

## **20.25E.065 Residential Shoreline Regulations**

### **A. Purpose.**

This section contains development requirements and standards that apply to all development of residential uses within the Shoreline Overlay District. This section is intended to provide a consolidated approach to regulation of shoreline residential development, uses and activities.. This section includes site planning requirements, general residential standards, residential dimensional requirements, vegetation conservation requirements for residential uses, residential moorage requirements, and residential nonconforming provisions.

### **B. General Requirements Applicable to all Residential Development.**

1. **Applicability.** All residential use and development shall comply with the requirements of this section LUC 20.25E.065 and all other applicable provisions of the SMP. All general development requirements and standards governing site development of property city-wide set forth in Chapter 20.20 LUC (General Development Requirements) apply, except to the extent expressly stated in this section and as stated in LUC 20.25E.010.C.1.c. All other applicable City of Bellevue codes, ordinances, and development and engineering standards shall also apply to development and uses in the Shoreline Overlay District. Bellevue City Code provisions of general applicability are not part of the SMP unless specifically adopted by reference.
2. **Site Planning.** New residential development shall comply with the following design criteria and development standards related to site planning within the Shoreline Overlay District:
  - a. **Shoreline Stabilization.** New residential development shall be located and designed to avoid the need for new shoreline stabilization over the life of the development.
  - b. **Site Sensitivity.** Development should be designed in a manner that directs land alteration to the least sensitive portions of the site outside of the shoreline setback. and shall be designed to limit clearing, grading, and alteration of topography and natural features.
  - c. **Context Sensitive Design.** Design shall minimize topographic modification. Structures shall conform to the natural contour of the slope. Foundations shall be tiered to conform to the existing topography and step down the slope with earth retention incorporated into the structure where feasible. Standard prepared building pads, i.e., slab on grade, shall be avoided.
  - d. **Topographic Modification.** Changes in existing grade outside the building footprint shall be minimized. Excavation shall not exceed 10 feet. Fill shall not exceed five feet subject to the following provisions: all fill in excess of four feet shall be engineered; and engineered fill may be approved in exceptional circumstances to exceed five feet to a maximum of eight feet. Exceptional circumstances are: (1) instances where driveway access would exceed 15

- percent slope if additional fill retained by the building foundation is not permitted; or (2) where the five-foot fill maximum generally is observed but limited additional fill is necessary to accommodate localized variations in topography.
- e. Garage and Driveway Orientation. Residential garages and driveways shall comply with the following applicable standards:
- i. Uphill Slopes. Garages on sites sloping uphill from the street should be placed below the main floor elevation where feasible to reduce required grading and to fit structures into existing topography.
  - ii. Downhill Slopes. Garages on sites sloping downhill from the street should be located as close to the right-of-way as feasible and at or near street grade. Intrusion into the front setback, as provided in LUC 20.20.025.B (Garages/Carports on Slopes), may be required.
  - iii. Slopes Exceeding 25 Percent. On slopes exceeding 25 percent, driveways shall be designed to minimize disturbance and should provide the most direct connection between the building and the public or private street.
- f. Parking and Driveways. Driveways and garages associated with residential uses shall comply with the following applicable standards:
- i. Residential parking shall not be permitted overwater or within the shoreline setback.
  - ii. Minimum Necessary. Parking and driveways shall be the minimum size necessary to support the approved residential use or development.
  - iii. Parking surfaces and driveways should be designed to incorporate Natural Drainage Practices and Low Impact Development practices where feasible. (Refer to the City of Bellevue Storm and Surface Water Utility Code, Chapter 24.06 BCC, and the Storm and Surface Water Engineering Standards (2011), now or hereafter amended).
  - iv. Construction, maintenance, and repair of parking surfaces and driveways shall prevent surface water runoff from contaminating water bodies by using best management practices as set forth in the City of Bellevue Storm and Surface Water Utility Code, Chapter 24.06 BCC, and the City's Storm and Surface Water Engineering Design Standards (2011); now or hereafter amended.
- g. Accessory Utilities. To minimize disturbance in the Shoreline Overlay District, and to reduce the impact on shoreline ecological functions, utilities serving residential development shall be co-located within existing or proposed roadway and driveway corridors that provide access to the development, except when the consolidation of the utilities with the roadway and driveway corridor will not realize the intended function of the utility, or the cost of

avoiding disturbance is substantially disproportionate when compared to the environmental impact of proposed disturbance.

