU
Cell towers/Personel Wireless Service Facility	CU	N/A	X
Community Beach	CU	CU	X
Community residential facility	CU	X	X
Docks, Piers and Floats	CU	CU	CU
Dredging	N/A	X	N/A
Fill ²	X	X	X
Floating home	N/A	X	N/A
Flood protection	SDP	SDP	SDP
Forestry (clearing)	CU	N/A	CU
Grading	CU	N/A	CU
Government facility	SDP	X	SDP
Habitat Enhancement or Restoration	SDP	SDP	SDP
Industrial & Ports	X	X	X
Jetty	X	X	X
Mining	X	X	X
Office	X	X	X
Public park and recreation facilities	SDP	X	SDP
Recreation	SDP	SDP	SDP
Residential - Single family**	SDP	N/A	SDP
Residential - Multi family	SDP	N/A	CU
Retail	X	X	X
Schools	CU	N/A	CU
Transportation Facilities & Parking	SDP	X	SDP
Utilities	SDP	CU	SDP

SDP Shoreline substantial development permit

CU Shoreline conditional use permit

X Prohibited

N/A Not applicable

1 Prohibited in critical saltwater habitats and Lake Burien

2 Allowed if necessary to construct a permitted use

[3 Private mooring buoys are exempt from the shoreline substantial development permit process but shall comply with BMC 20.30.090](#)

* Shoreline uses not listed in the matrix above are subject to a shoreline conditional use permit.

** Exempt from shoreline substantial development permit requirements if this is for construction of only one detached unit built by an owner, lessee, or contract purchaser who will be occupying the residence, in accordance with WAC 173-27-040(g), as amended.

20.30.005 Applicability

The following provisions shall apply to all uses and activities within the City of Burien's shoreline jurisdiction. These regulations are based on general goals and policies without regard to shoreline designation based upon elements of the shoreline detailed in Chapter II of this shoreline master program consistent with RCW 90.58.100(2) and implement the principles as established in WAC 173-26-186 and WAC 173-26-221.

- Land Use
- Archaeological and Historic Resources
- Critical Areas
- Flood Hazard Reduction
- Public Access
- Shoreline Vegetation Conservation
- Water Quality, Storm Water, and Nonpoint Pollution

20.30.010 Impact Mitigation

1. Policy

a. Impacts to the ecological functions and values shall be mitigated to result in no net loss of shoreline ecological functions and process.

~~a.b.~~ [Mitigation for impacts of new development projects should first consider enhancement of degraded conditions to offset the impacts of the new development near shoreline resources.](#)

(For additional policy guidance please refer to Chapter II General Goals and Policies, pgs. 1-2, 12-15 and Chapter III Management Policies, pgs. 2-4.)

2. Regulations

a. All shoreline development and uses shall occur in a manner that results in no net loss of shoreline ecological functions ~~to the greatest extent feasible~~, through the location and design of all allowed development and uses. In cases where impacts to shoreline ecological functions from allowed development and uses are unavoidable, those impacts shall be mitigated according to the provisions of this section.

b. To the extent Washington's State Environmental Policy Act of 1971 (SEPA), RCW chapter 43.21C, is applicable, the analysis of environmental impacts from proposed shoreline uses or developments shall be conducted consistent with the rules implementing SEPA (BMC Chapter 14 and WAC 197-11).

- c. Where required, mitigation measures shall be applied in the following sequence of steps listed in order of priority.
 - i. Avoiding the impact altogether by not taking a certain action or parts of an action;
 - ii. Minimizing impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology or by taking affirmative steps to avoid or reduce impacts;
 - iii. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;
 - iv. Reducing or eliminating the impact over time by preservation maintenance;
 - v. Compensating for the impact by replacing, enhancing, or providing substitute resources or environments;
 - vi. Monitoring the impact and the compensation projects and taking the appropriate corrective measures.

- d. In determining appropriate mitigation measures applicable to shoreline development, lower priority measures shall be applied only where higher priority measures are determined to be infeasible or inapplicable.

- e. Required mitigation shall not be in excess of that necessary to assure that proposed uses or development will result in no net loss of shoreline ecological functions.

- f. When requiring compensatory measures or appropriate corrective measures pursuant to the priority of mitigation sequencing above, preferential consideration shall be given to measures that replace the impacted functions directly and in the immediate vicinity of the impact. However, alternative compensatory mitigation within the watershed that addresses limiting factors or identified critical needs for shoreline resource conservation based on watershed or comprehensive resource management plans applicable to the area of impact may be authorized.
[Compensatory mitigation of impacts from new development projects should first consider enhancement of degraded conditions to offset the impacts of the new development near shoreline resources. If this is not feasible the second priority should focus mitigation on areas that are in need of restoration.](#) Authorization of compensatory mitigation measures may require appropriate safeguards, terms or conditions as necessary to ensure no net loss of ecological functions.

20.30.015 Land Use

The following provisions apply to all development and uses regardless of whether a shoreline substantial development permit is required.

1. Policies

- a. Preference for shoreline permitted uses shall first be given to *water dependent uses*, then to *water related* and *water enjoyment uses*.
- b. The city should be proactive in enforcing shoreline regulations and provide sufficient resources to ensure enforcement occurs.

(For additional policy guidance please refer to Chapter II General Goals and Policies, pgs. 8-11 and Chapter III Management Policies, pgs. 2-4.)

2. Regulations

- a. The application of master program policies and regulations to all uses and related modifications shall assure no net loss of ecological functions necessary to sustain shoreline natural resources.
- b. *Water dependent uses* shall only be allowed overwater if the overwater location is necessary for the operation of the water dependent use. Uses which are not water dependent shall not be permitted overwater unless specifically stated otherwise in the regulations for the applicable shoreline environment.

20.30.020 Archaeological and Historic Resources

According to the state shoreline management guidelines, if archaeological or historic resources have been identified in shoreline jurisdiction, the local government is required to collect information about these resources and contact the state historic preservation office and local affected Indian Tribes. The county and the state maintain inventories of both archaeological and historic resources. These sites and artifacts are protected by several state provisions:

RCW Chapter 27.53— Archaeological Sites and Resources

This state law makes it illegal to knowingly disturb an archaeological site on public or private lands without a state-issued permit.

RCW Chapter 27.44— Indian Graves and Records

This state law makes it illegal to knowingly disturb Native American cairns, petroglyphs and graves on public or private lands without a state-issued permit. Selling any Native American Indian artifacts or remains removed from a cairn or grave is also illegal.

WAC 25-48—Archaeological Excavation and Removal Permit

This provision establishes procedures for application for and issuance of state permits for excavation and/or removal of archaeological sites and resources.

1. Policy

The City should ensure conservation of significant archeological and historic amenities in the shoreline areas and include on the inventory of registered sites maintained by the Washington State Office of Archaeology and Historic Preservation, and tribally identified sites.

(For additional policies refer to Chapter II General Goals and Policies, pg. 15.)

2. Regulations

- a. Archaeological sites located in shoreline jurisdiction are subject to state and federal regulations as well as to the City of Burien Shoreline Master Program.
- b. The City shall notify the relevant Native American tribe(s) when an application for work in the shoreline area is filed.
- c. All shoreline permits shall contain the requirement to stop work immediately and notify the City, affected tribes and the Washington State Office of Archaeology and Historic Preservation if an artifact is discovered. The property owner will be required to provide for a site inspection and evaluation by a professional archaeologist for review by the relevant tribes and agencies prior to proceeding with the development or activity.
- d. Archaeological excavations may be permitted subject to the provisions of this shoreline program.

20.30.025 Critical Areas

Critical areas include the following areas and ecosystems: wetlands, critical aquifer recharge areas, fish and wildlife habitat conservation areas, frequently flooded areas, and geologically hazardous areas. Critical saltwater and critical freshwater habitats are also types of critical areas within shoreline jurisdiction.

1. Policies

- a. In assessing the potential for net loss of ecological functions or processes, project specific and cumulative impacts should be considered.
- b. Development standards for density, frontage, setbacks, impervious surface, shoreline stabilization, vegetation conservation, buffers, critical areas, and water quality should protect existing shoreline ecological functions and processes. During permit review, the Shoreline Administrator should consider the expected impacts associated with proposed shoreline development when assessing compliance with this policy.

(For additional policy guidance please refer to Chapter II General Goals and Policies, pgs. 12-15 and Chapter III Management Policies, pgs. 2-4.)

2. Regulations

- a. BMC 19.40—Critical areas (City of Burien Ordinance 394, adopted October 20, 2003) shall apply to the shoreline jurisdiction with the following exceptions:
 - ~~i.~~ The reasonable use provisions contained in BMC 19.40.070 (4) do not apply.
 - ii. The following types of wetlands are regulated by the SMP:
 - (a). Small wetlands less than 1,000 square feet and hydrologically isolated;
 - (b). Man-made ponds smaller than one acre and excavated from uplands without a surface water connection to streams, lakes, or other wetlands.
- b. Wetland delineation. Wetlands are those areas in the City of Burien, designated in accordance with the Washington State Wetland Identification and Delineation Manual, as required by RCW 36.70A.175 (Ecology Publication #96-94).
- c. Wetland rating system. Wetlands for the purposes of the SMP shall be categorized in accordance with the Washington State Wetland Rating System for Western Washington – Revised (Ecology Publication #04-06-025).
- d. Wetland buffers. Wetland buffers for the purposes of this SMP shall be determined based upon Appendix 8-C of “Wetlands in Washington State Volume 2: Guidance for Protecting and Managing Wetlands FINAL April 2005 Ecology Publication #05-06-0088” based on information provided as part of a critical area study.
- ~~a-e.~~ Development proposals shall adhere to the applicable submittal requirements (a critical area report specific to the critical area) as specified in the Critical Areas Ordinance.
- ~~b-f.~~ Development shall not intrude into, over, or within 10 feet from *critical saltwater habitats* (e.g., eelgrass) except when an alternative alignment or location is not *feasible* and the development would result in no net loss of *critical saltwater habitat*.
- ~~e-g.~~ When this Master Program requires mitigation, the mitigation sequence described in section BMC 20.30.010 shall be followed.

20.30.030 Flood Hazard Reduction

The following provisions apply to actions taken to reduce flood damage or hazard, as well as to uses, development and shoreline modifications that may increase flood hazards. Flood hazard reduction measures may consist of nonstructural measures such as setbacks, land use controls, wetland restoration, biotechnical measures, and storm water

management. Flood hazard reduction measures may also include structural measures such as the weir at Lake Burien, floodwalls, dikes and elevation of structures consistent with the National Flood Insurance Program.

1. Policies

- a. All new shoreline development and uses shall be located and designed to prevent the need for shoreline stabilization and structural flood hazard reduction measures for the life of the development.
- b. Flood protection structures may be allowed in shoreline jurisdiction if a shoreline substantial development permit is obtained.
- c. New and expanded public flood protection measures may be permitted subject to City of Burien review and approval of a critical area study and the approval of a Federal Biological Assessment by the federal agency responsible for reviewing actions related to a federally listed species.
- d. New structural flood protection measures should only be allowed when necessary to protect existing development or to facilitate restoration projects.
- e. When emergency repair of flood protection structures are necessary, permits for the work including mitigation, should be obtained upon abatement of the emergency or the structure must be removed.
- f. Maintain the outlet weir at Lake Burien to provide a relatively constant lake level to minimize the potential for flooding.

(For additional policies refer to Chapter II General Goals and Policies, pg. 16.)

2. Regulations

- a. Non-structural flood protection measures shall be used instead of structural solutions unless the project proponent demonstrates that a non-structural solution is not feasible and there would be no net loss of shoreline ecological functions.
- b. All flood protection measures, including repair and maintenance, shall conform to standards set forth in approved floodplain management plans, when available.
- c. Flood protection shall not have adverse impacts on the property of others.
- d. Flood control methods must be consistent with BMC 15.55-Flood Damage Prevention and BMC 19.40-Critical Areas.

- e. Subdivision proposals shall be consistent with the need to minimize flood damage by conforming to the adopted Base Flood Elevation regulations.

20.30.035 Public Access

Public access includes *physical access* or the ability of the general public to reach, touch, and enjoy the water's edge, to travel on the waters of the state, and to view the water and the shoreline from adjacent locations. Access with improvements that provide only a view of the shoreline or water, but do not allow physical access to the shoreline is considered *visual access*.

1. Policies

- a. Public access to shoreline areas should be designed to provide for public safety and to minimize potential impacts to private property and individual privacy.
- b. Public access should be provided as close as possible to the water's edge with no net loss of shoreline ecological function~~without adversely affecting a critical area such as a wetland.~~
- c. Private views of the shoreline, although considered during the review process, are not expressly protected. Property owners concerned with the protection of views from private property are encouraged to obtain view easements, purchase intervening property or seek other similar private means of minimizing view obstruction.

(For additional policies refer to Chapter II General Goals and Policies, pg. 2-4 and Chapter III Management Policies, pg. 2-4.)

2. Regulations

- a. Public access provided by shoreline street ends, rights-of-way, and other public lands shall provide, maintain, enhance and preserve visual access to the water and shoreline in accordance with RCW 35.79.035.
- b. Visual access to outstanding scenic areas shall be provided with the provision of roadway design features that allow for visual access opportunities and are sensitive to adjacent land uses and neighborhood characteristics. ~~roadside pullovers or broadening of road shoulders.~~
- c. If a public road is located within shoreline jurisdiction, any unused right of way shall be dedicated as open space and public access.
- d. Public access shall be required for all new shoreline development and uses, except for; water dependent uses, individual single family residences and subdivisions of less than four-five parcels.

