

# City of Burien, Washington

## *Shoreline Advisory Committee Meeting Agenda*

Wednesday, September 23, 2009, 4:00 – 6:00 pm

Burien Community Center  
425 SW 144<sup>th</sup> Street, South Building, Room 11  
(206) 241-4647

### **MEETING # 6**

- (1) SIGN IN/ROLL CALL - (5 min.)
- (2) CONFIRM AGENDA - (5 min.)
- (3) REVIEW AND APPROVE MEETING #5 SUMMARY - (5 min.)
- (4) SHORELINE MASTER PROGRAM UPDATE, PROGRESS REPORT AND RECAP - (5 min.)
- (5) SHORELINE USE AND MODIFICATION POLICIES AND REGULATIONS, Chapter IV – (60 min.)
- (6) ADMINISTRATIVE PROCEEDURES, Chapter V – (20 min.)
- (7) NEXT STEPS and NEXT MEETING (if needed) - (10 min.)

TENTATIVE DATE: Wednesday, October 7, 2009, 4:00 - 6:00 pm:

Shoreline Advisory Committee Meeting # 7  
Burien Community Center  
425 SW 144<sup>th</sup> Street, South Building, Room 11



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1-434

# City of Burien, Washington

## Shoreline Advisory Committee

### Meeting #5 Summary

February 11, 2009

4:00pm

#### (1) ATTENDANCE

SAC Members present	Technical Staff Present	Interested Parties Present
Brian Bennett Bruce Berglund Jim Branson Cyrilla Cook Bob Fritzen Victoria Hall Patrick Haugen David Johanson Rebecca McInteer Emelie McNett Lee Moyer Kim Otto Annie Phillips Steve Romer George Yocum Don Warren Joe Weiss	Liz Ockwell Karen Stewart	Bill Scharf Kirk Lakey, WDFW Bob Silverts John Upthegrove Chestine Edgar

#### (2) CONFIRM AGENDA

1. The agenda was confirmed

#### (3) REVIEW AND APPROVE MEETING #4 SUMMARY

1. The meeting summary was accepted as presented with the following exception:
  - The first bullet item under section 9 was stricken.

#### (4) SHORELINE MASTER PROGRAM UPDATE, PROGRESS REPORT AND RECAP: David Johanson briefly summarized where we are in the SMP update process and handed out the last version of the Schedule of Tasks. David Johanson also handed out the latest version of the goals and policy document.

There was a discussion regarding proposed policy language and whether there will be an opportunity to amend it, specifically as it pertains to access to Lake Burien and the recent rezone of the Ruth Dykeman Children's School property. A discussion of the policy regarding access to the shoreline ensued.

- Lee Moyer commented on the public access element, that it didn't feel that Pol. PA 1.5 adequately addressed the importance of public access and proposed amendments to the existing language.

- Cyrilla Cook asked how the proposed Ruth Dykeman rezone would affect Pol. PA 1.5. David Johanson summarized the two predominate views on access to Lake Burien and how it relates to the recent rezone of a portion of the Ruth Dykeman property.
- Patrick Haugen suggested that a formal motion should be made and for the committee to vote on proposed revisions to the policy language.
- Lee Moyer made a motion to amend Policy PA 1.5 to read as follows; *Pol. PA 1.5 - The City should seek opportunities to develop new public access areas in locations dispersed throughout the shoreline through, 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 water front areas;
  - c. Acquisitions using grants and bonds.
- Motion was seconded by Rebecca McInteer
- Motion passed to revise the language of Pol. PA 1.5:  
9 in favor    4 opposed

**(5) SHORELINE RESTORATION PLAN:** Karen Stewart explained the contents of the Shoreline Restoration Plan. She stated that it is a catalog of opportunities and not obligations.

1. Cyrilla Cook would like to look at including elements of the restoration plan in the goals and policies; would like to see the restoration plan be a living document. Specifically on pg. 8 of restoration plan that states project monitoring should be a requirement when mitigation of impacts is required.
2. There was a discussion regarding monitoring of restoration projects – there was *consensus* that monitoring is important and should be incorporated into development regulations so they can be used in everyday situations.
3. Clarification was requested meaning of 'Flexible Development Standards'. *Consensus* to modify 3<sup>rd</sup> bullet under Goals and Policies to read (Pol. REST 1.3) – New development and redevelopment activities in the shoreline should be offered incentives that provide opportunities to restore impaired ecological functions and processes.
4. There was concern that no one will be responsible for monitoring if a project has met its restoration objective. Karen Stewart commented that the last bullet point on pg. 4 might not cover all projects. It was also noted that there is monitoring language in Burien's Critical Areas Regulations.
5. Don Warren commented that the City, in conjunction with residents, can help monitor mitigation/restoration. There should be overarching policy to cover this. Bruce Berglund commented that the whole picture should be paid attention to. A policy could include requiring reports from various agencies such as a report from the sewer district on non-functioning septic tanks on the shoreline. Staff responded that specific mitigation requirements and criteria will be addressed in the regulations document and normally the applicant is responsible to provide monitoring.

1-436

6. Joe Weiss discussed monitoring in Seahurst Park and the importance of long term monitoring to determine results. A discussion ensued about various agencies and the monitoring programs in place already.
7. Steve Roemer commented that a lot of the monitoring that's being done at Seahurst Park was not required by policy, but that it was a request of the residents of Burien.
8. Lee Moyer pointed out incorrect information on the table on pg. 2. The feet vs. miles do not equate correctly. Staff will review the table and make the appropriate adjustments.
9. Jim Branson asked if the Duwamish Tribe could be recognized as a tribe by the City of Burien. The City will try and find a contact with the Duwamish Tribe.

**(6) CUMULATIVE IMPACTS ANALYSIS:** Karen Stewart provided a copy of the table of contents for the total SMP to show how final master program will be organized and where all the documents fit. Karen Stewart then discussed how the Critical Area Regulations will address the Cumulative Impacts Analysis.

1. Lee Moyer asked how armoring of the shoreline affects the impact of flooding – it was pointed out that this is explained at the bottom of pg. 4.
2. Don Warren asked why there are no liabilities of risk called out in the City's impact analysis (i.e. financial impacts, risk management) of these regulations. Karen Stewart responded that the document only addresses natural functions on man-made items. The items Mr. Warren mentioned have been addressed by an economic analysis provide in the state SMP.
3. Clarification was provided that the Cumulative Impacts Analysis is focused on the impacts of new development and redevelopment only.

**(7) SHORELINE ENVIRONMENT DESIGNATIONS**

1. A handout was provided by Karen Stewart from WAC 173-26-211 for more information about the definition of the shoreline environment designations.
2. Karen Stewart and David Johanson reviewed how the designations were assigned and that the requirement for an aquatic designation was added by the state.
3. Jim Branson asked how the Urban Conservancy designation was decided upon – the response by staff was that it is based on the existing conditions and factored in items such as the designated area is the least armored part of the shoreline and contains the most natural and ecological functions.
4. Cyrilla Cook asked why the Urban Conservancy designation doesn't extend to the stream just to the north of the line. David Johanson responded that the area immediately north of the park is developed with single-family homes and is heavily armored and therefore it did not seem appropriate to designate it as conservancy.

**(8) SHORELINE USE AND MODIFICATION POLICIES AND REGULATIONS**

1. Karen Stewart reviewed the Shoreline Use Table and handed out a list of definitions.

2. Patrick Haugen asked if land owned by the Shorewood Shore Club would still be considered residential and would be allowed in the shoreline residential designation. The initial answer was yes, but after further discussion, it was agreed that private beaches could have a separate designation. Thurston County possibly has some language regarding this subject. Staff would look into how this may be achieved.
3. Annie Phillips commented that recreational aquaculture should be allowed as an outright use. There was discussion to define what non-commercial or residential use would mean – possibly defining the intensity of the activity?
4. Lee Moyer stated it could possibly be exempt/allowed as an outright use because the fishing license regulations covered the limits and requirements of the activity.
5. Regulations regarding buoys were discussed. Topics of discussion included; self regulation, relying on other agencies. It was mentioned that this is an opportunity for the city to have an active role in managing placement of buoys.
6. Options for local regulation of buoys were discussed. Options include requirement of one per property, buoys are only allowed for owners directly on the shoreline. Questions were asked about how it is dealt with by Department of Natural Resources and Army Corp of Engineers as they require permits for buoys. It was stated that the federal agencies look to local jurisdictions and their vision for the shoreline.
7. Policy REC 1.8 talks about mooring buoys, but is not specific on how many. The committee commented that policy language regarding the number and location of buoys should be revised. There was no consensus on how to regulate buoys?
8. The table Shoreline Use table was confusing for members of the committee. It was suggested that in situations where a use was not possible, that N/A was used instead of an X to signify it is not prohibited.

#### **(9) NEXT MEETING**

- The next meeting is scheduled for May 13, 2009. David Johanson recognized that these documents are substantial in size and to allow sufficient time for review and comment by the SAC he will accept comments for 2 weeks on the documents provided in this meeting.
- Staff will be taking all the comments as well as coordinating with DOE to prepare a much more refined document for the next meeting.
- The public open house has been moved back from its original date in order to complete the regulations document and further refine the associated goal and policies. The open house will most likely occur in mid June.

The meeting concluded at 6:17pm.

**CITY OF BURIEN, WASHINGTON  
MEMORANDUM**

**DATE:** September 3, 2009  
**TO:** Burien Shoreline Advisory Committee  
**FROM:** David Johanson, AICP, Senior Planner *DJ.*  
**SUBJECT:** Burien Shoreline Master Program Meeting No. 6

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The purpose of this memo is to provide the Shoreline Advisory Committee information to help guide the discussion for its upcoming meeting on Wednesday, September 23, 2009 from 4-6:00 pm.

**SPECIAL NOTE:** Please note we will be meeting at the Burien Community Center located at  
425 SW 144<sup>th</sup> Street  
Room 11 (South Building)

There are two parking options. You may either park in the main lot accessed off of 4<sup>th</sup> Avenue SW or in the lot accessed from SW 144<sup>th</sup> Street.

Since our last meeting the consultant team and City staff have been drafting the regulations and procedures.

**PURPOSE/MEETING OBJECTIVE**

This is an opportunity for the Committee to review the first draft of the regulations and procedures. Our primary objective is to obtain feedback on the regulations to ensure they accurately implement the goals and policies that were developed by the committee. As with past discussions we are looking for a consensus.

In addition we would like to identify any potential regulatory issues. The primary question is; Do the regulations "make sense" given the overarching (and mandated) objective of achieving no net loss of ecological functions?

Attached to this memo and meeting agenda are the following:

- 1) Chapter IV, Shoreline Uses and Modifications Policies and Regulations
- 2) Chapter V, Administration and Shoreline Permit Procedures
- 3) Chapter VI, Definitions
- 4) Policy and Regulations Comparison Table.

Specifically at this meeting we are interested in reviewing Chapter IV, Shoreline Use Policies and Regulations (see Attachment 1). As the committee may recall this section is where many of the goals and polices are now being implemented through the development and use regulations. To assist the committee in understanding how and where the policies have been inserted into the regulations city staff has prepared a table illustrating where the goals and policies are located in the regulations and

procedures (see Attachment 4). This table illustrates the connection between your past work on the policies and how they will be implemented by the regulations.

### **DISCUSSION TOPICS**

To help facilitate and provide some focus to the discussion staff has compiled a number of questions that the committee may want to consider when reviewing the draft document.

- 1) Does the use chart (figure 4, page IV-1) contain an acceptable range of allowed uses in Burien's shoreline jurisdiction? And are the review processes appropriate for those uses?
- 2) Are the "alterations" allowed in the shoreline vegetation conservation area sufficient or are they too restrictive? (see page IV-9, 20.30.040[2.a-c]). *Please note there may be limitations on what can be modified in this section due to the "no net loss" standard that must be applied.*
- 3) Do the buffer and vegetation conservation widths "make sense"? (see page IV-14, 20.30.050) *Please note that there are common line setback provisions that allow for some flexibility.*
- 4) Are the common line setback allowances equitable? (see page IV-25, 20.30.100[2.c])
- 5) Should docks, ramps or piers be allowed in the marine environment? (see page IV-19, 20.30.080 [2.b])

Overall this draft still needs refinement; however we wanted to obtain your input before it proceeds any further. Our objective for this meeting is to keep the review at a high level and ensure the goals and policies as developed by the Shoreline Advisory Committee are sufficiently implemented in the regulations. The level of input and feedback we are looking for from the Shoreline Advisory Committee is more content-based as opposed to detailed editing.

Staff and our consultants will continue to evaluate the regulations by testing different development scenarios in an effort to improve the document. This review process could also identify any significant content or procedural glitches. If there are significant issues identified we will attempt to bring recommended solutions to the committee to consider at its meeting.

Please take the time to review these documents and note any questions you may have. Staff and our consultants will be presenting these to you at your next meeting and be available to answer any questions you may have. If you think of questions before our meeting, I encourage you to forward them to me so we can be prepared to answer them at the meeting. You can e-mail me at [davidj@burienwa.gov](mailto:davidj@burienwa.gov).

