



**City of Bellevue
Development Services Department
Land Use Staff Report**

Proposal Name: Pauley Residence Code Interpretation

Proposal Address: 244 West Lake Sammamish Parkway SE

Proposal Description: The applicant requests a Formal Code Interpretation of the City's Shoreline Master Program regulations as they apply to a rock wall constructed in 2002 in the Shoreline Overlay District.

File Number: 10-125460-DA

Applicant: Jane Kohler, Esq. on behalf of Gilbert and Patricia Pauley

Decisions Included: Interpretation of the Land Use Code (Process II. LUC 20.30K)

Legal Planner: Catherine A. Drews

State Environmental Policy Act Threshold Determination: EXEMPT

Director's Decision: Interpretation of the Land Use Code
Michael A. Brennan, Director
Development Services Department

Carol V. Helland

Carol V. Helland, Land Use Director
Development Services Department

Application Date:	October 25, 2010
Notice of Application Publication Date:	December 23, 2010
Decision Publication Date:	November 21, 2011
Project Appeal Deadline:	December 5, 2011

For information on how to appeal a proposal, visit Development Services Center at City Hall or call (425) 452-6800. 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.

**Interpretation of the Director
Bellevue File No. 10-125460-DA**

I. INTRODUCTION

The following is a written interpretation of the Land Use Code (“LUC”) issued by the Director. This code interpretation relates to property owned by Gilbert and Patricia Pauley (“Pauleys”), and located at 244 West Lake Sammamish Parkway SE, Bellevue Washington. Specifically, the code interpretation pertains to construction of a rock wall located in the Shoreline Overlay District. The Director is issuing this interpretation to clarify the scope and intent of the LUC pursuant to LUC 20.35.030.A.8 and Part 20.30K LUC.

Code Interpretation Issues Presented:

In their application materials, the Pauleys describe the structure constructed in the shoreline in 2002 as a rock wall. For ease of reference, this code interpretation will also use that term. The term bulkhead will be used when discussing applicable regulations. Use of the descriptive term “rock wall” does not impact or alter the determinations reached in this interpretation. The code interpretation questions presented below are quoted verbatim from the Pauleys’ application for formal code interpretation, dated October 22, 2010.¹

1. Whether the Pauleys’ rock wall is a legal non-conforming structure because it complied with the City code in effect in 2002? (Pauley Issue 1a).
2. Whether the City can demand that the Pauleys dismantle their rock wall, which was built in compliance with the City Code in effect in 2002 to bring their rock wall into compliance with the 2006 requirements governing bulkheads set forth in City’s Critical Area Ordinance? (Pauley Issue 1b).
3. Whether the Pauleys’ rock wall be classified as a bulkhead when the [Shoreline Management Act] defines bulkheads as structures which are constructed near the ordinary high water mark (“OHWM”) and the Pauley rock wall was constructed on an upland area of their property a substantial distance away from the OHWM? (Pauley Issue 2).

¹ Letter from Jane Ryan Koler to City of Bellevue Permit Processing, regarding Request for Formal Code Interpretation Pauley Property/244 W. Lake Sammamish Parkway SE, Bellevue WA, at 1-2, dated October 22, 2010 (hereinafter “Koler Letter”). Note: the Koler Letter at page 2 references the Pauleys’ construction receipt, which was attached as Exhibit 1; however, Exhibit 1 was missing from the application materials. Ms. Koler’s letter of October 2, 2010, also included the construction receipt; a copy of which was included with the code interpretation file consistent with Ms. Koler’s October 22 letter.

Summary of the Interpretation:

1. No. The rock wall is not legally-established because the Pauleys failed to obtain the required permits and approvals from the City of Bellevue for construction of the rock wall in the Shoreline Overlay District. Based on information provided by the Pauleys for this code interpretation and aerial photographs, the rock wall is not a "normal protective" bulkhead as described in LUC 20.25E.050.C, which describes the type of bulkhead that qualifies for exemption from the requirements for a shoreline substantial development permit, but which does not define what type structure constitutes a bulkhead (see Summary Answer 3 below). Construction of the rock wall was also inconsistent with the City's Shoreline Master Program ("SMP"), including the City's floodplain regulations. Therefore, the rock wall is not a legally-established, non-conforming structure.

2. Yes. Under Chapter 1.18 of the Bellevue City Code ("BCC"), the Director may seek compliance for code violations. Here, the rock wall was located and constructed without the required permits or approvals, and is inconsistent with both the current and the 2002 editions of the City's SMP and the City's Critical Areas Overlay District (Part 20.25H LUC). Such construction constitutes a violation of the LUC. Therefore, the Director is authorized to seek correction of the violation, including removal of the rock wall, compliance with current codes, and imposition of civil penalties.

3. Yes. The Shoreline Management Act ("SMA") does not define bulkhead. The LUC defines bulkhead as a wall or embankment used for holding back earth. Documentary evidence provided by the Pauleys and aerial photographs show the rock wall performs this function.

II. INTERPRETATION

A. Facts.

Facts used in this code interpretation were obtained from the following documents, which are available in File No. 10-125460-DA:

- Letter from Jane Ryan Koler to City of Bellevue Permit Processing, regarding Request for Formal Code Interpretation Pauley Property/244 W. Lake Sammamish Parkway SE, Bellevue WA, dated October 22, 2010.
- Letter from Jane Ryan Koler to City of Bellevue, regarding Addendum to Request for Director's Interpretation, Pauley Property/244 W. Lake Sammamish Parkway SE, Bellevue WA, File No. 10-125460-DA, dated March 15, 2011.
- 2001 and 2009 aerial photos of the Pauley property derived from the City of Bellevue GIS mapping system.

B. Summary of Events Leading to the Formal Code Interpretation.

The City received a complaint regarding construction of a bulkhead within the shoreline setback on the Pauleys' property located at 244 West Lake Sammamish Parkway SE (the "property"). City GIS bulkhead inventory data and corresponding aerial photography show an existing bulkhead in the northeast corner of the property measuring approximately 40 feet.² City Code Enforcement investigated the complaint and determined the Pauleys had constructed a rock bulkhead, which spanned the length of the shoreline, and other improvements without the required permits and approvals. Code Enforcement subsequently issued a Request for Voluntary Compliance ("RVC") to the Pauleys, seeking to bring the rock wall into compliance with the City LUC, specifically the Shoreline Overlay District (Part 20.25E LUC) and the Critical Areas Overlay District (Part 20.25H LUC).

After receiving the RVC, the Pauleys applied for a formal code interpretation of the City's LUC, specifically provisions related to the City's SMP, critical areas ordinance, and enforcement provisions. The Pauleys' application requests the Director interpret the LUC to determine:

- 1a. Whether the Pauleys' rock wall is a legal non-conforming structure because it complied with the City code in effect in 2002?
- 1b. Whether the City can demand that the Pauleys dismantle their rock wall, which was built in compliance with the City Code in effect in 2002 to bring their rock wall into compliance with the 2006 requirements governing bulkheads set forth in City's Critical Area Ordinance?
2. Whether the Pauleys' rock wall be classified as a bulkhead when the [Shoreline Management Act] defines bulkheads as structures which are constructed near the ordinary high water mark ("OHWM") and the Pauley rock wall was constructed on an upland area of their property a substantial distance away from the OHWM?³

This code interpretation addresses the Pauleys' issues in the following order: 2, 1a, and 1b in section C below. The issues are reordered to conduct and present the interpretation in an order consistent with LUC provisions. Reordering the issues does not alter the nature or substance of the Pauleys' request.

² In their application, the Pauleys do not discuss the original bulkhead located on their property, and there are insufficient facts to determine if the bulkhead was a legally-established nonconforming structure or if its construction complied with the City's Shoreline Master Program or applicable provisions of the Shoreline Management Act. Regardless, replacement of the original bulkhead constitutes new development and its existence does not impact the determinations related to the Pauleys' rock wall set forth in this code interpretation.

³ Koler Letter at 1-2.

C. Analysis.

1. The Rock Wall is a Bulkhead as Defined in the Land Use Code.
(Pauley Issue 2).

The Pauleys disagree with the City's determination that their rock wall is a bulkhead.⁴ They have requested the Director interpret the LUC to determine if the rock wall "can be classified as a bulkhead when it was located a substantial distance from away from the [OHWM] in 2002."⁵ In asserting their rock wall is not a bulkhead, the Pauleys rely on LUC 20.25E.050.C (2002); however, this provision describes what type of bulkhead qualifies for exemption from the requirements for a shoreline substantial development permit ("SSDP"). LUC 20.25E.050.C (2002) does not define a bulkhead for the purposes of applying the exemption:

Construction of the *normal protective bulkhead* common to single-family residences. A "normal protective" bulkhead is constructed at or near the ordinary high water mark to protect a single-family residence and is for protecting land from erosion, not for the purpose of creating land. Where an existing bulkhead is being replaced, it shall be constructed no further waterward of the existing bulkhead than is necessary for construction of new footings[.]

(Emphasis added). Under the LUC, which is a component of the City's SMP, a bulkhead is defined as "a wall or embankment used for holding back earth." LUC 20.50.012 (2002). The term bulkhead is not defined in either the SMA or Ecology's implementing regulations. RCW 90.58.030; Chapters 173-26, 173-27, and 173-14 WAC.

Based on aerial photographs and evidence submitted by the Pauleys, the rock wall is a bulkhead pursuant to the definition contained in LUC 20.50.012 (2002). The 2009 aerial photograph shows a rock wall of undetermined height.⁶ The photo also shows an elevation difference between the lawn behind the rock wall and beach. The invoice from the Pauleys' contractor confirms the installation of a rockery and topsoil. These facts demonstrate that the rock wall is holding back earth. Based on the LUC definition of bulkhead, the 2001 aerial photograph, and accompanying documents reviewed in preparation of this interpretation, the rock wall is a bulkhead as defined under the Land Use Code.

2. The Pauleys' Rock Wall is Illegal. (Pauley Issue 1a).

The Pauleys contend that their rock wall is a legal structure and seek an interpretation regarding application of the City's 2002 shoreline nonconforming development

⁴ Koler Letter at 3.

⁵ *Id.*

⁶ Under the 2002 LUC, bulkheads were limited to 30 inches in height from average grade of actual or existing topography, unless the additional height was approved by the Director and satisfied the performance standards in LUC 20.25E.080.E.3 (2002).

provisions to the rock wall.⁷ Nonconforming development in the Shoreline Overlay District is described in LUC 20.25E.055.A (2002):

Nonconforming development means a Shoreline Overlay District use or structure which was *lawfully constructed or established prior to the effective date of the Shoreline Management Act or the Bellevue Shoreline Master Program, whichever is applicable, or amendments thereto, but which does not conform to present regulations or standards of the Master Program or policies of the Shoreline Management Act.*

(Emphasis added). To establish that the rock wall is nonconforming, the Pauleys⁸ must demonstrate that the rock wall was either legally constructed or constructed before adoption of the City's SMP or the SMA. Because the rock wall was constructed in 2002, which is after adoption of the SMA and the City's SMP and applicable amendments, this interpretation will address only if construction of the rock wall was legal.

A SSDP is required for all development within the Shoreline Overlay District, unless the project is exempt from obtaining a SSDP. LUC 20.25E.040 (2002). Moreover, development within the Shoreline Overlay District must "comply with all applicable ordinances...including clearing and grading regulations." LUC 20.25E.080.B.7 (2002). Development within the Shoreline Overlay District is broadly defined:

A use consisting of the construction or exterior alteration of structures, dredging, drilling, dumping, filling, removal of any sand, gravel or minerals, bulkheading, driving of piling, placing of obstructions, or any other project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to the Master Program at any state of water level.

LUC 20.25E.017.A (2002). Regardless of whether the Pauleys' rock wall is deemed a bulkhead or some other type of development, a SSDP was required, unless construction of the rock wall qualified for exemption from the requirements of a SSDP. The exemptions are narrowly construed and do not exempt a project from other City ordinance or permit regulations, and the exempted development must be consistent with the City's SMP and the SMA. LUC 20.25E.050 (2002).

The City has no record of any permits for the Pauleys' rock wall. Consequently, because the rock wall was constructed without a SSDP, to be considered legally-established, the rock wall must qualify as a "normal protective" bulkhead that would have been exempt from the requirements of a SSDP, and must be shown to be consistent with the City's SMP and the SMA. LUC 20.25E.050 (2002), 20.25E.080.B.6 (2002), and 20.25E.080.B.7 (2002); WAC 173-14-040(k)(1).

⁷ Koler Letter at 3.

⁸ It is well established under Washington law that the property owner must demonstrate the structure or use is legally nonconforming. See *McMillan v. King County*, 161 Wn. App. 581, 255 P.3d 739, 745 (2011) (citations to cases omitted). Note: Page references to the Washington Appellate Reporter are not provided by Westlaw (date last visited Aug. 15, 2011).

There is a two-prong test to determine if a bulkhead is a “normal protective” bulkhead: (1) the bulkhead is constructed at or near ordinary high water mark to protect a single-family residence; and (2) is for protecting land from erosion, not for the purpose of creating land. LUC 20.25E.050.C (2002). Statements in the Pauleys’ request for a formal code interpretation demonstrate the rock wall is not a “normal protective” bulkhead. First, they state the rock wall replaced upland vegetation, and that in 2002, the rock wall was located a substantial distance from the ordinary high water mark.⁹ Finally, they state that the rock wall was not constructed to control erosion.¹⁰

Because the City did not review the Pauleys’ project, there is no site-specific OHWM determination, which is required when siting bulkheads or other forms of shoreline stabilization, so the location of the rock wall in relation to OHWM in 2002 is unknown. The 2001 aerial photograph does show that the single-family residence is located a considerable distance from the lake. Also, the invoice from the Pauleys’ contractor lists as work both grading and the installation of topsoil; these actions would have required a clearing and grading permit (BCC 23.76.025.A (1995)), and support the conclusion that the rock wall was built to create land and not protect it from erosion. This conclusion is further supported by comparing the 2001 and 2009 aerial photographs of the Pauley property, which demonstrate that the beach area behind the rock wall was filled to provide a level lawn area. Based on the available facts, the Pauleys’ rock wall is not a “normal protective” bulkhead that would qualify the project for exemption under LUC 20.25E.050.C (2002).

The only other exemption that may have applied to this project is LUC 20.25E.050.A (2002), which exempts “[a]ny development of which the total cost or fair market value, whichever is higher, does not exceed \$2500, if such development does not materially interfere with the normal public use of the water or Shoreline Overlay District.” The invoice from the Pauleys’ contractor lists the total cost for the project as \$24,850, with installation of the rockery costing \$6,460. Both amounts exceed the \$2,500 limit set forth in LUC 20.25E.050.A (2002). Under these facts, the rock wall cannot be exempted from the requirements for a SSDP.

Finally, construction of the rock wall was not consistent with the City’s SMP. Exemption from the requirements of a SSDP exempts applicants only from the requirement to obtain a SSDP. The SMA and the City’s SMP both require applicants to comply with the City’s SMP and other applicable codes, irrespective of whether a permit is required. LUC 20.25E.050 (2002), WAC 173-14-040(k)(1). This includes compliance with application submittal requirements, SEPA requirements, and clearing and grading requirements. LUC 20.25E.080.B.6 (2002), 20.25E.080.B.7 (2002), 20.35.030.B (2002); BCC 22.02.032, 22.02.033, and BCC 23.76.025.A.1 (1995).¹¹ Construction of the rock wall also required compliance with the Shoreline Overlay District general

⁹ Koler Letter at 3.

¹⁰ *Id.*

¹¹ Ordinance No. 4754, adopting new Clearing and Grading Code, (Apr. 3, 1995). The City’s Clearing and Grading Code was next amended in 2003. Ordinance No. 5452 (July 7, 2003).

development regulations and the specific performance standards for bulkheads. LUC 20.25E.050 and .080 (2002).

The Pauleys did not apply for these permits and therefore their rock wall is inconsistent with the City's SMP. The failure to obtain the required permits and approvals is not the only inconsistency with the Pauleys' project. Based on the aerial photographs showing elevation contour lines, a portion of the rock wall is located within the floodplain of Lake Sammamish, which is the area between elevation 36.6 feet NAVD and the OHWM. Rock walls are not permitted within the floodplain. LUC 20.25H.050 and 20.25H.055. Consequently, even if the Pauleys had applied to construct the rock wall in its present location, the City could not have approved the project. Without the required permits and compliance with the applicable standards, and removal from the floodplain, siting and construction of the Pauleys' rock wall was inconsistent with the City's SMP.

3. The Director is Authorized to Compel Compliance with the City Code.
(Pauley Issue 1b).

The Pauleys request interpretation of the LUC to determine if the City may require the Pauleys to "dismantle their rock wall," which the Pauleys contend was legally constructed in compliance with the City's 2002 code.¹² The Pauleys also inquire if the City may require them to bring their rock wall into compliance with the City's critical areas ordinance adopted in 2006.¹³ The Pauleys disagree with the City's determination that the Pauleys cannot maintain their rock wall as a nonconforming structure because the rock wall was constructed in compliance with the 2002 LUC.¹⁴ The Pauleys also state that the City cannot require them to comply with the City's critical areas ordinance, which was adopted in 2006 after construction of their rock wall in 2002, because the City is barred from retroactively applying new laws.¹⁵ These questions are addressed in order below.

The Director is charged with enforcement of the LUC. LUC 20.40.430. Construction of the rock wall in the Shoreline Overlay District without a permit or in violation of applicable requirements violates the LUC:

It shall be *unlawful* for any person, firm, or corporation to erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish, equip, use, occupy or maintain any building or structure or use any land in the City, or cause the same to be done, *contrary to or in violation of any of the provisions of this Code*

LUC 20.40.450 (emphasis added). The Pauleys constructed their rock wall in violation of the LUC; consequently the Director may seek compliance with the LUC through the

¹² Koler Letter at 2.

¹³ Part 20.25H LUC (Critical Areas Overlay District). Ordinance No. 5680, adopted June 26, 2006, effective August 1, 2006.

¹⁴ Koler Letter at 2.

¹⁵ *Id.*, at 1-2.

enforcement provisions of Chapter 1.18 BCC. LUC 20.40.460 authorizes the Director to seek civil penalties and require abatement of the violation. Because the Pauleys' rock wall was constructed in violation of the provisions of the Shoreline Overlay District, the Director is authorized, at a minimum, to require the Pauleys to remove their rock wall.

The Pauleys rock wall does not benefit from state vesting laws or the protections afforded legally-established nonconforming uses. Under LUC 20.40.500.A.1, vested rights attach when the City receives a fully complete building permit application, or if no building permit is required, vesting attaches on the date of the City's final decision on the applicable land use permit or approval. The City did not receive any applications from the Pauleys for permits or land use approvals required to construct the rock wall; consequently, the wall is not vested to the City's 2002 code. Finally, as discussed in section C.2 above, the Pauleys' rock wall is not a legally-established nonconforming structure and does not benefit from the protections afforded under the City code. For the same reasons, RCW 36.70A.480(3)(c)(i) would not apply to the Pauleys' rock wall.

The rock wall is located within critical areas, and therefore, if the rock wall is allowed to remain in and impact critical areas, its siting and construction must comply with the City's critical areas ordinance. LUC 20.25H.050 and 20.25H.055. As discussed in Section C.2, a portion of the rock wall is located within the floodplain of Lake Sammamish and rock walls are not permitted within the floodplain. LUC 20.25H.050 and 20.25H.055. The rock wall is also likely within the 25-foot shoreline buffer and the abutting 25-foot shoreline structure setback. Because the rock wall is located within these two critical areas, is not vested, and is not a legally-established nonconforming use, siting and construction of the rock wall must comply with the LUC, including the City's critical areas ordinance currently in effect (Part 20.25H LUC).

III. FACTORS FOR CONSIDERATION

In making an interpretation of the provisions of the Land Use Code, the Director shall take the following factors into consideration. LUC 20.30K.140.

A. Applicable Provisions of the Land Use Code.

The applicable LUC provisions considered in this formal code interpretation are the following:

1. Part 20.30K LUC Interpretation of the Land Use Code.
2. Part LUC 20.25E.017 (Definitions Specific to the Shoreline Overlay District) (2002)
3. LUC 20.25E.040 (Substantial Development Permit Required) (2002)
4. LUC 20.25E.050 (Exemptions from Substantial Development Permit system – Letter of Exemption Required) (2002)
5. LUC 20.25E.055 (Nonconforming Development) (2002)
6. LUC 20.25E.080.B. (General Regulations Applicable to all Development) (2002)
7. LUC 20.25E.080.E (Bulkhead Regulations) (2002)
8. LUC 20.25H.050 (Use and Development in the Critical Areas Overlay District)

9. LUC 20.25H.055 (Uses and Development Allowed in Critical Areas – Performance Standards)
10. LUC 20.25H.070.A.1 (Designation and restriction of protected area. Designation) (2002)
11. LUC 20.35.030.B (Submittal Requirements) (2002)
12. LUC 20.40.430 (Enforcement by Administrative Official)
13. LUC 20.40.450 (Violation of this Code)
14. LUC 20.40.460 (Violation – Penalty)
15. LUC 20.40.500.A.1 (Vesting for Permits and Approvals)
16. LUC 20.50.012 (2002) (B Definitions)

B. The Impact of the Interpretation on other Provisions of the Land Use Code.

The interpretation does not impact other provisions of the LUC other than those considered in the analysis provided here.

C. The Implications of the Interpretation for Development within the City as a whole.

The interpretation clarifies that LUC 20.25E.050.C does not define what structure constitutes a bulkhead; rather, LUC 20.25E.050.C describes what *type* of bulkhead qualifies for exemption from the requirements for a SSDP. Bulkhead is defined in the LUC as “a wall or embankment used for holding back earth.” The interpretation also confirms that development within the Shoreline Overlay District must be reviewed and approved by the City, even if a project qualifies for exemption from coverage under a SSDP, and that that development must still be consistent with the City’s SMP, which requires all development to comply with applicable Bellevue ordinances and codes.

The interpretation also confirms the process and requirements for determining if a structure, including a bulkhead, is legally-nonconforming. Finally, the interpretation clarifies that if a structure is deemed to be illegal and without the protections afforded to legally-established nonconforming structures or those with vested rights, its reconstruction or repair must comply with codes in effect when the reconstruction or repair is undertaken to legitimize the structure and ensure its compliance with health, safety, and public welfare provisions.

D. Applicable Provisions of the Comprehensive Plan and other Relevant Codes and Policies.

The following policies from the Comprehensive Plan were deemed relevant to the issue presented and reviewed in relation to the interpretation:

Shoreline Management Program Element

Goals:

Goal 1. To protect and enhance the natural and developed shorelines of the City.

Goal 6. To recognize existing residential uses and to regulate construction within the intent of shoreline policies.

Shoreline Uses and Activities:

Policy SH-3. Give priority to uses and activities which improve or are compatible with the natural amenities of the shorelines, provide public access, or depend on a shoreline location.

Policy SH-7. Discourage expansion or redevelopment of existing shoreline use or activities that are incompatible with the shoreline environment.

Conservation:

Policy SH-15. Discourage landfill and dredging in the shoreline area.

Shoreline Protective Structures:

Policy SH-47. Limit bulkheads upland of the ordinary high water mark except in the case of an approved landfill.

Policy SH-48. Encourage the use of vegetation, cobbles, and gravels for stabilizing the water's edge from erosion of the use of bulkheads. Where bulkheads are used, their design should reduce the transmission of wave energy to other properties.

Environmental:

Policy EN-14. Preserve and maintain the 100-year floodplain in a natural state.

Policy EN-19. Regulate land use and development in a manner which protects natural topographic, geologic, vegetational, and hydrological features.

Policy EN-24. Allow land alteration only for approved development proposals.

Policy EN-28. Encourage residents and professional landscaping firms to utilize native plants in residential and commercial landscapes.

The interpretation is consistent with and does not hinder the Comprehensive Plan policies.

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A Professional Limited Liability Company

zoning

land use

real property

environmental

October 22, 2010

City of Bellevue
Permit Processing
450 110th Ave. NE
Bellevue, WA 98009

**Re: Request for Formal Code Interpretation
Pauley Property/244 W. Lake Sammamish Parkway SE, Bellevue, WA**

To Whom It May Concern:

I represent the Pauleys, who live at 244 W. Lake Sammamish Parkway SE, Bellevue, WA. I am requesting a Director's Interpretation about several issues.

Recently, the City of Bellevue has opined that the Pauleys must dismantle a rock wall which the City characterizes erroneously as a bulkhead. This rock wall was constructed in 2002 when bulkheads were not classified as a substantial development under the Shoreline Management Act ("SMA"). The City has made the demand that the Pauleys must obtain various permits to authorize tearing down the rock wall, then restore the beach near their property. The City has stated that any substitute rock wall must be built in compliance with the City's new 2006 regulations governing bulkheads.

The City claim that the Pauleys must tear down their alleged bulkhead was made the same week that City employee Michael Paine observed to the Planning Commission that Dr. Pauley's criticism of the science on which the City is relying to support its SMA master program revisions has created significant delays in the revision process. (Dr. Pauley is a noted fish expert).