- e. Public access to shoreline areas shall not be required where it is demonstrated to be infeasible because of incompatible uses, safety, security, or constitutional and other legal limitations that may be applicable.
- f. The City shall utilize alternate methods of providing public access when appropriate and *feasible*, such as off-site improvements, viewing platforms, separation of uses through site planning and design, and restricting hours of public access.
- g. Public access improvements shall not result in a net loss of shoreline ecological functions.
- h. Required public access sites shall be fully developed and available for public use at the time of occupancy or use of the development or activity.
- i. Public access easements and permit conditions shall be recorded on the deed where applicable or on the face of a plat or short plat as a condition running in perpetuity with the land and shall occur at the time of permit approval.
- j. Future actions by the applicant or other parties shall not diminish the usefulness or value of the public access site.

20.30.040 Shoreline Vegetation Conservation

Vegetation along the shoreline plays a number of important roles including providing bank stability, habitat and wildlife corridors, shade and cover, wood and organic debris recruitment. By slowing erosion and retaining sediments, riparian vegetation reduces pollutants including nitrogen, phosphorus, hydrocarbons, PCBs, metals, and pesticides. Shoreline vegetation also prevents excessive turbidity by slowing down and filtering surface water runoff and associated sediments. This section should be used in conjunction with BMC section 20.30.050.

1. Policies

- a. Native plant communities within shoreline jurisdiction including, but not limited to, wetlands, lakes, streams and bluffs should be protected and maintained to minimize damage to the Ecology and environment of the shoreline area.
- b. Restoration and mitigation of shorelines degraded due to natural or manmade causes should, wherever feasible, use bioengineering techniques to arrest the processes of erosion and sedimentation, to improve water quality and to provide for properly functioning conditions.
- b-c. Vegetation within the city shoreline areas should be enhanced over time to provide a greater level of ecological functions, human safety, and property protection. This should be accomplished by managing alterations within shoreline jurisdiction and implementing vegetation management standards that will maintain or enhance the ecological functions. Emphasis on vegetation maintenance and enhancement should be focused in degraded areas and areas that are most beneficial to shoreline ecological functions.

(For additional policy guidance please see Chapter II General Goals and Policies, pg. 10-15.)

2. Regulations

- a. *Alterations* to vegetation within shoreline jurisdiction (except for the maintenance of existing or approved conditions) are not allowed without shoreline review. When allowed, alterations to the vegetation shall result in no net loss of shoreline ecological value or function.
- b. *Alterations* within the shoreline vegetation conservation buffer shall only be allowed through approval of a vegetation management plan. If mitigation of impacts is necessary it should take the form of vegetation enhancement and result in improvements to ecological functions. The plan shall be prepared by qualified professional and shall be consistent with the provisions of this chapter and BMC Chapter 19.40. Vegetation enhancement plans shall include:

- i. Revegetation of degraded buffer areas within 20 feet of the ordinary highwater mark (or top of shore armoring if applicable) or wetland edge with dense native vegetation meeting the standards of paragraph (c)(iii-iv) below. The Administrator may require wider widths or other improvements to mitigate greater impacts.
 - ii. The above revegetation area may be modified using area averaging when existing structures encroach into the 20 foot width, when access through the area to waterfront facilities is needed, or when water-dependent activities need to take place in the area.

- c. Within a shoreline riparian buffer as set forth in BMC 20.30.050 *alterations* shall comply with the following;
 - i. The applicant shall provide a vegetation management plan prepared by a qualified professional; and
 - ii. At least 75% of the buffer area shall be revegetated, where it is degraded; and
 - iii. Where vegetation is proposed within the buffer it shall be provided at a density to mimic natural conditions rather than a landscaped yard; and
 - iv. Vegetation planting areas shall consist of mix of native trees, shrubs and ground cover; and
 - ~~v. When alterations are proposed within a buffer, the end result shall be no loss of vegetated areas; and~~
 - ~~vi.~~v. Vegetation management plans should place emphasis on providing plantings within a 20 foot wide area parallel and adjacent to the shoreline; and
 - ~~vii.~~vi. Lawn is a prohibited vegetation in the shoreline buffer due to its limited functional benefits and need for chemical and fertilizer application; and
 - ~~viii.~~vii. Include appropriate limitations on the use of fertilizer, herbicides and pesticides as needed to protect lake and marine water quality.

- d. Prior to issuance of a building permit, the applicant shall submit a vegetation management plan pursuant to section g. The plans shall state what erosion control measures will be implemented during and after construction resulting in long term shoreline stabilization.

- e. All clearing, grading and vegetation removal shall be the minimum necessary except for the removal of noxious and invasive vegetation. Hand equipment should be used when feasible.

- f. In accordance with existing regulations, only noxious weeds shall be removed from the Lake Burien 30 foot wetland or wetland buffer without approval of the

Shoreline Administrator. Replacement of non-native vegetation may be allowed through approval of a vegetation management plan as prescribed in section g.

- g. The Director may establish minimum standards for vegetation management plans. At a minimum, vegetation management plans shall comply with the following;
 - i. Describe the area to be disturbed and the proposed vegetation to be altered; and
 - ii. Outline specific actions or methods that will be used to minimize impacts to the ecological functions and values; and
 - iii. Indicate how existing shoreline vegetation will be preserved and protected; and
 - iv. Describe measures that will be used or enacted that will ensure any alteration and required vegetation will be maintained for the duration of the use or development; and
 - v. Delineate any applicable critical area and/or buffer; and
 - vi. The plan shall document how the proposed alteration will result in equal or better ecological function and value.
- h. Hand removal of noxious weeds or invasive vegetation may be allowed without approval of a vegetation management plan as prescribe in section g, following a consultation with the shoreline administrator or his or her designee.

20.30.045 Water Quality, Storm Water and Nonpoint Pollution

Storm water picks up oil, grease, metals, yard and garden chemicals, dirt, bacteria, nutrients, and other pollutants from paved areas, and carries them to Puget Sound and Lake Burien without treatment. The higher rate of runoff from more impervious areas also results in decreased water quality by flushing more sediment into the water.

1. Policies

- a. The City of Burien should protect against adverse impacts to the public health, to the land and its vegetation and wildlife, and to the waters of the state and their aquatic life, through implementation of the following principles:
 - i) Prevent impacts to water quality and storm water quantity that would result in a net loss of shoreline ecological functions, or a significant impact to aesthetic qualities, or recreational opportunities.
 - ii) Ensure mutual consistency between shoreline management provisions and other regulations that address water quality and storm water quantity, including public health, storm water, and water discharge standards. The regulations that are most protective of ecological functions shall apply.

(For additional policy guidance please see Chapter II General Goals and Policies, pg. 12.)

2. Regulations

- a. Construction materials that come in continuous, direct contact with surface waters shall not be treated or coated with toxic materials. Untreated wood, precast concrete, plastic or nontoxic alternatives shall be used unless the project proponent demonstrates and the City of Burien building official determines that there is no feasible alternative to toxic treatments that will provide the structural characteristics necessary for the project.
- b. Low impact development methods shall be incorporated into any development or redevelopment in shoreline jurisdiction when feasible.

20.30.050 Dimensional Standards for Shoreline Development

The following buffers and setbacks are based on the City of Burien Shoreline Inventory (Appendix 1), City of Burien Shoreline Analysis and Characterization (Appendix 2) and, the City of Burien Shoreline Cumulative Impacts Analysis (Appendix 4) reports contained in this shoreline master program. The shoreline riparian buffers and building setbacks are calculated

from the ordinary high water mark or from the landward face of a bulkhead or other shoreline stabilization structure if one is present. For measurement methods, refer to BMC 19.17.

Figure 5 Dimensional Standards for Shoreline Development

SHORELINE ENVIRONMENT DESIGNATION			
	Shoreline Residential	Urban Conservancy	Aquatic
Marine Riparian Buffer	50 ft.	50 ft.	N/A
Lake Burien Riparian Buffer⁽¹⁾	30 ft.	N/A	N/A
Vegetation Conservation Buffer⁽²⁾	150 ft.	200 ft.	N/A
Building Setback from Riparian Buffer	15 ft.	15 ft.	N/A
Height Limit (see BMC 19.15)	35 ft.	35 ft.	35 ft.
Lot Size (see BMC 19.15)	RS-12,000 RS-7,200 (Lake Burien)	RS-12,000	N/A
Building Coverage (see BMC 19.15)	35%	30%	N/A

(1) Consistent with BMC 19.40 and BMC 20.30.040 (2) (f).
 (2) See BMC 20.30.040 Shoreline Vegetation Conservation for specific requirements.

20.30.055 Shoreline Buffers

Regulations:

1. A fifty foot riparian buffer for the marine shoreline (thirty feet for Lake Burien) shall be established from the ordinary high water mark for all lots. The riparian buffer is measured landward from a perpendicular line from the edge of the OHWM.
2. Docks are allowed within the buffer as provided herein. Structures and development such as viewing platforms, boardwalks, benches, and trails are allowed when associated with public access.
3. Whenever the Shoreline Administrator determines that monitoring has established a significant adverse deviation from predicted impacts, or that mitigation or

maintenance measures have failed, the applicant or the property owner shall be required to institute corrective action(s), which shall also be subject to further monitoring as provided in this section.

4. The Shoreline Administrator may require a performance bond(s) or other security in an amount sufficient to guarantee that all required mitigation measures will be completed in a manner that complies with conditions of approval and to guarantee satisfactory workmanship and materials for a period not to exceed five years. The Shoreline Administrator shall establish the conditions of the bond or other security according to the nature of the proposed mitigation, maintenance or monitoring and the likelihood and expense of correcting mitigation or maintenance failures.
5. All costs associated with the mitigation/monitoring and planning including city expenses, shall be the responsibility of the applicant.

20.30.060 Select Shoreline Uses and Modifications

Shoreline master programs establish a comprehensive program of use regulations for shorelines and provisions for specific uses to assure consistency with the policy of the act and where relevant within the jurisdiction. This section provides specific policies and regulations for the following types of uses and modifications:

- Aquaculture
- Bulkheads and Other Shoreline Stabilization Structures
- Docks, Piers and Floats
- Habitat Restoration and Enhancement
- Recreation
- Recreational Mooring Buoys
- Residential
- Transportation Facilities and Parking
- Utilities

20.30.065 Aquaculture

Aquaculture means the culture, harvesting or farming of food fish, shellfish, or other aquatic plants and animals. Sport fishing is not considered an aquaculture activity. Aquaculture activities include the hatching, cultivating, planting, feeding, raising, harvesting, and processing of aquatic plants and animals and the maintenance and construction of necessary equipment, buildings and growing areas. Cultivation methods include but are not limited to fish pens, fish hatcheries, shellfish rafts, racks and long lines, seaweed floats and nets and the culture of clams and oysters on tidelands and subtidal areas.

1. Policies

- a. Aquaculture should not be permitted in areas where it would result in a net loss of ecological functions, adversely impact eelgrass and macroalgae, or significantly conflict with existing adjacent uses.
- b. Aquacultural facilities must be designed and located so as not to spread disease to native aquatic life, establish new nonnative species which cause significant ecological impacts, or significantly impact the aesthetic qualities of the shoreline.

2. Regulations

- a. Aquaculture shall be limited to geoduck harvesting within Department of Natural Resources' tracts or for recovery of a native aquatic population in accordance with a government and/or tribal approved plan.
- b. Aquaculture is not permitted in areas where it would result in a net loss of ecological functions, adversely impact eelgrass and macroalgae, or significantly conflict with navigation and other water-dependent uses.
- c. Aquaculture is prohibited in critical saltwater habitat or within a 10 foot buffer from these areas.
- d. No aquatic organism shall be introduced into City of Burien shoreline areas without the prior written approval of the Director of the Washington State Department of Fish and Wildlife or the appropriate regulatory agency for the specific organism.
- e. No aquacultural processing, except for the sorting or culling of the cultured organism and the washing or removal of surface materials or organisms, shall be permitted waterward of the ordinary high water mark unless fully contained within a tending boat or barge.
- f. Shellfish seeding and culturing is allowed when conducted for native population recovery in accordance with a government and/or tribal approved plan.

20.30.070 Bulkheads and Other Shoreline Stabilization Structures

Shoreline stabilization includes actions taken to address erosion impacts to property and dwellings, roads and utilities, businesses, or structures caused by natural processes, such as current, flood, tides, wind, or wave action. These actions include structural and nonstructural methods.

Nonstructural methods include building setbacks, relocation of the structure to be protected, ground water management, planning and regulatory measures to avoid the need for structural stabilization.

1. Policies

- a. New development should be located and designed to avoid the need for future shoreline stabilization to the greatest extent *feasible*.
- b. Bulkheads should be designed to blend in with the natural surroundings and not detract from the aesthetic qualities or degrade the natural processes of the shoreline.

- c. Burien should take active measures to preserve natural unaltered shorelines, and prevent the proliferation of bulkheads and other forms of shoreline armoring.
- d. Non-structural stabilization measures including relocating structures, increasing buffers, enhancing vegetation, managing drainage and runoff and other measures are preferred over structural shoreline armoring.
- e. Where feasible, any failing, harmful, unnecessary, or ineffective structural shoreline armoring should be removed, and shoreline ecological functions and processes should be restored using non-structural methods.

(For additional policy guidance please see Chapter II General Goals and Policies, pg. 7, 11, 13.)

