



DATE: September 15, 2010

TO: Chair Ferris and Members of the Planning Commission

FROM: Shoreline Master Program Update Team  
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SUBJECT: Shoreline Master Program, Marinas/Critical Areas/Vegetation Conservation –  
September 22, 2010 Planning Commission Study Session

In furtherance of the SMP Update process and in preparation for the September 22 Planning Commission study session, draft regulatory concepts related to marinas, critical areas, and vegetation conservation have been developed for presentation to the Commission. These three topics were selected for presentation and discussion due to their technical complexity, noted importance to the community, and essential roles they play in the SMP. As in previous meetings, we anticipate presenting these topics, along with supporting background information, to the Commission and asking for feedback on the subjects presented.

#### **SUMMARY OF SEPTEMBER 8 MEETING**

The September 8 study session focused on three essential topics – project schedule, revised draft development and public comment incorporation/tracking, and shoreline stabilization. During the meeting, staff received feedback from the Planning Commission on the project schedule and the proposed method for tracking and incorporating public comment. The Commission also agreed that the draft regulatory concepts developed for shoreline stabilization were sufficiently mature to be converted to draft code language.

#### **ONGOING PUBLIC OUTREACH**

Staff anticipates publishing a response to the WSSA presented “Key Unanswered SMP Questions” to the project website by the close of business on September 17.

Additional outreach meetings have been scheduled as follows:

Meeting with WSSA – Critical Areas and Vegetation Conservation  
Meeting with Newport Shores – Marinas and General Project Status  
Meeting with Newport Yacht Basin – Marinas  
Meeting with City Parks Department - Marinas  
Meeting with Meydenbauer Yacht Club - Marinas

## **BACKGROUND - MARINAS**

The Bellevue boating community is currently served by four marinas within the City's Shoreline Jurisdiction. Of these four marinas, one is owned and operated by the City Parks Department, one is owned and operated by the Meydenbauer Yacht Club, one is owned and operated by the Newport Yacht Club (Newport Shores), and one is operated as the Newport Yacht Basin a condominium development. An additional marina operator is Seattle Boat, which owns an upland marina support and boat retail sales facility abutting the Newport Yacht Basin. For the purpose of analysis and due to the intricacies of their existence, the Newport Yacht Basin and the Seattle Boat facilities are considered together as one functional marina. Over the next 10 years it is anticipated that all of these facilities will need to complete repairs and be modernized. The City has recently received requests for minor marina facility expansions, berth or slip reconfigurations, and substantial repairs. The standards presented later in this discussion are designed to address many of the issues identified during preliminary review of maintenance, expansion, and redevelopment proposals presented by marina owners and managers.

Historically Marinas have been included in the City's SMP through the non-residential boating performance standards of the Land Use Code (LUC 20.25E.080.N). Updated in 2006, these standards essentially follow the same outline as the residential moorage standards although they are less prescriptive and more adaptable regarding specific dimensional standards. Under the current standards marina development is allowed through a conditional use permit and limited to those areas already developed as a marina. Applicants proposing to redevelop a marina must either meet the prescribed design standards, or submit a Critical Areas Report that identifies how standards unique to the site and intended facility function provide for equal or better protection of shoreline ecological functions. New marinas on undeveloped sites are not contemplated by the current regulations. Maintenance and repair to an existing marina or non-residential boating facility is allowed, although repairs must meet the prescribed design standards or demonstrate that compliance with the new standards is technically infeasible, in which case another form of mitigation is required to ensure preservation of critical areas functions. LUC 20.25E.080.N.3 and LUC 20.25E.080.N.4.

The objective of the Marina section of the SMP is to establish minimum requirements for the operation, repair, siting, and design of new and existing marinas to serve the needs of the Bellevue boating community while properly managing state shoreline resources, protecting public health, and maintaining appropriate transitions and separations between uses of varying intensity.

## **SHORELINE MANAGEMENT ACT AND WAC GUIDELINES – MARINAS**

Based on the use type that characterizes marinas, WAC Rules suggest a classification system with a designation as "High Intensity." The Rules also allow for an alternative designation to be incorporated into updated SMPs; however, any alternative systems must be consistent with the purposes and policies of the recommended designations. Reflecting the presence of existing boating facilities and the lack of traditional commercial or high intensity water dependent industry on the shorelines of Bellevue, the working draft SMP includes an alternative designation from the recommended classification system in the Rules. Rather than utilize the "High

Intensity” designation, the working draft incorporates the relevant sections from the “High Intensity” designation and identifies the designation as Marina and Marina-Civic (see discussion below regarding summary of working draft policies).

The relevant sections to Marina development include the standards for environment designations in WAC 173-26-211(5) (d) “High Intensity” environment. These provisions apply to first priority water dependent uses and second priority water-related and water enjoyment uses. Additionally, specific provisions for boating facilities and commercial development are found in WAC 176-26-241(3) (c) and (d). The Marina and Marina Civic Environments, described in the working draft, are based on the standards identified above as are the regulatory concepts that follow.

A complete excerpt from these sections is included as Attachment 1.

## **POLICY GUIDANCE FROM WORKING DRAFT SMP - MARINAS**

The Working Draft Policies include two environment designations which apply to Marina development. These are the Marina and Marina Civic designations. The Marina designation is to be applied to those areas along the City of Bellevue shoreline currently used as private marinas for water dependent recreational boating uses. Additional Marina areas may be designated as demand for recreational boating facilities increases. The Marina Civic environment designation is to be applied to those areas currently in public ownership, specifically the Meydenbauer Marina and the 40<sup>th</sup> Street Boat Ramp. Additional Marina Civic environment areas may be designated as demand for public access to viewing, water-oriented recreation, and recreational boating facilities increases. Facilities developed under the Marina Civic environment designation must be primarily held in public ownership in order to provide the most expansive public access available to the limited state resource.

Marina development in any case should not interfere with navigation or the public’s use and enjoyment of the water. Marina sites should be developed and operated with the objective of achieving no net loss in ecological function. Marinas should also be located where impacts to adjacent uses and property can be minimized. Specific working draft policies related to marinas are as follows:

**POLICY SH-55.** New marinas should be located only at sites with suitable environmental conditions, shoreline configuration, access, and upland areas capable of accommodating upland uses.

**POLICY SH-56.** Encourage existing marinas to provide public small boat launching facilities, and require new marinas to provide public small boat launching facilities.

**POLICY SH-57.** Floating homes, with no propulsion or steerage, shall be prohibited.

**POLICY SH-58.** Require translucent materials when repairing or replacing existing covered moorage in marinas.

**POLICY SH-59.** Design and locate marinas to be compatible with in-water recreational activities, and to be aesthetically and functionally compatible with the shoreline area and nearby uses.

**POLICY SH-60.** Where applicable, new development shall include environmental cleanup and restoration of the shoreline to comply with any relevant state and federal law.

**POLICY SH-61.** Aesthetic impacts should first be avoided and then minimized. Aesthetic objectives should be implemented in marina areas by means such as sign control regulations, appropriate development siting, screening, architectural design guidelines, and maintenance of natural vegetative buffers.

**POLICY SH-62.** Redevelopment of existing marina and boating facilities shall not result in significant adverse environmental impacts.

**POLICY SH-63.** Expansion or redevelopment of existing marina and boating facilities shall be the minimum necessary to achieve the facilities functional objective.

**POLICY SH-64.** Where feasible, new terrestrial dry boat storage (racks) shall be preferred over new aquatic wet boat storage or moorage (overwater slips).

**POLICY SH-65.** Encourage the development of a master plan covering long-term operation and maintenance to facilitate site permitting needs.

**POLICY SH-82.** Prioritize and improve access to a variety of water-dependent and water-oriented recreational activities along the shoreline.

## **PROPOSED REGULATORY CONCEPTS - MARINAS**

For the purpose of this discussion, we have divided proposed marina and into five categories to reflect different levels of development, redevelopment, expansion, and repair. The following is a summary of proposed marina and non-residential boating facility regulatory concepts. Complete draft marina regulatory concepts are included as Attachment 2.

### **New Marina**

The construction of a new marina in an area not already designated for this purpose would require a map amendment and a modification of the existing SMP. This process would require considerable study and endorsement by the City and Ecology. As part of this process many of the steps listed below would be addressed. Once the environment is in place, a new marina may be developed in a Marina or Marina Civic environment if:

- The proposed location meets requirements of marina or marina civic environment; and
- The proposal is supported by a demand study ; and
- Specific siting criteria can be met; and
- Specific design criteria can be met; and
- A maintenance and operations plan is developed.

### **Replacement Marina**

Replacement marinas are allowed in a Marina or Marina Civic environment if:

- No expansion in development footprint is proposed; and
- Specific design criteria can be met; and
- A maintenance and operations plan is developed.

## **Marina**

Expanded marinas may be developed in a Marina or Marina Civic environment if:

- The proposed location meets requirements of marina or marina civic environment; and
- The proposal is supported by a demand study ; and
- Specific expansion criteria can be met; and
- Specific design criteria can be met; and
- A maintenance and operations plan is developed.

## **Marina**

Expanded marinas may be developed in a Marina or Marina Civic environment if:

- Expansion of less than 10% of marina capacity and 10% of overall overwater coverage.
- In compliance with applicable design and siting criteria.

## **Marina**

Maintenance and repair is allowed when:

- It does not include expansion or reconfiguration of facility components; and
- Is the minimum necessary to restore facility to its original design condition and capacity; and
- Prescribed mitigation is included in the design (use of light penetrable materials) or alternative mitigation is proposed.
- A long term maintenance plan may be submitted to facilitate smooth permitting

## **BACKGROUND – CRITICAL AREAS**

Under the state Growth Management Act (GMA), cities and counties in Washington are required to adopt critical areas regulations (RCW 36.70A.060.) The state defines critical areas as wetlands, frequently flooded areas (what the City calls “areas of special flood hazard”), geologically hazardous areas, aquifer recharge areas, and fish and wildlife habitat conservation areas. The City of Bellevue adopted critical areas polices in 1987, predating the GMA. The city updated its critical areas ordinances in 2006 in response to state mandate.<sup>1</sup>

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<sup>1</sup> 2006 City of Bellevue Critical Areas Update, Final Environmental Impact Statement at 3.

Critical areas regulations protect and manage these areas; however, development in these areas may be subject to a combination of other state and federal regulations, each with a specific geographic focus and regulatory intent. These regulations include:

- Federal Clean Water Act (Section 404 permits and National Pollutant Discharge Elimination System (NPDES));
- State Clean Water Act (NPDES, discharges to groundwater)
- Endangered Species Act (federal);
- FEMA National Flood Insurance Policy floodplain regulations (federal)
- Washington State Environmental Policy Act (SEPA);
- Shoreline Management Act (state);
- Clearing and grading regulations (local and NDPES requirement); and
- Stormwater regulations (local and NDPES requirement).

Many of these regulations apply not only to critical areas, but apply city-wide, such as SEPA, clearing and grading, and stormwater regulations. Some of these regulations overlap, such as areas of special flood hazard. Flood hazards are regulated under the GMA (as critical areas), the floodplain management criteria of FEMA’s National Flood Insurance Program, in which the City participates, and the Shoreline Management Act (flood hazard reduction).

## **SHORELINE MANAGEMENT ACT AND WAC GUIDELINES – CRITICAL AREAS**

In March 2010, the Governor signed into law EHB 1653, clarifying the integration of the SMA and GMA, which has been the subject of prior legislative actions and several lawsuits. The following discussion will address integrating critical areas into the City’s SMP as intended under the EHB 1653.