We request interpretations on the following questions:

1a. Whether the Pauleys' rock wall is a legal non-conforming structure because it complied with the City Code in effect in 2002?

1.b. Whether the City can demand that the Pauleys dismantle their rock wall, which was built in compliance with the City Code in effect in 2002 to bring their rock wall into compliance with the 2006 requirements governing bulkheads set forth in the City's Critical Area Ordinance?

Received

OCT 25 2010

Permit Processing

2. Whether the Pauleys' rock wall will be classified as a bulkhead when the SMA defines bulkheads as structures which are constructed near the ordinary high water mark ("OHWM") and the Pauley rock wall was constructed on an upland area of their property a substantial distance away from the OHWM?

I. THE PAULEYS' ROCK WALL IS NOT AN ILLEGAL STRUCTURE

The Pauleys do not agree with the City claim that the rock wall on their property is a bulkhead subject to the City's 2006 regulations governing bulkheads. Section II of this document addresses why the rock wall is not a bulkhead.

The City claims that the Pauleys have no right to maintain the alleged bulkhead they constructed in 2002 as a nonconforming structure and argues that it is not a legal non-conforming structure because it was not authorized by a Shoreline Management Act letter of exemption. This claim is incorrect because under the City Code in effect in 2002 when the rock wall was built, no letter of exemption was required to authorize it. The wall was legal when built, and remains legal as a nonconforming structure.

The City Code in effect in 2002 stated that "a letter of exemption from the City shall be required for any such development to be forwarded to the Department of Ecology and the Attorney General's office **when required by WAC 173-14-115.**" WAC 173-14-115 only requires a letter of exemption when a development "is subject to a Section 10 permit under the Rivers and Harbors Act of 1899 or a Section 404 permit under the Federal Water Pollution Control Act of 1972."¹ Under the unequivocal terms of the SMA in 2002, a bulkhead serving a single family residence was not classified as a substantial development. The SMA states: "The following shall not be considered substantial developments for the purpose of this chapter.... (ii) construction of the normal protective bulkhead, to single family residences." RCW 90.58.030. Clearly, under the law in effect at the time the rock wall was built, no letter of exemption was necessary in order for the structure to be legal. Rather, the City's demand that the Pauleys dismantle their rockery is based on amendments to the Bellevue Municipal Code only adopted in 2006, four years after the rockery was built. (See receipts for construction, attached hereto as Exhibit 1.) The rockery is thus a nonconforming structure.

Fundamental constitutional principles prohibit the government from

¹ WAC 173-14-115 **Letter of exemption.** "Whenever a development falls within the exemptions stated in WAC 173-14-040 and the development is subject to a U.S. Corps of Engineers section 10 permit under the Rivers and Harbors Act of 1899, or a section 404 permit under the Federal Water Pollution Control Act of 1972, the local government shall prepare a letter addressed to the applicant and the department, exempting the development from the substantial development permit requirements of chapter 90.58 RCW. This exemption shall be in substantially the following form. Such forms will be supplied by local government....."

retroactively applying new laws. *State v. Thomasson*, 61 Wn.2d 425, 428-429, 378 P.2d 441 (1963). A law is said to be retroactive “when it takes away or impairs a vested right acquired under existing laws or creates a new obligation or attaches a new disability in respect to transactions or consideration already past.” *State v. Malone*, 9 Wn.App. 122, 131, 511 P.2d 67 (1963) (“in the absence of legislative expression to the contrary, a law is presumed to apply prospectively only”). The right to maintain a nonconforming structure is a vested property right protected by the Washington and United States Constitutions. *Van Sant v. Everett*, 69 Wn.App. 641, 648-49, 849 P.2d 1279 (1993) (“Protected property rights cannot be lost or easily voided.”). The City is barred from applying laws enacted after the bulkhead was built to require the Pauleys to remove it.

Pauleys ask that an interpretation be rendered addressing whether (1) the rock wall is a legal non-conforming structure because it complies with the City code in effect in 2002 and whether (2) the City can demand that Pauleys dismantle their rock wall and bring their property into compliance with the City’s new bulkhead requirements set forth in its 2006 Critical Area Ordinance.

II. THE PAULEYS’ ROCK WALL IS NOT A BULKHEAD WITHIN THE MEANING OF THE SMA

When the rock wall was constructed, it replaced upland vegetation (pampas grass, trees, and various other non-aquatic species). When built in 2002, it was some distance from the ordinary high water mark, (“OHWM”) but in subsequent years, the OHWM has changed. Consequently, the rock wall location is now closer to the waters of Lake Sammamish than formerly. The location of the OHWM has changed because King County does not clean out its outlets emptying into Lake Sammamish thus causing elevation of the lake’s waters.

The City has improperly characterized this rock wall as a bulkhead. The 2002 Bellevue Shoreline Overlay District defines a bulkhead as being “constructed at or near the ordinary high water mark to protect a single family residence and is for protecting land from erosion.” BMC 20.25E.050 (2002). Under the Shoreline Management Act (SMA), ordinary high water mark is defined as a vegetative mark which denotes where upland vegetation begins. See RCW 90.58.030 (2)(b). The Pauleys constructed their rockery at a substantial distance away from the ordinary high water mark, in the midst of upland vegetation. Further, the purpose of a bulkhead under the SMA is to prevent erosion. The 2002 rockery was not an erosion control feature; Lake Sammamish did not wash against it. As noted above, even if the rockery were a bulkhead, it would have been exempt from the SMA substantial development permit requirement. See BMC (2002) 20.25E.050(c).

The Pauleys request that the Director render a code interpretation as to whether the rockery can be classified as a bulkhead when it was a substantial

Re: Pauley – Request for Formal Code Interpretation
October 20, 2010
Page 4

distance away from the OHWM in 2002.

I appreciate the City taking the time to render a determination about these issues.

Very truly yours,

LAW OFFICES OF JANE RYAN KOLER, PLLC



Jane Ryan Koler
Attorney

JRK/ah
Enclosures- Application and
Permit Fee

Cc: Client

2001 Aerial Photo



2009 Aerial Photo



Part 20.25E Shoreline Overlay District**20.25E.010 Definition of district.**

The Shoreline Overlay District encompasses those lake waters 20 acres in size or greater and those stream waters with a mean annual water flow exceeding 20 cubic feet per second; the lands underlying them; the lands extending landward for 200 feet in all directions as measured on a horizontal plane from the ordinary high water mark; floodways and contiguous floodplain areas landward 200 feet from such floodways associated with such streams and lakes; and marshes, bogs, swamps and river deltas associated with such streams and lakes. Specifically included within the district are the following:

- A. Lake Washington, including Mercer Slough upstream to Interstate 405 – The lake waters, underlying lands and the area 200 feet landward of the ordinary high water mark, plus associated floodways, floodplains, marshes, bogs, swamps, and river deltas;
- B. Lake Sammamish – The lake waters, underlying lands and the area 200 feet landward of the ordinary high water mark, plus associated floodways, floodplains, marshes, bogs, swamps and river deltas;
- C. Lower Kelsey Creek – The creek waters, underlying lands, and territory between 200 feet on either side of the top of the banks, plus associated floodways, floodplains, marshes, bogs, swamps and river deltas; and
- D. Phantom Lake – The lake waters, underlying lands and the area 200 feet landward of the ordinary high water mark, plus associated floodways, floodplains, marshes, bogs, swamps and river deltas. (Ord. 4055, 3914, 9-25-89, § 1)

20.25E.017 Definitions specific to the Shoreline Overlay District.

As used in this chapter, the following definitions apply:

A. Development.

A use consisting of the construction or exterior alteration of structures, dredging, drilling, dumping, filling, removal of any sand, gravel or minerals, bulkheading, driving of piling, placing of obstructions, or any other project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to this Master Program at any state of water level.

B. Height.

Measured from average grade level (the average of the natural or existing topography of the portion of the lot, parcel, or tract of real property which will be directly under the proposed building or structure) to the highest point of a structure; provided, that television antennas, chimneys, and similar appurtenances shall not be used in calculating height, except where they obstruct the view of a substantial number of residences; provided further, that temporary construction equipment is excluded in this calculation.

C. Structure.

A permanent or temporary edifice or building, or any piece of work artificially built or composed of parts joined together in some definite manner, whether installed on, above, or below the surface of the ground or water, except for vessels. (Ord. 4055, 3914, 9-25-89, § 3)

20.25E.020 Authority and purpose.

The Shoreline Overlay District for the City is hereby adopted by authority of Chapter 90.58 RCW, the Shoreline Management Act of 1971 as amended, the same being incorporated herein by this reference as though fully set forth in this title, and more particularly, to fulfill the public purpose preserving the state's and City's important shoreline natural resources, and further, to protect and promote the public health, safety and general welfare.

20.25E.030 Interpretation – Administration by City.

The Bellevue Shoreline Overlay District is supplementary to the underlying land use districts. When conflict arises between regulations of the Shoreline Overlay District and underlying land use districts, regulations of the Shoreline Overlay District shall prevail. When conflict arises between regulations of the Shoreline Overlay District and other special districts, such as the Sensitive Area Overlay District, the most restrictive regulations shall prevail. (Ord. 4055, 3914, 9-25-89, § 4)

20.25E.040 Substantial Development Permit required.

A Substantial Development Permit is required for all development within the Shoreline Overlay District, with the exceptions noted in LUC 20.25E.050. Procedures for securing a Substantial Development Permit shall be as set forth in Chapter 173-14 WAC and Part 20.30R LUC. All information reasonably required to enable the City to make a full evaluation of proposed development in shoreline areas shall be provided by applicants for a Substantial Development Permit. (Ord. 4055, 3914, 9-25-89, § 5)

20.25E.050 Exemptions from Substantial Development Permit system – Letter of exemption required.

The following developments shall not require Substantial Development Permits so long as they are consistent with the policy of the State Shoreline Management Act, Chapter 173-14 WAC and the City's Shoreline Master Program. However, a letter of exemption from the City shall be required for any such development, to be forwarded to the Department of Ecology and the Attorney General's Office when required by WAC 173-14-115. Exemptions from the Substantial Development Permit system are as follows:

- A. Any development of which the total cost or fair market value, whichever is higher, does not exceed \$2,500, if such development does not materially interfere with the normal public use of the water or Shoreline Overlay District;
- B. Normal maintenance or repair of existing structures or developments, including damage by accident, fire or elements. "Normal maintenance" includes those usual acts to prevent a decline, lapse, or cessation from a lawfully established condition; "Normal repair" means to restore a development to a state comparable to its original condition within a reasonable period after decay or partial destruction except where repair involves total replacement which is not common practice or causes substantial adverse effects to the Shoreline Overlay District resource or environment. Replacement of existing pilings in the same location shall constitute "normal repair" under this section;
- C. Construction of the normal protective bulkhead common to single-family residences. A "normal protective" bulkhead is constructed at or near the ordinary high water mark to protect a single-family residence and is for protecting land from erosion, not for the purpose of creating land. Where an existing bulkhead is being replaced, it shall be constructed no further waterward of the existing bulkhead than is necessary for construction of new footings;

- D. Emergency construction necessary to protect property from damage by the elements. An "emergency" is an unanticipated and imminent threat to public health, safety, or the environment which requires immediate action within a time too short to allow full compliance with this chapter;
- E. Construction and practices normal or necessary for farming, irrigation, and ranching activities, including agricultural service roads and utilities construction of a barn or similar agricultural structure, and the construction and maintenance of irrigation structures including but not limited to head gates, pumping facilities, and irrigation channels; provided, that a feedlot of any size, all processing plants, other activities of a commercial nature, alteration of the contour of the property by leveling or filling other than that which results from normal cultivation, shall not be considered normal or necessary farming or ranching activities. A feedlot shall be an enclosure or facility used or capable of being used for feeding livestock hay, grain, silage, or other livestock-feed, but shall not include land for growing crops or vegetation for livestock feeding and/or grazing, nor shall it include normal livestock wintering operations;
- F. Construction or modification of navigational aids, such as channel markers or anchor buoys;
- G. Construction by an owner, lessee, or contract purchaser of a single-family residence, and/or accessory structure thereto, for his own or his family use which does not exceed a height of 35 feet above average grade level.
- "Single-family residence" means a detached dwelling designed for and occupied by one family including those structures and developments within a continuous ownership which are a normal appurtenance.
- An "appurtenance" is necessarily connected to the use and enjoyment of a single-family residence and is located landward of the perimeter of a marsh, bog, or swamp. Normal appurtenances include a garage; deck; driveway; utilities; fences; and grading which does not exceed 250 cubic yards (except to construct a conventional drainfield). Construction authorized under this exemption shall be located landward of the line of ordinary high water mark;
- H. Construction of a dock, including a community dock, designed for pleasure craft only, for the private noncommercial use of the owner, lessee, or contract purchaser of single-family and multiple residence(s), for which the cost or fair market value, whichever is higher, does not exceed \$2,500;
- I. Operation, maintenance, or construction of canals, waterways, drains, reservoirs, or other facilities that now exist or are hereafter created or developed as a part of an irrigation system for the primary purpose of making use of system waters, including return flow and artificially stored ground water for the irrigation of lands;
- J. The marking of property lines or corners on state-owned lands, when such marking does not significantly interfere with normal public use of the surface of the water;
- K. Operation and maintenance of any system of dikes, ditches, drains, or other facilities existing on September 8, 1975, which were created, developed or utilized primarily as a part of an agricultural drainage or diking system;
- L. Any project with certification from the governor pursuant to Chapter 80.50 RCW; and

The above exemptions shall be construed narrowly and shall not exempt a project from other City of Bellevue ordinance or permit regulations; further, exempted development shall be consistent with the policies and provisions of the Shoreline Management Act, the Shoreline Management Program Element of the Bellevue Comprehensive Plan and this Part 20.25E. (Ord. 4055, 3914, 9-25-89, § 6)

20.25E.055 Nonconforming development.

- A. Nonconforming development means a Shoreline Overlay District use or structure which was lawfully constructed or established prior to the effective date of the Shoreline Management Act or the Bellevue Shoreline Master Program, whichever is applicable, or amendments thereto, but which does not conform to present regulations or standards of the Master Program or policies of the Shoreline Management Act.
- B. Nonconforming development may be continued; provided, that it is not enlarged, intensified, increased, or altered in any way which increases its nonconformity;
- C. A nonconforming development which is moved any distance must be brought into conformance with this part and the Shoreline Management Act;
- D. If a nonconforming development is damaged to an extent not exceeding 75 percent replacement cost of the original structure, it may be reconstructed to those configurations existing immediately prior to the time the structure was damaged, so long as restoration is completed within one year of the date of damage;
- E. If a nonconforming use is discontinued for 12 consecutive months or for 12 months during any two-year period, any subsequent use shall be conforming. It shall not be necessary to show that the owner of the property intends to abandon such nonconforming use in order for the nonconforming rights to expire; and
- F. A nonconforming use shall not be changed to another nonconforming use, regardless of the conforming or nonconforming status of the building or structure in which it is housed. (Ord. 4055, 3914, 9-25-89, § 7)

20.25E.060 Use regulations and policies governing permits.

General use regulations applying to all permits and specific regulations for certain types of uses are found in LUC 20.25E.080, "Shoreline Use Regulation". In addition, all uses and permits must be in conformance with the Shoreline Master Program Policy Element of the Bellevue Comprehensive Plan.

20.25E.070 Permits.

Land use approvals in a Shoreline Overlay District shall follow procedures found in Parts 20.30C LUC (Shoreline Conditional Uses), 20.30H LUC (Variances to the Shoreline Master Program), and 20.30R LUC (Shoreline Substantial Development). (Ord. 4055, 3914, 9-25-89, § 8; Ord. 3530, 8-12-85, § 63)

20.25E.080 Shoreline use regulation.**A. Policy and Administration.**

1. The Shoreline Master Program Use Regulations, as adopted by the City of Bellevue by Resolution 2441, as amended by this Code, and as required by Chapter 98.58 RCW, regulate development in the Shoreline Overlay District.
2. The use regulations developed for the Lake Washington, Lake Sammamish, lower Kelsey Creek and Phantom Lake shorelines are derived directly from state policies pertaining to applicable activity. Some of the conditions are designated as mandatory requirements for the various use activities, while others are regarded as factors to guide discretionary decisions.

3. The City through the administration of this Code must advise affected parties, upon application for permits, of the need for compliance with federal and state law when their existence is known and further must advise the applicants when there is a probability of the existence of regulations administered by other agencies with suspected jurisdiction.

B. General Regulations Applicable to all Land Use Districts and Activities.

1. Where applicable, all federal and state water quality and effluent standards shall be met.
2. If a property extends into the Shoreline Overlay District, the Shoreline Master Program Policies and these use regulations shall apply only to that portion of the property lying within the Shoreline Overlay District.
3. All development within the Shoreline Overlay District shall be accompanied by a plan indicating methods of preserving shoreline vegetation and for control of erosion during and following construction in accordance with City of Bellevue Excavation, Clearing and Grading regulations (BCC 23.10.140), and the Comprehensive Plan.
4. Special care shall be exercised to preserve vegetation in wetland and water course bank areas in order to prevent soil erosion.
5. Maximum height limitation for any proposed structure within the Shoreline Overlay District shall be 35 feet, except in land use districts with more restrictive height limitations. The method of measuring the maximum height is described in WAC 173-14-030(6). Variances to this height limitation may be granted pursuant to Part 20.30H LUC.
6. The Bellevue Shoreline Master Program, in conjunction with existing Bellevue land use ordinances and Comprehensive Plan policies, shall guide all land use decisions in the Shoreline Overlay District.
7. Any development within the Shoreline Overlay District shall comply with all applicable Bellevue ordinances, including but not limited to the Bellevue Land Use Code, Sign Code, and clearing and grading regulations.
8. The dead storage of watercraft seaward of the ordinary high water mark of the shoreline is prohibited.
9. Where applicable, state and federal standards for the use of herbicides, pesticides and/or fertilizers shall be met, unless superseded by City of Bellevue ordinances.
10. Adequate storm drainage and sewer facilities must be operational prior to construction of new development within the Shoreline Overlay District. Storm drainage facilities shall be separated from sewage disposal systems.

C. Agricultural Use Regulations.

1. Minimum lot dimensions for a single-family dwelling within those areas of the Shoreline Overlay District designated Agriculture shall be 200 feet, length and width. Minimum setback requirements: front yard, 50 feet minimum; side and rear yards, 25 feet minimum. All structures, accessory buildings and ancillary facilities (e.g., manure stockpiles, retention ponds and storage ponds) shall be set back a minimum of 25 feet from the ordinary high water mark.
2. In those areas of the Shoreline Overlay District in which agricultural uses are permitted, habitable structures and accessory buildings may not exceed 35 percent of the lot area, and may not exceed a height maximum of 35 feet.

3. All structures, accessory buildings and ancillary facilities shall be built and located in such a manner so as to prevent agricultural wastes from entering ground and surface water.
4. Unless superseded by stricter City of Bellevue ordinances, erosion control measures shall be applied in accordance with the applicable guidelines and standards established by the Soil Conservation Service, U.S. Department of Agriculture.

D. Aquaculture Regulations.

1. When construction of aquaculture structures is permitted, it shall be done with minimum disturbance to the existing shorelines.
2. The quality of water discharged into water courses from rearing ponds shall not adversely affect the quality of the recipient waters or associated wetlands.
3. No structure which might reasonably hinder the passage of anadromous fish shall be permitted within the Shoreline Overlay District.

E. Bulkhead Regulations.

1. The use of bulkheads shall be limited to protection of existing areas or facilities landward of the ordinary high water mark, and not for the purpose of creating land by filling behind such bulkheads.
2. Construction of or improvements to bulkheads shall not extend into the lakes or Riparian Corridors beyond the ordinary high water mark, except in case of an approved landfill in compliance with LUC 20.25E.080.K.5, and shall be completed within a timely manner.
3. Bulkheads shall be limited in height to 30 inches from average grade of actual or existing topography or, if at the ordinary high water mark, the ordinary high water mark; except that bulkhead heights may be increased if approved by the Director of Planning and Community Development and Director of Storm and Surface Water Utility if they determine the following criteria are satisfied:
 - a. Increased height does not negatively impact abutting properties; and
 - b. Increased height is necessary to protect the existing upland property because of:
 - i. The extraordinary height and/or slope of the natural or existing topography at and immediately landward of the ordinary high water mark. In such instances, increased bulkhead height shall be limited to the minimum height necessary to protect the existing property landward of the ordinary high water mark, or
 - ii. Extraordinary wave action. In such instances, increased bulkhead height shall be limited to the minimum height necessary to protect the existing property landward of the ordinary high water mark or 45 inches, whichever is less.
4. Bulkheads shall be designed to minimize the transmission of wave energy to other properties.

F. Breakwaters, Jetties and Groins Regulations.

1. Solid landfill breakwaters shall be prohibited within the Shoreline Overlay District.
2. The builder of a jetty or groin structure shall be responsible for determining in advance any possible adverse effects to the property of others caused by his construction. Alternative

means for protecting the shoreline shall be outlined by the builder prior to issuance of a Substantial Development Permit.

G. Clearing and Grading Regulations.

1. All clearing, grading, excavating, and fill in the Shoreline Overlay District shall comply with the provisions of BCC 23.10.140.
2. No clearing, grading, excavating, or fill shall be allowed within 25 feet of the ordinary high water mark except as permitted by this Part 20.25E.
3. Wherever the City determines that the act or intended act of clearing, grading, excavation or fill has become or will constitute a hazard in life or limb, or endangers property, or adversely affects the safety, use of, or stability of a public way, drainage channel or natural watercourse, including siltation and sedimentation therein, the owner of the property upon which the clearing, excavation or fill is located or other person or agent in the City shall, within the period specified therein terminate such clearing, grading, excavation, embankment or fill, or eliminate the same from the development plan, or modify the plans, as may be required so as to eliminate the hazard and be in conformance with the requirements of this Code.

H. Commercial Development Regulations.

1. Commercial development is not permitted on the City's Lake Sammamish shoreline.
2. The maximum building height in areas of the Shoreline Overlay District which are zoned for commercial uses shall be 35 feet, except in those zoning districts with more restrictive height limitations.
3. Tanks for the distribution and sale of petroleum products are not permitted in the Shoreline Overlay District except for marinas. When permitted, such tanks shall be located on dry land, and designed to preclude and contain spills. Such tanks shall not be permitted in corrosive soil areas.
4. Any commercial development located within the Shoreline Overlay District shall be equipped to contain and clean up pollutant spills, as required by state and federal regulations.
5. Commercial parking facilities shall not be permitted over water or within 25 feet of the ordinary high water mark. Parking areas shall be permitted only when accessory to commercial uses. Provisions must be made to control and cleanse surface water runoff from the parking areas in order to comply with state water quality standards.
6. Commercial development along shorelines shall provide for erosion control.
7. Commercial development permitted within the Shoreline Overlay District, other than that related to water use, shall be set back a minimum of 25 feet from the ordinary high water mark.
8. Commercial development in the Shoreline Overlay District oriented to the use of watercraft shall provide restrooms and hookups for toilet facilities. No watercraft shall flush toilet refuse into the lake at such locations. For the purposes of this section, commercial development shall include yacht clubs, commercial and private marinas, boat repair shops, fueling facilities and other similar uses.

I. Dredging Regulations.

1. Dredging for the sole purpose of obtaining fill or construction material is prohibited.

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

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

3. The lateral spread of resuspended sediment created by a dredging operation shall be contained within previously approved limits.
4. Dredging spoils shall be deposited at dumping sites which are set back an adequate distance to prevent impairment of water quality. Dumping sites shall not be allowed except in areas designated by the City of Bellevue.
5. Dredging spoils stored at the dredging site shall be adequately contained to prevent leakage. Any drainage of the spoils shall be filtered sufficiently to prevent reentrance of sediments into the water.
6. Shoreline vegetation disturbed by dredging projects shall be restored to its original or an improved condition through use of indigenous vegetation.

J. Ecological and Historical Sites.

1. The designation of historical sites and related preservation activities is permitted in the Shoreline Overlay District.
2. Water fowl and wildlife preserves are a permitted use within the Shoreline Overlay District.

K. Landfill Regulations.

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

1. Landfills within the Shoreline Overlay District shall be controlled to prevent significant adverse alteration in the storage and flow characteristics of the affected area.
2. Landfills which do not meet the requirements of this Code and the Bellevue Building Code as amended are prohibited (Uniform Building Code 7010).
3. Landfill is prohibited except where necessary for:
 - a. Maintenance of shoreline property above the ordinary high water mark;
 - b. Improvement of water quality in the event no other possible alternatives are available;
 - c. Enhancement or restoration of habitat in conformance with City of Bellevue standards adopted by the Director of Planning and Community Development and the Director of Storm and Surface Water Utility if permitted under Part 20.25H LUC;

- d. Replenishment of sand on public and private beaches;
- e. Establishment of an interpretive center when undertaken by, or in cooperation with, the City of Bellevue if permitted under Part 20.25H LUC;
- f. Ensuring or preserving the structural integrity of bulkheads permitted under LUC 20.25E.080.E.