2. Regulations

- a. Non-structural shoreline stabilization or flood protection measures shall be used instead of structural solutions unless the project proponent demonstrates that a non-structural solution is not *feasible* and there would be no net loss of shoreline ecological functions.
- b. Construction of bulkheads, gabions, revetments, retaining walls and bluff walls, are only permitted when non structural methods (e.g., building setbacks, biotechnical vegetation measures, anchor trees, upland drainage control, and beach enhancement) are not feasible to protect a residence or other *primary structure* or essential public facility.
- c. New structural stabilization measures shall not be allowed except when the necessity to protect existing *primary structures* is demonstrated in the following manner:
 - i. New or enlarged structural shoreline stabilization measures for an existing *primary structure*, including residences and roads, shall not be allowed unless a geotechnical analysis, accepted by the City of Burien Shoreline Administrator, indicates that the structure is in imminent danger from shoreline erosion caused by tidal action, currents, or waves. Normal sloughing, erosion of steep bluffs, or shoreline erosion itself, without a scientific or geotechnical analysis, is not demonstration of need.
 - ii. The geotechnical analysis should evaluate on-site drainage issues and address drainage problems away from the shoreline edge before considering structural shoreline stabilization.
- d. An existing shoreline stabilization structure may be replaced with a similar structure if the following apply:

- i. The existing structure can no longer adequately serve its purpose of stabilizing the shoreline to protect the *primary structure*.
 - ii. Replacement walls or bulkheads shall not encroach waterward of the ordinary high water mark or existing structure unless the residence was occupied prior to January 1, 1992, and there is overriding safety or environmental concerns. In such cases, the replacement structure shall abut the existing shoreline stabilization structure.
 - iii. Where a net loss of ecological functions associated with *critical saltwater habitats* would occur by leaving the existing structure, removal of that structure would be required as part of the construction of the replacement.
- e. Structural shoreline stabilization may be allowed to protect new development when all the following conditions apply or have been complied with:
 - i. The need to protect a new *primary structure* from damage due to erosion must be demonstrated by a geotechnical analysis accepted by the City of Burien Shoreline Administrator. The analysis shall specifically find and state that the *primary structure* will be in imminent danger from shoreline erosion caused by tidal action, currents, or waves. Normal sloughing, erosion of steep bluffs, or shoreline erosion itself, without a scientific or geotechnical analysis, is not demonstration of need. The geotechnical analysis should evaluate on-site drainage issues and address drainage problems away from the shoreline edge before considering structural shoreline stabilization.
 - ii. The erosion on the site is not being caused by upland conditions, such as the loss of vegetation and drainage.
 - iii. Nonstructural measures, such as placing the development further from the shoreline, planting vegetation, or installing on-site drainage improvements, are not feasible or are not sufficient.
- f. Bulkheads shall be located and constructed in a manner which will not result in adverse effects on littoral drift and adjacent properties.
- g. Bulkheads shall not be installed for the purpose of creating upland by filling behind the bulkhead.
- h. The size and quantity of material utilized for the bulkhead shall be the minimum necessary to protect the structure from the estimated energy intensity of the shoreline hydraulic system.

i. The maximum height of a bulkhead on the marine shoreline shall be no greater than four (4) vertical feet above the OHWM.

j. Shoreline structures shall be design to minimize the transmission of wave energy.

20.30.075 Over-Water Structures—Including Docks, Piers and Floats

Docks are fixed structures floating upon the water. *Piers* are fixed, pile-supported structures. *Floats* (rafts) are floating structures that are moored, anchored, or otherwise secured in the water that are not directly connected to the shoreline. All of these types of overwater structures are found in the City's shoreline jurisdiction. These structures typically require permits from local, state and federal agencies. For structures overlying state owned lands, an Aquatic Lands lease and authorization from the Department of Natural Resources is required. For the purposes of this section, docks, piers, and floats will be called Over-Water Structures and addressed together unless otherwise noted. In addition to the following policies and regulations, applicants for an over-water structure should contact other permitting agencies including the Washington State Dept. of Fish and Wildlife and U.S. Army Corps of Engineers for their requirements, including dimensional standards.

1. Policies

- a. ~~Inwater~~ Over-water structures should be designed to minimize impacts to ecological functions of the water body including but not limited to water quality, anadromous and forage fish habitat, spawning and rearing areas, migration, and passage.
- b. New ~~piers and docks~~ over-water structures should be restricted to the minimum size necessary and permitted only when the applicant has demonstrated that a specific need exists to support the intended *water dependent* use.
- c. Ensure that ~~docks, piers and floats (rafts)~~ over-water structures are designed and maintained to avoid adverse impacts to the environment and shoreline aesthetics and minimize interference with the public's use of the water and public beach area.
- d. Encourage the use of mooring buoys in place of over-water ~~boating~~ structures.
- e. Encourage shared docks between multiple owners for single family waterfront development to minimize over-water coverage adversely impacting shoreline ecological functions.
- f. Over-water structures should be designed to avoid the need for maintenance dredging. The moorage of a boat larger than provided for in the original moorage design shall not be grounds for approval of dredging.

2. Regulations

- a. New ~~docks, piers, floats and rafts over-water structures~~ shall be limited to those required as part of a permitted water dependent use or for joint use of the facility.
- b. Private, single residence ~~piers over-water structures~~ for the sole use of the property owner shall not be considered an outright use on City of Burien marine shorelines. ~~An pier, dock or float over-water structure~~ may be allowed on the marine shoreline when the applicant has demonstrated a need for moorage and the following alternatives have been investigated and are not available or feasible:
 - i. Commercial or marina moorage;
 - ii. Floating moorage buoys;
 - iii. Joint use moorage pier.
- c. The design and construction of ~~docks, floats, and piers over-water structures~~ as well as their subsequent use and operation, shall:
 - i. Be capable of withstanding expected environmental conditions; and,
 - ii. Minimize interference with adjacent water uses and navigation; and
 - iii. Minimize adverse effects on fish, shellfish, wildlife, water quality and geohydraulic processes by limiting the size of the structure and the use of hazardous materials, incorporating grating to allow light passage or reflective panels to increase light refraction; and spaced and oriented to minimize shading and avoid a 'wall' effect that would block or baffle wave patterns, currents, littoral drive, or movement of aquatic life forms.
- d. ~~Piers, docks and floats Over-water structures~~ shall not be used for residential dwelling purposes nor provide moorage for boats that are occupied longer than two (2) days unless pump-out facilities are available and then no longer than seven (7) days total.
- e. Only joint use ~~dock, moorage, float or launching facilities over-water structures~~ are allowed for attached dwelling unit developments.
- f. Only one ~~dock, moorage, raft, float or launching facility over-water structure~~ is allowed for each single family detached residential lot.
- g. No covered moorage is allowed waterward of the ordinary high water mark.
- ~~h. The total surface area of piers, docks, floats and rafts shall not exceed 150 square feet of surface area.~~

20.30.080 Habitat Restoration and Enhancement

Shoreline habitat and natural systems enhancement projects include those activities proposed and conducted specifically for the purpose of establishing, restoring, or enhancing habitat for priority species in shorelines. Restoration or enhancement of shoreline areas means a change of the physical, chemical, or biological characteristics of a site with the goal of returning natural or historic ecological functions of a former or degraded wetland or fish and wildlife habitat conservation area.

1. Policy

Habitat restoration or enhancement projects that are not exempt pursuant to WAC 173-27-040, may be allowed in shoreline jurisdiction if a shoreline substantial development permit is obtained.

(For additional policy guidance please see Chapter II General Goals and Policies, pg. 16 & 17.)

2. Regulations

- a. Shoreline restoration or enhancement shall be designed to result in a natural shoreline with functions, vegetative communities and structure similar to what would historically have been found on the site or in the vicinity.
- b. All shoreline restoration or enhancement projects shall ensure that critical areas and their functions are not degraded by the action.
- c. Shoreline restoration projects shall implement the City's adopted shoreline restoration plan and be conducted specifically for the purpose of establishing, restoring, or enhancing habitat for priority species in shorelines.
- d. Nonstructural approaches for shoreline restoration or enhancement shall be used for shoreline stabilization instead of bulkheads or other structural stabilization measures, where feasible.
- e. Shoreline restoration projects that are not specifically listed in the City's adopted shoreline restoration plan shall be considered subject to approval of the Shoreline Administrator.
- f. Existing artificial structures that appear to be impeding natural recovery of a species or habitat shall be removed.
- g. When habitat is restored or enhanced, priority shall be given to retention of snags and trees that provide overhanging vegetation and/or nesting or perching branches for eagles, other raptors, or priority species.

- h. Shoreline habitat restoration or enhancement projects shall not adversely impact sediment processes, littoral drift, wetlands or fish and wildlife habitat conservation areas.
 - i. Beach enhancement shall not be allowed within spawning, nesting or breeding habitats unless the completed project will result in a greater long term benefit to the ecological functions and values.
 - j. Restoration of native vegetation shall comply with the vegetation conservation section BMC 20.30.040. In addition to the provisions of BMC section 20.30.040 a re-vegetation plan shall include a monitoring and maintenance program that shall, at a minimum, include the following:
 - a. Goals and objectives for the mitigation plan; and
 - b. Criteria for assessing the effectiveness of the mitigation; and
 - c. Monitoring plan including annual progress reports submitted to the Shoreline Administrator. The plan shall be in effect for a period of time sufficient to establish that performance standards have been met as determined by the Shoreline Administrator, but no less than five years; and
 - d. A contingency/adaptive management plan.
 - k. Restoration resulting in movement of the *OHWM*.
- (1) The Shoreline Administrator may grant relief from shoreline master program development standards and use regulations when the following apply:
- (a) A shoreline restoration project causes or would cause a landward shift in the ordinary high water mark, resulting in the following:
 - (i) (A) Land that had not been regulated under this Shoreline Master Program prior to construction of the restoration project is brought under shoreline jurisdiction; or
 - (B) Additional regulatory requirements apply due to a landward shift in required shoreline buffers or other regulations of the shoreline master program; and
 - (ii) Application of shoreline master program regulations would preclude or interfere with use of the property permitted by other development regulations, thus presenting a hardship to the project proponent;
 - (b) The proposed relief meets the following criteria:
 - (i) The proposed relief is the minimum necessary to relieve the hardship;
 - (ii) After granting the proposed relief, there is net environmental benefit from the restoration project;
 - (iii) Granting the proposed relief is consistent with the objectives of the shoreline restoration project and consistent with the shoreline master program; and

- (iv) Where a shoreline restoration project is created as mitigation to obtain a development permit, the project proponent required to perform the mitigation is not eligible for relief under this section; and
- (c) The application for relief must be submitted to the Department of Ecology for written approval or disapproval. This review must occur during the Department of Ecology's normal review of a shoreline substantial development permit, conditional use permit, or variance. If no such permit is required, then the Department of Ecology shall conduct its review when the City of Burien provides a copy of a complete application and all supporting information necessary to conduct the review.
 - (i) Except as otherwise provided in subsection (2) of this section, the Department of Ecology shall provide at least twenty-days (20) notice to parties that have indicated interest to the department in reviewing applications for relief under this section, and post the notice on their web site.
 - (ii) The department shall act within thirty calendar days of close of the public notice period, or within thirty days of receipt of the proposal from the local government if additional public notice is not required.
- (2) The public notice requirements of subsection (1)(c) of this section do not apply if the relevant shoreline restoration project was included in a shoreline master program or shoreline restoration plan as defined in WAC 173-26-201, as follows:
 - (a) The restoration plan has been approved by the Department of Ecology under applicable shoreline master program guidelines;
 - (b) The shoreline restoration project is specifically identified in the shoreline master program or restoration plan or is located along a shoreline reach identified in the shoreline master program or restoration plan as appropriate for granting relief from shoreline regulations; and
 - (c) The shoreline master program or restoration plan includes policies addressing the nature of the relief and why, when, and how it would be applied.
- (3) A substantial development permit is not required on land that is brought under shoreline jurisdiction due to a shoreline restoration project creating a landward shift in the ordinary high water mark.

20.30.085 Recreational Development

Shoreline recreational development includes facilities for activities such as hiking, fishing, picnicking, swimming, photography and viewing. It also includes facilities for more intensive uses, such as parks. This section applies to both publicly- and privately-owned shoreline facilities intended for use by the public or private group, association, or individual.

1. Policies

- a. Allow a variety of active and passive recreation opportunities in the shoreline areas.
- b. Encourage provision of view points, rest areas and picnic facilities in public shoreline areas.

(For additional policy guidance please see Chapter II General Goals and Policies, pg. 4-7, 15.)

2. Regulations

- a. Commercial recreational development or use in Seahurst Park shall be consistent with the provisions of this section.
- b. Recreation facilities shall be designed to take maximum advantage of and enhance the natural character of the shoreline area.
- c. Recreation areas shall promote public health, safety and security and not materially interfere with the normal public use of the water and shorelines.
- d. Recreation facilities shall provide adequate provisions to prevent the general public from trespassing and overflowing into adjacent, privately owned properties.
- e. Recreation facilities shall provide signage that prohibits tree cutting and collecting of marine life, driftwood and other natural materials.
- f. Jet skis and water craft with combustion engines are prohibited on Lake Burien.
- g. No person shall moor, anchor or dock a boat or other object overnight on or within 50 feet of the ordinary high water mark at any city beachfront park without authorization from the City of Burien Parks Department.
- h. Should public access occur on Lake Burien, only hand-carried watercraft shall be allowed to be launched from the public access areas.

20.30.090 Recreational Mooring Buoys

A recreational mooring buoy is a device used to tie up a boat and typically consists of a line from the boat attached to a float at the water's surface with a cable or line fixed underwater to the submerged ground. The anchor line allows the boat to float and swing around the fixed buoy anchor.

1. Policies

- a. Recreational boat mooring buoys are the preferred method to provide moorage instead of constructing new residential docks, piers or floats.

(For additional policy guidance please see Chapter II General Goals and Policies, pg. 7.)

2. Regulations

- a. Mooring buoys shall be located as close to the shore as possible while avoiding beaching under all tidal situations and no farther waterward than existing authorized mooring buoys unless the drift of the boat dictates it.
- b. Mooring buoys shall be located away from critical saltwater habitat.
- c. Mooring buoys shall utilize a system design that minimizes damage to underwater lands and marine vegetation.
- d. Individuals owning residential property abutting state-owned aquatic lands may install a mooring buoy on those public lands for recreational purposes after obtaining approval from the State of Washington Department of Natural Resources (DNR), Washington Department of State Fish and Wildlife (WDFW) and the Army Corps of Engineers.
- e. Recreational mooring buoys on public lands shall be installed using a DNR or WDFW approved system.
- f. Buoys shall be visible under normal daylight conditions at a minimum of 100 yards during daylight hours and must have reflectors for night time visibility.
- g. Recreational mooring buoys on public lands are prohibited for commercial and transient uses or live-aboards.
- h. Boats must be sixty feet or less in length to tie up to a recreational mooring buoy on public lands.
- i. A *Community Beach* may have one mooring buoy for every one hundred (100) lineal feet of waterfront.
- j. Mooring buoys are prohibited on Lake Burien.

