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CITY OF BELLEVUE, WASHINGTON

ORDINANCE NO. 3914

AN ORDINANCE relating to management of the City's shorelines; amending sections 20.25E.010, 20.25E.030, 20.25E.040, 20.25E.050, 20.25E.070, 20.25E.080, 20.30C.170, 20.30C.175, 20.30H.170, 20.30H.175, 20.50.012, 20.50.016, 20.50.020, 20.50.032, 20.50.034, 20.50.036, 20.50.038, 20.50.046, 20.50.052, and 20.50.054 of the Bellevue City Code (Land Use Code); adding new sections 20.25E.013, 20.25E.017, 20.25E.055, to Part 20.25E of the Bellevue City Code (Land Use Code); and adding a new part 20.30R to Chapter 20.30 of the Bellevue City Code (Land Use Code).

THE CITY COUNCIL OF THE CITY OF BELLEVUE, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. Section 20.25E.010 of the Bellevue City Code (Land Use Code) is amended to read as follows:

20.25E.010 Definition of District: The Shoreline Overlay District encompasses those lake waters twenty (20) acres in size or greater and those stream waters with a mean annual water flow exceeding twenty (20) cubic feet per second, the lands underlying them; the lands extending landward for 200 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 associated with such streams and lakes; and marshes, bogs, swamps and river deltas associated with such streams and lakes. Specifically included within the district are the following:

Lake Washington, including Mercer Slough upstream to Interstate 405--The lake waters, underlying lands and the area two hundred (200) feet landward of the ordinary high water mark, considered to be elevation 15.03 feet based on the U.S. Coast and Geodetic Survey Datum Plane of 1929 as amended, (measured as 21.85 feet from the Corp of Engineers Datum Plane of 1919 as amended), plus associated floodways, floodplains, marshes, bogs, swamps, and river deltas;

Lake Sammamish--The lake waters, underlying lands and the area two hundred (200) feet landward of the ordinary high water mark, generally considered to be elevation 27 feet based on the U.S. Geodetic Survey Datum Plane of 1929 as amended, plus associated floodways, floodplains, marshes, bogs, swamps and river deltas;

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Lower Kelsey Creek--The creek waters, underlying lands, and territory between two hundred (200) feet on either side of the top of the banks, plus associated floodways, floodplains, marshes, bogs, swamps and river deltas; and

Phantom Lake--The lake waters, underlying lands and the area two hundred (200) feet landward of the ordinary high water mark, plus associated floodways, floodplains, marshes, bogs, swamps and river deltas.

Section 2. A new section 20.25E.013 is added to Part 20.25E of the Bellevue City Code (Land Use Code) to read as follows:

20.25E.013 Relation to State Regulations, Wetlands: The Shoreline Management Act and Department of Ecology Shoreline Regulations use the term "wetlands" to define the portion of the Shoreline Overlay District landward of the line of Ordinary High Water. Please note that that definition is not used by the City of Bellevue. The term "wetlands" as used in the Bellevue City Code is defined in Section 20.50.054.

Section 3. A new section is added to Part 20.25E of the Bellevue City Code (Land Use Code) to read as follows:

20.25E.017 Definitions Specific to the Shoreline Overlay District. As used in this chapter, the following definitions apply:

- A. Development--A use consisting of the construction or exterior alteration of structures, dredging, drilling, dumping, filling, removal of any sand, gravel or minerals, bulkheading, driving of piling, placing of obstructions, or any other project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to this Master Program at any state of water level.
- B. Height--Measured from average grade level (the average of the natural or existing topography of the portion of the lot, parcel, or tract of real property which will be directly under the proposed building or structure) to the highest point of a structure: Provided, That television antennas, chimneys, and similar appurtenances shall not be used in calculating height, except where it obstructs the view of a substantial number of residences: Provided further, That temporary construction equipment is excluded in this calculation.

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- C. Structure--A permanent or temporary edifice or building, or any piece of work artificially built or composed of parts joined together in some definite manner, whether installed on, above, or below the surface of the ground or water, except for vessels.

Section 4. Section 20.25E.030 of the Bellevue City Code (Land Use Code) is amended as follows:

20.25E.030 Interpretation; Administration by City: The Bellevue Shoreline Overlay District is supplementary to the underlying Land Use Districts. When conflict arises between regulations of the Shoreline Overlay District and underlying Land Use Districts, regulations of the Shoreline Overlay District shall prevail. When conflict arises between regulations of the Shoreline Overlay District and other special districts, such as the Sensitive Area Overlay District, the most restrictive regulations shall prevail.

Section 5. Section 20.25E.040 of the Bellevue City Code (Land Use Code) is amended as follows:

20.25E.040 Substantial Development Permit Required: A Substantial Development Permit is required for all development within the Shoreline Overlay District, with the exceptions noted in Section 20.25E.050 below. Procedures for securing a Substantial Development Permit shall be as set forth in Chapter 173-14 of the Washington Administrative Code and Part 20.30R of the Land Use Code. All information reasonably required to enable the City to make a full evaluation of proposed development in shoreline areas shall be provided by applicants for a Substantial Development Permit.

Section 6. Section 20.25E.050 of the Bellevue City Code (Land Use Code) is amended to read as follows:

20.25E.050 Exemptions from Substantial Development Permit System; Letter of Exemption Required: The following developments shall not require Substantial Development Permits so long as they are consistent with the policy of the State Shoreline Management Act, Chapter 173-14 of the Washington Administrative Code and the City's Shoreline Master Program. However, a Letter of Exemption from the City shall be required for any such development, to be forwarded to the Department of Ecology and the Attorney General's Office when required by Section 173-14-115 of the Washington Administrative Code. Exemptions from the Substantial Development Permit System are as follows:

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- A. Any development of which the total cost or fair market value, whichever is higher, does not exceed \$2,500, if such development does not materially interfere with the normal public use of the water or Shoreline Overlay District;
- B. Normal maintenance or repair of existing structures or developments, including damage by accident, fire or elements. "Normal maintenance" includes those usual acts to prevent a decline, lapse, or cessation from a lawfully established condition, "Normal repair" means to restore a development to a state comparable to its original condition within a reasonable period after decay or partial destruction except where repair involves total replacement which is not common practice or causes substantial adverse effects to the Shoreline Overlay District resource or environment. Replacement of existing pilings in the same location shall constitute "normal repair" under this section;
- C. Construction of the 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;
- 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;
- E. Construction and practices normal or necessary for farming, irrigation, and ranching activities, including agricultural service roads and utilities construction of a barn or similar agricultural structure, and the construction and maintenance of irrigation structures including but not limited to head gates, pumping facilities, and irrigation channels:
PROVIDED, That a feedlot of any size, all processing plants, other activities of a commercial nature, alteration of the contour of the property by leveling or filling other than that which results from normal cultivation, shall not be considered normal or necessary farming or ranching activities. A feedlot shall be an enclosure or facility used or capable of being used for feeding livestock hay, grain, silage, or other livestock feed, but shall not include land for growing crops or vegetation for livestock feeding and/or

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grazing, nor shall it include normal livestock wintering operations;

- F. Construction or modification of navigational aids, such as channel markers or anchor buoys;
- G. Construction by an owner, lessee, or contract purchaser of a single family residence, and/or accessory structure thereto, for his own or his family use which does not exceed a height of 35 feet above average grade level.

