City of Bellevue
Development Services Department
Land Use Staff Report

Proposal Name:	Clark Shoreline Modification
Proposal Address:	18110 SE 41st Ln.
Proposal Description:	The applicant requests a Critical Areas Land Use Permit in order to disturb the Lake Sammamish 25-foot shoreline buffer, 25-foot structure setback, and area of flood hazard to remove an existing structure and impervious surfaces and construct a 622 square foot patio in a portion of the structure setback.
File Number:	08-133824-LO
Applicant:	Jeff Clark, Property Owner
Decisions Included:	Critical Areas Land Use Permit (Process II. LUC 20.30P)
Planner:	Reilly Pittman, Planner
State Environmental Policy Act Threshold Determination:	**Exempt**

Carol V. Helland, Environmental Coordinator
Development Services Department

Director's Decision: **Approval with Conditions**
Michael A. Brennan, Director
Development Services Department

By: _____
Carol V. Helland, Land Use Director

Application Date:	October 6, 2008
Notice of Application Publication Date:	January 15, 2009
Decision Publication Date:	February 5, 2009
Project/SEPA Appeal Deadline:	February 19, 2009

For information on how to appeal a proposal, visit Development Services Center at City Hall or call (425) 452-6800. Comments on State Environmental Policy Act (SEPA) Determinations can be made with or without appealing the proposal within the noted comment period for a SEPA Determination. Appeal of the Decision must be received in the City's Clerk's Office by 5 PM on the date noted for appeal of the decision.

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I. Proposal Description

LUC 20.25H.015.B requires a Critical Area Land Use Permit for any proposal which involves "disturbance or modification" of a critical area, critical area buffer or structure setback. The applicant is requesting a Critical Areas Land Use Permit in order to remove an existing guest house, remove part of an existing patio, and remove 1,090 square feet of an existing sports court. Approximately 1,981 square feet of existing impervious surfaces are proposed to be removed. These removal actions are occurring within the 25-foot shoreline buffer, 25-foot structure setback and the area of special flood hazard from Lake Sammamish. These actions are classified as disturbance within a critical area and as specified in LUC 20.25H.015.B a Critical Area Land Use Permit is required. 1,981 square feet of the shoreline buffer is proposed to be restored with native vegetation in order to achieve a 1:1 ratio of disturbed area to restored area. The removal of the existing structures results in no modification of any critical area or reduction of any critical area buffer or structure setback.

In addition to the proposed removal actions, a 622 square foot patio area is proposed within the 25-foot structure setback. The proposed patio is considered modification of the structure setback which can only be approved through a Critical Area Land Use Permit with a Critical Area. In exchange for the allowance to place a new patio in the structure setback a further 659 square feet of restoration planting is proposed to occur within the shoreline buffer. See **Attachment I** for the project site plan depicting the proposed work.

II. Site Description, Zoning, Land Use and Critical Areas

A. Site Description

The project site is located at 18110 SE 41st Ln. and is located in the NW quadrant of Section 18, Township 24 North, Range 6 East. The property is zoned single-family residential and has one single-family residence currently under construction (redevelopment). The site has shoreline frontage along Lake Sammamish to the north and is located within the City of Bellevue Shoreline Overlay District. The site is surrounded to the west, south and east by other single-family zoned properties. Generally the site slopes down from the southern property line to the north toward Lake Sammamish. The project area in question is at the bottom of the sloping site along Lake Sammamish and within the 25' shoreline buffer and 25' structure setback from the buffer. The slopes on-site were determined to not be classified as steep slope critical areas under prior permit review.

The project area along the shoreline of Lake Sammamish and under evaluation as part of this application is in poor condition when compared to an intact, highly functional, shoreline reference site. The area where the activity is proposed has been historically disturbed by a patio, sport court, guest house (already removed), and lawn. Current shoreline developments include a small dock with a covered moorage and a concrete bulkhead built at the ordinary high water mark. See Figure 1 below for a recent aerial oblique photograph of the shoreline and Figure 2 for an aerial photograph of the entire property.