20.30.095 Residential Development

Single family residences are the most common form of shoreline development and are identified as a priority use when developed in a manner consistent with control of pollution and prevention of damage to the natural environment. Residential development shall mean the construction or exterior alteration of one or more buildings, structures or portions thereof which are designed for and used to provide a place of abode for human beings including one and two family detached dwellings, multi-family residences, townhouses and condominiums, together with appurtenances and accessory structures. Bed and Breakfast establishments are considered an accessory use.

1. Policy

Residential development should demonstrate that the development and its related activities will not be detrimental to the public interest and uses of the shoreline and its associated water bodies.

(For additional policy guidance please see Chapter II General Goals and Policies, pg. 8-15.)

2. Regulations

- a. **General.** Residential development shall protect existing shoreline and water views, promote public safety, avoid adverse impacts to marine bluffs and nearshore habitat and not result in a net loss of shoreline ecological functions.
- b. **Dimensional Standards.** Residential development in shoreline jurisdiction shall conform to the dimensional standards found in BMC 20.30.050.
- c. **Common-line riparian buffer and building setback standards.** Riparian buffer and building setback standards [for single-family primary residential structures](#) may be reduced through the shoreline conditional use permit process. In addition to the conditional use criteria the Shoreline Administrator may approve reduced buffer and setback for residential development under the following conditions:
 - i. Where there are existing legally nonconforming residences that encroach on the established *OHWM* buffer and setback, within 50 feet of either side of the proposed building site, the required buffer and setback from the *OHWM* of the new or expanded home may be reduced. In such cases, proposed residential structures may be set back from the *OHWM* common to the average of the setbacks of the existing adjacent residences. (see Figure 6)
 - ii. In those instances where only one existing nonconforming single family residence is within 50 feet of the proposed building site, the

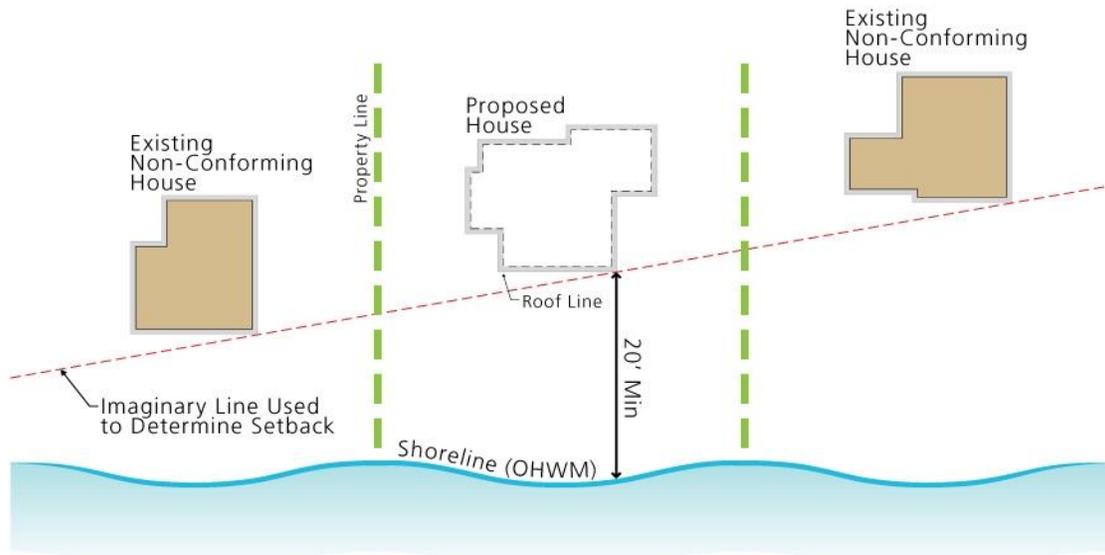
OHWM setback of the proposed structure may be reduced to the average of the *OHWM* setbacks for the existing adjacent residence and the applicable setback for the adjacent vacant parcel (65-feet for marine shorelines, 45-feet for Lake Burien).

- iii. In no case shall the reduced buffer and setback be less than 20 feet landward of the *OHWM* without a variance.
 - iv. In cases where the common line setback does not apply, expansion within the buffer/setback of existing homes may be allowed through a conditional use permit if there is no development waterward of the existing primary structure.
 - v. Any setback reduction beyond that allowed in this section shall require approval of a shoreline variance permit.
- d. **Lot size calculations.** Lot size calculations shall not include portions of the lot that are waterward of the ordinary high water mark.
- e. **Bluff top protection.** New development located at the top of bluffs in shoreline jurisdiction must be setback to ensure that shoreline stabilization is unlikely to be necessary for the life of the structure as demonstrated by a geotechnical analysis.
- f. **Vegetation removal for access.** Private access from single family detached residences to the shoreline shall avoid removal of trees and other woody vegetation when *feasible*.
- g. **Accessory structures and Appurtenances.** Accessory structures and appurtenances that are not normal appurtenances as defined at the end of this chapter must be proportional in size and purpose to the residence and compatible with onsite and adjacent structures, uses and natural features. Accessory structures and appurtenances that are not water-dependent are not permitted waterward of the principal residence unless clearly water-dependent (buoys, docks and floats) and used for recreational or personal use. Except for fences less than 6 feet high, accessory and appurtenant structures shall not be located within shoreline buffers or riparian buffer setbacks to assure that buffer integrity is maintained.
- h. **Floating homes or houseboats.** Floating homes or houseboats are prohibited in shoreline jurisdiction.
- i. **Stairs and trams.** Stairs and trams to the beach are allowed, except on feeder bluffs, provided the project proponent demonstrates that existing shared, public or community facilities are not adequate or available for use and the possibility of a multiple-owner or multiple-user facility has been thoroughly investigated and is not *feasible*. New facilities are encouraged to be share with adjacent properties that do not already have such facilities, and shall include shared maintenance easements

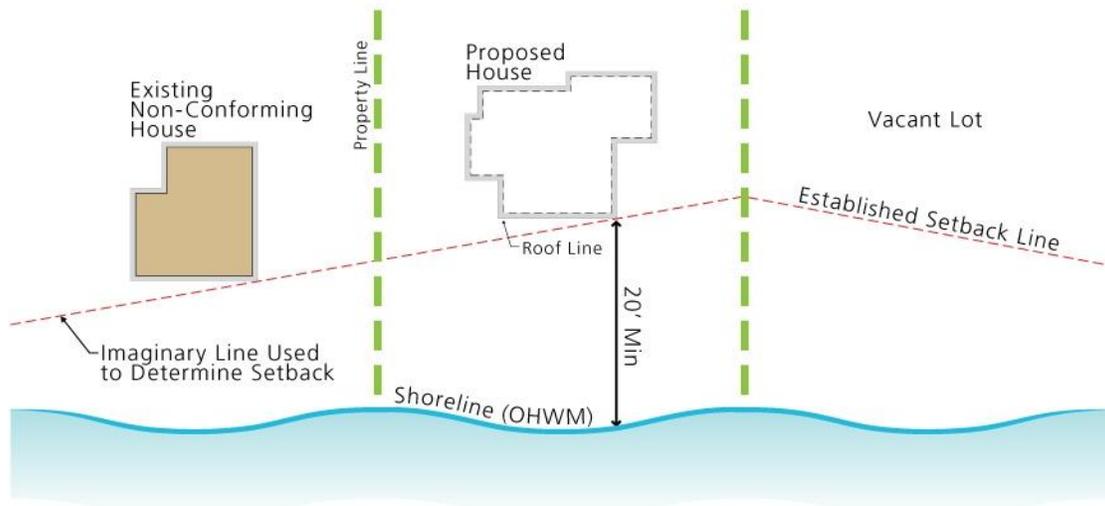
and agreements as necessary. Only one stair or tram system is allowed for each primary residential structure – duplicate facilities are not allowed.

- j. **Beach stairs and trams design.** Beach stairs and trams shall be designed and located such that no fill or other modification waterward of the ordinary high water mark is necessary to construct or use the structure. Stairways, trams and landings shall be located upland of existing bulkheads.
- k. **Detached Accessory Dwelling Units.** Detached accessory dwelling units shall not be located in riparian buffers or riparian buffer building setbacks.

Figure 6 Common-line Riparian Buffer and Building Setback Reduction Examples



OHWM = Ordinary High Water Mark



OHWM = Ordinary High Water Mark

20.30.100 Transportation Facilities and Parking

Transportation facilities are those structures and developments that aid in land and water surface movement of people, animals, goods and services. They include streets, bridges, bikeways, trails and other related facilities.

1. Policies

- a. All new or expanded roadways should be designed and located to minimize impacts to shoreline ecological functions including riparian and nearshore areas, and the natural landscape.
- b. Parking is not a preferred use in shorelines and should only be allowed to support authorized uses where no feasible alternatives exist.

(For additional policy guidance please see Chapter II General Goals and Policies, pg. 7 & 8.)

2. Regulations

- a. Unless in support of public access or other authorized use, new transportation and parking facilities shall be located outside of the shoreline jurisdiction or as far landward from the ordinary high watermark as feasible.
- b. Transportation facilities shall be designed and maintained to minimize erosion, preserve natural drainage ways and utilize low impact development techniques.
- c. Require transportation and utility facilities share use of rights-of-way to minimize disturbance in shoreline areas.
- d. The City shall give preference to mechanical means rather than the use of herbicides for roadside brush control on City streets in shoreline areas.
- e. Construction debris, overburden and other waste materials shall not be allowed to enter into any water body by disposal or erosion from drainage, high water or other means.
- f. Transportation facilities shall provide public access appropriate to the location and extent of the facility.
- g. All shoreline areas disturbed by road construction and maintenance shall be replanted and stabilized. Such vegetation shall be maintained by the agency or developer constructing or maintaining the road until established.

- h. Landscaping shall be provided to minimize visual impacts for all new and expanded transportation facilities in shorelines. A landscape plan shall be provided in conjunction with review and issuance of a shoreline substantial development permit.

20.30.105 Utilities

Utilities are services and facilities that produce, convey, transmit, store, or process water, sewage, communications, electric power, fuel, natural gas, and the like. On-site utility features serving a primary use, such as water, sewer or gas lines to a residence, are "accessory utilities" and shall be considered a part of the primary use.

1. Policies

- a. On-site utility features serving a primary use, such as water, sewer or gas lines to a residence, are considered a part of the primary use.
- b. Utilities production and processing facilities, such as sewage treatment plants, or parts of those facilities that are nonwater-oriented should not be allowed in shoreline areas unless it can be demonstrated that no other feasible option is available.
- c. Utilities should be located and designed to assure no net loss of shoreline ecological functions, preserve the natural landscape, and minimize conflicts with present and planned land and shoreline uses while meeting the needs of future populations in areas planned to accommodate growth.
- d. New development of pipelines and cables on tidelands, particularly those running roughly parallel to the shoreline, and development of facilities that may require periodic maintenance which would disrupt shoreline ecological functions should be discouraged except where no other feasible alternative exists.

(For additional policy guidance please see Chapter II General Goals and Policies, pg. 4 & 9.)

2. Regulations

- a. Utilities shall be placed underground whenever *feasible*.
- b. New development of underwater pipelines and cables on tidelands is prohibited except for deepwater outfalls and facilities where no other reasonable alternative exists.
- c. New cable crossings for telecommunications and power lines entering or leaving a body of water shall be bored or buried below the surface of the water body's bed

from the ordinary high water mark out to a minimum water depth of minus ten feet (-10') below mean lower low water.

- d. Directional boring, instead of excavation or trenching is required where *feasible*.
- e. New transmission facilities for the conveyance of services, such as power lines, cables, and pipelines, shall be located outside of the shoreline area where *feasible* and when necessarily located within the shoreline area shall assure no net loss of shoreline ecological functions.
- f. New or altered aerial utility lines and vertical utility facilities shall make maximum use of topography to minimize visual impact on the surrounding area.
- g. Communication and radio towers shall not obstruct or destroy scenic views of the water. This may be accomplished by design, orientation and location of the tower, height, camouflage of the tower, or other features consistent with utility technology.
- h. Culverts shall be located and installed in accordance with City of Burien standards and specifications.
- i. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters.
- j. Except for water lines, all underwater pipelines transporting substances hazardous to aquatic life or water quality are prohibited unless no other practical alternative exists. Such facilities shall include an automatic shut off valve on both shorelines and maintenance procedures are established.
- k. Expansion or repair of existing, underground utilities within shoreline jurisdiction shall include reclamation of areas disturbed during construction including, where *feasible*, replanting and maintenance care until the newly planted vegetation is established.

Chapter V. Administration and Shoreline Permit Procedures

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20.35.001 Purpose and Applicability

The purpose of this chapter is to establish a program for the administration and enforcement of the permit system for shoreline management provided by the Shoreline Management Act of 1971 (RCW Chapter 90.58). This chapter applies to all development within shorelines of the state within the City of Burien's shoreline jurisdiction. The City's shoreline administrative procedures are intended to be consistent with all provisions, criteria, application requirements, public notice requirements, and local or state review procedures set forth in WAC 173-27, Shoreline Management Permit and Enforcement Procedures. In the event of any inconsistencies between this Shoreline Master Program and WAC 173-27, the WAC shall govern.

