

Lynnwood Shoreline Master Program

May 2011



CITY OF
Lynnwood
Community Development

Table of Contents

Section 1 – Introduction	5
A. Shoreline Management Act	5
B. Public and Agency Participation	6
C. Legal Framework and Applicability of Shoreline Master Program	6
D. Shoreline Master Program Relationship to Other Regulations	6
E. Physical and Environmental Context	6
F. How to Use the Document	8
G. Regulations Not Applicable	8
H. Annexations	8
Section 2 – Goals	9
A. Master Goal.	9
B. Shoreline Use Goals	9
C. Economic Development Goal	9
D. Public Access Goals	9
E. Circulation Goals	10
F. Recreation Goal	10
G. Conservation Goal	10
H. Historic and Cultural Values Goal	11
I. Restoration of Impaired Ecological Functions Goal	11
Section 3 – Environment Designations	13
A. Environment Designation Classification Requirements	13
B. Aquatic Environment	13
C. High Intensity Environment	14
Section 4 – General Policies and Regulations	15
A. Archaeological and Historic Resources	15
B. Clearing and Grading	16
C. Environment Impacts	17
D. Native Vegetation Zone	19
E. Environmentally Critical and Hazard Areas	21
F. Public Access – Visual and Physical	24
G. Shorelines of Statewide Significance	28
H. Water Quality	30
I. Restoration of Impaired Ecological Functions	30
Section 5 – Specific Shoreline Uses	33
A. Introduction – Table of Uses	33
B. Primary Utility Facilities	34
C. Transportation Facilities	35
D. Parking Policies and Regulations.	36

E. Signs	37
F. Piers, Docks, Floats and Mooring Buoys	38
G. Utilities Policies and Regulations.	41
 Section 6 – Policies and Regulations for Shoreline Modification Activities	43
A. General Principles, Policies, and Regulations	43
B. Beach Enhancement	46
C. Shoreline Armoring (Revetments and Bulkheads)	48
D. Dredging and Dredge Material Disposal	52
E. Fill	55
 Section 7 – Administrative Regulations	59
A. General	59
B. Director	59
C. Hearing Examiner	61
D. Planning Commission	61
E. City Council	61
F. Permit or Exemption Required	61
G. Fees	63
H. Permit Application	63
I. Shoreline Substantial Development Permit Process	63
J. Appeals	66
K. Shoreline Variance and Shoreline Conditional Use Permits ..	68
L. Nonconforming Development	72
M. Master Program Review	73
N. Amendment to Master Program	73
O. Severability	74
P. Inspections	74
Q. Enforcement	74
 Section 8 – Appendices	
A. Definitions	
B. Inventory Map Portfolio	
C. Shoreline Inventory, Analysis, and Characterization	
D. Cumulative Impacts Analysis	
E. Restoration Plan	
F. LMC 13.35 Drainage Plans	
LMC 14.65 Flood Hazard Areas	
LMC 17.10 Environmentally Critical Areas	
LMC 17.15 Tree Regulations	

Section 1 – Introduction

A. Shoreline Management Act

Washington's Shoreline Management Act (SMA) was adopted by the State Legislature in 1971 and by the public in a 1972 referendum. The goal of the SMA is *"to prevent the inherent harm in an uncoordinated and piecemeal development of the state's shorelines."* The Act establishes broad policy giving preferences to uses that: protect the quality of water and the natural environment, depend on proximity to the shoreline, and preserve and enhance public access or increase public shoreline recreational opportunities. In Lynnwood, the SMA applies to the marine waters of the Puget Sound and the land beneath them, and the shorelands extending 200 feet inland from the ordinary high water mark (OHWM) of the Sound. The exact extent of shoreline jurisdiction will be determined at the time of permitting for a particular project. Areas undesignated in the Shoreline Master Program will have a conservancy designation.

The SMA contains the following major policy provisions:

- 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.
- Planning for and fostering all reasonable and appropriate uses of the shoreline.
- Protecting public rights of navigation, and public access to the shoreline and enhancing the public interest.

The SMA balances authority between local and state governments. Cities and counties are the primary regulators, but the state, through the Department of Ecology (*Ecology*), has authority to review local programs and decisions. Under the SMA, each city and county adopts a shoreline master program (SMP) based on state guidelines but tailored to the specific needs of the community. Local SMP's combine both plans and regulations. The plans are a comprehensive vision of how shoreline areas will be used and developed over time. Regulations are the standards shoreline projects and uses must meet.

Lynnwood has been required to have a SMP since 1972. For reasons unknown, none was ever prepared. Both the state and the City acknowledge that compliance with this state law is overdue. This document fulfills the City's obligation under the SMA. Revised regulations for preparing, updating, and administering SMP's were issued by the state in January 2004. The revised regulations guided preparation of this Shoreline Master Program.