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

4. Landfill behind bulkheads shall be limited to the height of bulkheads in compliance with paragraph E.3 of this section.
5. No landfill shall be permitted below or within the ordinary high water mark, except to restore lands lost to unusual erosion within the 12 months prior to the date of permit or exemption application. In no event, however, shall landfill be permitted below the ordinary high water mark established 12 months prior to permit or exemption application. The property owner bears the burden of demonstrating the unusual nature of the precipitating erosion and establishing the location of the earlier ordinary high water mark.
6. Landfill is prohibited within marshes, bogs and swamps and within wetlands described in the Sensitive Areas Notebook except as provided for in Chapter 20.25H LUC.
7. In those limited instances where landfill is permitted, the waterside perimeter of the fill shall be stabilized with vegetation.
8. Applicants for landfills within the Shoreline Overlay District must also secure and perform in accordance with fill permits under the City's clearing and grading regulations (Chapter 23.76 BCC).
9. Landfills shall be permitted only when they are in complete conformance with all conditions of site development approval.

L. Mining Regulations.

Mining is not a permitted activity within the Bellevue Shoreline Overlay District.

M. Outdoor Advertising, Sign and Billboard Regulations.

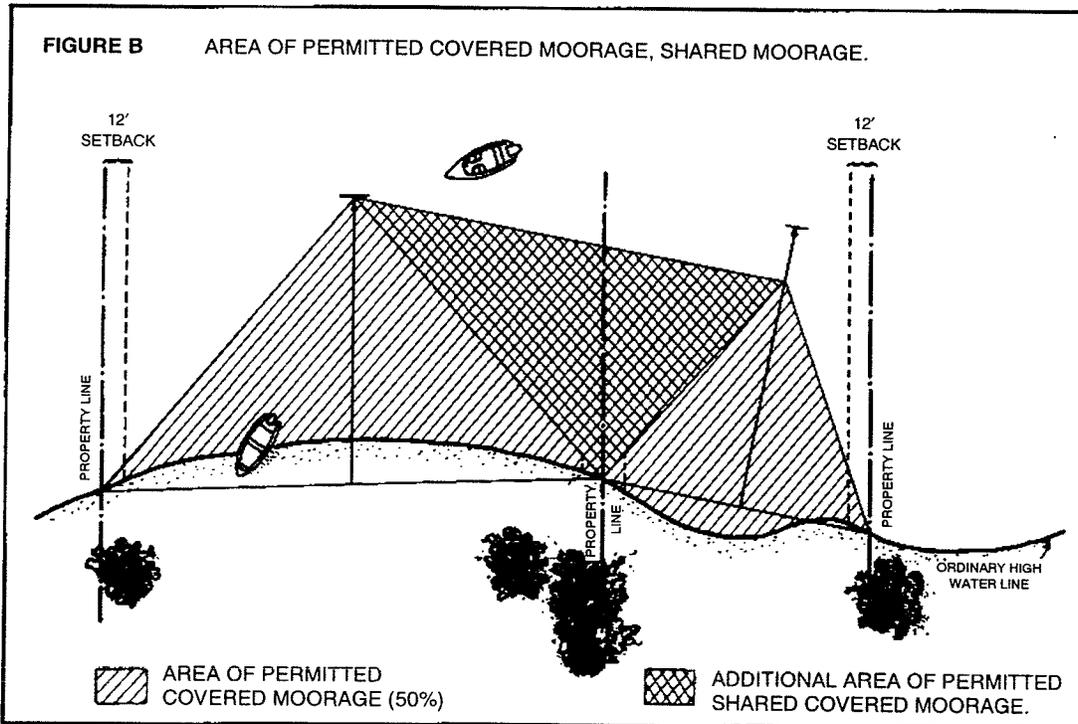
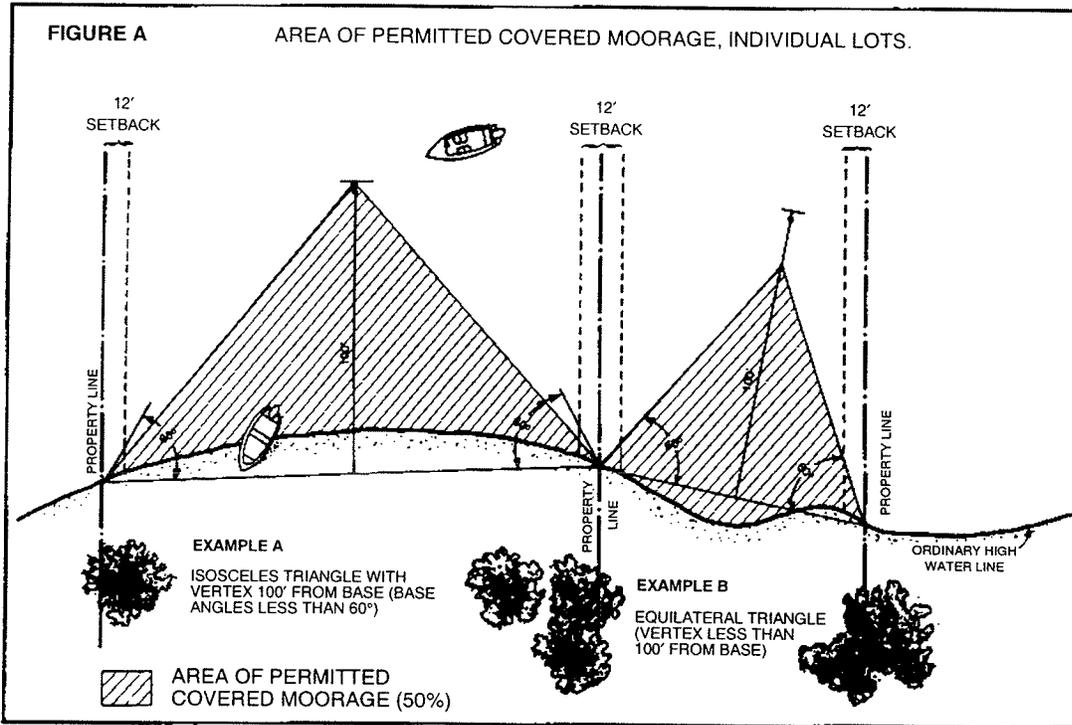
1. Signs in residential areas of the Shoreline Overlay District shall be for identification only, non-commercial, unobtrusive in character and nonilluminated. Lighting from an external source shall be shielded from view.
2. Signs in the Shoreline Overlay District shall not obstruct the shoreline views of upland properties.
3. Signs in that portion of the Shoreline Overlay District which permits commercial activities shall be permitted provided such signs are physically oriented internally to the district and meet the requirements of the Bellevue Sign Code. No water-oriented advertising is permitted.
4. Any permitted use within that portion of the Shoreline Overlay District which permits commercial activities and which actually fronts on Lake Washington, will be permitted one identifica-

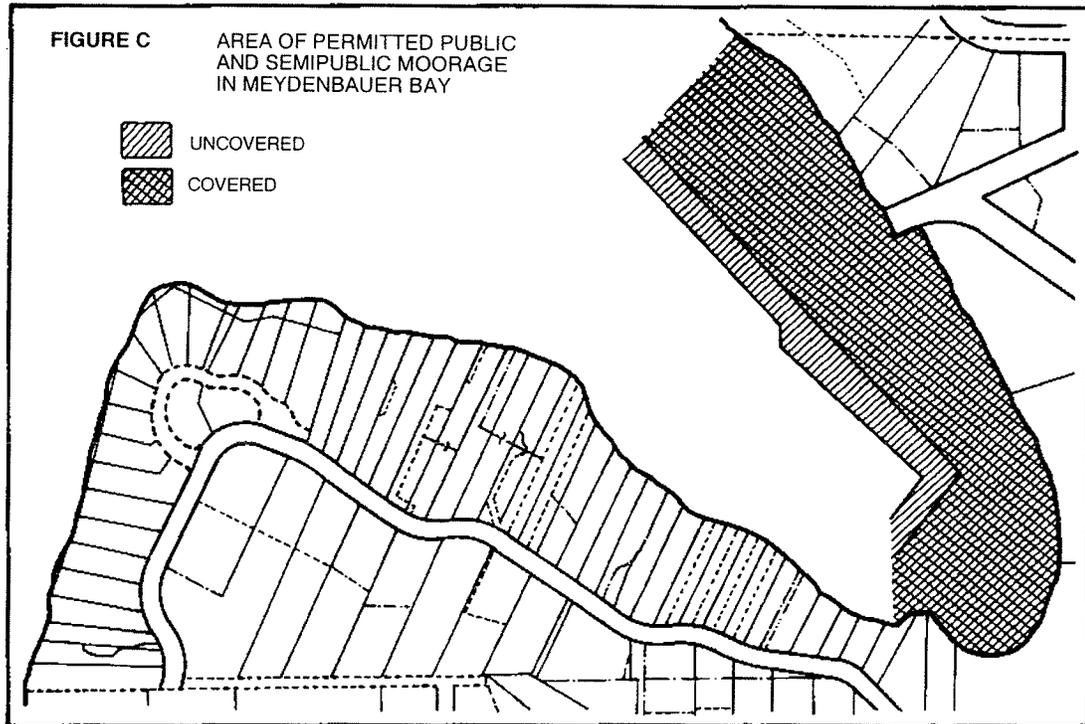
tion sign oriented to the lake. Such sign may identify the business complex itself or gasoline service associated with the complex.

- a. If located on dry land, the signs shall comply with the size and placement requirements of the Bellevue Sign Code and illumination of the sign may be low-level internal illumination.
 - b. If such sign is located on a pier, maximum size shall be 25 square feet and maximum height 10 feet above pier deck, and such sign may not be illuminated.
5. In those portions of the wetland environment of the Shoreline Overlay District where commercial development is permitted, signs shall be for identification only.
 6. In wetland environment commercial development areas, internally illuminated signs shall be low-level, and external lighting sources shall be shielded from view.
 7. Off-premises signs, nonappurtenant, illuminated and freestanding signs extending above the roof line are not permitted in the Shoreline Overlay District.
 8. Sign structures must meet all other conditions of the Bellevue Sign Code.

N. Moorage Regulations.

1. The height of any moorage structure shall not exceed a maximum of 16 feet above the ordinary high water mark.
2. **Area Requirements, Covered Moorage.** The covered portion of a moorage shall be restricted to the area lying within an equilateral triangle, the base of which shall be a line drawn between the points of intersection of the property sidelines with the line of normal high water, except that covered moorage shall not extend beyond 100 feet from the center of the base of such triangle; the covered portion of such moorage shall be restricted to the area lying within an isosceles triangle of which the base is the line drawn between the points of intersection with the respective sidelines of such property and the line of normal high water with the vertex thereof 100 feet from the center of said base. The required 12-foot setback from the property sidelines shall be deducted from the triangle area. (See Figure A.)





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

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

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

4. Uncovered Public and Semipublic Moorage in Meydenbauer Bay. Public or semipublic moorage in Meydenbauer Bay shall not extend beyond the following boundary line: All Azimuths being South; commencing at the E 1/4 Sec. corner of Sec. 31 T 25N, R 5E, W.M., whose "X" coordinate is 1,661,520.58 and whose "Y" coordinate is 225,661.29 of the Washington Coordinate System, North Zone, and running thence on an Az of 78°51'17" a distance of 963.76 feet to a point whose coordinate is "X" 1,660,575.00, "Y" 225,475.00 of said coordinate system; thence on an Az of 37°26'00" for a distance of 60 feet to a point being the true beginning of this description; thence on an Az of 316°19'15" a distance of 495.14 feet; thence on an Az of 2°21'10" a distance of 42.52 feet; thence on an Az of 312°06'17" a distance of 415.00 feet; thence on an Az of 37°24'19" a distance of 118.06 feet to an intersection with the northwesterly extension of the northwesterly line of Reserve "A" at the N. end of Ronda Street between Blocks 29 and 38, Plat of Moorlands, as recorded in Vol. 4 of Plats, Page 103, records of King

County, Washington, said point of intersection being the terminus of this line description. (See Figure C.)

5. Covered Public and Semipublic Moorage in Meydenbauer Bay. The extent of covered public or semipublic moorage in Meydenbauer Bay shall comply with the following limitations: On the common line of adjoining private properties, covered moorage shall observe a two-foot-six-inch setback; on public street lines, in the water, no setback shall be required; no covered moorage shall extend out in the bay farther than the limits of the following boundary line: All Azimuths being South; commencing at the E 1/4 Sec. corner of Sec. 31, T 25N, R 5E, W.M., whose "X" coordinate is 1,661,520.58 and whose "Y" coordinate is 225,661.29 of the Washington Coordinate System, North Zone, and running thence on an Az of 78°51'17" a distance of 963.76 feet to a point being the true beginning whose coordinate is "X" 1,660,575.00, "Y" 225,475.00 referred to said coordinate system; thence on an Az of 316°19'15" a distance of 999.87 feet; thence on an Az of 37°24'19" a distance of 217.23 feet to an intersection with the northwesterly extension of the northwesterly line of Reserve "A" at the N. end of Ronda Street between Blocks 29 and 38, Plats of Moorlands as recorded in Vol. 4 of Plats, page 103, records of King County, Washington, said point of intersection being the terminus of this line description. (See Figure C.)
6. Boathouses must be approved by the Director of Planning and Community Development. The Director may approve a boathouse only if the structure does not constitute a substantial obstruction of the range of view for neighboring properties, and the structure complies with the covered moorage restrictions in paragraph N.2 of this section.
7. Moorage shall only be permitted within:
 - a. Lots created on or after the effective date of this ordinance having water frontage meeting or exceeding the minimum lot width required in the applicable land use district;
 - b. Lots created prior to the effective date of this ordinance; or
 - c. Nonbuilding tracts platted for the purpose of providing common moorage for a group of contiguous properties.

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

8. No private moorage or other structure waterward of the ordinary high water mark, including structures attached thereto, shall be closer than 12 feet to any adjacent property line except when a mutual agreement of adjoining property owners is recorded with the King County Records and Elections Division and the Bellevue City Clerk. Excepted from the requirements of this section are boat lifts or portions of boat lifts which do not exceed 30 inches in height measured from ordinary high water mark.
9. Private Moorage Extension.
 - a. Except as provided in paragraph 9.b of this section, private moorage may not extend more than 80 feet beyond the ordinary high water mark.
 - b. Private moorage may extend more than 80 feet beyond the ordinary high water mark to the point at which 10 feet of water depth exists at ordinary high water, if approved by the

Director of Planning and Community Development. In making his determination the Director shall approve the proposal only if the following criteria are satisfied:

- i. The moorage will not extend beyond the point necessary to obtain a reasonable and safe moorage; and
 - ii. The increased length will not interfere with the public use and enjoyment of the water, or create a hazard to navigation; and
 - iii. The increased length will not unreasonably interfere with the use of adjacent piers.
- c. In no case may private moorage extend more than 150 feet beyond the ordinary high water mark.
10. Boat moorage for semipublic and public use shall be permitted as a shoreline conditional use only.

O. Ports and water-related industries are not a permitted use within the Shoreline Overlay District.

P. Recreation Activities Regulations.

1. Swimming shall be separated from public or semipublic boat launching area.
2. Public street ends in the Shoreline Overlay District may be developed for public recreational activities.
3. Recreational activities within the Shoreline Overlay District shall be permitted when designed subject to the provisions of the Bellevue Shoreline Master Program and its use regulations.

Q. Residential Development Regulations.

1. For purposes of this section, accessory structures shall include swimming pools, tennis courts, spas, greenhouses and similar facilities.
2. No boat, houseboat or watercraft moored seaward of the ordinary high water mark shall be used as a permanent residence.
3. All structures, accessory buildings and ancillary facilities, other than those related to water use (such as moorage) shall be set back a minimum of 25 feet from the ordinary high water mark, except minor structural elements as defined and regulated under LUC 20.20.025.C, and except stairs, handrails, and fences essentially perpendicular to the shoreline. The setback is measured from the ordinary high water mark of any shoreline regardless of property lines.
4. Fences essentially parallel with the shoreline are not permitted within 25-foot setback.
5. Maximum building height in those areas of the Shoreline Overlay District which are zoned for residential uses shall be 35 feet, except in land use districts where more restrictive height limitations exist.
6. All residential development shall be accompanied by a plan indicating methods for preserving shoreline vegetation and control of erosion during and following construction as required by City of Bellevue clearing and grading regulations (Chapter 23.76 BCC) and the Comprehensive Plan.

R. Road and Railroad Designs and Construction Regulations.

1. Construction of new railroad corridors in the Shoreline Overlay District is prohibited. Repair and reconstruction of existing facilities is permitted.
2. Motorized vehicles including off-trail vehicles, are prohibited within publicly-owned portions of the Shoreline Overlay District except for authorized public service vehicles.
3. Development of pedestrian and bicycle pathways within the Shoreline Overlay District shall avoid those areas which are too fragile for normal trail construction. When development design is shown to mitigate adverse impact, it may be permitted.
4. Runoff from City streets and roads within the Shoreline Overlay District should be cleansed of sediment and toxic materials before entering watercourses of the Shoreline Overlay District.
5. New parking facilities within the Shoreline Overlay District shall not be permitted over water or within 25 feet of the ordinary high water mark. Provisions must be made to control and cleanse surface water runoff from parking areas in order to comply with state water quality standards.
6. Parking facilities shall be set back a sufficient distance from the ordinary high water mark so as not to require the creation or protection of such parking facilities by shoreline protective measures.

S. Shoreline Protection Regulations.

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

T. Solid Waste Regulations.

1. The disposal of nuisance materials, as defined by the City of Bellevue Nuisance Ordinance, Chapter 9.10 BCC, within the Shoreline Overlay District is prohibited.
2. The dumping of toxic materials within the Shoreline Overlay District is prohibited.

U. Utilities Regulations.

1. When utilities are located within the wetlands environment of the Shoreline Overlay District, sufficient measures must be taken to adequately mitigate all related substantial adverse impacts.

2. Compatible utilities shall be consolidated within a single right-of-way. After construction, all areas shall be restored to their pre-project configuration, replanted with suitable vegetation, and provided maintenance until newly planted vegetation is established.

V. Variances – Special Procedures.

Where there is a Shoreline Overlay District, variances from the requirements of the underlying use district regulations will follow the requirements and procedures specified in Part 20.30G LUC. A variance from the Shoreline Master Program will not be required in addition to the variance from the requirements of the underlying use district unless the proposal would constitute a variance from the Shoreline Master Program. Where the variance sought is from the requirements of the Shoreline Master Program, the procedures and requirements specified in Part 20.30H LUC will be followed.

W. Conditional Uses – Special Procedures.

Uses which are shown as Conditional Uses on Chart 20.10.440 for the underlying use district shall, where there is also a Shoreline Overlay classification on the property, follow the requirements and procedures of Part 20.30C LUC.

X. Administration and Enforcement.

The administration and enforcement of this section shall be in conformance with the rules and procedures set forth in Chapter 20.40 LUC and with those found in WAC 173-14-180 or its successor. When conflict arises between regulations of the Shoreline District and underlying land use districts, regulations of the Shoreline Overlay District shall prevail. (Ord. 4973, 3-3-97, § 888; Ord. 4816, 12-4-95, § 988; Ord. 4255, 6-3-91, §§ 5 – 7; Ord. 4055, 3914, 9-25-89, §§ 9 – 14; Ord. 3690, 8-4-86, §§ 12, 15; Ord. 3530, 8-12-85, §§ 64, 65; Ord. 3145, 9-27-82, § 56)

Part 20.25H Sensitive Area Overlay District

20.25H.010 Scope.

This Part 20.25H establishes special standards and procedures that apply to development on any site which is in whole or in part mapped or defined as a sensitive area in the City of Bellevue Sensitive Area Notebook. Any such development must be reviewed and approved pursuant to this part in addition to being subject to all other relevant standards of the Bellevue City Code. (Ord. 3775, 5-26-87, § 18)

20.25H.020 Applicability.

This Part 20.25H applies to each application for development under the Land Use Code when the subject property is in whole or in part mapped or defined as a sensitive area in the City of Bellevue Sensitive Area Notebook. The procedures, standards and criteria apply only to that portion of the subject property which is determined to be a sensitive area. (Ord. 3775, 5-26-87, § 18)

20.25H.030 Purpose.

The Sensitive Area Overlay District is a mechanism by which the City recognizes the existence of natural conditions which affect the use and development of property and imposes special regulations on the use and development of that property in order to protect environmentally sensitive areas and the public health, safety and welfare. (Ord. 3775, 5-26-87, § 18)

20.25H.040 Applicable procedure.

The provisions of this part will be applied through the review process for the underlying permit or approval for a development and a decision on such applications may be appealed as specified therein. (Ord. 4973, 3-3-97, § 501; Ord. 4816, 12-4-95, § 601; Ord. 4654, 6-6-94, § 47; Ord. 4302, 11-18-91, § 6; Ord. 3775, 5-26-87, § 18)

20.25H.050 Who may apply.

The property owner may apply for approval of a use or development pursuant to this part. (Ord. 3775, 5-26-87, § 18)

20.25H.060 Submittal requirements.

- A. The Director of Planning and Community Development shall specify the submittal requirements, including type, detail and number of copies, for a use or development application to be deemed complete and accepted for filing.
- B. The Director of Planning and Community Development may waive specific submittal requirements determined to be unnecessary for review of an application. (Ord. 4654, 6-6-94, § 48; Ord. 3775, 5-26-87, § 18)

20.25H.070 Designation and restriction of protected area.

A. Designation.

Except in Downtown Districts and as limited by in subsection B of this section, the following areas are designated as Protected Areas for purposes of the Bellevue City Code:

1. Areas of Special Flood Hazard (see LUC 20.50.010).

2. Riparian Corridors excluding Type D (see LUC 20.50.044), including the following primary setback from the top-of-bank:
 - a. 50 feet for Type A corridors;
 - b. 25 feet for Type B corridors;
 - c. 10 feet for Type C corridors;
 - d. As defined in the Sensitive Areas Notebook for any channelized corridors for which a specific reach study and restoration plan is adopted.
3. Wetlands excluding Type C (see LUC 20.50.054), including the following primary setback from the wetland edge:
 - a. 50 feet for Type A wetlands; and
 - b. 25 feet for Type B wetlands.
4. Protected Slopes.
 - a. Areas of colluvial or landslide deposit on slopes of 15 percent or more, together with a primary setback of 75 feet from the toe-of-slope; and
 - b. Slopes of 40 percent or more together with a primary setback of 50 feet from the top-of-slope.
5. Areas designated on the Coal Mine Areas maps or in the City's Coal Mine Area Regulations as potentially affected by abandoned coal mines; provided, that compliance with the Coal Mine Area Regulations shall constitute compliance with the requirements of this chapter in regard to coal mines.
6. Area of Special Flood Hazard Extension. Any primary setback required by paragraphs A.1 through A.4 of this section is increased to the edge of the Area of Special Flood Hazard, LUC 20.50.010, if the requirements of those paragraphs otherwise result in a lesser setback.

B. Modification of Protected Area Status.

Modifications to standards as specified below shall be approved as part of approval of an underlying permit as provided for in LUC 20.25H.040.

1. Riparian Corridor Primary Setbacks. The width of riparian corridor primary setbacks may be averaged to reduce the minimum dimension up to 25 percent to accommodate specific design features including but not limited to site access where no feasible alternative is available, to align roads with existing intersections, to maintain intersection separation, or to provide an essential element of an allowed use of the site. To approve a modification, the applicant must demonstrate:
 - a. No reasonable alternative to modification is available to accommodate allowed development; and
 - b. The proposal complies with all applicable design standards of LUC 20.25H.110; and
 - c. The hydrologic characteristics of the stream will not result in natural stream meanders or flood plains outside of the Riparian Corridor; and

- d. The same area of Riparian Corridor is maintained through additional corridor width, on-site or off-site, within the same stream corridor and is of equal or superior value. Area added to the setback elsewhere shall perform a buffering function and shall be generally oriented parallel to the thread of the stream. If off-site, permanent Native Growth Protection Area designations and restrictions must be recorded with the King County Department of Records over the affected replacement area to assure long-term preservation.
2. Wetland Primary Setbacks. The width of the wetland primary setback may be averaged to reduce the minimum dimension up to 25 percent to accommodate specific design features including but not limited to site access where no feasible alternative is available, to align roads with existing intersections, to maintain intersection separation, or an essential element of an allowed use of the site. To approve a modification, the applicant must demonstrate:
 - a. No reasonable alternative to modification is available to accommodate allowed development; and
 - b. The proposal complies with all applicable design standards of LUC 20.25H.110; and
 - c. The same area of primary setback is maintained through additional setback on-site or off-site, adjacent to the same wetland, and is of equal or superior value. Area added to the setback elsewhere shall perform a buffering function and shall be generally oriented parallel to the boundary of the wetland. If off-site, permanent Native Growth Protection Area designations and restrictions must be recorded with the King County Department of Records over the affected replacement area to assure long-term preservation.
 3. Slopes and Associated Primary Setbacks. To approve a modification of protected area status for slopes and associated primary setbacks, the applicant must demonstrate:
 - a. Compliance with all applicable standards and criteria of LUC 20.25H.110; and
 - b. The proposed design, engineering specifications and construction method as documented in a geotechnical report will improve or not adversely impact the stability of the slope without requiring facilities which require significant long-term maintenance, and will not adversely affect erosion potential; and
 - c. The proposal utilizes design, engineering and construction techniques which minimize disruption of the existing topography and vegetation.