"Single-family residence" means a detached dwelling designed for and occupied by one family including those structures and developments within a continuous 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 perimeter of a marsh, bog, or swamp. Normal appurtenances include a garage; deck; driveway; utilities; fences; and grading which does not exceed 250 cubic yards (except to construct a conventional drainfield). Construction authorized under this exemption shall be located landward of the line of ordinary high water mark.

- H. Construction of a dock, including a community dock, designed for pleasure craft only, for the private noncommercial use of the owner, lessee, or contract purchaser of single family and multiple residence(s), for which the cost or fair market value, whichever is higher, does not exceed two thousand five hundred (\$2,500) dollars;
- I. Operation, maintenance, or construction of canals, waterways, drains, reservoirs, or other facilities that now exist or are hereafter created or developed as a part of an irrigation system for the primary purpose of making use of system waters, including return flow and artificially stored ground water for the irrigation of lands;
- J. 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;
- K. Operation and maintenance of any system of dikes, ditches, drains, or other facilities existing on September 8, 1975, which were created, developed or utilized primarily as a part of an agricultural drainage or diking system;

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- L. Any project with certification from the governor pursuant to Chapter 80.50 RCW; and

The above exemptions shall be construed narrowly and shall not exempt a project from other City of Bellevue ordinance or permit regulations; further, exempted development shall be consistent with the policies and provisions of the Shoreline anagement Act, Chapter 21.U of the Bellevue Comprehensive Plan and this Part, 20.25E.

Section 7. A new section is added to Part 20.25E of the Bellevue City Code (Land Use Code) to read as follows:

20.25E.055 Nonconforming Development.

- A. Nonconforming Development means a Shoreline Overlay District use or structure which was lawfully constructed or established prior to the effective date of the Shoreline Management Act or the Bellevue Shoreline Master Program, whichever is applicable, or amendments thereto, but which does not conform to present regulations or standards of the master program or policies of the Shoreline Management Act.
- B. Nonconforming development may be continued provided that it is not enlarged, intensified, increased, or altered in any way which increases its nonconformity;
- C. A nonconforming development which is moved any distance must be brought into conformance with this Part and the Shoreline Management Act;
- D. If a nonconforming development is damaged to an extent not exceeding seventy-five percent replacement cost of the original structure, it may be reconstructed to those configurations existing immediately prior to the time the structure was damaged, so long as restoration is completed within one year of the date of damage;
- E. If a nonconforming use is discontinued for twelve consecutive months or for twelve months during any two-year period, any subsequent use shall be conforming. It shall not be necessary to show that the owner of the property intends to abandon such nonconforming use in order for the nonconforming rights to expire; and
- F. A nonconforming use shall not be changed to another nonconforming use, regardless of the conforming or nonconforming status of the building or structure in which it is housed.

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Section 8. Section 20.25E.070 of the Bellevue City Code (Land Use Code) is amended as follows:

20.25E.070 Permits. Land Use Approvals in a Shoreline Overlay District shall follow procedures found in Parts 20.30C (Shoreline Conditional Uses), 20.30H (Variances to the Shoreline Master Program), and 20.30R (Shoreline Substantial Development) (Ord. 3530, 8-12-85, Section 63).

Section 9. Subsection 20.25E.080.E of the Bellevue City Code (Land Use Code) is amended as follows:

E. Bulkhead Regulations.

1. The use of bulkheads shall be limited to protection of existing areas or facilities landward of the ordinary high water mark, and not for the purpose of creating land by filling behind such bulkheads.
2. Construction of or improvements to bulkheads shall not extend into the lakes or riparian corridors beyond the ordinary high water mark, except in case of an approved landfill in compliance with Section 20.25E.080.K.5, and shall be completed within a timely manner.
3. Bulkheads shall be limited in height to 30 inches from average grade of actual or existing topography or, if at the ordinary high water mark, the ordinary high water mark; EXCEPT that bulkhead heights may be increased if approved through the procedures of 20.30E. In making his determination the director shall consider the following criteria instead of the criteria set forth in Section 20.30E.140:
 - a. Whether such increased height negatively impacts abutting properties; and
 - b. Whether such increased height is necessary to protect the existing upland property because of:
 - i. The extraordinary height and/or slope of the natural or existing topography at and immediately landward of the ordinary high water mark. In such instances, increased bulkhead height shall be limited to the minimum height necessary to protect the existing property landward of the ordinary high water mark; or

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- ii. Extraordinary wave action. In such instances, increased bulkhead height shall be limited to the minimum height necessary to protect the existing property landward of the ordinary high water mark or 45 inches, whichever is less.

Increased bulkhead height must be approved by both the Director of Design and Development and the Director of Storm and Surface Water Utility.

4. Bulkheads shall be designed to minimize the transmission of wave energy to other properties.

Section 10. Subsection 20.25E.080.I of the Bellevue City Code (Land Use Code) is amended as follows:

I. Dredging Regulations.

1. Dredging for the sole purpose of obtaining fill or construction material is prohibited
2. Dredging shall be permitted only in the following cases:
 - a. To maintain navigability; or
 - b. To improve water flow or water quality; or
 - c. To mitigate conditions which could endanger public health or safety; or
 - d. To create or improve recreational opportunities; or
 - e. To provide for the drainage of surface waters for approved development purposes.

Dredging shall be limited to the minimum extent necessary to accomplish its permitted purpose.