Within the shoreline jurisdiction,<sup>2</sup> critical areas are regulated under a jurisdiction’s critical area ordinances, adopted under the GMA, until the Washington State Department of Ecology approves a new or amended master program approved . RCW 36.70A.480(3)(b). Once Ecology approves a SMP update or amendment, the regulation and protection of critical areas is no longer subject to the procedural or substantive requirements of the GMA. RCW 36.70A.480(3)(d). Although once Ecology approves an update the procedural and substantive requirements of the

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<sup>2</sup> Shorelands are those lands::

[E]xtending landward for two hundred feet in all directions as measured on a horizontal plane from the ordinary high water mark; floodways and contiguous floodplain areas landward two hundred feet from such floodways; and all wetlands and river deltas associated with the streams, lakes, and tidal waters which are subject to the provisions of this chapter; the same to be designated as to location by the department of ecology.

RCW 90.58.030(2)(d).

Shorelines are:

[A]ll of the water areas of the state, including reservoirs, and their associated shorelands, together with the lands underlying them; except (i) shorelines of statewide significance; (ii) shorelines on segments of streams upstream of a point where the mean annual flow is twenty cubic feet per second or less and the wetlands associated with such upstream segments; and (iii) shorelines on lakes less than twenty acres in size and wetlands associated with such small lakes[.]

RCW 90.58.030(2)(e).

GMA no longer apply to critical areas in shorelines, the quantity and quality of information relied upon to protect critical areas in shorelines must not be any less. RCW 36.70A.480(3)(e).

In protecting critical areas, SMPs must “provide a level of protection to critical areas located within shorelines of the state that assures no net loss of shoreline ecological functions necessary to sustain shoreline natural resources as defined by [Ecology’s] guidelines....” Moreover, when Ecology approves the segment of a master program addressing critical areas, the agency must determine the segment is not only consistent with RCW 90.58.020 (SMA policies) and the Guidelines, but also that the critical areas within a shoreline are provided a level of protection at least equal to that provided under the GMA. RCW 90.58.090(4).

Complete excerpts from the WAC guidelines are included in Attachment 1. Complete RCW citations are included as Attachment 3.

## **POLICY GUIDANCE FROM WORKING DRAFT SMP - CRITICAL AREAS**

For the purposes of the SMP update and shoreline jurisdiction, critical areas in shoreline jurisdiction are regulated by the City’s shoreline critical areas regulations. The provisions of these regulations do not extend beyond the shoreline jurisdiction set forth in this SMP and the SMA. Critical areas outside the shoreline jurisdiction are regulated pursuant to Chapter 20.25H LUC. The working draft policies incorporate relevant existing policies found within the City’s environmental element of the comprehensive plan.

**POLICY SH-135.** Use the best scientific information available in an adaptive management approach to preserve or enhance the functions and values of shoreline critical areas through regulations, programs, and incentives.

**POLICY SH-136.** Use prescriptive development regulations based on the type of shoreline critical area and the functions to be protected to provide a predictable permitting option. Provide flexibility to the prescriptive regulations by allowing for site-specific or programmatic shoreline critical areas study to provide a science-based approach to development and mitigation that will achieve an equal or better result than the prescriptive development regulation for the shoreline critical area functions.

**POLICY SH-137.** Implement monitoring and adaptive management plans for shoreline critical areas mitigation projects to ensure that the intended functions are maintained or enhanced over time.

**POLICY SH-138.** Manage aquatic habitats, including shoreline and riparian (streamside) habitats, to preserve and enhance their natural functions of providing fish and wildlife habitat.

**POLICY SH-139.** Give special consideration to conservation or protection measures necessary to preserve or enhance anadromous salmonids, recognizing that requirements will vary depending on the aquatic resources involved, including differing stream classifications, and that additional effort may be identified in the regional salmon recovery planning process.

**POLICY SH-140.** Manage fish and wildlife habitat conservation areas to protect overall habitat functions and values (food, water, cover, space), except where a “special status species” requires targeted habitat management.

## **PROPOSED REGULATORY CONCEPTS - CRITICAL AREAS**

Under the statutory framework, there are at least two methods by which to incorporate the applicable critical areas ordinances into the SMP; the first is by reference; the second would entail bringing the critical area ordinances into the SMP. There are advantages and disadvantages to both approaches and in either case changes would be required to address slight differences in process between critical areas procedures and SMP procedures. At this time staff is not prepared to make a proposal to Commission on how best to affect this incorporation. In either case, the City will need to provide its critical areas code to Ecology to review as part of the city's SMP submittal to Ecology. Irrespective of what option is selected, use of the existing critical areas ordinances provides several advantages: (1) they are adopted and have been previously reviewed by Ecology; (2) they are known now by staff and the citizens, thus creating ease of administration and providing regulatory certainty and stability to the City's customers; (3) they are consistent with other state and federal requirements, such as flood plain management standards<sup>3</sup>; and most importantly (4) using the existing critical area ordinances reduces or eliminates any issues associated with differing critical area regulations that apply also to the upland portion of a property.

## **SHORELINE MANAGEMENT ACT AND WAC GUIDELINES – VEGETATION CONSERVATION**

The principles and standards for shoreline vegetation conservation are addressed in the Shoreline Master Program Guidelines (Rules) at WAC 173-26-221(5). As outlined in Rules, vegetation conservation includes those activities designed to protect and restore vegetation along or near shorelines that contribute to ecological functions of shoreline areas. The intent is to maintain, and if possible, restore the ecological services provided by shoreline vegetation. Identified benefits include water quality benefits, erosion and sedimentation control, nutrient and chemical control, including removal of pesticides, heavy metals and excessive organic matter, hydrologic benefits, and aquatic and territorial habitat enhancement. The Rules suggest the goal of conservation may be implemented by a variety of techniques including: clearing and grading regulations; setback and buffer standards; critical area regulations; conditional use requirements for specific uses and areas; mitigation requirements; incentives; and non-regulatory programs.

As outlined in previous discussions (see especially the presentation by Tessa Francis regarding the relationship of vegetation and aquatic productivity), the focus represented by the Rules is based on the founding principle that the coupling between terrestrial and aquatic systems is particularly strong along the lakeshore where human activities and their impacts can interfere with this relationship. Shorelines that are devoid of native vegetation or covered by structures, concrete, and pavers simply cannot contribute to this crucial interaction between land and water in the same manner less developed shorelines can. Similarly, Roger Tabor stressed the importance of overhanging and emergent vegetation as well as the role of coarse woody debris in providing complex habitat for daytime use by juvenile Chinook.

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<sup>3</sup> The Guidelines requires cities to consider integrating master program flood hazard reduction provision with other regulations and programs, such as the state's flood plain regulations, critical areas ordinances, and the National Flood Insurance Program. WAC 173-26-221(3).

The Rules require that local jurisdictions apply standards that implement the practice of vegetation conservation to the extent that the full-suite of vegetation-related shoreline functions is maintained. This will necessarily vary from site to site depending on the extent to which vegetation is present. On heavily developed shorelines the focus may be on preserving a few large trees or existing aquatic vegetation; on more heavily vegetated sites, a larger quantity of vegetation sufficient to maintain processes and functions may be targeted for preservation. In no case is vegetation conservation intended to preclude use and development. Where removal is necessary to accommodate development, appropriate mitigation must be provided.

## **POLICY GUIDANCE FROM WORKING DRAFT SMP – VEGETATION CONSERVATION**

The SMP working draft presented to the Commission at the May 12, 2010 study session continues to be our starting point for policy and regulatory discussion. As previously articulated in other sections, the working draft policies generally reflect the concept of minimizing impacts to existing ecological function while allowing some flexibility for alternative development based on specific site conditions. As outlined above, the intent of vegetation conservation is to maintain, and if possible, restore the ecological services provided by shoreline vegetation. Vegetation conservation should also be undertaken to protect human safety and property, to increase the stability of shoreline areas susceptible to erosion, to reduce the need for structural shoreline stabilization measures, to improve the visual and aesthetic qualities of the shoreline, to protect plant and animal species and their habitats, and to enhance shoreline uses.

This section regulates the modification, protection, and restoration of vegetation for all uses, development, or activities in the shoreline jurisdiction unless otherwise stated.

**POLICY SH-174.** Protect, conserve, enhance and establish native vegetation and trees within the shoreline setback and in critical areas and critical area buffers within shoreline jurisdiction to support shoreline functions and processes such as food webs, sediment transport, terrestrial and aquatic habitat, water quality, and hydrology.

**POLICY SH-175.** Support the private recreational use of shoreline setback areas as accessory uses to single family development when balanced with the objective of vegetation conservation.

**POLICY SH-176.** Allow for the removal and management of hazard trees. Require mitigation for hazard trees that are removed within the shoreline setback and in critical areas and critical area buffers.

**POLICY SH-177.** New development or substantial renovation to existing structures should include proportional restoration of native vegetation within the shoreline setback.

**POLICY SH-178.** New shoreline uses and development should be planned and designed to retain or replace native vegetation and trees within the shoreline setback and in critical areas and critical area buffers with the overall objective of achieving no net loss of the ecological function.

**POLICY SH-179.** Encourage the pruning of trees as a preference to topping or removal.

**POLICY SH-180.** Encourage vegetation conservation and restoration to provide bank and slope stabilization and to reduce the need for hard, structural shoreline stabilization measures.

**POLICY SH-181.** Provide incentives to private property owners to achieve specific habitat improvement goals, including retention and enhancement of native vegetation along the shoreline.

**POLICY SH-182.** Expand outreach to shoreline property owners regarding shoreline landscape design, maintenance, and armoring alternatives.

**POLICY SH-183.** Consider and encourage aesthetic values when reviewing development of the shoreline and encourage vegetation conservation policies that improve the visual and aesthetic qualities of the shoreline.

**POLICY SH-184.** Encourage vegetation conservation regulations that protect human safety and property, especially in flood hazard areas.

## **PROPOSED REGULATORY CONCEPTS - VEGETATION CONSERVATION**

### **Current Code – Buffers**

The City's current regulations do not directly address preservation of existing vegetation; instead buffers are mandated for developed and undeveloped sites. Since buffers are generally considered no touch areas, existing vegetation within them is protected against removal without a permit. In addition, vegetation management within Geological Hazard Areas such as steep slopes is considered an allowed use subject to specific performance criteria and submittal of vegetation management plan outlining the proposed changes and the ecological benefit that would result. Other maintenance issues, including pruning, noxious species and hazard tree removal are allowed.

### **Regulatory Approach for Vegetation Conservation**

Any new regulations would apply to vegetation within the 200-foot shoreline jurisdiction but the primary focus on vegetation near or adjacent to the shoreline (defined as that area within the 50-foot structure setback accepted by the Commission). Existing conifers or big-leaf maples above a certain size elsewhere on the site and not covered by existing critical area rules would also be regulated.

### **Key Concepts – Terrestrial and Emergent Vegetation**

1. Existing areas of native vegetation (clumps of trees over 4 inches in diameter, shrubs and emergents) within the 50-foot shoreline setback shall be retained except where setback is to be enhanced or where alteration is allowed in accordance with the code.
2. Under the proposed 50-foot shoreline setback, modification or removal of up to 40 percent of the preserved vegetation within the setback area may be allowed provided sufficient mitigation exists to ensure no net loss of ecological function. The actual amount will depend on the proposal under review and will be the minimum necessary to accomplish this purpose. One such reduction from standard could be based on an

allowance for permanent protection of significant trees in the shoreline area (outside the shoreline setback) not otherwise protected by other codes or development standards.