- h. Clearing and Grading.
  - i. All clearing, grading, excavating, and filling in the Shoreline Overlay District shall comply with the provisions of this paragraph B.2.h, Chapter 24.06 BCC (Storm and Surface Water Utility Code), Chapter 23.76 BCC (Clearing and Grading Code), and the City's engineering and clearing and grading development standards, now or as amended.
  - ii. Minimum Necessary. Clearing, grading, excavation, and filling is permitted only in association with an approved residential use or development and shall be the minimum necessary to support the approved residential use or development. Filling to create dry land is prohibited.
- i. Critical Areas. Critical areas in the Shoreline Overlay District shall be regulated in accordance with Part 20.25H LUC, Critical Areas Overlay District. In the event of a conflict between Part 20.25H LUC and the SMP, the provision providing the greatest protection to critical areas shall apply, consistent with LUC 20.25E.010.C.1.b.ii unless otherwise described in the applicable provision. If critical areas are located on the site, the requirements for the associated critical area buffer and buffer setback may impose a larger setback requirement than required under this section.
- j. Water Quality, Stormwater, Non-Point Source Pollution.
  - i. Purpose. The responsibility for water quality and control of stormwater and non-point source pollution is a City-wide obligation that is not borne entirely by property owners within land located in the Shoreline Overlay District. The purpose of this section is to prevent impacts to water quality and quantity that would result in a net loss of shoreline ecological functions, or a significant impact to aesthetic qualities or recreational opportunities.
  - ii. Applicability. All shoreline residential development and uses shall comply with applicable provisions of this section, Chapter 24.06 BCC (Storm and Surface Water Utility Code), the City of Bellevue Utilities' Department, Storm and Surface Water Engineering Standards (Jan. 2011 or as hereafter amended), Chapter 23.76 BCC (Clearing and Grading Code), and the Clearing and Grading Development Standards. The Director and the Director of Utilities may condition city approvals and permits to ensure consistency with the provisions of applicable land use, development, and utility codes and standards.
  - iii. To avoid water quality degradation by malfunctioning or failing septic systems located within the Shoreline Overlay District, on-site sewage systems shall be located and designed to meet all applicable water quality, utility, and health standards required by the state and local

public health agencies. Property owners with septic systems must comply with Chapter 24.05.160 WAC – Operation and Maintenance.

- iv. Construction Materials. All structures that may come in contact with water shall be constructed of materials, such as untreated wood, concrete, approved plastic composites or steel, that will not adversely affect water quality, aquatic plants, or animals. Materials used for decking or other structural components shall be approved by the Environmental Protection Agency for contact with water to avoid discharge of pollutants from wave splash, rain, or runoff. Wood treated with creosote, copper chromium arsenic, or pentachlorophenol is prohibited in or above shoreline water bodies. If ammoniacal copper zinc arsenate (ACZA) materials are proposed, the applicant will meet all of the Best Management Practices, including a post-treatment procedure, as outlined in the amended Best Management Practices of the Western Wood Preservers. Preservative and surface treatments are limited to products approved for use in aquatic environments and must be applied according to label directions. Construction hardware that comes into contact with water either directly or through precipitation that causes discharges either directly or indirectly into surface waters shall not be susceptible to dissolution by corrosion. Materials used for construction of moorage facilities shall conform to the provisions of paragraphs LUC 20.25E.065.H.3.a.
- v. The use of cold tar sealants that contain Polycyclic Aromatic Hydrocarbons is prohibited.
- k. Shoreline Residential Subdivision and Short Subdivision Standards. In addition to requirements set forth in Part 20.45 LUC, development of new subdivisions and short subdivisions on land within the Shoreline Overlay District shall ensure no net loss of ecological functions by complying with the following criteria:
  - i. Retain and maintain at least 30 percent of the existing diameter inches of significant trees on the site.
  - ii. Special Requirements for Subdivisions and short subdivisions of four lots or more:
    - a. Shared moorage is required. The final subdivision or short subdivision shall contain a note requiring shared moorage meeting the requirements of 20.25E.065.H.4 and Chart 20.25E.065.H.4.

- b. An area reserved for shared moorage shall be delineated on the face of the final plat.