Figure 1

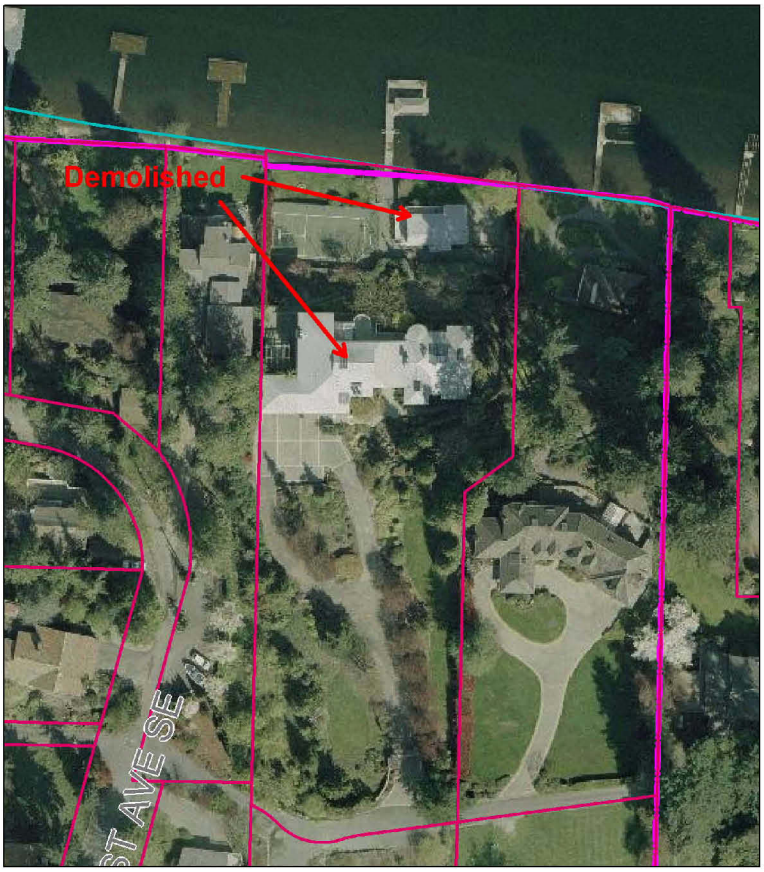


Figure 2

B. Zoning

The property is zoned R-5, single-family residential. The project area is within the Shoreline Overlay District and the Critical Areas Overlay District. The proposed activities are associated with the construction of a single-family residence which is an allowed use in the R-5 zone.

C. Land Use Context

The property has a Comprehensive plan Land Use Designation of SF-H (Single Family High Density). The proposed activity is consistent with single family development and is allowed in the single family comprehensive plan land use designation. The subject site is surrounded by single-family uses to the west, south, and east and is adjacent to Lake Sammamish to the north. The property obtains vehicular access from an access easement denoted as 41st Ln. SE which connects to 181st Ave. SE. The property was previously short platted into 2 lots in 2005 which established a Native Growth Protection Area easement to protect the on-site stream and its buffer. A permit for demolition of the existing house and construction of a new residence was issued in 2008. The new residence is currently under construction. The proposed activity in the shoreline buffer and structure setback is associated with the construction of the residence.

D. Critical Areas Function and Value, Regulations

i. Areas of Special Flood Hazard

The value of floodplains can be described in terms of both the hydrologic and ecological functions that they provide. Flooding occurs when either runoff exceeds the capacity of rivers, streams, or lakes to convey and contain water within their banks, or when engineered stormwater systems become overwhelmed. Development within the floodplain can dramatically affect the storage capacity of a floodplain, impact the hydrologic regime of a basin and present a risk to public health and safety and to property and infrastructure.

ii. Lake Sammamish Shoreline

The project area is adjacent to the shoreline of Lake Sammamish. Shorelines provide a variety of functions including shade, temperature control, water purification, woody debris recruitment, channel, bank and beach erosion, sediment delivery, and terrestrial-based food supply (Gregory et al. 1991; Naiman et al. 1993; Spence et al.1996).

