City of Bellevue

Staff Report

DATE: December 3, 2013

TO: Chair Kasner and Members of the East Bellevue Community Council

FROM: Carol Helland, Land Use Director, 425-452-2724
Mike Bergstrom, Principal Planner, 425-452-2970
Development Services Department

SUBJECT: Courtesy Hearing on Shoreline Master Program Land Use Code Conformance Amendments, File No. 11-103228-AD

INTRODUCTION

On December 3, 2013 the East Bellevue Community Council (EBCC) will hold a courtesy hearing on conformance amendments to the Land Use Code that are intended to ensure consistency between the overall Land Use Code and the Planning Commission-recommended Shoreline Master Program (Draft SMP) (Part 20.25E LUC). The amendments that are the subject of the public hearing do not include any proposed revisions to the Draft SMP itself, which was previously transmitted to the City Council for adoption. A map showing shoreline jurisdiction within the EBCC boundaries is included as Attachment 1. The conformance amendments are included in Attachment 2.

Amendments to the Land Use Code are legislative non-project decisions made by the City Council under its authority to establish regulations regarding future private and public development. These legislative actions are defined as Process IV decisions in the Land Use Code (LUC 20.35.015.E). After holding the courtesy hearing, input received from the EBCC will be forwarded to the Planning Commission which will hold its own public hearing on December 11, 2013. Following that hearing, the Commission will be asked to make a recommendation on the amendments to Council. Council will take final action on the amendments. Since these amendments affect Land Use Code provisions that apply city-wide, they are subject to the disapproval jurisdiction of the East Bellevue Community Council.

BACKGROUND

The City began its Shoreline Master Program Update project, required by the State of Washington, in 2007. The EBCC held a courtesy hearing on a draft of the SMP Update on May 3, 2011. The Planning Commission held its own public hearing on May 25, 2011, after which the Commission continued to work on the SMP Update. In January 2013 the Commission approved its recommended amendments to the City's Shoreline policies and Shoreline Overlay District (Part 20.25E LUC), resulting in the "Draft SMP" referenced above. The recommendation on the Draft SMP was presented to Council via transmittal in May 2013. If the EBCC would like an update on the Draft SMP staff can return at a later date to provide same.

In July 2013, Council discussed its strategy for moving the results of the SMP Update project to the Washington State Department of Ecology for review and approval. As one outcome of that

Council meeting, Council directed staff to engage the Planning Commission on conformance amendments to the Land Use Code, to ensure that adoption of the updated SMP would not create conflicts elsewhere in the Land Use Code.

Staff has been developing the conformance amendments in recent months and has met with the Planning Commission in three study sessions to review and discuss them – October 9, October 23, and November 13, 2013. At the conclusion of the November 13 study session, the Commission directed staff to schedule a December 11 public hearing on the proposed amendments. A courtesy hearing before the EBCC will be held on December 3, roughly one week prior to the Planning Commission public hearing, and feedback received from the EBCC will be forwarded to the Commission. Both hearings will focus on the conformance amendments only, and will not include any proposed amendments to either the current SMP (Part 20.25E LUC) or the Draft SMP.

CONFORMANCE AMENDMENTS

The purpose of this type of amendment is to ensure that the adoption of one piece of legislation (in this case a new Part 20.25E LUC) does not create conflicts or inconsistencies with other existing legislation (in this case the rest of the Land Use Code). The existing code provisions are amended to bring them into conformance with the new legislation in order to allow that legislation to operate as intended.

The draft amendments contained in Attachment 2 affect a wide range of Land Use Code provisions, including Use Charts (Chapter 20.10), General Development Requirements (Chapter 20.20), Special and Overlay Districts (Chapter 20.25), Permits and Decisions (Chapter 20.30), Review and Appeal Procedures (Chapter 20.35), Administration and Enforcement (Chapter 20.40), and Definitions (Chapter 20.50). By and large, the amendments reinforce the largely "free-standing" nature of the Planning Commission-proposed Part 20.25E (Shoreline Overlay District) by referring the user to that part of the LUC for shoreline-related regulations, by clarifying what other parts of the LUC are not applicable to the Shoreline Overlay District, by correcting internal references and citations, and proposing similar clarifying amendments.

STATE ENVIRONMENTAL POLICY ACT

On May 5, 2011 a Determination of Non-Significance (DNS) was issued, addressing (1) the Updated Shoreline Master Program, (2) Amendments to Part 20.25E LUC (Shoreline Overlay District), and (3) the currently-proposed conformance amendments. The DNS incorporated by reference the Draft and Final Critical Areas Update EIS issued June 2005 and May 2006 respectively.

PUBLIC NOTICE AND PARTICIPATION

A Notice of Application for the conformance amendments was published in the Weekly Permit Bulletin on October 17, 2013. A notice of the December 11 public hearing was published in the Weekly Permit Bulletin on November 21, 2013. Public testimony was received by the Planning Commission at each of the three October and November study sessions it held on the conformance amendments, and that testimony was considered by the Commission and reflected in direction given to staff for development of the amendments contained in Attachment 2.

The conformance amendments are within the jurisdiction of the East Bellevue Community Council (EBCC). A courtesy hearing will be held before the EBCC at its regular meeting December 3, 2013. Notice of the courtesy hearing was published in the Weekly Permit Bulletin on November 21, 2013 and in the Seattle Times on November 26, 2013. Staff will return to the

EBCC for a final hearing and action on the conformance amendments following Council action. Final action by the EBCC is anticipated within 60 days of any Council action. Affidavit of publication for the EBCC hearing is included in Attachment 3.

APPLICABLE DECISION CRITERIA – LAND USE CODE PART 20.30J

The City Council may approve or approve with modifications an amendment to the text of the Land Use Code if:

A. The amendment is in accord with the Comprehensive Plan; and

The proposed amendments are consistent with the Comprehensive Plan, including the Land Use, Citizen Participation, Economic Development, and Environmental policies identified below:

LU-1. Support a diverse community in an open and natural setting comprised of strong residential communities composed of stable neighborhoods with a variety of housing types and densities; a vibrant, robust Downtown which serves as an urban center; other employment and commercial areas; and distinctive community and neighborhood values, the neighborhood's quality of life, the natural environment, and the economy.

LU-2. Support the state Growth Management Act by developing and implementing a land use vision that is consistent with the GMA goals, the regional Vision 2020, and the King County Countywide Planning Policies.

CP-5. Develop and maintain Land Use Code provisions that define the process and standards relevant to each stage of land use decision making, and educate the public about these processes and standards to promote meaningful citizen participation.

ED-3. Develop and maintain regulations that allow for continued economic growth while respecting the environment and quality of life of city neighborhoods.

ED-4. Maintain an efficient, timely, predictable and customer-focused permit process, conducted in a manner that integrates multiple city departments into a coordinated entity.

ED-8. Recognize and consider the economic and environmental impacts of proposed legislative actions prior to adoption.

EN-1. Consider the immediate and long range environmental impacts of policy and regulatory decisions and evaluate those impacts in the context of the city's commitment to provide for public safety, infrastructure, economic development, and a compact Urban Center in a sustainable environment.

EN-7. Promote growth management strategies that protect air, water, land, and energy resources consistent with Bellevue's role in the regional plan to contain an Urban Center.

EN-12. Recognize critical area function in preparing programs and land use regulations to protect critical areas and to mitigate the lost function due to unavoidable impacts.

EN-21. Reduce or eliminate regulatory barriers to protecting and enhancing critical areas.

EN-29. Recognize and support the broad benefits and educational value of public access to critical areas and appropriate low-impact uses such as trails.

EN-38. Restore and protect the biological health and diversity of the Lake Washington and Lake Sammamish watersheds in Bellevue's jurisdiction.

B. The amendment bears a substantial relationship to the public health, safety or welfare; and

The proposed amendment serves the public welfare by ensuring consistency, clarity, and equity in its land use regulations.

C. The amendment is not contrary to the best interest of the citizens and property owners of the City of Bellevue.

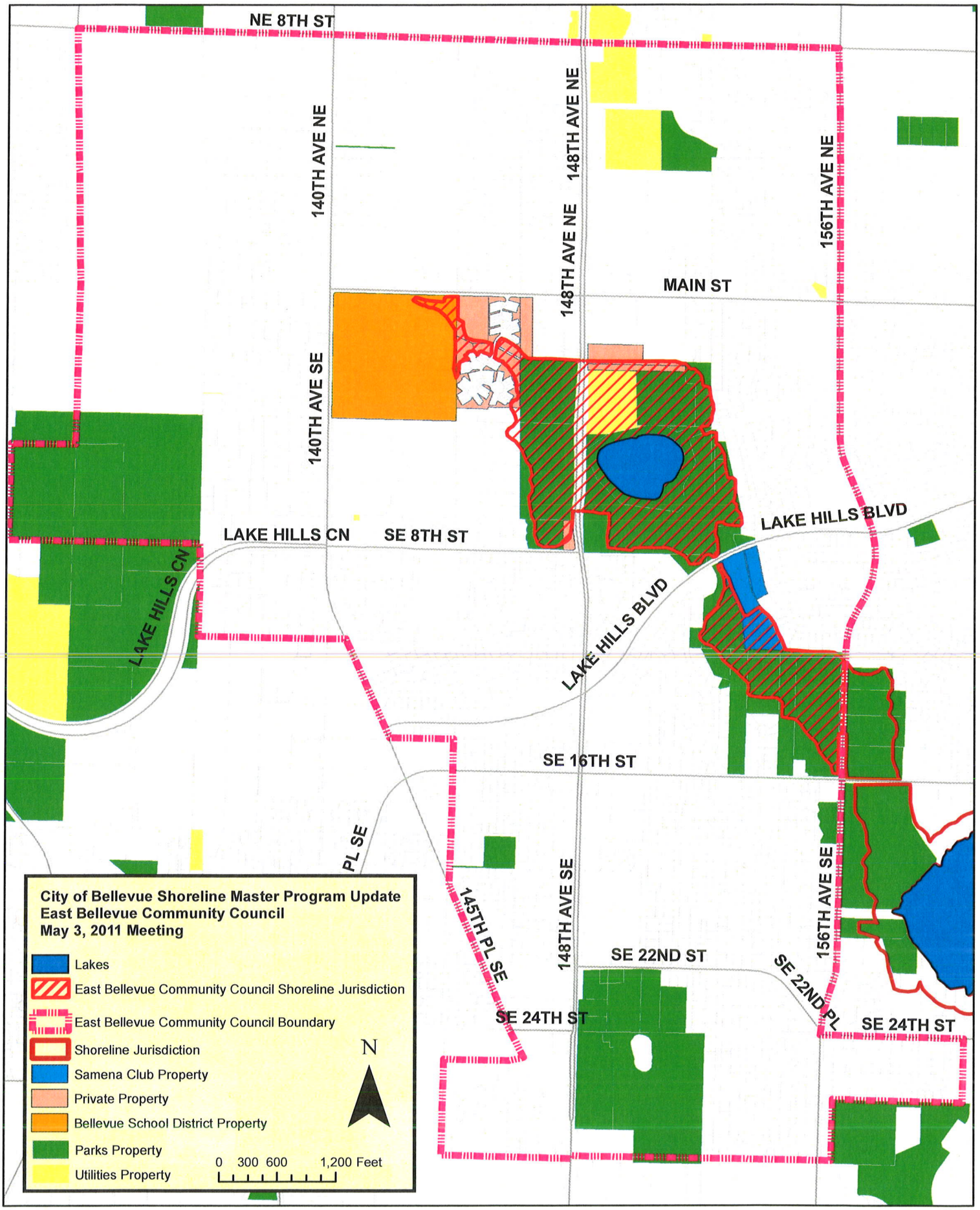
The proposed amendment is in the best interest of Bellevue citizens and property owners, as it will ensure consistency, clarity, and equity in its land use regulations, by resolving conflicts that would otherwise occur internal to the Land Use Code, and by minimizing the confusion and potential interpretation or litigation that can accompany such conflicts. Understandable and consistent land use regulations are in the best interest of the citizens and property owners alike.

ATTACHMENTS

1. Shoreline Jurisdiction Map within the EBCC Jurisdictional Boundaries
2. Draft Conformance Amendments, dated December 11, 2013
3. Affidavit of Publication – EBCC Courtesy Hearing (when available)

Attachment 1 - Shoreline Jurisdiction Within EBCC

East Bellevue Community Council Shoreline Jurisdiction



CITY OF BELLEVUE, WASHINGTON

ORDINANCE NO. _____

AN ORDINANCE amending the Bellevue Land Use Code for consistency with the new Shoreline Master Program and Shoreline Overlay District (Part 20.25E LUC); amending Sections 20.10.060 (Interpretation of map boundaries); 20.10.400 (Use chart described – interpretation); 20.10.420 (Interpretation of land use charts by Director); 20.10.440 (Land Use Charts – Services, Recreation, Resources); 20.20.010 (Dimensional Requirements Charts); 20.20.018 (Variation in minimum requirements – Area, width, depth); 20.20.020 (Land Use Charts); 20.20.025 (Intrusions into required setbacks); 20.20.128 (Affordable Housing); 20.20.255 (Electrical utility facilities); 20.20.560 (Nonconforming structures, uses and sites); 20.20.460 (Impervious surface); 20.20.840 (Subordinate Uses); Chapter 20.25 (Special and Overlay Districts, Table of Sections); 20.25H.025 (Designation of critical areas); 20.25H.035 (Critical area buffers and structure setbacks); 20.25H.050 (Uses and development in the Critical Areas Overlay District); 20.25H.055 (Uses and development allowed within critical areas – Performance standards); 20.25H.065 (Uses and development within critical area buffer or critical area structure setback not allowed pursuant to LUC 20.25H.055); 20.25H.075 (Designation of critical area and buffers); 20.25H.115 (Designation of critical area and buffers); 20.25H.118 (Mitigation and monitoring – Additional provisions); 20.25H.119 (Critical areas report – Additional provisions); 20.25H.150 (Designation of critical area); 20.25H.155 (Uses in habitat for species of local importance); 20.25H.210 (Applicability); 20.25H.220 (Mitigation and restoration plan requirements); 20.25H.230 (Critical areas report – Purpose); 20.25H.240 (Critical areas report – Limitation on modifications); 20.25M.010 (Light Rail Overlay District – General); 20.25M.030 (Light Rail Overlay District – Required Permits); Chapter 20.30 (Permits and Decisions – Shoreline Conditional Use Permit, Variance to the Shoreline Master Program, Shoreline Substantial Development Permit); Chapter 20.35 (Review and Appeal Procedures: 20.35.015 - Framework for decisions; 20.35.020 – Pre-application conferences; 20.35.070 – Appeal of City land use decisions to Superior Court; 20.35.150 – Appeal of Hearing Examiner decision; 20.35.200 – Process II: Administrative decisions; 20.35.210 – Notice of application; 20.35.250 – Appeal of Process II decisions); 20.40.500 (Vesting and expiration of vested status of land use permits and approvals); 20.50.010 (A Definitions); 20.50.012 (B definitions); 20.50.014 (C Definitions); 20.50.016 (D Definitions); 20.50.020 (F Definitions) and 20.50.046 (S Definitions); providing for severability; and establishing an effective date.