### **Attachments**

- 1) Chapter IV, Shoreline Uses and Modifications Policies and Regulations
- 2) Chapter V, Administration and Shoreline Permit Procedures
- 3) Chapter VI, Definitions
- 4) Policy and Regulations Comparison Table

## **Chapter IV: Shoreline Uses and Modifications Policies and Regulations**

## Table of Contents

20.30.001	Figure 4 Shoreline Use/Modification Permit Matrix .....	1
20.30.005	Applicability.....	2
20.30.010	Impact Mitigation .....	2
20.30.015	Land Use .....	3
20.30.020	Archaeological and Historic Resources .....	4
20.30.025	Critical Areas .....	5
20.30.030	Flood Hazard Reduction .....	6
20.30.035	Public Access .....	7
20.30.040	Shoreline Vegetation Conservation .....	8
20.30.045	Water Quality, Storm Water and Nonpoint Pollution.....	10
20.30.050	Dimensional Standards for Shoreline Development .....	12
	Figure 5 Dimensional Standards .....	12
20.30.055	Shoreline Buffers .....	13
20.30.060	Select Shoreline Uses and Modifications .....	14
20.30.065	Aquaculture .....	14
20.30.070	Bulkheads and Other Shoreline Stabilization Structures ..	15
20.30.075	Commercial, Institutional and Office .....	18
20.30.080	Docks, Piers and Floats .....	19
20.30.085	Habitat Restoration and Enhancement .....	20
20.30.090	Recreational Development .....	23
20.30.095	Recreational Mooring Buoys .....	24
20.30.100	Residential Development .....	25
	Figure 6: Common-line Setback Reductions.....	27
20.30.105	Transportation Facilities and Parking .....	28
20.30.110	Utilities .....	29

1-442

# General Provisions

## 20.30.001 Figure 4 Shoreline Use/Modification Permit Matrix

Type of Shoreline Permit Required for Shoreline Uses and Modifications*			
	Shoreline Residential	Aquatic	Urban Conservancy
Aquaculture	X	CU <sup>1</sup>	X
Boat Mooring Buoy	N/A	CU	N/A
Boat Ramp	X <sup>2</sup>	X <sup>2</sup>	X
Boat House (covered moorage)	X	X	X
Breakwater & other in-water structures	N/A	X	N/A
Bulkheads	CU	CU	CU
Cell towers	CU	N/A	X
Commercial	CU	X	X
Community Beach	CU	CU	X
Docks, Piers and Floats	CU	CU	CU
Dredging	N/A	X	N/A
Fill	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
Habitat Enhancement or Restoration	SDP	SDP	SDP
Industrial & Ports	X	X	X
Jetty	X	X	X
Mining	X	X	X
Office	CU	N/A	X
Recreation	SDP	SDP	SDP
Residential Single family**	SDP	N/A	SDP
Residential Multi family	SDP	N/A	CU
Schools	CU	N/A	CU
Transportation Facilities	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.

2 Except for Community Beach where a shoreline conditional use permit is required.

\* 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. To the fullest extent possible impacts to the ecological functions and values shall be mitigated to result in no net loss of shoreline ecological functions and process.

(For additional policy guidance please refer to Chapter II General Goals and Policies, pgs. 1-2, 9-12, 13-14. 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), chapter 43.21C RCW, 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 not net loss of shoreline ecological functions.
- f. When compensatory measures or appropriate 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 water shed or comprehensive resource management plans applicable to the area of impact may be authorized. 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. Policy**

Preference for shoreline permitted uses shall first be given to *water dependent uses*, then to *water related* and *water enjoyment uses*.

(For additional policy guidance please refer to Chapter II General Goals and Policies, pgs. 7-9 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.

### **RCW 42.17.310—Exempt Certain Person and Other Records**

### **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. 12.)

## **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, areas with a critical recharging effect on aquifers used for potable waters, 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. 9-12 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 exception of the reasonable use provisions contained in BMC 19.40.070 (4).
- b. 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.
- c. Development shall not intrude into, over, or within a 10 foot buffer from critical saltwater habitats except when an alternative alignment or location is not feasible and the development would result in no net loss of *critical saltwater habitat*.

- d. When this Master Program requires mitigation, the mitigation sequence described in section 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 should be located and designed to prevent the need for shoreline stabilization and structural flood hazard reduction measures for the life of the development, when *feasible*.
- 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. The City should maintain the outlet weir at Lake Burien to maintain a relatively constant lake level to minimize the potential for flooding.

(For additional policies refer to Chapter II General Goals and Policies, pg. 13.)

#### **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 es not allow physical access to the shoreline is *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 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 and Chapter III Management Policies, pgs. 2-4.)

#### **2. Regulations**

- a. Public access provided by shoreline street ends, public utilities, 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. The vacation or sale of street ends or other public right of ways and tax title properties that abut shoreline areas shall be prohibited as these areas provide shoreline public access and viewpoints.
- c. Visual access to outstanding scenic areas shall be provided with the provision of roadside pullovers or broadening of road shoulders.
- d. If a road is located within shoreline jurisdiction, any unused right of way shall be dedicated to open space and public access.
- e. Public access shall be required for all shoreline development and uses, except for water dependent uses and individual single family residences not part of a development planned for more than four parcels.
- f. 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.
- g. 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.
- h. Public access improvements shall not result in a net loss of shoreline ecological functions.
- i. 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.
- j. 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.
- k. 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 section 20.30.050.

## 1. Policies

- a. Native plant communities within shoreline jurisdiction including, but not limited to, wetlands, lakes, streams and unstable bluffs should be protected and maintained to minimize damage to the Ecology and environment of the shoreline area.
- b. Restoration and mitigation of degraded shorelines 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.

(For additional policy guidance please see Chapter II General Goals and Policies, pgs. 3-12.)

## 2. Regulations

- a. *Alterations* to vegetation within shoreline jurisdiction shall not result in a 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. The plan shall be prepared by qualified professional and shall be consistent with the provisions of this chapter and BMC Chapter 19.40.
- c. Within a shoreline riparian buffer as set forth in 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 vegetated; and
  - iii. Where vegetation is proposed within the buffer it shall be provided at a density to mimic natural conditions; and
  - iv. Vegetation shall consist of mix of native trees, shrubs and ground cover; and
  - v. When *alterations* are proposed within a non-compliant buffer 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
  - vii. Lawn is a prohibited vegetation in the shoreline buffer due to its limited functional benefits and need for chemical and fertilizer application; and
  - viii. Include appropriate limitations on the use of fertilizer, herbicides and pesticides as needed to protect lake and marine water quality; and

- ix. Non-conforming buffer areas that have been altered shall to the greatest extent feasible, provide vegetation consistent with this section.
- 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. No vegetation, except 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 a decrease in water quality by flushing more sediments 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. 10.)

## **2. Regulations**

- a. Construction materials that come in direct contact with the water 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**

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

(1) Consistent with BMC 19.40 and 20.30.040 (2) (f) BMC.

(2) See section 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. Water dependent development, such as 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.
2. 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 correction action, which shall also be subject to further monitoring as provided in this section.

1-454

3. 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.
4. All costs associated with the mitigation/monitoring and planning including city expenses, shall be the responsibility of the applicant.

## **Select Shoreline Uses and Modifications**

### **20.30.060**

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
- Commercial, Institutional, and Office
- 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 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.
- b. Aquaculture is prohibited in critical saltwater habitat or within a 10 foot buffer from these areas.
- c. 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.
- d. Farming and/or harvest of geoducks shall follow all applicable State and Federal regulations and guidelines.
- 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. Aquaculture shall be limited to geoduck harvesting within Department of Natural Resources tracts or aquaculture for recovery of a native aquatic population.
- g. Geoduck harvesting is prohibited in kelp or eelgrass beds.
- h. 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 of the shoreline.

### 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, indicates that the 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 one foot above the elevation of extreme high water as determined by the National Ocean Survey published by the National Oceanic and Atmospheric Administration.

### **20.30.075 Commercial, Institutional and Office**

Commercial development means those uses and facilities that are involved in wholesale or retail trade or business activities. Office development is defined as a place of employment providing professional, administrative, educational, business or governmental services other than production, distribution, sale or repair of goods or commodities.

#### **1. Policies**

- a. Commercial, institutional and office development should be designed and constructed in such a manner to result in no net loss of ecological functions including implementation of low impact development techniques to the maximum extent feasible.
- b. Commercial, institutional and office developments adjacent to the shoreline should be designed in a manner that provides buffers and environmental restoration consistent with constitutional and other limitations on the regulation of private property.
- c. Commercial, institutional and office developments in shoreline jurisdiction should be designed and operated to avoid blocking, reducing or adversely interfering with the public's physical access to the water and shorelines, unless such access would cause negative ecological impacts.

#### **2. Regulations**

- a. Overwater commercial, institutional or office structures are prohibited.
- b. Commercial, institutional and office developments in shoreline jurisdiction shall conform to the dimensional standards found in 20.30.050 BMC.

- c. Parking facilities shall utilize low impact development approaches and be placed a minimum of 200 feet landward of the ordinary high water mark.
- d. Parking, storage, loading and service areas and facilities serving commercial or office uses shall minimize impacts on the shorelines, including but not limited to storm water runoff, water quality, visual impact, public access and vegetation maintenance.
- e. Bed and Breakfast establishments proposed within a Residential zoning district are required to meet the policies and regulations for both Residential and Commercial use.

### **20.30.080 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.

#### **1. Policies**

- a. Inwater 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 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) 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 overwater boating structures.
- e. Encourage shared docks between multiple owners for single family waterfront development to minimize overwater coverage adversely impacting shoreline ecological functions.

#### **2. Regulations**

- a. New docks, *piers*, floats and rafts 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 for the sole use of the property owner shall not be considered an outright use on City of Burien marine shorelines. A pier, dock or float 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* as well as their subsequent use and operation, shall:
  - i. Be capable of withstanding expected environmental conditions,
  - 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.
- d. *Piers*, docks and floats may 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 are allowed for attached dwelling unit developments.
- f. Only one dock, moorage, raft, float or launching facility 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.

### **20.30.085 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.

## **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 20.30.040. In addition to the provisions of 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;
  - b. Criteria for assessing the effectiveness of the mitigation;
  - c. Monitoring plan including annual progress reports submitted to the Shoreline Administrator and that lasts for a period 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 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.

## **20.30.090 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 a private club, 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.

### **2. Regulations**

- a. Commercial recreational development shall be consistent with the provisions of this section and the provisions of section 20.30.075 BMC for commercial uses.
- 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.

### **20.30.095 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.
- b. Recreational boat mooring buoys are allowed in the Aquatic designation with the issuance of a shoreline conditional use permit.

#### **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 clustered 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.

### **20.30.100 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.

#### **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.

#### **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 20.30.050 BMC.
- c. **Common-line riparian buffer and building setback standards.** Riparian buffer and building setback standards may be reduced through the shoreline conditional

1-466

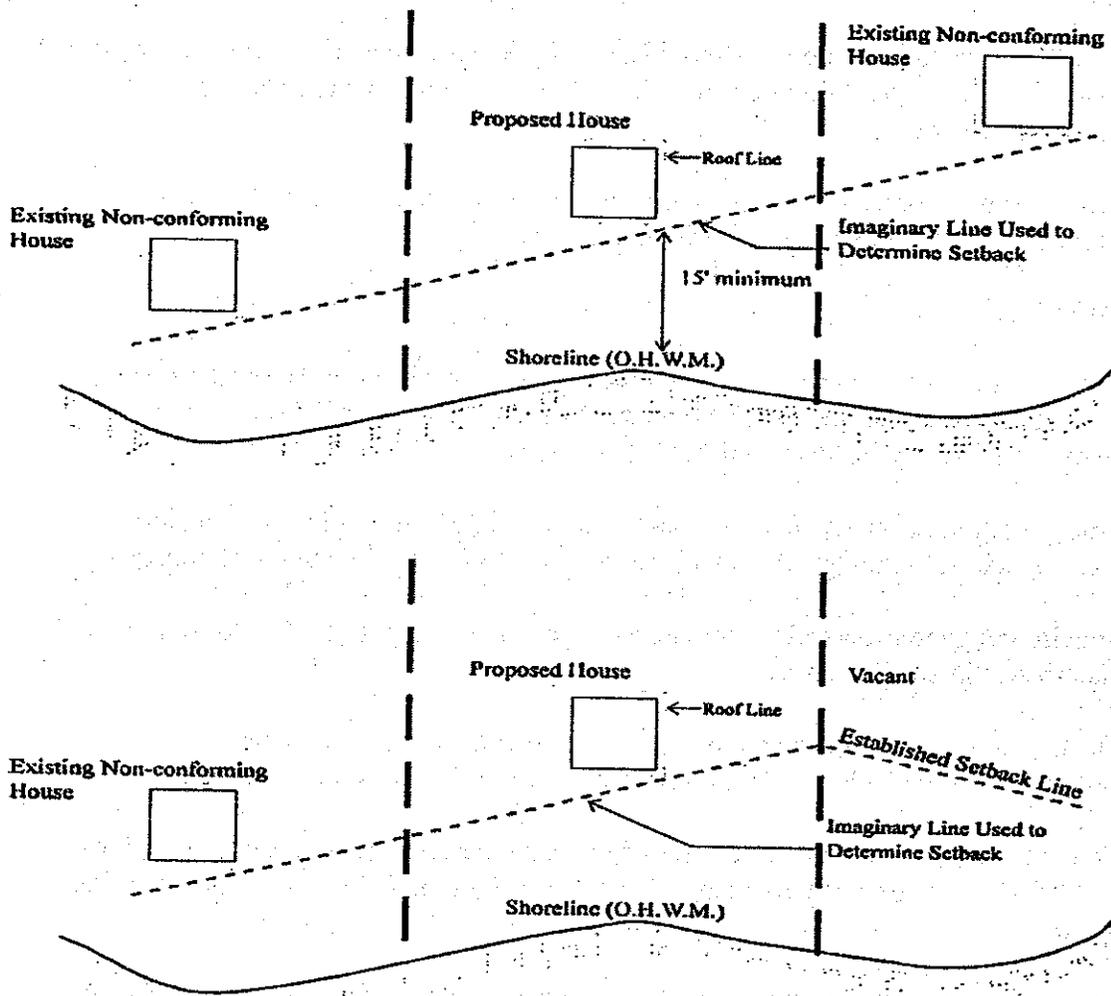
use permit process. In addition to the conditional use criteria the Shoreline Administrator may approve reduced buffer and setback for residential development under the following conditions:

- 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 7)
  - 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. 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.** Accessory structures 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.

- 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*.
- 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.

1-468

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



## **20.30.105 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 function 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.

### **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.

### **20.30.110 Utilities**

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 a water, sewer or gas line 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 a water, sewer or gas line 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. Wherever feasible, utility easements should be utilized to provide public access to shoreline areas and should be located in existing rights of way and corridors.

#### **2. Regulations**

- a. Utilities shall be placed underground whenever possible.
- b. Development of underwater pipelines and cables on tidelands is prohibited except for deepwater outfalls and facilities where no other reasonable alternative exists.
- c. 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.
- d. 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.
- e. Directional boring, instead of excavation or trenching is required where *feasible*.

- f. 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.
- g. Aerial utility lines and vertical utility facilities shall make maximum use of topography to minimize visual contrast with the surrounding area.
- h. 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.
- i. Culverts shall be located and installed in accordance with City of Burien standards and specifications.
- j. 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.
- k. 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.

