



# Burien

*Washington, USA*

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May 23, 2011

Ted Sturdevant, Director  
Washington State Dept. of Ecology  
PO Box 47600  
Olympia, WA 98504-6700

RE: City of Burien Comprehensive Shoreline Master Program Update Resolution 317—  
Reply to Dept. of Ecology Comments

Dear Mr. Sturdevant:

The City of Burien has completed our review and consideration of your April 22, 2011 comments on our Shoreline Master Program (mailed on April 27). We are hereby transmitting an alternative proposal pursuant to WAC 173-26-120(7)(b) as shown on the annotated Attachments B and C included with this letter.

We agree with most of Ecology's required changes. However, we disagree with the following required changes in Attachment B:

1. In the Shoreline Residential environment, increasing the marine riparian buffer from 20' to 50' and increasing the building setback from the buffer from 0' to 15'. (Pages 11 and 12)
2. Requiring a destroyed home to be located and designed to prevent the need for shoreline stabilization and structural flood hazard reduction measures. (Page 8)
3. Removal of the restriction on watercraft access from public access areas along Lake Burien (Page 13)
4. Requiring a shoreline variance for geologically hazardous area buffer reductions to between 0 and 25 feet, and wetland buffer reduction to 25 feet. (Page 7)

Sincerely,



Joan McGilton, Mayor  
City of Burien

Cc: Bob Fritzen, Department of Ecology  
Scott Greenberg, City of Burien  
David Johanson, City of Burien  
Peter Skowlund, Department of Ecology  
Geoff Tallent, Department of Ecology



## ATTACHMENT B: REQUIRED CHANGES

### INCLUDING CITY OF BURIEN RESPONSES

#### CITY OF BURIEN SHORELINE MASTER PROGRAM COMPREHENSIVE REWRITE

Resolution No. 317

All changes are required. As provided in RCW 90.58.090(2)(e)(ii) the city may choose to submit an alternative to all or part of the changes required by Ecology.

Added text is underlined. Removed text is ~~struck~~. Ecology's explanatory statements are in *italics*. Roman numeral subscripts *i* are used in the permit matrix to reference Ecology's comments and not part of a required change. Shading is added in some areas to enhance readability where no changes are being made to the text.

#### City of Burien Responses

**ABCDE** – denotes no objection

**ABCDE** – denotes agreement but with modifications

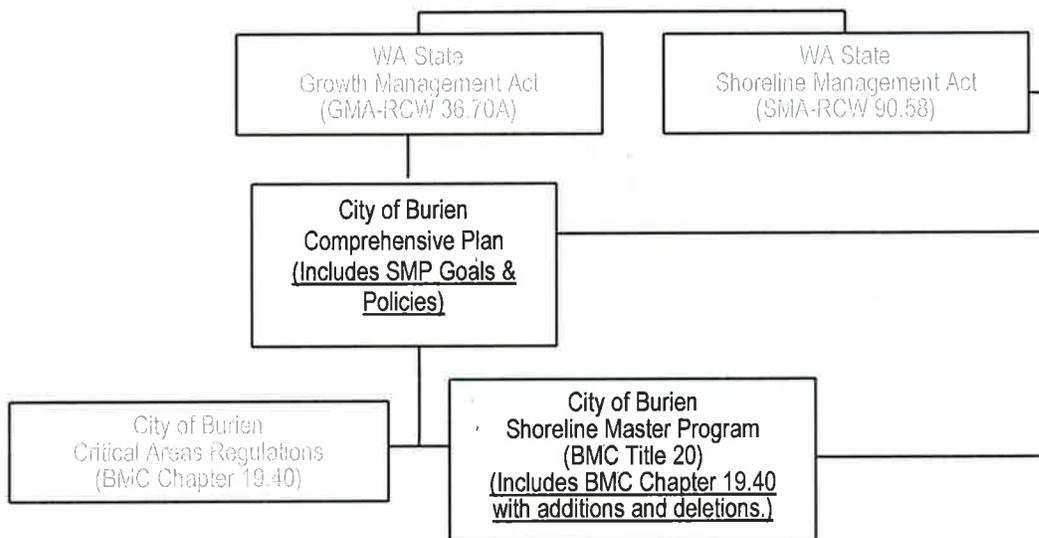
**ABCDE** – denotes disagreement

### Chapter I. User's Guide

#### 20.10.001 Overview of State Shoreline Management Act

In 1995, the Legislature amended the Growth Management Act (GMA) and the Shoreline Management Act (SMA) to partially integrate the two statutes. The amendments incorporated the goals and policies of the SMA as the 14<sup>th</sup> goal of the GMA, specifically designating the goals and policies of a local shoreline master program as a segment of the jurisdiction's development regulations comprehensive plan. All other portions of the SMP shall be considered a part of the jurisdiction's development regulations (RCW 36.70A.480). The diagram below indicates the relationship.

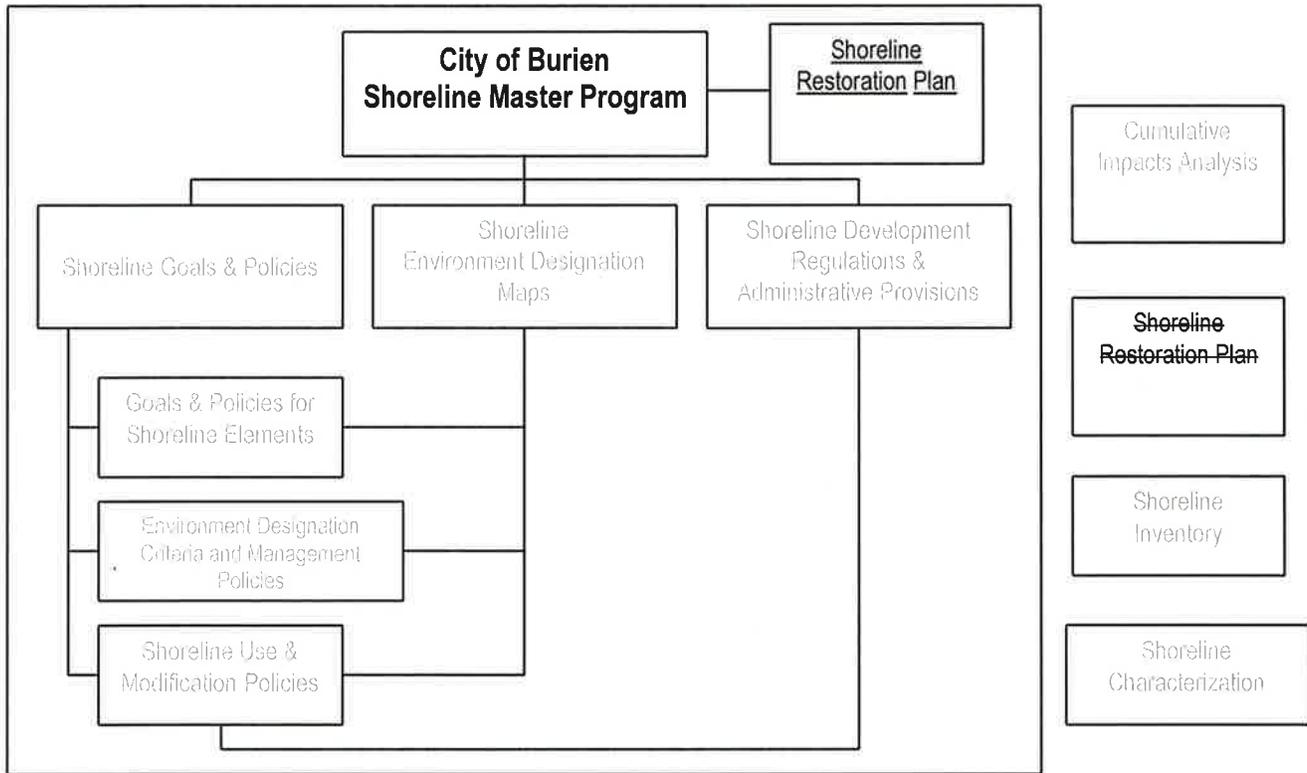
**Figure 1: Relationship of Shoreline Master Program to GMA**