WHEREAS, the Bellevue City Council has by separate Ordinance created a new Part 20.25E in the Bellevue Land Use Code providing for the use and development of properties located within the Shoreline Overlay District; and

WHEREAS, amendments to other sections of the Land Use Code are necessary to provide appropriate cross-referencing and avoid conflicts; and

WHEREAS, the Planning Commission held a public hearing on December 11, 2013 after providing the legally required notice, with regard to the Land Use Code amendment proposed herein; and

WHEREAS, the City Council finds that the proposed conformance and consistency amendments meet the decision criteria of LUC 20.30J.135 and are consistent with the Comprehensive Plan, enhance the public health, safety, and welfare, and are not contrary to the best interest of the citizens and property owners of the City of Bellevue, as more completely analyzed in the Staff Report for the amendment dated _____; and

WHEREAS, the City of Bellevue has complied with the State Environmental Policy Act (SEPA), Chapter 43.21C RCW, and the City's Environmental Procedures Code, BCC 22.02; now, therefore,

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

Section 1. Section 20.10.060 of the Bellevue Land Use Code is hereby amended by the addition of a note below each chart to read as follows:

20.10.060 Interpretation of map boundaries.

When uncertainty exists as to the boundaries of any use district established on the City's land use map(s), the following rules of construction shall apply:

A. Where district boundaries are indicated as approximately following the centerline of streets, alleys or highways, the actual centerline shall be construed to be the boundary.

B. Where district boundaries are indicated as running approximately parallel to the centerline of a street, the boundary line shall be construed to be parallel to the centerline of the street.

C. Where district boundaries are indicated as approximately following lot or tract lines, the actual lot or tract lines shall be construed to be the boundary lines of such use district.

D. Unmapped shorelands shall automatically be assigned an Urban Conservancy environment designation. ~~considered to be within the same land use district as the adjacent upland as shown on the use district map(s).~~

Comment [CoB1]: Change reflects consistency with Ecology direction. It is not expected that Bellevue has or will have unmapped shorelands.

E. Where a public street or alley is officially vacated or abandoned, the regulations applicable to the abutting property to which the vacated portion shall revert, shall apply to such vacated or abandoned street or alley.

F. In case uncertainty exists which cannot be determined by application of the foregoing rules, the Planning Commission shall recommend, and the City Council shall determine, the location of such use district boundaries.

G. Shoreline Overlay (S-O) District boundaries are as described in LUC ~~20.25E.010~~20.25E.010.C.1, and, with the exception of paragraph D above, are not subject to these rules of construction.

Comment [CoB2]: Internal consistency.

Comment [CoB3]: Internal consistency.

Section 2. Section 20.10.400 of the Bellevue Land Use Code is hereby amended to read as follows:

20.10.400 Use chart described – Interpretation

(Note: LUC 20.10.400 is not applicable in the Shoreline Overlay District).

Comment [CoB4]: Consistency with 20.25E.010.C.1.c

In chart 20.10.440, land use classifications and standard Land Use Code reference numbers are listed on the vertical axis. City of Bellevue land use districts are shown on the horizontal axis.

. . . .

Section 3. Section 20.10.420 of the Bellevue Land Use Code is hereby amended to read as follows:

20.10.420 Interpretation of land use charts by Director.

(Note: LUC 20.10.420 is not applicable in the Shoreline Overlay District).

Comment [CoB5]: Consistency with 20.25E.010.C.1.c

A. Director's Authority. In the case of a question as to the inclusion or exclusion of a particular proposed use in a particular use category, the Director shall have the authority to make the final determination. The Director shall make the determination according to the characteristics of the operation of the proposed use and based upon the Director's interpretation of the Standard Land Use Coding Manual, the Standard Industrial Classification Manual and the North American Industry Classification System.

. . . .

Section 4. Section 20.10.440 (Land Use Charts) of the Bellevue Land Use Code is hereby amended by the addition of a note below each chart to read as follows:

Permitted uses in the Shoreline Overlay District are listed in LUC 20.25E.020.

Comment [CoB6]: Permitted uses in the SAO are now contained in 20.25E.

Section 5. Section 20.10.440 (Land Use Charts – Services) of the Bellevue Land Use Code is hereby amended to revise Note 14 to read as follows:

(14) These uses are permitted only in Bellevue School District schools, whether under control of the School District or the City.

(a) In the review of the proposed use or uses under the Administrative Conditional Use Permit application, Part 20.30E LUC, the following criteria shall be considered:

(i) Consistency of the proposal with the goals and policies of the Comprehensive Plan.

(ii) Extent to which the physical environment will be modified by the proposal.

(iii) Ability to provide on-site parking facilities to accommodate intended uses under the proposal.

(iv) Extent of additional demand on public utilities and public services resulting from the proposal.

(v) Noise impacts of the proposal.

(vi) Traffic volumes and street classifications in the area of the proposal.

(vii) Compatibility of the proposal with surrounding land uses.

(viii) Impact of the proposal on the visual and aesthetic character of the neighborhood.

In addition, the proposed use or uses shall not be more intensive than if the school were being used as a school.

(b) A master Conditional Use Permit listing a range of permissible uses from those permitted in the land use district as listed in LUC 20.10.440 can be obtained for the entire school by using the conditional use process, Part 20.30B or ~~Part 20.30C~~ LUC 20.25E.150 and .180. Uses listed in the permit shall be permitted outright and uses not listed but permitted as conditional uses shall obtain a Conditional Use Permit.

Comment [CoB7]: Shoreline CUPs are now addressed in 20.25E.150 and .180.

Section 6. Section 20.10.440 (Land Use Charts – Recreation) is hereby amended to revise the following use listing in all land use charts (Residential Districts, Nonresidential Districts, and Downtown Districts):

744 ~~Marinas,~~ Yacht Clubs

Comment [CoB8]: Marinas will be regulated by 20.25E. Yacht clubs could be located either in shorelines or outside of them, so should remain as a use in the 20.10.440 use charts.

Section 7. Section 20.10.440 (Land Use Charts – Recreation) is hereby amended to revise Note 10 to read as follows:

*(10) City parks are generally permitted in all zones. However, the following types of uses or facilities in City parks in single-family or R-10 zones require conditional use approval: lighted sports and play fields, sports and play fields with amplified sound, and community recreation centers, motorized boat ramps, ~~and~~ beach parks, marinas, yacht clubs, and community clubs, on Lake Washington, Lake Sammamish, Phantom Lake and Larson Lake. Nonrecreation uses in City parks in all zones outside the Downtown require conditional use approval, except that the permit requirements for wireless communication facilities shall be as set forth in LUC 20.20.195. For purposes of this

Comment [CoB9]: Consistency with 20.25E.

requirement, "nonrecreation use" means a commercial, social service or residential use located on park property but not functionally related to City park programs and activities.

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

Section 8. Section 20.10.440 (Land Use Charts – Resources) is hereby amended to delete the following use listing from all land use charts (Residential Districts, Nonresidential Districts, and Downtown Districts):

8421 Fish Hatcheries

Comment [CoB10]: Listing not needed outside of shoreline areas. Addressed (as aquaculture) in 20.25E.

Section 9. Section 20.20.010 (Residential Dimensional Requirements Chart) of the Bellevue Land Use Code is hereby amended by the addition of a Note (46), attached to the "Minimum Greenscape Percentage of Front Yard Setback" dimensional requirement in the Residential chart, to read as follows:

(46) Not applicable to properties located in Shoreline Overlay Districts and which have shoreline frontage. For Greenscape requirements applicable to such properties, see LUC 20.25E.065.F.

Comment [CoB11]: Greenscape requirements for certain shoreline properties are now contained in 20.25E.

Section 10. Section 20.20.010 (Dimensional Requirements Charts) of the Bellevue Land Use Code is hereby amended by the addition of a note below each chart to read as follows:

Additional Dimensional Requirements for Shoreline Overlay Districts are found in Part 20.25E LUC.

Comment [CoB12]: Some dimensional requirements are now contained in 20.25E.050.A and .065.C.

Section 11. Section 20.20.018 of the Bellevue Land Use Code is hereby amended to read as follows:

20.20.018 Variation in minimum requirements – Area, width and depth.

Except as set forth in LUC 20.20.017 above, in no case may the Director or any other hearing body vary the minimum requirements for minimum lot area, width of street frontage, width required in lot or depth required in lot, as stated in Chart 20.20.010, by more than 10 percent; except that this section shall not apply to planned unit developments, Part 20.30D LUC, conservation subdivisions, LUC 20.45A.060, or conservation short subdivisions, LUC 20.45B.055. See Part 20.30G LUC relating to variances from the Land Use Code and Part ~~20.30H~~20.25E LUC relating to variances from the Shoreline Master Program.

Comment [CoB13]: Shoreline variances are now addressed in 20.25E.

Section 12. Section 20.20.020 (Land Use Charts) of the Bellevue Land Use Code is hereby amended by the addition of a note below each chart to read as follows:

Additional Dimensional Requirements for the Shoreline Overlay District are found in Part 20.25E.

Comment [CoB14]: Some dimensional requirements are now contained in 20.25E.

Section 13. Section 20.20.025 of the Bellevue Land Use Code is hereby amended to read as follows:

20.20.025 Intrusions into required setbacks

(Note: LUC 20.20.025 is not applicable in the Shoreline Overlay District).

Comment [CoB15]: Consistency with 20.25E.010.C.1.c

A. Signs, Marquees and Awnings.

See Sign Code, Chapter 22B.10 BCC.

. . . .

Section 14. Section 20.20.128.C.3 of the Bellevue Land Use Code is hereby amended to read as follows:

20.20.128.C Affordable housing.

C. Dimensional Standard Modification.

The following requirements of the Land Use Code may be modified through the procedures outlined in paragraph D of this section, to the extent necessary to accommodate affordable housing units and bonus units on-site.

. . . .

3. Building Height. Except in Transition Areas and the Shoreline Overlay District, the maximum building height in R-10, R-15, R-20 and R-30 Zoning Districts may be increased by up to six feet for those portions of the building(s) at least 20 feet from any property line.

Comment [CoB16]: 20.25E limits heights to 35'.

. . . .

Section 15. Section 20.20.255.B of the Bellevue Land Use Code is hereby amended to read as follows:

20.20.255.B Electrical utility facilities.

B. Applicability.

This section applies to all proposals for new or expanding electrical utility facilities as defined in LUC 20.50.018. Additional requirements applicable to Electrical utility facilities located within the Shoreline Overlay District are provided in Part 20.25E LUC.

Comment [CoB17]: Referal to 20.25E for additional regulations in the Shoreline Overlay.

Section 16. Section 20.20.460.C of the Bellevue Land Use Code is hereby amended to read as follows:

20.20.460 Impervious surface.

C. Modifications to Impervious Surface Limits.

The impervious surface limits contained in LUC 20.20.010 and Chapter 20.25 LUC may be modified pursuant to a critical areas report, LUC 20.25H.230, so long as the critical areas report demonstrates that the effective impervious surface on the site does not exceed the limit established in LUC 20.20.010 and Chapter 20.25 LUC, provided, that impervious limits within the Shoreline Overlay District may be modified pursuant to a Shoreline Special Report or Shoreline Variance, as provided for by LUC 20.25E.050.C.2.

Comment [CoB18]: Consistency with 20.25E.050.C.2

1. **. . . .**

Section 17. Section 20.20.560.E of the Bellevue Land Use Code is hereby amended to read as follows:

20.20.560.E Nonconforming structures, uses and sites.

E. Exceptions.

1. Downtown. The provisions of this section shall not apply in the Downtown Special Overlay District, Part 20.25A LUC. Refer to LUC 20.25A.025 for the requirements for nonconforming uses, structures, and sites located within the Downtown Special Overlay District.

2. Critical Areas Overlay District. The provisions of this section do not apply to structures or sites nonconforming to the requirements of Part 20.25H LUC. Refer to LUC 20.25H.065 for the requirements for such nonconforming structures and sites.

3. Shoreline Overlay District. The provisions of this section do not apply to uses, structures or sites nonconforming to the requirements of Part 20.25E LUC. Refer to LUC ~~20.25E.055~~20.25E.040 and .065.I for the requirements for such nonconforming uses, structures and sites.

Comment [CoB19]: 20.25E contains nonconforming provisions specific to shorelines.

4. Bel-Red (BR) Land Use Districts. The provisions of this section do not apply to uses, structures, or sites located in the Bel-Red Land Use Districts. For uses in the Bel-Red Land Use Districts established before May 26, 2009, refer to the existing conditions regulations in LUC 20.25D.060.

Section 18. Section 20.20.840 of the Bellevue Land Use Code is hereby amended to read as follows:

20.20.840 Subordinate Uses.

(Note: LUC 20.20.840 is not applicable in the Shoreline Overlay District).

Comment [CoB20]: Consistency with 20.25E.010.C.1.c

A. Purpose.

The purpose of this section is to provide performance standards for subordinate uses, as defined in LUC 20.50.046.

. . . .

Section 19. Chapter 20.25 – Special and Overlay Districts, Table of Sections, Part 20.25E, is hereby amended to read as follows:

Part 20.25E Shoreline Overlay District

20.25E.010 General
20.25E.020 Shoreline Uses Described

20.25E.040 Nonconforming Shoreline Conditions
20.25E.050 Dimensional Requirements
20.25E.060 General Requirements Applicable to All Shoreline Development and Uses
20.25E.065 Residential Shoreline Regulations
20.25E.070 Specific Use Regulations
20.25E.080 Shoreline Modifications
20.25E.100 Review and Appeal Procedures
20.25E.110 Shoreline Process I – Quasi Judicial Decisions
20.25E.120 Shoreline Process II – Administrative Decisions
20.25E.130 Shoreline Process III – Ministerial Decisions
20.25E.140 Legislative Non-Project Actions
20.25E.150 Shoreline Project Permits
20.25E.160 Shoreline Substantial Permits
20.25E.170 Exemptions from Shoreline Substantial Development Permits – Letter of Exemption Required
20.25E.180 Shoreline Conditional Use Permits
20.25E.190 Variances to the Shoreline Master Program
20.25E.200 Amendments to the Text of the Shoreline Master Program
20.25E.250 Administration
20.25E260 Enforcement
20.25E.270 Interpretation
20,25E.280 Definitions

Comment [CoB21]: Reflects structure of new 20.25E.