## **Chapter V. Administration and Shoreline Permit Procedures**

## Table of Contents

20.35.001	Purpose and Applicability.....	1
20.35.005	Authority and Rule of Liberal Construction .....	1
20.35.010	Shoreline Permit Types and Review Procedures .....	2
	Figure 7 Shoreline Permit Review for Type 1 Process .....	4
20.35.015	Shoreline Substantial Development Permits .....	5
20.35.020	Substantial Development Permits for Limited Utility Extensions & Bulkheads.....	5
20.35.025	Exemptions from Shoreline Substantial Development Permits .....	6
20.35.030	Letter of Exemption .....	10
20.35.035	Shoreline Conditional Use Permits .....	10
20.35.040	Shoreline Variance Permits .....	11
20.35.045	Alteration or Reconstruction of Nonconforming Structures .....	12
20.35.050	Appeals .....	14
20.35.055	Effective Date and Duration of Shoreline Permits .....	14
20.35.060	Compliance and Enforcement .....	14
20.35.065	Revisions to Shoreline Permits .....	21
20.35.070	Rescission of Shoreline Permits .....	22

### **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 (chapter 90.58 RCW). 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 (chapter 90.58 RCW) and the Shoreline Master Program Guidelines (chapter 173-26 WAC) 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 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 development undertaken on the City of Burien's shoreline jurisdiction must first obtain either a *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.

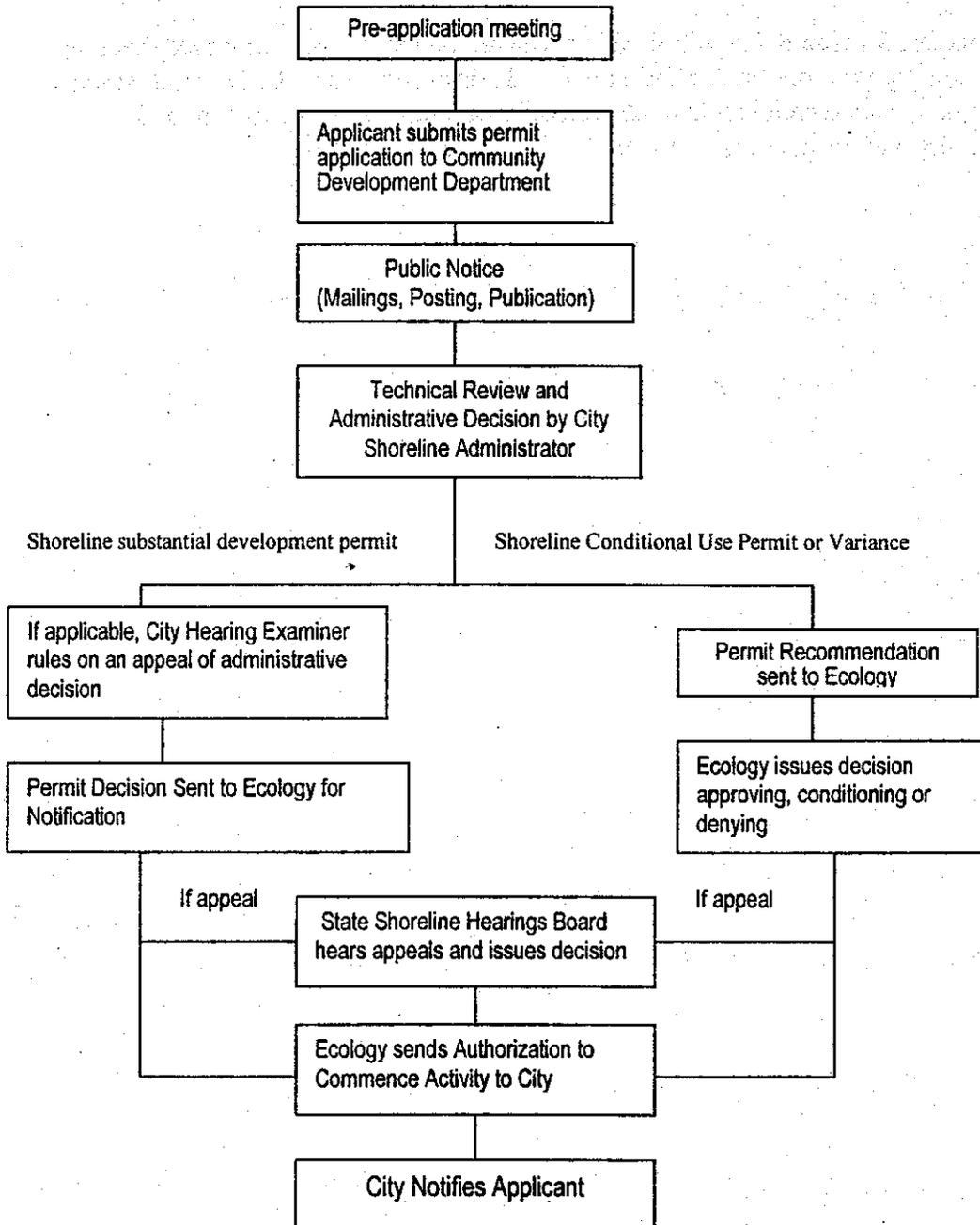
Issuance of a shoreline permit is typically processed as a Type 1 land use action as set forth in the City of Burien Municipal Code Chapter 19.65. A Type 1 land use decision is an administrative decision made by the Community Development Director following issuance of a public notice, consideration of 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) is notified of the permit decision in the case of a shoreline substantial development permit.
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 173-27-040(1)(b).

Figure 8 is a flow chart illustrating the shoreline permit review process for type 1 shoreline permit.

### Figure 7 Shoreline Permit Review for Type 1 Process



1-478

### **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, 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 as necessary to assure this consistency.

### **20.35.020 Substantial Development Permits for Limited Utility Extensions and Bulkheads**

1. **Procedures.** An applicant 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 30 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.

- b. For purposes of this section, a limited utility extension means the extension of a utility service that:
  1. Is categorically exempt under Chapter 43.21C RCW for one or more of the following: natural gas, electricity, telephone, water or sewer;
  2. Will serve an existing use in compliance with Chapter 90.58 RCW; 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**

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 statements of exemption from the shoreline substantial development permit requirement for uses and developments within shorelines that are specifically listed in the Shoreline Permit Matrix of this Master Program. Such statements shall be applied for on forms provided by the Shoreline Administrator. The statement shall be in writing and shall indicate the specific exemption of this SMP that is being applied to the development, and shall provide a summary of the Shoreline Administrator's analysis of the consistency of the project with this SMP and the SMA. As appropriate, such statements of exemption shall 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 19.65 BMC.
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 dollars (\$5,000), 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. 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 Chapter 19.55 BMC 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** 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 chapter 90.58 RCW, 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 appurtenance. An *appurtenance* is necessarily connected to the use and enjoyment of a single-family residence and is located landward of the ordinary high water mark and the perimeter of a wetland. Appurtenances typically include a garage, deck, 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 chapter 80.50 RCW.
- 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 chapter 43.21 C RCW.
- 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 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 chapter 75-20 RCW; 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 chapter 90.58 RCW shall not apply to a project for which a consent decree, order or agreed order has been issued pursuant to chapter 70.105D RCW or to Ecology when it conducts a remedial action under chapter 70.105D RCW. Ecology shall, in consultation with the City, assure that such projects comply with the substantive requirements of chapter 90.58 RCW, chapter 173-26 WAC and this master program.

### **20.35.030 Letter of Exemption**

1. **Letter of Exemption, General.** Applicants for other permits or approvals 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 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**

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 or 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. That the proposed use will be consistent with the Shoreline Management Act and the Burien Shoreline Master Program;
  - b. That the proposed use will not interfere with the normal public use of public shorelines;
  - c. That 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;

1-484

- d. That 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 on 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**

1. **Applicability.** A shoreline variance permit is strictly limited to granting relief to 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.
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. That the strict application of the bulk, dimensional or performance standards set forth in the applicable master program precludes all reasonable use of the property;
  - b. That 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. That the design of the project is compatible with other authorized uses 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. That the variance will not constitute a grant of special privilege not enjoyed by the other properties in the area;
  - e. That the variance requested is the minimum necessary to afford relief; and

- f. That the public interest will suffer no substantial detrimental effect.
3. **Waterward Variance Criteria.** Variance permits for development and/or uses that will be located waterward of the ordinary high water or within a wetland, may be authorized provided the applicant can demonstrate all of the following:
    - a. That the strict application of the bulk, dimensional or performance standards set forth in the Burien Shoreline Master Program precludes all reasonable use of the property;
    - b. That the proposal is consistent with the criteria established (b) through (f) of the previous section; and
    - c. That 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**

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.** 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 Alternations.** Voluntary removal or alteration of a primary structure or appurtenance that exceeds 50% of the value of the structure 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 this shoreline master program and the SMA.

1-486

4. **Reconstruction.** A nonconforming structure which is destroyed, deteriorated, or damaged more than fifty percent of its fair market value 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 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 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 by the addition of space to the primary structure or by the addition of normal appurtenances as defined in 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. 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 this 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, this Chapter 20.35 BMC, Chapter 90.58 RCW, or a permit issued pursuant to this Chapter 20.35 BMC, 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 Section 20.35.060(B) BMC shall be a violation of this Chapter 20.35 BMC 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 Section 20.35.060(C) BMC, 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 this 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 Chapter 20.35. BMC 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 this Chapter 20.35 BMC.

(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 this Chapter 20.35 BMC, 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 this Chapter 20.35 BMC;

(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 this Chapter 20.35 BMC;

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

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

(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 Section 20.35.060(A) BMC.

(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 Section 20.35.060(C) BMC, 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 Section 20.35.060(C) BMC 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 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 this Chapter 20.35 BMC, 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 this Chapter 23.60 BMC, enter all properties that are subject to such a permit. All persons applying for a permit under this Chapter 23.60 BMC 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 Chapter 90.58 RCW, 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, Chapter 90.58 RCW, Chapter 60.35 BMC, a permit issued pursuant to Chapter 60.35 BMC, 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 Chapter 90.58 RCW.

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.

1-494

## 20.35.065 Revisions to Shoreline Permits

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 chapter 90.58 RCW. 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 chapter 90.58 RCW, 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**

Whenever any development or shoreline substantial development is in violation of a permit 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 chapter 19.65 BMC.

## Chapter VI. Definitions

## **20.40.000 Definitions**

**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.

**20.40.045 Dredging** means the removal of earth, sand, sludge or other materials from the bottom of a stream, river, lake, bay or other waterbody. 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.

**20.40.050 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.

**20.40.055 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.

**20.40.060 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.

**20.40.065 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.

**20.40.070 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.

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

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

**20.40.085 Nearshore** means a zone in the marine (saltwater) shoreline that is the aquatic interface between freshwater, air, land, and the marine waters. It includes areas along the shore that are either influenced by or directly influence marine water including estuaries to the head of tidal influence. It extends waterward to the maximum depth offshore where sunlight is sufficient to support plant growth depending on water clarity.

**20.40.090 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.

**20.40.095 Ordinary High Water Mark (OHWM)** on all lakes, streams, and tidal water is that mark that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation as that conditions exists on June 1, 1971, as it may naturally change thereafter, or as it may change thereafter in accordance with permits issued by a local government or the

state: PROVIDED, That in any area where the ordinary high water mark cannot be found, the ordinary high water mark adjoining saltwater shall be the line of mean higher high tide and the ordinary high water mark adjoining fresh water shall be the line of mean high water.

**20.40.100 Physical public access** means unobstructed access with public use improvements which are available to the general public extending from the land to the ordinary high water mark or to the wetland directly abutting the ordinary high water mark. This includes access to tidelands and to the navigable waters of any water body.

**20.40.105 Pier** means a structure generally built from the shore out over the water or floating upon the water used as a landing place for marine transport or for recreational purposes.

**20.40.110 Primary structure** means the structure that contains the primary use.

**20.40.115 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.

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

**20.40.125 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.

**20.40.130 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.

**20.40.135 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.

**20.40.140 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.

**20.40.145 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.

**20.40.150 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.

## SHORELINE POLICY AND REGULATIONS COMPARISON TABLE

	Goals and Policies	Regulations
Pol. ALL 1	<p><b>20.20.003 General Goals and Policies</b></p> <p>The Shoreline Master Program shall result in no net loss of shoreline ecological functions and processes.</p>	<p><b>20.30.010 1a.</b> To the fullest extent possible impacts to the ecological functions and values shall be mitigated to result in no net loss of shoreline ecological functions and process.</p> <p><b>20.30.010 2a.</b> 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.</p> <p><b>20.30.015 2a.</b> 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.</p> <p><b>20.30.030 2a.</b> 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.</p> <p><b>20.30.035 2h.</b> Public access improvements shall not result in a net loss of shoreline ecological functions.</p> <p><b>20.30.040 2a.</b> Alterations to vegetation within shoreline jurisdiction shall not result in a loss of shoreline ecological value or function.</p> <p><b>20.30.065 2a.</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.</p> <p><b>20.30.070 2a.</b> 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.</p> <p><b>20.30.110 2h.</b> 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.</p>
Pol. ALL 2	<p>Regulation and management of Burien's shorelines should be guided by ongoing and comprehensive science.</p>	<p><b>20.30.010 2c.iii</b> Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;</p> <p><b>20.30.030 1c.</b> 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.</p> <p><b>20.30.070 2e.</b> Structural shoreline stabilization may be allowed to protect new development when all the following conditions apply or have been complied with:</p> <ul style="list-style-type: none"> <li>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, indicates that the 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.</li> <li>ii. The erosion on the site is not being caused by upland conditions, such as the loss of vegetation and drainage.</li> <li>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.</li> </ul>