3. The lateral spread of resuspended sediment created by a dredging operation shall be contained within previously approved limits.
4. Dredging spoils shall be deposited at dumping sites which are set back an adequate distance to prevent impairment of water quality. Dumping sites shall not be allowed except in areas designated by the City of Bellevue.
5. Dredging spoils stored at the dredging site shall be adequately contained to prevent leakage. Any drainage

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of the spoils shall be filtered sufficiently to prevent reentrance of sediments into the water.

6. Shoreline vegetation disturbed by dredging projects shall be restored to its original or an improved condition through use of indigenous vegetation.

Section 11. Subsection 20.25E.080.K of the Bellevue City Code (Land Use Code) is amended as follows:

K. Landfill Regulations

(Note: Prohibited landfill materials are defined by the Bellevue Uniform Building Code.)

1. Landfills within the Shoreline Overlay District shall be controlled to prevent significant adverse alteration in the storage and flow characteristics of the affected area.
2. Landfills which do not meet the requirements of this code and the Bellevue Building Code as amended are prohibited (Uniform Building Code 7010).
3. Landfill shall not be permitted except where necessary for:
 - a. Maintenance of shoreline property above the ordinary high water mark.
 - b. Improvement of water quality in the event no other possible alternatives are available.
 - c. Enhancement or restoration of habitat in conformance with City of Bellevue standards adopted by the Director of Design and Development and the Director of Storm and Surface Water Utility if permitted under Part 20.25H.
 - d. Replenishment of sand on public and private beaches.
 - e. Establishment of an interpretive center when undertaken by, or in cooperation with, the City of Bellevue if permitted under Part 20.25H.
 - f. Ensuring or preserving the structural integrity of bulkheads permitted under Section 20.25E.080.E.

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In such cases, landfill may be permitted provided there is no significant adverse impact upon fish, wildlife and adjacent property and shall be limited to the minimum extent necessary to accomplish its permitted purpose.

4. Landfill behind bulkheads shall be limited to the height of bulkheads in compliance with Section 20.25E.080.E 3.
5. No landfill shall be permitted below or within the Ordinary High Water Mark, EXCEPT to restore lands lost to unusual erosion within the twelve months prior to the date of permit or exemption application. In no event, however, shall landfill be permitted below the ordinary high water mark established twelve months prior to permit or exemption application. The property owner bears the burden of demonstrating the unusual nature of the precipitating erosion and establishing the location of the earlier ordinary high water mark.
6. Landfill is not permitted within wetlands described in the Sensitive Areas Notebook except as provided for in Chapter 20.25H.
7. In those limited instances where landfill is permitted, the waterside perimeter of the fill shall be stabilized with vegetation.
8. Applicants for landfills within the Shoreline Overlay District must also secure and perform in accordance with fill permits under the City's clearing and grading regulations (Bellevue City Code Section 23.76).
9. Landfills shall be permitted only when they are in complete conformance with all conditions of site development approval.

Section 12. Subsection 20.25E.080.N of the Bellevue City Code (Land Use Code) is amended as follows:

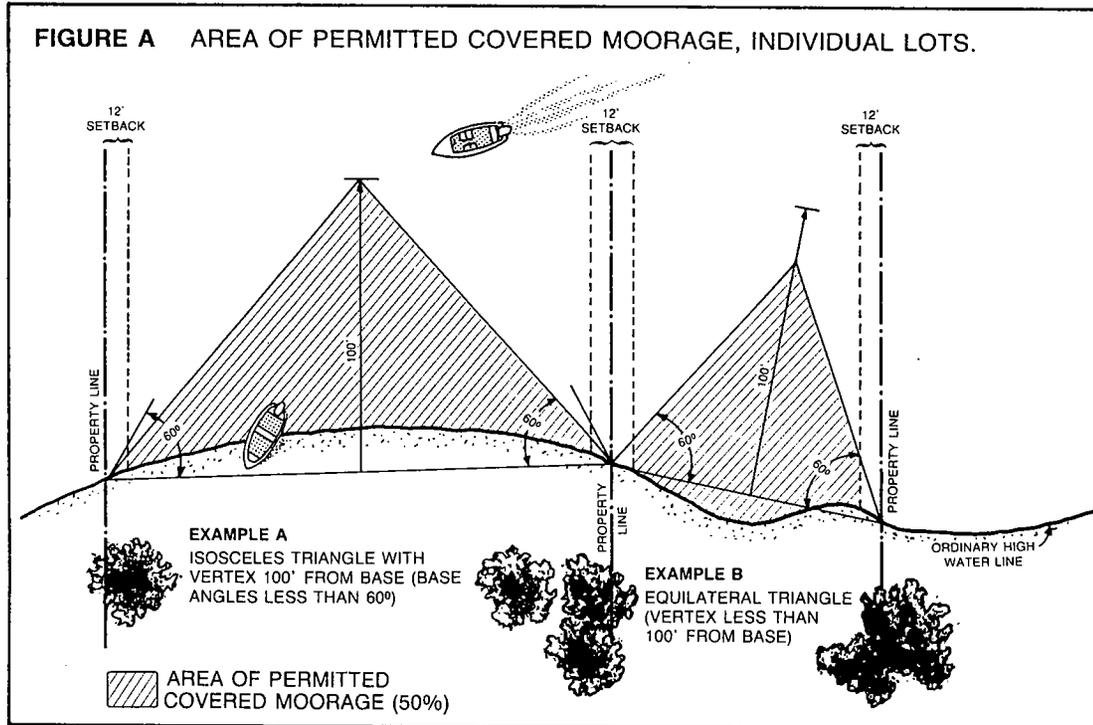
N. Moorage Regulations.

1. The height of any moorage structure shall not exceed a maximum of sixteen (16) feet above the ordinary high water mark.

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2. Area Requirements, Covered Moorage: The covered portion of a moorage shall be restricted to the area lying within an equilateral triangle, the base of which shall be a line drawn between the points of intersection of the property sidelines with the line of normal high water, except that covered moorage shall not extend beyond 100' from the center of the base of such triangle, the covered portion of such moorage shall be restricted to the area lying within an isosceles triangle of which the base is the line drawn between the points of intersection with the respective sidelines of such property and the line of normal high water with the vertex thereof 100' from the center of said base. The required 12' setback from the property sidelines shall be deducted from the triangle area. (See Figure A.)