3. Up to 30 percent of existing conifers and big leaf maples shall be retained within the shoreline area to maintain shoreline habitat functions. This requirement is in addition to the required preservation of trees within existing critical areas only to the extent that the 30 percent preservation standard is not met within existing critical areas. (This standard mimics the required tree preservation standards required with new development on single-family lots.)
4. In absence of a development proposal, existing, lawfully established landscaping and gardens within a vegetative conservation area may be maintained in its existing condition including but not limited to , mowing lawns, weeding, removal of noxious and invasive species, harvesting and replanting of garden crops, pruning and replacement planting of ornamental vegetation or native species to maintain the condition and appearance of such areas as they existed prior to adoption of this code, provided this does not apply to areas previously established as native growth protection areas, mitigation sites, or other areas protected via conservation easements or similar restrictive covenants. Pruning according to City standards will be permitted.
5. New development or redevelopment of existing uses shall implement the landscape standard to be developed in concert with the residential setback options menu. Unless otherwise provided, the landscape standard shall preserve, enhance or establish native vegetation within the required setback area. Preference will be given to emergent vegetation and vegetation overhanging the shoreline edge.
6. Vegetation conservation regulations specific to urban conservancy, urban conservancy – open space, and marina environments will be outlined separately.

### **Key Concepts - Aquatic Vegetation**

7. Aquatic weed control shall only occur when native plant communities and associated habitats are threatened or where an existing water dependent use is restricted by the presence of weeds. Aquatic weed control shall occur in compliance with all other applicable laws and standards.
8. The control of aquatic weeds by hand pulling, mechanical harvesting, or placement of aqua screens, if proposed to maintain existing water depth for navigation, shall be considered normal maintenance and repair and therefore exempt from the requirement to obtain a shoreline substantial development permit.
9. The control of aquatic weeds by derooting, rotovating or other method which disturbs the bottom sediment or benthos shall be considered development for which a substantial development permit is required, unless it will maintain existing water depth for navigation in an area covered by a previous permit for such activity, in which case it shall

be considered normal maintenance and repair and therefore exempt from the requirement to obtain a substantial development permit.

10. Where large quantities of plant material are generated by aquatic weed control measures, they shall be collected and disposed of in an appropriate, identified upland location.
11. Use of herbicides to control aquatic weeds shall be prohibited except for those chemicals specifically approved by the Department of Ecology for use in aquatic situations and where no reasonable alternative exists and weed control is demonstrated to be in the public's interest. Application of herbicides for the control of aquatic weeds requires approval from the Department of Ecology. The City's must be notified of all herbicide usage in aquatic areas and supplied with proof of approval from the Department of Ecology. Additionally, all herbicides shall be applied by a licensed professional.

**NEXT STEPS**

Staff seeks Commission feedback in the following areas:

- 1) Given the project objectives and requirements presented, is the direction taken for each topic (marinas, critical areas, and vegetation conservation) appropriate?
- 2) Are the draft regulatory concepts presented sufficiently developed to begin code drafting?

**Table 1. Proposed Planning Commission Schedule**

October 20	Setbacks Revisited Landscape Standards
November 3	Non-Conforming Development
November 17	Bundle remaining issues
December 8	Bundle remaining issues (continued)
December (mid-to-late)	Release revised draft
January 2011	Open House Introduce revised draft
February 2011	Public Hearing (date to be set by Planning Commission)

**ATTACHMENTS**

1. Excerpt from WAC Guidelines
2. Draft marina and regulatory concepts
3. RCW Citations

## **City of Bellevue Shoreline Master Program Update**

### **Marina, Vegetation Conservation, and Critical Areas WAC Citations**

**September 22, 2010**

#### **1. WAC Citations Relevant to Marina and Marina Civic Environments and Marina Uses:**

##### **173-26-211(5)(d) "High-intensity" environment.**

###### **(i) Purpose.**

The purpose of the "high-intensity" environment is to provide for high-intensity water-oriented commercial, transportation, and industrial uses while protecting existing ecological functions and restoring ecological functions in areas that have been previously degraded.

###### **(ii) Management policies.**

(A) In regulating uses in the "high-intensity" environment, first priority should be given to water-dependent uses. Second priority should be given to water-related and water-enjoyment uses. Non-water oriented uses should not be allowed except as part of mixed use developments. Non-water oriented uses may also be allowed in limited situations where they do not conflict with or limit opportunities for water oriented uses or on sites where there is no direct access to the shoreline. Such specific situations should be identified in shoreline use analysis or special area planning, as described in WAC 173-26-200 (3)(d).

If an analysis of water-dependent use needs as described in WAC 173-26-201(3)(d)(ii) demonstrates the needs of existing and envisioned water-dependent uses for the planning period are met, then provisions allowing for a mix of water-dependent and non-water dependent uses may be established. If those shoreline areas also provide ecological functions, apply standards to assure no net loss of those functions.

(B) Full utilization of existing urban areas should be achieved before further expansion of intensive development is allowed. Reasonable long-range projections of regional economic need should guide the amount of shoreline designated "high-intensity." However, consideration should be given to the potential for displacement of non-water oriented uses with water oriented uses when analyzing full utilization of urban waterfronts and before considering expansion of such areas.

(C) Policies and regulations shall assure no net loss of shoreline ecological functions as a result of new development. Where applicable, new development shall include environmental cleanup and restoration of the shoreline to comply with any relevant state and federal law.

(D) Where feasible, visual and physical public access should be required as provided for in WAC 173-26-221(4)(d).

(E) Aesthetic objectives should be implemented by means such as sign control regulations, appropriate development siting, screening and architectural standards, and maintenance of natural vegetative buffers.

**(iii) Designation Criteria**

Assign a "high-intensity" environment designation to shoreline areas within incorporated municipalities, urban growth areas, and industrial or commercial "rural areas of more intense development," as described by RCW 36.70A.070 if they currently support high-intensity uses related to commerce, transportation or navigation; or are suitable and planned for high-intensity water-oriented uses.

**173-26-241(3)(c) Boating facilities.**

For the purposes of this chapter, "boating facilities" excludes docks serving four or fewer single-family residences. Shoreline master programs shall contain provisions to assure no net loss of ecological functions as a result of development of boating facilities while providing the boating public recreational opportunities on waters of the state.

Where applicable, shoreline master programs should, at a minimum, contain:

- (i) Provisions to ensure that boating facilities are located only at sites with suitable environmental conditions, shoreline configuration, access, and neighboring uses.
- (ii) Provisions that assure that facilities meet health, safety, and welfare requirements. Master programs may reference other regulations to accomplish this requirement.
- (iii) Regulations to avoid, or if that is not possible, to mitigate aesthetic impacts.
- (iv) Provisions for public access in new marinas, particularly where water-enjoyment uses are associated with the marina, in accordance with WAC 173-26-221(4).
- (v) Regulations to limit the impacts to shoreline resources from boaters living in their vessels (live-aboard).
- (vi) Regulations that assure that the development of boating facilities, and associated and accessory uses, will not result in a net loss of shoreline ecological functions or other significant adverse impacts.
- (vii) Regulations to protect the rights of navigation.
- (viii) Regulations restricting vessels from extended mooring on waters of the state except as allowed by applicable state regulations and unless a lease or permission is obtained from the state and impacts to navigation and public access are mitigated.

**173-26-241(3)(d) Commercial development.**

Master programs shall first give preference to water-dependent commercial uses over non-water-dependent commercial uses; and second, give preference to water-related and water-enjoyment commercial uses over non-water-oriented commercial uses.

The design, layout and operation of certain commercial uses directly affects their classification with regard to whether or not they qualify as water related or water enjoyment uses. Master programs shall assure that commercial uses that may be authorized as water related or water enjoyment uses are required to incorporate appropriate design and operational elements so that they meet the definition of water related or water enjoyment uses.

Master programs should require that public access and ecological restoration be considered as potential mitigation of impacts to shoreline resources and values for all water-related or water-dependent commercial development unless such improvements are demonstrated to be infeasible or inappropriate. Where commercial use is proposed for location on land in public ownership, public access should be required. Refer to WAC 173-26-221(4) for public access provisions.

Master programs should prohibit non-water-oriented commercial uses on the shoreline unless they meet the following criteria:

- (i) The use is part of a mixed-use project that includes water-dependent uses and provides a significant public benefit with respect to the Shoreline Management Act's objectives such as providing public access and ecological restoration; or
- (ii) Navigability is severely limited at the proposed site; and the commercial use provides a significant public benefit with respect to the Shoreline Management Act's objectives such as providing public access and ecological restoration.

In areas designated for commercial use, non-water-oriented commercial development may be allowed if the site is physically separated from the shoreline by another property or public right of way.

Non-water-dependent commercial uses should not be allowed over water except in existing structures or in the limited instances where they are auxiliary to and necessary in support of water-dependent uses.

Master Programs shall assure that commercial development will not result in a net loss of shoreline ecological functions or have significant adverse impact to other shoreline uses, resources and values provided for in 90.58.020RCW such as navigation, recreation and public access .

## **2. WAC Citations Relevant to Vegetation Conservation:**

### **173-26-201(3)(d)(viii)Vegetation Conservation**

#### **(a) Applicability.**

Vegetation conservation includes activities to protect and restore vegetation along or near marine and freshwater shorelines that contribute to the ecological functions of shoreline areas. Vegetation conservation provisions include the prevention or restriction of plant clearing and earth grading, vegetation restoration, and the control of invasive weeds and nonnative species.

Unless otherwise stated, vegetation conservation does not include those activities covered under the Washington State Forest Practices Act, except for conversion to other uses and those other forest practice activities over which local governments have authority. As with all master program provisions, vegetation conservation provisions apply even to those shoreline uses and developments that are exempt from the requirement to obtain a permit. Like other master program provisions, vegetation conservation standards do not apply retroactively to existing uses and structures, such as existing agricultural practices.

(b) Principles.

The intent of vegetation conservation is to protect and restore the ecological functions and ecosystem-wide processes performed by vegetation along shorelines. Vegetation conservation should also be undertaken to protect human safety and property, to increase the stability of river banks and coastal bluffs, to reduce the need for structural shoreline stabilization measures, to improve the visual and aesthetic qualities of the shoreline, to protect plant and animal species and their habitats, and to enhance shoreline uses.

Master programs shall include; planning provisions that address vegetation conservation and restoration, and regulatory provisions that address conservation of vegetation; as necessary to assure no net loss of shoreline ecological functions and ecosystem-wide processes, to avoid adverse impacts to soil hydrology, and to reduce the hazard of slope failures or accelerated erosion.

Local governments should address ecological functions and ecosystem-wide processes provided by vegetation as described in WAC 173-26-201(3)(d)(i).

Local governments may implement these objectives through a variety of measures, where consistent with Shoreline Management Act policy, including clearing and grading regulations, setback and buffer standards, critical area regulations, conditional use requirements for specific uses or areas, mitigation requirements, incentives and non-regulatory programs.

In establishing vegetation conservation regulations, local governments must use available scientific and technical information, as described in WAC 173-26-201 (2)(a). At a minimum, local governments should consult shoreline management assistance materials provided by the department and Management Recommendations for Washington's Priority Habitats, prepared by the Washington state department of fish and wildlife where applicable.