## SHORELINE POLICY AND REGULATIONS COMPARISON TABLE

	Goals and Policies	Regulations
Pol. ALL 3	The City should be proactive in managing activities within the shoreline jurisdiction.	<p><b>20.30.010 2c.</b> Where required, mitigation measures shall be applied in the following sequence of steps listed in order of priority.</p> <p>i. Avoiding the impact altogether by not taking a certain action or parts of an action;</p>
Pol. ALL 4	Implement an adaptive management approach to respond to changes and to ensure continued effectiveness.	<p><b>20.30.085 2d.</b> Nonstructural approaches for shoreline restoration or enhancement shall be used for shoreline stabilization instead of bulkheads or other structural stabilization measures, where feasible.</p> <p><b>20.30.085 2. j.</b> Restoration of native vegetation shall comply with the vegetation conservation section 20.30.040. In addition to the provisions of 20.30.040 a re-vegetation plan shall include a monitoring and maintenance program that shall, at a minimum, include the following:</p> <ul style="list-style-type: none"> <li>a. Goals and objectives for the mitigation plan;</li> <li>b. Criteria for assessing the effectiveness of the mitigation;</li> <li>c. Monitoring plan including annual progress reports submitted to the Shoreline Administrator and that lasts for a period sufficient to establish that performance standards have been met as determined by the Shoreline Administrator, but no less than five years; and</li> <li>d. A contingency/adaptive management plan.</li> </ul>
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.	<p><b>20.30.090 2d.</b> Recreation facilities shall provide adequate provisions to prevent the general public from trespassing and overflowing into adjacent, privately owned properties.</p>
Pol. ALL 6	When Shoreline Master Program regulations are developed and applied, they should consider site-specific characteristics.	<p><b>20.30.100 2c.</b> Common-line riparian buffer and building setback standards. Riparian buffer and building setback standards may be reduced through the shoreline conditional use permit process. In addition to the conditional use criteria the Shoreline Administrator may approve residential development under the following conditions:</p> <ul style="list-style-type: none"> <li>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 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 7)</li> <li>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.</li> <li>iii. In no case shall the reduced setbacks be less than 20 feet landward of the OHWM.</li> <li>iv. Any further setback reduction beyond that allowed in this section shall require approval of a shoreline variance permit.</li> <li>v. in cases where there is a steep slope critical area (not buffer) located within the shoreline buffer and setback, expansions of legally established single family primary structures may use the common line setback provisions.</li> </ul>
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.	<p><b>20.30.010 2b.</b> To the extent Washington's State Environmental Policy Act of 1971 (SEPA), chapter 43.21C RCW, is applicable, the analysis of environmental impacts from proposed shoreline uses or developments shall be conducted consistent with the rules implementing SEPA (BMC and WAC 197-11).</p> <p><b>20.30.020 all</b></p> <ul style="list-style-type: none"> <li>i. Archaeological sites located in shoreline jurisdiction are subject to state and federal regulations as well as to the City of Burien Shoreline Master Program.</li> <li>ii. The City shall notify the relevant Native American tribe(s) when an application for work in the shoreline area</li> </ul>

## SHORELINE POLICY AND REGULATIONS COMPARISON TABLE

Goals and Policies	Regulations
	<p>is filed.</p> <p>iii. 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.</p> <p>iv. Archaeological excavations may be permitted subject to the provisions of this shoreline program.</p> <p><b>20.30.025 2a.</b> BMC 19.40—Critical areas (City of Burien Ordinance 394, adopted October 20, 2003) shall apply to the shoreline jurisdiction with the exception of the reasonable use provisions contained in BMC 19.40.070 (4).</p> <p><b>20.30.030 2c.</b> 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.</p> <p><b>20.30.030 2d.</b> New structural flood protection measures should only be allowed when necessary to protect existing development or to facilitate restoration projects.</p> <p><b>20.30.035 2a.</b> Public access provided by shoreline street ends, public utilities, 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.</p> <p><b>20.30.050 Figure 5</b></p> <p><b>20.30.065 2c.</b> 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.</p> <p><b>20.30.065 2d.</b> Farming and/or harvest of geoducks shall follow all applicable State and Federal regulations and guidelines.</p> <p><b>20.30.065 2f.</b> Aquaculture shall be limited to geoduck harvesting within Department of Natural Resources tracts or aquaculture for recovery of a native aquatic population.</p> <p><b>20.30.065 2h.</b> Shellfish seeding and culturing is allowed when conducted for native population recovery in accordance with a government and/or tribal approved plan.</p> <p><b>20.30.090 2g.</b> 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.</p> <p><b>20.30.095 2d.</b> 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.</p> <p><b>20.30.095 2e.</b> Recreational mooring buoys on public lands shall be installed using a DNR or WDFW approved system.</p>
Pol. ALL 8	<p>Consider an incentive base system to encourage redevelopment projects to comply with accepted shoreline best management practices and standards.</p> <p>In drafting the regulations there was a significant effort to create a buffer incentive system to allow buffer reductions, but because the Burien shoreline is so highly developed the application of an incentive system became very bureaucratic without achieving sufficient protection for the shoreline. The result was a more simplified buffer system that is more easily understood by the public and can be more consistently administered.</p>
	<p><b>20.20.005 Economic Development Element</b></p>
Pol. ED 1	<p>New commercial development in the shoreline area should be limited to water-oriented uses</p> <p><b>20.30.001 Figure 4</b></p>

## SHORELINE POLICY AND REGULATIONS COMPARISON TABLE

	Goals and Policies	Regulations
	that can exist harmoniously with surrounding land uses.	<b>20.30.015 2b.</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.
Pol. ED 2	Protect the beauty and function of the natural environment to maintain a community where workers want to live and work.	<b>20.30.025. Critical Areas</b> <b>20.30.040. Shoreline Vegetation Conservation</b> <b>20.30.045. Water Quality, Storm Water and Nonpoint Pollution</b> <b>20.30.055. Shoreline Buffers and Reductions</b> <b>20.30.085. Habitat Restoration and Enhancement</b>
Pol. ED 3	Promote actions ensuring a clean and attractive community.	<b>20.30.045. Water Quality, Storm Water and Nonpoint Pollution</b>
	<b>20.20.010 Shoreline Public Access Element</b>	
Pol. PA 1	Developments, uses, and activities on or near the shoreline should not impair or detract from the public's access to the water.	<b>20.30.035 2b.</b> The vacation or sale of street ends or other public right of ways and tax title properties that abut shoreline areas shall be prohibited as these areas provide shoreline public access and viewpoints. <b>20.30.035 2d.</b> If a road is located within shoreline jurisdiction, any unused right of way shall be dedicated to open space and public access. <b>20.30.035 2g.</b> 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. <b>20.30.035 2i.</b> 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. <b>20.30.035 2k.</b> Future actions by the applicant or other parties shall not diminish the usefulness or value of the public access site.
Pol. PA 2	Publicly owned shorelines should be limited to water-dependent or public recreational uses, otherwise such shorelines should remain protected open space.	<b>20.30.035 2e.</b> Public access shall be required for all shoreline development and uses, except for water dependent uses and individual single family residences not part of a development planned for more than four parcels.
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.	<b>20.30.035 2f.</b> 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. <b>20.30.090 2.d</b> Recreation facilities shall provide adequate provisions to prevent the general public from trespassing and overflowing into adjacent, privately owned properties.
Pol. PA 4	Public access should be provided as close as possible to the water's edge without adversely affecting a sensitive environment and should be designed for handicapped and physically impaired persons.	<b>20.30.035 2h.</b> Public access improvements shall not result in a net loss of shoreline ecological functions.
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.	<b>Policy that includes implementation actions connected to parks and open space plans.</b>
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.	<b>20.30.035 2b.</b> The vacation or sale of street ends or other public right of ways and tax title properties that abut shoreline areas shall be prohibited as these areas provide shoreline public access and viewpoints. <b>20.30.035 2d.</b> If a road is located within shoreline jurisdiction, any unused right of way shall be dedicated to open

## SHORELINE POLICY AND REGULATIONS COMPARISON TABLE

Goals and Policies	Regulations
	space and public access.
<p><b>Pol. PA 7</b></p> <p>Waterfront street ends should be recognized as:</p> <ul style="list-style-type: none"> <li>a. An important community resource that provides visual and physical access to the Puget Sound;</li> <li>b. Special use parks which serve the community, yet fit and support the character of the surrounding neighborhoods;</li> <li>c. A destination resource, where limited facilities and enhancements are provided.</li> </ul>	<p><b>20.30.35 2</b></p> <ul style="list-style-type: none"> <li>a. Public access provided by shoreline street ends, public utilities, 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.</li> <li>b. The vacation or sale of street ends or other public right of ways and tax title properties that abut shoreline areas shall be prohibited as these areas provide shoreline public access and viewpoints.</li> <li>d. If a road is located within shoreline jurisdiction, any unused right of way shall be dedicated to open space and public access.</li> </ul>
<p><b>Pol. PA 8</b></p> <p>The City should manage and develop waterfront street ends by:</p> <ul style="list-style-type: none"> <li>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, and is consistent with City risk management practices;</li> <li>b. Ensuring that public parking is available, and that any new parking that is developed would be harmonious with the surrounding neighborhood;</li> <li>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;</li> <li>d. Installing signs that indicate the public's right of access and encourage appropriate use;</li> <li>e. Installing limited trail improvements and enhancements to allow access to the water;</li> <li>f. Minimizing the potential impacts associated with their use on adjacent private property; and</li> <li>g. Developing a street ends plan that promotes waterfront access.</li> </ul> <p>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.</p>	<p><b>20.30.035 2a.</b> Public access provided by shoreline street ends, public utilities, 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.</p>
<p><b>Pol. PA 9</b></p> <p>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.</p>	<p><b>20.30.035 2a.</b> Public access provided by shoreline street ends, public utilities, 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.</p>
<p><b>Pol. PA 10</b></p> <p>The City should disseminate information that identifies all locations for public access to the shorelines.</p>	<p><b>20.30.035 2j.</b> 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.</p>
<p><b>Pol. PA 11</b></p> <p>The public's visual access to the City's shorelines from streets, paths, trails and designated viewing areas should be conserved and enhanced.</p>	<p><b>20.30.035 2c.</b> Visual access to outstanding scenic areas shall be provided with the provision of roadside pullovers or broadening of road shoulders.</p>

## SHORELINE POLICY AND REGULATIONS COMPARISON TABLE

	Goals and Policies	Regulations
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.	<b>20.30.035 2c.</b> Visual access to outstanding scenic areas shall be provided with the provision of roadside pullovers or broadening of road shoulders.
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.	<b>Policy should be considered in capital development proposals for public facilities like parks and bike and pedestrian trail improvements.</b>
	<b>20.20.015 Recreation Element</b>	
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.	<b>20.30.080 2a</b> New docks, piers, floats and rafts shall be limited to those required as part of a permitted water dependent use or for joint use of the facility.
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 which leave natural areas undisturbed and protected.	<p><b>20.30.080 2c</b> The design and construction of docks, floats, and <i>piers</i> as well as their subsequent use and operation, shall:</p> <ul style="list-style-type: none"> <li>i. Be capable of withstanding expected environmental conditions,</li> <li>i. Minimize interference with adjacent water uses and navigation, and</li> <li>ii. 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.</li> </ul> <p><b>20.30.090 2b</b> Recreation facilities shall be designed to take maximum advantage of and enhance the natural character of the shoreline area.</p>
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.	<b>20.30.090 2d</b> Recreation facilities shall provide adequate provisions to prevent the general public from trespassing and overflowing into adjacent, privately owned properties.
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:	<b>Ongoing Implementation Task</b>
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.	<b>20.30.090 2g</b> 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.
Pol. REC 6	Where appropriate, recreational developments should make adequate provisions for: <ul style="list-style-type: none"> <li>a. Vehicular and pedestrian access, both on-site and off-site;</li> <li>b. Proper water supply and sewage waste disposal methods;</li> <li>c. Security and fire protection;</li> <li>d. The prevention of overflow and trespass onto adjacent properties, including but not limited to landscaping, fencing and posting of property; and</li> <li>e. Buffering of such development from adjacent private property or natural area.</li> </ul>	<p><b>20.30.035 Public Access</b></p> <p><b>20.30.090 2c</b> Recreation areas shall promote public health, safety and security and not materially interfere with the normal public use of the water and shorelines.</p> <p><b>20.30.090 2d</b> Recreation facilities shall provide adequate provisions to prevent the general public from trespassing and overflowing into adjacent, privately owned properties.</p>
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.	<b>20.30.085 2d</b> Nonstructural approaches for shoreline restoration or enhancement shall be used for shoreline stabilization instead of bulkheads or other structural stabilization measures, where feasible.
Pol. REC 8	Mooring buoys, in general, are beneficial in enabling increased recreational opportunities.	<b>20.30.095 2a</b> Mooring buoys shall be located as close to the shore as possible while avoiding beaching under all tidal

## SHORELINE POLICY AND REGULATIONS COMPARISON TABLE

	Goals and Policies	Regulations
	However, the City should ensure that their possible negative effects on physical and visual environments are avoided.	situations and no farther waterward than existing authorized mooring buoys unless the drift of the boat dictates it. <b>20.30.095 2b</b> Mooring buoys shall be clustered away from critical saltwater habitat. <b>20.30.095 2c</b> Mooring buoys shall utilize a system design that minimizes damage to underwater lands and marine vegetation.
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.	Policy to be considered in future updates to parks plan.
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.	To be considered or verified in next park plan update and bicycle and pedestrian plan update.
Pol. REC 11	Development of recreational facility along City shorelines should implement Low Impact Development techniques whenever feasible.	<b>20.30.090 2b</b> Recreation facilities shall be designed to take maximum advantage of and enhance the natural character of the shoreline area.
	<b>20.20.020 Land-Use element</b>	
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.	<b>20.30.001</b>
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.	Policy used for code development guidance.
Pol. USE 3	Ensure the appropriate location, design, and operation of all activities, development, and redevelopment in the shoreline.	<b>20.30.015 2b.</b> <i>Water dependent uses</i> 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.
Pol. USE 4	Incentives should be available to encourage the removal and/or reduction of non-Conformances.	<b>20.30.001 Figure 4.</b> Single Family Residential (SFR) development is processed as a Shoreline Substantial Development if outside the buffers, which is the least process possible for new or expanded SFR's. Reducing processing barriers for projects that comply with the minimum requirements encourages projects to conform.
Pol. USE 5	If feasible, septic systems should be connected to the sanitary sewer system where connections are available.	A policy statement which requires coordination and cooperation of sewer service providers.
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.	An existing comprehensive plan policy. <b>BMC 19.15.005.2</b>
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.	<b>20.30.100 2d</b> Lot size calculations. Lot size calculations shall not include portions of the lot that are waterward of the ordinary high water mark.
Pol. USE 8	The planned densities for single-family development should encourage a lower development potential in areas with development constraints.	An existing comprehensive plan policy already implemented in the zoning code.
Pol. USE 9	The <i>Low Density Residential Neighborhood</i> designation will provide for low-density residential	See Zoning Code; <b>19.15.005</b>