B. Public and Agency Participation

The Shoreline Management Act and Growth Management Act mandate that preparation of the Lynnwood Shoreline Master Program include a public participation process that ensures all interested parties a meaningful opportunity to participate. Actions were taken early in the planning process for the Lynnwood SMP to ensure such opportunities were provided for any and all interested parties. The Lynnwood Planning Commission served as the Citizen Involvement Committee and directed that wide notice about the planning process be given residents around the shoreline jurisdiction (the area within Lynnwood's shoreline jurisdiction has no residents).

All meetings where the SMP was on the agenda were given proper public notice. Residents within an area extending six hundred feet beyond the project area were given notice of the planning process and individual meetings. Notice was also given to local, state, and federal agencies likely to be interested; and to Indian tribes and other organizations.

In summary, citizen comment on the project has been limited. Only a few citizens from the area around the project called, wrote, or attended meetings. Most interest centered on ensuring operation of the Lynnwood wastewater treatment facility giving vigilant attention to odor and noise control. With the exception of *Ecology* and the City of Edmonds, interest from local and state agencies has also been minimal.

Project records and meeting notices are available for inspection at the offices of the Lynnwood Community Development Department.

C. Legal Framework and Applicability of SMP

The Shoreline Master Program policies are more than guidelines. They are regulations that must be followed, and are as enforceable as regulations.

In most circumstances, the SMP applies only to the area of shoreline jurisdiction defined by the Shoreline Management Act (SMA). However, SMP policies and regulations may in some circumstances apply to areas outside SMA jurisdiction when the use of outside areas impacts areas within the shoreline jurisdiction in violation of SMP policies and regulations.

D. SMP Relationship to Other Regulations

The Shoreline Master Program policies and regulations are in addition to any other Lynnwood Municipal Code (LMC) regulations applying to the subject area. If there is a conflict between the SMP and other regulations, the SMP shall be the controlling document. Appendix C (pg. C-8) gives a more complete description of the relationship between the various regulations.

E. Physical and Environmental Context

The City of Lynnwood's Puget Sound shoreline and adjacent shorelands are within a seven-acre enclave which is noncontiguous to and west of the main part of the City. This small part of Lynnwood is surrounded on the north, east, and south by the City of Edmonds. The principal uses within this part of Lynnwood



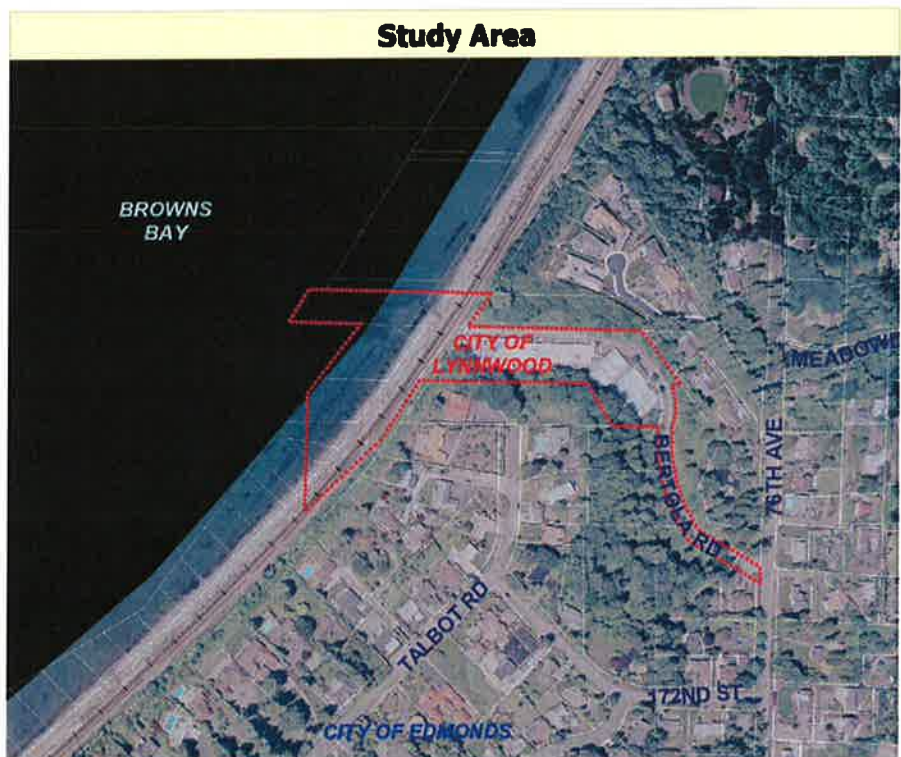
are the City's wastewater treatment facility, the Burlington North & Santa Fe (BNSF) Railway mainline, and Puget Sound shoreline and tidelands. All uses in the area pre-date passage of the SMA.