Section 20. Section 20.25H.025 of the Bellevue Land Use Code is hereby amended to read as follows:

20.25H.025 Designation of critical areas.

The following areas are hereby designated as critical areas. For additional information about identifying each critical area, see the specific sections noted.

Critical Area Category or Type	Additional Information Identifying Critical Area
Streams	
Type S water	LUC 20.25H.075
Type F water	LUC 20.25H.075

Type N water	LUC 20.25H.075
Type O water	LUC 20.25H.075
Closed segment, regardless of type; Kelsey Creek drainage basin	LUC 20.25H.075
Closed segment, regardless of type; all other drainage basins	LUC 20.25H.075
Wetlands	
Category I	LUC 20.25H.095
Category II	LUC 20.25H.095
Category III	LUC 20.25H.095
Category IV over 2,500 square feet	LUC 20.25H.095
~~**Shorelines**~~	
~~Shorelines~~	~~LUC 20.25E.017.D~~
Geologic Hazard Areas	
Landslide hazards	LUC 20.25H.120
Steep slopes	LUC 20.25H.120
Coal mine hazard areas	LUC 20.25H.120
Habitat Associated with Species of Local Importance	
Habitat associated with species of local importance	LUC 20.25H.150
Areas of Special Flood Hazard	
Areas of special flood hazard	LUC 20.25H.175

Comment [CoB22]: Shorelines are not regulated as critical areas.

Section 21. Section 20.25H.035.A of the Bellevue Land Use Code is hereby amended to read as follows:

20.25H.035(A) Critical area buffers and structure setbacks.

A. Critical Area Buffer.

The following critical area buffers and structure setbacks are established for each critical area set forth below. For information about modifying required critical area buffers and structure setbacks, see the referenced sections noted in the table.

Attachment 2
Draft SMP Land Use Code Conformance Amendments
December 3, 2013 EBCC Courtesy Hearing Draft

Critical Area Category or Type	Critical Area Buffer Width		Structure Setback		Modification of Buffer or Setback
Streams					
	Undeveloped Site[1]	**Developed Site**[1]	**Undeveloped Site**[1]	**Developed Site**[1]	
Type S water	100 ft	50 ft	20 ft	50 ft	LUC 20.25H.075 LUC 20.25H.230
Type F water	100 ft	50 ft	20 ft	50 ft	LUC 20.25H.075 LUC 20.25H.230
Type N water	50 ft	25 ft	15 ft	25 ft	LUC 20.25H.075 LUC 20.25H.230
Type O water	25 ft	25 ft	10 ft	None	LUC 20.25H.075 LUC 20.25H.230
Closed segment, regardless of type; Kelsey Creek drainage basin	None	None	50 ft or combined buffer and structure setback required for stream type, whichever is less	50 ft or combined buffer and structure setback required for stream type, whichever is less	LUC 20.25H.075 LUC 20.25H.230
Closed segment, regardless of type; all other drainage basins	None	None	10 ft	10 ft	LUC 20.25H.075 LUC 20.25H.230
Wetlands					
	Undeveloped Site[2]	**Developed Site**[2]	**Undeveloped Site**[2]	**Developed Site**[2]	
Category I		As established through previously approved and recorded NGPA or NGPE for wetland	20 ft	20 ft from edge of previously approved and recorded NGPA or NGPE	LUC 20.25H.095 LUC 20.25H.230
Natural heritage wetland	190 ft				
Bogs	190 ft				
Forested wetland	Based on score for habitat or water quality				
Habitat score of 29 to 36	225 ft				
Habitat score of 20 to	110 ft				

28					
Water quality score of 24 to 32 and habitat score of less than 20	75 ft				
All others	75 ft				
Category II		As established through previously approved and recorded NGPA or NGPE for wetland	20 ft	20 ft from edge of previously approved and recorded NGPA or NGPE	LUC 20.25H.095 LUC 20.25H.230
Habitat score of 29 to 36	225 ft				
Habitat score of 20 to 28	110 ft				
Water quality score of 24 to 32 and habitat score of less than 20	75 ft				
All others	75 ft				
Category III		As established through previously approved and recorded NGPA or NGPE for wetland	15 ft	15 ft from edge of previously approved and recorded NGPA or NGPE	LUC 20.25H.095 LUC 20.25H.230
Habitat score of 20 to 28	110 ft				
All others	60 ft				
Category IV over 2,500 square feet		As established through previously approved and recorded NGPA or NGPE for wetland	None	None	LUC 20.25H.095 LUC 20.25H.230
All	40 ft				
~~**Shorelines**~~					
	~~**Undeveloped Site**~~[3]	~~**Developed Site**~~[3]	~~**Undeveloped Site**~~[3]	~~**Developed Site**~~[3]	
~~All shorelines~~	~~50 ft~~	~~25 ft~~	~~None~~	~~25 ft~~	~~LUC 20.25H.115~~ ~~LUC 20.25H.230~~
Geologic Hazard Areas					
Landslide hazards	Toe-of-slope: None		Toe-of-slope: 75 ft		LUC 20.25H.120

Comment [CoB23]: Shorelines not regulated as critical area.

	Top-of-slope: 50 ft	Top-of-slope: None	LUC 20.25H.230
Steep slopes	Toe-of-slope: None	Toe-of-slope: 75 ft	LUC 20.25H.120 LUC 20.25H.230
	Top-of-slope: 50 ft	Top-of-slope: None	
Coal mine hazard areas	See LUC 20.25H.130	See LUC 20.25.130	LUC 20.25H.120 LUC 20.25H.230
Habitat Associated with Species of Local Importance			
Habitat associated with species of local importance	Only if required for known species on site	None	N/A
Naturally occurring ponds with no other critical area designation	35 ft	None	LUC 20.25H.230
Areas of Special Flood Hazard			
Areas of special flood hazard	None	None	N/A

1 For a definition of "undeveloped site" and "developed site" for sites with streams, see LUC 20.25H.075.C.1.a.
2 For a definition of "undeveloped site" and "developed site" for sites with wetlands, see LUC 20.25H.095.C.1.a.
~~3 For a definition of "undeveloped site" and "developed site" for sites with shorelines, see LUC 20.25H.115.B.1.a.~~

Comment [CoB24]: Footnote no longer needed.

Section 22. Section 20.25H.050 of the Bellevue Land Use Code is hereby amended to read as follows:

20.25H.050 Uses and development in the Critical Areas Overlay District.

A. Uses.

1. General. The uses established by LUC 20.10.440 for the applicable land use district may be undertaken in the Critical Areas Overlay District as allowed for in the underlying land use district. All development associated with the use shall comply with the provisions of this part.

2. Shorelines. Where the Critical Areas Overlay District and Shoreline Overlay District apply to the same site, the uses established by LUC 20.10.440 for the underlying land use district may be undertaken. Additional uses in the Shoreline Overlay District are set forth in LUC 20.25E.~~080~~020 and .030. The applicable permitting process to establish the allowed uses within the Shoreline Overlay District is set forth in LUC 20.25E.~~070~~100-.190. All development associated with the use shall comply with the provisions of this part and Part 20.25E LUC.

Comment [CoB25]: Reference citation update.

Comment [CoB26]: Reference citation update.

B. Development.

1. Coal Mine Hazard Areas and Habitat Associated with Species of Local Importance. The coal mine hazard areas and habitat associated with species of local importance designated as critical areas by this part do not include absolute restrictions on development or activity. Instead, uses allowed under subsection A of this section may be undertaken in such critical areas, so long as the performance standards of LUC 20.25H.130 (coal mine hazard areas) or LUC 20.25H.160 (habitat associated with species of local importance) are satisfied.

2. Other Critical Areas. Except as set forth in subsection B.1 of this section, all development, use, land alteration or other activity within the Critical Areas Overlay District shall be located outside of the critical area and the critical area buffer, unless such use or development is allowed pursuant to the following:

   a. Uses and development allowed within critical area or critical area buffer, see LUC 20.25H.055;

   b. Critical area buffer modifications for the following critical areas:
      i. Streams, see LUC 20.25H.075;
      ii. Wetlands, see LUC 20.25H.095;
      iii. ~~Shorelines, see LUC 20.25H.115;~~

Comment [CoB27]: Shorelines not regulated as critical area.

~~iv.~~ Geologic hazards, see LUC 20.25H.120.

c. Uses and development in the area of special flood hazard, see LUC 20.25H.180;

d. Modifications where allowed through a critical areas report, see LUC 20.25H.230;

e. Reasonable use exceptions, see LUC 20.25H.190;

f. Variances, see Part 20.30G and 20.30H LUC; or

g. Shoreline-specific uses and development, where allowed within the ~~s~~Shoreline~~s~~ Overlay District ~~critical area or critical area buffer~~, see Part 20.25E LUC.

Comment [CoB28]: Shorelines not regulated as critical area.

C. No Modification.

The critical areas report may not be used to modify the uses allowed in the Critical Areas Overlay District as set forth in LUC 20.10.440 ~~or in the Shoreline Overlay District as set forth in Part 20.25E LUC~~; nor the provisions of this section.

Comment [CoB29]: Shorelines not regulated as critical area.

Section 23. Section 20.25H.055.B of the Bellevue Land Use Code is hereby amended to read as follows:

20.25H.055(B) Uses and development allowed within critical areas – Performance standards.

B. Uses and Development Allowed within Critical Areas.

The following chart lists uses and development that may be allowed in a critical area, critical area buffer, or critical area structure setback. The sections noted in the chart for each use or activity and critical area refer to the applicable performance standards that must be met.

		Type of Critical Area				
		Streams	**Wetlands**	**~~Shorelines~~**	**Geologic Hazard Areas[7]**	**Areas of Special Flood Hazard**
Allowed Use or Development	Repair and maintenance of parks and parks facilities, including trails[1, 2]	20.25H.055.C.1 20.25H.080.A	20.25H.055.C.1 20.25H.100	~~20.25H.055.C.1~~ ~~20.25E.080.B~~ ~~20.25E.080.P~~	20.25H.055.C.1 20.25H.125	20.25H.055.C.1 20.25H.180.C 20.25H.180.D.2
	Repair and maintenance of utility facilities, utility systems, stormwater facilities and essential public facilities[1, 2]	20.25H.055.C.1 20.25H.080.A	20.25H.055.C.1 20.25H.100	~~20.25H.055.C.1~~ ~~20.25E.080.B~~ ~~20.25E.080.U~~	20.25H.055.C.1 20.25H.125	20.25H.055.C.1 20.25H.180.C
	Repair and maintenance of public rights-of-way, private roads, access easements, surface parking areas, and driveways[1, 2]	20.25H.055.C.1 20.25H.080.A	20.25H.055.C.1 20.25H.100	~~20.25H.055.C.1~~ ~~20.25E.080.B~~ ~~20.25E.080.H~~ ~~20.25E.080.R~~	20.25H.055.C.1 20.25H.125	20.25H.055.C.1 20.25H.180.C
	Repair and maintenance of bridges and culverts[1, 2]	20.25H.055.C.1 20.25H.080.A	20.25H.055.C.1 20.25H.100	~~20.25H.055.C.1~~ ~~20.25E.080.B~~ ~~20.25E.080.R~~	20.25H.055.C.1 20.25H.125	20.25H.055.C.1 20.25H.180.C
	Construction staging[1, 2, 11]	20.25H.055.C.1 20.25H.080.A	20.25H.055.C.1 20.25H.100	~~20.25H.055.C.1~~ ~~20.25E.080.B~~ ~~20.25E.080.H~~	20.25H.055.C.1 20.25H.125	20.25H.055.C.1 20.25H.180.C
	Existing agricultural activities[2]	20.25H.055.C.1 20.25H.055.C.3.a 20.25H.080.A	20.25H.055.C.1 20.25H.055.C.3.a 20.25H.100	~~20.25H.055.C.1~~ ~~20.25H.055.C.3.a~~ ~~20.25E.080.B~~ ~~20.25E.080.C~~	20.25H.055.C.1 20.25H.055.C.3.a 20.25H.125	20.25H.055.C.1 20.25H.055.C.3.a 20.25H.180.C
	Emergency actions	20.25H.055.C.3.b	20.25H.055.C.3.b	~~20.25H.055.C.3.b~~	20.25H.055.C.3.b	20.25H.055.C.3.b
	New or expanded utility facilities, utility systems, stormwater facilities[3]	20.25H.055.C.2 20.25H.080.A 20.25H.080.B	20.25H.055.C.2 20.25H.100	~~20.25H.055.C.2~~ ~~20.25E.080.B~~ ~~20.25E.080.U~~	20.25H.055.C.2 20.25H.125	20.25H.055.C.2 20.25H.180.C
	New or expanded essential public facilities (12)	20.25H.055.C.2 20.25H.080.A 20.25H.080.B	20.25H.055.C.2 20.25H.100	~~20.25H.055.C.2~~ ~~20.25E.080.B~~	20.25H.055.C.2 20.25H.125	20.25H.055.C.2 20.25H.180.C 20.25H.180.D.3

Comment [CoB30]: Shorelines not regulated as critical area.