## SHORELINE POLICY AND REGULATIONS COMPARISON TABLE

	Goals and Policies	Regulations
	development. Development within this designation includes existing neighborhoods that are zoned for four units per acre or less.	
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.	See Zoning Code BMC 19.40.230 [1]
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.	<p><b>20.30.070 1a</b> New development should be located and designed to avoid the need for future shoreline stabilization to the greatest extent feasible.</p> <p><b>20.30.040 2.c</b> Within a shoreline riparian buffer as set forth in 20.30.050 <i>alterations</i> shall comply with the following;</p> <ul style="list-style-type: none"> <li>i. The applicant shall provide a vegetation management plan prepared by a qualified professional; and</li> <li>ii. At least 75% of the buffer area shall be vegetated; and</li> <li>iii. Where vegetation is proposed within the buffer it shall be provided at a density to mimic natural conditions; and</li> <li>iv. Vegetation shall consist of mix of native trees, shrubs and ground cover; and</li> <li>v. When <i>alterations</i> are proposed within a non-compliant buffer the end result shall be no loss of vegetated areas; and</li> <li>vi. Vegetation management plans should place emphasis on providing plantings within a 20 foot wide area parallel and adjacent to the shoreline; and</li> <li>vii. Lawn is a prohibited vegetation in the shoreline buffer due to its limited functional benefits and need for chemical and fertilizer application; and</li> <li>viii. Include appropriate limitations on the use of fertilizer, herbicides and pesticides as needed to protect lake and marine water quality; and</li> <li>ix. Non-conforming buffer areas that have been altered shall to the greatest extent feasible, provide vegetation consistent with this section.</li> </ul>
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.	<p><b>20.30.070 1a</b> New development should be located and designed to avoid the need for future shoreline stabilization to the greatest extent feasible.</p> <p><b>BMC 19.40, Critical Areas</b></p>
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.	<p><b>20.30.070 1a</b> New development should be located and designed to avoid the need for future shoreline stabilization to the greatest extent feasible.</p> <p><b>20.30.100 2e.</b> 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.</p>
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.	<b>20.30.040 2e</b> 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.
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.	<b>20.30.070 1a</b> New development should be located and designed to avoid the need for future shoreline stabilization to the greatest extent feasible.
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	<b>20.30.070 2a</b> 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

## SHORELINE POLICY AND REGULATIONS COMPARISON TABLE

	Goals and Policies	Regulations
	use of "hard" measures, such as concrete bulkheads.	no net loss of shoreline ecological functions. <b>20.30.070 2b</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.
Pol. USE 17	Encourage joint-use activities in proposed shoreline developments.	<b>20.30.080 2e</b> Only joint use dock, moorage, float or launching facilities are allowed for attached dwelling unit 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.	Policy to support inter-jurisdictional discussions.
Pol. USE 19	Limit use of pesticides and herbicides within shoreline jurisdiction.	<b>20.30.040 2c.vii</b> Lawn is a prohibited vegetation in the shoreline buffer due to its limited functional benefits and need for chemical and fertilizer application; and
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.	<b>20.30.100 2a</b> 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>20.20.030 Conservation Element</b>	
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.	<p><b>20.30.010 2a</b> 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.</p> <p><b>20.30.010 2c</b> Where required, mitigation measures shall be applied in the following sequence of steps listed in order of priority.</p> <ul style="list-style-type: none"> <li>i. Avoiding the impact altogether by not taking a certain action or parts of an action;</li> <li>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;</li> <li>iii. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;</li> <li>iv. Reducing or eliminating the impact over time by preservation maintenance;</li> <li>v. Compensating for the impact by replacing, enhancing, or providing substitute resources or environments;</li> <li>vi. Monitoring the impact and the compensation projects and taking the appropriate corrective measures.</li> </ul> <p><b>20.30.025 2c.</b> Development shall not intrude into, over, or within a 10 foot buffer from critical saltwater habitats except when an alternative alignment or location is not feasible and the development would result in no net loss of critical saltwater habitat.</p> <p><b>20.30.040 2a</b> Alterations to vegetation within shoreline jurisdiction shall not result in a loss of shoreline ecological value or function.</p> <p><b>20.30.045 2a.</b> Construction materials that come in direct contact with the water 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.</p> <p><b>20.30.045 2b.</b> Low impact development methods shall be incorporated into any development or redevelopment in shoreline jurisdiction when feasible.</p> <p><b>20.30.055</b></p>

1-509

## SHORELINE POLICY AND REGULATIONS COMPARISON TABLE

Goals and Policies	Regulations	
	<p>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. Water dependent development, such as docks, viewing platforms and boardwalks, and structures and development which are accessory to a recreational use, such as benches and trails, are allowed within the buffer as provided herein.</p> <p>2. 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 correction action, which shall also be subject to further monitoring as provided in this section.</p> <p>3. 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.</p> <p>4. All costs associated with the mitigation/monitoring and planning including city expenses, shall be the responsibility of the applicant.</p> <p><b>20.30.065 2a</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.</p> <p><b>20.30.070 2f</b> Bulkheads shall be located and constructed in a manner which will not result in adverse effects on littoral drift and adjacent properties.</p> <p><b>20.30.085 Habitat Restoration and Enhancement</b></p> <p><b>20.30.090 2b</b> Recreation facilities shall be designed to take maximum advantage of and enhance the natural character of the shoreline area.</p>	
Pol. CON 2	<p>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.</p>	<p><b>20.30.001 Figure 4</b></p>
Pol. CON 3	<p>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.</p>	<p><b>20.30.025 2a</b> BMC 19.40—Critical areas (City of Burien Ordinance 394, adopted October 20, 2003) shall apply to the shoreline jurisdiction with the exception of the reasonable use provisions contained in BMC 19.40.070 (4).</p>
Pol. CON 4	<p>Development should be directed toward areas where their adverse impacts on critical areas can be minimized.</p>	<p><b>20.30.020 2d.</b> When this Master Program requires mitigation, the mitigation sequence described in this section shall be followed. In determining appropriate mitigation measures applicable to shoreline development, the following sequence listed in order of priority (from highest to lowest) shall be:</p> <p>(1) Avoiding the impact altogether by not taking a certain action or parts of an action;</p> <p>(2) Minimize 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;</p>
Pol. CON 5	<p>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.</p>	<p><b>20.30.005 Land Use</b></p> <p>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.</p>

## SHORELINE POLICY AND REGULATIONS COMPARISON TABLE

	Goals and Policies	Regulations
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	<p><b>20.30.025 2a</b> BMC 19.40—Critical areas (City of Burien Ordinance 394, adopted October 20, 2003) shall apply to the shoreline jurisdiction with the exception of the reasonable use provisions contained in BMC 19.40.070 (4).</p> <p><b>20.30.030 2d.</b> Flood control methods must be consistent with BMC 15.55-Flood Damage Prevention and BMC 19.40-Critical Areas.</p>
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.	<b>20.30.025 2b.</b> 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.
Pol. CON 8	The City shall develop land use regulations to buffer critical areas from the impacts of adjacent land uses.	<b>20.30.025 2c.</b> Development shall not intrude into, over, or within a 10-foot buffer from critical saltwater habitats except when an alternative alignment or location is not feasible and the development would result in no net loss of <i>Critical saltwater habitat</i> .
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).	<b>20.30.025 2a</b> BMC 19.40—Critical areas (City of Burien Ordinance 394, adopted October 20, 2003) shall apply to the shoreline jurisdiction with the exception of the reasonable use provisions contained in BMC 19.40.070 (4).
Pol. CON 10	The City should provide education and technical assistance on low-impact development techniques	<b>Policy that requires implementation actions.</b>
Pol. CON 11	Provide public outreach and education about shoreline ecological functions and processes, and engage the public in stewardship and enhancement activities.	<b>Policy that requires implementation actions.</b>
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.	<p><b>20.30.040 2c ii.</b> At least 75% of the buffer area shall be vegetated;</p> <p><b>20.30.040 2c ix.</b> Non-conforming buffer areas that have been altered shall to the greatest extent feasible, provide vegetation consistent with this section.</p> <p><b>20.30.045 2b</b> Low impact development methods shall be incorporated into any development or redevelopment in shoreline jurisdiction when feasible.</p> <p><b>20.30.050 figure 5</b></p>
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.	<b>20.30.045 2a.</b> Construction materials that come in direct contact with the water 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.
Pol. CON 14	Educate the public on water quality issues and impacts of stormwater flow.	<b>Policy that requires implementation actions.</b>
Pol. CON 15	Educate individuals and households about different ways to reduce pollution.	<b>Policy that requires implementation actions.</b>
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.	<p><b>20.30.010 2c ii</b></p> <p><b>20.30.010 2f</b> When compensatory measures or appropriate 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 water shed or comprehensive resource management plans applicable to the area of impact may be authorized. Authorization of compensatory mitigation measures may require appropriate safeguards, terms or conditions as necessary to ensure no net loss of ecological functions.</p> <p><b>20.30.025 2a</b> BMC 19.40—Critical areas (City of Burien Ordinance 394, adopted October 20, 2003) shall apply to the shoreline jurisdiction with the exception of the reasonable use provisions contained in BMC 19.40.070 (4).</p>
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	<b>20.30.025 2a.</b> BMC 19.40—Critical areas (City of Burien Ordinance 394, adopted October 20, 2003) shall apply to the shoreline jurisdiction with the exception of the reasonable use provisions contained in BMC 19.40.070 (4).

1-511

## SHORELINE POLICY AND REGULATIONS COMPARISON TABLE

	Goals and Policies	Regulations
	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.	<b>20.30.025 2a</b> BMC 19.40—Critical areas (City of Burien Ordinance 394, adopted October 20, 2003) shall apply to the shoreline jurisdiction with the exception of the reasonable use provisions contained in BMC 19.40.070 (4).
Pol. CON 19	Mitigation for any adverse impacts on wetlands shall be provided in the same basin within which the impacts occur.	<b>20.30.025 2a</b> BMC 19.40—Critical areas (City of Burien Ordinance 394, adopted October 20, 2003) shall apply to the shoreline jurisdiction with the exception of the reasonable use provisions contained in BMC 19.40.070 (4). <b>20.30.025 2d.</b> When this Master Program requires mitigation, the mitigation sequence described in section 20.30.010 shall be followed.
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.	<b>20.30.025 2a</b> BMC 19.40—Critical areas (City of Burien Ordinance 394, adopted October 20, 2003) shall apply to the shoreline jurisdiction with the exception of the reasonable use provisions contained in BMC 19.40.070 (4). <b>20.30.040 2b</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.
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.	<b>20.30.040 2b</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. <b>20.30.040 2c.</b> Within a shoreline riparian buffer as set forth in 20.30.050 <i>alterations</i> 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 vegetated; and iii. Where vegetation is proposed within the buffer it shall be provided at a density to mimic natural conditions; and iv. Vegetation shall consist of mix of native trees, shrubs and ground cover; and v. When <i>alterations</i> are proposed within a non-compliant buffer 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 vii. Lawn is a prohibited vegetation in the shoreline buffer due to its limited functional benefits and need for chemical and fertilizer application; and viii. Include appropriate limitations on the use of fertilizer, herbicides and pesticides as needed to protect lake and marine water quality; and ix. Non-conforming buffer areas that have been altered shall to the greatest extent feasible, provide vegetation consistent with this section.
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.	<b>20.30.070 2a</b> 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>20.30.070 2b</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.
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.	<b>20.30.040 2c</b> Within a shoreline riparian buffer as set forth in 20.30.050 <i>alterations</i> 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 vegetated; and

## SHORELINE POLICY AND REGULATIONS COMPARISON TABLE

	Goals and Policies	Regulations
		<ul style="list-style-type: none"> <li>iii. Where vegetation is proposed within the buffer it shall be provided at a density to mimic natural conditions; and</li> <li>iv. Vegetation shall consist of mix of native trees, shrubs and ground cover; and</li> <li>v. When <i>alterations</i> are proposed within a non-compliant buffer the end result shall be no loss of vegetated areas; and</li> <li>vi. Vegetation management plans should place emphasis on providing plantings within a 20 foot wide area parallel and adjacent to the shoreline; and</li> <li>vii. Lawn is a prohibited vegetation in the shoreline buffer due to its limited functional benefits and need for chemical and fertilizer application; and</li> <li>viii. Include appropriate limitations on the use of fertilizer, herbicides and pesticides as needed to protect lake and marine water quality; and</li> <li>ix. Non-conforming buffer areas that have been altered shall to the greatest extent feasible, provide vegetation consistent with this section.</li> </ul>
Pol. CON 24	Enhance riparian vegetation to improve shoreline ecological functions and processes where possible.	<p><b>20.30.040 2b</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.</p> <p><b>20.30.040 2c</b> Within a shoreline riparian buffer as set forth in 20.30.050 <i>alterations</i> shall comply with the following;</p> <ul style="list-style-type: none"> <li>i. The applicant shall provide a vegetation management plan prepared by a qualified professional; and</li> <li>ii. At least 75% of the buffer area shall be vegetated; and</li> <li>iii. Where vegetation is proposed within the buffer it shall be provided at a density to mimic natural conditions; and</li> <li>iv. Vegetation shall consist of mix of native trees, shrubs and ground cover; and</li> <li>v. When <i>alterations</i> are proposed within a non-compliant buffer the end result shall be no loss of vegetated areas; and</li> <li>vi. Vegetation management plans should place emphasis on providing plantings within a 20 foot wide area parallel and adjacent to the shoreline; and</li> <li>vii. Lawn is a prohibited vegetation in the shoreline buffer due to its limited functional benefits and need for chemical and fertilizer application; and</li> <li>viii. Include appropriate limitations on the use of fertilizer, herbicides and pesticides as needed to protect lake and marine water quality; and</li> <li>ix. Non-conforming buffer areas that have been altered shall to the greatest extent feasible, provide vegetation consistent with this section.</li> </ul>
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.	<p><b>20.30.40 2c</b></p> <ul style="list-style-type: none"> <li>iii. Where vegetation is proposed within the buffer it shall be provided at a density to mimic natural conditions; and</li> <li>iv. Vegetation shall consist of mix of native trees, shrubs and ground cover; and</li> </ul>
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.	<b>20.30.025 2c.</b> Development shall not intrude into, over, or within a 10 foot buffer from critical saltwater habitats except when an alternative alignment or location is not feasible and the development would result in no net loss of critical saltwater habitat.
Pol. CON 27	Fish and wildlife habitat should be protected, conserved and enhanced,	<b>20.30.025 2c.</b> Development shall not intrude into, over, or within a 10 foot buffer from critical saltwater habitats except when an alternative alignment or location is not feasible and the development would result in no net loss of critical saltwater habitat.
Pol. CON 28	Fish and wildlife should be maintained through conservation and enhancement of terrestrial,	<b>20.30.085 2c.</b> Shoreline restoration projects shall implement the City's adopted shoreline restoration plan and be

