Title 20

SHORELINE MASTER PROGRAM

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20.10.001 Overview of State Shoreline Management Act.

The State of Washington Shoreline Management Act (Chapter 90.58 RCW) was passed by the Legislature in 1971 and adopted by the public in a 1972 referendum. The following is an excerpt from the Shoreline Management Act stating Washington State’s policy regarding shorelines. Complete text of RCW 90.58.020:

The legislature finds that the shorelines of the state are among the most valuable and fragile of its natural resources and that there is great concern throughout the state relating to their utilization, protection, restoration, and preservation. In addition it finds that ever increasing pressures of additional uses are being placed on the shorelines necessitating increased coordination in the management and development of the shorelines of the state. The legislature further finds that much of the shorelines of the state and the uplands adjacent thereto are in private ownership; that unrestricted construction on the privately owned or publicly owned shorelines of the state is not in the best public interest; and therefore, coordinated planning is necessary in order to protect the public interest associated with the shorelines of the state while, at the same time, recognizing and protecting private property rights consistent with the public interest. There is, therefore, a clear and urgent demand for a planned, rational, and concerted effort, jointly performed by federal, state, and local governments, to prevent the inherent harm in an uncoordinated and piecemeal development of the state’s shorelines.

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

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

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

In the implementation of this policy the public’s opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the state shall be preserved to the greatest extent feasible consistent with the overall best interest of the state and the people generally. To this end uses shall be preferred which are consistent with control of pollution and prevention of damage to the natural environment, or are unique to or dependent upon use of the state’s shoreline. Alterations of the natural condition of the shorelines of the state, in those limited instances when authorized, shall be given priority for single-family residences and their appurtenant structures, ports, shoreline recreational uses including but not limited to parks, marinas, piers, and other improvements facilitating public access to shorelines of the state, industrial and commercial developments which are particularly dependent on their location on or use of the shorelines of the state and other development that will provide an opportunity for substantial numbers of the people to enjoy the shorelines of the state. Alterations of the natural condition of the shorelines and shorelands of the state shall be recognized by the department. Shorelines and shorelands of the state shall be appropriately classified and these classifications shall be revised when circumstances warrant regardless of whether the change in circumstances occurs through man-made causes or natural causes. Any areas resulting from alterations of the natural condition of the shorelines and shorelands of the state no longer meeting the definition of "shorelines of the state" shall not be subject to the provisions of chapter 90.58 RCW.

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

In 1995, the Legislature amended the Growth Management Act (GMA) and the Shoreline Management Act (SMA) to partially integrate the two statutes. The amendments incorporated the goals and policies of the SMA as the fourteenth goal of the GMA, specifically designating the goals and policies of a local shoreline master program as a segment of the jurisdiction’s comprehensive plan. All other portions of the SMP shall be considered a part of the jurisdiction’s development regulations (RCW 36.70A.480). The diagram below indicates the relationship.
The SMA is administered through a cooperative program between local governments and the Department of Ecology (Ecology), whereby local communities prepare a shoreline master program (SMP) that is adopted under guidelines established by Ecology. The SMP serves to regulate development along shorelines of the state and establish a comprehensive vision of how the shoreline areas will be used and developed over time.

The SMP is a comprehensive use plan for local shoreline areas that includes desired goals and policies consistent with SMA policy (RCW 90.58.020); maps, diagrams and charts or other descriptive material and text; use and development regulations; and administrative procedures for the shoreline permitting process. The Ecology SMP guidelines (Chapter 173-26 WAC) establish general goals and policies, and standards and criteria for regulations. The SMP is based on state guidelines, but tailored to the specific conditions and needs of individual communities. The SMP is also meant to be a comprehensive vision of how the shoreline area will be used and developed over time.

Under the SMA, shoreline jurisdiction generally includes water areas of the state, the lands underlying them, and areas that are 200 feet landward of the ordinary high water mark (OHWM) of said waters that have been designated as “shorelines of statewide significance” or “shorelines of the state.” These designations were established in 1971, and are described in RCW 90.58.030 (Definitions and concepts). Generally, “shorelines of statewide significance” include marine waters below extreme low water, rivers west of the Cascade Range that have a mean annual flow of 1,000 cubic feet per second (cfs) or greater, rivers east of the Cascade Range that have a mean annual flow of 200 cfs or greater, and freshwater lakes with a surface area of 1,000 acres or more. “Shorelines of the state” are generally described as all marine shorelines and shorelines of all other streams or rivers having a mean annual flow of 20 cfs or greater and lakes with a surface area greater than 20 acres. [Ord. 581 § 1 (Exh. A), 2013]

20.10.005 City of Burien shoreline jurisdiction. Although there are a number of water bodies, including streams, lakes and marine shorelines, within the city of Burien, only two are regulated under the SMA. The shoreline jurisdiction within the city limits of the city of Burien includes approximately five miles of marine shoreline along Puget Sound and Lake Burien. There are no “shorelines of the state” associated with rivers or streams in the city. The portions of Puget Sound within the city limits are
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defined as “shorelines of statewide significance” waterward of the line of extreme low tide (RCW 90.58.030(2)(e)(iii), Shorelines of Statewide Significance). The marine shoreline has been given a special status because it is considered a major resource from which all people in the state derive benefit.

Under the SMA, the shoreline area to be regulated under the city’s SMP must include marine waters and shorelands, defined as the upland area within 200 feet of the OHWM, as well as any associated wetlands (RCW 90.58.030, Definitions and concepts). All proposed uses and development occurring within shoreline jurisdiction must conform to Chapter 90.58 RCW, the Shoreline Management Act, and this shoreline master program. [Ord. 581 § 1 (Exh. A), 2013]

20.10.010 Components of Burien shoreline master program. The city of Burien shoreline master program was originally adopted at the time of the city’s incorporation in 1993. Under new shoreline master program guidelines adopted by Ecology in 2004, cities within King County are required to update their local shoreline master programs.

Figure 2: Structure of City of Burien Shoreline Master Program

[Ord. 581 § 1 (Exh. A), 2013]

20.10.015 Amendments and state role. The city of Burien shoreline master program may be amended when new information is obtained, local circumstances change, or shoreline management approaches are improved. The city will follow procedures identified in BMC 19.65.080 (Type 4 Decisions) for Type 4 legislative decisions which allow for public notice and hearing, review and recommendation by the shoreline administrator and the city planning commission with formal approval given by the city council. After local adoption, all amendments to the city of Burien shoreline master program must be approved by the Washington State Department of Ecology before they can be locally in effect.
Appeals of approved amendments to the Burien shoreline master program are under the jurisdiction of the Central Puget Sound Growth Management Hearings Board. Appeals involving a shoreline permit are under the jurisdiction of the State of Washington Shorelines Hearings Board. [Ord. 581 § 1 (Exh. A), 2013]
Chapter 20.20

GENERAL GOALS AND POLICIES

20.20.001 Purpose.
The shoreline master program goals and policies of this chapter reflect the aspirations and concerns that Burien citizens and stakeholders expressed about the city’s shorelines during community and shoreline advisory committee meetings. These goal and policy statements, along with the shoreline land use map, are the foundation for specific guidelines concerning how to regulate and manage activities occurring within the city’s shoreline jurisdiction.

The goals and policies of this element apply to all water bodies and shorelands that meet the definitions set forth in RCW 90.58.030 (Definitions and concepts) unless otherwise specifically stated in the goal or policy. Burien’s shorelines include those lands extending landward for 200 feet in all directions as measured on a horizontal plane from the ordinary high water mark; floodways and contiguous floodplain areas landward 200 feet from such floodways; and all wetlands and river deltas associated with the streams, lakes, and tidal waters. Water bodies in Burien that meet the applicable definitions include Puget Sound waterward to mid channel and Lake Burien. [Ord. 581 § 1 (Exh. A), 2013]

20.20.005 General goals and policies.
Goal ALL: Develop, implement, and maintain a shoreline master program that results in no net loss of shoreline ecological functions and processes, balances public and private interests in the shoreline, and considers other relevant programs.

(1) Policy ALL 1. The shoreline master program shall result in no net loss of shoreline ecological functions and processes.

(2) Policy ALL 2. Regulation and management of Burien’s shorelines should be guided by ongoing and comprehensive science.

(3) Policy ALL 3. The city should be proactive in managing activities within the shoreline jurisdiction.

(4) Policy ALL 4. Implement an adaptive management approach to respond to changes and to ensure continued effectiveness.

(5) Policy ALL 5. The shoreline master program should balance private use and enjoyment of tidelands and adjacent lands with the greater public benefit that shorelines provide, while recognizing the rights of individuals to use and develop private property in a manner consistent with city and other applicable regulations.

(6) Policy ALL 6. When shoreline master program regulations are developed and applied, they should consider site-specific characteristics.

(7) Policy ALL 7. Regulation and management of the city’s shorelines should be coordinated with relevant local, state, federal, and other programs. Such programs include, but are not limited to, those administered by: city of...

(8) Policy ALL 8. Consider an incentive base system to encourage redevelopment projects to comply with accepted shoreline best management practices and standards. [Ord. 581 § 1 (Exh. A), 2013]

20.20.010 Economic development element.
Goal ED: Ensure healthy, orderly economic growth by allowing those economic activities which will be an asset to the local economy and which result in the least possible adverse effect on the quality of the shoreline and surrounding environment.

(1) Policy ED 1. Protect the beauty and function of the natural environment to maintain a community where people want to live and work.

(2) Policy ED 2. Promote actions ensuring a clean and attractive community. [Ord. 581 § 1 (Exh. A), 2013]

20.20.015 Shoreline public access element.
Goal PA: Increase and enhance public access to shoreline areas, consistent with the natural shoreline character, private property rights, and public safety.

(1) Policy PA 1. Developments, uses, and activities on or near the shoreline should not impair or detract from public access to the water.

(2) Policy PA 2. Publicly owned shorelines should be limited to water-dependent or public recreational uses, otherwise such shorelines should remain protected open space.

(3) Policy PA 3. Public access to the city’s shorelines should be designed to provide for public safety and to minimize potential impacts to private property and individual privacy rights.

(4) Policy PA 4. Public access should be provided as close as possible to the water’s edge with no net loss of shoreline ecological function and without adversely impacting private property rights and personal privacy rights. Public access should be designed for handicapped and physically impaired persons.

(5) Policy PA 5. The city should seek opportunities to develop new public access areas in locations dispersed throughout the shoreline.

(6) Policy PA 6. The vacation or sale of street ends, other public rights-of-way and tax title properties that abut shoreline areas shall be prohibited except as provided for in RCW 35.79.035 (Streets – Vacation). The city should protect these areas for public access and public viewpoints.

(7) Policy PA 7. Waterfront street ends should be recognized as:

(a) An important community resource that provides visual and physical access to the Puget Sound;

(b) Special use parks which serve the community, yet fit and support the character of the surrounding neighborhoods;

(c) A destination resource, where limited facilities and enhancements are provided.

(8) Policy PA 8. The city should manage and develop waterfront street ends by:

(a) Supporting their use by residents citywide, yet ensuring that the street ends and their supporting facilities are developed at a level or capacity which is appropriate to the neighborhood character, promotes safety, protects private property rights and individual privacy, and is consistent with city risk management practices;

(b) Ensuring that public parking is available and limited to a level appropriate to the capacity of the public access site, and is harmonious with the surrounding neighborhood.
(c) Ensuring that the waterfront street ends are preserved and maintained with limited enhancements, such as places to sit or rest which fit in with the natural environment of the area;

(d) Installing signs that indicate the public’s right of access, the rules of use, and penalties for misuse;

(e) Installing limited trail improvements and enhancements to allow access to the water;

(f) Protecting adjacent private property including but not limited to protecting individual privacy rights and ensuring public safety; and

(g) Developing a street ends plan that promotes waterfront access and public safety.

(9) Policy PA 9. Waterfront street ends or other shoreline access should be planned in conjunction with the affected neighborhoods. However, the broader community should be notified during the public notification process.

(10) Policy PA 10. The city should disseminate information that identifies all locations for public access to the shorelines.

(11) Policy PA 11. The public’s visual access to the city’s shorelines from streets, paths, trails and designated viewing areas should be conserved and enhanced.

(12) Policy PA 12. Public views from the shoreline upland areas should be enhanced and conserved, while recognizing that enhancement of views should not be necessarily construed to mean removal of vegetation.

(13) Policy PA 13. Promote a coordinated system of connected pathways, sidewalks, passageways between buildings, beach walks, and shoreline access points that increase the amount and diversity of opportunities for walking and chances for personal discoveries. [Ord. 581 § 1 (Exh. A), 2013]

20.20.020 Recreation element.

Goal REC: Develop a well-maintained, interconnected system of multi-functional parks, recreation facilities, and open spaces that: is attractive, safe, and accessible for all geographic regions and population segments within the city; supports the community’s well-established neighborhoods and small town atmosphere; protects private property rights and results in no net loss of shoreline ecological functions and processes.

(1) Policy REC 1. Recreation facilities in the shoreline area should be restricted to those dependent upon a shoreline location, or those benefiting from a shoreline or in-water location that are in the public interest.

(2) Policy REC 2. Recreational developments should be located, designed and operated to be compatible with, and minimize adverse impacts on, environmental quality and valuable natural features as well as on adjacent surrounding land and water uses. Favorable consideration should be given to proposals which complement their environment and surrounding land and water uses, and result in no net loss of ecological functions.

(3) Policy REC 3. Public information and education programs should be developed and implemented to help ensure that the public is aware of park regulations and private property rights, and to prevent the abuse of the shoreline and its natural ecological system.

(4) Policy REC 4. The city shall plan to provide, in coordination with other agencies, a range of park facilities that serve a variety of recreational and open space purposes. Such planning should use the following designations and guidelines to provide such diversity:

(a) Mini or Pocket Park.

(i) Use Description. Passive recreation or specialized facilities that may serve a concentrated or limited population such as children or senior citizens.

(ii) Service Area. Approximately one-third of a mile radius.

(iii) Size. No minimum to approximately one acre.
The Burien Municipal Code is current through Ordinance 718, passed November 4, 2019.

(iv) Desirable Characteristics. These parks should be in close proximity to dwellings and/or other centers of activity. Mini parks should be designed for intensive use and should be accessible and visible from surrounding area.

(v) Examples. In Burien these types of parks are primarily private parks consisting of beach access for adjacent subdivisions, view appreciation areas (bench or platform), picnic tables and trees in a small area, children’s play area, game tables, or planted areas.

(vi) Other Considerations. Since maintenance costs of these smaller parks are high relative to their service areas, few jurisdictions are able to meet the desired quantity. This type of park is most suitable to provide unique local needs, such as shore access, or as a consideration in the design of new development. The city should seek a variety of means for financing and maintaining mini parks, including considering opportunities for community stewardship and grant or private funding.

(b) Regional Parks.

(i) Use Description. Areas of natural or ornamental quality for outdoor recreation such as picnicking, boating, beach activities, swimming, and trails. Such parks may contain special amenities, facilities or features that attract people from throughout the surrounding region. Such facilities require extensive on-site parking and good access by automobile.

(ii) Service Area. Approximately one-half to one hour driving time.

(iii) Size. Approximately 90 acres.

(iv) Desirable Characteristics. Contiguous to or encompassing significant natural resources.

(v) Examples. Seahurst Park.

(c) Special Use Park.

(i) Use Description. Specialized or single-purpose recreational activities such as walking and bicycle trails, street ends, or areas that preserve buildings, sites or features of historical significance.

(ii) Service Area. Variable.

(iii) Size. Depends on nature of facility.

(iv) Desirable Characteristics. Compatibility with adjacent facilities and uses.

(v) Examples. Examples within Burien shoreline consist primarily of designated viewpoints and historical markers, and waterfront street ends (including those at SW 170th Pl., SW 163rd Pl., and at the intersection of Maplewild Ave. SW and SW 172nd St.).

(d) Conservancy Park.

(i) Use Description. Conservancy parks are formally designated public resource areas. In such parks the primary management objectives are protection and management of historical, cultural and natural resources, including fish and wildlife habitat areas, and may include appropriate passive recreational activities.

(ii) Service Area. None.

(iii) Size. As appropriate for the resource.

(iv) Desirable Characteristics. As appropriate for the resource.
(5) Policy REC 5. Access for motorized vessels should be discouraged at Seahurst Park. Access for nonmotorized craft should be considered if access for such craft can be provided in an environmentally sensitive manner.

(6) Policy REC 6. Where appropriate, recreational developments should make adequate provisions for:

(a) Vehicular and pedestrian access, both on site and off site;

(b) Proper water supply and sewage waste disposal methods;

(c) Security and fire protection;

(d) The prevention of overflow and trespass onto adjacent properties, including but not limited to landscaping, fencing and posting of property; and

(e) Buffering of such development from adjacent private property or natural area.

(7) Policy REC 7. Trails and pathways on steep shoreline bluffs should be located, designed and maintained to protect bank stability without the need for shoreline armoring.

(8) Policy REC 8. Mooring buoys, in general, are beneficial in enabling increased recreational opportunities. However, the city should ensure that their possible negative effects on physical and visual environments are avoided.

(9) Policy REC 9. Artificial marine life habitats should be encouraged in order to provide increased aquatic life for recreation. Such habitats should be constructed in areas of low habitat diversity and in consultation with the Washington Department of Fish and Wildlife.

(10) Policy REC 10. The linkage of shoreline parks, recreation areas and public access points with linear systems, such as hiking paths, bicycle paths, easements and/or scenic drives, should be encouraged.


20.20.025 Circulation element.
Goal CI: Provide safe, reasonable, and adequate circulation systems in the shoreline area that will have the least possible adverse effect on unique or fragile shoreline features and existing ecological systems, while contributing to the functional and visual enhancement of the shoreline.

(1) Policy CI 1. Minimize impacts to the topography and other natural characteristics of the shoreline by appropriately locating transportation routes. New roadways for vehicle circulation should be located outside of or minimized within the shoreline area.

(2) Policy CI 2. Cross Puget Sound bridges should be prohibited within the Burien shoreline jurisdiction.

(3) Policy CI 3. Provide and/or enhance physical and visual public access along shoreline public roads and trails when appropriate given topography, views, natural features, and surrounding land uses.

(4) Policy CI 4. Public transit systems should provide service to designated public parks within the city.

(5) Policy CI 5. Wherever practicable, safe pedestrian and bicycle movement on and off roadways in the shoreline area should be encouraged as a means of personal transportation and recreation.
(6) Policy CI 6. Parking in shoreline areas should directly serve a permitted shoreline use. Parking developed for public access points should be limited to the number of spaces consistent with the capacity of those public access points and is harmonious with the surrounding neighborhood.

(7) Policy CI 7. Parking facilities should be located and designed to minimize adverse impacts, including those related to: storm water runoff; water quality; visual qualities; public access; and vegetation and habitat maintenance.

(8) Policy CI 8. Parking should be planned to achieve optimum use. Where possible, parking should serve more than one use.

(9) Policy CI 9. Utilities are necessary to serve shoreline uses and shall be properly installed so as to protect the shoreline and water from contamination and degradation.

(10) Policy CI 10. Utility facilities and rights-of-way should be located outside of the shoreline area to the maximum extent possible. When utility lines require a shoreline location, they should be placed underground.

(11) Policy CI 11. Utility facilities should be designed and located in a manner which preserves the natural landscape and shoreline ecology and minimizes conflicts with present and planned land uses.

(12) Policy CI 12. Parking for non-water-dependent uses should be located as far away as feasible from shorelines.

[Ord. 581 § 1 (Exh. A), 2013]

20.20.030 Land use element.

Goal USE: Provide functional and attractive shoreline uses that are appropriate in scale, configuration, and location, and are sensitive to and do not degrade habitat and ecological systems and other shoreline resources.

(1) Policy USE 1. The shoreline master program shall govern the development of all designated shorelines of the city. Lands adjacent to these areas shall be managed in a manner consistent with the shoreline master program.

(2) Policy USE 2. The city will strive to ensure that basic community values are reflected in the city’s land use and decision making processes, while recognizing the rights of individuals to use and develop private property in a manner consistent with city regulations.

(3) Policy USE 3. Ensure the appropriate location, design, and operation of all activities, development, and redevelopment in the shoreline.

(4) Policy USE 4. Incentives should be available to encourage the removal and/or reduction of nonconformances.

(5) Policy USE 5. If feasible, septic systems should be connected to the sanitary sewer system where connections are available.

(6) Policy USE 6. Any existing single-family lot that was legally subdivided or legally created prior to enactment of subdivision statutes prior to incorporation or annexation shall be considered a legally conforming lot for building purposes, providing the size of the lot was not reduced by more than 50 percent through acquisition for public purposes, and on such lots new homes may be built and existing houses may be expanded and remodeled; provided, that applicable setbacks, lot coverage, critical area restrictions, design review requirements (if any), height limits and other applicable regulations in the zoning code are met.

(7) Policy USE 7. When determining buildable lot size for residential development, the area of a lot covered by water (including but not limited to lakes or the Puget Sound) shall not be included in the calculation.

(8) Policy USE 8. The planned densities for single-family development should encourage a lower development potential in areas with development constraints.

(9) Policy USE 9. The low density residential neighborhood designation will provide for low density residential development. Development within this designation includes existing neighborhoods that are zoned for four units net per acre or less.
(a) Allowed Uses and Description. The low density residential neighborhood designation allows single-family residential uses and their accessory uses at a density of four units per net acre or less, due to the constraints posed by critical areas. This policy may be implemented by more than one zoning category, based on the ability of the land and public facilities to support development. Development standards, for such items as impervious surfaces, streetscapes, sidewalks and storm water drainage, may vary within each zoning category based on the existing character of the area.

(b) Designation Criteria. Properties designated low density residential neighborhood should reflect the following criteria:

(i) The area is already generally characterized by single-family residential development at four units per acre or less;
(ii) Relative to other residential areas within the city, the area is characterized by lower intensity development as shown on Map LU-2 of the comprehensive plan;
(iii) The land is designated as a potential landslide hazard area, steep slope area, or wetland on the city of Burien’s critical areas map;
(iv) The existing and planned public facilities for the area cannot adequately support a higher density; and
(v) The area is subject to existing impacts from high levels of airport-related noise.

(10) Policy USE 10. Clustering of housing units may be allowed on lots designated for residential development that contain steep slopes and are located adjacent to an urban environment.

(11) Policy USE 11. As slope increases, development intensity, site coverage, and vegetation removal should decrease and thereby minimize the potential for drainage problems, soil erosion, siltation and landslides. Slopes of 40 percent or greater should be retained in a natural state, free of structures and other land surface modifications.

(a) Single-family homes and detached single-family garages on existing legally established lots are exempted from this restriction; provided, that:

(i) The application of this restriction would deny any appropriate use of this property;
(ii) There is no other appropriate economic use with less impact;
(iii) The proposed development does not pose a threat to public health, safety or welfare on or off the development site;
(iv) Any alterations permitted to the critical area shall be the minimum necessary to allow for economic use of the property;
(v) An analysis of soils, footings and foundations, and drainage be prepared by qualified professionals, certifying that the proposed activity is safe and will not adversely affect the steep slope hazard area or buffer;
(vi) There are adequate plans, as determined by the city, for storm water and vegetation management;
(vii) It is the applicant’s responsibility to show that these provisions are met through an appropriate mechanism such as, or similar to, the SEPA process.

(b) Short plats or other divisions of an existing legal lot shall only be approved if all resulting lots are buildable under this restriction.

(c) It is the applicant’s responsibility to show that these provisions are met through an appropriate mechanism such as, or similar to, the SEPA process.
(12) Policy USE 12. The city should prohibit development on areas prone to erosion and landslide hazards. Further, the city should restrict development on potentially unstable land to ensure public safety and conformity with existing natural constraints, unless the risks and adverse impacts associated with such development can be appropriately mitigated.

(13) Policy USE 13. Land uses on steep slopes should be designed to prevent property damage and environmental degradation, and to enhance open space and wildlife habitat.

(14) Policy USE 14. Where there is a high probability of erosion, grading should be kept to a minimum and disturbed vegetation should be restored as soon as feasible. In all cases, the city shall require appropriate site design and construction measures to control erosion and sedimentation.

(15) Policy USE 15. The city should have development standards that promote the siting of new structures such that they will not require shoreline stabilization and protective measures in the future.

(16) Policy USE 16. Shoreline stabilization and protective measures should be limited in number and extent. The use of “soft” stabilization and protective measures, such as vegetation, is preferred over the use of “hard” measures, such as concrete bulkheads.

(17) Policy USE 17. Encourage joint-use activities in proposed shoreline developments.

(18) Policy USE 18. Wakes generated by vessels operating in the shoreline area should be minimized in order to reduce adverse impacts on the shoreline environment.


(20) Policy USE 20. Development should be designed to minimize impacts to both views of the shoreline and views from the water. Building orientation, height and the creation of view corridors shall be considered in site and structure design. [Ord. 581 § 1 (Exh. A), 2013]

20.20.035 Conservation element.
Goal CON: Preserve and enhance shoreline natural resources in order to protect public health, safety, and welfare; maintain the integrity of the natural environment; and preserve the quality of life in Burien.

(1) Policy CON 1. Protect critical areas and shoreline ecological processes and functions through regulatory and nonregulatory means. Protection may include acquisition of key properties, regulation of development, and incentives to encourage ecologically sound design.

(2) Policy CON 2. The city shall ensure that uses and development in shoreline areas are compatible with the shoreline environments designated in this shoreline master program. Adherence to these designations will ensure that sensitive habitat, ecological systems, and other shoreline resources are protected.

(3) Policy CON 3. The city of Burien’s critical areas map shall be used as a reference for identifying the city’s critical areas. Other unmapped critical areas do exist throughout the city. Any site containing critical areas within shoreline jurisdiction is subject to the special development regulations and conditions found in this shoreline master program.

(4) Policy CON 4. Development should be directed toward areas where their adverse impacts on critical areas can be minimized.

(5) Policy CON 5. New development or redevelopment should avoid or mitigate additional loss of shoreline ecological functions. Developments should be encouraged to improve ecological functions and restore riparian buffers.

(6) Policy CON 6. The city shall maintain a system of development regulations and a permitting system to prevent the destruction of critical areas. Development regulations should at a minimum address wetland protection, aquifer recharge areas important for potable water, fish and wildlife habitat conservation areas, frequently flooded areas, and geologically hazardous areas.
(7) Policy CON 7. The city shall require permit review approval before any activity or construction is allowed to occur in, adjacent to, or impact a critical area.

(8) Policy CON 8. The city shall develop land use regulations to buffer critical areas from the impacts of adjacent land uses.

(9) Policy CON 9. The city requires the use of best available science for protecting critical areas within the community pursuant to the Growth Management Act, RCW 36.70A.172(1) (Critical Areas).

(10) Policy CON 10. The city should provide education and technical assistance on low-impact development techniques.

(11) Policy CON 11. Provide public outreach and education about shoreline ecological functions and processes, and engage the public in stewardship and enhancement activities.

(12) Policy CON 12. Encourage minimizing the amount of impervious surfaces in new development through the use of appropriate low-impact development techniques and removing paved areas or using retrofit options in existing developments, where applicable, to minimize runoff.

(13) Policy CON 13. The city shall consider the impacts of new development on water quality as part of its environmental review process and require where appropriate any mitigation measures.

(14) Policy CON 14. Educate the public on water quality issues and impacts of storm water flow.

(15) Policy CON 15. Educate individuals and households about different ways to reduce pollution.

(16) Policy CON 16. If no feasible alternative exists, a limited amount of development may occur on wetlands and floodplains. In these instances, a broad range of site planning techniques should be explored to minimize impacts on these critical areas.

(17) Policy CON 17. All wetland functions should be considered in evaluating wetland mitigation proposals, including fish and wildlife habitat, flood storage, water quality, recreation, educational opportunities, and aesthetics.

(18) Policy CON 18. The city will protect wetlands by maximizing infiltration opportunities and promoting the conservation of forest cover and native vegetation.

(19) Policy CON 19. Mitigation for any adverse impacts on wetlands shall be provided in the same basin within which the impacts occur.

(20) Policy CON 20. The city shall consider the impacts of new development on the quality of land, wildlife and vegetative resources as a part of its environmental review process and require any appropriate mitigating measures. Such mitigation may involve the retention of significant habitats.

(21) Policy CON 21. The city shall encourage an increase in tree canopies through the addition and the preservation of existing vegetation and use of landscaping as an integral part of development plans.

(22) Policy CON 22. The city should require development proposals to include nonstructural measures to stabilize soils, hillsides, bluffs and ravine sidewalls and to promote wildlife habitat by removing invasive vegetation and retaining or restoring native vegetation.

(23) Policy CON 23. The city should consider developing policies that balance the removal of vegetation to preserve and enhance views with the need to retain vegetation to promote slope stability and open space.


(25) Policy CON 25. The city should maintain and enhance existing species and habitat diversity including fish and wildlife habitat that supports the greatest diversity of native species.
(26) Policy CON 26. All development activities shall be located, designed, constructed and managed to avoid disturbance of adverse impacts to fish and wildlife resources, including spawning, nesting, rearing and habitat areas and migratory routes.

(27) Policy CON 27. Fish and wildlife habitat should be protected, conserved and enhanced, including:

(a) Habitats for species which have been identified as endangered, threatened, or sensitive by the state or federal government;

(b) Priority species and habitats listed in the adopted King County comprehensive plan, October 2008, as amended;

(c) Shellfish areas;

(d) Kelp and eelgrass beds;

(e) Herring and smelt spawning areas; and

(f) Wildlife habitat networks designated by the city.

(28) Policy CON 28. Fish and wildlife should be maintained through conservation and enhancement of terrestrial, air and aquatic habitats.

(29) Policy CON 29. The city should ensure that habitat networks throughout the city are designated and mapped. The network should be of sufficient width to protect habitat and dispersal zones for small mammals, amphibians, reptiles, and birds. These networks should be protected through incentives, regulation and other appropriate mechanisms. Site planning should be coordinated during development review to ensure that connections are made or maintained amongst segments of the network.

(30) Policy CON 30. Native plant communities and wildlife habitats shall be integrated with other land uses where possible. Development shall protect wildlife habitat through site design and landscaping. Landscaping, screening, or vegetated buffers required during development review shall retain, salvage and/or reestablish native vegetation whenever feasible. Development within or adjacent to wildlife habitat networks shall incorporate design techniques that protect and enhance wildlife habitat values.

(31) Policy CON 31. The city shall promote voluntary wildlife enhancement projects which buffer and expand existing wildlife habitat, through educational and incentive programs for individuals and businesses.

(32) Policy CON 32. The city shall seek to retain as open space those areas that provide essential habitat for any rare, threatened or endangered plant or wildlife species.

(33) Policy CON 33. The city should maintain, protect and enhance greenbelts, riparian corridors and wildlife habitat corridors so that the extent and intensity of the built environment is balanced by these natural features.

(34) Policy CON 34. The city shall work with property owners to encourage nonpurchase options such as conservation easements, current use easements, and development covenants to preserve open space and greenbelts within the city’s neighborhoods. The city should also accept donations of properties where public access is anticipated or planned. [Ord. 581 § 1 (Exh. A), 2013]

20.20.040 Historic, cultural, scientific, and educational element.
Goal HCSE: Identify, protect, preserve, and restore buildings, sites, and areas in the shoreline having historic, cultural, scientific, or educational value for educational purposes, scientific endeavors, and enjoyment by the general public.

(1) Policy HCSE 1. The city should protect buildings, sites, and areas in the shoreline having historic, cultural, scientific, or educational value through designation, acquisition by purchase or gift, and incentives for preservation.
(2) Policy HCSE 2. Ensure that properties having historic, cultural, scientific, or educational value are protected from undue adverse impacts associated with public or private uses and activities.

(3) Policy HCSE 3. The city should consider developing and implementing measures which preserve trees of historical significance.

(4) Policy HCSE 4. Encourage educational projects and programs, including signage, that foster a greater appreciation of the importance of buildings, sites, and areas in the shoreline having historic, cultural, scientific, or educational value, as well as of shoreline management and environmental conservation. [Ord. 581 § 1 (Exh. A), 2013]

20.20.045 Flood prevention and minimization element.
Goal FLD: Prevent and minimize flood damage to public and private property by locating development away from flood-prone areas and by protecting and restoring shoreline ecological functions and processes.

(1) Policy FLD 1. Discourage new development in shoreline areas that would be harmed by flood conditions, or which would create or intensify flood hazard impacts on other properties.

(2) Policy FLD 2. The capacity of natural drainage courses shall not be diminished by development or other activities.

(3) Policy FLD 3. New structural flood hazard reduction measures shall only be allowed where demonstrated to be necessary, and when nonstructural methods are infeasible and mitigation is accomplished. New structural flood reduction measures shall be located landward of associated wetlands and buffer areas, except where no alternative exists as documented in a geotechnical analysis.

(4) Policy FLD 4. Monitor sea level rise and accordingly adjust development standards and building setbacks to minimize flooding potential. [Ord. 581 § 1 (Exh. A), 2013]

20.20.050 Restoration element.
Goal REST: Restore areas which are ecologically degraded to the greatest extent feasible while maintaining appropriate use of the shoreline.

(1) Policy REST 1. Promote restoration actions that are doable, practical, and effective.

(2) Policy REST 2. The city shall be a good steward of public lands and should integrate restoration and/or enhancement of fish and wildlife habitats into capital improvement projects whenever feasible.