C. Protected Area Restriction.

No development, use, land alteration or activity may occur in a Protected Area or a primary setback except as specifically allowed by this Part 20.25H; provided, that land alteration for necessary access to existing lots where no alternative access is available, for supplemental planting and for permitted land uses pursuant to LUC 20.25H.080 is permitted. (Ord. 5089, 8-3-98, §§ 27, 28; Ord. 4973, 3-3-97, § 502; Ord. 4816, 12-4-95, § 602; Ord. 4654, 6-6-94, § 49; Ord. 4302, 11-18-91, § 7; Ord. 3775, 5-26-87, § 18)

20.25H.080 Uses in land use districts.

A. General.

Subject to the restrictions of subsection B of this section, the uses established by LUC 20.10.440 for the applicable land use district may be undertaken in the Sensitive Area Overlay District as provided for in that section.

B. Protected Area Uses.

Only the following uses may be located within a protected area designated by LUC 20.25H.070 or protected area setback required by LUC 20.25H.090, regardless of the provisions of LUC 20.10.440. Each use is subject to the applicable performance standards of LUC 20.25H.110 and the specified permit requirements of this paragraph:

- | | |
|--|------------------|
| 1. Communication broadcast and relay tower/microwave | C |
| 2. Botanical gardens | C |
| 3. Camping sites/day camp | A |
| 4. Parks | |
| Public | C |
| Private | C |
| City | P/C ⁴ |
| 5. Agriculture | P ² |
| 6. Horticulture | P |
| 7. Tree farm | C |
| 8. Fish hatchery, aquaculture | C |
| 9. Accessory sales of items produced on-site | P |
| 10. City of Bellevue utility facility | C ¹ |
| 11. Any other utility facility | C ¹ |
| 12. Local utility system | P ¹ |
| 13. Regional utility system | C ¹ |
| 14. Right-of-way | P ¹ |
| 15. Pedestrian facilities | P ³ |

P = Permitted Use
 A = Administrative Conditional Use. See Part 20.30E LUC.
 C = Conditional Use. See Parts 20.30B and 20.30C LUC.

Notes:

- (1) Must constitute an Essential Public Facility defined by LUC 20.50.018.
- (2) Forested lands may not be converted to agricultural uses.
- (3) These include pedestrian trails and bridges which serve parks, commercial developments, or more than one single-family lot.
- (4) See Note (10) to LUC 20.10.440, Recreation Chart, for listing of types of park or facility requiring Conditional Use approval. (Ord. 4973, 3-3-97, § 503; Ord. 4816, 12-4-95, § 603; Ord. 4511, 4-5-93, § 3; Ord. 4302, 11-18-91, § 8; Ord. 3775, 5-26-87, § 18)

20.25H.085 Provisions for existing development.

A. Existing Single-Family Residential Development.

A single-family residential development located in a Riparian Corridor primary setback or Riparian Corridor structure setback which was in existence or for which the development rights were vested on or before June 25, 1987, the effective date of this section, is conforming as to the use requirements in LUC 20.25H.080 and the setback requirements in LUC 20.25H.070 and 20.25H.090.B.3. Such development is not subject to the nonconforming provisions of LUC 20.20.560 with respect to use and setback requirements.

B. Expansion of Existing Single-Family Residential Development Permitted.

A single-family residential development described in subsection A of this section may be expanded into a Riparian Corridor primary setback or structure setback required by LUC 20.25H.070 or 20.25H.090 through Process II. This section allows only one expansion and limits that expansion to a 20 percent increase of total square footage.

C. Existing Multifamily and Nonresidential Development.

Multifamily and nonresidential development in Riparian Corridor primary setbacks and structure setbacks which was in existence or for which the development rights were vested on or before June 25, 1987, the effective date of this section, is conforming as to the use requirements in LUC 20.25H.080 and the setback requirements in LUC 20.25H.070 and 20.25H.090.B.3, except that a remodel or expansion of the building floor area of such a building shall be treated as a change to a nonconforming structure or site and shall comply with the provisions of LUC 20.20.560. The Director may permit proportional compliance as provided for in LUC 20.20.560.C.4., or may approve specific channel improvements and corridor restoration where defined in the Sensitive Areas Notebook for any channelized corridors for which a specific reach study and restoration plan is adopted as provided for in LUC 20.25H.070.A.2.d. No such development may expand into a Riparian Corridor or Riparian Corridor structure setback.

- D. Repair, reconstruction, or improvements to a structure within the Area of Special Flood Hazard is governed by LUC 20.25H.110.A.

E. Hold Harmless.

Property owners who submit development applications to the City for expansion or reconstruction in a Protected Area or Protected Area setback shall execute a hold harmless agreement in a form approved by the City Attorney which releases the City from liability for any damage arising from the location of improvements within the Protected Area or Protected Area setback. (Ord. 4979, 3-17-97, § 15; Ord. 4973, 3-3-97, § 504; Ord. 4816, 12-4-95, § 604; Ord. 3775, 5-26-87, § 18)

20.25H.090 Structure setbacks.**A. General.**

The requirements of this section apply along with any other dimensional requirements of the Land Use Code (see LUC 20.20.010, 20.20.130, 20.20.190 and Parts 20.25A – 20.25G). The most restrictive dimension controls.

B. Minimum Setback of Structures.

1. General. Any structure must be set back as required by paragraphs B.2 through B.4 of this section. Setbacks are required in order to:
 - a. Minimize long-term impacts of development adjacent to Protected Areas; and
 - b. Protect Sensitive Areas from adverse impacts during construction.
2. Wetlands as defined in LUC 20.50.054:
 - a. Type A: 20 feet from the wetland primary setback;
 - b. Type B: 15 feet from the wetland primary setback.

- 3. Riparian Corridors as defined in LUC 20.50.044:
 - a. Type A: 20 feet from the primary setback;
 - b. Type B: 10 feet from the primary setback;
 - c. Type C: 5 feet from the primary setback;
 - d. Type D: 15 feet from the top of bank or side of closed conveyance.
- 4. Slopes as defined in LUC 20.50.044: 15 feet from edge of the primary setback.

Protected Area	Primary Setback for Land Alteration	Structure Setback
Riparian Corridor		
Type A:	50 feet	20 feet
Type B:	25 feet	10 feet
Type C:	10 feet	5 feet
Type D:	Top of bank or side of culvert	15 feet
Wetland		
Type A:	50 feet	20 feet
Type B:	25 feet	15 feet
Slopes		
Colluvial slopes/ landslide deposits	75 feet from toe of slope	15 feet
40% Slopes	50 feet from top of slope	15 feet

- 5. **Setback Modification.** The Director of Planning and Community Development may waive or modify the structure setback if the applicant demonstrates that:
 - a. Water quality, or slope stability as documented in a geotechnical report, will not be adversely affected; and
 - b. Protected Area vegetation will not be disturbed by construction or maintenance activities and will be maintained in a healthy condition. Solar access to vegetation must be maintained at least 50 percent of daylight hours during the normal growing season; and
 - c. Access for repair, or maintenance of culverts or other structures will be preserved.
- 6. **Setback Adjustment Process.** When the combination of opposite setback requirements for structures, pursuant to LUC 20.20.010, and protected areas, pursuant to LUC 20.25H.070 and 20.25H.090, equals more than 50 percent of the property dimension which includes those setbacks, the Director of Planning and Community Development may adjust setback requirements as follows:
 - a. When a side setback and the area designated as protected area, primary setback, and structure setback are combined, the side setback may be reduced to a figure equal to the perimeter landscape development requirement of LUC 20.20.520 but in no case less than five feet.

- b. When a rear setback and the area designated as protected area, primary setback, and structure setback are combined, the rear setback may be reduced to a figure equal to the perimeter landscape development requirement of LUC 20.20.520 but not less than 10 feet unless a lower requirement exists in LUC 20.20.010.
- c. When a front setback and the area designated as protected area, primary setback, and structure setback are combined, the front setback may be reduced to 20 feet or to the minimum setback required by LUC 20.20.010 except for transition area setbacks if less than 20 feet.
- d. When any other setback requirement of this Code is combined with the area designated as protected area, primary setback, and structure setback, that other setback may be reduced to five feet.
- e. When a transition area setback in LUC 20.25B.040.B and the area designated as protected area, primary setback, and structure setback are combined, the transition area setback may be reduced to the landscape dimension in LUC 20.25B.040.C.
- f. A variance to setback requirements contained in LUC 20.20.010 and beyond that authorized in LUC 20.25H.090.B.6 will be processed pursuant to Part 20.30G or 20.30H LUC. Modifications or exceptions to the setback requirements of LUC 20.25H.070.A or 20.25H.090.B.1 through 20.25H.090.B.4 may only be approved pursuant to the provisions of LUC 20.25H.070.B, 20.25H.090.B.5 or Part 20.30P LUC. (Ord. 5232, 7-17-00, § 8; Ord. 4979, 3-17-97, § 16; Ord. 4973, 3-3-97, § 505; Ord. 4816, 12-4-95, § 605; Ord. 4654, 6-6-94, § 50; Ord. 4302, 11-18-91, § 9; Ord. 4130, 3-12-90, § 6; Ord. 3775, 5-26-87, § 18)

20.25H.100 Density/intensity calculation.

A. General.

Except as provided for protected areas in this section, the number of dwelling units per acre and the maximum floor area ratio for office space pursuant to LUC 20.50.020 apply to a sensitive area.

B. Dwelling Units per Acre.

The maximum number of dwelling units per acre for a site which contains a protected area designated by LUC 20.25H.070 is equal to the dwelling units per acre as specified in LUC 20.20.010 times the buildable area in acres plus the dwelling units per acre times the protected area in acres times the Development Factor derived from subsection D of this section:

$$[(DU/Acre)(Buildable Area)] + [(DU/Acre) (Protected Area)(Development Factor)] = \text{Maximum Dwelling Unit Potential}$$

C. Floor Area Ratio for Office Space.

1. The maximum allowable office floor area for a site which contains a protected area designated by LUC 20.25H.070 is equal to 0.5 times the buildable area plus 0.5 times the protected area times the Development Factor derived from subsection D of this section:

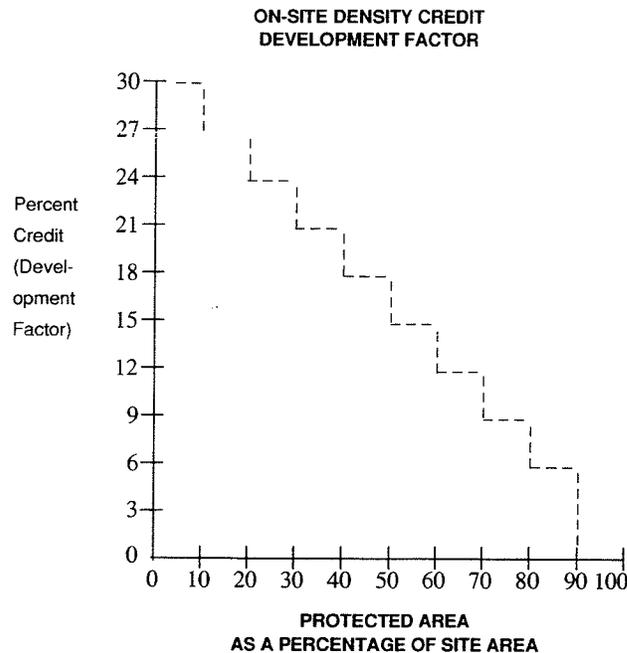
$$0.5 \times \text{Buildable Area} + 0.5 \times (\text{Protected Area} \times \text{Development Factor}) = \text{Maximum Office Development Potential}$$

2. A property which contains a protected area designated by LUC 20.25H.070 is exempt from the sliding scale FAR requirement of LUC 20.20.010, Note (8) (Notes: Uses in Land Use Districts – Dimensional Requirements). The applicable maximum floor area ratio to the buildable area is 0.5 regardless of building square footage.

D. Development Factor.

The development factor, consisting of a "percent credit," to be used in computing the number of dwelling units per acre or the maximum allowable office floor area for a protected area designated by LUC 20.25H.070 is derived from the following table:

E. This section shall not apply to the density within a subdivision or short subdivision, which shall be determined according to Disturbance Limits, LUC 20.25H.110.D, and other performance standards set forth in this Code or City regulations. (Ord. 5232, 7-17-00, § 9; Ord. 4654, 6-6-94, § 51; Ord. 3775, 5-26-87, § 18)



20.25H.110 Performance standards for Sensitive Areas.

All use and development within Sensitive Areas shall conform to the standards of this section. Standards shall apply to the entire contiguous parcel owned or controlled by the applicant if necessary to enable compliance with the purpose and intent of the Code.

A. Area of Special Flood Hazard.

1. **Restricted Use and Development.** No use, development or activity may occur in an Area of Special Flood Hazard except as specifically allowed by this Part 20.25H. All use, development or activity which is allowed is subject to the performance standards of this subsection. No alteration of the flood carrying capacity, configuration or volume of the Area of Special Flood Hazard is permitted except as specifically permitted by this Part 20.25H.
2. **Existing Development Declared Legal Nonconforming.** All development within the Area of Special Flood Hazard, LUC 20.50.010, constructed or for which a vested Building Permit application exists prior to the effective date of this Part 20.25H and which fails to comply with the requirements of this Part 20.25H is legal nonconforming development. Any change to a legal nonconforming development is subject to the performance standards of this subsection.
3. **Review Required.**

- a. In order to assure that proposed development will be safe from flooding, the Director of Planning and Community Development and the Fire Marshal shall review and must approve, approve with conditions or deny new development under this Part 20.25H and the substantial improvement of existing development within the Area of Special Flood Hazard. The Director of Planning and Community Development shall determine that all necessary permits have been obtained from federal, state, or local agencies prior to approval.
 - b. The Director of Planning and Community Development shall obtain and transmit to the Director of the Utilities Department the elevation in relation to mean sea level of the lowest habitable floor, including basement, of a new or substantially improved structure permitted by this part.
 - c. The Director of the Utilities Department shall review and must approve all plans and specifications for new or replacement water and sanitary sewage systems permitted by this Part 20.25H to assure compliance with the regulations of this part and to assure that all necessary permits have been received from those governmental agencies from which approval is required by federal or state law or agency regulation.
4. Definitions. The following definitions apply to the Area of Special Flood Hazard regulated under this subsection:
- a. Flood or Flooding. A general and temporary condition of partial or complete inundation of normally dry land areas from:
 - i. The overflow of inland or tidal waters; or
 - ii. The unusual and rapid accumulation or runoff of surface waters from any source.
 - b. Flood Insurance Rate Map. The map delineating special flood hazard areas effective December, 1978, that was prepared by the Federal Insurance Administration for the City or as subsequently revised by the Federal Emergency Management Agency.
 - c. Floodproofing. Any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.
 - d. Habitable Floor. Any floor usable for living purposes, which includes working, sleeping, eating, cooking or recreation, or a combination thereof. A floor used only for storage purposes is not a "habitable floor."
 - e. One Hundred-Year Flood. The flood having a one percent chance of being equaled or exceeded in any given year as determined by customary methods of statistical analyses defined in the Utility Code (Chapter 24.06 BCC).
 - f. Structure. A walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a mobile home.
 - g. Substantial Improvement. Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the replacement value of the structure either, (1) before the improvement or repair is started, or (2) if the structure has been damaged, and is being restored, before the damage occurred. For the purpose of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either (1) any project for improvement of a structure to comply with existing state or local

health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions or (2) any alteration of a structure listed on the National Register of Historic Places.

5. Intrusion Allowed. In addition to the uses and activity permitted by LUC 20.25H.080, any structure may intrude over the Area of Special Flood Hazard if:
 - a. The intrusion is located above existing grade, and does not alter configuration of the Area of Special Flood Hazard; and
 - b. The intrusion is at an elevation and orientation which maintains the existing vegetation of the Area of Special Flood Hazard in a healthy condition. Solar access to vegetation must be maintained at least 50 percent of daylight hours during the normal growing season.

No pile-supported or other structural element may be located in the Area of Special Flood Hazard except as required for those uses and activities permitted by LUC 20.25H.080.

6. Construction Standards.
 - a. Within the Area of Special Flood Hazard, any new development permitted by this Part 20.25H and any substantial improvement of existing development which is permitted must:
 - i. Be designed and adequately anchored to prevent flotation, collapse or lateral movement of the structure; and
 - ii. Be constructed with materials and utility equipment resistant to flood damage; and
 - iii. Be constructed by methods and practices that minimize flood damage; and
 - iv. Be constructed by methods and practices that minimize disturbance of the Area of Special Flood Hazard and retain its natural character; and
 - v. Be designed and constructed so that electrical heating, ventilation, plumbing and air conditioning equipment and other services are elevated or otherwise located to prevent water from entering or accumulating within the components during conditions of flooding; and
 - vi. Be elevated at least two feet above existing grade where floodplain data or other reliable historical flooding elevations are not available. Adequacy of historical data shall be determined by the Director of the Storm and Surface Water Utility; and
 - vii. The cumulative effect of any proposed development adjacent to, or encroaching within, the Area of Special Flood Hazard, when combined with all other existing and proposed development, may not increase the water surface elevation of the base flood.
 - b. Residential Construction.
 - i. The substantial improvement of an existing residential structure must result in the lowest floor (including basement) elevation being at or above the elevation of the 100-year flood; and
 - ii. Fully enclosed areas below the lowest floor that are subject to flooding are prohibited, unless they are designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:
 - (1) A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed floor area subject to flooding must be provided, and
 - (2) The bottom of all openings may be no higher than one foot above grade, and

- (3) Openings may be equipped with screens, louvers, or other coverings or devices; provided, that they permit the automatic entry and exit of floodwaters.

c. Nonresidential Construction.

- i. New development permitted by this Part 20.25H or the substantial improvement of an existing nonresidential structure must:
 - (1) Result in the lowest floor (including basement) elevation being at or above the elevation of the 100-year flood, or
 - (2) Together with attendant utility and sanitary facilities, be designed so that below a point one foot above the elevation of the 100-year flood the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. Minimum floodproofing standards are contained within Sections 210.2.1 and 210.2.2 of the U.S. Army Corps of Engineers publication entitled "Floodproofing Regulations," June 1972, or any subsequently adopted amendments thereto. Additionally, no perceptible change in the flood elevation upstream or downstream may occur and no change in the quantity, quality or velocity of flow leaving the site may occur; and
- ii. Where floodproofing is utilized for a nonresidential structure, a registered professional engineer or architect shall certify that the floodproofing methods are adequate to withstand the flood depths, pressures, velocities, impact and uplift forces and other factors associated with the 100-year flood; and
- iii. Nonresidential structures that are elevated, and not floodproofed, must meet the same standards for space below the lowest floor as set forth in paragraph A.4.b.ii of this section; and
- iv. Applicants floodproofing nonresidential buildings shall be notified by the Director of the Storm and Surface Water Utility that flood insurance premiums will be based on rates that are one foot below the floodproofed level (e.g., a building constructed to the base flood level will be rated as one foot below that level).

7. Roads and Utilities.

- a. The Director of Planning and Community Development must approve road and utility crossings within the Area of Special Flood Hazard and must find that the utility facility, system or road is an essential public utility, and that a crossing will provide essential public access or service which cannot be made feasibly in a location which is not an Area of Special Flood Hazard. The crossing must be by bridging the Area of Special Flood Hazard and designed for shared road and utility facilities in order to minimize adverse impacts. No more than one crossing may occur on a site unless required for safe emergency access; and
- b. All new and replacement water supply systems must be essential public utilities and designed to minimize or eliminate infiltration or exfiltration of floodwaters into the systems; and
- c. All new and replacement sanitary sewage systems must be essential public utilities and designed to minimize or eliminate infiltration or exfiltration of floodwaters into the systems and discharges from the systems into floodwaters; and
- d. All on-site waste disposal systems must be essential public utilities and located to avoid impairment to them or contamination from them during flooding.

8. Subdivisions and Other Proposed New Developments.

- a. All plat and short plat proposals and other proposed new developments must:
 - i. Be consistent with the need to minimize flood damage; and
 - ii. Provide for the location and construction of public utilities and facilities, such as sewer, gas, electrical, and water systems, so as to minimize flood damage; and
 - iii. Provide adequate drainage to reduce exposure to flood hazards.
 - b. All plat and short plat proposals and other new development proposals must provide 100-year flood elevation data.
9. Agricultural Uses.
- a. Erosion control measures, such as crop rotation, mulching, strip cropping and contour cultivation must be used in conformance with guidelines and standards established by the Natural Resources Conservation Service, U.S. Department of Agriculture; and
 - b. Areas of Special Flood Hazard must be protected from significant impacts of agricultural chemicals and pesticides as required by the Utility Code, BCC 24.06.195, and must meet the water quality standards of BCC 24.06.060K.

B. Wetlands.

1. Restricted Use and Development. No use, development or activity may occur in a wetland except as specifically allowed by this Part 20.25H. All use, development or activity which is allowed is subject to the performance standards of this subsection.
2. Agricultural Uses.
 - a. Erosion control measures, such as crop rotation, mulching, strip cropping and contour cultivation must be used in conformance with guidelines and standards established by the Natural Resources Conservation Service, U.S. Department of Agriculture; and
 - b. Wetland areas must be protected from significant impacts of agricultural chemicals and pesticides as required by the Storm and Surface Water Utility Code, BCC 24.06.195, and must meet the water quality standards of BCC 24.06.060K.
3. Aquaculture Uses.
 - a. Aquaculture development must be conducted in a way which does not adversely affect the aesthetic or environmental quality of the wetland and interrelated stream habitat; and
 - b. Aquaculture must to the extent feasible use underwater structures for fish rearing facilities.
4. Essential Public Utilities.
 - a. Essential public utilities must be located, designed and constructed to minimize or where possible avoid wetland disturbance to the maximum extent feasible. Wetland area displaced must be compensated for in compliance with paragraph B.7 of this section; and
 - b. All construction must be designed to protect the wetland against erosion, uncontrolled drainage, restriction of ground water movement, slides, pollution, aesthetic loss, habitat disturbance, excessive excavation or fill detrimental to the environment; and

- c. Upon completion of installation of essential public utilities lines, wetlands must be restored to pre-project configuration, replanted as required to re-establish native vegetation and provided with maintenance care until newly planted vegetation is established; and
 - d. All utility crossings must be designed for shared facilities in order to minimize adverse impacts and reduce the number of crossings.
5. Roads.
- a. Essential public roads must be located, designed and constructed to minimize or where possible avoid wetland disturbance and be designed and maintained to prevent erosion and not restrict the natural movement of ground water, to the maximum extent feasible. Wetland area displaced must be compensated for in compliance with paragraph B.7 of this section; and
 - b. Essential public roads must be located to conform to the topography so that minimum alteration of natural conditions is necessary. The number of crossings is limited to those necessary to provide essential public access; and
 - c. Essential public roads must be constructed in a way which does not adversely affect the aesthetic and hydrologic quality of the wetland and interrelated stream habitat. Where feasible, crossings must be by bridging the wetland and must allow for combination with other essential public utilities; and
 - d. Upon completion of construction, the area affected must be restored to an appropriate grade, replanted to re-establish native vegetation and provided with maintenance care until newly planted vegetation is established.
6. Public Use and Access.
- a. Pedestrian facilities must be specifically developed for interpretive, educational or research purposes, by or in cooperation with the City or as part of an adopted nonmotorized trail linkage program, or be part of a system of public or private trails as part of a development proposal or serve as access to or within an allowed use within a sensitive or protected area. Trail development shall:
 - i. Avoid removal or disturbance of significant trees and limit disturbance of understory vegetation,
 - ii. Be maintained at the minimum width necessary to accomplish their purpose and function,
 - iii. Consolidate opportunities for public or private access,
 - iv. Minimize crossings of Riparian Corridors or wetlands and utilize bridges or elevated structures where such crossings occur,
 - v. Incorporate design features and materials which protect water quality and allow adequate surface and ground water movements;
 - b. Public and private trails should be located outside protected areas except where no feasible alternative is available. If no feasible alternative exists, trails within protected areas must be located within areas which have the lowest sensitivity to human disturbance or alteration; and
 - c. No interpretive center may be constructed in a wetland of less than 150 acres. Additionally, an interpretive center must be located in either that portion of a wetland which is degraded or in an intermittent wetland having the lowest sensitivity to human disturbance or alteration; and

- d. No motorized vehicle is allowed within a wetland or its setback required by LUC 20.25H.090 except as required for necessary maintenance, agricultural management or security; and
- e. Any public access or interpretive facility developed in a wetland must, to the extent possible, be connected with a park, recreation or open-space area; and
- f. Vegetative edges, structural barriers, signs or other measures must be provided wherever necessary to protect sensitive areas by limiting access to designated public use or interpretive areas; and
- g. Consolidated area for nesting, breeding, and rearing must be preserved in the wetland area and its setback required by LUC 20.25H.090 to protect sensitive plant and wildlife species; and
- h. Dredging or filling within a wetland may occur only for the following purposes:
 - i. Maintenance of an existing water body, or
 - ii. Enhancement or restoration of habitat in conformance with City of Bellevue standards adopted by the Director of the Department of Planning and Community Development and the Director of the Storm and Surface Water Utility, or
 - iii. Natural system interpretation, education or research when undertaken by, or in cooperation with, the City, or
 - iv. Flood control or water quality enhancement by the City of Bellevue.