Allowed Use or Development	Public flood protection measures[4]	20.25H.055.C.2 20.25H.055.C.3.c 20.25H.080.A 20.25H.080.B	20.25H.055.C.2 20.25H.055.C.3.c 20.25H.100	~~20.25H.055.C.2~~ ~~20.25H.055.C.3.c~~ ~~20.25E.080.B~~	20.25H.055.C.2 20.25H.055.C.3.c 20.25H.125	20.25H.055.C.2 20.25H.055.C.3.c 20.25H.180.C 20.25H.180.D.5
	Instream structures[5]	20.25H.055.C.2 20.25H.055.C.3.d 20.25H.080.A 20.25H.080.B	20.25H.055.C.2 20.25H.055.C.3.d 20.25H.100	~~20.25H.055.C.2~~ ~~20.25H.055.C.3.d~~ ~~20.25E.080.B~~	20.25H.055.C.2 20.25H.055.C.3.d	20.25H.055.C.2 20.25H.055.C.3.d 20.25H.180.C
	New or expanded public rights-of-way, private roads, access easements and driveways	20.25H.055.C.2 20.25H.080.A 20.25H.080.B	20.25H.055.C.2 20.25H.100	~~20.25H.055.C.2~~ ~~20.25E.080.B~~ ~~20.25E.080.R~~	20.25H.055.C.2 20.25H.125	20.25H.055.C.2 20.25H.180.C 20.25H.180.D.4
	New or expanded bridges and culverts	20.25H.055.C.2 20.25H.055.C.3.e 20.25H.080.A	20.25H.055.C.2 20.25H.055.C.3.e 20.25H.100	~~20.25H.055.C.2~~ ~~20.25H.055.C.3.e~~ ~~20.25E.080.B~~ ~~20.25E.080.R~~	20.25H.055.C.2 20.25H.055.C.3.e 20.25H.125	20.25H.055.C.2 20.25H.055.C.3.e 20.25H.180.C
	New or expanded private nonmotorized trails	20.25H.055.C.2 20.25H.055.C.3.f 20.25H.080.A	20.25H.055.C.2 20.25H.055.C.3.f 20.25H.100	~~20.25H.055.C.2~~ ~~20.25H.055.C.3.f~~ ~~20.25E.080.B~~ ~~20.25E.080.G~~	20.25H.055.C.2 20.25H.055.C.3.f 20.25H.125	20.25H.055.C.2 [15,16] 20.25H.055.C.3.f 20.25H.180.C
	New or expanded City and public parks	20.25H.055.C.3.g 20.25H.080.A	20.25H.055.C.3.g 20.25H.100	~~20.25H.055.C.3.g~~ ~~20.25E.080.B~~ ~~20.25E.080.P~~	20.25H.055.C.3.g 20.25H.125	20.25H.055.C.3.g 20.25H.180.C 20.25H.180.D.2
	Existing landscape maintenance[2]	20.25H.055.C.3.h 20.25H.080.A	20.25H.055.C.3.h 20.25H.100	~~20.25H.055.C.3.h~~ ~~20.25E.080.B~~ ~~20.25E.080.G~~	20.25H.055.C.3.h 20.25H.125	20.25H.055.C.3.h 20.25H.180.C
	Vegetation management[6]	20.25H.055.C.3.i 20.25H.080.A	20.25H.055.C.3.i 20.25H.100	~~20.25H.055.C.3.i~~ ~~20.25E.080.B~~ ~~20.25E.080.G~~	20.25H.055.C.3.i 20.25H.125	20.25H.055.C.3.i 20.25H.180.C
	Habitat improvement projects	20.25H.055.C.3.j 20.25H.080.A	20.25H.055.C.3.j 20.25H.100	~~20.25H.055.C.3.j~~ ~~20.25E.080.B~~ ~~20.25E.080.G~~	20.25H.055.C.3.j 20.25H.125	20.25H.055.C.3.j 20.25H.180.C
	Forest practices	20.25H.055.C.3.k 20.25H.080.A	20.25H.055.C.3.k 20.25H.100	~~20.25H.055.C.3.k~~ ~~20.25E.080.B~~	20.25H.055.C.3.k 20.25H.125	20.25H.055.C.3.k 20.25H.180.C
	Aquaculture	20.25H.055.C.3.l 20.25H.080.A	20.25H.055.C.3.l 20.25H.100	~~20.25H.055.C.3.l~~ ~~20.25E.080.B~~ ~~20.25E.080.D~~	20.25H.055.C.3.l	20.25H.055.C.3.l 20.25H.180.C
	Stabilization measures	20.25H.055.C.3.m 20.25H.080.A	20.25H.055.C.3.m 20.25H.100	~~20.25E.080.B~~ ~~20.25E.080.E~~	20.25H.055.C.3.m 20.25H.125	20.25H.055.C.3.m [13, 15] 20.25H.180.C
	Expansion of existing single-family primary structures	20.25H.055.C.3.n 20.25H.080.A	20.25H.055.C.3.n 20.25H.100	~~20.25H.055.C.3.n~~ ~~20.25E.080.B~~ ~~20.25E.080.Q~~	20.25H.055.C.3.n 20.25H.125	20.25H.055.C.3.n 20.25H.180.C[9] 20.25H.180.D.1 20.25H.180.D.7
	Reasonable use exception[8]	20.25H.080.A	20.25H.100	~~20.25E.080.B~~	20.25H.125	20.25H.180.C 20.25H.180.D.7
	Recreational vehicle					20.25H.180.C 20.25H.180.D.6

Comment [CoB31]: See footnotes below.

Comment [CoB32]: See footnotes below.

	storage[10]					
	~~Additional shoreline-specific uses or development~~ Moorage and docks associated with a residential use			~~Part 20.25E~~		Part 20.25E.065 [14, 15]

Comment [CoB33]: Shoreline specific uses are now address in 20.25E.

Comment [CoB34]: See footnotes below.

Notes:

1. For purposes of this section, repair and maintenance includes replacement of facilities and systems, or expansion so long as the area of permanent disturbance of the critical area or critical area buffer is not expanded. As applicable to public rights-of-way, private roads, access easements, parking areas and driveways, repair and maintenance also includes removing and replacing improvements within the area of permanent disturbance, and expansion of paved areas, so long as the area of permanent disturbance within the critical area or critical area buffer is not expanded.

2. These uses do not require a Critical Areas Land Use Permit. The requirements of this part shall be applied through the review process applicable to the underlying use or activity.

3. In the event of a conflict between this section and the utilities code, the utilities code shall prevail.

4. Examples of public flood protection measures include, but are not limited to: flood control projects, flood damage reduction facilities such as levees, revetments, and pumping stations, streambank stabilization structures and surface water conveyance facilities, bridge piers and abutments.

5. Examples of instream structures include, but are not limited to: sediment ponds, instream ponds, dams, and weirs.

6. Permit requirements may vary. See subsection C.3.i of this section.

7. For geologic hazards other than coal mine hazard areas. Uses and performance standards for coal mine hazard areas set forth in LUC 20.25H.050.

8. Development authorized pursuant to a reasonable use exception, LUC 20.25H.190, shall incorporate the required performance standards to the maximum extent feasible.

9. Authorized only pursuant to a reasonable use exception, LUC 20.25H.190.

10. Such storage is not allowed in critical areas or critical area buffers except within the area of special flood hazard in compliance with applicable performance standards.

11. Authorized only in areas of the critical area buffer within areas of existing permanent disturbance, including, for example: paved or gravel surface parking areas, access drives, and other similar disturbed areas.

12. Refer to Part 20.25M LUC, Light Rail Overlay District, for specific requirements applicable to EPF defined as a Regional Light Rail Transit Facility or Regional Light Rail Transit System pursuant to LUC 20.25M.020. A conditional use permit is not required when the City Council has approved a Regional Light Rail Transit Facility or Regional

Light Rail Transit System by resolution or ordinance, or by a development agreement authorized by Chapter 36.70B RCW and consistent with LUC 20.25M.030.B.1.

13. Authorized only in areas of special flood hazard located within shoreline jurisdiction and only when developed in accordance with LUC 20.25E.080.F.

14. Authorized only in areas of special flood hazard located within shoreline jurisdiction and only when developed in the aquatic environment in accordance with LUC 20.25E.065.

15. In areas of special flood hazard located within shoreline jurisdiction performance standards required by this section will be applied through the applicable permit required by Part 20.25E. LUC and do not require a Critical Areas Land Use Permit.

16. Authorized only in areas of special flood hazard located within shoreline jurisdiction and only when developed in accordance with LUC 20.25H.

Comment [CoB35]: Clarifies that shoreline stabilization measures developed in accordance with 20.25E.080.F are not subject to the performance standards of 20.25H.

Comment [CoB36]: Clarifies that moorage structures developed in the aquatic environment in accordance with 20.25E.065 are authorized to be located in the area of special flood hazard within shoreline jurisdiction.

Comment [CoB37]: Clarifies that the performance standards for stabilization measures, residential moorage structures, and nonmotorized trails in areas of special flood hazard will be applied through the applicable shoreline permit and do not require a Critical Areas Land Use Permit.

Comment [CoB38]: Clarifies that private nonmotorized trails are authorized in areas of special flood hazard when developed in accordance with 20.25H.C.3.f.

Section 24. Section 20.25H.055.C.3.f of the Bellevue Land Use Code is hereby amended to read as follows:

20.25H.055.C.3.f

f. Private Nonmotorized Trails. New nonmotorized trails within the critical area or critical area buffer are limited to those accessing single-family residential moorage or serving nonresidential uses, multifamily residential uses and more than one single-family lot. Private nonmotorized trails shall comply with the performance standards for trails in subsection C.3.g of this section. Nothing in this section prohibits the creation of a soft surface nonmotorized trail in a critical area buffer on a single-family lot for use of the residents of that lot. Such trail shall not exceed four feet in width, and shall not involve the removal of any significant trees or bank-stabilizing roots. In stream and wetland buffers, trails shall not be generally parallel to the stream or wetland edge closer than a distance of 25 feet. Any clearing of brush or vegetation shall be the minimum necessary, and shall be with hand tools only.

Comment [CoB39]: Addresses the "gap" in our regulations.

Section 25. Section 20.25H.055.C.3.h of the Bellevue Land Code is hereby amended to read as follows:

20.25H.055.C.3.h

h. Existing Landscape Maintenance. Routine maintenance of existing legally established landscaping and landscape features developed prior to August 1, 2006, in the critical area or critical area buffer may be continued in accordance with this section. For purposes of this section, "routine maintenance" includes mowing, pruning, weeding, planting annuals, perennials, fruits and vegetables, and other activities associated with maintaining a legally established ornamental or garden landscape and landscape features. Also, for purposes of this subsection, "landscape features" refers to fences, trellises, rockeries and retaining walls, pathways, arbors, patios, play areas and other similar improvements. To be considered routine maintenance, activities shall have been consistently carried out so that the ornamental species predominate over native or invasive species. Maintenance shall be performed with hand tools or light equipment only, and no significant trees may be removed, except in accordance with ~~a~~ Vegetation Management ~~Plan~~ under subsection C.3.i of this section. Use of fertilizers, insecticides, and pesticides is ~~prohibited~~not recommended unless performed in accordance with the City of Bellevue's "Environmental best Management Practices" now or as hereafter amended.

Comment [CoB40]: Clarification.

Section 26. Section 20.25H.055.C.3.m of the Bellevue Land Use Code is hereby amended to read as follows:

20.25H.055.C.3.m

m. Stabilization Measures. ~~See LUC 20.25E.080.E for standards regulating shoreline stabilization measures.~~ Proposed stabilization measures within a critical area or critical area buffer to protect against streambank erosion or steep slopes or landslide hazards may be approved in accordance with this subsection. The performance standards of this part do not apply to shoreline stabilization measures in flood hazard critical areas when developed in accordance with LUC 20.25E.080.F.

Comment [CoB41]: Consistency with change to 20.25H.055(B) above re: stabilization measures.

Section 27. Section 20.25H.065 of the Bellevue Land Use Code is hereby amended to read as follows:

20.25H.065 Uses and development within critical area buffer or critical area structure setback not allowed pursuant to LUC 20.25H.055.

This section applies to uses and development legally established within the critical area or critical area buffer prior to August 1, 2006, and which is not included as an allowed use or development in LUC 20.25H.055. ~~LUC 20.25E.055 applies to uses and development within the shoreline critical area and shoreline critical area buffer.~~ See performance standards at LUC 20.25H.180 for provisions relating to the repair, remodeling, expansion or reconstruction of structures located in the area of special flood hazard. Any alterations to existing development allowed under this section shall also comply with provisions for the area of special flood hazard. In the event of conflict, the provisions that result in most protection for the critical area or critical area buffer shall govern.

Comment [CoB42]: Shorelines not regulated as critical area.

A. Existing Primary Structures.

. . . . . .

Section 28. Section 20.25H.075.B.1 of the Bellevue Land Use Code is hereby amended to read as follows:

20.25H.075.B.1 Designation of critical area and buffers.

B.1. Designation of Streams.

1. "Type S water" means all waters, ~~other than shoreline critical areas designated under LUC 20.25E.017~~, within their bankfull width, as inventoried as "shorelines of the state" under Chapter 90.58 RCW and the rules promulgated pursuant to Chapter 90.58 RCW including periodically inundated areas of their associated wetlands. As of [insert effective date of ordinance], the only known Type S waters are Lower Kelsey Creek and Mercer Slough.

Comment [CoB43]: Shorelines not regulated as critical area.

Comment [CoB44]: Clarification.

Section 29. Section 20.25H.115 of the Bellevue Land Use Code is hereby amended to read as follows:

VI. ~~SHORELINES~~(RESERVED)

Comment [CoB45]: Shorelines not regulated as critical area.

~~**20.25H.115 Designation of critical area and buffers.**~~

~~**A. Designation of Shoreline Critical Areas.**~~

~~See LUC 20.25E.017 for designated shoreline critical areas.~~

~~**B. Designation of Shoreline Critical Area Buffers.**~~

~~The following critical area buffers are established. The shoreline critical area buffer on Lake Sammamish shall be measured from elevation 31.8 NAVD 88. The shoreline critical area~~

~~buffer on all other shoreline critical areas shall be measured from the ordinary high water mark.~~

~~1. Shoreline Critical Area Buffers.~~

~~a. General – All Shoreline Critical Areas.~~

~~i. Undeveloped Sites. An undeveloped site is a site that contains no primary structure. All shoreline critical areas on undeveloped sites shall have a 50-foot critical area buffer.~~

~~ii. Developed Sites. A developed site is a site that contains a primary structure. Lots created through subdivision, short subdivision, or the Planned Unit Development process from a developed site shall be considered undeveloped and subject to the requirements of subsection B.1.a.i of this section, except that the lot containing the existing primary structure shall be considered developed. All shoreline critical areas on developed sites shall have a 25-foot critical area buffer.~~

~~b. Buffer and Setback on Sites with Existing Development. Where a primary structure legally established on a site prior to August 1, 2006, encroaches into the critical area buffer or structure setback established in this section, the critical area buffer and/or structure setback shall be modified to exclude the footprint of the existing primary structure. Expansion of any existing primary structure into the critical area buffer or critical area structure setback shall be allowed only pursuant to the provisions of LUC 20.25H.055 (single-family primary structures) or LUC 20.25H.230 (all other primary structures).~~

~~2. Buffer Modification. Modifications to the shoreline critical area buffer may be approved pursuant to this section as part of the permit or approval for the underlying proposal. Modifications to the shoreline critical area buffer that do not meet the criteria of this subsection may be considered through a critical areas report, LUC 20.25H.230:~~

~~a. Adjustment Based on Surrounding Development. Where the shoreline critical area buffer on all developed properties immediately abutting the site is less than the buffer required in subsection B.1 of this section, the required buffer may be modified as set forth in this subsection. Such modification shall allow only a primary structure to encroach into the required buffer. The buffer adjustment shall be determined by connecting the portion of each adjacent primary structure that most encroaches into the required buffer. The line established represents the shoreline critical area buffer for the site; however, in no event may the adjusted shoreline critical area buffer be less than 25 feet.~~

~~b. Transportation or Utility Infrastructure. Where a legally established right-of-way, railroad right-of-way or other similar infrastructure of a linear nature crosses a shoreline critical area buffer, the edge of the improved right-of-way shall be the extent of the buffer, if the part of the critical area buffer on the other side of the right-of-way provides insignificant biological or hydrological function in relation to the portion of the buffer adjacent to the shoreline.~~

~~**C. Structure Setbacks.**~~

1. 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 LUC). The most restrictive dimension controls. Structure setbacks are required in order to:

   a. Minimize long-term impacts of development adjacent to critical areas and critical area buffers; and

   b. Protect critical areas and critical area buffers from adverse impacts during construction.