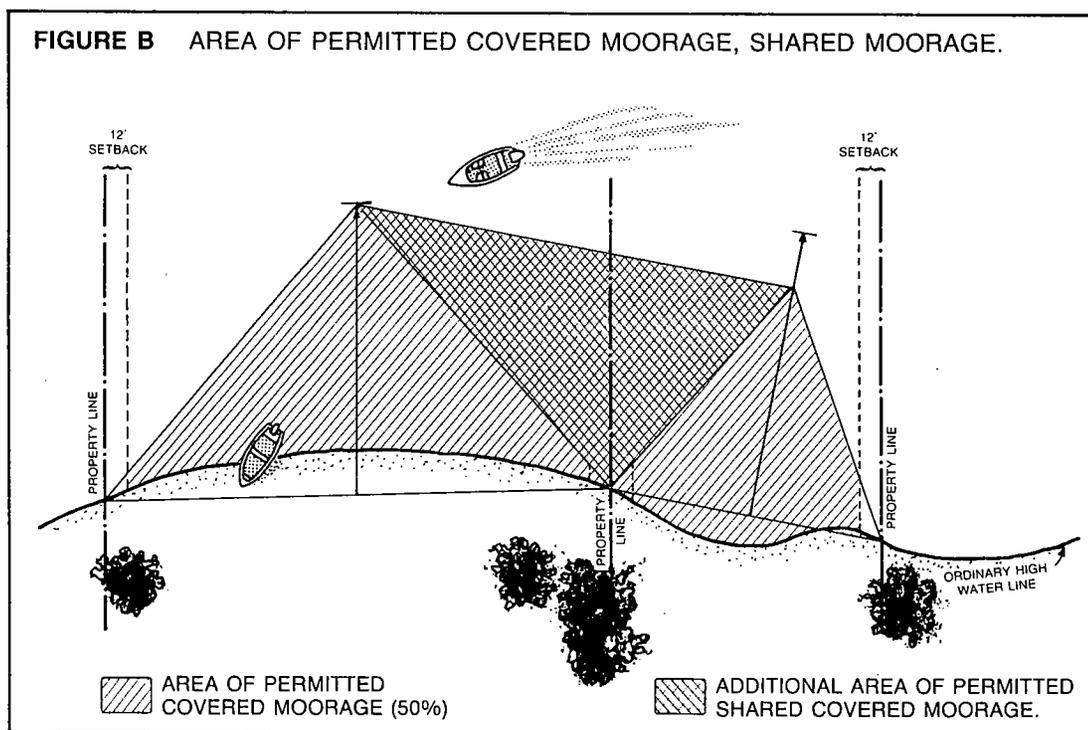
Covered moorage in no event shall cover more than fifty (50) percent of the permitted covered moorage area.



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3. Area requirements, Shared Covered Moorage: Where a shared covered moorage is built pursuant to the agreement of adjoining owners, the covered moorage area shall be deemed to include, subject to the limitations of such joint agreement, all of the combined building areas included within the triangles extended upon said adjoining properties as augmented by the inverted triangle situated between the aforesaid triangles having as its base a line drawn between the vertices of the respective triangles. (See Figure B.)

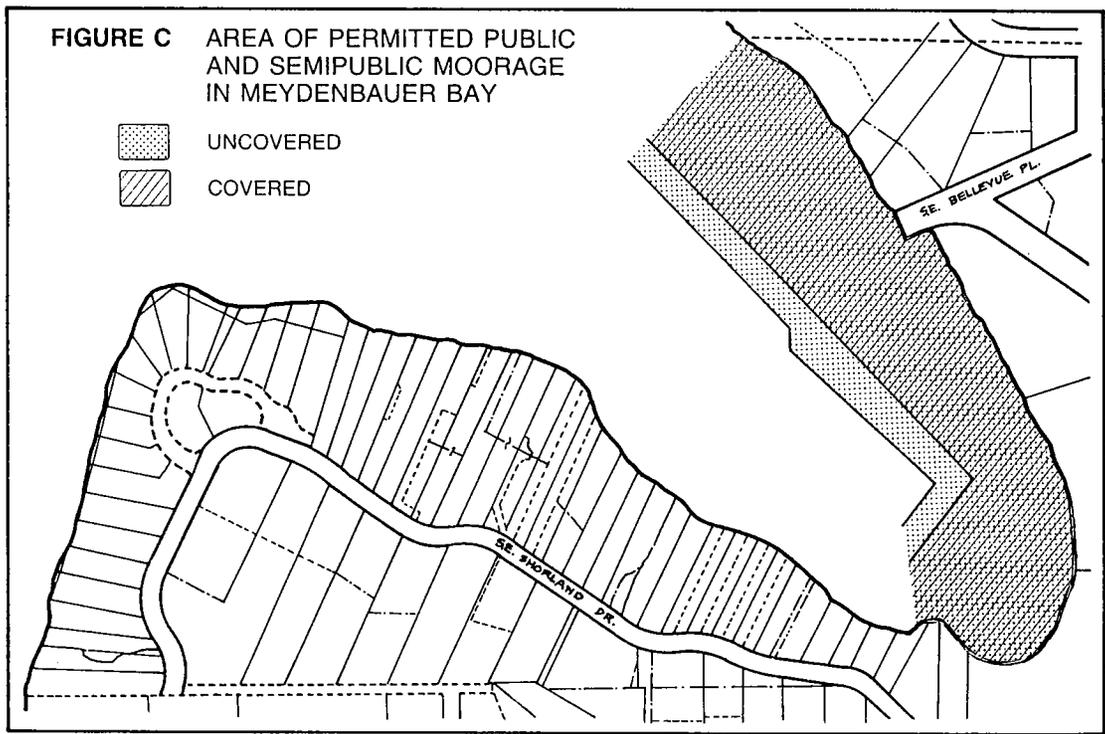
Covered moorage in no event shall cover more than fifty (50) percent of the permitted covered moorage area.