*The changes are required in order to be consistent with RCW 36.70A.480 – Growth Management, Shorelines of the State.*

**City Response:** No objection to the change.

**Figure 2: Structure of City of Burien Shoreline Master Program**



*The Shoreline Restoration Plan is part of the SMP per RCW 173-26-186(8.c).*

**City Comment:** No objection to the change.

**Chapter II. General Goals and Policies**

**20.20.035 Conservation Element**

Pol. CON 3 The City of Burien’s Critical Areas Map shall be used as a reference for identifying the City’s critical areas. Other unmapped critical areas do exist throughout the City. Any site containing critical areas within shoreline jurisdiction are subject to the special development regulations and conditions found in the ~~City’s Critical Areas Ordinance~~ this shoreline master program.

*These changes add clarification and are required in order to comply with RCW 36.70A.480(3.b.) – the transfer of critical area protection to the SMP.*

**City Response:** No objection to the changes.

## Chapter III. Shoreline Environment Designations

### 20.25.015 Urban Conservancy

#### 2. Criteria for Designation

An "Urban Conservancy" environment designation is assigned to areas within shoreline jurisdiction that are suitable for public access, water-enjoyment recreational uses and active recreation developments. These are areas that are developed at a low density including residences and outdoor recreation. The Urban Conservancy environment is bounded on the north by the northern end of Seahurst Park and on the south by the southern end of Eagle Landing Park.

### 20.25.020 Shoreline Residential

#### 2. Criteria for Designation

A Shoreline Residential environment designation is assigned to shoreline areas that are predominantly single-family or multifamily residential development or are planned and platted for residential development. These are areas that are developed at a moderate density or intensity including residences and outdoor recreation. Low intensity institutional uses may be allowed if their impacts on the shoreline environment are mitigated. The Shoreline Residential environment includes all shorelands from the northern city limits to the north end of Seahurst Park, from the southern end of Eagle Landing Park to the southern city limits, and all of Lake Burien.

*These changes are required per WAC 173-26-211(2.b.) - Common boundary descriptions.*

**City Response:** No objection to the changes.

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

**20.30.001 Figure 4 Shoreline Permit Matrix**

<b>Type of Shoreline Permit Required for New Shoreline Uses and Modifications*</b>			
	<b>Shoreline Environment Designations</b> (Please see Chapter 20.25 for shoreline designation descriptions and section 20.25.025 Figure 3 for a map showing the locations of each designation)		
	<b>Shoreline Residential</b>	<b>Aquatic</b>	<b>Urban Conservancy</b>
Aquaculture	X	CU <sup>1</sup>	X
Boat Mooring Buoy	N/A	P <sup>3</sup>	N/A
Boat Ramp	X	X	X
Boat House (covered moorage)	X	X	X
<b>Shoreline Stabilization Structures <sub>i</sub></b>			
• Breakwater & other in-water structures	N/A	X <sup>b</sup> <sub>vii</sub>	N/A
• Bulkheads	SDP <sup>4</sup>	CU	SDP <sup>4</sup>
• Upland Structures (retaining walls and bluff walls) <sub>i</sub>	<u>SDP</u>	<u>N/A</u>	<u>SDP</u>
Personal Wireless Service Facility	CU	N/A	X
Community Beach	CU	CU	X
Community residential facility	CU	X	X
Docks, Piers and Floats	CU	CU	CU
Docks, Piers and Floats-Residential	SDP <sup>5</sup>	SDP <sup>5</sup>	X
Dredging	N/A	X	N/A
Fill <sup>2</sup>	X	X	X
Floating home	N/A	X	N/A
Flood protection	SDP	SDP <u>CU</u> <sub>vi</sub>	SDP
Forestry (clearing)	CU	N/A	CU
Grading	CU	N/A	CU
Government facility	<u>SDP</u> <u>CUP</u> <sub>ii</sub>	X	<u>SDP</u> <u>CUP</u> <sub>ii</sub>
Habitat Enhancement or Restoration	SDP	SDP	SDP
Industrial & Ports	X	X	X
Jetty	X	X	X
Mining	X	X	X
Office	X	X	X
Public park and recreation facilities	SDP	X <u>SDP</u> <sub>ix</sub>	SDP
Recreation	SDP	SDP	SDP
Residential - Single family**	SDP <sup>8</sup> <sub>viii</sub>	N/A <u>X</u> <sub>v</sub>	SDP <sup>8</sup> <sub>viii</sub>
Residential - Multi family	SDP	N/A <u>X</u> <sub>v</sub>	CU
<u>Retail Commercial Use and Development</u> <sub>iii</sub>	X <sup>7</sup> <sub>iii</sub>	X	X <sup>7</sup> <sub>iii</sub>
Schools	CU	N/A	CU
Transportation Facilities & Parking	SDP	X	SDP
Utilities	SDP	CU	SDP

SDP Shoreline substantial development permit (City Decision) – See Chapter 20.35 for specific procedures

- CU Shoreline conditional use permit (Requires a Department of Ecology Decision if locally approved.) – See Chapter 20.35 for specific procedures. A SDP may also be required. <sup>iv</sup>
- X Prohibited
- N/A Not applicable
- 1 Prohibited in critical saltwater habitats and Lake Burien
- 2 Allowed if necessary to construct a permitted use
- 3 Private mooring buoys are exempt from the shoreline substantial development permit process but shall comply with BMC 20.30.090[Recreational Mooring Buoys] which prohibits mooring buoys on Lake Burien. <sup>ix</sup>
- 4 Construction of the normal protective bulkhead common to single-family residences must comply with BMC 20.30.070 [Bulkheads and other shoreline stabilization structures] but is not required to obtain a substantial development permit.
- 5 Construction of a dock, pier, or float that is below the substantial development threshold set forth in RCW 90.38.030[3e.iv] [Definitions and concepts, “substantial development”] shall be exempt from the Shoreline Substantial Development Permit process, but shall comply with all other applicable sections of this master program.
- 6 Allowed only for protection or restoration of ecological functions. <sup>vii</sup>
- 7 B & B’s are allowed in the Shoreline Residential environment (Section 20.30.095). Limited commercial recreation activities are allowed in Seahurst Park (Section 20.30.085). <sup>iii</sup>
- 8 A conditional use permit is required for construction within the riparian buffer or setback that is not waterward of the existing home. A variance is required for any development waterward of the existing home within the buffer or setback. This does not apply to the common line setback option. <sup>viii</sup>