All development in designated shoreline areas shall comply with the policy, provisions, and intent of the City of Burien Shoreline Master Program. Definitions contained in the Shoreline Management Act of 1971 (RCW Chapter 90.58) and the Shoreline Master Program Guidelines (WAC Chapter 173-26) shall apply to all terms and concepts used in this chapter, provided that definitions contained in this title shall be applicable where not in conflict with the Shoreline Management Act and the Shoreline Master Program Guidelines. In addition, the City will establish minimum application requirements, checklists, handouts, forms and fees for shoreline permits and shoreline exemption determinations.

Amendments to the City of Burien Shoreline Master Program will not become effective until approval by the Washington State Department of Ecology pursuant to RCW 90.58.090.

20.35.005 Authority and Rule of Liberal Construction

This chapter is promulgated pursuant to the authority and mandate of RCW 90.58.140(3). Compliance with this chapter shall constitute compliance with the Shoreline Management Act, the Shoreline Master Program Guidelines, and the City of Burien Shoreline Master Program (SMP) for evaluating permits on shorelines of the state.

As provided under RCW 90.58.900, the Shoreline Management Act (SMA) is exempted from the rule of strict construction. The SMA and the City of Burien Shoreline Master Program shall, therefore, be liberally construed to give full effect to the purposes, goals, policies, and standards for which the SMA and this Master Program were enacted. Exemptions from the Act or this Master Program are to be narrowly construed.

20.35.010 Shoreline Permit Types and Review Procedures

1. **Non-Exempt Activities.** All non-exempt substantial use and development undertaken on the City of Burien's shoreline jurisdiction must first obtain either a shoreline exemption, *Shoreline Substantial Development Permit*, *Shoreline Conditional Use Permit*, or *Shoreline Variance* from the City.
2. **Pre-application Meeting.** The owner of the subject property or the authorized agent of the owner is encouraged to have a pre-application meeting with the Shoreline Administrator to determine the appropriate type of shoreline permit needed for the proposed action.
3. **Consolidated Permit Review.** All shoreline permits shall be processed using the Type 1 land use decision process as set forth in BMC Chapter 19.65. If any shoreline use or development is subject to other approvals or permits under another permit authority, such as the zoning or subdivision codes, they shall be subject to a consolidated review and the decision maker designated for the approval or permit shall be the decision maker for the consolidated review.

Issuance of a shoreline permit is typically processed as a Type 1 land use action as set forth in the City of Burien Municipal Code Chapter 19.65. A Type 1 land use decision is an administrative decision made by the Community Development Director following issuance of a public notice, consideration of written public comments and review of a written staff recommendation. The Director's decision can be appealed to the City's Hearing Examiner. Depending on the underlying land use permits, the shoreline permit maybe processed as a Type 2 or 3 process involving the Hearing Examiner or the City Council.

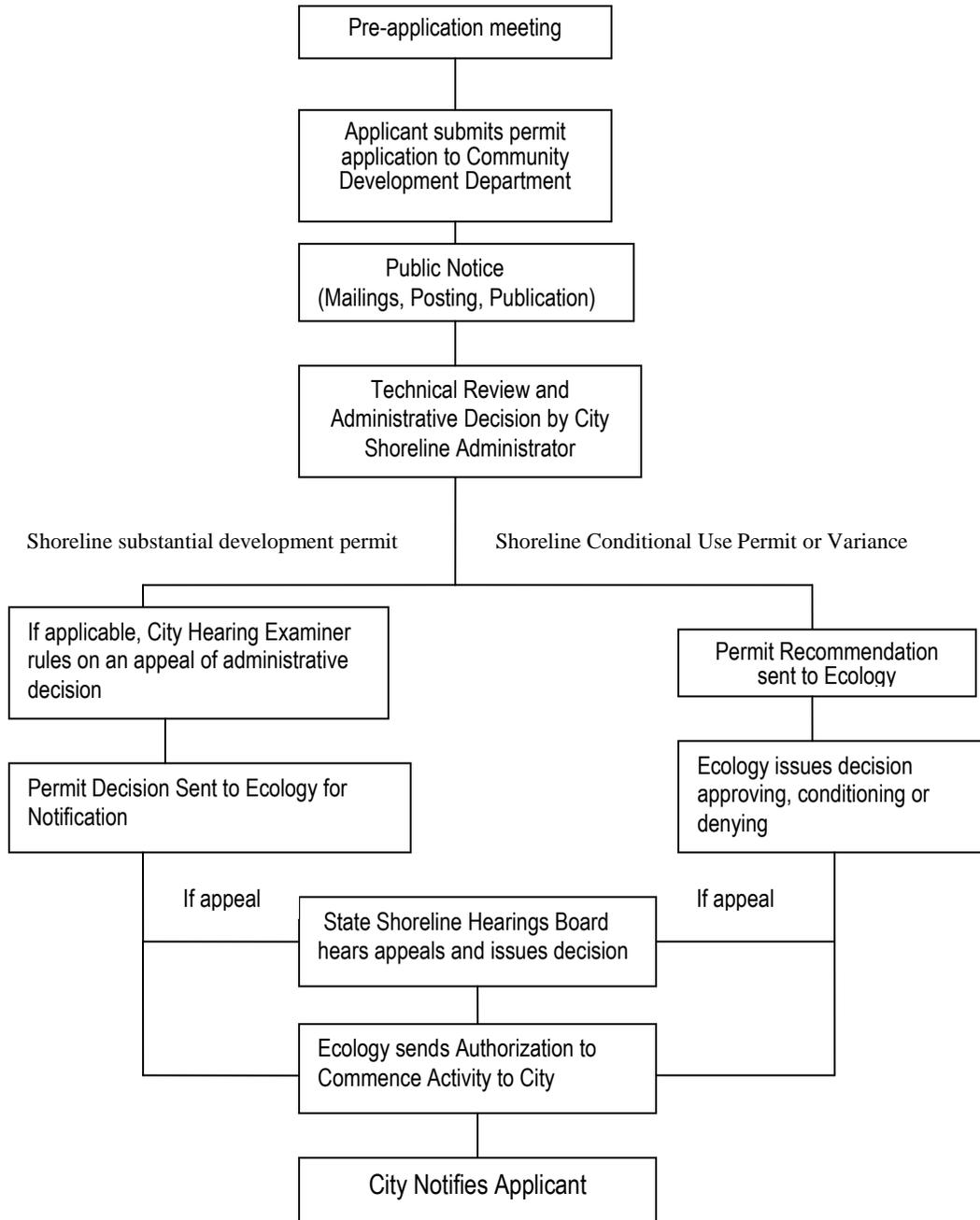
4. **Public Notice.** Public notice of an application for a shoreline permit shall be provided pursuant to BMC Chapter 19.65 unless otherwise specifically stated in this code. The public notice period shall extend thirty (30) days. If there is conflicting public notice time periods with State Law or Administrative Codes, the longer notice period shall be used.
5. **Department of Ecology Notification.** The Washington Department of Ecology-SEA Division (Ecology) shall be notified of the permit decision in the case of a shoreline permit or shoreline exemption involving a federal agency.
6. **Compliance with Regulations.** In the case of either a shoreline conditional use permit or a shoreline variance, the Shoreline Administrator shall determine the application's compliance with the relevant review criteria and prepare a recommendation that is then forwarded to Ecology for review and approval. The City's recommendation may include issuing the shoreline permit, issuing the shoreline permit with conditions, or denial of the requested shoreline permit.

7. **Shoreline Conditional Use Permit required.** A development activity or use that is listed as a conditional use pursuant to this master program or is an unclassified use, must obtain a conditional use permit even if the development or use does not require a substantial development permit.

8. **Shoreline Variance Required.** When a development or use is proposed that does not comply with the bulk, dimensional and performance standards of the master program, such development or use can only be authorized by approval of a shoreline variance, consistent with WAC 173-27-170.

Figure 7 is a flow chart illustrating the shoreline permit review process for a type 1 shoreline permit.

Figure 7 Shoreline Permit Review for Type 1 Process



20.35.015 Shoreline Substantial Development Permits

1. **Substantial Development Permit Required.** Prior to any shoreline substantial development within a shoreline of the state, a shoreline substantial development permit shall be obtained. A shoreline substantial development permit may be granted only when the development proposed is consistent with the Shoreline Management Act, the City of Burien Shoreline Master Program, the State Environmental Policy Act, and other applicable statutes, plans, regulations and policies. Development undertaken pursuant to the issuance of a permit shall be limited to that specifically delineated on the official site plan submitted by the applicant. The development shall be in compliance with any and all conditions imposed upon such permit at its issuance, including any impact mitigation measures identified in documents submitted in support of the application.
2. **Approval Criteria.** A substantial development permit shall be granted by the Shoreline Administrator only when the development proposed is consistent with the following:
 - A. City of Burien Comprehensive Plan, Burien Municipal Code, and Burien Shoreline Master Program; and
 - B. The proposed development or activity must also be found to be consistent with policies, guidelines, and regulations of the state Shoreline Management Act (RCW 90.58, WAC 173-26 and WAC 173-27).
3. **Authority to Condition.** The Shoreline Administrator may attach conditions to the approval of permits and shoreline exemptions as necessary to assure this consistency.

20.35.020 Substantial Development Permits for Limited Utility Extensions and Bulkheads

1. **Procedures.** An application for a substantial development permit for a limited utility extension or for the construction of a new bulkhead or other measures to protect a single-family residence and its appurtenant structures from shoreline erosion shall be subject to the following procedures:
 - a. The public comment period shall be 20 days. The notice provision set forth in BMC 19.65.040 shall explain how the public may obtain a copy of the city's decision on the application no later than two days following its issuance consistent with BMC 19.65.055. If there is an appeal of the decision to grant or deny the permit to the local government legislative authority, the appeal shall be finally determined by the legislative authority within thirty days.

- b. For purposes of this section, a limited utility extension means the extension of a utility service that:
 1. Is categorically exempt under RCW Chapter 43.21C for one or more of the following: natural gas, electricity, telephone, water or sewer;
 2. Will serve an existing use in compliance with RCW Chapter 90.58; and
 3. Will not extend more than 2,500 linear feet within the shorelines of the state.

20.35.025 Exemptions from Shoreline Substantial Development Permits (See WAC 173-27-040 for additional language and details)

1. **Rule of Narrow Construction.** There are several types of development activities that are exempt from the requirement to obtain a Shoreline Substantial Development Permit. State law requires that such exemptions be construed narrowly and if any part of the development is not eligible for exemption, then a Substantial Development Permit is required for the entire proposed development. No pre-application meeting is required for a shoreline exemption and the City usually makes a determination within thirty days. The Department of Ecology does not review shoreline exemptions unless State or Federal agency approvals are required for the project.
2. **Shoreline Exemption Process.** Exemption from the Shoreline Substantial Development Permit process does not constitute exemption from compliance with the policies and use regulations of the SMA (RCW 90.58); the provisions of this master program; or other applicable city, state or federal permit requirements. The Shoreline Administrator is authorized to grant or deny requests for exemptions from the shoreline substantial development permit requirement for uses and developments within shorelines that are specifically listed in the Shoreline Permit Matrix (Figure 4) of this master program. Such requests shall be applied for on forms provided by the Shoreline Administrator. The request shall be in writing and shall indicate the specific exemption of this SMP that is being applied to the development. The Shoreline Administrator shall prepare an analysis of the consistency of the project with this SMP and the SMA. As appropriate, the Shoreline Administrator's analysis and decision shall include statements of exemption which may contain conditions and/or mitigating measures of approval to achieve consistency and compliance with the provisions of the SMA and SMP. A denial of an exemption shall be in writing and shall identify the reason(s) for the denial. The Shoreline Administrator's actions on the issuance of a statement of exemption or a denial are subject to appeal pursuant to BMC 19.65.
3. **Agency Approvals Required.** Even though a project is exempt from obtaining a substantial development permit, it may still need approvals from other agencies. If the proposal involves construction within navigable water or if the project includes dredging or placement of fill, a U.S. Army Corps of Engineers Section and 10 and/or

404 permit is required. In addition, if the project involves construction or other activity waterward of the ordinary high water mark or if the project includes an activity that will use, divert, obstruct, or change the natural flow or bed of any state waters, a Hydraulic Project Approval from the Washington State Department of Fish and Wildlife is required.

4. **Exemptions.** The following developments or activities shall not require a local Shoreline Substantial Development Permit:
 - A. Any development of which the total cost or fair market value, whichever is higher, does not exceed five thousand seven hundred and eight dollars (\$5,718), if such development does not materially interfere with the normal public use of the water or shorelines of the state and does not result in a net loss of ecological functions. For 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 90.5 8.030 (2)(c). The total cost or fair market value of the development shall include the fair market value of any donated, contributed or found labor, equipment or materials.
 - B. **Normal Maintenance and Repair.** Normal maintenance or repair of existing structures or developments, including damage by accident, fire or elements. "Normal maintenance" includes those usual acts to prevent a decline, lapse, or cessation from a lawfully established condition. "Normal repair" means to restore a development to a state comparable to its original condition, including, but not limited to its size, shape, configuration, location and external appearance, except where repair involves total replacement which is not common practice or causes substantial adverse effects to the shoreline resource or environment. [The need for replacement resulting from neglect or maintenance and repair is not considered a common method of repair.](#) Normal repair must occur within a reasonable period after decay or partial destruction. If decay or partial destruction occurs to an extent of fifty percent or greater of the replacement cost of the original development, repair or replacement must be addressed within one year. Restoration may include total replacement of buildings and structures when supported by a statement from the Building Official that complete replacement is common practice. Replacement of nonconforming buildings, structures, land and uses shall comply with the provisions of BMC Chapter 19.55 and the Burien SMP.
 - C. **Construction of a normal protective bulkhead common to single family residences.** A "normal protective" bulkhead is constructed at or near the ordinary high water mark to protect a single family residence and is for protecting land from erosion, not for the purpose of creating land. Where an existing bulkhead is being replaced, 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. Bioengineered erosion control and alternative bank stabilization projects

may be considered a normal protective bulkhead when any structural elements are consistent with the above requirements and when the project has been approved by the Department of Fish and Wildlife. Backfill behind a constructed normal protective bulkhead is allowed, however no more than 1 cubic yard of fill per 1 horizontal foot of bulkhead wall may be used.