2. Minimum Setback of Structures.

   a. Undeveloped Site. An undeveloped site is a site that contains no primary structure. Undeveloped sites shall not require a shoreline critical area structure setback.

   b. Developed Site. A developed site is a site that contains a primary structure. Lots created through subdivision, short subdivision, or the Planned Unit Development process from a developed site shall be considered undeveloped and subject to the requirements of subsection C.2.a of this section, except that the lot containing the existing primary structure shall be considered developed. Developed sites shall require a 25-foot shoreline critical area structure setback, measured from the edge of the shoreline critical area buffer.

3. Structure Setback Modification.

   a. Modification Based on Surrounding Development. Where the shoreline critical area structure setback on all developed properties immediately abutting the site is less than the structure setback required in subsection C.2 of this section, the required structure setback may be modified as set forth in this subsection. Such modification shall allow only a primary structure to encroach into the required structure setback. The modification shall be determined by connecting the portion of each adjacent primary structure that most encroaches into the required structure setback. The line established represents the shoreline critical area structure setback for the site, however, in no event may this subsection modify the required critical area buffer.

   b. Structure Setback Modification – Other (Developed Sites). Structure setbacks on developed sites not meeting the requirements of subsection C.3.a of this section may be modified only through an approved critical areas report. (Ord. 5680, 6-26-06, § 3)

Section 30. Section 20.25H.118 of the Bellevue Land Use Code is hereby deleted.

20.25H.118 Mitigation and monitoring – Additional provisions.

In addition to the provisions of LUC 20.25H.210, mitigation plans designed to mitigate impacts to shorelines and shoreline critical area buffers shall meet the requirements of this section.

A. Mitigation Preference.

Mitigation plans for shorelines and shoreline critical area buffers shall provide mitigation for impacts to critical area functions and values in the following order of preference:

Comment [CoB46]: Shorelines not regulated as critical area.

~~1. On-site, through replacement of lost critical area buffer;~~

~~2. On-site, through enhancement of the functions and values of remaining critical area buffer;~~

~~3. Off-site, through replacement or enhancement, in the same sub-drainage basin;~~

~~4. Off-site, through replacement or enhancement, out of the sub-drainage basin but in the same drainage basin.~~

~~Mitigation off-site and out of the drainage basin shall be permitted only through a critical areas report.~~

~~**B. Buffer Mitigation Ratio.**~~

~~Shoreline critical area buffer disturbed or impacted under this part shall be replaced at a ratio of one-to-one.~~

Section 31. Section 20.25H.119 of the Bellevue Land Use Code is hereby deleted.

Comment [CoB47]: Shorelines not regulated as critical area.

~~**20.25H.119 Critical areas report – Additional provisions.**~~

~~An applicant proposing a modification to the shoreline critical area buffer which would reduce the buffer to less than 25 feet shall establish by survey the site's ordinary high water mark, notwithstanding any other provision of this part or Part 20.25E LUC. (Ord. 5680, 6-26-06, § 3)~~

Section 32. Section 20.25H.150.D of the Bellevue Land Use Code is hereby amended to read as follows:

20.25H.150.D Designation of critical area.

D. Designation of Critical Area for Naturally Occurring Ponds. The following critical area buffer is hereby established for naturally occurring ponds that are not classified as a stream~~, shoreline,~~ or wetland:

Comment [CoB48]: Shorelines not regulated as critical area.

Naturally occurring ponds where no other critical area designation applies: 35 feet.

Section 33. Section 20.25H.155 of the Bellevue Land Use Code is hereby amended to read as follows:

20.25H.155 Uses in habitat for species of local importance.

The uses allowed in the underlying land use district are allowed within habitat associated with species of local importance, so long as the development complies with the performance standards of LUC 20.25H.160; provided, that fish habitat protection is presumed through compliance with performance standards contained in Part 20.25E LUC. ~~The~~This section does not allow modification of other critical areas of critical area buffers.

Comment [CoB49]: Defers to 20.25E for protection of fish habitat, and presumption of validity contained in 20.25E.060.B.2.

Section 34. Section 20.25H.210 of the Bellevue Land Use Code is hereby amended to read as follows:

20.25H.210 Applicability.

Where a mitigation or restoration plan is required under this part ~~or Part 20.25E LUC~~, the plan shall be developed in accordance with the standards of LUC 20.25H.210 through 20.25H.225 inclusive. Any mitigation or restoration plan shall be approved as part of the permit or approval required for the underlying activity. Where a project requires a critical areas report and a mitigation or restoration plan, the mitigation or restoration plan may be included with the critical areas report.

Comment [CoB50]: Shorelines not regulated as critical area.

Section 35. Section 20.20.220.A of the Bellevue Land Use Code is hereby amended to read as follows:

20.25H.220.A Mitigation and restoration plan requirements.

A. Plan Phases.

Where an applicant is seeking modifications to this part ~~or Part 20.25E LUC~~ through a critical areas report pursuant to LUC 20.25H.230, the mitigation plan required for the proposal may be submitted in phases. A conceptual plan shall be submitted as part of the critical areas report and approved with the land use approval for the proposal. A detailed plan shall be approved prior to or with approval of the first permit or other approval required to perform work associated with the proposal.

Comment [CoB51]: Shorelines not regulated as critical area.

Section 36. Section 20.25H.230 of the Bellevue Land Use Code is hereby amended to read as follows:

20.25H.230 Critical areas report – Purpose.

A critical areas report is a mechanism by which the requirements of this part~~, certain requirements of Part 20.25E LUC as set forth in that part,~~ and the impervious surface standards set forth in LUC 20.20.010 may be modified for a specific proposal.

Comment [CoB52]: Shorelines not regulated as critical area. Special shoreline report process contained in the Planning Commission-recommended SMP at LUC 20.25E.160.E.

The critical areas report is intended to provide flexibility for sites where the expected critical area functions and values are not present due to degraded conditions or other unique site characteristics, or for proposals providing unique design or protection of critical area functions and values not anticipated by this part. The scope and complexity of information required in a critical areas report will vary, depending on the scope and complexity and magnitude of impact on critical areas and critical area buffers associated with the proposed development. Generally, the critical areas report must demonstrate that the proposal with the requested modifications leads to equivalent or better protection of critical area functions and values than would result from the application of the standard requirements. Where the proposal involves restoration of degraded conditions in exchange for a reduction in regulated critical area buffer on a site, the critical areas report must demonstrate a net increase in certain critical area functions.

Section 37. Section 20.25H.240 of the Bellevue Land Use Code is hereby amended to read as follows:

20.25H.240 Critical areas report – Limitation on modifications.

The critical areas report may not be used to modify sections of the Land Use Code outside of this part~~ and Part 20.25E LUC~~ unless otherwise expressly permitted. The critical areas report may not be used to modify the definitions of critical areas or definitions of stream types or wetland categories, or any other provision of this part that expressly prohibits modification. The critical areas report may not be used to modify streams~~,~~ or wetlands~~, or the shoreline below the ordinary high water mark~~ unless otherwise expressly permitted. Additional limitations on modifications for specific critical areas may be found in the sections of this part addressing that critical area.

Comment [CoB53]: Shorelines not regulated as critical area.

Comment [CoB54]: Shorelines not regulated as critical area.

Section 38. Section 20.25M.010.D.2 of the Bellevue Land Use Code is hereby amended to read as follows:

20.25M.010.D General

D. Applicable Land Use Code Provisions.

2. Applicable Procedural and Administrative Sections Incorporated by Reference. Predictability and certainty with respect to procedural Land Use Code requirements ensures effectiveness of permit review and that the level of public participation for individual RLRT Facility applications occurs consistently across all land use districts and overlay areas of the City. The following procedural and administrative sections of the Land Use Code are expressly incorporated into the provisions of this Chapter 20.25M and apply to an RLRT Facility:

   a. ~~Part 20.30H LUC – Variance to the Shoreline Master Program~~LUC 20.25E.100 through 20.25E.200 – Shoreline Overlay District Procedures and Permits

   b. ~~Part 20.30R LUC – Shoreline Substantial Development Permit~~LUC 20.25E.250 through 270 – Shoreline Overlay District Administration and Enforcement

   c. Chapter 20.35 LUC – Review and Procedures

   d. Chapter 20.40 LUC – Administration and Enforcement sections as follows:

      i. LUC 20.40.010 through 20.40.080; and
      ii. LUC 20.40.500 through 510.

   e. Chapter 20.50 LUC – Definitions.

Comment [CoB55]: Shoreline permit provisions are now located in 20.25E.

Section 39. Section 20.25M.030.D of the Bellevue Land Use Code is hereby amended to read as follows:

20.25M.030.D Required Permits

D. Shoreline Substantial Development Permit and Variance

1. Any RLRT Facility proposed or located in the Shoreline Overlay District (Part 20.25E LUC) shall comply with the Shoreline Substantial Development Permit (SSDP) requirements of LUC ~~20.25E.040~~20.25E.100 and .160. Application for a SSDP shall be

Comment [CoB56]: Citation corrections based on new 20.25E (applies to all changes in this Section).

processed independently of any application for Design and Mitigation approval under this chapter. Application for a SSDP shall be subject to the decision criteria of LUC ~~20.30R.155~~20.25E.150 and .160.

2. For properties lying within the Shoreline Overlay District, the City may approve a request to exceed the allowable height limit established by LUC ~~20.25E.080.B.5~~20.25E.050 through the Variance to the Shoreline Master Program process allowed pursuant to ~~Part 20.30H~~ LUC20.25E.100 and .120. Application for a shoreline variance shall be subject to the decision criteria of LUC ~~20.30H.155~~20.25E.150 and .190.

Section 40. Chapter 20.30 – Table of Contents - of the Bellevue Land Use Code is hereby amended to read as follows:

Chapter 20.30

PERMITS AND DECISIONS

Sections:

Part 20.30A Rezone

20.30A.110 Scope
20.30A.115 Applicability
20.30A.120 Purpose
20.30A.140 Decision criteria
20.30A.145 Limitation on authority
20.30A.150 Map change
20.30A.155 Concomitant agreement

Part 20.30B Conditional Use Permit

20.30B.110 Scope
20.30B.115 Applicability
20.30B.120 Purpose
20.30B.140 Decision criteria
20.30B.160 Merger with Binding Site Plan
20.30B.165 Periodic review
20.30B.170 Modification/revocation
20.30B.175 Modification or addition to an approved project or decision

Part 20.30C ~~Shoreline Conditional Use Permit~~(Reserved)

Comment [CoB57]: Shoreline permits will no longer be in 20.30; instead they will be in 20.25E (Shoreline Overlay District) (affects 20.30C, 20.30H. and 20.30R).

~~20.30C.110 Scope~~
~~20.30C.115 Applicability~~
~~20.30C.120 Purpose~~
~~20.30C.130 Limitation on filing~~
~~20.30C.145 Limitation on City action~~
~~20.30C.155 Decision criteria~~
~~20.30C.160 Transmittal to Department of Ecology/Attorney General~~
~~20.30C.165 Effective date~~

~~20.30C.170 Time limitation~~
~~20.30C.175 Extension~~
~~20.30C.185 Amendment to an approved Shoreline Conditional Use Permit~~
~~20.30C.190 Merger with Binding Site Plan~~
~~20.30C.195 Periodic review~~
~~20.30C.200 Modification/revocation~~

Part 20.30D Planned Unit Development

20.30D.110 Scope
20.30D.115 Applicability
20.30D.120 Purpose
20.30D.150 Planned Unit Development plan – Decision criteria
20.30D.160 Planned Unit Development plan – Conservation feature and recreation space requirement
20.30D.165 Planned Unit Development plan – Request for modification of zoning requirements
20.30D.167 Planned Unit Development – Additional bonus density for large-parcel projects
20.30D.170 Planned Unit Development plan – Limitation on authority to modify zoning
20.30D.175 Planned Unit Development plan – Authorized activity
20.30D.195 Planned Unit Development plan – Merger with subdivision
20.30D.200 Planned Unit Development plan – Effect of approval
20.30D.250 Planned Unit Development plan – Phased development
20.30D.255 Planned Unit Development plan – Map designation
20.30D.280 Merger with Binding Site Plan
20.30D.285 Amendment of an approved Planned Unit Development

Part 20.30E Administrative Conditional Use Permit

20.30E.110 Scope
20.30E.115 Applicability
20.30E.120 Purpose
20.30E.140 Decision criteria
20.30E.160 Merger with Binding Site Plan
20.30E.165 Periodic review
20.30E.170 Modification/revocation
20.30E.175 Modification or addition to an approved project or decision

Part 20.30F Design Review

20.30F.110 Scope
20.30F.115 Applicability
20.30F.116 City Council Design Review
20.30F.120 Purpose
20.30F.125 Who may apply
20.30F.145 Decision criteria
20.30F.165 Merger with Binding Site Plan
20.30F.170 Planning Commission Design Review
20.30F.175 Modification or addition to an approved Design Review project or decision
20.30F.180 Recording required

Part 20.30G Variance from the Land Use Code

20.30G.110 Scope
20.30G.115 Applicability
20.30G.120 Purpose
20.30G.140 Decision criteria
20.30G.150 Limitation on authority