7. Wetland Modification.

- a. Wetlands displaced by a permitted use such as an essential public facility shall be replaced at the time of construction of the permitted uses.
- b. Filling or alteration of an existing wetland and creation of a new replacement wetland is prohibited unless the site is more than 50 percent protected area and the filling or alteration is necessary to accommodate an essential element of a permitted use of the site; or the filling or alteration is necessary to provide specific site access where no feasible alternative is available. Such an alteration may be approved if the proposal:
 - i. Disturbs no more than 10 percent of the wetland or one acre, whichever is less; and
 - ii. Does not affect any habitat type which is unique in that wetland when considering the entire wetland, both on- and off-site; and
 - iii. Will not result in long term adverse impact on water quality; and
 - iv. Does not reduce the diversity of habitat found in the wetland; and
 - v. Is the minimum necessary to accommodate reasonable development of the property; and
 - vi. The development which the wetland adjustment is proposed to accommodate incorporates the best available construction, design and development techniques which result in the least impact on the Protected Area; and
 - vii. The development incorporates a proposed configuration which will result in less total coverage by impervious surface than would otherwise be required for reasonable development of the property; and
 - viii. The wetland adjustment is not necessary because of actions by the applicant in segregating the property and creating the unusual configuration; and
 - ix. Does not significantly impact the hydrological relationship between the wetland and streams or lakes.

- c. Plans for wetland restoration shall be prepared by a qualified wetland biologist or wetland restoration professional and approved prior to construction of the approved use.
 - i. Plans shall address the hydrologic, water quality, vegetation community and wildlife habitat functions of the existing wetland and the wetland to be created; and
 - ii. The area of the replacement wetland shall be a minimum of:
 - a) 2 times the displaced area for Type A wetlands;
 - b) 1.5 times the displaced area for Type B wetlands; and
 - iii. The replacement wetland created must replicate, to the extent feasible, the functional characteristics of the original wetland including soil, hydrology, depth, gradient, approximate shape, water quality, vegetation community and wildlife habitat functions; and
 - iv. The wetland primary setback for the created wetland area must provide an effective buffer equal or superior to that existing for the original wetland; and
 - v. Replacement wetland area shall be located within the same stream corridor as Type A displaced wetlands wherever feasible, and within the same drainage basin for all wetlands. If off-site, permanent Native Growth Protection Area designations and restrictions must be recorded with the King County Department of Records over the affected replacement area to assure long-term preservation.
- d. Replacement wetlands shall be completed prior to issuance of Occupancy Permits for the displacing use; or plans must be approved with a specific schedule for completion with provision of an assurance device of at least 150 percent of the cost of installation and monitoring.
- e. A monitoring plan shall be prepared to monitor successful re-establishment of the wetland for a period of three growing seasons. The applicant shall provide an assurance device in an amount necessary to retain a qualified wetlands biologist to assess the wetland and submit a report to the City at least twice yearly, prior to and near the end of the growing season and shall provide an assurance device in an amount necessary to implement additional restoration measures if the replacement wetland does not equal the functions of the wetland displaced.

C. Riparian Corridors.

1. Restricted Use and Development. No use, development or activity may occur in a Riparian Corridor or Riparian Corridor setback except as specifically allowed by this Part 20.25H. All use, development or activity which is allowed is subject to the performance standards of LUC 20.25H.110.C.
2. Essential Public Utilities.
 - a. Essential public utilities must be located, designed and constructed to minimize and where possible avoid Riparian Corridor disturbance to the maximum extent feasible; and
 - b. All construction must be designed to protect the Riparian Corridor against erosion, uncontrolled drainage, slides, pollution, aesthetic loss, habitat disturbance, excessive excavation or fill detrimental to the environment; and
 - c. Upon completion of installation of essential public utilities, the Riparian Corridor must be restored to pre-project configuration, replanted with native species and provided with maintenance care until newly planted vegetation is established; and
 - d. All crossings must be designed for shared utilities in order to minimize adverse impacts and reduce the number of crossings.

3. Roads.

- a. Essential public roads must be located, designed, constructed and maintained to minimize or where possible avoid Riparian Corridor disturbance, to prevent erosion and not restrict the natural movement of ground water to the maximum extent feasible; and
- b. Essential public roads must be located to conform to the topography so that minimum alteration of natural conditions is necessary. The number of crossings is limited to those necessary to provide essential public access; and
- c. Essential public roads must be constructed in a way which does not adversely affect the aesthetic and hydrologic quality of the Riparian Corridor. Where allowed, crossings of streams and floodplains in Type A and Type B Riparian Corridors shall be made by bridging to minimize adverse environmental impacts. Type C Riparian Corridors do not need to be bridged. Where feasible, roadway crossings should be combined with other essential public utilities; and
- d. Upon completion of construction, the area affected must be restored to an appropriate grade, replanted as required by the Clearing and Grading Code and provided with maintenance care until newly planted vegetation is established.

4. Public Use and Access.

- a. Pedestrian facilities must be specifically developed for interpretive, educational or research purposes, by or in cooperation with the City or as part of an adopted nonmotorized trail linkage program, or be part of a system of public or private trails as part of a development proposal or serve as access to or within an allowed use within a sensitive or protected area, or connected existing uses in a manner that serves to enhance pedestrian circulation and reduce vehicular trip generation. Trail development shall:
 - i. Avoid removal or disturbance of significant trees and limit disturbance of understory vegetation,
 - ii. Be maintained at the minimum width necessary to accomplish their purpose and function,
 - iii. Consolidate opportunities for public or private access,
 - iv. Minimize crossings of Riparian Corridors or wetlands and utilize bridges or elevated structures where such crossings occur. Bridges or elevated structures across Riparian Corridors must be designed so that they will not wash out during high stream flows;
- b. Public and private trails should be located outside protected areas except where no feasible alternative is available. If no feasible alternative exists, trails within protected areas must be located within areas which have the lowest sensitivity to human disturbance or alteration; and
- c. No motorized vehicle is allowed within a Riparian Corridor or its setback required by LUC 20.25H.090 except as required for necessary maintenance, agricultural management or security or as part of an approved recreational activity; and
- d. Any public access or interpretative facility developed in a Riparian Corridor must, to the extent possible, be connected with a park, recreation or open space area; and
- e. Vegetative edges, structural barriers, signs or other measures must be provided where necessary to protect sensitive areas by limiting access to designated public use or interpretive areas; and

- f. Consolidated area for nesting, breeding and rearing must be reserved in the Riparian Corridor area and its setback required by LUC 20.25H.090 to protect sensitive plant and wild-life species; and
- g. Dredging or filling within a Riparian Corridor may occur only for the following purposes:
 - i. Maintenance of an existing corridor, or
 - ii. Enhancement or restoration of habitat in conformance with City of Bellevue standards adopted by the Director of Planning and Community Development, or
 - iii. Natural system interpretation, education or research when undertaken by or in cooperation with the City, or
 - iv. Flood control or water quality enhancement by the City of Bellevue.

D. Sensitive Earth Conditions.

The provisions of this subsection apply to each use or development on property including a slope equal to or greater than 15 percent, including subdivisions, short subdivisions and planned unit developments. Development on individual single-family lots is exempt from the provisions of paragraph D.1 of this section (disturbance limitations), except that any restrictions on disturbance on individual single-family lots that have been imposed through subdivision, short subdivision or planned unit development approval do apply.

1. Disturbance Limitations.

- a. **Basic Requirement.** Development on property including a slope equal to or greater than 15 percent must:
 - i. Consolidate all areas of disturbance on the areas of least slope; and
 - ii. Minimize changes in grade, cleared area and volume of cut or fill on the site; and
 - iii. Comply with a limitation on disturbance of the subject property calculated as set forth in the following equation:

Disturbance Equation

$$\begin{aligned}
 &(\text{sq. ft. of site } 0 - 15\% \text{ slope}) \times 100\% + \\
 &(\text{sq. ft. of site } 15 - 25\% \text{ slope}) \times 60\% + \\
 &(\text{sq. ft. of site } 25 - 40\% \text{ slope}) \times 45\% + \\
 &(\text{sq. ft. of site } 40\% \text{ plus slope}) \times 30\% = \\
 &\text{Total amount of disturbance on-site allowed}
 \end{aligned}$$

Disturbance Chart*

Slope Categories	Percent Disturbance Allowed
40% and greater	30%
25 to 40%	45%
15 to 25%	60%

* This chart is for illustration purposes only.

- iv. For subdivisions, short subdivisions and planned unit developments, disturbance limits shall be designated on preliminary and final approvals.

2. Commercial and Multifamily Development.

a. Location.

- i. Development must be located to minimize disturbance and removal of vegetation; and
- ii. Structures must be clustered to retain as much open space as possible and the natural topographic character of the slope; and
- iii. Structures must conform to the natural contour of the slope. The foundation must be tiered to conform to the existing topography of the site; and
- iv. Development must be located so as to preserve the most sensitive portion of the site and its natural landforms or to protect vistas from public spaces.

b. Design.

- i. Development must minimize the footprint of buildings and other disturbed areas. The least number of buildings is desirable in order to consolidate the development; and
- ii. Development must retain consolidated areas of natural vegetation; and
- iii. Development must be designed with a foundation type that is compatible with existing slope conditions and that minimizes topographic modification. Where feasible, earth retention measures should be incorporated into the structure; and
- iv. Standard prepared building pads, i.e., slab on grade, resulting in grading more than 10 feet outside the building footprint area are prohibited; and
- v. Development must be designed to minimize the amount of impervious surface; and
- vi. Use of common access drives and utility corridors is required where feasible; and
- vii. Development must be designed to minimize lot coverage and must, with the exception of detached single-family structures, incorporate under-structure parking and multi-level structures where permitted; and
- viii. Roads, walkways and parking areas must be designed parallel to contours with consideration to maintaining consolidated areas of natural topography and vegetation. Access must be located in the least sensitive area feasible; and
- ix. Use of retaining walls which allow the maintenance of existing natural slope areas is preferred over graded artificial slopes.

c. Construction Types.

- i. Use of foundation walls as retaining walls is preferable to rock or concrete walls built separately and away from the building. Freestanding retaining devices are only permitted when they cannot be designed as structural elements of the building foundation; and
- ii. Use of pole-type construction which conforms to the existing topography is required where feasible. The structure must be tiered to conform to the existing topography and to minimize topographic modification; and
- iii. Change in grade, cleared area and volume of cut or fill on the site must be minimized; and
- iv. Piled deck support structures are preferred for parking or garages over fill-based construction types.

3. Subdivision and Short Subdivision.

a. Location.

- i. Lots which contain sensitive areas must be configured in a manner which, to the maximum extent possible, will allow a structure to be built on the least sensitive portion of the site; and
 - ii. Lots which contain protected area must be configured in a manner which will allow a designated building pad to be located outside of any protected area or protected area setback.
 - b. Design.
 - i. Roads must be designed parallel to contours with consideration to maintaining consolidated areas of natural topography and vegetation. Access must be located in the least sensitive area feasible; and
 - ii. Change in grade, cleared area and volume of cut or fill on the site must be minimized; and
 - iii. Utilities and other facilities should be located to utilize common corridors wherever possible; and
 - iv. Protected nondisturbed areas and retained significant trees should be retained in contiguous tracts, and placed in common ownership or contiguous easements whenever feasible; and
 - v. Management plans should be prepared for areas of retained vegetation designating future management responsibility with planting of additional vegetation required at the time of development of plat infrastructure to maintain a healthy climax community of native vegetation; and
 - vi. Each lot with slopes in excess of 25 percent shall demonstrate provision for feasible driveway access to a future residence not to exceed 15 percent or provide for meeting emergency access and fire protection by other means allowed by applicable codes, and shall demonstrate feasibility of construction of a residence on the lot through a design consistent with the standards of this Code. Shared driveway access and private roads should be utilized where significant reduction of grading can be accomplished compared to separate driveway access for each individual lot.
4. Single-Family Dwellings.
 - a. Design.
 - i. Design shall minimize topographic modification. Structures shall conform to the natural contour of the slope. The foundation 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; and
 - ii. Garages on sites sloping uphill should be placed below the main floor elevation where feasible to reduce grading and to fit structures into existing topography. Garages on sites sloping downhill from the street may be required to be placed 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, may be required. On slopes in excess of 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; and
 - iii. 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; and

- iv. Where change in grade outside the building footprint is necessary, the site retention system should be stepped and regrading should be designed to minimize topographic modification. On slopes in excess of 25 percent, grading for yard area may be disallowed where inconsistent with this criteria.

b. Construction Types.

- i. Building foundation walls shall be utilized as retaining walls rather than rockeries or retaining structures built separately and away from the building wherever feasible. Freestanding retaining devices are only permitted when they cannot be designed as structural elements of the building foundation; and
- ii. On slopes in excess of 25 percent, use of pole-type construction which conforms to the existing topography is required where feasible. The structure must be tiered to conform to the existing topography and to minimize topographic modification; and
- iii. On slopes in excess of 25 percent, piled deck support structures are preferred for parking or garages over fill-based construction types. (Ord. 5089, 8-3-98, §§ 29, 30; Ord. 5055, 3-2-98, § 1; Ord. 4979, 3-17-97, § 17; Ord. 4974, 3-3-97, § 2; Ord. 4973, 3-3-97, § 506; Ord. 4831-C, 12-12-95, § 1; Ord. 4816, 12-4-95, § 606; Ord. 4816, 12-4-95, § 606; Ord. 4654, 6-6-94, § 52; Ord. 4302, 11-18-91, §§ 10 – 14; Ord. 3775, 5-26-87, § 18)

20.25H.120 Recording required.

The property owner receiving approval of a use or development pursuant to this Part 20.25H shall record a site plan or other instrument clearly delineating the Protected Area designated by LUC 20.25H.070 with the King County Division of Records and Elections and with the Bellevue City Clerk.

A. Plats shall contain:

- 1. Protected Areas shall be designated on the face of the plat as Native Growth Protection Areas in a format approved by the City Attorney. The designation shall include the following restrictions:
 - a. An assurance that native vegetation will be preserved for the purpose of preventing harm to property and the environment, including, but not limited to, controlling surface water runoff and erosion, maintaining slope stability, buffering and protecting plants and animal habitat; and
 - b. The right of the City of Bellevue to enforce the terms of the restriction.
- 2. Areas designated for nondisturbance shall be designated as Retained Vegetation Areas in a format approved by the City Attorney. The designation shall include the following restriction:
 - a. An assurance that existing native and compatible introduced vegetation which provides overstory will be preserved for the purposes of buffering, protecting plants and animal habitat and for aesthetic and other purposes;
 - b. The right of the City of Bellevue to enforce the terms of the restriction.

B. The site plans must include a statement that the provisions of this Part 20.25H as now or hereafter amended control use and development of the subject property. The Director may require recording with the King County Department of Records of the delineation of, and restrictions of, Native

Growth Protection Areas and Retained Vegetation Areas for development other than subdivisions. Single-family development is exempt from this recording requirement.

- C. Management plans including but not limited to replanting, signing and fencing may be required for Protected Areas and nondisturbed areas to ensure maintenance of a viable community of native vegetation. (Ord. 4979, 3-17-97, § 18; Ord. 4973, 3-3-97, § 507; Ord. 4816, 12-4-95, § 607; Ord. 4302, 11-18-91, § 15; Ord. 3775, 5-26-87, § 18)

20.25H.130 Assurance device.

In appropriate circumstances, the City may require a performance or maintenance assurance device in conformance with LUC 20.40.490 to assure compliance with the provisions of this part and adequate protection of a sensitive area designated by the City of Bellevue Sensitive Area Notebook. (Ord. 3775, 5-26-87, § 18)

20.25H.140 Protected area development exception.

If more than 90 percent of a property is within a protected area designated by LUC 20.25H.070 or within a protected area setback required by LUC 20.25H.090, and if no use listed in LUC 20.25H.080.B constitutes a reasonable potential use of the property, the property owner may request a Protected Area Development Exception pursuant to Part 20.30P LUC. (Ord. 3775, 5-26-87, § 18)

1. The property owner or authorized agent of the owner may apply for any type of Process I, Process II, or Process III land use decision.
2. A resident of the dwelling may apply for a Home Occupation Permit.
3. The City Council, the Director of Planning and Community Development or the Planning Director may apply for a project-specific or site-specific rezone or for an area-wide rezone (Process IV).
4. The Director of Planning and Community Development, the Planning Director, or the Planning Commission may suggest site-specific and non-site-specific amendments to the Comprehensive Plan Map or to the text of the Land Use Code for consideration during the Annual Docket Adoption.
5. The property owner or authorized agent of the property owner may apply suggesting site-specific amendments to the Comprehensive Plan for consideration during the Annual Docket Adoption.
6. Any person may apply suggesting non-site-specific amendments to the Comprehensive Plan for consideration during the Annual Docket Adoption.
7. Any person may request an interpretation of the Land Use Code. In addition, the Director may issue interpretations of the Land Use Code as needed.

B. Submittal Requirements.

The Director shall specify submittal requirements, including type, detail, and number of copies for an application to be complete. The Director may waive specific submittal requirements determined to be unnecessary for review of an application. The Director may require additional material such as maps, studies, or models when the Director determines such material is needed to adequately assess the proposed project.

C. Notice of Complete Application.

1. Within 28 days after receiving a land use permit application, the Director shall mail, fax, or otherwise provide to the applicant a written determination that the application is complete, or that the application is incomplete and what is necessary to make the application complete.
2. If the Director does not provide a written determination within the 28 days, the application shall be deemed complete as of the end of the 28th day.
3. If additional information is needed to make the application complete, within 14 days after an applicant has submitted the information identified by the Director as being needed, the Director shall notify the applicant whether the application is complete or what additional information is necessary.
4. A land use application is complete for purposes of this section when it meets the submittal requirements established by the Director and is sufficient for continued processing even though additional information may be required or project modifications may be undertaken subsequently. The determination of completeness shall not preclude the Director from requesting additional information or studies either at the time of the notice of completeness or subsequently, if new information is required to complete review of the application or substantial changes in the permit application are proposed.

Arcade. A continuously covered area which functions as a weather protected extension of the publicly accessible space which it abuts. (Ord. 2945, 2-2-81, § 17)

Area, Site. The area within the property lines. (See also Floor Area, Gross and Floor Area, Usable.)

Area of Special Flood Hazard. The land in the floodplain subject to a one percent or greater chance of flooding in any given year as calculated in the Storm and Surface Water Utility Code, Chapter 24.06 BCC. This area is identified in an engineering report entitled "Flood Insurance Study – City of Bellevue, Washington" dated June 1978 and revised March 23, 1982. This area is also shown in the City of Bellevue Sensitive Area Notebook. (Ord. 3775, 5-26-87, § 24)

Assembly Room. See Auditorium. (Ord. 3747, 1-20-87, § 16)

Assisted Living. An establishment which provides living quarters and a variety of limited personal care and supportive health care to individuals who are unable to live independently due to infirmity of age, physical or mental handicap, but who do not need the skilled nursing care of a convalescent or nursing home. These facilities may consist of individual dwelling units of a barrier-free design, with separate bathroom facilities, a full kitchen or no kitchen. The facility may provide a minimal amount of supportive health care monitoring, such as assistance with medication, but is limited to health care services which do not require state or federal licensing. In addition, these facilities may have a communal dining area, recreation facilities (library, lounge, game room), laundry facilities and open space. (Ord. 4065, 10-23-89, § 7)

Assurance Device. A mechanism approved by the City whereby the City has recourse to identifiable assets of the applicant in order to insure compliance with this Code in conformance with LUC 20.40.490. (Ord. 3690, 8-4-86, § 36)

Athletic Club. A use, generally membership oriented, featuring exercise, sports and other active physical conditioning, as well as a broader range of services such as full service restaurants and meeting rooms. (Ord. 4028, 7-17-89, § 10)

Auditorium. A facility designed for the assembly of persons for exhibitions, performances, conferences, or other purposes serving an assembly function. (Ord. 3747, 1-20-87, § 16)

20.50.012 B definitions.

Basement. That portion of a story partly or totally underground and having at least one-half of its height more than five feet below the adjoining finished grade.

Bed and Breakfast. A dwelling which temporarily houses guests for profit. (Ord. 4028, 7-17-89, § 10)

Best Available Technology. The most effective method, technique or product available which is generally accepted in the field and which is demonstrated to be reliable and effective, which requires a low level of maintenance and which is responsive to the needs of the specific situation in which it is proposed to mitigate adverse impacts on the natural system. (Ord. 3775, 5-26-87, § 25)

Binding Site Plan. The division of land into lots or tracts classified for industrial or commercial use as provided by RCW 58.17.020 and 58.17.040. (Ord. 3848, 11-16-87, § 10)

Boarding House. A dwelling in which roomers and/or boarders are housed and/or fed for profit (see LUC 20.20.140). (Ord. 4654, 6-6-94, § 77; Ord. 4028, 7-17-89, § 11)

Boathouse. A covered moorage or overwater structure screened or enclosed by one or more sides exceeding 30 inches in height, except for vessels. (Ord. 4055, 3914, 9-25-89, § 20)

Boundary Line Adjustment. A division made for the purpose of alteration by adjusting boundary lines between platted or unplatted lots or both which does not create any additional lots, tracts, parcels, sites nor create existing lots which are more nonconforming. (Ord. 3937, 7-18-88, § 3)

Breakwater. Protective structure usually built offshore for the purpose of protecting the shoreline or harbor areas from wave action of water.

Buildable Area. That area of a property remaining after area defined as a Protected Area pursuant to LUC 20.25H.070 has been subtracted from the gross land area. (Ord. 5403, 8-5-02, § 13; Ord. 3775, 5-26-87, § 25)

Building. Any structure used or intended for supporting or sheltering any use or occupancy.

Building Height. The vertical distance measured from the average elevation of the finished grade around the building or building segment to the highest point of a flat roof, or to the mean height between the eaves and ridge of a pitched roof. Specifically excluded from this definition and from the regulation of maximum building height are structural elements not intended for habitation and not exceeding 15 feet above the maximum building height including penthouses for mechanical and elevator equipment, chimneys, wireless communication facility antenna arrays not located in a single-family residential land use districts, smoke and ventilation stacks, flag poles, mechanical and elevator equipment, and parapet walls designed solely to screen mechanical and elevator equipment. This definition does not apply to projects located within a Transition Area Design District (refer to LUC 20.25B.040) or the Shoreline Overlay District (refer to LUC 20.25E.017). (Ord. 5232, 7-17-00, § 19; Ord. 5086, 8-3-98, § 9; Ord. 4352, 4-13-92, § 2; Ord. 2945, 2-2-81, § 18)

Building Segment. That portion of a terraced building on a sloping site which has a separate roof line or finished floor elevation with a grade change of at least four feet. (Ord. 4352, 4-13-92, § 3)

Building Site. A legal lot or parcel. See Area, Site.

Bulkhead. A wall or embankment used for holding back earth.

20.50.014 C definitions.

Caliper. The diameter of a tree in inches as measured according to specifications promulgated by the American Association of Nurserymen in American Standard For Nursery Stock, ANSI Z60,1-1990. See also Significant Tree. (Ord. 4973, 3-3-97, § 602; Ord. 4816, 12-4-95, § 702)

***Camper.** A roomlike addition over the bed of a pickup truck, outfitted as temporary living quarters.

**Effective only within the jurisdiction of the East Bellevue Community Council and Sammamish Community Council.*

***Camper Shell.** Any all-weather cargo enclosure which is mounted on the walls of a truck over the bed, contains no interior fittings, and is used for the transportation of cargo. (Ord. 3985, 2-21-89, § 5)

**Not effective within the jurisdiction of the East Bellevue Community Council and Sammamish Community Council.*

Center, On. The distance measured between the center of two or more tree trunks or plants.

Central Business District or CBD. See Downtown. (Ord. 4979, 3-17-97, § 19)

Certificate of Occupancy. Permit to occupy, or change occupancy in, a structure; issued by the Department of Planning and Community Development. (Ord. 3498, 5-27-85, § 128)

WP0430C-ORD
03/30/95

CITY OF BELLEVUE, WASHINGTON

ORDINANCE NO. 4754

AN ORDINANCE repealing Chapter 23.76 of the Bellevue City Code (the Clearing and Grading Code); and adopting a new Chapter 23.76 to implement the City's current practices for clearing and grading, meet the goals of the Comprehensive Plan, and implement the requirements of the Stormwater Management Manual for the Puget Sound Basin.