- D. **Emergency Construction.** Emergency construction necessary to protect property from damage by the elements. An *emergency* is an unanticipated and imminent threat to public health, safety, or the environment which requires immediate action within a time too short to allow full compliance with this chapter. Emergency construction does not include development of new permanent protective structures where none previously existed, except 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 be obtained which would have been required, absent an emergency, pursuant to RCW Chapter 90.58, or the Burien Shoreline Master Program.
- E. **Single Family Residence.** Construction on shorelands by an owner, lessee or contract purchaser of a single family residence for his/her own use or for the use of his/her family, which residence does not exceed a height of thirty-five (35) feet above average grade level and which meets all requirements of the state agencies having jurisdiction and the City. "Single-family residence" means a detached dwelling designed for and occupied by one family, including those structures and developments within a contiguous ownership which are a normal appurtenances. An *appurtenance* is necessarily connected to the use and enjoyment of a single-family residence and is located landward of the ordinary high water mark and the perimeter of a wetland. Appurtenances typically include a garage, decks, driveway, utilities and fences. Construction of a single-family residence may include grading which does not exceed two hundred fifty (250) cubic yards, and which does not involve placement of fill in any wetland or waterward of the ordinary high water mark. Construction authorized under this exemption shall be located landward of the ordinary high water mark.
- F. **Marking of Property Lines.** 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.
- G. **Navigational Aids.** Construction or modification, by or under the authority of the Coast Guard, of navigational aids such as channel markers and anchor buoys.
- H. **State Certified Project.** Any project with a certification from the Governor pursuant to RCW Chapter 80.50.
- I. **Site Exploration and Investigation.** Site exploration and investigation activities that are prerequisite to preparation of an application for development authorization under this chapter, if:
 - i. The activity does not interfere with the normal public use of the surface waters;

- ii. The activity will have no significant adverse impact on the environment including but not limited to fish, wildlife, fish or wildlife habitat, water quality, and aesthetic values;
 - iii. The activity does not involve the installation of any structure, and upon completion of the activity the vegetation and land configuration of the site are restored to conditions existing before the activity;
 - iv. A private entity seeking development authorization under this section first posts a performance bond or provides other evidence of financial responsibility to ensure that the site is restored to preexisting conditions;
 - v. The activity is not subject to the permit requirements of RCW 90.58.550 (oil or natural gas exploration in marine waters).
- J. Noxious Weeds.** The process of removing or controlling aquatic noxious weeds, as defined in RCW 17.26.020, through the use of an herbicide or other treatment methods applicable to weed control that are recommended by a final environmental impact statement published by the Department of Agriculture or Ecology jointly with other state agencies under RCW Chapter 43.21 C.
- K. Watershed Restoration Projects.** The Shoreline Administrator shall review *watershed restoration projects* for consistency with the this master program in an expeditious manner and shall issue a 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 will be charged for accepting and processing requests for a shoreline exemption for watershed restoration projects as used in this section.
- L. Private or Public Restoration Projects.** A public or private project, the primary purpose of which is to improve fish or wildlife habitat or fish passage, when all of the following apply:
- i. The project has been approved in writing by the Washington State Department of Fish and Wildlife (WDFW) as necessary for the improvement of the habitat or passage and appropriately designed and sited to accomplish the intended purpose;
 - ii. The project has received hydraulic project approval by WDFW pursuant to RCW Chapter 75-20; and
 - iii. The Shoreline Administrator has determined that the project is consistent with this master program.
- M. Hazardous Substance Remedial Actions.** The procedural requirements of RCW Chapter 90.58 shall not apply to a project for which a consent decree, order or agreed order has been issued pursuant to RCW Chapter 70.105D or to Ecology when it conducts a remedial action under RCW Chapter 70.105D. Ecology shall, in consultation with the City, assure that such projects comply with the substantive requirements of RCW Chapter 90.58, WAC Chapter 173-26 and this master program.

20.35.030 Letter of Exemption

1. **Letter of Exemption, General.** ~~Applicants for other permits or approvals~~Persons requesting an exemption must obtain a written letter of exemption verifying the proposed development as not subject to a Shoreline Substantial Development Permit. The letter of exemption must state how the proposed action is consistent with the policies and regulations of the City of Burien Shoreline Master Program. For example, the approval of a Building Permit for a single-family residence and bulkhead can be conditioned on the basis of shoreline policy and use regulations. The Building Official or other permit authorizing official, through consultation with the Shoreline Administrator, shall attach shoreline management terms and conditions to a building permit or other permit approvals pursuant to RCW 90.58.140.

2. **State and Federal Agencies.** Where shoreline development proposals are subject to review, approval, and permitting by a federal or state agency, the Shoreline Administrator shall prepare a letter and send to the Department of Ecology indicating the specific exemption provision from WAC 173-27-040 that is being applied to the development and provide a summary of the City's analysis of the consistency of the project with the City of Burien Shoreline Master Program and the state Shoreline Management Act.

20.35.035 Shoreline Conditional Use Permits (See also WAC 173-27-160)

1. **Purpose.** The purpose of a shoreline conditional use permit is to allow greater flexibility in administering the use regulations of the Burien Shoreline Master Program in a manner consistent with the policies of the Shoreline Management Act. This allows for review of a proposed action which may have a potential for compatibility concerns with nearby uses of other impacts that could be resolved under special circumstances with appropriate mitigation measures or conditions of approval.

2. **Criteria.** Shoreline conditional uses identified in the Burien Shoreline Master Program Use Matrix or those that are unlisted uses but not prohibited uses, may be allowed only when the applicant can demonstrate all of the following:
 - a. The proposed use will be consistent with RCW 90.58.020 and the Shoreline Management Act and the Burien Shoreline Master Program;
 - b. The proposed use will not interfere with the normal public use of public shorelines;
 - c. The proposed use and development of the site and design of the project will be compatible with other permitted and planned uses within the area;
 - d. The shoreline proposal will not result in significant adverse impacts on the shoreline environment and that the cumulative impact of additional

requests for like actions in the area will remain consistent with the policies of the Shoreline Management Act and the Burien Shoreline Master Program.

- e. That the proposed use will not cause a substantial detrimental effect to the public interest. In authorizing a shoreline conditional use permit, special conditions may be attached to the permit to prevent undesirable effects of the proposed use, to ensure consistency with the Shoreline Management Act and the Burien Shoreline Master Program, or to address cumulative impacts of all like actions.

20.35.040 Shoreline Variance Permits (See also WAC 173-27-170)

1. **Applicability.** A shoreline variance permit is strictly limited to granting relief from specific bulk, dimensional or performance standards set forth in the Burien Shoreline Master Program where there are extraordinary or unique circumstances relating to the physical character or configuration of property such that strict implementation of the policies, regulations or development standards would impose unnecessary hardships on the applicant or thwart the policies set forth in RCW 90.58.020 or the Burien Shoreline Master Program. Shoreline 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. The applicant must demonstrate that extraordinary circumstances shall be shown and the public interest shall suffer no substantial detrimental effect. A variance permit cannot be granted for a use.
2. **Landward Variance Criteria.** Variance permits for development and/or uses that will be located landward of the ordinary high water mark and/or landward of a wetland may be authorized provided the applicant can demonstrate all of the following:
 - a. The strict application of the bulk, dimensional or performance standards set forth in the applicable master program precludes all reasonable use of the property;
 - b. The hardship described in (a) 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;
 - c. The design of the project is compatible with other authorized developments within the area and with uses planned for the area under the City's comprehensive plan and Shoreline Master Program and will not cause adverse impacts to the shoreline environment;
 - d. The variance will not constitute a grant of special privilege not enjoyed by the other properties in the area;
 - e. The variance requested is the minimum necessary to afford relief; and
 - f. The public interest will suffer no substantial detrimental effect.

3. **Waterward Variance Criteria.** Variance permits for development and/or uses that will be located waterward of the ordinary high water mark or within a wetland, may be authorized provided the applicant can demonstrate all of the following:
 - a. The strict application of the bulk, dimensional or performance standards set forth in the Burien Shoreline Master Program precludes all reasonable use of the property;
 - b. The proposal is consistent with the criteria established (b) through (f) of section 2; and
 - c. The public rights of navigation and use of the shorelines will not be adversely affected.

4. **Consideration of Cumulative Impacts.** 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.

20.35.045 Alteration or Reconstruction of Nonconforming Structures or Uses

1. **Nonconformance Defined.** A nonconforming use or structure means a shoreline use or development which was lawfully constructed or established prior to the effective date of the Shoreline Management Act or the City of Burien's shoreline master program, or amendments thereto, but which does not conform to currently adopted regulations or standards.

2. **Limitations.** Uses and developments that were legally established and are nonconforming with regard to the use regulations of this master program may continue as legal nonconforming uses. Such uses shall not be enlarged or expanded, except that nonconforming single family may be modified consistent with this section of the City of Burien Shoreline Master Program.

Structures that were legally established and are used for a conforming use, but which are nonconforming with regard to setbacks, buffers, area, density, bulk, or height, may be maintained, repaired, enlarged or expanded provided that these actions do 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. Non-conforming single family residences may be expanded pursuant to 20.35.045 [5], all other expansions shall obtain a variance or be brought into conformance with the provisions this shoreline master program and the SMA.

3. **Voluntary Removal, Moving or Alterations.** Voluntary removal or alteration of a primary structure or appurtenance that exceeds 50% of the assessed value of the *nonconforming structure* as established by the most current county assessor's tax roll shall comply with the provisions of this City of Burien Shoreline Master Program. A nonconforming structure which is moved any distance must be brought into conformance with provisions of this shoreline master program and the SMA.

4. **Reconstruction.** A nonconforming structure which is destroyed, deteriorated, or damaged more than ~~50~~75% of the assessed value of the *nonconforming structure* as established by the most current county assessor's tax roll at present or at the time of its destruction by fire, explosion, or other casualty or act of God, may be reconstructed only insofar as it is consistent with ~~existing regulations and~~ the following:
 - a. The structure must be located landward of the ordinary high water mark.
 - b. The area between the nonconforming structure and the OHWM shall meet the vegetation conservation standards of this Master Program.
 - c. The ~~remodel or expansion~~reconstruction shall not cause adverse impacts to shoreline ecological functions or processes.
 - d. The action shall not extend either further waterward than the existing primary residential structure (not appurtenance), further into the minimum side yard setback, or further into the riparian buffer than the existing structure. Encroachments that extend waterward ~~of the existing residential foundation walls~~ or further into the riparian buffer, or the minimum required side yard setback~~s~~ require a variance.
 - e. An application is filed to reconstruct the structure within 18 months of the date of the damage.

5. **Expansion.** Enlargement or expansion of single family residences, within the riparian buffer or building setback, less than 500 square feet of ~~roof area~~building coverage may be approved by a shoreline substantial development permit subject to the criteria listed in this section. Enlargement or expansions of a single family residence greater than 500 square feet of ~~roof area~~building coverage by the addition of space to the primary structure or by the addition of normal appurtenances as defined in ~~Section 20.40.000~~ that would increase the nonconformity and/or encroach further into areas where new structures or developments would not be allowed under this Master Program may be approved by a shoreline conditional use permit if all of the following criteria are met:

- a. The structure must be located landward of the ordinary high water mark.
- b. The enlargement, expansion or addition to the existing primary residential structure shall not extend further waterward except through application of the common line setback provision of 20.30.100 [2.c]. Expansions shall not extend further into the minimum side yard setback, or further into any critical area unless authorized by the provisions of BMC 19.40.
- c. The area between the nonconforming structure and the shoreline and/or critical area shall meet the vegetation conservation standards of Burien SMP section 20.30.030.

6. **Structures Within the Aquatic Designation.** Replacement of any portion of any structure in the Aquatic shoreline designation shall comply with the SMP requirements for materials that come in contact with the water pursuant to 20.30.070 [2.b.c].

20.35.050 Appeals

Any person aggrieved by the granting, denying or rescinding of a permit on shorelines of the state pursuant to BMC 19.65.060 and RCW 90.58.140 may seek review from the state shorelines hearings board by filing a petition for review within twenty-one days of the date of filing as defined in RCW 90.58.140(6).

20.35.055 Effective Date and Duration of Shoreline Permits

No construction authorized by an approved shoreline permit may begin until 30 days after the final city decision on the proposal. This restriction shall be stated on the permit. Construction shall be commenced or, where no construction is involved, the use or activity shall be commenced within two years and the construction related activity shall terminate within five years after the effective date of a shoreline permit or the final settlement date of any associated appeals or legal actions regarding the proposed action. Provided, that the City may authorize a single extension for a period not to exceed one 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. The City shall notify the Department of Ecology in writing of any change to the effective date of a permit, as authorized by this section, with an explanation of the basis for approval of the change. Any change to the time limits of a permit other than those authorized by this section shall require a new permit application.

20.35.060 Compliance and Enforcement

A. Choice of Action/Penalty; Conflict. The choice of enforcement action to be taken and the severity of any penalty to be imposed shall be guided by the nature of the violation, the damage or risk to the public or to public resources, and /or the existence or degree of bad faith of the person or persons subject to the enforcement action. The provisions of Section 20.35.060 shall supersede and take precedence over any other enforcement provisions of the City Code in conflict herewith.

B. Order to Cease and Desist; Notice of Correction: In the event any person is or has engaged in activity that violates any of the provisions of, BMC Chapter 20.35, RCW Chapter 90.58, or a permit issued pursuant to BMC Chapter 20.35, the City may issue and serve upon such person or persons, a cease and desist order and/or an order to take corrective action.