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4. Uncovered Public and Semipublic Moorage in Meydenbauer Bay: Public or semipublic moorage in Meydenbauer Bay shall not extend beyond the following boundary line: All Azimuths being South; commencing at the E 1/4 Sec. corner of Sec. 31 T 25N, R 5E, W.M., whose "X" coordinate is 1,661,520.58 and whose "Y" coordinate is 225,661.29 of the Washington Coordinate System, North Zone, and running thence on an Az of 78°51'17" a distance of 963.76 feet to a point whose coordinate is "X" 1,660,575.00, "Y" 225,475.00 of said coordinate system; thence on an Az of 37°26'00" a distance of 60 feet to a point being the true beginning of this description; thence on an Az of 316°19'15" a distance of 495.14 feet; thence on an Az of 2°21'10" a distance of 42.52 feet; thence on an Az of 312°06'17" a distance of 415.00 feet; thence on an Az of 37°24'19" a distance of 118.06 feet to an intersection with the northwesterly extension of the northwesterly line of Reserve "A" at the N. end of Ronda Street between Blocks 29 and 38, Plat of Moorlands, as recorded in Vol. 4 of Plats, Page 103, records of King County, Washington, said point of intersection being the terminum of this line description. (See Figure C.)
5. Covered Public and Semipublic Moorage in Meydenbauer Bay: The extent of covered public or semipublic moorage in Meydenbauer Bay shall comply with the following limitations: On the common line of adjoining private properties, covered moorage shall observe a 2'6" setback; on public street lines, in the water, no setback shall be required; no covered moorage shall extend out in the bay farther than the limits of the following boundary line: All Azimuths being South; commencing at the E 1/4 Sec. corner of Sec. 31, T 25N, R 5E, W.M., whose "X" coordinate is 1,661,520.58 and whose "Y" coordinate is 225,661.29 of the Washington Coordinate System, North Zone, and running thence on an Az of 78°51'17" a distance of 963.76 feet to a point being the true beginning whose coordinate is "X" 1,660,575.00, "Y" 225,475.00 referred to said coordinate system: thence on an Az of 316°19'15" a distance of 999.87 feet; thence on an Az of 37°24'19" a distance of 217.23 feet to an intersection with the northwesterly extension of the northwesterly line of Reserve "A" at the N. end of Ronda Street between Blocks 29 and 38, Plats of Moorlands as recorded in Vol. 4 of Plats, Page 103, records of King County, Washington, said point of intersection being the terminum of this line description. (See Figure C.)

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6. Boathouses are permitted pursuant to Part 20.30E, Administrative Conditional Use, if meeting the criteria of BCC 20.30E.140 and if not constituting a substantial obstruction of the range of view of neighboring properties.
7. Moorage shall only be permitted within
 - a. Lots created on or after the effective date of this ordinance having water frontage meeting or exceeding the minimum lot width required in the applicable land use district.
 - b. Lots created prior to the effective date of this ordinance; or
 - c. Non-building tracts platted for the purpose of providing common moorage for a group of contiguous properties.

For the purposes of meeting the requirements of subsection 7.a above, adjoining property owners may combine their water frontage by mutual agreement recorded with the King County Records and Elections Division and the Bellevue City Clerk. Only one moorage facility is permitted pursuant to such a combined frontage agreement, which may connect with the property landward of the ordinary high water mark at only one location.

8. No private moorage or other structure waterward of the ordinary high water mark, including structures attached thereto, shall be closer than twelve (12) feet to any adjacent property line except when a mutual agreement of adjoining property owners is recorded with the King County Records and Elections Division and the Bellevue City Clerk. Excepted from the requirements of this section are boat lifts or portions of boat lifts which do not exceed 30" in height measured from ordinary high water.
9. Private Moorage Extension:
 - a. Except as provided in Paragraph 9.b, private moorage may not extend more than 80 feet beyond the ordinary high water mark.

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- b. Private moorage may extend more than 80 feet beyond the ordinary high water mark to the point at which ten feet of water depth exists at ordinary high water, if approved through the procedures of Section 20.30E. In making his determination the director shall consider the following criteria instead of the criteria set forth in Section 20.30E.140:
 - i. Whether the moorage will extend beyond the point necessary to obtain a reasonable and safe moorage;
 - ii. Whether the increased length will interfere with the public use and enjoyment of the water, or create a hazard to navigation; and
 - iii. Whether the increased length will unreasonably interfere with the use of adjacent piers.
- c. In no case may private moorage extend more than one hundred fifty (150) feet beyond the ordinary high water mark.

- 10. Boat moorage for semipublic and public use shall be permitted as a shoreline conditional use only.

Section 13. Subsection 20.25E.080.Q of the Bellevue City Code (Land Use Code) is amended as follows:

Q. Residential Development Regulations.

- 1. For purposes of this Section, accessory structures shall include swimming pools, tennis courts, spas, greenhouses and similar facilities.
- 2. No boat, houseboat or water craft moored seaward of the ordinary high water mark shall be used as a permanent residence.
- 3. All structures, accessory buildings and ancillary facilities, other than those related to water use (such as moorage) shall be set back a minimum of twenty-five (25) feet from the ordinary high water mark, EXCEPT minor structural elements as defined and regulated under Section 20.20.025.C., and EXCEPT stairs,

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handrails, and fences essentially perpendicular to the shoreline.

4. Fences essentially parallel with the shoreline are not permitted within 25-foot setback.
5. Maximum building height in those areas of the Shoreline Overlay District which are zoned for residential uses shall be thirty-five (35) feet, except in land use districts where more restrictive height limitations exist.
6. All residential development shall be accompanied by a plan indicating methods for preserving shoreline vegetation and control of erosion during and following construction as required by City of Bellevue Clearing and Grading Regulations (Bellevue City Code Chapter 23.76), Section 20.20.515 of this Code and the Comprehensive Plan.

Section 14. Subsection 20.25E.080.S of the Bellevue City Code (Land Use Code) is amended as follows:

S. Shoreline Protection Regulations.

1. New development in the Shoreline Overlay District shall utilize design and construction methods and practices which will protect such development from damage resulting from a 100 year flood.
2. New development within the Shoreline Overlay District shall provide for the routing of flood waters and shall avoid reducing the flood water storage capacity of the wetlands.
3. Riprapping and bank stabilization measures should be of a sloping design, meeting the criteria set forth in City of Bellevue Clearing and Grading Regulations (Bellevue City Code Chapter 23.76) and should be left ungrouted.
4. Development within the Shoreline Overlay District shall exclude those uses which reduce the floodway area to the extent that they either cause a backwater on upstream property or increase the velocity on downstream property.

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Section 15. Section 20.30C.170 of the Bellevue City Code (Land Use Code) is amended as follows:

20.30C.170 Time Limitation:

- A. A Shoreline Conditional Use Permit automatically expires and is void if the applicant fails to file for a building permit or other necessary development permit and fails to make substantial progress towards completion of the project within two years of the effective date of the Shoreline Conditional Use Permit unless the applicant has received an extension for the Shoreline Conditional Use Permit pursuant to Section .175. "Substantial progress" includes the following, where applicable the making of contracts; signing of notice to proceed; completion of grading and excavation, and the laying of major utilities; or if no construction is involved, commencement of the activity.
- B. Permit authorization expires finally, despite substantial progress, five years after the effective date of the Shoreline Conditional Use Permit unless the applicant has received an extension pursuant to Section .175.