The Puget Sound shoreline in this location runs north-northeast to south-southwest, with the sound on the west and land to the east. The BNSF railway tracks parallel the shoreline in a narrow corridor between the toe of a 100-foot high bluff on the east, and Sound tidelands on the west. At high tide, there is little, if any, exposed land west of the railroad track bed. The City's wastewater treatment facilities are in a narrow, steep sided ravine extending east from the bluff. The wastewater treatment facility outfall runs under the track bed and 1,000 feet offshore into the Sound, and discharges at a depth of approximately 120 feet. A small stream runs through the City property. In its upper reaches, the stream is in an open streambed. Near the treatment facility, it enters underground piping which carries the stream water under and around the treatment facility then passes under the track bed in a large concrete pipe exiting the pipe west of the tracks onto the tidelands.

The BNSF railway completely bars access to the shoreline from the Lynnwood landside. No vehicular or pedestrian access is allowed across the railway tracks. The City has an access easement east of the tracks that permits limited vehicular access between the north and south sides of the treatment plant. This limited access easement does not allow access on or across the tracks. The City's wastewater treatment facilities establish a further barrier to access. The treatment facilities are fenced and gated; only authorized personnel may enter the property. Public access into the treatment

plant site is necessarily limited due to the potentially hazardous nature of plant operations. These barriers make it unlikely that future pedestrian or vehicular access to the Lynnwood shoreline will or even could be provided via the landside in Lynnwood. The closest approved railroad crossing is approximately one mile north of the Lynnwood shoreline at Meadowdale Beach County Park.

The area of Lynnwood subject to the SMA may be one of the smallest in the state required to have a Shoreline Master Program. The 4.2-acre area under current shoreline jurisdiction has a limited number of existing uses and property owners. Few, if any, land use changes



are anticipated and pressure to bring about change is minimal. The character of the shoreline is uniform and opportunities for either degradation or enhancement limited. Under these circumstances, it would seem that a Shoreline Master Program fully complying with the SMA should be brief, simple and straightforward. However, the complexity of the SMA and its implementing regulations dictate the content, length, and complexity of this plan. An abbreviated process or program is not provided for under the SMA.

F. How to Use this Document

Users of this Shoreline Master Program are encouraged to start with the Goals listed in Section 2. The Goals describe the end state, or continuing condition, the SMP is intended to achieve. The next stop, in logical progression, should be Section 3 where the Environment Designations are described. Then, breaking with linear progression, it may help most to turn to Section 5 where permissible shoreline uses are listed. With the foregoing as background, the reader is then prepared to tackle the detail of the policies and regulations.

G. Regulations Not Applicable

The area of shoreline jurisdiction in Lynnwood is geographically small and the range of natural features and human uses limited. Therefore, some parts of the WAC 173-26-221 thru 241 are not applicable to the Lynnwood SMP. In general, regulations for agriculture, forestry, mining, breakwaters, commercial and residential development and regulations in WAC 173-26-221 for critical freshwater habitat, aquifer recharge areas, do not apply as these conditions do not exist in the Lynnwood shoreline jurisdiction.

H. Annexations

This plan was partly written recognizing that the City of Lynnwood could at some point annex areas lying within the shoreline jurisdiction. Some uses listed and regulated herein are only likely to become applicable in the event of annexation, as the entirety of Lynnwood's existing shoreline area, except the tidelands, is occupied by the wastewater treatment plant and railroad, and the probability of these uses being redeveloped is remote.

There has been some discussion of a "cross-annexation" between Lynnwood and the surrounding City of Edmonds with Edmonds annexing the tidelands and railroad property south of the wastewater treatment plant, and Lynnwood annexing some upland (out of the shoreline jurisdiction) properties it owns adjacent to the wastewater plant. As of the adoption of this Master Program these plans have not gone beyond the speculation stage.

Section 2 – Goals

A. Master Goal

The Puget Sound shoreline is among the most valuable, scarce, and fragile of our natural resources. It is the intent of this Shoreline Master Program to manage the shoreline giving preference to water-dependent and water-related uses, and encourage development and other activities to co-exist in harmony with natural conditions. Uses that result in long-term over short-term benefits are preferred, as are uses which promote sustainable development.

B. Shoreline Use Goals

1. Reserve shoreline and water areas particularly suited for specific and appropriate uses - especially water-oriented and water-dependent uses, for such uses existing and potential.
2. Establish and implement policies and regulations for shoreline use consistent with the Shoreline Management Act of 1971. These policies and regulations should ensure the overall land use pattern in the shoreline area is compatible with existing shoreline environment designations and will be sensitive to and not degrade habitat and ecological systems and other shoreline resources.
3. Ensure proposed shoreline uses do not minimize the rights of others or infringe on rights of private ownership.
4. Encourage restoration of shoreline areas that have been degraded or diminished in ecological value and functions by past activities or catastrophic events.
5. Ensure that planning, zoning, and other regulatory and non-regulatory programs governing lands adjacent to shoreline jurisdictions are consistent with SMA policies and regulations and the provisions of this SMP.