## SHORELINE POLICY AND REGULATIONS COMPARISON TABLE

	Goals and Policies	Regulations
	air and aquatic habitats.	conducted specifically for the purpose of establishing, restoring, or enhancing habitat for priority species in shorelines.
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.	<b>Implementation task. Existing comprehensive plan policy EV 4.7.</b>
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.	<p><b>20.30.040 2b</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.</p> <p><b>20.30.040 2c</b> Within a shoreline riparian buffer as set forth in 20.30.050 <i>alterations</i> shall comply with the following;</p> <ul style="list-style-type: none"> <li>i. The applicant shall provide a vegetation management plan prepared by a qualified professional; and</li> <li>ii. At least 75% of the buffer area shall be vegetated; and</li> <li>iii. Where vegetation is proposed within the buffer it shall be provided at a density to mimic natural conditions; and</li> <li>iv. Vegetation shall consist of mix of native trees, shrubs and ground cover; and</li> <li>v. When <i>alterations</i> are proposed within a non-compliant buffer the end result shall be no loss of vegetated areas; and</li> <li>vi. Vegetation management plans should place emphasis on providing plantings within a 20 foot wide area parallel and adjacent to the shoreline; and</li> <li>vii. Lawn is a prohibited vegetation in the shoreline buffer due to its limited functional benefits and need for chemical and fertilizer application; and</li> <li>viii. Include appropriate limitations on the use of fertilizer, herbicides and pesticides as needed to protect lake and marine water quality; and</li> <li>ix. Non-conforming buffer areas that have been altered shall to the greatest extent feasible, provide vegetation consistent with this section.</li> </ul> <p><b>20.30.055 1 A</b> 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. Water dependent development, such as docks, viewing platforms and boardwalks, and structures and development which are accessory to a recreational use, such as benches and trails, are allowed within the buffer as provided herein.</p> <p><b>20.30.050 Figure 5</b></p>
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.	<b>Existing comprehensive plan policy EV 4.10.</b>
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.	<b>20.30.085 2e</b> 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.
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.	<b>Policy that should be considered when city considers parks projects or open space acquisitions.</b>
Pol. CON 34	The City should maintain, protect and enhance greenbelts riparian corridors and wildlife habitat corridors so that the extent and intensity of the built environment is balanced by these natural	<b>Policy that should be considered when city considers parks projects or open space acquisitions.</b>

## SHORELINE POLICY AND REGULATIONS COMPARISON TABLE

	Goals and Policies	Regulations
	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.	Existing Policy in comprehensive plan (OS 1.6) currently implemented in the Zoning Code BMC 19.40.220.
	<b>20.20.035 Historic, Cultural, Scientific, and Educational Element</b>	
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.	Existing similar comprehensive plan policy (HT 1.1) that requires implementation.
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.	20.30.020 2a. Archaeological sites located in shoreline jurisdiction are subject to state and federal regulations as well as to the City of Burien Shoreline Master Program
Pol. HCSE 3	The City should consider developing and implementing measures which preserve trees of historical significance.	Future implementation action. Existing comprehensive plan policy EV 2.11.
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.	Policy that requires implementation.
	<b>20.20.040 Flood Prevention and Minimization Element</b>	
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.	20.30.030 2d, New structural flood protection measures should only be allowed when necessary to protect existing development or to facilitate restoration projects.
Pol. FLD 2	The capacity of natural drainage courses shall not be diminished by development or other activities.	Implemented by the City Stormwater plan and drainage design manual BMC 13.10 Surface Water Management.
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.	20.30.030 2b. Flood protection structures may be allowed in shoreline jurisdiction if a shoreline substantial development permit is obtained.
Pol. FLD 4	Monitor sea level rise and accordingly adjust development standards such building setbacks to minimize flooding potential.	Ongoing and issue should be monitored and be reviewed as a part of future SMP updates.
	<b>20.20.045 Restoration Element</b>	
Pol. REST 1	Promote restoration actions that are doable, practical, and effective.	Policy to be implemented when considering new or amendments to the restoration plan.
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.	Policy to be considered during the consideration and evaluation of new or existing capital improvement projects.
Pol. REST 3	New development and redevelopment activities in the shoreline should be offered incentives that provide opportunities 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.	20.30.100 2c Common-line riparian buffer and building setback standards. Riparian buffer and building setback standards may be reduced through the shoreline conditional use permit process. In addition to the conditional use criteria the Shoreline Administrator may approve residential development under the following conditions: <ol style="list-style-type: none"> <li>1. 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 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 7)</li> </ol>

1-515

## SHORELINE POLICY AND REGULATIONS COMPARISON TABLE

	Goals and Policies	Regulations
		<ol style="list-style-type: none"> <li>2. 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.</li> <li>3. In no case shall the reduced setbacks be less than 20 feet landward of the OHWM.</li> <li>4. Any further setback reduction beyond that allowed in this section shall require approval of a shoreline variance permit.</li> <li>5. In cases where there is a steep slope critical area (not buffer) located within the shoreline buffer and setback, expansions of legally established single family primary structures may use the common line setback provisions.</li> </ol>
Pol. REST 4	The City shall promote voluntary shoreline enhancement projects through educational and incentive programs for individuals and organizations.	Implementation task
Pol. REST 5	The City should implement the restoration plan associated with this Shoreline Master Program.	Implementation task
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.	Implementation task. A policy consideration when evaluating restoration projects.
Pol. REST 7	Stream banks and stream channels should be maintained or restored to their natural condition wherever such conditions or opportunities exist.	Implemented by the Critical Areas Chapter 19.40.
Pol. REST 8	Increase availability of large woody debris and opportunities for recruitment in the nearshore zone.	20.30.040 2.c.vi Vegetation management plans should place emphasis on providing plantings within a 20 foot wide area parallel and adjacent to the shoreline; and
Pol. REST 9	Restore degraded shoreline areas with native species.	20.30.040 2c iv. Vegetation shall consist of mix of native trees, shrubs and ground cover
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.	Ongoing implementation task.

September 21, 2009

To: David Johanson, City of Burien  
Fr: Cyrilla Cook, People For Puget Sound  
Re: Burien SMP Update: Comments on Chapter IV

Thanks for the opportunity to review the chapters in advance of the September 24 meeting. Below are my comments and questions.

Page IV-7, 20.30.025 Critical Areas

Regulation 2.c. What is the basis of the ten-foot buffer from critical saltwater habitats, since the buffer is 50 feet? This seems inconsistent with best available science, and the adopted standards for buffer averaging in the CAO. A 50% reduction with buffer averaging would be a minimum of 25 feet. A 25-foot buffer will provide only minimal water quality and habitat functions, removing between 50-60% of sediments and pollution (Desbonnet et al 1994). The ten foot standard is also inconsistent with the minimum 20 foot buffer proposed on page IV-27 under common line riparian buffer. To maximize water quality treatment that supports the no net loss standard, the City should consider requiring enhancement of buffers through planting with native vegetation any time buffers less than the standard will apply.

Page IV-11, Shoreline Vegetation Conservation

Policy 1.a. Native plant communities on stable bluffs should also be maintained, as that may be what contributes to their stability.

Regulation 2.c. Item v refers to a "noncompliant" buffer and item ix refers to "non-conforming" buffers. Are these the same thing?

Page IV-17, Bulkheads and other shoreline stabilization structures

While the regulations in Subsection 2 make sense, they need a policy basis to support them. Regulations that favor nonstructural methods over structural methods avoid the individual and cumulative net loss of ecological functions attributable to shoreline stabilization, yet there are no policies in this section stating the city's objective of protecting shoreline functions from structural shoreline stabilization.

Policy b speaks to the aesthetic qualities of the shoreline but does not clearly state the city's preference for nonstructural stabilization. It could be modified as follows:

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.

I recommend adding the following additional policies:

Burien should take active measures to preserve natural unaltered shorelines, and prevent the proliferation of bulkheads and other forms of shoreline armoring.

Non-structural stabilization measures including relocating structures, increasing buffers, enhancing vegetation, managing drainage and runoff and other measures are preferred over structural shoreline armoring.

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.

#### **Page IV-20, Docks, Piers, and Floats**

Regulation 2.c.iii. implements Policy a, which seeks to minimize impacts to shoreline and nearshore ecological functions. Two potentially significant impacts of overwater structures are shading and interruption of sediment transport processes. (See Nightingale B., and C. Simenstad. 2001. Overwater structures: Marine Issues. White paper prepared for the Washington Department of Fish and Wildlife/Washington Department of Transportation). The proposed regulations do not appear to specifically address these types of impacts. I recommend the regulation be revised as follows:

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 drift, or movement of aquatic life forms.

Please also consider whether this policy is needed:

Overwater structures should be designed to avoid the need for maintenance dredging. The moorage of a boat larger than provided for in original moorage design shall not be grounds for approval of dredging.

#### **Page IV-21, Habitat Restoration and Enhancement**

This section would benefit from policies that express the city's desire to encourage uses that incorporate restoration projects along its shorelines. Here are some policies (from Jefferson County) to consider:

Protection of existing resources is the best way to ensure the long-term health and well-being of Burien shorelines. Restoration should be used to complement the protection strategies required by this Program to achieve the greatest overall ecological benefit.

Priority should be given to restoration actions that meet the goals and objectives of the Restoration Element of this Program.

#### Page IV-26, Residential Development

##### Common line Buffer

To ensure no net loss of ecological functions, the city has adopted shoreline buffers for new development. The common line buffer can be used in cases where new development is proposed on undersized lots, and application of the buffer would either preclude the development of the single family home or substantially affect views. This approach does, however, create new nonconforming structures. While we support the requirement that common line buffer proposals be reviewed as conditional uses, the draft appears to allow redevelopment or expansion of existing buildings to encroach into the buffer using the common line buffer approach. This is inconsistent with the SMA and state law, as it will result in the potential for increasingly more structures to become nonconforming, and will also result in additional loss of ecological functions. Existing buffers in the city are already smaller than that supported by best available science, so the city should limit the use of the common line buffer to only new development, not expansion of existing development. Expansion of existing structures should be prohibited from encroaching waterward of any existing buffer. If this policy is to remain, the City needs will need to assess the impacts of the waterward expansion of existing residential structures on ecological functions in its cumulative impacts analysis, and determine how no net loss will be met.

##### Regulations in General

This section would benefit from additional policies that provide the basis for the subsequent regulations that address environmental protection and use compatibility. Here are some to consider:

Residential use is not water-dependent but is a preferred use of the shorelines when such development is planned and carried out in a manner that protects shoreline functions and processes to be consistent with the no net loss provisions of this Program

All residential use and development should be planned, designed, located, and operated to avoid adverse impacts on shoreline processes, aquatic habitat, biological functions, water quality and quantity, aesthetics, navigation, and neighboring uses

To protect shoreline ecological functions and discourage the proliferation of shoreline structures, the joint use of residential shoreline facilities, including access stairs, is preferred.





1-522

## 2.13 SHORELINE ELEMENT

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.

The goals and policies contained in this chapter are organized according to the Shoreline Master Program elements set forth by the Washington State Legislature (RCW 90.58.100(2)). *[Adapted from Burien Comp Plan Pol. EV 2.1].*

### **2.13.1 - Goals and Policies Applicable to All Master Program Elements**

#### **Goal ALL.1**

**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. [Adapted from Ecology SMP Guidelines, SAC Meeting #2 Summary (5)2, and City of Burien Comp. Plan Policy LU 1.7]**

- Pol. ALL 1.1 The Shoreline Master Program shall result in no net loss of shoreline ecological functions and processes. *[Adapted from Ecology SMP Guidelines]*
- Pol. ALL 1.2 Regulation and management of Burien's shorelines should be guided by ongoing and comprehensive science. *[Adapted from 2007-2009 Puget Sound Conservation and Recovery Plan Priority 8 Long-term goal]*
- Pol. ALL 1.3 The City should be proactive in managing activities within the shoreline jurisdiction. *[SAC Meeting #2 Summary (5)2]*
- Pol. ALL 1.4 Implement an adaptive management approach to respond to changes and to ensure continued effectiveness. *[WRIA 9 Objective]*
- Pol. ALL 1.5 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. *[Adapted from SAC Meeting #2 Summary (5)2 and City of Burien Comp. Plan Policy LU 1.7]*
- Pol. ALL 1.6 When Shoreline Master Program regulations are developed and applied, they should consider site-specific characteristics. *[Adapted from SAC Meeting #2 Summary (5)2]*
- Pol. ALL 1.7 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. *[Adapted from Ecology SMP Guidelines]*
- Pol. ALL 1.8 When drafting new regulations the City should consider an incentive base system to encourage redevelopment projects to comply with accepted shoreline best management practices and standards. *[Adapted from SAC Meeting #2 (5),4]*

### ***2.13.2 - Economic Development Master Program Element***

#### **Goal ED.1**

**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. [1994 SMP Handbook Goal 2 of 9, SAC Meeting #2 Summary (5)4]**

- Pol. ED 1.1      New commercial development in the shoreline area should be limited to water-oriented uses that can exist harmoniously with surrounding land uses. *[Adapted from 1994 SMP Handbook Parking Policy 3 of 3, SAC Meeting #2 Summary (5)4]*
- Pol. ED 1.2      Protect the beauty and function of the natural environment to maintain a community where workers want to live and work. *[Burien Comp Plan Pol. ED 8.6]*
- Pol. ED 1.3      Promote actions ensuring a clean and attractive community. *[Burien Comp Plan Pol. ED 11.4]*

### **2.13.3 - Public Access Master Program Element**

#### **Goal PA.1**

**Increase and enhance public access to shoreline areas, consistent with the natural shoreline character, private property rights, and public safety. [Burien Comp Plan Goal SA.1]**