**C. Dimensional Requirements for Shoreline Residential and Shoreline Residential Canal Environments.**

1. Applicability. This paragraph C applies to all new residential uses and residential uses that are proposed for modification and located in the Shoreline Residential and Shoreline Residential Canal environments. Additionally, the general development requirements and standards governing site development of property city-wide, contained in Chapter 20.20 LUC apply.
2. Shoreline Dimensional Requirements for Residential Uses. Land Use Code Chart 20.25E.065.C sets forth shoreline dimensional requirements for residential uses located in the Shoreline Residential and Shoreline Residential Canal environments. Additional requirements applicable to all residential land use districts are located in the Chart of Dimensional Requirements (LUC Chart 20.20.010). Each residential structure, development, or use in the shoreline shall comply with these requirements, except as otherwise provided in this section. If a number appears in a box, the dimensional requirement is subject to the provision indicated in the corresponding Note. In the event of a conflict between the dimensional requirements of this section and the requirements of LUC Chart 20.20.010 when applied in the Shoreline Overlay District, the provisions of this section shall apply.

**Chart 20.25E.065.C Shoreline Dimensional Requirements for Residential Uses**

<b>Shoreline Dimensional Requirements for Residential Uses</b>				
<b>SHORELINE ENVIRONMENTS</b>	<b>Shoreline Structure Setback</b>	<b>Maximum Lot Coverage by Structures (percent)</b>	<b>Maximum Building Height (1)(4)</b>	<b>Maximum Impervious Surface (percent)</b>
<b>Shoreline Residential Canal (SRC)</b>	25'	(3)	35'	(5,6,7)
<b>Shoreline Residential (SR)</b>	25' (2)	(3)	35'	(5,6,7)

**Notes: Shoreline Dimensional Requirements for Residential Uses**

- (1) Maximum building height may only be modified through the Shoreline Variance process (Refer to LUC 20.25E.190).
- (2) Phantom Lake and Lower Kelsey Creek are also regulated pursuant to the substantive requirement contained in Part 20.25H LUC, Critical Areas Overlay District.

- (3) The allowed maximum lot coverage by structures in the Shoreline Residential and Shoreline Residential Canal environments shall not exceed the maximum lot coverage by structure established for the underlying land use district. (Refer to LUC Chart 20.20.010 Dimensional Requirements, Residential).
- (4) Building height in the Shoreline Overlay District is measured in accordance with the definition of height as defined in LUC 20.25E.280.
- (5) The allowed amount of maximum impervious surface in the Shoreline Residential and Shoreline Residential Canal environments shall not exceed the maximum impervious surface established for the underlying residential land use district (refer to LUC Chart 20.20.010 Dimensional Requirements, Residential).
- (6) The allowed amount of maximum impervious surface within the 25 foot structure setback shall not exceed 10% . In no case may the maximum impervious surface of the entire property exceed that referenced in LUC Chart 20.20.010.
- (7) The allowed amount of maximum impervious surface within the area measured 25 to 50 feet landward of the Ordinary High Water Mark shall not exceed 30%. In no case may the maximum impervious surface of the entire property exceed that referenced in LUC Chart 20.20.010.

#### **D. Residential Impervious Surfaces.**

Impervious surfaces in the Shoreline Overlay District are regulated pursuant to LUC 20.20.460, except that the impervious surface limits contained in LUC Chart 20.25E.065.C may only be modified through the shoreline variance process.

#### **E. Residential Structure Setback.**

1. General Setback Requirements Applicable to all Residential Development.
  - a. The Shoreline Structure Setback shall be 25 feet.
  - b. Measurement of Shoreline Structure Setback. On Lake Sammamish, the shoreline structure setback shall be measured landward from elevation 30.6 NAVD 88 on a horizontal plane and to a point that results in the required dimension, or from that point identified in a site-specific ordinary high water mark determination completed by a qualified professional. On Lake Washington the shoreline structure setback shall be measured landward from elevation 25.10 NAVD 88 on a horizontal plane and to a point that results in the required dimension, or from that point identified in a site-specific OHWM determination completed by a qualified professional. On Phantom Lake, the shoreline structure setback shall be measured landward from elevation 260.7 NAVD 88 on a horizontal plane and to a point that results in the required dimension, or from that point identified in a site-specific OHWM determination completed by a qualified professional. If critical areas are located on the site, the requirements for the associated critical area buffer and buffer setback may impose a larger setback than required under this section.
  - c. Footprint Exception - Existing Structures. When a legally established structure existing on or before [insert date of ordinance adoption]

encroaches into the structure setback established in LUC Chart 20.25E.065.C, the structure setback shall be modified to exclude the footprint of that portion of the structure located within the setback.