C. Economic Development Goal

Allow continuation and enhancement of existing uses consistent with achieving other goals for preservation and conservation of resources.

D. Public Access Goals

Note: While the City of Lynnwood supports the goals of the Shoreline Management Act to "increase public access to publicly owned areas of the shoreline" (RCW 90.58.020 (5)), a reading of Section 1E (above) reveals that it is neither legal, safe, nor practical to encourage general physical access to the shoreline area from the upland area within the City of Lynnwood as it now exists due to topography and the uses along the shoreline.

1. Provide opportunities for the public to view and enjoy the amenities of the shoreline area consistent with:
 - a) Private property rights including but not limited to the legal right of the BNSF to prohibit public access across their right-of-way;
 - b) Public health and safety concerns including but not limited to the necessity for the City to prevent unescorted access within the wastewater treatment plant, grounds, and of the BNSF to prevent crossing of or access along the railroad tracks;
 - c) Over-burdening fragile natural resources;
 - d) Prevention of other public nuisances.
2. Maintain public shoreline and tidelands in public ownership for continued public use.
3. Enhance and preserve public views from shoreline upland areas. Enhancement of views should not be construed to mean excessive removal of vegetation which partially impairs views.
4. Provide opportunities for escorted (guided tour) access to the wastewater treatment plant and adjacent shoreline area as may be practical within staffing limitations.

E. Circulation Goals

1. Provide for safe and efficient movement of people and goods within the shoreline area while recognizing and enhancing the unique, fragile, and scenic character of the shoreline area with minimum disruption to the shoreline environment and minimum conflict between different uses.
2. Provide for emergency services access to the shoreline area.

F. Recreation Goal

Provide public recreational opportunities in the shoreline area consistent with protection of shoreline resources, and the limitations of safe access. However, it is not at this time a goal of this plan to encourage or plan for recreational use within or adjacent to the wastewater treatment plant or BNSF railroad right-of-way.

G. Conservation Goal

Protect and enhance unique and fragile areas of flora and fauna and scenic vistas to help assure continued availability of these resources for future generations.

H. Historic and Cultural Values Goal

Identify, protect, preserve, and restore important archaeological, historical, art and cultural sites within the shoreline jurisdiction area for educational and scientific use and enjoyment by the general public.

I. Restoration of Impaired Ecological Functions Goals

1. Assure no net loss of shoreline ecological functions.
2. Restore impaired ecological functions within reasonable limits of both biological science and cost effectiveness.
3. Prepare, adopt, and implement a restoration plan which prioritizes and targets ecological functions most in need of restoration. (See Appendix E – Restoration Plan)

Section 3 – Environment Designations

A. Environment Designation Classification Requirements

Shoreline Master Programs are required by state regulations to classify shoreline areas into specific environment designations. The classification must be based on the existing use pattern, the biological and physical character of the shoreline, the classification criteria provided by state regulations, and the goals of the Lynnwood Comprehensive Plan. Taking the foregoing into account, the City of Lynnwood has chosen to use two of the six state recommended standard environment designations for the jurisdictional shoreline within the city limits. These two designations are

- 1) Aquatic and
- 2) High-Intensity.

The extent of each designation is shown on map C4b in Appendix B, Inventory Map Portfolio. The exact location of environment designation boundaries will be determined at the time of permitting for a particular project.

B. Aquatic Environment

The purpose of the Aquatic environment is to protect, restore, and manage the unique characteristics and resources of the areas waterward of the ordinary high-water mark. This is the default environment designation for areas waterward of the OHWM. This environment designation makes the most sense for Lynnwood's submerged and intertidal lands, and is so used for those lands. The Aquatic designation applies to all Lynnwood's jurisdiction west of the OHWM.

Management Policies:

1. Structures, which are not water-dependent, and uses which will substantially degrade the existing character of the area should be prohibited.
2. Several industries using the same tidelands should be given preference over single-industry use.
3. In appropriate areas, fishing and water recreation should be protected from competing uses.
4. Uses and activities in navigable waters or their beds should be located and designed to minimize interference with safe navigation, and allow unhindered passage of fish and animals, particularly those with life cycles dependent on such migration.
5. Filling operations should minimize possible adverse environmental impacts.
6. Development of underwater pipelines and cables on tidelands should be discouraged except where adverse environmental impacts can be shown to be less than the impact of upland alternatives, or when no reasonable alternative exists. When

permitted, such facilities should include provisions to prevent substantial or irrevocable environmental damage.