(3) Policy REST 3. Establish incentives that provide opportunities for new development or redevelopment activities in the shoreline to restore impaired ecological functions and processes. Incentives might include, but are not limited to: flexible development standards (e.g., setbacks, height limits, lot coverage), reduced or waiver of permit fees, and tax relief.

(4) Policy REST 4. The city shall promote voluntary shoreline enhancement projects through educational and incentive programs for individuals and organizations.

(5) Policy REST 5. The city should implement the restoration plan associated with this shoreline master program.

(6) Policy REST 6. Improve natural stream and shoreline conditions to an environmental quality level that supports the return and continuation of salmon runs and eliminates fish blockages.

(7) Policy REST 7. Stream banks and stream channels should be maintained or restored to their natural condition wherever such conditions or opportunities exist.

(8) Policy REST 8. Increase availability of large woody debris and opportunities for recruitment in the nearshore zone.

(9) Policy REST 9. Restore degraded shoreline areas with native species.
(10) Policy REST 10. The city should investigate partnerships with local environmental groups, city, state or county agencies, or tribes to implement projects and conduct follow-up monitoring and reporting. [Ord. 581 § 1 (Exh. A), 2013]
Chapter 20.25

SHORELINE ENVIRONMENT DESIGNATIONS

Sections:
20.25.001  Shorelines of statewide significance.
20.25.005  Shoreline environment designation map.
20.25.010  Aquatic.
20.25.015  Urban conservancy.
20.25.020  Shoreline residential.
20.25.025  Shoreline environment designation map.

20.25.001 Shorelines of statewide significance.
The State of Washington Shoreline Management Act (SMA) designates certain shoreline areas as shorelines of statewide significance. These shorelines are considered important major resources from which all people in the state derive benefit. The SMA states that local shoreline master programs must give preference to uses which favor public and long-term interests of the people of the state. In the city of Burien, only the marine shorelines below the extreme low tide are designated shorelines of statewide significance. Lake Burien is a “shoreline of the state” and is not a “shoreline of statewide significance.” The following policies apply to Burien’s marine shorelines:

(1) Recognize and protect the statewide interest over local interest.

(2) Preserve the natural character of the shoreline.

(3) Result in long-term over short-term benefit.

(4) Protect the resources and ecology of the shoreline.

(5) Increase public access to publicly owned areas of the shoreline.

(6) Increase recreational opportunities for the public on the shoreline. [Ord. 581 § 1 (Exh. A), 2013]

20.25.005 Shoreline environment designation map.
The shoreline designation map, Figure 3, establishes the general locations of each of the shoreline designations within the city of Burien. This map generally illustrates the extent of shoreline jurisdiction, but is only a depiction that will need to be reviewed and determined on a case-by-case basis based on the relevant definitions in the SMA.

In the event that there are any undesignated shorelines of the state, they will be automatically designated “urban conservancy” under this SMP. If any part of a proposed development or activity is located within shoreline designation, the entire proposal must be reviewed for consistency with the city of Burien’s shoreline master program. [Ord. 581 § 1 (Exh. A), 2013]

20.25.010 Aquatic.
(1) Purpose. The purpose of the “aquatic” shoreline environment designation is to protect, restore, and manage the unique characteristics and resources of shoreline areas waterward of the ordinary high water mark, including both Lake Burien and Puget Sound. This is accomplished by managing water-dependent uses and modifications to:

(a) Preserve/restore ecological functions of the nearshore area;

(b) Preserve critical saltwater and freshwater habitat;

(c) Provide public access and recreation opportunities;

(d) Assure compatibility between shoreland and aquatic uses.

(2) Criteria for Designation. An “aquatic” shoreline environment designation is assigned to lands waterward of the ordinary high water mark for both saltwater and freshwater bodies of water, including any submerged or intertidal...
areas. For the city of Burien, this designation applies to Lake Burien and all marine (Puget Sound) areas waterward of the ordinary high water mark out to the center of the channel within the city limits. The aquatic shoreline environment designation includes the water surface together with the underlying lands and the water column.

(3) Management Policies.

(a) Shoreline uses and modifications should be compatible with the adjoining shoreline environment and designed and managed to prevent degradation of water quality and alteration of natural hydrographic conditions.

(b) New over-water structures should be allowed only for water-dependent uses, public access, or ecological restoration if it can be clearly shown that the cumulative environmental impacts of such structures will not cause significant adverse impacts to protected species.

(c) The size of new over-water structures should be limited to the minimum necessary to support the structure’s intended use and should support multiple uses.

(d) All developments and uses on navigable waters or their beds should be located and designed to minimize interference with surface navigation and moorage.

(e) All developments and uses should consider impacts to public views and access and allow for the safe, unobstructed passage of fish and wildlife, particularly those species dependent on migration.

(f) Restoration opportunities associated with project impacts should be encouraged in the aquatic environment.

(g) Uses that adversely impact the ecological functions of critical saltwater and freshwater habitats should not be allowed except where necessary to achieve the objectives of RCW 90.58.020 (Shoreline Management Act), and then only when their impacts are mitigated according to the sequence described in WAC 173-26-201(2)(e) (Environmental Impact Mitigation) necessary to achieve no net loss of ecological functions.

(h) Shoreline uses and modifications should be designed and managed to prevent degradation of water quality and alteration of natural hydrographic conditions. [Ord. 581 § 1 (Exh. A), 2013]

20.25.015 Urban conservancy.

(1) Purpose. The purpose of the “urban conservancy” shoreline environment designation is to protect and restore ecological functions of open space, floodplains, and other sensitive lands where they exist in urban and developed settings, while allowing a variety of compatible uses. This designation focuses on providing public access for the enjoyment of marine and lake shorelines by allowing the development of public recreational facilities.

(2) Criteria for Designation. An “urban conservancy” environment designation is assigned to areas within shoreline jurisdiction that are suitable for public access, water enjoyment recreational uses and active recreation developments. These are areas that are developed at a low density including residences and outdoor recreation. The urban conservancy environment is bounded on the north by the northern end of Seahurst Park and on the south by the southern end of Eagle Landing Park.

(3) Management Policies.

(a) Uses that preserve or restore the natural character of the shoreline area or promote preservation of open space and critical areas should be the primary allowed uses.

(b) Public access and public recreation objectives should be implemented if feasible and wherever any significant ecological impacts can be mitigated.

(c) Water-oriented uses should be given priority over non-water-oriented uses with water-dependent uses given the highest priority.

(d) New development should be designed and located to preclude the need for shoreline armoring, vegetation removal, flood control, and other shoreline modifications.
(e) Standards should be established for shoreline stabilization measures, vegetation conservation, water quality, and shoreline modifications. These standards shall ensure that new development does not result in a net loss of shoreline ecological functions or further degrade other shoreline values. [Ord. 581 § 1 (Exh. A), 2013]

20.25.020 Shoreline residential.

(1) Purpose. The purpose of the “shoreline residential” environment designation is to accommodate residential development and appurtenant structures as well provide appropriate public access.

(2) Criteria for Designation. A “shoreline residential” environment designation is assigned to shoreline areas that are predominantly single-family or multifamily residential development or are planned and platted for residential development. These are areas that are developed at a moderate density or intensity including residences and outdoor recreation. Low intensity institutional uses may be allowed if their impacts on the shoreline environment are mitigated. The shoreline residential environment includes all shorelands from the northern city limits to the north end of Seahurst Park, from the southern end of Eagle Landing Park to the southern city limits, and all of Lake Burien.

(3) Management Policies.

(a) Residential and accessory uses, recreation facilities and public access shall be the preferred uses.

(b) Multifamily and multi-lot residential and recreational developments should provide public access and joint use for community recreational facilities.

(c) Water-oriented recreational uses should be allowed.

(d) Any new development or redevelopment should utilize low-impact development techniques where feasible.

(e) Standards for building setbacks, lot coverage limitations, riparian buffers, shoreline stabilization, vegetation conservation, critical area protection, and water quality shall be set to assure no net loss of shoreline ecological functions.

(f) Public access and public recreation objectives should be implemented if feasible and wherever any significant ecological impacts can be mitigated. [Ord. 581 § 1 (Exh. A), 2013]
20.25.025 Shoreline environment designation map.

Figure 3: Shoreline Environment Designation Map
[Ord. 581 § 1 (Exh. A), 2013]
Chapter 20.30

SHORELINE USES AND MODIFICATIONS POLICIES AND REGULATIONS*

Sections:
20.30.001 Shoreline permit matrix.
20.30.005 Applicability.
20.30.007 Existing development.
20.30.010 Impact mitigation.
20.30.015 Land use.
20.30.020 Archaeological and historic resources.
20.30.025 Critical areas.
20.30.030 Flood hazard reduction.
20.30.035 Public access.
20.30.040 Shoreline vegetation.
20.30.045 Water quality, storm water and nonpoint pollution.
20.30.050 Dimensional standards for shoreline development.
20.30.055 Shoreline buffers.
20.30.060 Select shoreline uses and modifications.
20.30.065 Aquaculture.
20.30.070 Bulkheads and other shoreline stabilization structures.
20.30.075 Over-water structures – Including docks, piers and floats.
20.30.080 Habitat restoration and enhancement.
20.30.085 Recreational development.
20.30.090 Recreational mooring buoys.
20.30.095 Residential development.
20.30.100 Transportation facilities and parking.
20.30.105 Utilities.

*The appendices referenced in this chapter are available at the city of Burien.

![Figure 4: Shoreline Permit Matrix](image)

| Type of Shoreline Permit Required for New Shoreline Uses and Modifications* | Shoreline Environment Designations |
|---|---|---|
| (Please see Chapter 20.25 BMC for shoreline designation descriptions and BMC 20.25.025, Figure 3, for a map showing the locations of each designation) | Shoreline Residential | Aquatic | Urban Conservancy |
| Aquaculture | X | CU | X |
| Boat Mooring Buoy | N/A | P² | N/A |
| Boat Ramp | X | X | X |
| Boat House (covered moorage) | X | X | X |
| Shoreline Stabilization Structures | | | |
| • Breakwater and Other In-Water Structures | N/A | X² | N/A |
| • Bulkheads | SDP¹ | CU | SDP³ |
| • Upland Structures (retaining walls and bluff walls)** | SDP | N/A | SDP³ |

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The Burien Municipal Code is current through Ordinance 718, passed November 4, 2019.
### Type of Shoreline Permit Required for New Shoreline Uses and Modifications*

**Shoreline Environment Designations**

(Please see Chapter 20.25 BMC for shoreline designation descriptions and BMC 20.25.025, Figure 3, for a map showing the locations of each designation)

<table>
<thead>
<tr>
<th>Shoreline Residential</th>
<th>Aquatic</th>
<th>Urban Conservancy</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Wireless Service Facility</td>
<td>CU</td>
<td>N/A</td>
</tr>
<tr>
<td>Community Beach</td>
<td>CU</td>
<td>CU</td>
</tr>
<tr>
<td>Community Residential Facility</td>
<td>CU</td>
<td>X</td>
</tr>
<tr>
<td>Docks, Piers and Floats</td>
<td>CU</td>
<td>CU</td>
</tr>
<tr>
<td>Docks, Piers and Floats – Residential</td>
<td>SDP</td>
<td>SDP</td>
</tr>
<tr>
<td>Dredging</td>
<td>N/A</td>
<td>X</td>
</tr>
<tr>
<td>Fill</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Floating Home</td>
<td>N/A</td>
<td>X</td>
</tr>
<tr>
<td>Flood Hazard Reduction</td>
<td>SDP</td>
<td>CU</td>
</tr>
<tr>
<td>Forest Practices*</td>
<td>CU</td>
<td>N/A</td>
</tr>
<tr>
<td>Grading</td>
<td>CU</td>
<td>N/A</td>
</tr>
<tr>
<td>Government Facility</td>
<td>CU</td>
<td>X</td>
</tr>
<tr>
<td>Habitat Enhancement or Restoration</td>
<td>SDP</td>
<td>SDP</td>
</tr>
<tr>
<td>Industrial and Ports</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Mining</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Office</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Public Park and Recreation Facilities</td>
<td>SDP</td>
<td>SDP</td>
</tr>
<tr>
<td>Recreation</td>
<td>SDP</td>
<td>SDP</td>
</tr>
<tr>
<td>Residential – Single-Family**</td>
<td>SDP</td>
<td>X</td>
</tr>
<tr>
<td>Residential – Multifamily</td>
<td>SDP</td>
<td>X</td>
</tr>
<tr>
<td>Commercial Use and Development</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Schools</td>
<td>CU</td>
<td>N/A</td>
</tr>
<tr>
<td>Transportation Facilities and Parking</td>
<td>SDP</td>
<td>X</td>
</tr>
<tr>
<td>Utilities</td>
<td>SDP</td>
<td>CU</td>
</tr>
</tbody>
</table>

**P**

Permitted – Allowed when meeting the requirements for the given use. A shoreline substantial development permit (SDP) or shoreline exemption may be needed. See WAC 173-27-040(2) for a complete list of development exempt from a substantial development permit.

**SDP**

Shoreline substantial development permit (city decision) – See Chapter 20.35 BMC for specific procedures.
<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
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</tr>
</thead>
<tbody>
<tr>
<td><strong>CU</strong></td>
<td>Shoreline conditional use permit (requires a Department of Ecology decision if locally approved) – See Chapter 20.35 BMC for specific procedures. A SDP may also be required.</td>
<td></td>
</tr>
<tr>
<td><strong>X</strong></td>
<td>Prohibited.</td>
<td></td>
</tr>
<tr>
<td><strong>N/A</strong></td>
<td>Not applicable.</td>
<td></td>
</tr>
<tr>
<td><strong>1</strong></td>
<td>Prohibited in critical saltwater habitats and Lake Burien.</td>
<td></td>
</tr>
<tr>
<td><strong>2</strong></td>
<td>Allowed if necessary to construct a permitted use.</td>
<td></td>
</tr>
<tr>
<td><strong>3</strong></td>
<td>Private mooring buoys are exempt from the shoreline substantial development permit process but shall comply with BMC 20.30.090 (Recreational mooring buoys) which prohibits mooring buoys on Lake Burien.</td>
<td></td>
</tr>
<tr>
<td><strong>4</strong></td>
<td>Construction of the normal protective bulkhead common to single-family residences must comply with BMC 20.30.070 (Bulkheads and other shoreline stabilization structures) but is not required to obtain a substantial development permit.</td>
<td></td>
</tr>
<tr>
<td><strong>5</strong></td>
<td>Construction of a dock, including a community dock, designed for pleasure craft only, for the private noncommercial use of the owner, lessee, or contract purchaser of single-family and multiple-family residences, shall not require a substantial development permit if below the thresholds set forth in WAC 173-27-040(2)(h), but shall comply with all other applicable sections of this master program.</td>
<td></td>
</tr>
<tr>
<td><strong>6</strong></td>
<td>Allowed only for protection or restoration of ecological functions.</td>
<td></td>
</tr>
<tr>
<td><strong>7</strong></td>
<td>Bed and breakfast establishments are allowed in shoreline residential environment (BMC 20.30.095). Limited commercial recreation activities in Seahurst Park (BMC 20.30.085).</td>
<td></td>
</tr>
<tr>
<td><strong>8</strong></td>
<td>A conditional use permit is required for construction within the shoreline buffer. A variance is required for any development waterward of the existing home within the buffer; however, a variance is not required if the common-line setback option of BMC 20.30.095(2)(c) is utilized.</td>
<td></td>
</tr>
<tr>
<td><strong>9</strong></td>
<td>A forest practice that only involves timber cutting is not a development under the Act and does not require a shoreline substantial development permit or a shoreline exemption. A forest practice that includes activities other than timber cutting may be a development under the Act and may require a substantial development permit, as required by WAC 222-50-020.</td>
<td></td>
</tr>
</tbody>
</table>

* Shoreline uses not listed in the matrix above are subject to a shoreline conditional use permit.  

** Exempt from shoreline substantial development permit requirements if this is for construction of only one detached unit built by an owner, lessee, or contract purchaser who will be occupying the residence, in accordance with WAC 173-27-040(2)(g) (single-family residential exemption), as amended.

20.30.005 **Applicability.**  
The following provisions shall apply to all uses and activities within the city of Burien’s shoreline jurisdiction unless otherwise noted. These regulations are based on general goals and policies without regard to shoreline designation based upon elements of the shoreline detailed in Chapter 20.20 BMC consistent with RCW 90.58.100(2) (SMP.
required contents) and implement the principles as established in WAC 173-26-186 (Governing principles of the guidelines) and WAC 173-26-221 (General master program provisions).

(1) Land use.

(2) Archaeological and historic resources.

(3) Critical areas.

(4) Flood hazard reduction.

(5) Public access.

(6) Shoreline vegetation conservation.

(7) Water quality, storm water, and nonpoint pollution. [Ord. 581 § 1 (Exh. A), 2013]

20.30.007 Existing development.
(1) Existing Single-Family Homes, Appurtenances, and Other Existing Structures. Single-family homes, appurtenances and other structures that were legally established by October 17, 2013, are considered to be conforming to the SMP. All such structures may be reconstructed within the existing footprint subject only to those building standards that prevail throughout the city of Burien for the associated zoning designation. Any addition, expansion or reconstruction beyond the existing footprint of the single-family home, appurtenance or other structure must comply with the SMP. Any single-family home to which a variance is issued shall be considered a conforming structure.

The ability to reconstruct a structure within its existing footprint does not imply an ability to create, enlarge or expand structures for flood hazard reduction (see BMC 20.30.030), or bulkheads and other shoreline stabilization structures (see BMC 20.30.070).

Replacement of any portion of any structure shall comply with the SMP requirements for materials that come in contact with the waters of Puget Sound and Lake Burien pursuant to BMC 20.30.045(2) (Water quality, storm water and nonpoint pollution).

(2) Other Existing Uses. Uses that were legally established by October 17, 2013, are considered to be conforming to the SMP. Any enlargement or expansion of the use must comply with the SMP. [Ord. 581 § 1 (Exh. A), 2013]

20.30.010 Impact mitigation.
(1) Policy.

(a) Adverse impacts to the ecological functions and values shall be mitigated to result in no net loss of shoreline ecological functions and process.

(b) Mitigation for adverse impacts of new development projects should first consider enhancement of degraded conditions to offset the impacts of the new development near shoreline resources.

(For additional policy guidance, please refer to BMC 20.20.005, 20.20.035, 20.25.010(3), 20.25.015(3) and 20.25.020(3).)

(2) Regulations.

(a) All shoreline development and uses shall occur in a manner that results in no net loss of shoreline ecological functions, through the location and design of all allowed development and uses. In cases where impacts to shoreline ecological functions from allowed development and uses are unavoidable, those impacts shall be mitigated according to the provisions of this section.

(b) To the extent Washington’s State Environmental Policy Act of 1971 (SEPA), Chapter 43.21C RCW (State environmental policy), is applicable, the analysis of environmental impacts from proposed shoreline uses or
developments shall be conducted consistent with the rules implementing SEPA (BMC Title 14 (Environmental Protection) and WAC Chapter 197-11 (SEPA rules)).

(c) Where required, mitigation measures shall be applied in the following sequence of steps listed in order of priority:

(i) Avoiding the impact altogether by not taking a certain action or parts of an action;

(ii) Minimizing impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology or by taking affirmative steps to avoid or reduce impacts;

(iii) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;

(iv) Reducing or eliminating the impact over time by preservation maintenance;

(v) Compensating for the impact by replacing, enhancing, or providing substitute resources or environments;

(vi) Monitoring the impact and the compensation projects and taking the appropriate corrective measures.

(d) In determining appropriate mitigation measures applicable to shoreline development, lower priority measures shall be applied only where higher priority measures are determined to be infeasible or inapplicable.

(e) Required mitigation shall not be in excess of that necessary to assure that proposed uses or development will result in no net loss of shoreline ecological functions.

(f) When requiring compensatory measures or appropriate corrective measures pursuant to the priority of mitigation sequencing above, preferential consideration shall be given to measures that replace the impacted functions directly and in the immediate vicinity of the impact. However, alternative compensatory mitigation within the watershed that addresses limiting factors or identified critical needs for shoreline resource conservation based on watershed or comprehensive resource management plans applicable to the area of impact may be authorized. Compensatory mitigation of impacts from new development projects should first consider enhancement of degraded conditions to offset the impacts of the new development near shoreline resources. If this is not feasible the second priority should focus mitigation on areas that are in need of restoration. Authorization of compensatory mitigation measures may require appropriate safeguards, terms or conditions as necessary to ensure no net loss of ecological functions.

(g) Mitigation for new development in the shoreline buffer is required if:

(i) Native vegetation is cleared; and/or

(ii) New impervious surface is created; and/or

(iii) New partially functioning area is created.

A procedure for evaluating impacts and determining requirements for mitigation is described in BMC 20.30.055 (Shoreline buffers).

Alternatively, the applicant may choose to secure the services of a qualified professional to develop a report to demonstrate that the no-net-loss standard will be met. The shoreline administrator may choose to develop standards for guiding the development of this report.

Please also refer to BMC 20.30.050, Dimensional standards for shoreline development, and BMC 20.30.055, Shoreline buffers, for specific requirements. [Ord. 581 § 1 (Exh. A), 2013]

20.30.015 Land use.
The following provisions apply to all development and uses regardless of whether a shoreline substantial development permit is required.
Chapter 20.30 SHORELINE USES AND MODIFICATIONS POLICIES AND REGULATIONS*

(1) Policies.

(a) Preference for shoreline permitted uses shall first be given to water-dependent uses, then to water-related and water enjoyment uses.

(b) The city should be proactive in enforcing shoreline regulations and provide sufficient resources to ensure enforcement occurs.

(For additional policy guidance, please refer to BMC 20.20.030, 20.25.010(3), 20.25.015(3) and 20.25.020(3).)

(2) Regulations.

(a) The application of master program policies and regulations to all uses and related modifications shall assure no net loss of ecological functions necessary to sustain shoreline natural resources.

(b) Water-dependent uses shall only be allowed over water if the over-water location is necessary for the operation of the water-dependent use. Uses which are not water dependent shall not be permitted over water unless specifically stated otherwise in the regulations for the applicable shoreline environment. [Ord. 581 § 1 (Exh. A), 2013]

**20.30.020 Archaeological and historic resources.**

According to the state shoreline management guidelines, if archaeological or historic resources have been identified in shoreline jurisdiction, the local government is required to collect information about these resources and contact the State Historic Preservation Office and local affected Indian tribes. The county and the state maintain inventories of both archaeological and historic resources. These sites and artifacts are protected by several state provisions:

Chapter 27.53 RCW – Archaeological Sites and Resources. This state law makes it illegal to knowingly disturb an archaeological site on public or private lands without a state-issued permit.

Chapter 27.44 RCW – Indian Graves and Records. This state law makes it illegal to knowingly disturb Native American cairns, petroglyphs and graves on public or private lands without a state-issued permit. Selling any Native American Indian artifacts or remains removed from a cairn or grave is also illegal.

Chapter 25-48 WAC – Archaeological Excavation and Removal Permit. This provision establishes procedures for application for and issuance of state permits for excavation and/or removal of archaeological sites and resources.

(1) Policy. The city should ensure conservation of significant archeological and historic amenities in the shoreline areas and include on the inventory of registered sites maintained by the Washington State Office of Archaeology and Historic Preservation, and tribally identified sites.

(For additional policies refer to BMC 20.20.040.)

(2) Regulations.

(a) Archaeological sites located in shoreline jurisdiction are subject to state and federal regulations as well as to the city of Burien shoreline master program.

(b) When an application for work in the shoreline area documented to contain archaeological resources is filed the application shall include an evaluation by a professional archaeologist coordinated with affected tribes.

(c) All shoreline permits shall contain the requirement to stop work immediately and notify the city, affected tribes and the Washington State Office of Archaeology and Historic Preservation if an artifact is discovered. The property owner will be required to provide for a site inspection and evaluation by a professional archaeologist for review by the relevant tribes and agencies prior to proceeding with the development or activity.

(d) Archaeological excavations may be permitted subject to the provisions of this shoreline program. [Ord. 581 § 1 (Exh. A), 2013]
20.30.025 Critical areas.
Critical areas include the following areas and ecosystems: wetlands, critical aquifer recharge areas, fish and wildlife habitat conservation areas, frequently flooded areas, and geologically hazardous areas. Critical saltwater and critical freshwater habitats are also types of critical areas within shoreline jurisdiction.

(1) Policies.

(a) In assessing the potential for net loss of ecological functions or processes, project specific and cumulative impacts should be considered.

(b) Development standards for density, frontage improvements, setbacks, impervious surface, shoreline stabilization, vegetation conservation, buffers, critical areas, and water quality should protect existing shoreline ecological functions and processes. During permit review, the shoreline administrator should consider the expected impacts associated with proposed shoreline development when assessing compliance with this policy.

(For additional policy guidance, please refer to BMC 20.20.035, 20.25.010(3), 20.25.015(3) and 20.25.020(3).)

(2) Regulations.

(a) Chapter 19.40 BMC, Critical Areas (city of Burien Ordinance 623, adopted June 15, 2015) has been reviewed for consistency with Chapter 90.58 RCW and Chapter 173-26 WAC and shall apply to the shoreline jurisdiction with the following exceptions:

(i) The exemptions and exceptions contained in BMC 19.40.070(3) and (4) apply only to the critical areas provisions and are not exemptions from substantial development permits. The exceptions contained in BMC 19.40.070(5) do not apply and are not considered part of the SMP.

(ii) BMC 19.40.290(2)(B)(iii) does not apply and is not considered part of the SMP. For a landslide hazard area buffer of less than 25 feet, in addition to the items required in BMC 19.40.120, a shoreline variance shall be required.

(iii) BMC 19.40.410(2)(B) does not apply and is not considered part of the SMP. Filling is prohibited in the aquatic environment per BMC 20.30.001, Figure 4.

(iv) BMC 19.40.300(3)(C) (Category III and IV wetland exemption) does not apply and is not considered part of the SMP.

(v) BMC 19.40.350(2)(F)(ii) is amended as follows:

Standard buffer width averaging may be allowed by the Director (in accordance with an approved critical area review) if:

ii. Minimum buffer width is the greater of seventy-five percent (75%) of the standard buffer width or twenty-five (25) feet;

(vi) The standard wetland buffers identified in the table in BMC 19.40.310(2)(B) are amended as follows:

<table>
<thead>
<tr>
<th>Wetland Category</th>
<th>Buffer width if wetland scores 3 – 5 habitat points</th>
<th>Buffer width if wetland scores 6 – 7 habitat points</th>
<th>Buffer width if wetland scores 8 – 9 habitat points</th>
</tr>
</thead>
<tbody>
<tr>
<td>Category I</td>
<td>75 ft</td>
<td>110 ft</td>
<td>225 ft</td>
</tr>
<tr>
<td>Category II</td>
<td>75 ft</td>
<td>110 ft</td>
<td>225 ft</td>
</tr>
<tr>
<td>Category III</td>
<td>60 ft</td>
<td>110 ft</td>
<td>225 ft</td>
</tr>
<tr>
<td>Category IV</td>
<td>50 ft</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
(b) Development proposals shall adhere to the applicable submittal requirements (a critical area report specific to the critical area) as specified in the critical areas ordinance regulations adopted as part of this SMP.

(c) Development shall not intrude into, over, or within 10 feet from critical saltwater habitats (e.g., eelgrass) except when an alternative alignment or location is not feasible and the development would result in no net loss of critical saltwater habitat.

(d) When this master program requires mitigation, the mitigation sequence described in BMC 20.30.010 (Impact mitigation) shall be followed. [Ord. 706 § 1 (Exh. A), 2019; Ord. 640 § 1 (Exh. A), 2016; Ord. 581 § 1 (Exh. A), 2013]

20.30.030 Flood hazard reduction.
The following provisions apply to actions taken to reduce flood damage or hazard, as well as to uses, development and shoreline modifications that may increase flood hazards. Flood hazard reduction measures may consist of nonstructural measures such as setbacks, land use controls, wetland restoration, biotechnical measures, and storm water management. Flood hazard reduction measures may also include structural measures such as floodwalls, dikes and elevation of structures consistent with the National Flood Insurance Program.

(1) Policies.

(a) All new shoreline development and uses shall be located and designed to prevent the need for shoreline stabilization and structural flood hazard reduction measures for the life of the development.

(b) Flood protection structures may be allowed in shoreline jurisdiction if a shoreline substantial development permit is obtained. Structures that are near and generally parallel to the ordinary high water mark shall be considered a bulkhead and require a conditional use permit consistent with bulkhead regulations. (See BMC 20.30.001, Figure 4.)

(c) New and expanded public flood protection measures may be permitted subject to city of Burien review and approval of a critical area study and the approval of a federal biological assessment by the federal agency responsible for reviewing actions related to a federally listed species.

(d) New structural flood protection measures should only be allowed when necessary to protect existing development or to facilitate restoration projects.

(e) When emergency repair of flood protection structures is necessary, permits for the work, including mitigation, should be obtained upon abatement of the emergency or the structure must be removed.

(For additional policies refer to BMC 20.20.045.)

(2) Regulations.

(a) Nonstructural flood protection measures shall be used instead of structural solutions unless the project proponent demonstrates that a nonstructural solution is not feasible and there would be no net loss of shoreline ecological functions.

(b) All flood protection measures, including repair and maintenance, shall conform to standards set forth in approved floodplain management plans, when available.

(c) Flood protection shall not have adverse impacts on the property of others.

(d) Flood control methods must be consistent with Chapter 15.55 BMC, Flood Damage Prevention, and Chapter 19.40 BMC, Critical Areas.

(e) Subdivision proposals shall be consistent with the need to minimize flood damage by conforming to the adopted base flood elevation regulations.
(f) All new shoreline development and uses, including the replacement of a destroyed home, shall be located and designed to prevent the need for new or expanded structural flood hazard reduction measures for the life of the development. Exceptions may be made for the limited instances where flood hazard reduction is necessary to protect allowed uses where no alternative locations are available and no net loss of ecological functions will result.

(g) New structural flood hazard reduction measures in shoreline jurisdiction are allowed only when it can be demonstrated by a scientific and engineering analysis that they are necessary to protect existing development or facilitate restoration projects, that nonstructural measures are not feasible, that impacts to ecological functions and priority species and habitats can be successfully mitigated so as to assure no net loss, and that appropriate vegetation conservation actions are undertaken consistent with BMC 20.30.040.

(h) Flood protection structures may be allowed in shoreline jurisdiction if a shoreline substantial development permit is obtained. In addition, flood protection structures at or near, and parallel to, the ordinary high water mark require a conditional use permit. [Ord. 581 § 1 (Exh. A), 2013]

20.30.035 Public access.

Public access can be either physical access or visual access. Physical access is the ability of the general public to reach, touch, and enjoy the water’s edge, and/or to travel on the waters of the state. Visual access is to view the water and the shoreline from adjacent locations or access with improvements that provide only a view of the shoreline or water, but do not allow physical access to the shoreline.

(1) Policies.

(a) Public access to shoreline areas should be designed to protect private property and public health and safety.

(b) Public access should be provided as close as possible to the water’s edge with no net loss of shoreline ecological function that cannot be mitigated.

(c) Private views of the shoreline, although considered during the review process, are not expressly protected. Property owners concerned with the protection of views from private property are encouraged to obtain view easements, purchase intervening property or seek other similar private means of minimizing view obstruction.

(For additional policies refer to BMC 20.20.015, 20.25.010(3), 20.25.015(3) and 20.25.020(3).)

(2) Regulations.

(a) Public access provided by shoreline street ends, rights-of-way, and other public lands shall provide, maintain, enhance and preserve visual access to the water and shoreline in accordance with RCW 35.79.035 (Limitations on vacations of streets abutting bodies of water – Procedure).

(b) Visual access to outstanding scenic areas shall be provided with the provision of roadway design features that allow for visual access opportunities and are sensitive to adjacent land uses and neighborhood characteristics.

(c) If a public road is located within shoreline jurisdiction, any unused right-of-way shall be dedicated as public access unless vacated as set forth in RCW 35.79.035 (Limitations on vacations of streets abutting bodies of water – Procedure).

(d) Subject to constitutional limitations, public access shall be required for all new shoreline development and uses, except for water-dependent uses, individual single-family residences, and subdivisions of less than five parcels.

(e) Public access to shoreline areas shall not be required, where it is demonstrated to be infeasible because of adverse ecological impacts that cannot be mitigated, incompatible uses, safety, security, or constitutional and other legal limitations that may be applicable.
The Burien Municipal Code is current through Ordinance 718, passed November 4, 2019.

(f) The city shall utilize alternate methods of providing public access when appropriate and feasible, such as off-site improvements, viewing platforms, separation of uses through site planning and design, and restricting hours of public access.

(g) Public access improvements shall not result in a net loss of shoreline ecological functions.

(h) Required public access sites shall be fully developed and available for public use at the time of occupancy or use of the development or activity.

(i) Public access easements and permit conditions shall be recorded on the deed where applicable or on the face of a plat or short plat as a condition running in perpetuity with the land and shall occur at the time of permit approval.

(j) Future actions by the applicant or other parties shall not diminish the usefulness or value of the public access site. [Ord. 581 § 1 (Exh. A), 2013]

20.30.040 Shoreline vegetation.
Vegetation along the shoreline plays a number of important roles including providing bank stability, habitat and wildlife corridors, shade and cover, wood and organic debris recruitment. By slowing erosion and retaining sediments, riparian vegetation reduces pollutants including nitrogen, phosphorus, hydrocarbons, PCBs, metals, and pesticides. Shoreline vegetation also prevents excessive turbidity by slowing down and filtering surface water runoff and associated sediments. This section should be used in conjunction with BMC 20.30.050 (Dimensional standards for shoreline development).