2. Residential Structure Setback Allowances.

- a. Expansion of the exterior footprint of an existing legally established structure within the 25 foot shoreline structure setback is allowed when:
  - i. The modification, addition, replacement or related activity does not increase the existing total footprint of the residence and associated impervious surface lying within the shoreline or building setback area more than 200 square feet over that existing before [insert effective date of ordinance]; and
  - ii. No portion of the modification, addition or replacement is located closer to the OHWM; and
  - iii. Vegetation enhancement of an area proportional (1:1) to the setback area impacted is required through consolidated planting of native vegetation within the structure setback adjacent to the OHWM in accordance with the standards developed by the Director; and
- b. This allowance may only be used once for the life of the structure.

**F. Vegetation Conservation.**

Applicability. The City-wide tree preservation standards in section LUC 20.20.900 shall apply when a land-disturbing activity is proposed. Additional standards may apply for critical areas; refer to Part 20.25H LUC (Critical Areas Overlay District).

**G. Shoreline Stabilization**

Shoreline stabilization measures in the Shoreline Overlay District are regulated pursuant to LUC 20.25E.080.

**H. Residential Moorage (Overwater Structures).**

1. Applicability. Moorage facilities are allowed in the Shoreline Overlay District when in compliance with paragraph H of this section.
2. Definitions. The following definitions apply to paragraph H of this section in addition to the definitions contained in LUC 20.25E.280 and Chapter 20.50 LUC.
  - a. Boat. A vessel built to travel on water that carries people or goods and is propelled by oars, outboard motor, inboard motor, or by wind.

- b. Boatlift. A structure or mechanism designed to elevate and dry-store boats above the water. Boatlifts do not include floating boatlifts, which for the purpose of this section, are regulated as a boat. Boatlifts include cradle lifts, platform lifts, and hoist lifts.
  - c. Boatlift, Attached. A suspended lift affixed to the structure of a dock with no parts contacting the substrate and located entirely above the established ordinary high water mark.
  - d. Boatlift, Freestanding. A ground based lift supported by the substrate and affixed to the ground by ballast.
  - e. .Walkway. The portion of the dock that is connected to the shoreline at the landward end and provides access to moorage.
  - f. Reconfigure. Refers to the rearrangement elements of dock structure elements which result in new length and width dimensions even when the overall square footage remains unchanged from the original dock structure.
  - g. Watercraft. A small recreational vessel that the rider sits or stands on, rather than inside of, seats up to three riders, and is powered by an inboard jet propulsion system.
  - h. Watercraft Lift. A structure or mechanism that is designed to elevate and dry-store watercraft above the water. The term watercraft lift does not include floating watercraft lifts, which for the purpose of this section, are regulated as watercraft. Watercraft lifts include cradle lifts, platform lifts, and hoist lifts.
  - i. Watercraft Lift, Attached. A suspended lift affixed to the structure of a dock or pier with no parts contacting the substrate and located entirely above the established ordinary high water mark.
  - j. Watercraft Lift, Freestanding. A ground-based lift supported by the substrate and affixed to the ground by ballast.
3. General Requirements Applicable to all Residential Docks. The following standards apply to all development and repairs related to residential docks.
- a. Dock Materials. Environmentally neutral materials approved by the Environmental Protection Agency for use in aquatic environments shall be used. No materials treated with known toxic preservatives is allowed. Dock materials shall not be treated with pentachlorophenol, creosote, chromate copper arsenate (CCA) or comparably toxic compounds. If (ammoniacal copper zinc arsenate) (ACZA) materials are proposed, the applicant will meet all of the Best Management Practices, including a post-treatment procedure, as outlined in the amended Best Management Practices of the Western Wood Preservers. Preservative and surface treatments are limited to products approved for use in aquatic environments and must be applied according to label directions. Construction hardware that comes into contact with water either directly, or through precipitation that causes discharges either directly or indirectly into surface waters shall not be susceptible to dissolution by corrosion.