Current scientific evidence indicates that the length, width, and species composition of a shoreline vegetation community contribute substantively to the aquatic ecological functions. Likewise, the biota within the aquatic environment is essential to ecological functions of the adjacent upland vegetation. The ability of vegetated areas to provide critical ecological functions diminishes as the length and width of the vegetated area along shorelines is reduced. When shoreline vegetation is removed, the narrower the area of remaining vegetation, the greater the risk that the functions will not be performed.

In the Pacific Northwest, aquatic environments, as well as their associated upland vegetation and wetlands, provide significant habitat for a myriad of fish and wildlife species. Healthy environments for aquatic species is inseparably linked with the ecological integrity of the surrounding terrestrial ecosystem. For example, a nearly continuous corridor of mature forest characterizes the natural riparian conditions of the Pacific Northwest. Riparian corridors along marine shorelines provide many of the same functions as their freshwater counterparts. The most commonly recognized functions of the shoreline vegetation include, but are not limited to:

- Providing shade necessary to maintain the cool temperatures required by salmonids, spawning forage fish, and other aquatic biota.
- Providing organic inputs critical for aquatic life.

- Providing food in the form of various insects and other benthic macroinvertebrates.
- Stabilizing banks, minimizing erosion, and reducing the occurrence of landslides. The roots of trees and other riparian vegetation provide the bulk of this function.
- Reducing fine sediment input into the aquatic environment through storm water retention and vegetative filtering.
- Filtering and vegetative uptake of nutrients and pollutants from ground water and surface runoff.
- Providing a source of large woody debris into the aquatic system. Large woody debris is the primary structural element that functions as a hydraulic roughness element to moderate flows. Large woody debris also serves a pool-forming function, providing critical salmonid rearing and refuge habitat. Abundant large woody debris increases aquatic diversity and stabilization.
- Regulation of microclimate in the stream-riparian and intertidal corridors.
- Providing critical wildlife habitat, including migration corridors and feeding, watering, rearing, and refugia areas.

Sustaining different individual functions requires different widths, compositions and densities of vegetation. The importance of the different functions, in turn, varies with the type of shoreline setting. For example, in forested shoreline settings, periodic recruitment of fallen trees, especially conifers, into the stream channel is an important attribute, critical to natural stream channel maintenance. Therefore, vegetated areas along streams which once supported or could in the future support mature trees should be wide enough to accomplish this periodic recruitment process.

Woody vegetation normally classed as trees may not be a natural component of plant communities in some environments, such as in arid climates and on coastal dunes. In Washington State Shoreline Master Program Guidelines, Chapter 173-26 WAC 69 of 100 these instances, the width of a vegetated area necessary to achieve the full suite of vegetation-related shoreline functions may not be related to vegetation height.

Local governments should identify which ecological processes and functions are important to the local aquatic and terrestrial ecology and conserve sufficient vegetation to maintain them. Such vegetation conservation areas are not necessarily intended to be closed to use and development but should provide for management of vegetation in a manner adequate to assure no net loss of shoreline ecological functions.

(c) Standards.

Master programs shall implement the following requirements in shoreline jurisdiction.

(i) Establish vegetation conservation standards that implement the principles in WAC 173-26-

221(5)(b). Methods to do this may include setback or buffer requirements, clearing and grading standards, regulatory incentives, environment designation standards, or other master program provisions. Selective pruning of trees for safety and view protection may be allowed and the removal of noxious weeds should be authorized.

Additional vegetation conservation standards for specific uses are included in WAC 173-26-241(3).

### 3. WAC Citations Relevant to Critical Areas:

#### **173-26-221(2) Critical areas.**

(a) **Applicability.** Pursuant to the provisions of RCW 90.58.090(4) as amended by chapter 321, Laws of 2003 (ESHB 1933), shoreline master programs must provide for management of critical areas designated as such pursuant to RCW 36.70A.170 (1)(d) and required to be protected pursuant to RCW 36.70A.060(2) that are located within the shorelines of the state with policies and regulations that:

(i) Are consistent with the specific provisions of this subsection (2) critical areas and subsection (3) of this section flood hazard reduction, and these guidelines; and

(ii) Provide a level of protection to critical areas within the shoreline area that is at least equal to that provided by the local government's critical area regulations adopted pursuant to the Growth Management Act for comparable areas other than shorelines.

When approved by ecology pursuant to RCW 90.58.090(4), a local government's SMP becomes regulations for protection of critical areas in the shorelines of the state in the jurisdiction of the adopting local government except as noted in RCW 36.70A.480 (3)(b) and (6).

The provisions of this section and subsection (3) of this section, flood hazard reduction, shall be applied to critical areas within the shorelines of the state. RCW 36.70A.030 defines critical areas as:

*""Critical areas" include the following areas and ecosystems:*

*(a) Wetlands; (b) areas with a critical recharging effect on aquifers used for potable waters; (c) fish and wildlife habitat conservation areas; (d) frequently flooded areas; and (e) geologically hazardous areas."*

The provisions of WAC 365-190-080, to the extent standards for certain types of critical areas are not provided by this section and subsection (3) of this section flood hazard reduction, and to the extent consistent with these guidelines are also applicable to and provide further definition of critical area categories and management policies.

As provided in RCW 90.58.030 (2)(f)(ii) and 36.70A.480, as amended by chapter 321, Laws of 2003 (ESHB 1933), any city or county may also include in its master program land necessary for buffers for critical areas, as defined in chapter 36.70A RCW, that occur within shorelines of

the state, provided that forest practices regulated under chapter [76.09 RCW](#), except conversions to nonforest land use, on lands subject to the provision of (f)(ii) of this subsection are not subject to additional regulations. If a local government does not include land necessary for buffers for critical areas that occur within shorelines of the state, as authorized above, then the local jurisdiction shall continue to regulate those critical areas and required buffers pursuant to [RCW 36.70A.060\(2\)](#).

(b) **Principles.** Local master programs, when addressing critical areas, shall implement the following principles:

(i) Shoreline master programs shall adhere to the standards established in the following sections, unless it is demonstrated through scientific and technical information as provided in [RCW 90.58.100\(1\)](#) and as described in [WAC 173-26-201 \(2\)\(a\)](#) that an alternative approach provides better resource protection.

(ii) In addressing issues related to critical areas, use scientific and technical information, as described in [WAC 173-26-201 \(2\)\(a\)](#). The role of ecology in reviewing master program provisions for critical areas in shorelines of the state will be based on the Shoreline Management Act and these guidelines and a comparison with requirements in currently adopted critical area ordinances for comparable areas to ensure that the provisions are at least equal to the level of protection provided by the currently adopted critical area ordinance.

(iii) In protecting and restoring critical areas within shoreline jurisdiction, integrate the full spectrum of planning and regulatory measures, including the comprehensive plan, interlocal watershed plans, local development regulations, and state, tribal, and federal programs.

(iv) The planning objectives of shoreline management provisions for critical areas shall be the protection of existing ecological functions and ecosystem-wide processes and restoration of degraded ecological functions and ecosystem-wide processes. The regulatory provisions for critical areas shall protect existing ecological functions and ecosystem-wide processes.

(v) Promote human uses and values that are compatible with the other objectives of this section, such as public access and aesthetic values, provided they do not significantly adversely impact ecological functions.

(c) **Standards.** When preparing master program provisions for critical areas, local governments should implement the following standards and the provisions of [WAC 365-190-080](#) and use scientific and technical information, as provided for in [WAC 173-26-201 \(2\)\(a\)](#).

In reviewing the critical areas segment of a master program, the department of ecology shall first assure consistency with the standards of this section Critical areas ([WAC 173-26-221\(2\)](#)), and with the Flood hazard reduction section ([WAC 173-26-221\(3\)](#)), and shall then assure that the master program also provides protection of comparable critical areas that is at least equal to the protection provided by the local governments adopted and valid critical area regulations in effect at the time of submittal of the SMP.

In conducting the review for equivalency with local regulations, the department shall not further evaluate the adequacy of the local critical area regulations. Incorporation of the adopted and valid critical area regulations in effect at the time of submittal by reference as provided in WAC [173-26-191](#) (2)(b) shall be deemed to meet the requirement for equivalency. However, a finding of equivalency does not constitute a finding of compliance with the requirements of this section and subsection (3) of this section flood hazard reduction, nor with the guidelines overall.

Note that provisions for frequently flooded areas are included in WAC [173-26-221](#)(3).

(i) **Wetlands.**

(A) **Wetland use regulations.** Local governments should consult the department's technical guidance documents on wetlands.

Regulations shall address the following uses to achieve, at a minimum, no net loss of wetland area and functions, including lost time when the wetland does not perform the function:

- The removal, excavation, grading, or dredging of soil, sand, gravel, minerals, organic matter, or material of any kind;
- The dumping, discharging, or filling with any material, including discharges of storm water and domestic, commercial, or industrial wastewater;
- The draining, flooding, or disturbing of the water level, duration of inundation, or water table;
- The driving of pilings;
- The placing of obstructions;
- The construction, reconstruction, demolition, or expansion of any structure;
- Significant vegetation removal, provided that these activities are not part of a forest practice governed under chapter [76.09](#) RCW and its rules;
- Other uses or development that results in a significant ecological impact to the physical, chemical, or biological characteristics of wetlands; or
- Activities reducing the functions of buffers described in (c)(i)(D) of this subsection.

(B) **Wetland rating or categorization.** Wetlands shall be categorized based on the rarity, irreplaceability, or sensitivity to disturbance of a wetland and the functions the wetland provides. Local governments should either use the Washington state wetland rating system, Eastern or Western Washington version as appropriate, or they should develop their own, regionally

specific, scientifically based method for categorizing wetlands. Wetlands should be categorized to reflect differences in wetland quality and function in order to tailor protection standards appropriately. A wetland categorization method is not a substitute for a function assessment method, where detailed information on wetland functions is needed.

(C) **Alterations to wetlands.** Master program provisions addressing alterations to wetlands shall be consistent with the policy of no net loss of wetland area and functions, wetland rating, scientific and technical information, and the mitigation priority sequence defined in WAC [173-26-201](#) (2)(e).

(D) **Buffers.** Master programs shall contain requirements for buffer zones around wetlands. Buffer requirements shall be adequate to ensure that wetland functions are protected and maintained in the long term. Requirements for buffer zone widths and management shall take into account the ecological functions of the wetland, the characteristics and setting of the buffer, the potential impacts associated with the adjacent land use, and other relevant factors.

(E) **Mitigation.** Master programs shall contain wetland mitigation requirements that are consistent with WAC [173-26-201](#) (2)(e) and which are based on the wetland rating.

(F) **Compensatory mitigation.** Compensatory mitigation shall be allowed only after mitigation sequencing is applied and higher priority means of mitigation are determined to be infeasible.

Requirements for compensatory mitigation must include provisions for:

(I) Mitigation replacement ratios or a similar method of addressing the following:

- The risk of failure of the compensatory mitigation action;
- The length of time it will take the compensatory mitigation action to adequately replace the impacted wetland functions and values;
- The gain or loss of the type, quality, and quantity of the ecological functions of the compensation wetland as compared with the impacted wetland.