- Pol. PA 1.1      Developments, uses, and activities on or near the shoreline should not impair or detract from the public's access to the water. [1994 SMP Handbook Policy 2 of 9]
- Pol. PA 1.2      Publicly owned shorelines should be limited to water-dependent or public recreational uses, otherwise such shorelines should remain protected open space. [1994 SMP Handbook Policy 4 of 9]
- Pol. PA 1.3      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. [Burien Comp Plan Pol. SA 1.6]
- Pol. PA 1.4      Public access should be provided as close as possible to the water's edge without adversely affecting a sensitive environment and should be designed for handicapped and physically impaired persons. [1994 SMP Handbook Policy 3 of 9]
- Pol. PA 1.5      The City should seek opportunities to develop new public access areas in locations dispersed throughout the shoreline through:
- a. Tax-title properties;
  - b. Donations of land and waterfront areas; and
  - c. Acquisition using grants and bonds. [Adapted from Burien Comp Plan Pol. SA 1.4 and SAC Meeting #3]
- Pol. PA 1.6      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. [Burien Comp Plan Pol. SA 1.10]
- Pol. PA 1.7      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. [Burien Comp Plan Pol. SA 1.1]
- Pol. PA 1.8      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, and is consistent with City risk management practices;

1-526

- b. Ensuring that public parking is available, 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 and encourage appropriate use;
- e. Installing limited trail improvements and enhancements to allow access to the water;
- f. Minimizing the potential impacts associated with their use on adjacent private property; and
- g. Developing a street ends plan that promotes waterfront access. *[Adapted from Burien Comp Plan Pol. SA 1.2]*

Pol. PA 1.9 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. *[Burien Comp Plan Pol. SA 1.3]*

Pol. PA 1.10 The City should disseminate information that identifies all locations for public access to the shorelines. *[Adapted from City of Edmonds SMP Policy 2]*

Pol. PA 1.11 The public's visual access to the City's shorelines from streets, paths, trails and designated viewing areas should be conserved and enhanced. *[Burien Comp Plan Pol. SA 1.7]*

Pol. PA 1.12 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. *[Burien Comp Plan Pol. SA 1.8]*

Pol. PA 1.13 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. *[Adapted from Port Townsend SMP Policy 4.5.3]*

## **2.13.4 – Recreation Master Program Element**

### **Goal REC.1**

**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; and does not adversely impact shoreline ecological functions and processes. [Adapted from Burien Comp Plan Goal PRO.1 and 1994 SMP Handbook Goal 1 of 6]**

- Pol. REC 1.1 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. [City of Edmonds SMP Policy 5]
- Pol. REC 1.2 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 which leave natural areas undisturbed and protected. [1994 SMP Handbook Policy 4 of 16]
- Pol. REC 1.3 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. [City of Edmonds SMP Policy 7]
- Pol. REC 1.4 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. [Burien Comp Plan Pol. PRO 1.5]

## **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. *[Adapted from Burien Comp Plan PRO 1.5]*

- Pol. REC 1.5 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. *[SAC Meeting #3]*
- Pol. REC 1.6 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. *[1994 SMP Handbook Policy 15 of 16]*
- Pol. REC 1.7 Trails and pathways on steep shoreline bluffs should be located, designed and maintained to protect bank stability without the need for shoreline armoring. *[1994 SMP Handbook Policy 16 of 16]*
- Pol. REC 1.8 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. *[SAC Meeting #3]*
- Pol. REC 1.9 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. *[1994 SMP Handbook Policy 11 of 16]*
- Pol. REC 1.10 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. *[1994 SMP Handbook Policy 8 of 16]*
- Pol. REC 1.11 Development of recreational facility along City shorelines should implement Low Impact Development techniques whenever feasible. *[City of Bellingham Draft SMP Recreation Policy 2.b]*

## **2.13.5 - Circulation Master Program Element**

### **Goal CI.1**

**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. [Adapted from 1994 SMP Handbook Goal 1 of 8]**

- Pol. CI 1.1 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. *[Adapted from Port Townsend SMP Policy 4.4.2 and Bellingham Draft SMP Circulation Objective 2a]*
- Pol. CI 1.2 Cross Puget Sound bridges should be prohibited within the Burien shoreline jurisdiction. *[SAC Meeting #2]*
- Pol. CI 1.3 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. *[Adapted from Port Townsend SMP Policy 4.4.3]*
- Pol. CI 1.4 Public transit systems should provide service to designated shoreline public access points. *[Adapted from City of Edmonds SMP Policy 9 and SAC Meeting #3]*
- Pol. CI 1.5 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. *[City of Edmonds SMP Policy 2]*
- Pol. CI 1.6 Parking in shoreline areas should directly serve a permitted shoreline use. *[1994 SMP Handbook Parking Policy 1 of 3]*
- Pol. CI 1.7 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. *[Adapted from 1994 SMP Handbook Parking Policy 2 of 3]*
- Pol. CI 1.8 Parking should be planned to achieve optimum use. Where possible, parking should serve more than one use. *[Adapted from 1994 SMP Handbook Parking Policy 3 of 3]*
- Pol. CI 1.9 Utilities are necessary to serve shoreline uses and shall be properly installed so as to protect the shoreline and water from contamination and degradation. *[1994 SMP Handbook Utilities Policy 1 of 3]*
- Pol. CI 1.10 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. *[1994 SMP Handbook Utilities Policy 2 of 3]*

City of Burien Washington  
Shoreline Advisory Committee  
SMP Preliminary Goals and Policies, 9-10-08

- Pol. CI 1.11 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. *[1994 SMP Handbook Utilities Policy 3 of 3]*
- Pol. CI 1.12 Parking for non water dependent uses should be located as far away as feasible from shorelines.

### **2.13.6 - Use Master Program Element**

#### **Goal USE.1**

**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. [Adapted from Burien Comp Plan Pol. BU 1.1 and 1994 SMP Handbook Goal 1 of 10]**

- Pol. USE 1.1 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. *[Adapted from Burien Comp Plan Pol. EV 2.5]*
- Pol. USE 1.2 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. *[Burien Comp Plan Pol. LU 1.7]*
- Pol. USE 1.3 Ensure the appropriate location, design, and operation of all activities, development, and redevelopment in the shoreline. *[Adapted from Port Townsend SMP Policy 4.2.4]*
- Pol. USE 1.4 Incentives should be available to encourage the removal and/or reduction of non-conformances. *[Adapted from SAC Meeting #2 Summary (5)4]*
- Pol. USE 1.5 If feasible, septic systems should be connected to the sanitary sewer system where connections are available. *[SAC Meeting #3]*
- Pol. USE 1.6 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. *[Burien Comp Plan Pol. RE 1.3]*
- Pol. USE 1.8 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. *[Burien Comp Plan Pol. RE 1.4]*
- Pol. USE 1.9 The planned densities for single-family development should encourage a lower development potential in areas with development constraints. *[Burien Comp Plan Pol. RE 1.2]*
- Pol. USE 1.10 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. [*Burien Comp Plan Pol. RE 1.5*]

Pol. USE 1.11 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. [*Burien Comp Plan Pol. EV 1.6*]

Pol. USE 1.12 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.

1-534

- 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.  
*[Burien Comp Plan Pol. EV 3.1]*
- Pol. USE 1.13 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. *[Burien Comp Plan Pol. EV 3.2]*
- Pol. USE 1.14 Land uses on steep slopes should be designed to prevent property damage and environmental degradation, and to enhance open space and wildlife habitat. *[Burien Comp Plan Pol. EV 3.5]*
- Pol. USE 1.15 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. *[Burien Comp Plan Pol. EV 3.6]*
- Pol. USE 1.16 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. *[SAC Meeting #3]*
- Pol. USE 1.17 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. *[City of Edmonds Draft SMP Policy 12]*
- Pol. USE 1.18 Encourage joint-use activities in proposed shoreline developments. *[1994 SMP Handbook Goal 7 of 10]*
- Pol. USE 1.19 Wakes generated by vessels operating in the shoreline area should be minimized in order to reduce adverse impacts on the shoreline environment. *[SAC Meeting #3]*

### **2.13.7 - Conservation Master Program Element**

#### **Goal CON.1**

**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. [Adapted from Burien Comp Plan Goal EV.1 and EV.2]**

#### *General*

- Pol. CON 1.1 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. *[Port Townsend SMP Policy 4.7.1]*
- Pol. CON 1.2 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. *[Adapted from Burien Comp Plan Pol. EV 2.1]*
- Pol. CON 1.3 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. *[Burien Comp Plan Pol. EV 1.1]*
- Pol. CON 1.4 Development should be directed toward areas where their adverse impacts on critical areas can be minimized. *[Burien Comp Plan Pol. EV 1.2]*
- Pol. CON 1.5 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. *[City of Edmonds Draft SMP Policy 5, City of Bellingham Draft SMP Economic Development Policy 1, and SAC Meeting #2 Summary (5)4]*
- Pol. CON 1.6 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. *[Burien Comp Plan Pol. EV 1.3]*
- Pol. CON 1.7 The City shall require permit review approval before any activity or construction is allowed to occur in, adjacent to, or impact a critical area. *[Burien Comp Plan Pol. EV 1.4]*
- Pol. CON 1.8 The City shall develop land use regulations to buffer critical areas from the impacts of adjacent land uses. *[Burien Comp Plan Pol. EV 1.7]*

1-536

- Pol. CON 1.9 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)]. *[Burien Comp Plan Pol. EV 1.8]*
- Pol. CON 1.10 The City should provide education and technical assistance on low-impact development techniques. *[SAC Meeting #2 Summary (5)4]*
- Pol. CON 1.11 Provide public outreach and education about shoreline ecological functions and processes, and engage the public in stewardship and enhancement activities. *[Adapted from WRIA 9 Objective]*

*Water*

- Pol. CON 1.11 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. *[Burien Comp Plan Pol. EV 1.9]*
- Pol. CON 1.12 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. *[Burien Comp Plan Pol. EV 2.4]*
- Pol. CON 1.13 Educate the public on water quality issues and impacts of stormwater flow. *[Burien Comp Plan Pol. EV 2.15]*
- Pol. CON 1.14 Educate individuals and households about different ways to reduce pollution. *[Burien Comp Plan Pol. EV 2.16]*

*Wetlands*

- Pol. CON 1.15 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. *[Burien Comp Plan Pol. EV 1.5]*
- Pol. CON 1.16 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. *[Burien Comp Plan Pol. EV 6.2]*
- Pol. CON 1.17 The City will protect wetlands by maximizing infiltration opportunities and promoting the conservation of forest cover and native vegetation. *[Burien Comp Plan Pol. EV 6.3]*
- Pol. CON 1.18 Mitigation for any adverse impacts on wetlands shall be provided in the same basin within which the impacts occur. *[Burien Comp Plan Pol. EV 6.4]*

*Habitat*

- Pol. CON 1.19 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. *[Burien Comp Plan Pol. EV 2.9]*

- Pol. CON 1.20 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. *[Burien Comp Plan Pol. EV 2.10]*
- Pol. CON 1.21 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. *[Burien Comp Plan Pol. EV 3.3]*
- Pol. CON 1.22 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. *[Burien Comp Plan Pol. EV 3.4]*
- Pol. CON 1.23 Enhance riparian vegetation to improve shoreline ecological functions and processes where possible. *[Adapted from WRIA 9 Objective]*
- Pol. CON 1.24 The City should maintain and enhance existing species and habitat diversity including fish and wildlife habitat that supports the greatest diversity of native species. *[Burien Comp Plan Pol. EV 4.1]*
- Pol. CON 1.25 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. *[Burien Comp Plan Pol. EV 4.2]*
- Pol. CON 1.26 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. *[Burien Comp Plan Pol. EV 4.3]*
- Pol. CON 1.27 Fish and wildlife should be maintained through conservation and enhancement of terrestrial, air and aquatic habitats. *[Burien Comp Plan Pol. EV 4.4]*
- Pol. CON 1.28 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. *[Burien Comp Plan Pol. EV 4.7]*

- Pol. USE 1.29 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. *[Burien Comp Plan Pol. EV 4.8]*
- Pol. CON 1.30 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. *[Burien Comp Plan Pol. EV 4.10]*
- Pol. CON 1.31 The City shall promote voluntary wildlife enhancement projects which buffer and expand existing wildlife habitat, through educational and incentive programs for individuals and businesses. *[Burien Comp Plan Pol. EV 4.11]*
- Pol. CON 1.32 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. *[Burien Comp Plan Pol. OS 1.2]*
- Pol. CON 1.33 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. *[Burien Comp Plan Pol. EQ 1.2]*
- Pol. CON 1.34 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. *[Burien Comp Plan Pol. EQ 1.3]*

### **2.13.8 Historic, Cultural, Scientific, and Educational Master Program Element**

#### **Goal HCSE.1**

**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. [Adapted from 1994 SMP Handbook Goal 1 of 3 and Ecology SMP Guidelines]**

- Pol. HCSE 1.1 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. *[Adapted from Burien Comp Plan Goal HT 1.1 and 1994 SMP Handbook Goal 2 of 3]*
- Pol. HCSE 1.2 Ensure that properties having historic, cultural, scientific, or educational value are protected from undue adverse impacts associated with public or private uses and activities. *[Adapted from 1994 SMP Handbook Policy 1 of 1 and Burien Comp Plan Goal HT.1]*
- Pol. HCSE 1.3 The City should consider developing and implementing measures which preserve trees of historical significance. *[Burien Comp Plan Goal EV 2.11]*
- Pol. HCSE 1.4 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. *[Adapted from City of Edmonds Draft SMP Policy 3]*

### **2.13.9 - Flood Prevention and Minimization Master Program Element**

#### **Goal FLD.1**

**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. [Adapted from City of Edmonds Draft SMP Flood Damage Prevention Element Goal and City of Bellingham Flood Minimization Goal 1a]**

- Pol. FLD 1.1 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. [City of Edmonds Draft SMP Flood Damage Prevention Element Policy 3]
- Pol. FLD 1.2 The capacity of natural drainage courses shall not be diminished by development or other activities. [Burien Comp Plan Pol. EV 2.3]
- Pol. FLD 1.3 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. [Adapted from DOE SMP Submittal Checklist]
- Pol. FLD 1.4 Monitor sea level rise and accordingly adjust development standards such as building setbacks to minimize flooding potential. [Adapted from SAC Meeting #1 Summary (6)1]

## **2.13.10 - Restoration Master Program Element**

### **Goal REST.1**

**Restore areas which are ecologically degraded to the greatest extent feasible while maintaining appropriate use of the shoreline. [Adapted from 1994 SMP Handbook Conservation Element Goal 3 of 4]**

- Pol. REST 1.1 Promote restoration actions that are doable, practical, and effective. *[Adapted from WRIA 9 Objective]*
- Pol. REST 1.2 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. *[Burien Comp Plan Pol. EV 4.5]*
- Pol. REST 1.3 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. *[Adapted from City of Edmonds Draft SMP Policy 12 and Port Townsend SMP Policies 4.8.2 and 4.8.3]*
- Pol. REST 1.4 The City shall promote voluntary shoreline enhancement projects through educational and incentive programs for individuals and organizations. *[Adapted from Burien Comp Plan Pol. EV 4.11]*
- Pol. REST 1.5 The City should implement the restoration plan associated with this Shoreline Master Program. *[Adapted from Port Townsend SMP Policy 4.8.1]*
- Pol. REST 1.6 Improve natural stream and shoreline conditions to an environmental quality level that supports the return and continuation of salmon runs. *[Adapted from Salmon Creek Neighborhood Plan Goal NE 8.3]*
- Pol. REST 1.7 Eliminate fish blockages. *[Adapted from Salmon Creek Neighborhood Plan Goal NE 8.1]*
- Pol. REST 1.8 Stream banks and stream channels should be maintained or restored to their natural condition wherever such conditions or opportunities exist. *[Burien Comp Plan Pol. EV 2.2]*
- Pol. REST 1.9 Increase availability of large woody debris and opportunities for recruitment in the nearshore zone. *[City of Edmonds Draft SMP Policy 5]*
- Pol. REST 1.10 Restore degraded shoreline areas with native species. *[Adapted from Salmon Creek Neighborhood Plan Goal NE 8.5]*
- Pol. REST 1.11 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.