7. The size of new over-water structures should be limited to the minimum necessary to support the intended use.
8. Uses adversely impacting the ecological functions of critical salt and fresh water habitat should not be allowed except where necessary to the objectives of RCW 90.58.020, and then only when their impacts are mitigated under the sequence described in WAC 173-26-201 (2)(e) to assure no net loss of ecological functions.
9. Shoreline uses and modifications should be designed and managed to prevent degradation of water quality and alteration of natural hydrographic conditions.

C. High Intensity Environment

The purpose of the High-Intensity environment is to provide for high-intensity water-oriented commercial, transportation, and industrial uses while protecting existing ecological functions and restoring ecological functions in previously degraded areas. This environment designation is to be applied to shoreline areas currently supporting high-intensity uses, or suitable and planned for high-intensity water-oriented uses. This environment designation applies to that part of Lynnwood located east and within 200 ft. of the Puget Sound OHWM.

Management Policies:

1. High-intensity use tends to preclude other shoreline uses. Emphasis should be given to directing new development into already developed areas consistent with the SMP.
2. Full utilization of existing high-intensity areas should be achieved before additional areas are designated High-Intensity.
3. Reasonable, long-range projections of regional economic need should guide the amount of shoreline designated High-Intensity.
4. Priority should be given to water-dependent, water-related, and water-enjoyment uses over other uses. Uses, not befitting from a water location, should be discouraged or prohibited.
5. Aesthetic considerations should be actively promoted by means such as appropriate development siting, sign regulations, screening and architectural standards, flexible lot design, planned unit development, and maintaining natural vegetation buffers.
6. To maximize use of available shoreline resources and accommodate future water-dependent uses, the redevelopment and renewal of substandard or degraded high-intensity shoreline areas should be encouraged.
7. Development within the High-Intensity environment should be compatible with uses and activities in adjacent, including aquatic, environments.

Section 4 – General Policies

The following general policies and regulations apply to shoreline uses and modifications irrespective of environment designation. Policies are the bridge between goals and regulations, translating the general into the specific. Shoreline policies are legally enforceable. Regulations are more specific, enforceable controls and standards for shoreline development.

1. All new shoreline uses and shoreline modifications, including those not needing a Shoreline Substantial Development Permit (SDP), must conform to applicable Section 2 Goal provisions, Section 3 Environment Designation provisions (including the shoreline environment maps), Section 5 Specific Shoreline Use provisions and Section 6 Shoreline Modification provisions as well as the provisions of this section.
2. Shoreline modifications must support an allowable shoreline use conforming to the SMP. Except as otherwise noted, all shoreline modifications not associated with a legally existing or approved shoreline use are prohibited.
3. Shoreline uses, modifications, and conditions listed as “prohibited” shall not be eligible for consideration of Shoreline Variances or Shoreline Conditional Use Permits.
4. The policies listed in the SMP shall provide broad guidance and direction and shall be used by the Director in interpreting the “regulations.”
5. Where provisions of the SMP conflict, the more restrictive provisions shall apply unless specifically stated otherwise.

A. Archaeological and Historic Resources

Where archaeological or historic resources are recorded with the State Historic Preservation Office and/or the City of Lynnwood, or where they have been uncovered, the following policies and regulations apply. (Note: there are no known archeological or historical sites within Lynnwood's shoreline jurisdiction.)

Policies:

1. Archaeological and historic resources are limited and irreplaceable by nature, and valuable links to our past, and should be considered whenever a development is proposed along State shorelines.
2. Public or private uses and activities should be prevented from destroying or altering any site having historic, prehistoric, cultural, scientific, or educational purpose or value as identified by appropriate authorities.

Regulations - General:

1. All shoreline permits shall contain provisions requiring developers to immediately stop work and notify the City if any phenomena of possible archaeological interest is

uncovered during excavation. In such cases, the developer shall provide for site inspection and evaluation by a professional archaeologist to ensure all valuable archaeological data is properly salvaged. The developer shall receive permission from the State Office of Archaeology and Historic Preservation prior to further site disturbance, and affected tribes must be notified (RCW 27.53.0 or its successor).