WAC 173-26-221(5)(b) (SMP Guidelines, General master program provisions, vegetation conservation) sets forth the principles on how vegetation contributes to the overall health and sustainability of our shorelines. The applicability of these principles to Burien’s SMP is supported by the appendices to this SMP (Shoreline Inventory, Shoreline Analysis and Characterization, Shoreline Cumulative Impacts Analysis and Supplemental Informational Documents).

(1) Policies.

(a) Native plant communities within shoreline jurisdiction including, but not limited to, wetlands, lakes, streams and bluffs should be protected and maintained to minimize damage to the ecology and environment of the shoreline area.

(b) Restoration and mitigation of shorelines degraded due to natural or manmade causes should, wherever feasible, use bioengineering techniques to arrest the processes of erosion and sedimentation, to improve water quality and to provide for properly functioning conditions.

(c) Vegetation within the city shoreline areas should be enhanced over time to provide a greater level of ecological functions, human safety, and property protection. This should be accomplished by managing alterations within shoreline jurisdiction and implementing vegetation management standards that will maintain or enhance the ecological functions. Emphasis on vegetation maintenance and enhancement should be focused in degraded areas and areas that are most beneficial to shoreline ecological functions.

(For additional policy guidance, please see BMC 20.20.030 and 20.20.035.)

(2) Regulations.

(a) Alterations to vegetation within shoreline jurisdiction (except for the maintenance of existing or approved conditions) are not allowed without review and approval by the city. When allowed, alterations to the vegetation shall result in no net loss of shoreline ecological value or function.

(b) Alterations within the shoreline vegetation conservation buffer (except for the maintenance of existing or approved conditions) shall only be allowed through review and approval by the city of a vegetation management plan as set forth in subsection (2)(d) of this section.
(c) If mitigation of impacts is necessary, it should take the form of vegetation enhancement and result in improvements to ecological functions. The vegetation management plan shall be prepared by a qualified professional and shall be consistent with the provisions of this chapter and Chapter 19.40 BMC (Critical Areas). Vegetation enhancement plans shall include:

(i) Revegetation of degraded buffer areas within zone 1 of the shoreline buffer (see BMC 20.30.050, Figure 5, Dimensional Standards for Shoreline Development) (or top of shore armoring if applicable) or wetland edge with dense native vegetation meeting the standards of subsections (2)(d)(iii) and (iv) of this section. The administrator may require wider widths or other improvements to mitigate greater impacts.

(ii) The above revegetation area may be modified using area averaging when existing structures encroach into zone 1 of the shoreline buffer, when access through the area to waterfront facilities is needed, or when water-dependent activities need to take place in the area.

(d) Within a shoreline vegetation conservation buffer as set forth in BMC 20.30.050 (Dimensional standards for shoreline development), alterations shall comply with the following:

(i) The applicant shall provide a vegetation management plan prepared by a qualified professional; and

(ii) The total area of vegetation removal or alteration shall be replaced at a size equal or greater to the area being altered; and

(iii) Where new or altered vegetation planting areas are proposed within the shoreline vegetation conservation buffer, either as a part of a project proposal or to replace any existing vegetation that is removed, the new vegetation shall be provided at a density to mimic natural conditions rather than a landscaped yard; and

(iv) When new vegetation planting areas are proposed within the shoreline vegetation conservation buffer, the new or altered vegetation planting areas shall consist of mix of native trees, shrubs and ground cover; and

(v) Vegetation management plans should place emphasis on surface water filtration and infiltration, and providing plantings as close to the water’s edge or edge of bulkhead as feasible within zone 1 of the shoreline buffer; and

(vi) New lawn areas are prohibited in zone 1 of the shoreline buffer due to their limited functional benefits and need for chemical and fertilizer application; and

(vii) Appropriate limitations shall be included on the use of fertilizer, herbicides and pesticides as needed to protect lake and marine water quality.

(e) Prior to issuance of a building permit, if applicable, the applicant shall submit a vegetation management plan pursuant to subsection (2)(h) of this section. The plans shall state what erosion control measures will be implemented during and after construction resulting in long-term shoreline stabilization.

(f) All clearing, grading and vegetation removal shall be the minimum necessary except for the removal of noxious and invasive vegetation. Hand equipment should be used when feasible.

(g) Consistent with existing regulations, only noxious weeds shall be removed from critical areas or their buffer without approval of the shoreline administrator. Replacement of nonnative vegetation may be allowed through approval of a vegetation management plan as prescribed in subsection (2)(h) of this section.

(h) The director shall establish standards for vegetation management plans. At a minimum, vegetation management plans shall comply with the following:

(i) Describe the area to be disturbed and the proposed vegetation to be altered; and
(ii) Outline specific actions or methods that will be used to minimize impacts to the ecological functions and values; and

(iii) Indicate how existing shoreline vegetation will be preserved and protected; and

(iv) Describe measures that will be used or enacted that will ensure any alteration and required vegetation will be maintained for a minimum of two years and preferably for the duration of the use or development; and

(v) Delineate any applicable critical area and/or buffer; and

(vi) The plan shall document how the proposed alteration will result in equal or better ecological function and value. [Ord. 581 § 1 (Exh. A), 2013]

20.30.045 Water quality, storm water and nonpoint pollution.

Storm water picks up oil, grease, metals, yard and garden chemicals, dirt, bacteria, nutrients, and other pollutants from paved areas, and carries them to Puget Sound and Lake Burien without treatment. The higher rate of runoff from more impervious areas also results in decreased water quality by flushing more sediment into the water.

(1) Policies.

(a) The city of Burien should protect against adverse impacts to the public health, to the land and its vegetation and wildlife, and to the waters of the state and their aquatic life, through implementation of the following principles:

   (i) Prevent impacts to water quality and storm water quantity that would result in a net loss of shoreline ecological functions, or a significant impact to aesthetic qualities, or recreational opportunities.

   (ii) Ensure mutual consistency between shoreline management provisions and other regulations that address water quality and storm water quantity, including public health, storm water, and water discharge standards. The regulations that are most protective of ecological functions shall apply, except as otherwise provided in RCW 36.70A.480 (Shorelines of the state), regarding the level of protection for critical areas within shorelines of the state.

(For additional policy guidance, please see BMC 20.20.035.)

(2) Regulations.

(a) Construction materials that come in continuous, direct contact with surface waters shall not be treated or coated with toxic materials. Untreated wood, precast concrete, plastic or nontoxic alternatives shall be used unless the project proponent demonstrates and the city of Burien building official determines that there is no feasible alternative to toxic treatments that will provide the structural characteristics necessary for the project. Wood products treated with creosote or pentachlorophenol are prohibited on all new structures or repair projects that come in direct contact with water or could leach into surface or ground water.

(b) Low-impact development methods shall be incorporated into any development or redevelopment in shoreline jurisdiction when feasible. [Ord. 581 § 1 (Exh. A), 2013]

20.30.050 Dimensional standards for shoreline development.

The following buffers are based on the City of Burien Shoreline Inventory (Appendix 1), City of Burien Supplement to the Shoreline Inventory (Appendix 1.A), the City of Burien Shoreline Analysis and Characterization (Appendix 2), the City of Burien Supplement to the Shoreline Analysis and Characterization (Appendix 2.A), the City of Burien Shoreline Cumulative Impacts Analysis (Appendix 4), the City of Burien Supplement to the Cumulative Impacts Analysis (Appendix 4.A), and Supplemental Informational Documents (Appendix 5) reports contained in this shoreline master program. The shoreline buffer, common-line building setbacks and vegetation conservation buffers are calculated from the ordinary high water mark. Buffer setbacks are measured landward from the outer edge of a buffer. For measurement methods, refer to Chapter 19.17 BMC (Miscellaneous Use, Development and Performance Standards).
A significant majority of Burien’s marine shorelines are developed with single-family residential structures and appurtenances. Specifically on reaches 1, 3 and 4, on the Puget Sound, there are many structures in close proximity to the ordinary high water mark and due to this existing development pattern there are inherent conflicts in applying greater buffer widths while also retaining the ability of residents to continue to use and maintain those areas that have been historically used in conjunction with those properties. Figure 6, Shoreline Planning Areas, illustrates the locations of altered and highly altered shoreline areas.

The shoreline buffer and vegetation conservation buffers shown in Figure 5 and in this section:

(1) Do not apply to legally established structures existing on October 17, 2013.

(2) Apply to new development, new structures, and additions/expansion of legally existing structures.

**Figure 5: Dimensional Standards for Shoreline Development**

<table>
<thead>
<tr>
<th></th>
<th>UC</th>
<th>SR-LB</th>
<th>SR-AL</th>
<th>SR-HA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Shoreline Buffer Zone 1(1)</td>
<td>50 ft</td>
<td>30 ft</td>
<td>30 ft</td>
<td>20 ft</td>
</tr>
<tr>
<td>Shoreline Buffer Zone 2(1)</td>
<td>100 ft</td>
<td>15 ft</td>
<td>15 ft</td>
<td>15 ft</td>
</tr>
<tr>
<td>Vegetation Conservation(2)</td>
<td>200 ft</td>
<td>150 ft</td>
<td>150 ft</td>
<td>150 ft</td>
</tr>
<tr>
<td>Lot Size(3)</td>
<td>RS-12,000</td>
<td>RS-12,000</td>
<td>RS-12,000</td>
<td>RS-12,000</td>
</tr>
<tr>
<td>Building Coverage(4)</td>
<td>30%</td>
<td>35%</td>
<td>35%</td>
<td>35%</td>
</tr>
</tbody>
</table>

UC: Urban Conservancy

SR-LB: Shoreline Residential – Lake Burien

SR-AL: Shoreline Residential – Marine Altered

SR-HA: Shoreline Residential – Marine Highly Altered

(Please refer to Figure 6 for a map detailing the locations of the areas listed above.)

(1) Consistent with Chapter 19.40 BMC, Critical Areas, and BMC 20.30.055(1). For single-family residential development in the marine altered and highly altered planning areas, development may occur in the buffers prescribed in this section pursuant to BMC 20.30.095, through the conditional use or variance permit process. Additions or expansions of primary single-family residences are not allowed in zone 1 or 2 around Lake Burien.

(2) See BMC 20.30.040, Shoreline vegetation, for specific requirements.

(3) See Chapter 19.15 BMC and BMC 19.17.170 for minimum lot area requirements.

(4) See Chapter 19.15 BMC.
Figure 6: Shoreline Planning Areas

[Ord. 640 § 1 (Exh. A), 2016; Ord. 581 § 1 (Exh. A), 2013]
20.30.055 Shoreline buffers.

(1) Policy. While buffer widths based on science are necessary to protect ecological functions, it presents challenges in existing heavily developed areas such as along some parts of Burien. In such areas, an alternative strategy is established using smaller buffers that are based on existing development pattern, in combination with mitigation requirements for new development that provide enhancement of the smaller buffer and other degraded features to address impacts of the new development outside the small buffer areas when part of a vegetation conservation plan.

(2) Regulations.

(a) A shoreline buffer is established for the marine shoreline and for Lake Burien. This buffer consists of two zones: zone 1 and zone 2.

   (i) Zone 1 is adjacent to the ordinary high water mark (OHWM). New development that would introduce adverse impacts is strictly limited within zone 1 and, if allowed, must be mitigated to assure no net loss.

   (ii) Zone 2 is adjacent to the landward side of zone 1. New development in zone 2 that would introduce adverse impacts, if allowed, must be mitigated to assure no net loss, preferentially by restoration activities in zone 1.

   (iii) The size of these zones varies as shown in BMC 20.30.050, Figure 5. Distances are measured on a horizontal plane in a direction that is perpendicular to the line of the OHWM.

(b) No Net Loss Compliance. All development within the buffer as set forth in BMC 20.30.050 and this section shall demonstrate that unavoidable adverse impacts are mitigated to achieve no net loss.

   (i) Achieving no net loss can be achieved by:

      (A) Avoiding an adverse impact; or

      (B) Relocating the adverse impact to be outside the buffer; or

      (C) By mitigating the impact.

   (ii) Demonstrating that the development will comply with the no net loss standard can be accomplished by one of the following methods:

      (A) An applicant submitting an ecological impacts report prepared by a qualified professional; or

      (B) Completion of a project worksheet as set forth in subsection (2)(e) of this section. The shoreline administrator shall verify the accuracy of the completed worksheet in conjunction with the appropriate shoreline approval process.

   (iii) The shoreline administrator may prepare standards and guidelines on what shall be included in an ecological impacts report to satisfactorily demonstrate compliance with the standards.

(c) Development Standards for Zone 1.

   (i) New development in zone 1 shall be primarily for the following:

      (A) Maintenance of existing structures; or

      (B) Restoration or remodeling of existing structures within the existing footprint; or

      (C) Voluntary restoration activities; or

      (D) Providing required mitigation for adverse impacts in zone 2.

   (ii) An access path from zone 2 to the line of the OHWM may be allowed as an exception.


The Burien Municipal Code is current through Ordinance 718, passed November 4, 2019.

(A) An access path shall be the minimum size and designed to serve this purpose.

(B) Additional flexibility may be allowed when it is necessary to meet the needs of users with limited mobility.

(C) When feasible, access paths shall be constructed using pervious materials.

(d) Development Standards for Zone 2.

(i) New development in zone 2 shall be primarily for the following:

(A) Maintenance of existing structures; or

(B) The restoration or remodeling of existing structures within the existing footprint; or

(C) Voluntary restoration activities.

(ii) New developments that result in adverse impacts may occur in buffer zone 2, if those impacts are mitigated and the total development activity achieves no net loss. New detached accessory structures are not allowed in buffer zone 2.

(iii) New single-family homes and expansion of existing single-family homes may be allowed in buffer zone 2 through the application of the common setback provisions of BMC 20.30.095(2)(c). New and expansions of existing single-family homes around Lake Burien are not allowed in buffer zone 2.

(e) Optional Method – Demonstrating Successful Mitigation of Unavoidable Adverse Impacts. An optional prescriptive worksheet (Figure 7) may be used in lieu of an ecological impact report. This method provides a means to quantify a measurement of certain adverse impacts and the benefits of certain improvements.

(i) Adverse Impacts. The scope of adverse impacts that can be evaluated are limited to the following:

(A) Creation or expansion of impervious surfaces; and

(B) Removal of existing native vegetation.

(ii) Ecological Benefits. Improvements to ecological functions are as follows:

(A) Removal or reduction of impervious surface; and

(B) Introduction or expansion of native vegetation.

(iii) The optional worksheet review process may only be applied in the evaluation of single-family residential development proposals.

(f) Over-water structures are allowed within the buffer as provided herein. Structures and development such as viewing platforms, boardwalks, benches, and trails are allowed when associated with public access. Pursuant to BMC 20.30.095(2)(g) (Accessory Structures and Appurtenances) fences less than six feet high, stairs and trams may be allowed within the buffer.

(g) Whenever the shoreline administrator determines that monitoring has established a significant adverse deviation from predicted impacts, or that mitigation or maintenance measures have failed, the applicant or the property owner shall be required to institute corrective action(s), which shall also be subject to further monitoring as provided in this section.

(h) The shoreline administrator may require a performance bond(s) or other security in an amount sufficient to guarantee that all required mitigation measures will be completed in a manner that complies with conditions of approval and to guarantee satisfactory workmanship and materials for a period not to exceed five years. The shoreline administrator shall establish the conditions of the bond or other security according to the nature of the
proposed mitigation, maintenance or monitoring and the likelihood and expense of correcting mitigation or maintenance failures.

(i) All costs associated with the mitigation/monitoring and planning, including city expenses, shall be the responsibility of the applicant.

![Figure 7: Impact Assessment Worksheet](image)

<table>
<thead>
<tr>
<th>Measure of adverse impacts in zone 2</th>
<th>Calculation</th>
<th>Result</th>
</tr>
</thead>
<tbody>
<tr>
<td>1) Total square feet of new impervious surface</td>
<td>_____ X 4 points = _____</td>
<td></td>
</tr>
<tr>
<td>2) Total square feet of cleared native vegetation</td>
<td>_____ X 2 points = _____</td>
<td></td>
</tr>
<tr>
<td>3) Total measurement (add 1 and 2)</td>
<td>_____</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Benefit of adding native vegetation in zone 1</th>
<th>Calculation</th>
<th>Result</th>
</tr>
</thead>
<tbody>
<tr>
<td>4) Total square feet of impervious surface eliminated</td>
<td>_____ X 4 points = _____</td>
<td></td>
</tr>
<tr>
<td>5) Total square feet of partially functioning area improved</td>
<td>_____ X 2 points = _____</td>
<td></td>
</tr>
<tr>
<td>6) Benefit of improvements in zone 1 (add 4 and 5)</td>
<td>_____</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Benefit of improvements in zone 2</th>
<th>Calculation</th>
<th>Result</th>
</tr>
</thead>
<tbody>
<tr>
<td>7) Square feet of impervious surface to native vegetation</td>
<td>_____ X 2 points = _____</td>
<td></td>
</tr>
<tr>
<td>8) Square feet of partially functioning area to native vegetation</td>
<td>_____ X 1 point = _____</td>
<td></td>
</tr>
<tr>
<td>9) Square feet of impervious surface to partially functioning area</td>
<td>_____ X 0.5 points = _____</td>
<td></td>
</tr>
<tr>
<td>10) Benefit of improvements in zone 2 (add 7 – 9)</td>
<td>_____</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>No Net Loss Indicator</th>
<th>Calculation</th>
<th>Result</th>
</tr>
</thead>
<tbody>
<tr>
<td>11) Measurement of adverse impacts (line 3)</td>
<td>_____</td>
<td></td>
</tr>
<tr>
<td>12) Total benefit of improvements (add 6 and 10)</td>
<td>_____</td>
<td></td>
</tr>
</tbody>
</table>

The project will meet the no net loss standard if line 11, the measurement of adverse impacts, is less than or equal to line 12, the benefit of improvements.

[Ord. 581 § 1 (Exh. A), 2013]

**20.30.060 Select shoreline uses and modifications.**
Shoreline master programs establish a comprehensive program of use regulations for shorelines and provisions for specific uses to assure consistency with the policy of the act and where relevant within the jurisdiction. This section provides specific policies and regulations for the following types of uses and modifications:

(1) Aquaculture.

(2) Bulkheads and other shoreline stabilization structures.

(3) Docks, piers and floats.
(4) Habitat restoration and enhancement.

(5) Recreation.

(6) Recreational mooring buoys.

(7) Residential.

(8) Transportation facilities and parking.

(9) Utilities. [Ord. 581 § 1 (Exh. A), 2013]

20.30.065 Aquaculture.

Aquaculture means the culture, harvesting or farming of food fish, shellfish, or other aquatic plants and animals. Aquaculture does not include the harvest of wild geoduck associated with the state managed wildstock geoduck fishery. Sport fishing is not considered an aquaculture activity. Aquaculture activities include the hatching, cultivating, planting, feeding, raising, harvesting, and processing of aquatic plants and animals and the maintenance and construction of necessary equipment, buildings and growing areas. Cultivation methods include but are not limited to fish pens, fish hatcheries, shellfish rafts, racks and long lines, seaweed floats and nets and the culture of clams and oysters on tidelands and subtidal areas.

(1) Policies.

(a) Aquaculture should not be permitted in areas where it would result in a net loss of ecological functions, adversely impact eelgrass and macroalgae, or significantly conflict with existing adjacent uses.

(b) Aquacultural facilities must be designed and located so as not to spread disease to native aquatic life, establish new nonnative species which cause significant ecological impacts, or significantly impact the aesthetic qualities of the shoreline.

(2) Regulations.

(a) Aquaculture shall be limited to the recovery of a native aquatic population in accordance with a government and/or tribal approved plan.

(b) Aquaculture is not permitted in areas where it would result in a net loss of ecological functions, adversely impact eelgrass and macroalgae, or significantly conflict with navigation and other water-dependent uses.

(c) Aquaculture is prohibited in critical saltwater habitat or within a 10-foot buffer from these areas.

(d) No aquatic organism shall be introduced into city of Burien shoreline areas without the prior written approval of the Washington State Department of Fish and Wildlife or the appropriate regulatory agency for the specific organism.

(e) No aquacultural processing, except for the sorting or culling of the cultured organism and the washing or removal of surface materials or organisms, shall be permitted waterward of the ordinary high water mark unless fully contained within a tending boat or barge.

(f) Shellfish seeding and culturing is allowed when conducted for native population recovery in accordance with a government and/or tribal approved plan. [Ord. 706 § 1 (Exh. A), 2019; Ord. 581 § 1 (Exh. A), 2013]

20.30.070 Bulkheads and other shoreline stabilization structures.

Shoreline stabilization includes actions taken to address erosion impacts to property and dwellings, roads and utilities, businesses, or structures caused by natural processes, such as current, flood, tides, wind, or wave action. These actions include structural and nonstructural methods.

Nonstructural methods include building setbacks, relocation of the structure to be protected, ground water management, planning and regulatory measures to avoid the need for structural stabilization.
The Burien Municipal Code is current through Ordinance 718, passed November 4, 2019.

(1) Policies.

(a) New development should be located and designed to avoid the need for future shoreline stabilization to the greatest extent feasible.

(b) New and replacement bulkheads should be designed to blend in with the natural surroundings and not detract from the aesthetic qualities or degrade the natural processes of the shoreline.

(c) Burien should take active measures to preserve natural unaltered shorelines, and prevent the proliferation of new bulkheads and other forms of shoreline armoring.

(d) Nonstructural stabilization measures including relocating structures, increasing buffers, enhancing vegetation, managing drainage and runoff and other measures are preferred over new structural shoreline armoring.

(e) Where feasible, any failing, harmful, unnecessary, or ineffective structural shoreline armoring that cannot be repaired or replaced should be removed, and shoreline ecological functions and processes should be restored using nonstructural methods.

(For additional policy guidance, please see BMC 20.20.025 through 20.20.035.)

(2) Regulations.

(a) A shoreline stabilization structure legally existing on October 17, 2013:

(i) May be repaired and maintained.

(ii) May be replaced with a similar structure if the following apply:

   (A) There is a demonstrated need to protect legally established principal uses or structures and legally established appurtenances necessary for use and enjoyment of a single-family home, which appurtenances shall not include fences, from erosion caused by currents, tidal action, or waves.

   (B) The existing structure can no longer adequately serve its purpose of stabilizing the shoreline to protect established uses and structures.

   (C) Replacement walls or bulkheads shall not encroach waterward of the ordinary high water mark or existing structure unless the residence was occupied prior to January 1, 1992, and there are overriding safety or environmental concerns. In such cases, the replacement structure shall abut the existing shoreline stabilization structure.

   (D) Where a net loss of ecological functions associated with critical saltwater habitats would occur by leaving the existing structure, removal of that structure may be required as part of the construction of the replacement.

   (E) Soft shoreline stabilization measures that provide restoration of shoreline ecological functions may be permitted waterward of the ordinary high water mark.

(b) Jetties, breakwaters and other in-water stabilization structures except for bulkheads are prohibited except for protection or restoration of ecological functions. New bulkheads and other shoreline stabilization structures such as gabions, revetments, retaining walls and bluff walls are allowed if there would be no net loss of shoreline ecological functions and the following requirements are met:

   (i) Nonstructural methods (e.g., building setbacks, biotechnical vegetation measures, anchor trees, upland drainage control, and beach enhancement) are not feasible to protect a residence or other primary structure or essential public facility.

   (ii) The necessity to protect existing primary structures is demonstrated in the following manner:
The Burien Municipal Code is current through Ordinance 718, passed November 4, 2019.

(A) A geotechnical analysis, accepted by the administrator, confirming that there is a significant possibility that the primary structure will be damaged within three years as a result of shoreline erosion caused by tidal action, currents, or waves in the absence of an armoring structural solution. Normal sloughing, erosion of steep bluffs, or shoreline erosion itself, without a scientific or geotechnical analysis, is not demonstration of need.

(B) The geotechnical analysis should evaluate on-site drainage issues and address drainage problems away from the shoreline edge before considering structural shoreline stabilization.

(c) The following requirements apply to both new and replacement bulkheads:

(i) Bulkheads shall be located and constructed in a manner which will not result in adverse effects on littoral drift and adjacent properties.

(ii) Bulkheads shall not be installed solely for the purpose of creating upland by filling behind the bulkhead.

(iii) The size and quantity of material utilized for the bulkhead shall be the minimum necessary to protect the structure from the estimated energy intensity of the shoreline hydraulic system.

(iv) The maximum height of a new bulkhead on the marine shoreline shall be no greater than four vertical feet above the OHWM. The height of a replacement bulkhead shall not exceed four vertical feet above the OHWM or exceed the height of the existing bulkhead, whichever is greater.

(d) All new and replacement shoreline structures shall be designed to minimize the transmission of wave energy.

(e) All new shoreline development and uses, including the replacement of a destroyed home, shall be located and designed to prevent the need for new or expanded shoreline stabilization measures for the life of the development. Exceptions may be made for the limited instances where shoreline stabilization measures are necessary to protect allowed uses, where no alternative locations are available, and where no net loss of ecological functions will result. [Ord. 581 § 1 (Exh. A), 2013]

20.30.075 Over-water structures – Including docks, piers and floats.
Docks are fixed structures floating upon the water. Piers are fixed, pile-supported structures. Floats (rafts) are floating structures that are moored, anchored, or otherwise secured in the water that are not directly connected to the shoreline. All of these types of over-water structures are found in the city’s shoreline jurisdiction. These structures typically require permits from local, state and federal agencies. For structures overlying state owned lands, an aquatic lands lease and authorization from the Department of Natural Resources is required. For the purposes of this section, docks, piers, and floats will be called over-water structures and addressed together unless otherwise noted. In addition to the following policies and regulations, applicants for an over-water structure should contact other permitting agencies including the Washington State Department of Fish and Wildlife and U.S. Army Corps of Engineers for their requirements, including dimensional standards.

(1) Policies.

(a) Over-water structures should be designed to minimize impacts to ecological functions of the water body including but not limited to water quality, anadromous and forage fish habitat, spawning and rearing areas, migration, and passage.

(b) New over-water structures should be restricted to the minimum size necessary and permitted only when the applicant has demonstrated that a specific need exists to support the intended water-dependent use.

(c) Ensure that over-water structures are designed and maintained to avoid adverse impacts to the environment and shoreline aesthetics and minimize interference with the public’s use of the water and public beach area.

(d) Encourage the use of mooring buoys in place of over-water structures.
(e) Encourage shared docks between multiple owners for single-family waterfront development to minimize over-water coverage adversely impacting shoreline ecological functions.

(f) Over-water structures should be designed to avoid the need for maintenance dredging. The moorage of a boat larger than provided for in the original moorage design shall not be grounds for approval of dredging.

(2) Regulations.

(a) New over-water structures shall be limited to those required as part of a permitted water-dependent use, ecological restoration or public access.

(b) Over-water structure design and construction shall be restricted to the minimum necessary to meet the needs of the proposed water-dependent use.

(c) Private, single residence over-water structures for the sole use of the property owner shall not be considered an outright use on city of Burien marine shorelines. An over-water structure may be allowed on the marine shoreline when the applicant has demonstrated a need for moorage and the following alternatives have been investigated and are not available or feasible:

(i) Commercial or marina moorage;

(ii) Floating moorage buoys;

(iii) Joint use moorage pier.

(d) The design and construction of over-water structures, as well as their subsequent use and operation, shall:

(i) Be capable of withstanding expected environmental conditions; and

(ii) Minimize interference with adjacent water uses and navigation; and

(iii) Minimize adverse effects on fish, shellfish, wildlife, water quality, public views and geohydraulic processes by limiting the size of the structure and the use of hazardous materials, incorporating grating to allow light passage or reflective panels to increase light refraction, and spaced and oriented to minimize shading and avoid a “wall” effect that would block or baffle wave patterns, currents, littoral drive, or movement of aquatic life forms.

(e) Over-water structures shall not be used for residential dwelling purposes nor provide moorage for boats that are occupied longer than two days unless pump-out facilities are available and then no longer than seven days total.

(f) Only joint use over-water structures are allowed for attached dwelling unit developments.

(g) Only one over-water structure is allowed for each single-family detached residential lot.

(h) No covered moorage is allowed waterward of the ordinary high water mark.

(i) When permitted, new residential development of two or more dwellings shall provide joint use or community docks, rather than individual docks, when feasible, rather than allow individual docks for each residence.

(j) Dredging associated with over-water structures is prohibited in the aquatic environment. [Ord. 581 § 1 (Exh. A), 2013]

20.30.080 Habitat restoration and enhancement.
Shoreline habitat and natural systems enhancement projects include those activities proposed and conducted specifically for the purpose of establishing, restoring, or enhancing habitat for priority species in shorelines. Restoration or enhancement of shoreline areas means a change of the physical, chemical, or biological
characteristics of a site with the goal of returning natural or historic ecological functions of a former or degraded wetland or fish and wildlife habitat conservation area.

(1) Policy.

(a) Habitat restoration or enhancement projects that are not exempt pursuant to WAC 173-27-040 (Developments exempt from substantial development permit requirement) may be allowed in shoreline jurisdiction if a shoreline substantial development permit is obtained.

(For additional policy guidance, please see BMC 20.20.050.)

(2) Regulations.

(a) Shoreline restoration or enhancement projects shall be designed to result in a natural shoreline with functions, vegetative communities and structure similar to what would historically have been found on the site or in the vicinity.

(b) All shoreline restoration or enhancement projects shall ensure that critical areas and their functions are not degraded by the action.

(c) Shoreline restoration projects shall implement the city’s adopted shoreline restoration plan and be conducted specifically for the purpose of establishing, restoring, or enhancing habitat for priority species in shorelines.

(d) Nonstructural approaches for shoreline restoration or enhancement shall be used for shoreline stabilization instead of bulkheads or other structural stabilization measures, where feasible.

(e) Shoreline restoration projects that are not specifically listed in the city’s adopted shoreline restoration plan shall be considered subject to approval of the shoreline administrator.

(f) Existing artificial structures on the site of a shoreline restoration or enhancement project that appear to be impeding natural recovery of a species or habitat shall be removed.

(g) When habitat is restored or enhanced, priority shall be given to retention of snags and trees that provide overhanging vegetation and/or nesting or perching branches for eagles, other raptors, or priority species.

(h) Shoreline habitat restoration or enhancement projects shall not adversely impact sediment processes, littoral drift, wetlands or fish and wildlife habitat conservation areas.

(i) Beach enhancement shall not be allowed within spawning, nesting or breeding habitats unless the completed project will result in a greater long-term benefit to the ecological functions and values.

(j) Restoration of native vegetation shall comply with the vegetation conservation section, BMC 20.30.040. In addition to the provisions of BMC 20.30.040, a revegetation plan shall include a monitoring and maintenance program that shall, at a minimum, include the following:

   (i) Goals and objectives for the mitigation plan; and

   (ii) Criteria for assessing the effectiveness of the mitigation; and

   (iii) Monitoring plan including annual progress reports submitted to the shoreline administrator. The plan shall be in effect for a period of time sufficient to establish that performance standards have been met as determined by the shoreline administrator, but no less than five years; and

   (iv) A contingency/adaptive management plan.

(k) Restoration resulting in movement of the OHWM shall meet the following standards:
(i) The shoreline administrator may grant relief from shoreline master program development standards and use regulations when the following apply:

(A) A shoreline restoration project causes or would cause a landward shift in the ordinary high water mark, resulting in the following:

1. a. Land that had not been regulated under this shoreline master program prior to construction of the restoration project is brought under shoreline jurisdiction; or

   b. Additional regulatory requirements apply due to a landward shift in required shoreline buffers or other regulations of the shoreline master program; and

2. Application of shoreline master program regulations would preclude or interfere with use of the property permitted by other development regulations, thus presenting a hardship to the project proponent;

(B) The proposed relief meets the following criteria:

1. The proposed relief is the minimum necessary to relieve the hardship;

2. After granting the proposed relief, there is net environmental benefit from the restoration project;

3. Granting the proposed relief is consistent with the objectives of the shoreline restoration project and consistent with the shoreline master program; and

4. Where a shoreline restoration project is created as mitigation to obtain a development permit, the project proponent required to perform the mitigation is not eligible for relief under this section; and

(C) The application for relief must be submitted to the Department of Ecology for written approval or disapproval. This review must occur during the Department of Ecology’s normal review of a shoreline substantial development permit, conditional use permit, or variance. If no such permit is required, then the Department of Ecology shall conduct its review when the city of Burien provides a copy of a complete application and all supporting information necessary to conduct the review.

1. Except as otherwise provided in subsection (2)(k)(ii) of this section, the Department of Ecology shall provide at least 20 days’ notice to parties that have indicated interest to the Department in reviewing applications for relief under this section, and post the notice on their website.

2. The Department shall act within 30 calendar days of close of the public notice period, or within 30 days of receipt of the proposal from the local government if additional public notice is not required.

(ii) The public notice requirements of subsection (2)(k)(i)(c) of this section do not apply if the relevant shoreline restoration project was included in a shoreline master program or shoreline restoration plan as defined in WAC 173-26-201 (Comprehensive process to prepare or amend shoreline master programs), as follows:

(A) The restoration plan has been approved by the Department of Ecology under applicable shoreline master program guidelines;

(B) The shoreline restoration project is specifically identified in the shoreline master program or restoration plan or is located along a shoreline reach identified in the shoreline master program or restoration plan as appropriate for granting relief from shoreline regulations; and
(C) The shoreline master program or restoration plan includes policies addressing the nature of the relief and why, when, and how it would be applied.