Section 16. Section 20.30C.175 of the Bellevue City Code (Land Use Code) is amended as follows:

20.30C.175 Extension:

- A. The Director of Design and Development may extend a Shoreline Conditional Use Permit, not to exceed one year, with prior notice to the Department of Ecology and those who requested copies of the City's decision, only if --
 - 1. Unforeseen circumstances or conditions necessitate the extension of the permit; and
 - 2. Termination of the permit would result in unreasonable hardship to the applicant, and the applicant is not responsible for the delay; and
 - 3. An extension of the permit will not cause substantial detriment to existing uses in the immediate vicinity of the subject property.
- B. The Director of Design and Development may grant no more than two extensions--one only of the two-year "substantial progress" deadline described in Section .170.A and one only of the five-year final deadline described in Section .170.B.

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Section 17. Section 20.30H.170 of the Bellevue City Code (Land Use Code) is amended as follows:

20.30H.170 Time Limitation:

- A. A Variance to the Shoreline Master Program automatically expires and is void if the applicant fails to file for a building permit or other necessary development permit and fails to make substantial progress towards completion of the project within two years of the effective date of the Variance unless the applicant has received an extension for the Variance to the Shoreline Master Program pursuant to Section .175. "Substantial progress" includes the following, where applicable: the making of contracts; signing of notice to proceed; completion of grading and excavation; and the laying of major utilities; or if no construction is involved, commencement of the activity.
- B. Permit authorization expires finally, despite substantial progress, five years after the effective date of the Shoreline Variance unless the applicant has received an extension pursuant to Section .175.

Section 18. Section 20.30H.175 of the Bellevue City Code (Land Use Code) is amended as follows:

20.30H.175 Extension:

- A. The Director of Design and Development may extend a Variance to the Shoreline Master Program, not to exceed one year, with prior notice to the Department of Ecology and those who requested copies of the City's decision, only if --
 - 1. Unforeseen circumstances or conditions necessitate the extension of the variance; and
 - 2. Termination of the approval would result in unreasonable hardship to the applicant and the applicant is not responsible for the variance; and
 - 3. An extension of the variance will not cause substantial detriment to existing uses in the immediate vicinity of the subject property.
- B. The Director of Design and Development may grant no more than two extensions--one only of the two-year "substantial progress" deadline described in Section .170.A and one only of the five-year final deadline described in Section .170.B.

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Section 19. A new part is added to Chapter 20.30 of the Bellevue City Code (Land Use Code) to read as follows:

20.30R. SHORELINE SUBSTANTIAL DEVELOPMENT

20.30R.110 Scope: This Part (20.30R) establishes the procedure and criteria that the City will use in making a decision upon an application for a Shoreline Substantial Development Permit.

20.30R.115 Applicability: This Part applies to each application for a Shoreline Substantial Development Permit.

20.30R.120 Purpose: A Shoreline Substantial Development Permit is the primary mechanism by which the City administers the Shoreline Master Program in a manner consistent with the policies of the Shoreline Management Act.

20.30R.125 Who May Apply: The property owner or authorized agent may apply for a Shoreline Substantial Development Permit.

20.30R.130 State Environmental Policy Act: The State Environmental Policy Act and the Bellevue Environmental Procedures Code (Bellevue City Code 22.02) may apply to any action taken under Part 20.30R. Read Bellevue City Code 22.02 for additional notice provisions, decision authority and other review requirements.

20.30R.135 Submittal Requirements:

- A. The Director of Design and Development shall specify the submittal requirements, including type, detail and number of copies, for a Shoreline Substantial Development Permit application to be deemed complete and accepted for filing.
- B. The Director of Design and Development may waive specific submittal requirements determined to be unnecessary for review of an application. However, such information may be required at a later date by the Department of Ecology.

20.30R.140 Public Notice of Upcoming Decision:

- A. Content: The applicable Department Director shall prepare notice of an upcoming decision on the application containing the following:
 - 1. The name of the applicant, and if applicable, the project name, and the name(s) of the water area(s) and/or area(s) of the Shoreline Overlay District within which the development is proposed, and

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2. The street address of the subject property, and a description in nonlegal terms sufficient to identify its location, and
3. A vicinity map indicating the location of the subject property, and
4. A brief description of the action, permit, or approval requested in the application, and
5. The date on which the minimum public comment period ends and an explanation of this date in relation to other City processes and time limits, and
6. A statement of the right of any person to participate in the decision as provided for in Paragraph .150.B.

B. Provision of Notice

1. Time of Notice: The Director of Design and Development shall provide notice of an upcoming decision on the application at least 37 calendar days prior to the decision.
2. Means of Notice: The Director of Design and Development shall provide notice of an upcoming decision on the application by --
 - a. Posting notice of the upcoming decision at each official posting place of the City (see Bellevue City Code 1.08), and
 - b. Mailing notice of the upcoming decision to each person who has requested such notice in writing for the calendar year and who has paid the fee established by the Director of Design & Development, and
 - c. Publishing notice of the upcoming decisions in a newspaper printed and published within the City for two consecutive weeks, on the same day of the week.

20.30R.145 Limitation on City Action: The City may not take final action on an application for a Shoreline Substantial Development Permit for at least thirty days following the second publication required by Section .140.

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20.30R.150 Public Comment Process Before Director's Decision:

- A. Who May Participate: Any person may participate in the decision.
- B. How to Participate: A person may participate in the decision by submitting written comments on the application to the Director of Design & Development prior to the date on which the decision is made.

20.30R.155 Director's Decision:

- A. General: On or after the date specified in Paragraph .140.B.1, and subject to all other restrictions on the time of decision-making, the Director of Design & Development shall either approve, approve with modifications or deny the application.
- B. Criteria: The Director of Design & Development may approve or approve with modifications if --
 - 1. The applicant has carried the burden of proof and produced evidence sufficient to support the conclusion that the application merits approval or approval with modifications, and
 - 2. The applicant has demonstrated that the proposal complies with the applicable decision criteria of the Bellevue City Code.
 - 3. The applicant has demonstrated that the proposal is consistent with the policies and procedures of the Shoreline Management Act and the provisions of WAC 173.14 and this Master Program.

In all other cases, the applicable Department Director shall deny the application.