(II) Establishment of performance standards for evaluating the success of compensatory mitigation actions;

(III) Establishment of long-term monitoring and reporting procedures to determine if performance standards are met; and

(IV) Establishment of long-term protection and management of compensatory mitigation sites.

Credits from a certified mitigation bank may be used to compensate for unavoidable impacts.

(ii) **Geologically hazardous areas.** Development in designated geologically hazardous areas shall be regulated in accordance with the following:

(A) Consult minimum guidelines for geologically hazardous areas, WAC [365-190-080\(4\)](#).

(B) Do not allow new development or the creation of new lots that would cause foreseeable risk from geological conditions to people or improvements during the life of the development.

(C) Do not allow new development that would require structural shoreline stabilization over 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 no net loss of ecological functions will result. The stabilization measures shall conform to WAC [173-26-231](#).

(D) Where no alternatives, including relocation or reconstruction of existing structures, are found to be feasible, and less expensive than the proposed stabilization measure, stabilization structures or measures to protect existing primary residential structures may be allowed in strict conformance with WAC [173-26-231](#) requirements and then only if no net loss of ecological functions will result.

(iii) **Critical saltwater habitats.**

(A) **Applicability.** Critical saltwater habitats include all kelp beds, eelgrass beds, spawning and holding areas for forage fish, such as herring, smelt and sandlance; subsistence, commercial and recreational shellfish beds; mudflats, intertidal habitats with vascular plants, and areas with which priority species have a primary association. Critical saltwater habitats require a higher level of protection due to the important ecological functions they provide. Ecological functions of marine shorelands can affect the viability of critical saltwater habitats. Therefore, effective protection and restoration of critical saltwater habitats should integrate management of shorelands as well as submerged areas.

(B) **Principles.** Master programs shall include policies and regulations to protect critical saltwater habitats and should implement planning policies and programs to restore such habitats. Planning for critical saltwater habitats shall incorporate the participation of state resource agencies to assure consistency with other legislatively created programs in addition to local and regional government entities with an interest such as port districts. Affected Indian tribes shall also be consulted. Local governments should review relevant comprehensive management plan policies and development regulations for shorelands and adjacent lands to achieve consistency as directed in RCW [90.58.340](#). Local governments should base management planning on information provided by state resource agencies and affected Indian tribes unless they demonstrate that they possess more accurate and reliable information.

The management planning should include an evaluation of current data and trends regarding the following:

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- Available inventory and collection of necessary data regarding physical characteristics of the habitat, including upland conditions, and any information on species population trends;
- Terrestrial and aquatic vegetation;
- The level of human activity in such areas, including the presence of roads and level of recreational types (passive or active recreation may be appropriate for certain areas and habitats);
- Restoration potential;
- Tributaries and small streams flowing into marine waters;
- Dock and bulkhead construction, including an inventory of bulkheads serving no protective purpose;
- Conditions and ecological functions in the near-shore area;
- Uses surrounding the critical saltwater habitat areas that may negatively impact those areas, including permanent or occasional upland, beach, or over-water uses; and
- An analysis of what data gaps exist and a strategy for gaining this information.

The management planning should address the following, where applicable:

- Protecting a system of fish and wildlife habitats with connections between larger habitat blocks and open spaces and restoring such habitats and connections where they are degraded;
- Protecting existing and restoring degraded riparian and estuarine ecosystems, especially salt marsh habitats;
- Establishing adequate buffer zones around these areas to separate incompatible uses from the habitat areas;
- Protecting existing and restoring degraded near-shore habitat;
- Protecting existing and restoring degraded or lost salmonid habitat;
- Protecting existing and restoring degraded upland ecological functions important to critical saltwater habitats, including riparian vegetation;
- Improving water quality;
- Protecting existing and restoring degraded sediment inflow and transport regimens; and

- Correcting activities that cause excessive sediment input where human activity has led to mass wasting.

Local governments, in conjunction with state resource agencies and affected Indian tribes, should classify critical saltwater habitats and protect and restore seasonal ranges and habitat elements with which federal-listed and state-listed endangered, threatened, and priority species have a primary association and which, if altered, may reduce the likelihood that a species will maintain its population and reproduce over the long term.

Local governments, in conjunction with state resource agencies and affected Indian tribes, should determine which habitats and species are of local importance.

All public and private tidelands or bedlands suitable for shellfish harvest shall be classified as critical areas. Local governments should consider both commercial and recreational shellfish areas. Local governments should review the Washington department of health classification of commercial and recreational shellfish growing areas to determine the existing condition of these areas. Further consideration should be given to the vulnerability of these areas to contamination or potential for recovery. Shellfish protection districts established pursuant to chapter [90.72](#) RCW shall be included in the classification of critical shellfish areas. Local governments shall classify kelp and eelgrass beds identified by the department of natural resources' aquatic resources division, the department, and affected Indian tribes as critical saltwater habitats.

Comprehensive saltwater habitat management planning should identify methods for monitoring conditions and adapting management practices to new information.

(C) **Standards.** Docks, bulkheads, bridges, fill, floats, jetties, utility crossings, and other human-made structures shall not intrude into or over critical saltwater habitats except when all of the conditions below are met:

- The public's need for such an action or structure is clearly demonstrated and the proposal is consistent with protection of the public trust, as embodied in RCW [90.58.020](#);
- Avoidance of impacts to critical saltwater habitats by an alternative alignment or location is not feasible or would result in unreasonable and disproportionate cost to accomplish the same general purpose;
- The project including any required mitigation, will result in no net loss of ecological functions associated with critical saltwater habitat.
- The project is consistent with the state's interest in resource protection and species recovery.

Private, noncommercial docks for individual residential or community use may be authorized provided that:

- Avoidance of impacts to critical saltwater habitats by an alternative alignment or location is

not feasible;

- The project including any required mitigation, will result in no net loss of ecological functions associated with critical saltwater habitat.

Until an inventory of critical saltwater habitat has been done, shoreline master programs shall condition all over-water and near-shore developments in marine and estuarine waters with the requirement for an inventory of the site and adjacent beach sections to assess the presence of critical saltwater habitats and functions. The methods and extent of the inventory shall be consistent with accepted research methodology. At a minimum, local governments should consult with department technical assistance materials for guidance.

(iv) **Critical freshwater habitats.**

(A) **Applicability.** The following applies to master program provisions affecting critical freshwater habitats, including those portions of streams, rivers, wetlands, and lakes, their associated channel migration zones, and flood plains designated as such.

(B) **Principles.** Many ecological functions of river and stream corridors depend both on continuity and connectivity along the length of the shoreline and on the conditions of the surrounding lands on either side of the river channel. Environmental degradation caused by development such as improper storm water sewer or industrial outfalls, unmanaged clearing and grading, or runoff from buildings and parking lots within the watershed, can degrade ecological functions downstream. Likewise, gradual destruction or loss of the vegetation, alteration of runoff quality and quantity along the corridor resulting from incremental flood plain development can raise water temperatures and alter hydrographic conditions and degrade other ecological functions, thereby making the corridor inhospitable for priority species and susceptible to catastrophic flooding, droughts, landslides and channel changes. These conditions also threaten human health, safety, and property. Long stretches of river and stream shorelines have been significantly altered or degraded in this manner. Therefore, effective management of river and stream corridors depends on:

(I) Planning for protection, and restoration where appropriate, along the entire length of the corridor from river headwaters to the mouth; and

(II) Regulating uses and development within the stream channel, associated channel migration zone, wetlands, and the flood plain, to the extent such areas are in the shoreline jurisdictional area, as necessary to assure no net loss of ecological functions associated with the river or stream corridors, including the associated hyporheic zone, results from new development.

As part of a comprehensive approach to management of critical freshwater habitat and other river and stream values, local governments should integrate master program provisions, including those for shoreline stabilization, fill, vegetation conservation, water quality, flood hazard reduction, and specific uses, to protect human health and safety and to protect and restore the corridor's ecological functions and ecosystem-wide processes.

Applicable master programs shall contain provisions to protect hydrologic connections between water bodies, water courses, and associated wetlands. Restoration planning should include incentives and other means to restore water connections that have been impeded by previous development.

Master program provisions for river and stream corridors should, where appropriate, be based on the information from comprehensive watershed management planning where available.

(C) **Standards.** Master programs shall implement the following standards within shoreline jurisdiction:

(I) Provide for the protection of ecological functions associated with critical freshwater habitat as necessary to assure no net loss.

(II) Where appropriate, integrate protection of critical freshwater habitat, protection with flood hazard reduction and other river and stream management provisions.

(III) Include provisions that facilitate authorization of appropriate restoration projects.

(IV) Provide for the implementation of the principles identified in (c)(iv)(B) of this subsection.

(3) ***Flood hazard reduction.***

(a) **Applicability.** The following provisions apply to actions taken to reduce flood damage or hazard and 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, dike removal, use relocation, biotechnical measures, and storm water management programs, and of structural measures, such as dikes, levees, revetments, floodwalls, channel realignment, and elevation of structures consistent with the National Flood Insurance Program. Additional relevant critical area provisions are in WAC [173-26-221\(2\)](#).

(b) **Principles.** Flooding of rivers, streams, and other shorelines is a natural process that is affected by factors and land uses occurring throughout the watershed. Past land use practices have disrupted hydrological processes and increased the rate and volume of runoff, thereby exacerbating flood hazards and reducing ecological functions. Flood hazard reduction measures are most effective when integrated into comprehensive strategies that recognize the natural hydrogeological and biological processes of water bodies. Over the long term, the most effective means of flood hazard reduction is to prevent or remove development in flood-prone areas, to manage storm water within the flood plain, and to maintain or restore river and stream system's natural hydrological and geomorphological processes.

Structural flood hazard reduction measures, such as diking, even if effective in reducing inundation in a portion of the watershed, can intensify flooding elsewhere. Moreover, structural

flood hazard reduction measures can damage ecological functions crucial to fish and wildlife species, bank stability, and water quality. Therefore, structural flood hazard reduction measures shall be avoided whenever possible. When necessary, they shall be accomplished in a manner that assures no net loss of ecological functions and ecosystem-wide processes.

The dynamic physical processes of rivers, including the movement of water, sediment and wood, cause the river channel in some areas to move laterally, or "migrate," over time. This is a natural process in response to gravity and topography and allows the river to release energy and distribute its sediment load. The area within which a river channel is likely to move over a period of time is referred to as the channel migration zone (CMZ) or the meander belt. Scientific examination as well as experience has demonstrated that interference with this natural process often has unintended consequences for human users of the river and its valley such as increased or changed flood, sedimentation and erosion patterns. It also has adverse effects on fish and wildlife through loss of critical habitat for river and riparian dependent species. Failing to recognize the process often leads to damage to, or loss of, structures and threats to life safety.

Applicable shoreline master programs should include provisions to limit development and shoreline modifications that would result in interference with the process of channel migration that may cause significant adverse impacts to property or public improvements and/or result in a net loss of ecological functions associated with the rivers and streams. (See also (c) of this subsection.)

The channel migration zone should be established to identify those areas with a high probability of being subject to channel movement based on the historic record, geologic character and evidence of past migration. It should also be recognized that past action is not a perfect predictor of the future and that human and natural changes may alter migration patterns. Consideration should be given to such changes that may have occurred and their effect on future migration patterns.

For management purposes, the extent of likely migration along a stream reach can be identified using evidence of active stream channel movement over the past one hundred years. Evidence of active movement can be provided from historic and current aerial photos and maps and may require field analysis of specific channel and valley bottom characteristics in some cases. A time frame of one hundred years was chosen because aerial photos, maps and field evidence can be used to evaluate movement in this time frame.