(iii) A substantial development permit is not required on land that is brought under shoreline jurisdiction due to a shoreline restoration project creating a landward shift in the ordinary high water mark. [Ord. 581 § 1 (Exh. A), 2013]

20.30.085 Recreational development.
Shoreline recreational development includes facilities for activities such as hiking, fishing, picnicking, swimming, photography and viewing. It also includes facilities for more intensive uses, such as parks. This section applies to both publicly and privately owned shoreline facilities intended for use by the public or private group, association, or individual.

(1) Policies.

(a) Allow a variety of active and passive recreation opportunities in the shoreline areas.

(b) Encourage provision of view points, rest areas and picnic facilities in public shoreline areas.

(For additional policy guidance, including policies that provide for public access planning as set forth in WAC 173-26-221(4)(c) (General master program provisions, Planning process to address public access), please see BMC 20.20.020.)

(2) Regulations.

(a) Commercial recreational development or use in Seahurst Park shall be consistent with the provisions of this section.

(b) Recreation facilities shall be designed to take maximum advantage of and enhance the natural character of the shoreline area.

(c) Recreation areas shall promote public health, safety and security and not materially interfere with the normal public use of the water and shorelines.

(d) Recreation facilities shall provide adequate provisions to prevent the general public from trespassing and overflowing into adjacent, privately owned properties.

(e) Recreation facilities shall provide signage that prohibits tree cutting and collecting of marine life, driftwood and other natural materials.

(f) Jet skis and water craft with combustion engines are prohibited on Lake Burien.

(g) No person shall moor, anchor or dock a boat or other object overnight on or within 50 feet of the ordinary high water mark at any city beachfront park without authorization from the city of Burien parks department.

(h) Shoreline recreational development is a priority and shall be primarily related to access to, enjoyment and use of the water and shorelines of the state. [Ord. 581 § 1 (Exh. A), 2013]

20.30.090 Recreational mooring buoys.
A recreational mooring buoy is a device used to tie up a boat and typically consists of a line from the boat attached to a float at the water’s surface with a cable or line fixed underwater to the submerged ground. The anchor line allows the boat to float and swing around the fixed buoy anchor.

(1) Policies.

(a) Recreational boat mooring buoys are the preferred method to provide moorage instead of constructing new residential docks, piers or floats on the marine waters in the city of Burien.
(2) Regulations.

(a) Mooring buoys shall be located as close to the shore as possible while avoiding beaching under all tidal situations and no farther waterward than existing authorized mooring buoys unless the drift of the boat dictates it.

(b) Mooring buoys shall be located away from critical saltwater habitat.

(c) Mooring buoys shall utilize a system design that minimizes damage to underwater lands and marine vegetation.

(d) Individuals owning residential property abutting aquatic lands may install a mooring buoy for recreational purposes after obtaining approval from the State of Washington Department of Natural Resources (DNR), Washington Department of Fish and Wildlife (WDFW) and the Army Corps of Engineers as appropriate.

(e) Recreational mooring buoys shall be installed using a DNR or WDFW approved system.

(f) Buoys shall be visible under normal daylight conditions at a minimum of 100 yards during daylight hours and must have reflectors for nighttime visibility.

(g) Recreational mooring buoys are prohibited for commercial and transient uses or live-aboards.

(h) Boats must be 60 feet or less in length to tie up to a recreational mooring buoy.

(i) A community beach may have one mooring buoy for every 100 lineal feet of waterfront.

(j) Mooring buoys are prohibited on Lake Burien. [Ord. 581 § 1 (Exh. A), 2013]

20.30.095 Residential development.

Single-family residences are the most common form of shoreline development and are identified as a priority use when developed in a manner consistent with control of pollution and prevention of damage to the natural environment. “Residential development” shall mean the creation of new residential lots and the construction or exterior alteration of one or more buildings, structures or portions thereof which are designed for and used to provide a place of abode for human beings including one- and two-family detached dwellings, multifamily residences, townhouses and condominiums, together with appurtenances and accessory structures. For purposes of this master program, bed and breakfast establishments are considered an accessory use (see also BMC 20.30.001, Figure 4, Shoreline Permit Matrix, under Commercial Use and Development).

(1) Policy. Residential development should demonstrate that the development and its related activities will not be detrimental to the public interest and uses of the shoreline and its associated water bodies.

(For additional policy guidance, please see BMC 20.20.025 through 20.20.035.)

(2) Regulations.

(a) General. Consistent with WAC 173-26-221(4)(d)(iv) (General master program provisions, Standards for height limits, setbacks, and view corridors), residential development shall protect existing shoreline and water views, promote public safety, avoid adverse impacts to marine bluffs and nearshore habitat, and not result in a net loss of shoreline ecological functions.

(b) Dimensional Standards. Residential development in shoreline jurisdiction shall conform to the dimensional standards found in BMC 20.30.050.

(c) Common-Line Building Setback Standards. The shoreline administrator may approve new or expanded single-family primary residential structures in zone 2 of the shoreline buffer under the following conditions through the conditional use permit process and without a variance permit:
(i) Where there are existing legally constructed single-family primary residential structures that are located within the shoreline buffer zone 2 designated in BMC 20.30.050 and within 50 feet of either side of the proposed building site, a new or expanded home may be located in the shoreline buffer. As an alternative in such cases, the proposed new or expanded single-family primary residential structure may be set back from the OHWM common to the average of the OHWM setback of the existing adjacent residences (see Figure 8).

(ii) In those instances where only one existing single-family primary residence is within 50 feet of the proposed building site, the OHWM setback of the proposed structure may be reduced to the average of the OHWM setbacks for the existing adjacent residence and the applicable setback for the adjacent vacant parcel.

(iii) In no case shall the reduced setback allow development in zone 1 without a variance.

(iv) In cases where the common-line setback does not apply, expansion of existing single-family primary residential structures within the designated shoreline buffer zone 2 may be allowed through a conditional use permit.

(v) Any shoreline OHWM setback reduction beyond that allowed in this section shall require approval of a shoreline variance permit.

(vi) For the purposes of this section the optional method of demonstrating successful mitigation of unavoidable adverse impacts as set forth in BMC 20.30.055(2)(e) may not be used and the applicant shall submit an ecological impact report prepared by a qualified professional demonstrating that unavoidable impacts are mitigated to achieve no net loss.

(d) Lot Size Calculations. Lot size calculations shall not include portions of the lot that are waterward of the ordinary high water mark.

(e) Bluff Top Protection. New development located at the top of bluffs in shoreline jurisdiction must be set back to ensure that shoreline stabilization is unlikely to be necessary for the life of the structure as demonstrated by a geotechnical analysis.

(f) Vegetation Removal for Access. Private access from single-family detached residences to the shoreline shall avoid removal of trees and other woody vegetation when feasible.

(g) Accessory Structures and Appurtenances. New accessory structures and appurtenances must be proportional in size and purpose to the residence and compatible with on-site and adjacent structures, uses and natural features. New accessory structures and appurtenances are not permitted within the shoreline buffer zone 1 unless otherwise permitted by subsection (2)(c) of this section (Common-Line Building Setback Standards). New detached accessory structures are not allowed in buffer zone 2. The following may be allowed in the shoreline buffer:

(i) Fences less than six feet high;

(ii) Water-dependent features (buoys, docks and floats) used for recreational or personal use;

(iii) Stairs and trams pursuant to subsections (2)(i) and (j) of this section;

(iv) Utilities solely serving the subject single-family residence.

(h) Floating Homes or Houseboats. Floating homes or houseboats are prohibited in shoreline jurisdiction.

(i) Stairs and Trams. Construction of new stairs and trams to the beach is allowed within required shoreline buffer areas, except on feeder bluffs, provided the project proponent demonstrates that existing shared, public or community facilities are not adequate or available for use and the possibility of a multiple-owner or multiple-user facility has been thoroughly investigated and is not feasible. New facilities are encouraged to be shared with adjacent properties that do not already have such facilities, and shall include shared maintenance.
easements and agreements as necessary. Only one stair or tram system is allowed for each primary residential structure; duplicate facilities are not allowed.

(j) Beach Stairs and Trams Design. New beach stairs and trams shall be designed and located such that no fill or other modification waterward of the ordinary high water mark is necessary to construct or use the structure. Stairways, trams and landings shall be located upland of existing bulkheads.

(k) Detached Accessory Dwelling Units. New detached accessory dwelling units shall not be located in the shoreline buffers.
Figure 8: Common-Line Buffer and OHWM Building Setback Reduction Examples
20.30.100 Transportation facilities and parking.

Transportation facilities are those structures and developments that aid in land and water surface movement of people, animals, goods and services. They include streets, bridges, bikeways, trails and other related facilities.

(1) Policies.

(a) All new or expanded roadways should be designed and located to minimize impacts to shoreline ecological functions including riparian and nearshore areas, and the natural landscape.

(b) Parking is not a preferred use in shorelines and should only be allowed to support authorized uses where no feasible alternatives exist.

(For additional policy guidance, please see BMC 20.20.025.)

(2) Regulations.

(a) New transportation and parking facilities shall be located outside of the shoreline jurisdiction or as far landward from the ordinary high water mark as feasible, unless they support public access or other authorized use.

(b) Transportation facilities shall be designed and maintained to minimize erosion, preserve natural drainage ways and utilize low-impact development techniques.

(c) Transportation and utility facilities shall share rights-of-way to minimize disturbance in shoreline areas.

(d) The city shall give preference to mechanical means rather than the use of herbicides for roadside brush control on city streets in shoreline areas.

(e) Construction debris, overburden and other waste materials shall not be allowed to enter into any water body by disposal or erosion from drainage, high water or other means.

(f) Transportation facilities shall provide public access appropriate to the location and extent of the facility.

(g) All shoreline areas disturbed by road construction and maintenance shall be replanted and stabilized. Such vegetation shall be maintained by the agency or developer constructing or maintaining the road until established.

(h) Landscaping shall be provided to minimize visual impacts for all new and expanded transportation facilities in shoreline areas. A landscape plan shall be provided in conjunction with review and issuance of a shoreline substantial development permit. [Ord. 581 § 1 (Exh. A), 2013]

20.30.105 Utilities.

Utilities are services and facilities that produce, convey, transmit, store, or process water, sewage, communications, electric power, fuel, natural gas, and the like.

(1) Policies.

(a) On-site utility features serving a primary use, such as water, sewer or gas lines to a residence, are considered a part of the primary use.

(b) Utilities production and processing facilities, such as sewage treatment plants, or parts of those facilities that are non-water-oriented should not be allowed in shoreline areas unless it can be demonstrated that no other feasible option is available.
(c) Utilities should be located and designed to assure no net loss of shoreline ecological functions, preserve the natural landscape, and minimize conflicts with present and planned land and shoreline uses while meeting the needs of future populations in areas planned to accommodate growth.

(d) New development of pipelines and cables on tidelands, particularly those running roughly parallel to the shoreline, and development of facilities that may require periodic maintenance which would disrupt shoreline ecological functions should be discouraged except where no other feasible alternative exists.

(For additional policy guidance, please see BMC 20.20.020 and 20.20.030.)

(2) Regulations.

(a) Utilities shall be placed underground pursuant to Chapter 12.40 BMC (Utility Undergrounding Policy).

(b) New development of underwater pipelines and cables on tidelands is prohibited except for deepwater outfalls and facilities where no other feasible alternative exists.

(c) New cable crossings for telecommunications and power lines entering or leaving a body of water shall be bored or buried below the surface of the water body’s bed from the ordinary high water mark out to a minimum water depth of minus 10 feet below mean lower low water.

(d) Directional boring, instead of excavation or trenching, is required where feasible.

(e) New transmission facilities for the conveyance of services, such as power lines, cables, and pipelines, shall be located outside of the shoreline area where feasible and when necessarily located within the shoreline area shall assure no net loss of shoreline ecological functions. When allowed, utility and transportation facilities shall share rights-of-way to minimize disturbance in shoreline areas.

(f) New or altered aerial utility lines and vertical utility facilities shall make maximum use of topography to minimize visual impact on the surrounding area.

(g) Communication, radio towers and personal wireless service facilities shall not obstruct or destroy scenic views of the water. This may be accomplished by design, orientation and location of the tower, height, camouflage of the tower, or other features consistent with utility technology.

(h) Culverts shall be located and installed in accordance with city of Burien standards and specifications.

(i) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters.

(j) Except for water lines, all underwater pipelines transporting substances hazardous to aquatic life or water quality are prohibited unless no other feasible alternative exists. Such facilities shall include an automatic shut off valve on both shorelines and have established maintenance procedures.

(k) Expansion or repair of existing, underground utilities within shoreline jurisdiction shall include reclamation of areas disturbed during construction including, where feasible, replanting and maintenance care until the newly planted vegetation is established. [Ord. 581 § 1 (Exh. A), 2013]
Chapter 20.35

ADMINISTRATION AND SHORELINE PERMIT PROCEDURES

Sections:
20.35.001 Purpose and applicability.
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20.35.001 Purpose and applicability.
The purpose of this chapter is to establish a program for the administration and enforcement of the permit system for shoreline management provided by the Shoreline Management Act of 1971 (Chapter 90.58 RCW). This chapter applies to all development within shorelines of the state within the city of Burien’s shoreline jurisdiction. The city’s shoreline administrative procedures are intended to be consistent with all provisions, criteria, application requirements, public notice requirements, and local or state review procedures set forth in Chapter 173-27 WAC, Shoreline Management Permit and Enforcement Procedures. In the event of any inconsistencies between this shoreline master program and Chapter 173-27 WAC, the WAC shall govern.

All development in designated shoreline areas shall comply with the policy, provisions, and intent of the city of Burien shoreline master program. Definitions contained in the Shoreline Management Act of 1971 (Chapter 90.58 RCW) and the Shoreline Master Program Guidelines (Chapter 173-26 WAC) shall apply to all terms and concepts used in this chapter; provided, that definitions contained in this title shall be applicable where not in conflict with the Shoreline Management Act and the Shoreline Master Program Guidelines. In addition, the city will establish minimum application requirements, checklists, handouts, forms and fees for shoreline permits and shoreline exemption determinations.

Amendments to the city of Burien shoreline master program will not become effective until approval by the Washington State Department of Ecology pursuant to RCW 90.58.090 (Approval of master program). [Ord. 706 § 1 (Exh. A), 2019; Ord. 581 § 1 (Exh. A), 2013]

20.35.005 Authority and rule of liberal construction.
This chapter is promulgated pursuant to the authority and mandate of RCW 90.58.140(3) (Development Permits). Compliance with this chapter shall constitute compliance with the Shoreline Management Act, the Shoreline Master Program Guidelines, and the city of Burien shoreline master program (SMP) for evaluating permits on shorelines of the state.

As provided under RCW 90.58.900 (Liberal construction), the Shoreline Management Act (SMA) is exempted from the rule of strict construction. The SMA and the city of Burien shoreline master program shall, therefore, be liberally construed to give full effect to the purposes, goals, policies, and standards for which the SMA and this master program were enacted. Exemptions from the Act or this master program are to be narrowly construed. [Ord. 706 § 1 (Exh. A), 2019; Ord. 581 § 1 (Exh. A), 2013]
20.35.010 Shoreline permit types and review procedures.

(1) Nonexempt Development. Substantial development that is not otherwise exempt or uses that are identified as requiring conditional use permits within the city of Burien’s shoreline jurisdiction must obtain a shoreline substantial development permit, shoreline conditional use permit, or shoreline variance from the city.

(2) Exempt Development. Development within the city of Burien’s shoreline jurisdiction that is exempt from the requirement to obtain a shoreline substantial development permit shall comply with BMC 20.35.025. An exempt development that requires a conditional use permit or variance shall also comply with applicable provisions related to those processes.

(3) Pre-Application Meeting. The owner of the subject property or the authorized agent of the owner is encouraged to have a pre-application meeting with the shoreline administrator to determine the appropriate type of shoreline permit needed for the proposed action.

(4) Permit Review. Shoreline permits shall be reviewed using the land use decision processes in Chapter 19.65 BMC (Procedures).

Shoreline permits are processed as a Type 1 land use decision pursuant to Chapter 19.65 BMC (Procedures). A Type 1 decision is a written administrative decision issued following public notice, consideration of written public comments and review of a written staff recommendation. For the purposes of this master program, the shoreline administrator is the decision maker on a shoreline permit using the Type 1 land use decision. The Type 1 land use decision can be appealed to the city’s hearing examiner.

If any shoreline use or development is subject to other approvals or permits under another permit authority, such as the zoning or subdivision codes, they shall be subject to a consolidated review and the decision maker designated for the nonshoreline approval or permit shall be the decision maker for the consolidated review.

Depending on the underlying land use permits, the shoreline permit may be processed as a Type 2 or 3 land use review involving the hearing examiner or the city council.

(5) Public Notice. Public notice of an application for a shoreline permit shall be provided pursuant to Chapter 19.65 BMC (Procedures) unless otherwise specifically stated in this code. The minimum public notice period for shoreline permits shall be 30 days. If there are conflicting public notice time periods with state law or administrative codes, or local laws, the longer notice period shall be used.


(7) Compliance with Regulations. In the case of either a shoreline conditional use permit or a shoreline variance, the shoreline administrator shall determine the application’s compliance with the relevant review criteria and render a decision that is then forwarded to Ecology for review and approval. The city’s decision may include issuing the shoreline permit, issuing the shoreline permit with conditions, or denial of the requested shoreline permit.

(8) Shoreline Conditional Use Permit Required. A development activity or use that is listed as a conditional use pursuant to this master program or is an unlisted use must obtain a conditional use permit even if the development or use does not require a substantial development permit. The conditional use permit application shall be processed as indicated in subsection (4) of this section.

(9) Shoreline Variance Required. When a development or use is proposed that does not comply with the bulk, dimensional and performance standards of the master program, such development or use can only be authorized by approval of a shoreline variance, consistent with WAC 173-27-170 (Variances). The variance application shall be processed as set forth in subsection (4) of this section.

Figure 9 is a flow chart illustrating the shoreline permit review process for a Type 1 shoreline permit.
Figure 9: Shoreline Permit Review for Type 1 Process

20.35.015 Shoreline substantial development permits.
(1) Substantial Development Permit Required. Prior to any shoreline substantial development within a shoreline of the state, a shoreline substantial development permit shall be obtained. Development undertaken pursuant to the issuance of a permit shall be limited to that specifically delineated on the official site plan submitted by the
The development shall be in compliance with any and all conditions imposed upon such permit at its issuance, including any impact mitigation measures identified in documents submitted in support of the application.

(2) Approval Criteria. A substantial development permit shall be granted by the shoreline administrator only when the development proposed is consistent with the following:

(a) City of Burien comprehensive plan, Burien Municipal Code, and Burien shoreline master program; and

(b) The proposed development or activity must also be found to be consistent with policies, guidelines, and regulations of the state Shoreline Management Act (Chapter 90.58 RCW and Chapters 173-26 and 173-27 WAC).

(3) Authority to Condition. The shoreline administrator may attach conditions to the approval of permits and shoreline exemptions as necessary to assure this consistency. [Ord. 581 § 1 (Exh. A), 2013]

20.35.020 Substantial development permits for limited utility extensions.

(1) Procedures. An application for a substantial development permit for a limited utility extension shall be subject to the following procedures:

(a) The public comment period shall be 20 days. The public notice issued pursuant to BMC 19.65.040 (Notice of Application) shall explain how the public may obtain a copy of the city’s decision on the application no later than two days following its issuance consistent with BMC 19.65.055 (Notice of Decision). If there is an appeal of the decision to grant or deny the permit to the local government legislative authority, the appeal shall be finally determined by the legislative authority within 30 days.

(b) For purposes of this section, a limited utility extension means the extension of a utility service that:

(i) Is categorically exempt under Chapter 43.21C RCW (State Environmental Policy Act) for one or more of the following: natural gas, electricity, telephone, water or sewer;

(ii) Will serve an existing use in compliance with Chapter 90.58 RCW (Shoreline Management Act); and

(iii) Will not extend more than 2,500 linear feet within the shorelines of the state. [Ord. 581 § 1 (Exh. A), 2013]

20.35.025 Exemptions from shoreline substantial development permits.

(See WAC 173-27-040 (Developments exempt from substantial development permit requirement) for additional language and details.)

(1) Rule of Narrow Construction. There are several types of development activities that are exempt from the requirement to obtain a shoreline substantial development permit. State law requires that such exemptions be construed narrowly and, if any part of the development is not eligible for exemption, then a substantial development permit is required for the entire proposed development. No pre-application meeting is required for a shoreline exemption, and the city usually makes a determination on the exemption within 30 days of application. The Department of Ecology does not review shoreline exemptions unless state or federal agency approvals are required for the project.

(2) Shoreline Exemption Process. Exemption from the shoreline substantial development permit process does not constitute exemption from compliance with the policies and use regulations of the SMA (Chapter 90.58 RCW), the provisions of this master program, or other applicable city, state or federal permit requirements. The shoreline administrator is authorized to grant or deny requests for exemptions from the shoreline substantial development permit requirement for uses and developments within shorelines that are specifically listed in the Shoreline Permit Matrix (Figure 4) of this master program (BMC 20.30.001).

Such requests shall be applied for on forms provided by the shoreline administrator. The request shall be in writing and shall indicate the specific exemption of this SMP that is being applied to the development. The shoreline administrator shall prepare an analysis of the consistency of the project with this SMP and the SMA. As appropriate, the shoreline administrator’s analysis and decision shall include statements of exemption, which may contain
conditions and/or mitigating measures of approval to achieve consistency and compliance with the provisions of the SMA and SMP. A denial of an exemption shall be in writing and shall identify the reason(s) for the denial.

The shoreline administrator’s actions on the issuance of a statement of exemption or a denial are subject to appeal. The appeal shall be processed using the appeal procedures for the underlying land use approval pursuant to Chapter 19.65 BMC (Procedures). If there is no underlying land use approval, the appeal shall be processed pursuant to the Type 1 appeal procedures in BMC 19.65.065 (Type 1 Decisions).

(3) Agency Approvals Required. Even though a project is exempt from obtaining a substantial development permit, it may still need approvals from other agencies. For example, if the proposal involves construction within navigable water or if the project includes dredging or placement of fill, a U.S. Army Corps of Engineers Section 10 and/or 404 permit is required. In addition, if the project involves construction or other activity waterward of the ordinary high water mark or if the project includes an activity that will use, divert, obstruct, or change the natural flow or bed of any state waters, a hydraulic project approval from the Washington State Department of Fish and Wildlife is required.

(4) Exemptions. The developments listed in WAC 173-27-040(2) shall not require a local shoreline substantial development permit. Developments not meeting the provisions in WAC 173-27-040(2) must obtain a shoreline substantial development permit. [Ord. 706 § 1 (Exh. A), 2019; Ord. 581 § 1 (Exh. A), 2013]

20.35.030  Letter of exemption.
(1) Letter of Exemption – General. Persons requesting an exemption must obtain a written letter of exemption verifying the proposed development as not subject to a shoreline substantial development permit. The letter of exemption must state how the proposed action is consistent with the policies and regulations of the city of Burien shoreline master program. For example, the approval of a building permit for a single-family residence and bulkhead can be conditioned on the basis of shoreline policy and use regulations. The building official or other permit authorizing official, through consultation with the shoreline administrator, shall attach shoreline management terms and conditions to a building permit or other permit approvals pursuant to RCW 90.58.140 (Development permits).

(2) State and Federal Agencies. Where shoreline development proposals are subject to review, approval, and permitting by a federal or state agency, the shoreline administrator shall prepare a letter and send to the Department of Ecology indicating the specific exemption provision from WAC 173-27-040 (Developments exempt from substantial development permit requirement) that is being applied to the development and provide a summary of the city’s analysis of the consistency of the project with the city of Burien shoreline master program and the state Shoreline Management Act. [Ord. 706 § 1 (Exh. A), 2019; Ord. 581 § 1 (Exh. A), 2013]

20.35.033  Developments not required to obtain shoreline permits or local reviews.
(1) Requirements to obtain a substantial development permit, conditional use permit, variance, letter of exemption, or other review to implement the Shoreline Management Act do not apply to the following:

(a) Remedial Actions. Pursuant to RCW 90.58.355, any person conducting a remedial action at a facility pursuant to a consent decree, order, or agreed order issued pursuant to Chapter 70.105D RCW, or to the Department of Ecology when it conducts a remedial action under Chapter 70.105D RCW.

(b) Boatyard Improvements to Meet NPDES Permit Requirements. Pursuant to RCW 90.58.355, any person installing site improvements for storm water treatment in an existing boatyard facility to meet requirements of a national pollutant discharge elimination system storm water general permit.

(c) WSDOT Facility Maintenance and Safety Improvements. Pursuant to RCW 90.58.356, Washington State Department of Transportation projects and activities meeting the conditions of RCW 90.58.356 are not required to obtain a substantial development permit, conditional use permit, variance, letter of exemption, or other local review.

(d) Projects consistent with an environmental excellence program agreement pursuant to RCW 90.58.045.

(e) Projects authorized through the Energy Facility Site Evaluation Council process, pursuant to Chapter 80.50 RCW. [Ord. 706 § 1 (Exh. A), 2019]
20.35.035 Shoreline conditional use permits.
(See also WAC 173-27-160 (Conditional use permits).)

(1) Purpose. The purpose of a shoreline conditional use permit is to allow greater flexibility in administering the use regulations of the Burien shoreline master program in a manner consistent with the policies of the Shoreline Management Act. This allows for review of a proposed action which may have a potential for compatibility concerns with nearby uses of other impacts that could be resolved under special circumstances with appropriate mitigation measures or conditions of approval.

(2) Criteria. Shoreline conditional uses identified in the Burien shoreline master program Shoreline Permit Matrix (BMC 20.30.001), or those that are unlisted uses but not prohibited uses, may be allowed only when the applicant can demonstrate all of the following:

(a) The proposed use will be consistent with RCW 90.58.020 (Use preference) and the Shoreline Management Act and the Burien shoreline master program;

(b) The proposed use will not interfere with the normal public use of public shorelines;

(c) The proposed use and development of the site and design of the project will be compatible with other permitted and planned uses within the area;

(d) The shoreline proposal will not result in significant adverse impacts on the shoreline environment and that the cumulative impact of additional requests for like actions in the area will remain consistent with the policies of the Shoreline Management Act and the Burien shoreline master program;

(e) That the proposed use will not cause a substantial detrimental effect to the public interest. In authorizing a shoreline conditional use permit, special conditions may be attached to the permit to prevent undesirable effects of the proposed use, to ensure consistency with the Shoreline Management Act and the Burien shoreline master program, or to address cumulative impacts of all like actions. [Ord. 581 § 1 (Exh. A), 2013]

20.35.040 Shoreline variance permits.
(See also WAC 173-27-170 (Variances).)

(1) Applicability. A shoreline variance permit is strictly limited to granting relief from specific bulk, dimensional or performance standards set forth in the Burien shoreline master program where there are extraordinary or unique circumstances relating to the physical character or configuration of property such that strict implementation of the policies, regulations or development standards would impose unnecessary hardships on the applicant or thwart the policies set forth in RCW 90.58.020 (Use preference) or the Burien shoreline master program. Shoreline variance permits should be granted in circumstances where denial of the permit would result in a thwarting of the policy enumerated in RCW 90.58.020 (Use preference). The applicant must demonstrate that extraordinary circumstances shall be shown and the public interest shall suffer no substantial detrimental effect. A variance permit cannot be granted for a use.

(2) Landward Variance Criteria. Variance permits for development and/or uses that will be located landward of the ordinary high water mark and/or landward of a wetland may be authorized provided the applicant can demonstrate all of the following:

(a) The strict application of the bulk, dimensional or performance standards set forth in the applicable master program precludes reasonable use of the property;

(b) The hardship described in subsection (2)(a) of this section is specifically related to the property, and is the result of unique conditions such as irregular lot shape, size, or natural features and the application of the master program, and not, for example, from deed restrictions or the applicant’s own actions;

(c) The design of the project is compatible with other authorized developments within the area and with uses planned for the area under the city’s comprehensive plan and shoreline master program and will not cause adverse impacts to the shoreline environment;
(d) The variance will not constitute a grant of special privilege not enjoyed by the other properties in the area;

(e) The variance requested is the minimum necessary to afford relief; and

(f) The public interest will suffer no substantial detrimental effect.

(3) Waterward Variance Criteria. Variance permits for development and/or uses that will be located waterward of the ordinary high water mark or within a wetland may be authorized provided the applicant can demonstrate all of the following:

(a) The strict application of the bulk, dimensional or performance standards set forth in the Burien shoreline master program precludes all reasonable use of the property;

(b) The proposal is consistent with the criteria established in subsections (2)(b) through (f) of this section; and

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

(4) Consideration of Cumulative Impacts. In the granting of all variance permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if variances were granted to other developments and/or uses in the area where similar circumstances exist, the total of the variances shall also remain consistent with the policies of RCW 90.58.020 (Use preference) and shall not cause substantial adverse effects to the shoreline environment. [Ord. 581 § 1 (Exh. A), 2013]

20.35.050 Appeals.
Any person aggrieved by the granting, denying or rescinding of a shoreline substantial development permit pursuant to BMC 19.65.060 (Judicial Appeal) and RCW 90.58.140 (Development permits) may seek review from the state shorelines hearings board by filing a petition for review within 21 days of the date of filing as defined in RCW 90.58.140(6) (Development permits). [Ord. 581 § 1 (Exh. A), 2013]

20.35.055 Effective date and duration of shoreline permits.
Construction authorized by an approved shoreline permit shall not begin until 21 days after the date of filing as defined by RCW 90.58.140 (Development permits). This restriction shall be stated on the permit. Construction shall be commenced or, where no construction is involved, the use or activity shall be commenced within two years and the construction related activity shall terminate within five years after the effective date of a shoreline permit or the final settlement date of any associated appeals or legal actions regarding the proposed action; provided, that the city may authorize a single extension for a period not to exceed one year based on reasonable factors, if a request for extension has been filed before the expiration date and notice of the proposed extension is given to parties of record and the Department of Ecology. The city shall notify the Department of Ecology in writing of any change to the effective date of a permit, as authorized by this section, with an explanation of the basis for approval of the change. Any change to the time limits of a permit other than those authorized by this section shall require a new permit application. See also WAC 173-27-090 for additional information regarding duration of permits. [Ord. 581 § 1 (Exh. A), 2013]

20.35.060 Compliance and enforcement.
(1) Choice of Action/Penalty – Conflict. The choice of enforcement action to be taken and the severity of any penalty to be imposed shall be guided by the nature of the violation, the damage or risk to the public or to public resources, and/or the existence or degree of bad faith of the person or persons subject to the enforcement action. The provisions of this section shall supersede and take precedence over any other enforcement provisions of the Burien Municipal Code in conflict herewith.

(2) Order to Cease and Desist – Notice of Correction. In the event any person is or has engaged in activity that violates any of the provisions of this chapter, Chapter 90.58 RCW (Shoreline Management Act), or a permit issued pursuant to this chapter, the city may issue and serve upon such person or persons a cease and desist order and/or an order to take corrective action.

(a) Content of Order. The order shall set forth and contain:
The Burien Municipal Code is current through Ordinance 718, passed November 4, 2019.

Chapter 20.35 ADMINISTRATION AND SHORELINE PERMIT PROCEDURES

The Burien Municipal Code is current through Ordinance 718, passed November 4, 2019.

(i) A description of the specific nature, extent, and time of violation and the damage or potential damage; and

(ii) A notice that the act or acts causing a violation or a potential violation shall immediately cease and desist or, in appropriate cases, the specific corrective action to be taken within a specific and reasonable time, which corrective action may include, but is not limited to, restoration and/or mitigation of the site and other property damaged.

(b) Effective Date. An order issued under this section shall become effective immediately upon receipt by the person to whom the order is directed.

(c) Compliance. Failure to comply with the terms of an order issued pursuant to this subsection (2) shall be a violation of this chapter and can result in enforcement actions including, but not limited to, the issuance of a civil penalty.

(d) Other Action. In addition to the issuance of the cease and desist order and/or an order to take corrective action, the city may take other enforcement action available at law including issuance of a civil notice of violation and penalties pursuant to subsection (3) of this section, seeking injunctive or declaratory relief, imposition of criminal penalties, and permit rescission as set forth in RCW 90.58.140 (Development permits). The city may combine an order issued pursuant to this subsection (2) with a notice of violation.

(3) Civil Penalties – Procedures – Remission.

(a) Civil Violations. It shall be a civil violation of this chapter for any person to:

   (i) Use, construct or demolish any structure, or to conduct clearing, earth-moving, construction or other development not authorized under a substantial development permit, conditional use permit or variance permit, where such permit is required by this chapter;

   (ii) Undertake or conduct any work which is not conducted in accordance with the plans, conditions, or other requirements in a permit approved pursuant to this chapter; provided, that the terms or conditions are stated in the permit or the approved plans;

   (iii) Remove or deface any sign, notice, complaint or order required by or posted in accordance with this chapter;

   (iv) Misrepresent any material fact in any application, plans or other information submitted to obtain any shoreline use or development authorization;

   (v) Fail to comply with the requirements of a substantial development permit, conditional use permit or variance issued pursuant to this chapter;

   (vi) Undertake a development or use on shorelines of the state without first obtaining a permit required pursuant to this chapter;

   (vii) Fail to comply with an order issued under subsection (2) of this section.