Part 20.30H ~~Variance to the Shoreline Master Program~~(Reserved)

Comment [CoB58]: Shoreline permits will no longer be in 20.30; instead they will be in 20.25E (Shoreline Overlay District)

~~20.30H.110 Scope~~
~~20.30H.115 Applicability~~
~~20.30H.120 Purpose~~
~~20.30H.125 Who may apply~~
~~20.30H.130 Limitation on filing~~
~~20.30H.155 Decision criteria~~
~~20.30H.160 Transmittal to Department of Ecology/Attorney General~~
~~20.30H.165 Effective date~~

Part 20.30I Amendment and Review of the Comprehensive Plan

20.30I.110 Scope and background
20.30I.115 Applicable process
20.30I.120 Purpose
20.30I.130 Initiation of amendment proposals
20.30I.140 Threshold review decision criteria
20.30I.150 Final review decision criteria

Part 20.30J Amendments to the Text of the Land Use Code

20.30J.110 Scope
20.30J.115 Applicability
20.30J.120 Purpose
20.30J.125 Who may initiate
20.30J.130 Applicable procedure
20.30J.135 Decision criteria

Part 20.30K Interpretation of the Land Use Code

20.30K.110 Scope
20.30K.115 Applicability
20.30K.120 Purpose
20.30K.130 Applicable procedure
20.30K.135 Submittal requirements
20.30K.140 Factors for consideration
20.30K.150 Effect of interpretation
20.30K.155 Time limitation

Part 20.30M Temporary Use Permit

20.30M.110 Scope
20.30M.115 Applicability
20.30M.120 Purpose
20.30M.125 Applicable procedure
20.30M.130 Who may apply
20.30M.140 Decision criteria
20.30M.145 Time limitation
20.30M.150 Limitation on activity
20.30M.155 Removal of temporary use

20.30M.160 Abatement of temporary use
20.30M.170 Screening of off-site construction parking areas

Part 20.30N Home Occupation Permit

20.30N.110 Scope
20.30N.115 Applicability
20.30N.120 Purpose
20.30N.125 Who may apply
20.30N.140 Decision criteria
20.30N.145 Conditions
20.30N.150 Time limitation
20.30N.155 Quarterly report
20.30N.160 Revocation of Home Occupation Permit
20.30N.165 Assurance device

Part 20.30P Critical Areas Land Use Permit

20.30P.110 Scope
20.30P.115 Applicability
20.30P.120 Purpose
20.30P.125 Who may apply
20.30P.130 Applicable procedure
20.30P.140 Decision criteria
20.30P.150 Time limitation
20.30P.155 Extension
20.30P.160 Assurance device
20.30P.170 Hold harmless
20.30P.180 Critical area report – Additional review procedures

Part 20.30R ~~Shoreline Substantial Development Permit~~(Reserved)

Comment [CoB59]: Shoreline permits will no longer be in 20.30; instead they will be in 20.25E (Shoreline Overlay District)

~~20.30R.110 Scope~~
~~20.30R.115 Applicability~~
~~20.30R.120 Purpose~~
~~20.30R.155 Director's decision~~
~~20.30R.160 Transmittal to Department of Ecology/Attorney General~~
~~20.30R.170 Commencement of activity~~
~~20.30R.175 Time limitation~~
~~20.30R.180 Extension~~
~~20.30R.190 Revision of an approved Shoreline Substantial Development Permit~~

Part 20.30S Vendor Cart Permit

20.30S.110 Scope
20.30S.115 Applicability
20.30S.120 Purpose
20.30S.125 Applicable procedure
20.30S.130 Who may apply
20.30S.135 Submittal requirements
20.30S.140 Decision criteria

Part 20.30T Reasonable Accommodation

20.30T Reasonable accommodation

Part 20.30U Temporary Encampment Permit

20.30U.110 Scope
20.30U.115 Applicability
20.30U.120 Who may apply
20.30U.121 Submittal requirements
20.30U.122 Applicable procedures
20.30U.125 Use requirements
20.30U.127 Hardship exception
20.30U.130 Decision criteria
20.30U.135 Revocation of Temporary Encampment Permit

Part 20.30V Master Development Plan

20.30V.110 Scope
20.30V.115 Applicability
20.30V.120 Purpose
20.30V.130 Phasing plan
20.30V.140 Binding Site Plan
20.30V.150 Decision criteria
20.30V.160 Modification or addition to an approved Master Development Plan
20.30V.170 Land area computation
20.30V.180 Recording required
20.30V.190 Extended vesting period for Master Development Plans and associated Design Review approval

Section 41. Part 20.30C of the Bellevue Land Use Code is hereby amended to read as follows:

Part 20.30C ~~Shoreline Conditional Use Permit~~(Reserved)

Comment [CoB60]: All shoreline permits moved to 20.25E (Shoreline Overlay District)

~~20.30C.110 Scope.~~

~~This Part 20.30C establishes the procedure and criteria that the City will use in making a decision upon an application for a Shoreline Conditional Use Permit.~~

~~20.30C.115 Applicability.~~

~~This part applies to each application for a Shoreline Conditional Use Permit.~~

~~20.30C.120 Purpose.~~

~~A Shoreline Conditional Use Permit is a mechanism by which the City may both provide more control and allow greater flexibility in administering the Shoreline Master Program in a manner consistent with the policies of the Shoreline Management Act. The City may permit certain uses to be established or may require special conditions on development or on the use of land in order to insure that designated uses or activities are compatible with other uses in the same land use district and in the vicinity of the subject property.~~

~~20.30C.130 Limitation on filing.~~

~~An application for a Shoreline Conditional Use Permit will not be accepted for filing unless accompanied by a complete application for a Substantial Development Permit (See LUC 20.25E.040).~~

~~20.30C.145 Limitation on City action.~~

~~The City may not take final action on an application for a Shoreline Conditional Use Permit for at least 30 days following the second publication required by LUC 20.30C.140.~~

~~20.30C.155 Decision criteria.~~

~~The City may approve or approve with modifications an application for a Shoreline Conditional Use Permit if:~~

~~A. The proposed use will be consistent with the policies of RCW 90.58.020 and the policies of the Bellevue Shoreline Master Program; and~~

~~B. The proposed use will not interfere with the normal public use of public shorelines; and~~

~~C. The proposed use of the site and design of the project will be compatible with other permitted uses within the area; and~~

~~D. The proposed use will cause no unreasonably adverse effects to the shoreline environment designation in which it is to be located; and~~

~~E. The public interest suffers no substantial detrimental effect; and~~

~~F. The proposed use complies with all requirements of WAC 173-14-140; and~~

~~G. The proposed use is harmonious and appropriate in design, character and appearance with the existing or intended character and quality of development in the immediate vicinity of the subject property and with the physical characteristics of the subject property; and~~

~~H. The proposed use will be served by adequate public facilities including streets, fire protection, water, stormwater control and sanitary sewer; and~~

~~I. The proposed use will not be materially detrimental to uses or property in the immediate vicinity of the subject property; and~~

~~J. The proposed use has merit and value for the community as a whole; and~~

~~K. The proposed use is in accord with the Comprehensive Plan; and~~

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L. The proposed use complies with all other applicable criteria and standards of the Bellevue City Code.

20.30C.160 Transmittal to Department of Ecology/Attorney General.

Pursuant to WAC 173-14-090 and WAC 173-14-130, the Director of the Development Services Department shall send the following to the Department of Ecology and the Attorney General's Office within eight days of the City Council action on a Shoreline Conditional Use Permit:

A. The original application; and

B. An affidavit of public notice; and

C. A copy of the approved site plan; and

D. A vicinity map; and

E. A copy of the approved Shoreline Conditional Use and Substantial Development Permits; and

F. If applicable, the Council ordinance or resolution approving the application.

20.30C.165 Effective date.

Notwithstanding the provisions of LUC 20.35.100 et seq., a Shoreline Conditional Use Permit is not effective until it is approved by the Department of Ecology as required by WAC 173-14-130.

20.30C.170 Time limitation.

A. A Shoreline Conditional Use Permit automatically expires and is void if the applicant fails to file for a Building Permit or other necessary development permit and fails to make substantial progress towards completion of the project within two years of the effective date of the Shoreline Conditional Use Permit unless the applicant has received an extension for the Shoreline Conditional Use Permit pursuant to LUC 20.30C.175. "Substantial progress" includes the following, where applicable: the making of contracts; signing of notice to proceed; completion of grading and excavation; and the laying of major utilities; or if no construction is involved, commencement of the activity.

B. Permit authorization expires finally, despite substantial progress, five years after the effective date of the Shoreline Conditional Use Permit unless the applicant has received an extension pursuant to LUC 20.30C.175. (Ord. 4055, 3914, 9-25-89, § 15)

20.30C.175 Extension.

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

1. Unforeseen circumstances or conditions necessitate the extension of the permit; and

2. Termination of the permit would result in unreasonable hardship to the applicant, and the applicant is not responsible for the delay; and

3. An extension of the permit will not cause substantial detriment to existing uses in the immediate vicinity of the subject property.

B. The Director of the Development Services Department may grant no more than two extensions – one only of the two-year "substantial progress" deadline described in LUC 20.30C.170.A and one only of the five-year final deadline described in LUC 20.30C.170.B. (Ord. 4055, 3914, 9-25-89, § 16)

20.30C.185 Amendment to an approved Shoreline Conditional Use Permit.

A. General.

~~The provisions of this section are in addition to those procedures governing amendments to an approved project or decision found in LUC 20.30B.175.~~

~~B. Additional Criteria for Administrative Amendment.~~

~~An amendment may be reviewed as an administrative amendment if it complies with the provisions of WAC 173-14-064.~~

~~C. Transmittal to Department of Ecology/Attorney General.~~

~~The Director shall send a copy of the final City action on to the Department of Ecology and the Attorney General's Office in conformance with LUC 20.30C.160 and WAC 173-14-064. (Ord. 4973, 3-3-97, § 829; Ord. 4816, 12-4-95, § 929)~~

~~20.30C.190 Merger with Binding Site Plan.~~

~~A. General.~~

~~The applicant may request that the site plan approved with the Shoreline Conditional Use Permit constitute a Binding Site Plan pursuant to Chapter 58.17 RCW.~~

~~B. Survey and Recording Required.~~

~~If a site plan is approved as a Binding Site Plan, the applicant shall provide a recorded survey depicting all lot lines and shall record the approved site plan and survey with the King County Department of Records and Elections. No document shall be presented for recording without the signature of each owner of the subject property.~~

~~C. Effect of Binding Site Plan.~~

~~Upon the approval and recording of a Binding Site Plan the applicant may develop the subject property in conformance with the approved and recorded Binding Site Plan and without regard to lot lines internal to the subject property. Any sale or lease of lots or parcels within the subject property shall be subject to the approved and recorded Binding Site Plan and the requirements of state law. (Ord. 3848, 11-16-87, § 2)~~

~~20.30C.195 Periodic review.~~

~~The City may impose periodic review requirements as a condition of permit approval. (Ord. 4066, 10-23-89, § 3)~~

~~20.30C.200 Modification/revocation.~~

~~A. Modification.~~

~~The City may initiate a modification to an approved Shoreline Conditional Use Permit. A modification will be processed through Process I, LUC 20.35.100 et seq.; provided, that modification of a Shoreline Conditional Use Permit within the jurisdiction of a Community Council pursuant to RCW 35.14.040 shall require a Process III decision. Through the modification procedure, the Hearing Body may delete, modify or impose additional conditions upon finding that the use for which such approval was granted has been intensified, changed or modified by the property owner or by person(s) who control the property without approval so as to significantly impact surrounding land uses.~~

~~B. Revocation.~~

~~The Hearing Body may revoke an approved permit through Process I, LUC 20.35.100 et seq.; provided, that revocation of a Conditional Use Permit within the jurisdiction of a Community Council pursuant to RCW 35.14.040 shall require a Process III decision. An approved permit may be revoked only upon a finding that:~~

~~1. The use for which the approval was granted has been abandoned for a period of at least one year; or~~

~~2. Approval of the permit was obtained by misrepresentation of material fact; or~~

~~3. The permit is being exercised contrary to the terms of approval. (Ord. 4973, 3-3-97, § 830; Ord. 4816, 12-4-95, § 930; Ord. 4066, 10-23-89, § 4)~~

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Section 42. Part 20.30H of the Bellevue Land Use Code is hereby amended to read as follows:

Part 20.30H ~~Variance to the Shoreline Master Program~~(Reserved)

Comment [CoB61]: All shoreline permits moved to 20.25E (Shoreline Overlay District)

~~20.30H.110 Scope.~~

~~This Part 20.30H establishes the procedure and criteria that the City will use in making a decision upon an application for a variance to the provisions of the Shoreline Master Program.~~

~~20.30H.115 Applicability.~~

~~This part applies to each application for a variance to the provisions of the Shoreline Master Program.~~

~~20.30H.120 Purpose.~~

~~The purpose of a variance to the Shoreline Master Program is to grant relief to specific bulk, dimensional or performance standards set forth in the Master Program where there are extraordinary or unique circumstances relating to the property such that strict implementation of the Master Program would impose unnecessary hardships on the applicant or thwart the policies of the Shoreline Management Act.~~

~~20.30H.125 Who may apply.~~

~~The property owner may apply for a variance to the provisions of the Shoreline Master Program.~~

~~20.30H.130 Limitation on filing.~~

~~An application for a variance to the Shoreline Master Program will not be accepted for filing unless accompanied by a complete application for a Substantial Development Permit (see LUC 20.25E.040).~~

~~20.30H.155 Decision criteria.~~

~~The City may approve or approve with modifications an application for a variance to the Shoreline Master Program if:~~

~~A. Denial of the variance would result in thwarting the policy of RCW 90.58.020; and~~

~~B. The applicant has demonstrated extraordinary circumstances and the public interest will suffer no substantial detrimental effect; and~~

~~C. The strict application of the bulk, dimensional or performance standards of the Master Program preclude or significantly interfere with a reasonable permitted use of the property; and~~

~~D. The hardship described in subsection C of this section is specifically related to the property and is the result of unique conditions such as irregular lot shape or natural features and the application of the Master Program and not, for example, deed restrictions or the applicant's own actions; and~~

~~E. The design of the project will be compatible with other permitted activities in the area and will not cause adverse effects to adjacent properties or the shoreline environment designation; and~~

~~F. The variance authorized does not constitute a grant of special privilege not enjoyed by the other properties in the area and will be the minimum necessary to afford relief; and~~

~~G. If the development will be located either waterward of the ordinary high water mark or in a marsh, bog or swamp designated pursuant to Chapter 173-22 WAC:~~

~~1. In place of subsection C of this section, the strict application of the bulk, dimensional or performance standards of the Master Program preclude a reasonable permitted use of the property, and~~

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2. The public rights of navigation and use of the shorelines will not be adversely affected by the granting of the variance.