In some cases, river channels are prevented from normal or historic migration by human-made structures or other shoreline modifications. The definition of channel migration zone indicates that in defining the extent of a CMZ, local governments should take into account the river's characteristics and its surroundings. Unless otherwise demonstrated through scientific and technical information, the following characteristics should be considered when establishing the extent of the CMZ for management purposes:

- Within incorporated municipalities and urban growth areas, areas separated from the active river channel by legally existing artificial channel constraints that limit channel movement

should not be considered within the channel migration zone.

- All areas separated from the active channel by a legally existing artificial structure(s) that is likely to restrain channel migration, including transportation facilities, built above or constructed to remain intact through the one hundred-year flood, should not be considered to be in the channel migration zone.

- In areas outside incorporated municipalities and urban growth areas, channel constraints and flood control structures built below the one hundred-year flood elevation do not necessarily restrict channel migration and should not be considered to limit the channel migration zone unless demonstrated otherwise using scientific and technical information.

Master programs shall implement the following principles:

(i) Where feasible, give preference to nonstructural flood hazard reduction measures over structural measures.

(ii) Base shoreline master program flood hazard reduction provisions on applicable watershed management plans, comprehensive flood hazard management plans, and other comprehensive planning efforts, provided those measures are consistent with the Shoreline Management Act and this chapter.

(iii) Consider integrating master program flood hazard reduction provisions with other regulations and programs, including (if applicable):

- Storm water management plans;
- Flood plain regulations, as provided for in chapter [86.16 RCW](#);
- Critical area ordinances and comprehensive plans, as provided in chapter [36.70A RCW](#); and
- The National Flood Insurance Program.

(iv) Assure that flood hazard protection measures do not result in a net loss of ecological functions associated with the rivers and streams.

(v) Plan for and facilitate returning river and stream corridors to more natural hydrological conditions. Recognize that seasonal flooding is an essential natural process.

(vi) When evaluating alternate flood control measures, consider the removal or relocation of structures in flood-prone areas.

(vii) Local governments are encouraged to plan for and facilitate removal of artificial restrictions to natural channel migration, restoration of off channel hydrological connections and return river processes to a more natural state where feasible and appropriate.

(c) **Standards.** Master programs shall implement the following standards within shoreline jurisdiction:

(i) Development in flood plains should not significantly or cumulatively increase flood hazard or be inconsistent with a comprehensive flood hazard management plan adopted pursuant to chapter [86.12](#) RCW, provided the plan has been adopted after 1994 and approved by the department. New development or new uses in shoreline jurisdiction, including the subdivision of land, should not be established when it would be reasonably foreseeable that the development or use would require structural flood hazard reduction measures within the channel migration zone or floodway. The following uses and activities may be appropriate and/or necessary within the channel migration zone or floodway:

- Actions that protect or restore the ecosystem-wide processes or ecological functions.
- Forest practices in compliance with the Washington State Forest Practices Act and its implementing rules.
- Existing and ongoing agricultural practices, provided that no new restrictions to channel movement occur.
- Mining when conducted in a manner consistent with the environment designation and with the provisions of WAC [173-26-241](#) (3)(h).
- Bridges, utility lines, and other public utility and transportation structures where no other feasible alternative exists or the alternative would result in unreasonable and disproportionate cost. Where such structures are allowed, mitigation shall address impacted functions and processes in the affected section of watershed or drift cell.
- Repair and maintenance of an existing legal use, provided that such actions do not cause significant ecological impacts or increase flood hazards to other uses.
- Development with a primary purpose of protecting or restoring ecological functions and ecosystem-wide processes.
- Modifications or additions to an existing nonagricultural legal use, provided that channel migration is not further limited and that the new development includes appropriate protection of ecological functions.
- Development in incorporated municipalities and designated urban growth areas, as defined in chapter [36.70A](#) RCW, where existing structures prevent active channel movement and flooding.
- Measures to reduce shoreline erosion, provided that it is demonstrated that the erosion rate exceeds that which would normally occur in a natural condition, that the measure does not

interfere with fluvial hydrological and geomorphological processes normally acting in natural conditions, and that the measure includes appropriate mitigation of impacts to ecological functions associated with the river or stream.

(ii) Allow new structural flood hazard reduction measures in shoreline jurisdiction only when it can be demonstrated by a scientific and engineering analysis that they are necessary to protect existing development, that nonstructural measures are not feasible, that impacts on 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 WAC [173-26-221\(5\)](#).

Structural flood hazard reduction measures shall be consistent with an adopted comprehensive flood hazard management plan approved by the department that evaluates cumulative impacts to the watershed system.

(iii) Place new structural flood hazard reduction measures landward of the associated wetlands, and designated vegetation conservation areas, except for actions that increase ecological functions, such as wetland restoration, or as noted below. Provided that such flood hazard reduction projects be authorized if it is determined that no other alternative to reduce flood hazard to existing development is feasible. The need for, and analysis of feasible alternatives to, structural improvements shall be documented through a geotechnical analysis.

(iv) Require that new structural public flood hazard reduction measures, such as dikes and levees, dedicate and improve public access pathways unless public access improvements would cause unavoidable health or safety hazards to the public, inherent and unavoidable security problems, unacceptable and unmitigable significant ecological impacts, unavoidable conflict with the proposed use, or a cost that is disproportionate and unreasonable to the total long-term cost of the development.

(v) Require that the removal of gravel for flood management purposes be consistent with an adopted flood hazard reduction plan and with this chapter and allowed only after a biological and geomorphological study shows that extraction has a long-term benefit to flood hazard reduction, does not result in a net loss of ecological functions, and is part of a comprehensive flood management solution.

**City of Bellevue Shoreline Master Program Update**  
**Draft Marina and Non-Residential Boating Facility Standards**

**September 22, 2010**

**I. Marina Objectives**

To establish requirements for the operation, repair, siting, and design of new and existing marinas to serve the needs of the Bellevue boating community while properly managing state shoreline resources, protecting public health, and maintaining appropriate transitions and separations between uses of varying intensity.

**II. New, Replacement, or Expanded Marina Facilities - Definitions**

New Marina Facility: Siting and development of a new marina.

Marina Facility Replacement: Redevelopment or reconfiguration of an existing marina.

Marina Facility Expansion: Expansion of an existing marina to increase the size or capacity.

Minor Marina Facility Expansion: Expansion of less than 10% of marina capacity and 10% of overall overwater coverage.

**A. Marina Replacement**

Proposals to replace existing marina facilities where no expansion in capacity or development footprint is proposed shall be allowed when consistent with the prescribed marina design criteria included below.

**B. New or Expanded Marina**

Proposals to develop a new or expanded marina use shall be justified through a demand study, located based on prescribed siting criteria, and shall be consistent with the prescribed marina design criteria included below.

**C. Demand Study**

Development proposals for new or expanded marinas or associated facilities shall demonstrate demand for new or expanded facilities through preparation and submittal of an assessment identifying anticipated need for the proposed moorage capacity and the ability of the site to accommodate the proposal when considering such factors as environmental conditions, shoreline configuration, access, and neighboring uses.

Proposals where the scope of work is limited to the replacement of an existing marina facility and where no expansion of capacity or development footprint is proposed are not required to submit a need study.

**D. New or Expanded Marina Siting Criteria**

- i. Shall be located only on sites where appropriate separation from adjacent residential uses can be achieved and maintained.
- ii. Marina moorage shall not be located near beaches commonly used for swimming unless no alternative location exists, and mitigation is provided to minimize impacts to such areas and protect the public health, safety, and welfare.
- iii. Marinas and accessory uses shall be located only where adequate utility services are available, or where they can be provided concurrent with the development.
- iv. Marinas, launch ramps, and accessory uses shall be designed so that lawfully existing or planned public shoreline access is not unnecessarily blocked, obstructed, nor made dangerous.
- v. Shall be allowed only when accompanied by detailed analysis of affect on ecological conditions that demonstrates ecological impacts can be avoided or mitigated and the objective of no net loss of ecological functions, specifically natural geomorphic processes and fish habitat, can be achieved.
- vi. The City will determine the maximum allowable number of slips based on submittal of the following factors:
  - a) The suitability of the environmental conditions, such as, but not limited to: the presence of submerged aquatic vegetation, proximity to shoreline associated wetlands, critical nesting and spawning areas, water depth, water circulation, sediment inputs and accumulation, and wave action.
  - b) The ability of the land upland of the OHWM to accommodate the necessary support facilities.
  - c) The demand analysis submitted by the applicant to demonstrate anticipated need for the requested number of moorages.
  - d) Use drystack facilities to expand marina storage capacity before expanding capacity of wet moorage.
- vii. Marinas shall not be approved in cases where it is reasonably foreseeable that the development or use would require maintenance dredging and/or installation of a breakwater during the life of the development or use.
- viii. Shall be located in areas where deep water access can be obtained without excavation, filling, and dredging.

- ix. Shall be located only at sites with sufficient water depth, adequate navigational and vehicular access, and not adjacent to an outlet of a stream.
- x. Shall not interfere with the public use and enjoyment of the water or create a hazard to navigation.
- xi. Shall be located to maximize flushing freely flowing water so as to prevent the possible water quality degradation that would negatively affect the surrounding areas.
- xii. Ability of the proposed marina location to capture and treat stormwater from upland facilities without direct conveyance to the primary waterbody.
- xiii. Marinas, launch ramps, and accessory uses shall be designed so that lawfully existing or planned public shoreline access is not unnecessarily blocked, obstructed, nor made dangerous.

#### **E. New, Replacement, or Expanded Marina Design Criteria**

- i. When impacts to shoreline resources are identified, a compensatory mitigation plan is included.
- ii. Marina developments shall provide appropriate screening and separation from adjacent uses and property.
- iii. Comply with dimensional standards applicable to marina districts to address the scale and intensity when considering the size, location, and physical characteristics of the site.
- iv. Covered moorage, including boatlift canopies, is not permitted.
- v. Upland support services(except fuel services, pump out services, recreation services, and chandlery services) are located outside of the required shoreline setback or when setbacks are reduced the proposal provides appropriate compensatory mitigation.
- vi. In order to protect shoreline ecological functions, efficiently use shoreline space, and minimize consumption of public water surface areas; incorporation of upland boat storage to the maximum extent possible is required for new or expanded permanent moorage proposals unless:
  - a) No suitable upland locations exist for such facilities; or
  - b) It is demonstrated that wet moorage would result in fewer impacts to ecological functions; or
  - c) It is demonstrated that wet moorage would enhance public use of the shoreline.