2. Permits issued in areas with known archaeological artifacts and data shall include a requirement that the developer provide for site inspection and evaluation by an archaeologist. The permit shall require approval by the City before work begins, following inspection. Significant archaeological data or artifacts shall be recovered before work begins. This must be coordinated with affected tribes.
3. Significant archaeological and historic resources shall be permanently preserved for scientific study, education, and public observation. If the City determines a site has significant archaeological, natural scientific or historical value, it shall not issue permits for substantial development posing a threat to the resources of the site. The City may require development be postponed in such areas to allow investigation, public acquisition and/or retrieval and preservation of significant artifacts, and/or development of a mitigation plan.
4. In the event unforeseen factors constituting an emergency, as defined in RCW 90.58.030 or its successor, necessitate rapid action to retrieve or preserve artifacts or data identified above, the project may be exempted from shoreline permit requirements. The City shall notify *Ecology*, the State Attorney General's Office and the State Historic Preservation Office of such a waiver in a timely manner.
5. Archaeological sites, including middens, located both in and outside the shoreline jurisdiction are subject to RCW 27.44 (Indian Graves and Records) or its successor and RCW 27.53 (Archaeological Sites and Records) or its successor and shall comply with WAC 25-48 or its successor as well as the provisions of the SMP.
6. Archaeological excavation may be permitted subject to the provisions of the SMP.
7. Identified historical or archaeological resources shall be considered in site planning for parks, open space and public access with access to such areas designed and managed to protect the resources and surrounding environment.
8. Appropriate signs interpreting historical and archaeological features shall be provided
9. Areas of known or suspected archaeological middens shall not be disturbed and shall be identified and fenced and during construction projects on the site.

B. Clearing and Grading

The purpose of this section is to ensure shoreline uses and activities are designed and conducted in a manner minimizing damage to the ecology and environment of the shoreline area. All shoreline uses and activities shall conform to the clearing and grading provisions

herein, including developments not needing a shoreline permit. (See subsection I - Water Quality for related provisions.)

Policies:

1. Clearing and grading activities should be designed and conducted with the proper protections and in conformance with all local, state and Federal regulations.
2. Clearing and grading should be limited to the minimum necessary to accommodate permitted shoreline development.
3. Negative environmental impacts associated with clearing and grading should be avoided wherever possible through proper site planning, construction practices and timing, bank stabilization, bioengineering and/or use of erosion and drainage control methods, as well as long-term maintenance.
4. Following project completion, disturbed areas should be promptly replanted.
5. Clearing and grading activities should be designed so as to maintain native vegetation areas. Appropriate critical area buffers, as described in LMC Chapter 17.10 or as described below, shall be maintained in native vegetation.
6. For extensive clearing and grading proposals, a clearing and grading plan addressing native species removal, erosion and sedimentation control, and protection of sensitive area native vegetation zones shall be required.

Regulations – General:

1. Clearing and grading shall be permitted landward of the native vegetation zone (see subsection E- Native Vegetation Zone) for a permitted shoreline use, provided that upon completion of construction, remaining cleared areas shall be replanted within the first planting season. Replanted areas shall be fully re-established within three (3) years of completing construction and shall be properly maintained.
2. Except as otherwise provided in this SMP, existing native vegetation between the OHWM and the top of any bank ten (10) feet or higher waterward of the development shall be retained.
3. All vegetation within the native vegetation zone or other buffer likely to be disturbed by clearing and grading shall be protected by temporary fencing or other marking the City determines will adequately protect the vegetation. This includes root zones of trees to remain. The fencing/marketing shall be installed, and approved by the City before clearing and grading begins, and maintained until construction is complete.
4. Land alteration (clearing, grading, filling) shall be limited to the minimum necessary for development. Surface drainage systems or earth modifications involving more than five hundred (500) cubic yards of material shall be designed by a licensed engineer to prevent maintenance problems or adverse impacts to shoreline features.

C. Environmental Impacts

Minimizing the impacts of shoreline uses and activities on the environment is a key purpose of the SMA. All shoreline uses and activities, including developments not needing a permit, must conform to these provisions.

Policy:

Adverse environmental impacts from shoreline uses and activities should be minimized during all phases of development (e.g., design, construction, and management).

Regulations – General:

1. The location, design, construction, and management of all shoreline uses and activities shall protect the quality and quantity of surface and ground water adjacent to the site and shall adhere to the guidelines, policies, standards, and regulations of applicable water quality management programs and regulatory agencies.
2. Solid waste, liquid waste, and untreated effluent (i.e., discharge from a source containing pollutants) shall not be allowed to enter any surface waters or be discharged onto land. If there is evidence of discharge, the activity shall be suspended until the deficiency has been satisfactorily corrected.
3. The release of oil, chemicals, or other hazardous material onto or into the water is prohibited. Equipment for transporting, storing, handling, or applying such materials shall be maintained in a safe and leak-proof condition. If there is evidence of leakage, the use of such equipment shall be suspended until the deficiency has been satisfactorily corrected.
4. Shoreline uses and activities shall use effective measures to minimize increases in surface water runoff and to control, treat, and release surface water runoff so that receiving water quality and shore properties and features are not adversely affected. Such measures may include, but are not limited to, dikes, catch basins, settling ponds, grassy swales, interceptor drains, landscaped buffers, and installation and maintenance of oil/water separators.
5. Shoreline uses and activities shall utilize effective erosion control methods during project construction and operation.
6. Shoreline uses and activities shall be located, designed, constructed, and managed to minimize adverse impacts to fish and wildlife resources including spawning, nesting, rearing and habitat areas, and migratory routes.
7. Shoreline uses and activities shall be located, designed, constructed, and managed to minimize interference with beneficial natural shoreline processes such as water circulation, sand and gravel movement, erosion, and accretion.