WHEREAS, the City of Bellevue adopted an updated Comprehensive Plan on December 6, 1993; and

WHEREAS, the Environmental Element of the Plan sets forth the goal of integrating the natural and built environments to create a sustainable urban habitat with clean air and water, habitat for wildlife, and comfortable and secure places for people to live and work; and

WHEREAS, the State Department of Ecology and the Puget Sound Water Quality Authority published the Storm Water Management Manual for the Puget Sound Basin, which mandates certain minimum standards and sets forth Best Management Practices for stormwater and erosion control; and

WHEREAS, the City has adjusted its practices under the existing Clearing and Grading Code to better achieve the purposes of the Code, but has not significantly updated the Code since its enactment in 1979; and

WHEREAS, the City has complied with the Environmental Procedures Code and the State Environmental Policy Act, now, therefore,

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

Section 1. Chapter 23.76 of the Bellevue City Code (Clearing and Grading Code) is hereby repealed.

Section 2. A new Chapter 23.76 of the Bellevue City Code is hereby adopted as follows:

Chapter 23.76
Clearing and Grading Code

- 23.76.005 Purpose
- 23.76.015 Definitions
- 23.76.025 Permit Requirements
- 23.76.030 Permit Issuance
- 23.76.035 Expiration of Permits and Applications
- 23.76.040 Related Codes and Regulations
- 23.76.050 Conditions of Approval/Project Denial
- 23.76.060 Clearing: Vegetation Preservation and Replacement
- 23.76.070 Grading
- 23.76.080 Slopes
- 23.76.085 Rockeries
- 23.76.090 Erosion and Sedimentation Control
- 23.76.093 Temporary Restrictions on Clearing and Grading
- 23.76.095 Dust Suppression
- 23.76.100 Control of Other Pollutants
- 23.76.110 Construction Phasing and Work Progress
- 23.76.120 Maintenance
- 23.76.140 Abatement Security
- 23.76.150 Responsibility to Have Permit
- 23.76.160 Project Inspections/City Access
- 23.76.170 Stop Work Orders and Corrective Actions
- 23.76.175 Permit Revocation
- 23.76.180 Final Approval
- 23.76.185 As-Built Plans
- 23.76.190 Violations/Penalties

23.76.005 Purpose

- A. The purpose of this chapter is to enact regulations consistent with the Environmental Element of the City's Comprehensive Plan to protect water and earth resources, fish and wildlife habitat, and public health and safety from the potential adverse impacts associated with clearing and grading private and public land in the City.

In addition to implementing goals of the Environmental Element, these regulations implement best management practices required to meet federal and state environmental law requirements.

These regulations focus on prevention of potential adverse impacts associated with clearing and grading activities through a proactive

approach rather than remediation of (or a reactive approach to) adverse impacts.

- B. It is expressly the purpose of this Chapter to provide for and promote the health, safety, and welfare of the general public. This Chapter is not intended to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefitted by its terms.

23.76.015 Definitions

- A. **Applicant:** the individual, partnership, association, or corporation applying for a permit to do work under this chapter, including the property owner, and any employee, agent, consultant or contractor acting on behalf of the applicant, and any successor in interest.
- B. **Best management practices (BMPs):** physical, structural, and/or managerial practices that, when used singly, or in combination, prevent or reduce pollution of water. BMPs include, but are not limited to, structural solutions covered by the terms "best available technology" (BAT) and "all known available and reasonable methods of treatment" (AKART).
- C. **Clearing:** the act of destroying or removing vegetation by any means, including chemical, mechanical, or by hand.
- D. **Clearing and grading permit:** the written permission of the Director to the permittee to proceed with the act of clearing and grading within the provisions of this Chapter. The clearing and grading permit includes the associated approved plans and any conditions of approval as well as the permit form itself.
- E. **Colluvium, or colluvial deposits:** a soil deposit derived from downslope movement of material from other soil formations. (These deposits are most often found on or below the walls of ravines or on steep hillsides.)
- F. **Development Standards:** City of Bellevue Development Standards.
- G. **Director:** The director of the Department of Community Development or his/her designee or other person designated by the City Manager.
- H. **Excavation:** the removal of material such as earth, sand, gravel, rock, or asphalt.

WP0430C-ORD
03/30/95

- I. **Fill:** earth, sand, gravel, rock, asphalt, or other solid material used to increase the ground surface elevation or to replace excavated material.
- J. **Filling:** any act by which earth, sand, gravel, rock, asphalt, or other solid material is deposited or placed to raise the ground elevation or to replace excavated material.
- K. **Geotechnical engineer:** a professional engineer licensed by the state of Washington in civil engineering, or geotechnical engineering should such a category be instituted, who is qualified by reason of experience and education in the practice of evaluating and predicting the engineering properties of soils and geologic formations.
- L. **Grading:** any excavating or filling or combination thereof.
- M. **Permanent erosion control:** Permanent improvements, such as landscaping or drainage control structures, that cover the soil such that no erosion can occur.
- N. **Permit:** unless noted otherwise, "permit" refers to the clearing and grading permit; see clearing and grading permit.
- O. **Permittee:** the property owner to whom the clearing and grading permit is issued. The property owner may be a person(s), partnership, association, or corporation.
- P. **Potential slide block (failure envelope):** the area near the surface of a slope between the toe of the slope and a line drawn upward at two feet horizontal to one foot vertical from the toe to the surface of the ground above the slope, or as otherwise determined by a geotechnical engineer.
- Q. **Protected Area:** an area designated by Land Use Code section 20.25H where use or development is subject to special limitations due to its physical characteristics.
- R. **Sensitive Area:** an area that is mapped as a Sensitive Area in the City of Bellevue Sensitive Areas Notebook or that fits the definition of a Sensitive Area based on the definitions in the Sensitive Areas Notebook. Sensitive Areas include Areas of Special Flood Hazard, Wetlands, Riparian Corridors, and Slopes equal to or exceeding 15%.
- S. **Significant tree:** A healthy evergreen tree, eight inches in diameter or greater, measured four feet above existing grade, and a healthy deciduous

tree, twelve inches in diameter or greater, measured four feet above existing grade.

- T. Site: A lot or group of contiguous lots associated with a certain application, building or buildings, or other development.
- U. Slide: the movement of a mass of loosened rocks or earth down a slope.
- V. Soil: unaggregated or uncemented deposits of mineral and/or organic particles or fragments derived from the breakdown of massive rocks or decay of living matter.
- W. Unstable slopes: those sloping areas of land which have in the past exhibited, are currently exhibiting, or will likely exhibit mass movement of earth.

23.76.025 Permit Requirements

- A. A clearing and grading permit is required for a project involving any of the following, except as provided for in subsection B. In applying this section, the total proposal must be considered.
 - 1. Any clearing, filling, or excavation in a Protected Area or Protected Area setback.
 - 2. Fill and/or excavation totalling over 50 cubic yards. Quantities of fill and excavation are separately calculated and then added together, even if excavated material is used as fill on the same site.
 - 3. Over 1,000 square feet of clearing, as measured at the ground level. Clearing includes disturbance of over 1000 square feet at grade due to felling or topping of trees.
 - 4. Rockeries over three feet in height as measured from the bottom of the base rock.
 - 5. The cutting down or topping by more than one quarter of any significant trees that are required to be preserved by a city code, plat condition, or other requirement.
 - 6. Any re-grading or re-paving of a parking lot used for stormwater detention.
- B. The following activities are exempt from the requirements for a clearing and grading permit even if the criteria in subsection A are exceeded:
 - 1. Agricultural crop management of existing farmed areas.
 - 2. Routine landscape maintenance of existing landscaped areas on developed lots, including pruning, weeding, planting annuals,

and other activities associated with maintaining an already established landscape. For lots developed prior to the adoption of Sensitive Area regulations (Land Use Code Part 20.25H) with landscaping in what are now Protected Areas or Protected Area setbacks, routine landscape maintenance can occur without a clearing and grading permit provided the soil level is not increased.

3. Work needed to correct an immediate danger to life or property in an emergency situation as declared by the mayor or the city manager or his/her designee.
 4. Cemetery graves involving less than 50 cubic yards of excavation, and related filling, per each cemetery plot.
- C. An exemption from a clearing and grading permit does not exempt the person doing the work from meeting all applicable City codes, including, but not limited to, the Storm and Surface Water Utility Code (Bellevue City Code Chapter 24.06) which requires that sediment and other pollutants be kept from the drainage system.
- D. The Director may categorize clearing and grading permits by different types for administrative purposes, and different fees may be charged for different types. A clearing and grading permit may be issued as a component of a building permit, or other permit, rather than as a separate permit. The Director may require that single family building permits and clearing and grading permits be combined.
- E. The Director shall specify what submittal and application materials are required for a complete clearing and grading permit application, including the type of submittals, the required level of detail, the minimum qualifications of preparers of technical documents, and the number of copies. The Director may establish different submittal requirements for different types of clearing and grading permits. He/she may waive specific submittal requirements if he/she determines them to be unnecessary, or may require additional information if needed for review of an application.
- F. As a condition of applying for a permit for a project that includes clearing and grading, the applicant shall allow the City to enter the subject property in order to evaluate the proposed clearing and grading.

23.76.030 Permit Issuance

- A. A clearing and grading permit shall be issued only in conjunction with, or as part of, one or more of the following permits or approvals, except as described in subsection B:
1. A valid building permit application; provided, that if a discretionary Land Use approval pursuant to the provisions of Bellevue City Code Chapter 20.30 or environmental (SEPA) review is required, the clearing and grading permit shall not be issued until the land use approval is received, the City appeal period has passed, and, if a City appeal is filed, until the City has made a final decision on the appeal.
 2. A Utility System Extension Agreement approved by the Bellevue Utilities Department Director.
 3. An approved conditional use permit or planned unit development approval.
 4. Preliminary plat or preliminary short plat approval, provided that, at this stage, a clearing and grading permit may be approved only for infrastructure construction, and not for clearing or grading building sites on individual lots.
 5. An approved shoreline conditional use, shoreline substantial development permit or shoreline management exemption, provided all appeal periods pursuant to WAC 173-14-180 must have expired without the filing of an appeal.
 6. A demolition permit.
 7. Inclusion of the project in the City's approved capital improvement program.
 8. A right of way use permit.
 9. Completion of environmental (SEPA) review for surcharging a site or for environmental or toxics cleanup at a site; provided that if a discretionary land use approval pursuant to the provisions of Bellevue City Code Chapter 20.30 is required, the clearing and grading permit shall not be issued until the land use approval is received, the City appeal period has passed, and if an appeal is filed, until the City has made a final decision on the appeal.
- B. The Director may approve issuance of a clearing and grading permit without an accompanying permit or other approval as listed in subsection A, provided:
1. All of the following criteria are met (in addition to other applicable requirements of this code and other City codes):
 - a. The proposed clearing and grading is not related to a project for which one or more of the approvals listed in subsection A is required.

- b. Approval of the proposal will not pose a threat to or be detrimental to the public health, safety, and welfare, nor be materially detrimental to fish and wildlife habitat and/or water resources.
 - c. The applicant has demonstrated that approval of the proposal is necessary for the reasonable development or maintenance of the property.
 - d. The proposal is not in a Protected Area or Protected Area setback as defined in Land Use Code Part 20.25H.
2. If the proposed work involves more than 500 cubic yards of filling and excavation combined or involves work in a Protected Area or Protected Area setback, the Director shall use Land Use Code Process II (Land Use Code section 20.35.200 - .255) to approve or deny the application.
- C. If construction necessitates access, construction, or intrusion onto or across property not under the applicant's control, then the applicant must provide the City with a copy of a valid construction easement or right-of-entry before the permit can be issued.
- D. The permit may be issued to the property owner or his/her agent. However, the property owner is the permittee and is responsible for ensuring compliance with the terms of the permit.

23.76.035 Expiration of Permits and Applications

- A. An application for a clearing and grading permit may be cancelled for inactivity if an applicant fails, without reasonable justification, to respond to the Department's written request for revisions or corrections within 60 days. The Director may extend the response period beyond 60 days if the applicant provides and adheres to a reasonable schedule for submitting the full revisions.
- B. Clearing and grading permits expire as follows:
- 1. If a building permit is issued for the same site, the clearing and grading permit shall automatically expire or be extended when the building permit expires or is extended.
 - 2. If a building permit is not issued for the same site, the clearing and grading permit shall expire as follows:
 - a. The permit shall expire if the authorized work is not begun within one year from the date of permit issuance, or if work is abandoned for over 180 days.
 - b. If the authorized work is continually performed, the permit shall expire one year from the date of issuance unless a

different time frame is specified on the permit or an extension is granted. Two one-year extensions may be granted by the Director provided that conditions which were relevant to issuance of the permit have not changed substantially and no material detriment to the public welfare will result from the extension.

- C. When a permit is ready to be issued, the applicant shall be notified and must pick up the permit within 60 days of notification. If the permit is not picked up, it may be canceled by the director and become null and void. If the permit is canceled, the Director shall notify the applicant by mail.

23.76.040 Related Codes and Regulations

- A. The requirements of this Chapter are in addition to other City codes and regulations, including the Land Use Code (Title 20 of the Bellevue City Code) and the City's Coal Mine Area regulations (adopted by Resolution 5712).
- B. In order to be in compliance with the provisions of this code, the applicant shall comply with the applicable engineering standards contained in the Development Standards or equivalent standards approved by the Director. In addition, the applicant shall comply with those minimum requirements for temporary erosion and sedimentation control and associated BMPs set forth in the State *Stormwater Management Manual for the Puget Sound Basin*.
- C. Requirements administered by other state and local agencies may also apply. The responsibility for determining the existence and application of other agency requirements rests solely with the applicant; provided that to the extent known, the City will inform the applicant of other agency requirements or permits that may apply to a site.

23.76.050 Conditions of Approval/Project Denial

The Director may impose conditions on permit approval as needed to mitigate identified project impacts and shall deny permit applications that are inconsistent with the provisions of this Chapter.

23.76.060 Clearing: Vegetation Preservation and Replacement

The applicant/permittee shall:

WP0430C-ORD
03/30/95

- A. Meet applicable Land Use Code requirements for vegetation preservation, disturbance limitation, and new landscaping (in particular, see Land Use Code sections 20.20.520, Tree Preservation and Landscape Development; 20.25H, the Sensitive Area Overlay District; and 20.25E, the Shoreline Overlay District).
- B. Where possible, maintain natural vegetation for erosion and sedimentation control and water quality and quantity control.
- C. Follow the methodology in the Development Standards (or equivalent methodology approved by the Director) for preserving/replacing vegetation.
- D. Mark clearing limits in the field prior to clearing.

23.76.070 Grading

The applicant/permittee shall:

- A. Meet applicable Land Use Code requirements related to grading, filling and excavation; in particular see Land Use Code Part 20.25H, the Sensitive Area Overlay District and Part 20.25E, the Shoreline Overlay District, and the City's Coal Mine Area regulations adopted by Resolution 5712.
- B. Follow the methodology in the Development Standards (or equivalent methodology approved by the Director) for any proposed filling or excavation.
- C. Protect adjacent property, including but not limited to public rights-of-way and drainage systems, from damage from grading, filling and excavation.

23.76.080 Slopes

The applicant/permittee shall:

- A. Submit a geotechnical report, prepared by a geotechnical engineer, when required pursuant to the Land Use Code or Development Standards. The Development Standards specify when a subsurface investigation is required and the level of investigation and information required in the report.

- B. Minimize clearing and grading on slopes 15% or greater and meet the Sensitive Earth Conditions Performance Standards set forth in Land Use Code Section 20.25H.110.D.
- C. Comply with the Land Use Code restrictions applicable to slopes 40% or greater and to areas of colluvial or landslide deposit on slopes of 15% or greater (See Land Use Code 20.25H).
- D. Limit the maximum gradient of artificial slopes to no steeper than 2:1 (two feet of horizontal run to one foot of vertical fall) unless a geotechnical engineering report and slope stability analysis is provided and shows that a factor of safety of at least 1.5 for static loads and 1.1 for pseudostatic loads can be met, as demonstrated per the methodology in the Development Standards.
- E. Do no clearing, excavation, stockpiling or filling on the potential slide block of an unstable or potentially unstable slope unless it is demonstrated to the Director's satisfaction that the activity would not increase the load, drainage, or erosion on the slope.
- F. Do no clearing, excavation, stockpiling or filling on any unstable or potentially unstable areas (such as landslide deposits) unless it is demonstrated to the Director's satisfaction that the activity would not increase the risk of damage to adjacent property or natural resources or injury to persons.
- G. Intercept any groundwater, subsurface, or surface water drainage encountered on a cut slope and discharge it at a location approved by the Director in consultation with the Bellevue Utilities Department.
- H. Follow the procedures and standards in the Development Standards related to slopes.
- I. Design and protect cut and fill slopes to minimize erosion.

23.76.085 Rockeries

- A. Rockeries may be used for erosion protection of cut or fill slopes.
- B. Rockeries used to protect fill slopes may be no higher than four feet.
- C. Rockeries used to protect cut slopes may be up to a maximum height of twelve feet with the approval of the Director. Any rockery that is over four feet high (cut slopes only) shall be designed by a

geotechnical engineer; the geotechnical engineer must be on site during construction and submit construction inspection reports for such rockeries to the Department.

- D. Drainage control of the area behind the rockery must be provided. Rockery drains are required for all rockeries greater than 30 inches in height.
- E. The procedures and requirements in the Development Standards related to rockery design and construction must be followed. If the rockery is within a property line setback, see also the height restrictions of Land Use Code section 20.20.025.

23.76.090 Erosion and Sedimentation Control

The property owner shall design and implement erosion and sedimentation control BMPs necessary to prevent sediment from leaving the project site, including but not limited to the requirements described in this section.

- A. The following erosion and sedimentation control requirements apply to all projects:
 - 1. Construction access shall be limited to one route if possible and a hard-surface construction access pad shall be used. Sediment deposited on the paved right-of-way in a manner that prevents it from entering the drainage system shall be removed.
 - 2. Exposed and unworked soils shall be stabilized using BMPs described in the Development Standards. Exposed soils shall be covered at the end of each working day when working from October 1st through April 30th. Exposed soils shall be covered within seven days when working from May 1st through September 30th, except that a shorter time period may be imposed for street use permits.
 - 3. Adjacent and downstream properties, storm drain inlets, and the downstream drainage system shall be protected from sediment deposition using BMPs described in the Development Standards. If protection is inadequate and deposition occurs on adjoining property or public right-of-way or the drainage system, the Permittee shall immediately remove the deposited sediment and restore the affected area to original conditions.
 - 4. Dewatering devices shall be discharged where sediment, and/or other pollutants, will not enter the drainage system (for example, discharge them into a sediment pond or trap).
 - 5. Downstream properties and waterways shall be protected from erosion and sedimentation during construction due to temporary

increases in the volume, velocity, and peak flow rate of runoff from the site.

6. When constructing underground utility lines, no more trench shall be opened than can be closed in a single day, or no more than 500 feet, whichever is less. Excavated material shall be placed on the uphill side of the trench where consistent with safety and space considerations and temporary trench dewatering devices shall be discharged into a sediment trap or pond. Trenches shall be closed at the end of each day unless otherwise allowed by the Director. For utility trenching and other clearing or grading work in street rights-of-way, erosion and sedimentation control BMPs specific to such work shall be applied, as described in the Development Standards, and the BMPs shall be maintained daily.
 7. Permanent erosion control shall be provided per the Development Standards. Disturbed areas of the site that are not covered by permanent improvements such as buildings, parking lots, and decks shall be vegetated.
- B. The following additional requirement applies to projects that are not individual single-family homes and that involve one acre or more of clearing: Temporary on-site conveyance systems shall be designed, constructed and stabilized to prevent erosion from the expected flow velocity from a 2-year, 24-hour storm for the developed condition. Stabilization shall be provided, at conveyance system outlets to prevent erosion of outlets, adjacent streambanks, slopes, and downstream reaches or properties.
- C. If the initially implemented erosion and sedimentation BMPs do not adequately control erosion and sedimentation, additional BMPs shall be installed. It is the permittee's responsibility to ensure sediment does not leave the site in an amount that would violate applicable state or City water quality standards. The City has the authority to enforce state water quality standards, or, if adopted by the City, more stringent water quality standards.
- D. The timing/sequencing requirements for implementing/removing erosion and sedimentation control measures are as follows:
1. The permittee must install the temporary erosion and sedimentation control BMPs prior to all other clearing, grading, or construction.

2. The permittee must remove all temporary erosion and sediment control BMPs within 30 days after final site stabilization or after the BMP is no longer needed, per agreement of the Director. Before removing such BMPs, the permittee must remove trapped sediment or stabilize on-site. Any soils disturbed during sediment removal must be permanently stabilized by the permittee.
3. The permittee must complete the required permanent erosion control within seven days of completed grading unless the weather is unsuitable for transplanting. In that case, the permittee must maintain temporary erosion control until permanent restoration can be completed. The period between work completion and final planting shall not exceed one year without written authorization from the Director.

23.76.093. Temporary Restrictions on Clearing and Grading

- A. In the areas listed below in 23.76.093.A.1 through 4, clearing and grading may be permitted to continue or to be initiated during the rainy season, only if the Director grants specific approval per 23.76.093.C. The rainy season is defined as November 1st through April 30th, unless the Director modifies these dates based on weather patterns and forecasts. In determining whether to permit rainy season construction, the Director shall consult with the Bellevue Utilities Department. Such consultation shall occur on a regular basis to ensure consistent implementation of the City's Environmental and Water Quality policies and shall occur as needed regarding individual projects on specific sites.
 1. The Coal Creek and Lake Sammamish watersheds.
 2. Protected Areas or Protected Area setbacks;
 3. Areas identified by the City or a by geotechnical report as prone to landslides due to the presence of colluvial soils or other geologic or hydrologic factor.
 4. Areas that drain, by pipe, open ditch, sheetflow, or a combination of these, directly to a stream or lake (i.e., where there is no intermediary permanent sediment trap or detention system between the site and the tributary waterbody), with the exception of the Meydenbauer Drainage Basin.

- B. If clearing and grading is prohibited during the rainy season, building construction can nonetheless proceed as long as necessary clearing and grading is complete and effective erosion control is in place and effectively maintained.

- C. The Director shall grant approval to initiate or continue clearing or grading activity in the areas listed in 23.76.093.A.1. through 4 during the rainy season only if, based on an evaluation of site and project conditions, the Director determines the proposal ensures slope stability and adequately protects receiving waters from increased erosion and sedimentation during construction. The evaluation of site and project conditions, shall include, but not be limited to, an evaluation of the following:
 - 1. Whether the clearing and grading is near completion if the project is already underway;
 - 2. Average existing slope of the site;
 - 3. Quantity of proposed cut and/or fill;
 - 4. Classification of the predominant soils and their erosion and runoff potential;
 - 5. Proposed deep utility installation;
 - 6. Hydraulic connection of the site to features that are sensitive to the impacts of erosion/sedimentation;
 - 7. Ability to phase clearing and grading and to create a feasible clearing and grading schedule;
 - 8. Extent of clearing and grading BMPs proposed, and if the project is underway, the project's track record at controlling erosion and sedimentation.

- D. Determinations under 23.76.093.C shall be made by the Director on a site-specific basis. However:
 - 1. Rainy season construction generally will be prohibited for proposals requiring large scale clearing and grading.
 - 2. Rainy season construction generally will be approved for smaller-scale clearing and grading proposals that have limited shallow utility installation and are on sites with less than 15 percent slopes, predominant soils that have low runoff potential, and are not hydraulically connected to sediment/erosion-sensitive features.

3. Rainy season construction generally will be approved if extraordinary BMPs to control erosion/sedimentation and slope stability are proposed when:
 - a. moderate scale clearing and grading is proposed;
 - b. the proposal involves deep utility installation; or
 - c. the proposal is located on sites with greater than 15 percent slopes, soils with a high runoff potential, or sites hydraulically near a sediment/erosion-sensitive feature.

- E. Whenever rainy season clearing and grading is allowed, the applicant may be required to implement extraordinary BMPs if the BMPs that are initially implemented are not working. If the permit was issued in the dry season, and work is allowed to continue in the rainy season, the City may modify the previously issued permit to require additional, extraordinary BMPs. Extraordinary BMPs may include, but not be limited to:
 1. Performance monitoring to determine compliance with state water quality standards, or more stringent standards if adopted by the City.
 2. Funding additional City inspection time, up to a full-time inspector.
 3. Shutting down work if necessary to control erosion and sedimentation.
 4. Construction of additional siltation/sedimentation ponds.
 5. Use of a series of Baker tanks or temporary filter vaults.
 6. Use of high quality catch basin inserts to filter runoff.
 7. Use of erosion control blankets, nets, or mats in addition to or in conjunction with straw mulch.

- F. If a clearing and grading permit is issued, and the City subsequently issues three stop work orders or correction notices for insufficient erosion and sedimentation control, the permit will be suspended until the dry season, or, if violations occurred in the dry season, until weather conditions are favorable and effective erosion and sedimentation control is in place.