(b) Amount of Penalty. The penalty for each civil violation shall not exceed $1,000 for each violation and shall not be less than $25.00. The amount of the penalty prescribed in the notice of violation shall be determined based upon the guidelines set forth in subsection (1) of this section.

(c) Separate Violation. Each calendar day that a civil violation occurs or continues to occur shall constitute a separate civil violation.

(d) Notice of Civil Violation. A notice of civil violation and penalty shall be imposed by issuance and service of a notice of civil violation in writing.

(e) Contents of Notice of Violation. The notice of violation shall set forth and contain:
(i) A description of the specific nature, extent, and time of violation(s) and the damage or potential damage; and

(ii) A notice that the act or acts causing a violation or a potential violation shall immediately cease and desist or, in appropriate cases, the specific corrective action to be taken within a specific and reasonable time; and

(iii) A notice that any order included in the notice of violation shall become effective immediately upon receipt by the person to whom the order is directed.

(f) Service of Notice of Violation. The notice of violation shall be served upon the person or persons alleged to have committed the violation either by certified mail with return receipt requested, at such person’s or persons’ last known address of record, or by personal service.

(g) Application for Remission or Mitigation. Any person incurring a penalty may apply in writing, within 30 days of receipt of the penalty, to the director for remission or mitigation of such penalty. The application shall be filed with the city clerk and shall identify the specific violation or violations for which the applicant seeks remission or mitigation, set forth the specific facts establishing the extraordinary circumstances which the applicant desires the director to consider, include complete copies of any documents or records applicant wishes the director to consider, include the mailing address (not a post office box) at which the applicant will receive notice of the decision, and shall be signed by the applicant. Incomplete applications and applications filed with the city after the 30-day period specified herein shall not be considered by the director.

Upon receipt of a complete application for remission or mitigation, the director, or his/her designee, shall consider the application, together with any information the director, or his/her designee, determines is relevant, and may remit or mitigate the penalty only upon a finding that that applicant has demonstrated extraordinary circumstances, such as the presence of information or factors not considered in setting the original penalty. When a penalty is imposed jointly by the Department of Ecology and the city, the penalty may be remitted or mitigated only upon such terms as both the Department of Ecology and the city agree.

(h) Right of Appeal.

(i) Any person issued a notice of civil violation pursuant to this subsection (3) may appeal the same to the city council; provided, that, if the penalty is imposed jointly by the city and the Department of Ecology, an appeal shall be filed with the Shorelines Hearings Board in accordance with WAC 173-27-290 (Appeal of civil penalty).

(ii) Timing of Appeal. Except as provided below, any person appealing a notice of civil violation to the city council shall file a written notice of appeal with the city clerk within 30 days of service of the notice of civil violation. In the event that a timely and completed application is filed with the city clerk for remission or mitigation, an appeal of a civil violation that is the subject of the application for remission or mitigation shall be filed within 30 days of applicant’s receipt of the city’s written decision regarding the remission or mitigation. The applicant shall be deemed to have received the written decision upon the earlier of the date of personal service of the written decision or three days after the written decision is deposited in the United States mail, in a postage prepaid, properly addressed envelope, using the applicant’s address as stated in the application.

(iii) Notice of Appeal. All appeals shall be in writing and contain the following:

(A) A heading in the words: “Before the Hearing Examiner”;

(B) A caption reading: “Appeal of ______” giving the name of all appellant(s);

(C) A brief statement in concise language of the violation or violations protested, together with any material facts claimed to support the contentions of the appellant, including a copy of the notice of civil violation(s) being appealed;
(D) A brief statement in concise language of the relief sought, and the reasons why it is claimed the protested notice of violation(s) should be reversed, modified or otherwise set aside;

(E) The signatures of appellant and appellant’s official mailing addresses;

(F) The verification (by declaration under penalty of perjury under the laws of the state of Washington) of the appellant as to the truth of the matters stated in the appeal.

(iv) Hearing. Within 10 days of receiving the written appeal, the city clerk shall fix a date, time and place for the hearing of the appeal. Such date shall be not less than 10 days nor more than 60 days from the date the appeal was filed; provided, that the hearing examiner may reset or continue a hearing upon request of the city or the party appealing, upon good cause shown, or sua sponte. Written notice of the date of the hearing shall be provided to the appellant by mailing such notice by first class mail, postage prepaid, to the appellant at the address shown on the notice of appeal. At the hearing the appellant shall be entitled to appear in person and be represented by counsel, and to offer evidence pertinent and material to those matters or issues specifically raised by the appellant in the written notice of appeal.

(v) Evidence. Unless otherwise provided by law, evidence that is material and relevant to determination of the matter consistent with the applicable legal requirements and subject to administrative rules of proceedings before the hearing examiner shall be admitted into the record whether or not such evidence was considered by the official issuing the notice of civil violation.

(vi) Findings – Conclusions – Recommendation. The hearing examiner shall conduct adjudicative proceedings, receive and examine all evidence it finds relevant to the subject matter, and prepare a record thereof. When the hearing examiner renders a recommendation, the examiner shall make and enter written findings and conclusions which support such decision. The findings and conclusions shall set forth and demonstrate the manner in which the decision or recommendation is consistent with applicable laws, regulations and policies of the city of Burien. The hearing examiner may recommend that the notice of civil violation be affirmed, dismissed or modified consistent with his/her findings and conclusions. The decision or recommendation shall be rendered as soon as possible but in all events within 20 working days of the conclusion of the hearing.

(vii) City Council. When taking final action, the city council shall make and enter findings of fact from the record before the hearing examiner which support its action, may affirm, reverse, modify, or remand the decision of the hearing examiner, and may adopt all or portions of the examiner’s findings and conclusions. The decision of the city council shall be a final decision.

(i) Penalties Due.

(i) Penalties imposed under this subsection (3) shall become due and payable 30 days after receipt of notice of civil violation unless application for remission or mitigation is made or an appeal is filed. Whenever an application for remission or mitigation is made, penalties shall become due and payable 30 days after receipt of the city’s decision regarding the remission or mitigation. Whenever an appeal of a penalty is filed, the penalty shall become due and payable upon completion of all review proceedings and upon the issuance of a final decision confirming the penalty in whole or in part.

(ii) If the amount of a penalty owed the city is not paid within 30 days after it becomes due and payable, the city may take actions necessary to recover such penalty.

(j) Aiding or Abetting. Any person who, through an act of commission or omission, procures, aids or abets in the civil violation shall be considered to have committed a civil violation for the purposes of the civil penalty.

(4) Criminal Penalties. In addition to incurring civil penalties under subsection (3) of this section, any person found to have willfully engaged in activities on shorelines of the state in violation of the provisions of this chapter shall be guilty of a gross misdemeanor, and shall be punished by:

(a) A fine of not less than $25.00 or more than $1,000;
(b) Imprisonment in the county/city jail for not more than 90 days; or

(c) Both such fine and imprisonment; provided, that the fine for the third and all subsequent violations in any five-year period shall not be less than $500.00 nor more than $10,000; provided further, that fines for violations of RCW 90.58.550 (Oil or natural gas exploration in marine waters), or any rule adopted thereunder, shall be determined under RCW 90.58.560 (Oil or natural gas exploration).

(5) Inspection Access. The director and his/her authorized representatives may, for the purpose of inspection for compliance with the provisions of a permit issued pursuant to this chapter, enter all properties that are subject to such a permit. All persons applying for a permit under this chapter shall be deemed to have given their consent to entry upon the property upon issuance of the permit. No owner or occupant of any premises shall fail to provide prompt entry to the director or authorized representative for the purposes of inspection under this section. If such entry is refused, the city shall have recourse to every remedy provided by law to secure entry, including issuance of a notice of correction and issuance of a notice of civil violation.

Whenever entry is required for purposes of inspection pursuant to this section, if the premises are occupied, the persons conducting the inspection shall present proper credentials and request entry, and if the premises are unoccupied, reasonable effort shall first be made to locate the owner of the premises and request entry.

(6) Other Remedies.

(a) In addition to the civil and criminal penalties provided for herein, the city may, pursuant to Chapter 90.58 RCW (Shoreline Management Act), bring such injunctive, declaratory, or other actions as are necessary to ensure that no uses are made of the shorelines of the state located within the city of Burien in conflict with the provisions of Chapter 90.58 RCW (Shoreline Management Act), this chapter, a permit issued pursuant to this chapter, or other regulations adopted pursuant to state law or city code, and to otherwise enforce the provisions of the city’s shoreline master program.

(b) Any person subject to the regulatory provisions of this program or the Act who violates any provision thereof, or permit, or permit condition issued pursuant thereto shall be liable for all damage to public or private property arising from such violation, including the cost of restoring the affected area to its condition prior to violation. The city attorney may bring suit for damages under this section on behalf of the city and on the behalf of all persons similarly situated pursuant to Chapter 90.58 RCW (Shoreline Management Act).

(7) Abatement. Structures or development on shorelines considered by the director to present a hazard or other public nuisance to persons, properties or natural features may be abated by the city using all lawful means available. [Ord. 581 § 1 (Exh. A), 2013]

20.35.065 Revisions to shoreline permits.

(See also WAC 173-27-100 (Revisions to permits).)

(1) Revision Required. A permit revision is required whenever an applicant proposes substantive changes to the design, terms or conditions of a project from that which is approved in the shoreline permit. Changes are considered substantive if they materially alter the project in a manner that relates to its conformance to the terms and conditions of the permit, the Burien shoreline master program and/or the policies and provisions of Chapter 90.58 RCW (Shoreline Management Act). Changes which are not substantive in effect do not require approval of a revision.

(2) Required Information. When an applicant seeks to revise a permit, the city will request from the applicant detailed plans and text describing the proposed changes. If the shoreline administrator determines that the proposed changes are within the scope and intent of the original permit, and are consistent with the Burien shoreline master program and the Shoreline Management Act, the city may approve a revision.

“Within the scope and intent of the original permit” means all of the following:

(a) No additional over-water construction is involved except that pier, dock, or float construction may be increased by 500 square feet or 10 percent from the provisions of the original permit, whichever is less;
The Burien Municipal Code is current through Ordinance 718, passed November 4, 2019.

(b) Ground area coverage and height may be increased a maximum of 10 percent from the provisions of the original permit;

(c) 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 a variance granted as the original permit or a part thereof;

(d) Additional or revised landscaping is consistent with any conditions attached to the original permit and with the applicable county master program;

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

(f) No adverse environmental impact will be caused by the project revision.

(3) New Permits Required. If the revision, or the sum of the revision and any previously approved revisions, will violate the criteria specified in subsections (2)(a) through (f) of this section, the city shall require that the applicant apply for a new shoreline permit. Revisions to permits may be authorized after original permit authorization has expired under WAC 173-27-080(2) (legally established structures). The purpose of such revisions shall be limited to authorization of changes which are consistent with this section and which would not require a permit for the development or change proposed under the terms of Chapter 90.58 RCW (Shoreline Management Act), the Burien shoreline master program and this section. If the proposed change constitutes substantial development, then a new permit is required; provided, this subsection shall not be used to extend the time requirements or to authorize substantial development beyond the time limits of the original permit. The revision approval, including the revised site plans and text consistent with the provisions of WAC 173-27-180 (Application requirements) as necessary to clearly indicate the authorized changes and the final ruling on consistency with this section, shall be filed with the Washington State Department of Ecology. In addition, the city shall notify parties of record of the action.

(4) Revisions to Conditional Use or Variance Permits. If the revision to the original permit involves a conditional use or variance, the city shall submit the revision to the Department of Ecology for the required state’s approval, approval with conditions, or denial, and shall indicate that the revision is being submitted under the requirements of this subsection. The Department of Ecology shall render and transmit to the city and the applicant its final decision within 15 days of the date of their receipt of the submittal from the city. The city of Burien shall notify parties of record of the Department of Ecology’s final decision.

(5) Effective Date. The revised permit is effective immediately upon final decision by the city or, when appropriate, upon final action by the Department of Ecology.

(6) Appeals. Appeals shall be to the State Shorelines Hearings Board in accordance with RCW 90.58.180 (Appeals) and shall be filed within 21 days from the date of receipt of the city’s action by the Department of Ecology or the date the Department of Ecology’s final decision is transmitted to the city and the applicant.

(7) Construction Authorization. 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 within the scope and intent of the original permit, the decision shall have no bearing on the original permit. [Ord. 581 § 1 (Exh. A), 2013]

20.35.070 Rescission of shoreline permits and exemptions.

(See also RCW 90.58.140(8) (Development permits).)

Whenever any development or use is in violation of a permit or shoreline exemption issued pursuant to this chapter, the city may, concurrent with or as an alternative to any other remedy provided by this title or other law or ordinance, initiate permit rescission proceedings by scheduling a public hearing before the hearing examiner and serving the applicant with written notice thereof. Notice shall be provided in accordance with BMC 19.65.045 (Notice of Open Record Predecision Hearing) and contain a general description of the alleged noncompliance and date, time, and place of public hearing. It shall be served by registered mail at least 15 calendar days prior to such hearing. The permit rescission request shall be processed as a Type 2 decision in accordance with the procedures established in Chapter 19.65 BMC (Procedures). [Ord. 581 § 1 (Exh. A), 2013]
Chapter 20.40

SHORELINE DEFINITIONS*

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*Definitions contained in the Shoreline Management Act of 1971 (Chapter 90.58 RCW) and the Shoreline Master Program Guidelines (Chapter 173-26 WAC) shall apply to all terms and concepts used in this shoreline master program; provided, that definitions contained in this title shall be applicable where not in conflict with the Shoreline Management Act and the Shoreline Master Program Guidelines and shoreline management procedural rules. Unless otherwise defined in this chapter, the definitions provided in Chapter 19.10 BMC shall apply. If there is a conflict, the definitions in this section shall govern.

20.40.000 Alteration.
“Alteration” means any human activity that results or is likely to result in a significant impact upon the existing condition of a critical area. Alterations include, but are not limited to, grading, filling, dredging, draining, channelizing, applying herbicides or pesticides or any hazardous substance, discharging pollutants except storm water, grazing domestic animals, paving, constructing, applying gravel, modifying for surface water management purposes, cutting, pruning, topping, trimming, relocating or removing vegetation or any other human activity which results or is likely to result in a significant impact to existent vegetation, hydrology, wildlife or wildlife habitat. Alterations do not include walking, fishing or any other passive recreation or other similar activities. [Ord. 706 § 1 (Exh. A), 2019; Ord. 581 § 1 (Exh. A), 2013]

20.40.005 Appurtenance.
“Appurtenance” means development necessarily connected to the use and enjoyment of a single-family residence and located landward of the perimeter of an associated wetland and landward of the ordinary high water mark. Normal appurtenances include a garage, deck, driveway, utilities solely servicing the subject single-family residence, fences, and grading which does not exceed 250 cubic yards. [Ord. 706 § 1 (Exh. A), 2019; Ord. 581 § 1 (Exh. A), 2013]

20.40.010 Aquaculture.
“Aquaculture” means the culture, harvesting or farming of food fish, shellfish, or other aquatic plants and animals. Aquaculture does not include the harvest of wild geoduck associated with the state managed wildstock geoduck fishery. Activities include the hatching, cultivating, planting, feeding, raising, harvesting, and processing of aquatic plants and animals and the maintenance and construction of necessary equipment, buildings and growing areas. [Ord. 706 § 1 (Exh. A), 2019; Ord. 581 § 1 (Exh. A), 2013]

20.40.015 Associated wetlands.
“Associated wetlands” means those wetlands that are in proximity to and either influence or are influenced by tidal waters or a lake or stream subject to the Shoreline Management Act. [Ord. 706 § 1 (Exh. A), 2019; Ord. 581 § 1 (Exh. A), 2013]

20.40.020 Beach.
“Beach” means the zone of unconsolidated material that is moved by waves, wind, and tidal currents, extending landward to the coastline. [Ord. 706 § 1 (Exh. A), 2019; Ord. 581 § 1 (Exh. A), 2013]

20.40.025 Boat ramp.
“Boat ramp” means graded slopes, slabs, pads, planks, or rails used for launching boats by means of a trailer, hand, or mechanical device. [Ord. 706 § 1 (Exh. A), 2019; Ord. 581 § 1 (Exh. A), 2013]


20.40.030 **Bulkhead.**
“Bulkhead” means a solid or open pile wall erected generally parallel to and near the ordinary high water mark for the purposes of protecting adjacent uplands from waves or current action. [Ord. 706 § 1 (Exh. A), 2019; Ord. 581 § 1 (Exh. A), 2013]

20.40.035 **Community beach.**
“Community beach” means a beach area jointly owned by a homeowners association for use of the neighborhood. [Ord. 706 § 1 (Exh. A), 2019; Ord. 581 § 1 (Exh. A), 2013]

20.40.040 **Community residential facility.**
“Community residential facility” means living quarters meeting applicable federal and state standards that function as a single housekeeping unit and provide supportive services, including but not limited to counseling, rehabilitation and medical supervision, excluding drug and alcohol detoxification; if staffed by nonresident staff, each 24 staff hours per day equals one full-time residing staff member for subclassifying community residential facilities as follows:

(1) Community residential facility-I: nine to 10 residents and staff.

(2) Community residential facility-II: 11 or more residents and staff. (BMC 19.10.065.) [Ord. 706 § 1 (Exh. A), 2019; Ord. 581 § 1 (Exh. A), 2013]

20.40.042 **Critical saltwater habitat.**
“Critical saltwater habitat” means all kelp beds, eelgrass beds, spawning and holding areas for forage fish, such as herring, smelt and sandlance; shellfish beds; mudflats, intertidal habitats with vascular plants, and areas with which priority species have a primary association. [Ord. 706 § 1 (Exh. A), 2019; Ord. 581 § 1 (Exh. A), 2013]

20.40.044 **Development.**
“Development” means a use consisting of the construction or exterior alteration of structures; dredging; drilling; dumping; filling; removal of any sand, gravel, or minerals; bulkheading; driving of piling; placing of obstructions; or any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to this chapter at any state of water level. “Development” does not include dismantling or removing structures if there is no other associated development or re-development. [Ord. 706 § 1 (Exh. A), 2019; Ord. 581 § 1 (Exh. A), 2013]

20.40.045 **Docks.**
“Docks” are fixed structures floating upon the water. [Ord. 706 § 1 (Exh. A), 2019; Ord. 581 § 1 (Exh. A), 2013]

20.40.050 **Dredging.**
“Dredging” means the removal of earth, sand, sludge or other materials from the bottom of a stream, river, lake, bay or other water body. However, the creation of temporary depressions or contour alterations on tidelands or bedlands through the use of aquaculture harvesting equipment approved by the Washington State Department of Fish and Wildlife shall not be construed to be dredging. [Ord. 706 § 1 (Exh. A), 2019; Ord. 581 § 1 (Exh. A), 2013]

20.40.055 **Feasible.**
“Feasible” means actions that meet all of the following conditions:

(1) The action can be accomplished with technologies and methods that have been used in the past in similar circumstances, or studies or tests have demonstrated in similar circumstances that such approaches are currently available and likely to achieve the intended results;

(2) The action provides a reasonable likelihood of achieving its intended purpose; and

(3) The action does not physically preclude achieving the project’s primary intended legal use.

In cases where this SMP requires certain actions unless they are infeasible, the burden of proving infeasibility is on the applicant.
In determining an action’s infeasibility, the reviewing agency may weigh the action’s relative public costs and public benefits, considered in the short- and long-term time frames. [Ord. 706 § 1 (Exh. A), 2019; Ord. 581 § 1 (Exh. A), 2013]

20.40.060 Fill. “Fill” means any material, such as earth, clay, sand, concrete, rubble, wood chips, bark or waste of any kind, which is placed, stored or dumped upon the surface of the ground resulting in an increase in the natural surface elevation. [Ord. 706 § 1 (Exh. A), 2019; Ord. 581 § 1 (Exh. A), 2013]

20.40.065 Floating home. “Floating home” means a single-family dwelling unit constructed on a float that is moored, anchored, or otherwise secured in waters, and is not a vessel, even though it may be capable of being towed. [Ord. 706 § 1 (Exh. A), 2019; Ord. 581 § 1 (Exh. A), 2013]

20.40.070 Floats (rafts). “Floats (rafts)” are floating structures that are moored, anchored, or otherwise secured in the water that are not directly connected to the shoreline. [Ord. 706 § 1 (Exh. A), 2019; Ord. 581 § 1 (Exh. A), 2013]


20.40.074 Grading. “Grading” means the movement or redistribution of the soil, sand, rock, gravel, sediment, or other material on a site in a manner that alters the natural contour of the land. [Ord. 706 § 1 (Exh. A), 2019; Ord. 581 § 1 (Exh. A), 2013]

20.40.075 Houseboat. “Houseboat” means a vessel used for living quarters but licensed and designed substantially as a mobile structure by means of detachable utilities or facilities, anchoring, and the presence of adequate self-propulsion to operate as a vessel. [Ord. 706 § 1 (Exh. A), 2019; Ord. 581 § 1 (Exh. A), 2013]

20.40.080 In-water structure. “In-water structure” means a structure located waterward of the ordinary high water mark that either causes or has the potential to cause water impoundment or the diversion, obstruction, or modification of water flow. [Ord. 706 § 1 (Exh. A), 2019; Ord. 581 § 1 (Exh. A), 2013]

20.40.085 Littoral drift. “Littoral drift” means the mud, sand, or gravel materials moved parallel to the shoreline in the nearshore zone by waves and currents. [Ord. 706 § 1 (Exh. A), 2019; Ord. 581 § 1 (Exh. A), 2013]

20.40.088 Mean higher high water. “Mean higher high water” or “MHHW” means the tidal elevation obtained by averaging each day’s highest tide at a particular location over a period of 19 years. It is measured from the mean lower low water = 0.0 tidal elevation. [Ord. 706 § 1 (Exh. A), 2019; Ord. 581 § 1 (Exh. A), 2013]

20.40.090 Mooring buoy. “Mooring buoy” means a floating object anchored to the bottom of a water body that provides tie-up capabilities for vessels. [Ord. 706 § 1 (Exh. A), 2019; Ord. 581 § 1 (Exh. A), 2013]

20.40.092 Net acre. “Net acre” means a measure of horizontal area for calculating development potential. At the area-wide planning level, net acre refers to the gross acre less the estimated area to be transferred (e.g., sale, dedication or donation) to public ownership from individual parcels. Net acreage is typically 67 to 75 percent of gross acreage, and depends largely on the amount of road right-of-way. At the site development level, this is the total acreage of a parcel less the area transferred to public ownership. The remaining net acreage is the basis for determining development density and potential. Net acre typically includes easement areas. [Ord. 706 § 1 (Exh. A), 2019; Ord. 581 § 1 (Exh. A), 2013]
20.40.095 Normal protective bulkhead.
“Normal protective bulkhead” means a bulkhead, common to single-family residences, constructed at or near the ordinary high water mark to protect an existing single-family residence, the sole purpose of which is to protect land from erosion, not for the purpose of creating new land. [Ord. 581 § 1 (Exh. A), 2013]

20.40.097 Office.
“Office” means a place of employment providing professional, administrative, educational, business or governmental services other than production, distribution, sale or repair of goods or commodities. The following is a nonexclusive list of office uses: medical, dental or other health care; veterinary, accounting, architectural, engineering, consulting or other similar professional services; management, administrative, secretarial, marketing, advertising, personnel or other similar services; sales offices where no inventories or goods are available on the premises, real estate, insurance, travel agent, brokerage or other similar services. (BMC 19.10.385.) [Ord. 581 § 1 (Exh. A), 2013]

20.40.100 Ordinary high water mark.
“Ordinary high water mark (OHWM)” means, on all lakes, streams, and tidal water, that mark that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation as that condition existing on June 1, 1971, as it may naturally change thereafter, or as it may change thereafter in accordance with permits issued by a local government or the Department; provided, that in any area where the ordinary high water mark cannot be found, the ordinary high water mark adjoining salt water shall be the line of mean higher high tide and the ordinary high water mark adjoining fresh water shall be the line of mean high water. [Ord. 581 § 1 (Exh. A), 2013]

20.40.101 Partially functioning areas.
“Partially functioning areas” means areas that provide one or more reduced ecological functions and consist of neither native vegetation nor impervious surface. Ecological functions may include sediment removal, erosion control, pollution removal, wildlife habitat, and infiltration. Partially functioning areas specifically include lawns, slat decks that allow infiltration, and nonnative landscaped areas. [Ord. 581 § 1 (Exh. A), 2013]

20.40.102 Personal wireless service facility (PWSF).
“Personal wireless service facility (PWSF)” means a site, building, and/or structure that contains facilities to provide personal wireless services. A personal wireless service facility includes at least one of the following: antenna, support structure, and/or equipment enclosure. (BMC 19.10.397.) [Ord. 581 § 1 (Exh. A), 2013]

20.40.105 Piers.
“Piers” are fixed, pile-supported structures extending over the water. [Ord. 581 § 1 (Exh. A), 2013]

20.40.110 Physical access.
“Physical access” means the ability of the general public to reach, touch, and enjoy the water’s edge, to travel on the waters of the state, and to view the water and the shoreline from adjacent locations. [Ord. 581 § 1 (Exh. A), 2013]

20.40.115 Primary structure.
“Primary structure” means any permanent building, road, bridge or utility requiring a permit or approval which is necessary to support the primary use of a site. [Ord. 581 § 1 (Exh. A), 2013]

20.40.116 Public park and recreation facilities.
“Public park and recreation facilities” means a natural or landscaped area, buildings or structures, provided by a unit of government, to meet the active or passive recreational needs of people. (BMC 19.10.420.) [Ord. 581 § 1 (Exh. A), 2013]

20.40.117 Retail.
“Retail” means a commercial enterprise which provides goods and/or services directly to the consumer, and whose goods are available for immediate purchase and/or rental, and whose goods are available for immediate removal from the premises by the purchaser and/or whose services are traditionally not permitted within an office use. The sale and consumption of food are included if: (1) the seating and associated circulation area does not exceed 10 percent of the gross floor area of the use; and (2) it can be demonstrated to the city that the floor plan is designed to
The Burien Municipal Code is current through Ordinance 718, passed November 4, 2019.

20.40.119 School.
“School” means an institution of learning offering instruction in the several branches of learning and study required by the Education Code of the state of Washington. The following are categories of schools:

(1) Elementary and Middle/Junior High Schools. Grades kindergarten through nine, including associated meeting rooms, auditoriums and athletic facilities.

(2) Secondary or High Schools. Grades nine through 12, including associated meeting rooms, auditoriums and athletic facilities. [Ord. 706 § 1 (Exh. A), 2019; Ord. 581 § 1 (Exh. A), 2013]

20.40.120 Shorelands.
“Shorelands” means those lands extending landward for 200 feet in all directions as measured on a horizontal plane from the ordinary high water mark, floodways and 100-year floodplains, and all wetlands and river deltas associated with the streams, lakes, and tidal waters which are subject to the State of Washington Shoreline Management Act. [Ord. 706 § 1 (Exh. A), 2019; Ord. 581 § 1 (Exh. A), 2013]

20.40.125 Shoreline administrator.
“Shoreline administrator” means the city manager or his or her designee in the community development department who is responsible for administering the city of Burien shoreline master program. [Ord. 706 § 1 (Exh. A), 2019; Ord. 581 § 1 (Exh. A), 2013]

20.40.130 Shoreline conditional use.
“Shoreline conditional use” means a use or modification classified by the city of Burien shoreline master program as a conditional use or modification for certain shoreline environments or is an unlisted use/modification. [Ord. 706 § 1 (Exh. A), 2019; Ord. 581 § 1 (Exh. A), 2013]

20.40.135 Shoreline modification.
“Shoreline modification” means an action that modifies the physical configuration or qualities of the shoreline area, usually through the construction of a physical element such as a breakwater, dock, boat launch ramp, or other shoreline structures. A shoreline modification also can consist of other activities, such as dredging and filling. [Ord. 706 § 1 (Exh. A), 2019; Ord. 581 § 1 (Exh. A), 2013]

20.40.140 Shoreline permit.
“Shoreline permit” means any substantial development, variance, conditional use, or revision thereto authorized under the provisions of the city of Burien shoreline master program subject to review by the Washington State Department of Ecology. [Ord. 706 § 1 (Exh. A), 2019; Ord. 581 § 1 (Exh. A), 2013]

20.40.145 Shoreline substantial development.
“Shoreline substantial development” means any development of which the total cost, or fair market value, whichever is higher, exceeds the dollar amount prescribed by WAC 173-27-040(2)(a), so long as such development does not materially interfere with the normal public use of the water or shorelines of the state. [Ord. 706 § 1 (Exh. A), 2019; Ord. 581 § 1 (Exh. A), 2013]

20.40.150 Shoreline variance.
“Shoreline variance” means a permit for the limited purposes of granting relief to specific bulk, dimensional, or performance standards set forth in the city of Burien shoreline master program. [Ord. 706 § 1 (Exh. A), 2019; Ord. 581 § 1 (Exh. A), 2013]

20.40.155 Shoreline environment designations.
“Shoreline environment designations” means the categories of shorelines established by the city of Burien shoreline master program in order to provide a uniform basis for applying policies and use regulations within physically distinct shoreline areas. The city of Burien shoreline master program classifies shorelines into three shoreline environment designations: urban conservancy, aquatic and shoreline residential. [Ord. 706 § 1 (Exh. A), 2019; Ord. 581 § 1 (Exh. A), 2013]
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20.40.160 Shoreline jurisdiction.
“Shoreline jurisdiction” means the proper term describing all of the geographic areas regulated by the city of Burien shoreline master program. [Ord. 581 § 1 (Exh. A), 2013]

20.40.165 Shoreline master program.
“Shoreline master program” means the general term for shoreline comprehensive plans and regulations prepared under the jurisdiction of the Shoreline Management Act. [Ord. 581 § 1 (Exh. A), 2013]

20.40.170 Shorelines.
“Shorelines” means all of the water areas of the state, including reservoirs, and their associated shorelands, together with the lands underlying them; except (1) shorelines of statewide significance; (2) shorelines on segments of streams upstream of a point where the mean annual flow is 20 cubic feet per second or less, and the wetlands associated with such upstream segments; and (3) shorelines on lakes less than 20 acres in size, and wetlands associated with such small lakes. [Ord. 581 § 1 (Exh. A), 2013]

20.40.175 Shorelines of statewide significance.
“Shorelines of statewide significance” means shorelines designated by the state of Washington that are major resources from which all people in the state derive benefit. Shoreline areas in the city of Burien that are designated as shorelines of statewide significance are portions of the Puget Sound adjacent to the city limits extending out to mid channel from extreme low tide. [Ord. 581 § 1 (Exh. A), 2013]

20.40.180 Shorelines of the state.
“Shorelines of the state” means the total of all “shorelines” and “shorelines of statewide significance” within the state. [Ord. 581 § 1 (Exh. A), 2013]

20.40.185 Tidal waters.
“Tidal waters” means marine and estuarine waters bounded by the ordinary high water mark. Where a stream enters the tidal waters, the tidal water is bounded by the extension of the elevation of the marine ordinary high water mark within the stream. [Ord. 581 § 1 (Exh. A), 2013]

20.40.190 Tidelands.
“Tidelands” means the land on the shore of marine water bodies between the line of ordinary high tide and the line of extreme low tide. [Ord. 581 § 1 (Exh. A), 2013]

20.40.195 Tram.
“Tram” means a conveyance that transports passengers or freight in carriers on rails or suspended from cables supported by a series of towers. [Ord. 581 § 1 (Exh. A), 2013]

20.40.200 Upland.
“Upland” means generally the area above and landward of the ordinary high water mark. [Ord. 581 § 1 (Exh. A), 2013]

20.40.205 Visual access.
“Visual access” means access with improvements that provide only a view of the shoreline or water, but do not allow physical access to the shoreline. [Ord. 581 § 1 (Exh. A), 2013]

20.40.210 Water dependent.
“Water dependent” means a use or a portion of a use which requires direct contact with the water and cannot exist at a nonwater location due to the intrinsic nature of its operations. Examples of water-dependent uses may include ship cargo terminal loading areas, ferry and passenger terminals, barge loading facilities, ship building and dry docking, marinas, aquaculture, float plane facilities, and sewer outfalls. [Ord. 581 § 1 (Exh. A), 2013]

20.40.215 Water enjoyment.
“Water enjoyment” means a recreational use, or other use facilitating public access to the shoreline as a primary characteristic of the use; or a use that provides for recreational use or aesthetic enjoyment of the shoreline for a substantial number of people as a general character of the use and which through the location, design and operation assures the public’s ability to enjoy the physical and aesthetic qualities of the shoreline. In order to qualify as a water
enjoyment use, the use must be open to the general public and the shoreline space of the project must be devoted to provisions that accommodate public shoreline enjoyment. Examples may include parks, piers, museums, restaurants, educational/scientific reserves, resorts, and mixed use projects. [Ord. 581 § 1 (Exh. A), 2013]

20.40.220 Water oriented.
“Water oriented” means any combination of water-dependent, water-related, and/or water enjoyment uses. “Nonwater oriented” serves to describe those uses which have little or no relationship to the shoreline. Examples of nonwater-oriented uses include professional office, automobile sales or repair shops, mini storage facilities, multifamily residential development, department stores, and gas stations. [Ord. 581 § 1 (Exh. A), 2013]

20.40.225 Water related.
“Water related” means a use or a portion of a use which is not intrinsically dependent on a waterfront location but whose operation cannot occur economically without a waterfront location. Examples of water-related uses may include warehousing of goods transported by water, seafood processing plants, hydroelectric generating plants, gravel storage when transported by barge, oil refineries where transport is by tanker, and log storage. [Ord. 581 § 1 (Exh. A), 2013]

20.40.230 Watershed restoration plan.
“Watershed restoration plan” means a plan, developed or sponsored by the Department of Fish and Wildlife, the Department of Ecology, the Department of Natural Resources, the Department of Transportation, a federally recognized Indian tribe acting within and pursuant to its authority, a city, a county, or a conservation district that provides a general program and implementation measures or actions for the preservation, restoration, re-creation, or enhancement of the natural resources, character, and ecology of a water body or reach, drainage area, or watershed for which agency and public review have been conducted pursuant to Chapter 43.21C RCW, the State Environmental Policy Act. [Ord. 581 § 1 (Exh. A), 2013]

20.40.235 Wetlands.
“Wetlands” means areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from nonwetland areas to mitigate the conversion of wetlands. [Ord. 581 § 1 (Exh. A), 2013]
Chapter 19.40
Critical Areas

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PURPOSES AND ADMINISTRATIVE PROVISIONS

19.40.010 User guide.
This chapter establishes regulations pertaining to the development within or adjacent to critical areas. Many areas of Burien have been or may become classified as critical areas by the City or other public agencies. The following critical areas are found in the City of Burien and regulated under this chapter:

A. Frequently flooded areas (BMC 19.40.240);

B. Geologically hazardous areas (BMC 19.40.280), including:

   i. Erosion hazard areas,

   ii. Landslide hazard areas, and

   iii. Seismic hazard areas;

C. Wetlands (BMC 19.40.300);

D. Streams (BMC 19.40.340);

E. Fish and wildlife habitat conservation areas (BMC 19.40.380); and

F. Critical aquifer recharge areas (BMC 19.40.420). [Ord. 623 § 1, 2015; Ord. 376 § 1, 2003]

19.40.020 Purposes and Goals.
1. The City finds that critical areas provide a variety of valuable and beneficial biological and physical functions that benefit the City and its residents, and/or may pose a threat to human safety or to public and private property. The beneficial functions and values of critical areas include, but are not limited to, water quality protection and enhancement, fish and wildlife habitat, food chain
support, flood storage, conveyance and attenuation of storm runoff, groundwater recharge and discharge, wave attenuation, aesthetic value protection, and recreation. Hazards include landslides, flooding and excessive erosion.