20.30H.160 Transmittal to Department of Ecology/Attorney General.

Pursuant to WAC 173-14-090 and 173-14-130, the Director shall send the following to the Department of Ecology and the Attorney General's Office within eight days of the Director's action on a variance to the Shoreline Master Program:

A. The original application; and

B. An affidavit of public notice; and

C. A copy of the approved site plan; and

D. A vicinity map; and

E. A copy of the approved variance to the Shoreline Master Program and Substantial Development Permits. (Ord. 4973, 3-3-97, § 806; Ord. 4816, 12-4-95, § 906)

20.30H.165 Effective date.

Notwithstanding the provisions of LUC 20.35.200 et seq., a variance to the Shoreline Master Program is not effective until it is approved by the Department of Ecology as required by WAC 173-14-130. (Ord. 4973, 3-3-97, § 807; Ord. 4816, 12-4-95, § 907)

Section 43. Part 20.30R of the Bellevue Land Use Code is hereby amended to read as follows:

Part 20.30R Shoreline Substantial Development Permit(Reserved)

Comment [CoB62]: All shoreline permits moved to 20.25E (Shoreline Overlay District)

20.30R.110 Scope.

This Part 20.30R establishes the procedure and criteria that the City will use in making a decision upon an application for a Shoreline Substantial Development Permit. (Ord. 4055, 3914, 9-25-89, § 19)

20.30R.115 Applicability.

This Part 20.30R applies to each application for a Shoreline Substantial Development Permit. (Ord. 4055, 3914, 9-25-89, § 19)

20.30R.120 Purpose.

A Shoreline Substantial Development Permit is the primary mechanism by which the City administers the Shoreline Master Program in a manner consistent with the policies of the Shoreline Management Act. (Ord. 4055, 3914, 9-25-89, § 19)

20.30R.155 Director's decision.

A. General.

On or after the date specified in LUC 20.30R.140.B.1, and subject to all other restrictions on the time of decisionmaking, the Director of the Development Services Department shall either approve, approve with modifications or deny the application.

B. Criteria.

The Director of the Development Services Department may approve or approve with modifications if:

1. The applicant has carried the burden of proof and produced evidence sufficient to support the conclusion that the application merits approval or approval with modifications; and

2. The applicant has demonstrated that the proposal complies with the applicable decision criteria of the Bellevue City Code; and

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~~3. The applicant has demonstrated that the proposal is consistent with the policies and procedures of the Shoreline Management Act and the provisions of Chapter 173-14 WAC and the Master Program.~~

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

~~C. Limitation on Modification.~~

~~If the Director of the Development Services Department makes a modification which results in a proposal not reasonably foreseeable from the description of the proposal contained in the public notice provided pursuant to LUC 20.30R.140.A, the Director of the Development Services Department shall provide a new notice of an upcoming decision and obtain public comment prior to making a decision.~~

~~D. Conditions.~~

~~The Director of the Development Services Department may include conditions as part of the approval or approval with modifications to ensure conformance with subsection B of this section.~~

~~E. Written Decision of the Director.~~

~~1. Content. The Director of the Development Services Department shall issue a written decision which contains the following:~~

~~a. A statement indicating that the application is approved, approved with modifications or denied; and~~

~~b. A statement of any conditions included as part of an approval or approval with modifications; and~~

~~c. A statement of facts upon which the decision, including any conditions, was based and the conclusions derived from those facts.~~

~~2. Distribution. The applicable Department Director shall mail the written decision of the Director, bearing the date it is mailed, to each person who participated in the decision as provided for in subsection B of this section.~~

~~F. Effect of Decision.~~

~~Subject to LUC 20.30R.165, the decision of the Director of the Development Services Department on the application is the final decision of the City. (Ord. 4055, 3914, 9-25-89, § 19)~~

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

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

~~A. The original application; and~~

~~B. An affidavit of public notice; and~~

~~C. A copy of the approved site plan; and~~

~~D. A vicinity map; and~~

~~E. A copy of the approved Shoreline Substantial Development Permit; and~~

~~F. A copy of the approved Shoreline Conditional Use Permit or Shoreline Variance, if applicable; and~~

~~G. A copy of the environmental checklist and SEPA determination, if applicable; and~~

~~H. The final action on the application. (Ord. 4055, 3914, 9-25-89, § 19)~~

~~20.30R.170 Commencement of activity.~~

~~Subject to LUC 20.30R.165, the applicant may commence activity or obtain other required approvals authorized by the approval or approval with modifications 30 calendar days following the date of the City's filing with the Department of Ecology. If the decision of the Director of the Development Services Department is appealed pursuant to LUC 20.30R.165, no activity may begin and no other City approvals may be granted until resolution of the appeal. (Ord. 4055, 3914, 9-25-89, § 19)~~

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~~20.30R.175 Time limitation.~~

~~A. A Shoreline Substantial Development Permit automatically expires and is void if the applicant fails to file for a Building Permit or other necessary development permit and fails to make substantial progress towards completion of the project within two years of the effective date of the Shoreline Substantial Development Permit unless the applicant has received an extension for the Shoreline Substantial Development Permit pursuant to LUC 20.30R.180. "Substantial progress" includes the following, where applicable: the making of contracts; signing of notice to proceed; completion of grading and excavation; and the laying of major utilities; or if no construction is involved, commencement of the activity.~~

~~B. Permit authorization expires finally, despite substantial progress, five years after the effective date of the Shoreline Substantial Development Permit unless the applicant has received an extension pursuant to LUC 20.30R.180. (Ord. 4055, 3914, 9-25-89, § 19)~~

~~20.30R.180 Extension.~~

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

~~1. Unforeseen circumstances or conditions necessitate the extension of the permit; and~~

~~2. Termination of the permit would result in unreasonable hardship to the applicant, and the applicant is not responsible for the delay; and~~

~~3. An extension of the permit will not cause substantial detriment to existing uses in the immediate vicinity of the subject property.~~

~~B. The Director of the Development Services Department may grant no more than two extensions — one only of the two-year "substantial progress" deadline described in LUC 20.30R.175.A and one only of the five-year final deadline described in LUC 20.30R.175.B. (Ord. 4055, 3914, 9-25-89, § 19)~~

~~20.30R.190 Revision of an approved Shoreline Substantial Development Permit.~~

~~A. General.~~

~~Except as otherwise provided in subsection B of this section, a revision of a previously approved project or decision is treated as a new application for a Shoreline Substantial Development Permit.~~

~~B. Minor Revisions.~~

~~1. Authority. A revision may be reviewed as a Minor Revision if determined to be within the scope and intent of the original permit by meeting all of the following criteria:~~

~~a. No additional over water construction is involved except that pier, dock, or float construction may be increased by 500 square feet or 10 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 10 percent from the provisions of the original permit;~~

~~c. Additional separate structures may not exceed a total of 250 square feet;~~

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

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

~~f. The use authorized pursuant to the original permit is not changed; and~~

~~g. No substantial adverse environmental impact will be caused by the project revision.~~

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

~~2. Decision Criteria. The Director of the Development Services Department may approve or approve with modifications a Minor Revision if:~~

~~a. The applicant has carried the burden of proof and produced evidence sufficient to support the conclusion that the application merits approval or approval with modifications; and~~

~~b. The applicant has demonstrated that the proposal complies with the applicable decision criteria of the Bellevue City Code.~~

~~In all other cases, the Director of the Development Services Department shall deny the application.~~

~~3. Conditions. The Director of the Development Services Department may include conditions as part of the proposed approval or approval with modifications to ensure conformance with paragraph B.2 of this section.~~

~~4. Content. The Director of the Development Services Department shall issue a written decision on the revision which contains the following:~~

~~a. A statement indicating that the application is approved, approved with modifications or denied; and~~

~~b. A statement of any conditions included as part of an approval or approval with modifications; and~~

~~c. A statement of facts upon which the decision, including any conditions, was based and the conclusions derived from those facts.~~

~~5. Transmittal to Department of Ecology/Attorney General. The Director of the Development Services Department shall send within eight days a copy of the final City action on the revision on to the Department of Ecology and the Attorney General's Office in conformance with LUC 20.30R.160 and WAC 173-14-064.~~

~~6. If the revision to the original permit involves a conditional use or variance which was conditioned by the Department of Ecology, the revision shall be submitted to the Department of Ecology for the department's approval, approval with conditions, or denial. The revision shall indicate that it is being submitted under the requirements of WAC 173-14-064(5). Persons having requested notice of the Director's decision shall be notified. The Department of Ecology shall transmit to the City its decision within 15 days of receipt of the Director's submittal.~~

~~7. The revised permit is effective immediately upon the Director's decision or, when appropriate under paragraph B.6 of this section, upon the Department of Ecology's action.~~

~~8. Appeals shall be in accordance with RCW 90.58.180 and shall be filed within 30 days from the date of receipt of the Director's decision by the Department of Ecology or, when appropriate under paragraph B.6 of this section, the date the Department of Ecology's final decision is transmitted to the City and the applicant. Appeals shall be based only upon contentions of noncompliance with the provisions of paragraph B.1 of this section. Construction undertaken pursuant to that portion of a revised permit not authorized under the original permit is at the applicant's own risk until the expiration of the appeals deadline. If an appeal is successful in proving that a revision is not in compliance with paragraph B.1 of this section, the decision shall have no bearing on the original permit. (Ord. 4055, 3914, 9-25-89, § 19)~~

Section 44. Section 20.35.015 of the Bellevue Land Use Code is hereby amended to read as follows:

20.35.015 Framework for decisions.

A. Land use decisions, other than decisions on applications for Shoreline Conditional Use Permits, Shoreline Substantial Development Permits, and Variances to the Shoreline Master

Comment [CoB63]: Shoreline permits, procedures, and decisions are now in 20.25E.

Program, are classified into ~~four~~five processes based on who makes the decision, the amount of discretion exercised by the decisionmaker, the level of impact associated with the decision, the amount and type of public input sought, and the type of appeal opportunity. Refer to LUC 20.25E.100-.200 for procedures, permits, and decisions related to Shoreline Conditional Use Permits, Shoreline Substantial Development Permits, and Variances to the Shoreline Master Program.

B. Process I decisions are quasi-judicial decisions made by the Hearing Examiner on project applications. The following types of applications require a Process I decision:

1. Conditional Use Permits (CUPs)~~ and Shoreline Conditional Use Permits~~;

2. Preliminary Subdivision Approval (Plat); and

3. Planned Unit Development (PUD) Approval; provided, that applications for CUPs, ~~shoreline CUPs,~~ preliminary plats, and PUDs, within the jurisdiction of a Community Council pursuant to RCW 35.14.040, shall require a Process III decision.

C. Process II decisions are administrative land use decisions made by the Director. Threshold determinations under the State Environmental Policy Act (SEPA) made by the Environmental Coordinator and Sign Code variances are also Process II decisions. (See the Environmental Procedures Code, BCC 22.02.034, and Sign Code, BCC 22B.10.180.) The following types of applications require a Process II decision:

1. Administrative amendments;

2. Administrative Conditional Use;

3. Design Review;

4. Home Occupation Permit;

5. Interpretation of the Land Use Code;

6. Preliminary Short Plat;

~~7. Shoreline Substantial Development Permit;~~

~~8~~7. Variance~~ and Shoreline Variance~~;

~~9~~8. Critical Area Land Use Permits;

~~10~~9. Master Development Plans;

~~11~~10. Design and Mitigation Permits required pursuant to the Light Rail Overlay Part 20.25M LUC; and

~~12~~11. Review under State Environment Policy Act (SEPA) when not consolidated with another permit.

Comment [CoB64]: Shoreline CUPs are now addressed in 20.25E.

Comment [CoB65]: Shoreline CUPs are now addressed in 20.25E.

Comment [CoB66]: Shoreline permits are now addressed in 20.25E.

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D. Process III decisions are quasi-judicial decisions made by the City Council. The following types of applications require a Process III decision:

1. Site-specific or project-specific rezone;

2. Conditional Use, ~~Shoreline Conditional Use,~~ Preliminary Plat, and Planned Unit Development projects subject to the jurisdiction of a Community Council pursuant to RCW 35.14.040; and

3. A rezone of any property to the OLB-OS Land Use District designation.

E. *(Process IV decisions – no change)*

F. *(Process V decisions – no change)*

G. *(Other types of land use applications and decisions made by the Director – no change)*

Section 45. Section 20.35.020 of the Bellevue Land Use Code is hereby amended to read as follows:

20.35.020 Pre-application conferences.

A pre-application conference is required prior to submitting an application for Conditional Use ~~or Shoreline Conditional Use~~ Permits, preliminary subdivision approval, planned unit developments, Master Development Plans, Design and Mitigation Permits required pursuant to the Light Rail Overlay Part 20.25M LUC, and Design Review projects, unless waived by the Director.

Section 46. Section 20.35.070 of the Bellevue Land Use Code is hereby amended to read as follows:

20.35.070 Appeal of City land use decisions to Superior Court.

A. General. A final City decision on a land use permit application (Processes I through III and V)~~, except for shoreline permits~~, may be appealed to Superior Court by filing a land use petition meeting the requirements set forth in Chapter 36.70C RCW. The petition must be filed and served upon all necessary parties as set forth in state law and within the 21-day time period as set forth in RCW 36.70C.040. Notwithstanding the provisions of this paragraph, the time for filing an appeal of a final Process II land use action that has been merged with a Process I or III application will be tolled until the Process I or III decisions are final. Requirements for fully exhausting City administrative appeal opportunities, if any are available, must be fulfilled. ~~An appeal of a Shoreline Substantial Development Permit, a Shoreline Conditional Use Permit, or a shoreline variance shall be to the State Shoreline Hearings Board and shall be filed within 21 days as set forth in RCW 90.58.180.~~

B. A final City action on a legislative nonproject land use proposal (Process IV) may be appealed by petition to the Growth Management Hearings Board as set forth in LUC 20.35.440.C and RCW 36.70A.290.

Comment [CoB67]: Shoreline permits are now addressed in 20.25E.

Comment [CoB68]: Amendment is proposed to this paragraph G as part of the LUC cleanup ordinance; need to make sure both ords are consistent.

Comment [CoB69]: All shoreline permit requirements now in 20.25E.