- C. Limitation on Modification: If the Director of Design & Development makes a modification which results in a proposal not reasonably foreseeable from the description of the proposal contained in the public notice provided pursuant to Paragraph .140.A, the Director of Design & Development shall provide a new notice of an upcoming decision and obtain public comment prior to making a decision.

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- D. Conditions: The Director of Design & Development may include conditions as part of the approval or approval with modifications to ensure conformance with Paragraph B.
- E. Written Decision of the Director:
 - 1. Content: The Director of Design & Development shall issue a written decision which contains the following:
 - a. A statement indicating that the application is approved, approved with modifications or denied, and
 - b. A statement of any conditions included as part of an approval or approval with modifications, and
 - c. A statement of facts upon which the decision, including any conditions, was based and the conclusions derived from those facts.
 - 2. Distribution: The applicable Department Director shall mail the written decision of the Director, bearing the date it is mailed, to each person who participated in the decision as provided for in Paragraph .150.B.
- F. Effect of Decision: Subject to Section .165, the decision of the Director of Design & Development on the application is the final decision of the City.

20.30R.160. Transmittal to Department of Ecology/Attorney General:

Pursuant to WAC 173-14-090, the Director of Design and Development shall file the following with the Department of Ecology and the Attorney General's Office within eight days of the Director's action on a Shoreline Substantial Development Permit:

- A. The original application, and
- B. An affidavit of public notice, and
- C. A copy of the approved site plan, and
- D. A vicinity map, and
- E. A copy of the approved Shoreline Substantial Development Permit, and
- F. A copy of the approved Shoreline Conditional Use Permit or Shoreline Variance, if applicable, and

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- G. A copy of the environmental checklist and SEPA determination, if applicable, and
- H. The final action on the application.

20.30R.165. Appeal: Appeal of the decision of the Director of Design and Development shall be made to the Shoreline Hearings Board within 30 days of the City's filing with the Department of Ecology the materials listed in Section .160. Requests for review by the Shoreline Hearings Board are governed by procedures established in RCW Section 90.58.180 and WAC Chapter 461-08.

20.30R.170 Commencement of Activity: Subject to Section .165, the applicant may commence activity or obtain other required approvals authorized by the approval or approval with modifications 30 calendar days following the date of the City's filing with the Department of Ecology. If the decision of the Director of Design & Development is appealed pursuant to Section .165, no activity may begin and no other City approvals may be granted until resolution of the appeal.

20.30R.175 Time Limitation:

- A. A Shoreline Substantial Development Permit automatically expires and is void if the applicant fails to file for a building permit or other necessary development permit and fails to make substantial progress towards completion of the project within two years of the effective date of the Shoreline Substantial Development Permit unless the applicant has received an extension for the Shoreline Substantial Development Permit pursuant to Section .180. "Substantial progress" includes the following, where applicable: the making of contracts; signing of notice to proceed; completion of grading and excavation; and the laying of major utilities; or if no construction is involved, commencement of the activity.
- B. Permit authorization expires finally, despite substantial progress, five years after the effective date of the Shoreline Substantial Development Permit unless the applicant has received an extension pursuant to Section .180.

20.30R.180 Extension:

- A. The Director of Design and Development may extend a Shoreline Substantial Development Permit, not to exceed one year, with prior notice to the Department of Ecology and those who requested copies of the Director's decision only if --

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1. Unforeseen circumstances or conditions necessitate the extension of the permit; and
2. Termination of the permit would result in unreasonable hardship to the applicant, and the applicant is not responsible for the delay; and
3. An extension of the permit will not cause substantial detriment to existing uses in the immediate vicinity of the subject property.

B. The Director of Design and Development may grant no more than two extensions -- one only of the two-year "substantial progress" deadline described in Section 175 A and one only of the five-year final deadline described in Section .175.B.

20.30R.185 Assurance Device: In appropriate circumstances, the City may require a reasonable performance or maintenance assurance device in conformance with Section 20.40.490 to assure compliance with the provisions of the Land Use Code and the Shoreline Substantial Development Permit as approved.

20.30R.190 Revision of an Approved Shoreline Substantial Development Permit:

A. General: Except as otherwise provided in Paragraph .190.B, a revision of a previously approved project or decision is treated as a new application for a Shoreline Substantial Development Permit.

B. Minor Revisions:

1. Authority: A revision may be reviewed as a Minor Revision if determined to be within the scope and intent of the original permit by meeting all of the following criteria:
 - 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 of each structure may be increased a maximum of ten percent from the provisions of the original permit;

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- c. Additional separate structures may not exceed a total of two hundred fifty square feet;
- d. 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 the original permit;
- e. Additional landscaping is consistent with conditions (if any) attached to the original permit and with the applicable master program,
- f. The use authorized pursuant to the original permit is not changed; and
- g. No substantial adverse environmental impact will be caused by the project revision.

If the sum of the revision and any previously approved revisions violate the provisions of this section, a new permit shall be required.

- 2. Decision Criteria: The Director of Design & Development may approve or approve with modifications a Minor Revision if --
 - a. The applicant has carried the burden of proof and produced evidence sufficient to support the conclusion that the application merits approval or approval with modifications, and
 - b. The applicant has demonstrated that the proposal complies with the applicable decision criteria of the Bellevue City Code.

In all other cases, the Director of Design & Development shall deny the application.

- 3. Conditions: The Director of Design & Development may include conditions as part of the proposed approval or approval with modifications to ensure conformance with Paragraph .190.B.2.
- 4. Content: The Director of Design & Development shall issue a written decision on the revision which contains the following:

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- a. A statement indicating that the application is approved, approved with modifications or denied, and
 - b. A statement of any conditions included as part of an approval or approval with modifications, and
 - c. A statement of facts upon which the decision, including any conditions, was based and the conclusions derived from those facts.
5. Transmittal to Department of Ecology/Attorney General: The Director of Design and Development shall send within eight days a copy of the final City action on the revision on to the Department of Ecology and the Attorney General's Office in conformance with Section .160 and WAC 173-14-064.
 6. If the revision to the original permit involves a conditional use or variance which was conditioned by the Department of Ecology, the revision shall be submitted to the Department of Ecology for the department's approval, approval with conditions, or denial. The revision shall indicate that it is being submitted under the requirements of subsection WAC 173.14.064(5). Persons having requested notice of the Director's decision shall be notified. The Department of Ecology shall transmit to the City its decision within 15 days of receipt of the Director's submittal.
 7. The revised permit is effective immediately upon the Director's decision or, when appropriate under Section .190.B.6, upon the Department of Ecology's action.
 8. Appeals shall be in accordance with RCW 90.58.180 and shall be filed within thirty days from the date of receipt of the Director's decision by the Department of Ecology or, when appropriate under Section .190.B.6, the date the Department of Ecology's final decision is transmitted to the City and the applicant. Appeals shall be based only upon contentions of noncompliance with the provisions of Section .190.B.1 above. 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 in compliance with Section .190.B.1, the decision shall have no bearing on the original permit.