\* 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)[single-family residential exemption], as amended.

i *“Shoreline Stabilization Structures” and other additional language is necessary to be consistent with Section 20.30.070 – “Bulkheads and Other Shoreline Stabilization Structures”. The section includes retaining walls and bluff walls as shoreline stabilization structures making it necessary to distinguish between in-water and upland structures. SDPs for the upland structures are consistent with the use section of the SMP.*

**City Response:** Agree that distinguishing between in water and upland structures is good and it improves clarity, however a SDP may not be necessary if associated with a SFR. It may be appropriate to add this symbol “\*\*” to indicate that it may not be subject to a SDP.

ii *The SMP contains no policies, regulations or definition for government facilities. Government facilities may or may not be a preferred use in shorelines. The City states in the Responsiveness Summary that the SDP is consistent with the zoning code and was specifically included in the Urban Conservancy to ensure some existing uses would not become nonconforming. Although useful for determining intent, the zoning code is not based upon SMA policy or Guideline provisions and is not part of the SMP. A CUP is required until the City adopts appropriate policies and regulations as part of the SMP to ensure consistency with the provisions of the SMA.*

**City Response:** No objection to the change.

iii *The Recreation and Residential Sections of the SMP allows for B & B’s and limited commercial recreation and must be correctly reflected in the matrix.*

**City Response:** No objection to the change.

iv *WAC 173-27-200 requires local government to make a decision on conditional use permits. Some developments that require a CUP may also require a SDP.*

**City Response:** No objection to the change.

v Required by WAC 173-26-241(3.j.) – New overwater homes are not permitted.

**City Response:** No objection to the change.

vi A flood protection structure in the Aquatic environment is the same as a bulkhead and needs a CUP consistent with the bulkhead CUP requirement.

**City Response:** No objection to the change.

vii Required by WAC 173-26-231(3.a.iii.B.IV.) – provisions for specific shoreline modifications.

**City Response:** No objection to the change.

viii This is consistent with Section 20.30.095(2.c.) which allows for greater flexibility for the expansion of single family homes and at the same time ensuring not net loss of ecological functions.

**City Response:** Required text is not consistent with Section 20.30.095(2.c). Text in this section should be consistent with Section 20.30.095(2.c) as amended below.

ix Recreational mooring buoys are specifically allowed in Section 20.30.090 except in Lake Burien.

**City Response:** No objection to the change.

## 20.30.007 Existing Development

1. **Existing Single-Family Homes, Appurtenances, and Other Existing Structures.** Single-family homes, appurtenances and other structures that were legally established by \_\_\_\_\_ (effective date of this SMP) are considered to be conforming to the SMP. Any addition, expansion or reconstruction beyond the existing footprint of the single-family home, appurtenance or other structure must comply with the SMP. 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 20.30.045 [2.b][Water Quality, Storm Water and Nonpoint Pollution].

*The deleted language is consistent with Section 20.30.045 and is necessary to achieve “no net loss” since banned or improper use of treated wood may also leach into surface and ground water in upland areas.*

**City Response:** No objection to the change, however it should be clarified that the term “water” in the last sentence, refers to the actual water body (Puget Sound, Lake Burien).

## 20.30.025 Critical Areas

### 2. Regulations

- a. BMC 19.40—Critical areas (City of Burien Ordinance 394, adopted October 20, 2003) has been reviewed for consistency with Chapter 90.58 RCW and WAC 173-26 and shall apply to the shoreline jurisdiction with the following exceptions:

*This is a statement of fact required by RCW 36.70A.480, the Shoreline Management Act and Guidelines.*

**City Response:** No objection to the change.

- i. “Reasonable use exemptions” contained in BMS 19.40.070(1), (2) & (3) apply only to the critical areas provisions and are not exemptions from substantial development permits. The reasonable use provisions-exemptions contained in BMC 19.40.070 (3) & (4) do not apply and are not considered part of the SMP.

*The changes are required in order to be consistent with WAC 173-27-040 (Exemptions from Substantial Development Permits) and 173-27-170 (Review Criteria for Shoreline Variance Permits).*

**City Response:** There is a typo in the first sentence, replace BMS with BMC. There are no reasonable use exceptions in BMC 19.40.070(1, 2 & 3). The City suggests the following language

“Reasonable use The exemptions and exceptions contained in BMC .....

The exempt activities section (BMC section 19.40.070[2]) specifically states that alterations may not be exempt from other city, state or federal permit requirements or regulations.

Subsection (3) contains exceptions for utilities and allows utilities to be located in critical areas. Without this section utilities may not be allowed in critical areas such as geologic hazardous areas, streams, or wetlands. There is a specific review process for an agency to obtain an exception which includes SEPA review and requires a review based on specific criteria. Actions would not be exempted from SMA review. In addition, utilities are not prohibited by the proposed SMP and require either a SDP or a CU permit. The section should read as follows;

The exemptions and exceptions contained in BMC 19.40.070(1), (2) & (3) apply only to the critical areas provisions and are not exemptions from substantial development permits. The reasonable use provisions-exemptions contained in BMC 19.40.070 (3) & (4) do not apply and are not considered part of the SMP.

- iii. Sections 19.40.290(3.B.iii.) and 19.40.310(2.H.v.) shall require a shoreline variance permit.

*The required language is consistent with the purpose and intent of WAC 173-27-170 - Review Criteria for Variance Permits.*

**City Response:** Do not agree with the required changes. BMC 19.40.290(3.B.iii.) allows Geologic hazard area buffer reduction between 0-25 feet and BMC 19.40.310(2.H.v.) requires the applicant to attend an environmental stewardship class if a wetland buffer reduction results in a buffer less than 25 feet. The required changes shown above would now require a shoreline variance when buffer are reduced below the specified widths. The City has adequate regulations and review processes in the existing critical area ordinance providing protection of these critical areas and the associated natural processes.

- iv. Section 19.40.410(2.B) is not part of the shoreline master program. Filling is prohibited in the Aquatic environment per Section 20.30.001 Figure 4.