(1) Content of order. The order shall set forth and contain:

(a) A description of the specific nature, extent, and time of violation and the damage or potential damage; and

(b) A notice that the act or acts causing a violation or a potential violation shall immediately cease and desist or, in appropriate cases, the specific corrective action to be taken within a specific and reasonable time, which corrective action may include, but is not limited to, restoration and/or mitigation of the site and other property damaged.

(2) Effective date. An order issued under this section shall become effective immediately upon receipt by the person to whom the order is directed.

(3) Compliance. Failure to comply with the terms of an order issued pursuant to BMC Section 20.35.060(B) shall be a violation of BMC Chapter 20.35 and can result in enforcement actions including, but not limited to, the issuance of a civil penalty.

(4) Other Action. In addition to the issuance of the cease and desist order and/or an order to take corrective action, the City may take other enforcement action available at law including, issuance of a civil notice of violation and penalties pursuant to BMC Section 20.35.060(C), seeking injunctive or declaratory relief, imposition of criminal penalties, and permit rescission as set forth in RCW 90.58.140. The City may combine an order issued pursuant to Section 20.35.060(B) with a notice of violation.

C. Civil Penalties; Procedures; Remission:

(1) Civil Violations. It shall be a civil violation of this BMC Chapter 20.35. for any person to:

(a) Use, construct or demolish any structure, or to conduct clearing, earth-moving, construction or other development not authorized under a Substantial Development Permit, Conditional Use Permit or Variance Permit, where such permit is required by BMC Chapter 20.35.

(b) Undertake or conduct any work which is not conducted in accordance with the plans, conditions, or other requirements in a permit approved pursuant to BMC Chapter 20.35, provided that the terms or conditions are stated in the permit or the approved plans;

(c) Remove or deface any sign, notice, complaint or order required by or posted in accordance with BMC Chapter 20.35;

(d) Misrepresent any material fact in any application, plans or other information submitted to obtain any shoreline use or development authorization;

(e) Fail to comply with the requirements of a substantial development permit, conditional use permit or variance issued pursuant to BMC Chapter 20.35;

(f) Undertake a development or use on shorelines of the state without first obtaining a permit required pursuant to BMC Chapter 20.35;

(g) Fail to comply with an order issued under BMC Section 20.35.060(B);

(2) Amount of penalty. The penalty for each civil violation shall not exceed one thousand dollars for each violation and shall not be less than twenty-five dollars. The amount of the penalty prescribed in the notice of violation shall be determined based upon the guidelines set forth in BMC Section 20.35.060(A).

(3) Separate Violation. Each calendar day that a civil violation occurs or continues to occur shall constitute a separate civil violation.

(4) Notice of Civil Violation. A notice of civil violation and penalty shall be imposed by issuance and service of a notice of civil violation in writing.

(5) Contents of Notice of Violation. The notice of violation shall set forth and contain:

(a) A description of the specific nature, extent, and time of violation(s) and the damage or potential damage; and

(b) A notice that the act or acts causing a violation or a potential violation shall immediately cease and desist or, in appropriate cases, the specific corrective action to be taken within a specific and reasonable time; and

(c) A notice that any order included in the notice of violation shall become effective immediately upon receipt by the person to whom the order is directed.

(6) Service of Notice of Violation. The notice of violation shall be served upon the person or persons alleged to have committed the violation either by certified mail with return receipt requested, at such person's or persons' last known address of record, or by personal service.

(7) Application for Remission or Mitigation. Any person incurring a penalty may apply in writing, within thirty days of receipt of the penalty, to the Director for remission or mitigation of such penalty. The application shall be filed with the City Clerk and shall identify the specific violation or violations for which the applicant seeks remission or mitigation, set forth the specific facts establishing the extraordinary circumstances which the applicant desires the Director to consider, include complete copies of any documents or records applicant wishes the Director to consider, include the mailing address (not a post office box) at which the applicant will receive notice of the decision, and shall be signed by the applicant. Incomplete applications and applications filed with the City after the thirty-day period specified herein shall not be considered by the Director.

Upon receipt of a complete application for remission or mitigation, the Director, or his/her designee, shall consider the application, together with any information the Director, or his/her designee, determines is relevant, and may remit or mitigate the penalty only upon a finding that that applicant has demonstrated extraordinary circumstances, such as the presence of information or factors not considered in setting the original penalty. When a penalty is imposed jointly by the Department of Ecology and the City, the penalty may be remitted or mitigated only upon such terms as both the Department of Ecology and the City agree.

(8) Right of Appeal.

(a) Any person issued a notice of civil violation pursuant to BMC Section 20.35.060(C), may appeal the same to the City Council; provided that, if the penalty is imposed jointly by the City and the Department of Ecology, an appeal shall be filed with the shorelines hearings board in accordance with WAC 173-27-290.

- (b) Timing of Appeal. Except as provided below, any person appealing a notice of civil violation to the City Council shall file a written notice of appeal with the City Clerk within thirty days of service of the notice of civil violation. In the event that a timely and completed application is filed with the City Clerk for remission or mitigation, an appeal of a civil violation that is the subject of the application for remission or mitigation shall be filed within thirty days of applicant's receipt of the City's written decision regarding the remission or mitigation. The applicant shall be deemed to have received the written decision upon the earlier of the date of personal service of the written decision or three days after the written decision is deposited in the United States Mail, in a postage pre-paid, properly addressed envelope, using the applicant's address as stated in the application.
- (c) Notice of Appeal. All appeals shall be in writing and contain the following:
- i. A heading in the words: "Before the Hearing Examiner;
 - ii. A caption reading: "Appeal of _____" giving the name of all appellant(s);
 - iii. A brief statement in concise language of the violation or violations protested, together with any material facts claimed to support the contentions of the appellant, including a copy of the notice of civil violation(s) being appealed;
 - iv. A brief statement in concise language of the relief sought, and the reasons why it is claimed the protested notice of violation(s) should be reversed, modified or otherwise set aside;
 - v. The signatures of appellant and appellant's official mailing addresses;
 - vi. The verification (by declaration under penalty of perjury under the laws of the State of Washington) of the appellant as to the truth of the matters stated in the appeal.
- (d) Hearing. Within 10 days of receiving the written appeal, the city clerk shall fix a date, time and place for the hearing of the appeal. Such date shall be not less than 10 days nor more than 60 days from the date the appeal was filed; provided that, the Hearing Examiner may reset or continue a hearing upon request of the City or the party appealing, upon good cause shown, or sua sponte. Written notice of the date of the hearing shall be provided to the appellant by mailing such notice by first class mail, postage prepaid, to the appellant at the address shown on the notice of appeal. At the hearing the appellant shall be entitled to appear in person and be represented by counsel, and to offer evidence pertinent and material to those matters or issues specifically raised by the appellant in the written notice of appeal.

- (e) Evidence. Unless otherwise provided by law, evidence that is material and relevant to determination of the matter consistent with the applicable legal requirements and subject to administrative rules of proceedings before the Hearing Examiner, shall be admitted into the record whether or not such evidence was considered by the official issuing the notice of civil violation.
 - (f) Findings/Conclusions/Recommendation. The Hearing Examiner shall conduct adjudicative proceedings, receive and examine all evidence it finds relevant to the subject matter, and prepare a record thereof. When the Hearing Examiner renders a recommendation, the examiner shall make and enter written findings and conclusions which support such decision. The findings and conclusions shall set forth and demonstrate the manner in which the decision or recommendation is consistent with applicable laws, regulations and policies of the city of Burien. The Hearing Examiner may recommend that the notice of civil violation be affirmed, dismissed or modified consistent with his/her findings and conclusions. The decision or recommendation shall be rendered as soon as possible but in all events within 20 working days of the conclusion of the hearing.
 - (g) City Council. When taking final action, the City Council shall make and enter findings of fact from the record before the Hearing Examiner which support its action, may affirm, reverse, modify, or remand the decision of the hearing examiner, and may adopt all or portions of the examiner's findings and conclusions. The decision of the City Council shall be a final decision.
- (9) Penalties due.
- (a) Penalties imposed under BMC Section 20.35.060(C) shall become due and payable thirty days after receipt of notice of civil violation unless application for remission or mitigation is made or an appeal is filed. Whenever an application for remission or mitigation is made, penalties shall become due and payable thirty days after receipt of the City's decision regarding the remission or mitigation. Whenever an appeal of a penalty is filed, the penalty shall become due and payable upon completion of all review proceedings and upon the issuance of a final decision confirming the penalty in whole or in part.
 - (b) If the amount of a penalty owed the City is not paid within thirty days after it becomes due and payable, the City may take actions necessary to recover such penalty.
- (10) Aiding or abetting. Any person who, through an act of commission or omission procures, aids or abets in the civil violation shall be considered to have committed a civil violation for the purposes of the civil penalty.

D. Criminal Penalties.

In addition to incurring civil penalties under BMC Section 20.35.060(C), any person found to have willfully engaged in activities on shorelines of the state in violation of the provisions of BMC Chapter 20.35, shall be guilty of a gross misdemeanor, and shall be punished by:

- (1) A fine of not less than twenty-five dollars (\$25) or more than one thousand dollars (\$1,000);
- (2) Imprisonment in the County/City jail for not more than ninety (90) days; or
- (3) 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.

E. Inspection Access.

The Director and his/her authorized representatives, may for the purpose of inspection for compliance with the provisions of a permit issued pursuant to BMC Chapter 20.35, enter all properties that are subject to such a permit. All persons applying for a permit under this BMC Chapter 20.35 shall be deemed to have given their consent to entry upon the property upon issuance of the permit. No owner or occupant of any premises shall fail to provide prompt entry to the Director or authorized representative for the purposes of inspection under this section. If such entry is refused, the City shall have recourse to every remedy provided by law to secure entry, including, issuance of a notice of a notice of correction and issuance of a notice of civil violation.

Whenever entry is required for purposes of inspection pursuant to this section, if the premises are occupied, the persons conducting the inspection shall present proper credentials and request entry, and if the premises are unoccupied, reasonable effort shall first be made to locate the owner of the premises and request entry.

F. Other Remedies.

- (1) In addition to the civil and criminal penalties provided for herein, the City may, pursuant to RCW Chapter 90.58, bring such injunctive, declaratory, or other actions as are necessary to insure that no uses are made of the shorelines of the state located within the City of Burien in conflict with the provisions of, RCW Chapter 90.58, BMC Chapter 20.35, a permit issued pursuant to BMC Chapter 20.35, or other regulations adopted pursuant state law or city code, and to otherwise enforce the provisions of the City's Shoreline Master Program.

(2) Any person subject to the regulatory provisions of this Program or the Act 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 condition prior to violation. The City Attorney may bring suit for damages under this section on behalf of the City and on the behalf of all persons similarly situated pursuant to RCW Chapter 90.58.

G. Abatement.

Structures or development on shorelines considered by the Director to present a hazard or other public nuisance to persons, properties or natural features may be abated by the City using all lawful means available.

20.35.065 Revisions to Shoreline Permits (See also WAC 173-27-100)

1. **Revision required.** A permit revision is required whenever an applicant proposes substantive changes to the design, terms or conditions of a project from that which is approved in the shoreline permit. Changes are considered substantive if they materially alter the project in a manner that relates to its conformance to the terms and conditions of the permit, the Burien Shoreline Master Program and/or the policies and provisions of RCW Chapter 90.58. Changes which are not substantive in effect do not require approval of a revision.
2. **Required Information.** When an applicant seeks to revise a permit, the city will request from the applicant detailed plans and text describing the proposed changes. If the Shoreline Administrator determines that the proposed changes are within the scope and intent of the original permit, and are consistent with the Burien Shoreline Master Program and the Shoreline Management Act, the city may approve a revision.

"Within the scope and intent of the original permit" means all of the following:

- a) No additional over water construction is involved except that pier, dock, or float construction may be increased by five hundred square feet or ten percent from the provisions of the original permit, whichever is less;
- b) Ground area coverage and height may be increased a maximum of ten percent from the provisions of the original permit;
- c) The revised permit does not authorize development to exceed height, lot coverage, setback, or any other requirements of the applicable master program except as authorized under a variance granted as the original permit or a part thereof;
- d) Additional or revised landscaping is consistent with any conditions attached to the original permit and with the applicable county master program;
- e) The use authorized pursuant to the original permit is not changed; and

- f) No adverse environmental impact will be caused by the project revision.
3. **New Permits Required.** If the revision, or the sum of the revision and any previously approved revisions will violate the criteria specified in (a)-(f) of the preceding section, the City shall require that the applicant apply for a new shoreline permit. Revisions to permits may be authorized after original permit authorization has expired under WAC 173-27-080(2). The purpose of such revisions shall be limited to authorization of changes which are consistent with this section and which would not require a permit for the development or change proposed under the terms of RCW Chapter 90.58, the Burien Shoreline Master Program and this section. If the proposed change constitutes substantial development, then a new permit is required. Provided, this subsection shall not be used to extend the time requirements or to authorize substantial development beyond the time limits of the original permit. The revision approval, including the revised site plans and text consistent with the provisions of WAC 173-27-180 as necessary to clearly indicate the authorized changes, and the final ruling on consistency with this section shall be filed with the Washington State Department of Ecology. In addition, the city shall notify parties of record of the action.
 4. **Revisions to Conditional Use or Variance Permits.** If the revision to the original permit involves a conditional use or variance, the city shall submit the revision to the Department of Ecology for the required state's approval, approval with conditions, or denial, and shall indicate that the revision is being submitted under the requirements of this subsection. The Department of Ecology shall render and transmit to the City and the applicant its final decision within fifteen days of the date of their receipt of the submittal from the City. The City of Burien shall notify parties of record of the Department of Ecology's final decision.
 5. **Effective Date.** The revised permit is effective immediately upon final decision by the City or, when appropriate, upon final action by the Department of Ecology.
 6. **Appeals.** Appeals shall be to the state shorelines hearings board in accordance with RCW 90.58.180 and shall be filed within twenty-one days from the date of receipt of the City's action by the Department of Ecology or the date the Department of Ecology's final decision is transmitted to the City and the applicant.
 7. **Construction Authorization.** Construction undertaken pursuant to that portion of a revised permit not authorized under the original permit is at the applicant's own risk until the expiration of the appeals deadline. If an appeal is successful in proving that a revision is not within the scope and intent of the original permit, the decision shall have no bearing on the original permit.