Shorelines provide a wide variety of functions related to aquatic and riparian habitat, flood control and water quality, economic resources, and recreation, among others. Each function is a product of physical, chemical, and biological processes at work within the overall landscape. In lakes, these processes take place within an integrated system (ecosystem) of coupled aquatic and riparian habitats (Schindler and Scheuerell 2002). Hence, it is important to have an ecosystem approach which incorporates an understanding of shoreline functions and values. The discussion presented herein emphasizes this ecosystem approach.

iii. Shoreline Overlay District/Shoreline Substantial Development Permit

The Shoreline Overlay District regulations (LUC 20.25E) allow for the construction of a single family residence and associated appurtenances as an exemption (LUC 20.25E.050); however, all applicable performance standards must be met. The proposed removal of structures and patio construction is considered an appurtenance and is exempt from Shoreline Substantial Development Permit. The proposed activity meets the performance standards identified in LUC 20.25E.080.B and 20.25E.080.G as required.

iv. Shoreline Critical Areas

The proposed work is subject to the Shoreline Critical Areas regulations outlined in LUC 20.25H.115. Any action which involves disturbance or modification of a critical area buffer or structure setback requires approval of a Critical Areas land Use Permit. Disturbance resulting from the removal of an existing guest house and impervious surfaces (sport court and patio) is proposed. This disturbance can be approved provided the disturbed area is restored. The proposed new patio may be located within the shoreline structure setback provided the requirements of the Critical Areas Report process can be met. The Critical Areas Report and Critical Areas Land Use Permit are addressed in greater detail in section III of this report.

v. Lake Sammamish Floodplain

A portion of the proposed activity will occur below elevation 36.6' which is within the floodplain of Lake Sammamish. The proposed activity meets the performance standards in LUC 20.25H.180.C and D. No structures are proposed within the floodplain and approval of this application will allow the removal of existing structures located in a floodplain.

III. Consistency with Land Use Code Requirements:

A. Zoning District Dimensional Requirements:

The site is located in the R-5 zoning district. The general dimensional requirements for the property do not apply as no new structures are proposed. Furthermore, the proposed removal of structures does not result in a change of use of the property.

B. Critical Areas Report Requirements - LUC 20.25H.230:

The applicant has submitted application for critical areas land use permit for disturbance resulting from the removal of 1,981 of existing impervious surface located in the shoreline buffer and structure setback. In addition to the disturbance a new 622 square foot patio is proposed to be constructed partially in the shoreline structure setback. As allowed under LUC 20.25H.115.C.3 a critical areas report is needed to allow construction of the patio. Critical Area Land Use Permits with critical areas reports are governed by LUC 20.25H.230 and typically include an assessment of site conditions in relation to the proposed modification (modification of the structure setback). Materials and concepts submitted through this process must include a proposal to restore or enhance degraded portions of the property with the objective of a net increase in functions as identified in Section II.D.ii above. In response to these requirements the applicant has submitted a restoration/replanting plan to restore and enhance the 25-foot shoreline buffer behind the bulkhead at a

1:1 ratio for all disturbance resulting from structure removal and installation of a new patio. Additional planting is proposed to occur along the property side yards, outside of this restoration plan.

All restoration/replanting will be done with native plantings in quantities (densities) that meet the requirements of the city's critical areas handbook. The applicant is also required to maintain the restored area through five years of maintenance and monitoring and will be required to submit a security device (assignment of savings or bond) to ensure the plantings will be installed and maintained over the required five year period. See related conditions of approval in Section IX. Proposal consistency with the Critical Areas Report Decision Criteria is addressed in section VII below. The conceptual restoration plan is included as **Attachment II**.