- G. The Director has the authority to temporarily stop clearing and grading during periods of heavy rain.

- H. When clearing and grading is suspended during the rainy season or interrupted at any time of the year due to heavy rain or for other reasons, the permittee shall stabilize the site and maintain the erosion control BMPs.

23.76.095 Dust Suppression

Dust from clearing, grading, and other construction activities shall be minimized at all times. Impervious surfaces on or near the construction area shall be swept, vacuumed, or otherwise maintained to suppress dust entrainment. Any dust suppressants used shall be approved by the Director. Petrochemical dust suppressants are prohibited. Watering the site to suppress dust is also prohibited unless it can be done in a way that keeps sediment out of the drainage system.

23.76.100 Control of Other Pollutants

The permittee must properly handle and dispose of other pollutants that are on-site during construction so as to avoid possible health risks or environmental contamination. Direct and indirect discharge of pollutants to the drainage system is prohibited per Bellevue City Code 24.06.

23.76.110 Construction Phasing and Work Progress

- A. Staged construction is allowed only if each phase complies with the code, and if the permit authority approves a phasing plan.
- B. The permittee shall expeditiously proceed with permitted work until completion unless the Director allows (or requires) delays due to bad weather or the need to coordinate other construction on the site.

23.76.120 Maintenance

The permittee shall:

- A. Regularly inspect, including on weekends, all temporary and permanent erosion and sedimentation BMPs and maintain them per the Development Standards so that they function as intended until the site has been permanently stabilized, and the potential for on-site erosion has passed.
- B. Submit a schedule for operation and maintenance of all construction-related BMPs if the project is not an individual single-family home and involves more than 5,000 square feet of clearing and/or more than 50 cubic yards of excavation and/or fill. The operation and maintenance schedule must identify the responsible parties and provide their day and evening phone numbers.

- C. Return any BMPs that are damaged or not working properly to normal operating conditions as directed by the field inspector or within 24 hours of receiving notice from the Director.

23.76.140 Abatement Security

- A. An abatement security device is required for all projects that are not individual single-family homes and that involve more than 5,000 square feet of clearing and/or more than 50 cubic yards of excavation and/or fill. In addition, the Director may require an abatement security device for other projects, including individual single-family homes, that can cause problems related to earth and water resources such as erosion and sedimentation or slope instability.
- B. The Director shall determine the amount of the abatement security device; it must be sufficient to correct or eliminate problems related to earth or water resources, either on or off-site, caused by project clearing and grading.
- C. The Director shall determine acceptable forms (such as assigned savings accounts or letters of credit) for abatement security devices. Interest from any interest-bearing form of the abatement security device shall accrue to the depositor.
- D. Should the City, at any time during the life of the permit, find it necessary to expend any portion of the abatement security device to correct any work not in accordance with the approved plans, or abate conditions, per section 23.76.170, a stop work order shall be issued to the permittee prohibiting any additional work until the permittee re-establishes the original amount of the security and implements more rigorous erosion control BMPS to prevent reoccurrences of the problem. If the City uses any of the abatement security, it shall give the permittee an itemized statement of all funds used. If City costs exceed the amount of the abatement security, the permittee shall reimburse the City for the excess costs.
- E. The City shall release the abatement security device once final clearing and grading approval has been given per section 23.76.180.

23.76.150 Responsibility to Have Permit

Every contractor or other person working or directing work that requires a permit under this chapter must:

WPO430C-ORD
03/30/95

- A. Have a copy of the permit before starting and during all phases of the work. The permit, approved plans, and applicable terms and conditions of approval shall be kept on site at all times.
- B. Be familiar with and comply with the terms and conditions of the permit.

23.76.160 Project Inspections/City Access

- A. All projects with a clearing and grading permit are subject to City inspections to ensure compliance with the permit. As a condition of permit issuance, the applicant must grant right-of-entry for such inspections and City emergency corrective measures.
- B. The Director will specify the general stages of work when City inspection is required and may require inspection and testing by an approved testing agency, to be paid by the applicant.
- C. The Director shall specify inspection and testing requirements applicable to a given project prior to permit issuance; however, the Director may require additional inspection, testing, or professional analysis and recommendations when conditions exist that were not covered in the permit application documents or were not sufficiently known at the time of permit issuance.
- D. The Permittee must give the Director at least twenty-four hours of advance notice prior to needed inspections. Inspections will be scheduled for the next working day after receiving the request, except if the notice is received on Friday, the inspection will be scheduled for Tuesday. If the City does not inspect the project within eight working hours of the scheduled inspection time, the permittee may proceed but must still comply with all permit conditions and the requirements of this code.

23.76.170 Stop Work Orders and Corrective Actions

- A. The Director shall notify the permittee, or person doing the work, whenever the Director determines that:
 - 1. During the life of the permit, the project is causing problems related to earth and water resources, such as sediment leaving the site or entering the drainage system; or
 - 2. The act or intended act of clearing or grading has become or will constitute a hazard to life and limb, or endangers property,

- or adversely affects the safety, use or stability of a public way, drainage channel, street, or surface water; or
3. Clearing and grading is occurring without a required permit; or
 4. The project is otherwise violating this chapter or the provisions of a permit issued under this chapter.
- B. Initial notice per section 23.76.170.A may be verbal. If verbal notice is given, it shall be followed by a written correction notice if compliance is not readily achieved. When issuing a written correction notice, the Director shall serve it to the persons doing the work or causing the work to be done or by posting notice on the site. Any written correction notice shall specify:
1. The work that must be done to correct the violation or abate the problem.
 2. The amount of time that the permittee has to commence and complete the required work.
 3. That, if the work is not commenced and completed within the time specified, the City will use the proceeds of the abatement security device, if an abatement security device was provided for the project, to have the required work completed.
- C. A written correction notice per section 23.76.170.B may include a stop work order, or a stop work order may be independently issued, whenever the continuation of work is likely to harm or pose a hazard to property, safety, or the downstream drainage system. In addition, a stop work order shall also be issued as specified in section 23.76.140.D.
1. In the stop work order, the Director shall specify which work must stop (in order to prevent further damage). The Director has the authority to stop all work on the site.
 2. If a stop work order is issued, it shall be served to the persons doing the work or causing the work to be done or by posting notice on the site.
 3. Work suspended through a stop work order can not resume until measures are in place to prevent a reoccurrence of the problem and until continued work is authorized in writing by the Director.
- D. The cost of measures needed to correct damage caused by the project clearing and grading, including impacts to the downstream

drainage system, shall be born by the permittee. The permittee is required to correct on-site or off-site damages that are caused by the project per the direction of the Director and within the time specified in the Director's written correction notice. Otherwise, the City, or a contractor working under the direction of the City, shall do so using the abatement security device, if a device was provided for the site.

- E. If at any time the City Manager determines that clearing and grading associated with an abatement security device has created an emergency situation endangering the public health, safety, or welfare, creating a potential liability for the city, or endangering City streets, utilities, or property; and if the nature or timing of such an emergency precludes notification per section 23.76.170.B, the city may use the abatement security device to correct the emergency situation. The City may have City employees or a contractor working under the City's direction do the work or make the improvements. If the City uses the abatement security device as provided by this section, the permittee shall be notified in writing within four days of the commencement of emergency work. The notice must state the work that was completed and the nature or timing of the emergency that necessitated the use of the abatement security device without prior notification.

23.76.175 Permit Revocation

The director may revoke or suspend the clearing and grading permit whenever:

- A. The permittee requests such revocation or suspension;
- B. The work does not proceed in accordance with the plans, as approved, or is not in compliance with the requirements of this chapter or other city ordinances;
- C. Entry upon the property for the purpose of investigation or inspection has been denied;
- D. The permittee has made a misrepresentation of a material fact in applying for such permit;
- E. The progress of the work indicates that the plan is or will be inadequate to protect the public, the adjoining property, the street, the drainage system, or other utilities, or the work endangers or will endanger the public, the adjoining property, the street, the drainage system or other utilities.
- F. The permit has not been acted upon within the time allowed for extensions pursuant to section 23.76.035.B.

WP0430C-ORD
03/30/95

- G. The related building permit has expired without renewal or has been revoked or canceled.

23.76.180 Final Approval

The Director shall give final clearing and grading approval once all work is completed per the permit.

23.76.185 As-Built Plans

For clearing and grading undertaken to develop plat or short plat infrastructure, the permittee shall submit a copy of the as-built plans submitted to the Utility and Transportation Departments. Such plan(s) shall be submitted prior to final approval per section 23.76.180.

23.76.190 Violations/Penalties

- A. Civil violation: Any violation of any of the provisions of this chapter constitutes a civil violation as provided for in Bellevue City Code Chapter 1.18, for which a monetary penalty may be assessed and abatement may be required as provided therein. The City shall seek compliance through the civil violations code if compliance is not achieved through section 23.76.170 of this chapter.
- B. Destruction of Notice: It shall be unlawful for any person to remove, mutilate, destroy, or conceal any notice issued and posted by the Director pursuant to this chapter.

WP0430C-ORD
03/30/95

Section 3. This ordinance shall take effect and be in force thirty (30) days after its final passage.

PASSED by the City Council this 3rd day of April, 1995, and signed in authentication of its passage this 3rd day of April, 1995.

(SEAL)

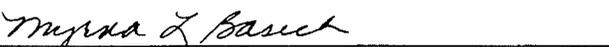

Donald S. Davidson, DDS, Mayor

Approved as to form:

Richard L. Andrews, City Attorney


Richard L. Andrews, City Attorney

Attest:


Myrna L. Basich, City Clerk

Published April 7, 1995

H. When clearing and grading is suspended during the rainy season or interrupted at any time of the year due to heavy rain or for other reasons, the permittee shall stabilize the site and maintain the erosion control BMPs.

Section 15. Section 23.76.110.A of the Bellevue City Code is hereby amended to read as follows:

23.76.110 Construction phasing and work progress.

A. Staged construction is allowed only if each phase complies with the code, and if the director approves a phasing plan.

Section 16. Section 23.76.175 of the Bellevue City Code is hereby amended to read as follows:

23.76.175 Permit revocation.

The director may revoke or suspend the clearing and grading permit whenever:

- A. The permittee requests such revocation or suspension;
- B. The work does not proceed in accordance with the plans, as approved, or is not in compliance with the requirements of this chapter or other city ordinances;
- C. Entry upon the property for the purpose of investigation or inspection has been denied;
- D. The permittee has made a misrepresentation of a material fact in applying for such permit;
- E. The progress of the work indicates that the plan is or will be inadequate to protect the public, the adjoining property, the street, protected areas, the drainage system, or other utilities, or the work endangers or will endanger the public, the adjoining property, the street, protected areas, the drainage system or other utilities;
- F. The permit has not been acted upon or extended within the time allowed pursuant to BCC 23.76.035(B).

Section 17. This ordinance shall take effect and be in force five (5) days after adoption and legal publication.

0616-ORD
6/18/2003

ORIGINAL

PASSED by the City Council this 7th day of July, 2003,
and signed in authentication of its passage this 7th day of July,
2003.

(SEAL)

Connie B. Marshall
Connie B. Marshall, Mayor

Approved as to form:

Richard L. Andrews, City Attorney

Lori M. Riordan
Lori M. Riordan, Assistant City Attorney

Attest:

Myrna L. Basich
Myrna L. Basich, City Clerk

Published July 11, 2003

Chapter 173-14 WAC

PERMITS FOR DEVELOPMENTS ON SHORELINES OF THE STATE

WAC	
173-14-010	Authority.
173-14-020	Purpose.
173-14-030	Definitions.
173-14-040	Developments exempt from substantial development permit requirement.
173-14-050	Application of the permit system to substantial development undertaken prior to the act.
173-14-055	Nonconforming development standards.
173-14-060	Time requirements of permit.
173-14-062	Applicability of permit system to federal agencies.
173-14-064	Revisions to permits.
173-14-070	Notice required.
173-14-080	Public hearings.
173-14-090	Filing with department and attorney general.
173-14-100	Review criteria for substantial development permits.
173-14-110	Application for substantial development, conditional use, or variance permit.
173-14-115	Letter of exemption.
173-14-120	Permits for substantial development, conditional use, or variance.
173-14-130	Department review of conditional use and variance permits.
173-14-140	Review criteria for conditional use permits.
173-14-150	Review criteria for variance permits.
173-14-155	Minimum standards for conditional use and variance permits.
173-14-170	Requests for review.
173-14-174	Certification of requests for review.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

173-14-160	Department of ecology review. [Order DE 76-17, § 173-14-160, filed 7/27/76; Order DE 75-22, § 173-14-160, filed 10/16/75.] Repealed by 78-07-001 (Order DE 78-7), filed 6/14/78. Statutory Authority: RCW 90.58.200.
173-14-180	Regulatory orders by local government or the department. [Statutory Authority: Chapter 90.58 RCW. 86-12-011 (Order 86-06), § 173-14-180, filed 5/23/86. Statutory Authority: Chapters 90.22 and 90.54 RCW. 81-04-027 (Order DE 80-42), § 173-14-180, filed 2/2/81. Statutory Authority: RCW 90.58.200. 78-07-011 (Order DE 78-7), § 173-14-180, filed 6/14/78; Order DE 76-17, § 173-14-180, filed 7/27/76; Order DE 75-22, § 173-14-180, filed 10/16/75.] Repealed by 87-16-101 (Order DE 87-09), filed 8/5/87. Statutory Authority: RCW 90.58.200.
173-14-190	Hearings on regulatory orders. [Statutory Authority: RCW 90.58.200. 78-07-011 (Order DE 78-7), § 173-14-190, filed 6/14/78; Order DE 75-22, § 173-14-190, filed 10/16/75.] Repealed by 81-04-027 (Order DE 80-42), filed 2/2/81. Statutory Authority: Chapters 90.22 and 90.54 RCW.

WAC 173-14-010 Authority. This regulation is adopted pursuant to RCW 90.58.140(3) and 90.58.200, the Shoreline Management Act of 1971. [Statutory Authority: RCW 90.58.200. 78-07-011 (Order DE 78-7), § 173-14-010, filed 6/14/78; Order DE 75-22, § 173-

14-010, filed 10/16/75; Order 71-18, § 173-14-010, filed 12/16/71.]

WAC 173-14-020 Purpose. RCW 90.58.140(3) requires local governments to establish a program, consistent with rules adopted by the department of ecology, for the administration and enforcement of the permit system for shoreline management established therein. The purpose of this regulation is to establish basic rules for the permit system in harmony with the spirit of RCW 90.58.140(3).

This administrative regulation is drafted to also reflect RCW 90.58.050 which provides that the intent of the Shoreline Management Act is to establish a cooperative program between local government and the state. According to this provision, local government shall have the primary responsibility for initiating and administering the regulatory program of shoreline management, whereas the department shall act primarily in a supportive and review capacity with primary emphasis on insuring compliance with the policies and provisions of the Shoreline Management Act. [Statutory Authority: RCW 90.58.200. 78-07-011 (Order DE 78-7), § 173-14-020, filed 6/14/78; Order DE 75-22, § 173-14-020, filed 10/16/75; Order 71-18, § 173-14-020, filed 12/16/71.]

WAC 173-14-030 Definitions. The following definitions shall apply:

(1) "Act" means chapter 286, Laws of 1971 ex. sess., chapter 90.58 RCW, the Shoreline Management Act of 1971, as amended;

(2) "Applicable master program" means the master program approved or adopted by the department pursuant to RCW 90.58.090 or 90.58.190 prior to issuance of the permit by local government;

(3) "Average grade level" means the average of the natural or existing topography of the portion of the lot, parcel, or tract of real property which will be directly under the proposed building or structure: *Provided*, That in the case of structures to be built over water, average grade level shall be the elevation of ordinary high water.

Calculation of the average grade level shall be made by averaging the elevations at the center of all exterior walls of the proposed building or structure;

(4) "Conditional use" means a use, development, or substantial development which is classified as a conditional use or is not classified within the applicable master program;

(5) "Department" means the department of ecology;

(6) "Exempt" developments are those set forth in WAC 173-14-040 which do not meet the definition of substantial development under RCW 90.58.030 (3)(e);

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

(8) "Final order" includes the approval or disapproval of a permit, or a letter of exemption as set forth in WAC 173-14-115;

(9) "Height" is measured from average grade level to the highest point of a structure: *Provided*, That television antennas, chimneys, and similar appurtenances shall not be used in calculating height, except where it obstructs the view of a substantial number of residences on areas adjoining such shorelines, or the applicable master program provides otherwise: *Provided further*, That temporary construction equipment is excluded in this calculation;

(10) "Local government" means any county, incorporated city, or town which contains within its boundaries any lands or waters subject to this chapter;

(11) "Natural or existing topography" means the topography of the lot, parcel, or tract of real property immediately prior to any site preparation or grading, including excavation or filling;

(12) "Party of record" includes all persons who have notified local government of their desire to receive a copy of the final order on a permit under WAC 173-14-070;

(13) "Permit" means any substantial development, variance, conditional use permit, or revision authorized under chapter 90.58 RCW;

(14) "Public interest" means the interest shared by the citizens of the state or community at large in the affairs of government, or some interest by which their rights or liabilities are affected such as an effect on public property or on health, safety, or general welfare resulting from a use or development;

(15) "Structure" means a permanent or temporary edifice or building, or any piece of work artificially built or composed of parts joined together in some definite manner, whether installed on, above, or below the surface of the ground or water, except for vessels;

(16) "Transmit" means to send from one person or place to another by mail or hand delivery. The date of transmittal for mailed items is the date that the department's final order is certified for mailing or, for hand-delivered items, is the date of receipt at the destination; and

(17) "Variance" is a means to grant relief from the specific bulk, dimensional or performance standards set forth in the applicable master program and not a means to vary a use of a shoreline;

(18) "Vessel" includes ships, boats, barges, or any other floating craft which are designed and used for

navigation and do not interfere with the normal public use of the water.

(19) The definitions and concepts set forth in RCW 90.58.030 also apply as used herein. [Statutory Authority: RCW 90.58.120 and 90.58.200. 88-19-004 (Order DE 88-23), § 173-14-030, filed 9/8/88. Statutory Authority: Chapter 90.58 RCW. 86-12-011 (Order 86-06), § 173-14-030, filed 5/23/86. Statutory Authority: RCW 90.58.200. 78-07-011 (Order DE 78-7), § 173-14-030, filed 6/14/78; Order DE 76-17, § 173-14-030, filed 7/27/76; Order DE 75-22, § 173-14-030, filed 10/16/75; Order 71-18, § 173-14-030, filed 12/16/71.]

WAC 173-14-040 Developments exempt from substantial development permit requirement. (1) The following developments shall not require substantial development permits:

(a) Any development of which the total cost or fair market value, whichever is higher, does not exceed two thousand five hundred dollars, if such development does not materially interfere with the normal public use of the water or shorelines of the state. ≥ 2,500

(b) Normal maintenance or repair of existing structures or developments, including damage by accident, fire or elements. "Normal maintenance" includes those usual acts to prevent a decline, lapse, or cessation from a lawfully established condition. "Normal repair" means to restore a development to a state comparable to its original condition within a reasonable period after decay or partial destruction except where repair involves total replacement which is not common practice or causes substantial adverse effects to the shoreline resource or environment;

(c) Construction of the normal protective bulkhead common to single-family residences. A "normal protective" bulkhead is constructed at or near the ordinary high water mark to protect a single family residence and is for protecting land from erosion, not for the purpose of creating land. Where an existing bulkhead is being replaced, it shall be constructed no further waterward of the existing bulkhead than is necessary for construction of new footings;

(d) Emergency construction necessary to protect property from damage by the elements. An "emergency" is an unanticipated and imminent threat to public health, safety, or the environment which requires immediate action within a time too short to allow full compliance with this chapter;

(e) Construction and practices normal or necessary for farming, irrigation, and ranching activities, including agricultural service roads and utilities on wetlands, construction of a barn or similar agricultural structure, and the construction and maintenance of irrigation structures including but not limited to head gates, pumping facilities, and irrigation channels: *Provided*, That a feedlot of any size, all processing plants, other activities of a commercial nature, alteration of the contour of the wetlands by leveling or filling other than that which results from normal cultivation, shall not be considered normal or necessary farming or ranching activities. A feedlot shall be an enclosure or facility used or capable of being used

for feeding livestock hay, grain, silage, or other livestock feed, but shall not include land for growing crops or vegetation for livestock feeding and/or grazing, nor shall it include normal livestock wintering operations;

(f) Construction or modification of navigational aids such as channel markers and anchor buoys;

(g) Construction on wetlands by an owner, lessee or contract purchaser of a single-family residence for his own use or for the use of his family, which residence does not exceed a height of thirty-five feet above average grade level and which meets all requirements of the state agency or local government having jurisdiction thereof, other than requirements imposed pursuant to this chapter. "Single-family residence" means a detached dwelling designed for and occupied by one family including those structures and developments within a contiguous ownership which are a normal appurtenance. An "appurtenance" is necessarily connected to the use and enjoyment of a single-family residence and is located landward of the perimeter of a marsh, bog, or swamp. On a state-wide basis, normal appurtenances include a garage; deck; driveway; utilities; fences; and grading which does not exceed two hundred fifty cubic yards (except to construct a conventional drainfield). Local circumstances may dictate additional interpretations of normal appurtenances which shall be set forth and regulated within the applicable master program. Construction authorized under this exemption shall be located landward of the ordinary high water mark;

(h) Construction of a dock, designed for pleasure craft only, for the private noncommercial use of the owners, lessee, or contract purchaser of a single-family residence, for which the cost or fair market value, whichever is higher, does not exceed two thousand five hundred dollars.

(i) Operation, maintenance, or construction of canals, waterways, drains, reservoirs, or other facilities that now exist or are hereafter created or developed as a part of an irrigation system for the primary purpose of making use of system waters, including return flow and artificially stored ground water from the irrigation of lands;

(j) The marking of property lines or corners on state owned lands, when such marking does not significantly interfere with normal public use of the surface of the water;

(k) Operation and maintenance of any system of dikes, ditches, drains, or other facilities existing on the effective date of the 1975 amendatory act which were created, developed or utilized primarily as a part of an agricultural drainage or diking system; and

(1) Any project with a certification from the governor pursuant to chapter 80.50 RCW.

(2) Exemptions shall be construed narrowly.

(3) Exempted developments authorized by local government shall be consistent with the policies and provisions of the act and the applicable master program. [Statutory Authority: Chapter 90.58 RCW. 86-12-011 (Order 86-06), § 173-14-040, filed 5/23/86. Statutory Authority: RCW 90.58.030, 90.58.120 and 90.58.200. 85-09-043 (Order DE 85-05), § 173-14-040, filed

4/15/85. Statutory Authority: RCW 90.58.200. 78-07-011 (Order DE 78-7), § 173-14-040, filed 6/14/78; Order DE 76-17, § 173-14-040, filed 7/27/76; Order DE 75-28, § 173-14-040, filed 12/4/75; Order DE 75-22, § 173-14-040, filed 10/16/75; Order 71-18, § 173-14-040, filed 12/16/71.]

WAC 173-14-050 Application of the permit system to substantial development undertaken prior to the act. Substantial development undertaken on the shorelines of the state prior to the effective date of the act shall not require a permit except under the following circumstances:

(1) Where the activity was unlawful prior to the effective date of the act.

(2) Where there has been an unreasonable period of dormancy in the project between its inception and the effective date of the act.

(3) Where the development is not completed within two years after the effective date of the act. In determining the running of the two-year period hereof, those periods of time after June 1, 1971, shall not be included during which a development was not actually pursued by construction and the pendency of litigation reasonably related thereto made it reasonable not to so pursue.

(4) Where substantial development occurred prior to the effective date of the act on a shoreline and continued on to a different lake, river or tributary after the effective date, a permit shall be required for the development undertaken after the effective date.

Substantial development undertaken prior to the effective date of the act shall not continue without a permit into other phases that were not part of the plan being followed at the time construction commenced. [Statutory Authority: RCW 90.58.200. 78-07-011 (Order DE 78-7), § 173-14-050, filed 6/14/78; Order 73-23, § 173-14-050, filed 10/23/73; Order 71-18, § 173-14-050, filed 12/16/71.]

WAC 173-14-055 Nonconforming development standards. Where nonconforming development standards do not exist in the applicable master program, the following definitions and standards shall apply:

(1) "Nonconforming development" means a shoreline use or structure which was lawfully constructed or established prior to the effective date of the act or the applicable master program, or amendments thereto, but which does not conform to present regulations or standards of the program or policies of the act;

(2) Nonconforming development may be continued provided that it is not enlarged, intensified, increased, or altered in any way which increases its nonconformity;

(3) A nonconforming development which is moved any distance must be brought into conformance with the applicable master program and the act;

(4) If a nonconforming development is damaged to an extent not exceeding seventy-five percent replacement cost of the original structure, it may be reconstructed to those configurations existing immediately prior to the time the structure was damaged, so long as restoration is completed within one year of the date of damage;

(5) If a nonconforming use is discontinued for twelve consecutive months or for twelve months during any two-year period, any subsequent use shall be conforming. It shall not be necessary to show that the owner of the property intends to abandon such nonconforming use in order for the nonconforming rights to expire;

(6) A nonconforming use shall not be changed to another nonconforming use, regardless of the conforming or nonconforming status of the building or structure in which it is housed; and

(7) An undeveloped lot, tract, parcel, site, or division which was established prior to the effective date of the act or the applicable master program but which does not conform to the present lot size or density standards may be developed so long as such development conforms to other requirements of the applicable master program and the act. [Statutory Authority: RCW 90.58.200. 87-16-101 (Order DE 87-09), § 173-14-055, filed 8/5/87. Statutory Authority: Chapter 90.58 RCW. 86-12-011 (Order 86-06), § 173-14-055, filed 5/23/86.]