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- d) The proposal is part of a marina development in the Marina Civic shoreline environment where the objective is enhanced public access and the location of an upland stacked storage facility would be in conflict with the objective of public use of the shoreline.
- vii. New or expanded marina facilities should be designed to preclude moorage in locations that would have insufficient water depth to avoid boats resting at any time of year to on the substrate of the lake.
- viii. The moorage structure is designed to promote maximum efficiency and minimize over water coverage and the facility is not larger than necessary to moor the approved number of boats when considering the beam and draft of the type of boat moored. Preference is given to designs that provide two berths per finger pier and allow for a diversity of vessel types to be moored. The width and length of all structures shall be limited to what is reasonable for the intended use. To the extent feasible, heights and widths should be chosen to minimize overwater coverage and shading of vegetation.
- ix. Access must be designed to access the moorage portion of the pier from the upland through the minimum possible number of ramps or gangways with the first set of finger piers located at a depth of 9 feet or greater or a distance of at least 30 feet from shore. For sites with depth constraints, an alternative moorage plan may be approved to accommodate the type of vessel to be moored while ensuring no vessel grounding and without dredging. Facilities for human powered vessel launching and moorage may be located in depths of less than 9 feet or closer than 30 feet from shore.
- x. The marina moorage facility does not extend waterward beyond the point necessary to provide reasonable draft for the boats to be moored. Dredging to provide such depths closer to shore is prohibited. Limitations on maximum vessel drafts may be necessary due to depth restrictions. Minimum navigable depths shall be based on the kind of vessels expected to use the marina, but shall not exceed the depths of the receiving water body.
- xi. Designed with an open perimeter with piers and other structures placed to enhance, rather than to obstruct, water circulation. Marina basins shall be designed so that they do not include square corners or stagnant water areas that tend to collect debris or flushing problems.
- xii. Use environmentally neutral materials not materials treated with known toxic preservatives.
- xiii. Be designed and located to minimize adverse affects on existing public and private use of waters of the state.
- xiv. With the exception of dock connections, use integrated or soft alternatives for shoreline stabilization and if hard stabilization required demonstrate that no

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- practicable and appropriate alternatives to hard stabilization exist to accomplish the primary purpose of the project.
- xv. Vessel maintenance areas shall be sited as far from the water as is practicable, and shall be designed so that all maintenance activities that are potential sources of water or air pollution can be accomplished over dry land, under roof, and in a contained operation. All drains from maintenance areas must lead to a sump, holding tank, or pump out facility from which the wastes can later be extracted for treatment and/or disposal by approved methods. Drainage of maintenance areas directly into surface or groundwater shall not be allowed.
  - xvi. Barrier-free access for the handicapped shall be provided for all marina structures in accordance with federal, state, or local statutes, regulations, or ordinances.
  - xvii. Discharge of solid waste, including but not limited to, garbage, maintenance waste, plastics, refuse, and rubbish shall be managed so as to prevent their entrance into any surface or ground waters of the State.
  - xviii. Adequate restroom facilities for the use of marina patrons shall be provided to discourage any overboard discharge of untreated or inadequately treated sewage from vessels, and to protect water quality. Toilet facilities shall be constructed in a location that would facilitate their use by the users of the marina. The number of toilets required for any given marina shall be determined by the nature (recreational, public, or commercial) and size of the marina and by its specific configuration. There shall be adequate restroom facilities to serve patrons such that use of land based facilities is encouraged.
  - xix. Parking spaces should be provided at a minimum rate of 0.50 spaces/slip, plus additional space required for related activities as identified by LUC 20.20.590. The applicant may submit information in support of an alternative parking space rate in accordance with the criteria established in LUC 20.20.590. The director will review such information to determine if the proposed standard is appropriate for use.
  - xx. Aside from parking dedicated for loading and unloading, facility parking shall be located as far from the waters edge as possible.
  - xxi. Fuel storage tank installations shall be located as far from the waters edge as possible while providing for appropriate separation from adjacent properties and uses and shall comply with all State and/or local storage tank and fuel system delivery regulations.
  - xxii. No fuel storage facility or sanitary pump-out station holding tank shall be located over water.
  - xxiii. Design and locate a designated vessel fueling stations to minimize queuing, reduce frequency of spills, and facilitate spill containment.
  - xxiv. Adequate spill containment areas shall be provided on the property.

- xxv. For marina facilities located adjacent to a residential environment, no fueling or commercial launching facilities shall be located within 20 feet of a residential property line.
- xxvi. At least one (1) pump-out facility for use by the general public shall be provided. This facility must be easily accessible to the general public and clearly marked for public use.
- xxvii. Moorage facilities shall be marked with reflectors, or otherwise identified to prevent unnecessarily hazardous conditions for water surface users during the day or night. Lighting shall be minimized to that necessary for safety.
- xxviii. For proposals in the Marina Civic environment, provide public access for as many water-dependent and water-related recreational uses as possible, commensurate with the scale of the proposal. Features for such access could include, but are not limited to: docks and piers, pedestrian bridges to offshore structures, or fishing platforms.
- xxix. Aircraft moorage is not permitted, except as associated with an approved float plane landing and mooring facility incorporated into the overall marina design.
- xxx. Moorage structures must display the street address of the subject property. The address must be oriented to the lake and be sufficiently visible to be read by passing boaters.
- xxxi. A limited number of liveaboards may be allowed as part of an approved residence plan distributed through the facility. Areas proposed for occupation by liveaboards should include properly planned and designed utility connection and storage facilities for each liveboard slip.
- xxxii. Locate boating related marina support uses in a functional and convenient location for marina users and in areas with the least impact to adjacent residential uses.
- xxxiii. Maintain a minimum moorage space within the marina for transient moorage.
- xxxiv. Public access is required to limited parts of the marina facility. This public access area should also provide opportunities for hand launching of canoes and kayaks.
- xxxv. Marina security gates and ramps should be located and designed so that emergency access to the water is maximized and view blockage from the shore is minimized. Ramp locations should be in close proximity to marina loading and short term parking areas.
- xxxvi. Safety flotation devices shall be provided in public access areas.
- xxxvii. Must be designed to meet Washington State Puget Soundkeeper Alliance Green Marina standards or equivalent.

## **F. Minor Marina Facility Expansion**

- i. Requires compliance with applicable design and siting criteria.
- ii. Design and siting criteria only applicable to expanded area.

- iii. Does not require development of an operations plan (below).

## **G. New, Replacement, or Expanded Marina Facility Operations Criteria**

New expanded or replacement marinas must develop a maintenance, repair, and operations plan including the following elements:

- i. Maintenance and repair of shoreline protection structures.
- ii. Maintenance of navigation and access channels.
- iii. Management of vessel traffic and navigation.
- iv. Management of wastewater facilities.
- v. Maintenance of fire suppression and life safety facilities.
- vi. Maintenance of storm water quality facilities.
- vii. Maintenance of fuel delivery and storage facilities.
- viii. Maintenance of landscaped, vegetated, and natural areas.
- ix. Maintenance and repair of overwater structures and moorage facilities.
- x. Maintenance and repair of land based structures and facilities.
- xi. Management of land based vessel maintenance areas and facilities.

Marinas shall be inspected for compliance with the maintenance and operations plan and for compliance with the minimum standards of this shoreline master program. Inspections should be conducted by a qualified professional trained in operation of marina facilities and inspection reports summarizing the inspection findings submitted directly to the City.

## **III. Existing Marina Facility Maintenance and Repair Standards**

### **A. Maintenance and repair of docks, piers, and moorage**

- i. Maintenance and repair as used in this part includes actions taken to repair a failed or degraded component of a moorage facility with the intention of restoring the facility to its original design condition and capacity. Expansion or reconfiguration of facility components is not allowed under repair.
- ii. Light penetrable materials as used in this part shall mean a grated dock surface designed to allow the transmission of light or moorage cover light transmitting design features (such as translucent roof panels or skylights).
- iii. Dock segment as used in this part refers to a section or portion of a dock that may be delineated as an independent component. Examples include finger piers, boat covers, or canopies.
- iv. Maintenance and repair shall be the minimum necessary to restore the facility to its original design condition and capacity.

- v. Repairs require use of environmentally neutral materials and shall not cause environmental impact or degradation.
- vi. Minor repairs may be completed with materials similar to those used for original construction unless in conflict with other requirements of this section.
- vii. Modifications to capacity or configuration that reduce environmental impacts are allowed as repair when consistent with the requirements of this section.
- viii. Replacement of more than 50% of the surface of any overwater segment of a marina facility within a 5 year period requires replacement with light penetrable materials (grating or translucent surface). For floating docks light penetrable materials must be used the extent the modification provides light transmission.
- ix. Repair (capping, collaring, sleeving) of more than 50% of the piling of any overwater segment of a marina facility within a 5 year period requires replacement with light penetrable materials (grating or translucent surface). For floating docks light penetrable materials must be used the extent the modification provides light transmission.
- x. Repair or replacement of more than 50% of the deck substructure (stringers, joists, beams) of any overwater segment of a marina facility within a 5 year period requires replacement with light penetrable materials (grating or translucent surface). For floating docks light penetrable materials must be used the extent the modification provides light transmission.
- xi. Replacement of more than 50% of the structural support piling of any overwater segment of a marina facility within a 5 year period requires compliance with new marina facility standards.
- xii. Alternative mitigation may be allowed in-lieu of use of light penetrable materials or compliance with new marina standards, as approved by a five year repair and maintenance plan.
- xiii. Moorage piling may be replaced and repaired in the original design configuration. A limited number of mooring piles may be added as repair to address a change in vessel type.

## **B. Maintenance and Repair of Upland Support Facilities**

May be maintained in accordance with general standards applicable to new marinas and in accordance with the rules governing nonconforming sites, structures, and uses.

## **C. Maintenance and Repair Plan**

For the purpose of consolidated environmental review, and to permit alternative mitigation for repair and maintenance activities, existing marina facilities may submit a five year maintenance and repair plan that documents anticipated and budgeted

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maintenance activities intended to replace or repair facility components and document alternative mitigation elements, if proposed.

Maintenance plans proposing alternative mitigation shall include a plan that demonstrates mitigation commensurate to the scope of planned repairs and maintenance and shall include a plan for mitigation implementation that corresponds to the repair schedule. For proposals utilizing alternative mitigation, the City shall review and approve or deny the proposed maintenance plan based on inclusion of appropriate mitigation (follow LUC 20.25H.210).

DRAFT

## City of Bellevue Shoreline Master Program Update

### Critical Areas RCW Citations

September 22, 2010

#### **RCW 36.70A.060 - Natural resource lands and critical areas — Development regulations.**

(1)(a) Except as provided in \*RCW [36.70A.1701](#), each county that is required or chooses to plan under RCW [36.70A.040](#), and each city within such county, shall adopt development regulations on or before September 1, 1991, to assure the conservation of agricultural, forest, and mineral resource lands designated under RCW [36.70A.170](#). Regulations adopted under this subsection may not prohibit uses legally existing on any parcel prior to their adoption and shall remain in effect until the county or city adopts development regulations pursuant to RCW [36.70A.040](#). Such regulations shall assure that the use of lands adjacent to agricultural, forest, or mineral resource lands shall not interfere with the continued use, in the accustomed manner and in accordance with best management practices, of these designated lands for the production of food, agricultural products, or timber, or for the extraction of minerals.

(b) Counties and cities shall require that all plats, short plats, development permits, and building permits issued for development activities on, or within five hundred feet of, lands designated as agricultural lands, forest lands, or mineral resource lands, contain a notice that the subject property is within or near designated agricultural lands, forest lands, or mineral resource lands on which a variety of commercial activities may occur that are not compatible with residential development for certain periods of limited duration. The notice for mineral resource lands shall also inform that an application might be made for mining-related activities, including mining, extraction, washing, crushing, stockpiling, blasting, transporting, and recycling of minerals.

(2) Each county and city shall adopt development regulations that protect critical areas that are required to be designated under RCW [36.70A.170](#). For counties and cities that are required or choose to plan under RCW [36.70A.040](#), such development regulations shall be adopted on or before September 1, 1991. For the remainder of the counties and cities, such development regulations shall be adopted on or before March 1, 1992.