IV. Public Notice and Comment

Application Date:	October 6, 2008
Public Notice (500 feet):	January 15, 2009
Minimum Comment Period:	January 29, 2009

The Notice of Application for this project was published in the City of Bellevue Weekly Permit Bulletin on January 15, 2009. It was mailed to property owners within 500 feet of the project site. It was mailed to property owners within 500 feet of the project site. One comment letter was received and is included as **Attachment III**. The comment letter concerned:

- Permitting requirements including the need for a Shoreline Substantial Development Permit
- SEPA exemption status of proposed activity
- The length of the comment period required
- Phasing of demolition of pre-existing residence and proposed demolition of structures under this application
- Required permits obtained
- Public notification requirements for construction of new residence

In response to these issues:

- Construction of a single-family residence and any associated work (i.e. demo, clearing, grading, utilities, etc.) is exempt from a Shoreline Substantial Development Permit and SEPA review. A building permit (07-144236-BS) has been issued for construction of a new single-family residence which is currently under construction. The proposed work is associated with the construction of the new residence.
- This project is exempt from a Shoreline Substantial Development Permit and therefore only requires a 14-day comment period associated with the Critical Area Land Use Permit per LUC 20.35.210.
- The demolition of the pre-existing house and construction of the new house is outside of the 25' shoreline buffer and 25' structure setback from the buffer. The work covered under the current permit application is associated with the

construction of the single-family residence but needs a Critical Area Land Use Permit because the action proposes to cause disturbance with a shoreline buffer and structure setback to remove existing development and construct a new patio. The building permit for the house was approved with the condition that no work could be done within the shoreline buffer or structure setback without City approval of appropriate permits.

- The guest house has already been demolished which is the subject of a current code enforcement action. Resolution of the code enforcement is by obtaining approval of this critical area land use permit application. The current permit application is for work occurring in the shoreline buffer and structure setback. The continued construction of the house does not require approval of the current permit application. However, final occupancy of the new residence cannot be granted until the code enforcement issue is resolved.
- Building permits for the construction of the residence did not require a public comment period.

In addition to the public comment letter above comments were also received from Karen Walter with the Muckleshoot Indian Tribe, Fisheries Division regarding the proposed restoration planting plan. See **Attachment III** for comments. These comments regarding species selection will be incorporated into a final restoration planting plan to be submitted as a revision to building permit 07-144236-BS.. <u>See related conditions of approval in section IX.</u>

V. Summary of Technical Reviews

Clearing and Grading:
The Clearing and Grading Division of the Development Services Department has reviewed the proposed site development for compliance with Clearing and Grading codes and standards. The Clearing and Grading staff found no issues with the proposed development.

VI. Changes to proposal as a result of City review

The applicant modified the restoration/replanting plan as a result of comments by Land Use staff in a revision letter dated 11/4/08 (in project file). The revisions increased the planting area proposed to encompass the entire length of the shoreline within the 25-foot shoreline buffer. In addition the plan was revised to match the plant species, density, and size depicted on the shoreline planting templates found in the City's Critical Areas Handbook.

VII. Decision Criteria

A. Critical Areas Report Decision Criteria LUC 20.25H.255

The proposal, as conditioned below, meets the applicable regulations and decision criteria for a Critical Areas Report pursuant to LUC Section 20.25H.255.

1. The modifications and performance standards included in the proposal lead to levels of protection of critical area functions and values at least as protective as application of the regulations and standards of this code;

Finding: The removal of existing structures in the 25-foot shoreline buffer is an improvement to the functions and values of the shoreline buffer. The creation of a new patio area within the shoreline structure setback will not lead to a reduction in the level of protection of the shoreline as compared to the current and historic condition and as compared to the standards of the land use code. The critical areas report is intended to provide flexibility for sites where the expected critical area functions and values are not present due to degraded conditions or other unique site characteristics. In this case, the shoreline, shoreline buffer, and shoreline structure setback have been degraded by past development activity and many of the expected functions (as identified in section II.D above) are not present. The applicant has demonstrated through submittal of a restoration/replanting plan that the proposal, with the requested modifications, leads to an enhancement of critical area functions and values over what would otherwise result from the application of the standard requirements. See related conditions of approval in Section IX.

2. Adequate resources to ensure completion of any required mitigation and monitoring efforts;

Finding: As a condition of approval, the applicant is required to maintain the restored area through five years of maintenance and monitoring and will be required to submit a security device (assignment of savings or bond) to ensure the plantings will be installed and maintained over the required five year period. See related conditions of approval in Section IX.