WAC 173-14-060 Time requirements of permit. The following time requirements shall apply to all permits:

(1) Substantial progress toward completion of a permitted activity shall be undertaken within two years after the approval of the permit by local government. Substantial progress shall include all of the following, where applicable: The making of contracts; signing of notice to proceed; completion of grading and excavation; and the laying of major utilities; or, where no construction is involved, commencement of the activity: *Provided*, That local government may authorize a single extension before the end of the time limit, with prior notice to parties of record and the department, for up to one year based on reasonable factors.

(2) Permit authorization shall terminate within five years after the approval of the permit by local government: *Provided*, That local government may authorize a single extension before the end of the time limit, with prior notice to parties of record and the department, for up to one year based on reasonable factors.

(3) The running of a permit time period shall not include the time during which an activity was not actually pursued due to the pendency of reasonably related administrative appeals or litigation.

(4) Local government may issue permits with a fixed termination date of less than five years.

(5) When permit approval is based on conditions, such conditions shall be satisfied prior to occupancy or use of a structure or prior to commencement of a nonstructural activity: *Provided*, That an alternative compliance limit may be specified in the permit.

(6) Revisions to permits under WAC 173-14-064 may be authorized after original permit authorization has expired under subsection (2) of this section: *Provided*, That this procedure shall not be used to extend the original permit time requirements. [Statutory Authority: RCW 90.58.200. 87-16-101 (Order DE 87-09), § 173-14-060, filed 8/5/87; 80-04-027 (Order DE 80-

9), § 173-14-060, filed 3/18/80; 78-07-011 (Order DE 78-7), § 173-14-060, filed 6/14/78; Order DE 75-22, § 173-14-060, filed 10/16/75; Order 71-18, § 173-14-060, filed 12/16/71.]

WAC 173-14-062 Applicability of permit system to federal agencies. The permit system shall be applied in the following manner to federal agencies on lands meeting the criteria of the Shoreline Management Act and the department for shorelines of the state.

(1) Federal agencies shall not be required to obtain permits for developments undertaken by the federal government on lands owned in fee by the federal government, unless the federal government grants or reserves to the state or local government, substantial jurisdiction over activities on those lands.

(2) The permit system shall apply to nonfederal activities constituting developments undertaken on lands subject to nonfederal ownership, lease or easement, even though such lands may fall within the external boundaries of a federal ownership.

(3) The permit system shall apply to developments undertaken on lands not federally owned but under lease, easement, license, or other similar federal property rights short of fee ownership, to the federal government.

(4) Federal agency actions shall be consistent with the approved Washington state coastal zone management program subject to certain limitations set forth in the Federal Coastal Zone Management Act, 16 U.S.C. 1451 et seq. and regulations adopted pursuant thereto. [Statutory Authority: RCW 90.58.200. 78-07-011 (Order DE 78-7), § 173-14-062, filed 6/14/78; Order DE 75-22, § 173-14-062, filed 10/16/75.]

WAC 173-14-064 Revisions to permits. When an applicant seeks to revise a permit, local government shall request from the applicant detailed plans and text describing the proposed changes in the permit.

(1) If local government determines that the proposed changes are within the scope and intent of the original permit, local government may approve a revision.

(2) "Within the scope and intent of the original permit" means all of the following:

(a) No additional over water construction is involved except that pier, dock, or float construction may be increased by five hundred square feet or ten percent from the provisions of the original permit, whichever is less;

(b) Ground area coverage and height of each structure may be increased a maximum of ten percent from the provisions of the original permit;

(c) Additional separate structures may not exceed a total of two hundred fifty square feet;

(d) The revised permit does not authorize development to exceed height, lot coverage, setback, or any other requirements of the applicable master program except as authorized under the original permit;

(e) Additional landscaping is consistent with conditions (if any) attached to the original permit and with the applicable master program;

(f) The use authorized pursuant to the original permit is not changed; and

[Statutory Authority: RCW 90.58.200. 78-07-011 (Order DE 78-7), § 173-14-070, filed 6/14/78; Order DE 76-17, § 173-14-070, filed 7/27/76; Order DE 75-22, § 173-14-070, filed 10/16/75; Order 71-18, § 173-14-070, filed 12/16/71.]

WAC 173-14-080 Public hearings. Local governments may establish a mandatory or optional public hearing procedure to precede the issuance or denial of substantial development, conditional use, or variance permits in order to allow interested persons to present their views. [Statutory Authority: RCW 90.58.200. 78-07-011 (Order DE 78-7), § 173-14-080, filed 6/14/78; Order DE 75-22, § 173-14-080, filed 10/16/75; Order 71-18, § 173-14-080, filed 12/16/71.]

WAC 173-14-090 Filing with department and attorney general. A final action by local government on an application for a permit, whether it be an approval or denial, or a revision shall be filed with the department and attorney general. A "final action" is that order or ruling, whether it be an approval or denial, which is established after local administrative appeals related to the permit have lapsed. When a substantial development permit and a conditional use or variance permit are required for a development, the filing of local government's rulings on the permits shall be made concurrently.

Copies of the original application, affidavit of public notice, site plan, vicinity map, permit, and final order shall be filed with the department and attorney general within eight days of the local government final action on a permit. Where applicable, local government shall also file the applicable documents required by chapter 43.21C RCW, the State Environmental Policy Act, or in lieu thereof, a statement summarizing the actions and dates of such actions taken under chapter 43.21C RCW.

Filing is not complete until the required documents have been received by the department and by the attorney general. This same rule shall apply to conditional uses, variances, rescissions and revisions of permits. If the filing is determined by the department to be incomplete, the department will identify the deficiencies and so notify local government and the applicant in writing. If the requested materials are not received by the department within thirty days of notification, the permit will be returned to local government for completion and resubmittal.

"Date of filing" of a local government final action involving approval or denial of a substantial development permit, or involving a denial of a variance or conditional use permit, is the date of actual receipt of a completed filing by the department. With regard to a permit for a conditional use or variance approved by local government, and such permits which also involve concurrent filing by local government of a substantial development permit, the "date of filing" means the date the department's final order on the variance or conditional use permit is transmitted to local government and the applicant. The department shall in all circumstances notify in writing the local government and the applicant of the

"date of filing." [Statutory Authority: Chapter 90.58 RCW. 86-12-011 (Order 86-06), § 173-14-090, filed 5/23/86. Statutory Authority: RCW 90.58.030, 90.58-.120 and 90.58.200. 85-09-043 (Order DE 85-05), § 173-14-090, filed 4/15/85. Statutory Authority: RCW 90.58.200. 78-07-011 (Order DE 78-7), § 173-14-090, filed 6/14/78; Order DE 76-17, § 173-14-090, filed 7/27/76; Order DE 75-22, § 173-14-090, filed 10/16/75; Order 71-18, § 173-14-090, filed 12/16/71.]

WAC 173-14-100 Review criteria for substantial development permits. * (1) Prior to the effective date of an applicable master program, a substantial development permit shall be granted only when the development proposed is consistent with:

- (a) The policies and procedures of the act;
- (b) The guidelines and regulations of the department; and,
- (c) So far as can be ascertained, the master program being developed for the area.

(2) After the adoption or approval, as appropriate, by the department of an applicable master program, a substantial development permit shall be granted only when the development proposed is consistent with:

- (a) The policies and procedures of the act;
- (b) The provisions of this regulation; and,
- (c) The applicable master program adopted or approved for the area.

* The State Environmental Policy Act, chapter 43.21C RCW, has been determined to be applicable to government permit programs. See WAC 461-08-175, rules of practice and procedures of the shoreline hearings board. Also see State Environmental Policy Act guidelines.

[Statutory Authority: RCW 90.58.200. 78-07-011 (Order DE 78-7), § 173-14-100, filed 6/14/78; Order DE 75-22, § 173-14-100, filed 10/16/75; Order 71-18, § 173-14-100, filed 12/16/71.]

WAC 173-14-110 Application for substantial development, conditional use, or variance permit. Applications for a substantial development, conditional use, or variance permit shall contain, as a minimum, the information called for in the following form. Such forms shall be supplied by local government.

APPLICATION FOR SUBSTANTIAL DEVELOPMENT, CONDITIONAL USE, OR VARIANCE PERMIT

TO THE APPLICANT: This is an application for a substantial development, conditional use, or variance permit as authorized by the Shoreline Management Act of 1971. It is suggested that you check with appropriate local, state, or federal officials to determine whether your project falls within any other permit systems.

1. Name of applicant
2. Mailing address

3. Relation of applicant to property:
 - Owner -----
 - Purchaser -----
 - Lessee -----
 - Other -----
4. Name and address of owner, if other than applicant

5. General location of proposed project (please list section to the nearest quarter section, township, and range)

6. Name of water area and/or wetlands within which development is proposed

7. Current use of the property with existing improvements

8. Proposed use of property (Please be specific)

9. (To be completed by local official.) Nature of the existing shoreline. (Describe type of shoreline, such as marine, stream, lake, lagoon, marsh, bog, swamp, flood plain, floodway, delta; type of beach, such as accretion, erosion, high bank, low bank, or dike; material such as sand, gravel, mud, clay, rock, riprap; and extent and type of bulkheading, if any):

10. (To be completed by local official.) In the event that any of the proposed buildings or structures will exceed a height of thirty-five feet above the average grade level, indicate the approximate location of and number of residential units, existing and potential, that will have an obstructed view.
11. (To be completed by local official.) If the application involves a conditional use or variance, set forth in full that portion of the master program which provides that the proposed use may be a conditional use, or, in the case of a variance, from which the variance is being sought.

- (a) *SITE PLAN*: Include on plan:
 - (1) Site boundary.
 - (2) Property dimensions in vicinity of project.
 - (3) Ordinary high-water mark.
 - (4) Typical cross section or sections showing:
 - (i) Existing ground elevations.
 - (ii) Proposed ground elevation.
 - (iii) Height of existing structures.
 - (iv) Height of proposed structures.
 - (5) Where appropriate, proposed land contours using five-foot intervals in water area and ten-foot intervals on areas landward of ordinary high-water mark, if development involves grading, cutting, filling, or other alteration of land contours.
 - (6) Show dimensions and locations of existing structures which will be maintained.
 - (7) Show dimensions and locations of proposed structures.
 - (8) Identify source, composition, and volume of fill material.
 - (9) Identify composition and volume of any extracted materials, and identify proposed disposal area.
 - (10) Location of proposed utilities, such as sewer, septic tanks and drainfields, water, gas, electricity.
 - (11) If the development proposes septic tanks, does proposed development comply with local health and state regulations?
 - (12) Shoreline designation according to master program.
 - (13) Show which areas are shorelines and which are shorelines of state-wide significance.
- (b) *VICINITY MAP*.
 - (1) Indicate site location using natural points of reference (roads, state highways, prominent land marks, etc.).
 - (2) If the development involves the removal of any soils by dredging or otherwise, please identify the proposed disposal site on the map. If the disposal site is beyond the confines of the vicinity map, provide another vicinity map showing the precise location of the disposal site and its distance to the nearest city or town.
 - (3) Give a brief narrative description of the general nature of the improvements and land use within one thousand feet in all directions from development site. (i.e., residential to the north, commercial to the south, etc.) [Statutory Authority: RCW 90.58.200, 78-07-011 (Order DE 78-7), § 173-14-110, filed 6/14/78; Order DE 76-17, § 173-14-110, filed 7/27/76; Order DE 75-22, § 173-14-110, filed 10/16/75; Order 71-18, § 173-14-110, filed 12/16/71.]

WAC 173-14-115 Letter of exemption. Whenever a development falls within the exemptions stated in WAC 173-14-040 and the development is subject to a U.S. Corps of Engineers section 10 permit under the Rivers and Harbors Act of 1899, or a section 404 permit under the Federal Water Pollution Control Act of 1972, the local government shall prepare a letter addressed to the applicant and the department, exempting the development from the substantial development permit requirements of chapter 90.58 RCW. This exemption shall be

PROJECT DIAGRAMS: Draw all site plans and maps to scale, clearly indicating scale on lower right-hand corner and attach them to the application.

in substantially the following form. Such forms will be supplied by local government.

EXEMPTION FROM SHORELINE MANAGEMENT ACT SUBSTANTIAL DEVELOPMENT PERMIT REQUIREMENT

To: (name and address of the applicant)

The proposal by (name of applicant) to undertake the the following development (please be specific)

upon the following property (please list legal description, i.e., section to the nearest quarter section)

within (name of water area) and/or its associated wetlands is exempt from the requirement of a substantial development permit because the development

(Identify exemptions as outlined in WAC 173-14-040)

(Corps Public Notice Number)

The proposed development is consistent or inconsistent with:

CHECK ONE

CONSISTENT INCONSISTENT

- Consistent/Inconsistent checkboxes for Policies of the Shoreline Management Act, Department of Ecology guidelines, and The master program.

(Date)

(Signature of Authorized Local Governmental Official)

[Statutory Authority: RCW 90.58.030, 90.58.120 and 90.58.200. 85-09-043 (Order DE 85-05), § 173-14-115, filed 4/15/85. Statutory Authority: RCW 90.58.200. 78-07-011 (Order DE 78-7), § 173-14-115, filed 6/14/78; Order DE 76-17, § 173-14-115, filed 7/27/76; Order DE 75-22, § 173-14-115, filed 10/16/75.]

WAC 173-14-120 Permits for substantial development, conditional use, or variance. Each permit for a substantial development, conditional use or variance, issued by local government shall contain a provision that construction pursuant to the permit shall not begin and is not authorized until thirty days from the date of filing as defined in RCW 90.58.140(6) and WAC 173-14-

090; or until all review proceedings initiated within thirty days from the date of such filing have been terminated; except as provided in RCW 90.58.140 (5)(a)(b)(c).

Permits for substantial development, conditional use, or variance shall be in substantially the following form. Such forms will be supplied by local government.

SHORELINE MANAGEMENT ACT OF 1971 PERMIT FOR SHORELINE MANAGEMENT SUBSTANTIAL DEVELOPMENT, CONDITIONAL USE, OR VARIANCE

NOTE - THIS PAGE FOR LOCAL GOVERNMENT USE ONLY

(Consecutive but beginning with No. 1)

Application No.

Administering Agency (city or county)

Date received

Approved Denied

Date

Type of Action(s)

- Substantial Development Permit
Conditional Use Permit
Variance Permit

Pursuant to chapter 90.58 RCW, a permit is hereby granted/denied to:

(name of applicant)

(address)

to undertake the following development: (Please be specific)

upon the following property (please list the legal description, i.e., section to the nearest quarter section, township, range):

Within (name of water area) and/or its associated wetlands.

The project will (be/not be) within shorelines of state-wide significance (RCW 90.58.030). The project will be located within a (environment) designation. The following

master program provisions are applicable to this development (state the master program section or page number): If a conditional use or variance, also identify the portion of the master program which provides that the proposed use may be a conditional use, or that portion of the master program being varied.

Development pursuant to this permit shall be undertaken pursuant to the following terms and conditions:

This permit is granted pursuant to the Shoreline Management Act of 1971 and nothing in this permit shall excuse the applicant from compliance with any other federal, state or local statutes, ordinances or regulations applicable to this project, but not inconsistent with the Shoreline Management Act (chapter 90.58 RCW).

This permit may be rescinded pursuant to RCW 90.58.140(8) in the event the permittee fails to comply with the terms or conditions hereof.

CONSTRUCTION PURSUANT TO THIS PERMIT WILL NOT BEGIN OR IS NOT AUTHORIZED UNTIL THIRTY DAYS FROM THE DATE OF FILING AS DEFINED IN RCW 90.58.140(6) AND WAC 173-14-090, OR UNTIL ALL REVIEW PROCEEDINGS INITIATED WITHIN THIRTY DAYS FROM THE DATE OF SUCH FILING HAVE TERMINATED; EXCEPT AS PROVIDED IN RCW 90.58.140 (5)(a)(b)(c).

(Date) (Signature of Authorized Local Government Official)

THIS SECTION FOR DEPARTMENT USE ONLY IN REGARD TO A CONDITIONAL USE OR VARIANCE PERMIT.

Date received by the department
Approved Denied

This conditional use/variance permit is approved/denied by the department pursuant to chapter 90.58 RCW.

Development shall be undertaken pursuant to the following additional terms and conditions:

(Date) (Signature of Authorized Department Official)

[Statutory Authority: RCW 90.58.200. 78-07-011 (Order DE 78-7), § 173-14-120, filed 6/14/78; Order DE 76-17, § 173-14-120, filed 7/27/76; Order DE 75-22, § 173-14-120, filed 10/16/75; Order 71-18, § 173-14-120, filed 12/16/71.]

WAC 173-14-130 Department review of conditional use and variance permits. After local government approval of a conditional use or variance permit, local government shall submit the permit to the department for the department's approval, approval with conditions, or denial. When the department intends to conditionally approve a conditional use or a variance permit, the department shall notify the local government of its intention and the nature of the conditions prior to rendering its final decision. The department shall render and transmit to local government and the applicant its final decision approving, approving with conditions, or disapproving the permit within thirty days of the date of submittal by local government pursuant to WAC 173-14-090. Local government shall notify those interested persons having requested notification from local government pursuant to WAC 173-14-070 of the departments final decision. [Statutory Authority: Chapter 90.58 RCW. 86-12-011 (Order 86-06), § 173-14-130, filed 5/23/86. Statutory Authority: RCW 90.58.030, 90.58.120 and 90.58.200. 85-09-043 (Order DE 85-05), § 173-14-130, filed 4/15/85. Statutory Authority: RCW 90.58.200. 78-07-011 (Order DE 78-7), § 173-14-130, filed 6/14/78; Order DE 76-17, § 173-14-130, filed 7/27/76; Order DE 75-22, § 173-14-130, filed 10/16/75.]

WAC 173-14-140 Review criteria for conditional use permits. The purpose of a conditional use permit is to allow greater flexibility in varying the application of the use regulations of the master program in a manner consistent with the policies of RCW 90.58.020: Provided, That conditional use permits should also be granted in a circumstance where denial of the permit would result in a thwarting of the policy enumerated in RCW 90.58.020. In authorizing a conditional use, special conditions may be attached to the permit by local government or the department to prevent undesirable effects of the proposed use.

- (1) Uses which are classified or set forth in the applicable master program as conditional uses may be authorized provided the applicant can demonstrate all of the following:
(a) That the proposed use is consistent with the policies of RCW 90.58.020 and the policies of the master program;
(b) That the proposed use will not interfere with the normal public use of public shorelines;
(c) That the proposed use of the site and design of the project is compatible with other permitted uses within the area;
(d) That the proposed use will cause no unreasonably adverse effects to the shoreline environment in which it is to be located; and
(e) That the public interest suffers no substantial detrimental effect.
(2) Other uses which are not classified or set forth in the applicable master program may be authorized as conditional uses provided the applicant can demonstrate, in addition to the criteria set forth in WAC 173-14-140(1) above, that extraordinary circumstances preclude

reasonable use of the property in a manner consistent with the use regulations of the master program.

(3) Uses which are specifically prohibited by the master program may not be authorized.

(4) In the granting of all conditional use permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if conditional use permits were granted for other developments in the area where similar circumstances exist, the total of the conditional uses shall also remain consistent with the policies of RCW 90.58.020 and shall not produce substantial adverse effects to the shoreline environment. [Statutory Authority: Chapter 90.58 RCW. 86-12-011 (Order 86-06), § 173-14-140, filed 5/23/86. Statutory Authority: Chapters 90.22 and 90.54 RCW. 81-04-027 (Order DE 80-42), § 173-14-140, filed 2/2/81. Statutory Authority: RCW 90.58.200. 78-07-011 (Order DE 78-7), § 173-14-140, filed 6/14/78; Order DE 75-22, § 173-14-140, filed 10/16/75.]

WAC 173-14-150 Review criteria for variance permits. The purpose of a variance permit is strictly limited to granting relief from specific bulk, dimensional or performance standards set forth in the applicable master program where there are extraordinary or unique circumstances relating to the property such that the strict implementation of the master program will impose unnecessary hardships on the applicant or thwart the policies set forth in RCW 90.58.020.

(1) Variance permits should be granted in a circumstance where denial of the permit would result in a thwarting of the policy enumerated in RCW 90.58.020. In all instances extraordinary circumstances shall be shown and the public interest shall suffer no substantial detrimental effect.

(2) Variance permits for development that will be located landward of the ordinary high water mark (OHWM), as defined in RCW 90.58.030 (2)(b), except within those areas designated by the department as marshes, bogs, or swamps pursuant to chapter 173-22 WAC, may be authorized provided the applicant can demonstrate all of the following:

(a) That the strict application of the bulk, dimensional or performance standards set forth in the applicable master program precludes or significantly interferes with a reasonable use of the property not otherwise prohibited by the master program;

(b) That the hardship described in WAC 173-14-150 (2)(a) above is specifically related to the property, and is the result of unique conditions such as irregular lot shape, size, or natural features and the application of the master program, and not, for example, from deed restrictions or the applicant's own actions;

(c) That the design of the project is compatible with other permitted activities in the area and will not cause adverse effects to adjacent properties or the shoreline environment;

(d) That the requested variance does not constitute a grant of special privilege not enjoyed by the other properties in the area, and is the minimum necessary to afford relief; and

(e) That the public interest will suffer no substantial detrimental effect.

(3) Variance permits for development that will be located either waterward of the ordinary high water mark (OHWM), as defined in RCW 90.58.030 (2)(b), or within marshes, bogs, or swamps as designated by the department under chapter 173-22 WAC, may be authorized provided the applicant can demonstrate all of the following:

(a) That the strict application of the bulk, dimensional or performance standards set forth in the applicable master program precludes a reasonable use of the property not otherwise prohibited by the master program;

(b) That the proposal is consistent with the criteria established under (2)(b) through (e) of this section; and

(c) That the public rights of navigation and use of the shorelines will not be adversely affected.

(4) In the granting of all variance permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example if variances were granted to other developments in the area where similar circumstances exist the total of the variances shall also remain consistent with the policies of RCW 90.58.020 and shall not produce substantial adverse effects to the shoreline environment.

(5) Requests for varying the use to which a shoreline area is to be put are not requests for variances, but rather requests for conditional uses. Such requests shall be evaluated using the criteria set forth in WAC 173-14-140. [Statutory Authority: Chapter 90.58 RCW. 86-12-011 (Order 86-06), § 173-14-150, filed 5/23/86. Statutory Authority: Chapters 90.22 and 90.54 RCW. 81-04-027 (Order DE 80-42), § 173-14-150, filed 2/2/81. Statutory Authority: RCW 90.58.200. 78-07-011 (Order DE 78-7), § 173-14-150, filed 6/14/78; Order DE 76-17, § 173-14-150, filed 7/27/76; Order DE 75-22, § 173-14-150, filed 10/16/75.]

WAC 173-14-155 Minimum standards for conditional use and variance permits. Pursuant to RCW 90.58.100(5) and 90.58.140(3), the criteria contained in WAC 173-14-140 and 173-14-150 for shoreline conditional use and variance permits shall constitute the minimum criteria for review of these permits by local government and the department. Local government and the department may, in addition, apply the more restrictive criteria where it exists in approved and adopted master programs. [Statutory Authority: Chapters 90.22 and 90.54 RCW. 81-04-027 (Order DE 80-42), § 173-14-155, filed 2/2/81.]

WAC 173-14-170 Requests for review. All requests for review of any final permit decisions under chapter 90.58 RCW and chapter 173-14 WAC are governed by the procedures established in RCW 90.58.180 and chapter 461-08 WAC, the rules of practice and procedure of the shorelines hearings board. [Statutory Authority: RCW 90.58.200. 78-07-011 (Order DE 78-7), § 173-14-170, filed 6/14/78; Order DE 75-22, § 173-14-170, filed 10/16/75.]

WAC 173-14-174 Certification of requests for review. All requests for review filed with the department pursuant to RCW 90.58.180(1) must contain the items required by WAC 461-08-055. Such requests shall be filed with the department within thirty days of the date of filing as defined in RCW 90.58.140(6) and WAC 173-14-090. The department will certify the request for review to the shorelines hearings board within thirty days of receipt of same if it appears the request has set forth valid reasons to seek review. Failure of the department to provide such certification does not preclude the requestor from obtaining certification from the attorney general or from obtaining a review in the superior court under any right to review otherwise available. [Statutory Authority: RCW 90.58.200. 78-07-011 (Order DE 78-7), § 173-14-174, filed 6/14/78.]