- b. Dock Lighting. Dock lighting for the purpose of illuminating the dock surface for safety is allowed when the illuminating fixtures are limited to the minimum height necessary above the dock surface, or screened to provide the intended function of walkway illumination, without allowing light emissions to spill outside of the dock surface.
  - c. Accidental Destruction - Timing of Construction. Pursuant to paragraph I.4.e of this section, legally-established structures destroyed by fire, explosion, or other unforeseen disaster beyond the control of the owner may be reconstructed in the same configuration; provided, that such reconstruction is commenced within one year from the date of destruction and diligently pursued. Materials used for reconstruction shall comply with the requirements set forth in paragraph 3.a of this section. Areas of temporary construction disturbance resulting from the reconstruction shall be restored pursuant to a mitigation plan approved by the Director under LUC 20.25E.060.D (Mitigation Sequencing).
- .
- 4. General Requirements Applicable to New or Reconfigured Residential Docks.
    - i. Paragraph H.4 and LUC Chart 20.25E.065.H.4 of this section contain general requirements that apply to all new and reconfigured residential docks in addition to the general requirements set forth in paragraph H.3 of this section. Each application for a new or reconfigured residential dock shall comply with these requirements.

**Chart 20.25E.065.H.4 New and Replacement Residential Dock Standards.**

	<b>Residence Location</b>			
	<b>Lake Washington</b>	<b>Lake Sammamish</b>	<b>Phantom Lake (1)</b>	<b>Residential Canal Environment (1)</b>
<b>Number of docks allowed</b>	One per residential lot			
<b>Dock Side Setback Requirements(2)</b>	10'	10'	10'	10'
<b>Maximum Dock Length</b>	150'	150'	100'	Platform may not extend greater than 10' from canal bulkhead
<b>Maximum Dock Size - sq. ft.</b>	480 sq. ft. (3)	480 sq. ft. (3)	250 sq. ft. (3)	100 sq. ft.
<b>Dock Walkway Requirements:</b>				
<b>Maximum Walkway width (3)</b>	4' for portion of pier or dock located within 30 ft. of the OHWM; otherwise, 6 ft. for walkways	4' for portion of pier or dock located within 30 ft. of the OHWM; otherwise, 6 ft. for walkways	4'	Walkway Prohibited N/A
<b>Minimum EII Water Depth (3)</b>	30' minimum or at least 9' water depth measured from the ordinary high water mark	30' minimum or at least 9' water depth measured from the ordinary high water mark	EII Prohibited N/A	EII Prohibited N/A

<b>Mooring Pile</b>	2 maximum per residential lot
<b>Decking</b>	Grated

DRAFT

**Notes: New and Replacement Residential Dock Standards**

- (1) Floating docks may be approved on Phantom Lake and in the Shoreline Residential Canal environment when the use of fixed dock is not feasible.
  - (2) No private dock or other structure waterward of the ordinary high water mark, including boatlifts, watercraft lifts, and other structures attached thereto, shall be closer than 10 feet to any adjacent property line projection, except where a mutual agreement of adjoining property owners is recorded with the King County Records and Election Division and the Bellevue City Clerk and submitted as part of the permit application for the use or activity.
  - (3) Unless a larger dimension is authorized through state and federal approval.
- i. **New and Replacement Residential Docks - Limitations. Number of Docks Per Lot.** Construction of one residential dock per upland residential waterfront lot or one-joint use dock for two or more adjacent waterfront lots is allowed in accordance with Chart 20.25E.065.H.4. Expansion of any legally-established existing residential dock is permitted; provided the expansion complies with the development standards contained paragraphs H.3 and H.4 of this section.
  - ii. **Lot Dimensional Requirements.** Residential docks are allowed only on:
    - (1) Lots created on or after [insert effective date of ordinance], and having water frontage meeting or exceeding the minimum lot width required in the underlying land use district as established in LUC 20.20.010; or
    - (2) Lots created before [insert effective date of ordinance]; or
    - (3) Nonbuilding tracts platted for the purpose of providing common residential moorage for a group of contiguous properties; provided the minimum width of the nonbuilding tract is equal to or greater than 24 feet.
  - iii. **Combining Frontage—Shared Docks.** For the purposes of meeting the requirements of paragraph H.4.b.ii of this section, adjoining property owners may combine their water frontage by mutual agreement recorded with the King County Records and Elections Division, or its successor agency, and the Bellevue City Clerk. Only one shared residential dock is permitted pursuant to a combined frontage agreement, which may connect with the property landward of the ordinary high water mark at only one location.
  - iv. **Boathouses.** New boathouses are prohibited. Existing boathouses are subject to the rules for nonconforming overwater accessory structures set forth in paragraph I.7 of this section.
  - v. **Open-sided Boat Moorage Covers.** One open-sided structural boat cover may be allowed only through a special shorelines report where the proposal results in a net benefit to shoreline ecological functions. Open-sided boat covers shall be considered as part of the moorage platform, and the total square footage of the open-sided cover and the moorage platform shall not exceed the allowed maximum platform size in Chart 20.25E.065.I.4.