3. The modifications and performance standards included in the proposal are not detrimental to the functions and values of critical area and critical area buffers off-site;

Finding: The proposals to remove existing structures and construct a 622 square foot patio will not be detrimental to the functions and values of the Lake Sammamish shoreline or buffer as both actions will have compensatory restoration and enhancement of the shoreline buffer. Through enhancement of the shoreline and buffer with native vegetation and the maintenance of the restored area for five years, it is expected that an overall improvement in the natural function of the shoreline will be achieved.

4. The resulting development is compatible with other uses and development in the same land use district.

Finding: The proposed activity is allowed in this zone as it is part of a single-family development. Patios are common single-family amenities and are located as appurtenances to single family development throughout Bellevue. The

proposed activity is compatible with single-family development.

B. Critical Areas Land Use Permit Decision Criteria LUC 20.30P

The proposal, as conditioned below, meets the applicable regulations and decision criteria for a Critical Areas Land Use Permit pursuant to LUC Section 20.30P.

1. The proposal obtains all other permits required by the Land Use Code;

Finding: Building permit 07-144236-BS has already been approved for the construction of a new single-family residence. The work proposed under this Critical Area Land Use Permit will require revisions to the plans of the approved building permit. See related conditions of approval in Section IX of this report.

2. The proposal utilizes to the maximum extent possible the best available construction, design and development techniques which result in the least impact on the critical area and critical area buffer;

Finding: The applicant has designed the proposed patio so that it does not extend into the buffer. To ensure all disturbance is minimized, the proposal includes a plan for restoration of the 25-foot shoreline buffer with dense vegetation to limit pet or human use. The structure setback modification proposed under this application is only for the construction of a patio within the setback. The dimension of the structure setback will be modified to exclude the area of the proposed patio. The remaining portion of the structure setback outside of the patio is unchanged. Any future development proposed outside the area of the patio will require a Critical Area Land Use Permit. See related conditions of approval in Section IX of this report.

3. The proposal incorporates the performance standards of Part 20.25H to the maximum extent applicable, and ;

Finding: The proposed activity meets the performance standards in LUC 20.25H.180 for areas of special food hazard as no structures are proposed in the floodplain of Lake Sammamish. The performance standards identified in LUC 20.25E.080.B and 20.25E.080.G. are also required to be met. See related conditions of approval in Section IX of this report.

4. The proposal will be served by adequate public facilities including street, fire protection, and utilities; and;

Finding: The proposed project will be served by adequate public facilities. The site has historically been built out with an existing single family residence. No new streets or utility connections will be needed to serve the site. Additionally, fire and police protection are currently available at the site.

5. The proposal includes a mitigation or restoration plan consistent with the requirements of LUC Section 20.25H.210; and

Finding: A mitigation and restoration plan has been prepared as required by LUC 20.25H.220.H. See related conditions of approval in Section IX of this report.

6. The proposal complies with other applicable requirements of this code.

Finding: As discussed in Section III of this report, the proposal complies with all other applicable requirements of the Land Use Code.

VIII. Conclusion and Decision

After conducting the various administrative reviews associated with this proposal, including Land Use Code consistency, City Code and Standard compliance reviews, the Development Services Director does hereby **approve with conditions** the proposal to remove existing structures in the shoreline buffer and structure setback with restoration and the proposal to modify a portion of the structure setback to accommodate the construction of a 622 square foot patio and restore/replant the shoreline buffer.

Note- Expiration of Approval: In accordance with LUC 20.30P.150 a Critical Areas Land Use Permit automatically expires and is void if the applicant fails to file for a Clearing and Grading Permit or other necessary development permits within one year of the effective date of the approval.

IX. Conditions of Approval

The applicant shall comply with all applicable Bellevue City Codes and Ordinances including but not limited to:

Applicable Ordinances	Contact Person
Clearing and Grading Code- BCC 23.76	Tom McFarlane, 425-452-5207
Land Use Code- BCC 20.25H	Reilly Pittman, 425-452-4350
Noise Control- BCC 9.18	Reilly Pittman, 425-452-4350

The following conditions are imposed under the Bellevue City Code or SEPA authority referenced:

1. Disturbance Limit: The structure setback modification approved is limited to the edge of the new 622 square foot patio area shown in the Land Use decision issued on February 5, 2009 and depicted in the approved site plan. Any future proposals for structures outside of the patio area will require a Critical Area Land Use Permit approval to modify the structure setback.