20.35.070 Rescission of Shoreline Permits (See also RCW 90.58.140(8))

Whenever any development or use is in violation of a permit or shoreline exemption issued pursuant to this chapter, the City may, concurrent with or as an alternative to any other remedy provided by this title or other law or ordinance, initiate permit rescission proceedings by scheduling a public hearing before the hearing examiner and serving the applicant with written notice thereof. Notice shall be provided in accordance with BMC 19.65.045 and contain a general description of the alleged noncompliance and date, time, and place of public hearing. It shall be served by registered mail at least 15 calendar days prior to such hearing. The permit rescission request shall be processed as a Type 2 decision in accordance with the procedures established in BMC Chapter 19.65.

Chapter VI. Shoreline Definitions

20.40.000 Alteration means any human activity which results or is likely to result in an impact upon the existing condition of a critical area. Alterations include, but are not limited to, grading, filling, dredging, draining, channelizing, applying herbicides or pesticides or any hazardous substance, discharging pollutants except storm water, grazing domestic animals, paving, constructing, applying gravel, modifying for surface water management purposes, cutting, pruning, topping, trimming, relocating or removing vegetation or any other human activity which results or is likely to result in an impact to existent vegetation, hydrology, wildlife or wildlife habitat. Alterations do not include walking, fishing or any other passive recreation or other similar activities.

20.40.005 Appurtenance means development necessarily connected to the use and enjoyment of a single family residence and located landward of the perimeter of an associated wetland and landward of the ordinary high water mark. Normal appurtenances include a garage; deck; driveway; utilities solely servicing the subject single family residence; fences; and grading which does not exceed 250 cubic yards.

20.40.010 Aquaculture means the culture, harvesting or farming of food fish, shellfish, or other aquatic plants and animals. Activities include the hatching, cultivating, planting, feeding, raising, harvesting, and processing of aquatic plants and animals and the maintenance and construction of necessary equipment, buildings and growing areas. Cultivation methods include but are not limited to fish pens, fish hatcheries, shellfish rafts, racks and long lines, seaweed floats and nets and the culture of clams and oysters on tidelands and subtidal areas.

20.40.015 Associated wetlands means those wetlands which are in proximity to and either influence or are influenced by tidal waters or a lake or stream subject to the Shoreline Management Act.

20.40.020 Beach means the zone of unconsolidated material that is moved by waves, wind, and tidal currents, extending landward to the coastline.

20.40.025 Boat ramp means graded slopes, slabs, pads, planks, or rails used for launching boats by means of a trailer, hand, or mechanical device.

20.40.030 Bulkhead means a solid or open pile wall erected generally parallel to and near the ordinary high water mark for the purposes of protecting adjacent uplands from waves or current action.

20.40.035 Critical saltwater habitat means all kelp beds, eelgrass beds, spawning and holding areas for forage fish, such as herring, smelt and sandlance; shellfish beds; mudflats, intertidal habitats with vascular plants, and areas with which priority species have a primary association.

20.40.040 Community Beach means a beach area jointly owned by a homeowners association for use of the neighborhood.

20.40.043 Community residential facility - Living quarters meeting applicable federal and state standards that function as a single housekeeping unit and provide supportive services, including but not limited to counseling, rehabilitation and medical supervision, excluding drug and alcohol detoxification; if staffed by nonresident staff, each 24 staff hours per day equals one full-time residing staff member for subclassifying community residential facilities as follows:

1. Community residential facility-I: Nine to ten residents and staff.

2. Community residential facility-II: Eleven or more residents and staff. [BMC 19.10.065]

20.40.045 Docks are fixed structures floating upon the water.

20.40.050 Dredging means the removal of earth, sand, sludge or other materials from the bottom of a stream, river, lake, bay or other water body. However, the creation of temporary depressions or contour alterations on tidelands or bedlands through the use of aquaculture harvesting equipment approved by the Washington State Department of Fish and Wildlife shall not be construed to be dredging.

20.40.055 Feasible means actions that meet all of the following conditions:

- (a) The action can be accomplished with technologies and methods that have been used in the past in similar circumstances, or studies or tests have demonstrated in similar circumstances that such approaches are currently available and likely to achieve the intended results;
- (b) The action provides a reasonable likelihood of achieving its intended purpose; and
- (c) The action does not physically preclude achieving the project's primary intended legal use.

20.40.060 Fill means any material, such as earth, clay, sand, concrete, rubble, wood chips, bark or waste of any kind which is placed, stored or dumped upon the surface of the ground resulting in an increase in the natural surface elevation.

20.40.065 Floating home means a structure designed and operated substantially as a permanently based structure and not as a vessel and is typically characterized by permanent utilities, a semi-permanent anchorage/moorage design, and by the lack of adequate self-propulsion to operate as a vessel.

20.40.070 Floats (rafts) are floating structures that are moored, anchored, or otherwise secured in the water that are not directly connected to the shoreline.

20.40.073 Government Facility – Services and facilities operated by any level of government, excluding those use listed separately in this Code. [BMC 19.10.210]

20.40.075 Houseboat means a vessel used for living quarters but licensed and designed substantially as a mobile structure by means of detachable utilities or facilities, anchoring, and the presence of adequate self-propulsion to operate as a vessel.

20.40.080 In-water structure means a structure located waterward of the ordinary high water mark that either causes or has the potential to cause water impoundment or the diversion, obstruction, or modification of water flow.

20.40.085 Littoral drift means the mud, sand, or gravel materials moved parallel to the shoreline in the nearshore zone by waves and currents.

20.40.090 Mooring buoy means a floating object anchored to the bottom of a water body that provides tie up capabilities for vessels.

20.40.095 Normal protective bulkhead means a bulkhead, common to single family residences, constructed at or near the ordinary high water mark to protect an existing single family residence, the sole purpose of which is to protect land from erosion, not for the purpose of creating new land.

20.40.097 Office – A place of employment providing professional, administrative, educational, business or governmental services other than production, distribution, sale or repair of goods or commodities. The following is a nonexclusive list of office uses: medical, dental or other health care; veterinary, accounting, architectural, engineering, consulting or other similar professional services; management, administrative, secretarial, marketing, advertising, personnel or other similar services; sales offices where no inventories or goods are available on the premises, real estate, insurance, travel agent, brokerage or other similar services.[BMC 19.10.385]

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20.40.100 Ordinary High Water Mark (OHWM) means the mark on lakes, streams and tidal waters that approximates the line of mean high water as commonly evidenced by a mark upon the soil a character distinct from that of the abutting upland with respect to vegetation.

20.40.102 Personal wireless service facility (PWSF) – A site, building, and/or structure that contains facilities to provide *personal wireless services*. A personal wireless service facility includes at least one of the following: *antenna, support structure, and/or equipment enclosure*. [Ord. 265 § 23, 1999], [BMC 19.10.397]

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20.40.105 Piers are fixed, pile-supported structures extending over the water.

20.40.110 Physical access means the ability of the general public to reach, touch, and enjoy the water's edge, to travel on the waters of the state, and to view the water and the shoreline from adjacent locations.

20.40.115 Primary structure means any permanent building, road, bridge or utility requiring a permit or approval which is necessary to support the primary use of a site.

20.40.116 Public park and recreation facilities – A natural or landscaped area, *buildings or structures*, provided by a unit of government, to meet the active or passive recreational needs of people. [BMC 19.10.210]

20.40.117 Retail – A commercial enterprise which: provides goods and/or services directly to the consumer; and, whose goods are available for immediate purchase and/or rental; and, whose goods are available for immediate removal from the premises by the purchaser and/or whose services are traditionally not permitted within an *office use*. The sale and consumption of food are included if: a) the seating and associated circulation area does not exceed ten percent of the *gross floor area* of the *use*, and b) it can be demonstrated to the City that the floor plan is designed to preclude the seating area from being expanded. Goods and services offered include, but are not limited to: *convenience retail uses*. [BMC 19.10.465]

20.40.120 Shorelands means those lands extending landward for 200 feet in all directions as measured on a horizontal plane from the ordinary high water mark; floodways and 100-year floodplains; and all wetlands and river deltas associated with the streams, lakes, and tidal waters which are subject to the State of Washington Shoreline Management Act.

20.40.125 Shoreline Administrator means the City Manager or his or her designee in the Community Development Department who is responsible for administering the City of Burien Shoreline Master Program.

20.40.130 Shoreline conditional use means a use or modification classified by the City of Burien Shoreline Master Program as a conditional use or modification for certain shoreline environments or is an unlisted use/modification.

20.40.135 Shoreline modification means an action that modifies the physical configuration or qualities of the shoreline area, usually through the construction of a physical element such as a breakwater, dock, boat launch ramp, or other shoreline structures. A shoreline modification also can consist of other activities, such as dredging and filling.

20.40.140 Shoreline permit means any substantial development, variance, conditional use, or revision thereto authorized under the provisions of the City of Burien Shoreline Master Program subject to review by the Washington State Department of Ecology.

20.40.145 Shoreline substantial development means any development of which the total cost, or fair market value, whichever is higher, exceeds \$5,000, or any development which materially interferes with the normal public use of the water or shorelines of the state.

20.40.150 Shoreline variance means a permit for the limited purposes of granting relief to specific bulk, dimensional, or performance standards set forth in the City of Burien Shoreline Master Program.

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20.40.155 Shoreline environment designations means the categories of shorelines established by the City of Burien Shoreline Master Program in order to provide a uniform basis for applying policies and use regulations within physically distinct shoreline areas. The City of Burien Shoreline Master Program classifies shorelines into three shoreline environment designations: Urban Conservancy, Aquatic and Shoreline Residential.

20.40.160 Shoreline jurisdiction means the proper term describing all of the geographic areas regulated by the City of Burien Shoreline Master Program.

20.40.165 Shoreline master program means the general term for shoreline comprehensive plans and regulations prepared under the jurisdiction of the Shoreline Management Act.

20.40.170 Shorelines means all of the water areas of the state, including reservoirs, and their associated shorelands, together with the lands underlying them; except (1) shorelines of statewide significance, (2) shorelines on segments of streams upstream of a point where the mean annual flow is 20 cubic feet per second or less, and the wetlands associated with such upstream segments, and (3) shorelines on lakes less than 20 acres in size, and wetlands associated with such small lakes.

20.40.175 Shorelines of statewide significance means shorelines designated by the State of Washington that are major resources from which all people in the state derive benefit. Shoreline areas in the City of Burien that are designated as shorelines of statewide significance are portions of the Puget Sound adjacent to the city limits extending out to mid channel.

20.40.180 Shorelines of the state means the total of all "shorelines" and "shorelines of statewide significance" within the state.

20.40.185 Tidal waters means marine and estuarine waters bounded by the ordinary high mark. Where a stream enters the tidal waters, the tidal water is bounded by the extension of the elevation of the marine ordinary high water mark within the stream.

20.40.190 Tidelands means the land on the shore of marine water bodies between the line of ordinary high tide and the line of extreme low tide.

20.40.195 Tram means a conveyance that transports passengers or freight in carriers on rails or suspended from cables supported by a series of towers.

20.40.200 Upland means generally the area above and landward of the ordinary high water mark.

20.40.205 Visual access means access with improvements that provide only a view of the shoreline or water, but do not allow physical access to the shoreline.

20.40.210 Water dependent means a use or a portion of a use which requires direct contact with the water and cannot exist at a nonwater location due to the intrinsic nature of its operations. Examples of water dependent uses may include ship cargo terminal loading areas, ferry and passenger terminals, barge loading facilities, ship building and dry docking, marinas, aquaculture, float plane facilities, and sewer outfalls.

20.40.215 Water enjoyment means a recreational use, or other use facilitating public access to the shoreline as a primary characteristic of the use; or a use that provides for recreational use or aesthetic enjoyment of the shoreline for a substantial number of people as a general character of the use and which through the location, design and operation assures the public's ability to enjoy the physical and aesthetic qualities of the shoreline. In order to qualify as a water enjoyment use, the use must be open to the general public and the shoreline space of the project must be devoted to provisions that accommodate public shoreline enjoyment. Examples may include parks, piers, museums, restaurants, educational/scientific reserves, resorts, and mixed use projects.

20.40.220 Water oriented means any combination of water dependent, water related, and/or water enjoyment uses. Nonwater oriented serves to describe those uses which have little or no relationship to the shoreline. Examples of nonwater oriented uses include professional office, automobile sales or repair shops, mini storage facilities, multifamily residential development, department stores, and gas stations.

20.40.225 Water related means a use or a portion of a use which is not intrinsically dependent on a waterfront location but whose operation cannot occur economically without a waterfront location. Examples of water related uses may include warehousing of goods transported by water, seafood processing plants, hydroelectric generating plants, gravel storage when transported by barge, oil refineries where transport is by tanker, and log storage.

20.40.230 Watershed restoration plan means a plan, developed or sponsored by the department of fish and wildlife, the department of ecology, the department of natural resources, the department of transportation, a federally recognized Indian tribe acting within and pursuant to its authority, a city, a county, or a conservation district that provides a general program and implementation measures or actions for the preservation, restoration, re-creation, or enhancement of the natural resources, character, and ecology of a water body or reach, drainage area, or watershed for which agency and public review has been conducted pursuant to chapter 43.21C RCW, the State Environmental Policy Act.

20.40.235 Wetlands means areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and

landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from nonwetland areas to mitigate the conversion of wetlands.