Comment [CoB70]: Shoreline permit appeals are now addressed in 20.25E.

Comment [CoB71]: Shoreline permit appeals are now addressed in 20.25E.

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Section 47. Section 20.35.150.D of the Bellevue Land Use Code is hereby amended to read as follows:

20.35.150.D Appeal of Hearing Examiner decision.

D. Effect of Decision.

The decision of the City Council on the application is the final decision of the City and may be appealed to Superior Court as provided in LUC 20.35.070~~, except that an appeal of a shoreline conditional use decision shall be filed with the State Shoreline Hearings Board as set forth in RCW 90.58.180~~.

Comment [CoB72]: Shoreline permit appeals now addressed in 20.25E.

Section 48. Section 20.35.200.C of the Bellevue Land Use Code is hereby amended to read as follows:

20.35.200.C Process II: Administrative decisions.

C. Process II decisions of the Director and SEPA threshold determinations are final decisions, effective on the day following the expiration of any associated administrative appeal period, except that for projects where no person or entity submitted comments prior to the date the final decision was issued pursuant to LUC 20.35.250.A.1, the Process II decision is a final decision effective on the date of issuance. If an administrative appeal is filed by a person or entity that submitted comments prior to the date the final decision was issued as set forth in LUC 20.35.250.A.1, the decision is not final until the appeal is heard and decided by the City Hearing Examiner, ~~the Shoreline Hearings Board pursuant to LUC 20.35.250.B and RCW 90.58.180,~~ or the Growth Management Hearings Board pursuant to LUC 20.35.250.C and RCW 36.70A.290.

Comment [CoB73]: Shoreline permit appeals are now addressed in 20.25E.

Section 49. Section 20.35.210, Table 20.35.210.A, of the Bellevue Land Use Code is hereby amended to read as follows:

20.35.210 Notice of application.

A. Notice of application for Process II land use decisions shall be provided within 14 days of issuance of a notice of completeness as follows:

Table 20.35.210.A

Comment [CoB74]: Amendment to this table is proposed under the LUC cleanup ordinance. Need to make sure both ords are consistent)

Application Type	Publish	Mail	Sign
Administrative Amendment	X	X	X
Administrative Conditional Use	X	X	X
Design Review	X	X	X
Home Occupation Permit	X	X	
Interpretation of Land Use Code	X		
Preliminary Short Plat	X	X	X
~~Shoreline Substantial Development Permit~~	~~X~~	~~X~~	

Comment [CoB75]: Shoreline permits are now addressed in 20.25E.

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Variance~~, Shoreline Variance~~	X	X	
Critical Areas Land Use Permit	X	X	
SEPA Review (when not consolidated with another permit)	X		

Section 50. Section 20.35.250 of the Bellevue Land Use Code is hereby amended to read as follows:

20.35.250 Appeal of Process II decisions.

A. Process II decisions, except for~~ shoreline permits and~~ SEPA Threshold Determinations on Process IV actions, may be appealed as follows:

Comment [CoB76]: Appeals of shoreline permits are now addressed in 20.25E.

1. Who May Appeal. The project applicant or any person who submitted written comments prior to the date the decision was issued may appeal the decision.

2. Form of Appeal. A person appealing a Process II decision must file a written statement setting forth:

   a. Facts demonstrating that the person is adversely affected by the decision;

   b. A concise statement identifying each alleged error and the manner in which the decision fails to satisfy the applicable decision criteria;

   c. The specific relief requested; and

   d. Any other information reasonably necessary to make a decision on the appeal.

   The written statement must be filed together with an appeal notification form available from the Office of the City Clerk. The appellant must pay such appeal fee, if any, as established by ordinance or resolution at the time the appeal is filed.

3. Time and Place to Appeal. The written statement of appeal, the appeal notification form, and the appeal fee, if any, must be received by the City Clerk no later than 5:00 p.m. on the 14th day following the date of publication of the decision of the Director; except that if the Director's decision is consolidated with a threshold Determination of Nonsignificance under the State Environmental Policy Act for which a comment period pursuant to WAC 197-11-340 must be provided, the appeal period for the consolidated decision shall be 21 days.

~~**B. Shoreline Permit Appeals.**~~

Comment [CoB77]: Shoreline permit appeals are now addressed in 20.25E.

~~An appeal of a Shoreline Substantial Development Permit or a shoreline variance shall be to the State Shoreline Hearings Board and shall be filed within 21 days as set forth in RCW 90.58.180.~~

~~C~~B. SEPA Threshold Determinations on Process IV and Process V Actions.

1. Process IV. An appeal of a SEPA threshold determination on a Process IV action shall be filed together with an appeal of the underlying Process IV action. The appeal shall be

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by petition to the Growth Management Hearings Board and shall be filed within the 60-day time period set forth in RCW 36.70A.290.

2. Process V. An appeal of a SEPA threshold determination on a Process V action shall be filed together with an appeal of the underlying Process V action. The appeal shall be as set forth in LUC 20.35.070 and 20.35.540.

~~D~~C. Notice of Appeal Hearing.

If a Process II decision is appealed, a hearing before the City Hearing Examiner shall be set and notice of the hearing shall be mailed to the appellant, the applicant, and all parties of record by the applicable Department Director. Notice shall be mailed no less than 14 days prior to the appeal hearing; except that if the Process II decision has been consolidated with a recommendation on a Process I or Process III application, any appeal of the Process II decision shall be consolidated with the Process I or Process III public hearing. No separate notice of a Process II appeal need be provided if the public hearing has already been scheduled for the Process I or Process III component of an application.

~~E~~D. Hearing Examiner Hearing.

The Hearing Examiner shall conduct an open record hearing on a Process II appeal. The appellant, the applicant, and the City shall be designated parties to the appeal. Each party may participate in the appeal hearing by presenting testimony or calling witnesses to present testimony. Interested persons, groups, associations, or other entities who have not appealed may participate only if called by one of the parties to present information; provided, that the Examiner may allow nonparties to present relevant testimony if allowed under the Examiner's Rules of Procedure.

~~F~~E.Hearing Examiner Decision on Appeal.

Within 10 working days after the close of the record for the Process II appeal, the Hearing Examiner shall issue a decision to grant, grant with modifications, or deny the appeal. The Examiner may grant the appeal or grant the appeal with modification if:

1. The appellant has carried the burden of proof; and

2. The Examiner finds that the Process II decision is not supported by a preponderance of the evidence.

The Hearing Examiner shall accord substantial weight to the decision of the applicable Department Director and the Environmental Coordinator.

~~G~~F. Appeal of Hearing Examiner Decision.

A final decision by the Hearing Examiner on a Process II application may be appealed to Superior Court as set forth in LUC 20.35.070.

~~H~~G. Time Period to Complete Appeal Process.

In all cases except where the parties to an appeal have agreed to an extended time period, the administrative appeal process shall be completed within 90 days from the date the

original administrative appeal period closed. Administrative appeals shall be deemed complete on the date of issuance of the Hearing Examiner's decision on the appeal.

Section 51. Section 20.40.500.A.1 of the Bellevue Land Use Code is hereby amended to read as follows:

20.40.500.A Vesting and expiration of vested status of land use permits and approvals.

A. Vesting for Permits and Approvals.

1. Permits and Approvals Other than Subdivisions and Short Subdivisions and Shoreline Permits. Applications for all land use permits and approvals except subdivisions and short subdivisions and shoreline permits (Shoreline Conditional Use, Shoreline Substantial Development Permit, and Variance to the Shoreline Master Program) shall be considered under the Land Use Code and other land use control ordinances in effect on the date that a fully complete Building Permit application, meeting the requirements of BCC ~~23.10.032~~23.05.090E and F, is filed. Vesting provisions for Shoreline Permits are provided in LUC 20.25E.250.C. If a complete Building Permit application is not filed, the land use permit or approval shall become vested to the provisions of the Land Use Code upon the date of the City's final decision on the land use permit or approval.

Comment [CoB78]: Amendments to this paragraph A.1 are proposed under the LUC cleanup ordinance. Need to make sure both ords are consistent)

Comment [CoB79]: Shoreline permit vesting is now addressed in 20.25E.

Comment [CoB80]: Shoreline permit vesting is now addressed in 20.25E.

Section 52. Section 20.40.500.B.1 of the Bellevue Land Use Code is hereby amended to read as follows:

20.40.500.B Vesting and expiration of vested status of land use permits and approvals.

B. Expiration of Vested Status of Land Use Permit or Approval.

1. The vested status of a land use permit or approval shall expire as provided in subsection B.2 of this section; provided, that:

   a. Variances shall run with the land in perpetuity if recorded with King County Department of Records and Elections within 60 days following the City's final action; and

   b. Critical Areas Land Use Permits shall expire as set forth in LUC 20.30P.150; and

   c. Lots in a subdivision or short subdivision shall be vested against changes in the Land Use Code, except for changes that address a serious threat to the public health or safety as found by the City Council when such change is adopted, for a period of five years following the date of recording of the final plat or final short plat; and

   d. The time period established pursuant to subsection B.2 of this section shall not include the time during which an activity was not actively pursued due to the pendency of litigation which may materially affect rights of the applicant for the permit or approval related to that permit or approval.

   e. Expiration of Shoreline Permits shall occur pursuant to LUC 20.25E.250.C.

Comment [CoB81]: Shoreline permit expiration is now addressed in 20.25E.

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Section 53. Section 20.50.010 of the Bellevue Land Use Code is hereby amended to delete the definition of "Agricultural Lands, Prime".

20.50.010 A definitions.

Agricultural Lands, Prime. Soils for crop production with little or no limitations, or hazards, for crop production. This definition does not apply with the Shoreline Overlay District (refer to LUC 20.25E.280 – "Agricultural Land").

Section 54. Section 20.50.012 of the Bellevue Land Use Code is hereby amended to delete the definition of "Boathouse".

Section 55. Section 20.50.012 of the Bellevue Land Use Code is hereby amended to revise the definition of "Building Height" to read as follows:

20.50.012 B definitions.

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, 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), the Shoreline Overlay District (refer to LUC ~~20.25E.017~~20.25E.280 – "Height"), Single-Family Land Use Districts (refer to the definition of Building Height – Single-Family Land Use Districts contained in this section; see also LUC 20.10.440, Note (16)), and to the F1 Land Use District (refer to LUC 20.25F1.040, Footnote (6)).

Section 56. Section 20.50.014 of the Bellevue Land Use Code is hereby amended to revise the definition of "Community Club" to read as follows:

20.50.014 C definitions.

Community Club. A formally constituted nonprofit association or corporation made up of the residents of a given area. This definition does not apply with the Shoreline Overlay District (refer to LUC 20.25E.280 – "Community Club").

Section 57. Section 20.50.016 of the Bellevue Land Use Code is hereby amended to revise the definition of "Development" to read as follows:

20.50.016 D definitions.

Development. All structures and other modifications of the natural landscape above and below ground or water, on a particular site. For the purposes of Part 20.25E LUC, regulation for the Shoreline Overlay District, a different definition is used. See LUC 20.25E.017.A.

Comment [CoB82]: Defer to new definition of "Agricultural Land" in 20.25E. Note that there are no agricultural lands in the GMA meaning of the term within Bellevue's urban growth boundary.

Comment [CoB83]: 20.25E contains definition of Boathouse. This use does not occur outside of the Shoreline Overlay District, so general definition in 20.50 is not needed.

Comment [CoB84]: Defer to new definition in 20.25E.

Comment [CoB85]: Defer to new definition in 20.25E.

Comment [CoB86]: LUC 20.25E.017.A will be an outdated citation under the new 20.25E. Intent is to revise the definition of "development" here in LUC 20.50.016 in a manner that incorporates shoreline development so that only one definition applies. Amendment is not yet drafted.

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Section 58. Section 20.50.020 of the Bellevue Land Use Code is hereby amended to revise the definition of "Fair Market Value" to read as follows:

20.50.020 F definitions.

Fair Market Value. The expected price at which the development can be sold to a willing buyer. For developments which involve nonstructural operations such as dredging, drilling, dumping, or filling, the fair market value is the expected cost of hiring a contractor to perform the operation or where no such value can be calculated, the total of labor, equipment use, transportation, and other costs incurred for the duration of the permitted project. This definition does not apply with the Shoreline Overlay District (refer to LUC 20.25E.280 – "Fair Market Value").

Comment [CoB87]: Defer to new definition in 20.25E.

Section 59. Section 20.50.020 of the Bellevue Land Use Code is hereby amended to revise the definition of "Fill" to read as follows:

20.50.020 F definitions.

Fill. A solid material which increases ground surface elevation ~~above or below the ordinary high water mark~~. This definition does not apply with the Shoreline Overlay District (refer to LUC 20.25E.280 – "Fill").

Comment [CoB88]: Defer to new definition in 20.25E.

Section 60. Section 20.50.040 of the Bellevue Land Use Code is hereby amended to delete the definition of "Ordinary High Water Mark".

Comment [CoB89]: 20.25E contains definition of OHWM. This term is not used outside of the Shoreline Overlay District, so general definition in 20.50 is not needed.

Section 61. Section 20.50.046 of the Bellevue Land Use Code is hereby amended to delete the definition of "Shoreland, Shoreline".

Comment [CoB90]: 20.25E contains definition of Shorelines. This term is not used outside of the Shoreline Overlay District, so general definition in 20.50 is not needed.

Section 62. Section 20.50.046 of the Bellevue Land Use Code is hereby amended to revise the definition of "Structure" to read as follows:

20.50.046 S definitions.

Structure. A combination of materials constructed and erected permanently on or under the ground or attached to something having a permanent location on or under the ground. Not included are residential fences, retaining walls less than 30 inches in height, rockeries less than 30 inches in height and similar improvements of a minor character. For the purposes of Part 20.25E LUC, regulations for the Shoreline Overlay District, a different definition applies. See LUC ~~20.25E.017.C~~20.25E.280 – "Structure".

Comment [CoB91]: Defer to new definition in 20.25E.

Section 63. If any section, subsection, paragraph, sentence, clause, or phrase of this ordinance is declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining parts of this ordinance.

Section 64. This ordinance shall take effect and be in force five/thirty (5/30) days after legal publication.

PASSED by the City Council this _____ day of _____, 201___, and signed in authentication of its passage this _____ day of _____, 201___.

(SEAL)

DRAFT

_____
Conrad Lee, Mayor

Approved as to form:

_____
Lori M. Riordan, City Attorney

Attest:

_____
Myrna L. Basich, City Clerk

Published _____

DRAFT