8. The location, design, construction, and management of shoreline uses and activities shall minimize adverse impacts to surrounding land and water uses.
9. The location, design, construction and management of shoreline uses and activities shall avoid hazards to public health and safety.
10. All shoreline uses and activities shall be located and designed to minimize the need for shoreline stabilization measures and flood protection. (See Section 6, Shoreline Modification Policies and Regulations.)
11. Herbicides and pesticides shall not be allowed to directly enter water bodies or wetlands unless approved for such use by the appropriate agencies (Washington Dept. of Agriculture or Dept. of Ecology, U.S. Dept. of Agriculture or U.S. Environmental Protection Agency).
12. See Environmentally Critical Areas in the next subsection for additional provisions which may apply.

D. Native Vegetation Zone

Native vegetation zones are required vegetation buffers encompassing areas landward from the OHWM. Their purpose is to protect and enhance the shoreline's natural character, water quality, native plant communities, and wildlife habitat. Native vegetation zone provisions apply to all new shoreline development, uses, and activities, including those not needing a shoreline development permit and, where practical, to existing development.

Existing development, vegetation patterns, site conditions, parcel configurations, adjacent land uses and other factors shall be considered when applying native vegetation zone requirements. Existing developed properties such as the Wastewater Treatment Plant with no direct shoreline access (separated from the water by the railroad right-of-way), existing buildings in close proximity to the waterward property line, and limited land area for development, may have limited opportunity to implement native vegetation zone mitigation in the event of expansion. In such instances, a native vegetation zone is not required, but mitigation for removal of significant trees is still appropriate.

Policies:

1. Preservation of native plant species is key to maintaining the ecology of the shoreline as well as preserving its natural character.
2. Native plant communities within the shoreline jurisdiction should be protected, maintained, and enhanced.
3. Degraded shorelines should be restored to provide native habitats and enhance water quality.
4. Development should preserve existing environmental features to minimize disturbance of natural systems.

5. A native vegetation zone, landward of the OHWM, should be established for each shoreline use and shoreline environment, consistent with the development pattern and ecology of the shoreline.
6. The City should implement a public education program emphasizing the importance of maintaining native vegetation in the shoreline area.
7. Requirements for native vegetation zones, including their width, shall take into consideration factors such as, but not limited to, existing development and vegetation patterns, existing site conditions, characteristics of the land use and adjacent land uses. In cases where a native vegetation zone is not required and existing significant trees are removed, mitigation for the removed trees is appropriate.

Regulations- General:

A vegetation buffer, called a native vegetation zone, shall be maintained landward of the OHWM. For environmentally critical areas other than wetlands, the width of the native vegetation zone shall be a minimum of 50 feet except as altered by the depth averaging provisions of paragraph 9 below. However, in no instance shall the native vegetation zone be less than that required by the Lynnwood Critical Areas Ordinance (LMC Ch. 17.10 or its successors). No wetlands are present in Lynnwood's shoreline area.

1. Existing native vegetation within this zone shall be maintained unless specifically allowed to be altered or removed under the provisions of this section.
2. New plantings in this zone shall be native plant species, similar in diversity, type, density, wildlife habitat value, water quality and slope stabilizing qualities to the original vegetation.
3. Removal of nonnative plants and plants on the State noxious weed list shall be allowed within the native vegetation zone.
4. Within the native vegetation zone, normal nondestructive pruning and limbing of native vegetation for maintenance and view shall be allowed if it does not threaten the health of the vegetation. Individual tree cutting to remove hazards may be allowed by the Director, subject to a report by an arborist or other approved expert.
5. No clearing, grading, or construction may be undertaken in the native vegetation zone unless specifically allowed by this section.
6. A path to the shoreline not more than four (4) feet wide, constructed by hand and designed to minimize environmental impacts, shall be allowed. Paths may be wider when required for handicapped access.
7. Accessory utility lines determined by the Director to be necessary or to reduce an impact may be allowed.