*The required change is needed to remove conflict between the critical area section and use section of the SMP.*

**City Response:** No objection to the change.

## 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.

*The background information for the writing of the SMP suggests that this is a means to keep the lake level up rather than to control flooding. (The City concurs in the Responsiveness Summary.)*

**City Response:** No objection to the change.

## 1. Policies

- b. Flood protection structures may be allowed in shoreline jurisdiction if a shoreline substantial development permit is obtained. Structures that are near and generally parallel to the ordinary high water mark shall be considered a bulkhead and require a conditional use permit consistent with bulkhead regulations.

Definition: Bulkhead means a solid or open pile wall erected generally parallel to and near the OHWM for purposes of protecting adjacent uplands from waves or current action.

*The required language is consistent with a conditional use permit for a bulkhead in the aquatic environment. This eliminates the argument for the type of permit required for bulkhead that is stated to be for flood protection.*

**City Response:** Suggest that there be a reference to 20.30.001, Figure 4 to further clarify the requirement and that it only applies to flood protection structures in the Aquatic Environment. Insert "Flood protection" at the beginning of the second sentence. Note: bulkhead is defined in 20.40.030.

## 2. Regulations

- f. All new shoreline development and uses, including the replacement of a destroyed home, shall be located and designed to prevent the need for shoreline stabilization and structural flood hazard reduction measures for the life of the development. Exceptions may be made for the limited instances where stabilization is necessary to protect allowed uses where no alternative locations are available and not net loss of ecological functions will result.

*The new language is consistent with Policy 1. It is also required by WAC 173-26-221(2.c.ii.C.) and WAC 173-26-231(3.a.iii.) which address standards for new development and shoreline stabilization. The change also removes any ambiguity of a policy statement using the term "shall" when not backed by a regulation.*

**City Response:** Do not agree with change. The original draft intended to allow the reconstruction of legally established homes. Remove the following section "~~including the replacement of a destroyed home~~". The required change is inconsistent with 20.30.007(1).

- g. New structural flood hazard reduction measures in shoreline jurisdiction are allowed only when it can be demonstrated by a scientific and engineering analysis that they are necessary to protect existing development or facilitate restoration projects, that nonstructural measures are not feasible, that impacts to ecological functions and priority species and habitats can be successfully mitigated so as to assure no net loss and that appropriate vegetation conservation actions are undertaken consistent with Section 20.30.040.

*The regulation is required per WAC 173-26-221(3.c.ii.) addressing new flood hazard structures.*

**City Response:** No objection to the change.

- h. Flood protection structures may be allowed in shoreline jurisdiction if a shoreline substantial development permit is obtained. In addition, flood protection structures at or near, and parallel to, the ordinary high water mark requires a conditional use permit.

*The required language is consistent with the definition for a bulkhead and is consistent with the CUP requirement for a bulkhead in the Aquatic environment. This eliminates the argument for the type of permit required for bulkhead that is stated to be for flood protection. As a regulation the requirement is unambiguous and supports the policy statement.*

**City Response:** No objection to the change.

## 20.30.035 Public Access

Public access ~~includes both~~ can be either physical access or visual access. Physical access is the ability of the general public to reach, touch, and enjoy the water's edge, ~~to view the water and the shoreline from adjacent locations,~~ and/or to travel on the waters of the state, ~~and.~~ Visual access is to view the water and the shoreline from adjacent locations or access with improvements that provide only a view of the shoreline or water, but do not allow physical access to the shoreline.

*The corrections are necessary to be consistent with WAC 173-26-221(4.a.) – Public Access.*

**City Response:** No objection to the change.

## 20.30.045 Water Quality, Storm Water and Nonpoint Pollution

### 2. Regulations

- a. Construction materials that come in continuous, direct contact with surface waters shall not be treated or coated with toxic materials. Untreated wood, precast concrete, plastic or nontoxic alternatives shall be used unless the project proponent demonstrates and the City of Burien building official determines that there is no feasible alternative to toxic treatments that will provide the structural characteristics necessary for the project. Wood products treated with creosote or pentachlorophenol are prohibited on all new structures or repair projects that come in direct contact with water or could leach into surface or ground water.

*The language is required in order to meet the “no net loss” standard. It is also consistent with the State Department’s of Ecology and Fish & Wildlife memorandum of understanding for use of treated wood in the aquatic environment as well as the policies and regulations in the section.*

**City Response:** No objection to the change.

## **20.30.050 Dimensional Standards for Shoreline Development**

The following buffers 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), and Supplemental Informational Documents (Appendix 5)~~ reports contained in this shoreline master program. The shoreline riparian buffers, common line building setbacks and vegetation conservation buffers 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.~~ Buffer setbacks are measured landward from the outer edge of a buffer. For measurement methods, refer to BMC 19.17[Misc. Use, Development and Performance Standards].

A significant majority of Burien’s marine shorelines are developed with single-family residential structures and appurtenances. Specifically reaches 1, 3 and 4, on the Puget Sound, there are many structures in close proximity to the ordinary high water mark and due to this existing development pattern there is inherent conflicts in applying greater buffer widths while also retaining the ability of residents to continue use and maintain those areas that have been historically used in conjunction with those properties. **The justification for this approach is supported by the documentation found in Appendix 5 of this SMP.**

*As stated in the second paragraph, Appendix 5 is used in the final buffer determination and needs to be included. The setback changes are needed to in order to be accurate and distinguish between buffer setbacks and the common line setback. The change to measurement of the OHWM is required to be consistent with Section 20.30.055(1.) – Shoreline Buffers.*

**City Response:** No objection to the change.

**Figure 5 Dimensional Standards for Shoreline Development**

SHORELINE ENVIRONMENT DESIGNATION			
	Shoreline Residential	Urban Conservancy	Aquatic
Marine Riparian Buffer <sup>(3)</sup>	<del>20</del> 50 ft.	50 ft.	N/A
Building Setback <u>from Buffer</u>	<del>0</del> 15 ft.	15 ft.	N/A
Lake Burien Riparian Buffer <sup>(1)</sup>	30 ft.	N/A	N/A
Building Setback <u>from Buffer</u>	15 ft.	N/A	N/A

The required change to a 50-foot marine buffer and 15-foot setback is consistent with the supporting documents including Appendix 5 (see the "Findings and Conclusions" for further discussion). Section 19.40.230(2) also requires a setback to the buffer. The additional language referencing the buffer is needed to distinguish from the common line setback which is measured from the OHWM.

**City Response:** Do not agree to buffer width and setback width changes.

Vegetation Conservation Buffer <sup>(2)</sup>	150 ft.	200 ft.	N/A
Height Limit (see BMC 19.15)	35 ft.	35 ft.	<del>35</del> N/A ft.

A 35-foot height limit in the Aquatic environment is not justified given the allowed uses.

**City Response:** No objection to the change.

Lot Size <sup>(4)</sup> (see BMC 19.15)	RS-12,000 RS-7,200 (Lake Burien)	RS-12,000	N/A
Building Coverage (see BMC 19.15)	35%	30%	N/A

- (1) Consistent with BMC 19.40-critical areas and BMC 20.30.055(1) 040 (2) (g).
- (2) See BMC 20.30.040 Shoreline Vegetation Conservation for specific requirements.
- (3) For single family residential development, the buffers prescribed in this section may be reduced pursuant to BMC 20.30.095, through the conditional use or variance permit process.
- (4) See BMC 19.17.170 of the zoning code for minimum lot area requirements.