5. Repair and Replacement of Existing Residential Docks. Existing, legally-established residential docks may be repaired or replaced in the existing configuration. Docks may be repaired or replaced when the following standards are met:
  - a. Grating of the dock surface to allow light transmission is required when the total area of the dock surface being repaired or replaced equals or exceeds 20 square feet. Replacement of surfaces less than 20 square feet may utilize in-kind materials; and
  - b. Materials used for dock repairs shall meet the requirements established in paragraph H.3.a of this section
6. Boat and Watercraft Lifts. To eliminate disturbance of the lake substrate, attached boatlifts and watercraft lifts are preferred over freestanding lifts. Lifts are limited in the number allowed and location:
  - a. Number. The number of freestanding boat lifts per residential dock is limited to two. The number of freestanding watercraft lifts per dock is limited to four. The number of combined freestanding boat and watercraft lifts is limited to one freestanding boat lift and two freestanding watercraft lifts per dock.
  - b. Location. Freestanding boat and watercraft lifts shall be located more than 30 feet from the ordinary high water mark.
  - c. Number of Lift Canopies Allowed. One light-transmitting fabric watercraft or boat lift canopy per dock is allowed unless otherwise approved by State or Federal Agencies.
7. Boathouses. New boathouses are prohibited. Existing boathouses are subject to the rules for nonconforming overwater accessory structures set forth in paragraph I.6 of this section.

#### **I. Nonconforming Residential Development**

1. Purpose. Some existing residential development would not be allowed pursuant to regulations in this Part 20.25E LUC that implement the current SMP. The purpose of this section is to allow for continued enjoyment, maintenance and repair of existing residential development that was lawful when constructed, and to allow for replacement of residential development destroyed through no fault of the owner.
2. Applicability
  - a. This section applies to legally constructed residential uses and development that existed as of [insert effective date]
  - b. The nonconforming provisions of WAC 173-27-080 do not apply..

- c. The nonconforming provisions of LUC 20.25E.040 do not apply to residential development located within the Shoreline Overlay District. The nonconforming provisions of LUC 20.20.560 apply to applicable general development requirements of Chapter 20.20 LUC.
    - d. Modifications to residential development located within a critical area or critical area buffer identified pursuant to LUC 25.25H.030 shall comply with the applicable requirements of Part 20.25H LUC (Critical Areas Overlay District).
  3. Documentation. As part of the application process and before undertaking work allowed by this section, the applicant shall submit documentation demonstrating that the nonconforming residential uses or development was legally established and maintained over time. Using the applicant-supplied documentation and the criteria in paragraphs I.3.a and I.3.b of this section, the Director shall determine whether the documentation is adequate to support a determination that the development constitutes a legally established residential development to which this section applies. The Director may waive the documentation requirement when an existing residential use or development is clearly known.
    - a. Development Permitted when Constructed. Documentation that the residential development was permitted when constructed includes, but is not limited to, the following:
      - i. Building, land use or other development permits; or
      - ii. Land use or zoning codes or shoreline master programs in effect when the residential development was constructed.
    - b. Development Maintained Over Time. Documentation that the residential development has been maintained over time, and not destroyed or discontinued as described in this section includes, but is not limited to, the following:
      - i. Dated title reports;
      - ii. Dated appraisal documents; or
      - iii. Dated photos.
    - c. Appeal of Director Determination. The Director's determination of whether a residential development was legally established may be appealed pursuant to LUC 20.35.250, Appeal of Process II decisions.
4. Regulations and Thresholds Applicable to Nonconforming Residential Development
  - a. Ownership. The status of a nonconforming residential development is not affected by changes in ownership.