Authority: Land Use Code 20.30P.120
Reviewer: Reilly Pittman, Development Services Department

2. Building Permit Plan Revision Required: The work approved under this Critical Area Land Use Permit shall be submitted as plan revisions under the existing building permit application 07-144236-BS for construction of the single-family residence associated with this work. Plan revisions submitted under this building permit must be consistent with the activity permitted under this Critical Areas Land Use Permit.

Authority: Land Use Code 20.30P.140
Reviewer: Reilly Pittman, Development Services Department

3. Special Inspection Required: Special inspection of the shoreline restoration following construction must be completed by the Land Use Planner. A Land Use inspection will be added to building permit 07-144236-BS.

Authority: Land Use Code 20.25H.210
Reviewer: Reilly Pittman, Development Services Department

4. Clearing Limits for Permanent and Temporary Disturbance: Prior to commencement of construction, clearing limits must be delineated in preparation for preconstruction inspection by clearing and grading and land use staff and certified in the field to be in conformity with this approval.

Authority: Bellevue City Code 23.76.160
Reviewer: Reilly Pittman, Development Services Department

5. Buffer Restoration and Maintenance Plan Cost Estimate: A final restoration/planting plan is required to be submitted as a plan revision to the existing building permit. This plan shall revise the plan to incorporate the comments received from the Muckleshoot Tribe and make any necessary changes. In addition a cost estimate is required to be submitted which is in the amount of 50 percent of the cost of work and plants proposed under the restoration plan. Staff will use this cost estimate to determine the amount required for the Maintenance Assurance Device in condition 6 below.

Authority: Land Use Code 20.25H.220
Reviewer: Reilly Pittman, Development Services Department

6. Installation and Maintenance Assurance Devices: To ensure the proposed plantings are installed and that the five year maintenance and monitoring plan is implemented, the applicant shall post a Maintenance Assurance Device (based on cost estimate in condition 5 above) prior to the required Land Use inspection. This device will be released after 5 years, following an inspection from the Land Use Planner that finds that the maintenance and monitoring plan has been implemented and the restoration is successfully established.

Authority: Land Use Code 20.25H.255.B.4
Reviewer: Reilly Pittman, Development Services Department

7. Rainy Season Restrictions: Due to the proximity to Lake Sammamish, no clearing and grading activity may occur during the rainy season, which is defined as November 1 through April 30 without written authorization of the Development Services Department. Should approval be granted for work during the rainy season , increased erosion and sedimentation measures, representing the best available technology must be implemented prior to beginning or resuming site work.

Authority: Bellevue City Code 23.76.093.A
Reviewer: Reilly Pittman, Development Services Department

8. Pesticides, Insecticides, and Fertilizers: The applicant must submit as part of the required building permit information regarding the use of pesticides, insecticides, and fertilizers in accordance with the City of Bellevue's "Environmental Best Management Practices" .

Authority: Land Use Code 20.25H.220
Reviewer: Reilly Pittman, Development Services Department

9. Noise Control: Noise related to construction is exempt from the provisions of BCC 9.18 between the hours of 7 am to 6 pm Monday through Friday and 9 am to 6 pm on Saturdays, except for Federal holidays and as further defined by the Bellevue City Code. Noise emanating from construction is prohibited on Sundays or legal holidays unless expanded hours of operation are specifically authorized in advance. Requests for construction hour extension must be done in advance with submittal of a construction noise expanded exempt hours permit.