The change to footnote 1 referencing BMC 20.30 is needed to correct an apparent error. As submitted, the referenced section talks about noxious weeds. The required reference mirrors the 30-foot riparian buffer on Lake Burien. The change to footnote 3 is consistent with Section 20.30.095(2.c), buffer and setback standards.

**City Response:** No objection to the change.

## 20.30.055 Shoreline Buffers

### Regulations:

1. A ~~twenty-five~~ foot riparian buffer for the marine shoreline (thirty feet for Lake Burien) shall be established from the ordinary high water mark for all lots. The riparian buffer is measured landward from a perpendicular line from the edge of the OHWM.

*The change is required consistent with supporting documents. See Attachment A – “Findings and Conclusions” for a detailed explanation.*

**City Response:** Do not agree to buffer width change.

2. Overwater structures 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. Fences less than 6-feet high, stairs, and trams (see Section 20.30.095 (2.g.) – Residential Development.

*The change is required for internal consistency of the SMP.*

**City Response:** Should be rewritten for clarity. Pursuant to 20.30.095 (2.g.) – Residential Development, fences less than 6-feet high, stairs and trams may be allowed within the buffer.

## 20.30.070 Bulkheads and Other Shoreline Stabilization Structure

### 2. Regulations

- b. Jetties, breakwaters and other in-water stabilization structures except for bulkheads are prohibited except for protection or restoration of ecological functions. New bulkheads and other shoreline stabilization structures such as, gabions, revetments, retaining walls and bluff walls are allowed if there would be no net loss of shoreline ecological functions and the following requirements are met:

*The added language is consistent with the 20.30.001 (Figure 4) – the use table, WAC 173-26-231(3.a.iii.B.IV.), and the intent of SMP.*

**City Response:** No objection to the change.

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

### 2. Regulations

- a. New over-water structures shall be limited to those required as part of a permitted water dependent use ~~or for joint use of the facility,~~ ecological restoration or public access.

*The deleted language is too general and could be misinterpreted to mean any type of joint use. The added language is required per WAC 173-26-211(5.c.ii.A.), new over-water structures.*

**City Response:** No objection to the change. Related to 20.30.075(i) below.

- b. The design and construction of over-water structures as well as their subsequent use and operation, shall:
- i. Be capable of withstanding expected environmental conditions; and
  - ii. Minimize interference with adjacent water uses and navigation; and
  - iii. Minimize adverse effects on fish, shellfish, wildlife, water quality, public views and geohydraulic processes by limiting the size of the structure and the use of hazardous materials, incorporating grating to allow light passage or reflective panels to increase light refraction; and spaced and oriented to minimize shading and avoid a 'wall' effect that would block or baffle wave patterns, currents, littoral drive, or movement of aquatic life forms.

*Required per WAC 173-26-211(5.c.ii.D.), new over-water structures.*

**City Response:** No objection to the change.

- i. When permitted, new residential development of two or more dwellings shall provide joint use or community docks, rather than individual docks, when feasible, rather than allow individual docks for each residence.

*Required per WAC 173-26-231(3.b.), piers and docks.*

**City Response:** No objection to the change.

- k. Dredging associated with over-water structures is prohibited in the Aquatic environment.

*This is consistent with 20.30.001- Figure 4- Shoreline Permit Matrix.*

**City Response:** No objection to the change.

## 20.30.085 Recreational Development

### 2. Regulations

- ~~h. Should public access occur on Lake Burien, no watercraft access is allowed from public access areas.~~

*The deletion is consistent with Section 20.30.035 (Public Access), Chapter 90.58 RCW and the Guidelines. The public access section of the SMP requires that any concerns regarding public access to Lake Burien be addressed at the time of permitting. See also Attachment A – "Findings and Conclusions" for additional discussion.*

**City Response:** Do not agree to the required change.

- h. Shoreline recreational development is a priority and shall be primarily related to access to, enjoyment and use of the water and shorelines of the State.

*This is required per WAC 173-26-241(3.i.) – recreational development.*

**City Response:** No objection to the change.

## 20.30.090 Recreational Mooring Buoys

### 2. Regulations

- d. Individuals owning residential property abutting ~~state-owned~~ aquatic lands may install a mooring buoy ~~on these 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 as appropriate.
- e. Recreational mooring buoys ~~on public lands~~ shall be installed using a DNR or WDFW approved system.

*Regardless of ownership of the intertidal area, recreational mooring buoys located in marine waters require regulating.*

**City Response:** No objection to the change.

- g. Recreational mooring buoys ~~on public lands~~ are prohibited for commercial and transient uses or live-aboards.

*The SMP use matrix prohibits these types of uses regardless of ownership of the intertidal area. Again, regardless of ownership of the land, use and development must be regulated.*

**City Response:** No objection to the change.

## 20.30.095 Residential Development

Single family residences are the most common form of shoreline development and are identified as a priority use when developed in a manner consistent with control of pollution and prevention of damage to the natural environment. Residential development shall mean the creation of new residential lots and 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. For purposes of this master program, Bed and Breakfast establishments are considered an accessory use (see also Use Table under Commercial Use and Development).

*WAC 173-26-241(3.j) establishes subdivision of land as residential development. The SMP must recognize B & B's as a commercial use.*

**City Response:** No objection to the change.

### 2. Regulations

- c. **Common-line riparian buffer and building setback standards.** Riparian buffer and setback standards for new or expanded single-family primary residential structures may be reduced through the shoreline ~~conditional-use~~ variance permit process. In addition ~~to the conditional~~

~~use criteria~~ the Shoreline Administrator may approve a reduced buffer and setback for residential development under the following conditions without a variance permit.

*Setbacks are associated with riparian buffers and need to be included. A variance is required for reduction of bulk dimensions in this situation (see WAC 173-27-170). A variance may not required for common line setbacks as long as the City applies "no net loss" standards and other criteria found in this section of the SMP.*

**City Response:** No objection to the change. Note: In order to achieve internal document consistency, section 20.30.0952.c.iv should be amended to remove the requirement for a conditional use permit when expansions occur within the riparian buffer.

- k. **Detached Accessory Dwelling Units.** New detached accessory dwelling units shall not be located in riparian buffers or setbacks.

*Required change consistent with Section 19.40.230(2) - setback to buffers.*

**City Response:** No objection to the change.

## Chapter V. Administration and Shoreline Permit Procedures

### 20.35.010 Shoreline Permit Types and Review Procedures

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 render a decision ~~prepare a recommendation~~ that is then forwarded to Ecology for review and approval. The City's ~~recommendation~~ decision may include issuing the shoreline permit, issuing the shoreline permit with conditions, or denial of the requested shoreline permit.