2. This chapter is to be administered with flexibility and attention to site-specific characteristics. It is not the intent of this chapter to make a parcel of property unusable by denying its owner reasonable use of the property.

3. Purposes. The purposes of this chapter are to:

   A. Implement the goals, policies, guidelines and requirements of the Washington State Environmental Policy Act, Chapter 43.21C RCW, Growth Management Act, Chapter 36.70A RCW and the City of Burien comprehensive plan which call for protection of the natural environment and the public health, safety and welfare, and allowing for appropriate urban development within the region’s urban growth area.

   B. Designate, classify, and regulate the use of critical areas in accordance with the Growth Management Act and through the application of best available science, as determined according to WAC 365-195-900 through 365-195-925, as amended, and in consultation with state and federal agencies and other qualified professionals.

4. Goals. By regulating development and alteration of critical areas and their buffers, this chapter seeks to:

   A. Preserve and enhance the ecological value of critical areas to maintain the functional integrity of the natural environment;

   B. Protect public health, safety and welfare by minimizing adverse impacts and risks associated with development in critical areas;

   C. Preserve the quality of life in Burien;

   D. Minimize public and private expenditures to correct future misuses of critical areas;

   E. Provide City officials with sufficient information, direction and authority to identify and if necessary, regulate development of critical areas; mitigate impacts on critical areas and enforce critical area regulations and permit conditions;

   F. Encourage flexibility and creativity in the development of property containing or adjacent to critical areas, to meet the requirements and goals of this chapter while preserving property rights; and

   G. Educate the community about the hazards, risks, functions, and value of Burien’s critical areas and the responsibility of the City to protect and preserve the natural environment for
future generations. [Ord. 623 § 1, 2015; Ord. 376 § 1, 2003]

19.40.030 Relationship to other regulations.
1. Greater restrictions. When any provision of this code conflicts with this chapter or when the provisions of this chapter are in conflict, the provision that provides more protection to critical areas shall apply, unless specifically provided otherwise in this chapter or unless such provision conflicts with federal or state laws or regulations.

2. Multiple buffers. When more than one critical area affects a site and multiple buffers are required, all required buffers must be provided, unless specifically provided otherwise in this chapter. Where buffers overlap, the most restrictive buffer applies.

3. Compliance with the provisions of this chapter does not constitute compliance with other federal, state, and local regulations and permit requirements that may be required. The applicant is responsible for complying with these requirements, apart from the process established in this chapter. [Ord. 623 § 1, 2015; Ord. 376 § 1, 2003]

19.40.040 Applicability.
1. Compliance required. Alteration, development, use, and/or activities proposed within or adjacent to critical areas and their required buffers shall comply with the provisions of this chapter. Critical areas and their required buffers shall not be altered except as allowed by this chapter.

2. Identification and classification of critical areas. The Director shall identify and classify critical areas as follows:

   A. Critical Areas Map. The locations of many critical areas in Burien are displayed on the City of Burien’s Critical Areas Map, which is hereby adopted by reference. This map is used to alert the public of the potential location of critical areas in Burien. As new environmental information related to critical areas becomes available, the Director is hereby designated to periodically make such changes as necessary to the Critical Areas Map.

   B. Actual site conditions. Regardless of whether a critical area is shown on the Critical Areas Map, the actual presence or absence of the features defined in this code as critical areas shall govern. The Director may require the applicant to submit technical information to indicate whether critical areas actually exist on or adjacent to the applicant’s site, based on the definitions of critical areas in this code.

3. Adjacency. For the purposes of this chapter, land is “adjacent” to a critical area if it is:

   A. Land that contains the required critical area buffer width and building setback;

   B. Land within one hundred (100) feet upland from a stream or lake;

   C. Land within three hundred (300) feet of a wetland;
D. Land within 660 feet of a bald eagle nest;

E. Land within two hundred (200) feet of a designated critical aquifer recharge area; or

F. Land within the floodway or floodplain. [Ord. 623 § 1, 2015; Ord. 394 § 1, 2003; Ord. 376 § 1, 2003]

19.40.050 Protection of critical areas.
Any action taken pursuant to this chapter shall result in equivalent or greater functions and value of the critical areas associated with the proposed action, as determined by the best available science. All actions and developments shall be designed and constructed in accordance with mitigation sequencing (BMC 19.40.170) to achieve no net loss of critical area functions and values. Applicants must first demonstrate an inability to avoid or reduce impacts, before restoration and compensation of impacts will be allowed. No activity or use shall be allowed that results in a net loss of the functions or value of critical areas. [Ord. 623 § 1, 2015; Ord. 376 § 1, 2003]

19.40.060 Best available science.
1. Criteria for best available science. The best available science is that scientific information applicable to the critical area prepared by local, state or federal natural resource agencies, a qualified scientific professional or team of qualified scientific professionals, that is consistent with criteria established in WAC 365-195-900 through WAC 365-195-925, as amended.

2. Protection for functions and value and anadromous fish. Critical area studies and decisions to alter critical areas shall rely on the best available science to protect the functions and value of critical areas and must give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fish and their habitat, such as salmon and bull trout.

3. Absence of valid scientific information. Where there is an absence of valid scientific information or incomplete scientific information relating to a critical area leading to uncertainty about the risk to critical area function of permitting an alteration of or impact to the critical area, the Director shall take a “precautionary approach,” that strictly limits development and land use activities until the uncertainty is sufficiently resolved. [Ord. 623 § 1, 2015; Ord. 376 § 1, 2003]

19.40.070 Exemptions and exceptions.
1. Exemption request and review process. Exemptions shall be reviewed in conjunction with an associated approval such as a land use decision or the issuance of a construction permit. Absent associated permits or approvals, the proponent of the activity may submit a written request for exemption to the Director that describes the activity and states the exemption in this section that applies. The request shall be processed as an administrative decision. If the exemption is approved, it shall be placed on file with the department. If the exemption is denied, the proponent may continue in the review process and shall be subject to the requirements of this chapter. The Director may add conditions for exemption to ensure the level of activity remains consistent with
the provisions of this chapter.

2. Avoid or limit impacts. All exempt activities shall use city-approved best management practices and other reasonable methods to reasonably minimize impact to critical areas and their required buffers. To be exempt from this chapter does not give permission to degrade a critical area or ignore risk from natural hazards. The Director may require submittal of a critical area study pursuant to BMC 19.40.110 through 19.40.130 if needed to assess public safety risks associated with the proposal. Restoration of non-exempted alterations or damage to a critical area or its buffer may be required.

3. Exempt activities. The following shall be exempt from the provisions of this chapter; however, the activities listed below may not be exempted from other city, state or federal permit requirements or regulations:

A. Emergencies. Alterations in response to emergencies which pose an immediate threat to the public health, safety and welfare or which pose an imminent risk of damage to property. Any alteration undertaken as an emergency shall be reported within one (1) business day to the Department of Community Development. The Director shall confirm that an emergency exists and determine what, if any, mitigation and conditions shall be required to protect the health, safety, welfare and environment and to repair any damage to the critical area and its required buffers. Emergency work must be approved by the City. If the Director determines that the action taken, or any part of the action taken, was beyond the scope of an allowed emergency action, then enforcement provisions of Chapter 1.15 BMC shall apply.

B. Normal and routine operation, maintenance, remodeling, repair and revegetation of existing public facilities, parks and open spaces as long as any such activities do not involve the expansion of improvements into previously unimproved areas.

C. Normal and routine operation, maintenance, remodeling, replacement and repair of existing public streets and city-approved private roads. Such activities shall not involve the expansion of roadways or related improvements into previously unimproved portions of rights-of-way or vehicular access easements or tracts.

D. Except in streams and wetlands or their buffers, normal and routine operation, maintenance, remodeling, and repair of existing public and quasi-public utilities (including water, sanitary sewer, storm drainage, electric, natural gas, cable communications, telephone utility and related activities), including:

i. Relocation of electric facilities, lines, equipment or appurtenances, not including substations, with an associated voltage of 55,000 volts or less, only when required by a local governmental agency which approves the new location of the facilities;

ii. Replacement, modification, installation or construction in an improved city road right-
of-way or city authorized private road of all electric facilities, lines, equipment or appurtenances, not including substations, with an associated voltage of 55,000 volts or less;

iii. Relocation of public sewer local collection, public water local distribution, natural gas, cable communication or telephone facilities, lines, pipes, mains, equipment or appurtenances, only when required by a local governmental agency which approves the new location of the facilities; and

iv. Replacement, modification, installation or construction of public sewer local collection, public water local distribution, natural gas, cable communication or telephone facilities, lines, pipes, mains, equipment or appurtenances when such facilities are located within an improved public right-of-way or city authorized private roadway;

E. Normal and routine maintenance, repair, renovation or structural alteration of public and private structures not listed in this section, in existence on January 14, 2003.

F. New accessory structures and additions to structures that do not exceed a cumulative impervious surface addition after January 14, 2003 of 1,000 square feet or 7% of lot area, whichever is greater; provided that:

i. Construction is not within a stream, wetland or lake or in their required buffers; and

ii. The proposal does not increase non-conformance to critical area standards related to streams, wetlands or lakes.

G. Public and private pedestrian trails, except in streams, wetlands, fish and wildlife habitat conservation areas, or their buffers, subject to the following:

i. Critical area and/or buffer widths shall be increased, where possible, equal to the width of the trail corridor, including disturbed areas; and

ii. Trails proposed to be located in landslide or erosion hazard areas shall be constructed in a manner that does not increase the risk of landslide or erosion and in accordance with an approved geotechnical report.

H. Forest practices. Forest practices regulated and conducted in accordance with the provisions of Chapter 76.09 RCW and forest practices regulations, WAC Title 222, and those that are exempt from city’s jurisdiction, provided that forest practice conversions are not exempt.

I. Minor site investigative work. Work necessary for permit submittals, such as surveys, soil logs, percolation tests, and other related activities, where such activities do not require construction of new roads, significant amounts of excavation or removal of significant trees. In
every case, impacts to the critical area shall be minimized and disturbed areas shall be immediately restored.

J. Non-regulated activities in the critical aquifer recharge areas.

4. Public agency and utility exception.

A. If the application of this chapter would prohibit a development proposal by a public agency or public utility, the agency or utility may apply for a Public Agency and Utility Exception. All requirements of this chapter apply, except as specifically waived as part of the decision on the exception.

B. Exception request and review process. An application for a public agency and utility exception shall be made to the city and shall include a critical area study, including mitigation plan, if necessary; other related project documents, and any applicable environmental documents prepared pursuant to the State Environmental Policy Act (Chapter 43.21C RCW). The application shall be processed using the Type 1 review process pursuant to Chapter 19.65 BMC.

C. Public agency and utility exception review criteria. The Director’s decision shall be based on the following criteria:

   i. There is no other practical or feasible alternative to the proposed development with less impact on the critical area; and

   ii. The proposal minimizes the impact on critical areas; and

   iii. The application of this chapter would unreasonably restrict the ability to provide utility services to the public; and

   iv. The proposal meets the decision criteria in BMC 19.40.100.

5. Reasonable use exception.

A. If the application of this chapter would deny all reasonable use of the property, the applicant may apply for a Reasonable Use Exception. All requirements of this chapter apply, except as specifically waived as part of the decision on the exception.

B. Limitations. Reasonable use exceptions are not authorized for changes in density limitations, permitted uses or activities in critical areas or their required buffers, expanding a use otherwise prohibited, and shall not be used to achieve the maximum density allowed without the existence of critical areas.

C. Exception request and review process. An application for a reasonable use exception shall
be made to the city and shall include a critical area study, including mitigation plan, if necessary; and any other related project documents, such as special studies, and environmental documents prepared pursuant to the State Environmental Policy Act (Chapter 43.21C RCW). The application shall be processed using the Type 1 review process pursuant to Chapter 19.65 BMC.

D. Reasonable use exception review criteria. The Director's decision shall be based on the following criteria:

i. The application of this chapter would deny all reasonable use of the property;

ii. There is no other reasonable use with less impact on the critical area;

iii. The proposed development does not pose an unreasonable threat to the public health, safety or welfare on or off the development proposal site and is consistent with the general purposes of this chapter and the public interest; and

iv. Any alterations permitted to the critical area shall be the minimum necessary to allow for reasonable use of the property.

v. The proposal meets the decision criteria in BMC 19.40.100. [Ord. 623 § 1, 2015; Ord. 560 § 1 (Exh. A), 2012; Ord. 394 § 1, 2003; Ord. 376 § 1, 2003]

19.40.080 Nonconforming uses and structures.
Uses or structures lawfully established in a critical area or its buffer prior to the adoption of this chapter that no longer conform to the provisions of this chapter shall be considered nonconforming to this chapter and shall be subject to the provisions of Chapter 19.55 BMC, Non-Conformance. [Ord. 623 § 1, 2015; Ord. 394 § 1, 2003]

CRITICAL AREA REVIEW

19.40.090 Critical area review.
1. Required review. Alteration, construction, development or activity within a critical area (except a seismic hazard) or its required buffer must be approved through a critical area review, unless exempted pursuant to BMC 19.40.070 or 19.40.320. Prior to submitting an application for critical area review, the applicant shall schedule and attend a City of Burien pre-application meeting to obtain information relating to overall project feasibility, scope of critical area studies, standards and possible mitigation required for alterations on or near critical areas.

2. As part of its review of a critical area review, the City shall:

A. Verify the information submitted by the applicant;

B. Determine whether any critical area exists on the property and confirm its nature and type;
C. Evaluate the *critical area* study;

D. Determine whether the *development proposal* conforms to the purposes and provisions of this chapter, including the criteria in BMC 19.40.100;

E. Determine if the proposed project adequately addresses impacts on the *functions or value* of *critical areas* and whether such impacts are necessary and unavoidable;

F. Determine if the *mitigation and monitoring* plans and bonding measures proposed by the *applicant* are sufficient to protect the *functions and value* of the *critical area*, and public health, safety and welfare concerns, consistent with the goals, purposes, objectives and requirements of this chapter.

3. Submittal requirements. Applications for *critical area* review shall be submitted with all of the following information:

   A. A written *critical area* study (BMC 19.40.120) that adequately evaluates the proposal, all probable impacts and risks related to the *critical area* and recommends appropriate *mitigation* measures to comply with the provisions of this chapter.

   B. In addition to indicating the location of the proposal, the *site* and development plans shall include:

      i. The accurate location of those *critical areas* and their required *buffers* that could be affected by the proposal.

      ii. The approximate location of all mapped or identifiable *critical areas* and their *buffers* that are within the distances identified in BMC 19.40.040(3).

      iii. Accurate topography drawn to *scale* with a minimum 2-foot contour interval.

   C. Applicable filing fees.

   D. If necessary to insure compliance with this chapter, the *Director* may require additional information from the *applicant*, separate from the *critical area* study. [Ord. 623 § 1, 2015; Ord. 376 § 1, 2003]

19.40.100 Review criteria.
1. Any *alteration* to a *critical area* or its required *buffer*, unless otherwise provided for in this chapter, shall be reviewed and approved, approved with conditions, or denied based on the proposal’s ability to comply with all of the following criteria:

   A. The proposal limits the impact on *critical areas*;

   B. The proposal does not pose an unreasonable threat to the public health, safety, or welfare
on or off the site;

C. The proposal is consistent with the general purposes of this chapter and the public interest;

D. Any alterations permitted to the critical area or its required buffer are mitigated in accordance with the mitigation requirements of this chapter (BMC 19.40.170) and the critical area study (BMC 19.40.120); and

E. The proposal protects the critical area functions and value consistent with the best available science and achieves no net loss of critical area functions and values.

2. The city may condition the proposed activity as necessary to mitigate impacts to critical areas and to conform to the standards required by this chapter. [Ord. 623 § 1, 2015; Ord. 376 § 1, 2003]

CRITICAL AREA STUDY

19.40.110 Critical area study – waiver.
The Director shall waive the requirement for a critical area study if:

1. There will be no alteration of the critical area or buffer; and

2. The development proposal will not impact the critical area in a manner contrary to the purpose, intent, and requirements of this chapter; and

3. The proposal is consistent with other City of Burien applicable regulations and standards. [Ord. 623 § 1, 2015; Ord. 394 § 1, 2003; Ord. 376 § 1, 2003]

19.40.120 Critical area study requirements.
1. General. The critical area study shall be funded by the applicant and shall be prepared in accordance with procedures established by the Director. If appropriate professional expertise does not exist on City staff, the Director may retain experts at the applicant’s expense to review critical area studies submitted by the applicant. Expense to the applicant shall be determined at the pre-application meeting.

2. Prepared by qualified professional. A required critical area study shall be prepared by a person with experience and training in the scientific discipline appropriate for the relevant critical area subject in accordance with WAC 365-195-905(4). A qualified professional must have obtained a B.S. or B.A. or equivalent degree in biology, engineering, environmental studies, fisheries, geomorphology or related field, and two years of related work experience. The City maintains a roster of qualified professionals.

   A. A qualified professional for wetlands must be a Professional Wetland Scientist with at least two years of full-time work experience as a wetlands professional, including delineating wetlands using the state or federal manuals; preparing wetland reports; conducting function
assessments; and developing and implementing mitigation plans.

B. A qualified professional for Fish and Wildlife Habitat Conservation Areas must have a degree in biology and professional experience related to the subject species.

C. A qualified professional for a geological hazard must be a professional engineer or geologist, licensed in the state of Washington.

D. A qualified professional for critical aquifer recharge areas means a hydrogeologist, geologist, engineer, or other scientist with experience in preparing hydrogeologic assessments.

3. Incorporating best available science. The critical area study shall use scientifically valid methods and studies in the analysis of critical area data and field reconnaissance and reference the source of science used. The critical area study shall evaluate the proposal and all probable impacts to critical areas in accordance with the provisions of this chapter.

4. Minimum study contents. The critical area study shall contain, at a minimum, the following information, as applicable:

A. The name and contact information of the applicant, a description of the proposal, and identification of the permit requested.

B. A copy of the site plan for the development proposal showing:

   i. Identified critical areas, buffers, and the development proposal with dimensions;

   ii. Limits of any areas to be cleared; and

   iii. A description of the proposed stormwater management plan for the development and consideration of impacts to drainage alterations;

C. The dates, names, and qualifications of the persons preparing the study and documentation of any fieldwork performed on the site;

D. Identification and characterization of all critical areas, water bodies, and buffers adjacent to the proposed project area or potentially impacted by the proposed project;

E. A statement specifying the accuracy of the study, and assumptions used in the study;

F. Determination of the degree of hazard and risk from the proposal both on the site and on surrounding properties;

G. An assessment of the probable cumulative impacts to critical areas, their buffers and other properties resulting from the proposal;
H. A description of reasonable efforts made to apply mitigation sequencing (BMC 19.40.170(2)) to avoid, minimize, and mitigate impacts to critical areas;

I. When impacts are unavoidable, a mitigation plan (BMC 19.40.170(3));

J. Recommendations for maintenance, short-term and long-term monitoring, contingency plans and bonding measures; and

K. Any other technical information required by the Director to assist in determining compliance with this chapter. [Ord. 623 § 1, 2015; Ord. 394 § 1, 2003; Ord. 376 § 1, 2003]

19.40.130 Critical area study – modifications to requirements.

1. Limitations to study area. The Director may limit the required geographic area of the critical area study as appropriate if:

   A. The applicant, with assistance from the city, cannot obtain permission to access properties adjacent to the project area; or

   B. The proposed activity will affect only a limited part of the site.

2. Modifications to required contents of study. The Director may allow modifications to the required contents of the study where, in the judgment of a qualified professional, more or less information is required to adequately address the potential critical area impacts and required mitigation. [Ord. 623 § 1, 2015; Ord. 376 § 1, 2003]

CRITICAL AREA DETERMINATION

19.40.140 Determination.

1. General. The Director shall issue a written critical area determination as to whether the proposed activity and mitigation, if any, is consistent with the provisions of this chapter. The Director's determination shall be based on the criteria of BMC 19.40.100. The Director may require increased buffer widths, increased setbacks or other protective measures not required in this chapter if required in the critical area study.

2. Review process and timing. The determination for proposed development on an undeveloped lot in a landslide hazard area shall be processed using the Type I review process and timing described in Chapter 19.65 BMC. Determinations for all other types of proposals shall be processed as an administrative decision. The City’s goal is to issue the administrative decision within 60 days of submittal of a complete application containing the materials required in BMC 19.40.090(3).

3. Favorable determination. If the Director determines that the proposed activity meets the criteria in BMC 19.40.100 and complies with the applicable provisions of this chapter, the Director shall prepare a written notice of determination and identify any required conditions of approval. If a Type I review is required, the critical area notice of determination shall be combined with the Type I review
notice of decision. The notice of determination and conditions of approval shall be included in the project file and be considered in future phases of the city’s review of the proposed activity in accordance with any other applicable codes or regulations.

Any conditions of approval included in a notice of determination shall be attached to the underlying permit or approval. Any subsequent changes to the conditions of approval shall void the previous determination pending re-review of the proposal and conditions of approval by the Director.

A favorable determination should not be construed as endorsement or approval of any underlying permit or approval.

4. Unfavorable determination. If the Director determines that a proposed activity does not adequately mitigate its impacts on the critical areas and/or does not comply with the criteria in BMC 19.40.100 and the provisions of this chapter, the Director shall prepare written notice of the determination that includes findings of noncompliance. If a Type I review is required, the critical area notice of determination shall be combined with the Type I review notice of decision.

No proposed activity or permit shall be approved or issued if it is determined that the proposed activity does not adequately mitigate its impacts on the critical areas and/or does not comply with the provisions of this chapter. [Ord. 623 § 1, 2015; Ord. 394 § 1, 2003; Ord. 376 § 1, 2003]

19.40.150 Appeal of determination.
A critical area determination issued using the Type 1 review process may be appealed using the appeal procedures for a Type 1 decision (Chapter 19.65 BMC). A critical area determination issued as an administrative decision may be appealed according to, and as part of the appeal procedure for the underlying permit or approval involved. [Ord. 623 § 1, 2015; Ord. 376 § 1, 2003]

GENERAL CRITICAL AREA REQUIREMENTS

1. The owner of any property containing critical areas or buffers on which a critical area review application is submitted, except a public right-of-way, shall record a notice approved by the Director with the King County Records and Elections Division. The notice shall inform the public of the presence of critical areas or buffers on the site, of the application of this chapter to the property, of the requirement for engineered structure design (if applicable), and that limitations on actions in or affecting such critical areas or buffers may exist. The notice shall run with the land.

2. The applicant shall submit proof that the notice has been filed for public record before the Director shall approve any permits or alteration for the site, in the case of subdivisions, short subdivisions and binding site plans, at or before recording. [Ord. 623 § 1, 2015; Ord. 394 § 1, 2003; Ord. 376 § 1, 2003. Formerly 19.40.210]

19.40.170 Mitigation requirements.
1. The applicant shall avoid all impacts that degrade the functions and values of critical areas and buffers. Unless otherwise provided in this chapter, if impacts to critical areas or buffers are unavoidable, all adverse impacts resulting from the proposed alteration, construction, development, or activity shall be mitigated, at the applicant's expense, using the best available science in accordance with an approved critical area study.

2. Mitigation sequencing. Applicants shall demonstrate that all reasonable efforts have been examined with the intent to avoid and minimize impacts to critical areas. When an alteration to a critical area is proposed, applicants shall follow the sequential order of preference below. Mitigation for individual actions may include a combination of these measures.

   A. Avoiding the impact altogether by not taking a certain action or parts of an action;

   B. Minimizing the impact by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps, such as project redesign, relocation, or timing, to avoid or reduce impacts;

   C. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;

   D. Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action;

   E. Compensating for the impact by replacing, enhancing, or providing substitute resources or environments; and/or

   F. Monitoring the impact area or the required mitigation area and taking remedial action when necessary.

3. When mitigation is required, the applicant shall submit for approval by the City a mitigation plan as part of the critical areas study (BMC 19.40.120). The mitigation plan:

   A. shall be prepared by a qualified professional;

   B. shall demonstrate that the proposed mitigation will adequately offset all adverse impacts to critical areas that may result from the proposed alteration, construction, development, or activity; and

   C. shall include a monitoring, maintenance, and contingency plan, including measurable performance standards that evaluate whether or not the mitigation project has fulfilled the requirements of this chapter.

4. Mitigation shall not be implemented until after the City approval of a critical area study that includes a mitigation plan, and mitigation shall be in accordance with the provisions of the approved critical areas study.
5. Impacts to significant trees within critical areas shall be mitigated according to Chapter 19.25 BMC, Tree Retention and Landscaping. [Ord. 623 § 1, 2015; Ord. 394 § 1, 2003; Ord. 376 § 1, 2003]

**19.40.180 Vegetation management plan.**

1. For all proposals where preservation of existing vegetation is required by this chapter, a vegetation management plan shall be submitted and approved prior to issuance of the permit or other request for permission to proceed with an alteration.

2. Normal nondestructive pruning and trimming of vegetation for maintenance purposes shall not be considered alteration for the purposes of this section. Pruning allowed without a vegetation management plan shall be performed in a manner that ensures continual survival of the vegetation.

3. The vegetation management plan shall incorporate all City requirements relating to protection, maintenance and planting of vegetation and shall identify the proposed clearing limits for the project and any areas where vegetation in a critical area or its buffer is proposed to be disturbed.

4. Clearing limits as shown on the plan shall be marked in the field in a prominent and durable manner. Proposed methods of field marking shall be reviewed and approved by the Director prior to any site alteration. Field marking shall remain in place until the certificate of occupancy or final project approval is granted.

5. The vegetation management plan may be incorporated into a temporary erosion and sediment control plan or landscaping plan where either of these plans is required by other laws or regulations.

6. Vegetation within critical areas and their buffers may be altered only upon prior written approval by the Director. A report by a qualified professional or certified arborist may be required to address alternatives, to ensure that the proposed alteration will not be detrimental to surrounding properties and to the functions and values of the associated critical area.

7. Where alteration of the critical area or buffer has occurred during construction, revegetation with native vegetation will be required unless the Director approves a substitute vegetation with the same or better functions than the original buffer area. If the alteration was unauthorized by the City, the Director may also impose penalties pursuant to Chapter 1.15 BMC. [Ord. 623 § 1, 2015; Ord. 560 § 1 (Exh. A), 2012; Ord. 394 § 1, 2003; Ord. 376 § 1, 2003. Formerly 19.40.190]

**19.40.190 General development standards.**

1. Clustering. Clustering of structures in areas of a site that are not located within critical areas or their buffers is encouraged. For purposes of this section, "clustering" means a form of development that allows a reduction in lot area, provided that the number of proposed dwelling units does not exceed the total number of dwelling units that could be allowed if clustering was not used. For the purposes of this section, the limitation on lot averaging in BMC 19.15.005(2) and 19.15.010(4) does not apply.
2. Building setback. Except in critical aquifer recharge areas and seismic hazard areas, buildings shall be set back 15 feet from the edges of all critical area buffers or from the edges of all other critical areas, if no buffers are required, as required in the critical area study. The following may be allowed in the building setback area:

A. Landscaping;

B. Uncovered decks;

C. Building overhangs which do not extend more than eighteen (18) inches into the area;

D. Pervious unroofed stairways and steps; and

E. Impervious ground surfaces, such as driveways and patios, provided that such improvements may be subject to water quality regulations as adopted in the City’s stormwater management regulations (Chapter 13.10 BMC). [Ord. 623 § 1, 2015; Ord. 394 § 1, 2003; Ord. 376 § 1, 2003. Formerly 19.40.230]

19.40.200 Construction requirements.
1. The Director may require that the applicant retain the expert(s) that prepared the critical area study, or another expert approved by the City, to monitor construction for compliance with the professional’s recommendations and related requirements imposed by the City. The Director may require that the expert submit field reports to the City on a regular basis during construction, a final report and following construction if needed to ensure compliance with this code and the recommendations of the critical area study.

2. If required by the critical area study, City of Burien Construction Code, or King County Surface Water Design Manual, the applicant shall submit a temporary erosion and sedimentation control plan and/or a permanent and complete stormwater control plan for the proposal. The plan shall include but not be limited to the following items as appropriate: curbs, gutters, inlets, catch basins, tightlines, retention and detention facilities, stabilized outfalls, and subterranean water. Maximum flows of runoff from the property shall not be increased by the construction activity or resultant improvements. The Director shall provide specific requirements for such plans.

3. If required by the critical area study, City of Burien Construction Code, or King County Surface Water Design Manual, the Director may restrict construction to a construction season. If a construction season is established, it may be subsequently modified as necessary by the Director.

4. If required by the critical area study or City of Burien Construction Code, the Director may require the use of alternate foundation systems that limit the amount of excavation, for example, pilings, caissons, footings with grade beams, or other appropriate systems. The Director may limit or prohibit the use of conventional spread footings at building perimeters. The Director may require excavations to be dug by hand or using hand-held machinery.
5. All subdivisions, short subdivisions or binding *site* plans shall comply with the following additional requirements:

   A. Except as provided in this section, existing *vegetation* shall be retained on all lots until *building permits* are approved for development on individual lots; and

   B. If any *vegetation* on the lots is damaged or removed during construction of the subdivision infrastructure, the *applicant* shall be required to submit a *restoration plan* to the *Director* for review and approval. Following approval, the *applicant* shall be required to implement the plan;

6. Indemnification. An indemnification or hold harmless agreement shall be required for all clearing, *grading* or construction on lots containing *critical areas*, except for non-regulated uses in *critical aquifer recharge areas*. The form of the agreement shall be approved by the City Attorney and executed prior to issuance of any permits for development of the *site*. [Ord. 623 § 1, 2015; Ord. 394 § 1, 2003; Ord. 376 § 1, 2003. Formerly 19.40.160]

19.40.210 Critical area markers and signs.
The section below does not pertain to *critical aquifer recharge areas* or *seismic hazard areas*.

1. Boundary delineation and construction *fencing*. The outer edge of any required *critical area buffer*, tract or protective easement shall be clearly staked using permanent survey markers installed by a licensed surveyor. The survey markers and a temporary construction *fence* shall be installed at *applicant* expense and accepted by the *Director* prior to issuance of any permits for *site* clearing or construction, or, if permits are not required, prior to any *alteration* of the *site*. The temporary construction *fence* shall be a sturdy wire, chain link or wood *fence* between 3 feet and 6 feet high as required by the *Director*. The *Director* may require signs to be installed on the *fence* indicating that no disturbance of the *critical area* and its *buffer* is allowed.

2. Permanent barrier or *fencing*. Permanent *fencing* shall be required at the outer edge of the *critical area buffer* under the following circumstances. *Fencing* installed in accordance with this section shall be designed to not interfere with fish and wildlife migration and shall be constructed in a manner that minimizes *critical areas* impacts.