# **Burien Shoreline Master Program**

## **Table of Contents**

### **I. User's Guide**

- Overview of State Shoreline Management Act
- 2003 Shoreline Master Program Guidelines
- City of Burien Shoreline Jurisdiction
- Components of Burien Shoreline Master Program Update
- Amendments and State Role

### **II. General Goals and Policies**

- General
- Economic development element
- Public access element
- Recreation element
- Circulation element
- Shoreline use element
- Conservation element
- Historical, cultural, scientific and education element
- Flood damage prevention element
- Restoration element

### **III. Shoreline Environment Designations**

- Shorelines of Statewide Significance
- Aquatic environment designation
  - Purpose
  - Criteria for designation
  - Areas designated
  - Management policies
- Urban Conservancy environment designation
  - Purpose
  - Criteria for Designation
  - Areas Designated
  - Management Policies
- Shoreline Residential environment designation
  - Purpose
  - Criteria for Designation
  - Areas Designated
  - Management Policies

#### **IV. Shoreline Uses and Modifications Policies and Regulations**

- Shoreline Permit Matrix
- General Regulations
- Aquaculture
- Bulkheads
- Commercial, Institutional and Office
- Flood protection structures
- Habitat Restoration/Enhancement
- Recreation
- Recreational Mooring Buoys
- Residential
- Transportation Facilities and Parking
- Utilities

#### **V. Administration and Shoreline Permit Procedures**

- Purpose and applicability
- Authority
- Shoreline permit procedures
- Shoreline substantial development permits
- Exemptions from shoreline substantial development permits
- Shoreline conditional use permits
- Shoreline variance permits
- Appeals
- Effective date of shoreline permits
- Enforcement
- Revisions to shoreline permits
- Rescission of shoreline permits

#### **VI. Definitions**

#### **VII. Appendices**

- City of Burien Shoreline Inventory
- City of Burien Shoreline Characterization and Analysis
- City of Burien Restoration Plan
- City of Burien Cumulative Impacts Analysis
- City of Burien Coastal Flood Hazard Zone Delineation





## Definitions

**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.

**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.

**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.

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

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

**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.

**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.

**Dredging** means the removal of earth, sand, sludge or other materials from the bottom of a stream, river, lake, bay or other waterbody. 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.

**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.

**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.

**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.

**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.

**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.

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

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

**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.

**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

**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

**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.

**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.

**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.

**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.

**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.

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

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

**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.

**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.

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

**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.

**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.

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

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

**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.

**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.

**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.

**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.

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CITY OF BURIEN

SIGN IN SHEET

Date: 9/24/69

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# City of Burien, Washington

## Shoreline Advisory Committee Meeting #6 Summary

September 23, 2009  
4:00pm

### (1) ATTENDANCE

SAC Members present	Technical Staff Present	Interested Parties Present
Brian Bennett Bruce Berglund Cyrilla Cook Victoria Hall Patrick Haugen Rebecca McInteer Lee Moyer Kim Otto George Yocum Don Warren	David Johanson Bob Fritzen Liz Ockwell Steve Roemer Karen Stewart	Chestine Edgar Robert Edgar Dick Franks Judy Franks Robert Howell Faith Ireland Kirk Lakey, WDFW Terry Lee Sandy Lievero Homer Lockett Dorothy Lockett Susan Luthy Cheryl Merritt Bud Mount Fred Reinke Denise Reinke Kathi Skarbo John Upthegrove Doug Weber

### (2) CONFIRM AGENDA

1. The agenda was confirmed

### (3) REVIEW AND APPROVE MEETING #5 SUMMARY

1. The meeting summary was accepted as presented with the following clarification:
  - A clarification question was raised regarding whether project monitoring applied to public or private projects as referenced in Section 5, Shoreline Restoration Plan. The response was that it could apply to both project types.

- ### (4) SHORELINE MASTER PROGRAM UPDATE, PROGRESS REPORT AND RECAP:
- David Johanson briefly summarized where we are in the SMP update process and referenced the latest version of the Shoreline Policy and Regulations Comparison Table. He went on to explain that the Department of Ecology still has to review the proposed Shoreline Master Program and this version is the 1<sup>st</sup> draft and he wants to get the committee's comments and issues incorporated before it moves forward to the Planning Commission and City Council for consideration and approval.

Karen Stewart gave an update of her work as a consultant with Reid Middleton and their coordination with the City and Department of Ecology. The goal is to work collaboratively with each agency to streamline the process.

David Johanson wrapped up the update and progress report stating that the committee would get through as much of the draft code as they can at this meeting, and if needed, discussion may continue at the next meeting scheduled for October 7, 2009. He wanted to ensure that the committee doesn't feel rushed.

- (5) **SHORELINE USES AND MODIFICATIONS, POLICIES AND REGULATIONS, CHAPTER IV:** Brian Bennett led the discussion of Chapter IV and stated comments could be taken and written down at the meeting, and staff would work on it and bring the incorporated comments back to the committee. Cyrilla asked that the committee go through the chapter from beginning to end, not jumping around through different sections.

1. **20.30.001 Figure 4 Shoreline Use/Modification Permit Matrix**

- Pat Haugen was concerned about boat ramps being prohibited and what would happen to existing boat ramps. The response was that existing boat ramps would fall under the nonconforming regulations in 20.35.045 as well as in the BMC and RCW (Revised Code of Washington). Karen Stewart brought attention to the footnotes to the chart and that boat ramps are permitted on community beaches with a conditional use permit.
- Lee Moyer asked about opening up a bulkhead to install a boat ramp that went no further waterward than the existing bulkhead. The response was that you would have to look at the shoreline designation directly adjacent to the bulkhead to determine if it is allowed. Bob Fritzen stated that a boat ramp is a boat ramp no matter if it's located landward or waterward of the ordinary high water mark. Boat ramps are prohibited based on the impact they have on the beach habitat and sediment transport. The committee was asked if they would like to further discuss this issue, but there were no further comments.
- Bob Fritzen would like language or a footnote added relating to 'Fill' in the use chart. He would like to add that fill should be allowed if associated with an otherwise allowed use.

2. **20.30.010 Impact Mitigation**

- Bruce Berglund asked for clarification regarding the wording 'to the fullest extent possible' in 20.30.010 [1.a]. He was directed to 2.a where 'to the greatest extent feasible' was used and that "feasible" was a defined term in the code.

There was a consensus that 'to the fullest extent possible' be removed from 1.a. since further detail is given in the regulations section 2.a.

- Don Warren feels that wetlands are missing from the impact mitigation section of the code. David Johanson stated that regulations regarding wetlands are located in the critical areas section of the BMC (Chapter 19.40). Bob Fritzen explained that the SMP will adopt the Critical Areas Ordinance into the SMP and provide some crossover regulations.
- Don Warren asked if compensatory measures as described in 'f' are able to be done off-site in another area or jurisdiction and would prefer that mitigation be done in the basin. It was pointed out that the language reads that the mitigation must be in the immediate vicinity or associated watershed.

### 3. 20.30.020 Archaeological and Historic Resources

- Don Warren asked what RCW 42.17.310 discussed – he will look up the language on his own

### 4. 20.30.025 Critical Areas

- Lee Moyer asked if aquifer recharge areas should be in the SMP or if they can they be covered only in BMC 19.40 Critical Areas. It was pointed out that there are regulations in the BMC.
- Cyrilla Cook asked for clarification on 2.c regarding the 10 foot buffer. There was confusion regarding what the buffer was for. Karen Stewart explained that it wasn't actually a buffer associated with the shoreline setback, but is related only to in/over water development and the protection of saltwater habitat such as eelgrass. There was a consensus of the committee to change the language from 'within a 10 foot buffer' to 'within 10 feet'.
- Based on a map from NOAA the entire shoreline is mapped as 'nearshore critical habitat' for Chinook Salmon, therefore it could be considered 'critical saltwater habitat' as stated in the draft SMP.
- The question was also asked if docks and ramps should be allowed in the critical saltwater habitat. The committee had no comments.

### 5. 20.30.030 Flood Hazard Reduction

- In 1.a, a question was raised regarding 'should' vs. 'shall' in the policy language. The committee asked that the policy should use shall vs. should because the word 'feasible' is included in the policy which already gives flexibility. There was consensus that "shall" should be used. There was also

consensus that "when feasible" should be removed from the policy language.

- David Johanson noted that there are flood hazard regulations that will also apply for development proposals if the site is mapped as a flood hazard area. These regulations are found in other areas of the BMC.
- Don Warren asked if there will be noticing requirements when all development occurs in a flood hazard zone. David Johanson responded that it depends on the project. If the project includes a review that requires noticing such as a Type 1, Shoreline Substantial Development permit or Shoreline Conditional Use permits, then yes.
- Don Warren commented that 1.f. should be taken out of the SMP.
  - f. The City should maintain the outlet weir at Lake Burien to maintain a relatively constant lake level to minimize the potential for flooding.
- Don Warren stated that the Lake Burien community has always maintained it and that they do not want the city to step in for maintenance. There has never been a flooding issue involving the lake. A comment was made from other members that since it is on Ruth Dykeman's property, that they should weigh in on the decision and if they want the legal responsibility to maintain it. Don Warren mentioned that he has been told that the weir was installed by King County on or about 1958.
- Rebecca McInteer suggested that the Burien City Attorney review this and all of the residents of Lake Burien could possibly sign a hold harmless regarding maintenance of the weir, because a flooding issue could affect all property owners on the lake not just those present at this meeting.
- Don Warren would like the language to be removed for now, then, if the City decides they will maintain the weir, the language could be put back in at that point.
- Kirk Lakey, with WDFW suggested research should be done as to who actually holds the permit for the weir to hold water in the lake and if it was permitted. Research will be done to determine permit information. There was a consensus that the language should stay pending further research.

#### 6. 20.30.035 Public Access

- Don Warren commented on 1.c. and asked if views could be blocked by construction project. David Johanson responded that there are no regulations regarding view protection in the BMC. The SMP language states that

views should be considered, but historically the City has made a decision not to regulate views.

- Don Warren asked if regulation 2.a intended that utility easements could be constructed to provide public access. Staff responded that this regulation talks about existing street ends, utilities, and rights-of-way, and that those cannot be vacated for public access. Policy 20.30.110 [1.d] addresses this issue.
- There was confusion regarding whether this regulation applies to public or private property. There was a consensus of committee that 2.b be revised to read:  
*"The vacation or sale of City street ends or other public rights-of-way and tax title properties that abut shoreline areas shall be prohibited as these areas provide shoreline public access and viewpoints".*
- There was a consensus of committee that 2.d be revised to read:  
*"If a public road is located within a shoreline jurisdiction, any unused right-of-way shall be dedicated to open space and public access".*
- Pat Haugen pointed out that it was not clear if public access requirement 2.e be applied to existing development such as community beaches. It was clarified that that this applies to new development. There was consensus to add the term 'new' to regulation 2.e.
- Don Warren asked about restricting hours for public access points and if this applies to Lake Burien. He also asked if the code could specify hours of public access to beaches. Steve Roemer responded that this level of specification could not be added to the code because it may vary from access point to access point. He said the City would work with the homeowners on Lake Burien to determine appropriate hours on a project specific basis. It was noted that generally when there is a parks proposal they work with the surrounding property owners and residents to address design and operational issues.
- Don Warren asked that the threshold for providing public access in 2.e be increased to 5 lots. There was a consensus of the committee to keep the language as proposed.

#### 7. 20.30.040 Shoreline Vegetation Conservation

- The committee asked if in policy 1.b if 'degraded shoreline' is defined. Staff responded that it was not, but degraded means whatever shoreline function has been disturbed or altered. The committee then suggested that 'alteration' be defined in the SMP because alteration leads to the

requirement of a vegetation management plan and bonding. David Johanson stated that alteration is a defined term in the zoning code and there will need to be more definitions added to the draft, specifically Chapter VI, Definitions.

- The committee asked if a degraded shoreline would be enforced, who decides what mitigation would be required, and what legal rights they have to determine that. Cyrilla Cook mentioned that degradation should only be associated with new development. She also suggested that policy[1.b] read as follows;

"Restoration and mitigation of degraded 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."

There was *consensus* of the committee to change the language as proposed.

- The committee agreed that they would continue the review starting with Shoreline Vegetation Conservation at the next meeting.

**(6) ADMINISTRATIVE PROCEDURES, CHAPTER V:** Committee did not have time to discuss Chapter V at this meeting.

**(7) NEXT STEPS AND NEXT MEETING:**

1. Cyrilla Cook mentioned that it would be helpful to further the progress or SMP review that the committee read over the rest of the document and submit any comments or questions to staff prior to the next meeting. There was *consensus* that this was a good idea and that all comments shall be submitted to David Johanson by September 28<sup>th</sup>, 5pm. He will then compile the comments and provide them to the committee.
2. Another meeting for further discussion has been schedule for October 7, 2009, in the same location and at the same time.

The meeting concluded at 6:00pm.