(3) Such counties and cities shall review these designations and development regulations when adopting their comprehensive plans under RCW [36.70A.040](#) and implementing development regulations under RCW [36.70A.120](#) and may alter such designations and development regulations to insure consistency.

(4) Forest land and agricultural land located within urban growth areas shall not be designated by a county or city as forest land or agricultural land of long-term commercial significance under RCW [36.70A.170](#) unless the city or county has enacted a program authorizing transfer or purchase of development rights.

**RCW 36.70A.480 - Shorelines of the state.**

(1) For shorelines of the state, the goals and policies of the shoreline management act as set forth in RCW [90.58.020](#) are added as one of the goals of this chapter as set forth in RCW [36.70A.020](#) without creating an order of priority among the fourteen goals. The goals and policies of a shoreline master program for a county or city approved under chapter [90.58](#) RCW shall be considered an element of the county or city's comprehensive plan. All other portions of the shoreline master program for a county or city adopted under chapter [90.58](#) RCW, including use regulations, shall be considered a part of the county or city's development regulations.

(2) The shoreline master program shall be adopted pursuant to the procedures of chapter [90.58](#) RCW rather than the goals, policies, and procedures set forth in this chapter for the adoption of a comprehensive plan or development regulations.

(3)(a) The policies, goals, and provisions of chapter [90.58](#) RCW and applicable guidelines shall be the sole basis for determining compliance of a shoreline master program with this chapter except as the shoreline master program is required to comply with the internal consistency provisions of RCW [36.70A.070](#), [36.70A.040\(4\)](#), [35.63.125](#), and [35A.63.105](#).

(b) Except as otherwise provided in (c) of this subsection, development regulations adopted under this chapter to protect critical areas within shorelines of the state apply within shorelines of the state until the department of ecology approves one of the following: A comprehensive master program update, as defined in RCW [90.58.030](#); a segment of a master program relating to critical areas, as provided in RCW [90.58.090](#); or a new or amended master program approved by the department of ecology on or after March 1, 2002, as provided in RCW [90.58.080](#). The adoption or update of development regulations to protect critical areas under this chapter prior to department of ecology approval of a master program update as provided in this subsection is not a comprehensive or segment update to the master program.

(c)(i) Until the department of ecology approves a master program or segment of a master program as provided in (b) of this subsection, a use or structure legally located within shorelines of the state that was established or vested on or before the effective date of the local government's development regulations to protect critical areas may continue as a conforming use and may be redeveloped or modified if: (A) The redevelopment or modification is consistent with the local government's master program; and (B) the local government determines that the proposed redevelopment or modification will result in no net loss of shoreline ecological functions. The local government may waive this requirement if the redevelopment or modification is consistent with the master program and the local government's development regulations to protect critical areas.

(ii) For purposes of this subsection (3)(c), an agricultural activity that does not expand the

area being used for the agricultural activity is not a redevelopment or modification. "Agricultural activity," as used in this subsection (3)(c), has the same meaning as defined in RCW [90.58.065](#).

(d) Upon department of ecology approval of a shoreline master program or critical area segment of a shoreline master program, critical areas within shorelines of the state are protected under chapter [90.58](#) RCW and are not subject to the procedural and substantive requirements of this chapter, except as provided in subsection (6) of this section. Nothing in chapter 321, Laws of 2003 or chapter 107, Laws of 2010 is intended to affect whether or to what extent agricultural activities, as defined in RCW [90.58.065](#), are subject to chapter [36.70A](#) RCW.

(e) The provisions of RCW [36.70A.172](#) shall not apply to the adoption or subsequent amendment of a local government's shoreline master program and shall not be used to determine compliance of a local government's shoreline master program with chapter [90.58](#) RCW and applicable guidelines. Nothing in this section, however, is intended to limit or change the quality of information to be applied in protecting critical areas within shorelines of the state, as required by chapter [90.58](#) RCW and applicable guidelines.

(4) Shoreline master programs shall provide a level of protection to critical areas located within shorelines of the state that assures no net loss of shoreline ecological functions necessary to sustain shoreline natural resources as defined by department of ecology guidelines adopted pursuant to RCW [90.58.060](#).

(5) Shorelines of the state shall not be considered critical areas under this chapter except to the extent that specific areas located within shorelines of the state qualify for critical area designation based on the definition of critical areas provided by RCW [36.70A.030\(5\)](#) and have been designated as such by a local government pursuant to RCW [36.70A.060\(2\)](#).

(6) If a local jurisdiction's master program does not include land necessary for buffers for critical areas that occur within shorelines of the state, as authorized by \*RCW [90.58.030\(2\)\(f\)](#), then the local jurisdiction shall continue to regulate those critical areas and their required buffers pursuant to RCW [36.70A.060\(2\)](#).

### **RCW 90.58.020 - Legislative findings — State policy enunciated — Use preference.**

The legislature finds that the shorelines of the state are among the most valuable and fragile of its natural resources and that there is great concern throughout the state relating to their utilization, protection, restoration, and preservation. In addition it finds that ever increasing pressures of additional uses are being placed on the shorelines necessitating increased coordination in the management and development of the shorelines of the state. The legislature further finds that much of the shorelines of the state and the uplands adjacent thereto are in private ownership; that unrestricted construction on the privately owned or publicly owned shorelines of the state is not in the best public interest; and therefore, coordinated planning is necessary in order to protect the public interest associated with the shorelines of the state while, at the same time, recognizing and protecting private property rights consistent with the public interest. There is, therefor, a clear

and urgent demand for a planned, rational, and concerted effort, jointly performed by federal, state, and local governments, to prevent the inherent harm in an uncoordinated and piecemeal development of the state's shorelines.

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

The legislature declares that the interest of all of the people shall be paramount in the management of shorelines of statewide significance. The department, in adopting guidelines for shorelines of statewide significance, and local government, in developing master programs for shorelines of statewide significance, shall give preference to uses in the following order of preference which:

- (1) Recognize and protect the statewide interest over local interest;
- (2) Preserve the natural character of the shoreline;
- (3) Result in long term over short term benefit;
- (4) Protect the resources and ecology of the shoreline;
- (5) Increase public access to publicly owned areas of the shorelines;
- (6) Increase recreational opportunities for the public in the shoreline;
- (7) Provide for any other element as defined in RCW 90.58.100 deemed appropriate or necessary.

In the implementation of this policy the public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the state shall be preserved to the greatest extent feasible consistent with the overall best interest of the state and the people generally. To this end uses shall be preferred which are consistent with control of pollution and prevention of damage to the natural environment, or are unique to or dependent upon use of the state's shoreline. Alterations of the natural condition of the shorelines of the state, in those limited instances when authorized, shall be given priority for single family residences and their appurtenant structures, ports, shoreline recreational uses including but not limited to parks, marinas, piers, and other improvements facilitating public access to shorelines of the state, industrial and commercial developments which are particularly dependent on their location on or use of the shorelines of the state and other development that will provide an opportunity for substantial numbers of the people to enjoy the shorelines of the state. Alterations of the natural condition of the shorelines

and shorelands of the state shall be recognized by the department. Shorelines and shorelands of the state shall be appropriately classified and these classifications shall be revised when circumstances warrant regardless of whether the change in circumstances occurs through man-made causes or natural causes. Any areas resulting from alterations of the natural condition of the shorelines and shorelands of the state no longer meeting the definition of "shorelines of the state" shall not be subject to the provisions of chapter 90.58 RCW.

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

**RCW 90.58.090 - Approval of master program or segments or amendments —  
Procedure — Departmental alternatives when shorelines of statewide significance  
— Later adoption of master program supersedes departmental program.**

(1) A master program, segment of a master program, or an amendment to a master program shall become effective when approved by the department. Within the time period provided in RCW 90.58.080, each local government shall have submitted a master program, either totally or by segments, for all shorelines of the state within its jurisdiction to the department for review and approval.

(2) Upon receipt of a proposed master program or amendment, the department shall:

(a) Provide notice to and opportunity for written comment by all interested parties of record as a part of the local government review process for the proposal and to all persons, groups, and agencies that have requested in writing notice of proposed master programs or amendments generally or for a specific area, subject matter, or issue. The comment period shall be at least thirty days, unless the department determines that the level of complexity or controversy involved supports a shorter period;

(b) In the department's discretion, conduct a public hearing during the thirty-day comment period in the jurisdiction proposing the master program or amendment;

(c) Within fifteen days after the close of public comment, request the local government to review the issues identified by the public, interested parties, groups, and agencies and provide a written response as to how the proposal addresses the identified issues;

(d) Within thirty days after receipt of the local government response pursuant to (c) of this subsection, make written findings and conclusions regarding the consistency of the proposal with the policy of RCW 90.58.020 and the applicable guidelines, provide a response to the issues identified in (c) of this subsection, and either approve the proposal as submitted, recommend specific changes necessary to make the proposal approvable, or deny approval of the proposal in those instances where no alteration of the proposal appears likely to be consistent with the policy of RCW 90.58.020 and the applicable guidelines. The written findings and conclusions shall be

provided to the local government, all interested persons, parties, groups, and agencies of record on the proposal;

(e) If the department recommends changes to the proposed master program or amendment, within thirty days after the department mails the written findings and conclusions to the local government, the local government may:

(i) Agree to the proposed changes. The receipt by the department of the written notice of agreement constitutes final action by the department approving the amendment; or

(ii) Submit an alternative proposal. If, in the opinion of the department, the alternative is consistent with the purpose and intent of the changes originally submitted by the department and with this chapter it shall approve the changes and provide written notice to all recipients of the written findings and conclusions. If the department determines the proposal is not consistent with the purpose and intent of the changes proposed by the department, the department may resubmit the proposal for public and agency review pursuant to this section or reject the proposal.

(3) The department shall approve the segment of a master program relating to shorelines unless it determines that the submitted segments are not consistent with the policy of RCW [90.58.020](#) and the applicable guidelines.

(4) The department shall approve the segment of a master program relating to critical areas as defined by RCW [36.70A.030\(5\)](#) provided the master program segment is consistent with RCW [90.58.020](#) and applicable shoreline guidelines, and if the segment provides a level of protection of critical areas at least equal to that provided by the local government's critical areas ordinances adopted and thereafter amended pursuant to RCW [36.70A.060\(2\)](#).

(5) The department shall approve those segments of the master program relating to shorelines of statewide significance only after determining the program provides the optimum implementation of the policy of this chapter to satisfy the statewide interest. If the department does not approve a segment of a local government master program relating to a shoreline of statewide significance, the department may develop and by rule adopt an alternative to the local government's proposal.

(6) In the event a local government has not complied with the requirements of RCW [90.58.070](#) it may thereafter upon written notice to the department elect to adopt a master program for the shorelines within its jurisdiction, in which event it shall comply with the provisions established by this chapter for the adoption of a master program for such shorelines.

Upon approval of such master program by the department it shall supersede such master program as may have been adopted by the department for such shorelines.

(7) A master program or amendment to a master program takes effect when and in such form as approved or adopted by the department. Shoreline master programs that were adopted by the department prior to July 22, 1995, in accordance with the provisions of this section then in effect,

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shall be deemed approved by the department in accordance with the provisions of this section that became effective on that date. The department shall maintain a record of each master program, the action taken on any proposal for adoption or amendment of the master program, and any appeal of the department's action. The department's approved document of record constitutes the official master program.