   A. As part of any *development proposal* for:

      i. Plats;

      ii. Short plats;

      iii. Parks;

      iv. Other *development proposals*, including but not limited to multifamily, *mixed use*, and commercial development where the *director* determines that such *fencing* is necessary to
protect the functions of the critical area;

B. When buffer reductions are employed as part of a development proposal;

C. When buffer averaging is employed as part of a development proposal; and

D. At the director's discretion to protect the values and functions of a critical area.

3. Signs. Development proposals approved by the City shall require that the boundary between a critical area buffer and contiguous land shall be identified with permanent signs. Permanent signs shall be a City-approved type designed for high durability. Signs must be posted at an interval of one per lot or every 50 feet, whichever is less, and must be maintained by the property owner or homeowners’ association in perpetuity. The wording, number and placement of the signs may be modified by the director based on specific site conditions. [Ord. 623 § 1, 2015; Ord. 394 § 1, 2003; Ord. 376 § 1, 2003. Formerly 19.40.200]

19.40.220 Permanent protection of critical areas and buffers.
As a condition of approval of a proposed activity within a critical area or its buffer, the City may require that critical areas and their buffers, except for critical aquifer recharge areas and seismic hazard areas, shall be permanently protected from alteration by tracts or easements. A property owner may also voluntarily propose permanent protection of critical areas and their buffers on the owner's property by use of tracts, easements, or gifting of the property to the City. Any required forms or documents related to protective tracts or easements shall be approved by the City Attorney. Any area permanently protected under this section shall impose upon all present and future owners and occupiers of the protected area the obligation to leave the protective area permanently undisturbed, unless otherwise allowed by this chapter. Such obligation shall be enforceable by the City on behalf of the public. [Ord. 623 § 1, 2015; Ord. 394 § 1, 2003; Ord. 376 § 1, 2003]

19.40.230 Bonds.
The Director may require a bond or other security in a form and amount deemed acceptable by the Director to ensure compliance with any aspect of this chapter or any decision or determination made under this chapter. The Director shall administratively prepare and maintain applicable bonding forms and procedures. [Ord. 623 § 1, 2015; Ord. 394 § 1, 2003; Ord. 376 § 1, 2003. Formerly 19.40.180]

FREQUENTLY FLOODED AREAS

19.40.240 Frequently flooded areas – Designation.
1. The purpose of designation and protection of frequently flooded areas shall be to:

A. Reduce the risk to life and safety, public facilities, and public and private property that result from floods;
B. Avoid and minimize impacts to fish and wildlife habitats that occur within frequently flooded areas;

C. Assure that flood loss reduction measures protect and are consistent with retaining natural floodplain functions related to protecting riparian habitat and the natural processes that create and maintain habitat for fish;

D. Assure maintenance of hydraulic, geomorphic, and ecological functions of floodplains;

E. Control filling, grading, dredging, and other development activities which may increase flood damage and alter beneficial natural stream processes; and

F. Prevent or regulate the construction of flood barriers that may unnaturally divert floodwaters in such a way as to block natural channel migration, or may increase flood hazards in other areas.

2. Frequently flooded areas shall include the following:

   A. 100-year floodplain;

   B. Flood fringe;

   C. Zero-rise floodway; and


3. The City of Burien shall determine frequently flooded area boundaries after obtaining, reviewing and utilizing base flood elevations and available floodway data for a flood having a one percent chance of being equaled or exceeded in any given year, often referred to as the “100-year flood.” The base flood is determined for existing conditions, unless a basin plan including projected flows under future developed conditions has been completed and adopted by the city of Burien, in which case these future flow projections shall be used. In areas where the Flood Insurance Study for King County includes detailed base flood calculations, those calculations may be used until projections of future flows are completed and approved by the city of Burien. [Ord. 623 § 1, 2015; Ord. 394 § 1, 2003; Ord. 28 § 1(469), 1993]

19.40.250 Frequently flooded areas – General Standards.

1. For the purposes of this section and BMC 19.40.260 and 19.40.270, development in frequently flooded areas includes any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, storage of equipment or materials, subdivision of land, removal of substantial amounts of vegetation, or alteration of natural site characteristics.

2. Development within frequently flooded areas shall be subject to the provisions of Chapter 15.55.
3. Application requirements. In addition to the requirements of BMC 19.40.120(4), a critical area study for a frequently flooded area shall contain an assessment of the following site- and proposal-related information that describes the effects of proposed development on floodplain functions including, but not limited to:

A. Storing and conveying floodwater;
B. Reducing peak flows and flow velocities;
C. Reducing redd scour and displacing rearing juvenile fish at the project site and downstream;
D. Maintaining sediment quality in streams;
E. Improving water quality;
F. Maintaining and improving fish access; and
G. Mitigation for any adverse effects on floodplain functions, pursuant to BMC 19.40.170.

4. The Director shall have the authority to require consultation with the Washington Department of Fish and Wildlife or other appropriate agencies.

5. Development proposals shall not reduce the effective base flood storage volume of the floodplain. Grading or other activity which would reduce the effective storage volume shall be mitigated by creating compensatory storage on the site or off the site if legal arrangements can be made to assure that the effective compensatory storage volume will be preserved over time. Grading for construction of livestock manure storage facilities to control non-point source water pollution designed to the standards of and approved by the King County Conservation District is exempt from this compensatory storage requirement.

6. No structure shall be allowed which would be at risk due to stream bank destabilization including, but not limited to, that associated with channel relocation or meandering.

7. Prior to approving any permit for alterations in frequently flooded area, the city of Burien shall determine that all permits required by state or federal law have been obtained. [Ord. 623 § 1, 2015; Ord. 394 § 1, 2003; Ord. 28 § 1(470), 1993]

1. The following are presumed to produce no increase in base flood elevation and shall not require a special study to establish this fact:

A. New residential structures outside the FEMA floodway on lots in existence before
November 27, 1990, which contain less than 5,000 square feet of buildable land outside the zero-rise floodway and which have a total building footprint of all proposed structures on the lot of less than 2,000 square feet;

B. Substantial improvements of existing residential structures in the zero-rise floodway, but outside the FEMA floodway, where the footprint is not increased;

C. Substantial improvements of existing residential structures meeting the requirements for new residential structures in BMC 19.40.250; and

D. Substantial improvements of existing residential structures in the FEMA floodway, meeting the requirements of WAC 173-158-070, as amended.

2. Post or piling construction techniques which permit water flow beneath a structure shall be used.

3. All temporary structures or substances hazardous to public health, safety and welfare, except for hazardous household substances or consumer products containing hazardous substances, shall be removed from the zero-rise floodway during the flood season from September 30th to May 1st.

4. New residential or nonresidential structures shall meet the following requirements:

   A. The structures shall be outside the FEMA floodway; and

   B. The structures shall be on lots in existence before November 27, 1990, which contain less than 5,000 square feet of buildable land outside the zero-rise floodway.

5. Utilities may be allowed within the floodway if the city of Burien determines that no feasible alternative site is available, subject to the following requirements:

   A. Installation of new on-site sewage disposal systems shall be prohibited unless a waiver is granted by the Seattle/King County department of public health; and

   B. Construction of sewage treatment facilities shall be prohibited.

6. Critical facilities shall not be allowed within the zero-rise floodway except as provided in subsection 8 of this section.

7. Livestock manure storage facilities and associated nonpoint source water pollution facilities designed, constructed and maintained to the standards of and approved in a conservation plan by the King County Conservation District may be allowed if the city of Burien reviews and approves the location and design of the facilities.

8. Structures and installations which are dependent upon the floodway may be located in the floodway if the development proposal is approved by all agencies with jurisdiction. Such structures include, but are not limited to:
A. Dams or diversions for water supply, flood control, hydroelectric production, irrigation or fisheries enhancement;

B. Flood damage reduction facilities, such as levees and pumping stations;

C. Stream bank stabilization structures where no feasible alternative exists for protecting public or private property;

D. Storm water conveyance facilities subject to the development standards for streams and wetlands and the Surface Water Design Manual;

E. Boat launches and related recreation structures;

F. Bridge piers and abutments; and

G. Other fisheries enhancement or stream restoration projects. [Ord. 623 § 1, 2015; Ord. 394 § 1, 2003; Ord. 28 § 1(471), 1993]

GEOLOGICALLY HAZARDOUS AREAS

19.40.280 Geologically hazardous areas – Designation.
1. Intent. Geologically hazardous areas are a potential threat to public health, safety and welfare when construction of geotechnically incompatible uses is allowed. Some potential risk due to construction in geologically hazardous areas can be reduced through engineering design. Alteration of and construction in geologically hazardous areas should be avoided when the potential risk to public health and safety cannot be reduced to a level comparable to the undeveloped site.

2. Geologically hazardous areas include areas susceptible to erosion, landslide, rock fall, subsidence, earthquake, or other geological events. Areas susceptible to one or more of the following types of hazards shall be designated as a geologically hazardous area:

   A. Erosion hazard;

   B. Landslide hazard; or

   C. Seismic hazard.

3. The approximate location and extent of known landslide hazard areas and seismic hazard areas are shown on the Critical Areas Map adopted by the City, as described in BMC 19.40.040 and as most recently updated. For landslide hazard areas and seismic hazard areas depicted on the Critical Areas Map, the King County Census Areas Mapfolio from December 1990 was used as a base map. The City amends this map as new site-specific information becomes available from professional critical area studies completed as part of critical area review.
4. The following areas are exempt from designation as *geologically hazardous areas*:

A. *Slope* exemptions: The following *slopes* are exempt, unless the *slope* is part of another *critical area* or required *buffer*:

i. *Slopes* resulting from *street*, *alley*, sidewalk and other typical *rights-of-way* improvements, including rockeries or retaining walls. This exemption shall not extend beyond the cut or fill created by the *street*, *alley*, sidewalk or other *rights-of-way* improvement.

ii. *Slopes* with a vertical elevation change of up to ten feet (10) and not part of a larger *steep-slope* system.

iii. *Slopes* which have been created through previous verifiable, legal *grading* activities, may be exempted by the *Director* based on a geotechnical report demonstrating that no adverse impact will result from the exemption.

B. Stabilization of *landslide hazard area*. Certain *landslide hazard areas* may be exempt if the *Director* determines based on geotechnical expertise, that application of the regulations would prevent necessary stabilization of a *landslide*-prone area. [Ord. 623 § 1, 2015]

19.40.290 Geologically hazardous areas – Development standards and permitted alterations.

1. Standards – *Seismic hazard areas*. Development in *seismic hazard areas* shall be in accordance with the standards for earthquake design and seismic motion of the *City of Burien Construction Code*.

2. Standards – *Erosion hazard areas* and *landslide hazard areas*. Development on or within 50 feet of areas designated *erosion hazard areas* or *landslide hazard areas* shall comply with the following requirements:

A. *Buffer*. A minimum 50 foot wide *buffer* shall be established from all edges of a *landslide hazard area*. The *buffer* shall be extended as required to mitigate hazards identified in the *critical area* study or as otherwise necessary to protect the public health, safety and welfare. The *buffer* shall be maintained in *native vegetation* to provide additional soil stability and *erosion* control. If the *buffer* area has been previously cleared, it shall be replanted with *native vegetation* pursuant to a landscape plan submitted by the *applicant* and approved by the *Director*.

B. *Buffer reduction*. As part of *critical area* review, the *Director* may reduce or waive the *landslide hazard area buffer* if the *applicant* shows that the following criteria are met:

i. The proposed development does not pose an unreasonable threat to the public health, safety or welfare on or off the *development proposal site* and is consistent with the
general purposes of this chapter and the public interest; and

ii. There is no feasible alternative with less impact on the critical area.

iii. For a buffer of between 0 feet and 25 feet, in addition to the items required in BMC 19.40.120, the critical area study must specifically discuss and support the requested buffer reduction, including:

   a. The ability to maintain long-term stability of the landslide hazard area; and

   b. Any appropriate mitigating measures needed to mitigate impacts of the buffer reduction; and

   c. An assessment of any increased risk that could result from the buffer reduction.

C. Erosion control. An erosion control plan shall be submitted to the Director for approval prior to any clearing, grading, construction or other alteration. The Director may limit clearing, grading or filling to the period between April 1st and October 1st.

D. Disturbance and alterations. Any alterations permitted in or within 50 feet of an erosion hazard area or landslide hazard area, or in a required landslide hazard area buffer, shall comply with the following criteria:

   i. All proposed alterations shall be limited to the minimum necessary to accomplish the applicant’s objectives and engineering design.

   ii. The face of cuts and fills shall be prepared and maintained to control against erosion and instability. Bluffs shall be protected from surface erosion.

   iii. The proposal shall not increase the rate of surface water runoff, erosion or sedimentation, shall not increase geologic hazards for any property and shall reduce ponding and infiltration of storm drainage.

   iv. Development must be located and designed to minimize slope disturbance, minimize removal of vegetation, and retain open space.

   v. Shared access drives and utility corridors are required where feasible. Vehicular access shall be in the least sensitive area of the site.

   vi. Foundations should be tiered where possible to conform to the existing topography of the site. Roads, walkways, driveways and parking areas should be designed to parallel the natural contours.

   vii. All development shall be designed to minimize impervious surface coverage and where feasible should incorporate under-structure parking and multi-level structures.
viii. Construction techniques must minimize disruption of existing topography and existing vegetation. Any disturbed vegetation shall be restored as soon as feasible.

ix. The applicant shall submit a detailed site plan prepared by a licensed engineer showing all proposed clearing, grading, drainage and utilities. The Director may require that all proposed clearing, grading, drainage and utility locations be marked in the field by a licensed land surveyor, based on the engineer-prepared site plan.

E. Landscaping. The disturbed area of a site shall be landscaped to provide erosion control and to enhance wildlife habitat. Landscape plantings should include trees and shrubs with a mix of shade, flowering, and coniferous and broad-leaf evergreens that are either native to the Puget Sound area or are valuable to western Washington birds and wildlife as listed by the Department of Fish and Wildlife. [Ord. 523 § 1, 2009]

F. Vegetation maintenance. Limited trimming and pruning of vegetation for the creation and maintenance of views is allowed in accordance with the pruning standards of the International Society of Arboriculture; provided, that the soils are not disturbed and the activity will not increase the risk of landslide or erosion.

3. Application requirements. In addition to the requirements of Section 19.40.090.3, an application for critical area review involving a landslide hazard area shall include at least the following additional items, submitted by the applicant and prepared at the applicant’s expense. The Director may waive any of the following submittal requirements if not applicable to the proposal:

   A. Plans and specifications prepared by a licensed architect or licensed professional engineer, in accordance with the City of Burien Construction Code;

   B. A footing and foundation plan prepared by a licensed professional engineer incorporating the recommendations contained in the critical area study;

   C. A Level 1 drainage analysis prepared by a licensed professional engineer in accordance with the Surface Water Design Manual as adopted by the City of Burien;

   D. A storm water management plan prepared by a licensed professional engineer incorporating the recommendations contained in the Level 1 drainage analysis;

   E. A vegetation management plan pursuant to BMC 19.40.180 showing all existing vegetation and which vegetation is proposed for removal. The location, size and species of all significant trees on the site shall be indicated by survey. Significant trees shall be retained, protected, or replaced in accordance with BMC 19.40.180. The plan shall propose mitigation measures to prevent erosion and protect the geologically hazardous area, its buffer and other properties from hazards and adverse impacts;
F. A landslide hazard area affidavit in a form approved by the City attorney, submitted by the applicant, which waives any claims against the City, releases the City from all liability, holds the City harmless, and agrees to indemnify the City for all costs, claims, and demands of any kind, including but not limited to attorney and expert witness fees associated with litigation, arbitration, or any other adversary proceeding arising in any manner from the owner’s or the owner’s agents’ acts or omissions relating in any manner to the development. The affidavit shall be recorded with the King County assessor’s office prior to, and as an express condition of, the issuance of any grading or building permit;

G. All other applicable codes of the City are met including but not limited to the setback, height, impervious surface coverage, and other requirements of this code and the requirements of the shoreline master program and the City of Burien Construction Code;

H. The applicant’s geotechnical engineer or geologist shall review the project plans and specifications prior to issuance of any permits and provide written confirmation to the City that the recommendations and design criteria have been fully incorporated into the project documents;

I. The applicant’s geotechnical engineer or geologist shall monitor project construction and provide written confirmation that the project has been constructed in accordance with their recommendations and design criteria. Changes to the recommended designs for excavation and construction which are based on new information shall be reviewed and approved by the City prior to proceeding with the development activity. [Ord. 623 § 1, 2015; Ord. 394 § 1, 2003; Ord. 376 § 1, 2003]

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**WETLANDS**

19.40.300 Wetlands – Designation and Classification.

1. Intent. Wetlands provide fish and wildlife habitat, flood storage, water quality, recreation, educational opportunities, and aesthetics. The goal of wetland regulations in the City of Burien is to achieve no net loss of wetland functions and values.

2. Designation and Applicability.

   A. Wetlands are those areas in the City of Burien, designated in accordance with the approved federal wetland delineation manual and applicable regional supplements. All areas within the City of Burien meeting the wetland designation criteria in that procedure, regardless of any formal identification, are hereby designated critical areas and are subject to the provisions of this chapter. [RCW 36.70A.175, 90.58.380 (1995); WAC 173-22-035 (2011)]

   B. Where the vegetation has been removed or substantially altered, a wetland shall be determined by the presence or evidence of hydric or organic soil, as well as by other documentation, such as aerial photographs, of the previous existence of wetland vegetation.
C. Puget Sound and Lake Burien are shorelines of the state and shall be regulated under the Burien Shoreline Master Program.


A. *Wetlands* shall be classified into category I, category II, category III and category IV according to the Washington Department of Ecology *wetland* rating system, as set forth in the Washington State *Wetland* Rating System for Western Washington, Washington State Department of Ecology publication number 14-06-029, or as amended, which contains the definitions and methods for determining whether the criteria below are met.

i. Category I. Category I *wetlands* are those that 1) represent a unique or rare *wetland* type; or 2) are more *sensitive* to disturbance than most *wetlands*; or 3) are relatively undisturbed and contain ecological attributes that are impossible to replace within a human lifetime; or 4) provide a high level of *functions*. In Western Washington these include large undisturbed estuarine *wetlands*; *wetlands* of high conservation *value*; bogs; *wetlands* with mature and old-growth forests; *wetlands* in coastal lagoons; interdunal *wetlands* larger than one (1) acre with a high habitat score; and *wetlands* that provide a high level of *functions*.

ii. Category II. Category II *wetlands* are difficult, though not impossible, to replace, and provide high levels of some *functions*. In Western Washington, these include smaller estuarine *wetlands*; interdunal *wetlands* larger than one (1) acre or interdunal *wetlands* that are part of a *wetland* mosaic; and *wetlands* with a moderately high level of *functions*.

iii. Category III. Category III *wetlands* include *wetlands* with a moderate level of *functions*, and interdunal *wetlands* between 0.1 and one (1) acre in size. Category III *wetlands* generally have been disturbed in some way; are often less diverse or more isolated from other natural resources in the landscape than Category II *wetlands*; and can often be adequately replaced with a well-planned *mitigation* project.

iv. Category IV. Category IV *wetlands* have the lowest levels of *functions* and are often heavily disturbed. These are *wetlands* that we should be able to replace, and in some cases be able to improve.

B. *Wetland* rating categories shall not recognize illegal modifications.

C. The following types of *wetlands* are not regulated by the City of Burien: All hydrologically isolated Category III and IV *wetlands* less than 1,000 square feet that:

i. Are not associated with riparian areas or *buffers*,

ii. Are not part of a *wetland* mosaic, and
iii. Do not contain habitat identified as essential by Washington Department of Fish and Wildlife. [Ord. 623 § 1, 2015; Ord. 394 § 1, 2003]


1. General Requirements.

A. Any alterations to a wetland and/or wetland buffer shall require mitigation as described in BMC 19.40.330.

B. The use of hazardous substances, pesticides and fertilizers in the wetland and its buffer are prohibited by the City of Burien unless approved by the Director;

C. Plantings in a wetland or buffer shall be native to Western Washington or be a native plant community appropriate for the ecoregion;

D. No vegetation removal, including mowing, shall be allowed in a wetland or wetland buffer unless authorized by the Director. Removal of noxious weeds is permitted if done manually;

E. Unless otherwise provided, the following restrictions shall apply to all development proposals in Category I, II, or III wetlands that include the introduction of livestock:

   i. Implementation of a plan approved by the Director to protect and enhance the wetland’s water quality; and

   ii. Fencing located at the buffer edge.

2. Buffers.

A. A buffer area shall be established adjacent to designated wetland areas. The purpose of the buffer area shall be to protect the integrity, functions and values of the wetland area. Buffer widths shall be appropriate for the sensitivity of the wetland and for the risks associated with land use development.

B. The following standard buffers, based on the category of wetland and the habitat score as determined by a qualified wetland professional, shall be established from the wetland edge. Additional buffer widths are added to the standard buffer widths. For example, a Category I wetland scoring eight (8) points for habitat function would require a buffer of 225 feet (75 + 150).

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<tr>
<th>Wetland Buffers</th>
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<td>Buffer width</td>
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<td>Buffer width</td>
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The Burien Municipal Code is current through Ordinance 704, passed March 4, 2019.
C. The *use* of the standard buffer widths requires the implementation of the measures in the following table, where applicable, to minimize the impacts of the adjacent land *uses*. If an *applicant* chooses not to apply these measures, then a thirty-three (33) percent increase in the width of all buffers is required. For example, a 75-foot buffer accompanied by the mitigation measures would be a 100-foot buffer without them.

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<tr>
<th>Wetland Category</th>
<th>if wetland scores 3 – 4 habitat points</th>
<th>if wetland scores 5 habitat points</th>
<th>if wetland scores 6 – 7 habitat points</th>
<th>if wetland scores 8 – 9 habitat points</th>
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<tr>
<td>Category I</td>
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<td>add 90 ft</td>
<td>add 150 ft</td>
</tr>
<tr>
<td>Category II</td>
<td>75 ft</td>
<td>add 30 ft</td>
<td>add 90 ft</td>
<td>add 150 ft</td>
</tr>
<tr>
<td>Category III</td>
<td>60 ft</td>
<td>add 45 ft</td>
<td>add 105 ft</td>
<td>add 165 ft</td>
</tr>
<tr>
<td>Category IV</td>
<td></td>
<td></td>
<td></td>
<td>50 ft</td>
</tr>
</tbody>
</table>

**Wetland Impact Minimizations**

<table>
<thead>
<tr>
<th>Disturbance</th>
<th>Required Measures to Minimize Impacts</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lights</td>
<td>• Direct lights away from wetland</td>
</tr>
</tbody>
</table>
| Noise       | • Locate activity that generates noise away from wetland  
|             | • If warranted, enhance existing buffer with native vegetation plantings adjacent to noise source  
|             | • For activities that generate relatively continuous, potentially disruptive noise, such as certain heavy industry or mining, establish an additional 10’ heavily vegetated buffer strip immediately adjacent to the outer wetland buffer  |
| Toxic runoff| • Route all new, untreated runoff away from wetland while ensuring wetland is not dewatered  
|             | • Establish covenants limiting use of pesticides within 150 feet of wetland  
|             | • Apply integrated pest management   |
| **Stormwater runoff** | Retrofit stormwater detention and treatment for roads and existing adjacent development  
| | Prevent channelized flow from lawns that directly enters the buffer  
| | Use Low Intensity Development techniques (per PSAT publication on LID techniques)  |
| **Change in water regime** | Infiltrate or treat, detain, and disperse into buffer new runoff from impervious surfaces and new lawns  |
| **Pets and human disturbance** | Use privacy fencing OR plant dense vegetation to delineate buffer edge and to discourage disturbance using vegetation appropriate for the ecoregion  
| | Place wetland and its buffer in a separate tract or protect with a conservation easement  |
| **Dust** | Use best management practices to control dust  |
| **Disruption of corridors or connections** | Maintain connections to offsite areas that are undisturbed  
| | Restore corridors or connections to offsite habitats by replanting  |

D. *Buffer* widths as defined in subsection B above assume that the *buffer* is vegetated with a *native* plant community appropriate for the *ecoregion*. If the existing *buffer* is unvegetated, sparsely vegetated, or vegetated with invasive *species* that do not perform needed *functions*, the *buffer* shall either be planted to create the appropriate plant community or the *buffer* shall be widened to ensure that adequate *functions* of the *buffer* are provided.

E. *Wetland buffers* shall be measured from the *wetland edge* as delineated and marked in the field.

F. Any *wetland restored, relocated, replaced or enhanced* because of a *wetland alteration* shall have the minimum *buffer* required for the highest *wetland class* involved pursuant to an approved *compensatory mitigation* plan set forth in BMC 19.40.330.

G. Increased *buffer* widths may be required by the City of Burien when:

i. The *buffer* is within twenty-five (25) feet of the toe of a *slope* that is greater than thirty percent (30%); or
ii. The slope is susceptible to erosion and standard best management practices (BMPs) and erosion-control measures will not prevent adverse impacts to the wetland.

H. Standard buffer width averaging may be allowed by the Director (in accordance with an approved critical area review) if:

i. Additional protection to wetlands will be provided through the implementation of a buffer enhancement plan;

ii. Minimum buffer width is the greater of seventy-five percent (75%) of the standard buffer width or twenty-five (25) feet;

iii. Wetland functions or values will not be reduced; and

iv. As long as the total area contained in the buffer on the development proposal site does not decrease.

I. Buffer reduction with enhancement may be allowed by the Director (in accordance with an approved critical area review) if:

i. Additional protection to wetlands will be provided through the implementation of a buffer enhancement plan;

ii. The existing condition of the buffer is degraded;

iii. Buffer enhancement includes, but is not limited to the following:

   a. Planting native vegetation that would increase value for fish and wildlife habitat, improve water quality, or provide aesthetic/recreational value.

   b. Enhancement of wildlife habitat by incorporating structures that are likely to be used by wildlife, including wood duck boxes, bat boxes, nesting platforms, snags, rootwads/stumps, birdhouses, and heron nesting areas.

   c. Removing non-native plant species and noxious weeds from the buffer area and replanting the area subject to subsection (2)(I)(iii)(a) of this section.

iv. Buffer reductions under this Section shall be limited to twenty-five (25)% of the standard buffer width or a minimum of twenty-five (25) feet, whichever is greater. [Ord. 623 § 1, 2015; Ord. 394 § 1, 2003]

19.40.320 Wetlands – Permitted Alterations.
1. Activities and uses shall be prohibited from wetlands and wetland buffers, except as allowed in this section.
2. The following activities are allowed outright without completion of a critical area review as described in BMC 19.40.090:

   A. Conservation or preservation of soil, water, vegetation, fish, shellfish, and other wildlife that does not entail changing the structure or functions of the existing wetland.

   B. The harvesting of wild crops in a manner that is not injurious to natural reproduction of such crops and provided the harvesting does not require tilling of soil, planting of crops, or alteration of the wetland by changing existing topography, water conditions or water sources.

   C. Site-specific biological studies with the purpose of collecting data for critical area studies.

   D. Removal of noxious weeds if done manually.

3. Alterations to Wetlands.

   A. Activities and uses shall be prohibited from Category I wetlands.

   B. Alterations to Category II, III, and IV wetlands may be permitted if the Director determines, based upon review of special studies completed by qualified professionals, that:

      i. It will not adversely affect water quality;

      ii. It will not adversely affect fish, wildlife, or their habitat;

      iii. It will not have an adverse effect on drainage and/or storm water detention capabilities;

      iv. It will not lead to unstable earth conditions or create an erosion hazard or contribute to scouring actions;

      v. It will not be materially detrimental to any other property or the City as a whole; and

      vi. It will not have adverse effects on any other critical areas.

4. Alterations to Wetland Buffers. No land surface alteration or improvement may occur in a wetland buffer except as provided for below:

   A. Buffer enhancements may be allowed pursuant to an approved mitigation plan.

   B. Utilities such as water, telephone, cable, electric, and natural gas may be allowed in wetland buffers if:

      i. The Director determines that no practical alternative location is available; and

      ii. The utility corridor meets any additional requirements set forth by the Director and BMC 19.40.070(3) including, but not limited to, requirements for installation, replacement
of vegetation and maintenance pursuant to an approved mitigation plan as set forth in BMC 19.40.330.

C. Sewer utility corridors may be allowed in wetland buffers only if all of the following criteria are met:

i. The applicant demonstrates that sewer lines are necessary for gravity flow;

ii. The corridor is not located in a wetland or buffer used by species listed as endangered or threatened by the state or federal government or containing critical or outstanding actual habitat for those species or heron rookeries or raptor nesting trees;

iii. The corridor alignment including, but not limited to, any allowed maintenance roads, follows a path beyond a distance equal to 75 percent of the buffer width from the wetland edge;

iv. Corridor construction and maintenance protects the wetland and buffer and is aligned to avoid cutting trees greater than 12 inches in diameter at breast height, when possible, and pesticides, herbicides and other hazardous substances are not used;

v. An additional, contiguous and undisturbed buffer, equal in width to the proposed corridor including any allowed maintenance roads, is provided to protect the wetland;

vi. The corridor is revegetated with appropriate vegetation native to the City at preconstruction densities or greater immediately upon completion of construction or as soon thereafter as possible, and the sewer utility ensures that such vegetation survives;

vii. Any additional corridor access for maintenance is provided, to the extent possible, at specific points rather than by a parallel road;

viii. The width of any necessary parallel road providing access for maintenance is as small as possible, but not greater than 15 feet, the road is maintained without the use of herbicides, pesticides or other hazardous substances and the location of the road is contiguous to the utility corridor on the side away from the wetland;

ix. Joint use of an approved sewer utility corridor by other utilities may be allowed.

D. The following surface water management activities and facilities may be allowed in wetland buffers only as follows:

i. Surface water discharge to a wetland buffer from a detention facility, pre-settlement pond or other surface water management activity or facility may be allowed if the discharge does not increase the rate of flow, change the plant composition in a forested wetland or decrease the water quality of the wetland;
ii. Stormwater management facilities are limited to stormwater dispersion outfalls and bioswales. They are not allowed in buffers of Category I or II wetlands, but may be allowed within the outer twenty-five percent (25%) of the buffer of Category III or IV wetlands, provided that:

a. No other location is feasible; and

b. The location of such facilities will not degrade the functions and values of the wetland; and

c. All requirements of the King County Surface Water Design Manual, as adopted in Chapter 13.10 BMC, are met.

E. Public and private trails may be allowed in the outer 25% of wetland buffers only if:

i. The trail surface is no more than 5 feet wide and shall not be made of impervious materials, except that public multipurpose trails may be made of impervious materials if:

a. they meet all other requirements including water quality; and

b. an impervious trail has less of an impact on the wetland and its buffer.

ii. The use of elevated boardwalks for trails is encouraged. [Ord. 623 § 1, 2015; Ord. 394 § 1, 2003]

19.40.330 Wetlands – Additional Mitigation Requirements.

1. General Requirements.

A. All approved activities that affect regulated wetlands or their buffers require compensatory mitigation so that the goal of no net loss of wetland function or value may be achieved.

B. Mitigation for alterations to wetlands shall achieve equivalent or greater biological functions. Mitigation plans shall be consistent with this chapter (BMC 19.40.170) and Wetland Mitigation in Washington State, Part 1: Agency Policies and Guidance (Version 1, Ecology Publication #06-06-011a) or as amended, and best available science.

C. Wetland mitigation shall provide for in-kind lost functions and values. Mitigation actions shall address functions affected by the alteration to achieve functional equivalency or improvement, and shall provide similar wetland functions as those lost except when:

i. The altered wetland provides minimal functions as determined by a site-specific function assessment; and

ii. The proposed mitigation action(s) will provide equal or greater functions or will provide functions that are limited in the watershed; or
iii. Out of kind replacement will best meet formally identified regional goals, such as replacement of historically diminished wetland types.

2. Types of Mitigation. Impacts to wetlands shall be mitigated according to the mitigation sequence defined in BMC 19.40.170, Mitigation Requirements. Mitigation actions that require compensation by replacing, enhancing, or substitution shall occur in the following order of preference:

   A. Restoring wetlands on upland sites that were formerly wetlands.

   B. Creating wetlands on disturbed upland sites such as those with vegetative cover consisting primarily of exotic introduced species or noxious weeds.

   C. Enhancing significantly degraded wetlands.

3. Mitigation Location. Mitigation actions shall be conducted within the same sub-drainage basin and on the site as the alteration except when all of the following apply:

   A. There are no reasonable on-site or in sub-drainage basin opportunities or on-site and in sub-drainage basin opportunities do not have a high likelihood of success due to development pressures, adjacent land uses, or on-site buffers or connectivity are inadequate;

   B. Off-site mitigation has a greater likelihood of providing equal or improved wetland functions than the impacted wetland; and

   C. Off-site locations shall be in the same sub-drainage basin and the same Water Resource Inventory Area (WRIA) unless:

      i. Regional or watershed goals for water quality, flood or conveyance, habitat or other wetland functions have been established and strongly justify location of mitigation at another site; or

      ii. Credits from a state-certified wetland mitigation bank are used as compensation, and the use of credits is consistent with the terms of the certified bank instrument; or

      iii. Fees are paid to an approved in-lieu fee program to compensate for the impacts.

   D. If compensatory wetland or wetland buffer mitigation is proposed off-site, a signed statement of consent is required from owners of all affected properties. This statement shall be submitted to the Director and a Notice on Title recorded with King County Department of Assessments prior to approval of a compensatory mitigation plan.

4. Mitigation Timing. Mitigation shall be completed immediately following disturbance and prior to use or occupancy of the activity or development causing the wetland alteration. Construction of mitigation projects shall be timed to reduce impacts to existing wildlife and flora.
5. Mitigation Schedule.