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Section 20. Section 20.50.012 of the Bellevue City Code (Land Use Code) is amended by the addition of the following definition:

20.50.012 ADDITIONAL DEFINITIONS:

BOATHOUSE. A covered moorage or overwater structure screened or enclosed by one or more sides exceeding 30 inches in height, except for vessels.

Section 21. Section 20.50.014 of the Bellevue City Code (Land Use Code) is amended as follows:

20.50.014 ADDITIONAL DEFINITIONS:

COVERED MOORAGE. Moorage covered by a roof.

Section 22. Section 20.50.016 of the Bellevue City Code (Land Use Code) is amended as follows:

20.50.016 ADDITIONAL DEFINITIONS:

* * *

DEVELOPMENT. All structures and other modifications of the natural landscape above and below ground or water, on a particular site. For the purposes of Part 20.25E, regulation for the Shoreline Overlay District, a different definition is used. See Section 20.25E.005.A.

* * *

Section 23. Section 20.50.020 of the Bellevue City Code (Land Use Code) is amended by the addition of the following definitions:

20.50.020 ADDITIONAL DEFINITIONS:

FAIR MARKET VALUE. The expected price at which the development can be sold to a willing buyer. For developments which involve nonstructural operations such as dredging, drilling, dumping, or filling, the fair market value is the expected cost of hiring a contractor to perform the operation or where no such value can be calculated, the total of labor, equipment use, transportation, and other costs incurred for the duration of the permitted project.

FILL. A solid material which increases ground surface elevation above or below the ordinary high water mark.

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Section 24. Section 20.50.032 of the Bellevue City Code (Land Use Code) is amended by the addition of the following definitions:

20.50.032 ADDITIONAL DEFINITIONS:

LAND FILL. See FILL.

Section 25. Section 20.50.034 of the Bellevue City Code (Land Use Code) is amended as follows:

20.50.034 ADDITIONAL DEFINITIONS:

* * *

MARSHES, BOGS, AND SWAMPS. Lands transitional between terrestrial and aquatic systems where saturation with water is the dominant factor determining plant and animal communities and soil development. For the purposes of this definition, these areas must have one or more of the following attributes:

(a) At least periodically, the land supports predominantly hydrophytes; and/or

(b) The substrate is predominantly undrained hydric soil.

Hydrophytes include those plants capable of growing in water or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content. Hydric soils include those soils which are wet long enough to periodically produce anaerobic conditions, thereby influencing the growth of plants.

* * *

MOORAGE. Any device or structure used to secure a vessel for anchorage, but which is not attached to the vessel, such as a pier, buoy, dock, ramp, boat lift, pile, or dolphin. (Ord. 3145, 9-27-82, Section 79)

Section 26. Section 20.50.036 of the Bellevue City Code (Land Use Code) is amended as follows:

20.50.036 ADDITIONAL DEFINITIONS:

* * *

NATURAL OR EXISTING TOPOGRAPHY. The topography of the lot, parcel, or tract of real property immediately prior to any site preparation or grading, including excavation or filling.

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Section 27. Section 20.50.038 of the Bellevue City Code (Land Use Code) is amended as follows:

20.50.038 ADDITIONAL DEFINITIONS:

* * *

ORDINARY HIGH WATER MARK. On all lakes, streams, and tidal water, 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 condition exists on June 1, 1971, as it may naturally change thereafter, or as it may change thereafter in accordance with permits issued by the City or the Department of Ecology: Provided, that in any area where the ordinary high water mark cannot be found, the ordinary high water mark adjoining fresh water shall be the line of mean high water.

* * *

Section 28. Section 20.50.046 of the Bellevue City Code (Land Use Code) is amended as follows:

20.50.046 ADDITIONAL DEFINITIONS:

* * *

SPA. A tub, generally with heated and/or jetted water, designed for therapy and relaxation.

* * *

STRUCTURE. A combination of materials constructed and erected permanently on or under the ground or attached to something having a permanent location on or under the ground. Not included are residential fences, retaining walls less than 30 inches in height, rockeries less than 30 inches in height and similar improvements of a minor character. For the purposes of Part 20.35E, regulations for the Shoreline Overlay District, a different definition applies. See 20.25E.005.B.

* * *

Section 29. Section 20.50.052 of the Bellevue City Code (Land Use Code) is amended by the addition of the following definition:

20.50.052 ADDITIONAL DEFINITIONS:

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VESSEL. A ship, boat, barge or any floating craft which is designed for and used for navigation and does not interfere with the normal public use of the water.

Section 30. Section 20.50.054 of the Bellevue City Code (Land Use Code) is amended as follows:

20.50.054 ADDITIONAL DEFINITIONS:

* * *

WETLANDS. The area mapped or defined as a wetland in the City of Bellevue Sensitive Area Notebook. A wetland is classified as one of three types as follows:

- A. Type A: Those wetlands which include, are adjacent to, or are hydrologically related with a Type A or B riparian corridor.
- B. Type B: Those wetlands with an area exceeding 7,200 square feet which do not include, are not adjacent to, or are not otherwise hydrologically interdependent with a Type A or B riparian corridor.
- C. Type C: Those wetlands with an area of less than 7,200 square feet which do not include, are not adjacent to, or are

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not otherwise hydrologically related with a Type A or B riparian
corridor.
(Ord. 3775, 5-26-87, Section 32)

* * *

Section 31. This ordinance shall take effect after its passage and legal
publication and after approval by the State Department of Ecology.

PASSED by the City Council this 1st day of August, 1988,
and signed in authentication of its passage this 1st day
of August, 1988.

(SEAL)

Nan Campbell
Nan Campbell, Mayor

Approved as to form:

Richard L. Andrews, City Attorney

Richard Gidley
Richard Gidley, Deputy City Attorney

Attest:

Marie K. O'Connell
Marie K. O'Connell, City Clerk

Published August 18, 1988