Authority: Bellevue City Code 9.18
Reviewer: Reilly Pittman, Development Services Department

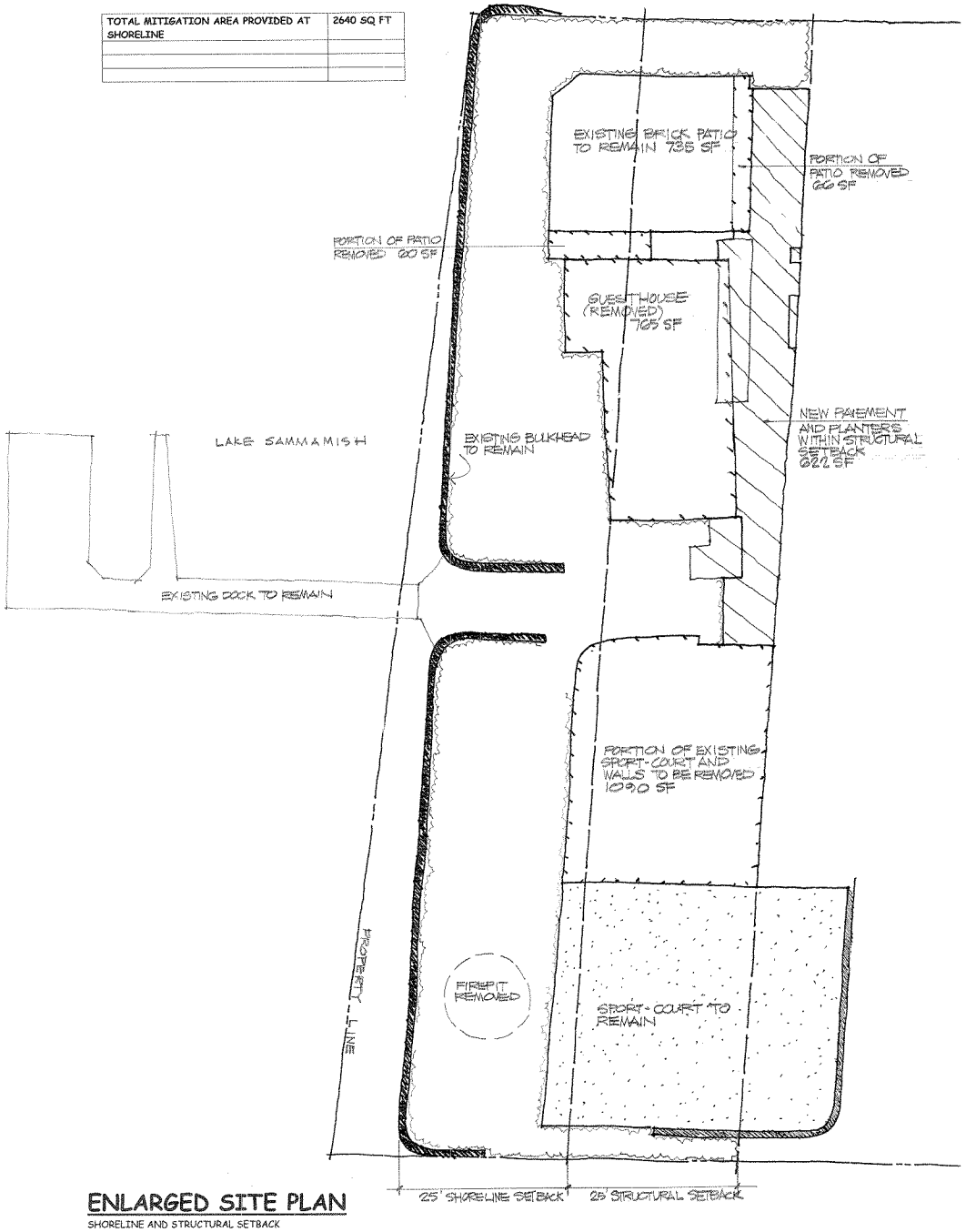
Attachments

1. Project Site Plan - Enclosed
2. Conceptual Restoration/Replanting Plans – In File
3. Public Comment Letters – In File

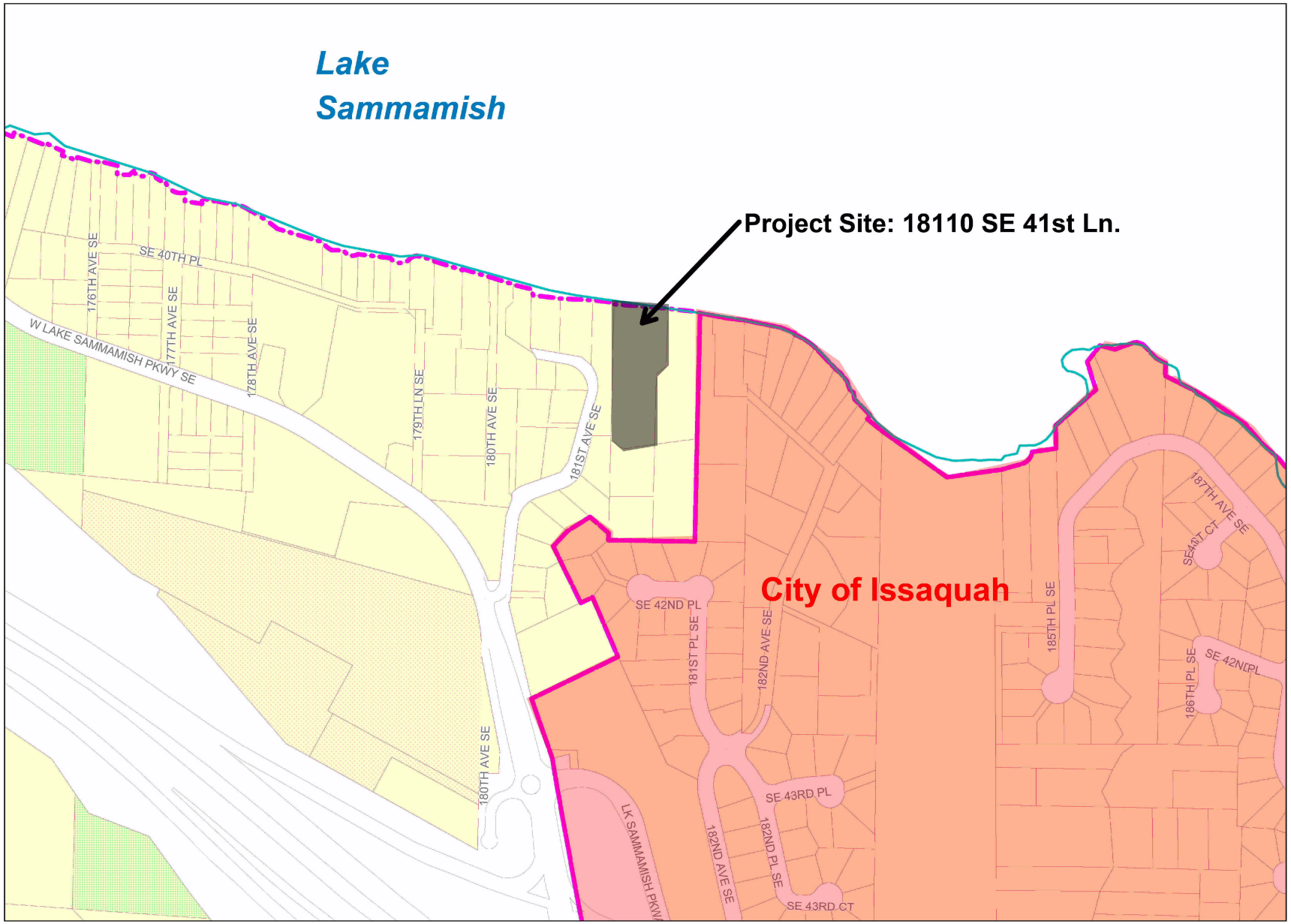
Attachment 1:
Site Plan

IMPERVIOUS AREA WITHIN SETBACK REMOVED	REQUIRED MITIGATION AREA 1:1
HOUSE	765 SQ FT
BRICK PAVEMENT,SPORTCOURT	1216 SQ FT
AREA OF NEW PAVING/ PLANTERS	622 SQ FT
TOTAL AREA REQUIRING MITIGATION	2603 SQ FT

TOTAL MITIGATION AREA PROVIDED AT SHORELINE	2640 SQ FT



ENLARGED SITE PLAN

SHORELINE AND STRUCTURAL SETBACK
1" = 10' - 0"

Clark Shoreline Modification
Vicinity Map