A. A mitigation monitoring schedule shall be established for a period of a minimum of five years.

B. An "as-built" mitigation report shall be submitted to the City within one month of mitigation installation. Acceptance of the as-built report by the City will be made after a site investigation is performed by the City, and all changes requested by the City are completed.

C. Mitigation monitoring reports shall be submitted annually to the City.

6. Financial Surety. A performance bond, or other approved financial surety, is required before building and clearing and grading permits are issued. The purpose of the financial surety is to hold an applicant accountable for implementing the mitigation, monitoring, and contingency plans. The release of financial surety is contingent on satisfactory completion by the applicant of the proposed construction, mitigation, monitoring, and contingency plans as determined by the Director.

7. Mitigation Ratios.

A. The following ratios shall apply to creation or restoration that meets all other requirements in subsections 1 through 6 of this section and is the same category of wetland, and has a high probability of success. The first number in the following table specifies the acreage of replacement wetlands and the second specifies the acreage of wetlands altered.

<table>
<thead>
<tr>
<th>Category of Impact Wetland</th>
<th>Creation or Re-establishment</th>
<th>Rehabilitation</th>
<th>Enhancement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Category I: based on total score</td>
<td>4:1</td>
<td>8:1</td>
<td>16:1</td>
</tr>
<tr>
<td>Category I: Mature Forested</td>
<td>6:1</td>
<td>12:1</td>
<td>24:1</td>
</tr>
<tr>
<td>Category II</td>
<td>3:1</td>
<td>6:1</td>
<td>12:1</td>
</tr>
<tr>
<td>Category III</td>
<td>2:1</td>
<td>4:1</td>
<td>8:1</td>
</tr>
<tr>
<td>Category IV</td>
<td>1.5:1</td>
<td>3:1</td>
<td>6:1</td>
</tr>
</tbody>
</table>

B. Increased creation or restoration ratios. The City of Burien may increase the ratios under the following circumstances:

i. Uncertainty exists as to the probable success of the proposed restoration or creation;

ii. A significant period of time will elapse between impact and replication of wetland
functions;

iii. Proposed mitigation will result in a lower category wetland or reduced functions relative to the wetland being impacted; or

iv. The impact or alteration requiring mitigation was not authorized by the City.

8. Wetlands Enhancement as Mitigation.

A. Impacts to wetlands may be mitigated by enhancement of existing significantly degraded wetlands. Applicants proposing to enhance wetlands must produce a critical area study that identifies how enhancement will increase the functions of the degraded wetland and how this increase will adequately mitigate for the loss of wetland area and function at the impact site. An enhancement proposal must also show whether existing wetland functions will be reduced by the enhancement actions.

B. At a minimum, enhancement acreage shall be according to the ratios in subsection 7 of this section.

9. Wetland and Wetland Buffer Violations. Restoration shall be required when a wetland or its buffer is altered in violation of law or without any specific permission or approval by the Director. The following minimum requirements shall be met for the restoration of a wetland:

A. The original wetland configuration shall be replicated including its depth, width, length and gradient at the original location;

B. The original soil type and configuration shall be replicated;

C. The wetland edge and buffer configuration shall be restored to its original condition;

D. The wetland, edge and buffer shall be replanted with vegetation native to Burien which replicates the original vegetation in species, sizes and densities; and

E. The original wetland functions shall be restored including, but not limited to, hydrologic and biologic functions.

F. Violators may be imposed penalties pursuant to Chapter 1.15 BMC.

G. At the discretion of the Director, the violator may be required to enhance the wetland or wetland buffer to provide higher functions and values than the original wetland or wetland buffer. [Ord. 623 § 1, 2015; Ord. 560 § 1 (Exh. A), 2012; Ord. 394 § 1, 2003]

STREAMS

1. General Requirements. The goal of stream regulations in the City of Burien is to preserve and enhance stream channels, banks, and buffers and to maintain and enhance fish and wildlife habitat and species diversity.

2. Applicability. All water bodies meeting the definition of streams that lie within the City of Burien are regulated by this section. Ditches are excluded from regulation as streams under this section; ditches and artificial drainage features with documented current fish usage are regulated as streams.

3. Stream Classifications. Streams shall be classified as Type S, Type F, Type Np, or Type Ns according to the permanent water typing system (WAC 222-16-030). Water types are described generally below:

A. Type S waters are all waters inventoried as “shorelines of the state” under Chapter 90.58 RCW. Type S waters are not regulated under this chapter and are subject to the Shoreline Master Program (BMC Title 20).

B. Type F waters are segments of natural watercourses, or natural watercourses which have been altered by humans, other than Type S waters, which contain fish habitat.

C. Type Np waters include segments of natural watercourses, or natural watercourses which have been altered by humans, which are perennial during a period of normal rainfall and do not have the potential to be used by fish and are typically formed by geomorphic processes.

D. Type Ns waters include segments of natural watercourses, or natural watercourses which have been altered by humans, which are seasonal or ephemeral during a year of normal rainfall and do not have the potential to be used by fish and were generally formed by geomorphic processes. [Ord. 623 § 1, 2015; Ord. 394 § 1, 2003]


1. General Requirements.

A. Any alterations to a stream may require state and federal approvals that may require mitigation and conditions of approval beyond those required by the City.

B. The use of hazardous substances, pesticides and fertilizers in the stream corridor and its buffer are prohibited by the City of Burien unless approved by the City.

C. Plantings in a stream or buffer should be native to Western Washington or increase the functions of the stream or buffer;

D. No vegetation removal, including mowing, shall be allowed in a stream buffer unless authorized by the Director. Removal of noxious weeds is permitted if done manually.
E. Unless otherwise provided, the following restrictions shall apply to all development proposals within the vicinity of all City of Burien streams and stream buffers that include the introduction of livestock:

i. Implementation of a plan approved by the Director to protect and enhance the stream’s water quality; and

ii. Fencing located at the stream buffer edge.

2. Buffers.

A. A stream buffer area shall be established as required in this section. The purpose of the buffer shall be to protect the integrity, functions, and values of the stream.

B. Required buffer widths shall reflect the sensitivity of the particular stream. The following minimum buffers for streams shall be established from the ordinary high water mark of the adjacent stream(s) or from the top of the defined stream bank if the ordinary high water mark cannot be identified:

<table>
<thead>
<tr>
<th>Stream Type</th>
<th>Standard Stream Buffer (feet)</th>
</tr>
</thead>
<tbody>
<tr>
<td>S</td>
<td>See BMC Title 20, Shoreline Master Program</td>
</tr>
<tr>
<td>F</td>
<td>100</td>
</tr>
<tr>
<td>Np</td>
<td>50</td>
</tr>
<tr>
<td>Ns</td>
<td>50</td>
</tr>
</tbody>
</table>

C. Any stream restored or enhanced because of a stream alteration shall have the minimum buffer required for the highest stream class involved pursuant to an approved mitigation plan and stream study set forth in BMC 19.40.370.

D. Increased stream buffer widths may be required by the City of Burien when the slope is susceptible to erosion and standard erosion-control measures will not prevent adverse impacts to the stream.

E. Any stream with an ordinary high water mark within twenty-five (25) feet of the toe of a slope thirty percent (30%) or steeper, shall have the minimum buffer required for the stream class involved or a twenty-five (25) foot buffer beyond the top of the slope, whichever is greater.

F. Standard buffer width averaging may be allowed by the Director (in accordance with an
approved critical area review) if:

i. Additional protection to the stream and riparian habitat area will be provided through the implementation of a buffer enhancement plan as described in subsection (2)(G) of this section;

ii. Minimum buffer width is the greater of fifty percent (50%) of the standard buffer width or twenty-five (25) feet;

iii. Stream and riparian functions or values will not be reduced; and

iv. As long as the total area contained in the buffer on the development proposal site does not decrease.

G. Buffer reduction with enhancement may be allowed by the Director (in accordance with an approved critical area study) if:

i. Additional protection to streams will be provided through the implementation of a buffer enhancement plan.

ii. The existing condition of the buffer is degraded.

iii. Buffer enhancement includes, but is not limited to, the following:

   a. Planting vegetation that would increase value for fish and wildlife habitat, improve water quality, or provide aesthetic/recreational value.

   b. Enhancement of wildlife habitat by incorporating structures that are likely to be used by wildlife, including wood duck boxes, bat boxes, nesting platforms, snags, rootwads/stumps, birdhouses, and heron nesting areas.

   c. Removing non-native plant species from the buffer area.

iv. For Type F and Type Np streams, buffer reductions under this Section shall be limited to twenty-five percent (25)% of the standard buffer width. For Type Ns streams, buffer reductions shall result in a buffer of no less than twenty-five (25) feet. [Ord. 623 § 1, 2015; Ord. 560 § 1 (Exh. A), 2012; Ord. 394 § 1, 2003]

19.40.360 Streams – Permitted Alterations.

1. Alteration to Streams.

   A. Relocation or piping of any Type F stream in the City of Burien shall not be permitted unless undertaken for stream enhancement as described in subsection (1)(B) of this section. Relocation or piping of Type Np or Ns streams may take place only when it is part of an approved mitigation or restoration plan, and will result in equal or better habitat and water
quality, and will not diminish the flow capacity of the stream.

B. Stream enhancement not associated with any other development proposal may be allowed if:

i. An approved design, implementation, maintenance, and monitoring plan prepared by a civil engineer and a qualified professional is approved by the Director;

ii. The plan is carried out under the direct supervision of a qualified professional pursuant to provisions contained in administrative rules;

iii. The enhancement is accomplished by a public agency with a mandate to do such work;

iv. The enhancement is limited to placement of rock weirs, log controls, spawning gravel, other specific salmonid improvements, and involves only light equipment or hand labor; and

v. Water quality in the stream is protected during construction.

C. A stream channel may be stabilized if:

i. Movement of the stream channel threatens existing residential or commercial structures, public facilities or improvements, unique natural resources or the only existing access to property; and

ii. The stabilization is done in compliance with the requirements of BMC 19.40.240 through 19.40.280.

2. Alterations to Stream Buffers. No alteration may occur in a stream buffer except as permitted below:

A. Buffer enhancements may be allowed pursuant to an approved mitigation plan as described in BMC 19.40.370.

B. Buffers and vegetation within the buffer shall be protected during construction by placement of a temporary fencing, on-site notice for construction crews of the presence of the stream, and implementation of appropriate erosion and sedimentation controls.

C. Utilities such as water, telephone, cable, electric, and natural gas may be allowed in Type Np or Type Ns stream buffers if:

i. The Director determines that no practical alternative location is available; and

ii. The utility corridor meets any additional requirements set forth by the Director and
BMC 19.40.070(3) including, but not limited to, requirements for installation, replacement of vegetation and maintenance.

D. Sewer utility corridors may be allowed in stream buffers only if all of the following criteria are met:

i. The applicant demonstrates that sewer lines are necessary for gravity flow;

ii. The corridor is not located in a stream or stream buffer used by species listed as endangered or threatened by the state or federal government or containing critical or outstanding actual habitat for those species or heron rookeries or raptor nesting trees;

iii. The corridor alignment including, but not limited to, any allowed maintenance roads, follows a path beyond a distance equal to seventy-five percent (75%) of the stream buffer width from the ordinary high water mark;

iv. Corridor construction and maintenance protects the stream and stream buffer and is aligned to avoid cutting trees greater than twelve (12) inches in diameter at breast height, when possible, and pesticides, herbicides, and other hazardous substances are not used;

v. An additional, contiguous and undisturbed buffer, equal in width to the proposed corridor including any allowed maintenance roads, is provided to protect the stream;

vi. The corridor is revegetated with appropriate vegetation native to the City at preconstruction densities or greater immediately upon completion of construction or as soon thereafter as possible, and the sewer utility ensures that such vegetation survives;

vii. Any additional corridor access for maintenance is provided, to the extent possible, at specific points rather than by a parallel road; and

viii. The width of any necessary parallel road providing access for maintenance is as small as possible, but not greater than fifteen (15) feet, the road is maintained without the use of herbicides, pesticides or other hazardous substances and the location of the road is contiguous to the utility corridor on the side away from the stream.

ix. Joint use of an approved sewer utility corridor by other utilities may be allowed.

E. The following surface water management activities and facilities may be allowed in Type Np and Type Ns stream buffers only as follows:

i. Surface water discharge to a Type Np or Type Ns stream from a detention facility, pre-settlement pond or other surface water management activity or facility may be allowed if discharge does not increase the rate of flow, change the fish habitat or decrease the water quality of the stream;
A Type Np or Type Ns stream or stream buffer may be used for a regional retention/detention facility if:

a. A public agency and utility exception is granted pursuant to BMC 19.40.070(4);

b. All requirements of the King County Surface Water Design Manual, as adopted in Chapter 13.10 BMC, are met;

c. The use will not alter the rating or the factors used in rating the stream; and

d. There are no significant adverse impacts to the stream.

F. Public and private trails may be allowed in stream buffers only if:

i. The trail surface shall not be made of impervious materials, except that public multipurpose trails may be made of impervious materials if:

   a. they meet all other requirements including water quality, and

   b. an impervious trail has less of an impact on the stream and its buffer.

ii. The use of elevated boardwalks for trails is encouraged.

G. Stream crossings may be allowed and may encroach on the required stream buffer if the following conditions are met. Stream crossings include those for streets, trails, or private vehicular access easements.

i. There is no other feasible access to the property;

ii. All crossings use bridges or other construction techniques which do not disturb the stream bed or bank, except that bottomless culverts, fish friendly culverts or other appropriate methods demonstrated to provide fisheries protection may be used for Type F, Np, or Ns streams if the culvert design is in accordance with the 2013 WDFW manual Water Crossing Design Guidelines, as amended;

iii. All crossings are constructed during low stream flow periods and are timed to avoid stream disturbance during periods when use is critical to salmonids, construction timing must coincide with the WDFW in-water work windows;

iv. Crossings do not occur over salmonid spawning areas;

v. Bridge piers or abutments are not placed within the FEMA floodway or the ordinary high water mark;

vi. Crossings do not diminish the flood-carrying capacity of the stream;
vii. Underground utility crossings are laterally drilled and located at a depth of four (4) feet below the maximum depth of scour for the base flood predicted by a civil engineer licensed by the State of Washington; and

viii. Crossings are minimized and serve multiple purposes and properties whenever possible. [Ord. 623 § 1, 2015; Ord. 394 § 1, 2003]

19.40.370 Streams – Additional mitigation requirements.

1. General Requirements.

A. Restoration or mitigation shall be required when a stream or its buffer is altered in violation of law or without any specific permission or approval by the Director. In addition to the requirements of BMC 19.40.170, a mitigation plan for stream impacts shall demonstrate that:

i. The stream has been degraded and will not be further degraded by the mitigation activity;

ii. The mitigation will improve the water quality and fish and wildlife habitat of the stream;

iii. The mitigation will have no lasting significant adverse impact on any stream functions; and

iv. The mitigation will assist in stabilizing the stream channel.

B. In addition to the requirements of BMC 19.40.170, mitigation minimum requirements shall include:

i. All work shall be carried out under the direct supervision of a qualified professional;

ii. Engineering analysis as described in Chapter 13.10 BMC shall be performed to determine hydrologic conditions;

iii. The natural channel dimensions shall be replicated including its depth, width, length and gradient at the original location, and the original horizontal alignment (meander lengths) shall be replaced;

iv. The bottom shall be restored with identical or similar materials;

v. The bank and buffer configuration shall be restored to its original condition;

vi. The channel, bank and buffer areas shall be replanted with vegetation native to Western Washington which replicates the original vegetation in species, sizes and densities; and

vii. The original biologic functions of the stream shall be recreated.
2. Mitigation Location. Mitigation of adverse impacts to riparian habitat areas or streams shall result in equivalent functions and values on a per function basis, be located as near the alteration as feasible, and be located in the same sub-drainage basin as the habitat impacted.

3. Mitigation Schedule.

   A. A mitigation monitoring schedule shall be established for a period of five (5) years.

   B. An “as-built” mitigation report shall be submitted to the City within one (1) month of mitigation installation. Acceptance of the as-built report by the City will be made after a site investigation is performed by the City, and all changes requested by the City are completed.

   C. Mitigation monitoring reports shall be submitted annually to the City and shall show that the mitigated area is meeting performance standards and goals set forth in the mitigation plan.

4. Financial Surety. A performance bond, or other approved financial surety, is required before building and clearing and grading permits are issued. The purpose of the financial surety is to hold an applicant accountable for implementing the mitigation, monitoring, and contingency plans. The release of financial surety is contingent on satisfactory completion by the applicant of the proposed construction, mitigation, monitoring, and contingency plans as determined by the Director. [Ord. 623 § 1, 2015; Ord. 394 § 1, 2003]

FISH AND WILDLIFE HABITAT CONSERVATION AREAS

1. Fish and wildlife habitat conservation areas are those habitat areas that meet any of the following criteria:

   A. Areas with which endangered, threatened, and sensitive species listed by the federal government or the State of Washington have a primary association;

   B. All public and private tidelands or bedlands suitable for commercial or recreational shellfish harvest;

   C. Kelp and eel-grass beds identified by the Washington Department of Natural Resources;

   D. Herring and smelt spawning areas as outlined in Chapter 220-110 WAC and the Puget Sound Environmental Atlas as presently constituted or as may be subsequently amended;

   E. Naturally occurring ponds under 20 acres and their submerged aquatic beds that provide fish or wildlife habitat;

   F. Bald eagle habitat protected pursuant to the Federal Bald and Golden Eagle Protection Act;
G. Heron rookeries or active nesting trees; or

H. Waters of the state, regulated under BMC 19.40.340, Streams.

2. The approximate location and extent of known fish and wildlife habitat conservation areas are shown on the Critical Area Maps adopted by the City, as described in BMC 19.40.040(2)(A) and as most recently updated. The following maps are to be used as a guide for the City, but do not provide a final critical area designation:

   A. Washington State Department of Fish and Wildlife Priority Habitat and Species Maps;

   B. Anadromous and resident salmonid distribution maps contained in the Habitat Limiting Factors Reports published by the Washington Conservation Commission; and

   C. Washington State Digital Coastal Atlas and Coastal Zone Management Program. [Ord. 623 § 1, 2015; Ord. 394 § 1, 2003]


1. The Director shall require the establishment of buffer areas for activities in, or adjacent to, fish and wildlife habitat conservation areas, when needed to protect fish and wildlife habitat conservation areas. Buffers shall:

   A. Consist of an undisturbed area of native vegetation, or areas identified for restoration, established to protect the integrity, functions and values of the affected habitat;

   B. Reflect the sensitivity of the habitat and the type and intensity of human activity proposed to be conducted on the site and on adjacent sites; and

   C. Be consistent with the management recommendations issued by the state Department of Fish and Wildlife.

2. When a species is more susceptible to adverse impacts during specific periods of the year, seasonal restrictions may apply. Larger buffers may be required and activities may be further restricted during the specified season.

3. A Habitat Management Plan may be required by the Director when the critical area review of a development proposal determines that the proposed activity will have an effect on habitat conservation areas.

   A. All Habitat Management Plans shall be prepared by a qualified professional in consultation with the state Department of Fish and Wildlife. Habitat Management Plans for critical species listed as endangered or threatened shall be approved by the City following review and approval by the Department of Fish and Wildlife.
B. Habitat Management Plan Content Requirements. Based on the characteristics of the site and information submitted by the applicant, the Director may require that all or a portion of the following be included in a Habitat Management Plan:

i. A map drawn to scale or survey showing the following information:
   a. All lakes, ponds, streams, and wetlands on, or adjacent to the subject property, including the name (if named), ordinary high water mark of each, and the stream type or wetland class;
   b. The location and description of the fish and wildlife habitat conservation areas on the subject property, as well as any potential fish and wildlife habitat conservation areas within 200 feet of the subject property as shown on the City’s adopted Critical Area Maps; and
   c. The location of any observed evidence of use by a listed species;

ii. An analysis of how the proposed development activities will affect the fish and wildlife habitat conservation areas and listed species;

iii. The Habitat Management Plan should also address the following mitigation measures:
   a. Reduction or limitation of development activities within the fish and wildlife habitat conservation areas;
   b. Use of low impact development techniques or clustering of development on the subject property to locate structures in a manner that preserves and minimizes adverse effects to habitat areas;
   c. Seasonal restrictions on construction activities on the subject property;
   d. Preservation or retention of habitat and vegetation on the subject property in contiguous blocks or with connection to other habitats that have a primary association with listed species;
   e. Establishment of a buffer around the fish and wildlife habitat conservation areas;
   f. Limitation of access to the fish and wildlife habitat conservation areas and buffer; and
   g. The creation or restoration of habitat area for the listed species.

4. Non-indigenous species shall not be introduced. No plant, wildlife, or fish species not indigenous to the Puget Sound region shall be introduced into a fish and wildlife habitat conservation area unless authorized by a state or federal permit or approval. [Ord. 623 § 1, 2015; Ord. 394 § 1, 2003]
19.40.400 Fish and Wildlife Habitat Conservation Areas – Permitted Alterations.

1. Fish and wildlife habitat conservation areas or their buffers may be altered only if the proposed alteration of the habitat or the mitigation proposed does not degrade the functions and values of the habitat. All new structures and land alterations shall be prohibited from habitat conservation areas except in accordance with this Chapter.

2. Approvals of activities may be conditioned. The Director may condition approvals of activities allowed adjacent to fish and wildlife habitat conservation areas as necessary, to minimize or mitigate any potential adverse effects. Conditions may include, but are not limited to, the following:

   A. Establishment of buffer zones;
   B. Preservation of vegetation with which listed species have a primary association;
   C. Limitation of access to the habitat area, including fencing to deter unauthorized access;
   D. Seasonal restriction of construction activities;
   E. Requirement of mitigation for activities having an effect on fish and wildlife habitat conservation areas; and
   F. Requirement of a performance bond, when necessary, to ensure completion and successful implementation of proposed mitigation (BMC 19.40.170).

3. Low impact uses and activities which are consistent with the purpose and function of the habitat buffer and do not detract from its integrity may be permitted within the buffer depending on the sensitivity of the habitat area. Any impacts from these uses and activities shall be mitigated. Examples of uses and activities which may be permitted by the Director include:

   A. Pervious trails;
   B. Viewing platforms;
   C. Storm water management features such as grass-lined swales, and
   D. Utilities and utility easements.

4. Mitigation shall result in contiguous habitat. Mitigation sites shall be located to achieve contiguous wildlife habitat in accordance with a mitigation plan that is part of an approved habitat Management Plan to minimize the isolating effects of development on habitat areas. Mitigation of aquatic habitat must be located within the same aquatic ecosystem or watershed as the area disturbed.

5. Mitigation of alterations to habitat conservation areas shall achieve equivalent or greater biologic
functions, and in the case of streams shall include mitigation for adverse impacts upstream and/or downstream of the development proposal site. Mitigation shall address each function affected by the alteration to achieve functional equivalency or improvement on a per function basis. [Ord. 623 § 1, 2015; Ord. 394 § 1, 2003]

19.40.410 Fish and Wildlife Habitat Conservation Areas – Specific Habitats.

1. Endangered, threatened, and sensitive species habitat.

   A. No alteration shall be allowed within a fish and wildlife habitat conservation area with which state or federally endangered, threatened, or sensitive species have a primary association without Federal and State approval.

   B. Whenever activities are proposed adjacent to a fish and wildlife habitat conservation area with which state or federally endangered, threatened, or sensitive species have a primary association, such area shall be protected through the application of protection measures in accordance with a Habitat Management Plan prepared by a qualified professional (BMC 19.40.390) and approved by the City.

   C. Bald eagle habitat shall be protected pursuant to the Federal Bald Eagle Protection Act. Whenever activities are proposed within 660 feet of a verified nest territory or communal roost, the applicant shall consult with the U.S. Fish and Wildlife Service to determine if a permit is required.

2. Aquatic Habitats.

   A. All activities, uses, and alterations proposed to be located in water bodies used by salmonid fish species or in areas that affect such water bodies shall give special consideration to the preservation and enhancement of salmonid habitat.

   B. Filling of aquatic habitats shall not adversely impact salmonids or their habitat or shall mitigate any unavoidable impacts, and shall only be allowed for a water-dependent activity. [Ord. 623 § 1, 2015; Ord. 394 § 1, 2003]

CRITICAL AQUIFER RECHARGE AREAS

19.40.420 Critical aquifer recharge areas – Designation and Classification.

1. Purpose and Intent. The purpose of this section is to protect critical aquifer recharge areas from degradation or depletion resulting from new and redeveloping land use activities. Due to the potential vulnerability of groundwater underlying certain aquifer recharge areas to contamination and the importance of such groundwater as sources of public water supply, it is the intent of this section to safeguard groundwater resources by mitigating or precluding future discharges of contaminants from new development activities and redevelopment activities.
2. Applicability.

A. General. The provisions of this section shall apply to regulated facilities as defined in this ordinance within or adjacent to those portions of the City of Burien designated as critical aquifer recharge areas on the City of Burien Critical Areas Map. Regulated facilities are those commercial, industrial and home occupation uses that:

   i. Process or handle hazardous materials in regulated quantities; and

   ii. Treat and store regulated quantities of hazardous materials.

B. The City of Burien shall administer the provisions of this Chapter and shall determine appropriate mitigation measures.

3. Classification.

A. Criteria. Any site located within the City of Burien and within or adjacent to the boundaries of any critical aquifer recharge area is subject to the provisions of this chapter.

B. Sources. The following sources were used to identify the aquifer recharge areas that are depicted on the Critical Areas Map.


1. Prohibited activities and land uses – critical aquifer recharge areas. The following land uses and activities for new development or redevelopment shall be prohibited within or adjacent to critical aquifer recharge areas:

   A. Solid waste landfills;

   B. Disposal of hazardous or dangerous wastes;

   C. All underground injection wells as defined in Chapter 173-218 WAC;

   D. Mining;

The Burien Municipal Code is current through Ordinance 704, passed March 4, 2019.
i. Metals and hard rock mining.

ii. Sand and gravel mining is prohibited from *critical aquifer recharge areas* determined to be highly susceptible or vulnerable;

E. Wood Treatment Facilities. Wood treatment facilities that allow any portion of the treatment process to occur over permeable surfaces (both natural and manmade);

F. Storage, processing, or disposal of radioactive substances. Facilities that store, process, or dispose of radioactive substances;

G. Dry cleaning establishments using the solvent perchloroethylene; and

H. Other.

i. Activities that would significantly reduce the recharge to *aquifers* currently or potentially used as a potable water source;

ii. Activities that would significantly reduce the recharge to *aquifers* that are a source of significant baseflow to a regulated *stream*;

iii. Activities that are not connected to an available sanitary sewer system are prohibited from *critical aquifer recharge areas* associated with sole source *aquifers*.

2. *Hazardous materials questionnaire* required. Applications for development or redevelopment of *regulated facilities* within the boundaries of *critical aquifer recharge areas* shall be accompanied by a completed *hazardous materials questionnaire* to determine the regulatory status of the *applicant* facility. The *Director* shall review the *hazardous materials questionnaire* to determine whether the facility is regulated under this chapter. If it is determined that the *applicant* is a *regulated facility* that processes, handles, treats, and/or stores *hazardous substances* as defined by this chapter, the *applicant* facility must submit a *Critical Areas Report* pursuant to this Section to the City.

3. *Critical area review for critical aquifer recharge areas* required.

   A. After reviewing the *hazardous materials questionnaire*, the *Director* may require a *critical area review* pursuant to BMC 19.40.090 through 19.40.150.

   B. Notification to adjacent water supply systems. The City of Burien shall provide written notice to the operators of neighboring water supply systems in whose *wellhead protection area* the proposed *regulated activity* is located. The City of Burien shall consider comments received from the water system when reviewing the hydrogeologic assessment.

4. *Appeal of determination*.

   A. The *Director’s* determination that the facility is a *regulated facility* or within a *critical aquifer*
Redevelopment may be appealed according to, and as part of the appeal procedure for the underlying permit or approval involved. The appeal must be accompanied with a hydrogeologic assessment to assess the facility’s potential impact on the aquifer.

B. Prepared by a qualified professional. The hydrogeologic assessment should be prepared by a licensed engineer, engineering geologist, geologist, or hydrogeologist registered in the State of Washington and approved by the City of Burien.

C. Hydrogeologic assessment report. A hydrogeologic assessment shall include, but is not limited to, the following:

i. Information sources;

ii. Geologic setting – include well logs or borings used to characterize the area;

iii. Background water quality;

iv. Groundwater elevations;

v. Location/depth to perched water tables;

vi. Recharge potential of the proposed development site (permeability/transmissivity);

vii. Groundwater flow direction and gradient;

viii. Currently available data on wells located within 1,000 feet of site;

ix. Currently available data on any spring within 1,000 feet of site;

x. Surface water location and recharge potential;

xi. Water source supply to site;

xii. Any sampling schedules necessary;

xiii. Discussion of the effects of the proposed project on the groundwater resource;

xiv. Description of potential mitigation measures, should it be determined that the proposed project may have an adverse impact on groundwater resources; and

xv. Other information as required by the City of Burien.

D. If the hydrogeologic assessment determines that the facility will have no effect on groundwater, the facility is exempt from the development standards requirements in subsection 6 of this section.
5. Development standards – General requirements.

A. Activities may only be permitted in a critical aquifer recharge area if the applicant can show that the proposed activity will not cause contaminants to enter the aquifer and that the proposed activity will not adversely affect the recharging of the aquifer.

B. The proposed activity must comply with the water source protection requirements and recommendations of the federal Environmental Protection Agency, and state Department of Health, and the King County Health District.

C. Storage tank permits. The City of Burien specifically regulates and authorizes permits for underground storage tanks, pursuant to the International Fire Code and this chapter. The Washington Department of Ecology also regulates and authorizes permits for underground storage tanks (Chapter 173-360 WAC). The local Fire District regulates and authorizes permits for the removal of underground storage tanks.

D. Owners and operators of facilities with existing underground storage tanks that are located within a critical aquifer recharge area shall comply with all release detection requirements as specified in Chapter 173-360 WAC.

E. Spreading or injection of reclaimed water. Water reuse projects for reclaimed water must be in accordance with the adopted water or sewer comprehensive plans that have been approved by the departments of Ecology and Health.

   i. Surface spreading must meet the groundwater recharge criteria given in RCW 90.46.080 and 90.46.010(10).

   ii. Direct injection must be in accordance with the standards developed by authority of RCW 90.46.042.

F. Storm water treatment and control as per the King County Surface Water Design Manual.

6. Development standards for regulated facilities within critical aquifer recharge areas. The following mitigation measures, as applicable, are required for development of regulated facilities within a critical aquifer recharge area:

   A. Floor drains shall not be allowed to drain to the storm water system and must be designed and installed to meet the Uniform Plumbing Code (UPC) Section 303.

   B. If any roof venting carries contaminants, then the portion of the roof draining this area must
go through pretreatment pursuant to UPC Section 304(b).

C. All nonresidential vehicle washing must be self contained or be discharged to a sanitary sewer system, if approved by the sewer utility, and is subject to UPC Sections 708 and 711.

D. Utilize Integrated Pest Management (IPM) practices for pest control and Best Management Practices (BMPs) for the use of fertilizers as described by the King County Local Hazardous Waste Management Program.

E. Facilities installing new underground tanks. All new underground storage facilities used or to be used for the underground storage of hazardous substances or hazardous wastes shall meet the requirements of WAC 173-360 and be designed and constructed so as to:

   i. Prevent releases due to corrosion or structural failure for the operational life of the tank;

   ii. Be protected against corrosion, constructed of non-corrosive material, steel clad with a non-corrosive material, or designed to include a secondary containment system to prevent the release or threatened release of any stored substance; and

   iii. Use material in the construction or lining of the tank which is compatible with the substance to be stored.

F. Aboveground tanks.

   i. No new aboveground storage facility or part thereof shall be fabricated, constructed, installed, used, or maintained in any manner which may allow the release of a hazardous substance to the ground, or groundwater of the City of Burien within a critical aquifer recharge area.

   ii. For a tank that will contain a hazardous substance, no new aboveground tank or part thereof shall be fabricated, constructed, installed, used, or maintained without having constructed around and under it an impervious containment area enclosing or underlying the tank or part thereof.

   iii. A new aboveground tank that will contain a hazardous substance will require a secondary containment system either built into the tank structure or a dike system built outside the tank for all tanks located within a critical aquifer recharge area. The secondary containment system or dike system must be designed and constructed to contain the material stored in the tank(s), have a capacity of at least 110 percent of the primary tank and conform to the requirements of UFC Chapter 7902.2.

G. Vehicle repair and servicing.

   i. Commercial vehicle repair and servicing must be conducted over impermeable pads
and within a covered *structure* capable of withstanding normally expected weather conditions. Chemicals used in the process of vehicle repair and servicing must be stored in a manner that protects them from weather and provides containment should leaks occur.

ii. No dry wells shall be allowed in *critical aquifer recharge areas* on *sites* used for vehicle repair and servicing. Dry wells existing on the *site* prior to facility establishment must be abandoned using techniques approved by the state Department of Ecology prior to commencement of the proposed activity.

H. Additional protective measures may be required if deemed necessary by the City of Burien.

I. State and federal regulations – The *uses* listed below shall be conditioned as necessary to protect *critical aquifer recharge areas* in accordance with the applicable state and federal regulations.

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[Ord. 623 § 1, 2015; Ord. 394 § 1, 2003]