*The City is required to make a decision as required by RCW 90.58.140(2) – development permits.*

**City Response:** No objection to the change.

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 unlisted use, must obtain a conditional use permit even if the development or use does not require a substantial development permit. The conditional use permit application shall be processed as indicated in BMC 20.35.010.3; ~~except the decision maker issues a recommendation to the Dept. of Ecology rather than a decision. This recommendation is not appealable to the Hearing Examiner or City Council.~~

*The City is required to make a decision as required by RCW 90.58.140(2) – development permits.*

**City Response:** No objection to the change.

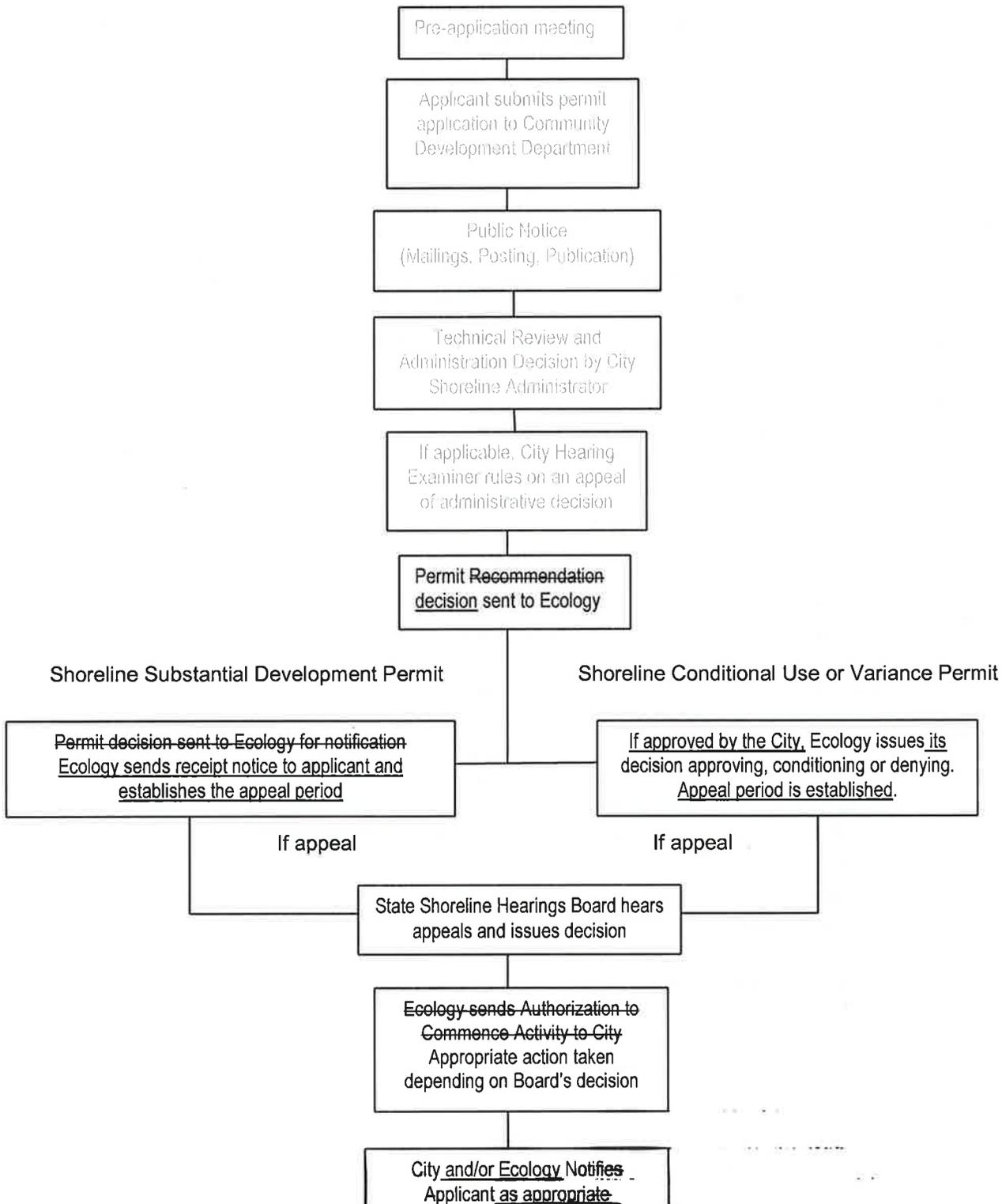
8. **Shoreline Variance Required.** When a development or use is proposed that does not comply with the bulk, dimensional and performance standards of the master program, such development or use can only be authorized by approval of a shoreline variance, consistent with WAC 173-27-170 (Variances). The variance application shall be processed as set forth in BMC 20.35.010.3;

~~except that the decision maker issues a recommendation to the Department of Ecology rather than a decision. This recommendation is not appealable to the Hearing Examiner or City Council.~~

*The City is required to make a decision as required by RCW 90.58.140(2) – development permits.*

**City Response:** No objection to the change.

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



*The changes are required per RCW 90.58.140 – development permits, and 90.58.180 - appeals.*

**City Response:** No objection to the change.

## Chapter VI. Shoreline Definitions

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

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

In cases where this SMP require certain actions unless they are infeasible, the burden of proving infeasibility is on the applicant.

In determining an action's infeasibility, the reviewing agency may weigh the action's relative public costs and public benefits, considered in the short- and long-term time frames.

*Required per WAC 173-26-020(13) – definition of “feasible”.*

**City Response:** A typographical error occurs in the first sentence, it should read “requires”. Agree to proposed changes.

**20.40.145 Shoreline substantial development** means any development of which the total cost, or fair market value, whichever is higher, exceeds \$5,718,000, or any development which materially interferes with the normal public use of the water or shorelines of the state (See also WAC 173-27-040(2.a.)).

*The changes accurately reflect and explain new legislative standards.*

**City Response:** No objection to the change.

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

*See definition in RCW 90.58.030(2.f.iii.).*

**City Response:** No objection to the change.



## ATTACHMENT C: SUGGESTED CHANGES

### INCLUDING CITY OF BURIEN RESPONSES

#### CITY OF BURIEN'S SHORELINE MASTER PROGRAM COMPREHENSIVE REWRITE

Resolution No. 317

All changes are suggested to add clarity or to remove ambiguity. As provided in RCW 90.58.090(2)(e)(ii) the city may choose to submit an alternative to all or part of the changes suggested by Ecology.

Text to be added is underlined. Text to be removed is ~~struck~~. Ecology's explanatory statements are in *italics*. Roman numeral subscripts *i* have been used for explanatory statements in the permit matrix and are not intended to be part of the final SMP. Shading is added in some areas to enhance readability where no changes are being made to the text.

#### City of Burien Responses

**ABCDE** – denotes no objection

**ABCDE** – denotes agreement but with modifications

**ABCDE** – denotes disagreement

### Chapter I. User's Guide

#### 20.10.001 Overview of State Shoreline Management Act

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

RCW 90.58.020 – “The legislature finds that the shorelines of the state are among the most valuable and fragile of its natural resources and that there is great concern throughout the state relating to their utilization, protection, restoration, and preservation. In addition it finds that ever increasing pressures of additional uses are being placed on the shorelines.... (*shortened for brevity*)....”