- b. Continued Enjoyment. Nonconforming residential development may remain unless specifically limited by the terms of this section.
- c. Routine Maintenance and Repair. Routine maintenance and repair associated with nonconforming residential development is allowed. "Routine maintenance" includes those usual acts to prevent decline, lapse, or cessation from a legally established condition. "Repair" includes in-kind restoration and modernization improvements to a state comparable to its original condition within a reasonable period after decay has occurred. Improvements to nonconforming residential development that cost more than 50% of the replacement value of any individual structure undergoing improvement are not defined as maintenance and repair, and shall comply with development regulations applicable to new residential development.
  - i. Three-Year Period. Improvements made within a three-year period will be viewed as a single action for the purposes of determining whether regulations applicable to new residential development shall apply.
  - ii. Value of Improvements. The value of improvements is determined by the Director based on the entire project and not individual permits.
- d. Exemptions from the Calculation of Replacement Value. The following improvements do not count toward the calculation of replacement value thresholds identified in paragraph I.4.c:
  - i. Alterations related to installation of improved fire prevention measures;
  - ii. Alterations related to removal of architectural barriers pursuant to the Americans with Disabilities Act, or the Washington State Building Code (Chapter 19.27 RCW), now or as hereafter amended;
  - iii. Alterations related to seismic retrofit of existing structures;
  - iv. Improvements to on-site stormwater management facilities in conformance with Chapter 24.06 BCC, now or as hereafter amended;
  - v. Alterations that meet LEED, Energy Star or other industry-recognized standard that results in improved mechanical system, water savings, or operational efficiency; and,
  - vi. Alterations that meet the definition of routine maintenance, including but not limited to, painting, caulking, washing and rewiring.
- e. Accidental Destruction. When a legally established residential development is damaged or destroyed by fire, explosion, natural disaster, or other unforeseen circumstances outside the control of the property owner, the development may be repaired or reconstructed subject only to the following limitations:
  - i. The legally established residential development shall be repaired or reconstructed within the footprint existing when the destruction

occurred, unless the area of the structure footprint is moved to a less sensitive portion of the site, the movement reduces nonconformities to the SMP or identified critical areas, and shoreline vegetation or critical area functions are restored in the areas vacated;

- ii. The repair or reconstruction is initiated within one year of the date of destruction and is diligently pursued;
  - iii. Under no circumstances may the reconstruction expand, enlarge, or otherwise increase a nonconformity, unless expansions are permitted pursuant to the provisions of this Part 20.25E; and,
  - iv. Areas of temporary construction disturbance resulting from reconstruction shall be restored pursuant to a mitigation plan approved by the Director under LUC 20.25E.060.D (Mitigation Requirements and Sequencing).
- f. Loss of Nonconforming Residential Development Status. If a nonconforming residential use or development is abandoned for a period of 12 months with the intention of abandoning that development, any subsequent development shall thereafter conform to this Part 20.25E LUC. Discontinuance of a nonconforming residential use or development for a period of 12 months or greater constitutes prima facie evidence of an intention to abandon.
- g. Permits. If not otherwise exempt pursuant to the terms of LUC 20.25E.170, a Shoreline Substantial Development Permit shall be obtained prior to undertaking any maintenance and repair, alteration, or replacement authorized by this section.
5. Nonconforming Residential Development within the Shoreline Structure Setback

Residential and Accessory Structures. A legally constructed residential or accessory structure that encroaches into the structure setback, is granted a footprint exception pursuant to the requirements of LUC 20.25E.065.E.1.c and is not considered to be nonconforming. The maintenance and repair thresholds of paragraph 20.25E.065.I.4.c of this section do not apply. Expansions to this type of residential shoreline development are regulated pursuant to the requirements of LUC 20.25E.065.E.2.a. Replacement of a residential structure or accessory structure following accidental destruction is permitted pursuant to paragraph I.4.e of this section.

6. Nonconforming Overwater Accessory Structures. Maintenance and repair of a legally constructed overwater accessory structure is permitted. Improvements to overwater accessory structures that exceed the cost thresholds contained in paragraph I.4.c of this section shall be considered new development, which is not permitted below the ordinary high water mark.

7. Nonconforming Moorage and Shoreline Stabilization

- a. Legally constructed moorage may be repaired and maintained in accordance with LUC 20.25E.065.H (Residential Moorage).
- b. Legally constructed shoreline stabilization may be repaired and replaced in accordance with LUC 20.25E.080.F (Shoreline Stabilization).

DRAFT