*The citation from RCW 90.58.020 should either be in quotes or italicized to set off from the rest of the section. The City should also include all the language from RCW 90.58.020 since it is the basis for Shoreline Management Act.*

**City Response:** Agree to proposed changes.

Under the SMA, ~~the~~ shoreline jurisdiction generally includes ~~all~~ water areas of the state, the lands underlying them, and areas that are 200 feet landward of the ordinary high water mark (OHWM) of said waters that have been designated as “shorelines of statewide significance” or “shorelines of the state.”

*The changes are suggested to add clarity and accuracy.*

**City Response:** Agree to proposed changes.

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

### 20.30.001 Figure 4 Shoreline Permit Matrix

*(Note that the table has been changed to reflect the required changes found in Attachment B.)*

<b>Type of Shoreline Permit Required for New Shoreline Uses and Modifications*</b>			
	<b>Shoreline Environment Designations</b> (Please see Chapter 20.25 for shoreline designation descriptions and section 20.25.025 Figure 3 for a map showing the locations of each designation)		
	<b>Shoreline Residential</b>	<b>Aquatic</b>	<b>Urban Conservancy</b>
Aquaculture	X	CU <sup>1</sup>	X
Boat Mooring Buoy	N/A	SDP P <sub>i</sub> <sup>3</sup>	N/A
Boat Ramp	X	X	X
Boat House (covered moorage)	X	X	X
Shoreline Stabilization Structures			
<ul style="list-style-type: none"> <li>• Breakwater &amp; other in-water structures</li> </ul>	N/A	X <sup>0</sup>	N/A
<ul style="list-style-type: none"> <li>• Bulkheads</li> </ul>	SDP P <sub>i</sub> <sup>4</sup>	CU	SDP P <sub>i</sub> <sup>4</sup>
<ul style="list-style-type: none"> <li>• Upland Structures (retaining walls and bluff walls)</li> </ul>	SDP P <sub>i</sub>	N/A	SDP P <sub>i</sub>
Personal Wireless Service Facility	CU	N/A	X
Community Beach	CU	CU	X
Community residential facility	CU	X	X
Docks, Piers and Floats	CU	CU	CU
Docks, Piers and Floats-Residential	SDP P <sub>i</sub> <sup>5</sup>	SDP P <sub>i</sub> <sup>5</sup>	X
Dredging	N/A	X	N/A
Fill <sup>2</sup>	X	X	X
Floating home	N/A	X	N/A
Flood protection Hazard Reduction <sup>iv</sup>	SDP P <sub>i</sub>	CU	SDP P <sub>i</sub>
Forestry (clearing)	CU	N/A	CU
Grading	CU	N/A	CU
Government facility	CUP	X	CUP
Habitat Enhancement or Restoration	SDP P <sub>i</sub>	SDP P <sub>i</sub>	SDP P <sub>i</sub>
Industrial & Ports	X	X	X
Jetty <sup>ii</sup>	X	X	X
Mining	X	X	X
Office <sup>iii</sup>	X	X	X
Public park and recreation facilities	SDP P <sub>i</sub>	SDP P <sub>i</sub>	SDP P <sub>i</sub>
Recreation	SDP P <sub>i</sub>	SDP P <sub>i</sub>	SDP P <sub>i</sub>
Residential - Single family**	SDP P <sub>i</sub> <sup>8</sup>	N/A	SDP P <sub>i</sub> <sup>8</sup>

Residential - Multi family	SDP P <sub>i</sub>	N/A	CU
Commercial Use and Development	X <sup>1</sup>	X	X <sup>1</sup>
Schools	CU	N/A	CU
Transportation Facilities & Parking	SDP P <sub>i</sub>	X	SDP P <sub>i</sub>
Utilities	SDP P <sub>i</sub>	CU	SDP P <sub>i</sub>

~~SDP— Shoreline substantial development permit (City Decision) — See Chapter 20.35 for specific procedures~~

**P** Permitted - Allowed when meeting the requirements for the given use. A shoreline substantial development permit (SDP) or shoreline exemption may be needed. See WAC 173-26-040 for complete list of development exempt from a substantial development permit.

**CU** Shoreline conditional use permit (Requires a Department of Ecology Decision if locally approved.) – See Chapter 20.35 for specific procedures. A SDP may also be required.

**X** Prohibited

**N/A** Not applicable

- 1 Prohibited in critical saltwater habitats and Lake Burien
- 2 Allowed if necessary to construct a permitted use
- 3 Private mooring buoys are exempt from the shoreline substantial development permit process but shall comply with BMC 20.30.090 [Recreational Mooring Buoys] which prohibits mooring buoys on Lake Burien.
- 4 Construction of the normal protective bulkhead common to single-family residences must comply with BMC 20.30.070 [Bulkheads and other shoreline stabilization structures] but is not required to obtain a substantial development permit.
- 5 Construction of a dock, pier, or float that is below the substantial development threshold set forth in RCW 90.58.030 [3e,iv] [Definitions and concepts, "substantial development"] shall be exempt from the Shoreline Substantial Development Permit process, but shall comply with all other applicable sections of this master program.
- 6 Allowed for protection or restoration of ecological functions.
- 7 B & B's are allowed in the Shoreline Residential environment (Section 20.30.095). Limited commercial recreation activities are allowed in Seahurst Park (Section 20.30.085).
- 8 A conditional use permit is required for construction within the riparian buffer or setback that is not waterward of the existing home. A variance is required for any development waterward of the existing home within the buffer or setback. This does not apply to the common line setback option.
- \* 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) [single family residential exemption], as amended.

*i It would be more accurate to use “permitted” instead of “substantial development permit”. A permitted development or use may or may not require a SDP or even a shoreline exemption.*

**City Response:** Do not agree to proposed changes.

*ii “Jetty” is unnecessary since it is covered under “Shoreline Stabilization Structures”.*

**City Response:** Agree to proposed changes.

*iii “Office” is covered under “Commercial Use and Development”.*

**City Response:** Do not agree to proposed changes. The City would prefer to keep the term "office" to provide consistency with local zoning categories and provide more clarity to the user.

*iv The change in language is consistent with the Guidelines and Section 20.30.030.*

**City Response:** Agree to proposed changes.

## **20.30.007 Existing Development**

**Existing Single-Family Homes, Appurtenances, and Other Existing Structures.** Single-family homes, appurtenances and other structures that were legally established by \_\_\_\_\_ (effective date of this SMP) are considered to be conforming to the SMP. Any addition, expansion or reconstruction of the single-family home, appurtenance or other structure must comply with the SMP. Any single family home to which a variance is issued shall be considered a conforming structure.

*The suggested language is consistent with the City's intent to eliminate nonconforming single family homes. Without this language any homes that are issued a variance would be considered nonconforming and WAC 173-27-080 "Nonconforming Use and Development Standards" would apply.*

**City Response:** Agree to proposed changes.

## **20.30.025 Critical Areas**

### **2. Regulations**

- e. Development proposals shall adhere to the applicable submittal requirements (a critical area report specific to the critical area) as specified in the Critical Areas Ordinance regulations adopted as part of this SMP.

*The additional language should be added to avoid confusion since the Critical Areas Ordinance is a separate document and may change over time without an SMP amendment.*

**City Response:** Agree to proposed changes.

## **20.30.040 Shoreline Vegetation**

### **2. Regulations**

- d. Within a shoreline vegetation conservation buffer as set forth in BMC 20.30.050[Dimensional Standards for Shoreline Development], *alterations* shall comply with the following;
  - v. Vegetation management plans should place emphasis on surface water filtration and infiltration, and providing plantings as close to the water's edge

or edge of bulkhead as feasible within a 20 foot wide area parallel and adjacent to the shoreline; and

*The suggested language is consistent with the policy statements and optimum mitigation.*

**City Response:** Agree to proposed changes.

- g. ~~In accordance~~ Consistent with existing regulations, only noxious weeds shall be removed from ~~the Lake Burien wetland or wetland~~ critical areas or their 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 h.

*Section 19.40.350(1.D.) allows for manual removal of noxious weeds without review or approval in stream buffers. The master program does the same for Lake Burien wetlands and buffers as shown above. It is only logical to be consistent with the marine shoreline.*

**City Response:** Agree to proposed changes.

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

*The change is suggested since the minimum standards are listed and the Director should establish what the management plan is.*

**City Response:** Agree to proposed changes.

- i. ~~Describe~~ Delineate the area to be disturbed and describe the proposed vegetation to be altered; and

*The suggested changes are consistent with terminology in the other criteria found in this section.*

**City Response:** Do not agree to proposed changes, the existing language is consistent with the other vegetation management components listed.

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

*This regulation is no longer needed if the change is made to "g" above.*

**City Response:** Agree to proposed changes.

## **20.30.045 Water Quality, Storm Water and Nonpoint Pollution**

### **2. Regulations**

- b. Low impact development methods shall be incorporated into any development or redevelopment in shoreline jurisdiction when feasible. Low Impact Development –

Technical Guidance Manual for Puget Sound - January 2005 shall be utilized until the 2011 edition is finalized.

*Unless the City has a better manual it is suggested to use this one.*

**City Response:** Do not agree to proposed changes. The City is in the process of preparing a drainage master plan (DMP) and may develop specific recommendations for conditions found in Burien. The City may reconsider this option in the future.

## **20.30.055 Shoreline Buffers**

### **Policy**

1. While buffers widths based on science are necessary to protect ecological functions, it presents challenges in existing heavily developed areas such as along some parts of Burien. In such areas, an alternative strategy is established using smaller buffers that are based on the existing development pattern, in combination with mitigation requirements for new development that provide enhancement of the smaller buffer and other degraded features to address impacts of the new development outside the small buffer areas when part of a vegetation conservation plan.

*The language comes as a suggestion from Futurewise and is supported by Ecology.*

**City Response:** Agree to proposed changes. The statement is consistent with the buffer approach applied by the City.

## **20.30.065 Aquaculture**

### **2. Regulations**

- d. No aquatic organism shall be introduced into City of Burien shoreline areas without the prior written approval of the ~~Director of the~~ Washington State Department of Fish and Wildlife or the appropriate regulatory agency for the specific organism.

*It is more appropriately up to WDFW to decide the approval process.*

**City Response:** Agree to proposed changes.

## **20.30.070 Bulkheads and Other Shoreline Stabilization Structures**

### **2. Regulations**

- c. The following requirements apply to both new and replacement bulkheads:
  - iv. The maximum height of a new bulkhead on the marine shoreline shall be no greater than four (4) vertical feet above the OHWM. The height of a replacement

bulkhead shall not exceed four (4) vertical feet above the OHWM or exceed the height of the existing bulkhead, whichever is greater.

*The additional language helps makes it clear that 4-feet is not measured from the existing bulkhead.*

**City Response:** Agree to proposed changes.

## 20.30.090 Recreational Mooring Buoys

### 1. Policies

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

*Given that mooring buoys are prohibited on Lake Burien, the suggested language would seem appropriate.*

**City Response:** Agree to proposed changes.

### 2. Regulations

- h. Boats must be sixty feet or less in length to tie up to a recreational mooring buoy ~~on~~ public lands.

*The change is suggested in order to be consistent along residential shorelines regardless of ownership of the intertidal area. The water areas are "waters of the state" and are not privately owned.*

**City Response:** Agree to proposed changes.

## 20.30.105 Utilities

### 2. Regulations

- e. New transmission facilities for the conveyance of services, such as power lines, cables, and pipelines, shall be located outside of the shoreline area where *feasible* and when necessarily located within the shoreline area shall assure no net loss of shoreline ecological functions. When allowed, utility and transportation facilities shall share rights-of-way to minimize disturbance in shoreline areas.

*Suggested language comes from 20.30.100(2.c.).*

**City Response:** Agree to proposed changes.

## Chapter V. Administration and Shoreline Permit Procedures

### 20.35.055 Effective Date and Duration of Shoreline Permits

Construction authorized by an approved shoreline permit shall not begin until 21 days after the date of filing as defined by ~~WAC 173-27-130 (Filing With Ecology)~~ RCW 90.58.140 (Development Permits). This restriction shall be stated on the permit. Construction shall be commenced or, where no construction is involved, the use or activity shall be commenced within two years and the construction related activity shall terminate within five years after the effective date of a shoreline permit or the final settlement date of any associated appeals or legal actions regarding the proposed action. Provided, that the City may authorize a single extension for a period not to exceed one year based on reasonable factors, if a request for extension has been filed before the expiration date and notice of the proposed extension is given to parties of record and the Department of Ecology. The City shall notify the Department of Ecology in writing of any change to the effective date of a permit, as authorized by this section, with an explanation of the basis for approval of the change. **Any change to the time limits of a permit other than those authorized by this section shall require a new permit application.** See also WAC 173-27-090 for additional information regarding duration of permits.

*A bill before the legislature is expected to take effect in July or August of 2011 that re-established "date of filing" instead of "date of receipt" currently in effect. The bill also has additional permit related changes that are not yet in the WAC.*

*WAC 173-27-090 provides additional information to permit duration that is not included in this section.*

**City Response:** Agree to proposed changes.

## Chapter VI. Shoreline Definitions

Definitions contained in the Shoreline Management Act of 1971 (RCW Chapter 90.58) and the Shoreline Master Program Guidelines (WAC Chapter 173-26) shall apply to all terms and concepts used in this shoreline master program, 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 and Shoreline Management procedural rules.

*The suggested language is consistent with 20.35.001.*

**City Response:** Agree to proposed changes.