8. To allow flexibility when required by site limitations, the depth of the native vegetation zone (measured from the eastern boundary of the BNSF right-of-way) may be altered by averaging the depth, provided that:
 - a) The total area of the native vegetation zone shall not be less than otherwise required.
 - b) All portions of the native vegetation zone shall be contiguous.
 - c) The zone depth shall not be reduced more than twenty-five (25) percent, and shall be minimum thirty-eight (38) feet (from the OHWM) at any point.
 - d) At least seventy-five percent (75%) of the resulting zone shall be located within the area otherwise required.
 - e) Any area altered shall be compensated for by a substitute area. Areas used as substitutes must contain vegetation of comparable or better quality than the area deleted.
9. Native vegetation zones and related restrictions required for a preliminary plat shall be shown on the face of the final plat, and for all other land shall be included in a covenant, easement or similar document. The document(s) shall be recorded with the County Auditor within one month of imposing the requirement.
10. In cases where a native vegetation zone is not required or its width is allowed to be reduced (due to considerations in Policy 7 above), and existing significant trees are to be removed, mitigation in accordance with LMC 17.15 (Tree Regulations) or its successor will be required for the tree removal. Preference for mitigation shall be:
 - a) Replacement trees on the subject property and within the area subject to shoreline management jurisdiction (i.e. 200 feet landward of the OHWM);
 - b) If "a" is not practical, replacement trees shall be located on the subject property at a location clearly visible from the shoreline.

E. Environmentally Critical and Hazard Areas

Environmentally critical areas and geologic and flood hazard areas in Lynnwood's shoreline jurisdiction are primarily regulated through LMC, Chapter 17.10, "Environmentally Critical Areas" and/or LMC Chapter 16.46 "Flood Hazard Area Regulations". Sections 17.10.090, 091, 092 & 093 of the Critical Areas Ordinance (Ord. No. 2598, Dec. 2005) are hereby incorporated into the SMP (see section – E items 9-12). The Flood Hazard Area Regulations (Ord. No. 2274, Nov. 1999) are hereby incorporated into this SMP (see Appendix F). The provisions in the SMP supplement those regulations and apply to all uses and activities, including those not needing a shoreline substantial development permit. Any conflicts between the ordinances and the SMP shall be resolved in favor of the regulation that is most protective of the environment

Policies:

1. Unique, rare, and fragile shoreline resources including, but not limited to, aquifer recharge areas; fish and wildlife habitat; fish breeding, rearing or feeding areas; frequently flooded areas; geologically hazardous areas; wetlands and streams; tidal lagoons; mud flats; and salt marshes and aquatic vegetation should be preserved.
2. Shoreline uses and activities should be located, designed, constructed, and managed to protect and/or not adversely affect valuable, fragile or unique natural features.
3. Development should be located minimum distances specified in LMC, Ch. 17.10, from shorelines identified as unstable and/or erosion prone to prevent hazardous conditions and property damage as well as to protect environmental features.
4. Development in flood hazard areas should be restricted in accordance with LMC Ch. 16.46 to prevent hazardous conditions and property damage as well as to protect the environment.
5. Some areas, because of unique and/or fragile geological or biological characteristics, should be protected from public access (e.g., wetlands, shoregrass, kelp beds, etc.).
6. In areas adjacent to critical environmental features and their native vegetation zones, use intensities should be regulated to protect the critical features.

Regulations - General:

1. Over-water and near-shore development in marine and estuarine waters shall inventory the development site and adjacent areas to assess the presence of critical saltwater habitats and functions. The method and extent of the inventory shall be consistent with accepted research methodology.
2. Native vegetation zones shall be equal to the buffers established in LMC, Ch. 17.10, as amended, except that native vegetation zones for Puget Sound shall be established in the SMP. There are no wetlands in Lynnwood's shoreline jurisdiction.
3. Regulation 2 above, notwithstanding, native vegetation zones for areas of Puget Sound exhibiting unique, rare and/or fragile resources (including, but not limited to tidal lagoons, mud flats, and salt marshes) may be increased under LMC Ch. 17.10.
4. When critical areas and/or critical area native vegetation zones are disturbed, revegetation with native vegetation shall be required. (See subsection B, Clearing and Grading (above) for regulations protecting critical areas during construction.)
5. Fish and wildlife habitat enhancement or restoration shall be allowed as approved by appropriate resource agencies.

6. If Development results in a shoreline impact, the following mitigation measures shall be applied in the sequence of steps listed in order of priority, with (a) of this subsection being top priority.
 - a) Avoiding the impact altogether by not taking a certain action or parts of an action;
 - b) 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;
 - 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;
 - e) Compensating for the impact by replacing, enhancing, or providing substitute resources or environments; and
 - f) Monitoring the impact and the compensation projects and taking appropriate corrective measures.
 - g) 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.
7. Where critical area replacement is proposed, an applicant shall permanently protect the replacement area through legal instruments such as critical area tracts, conservation easements, or comparable use restrictions.
8. The following are classified as geologically hazardous areas:
 - a) Naturally occurring slopes of 40 percent or more;
 - b) Other areas which the City has reason to believe are geologically unstable due to factors such as landslide, seismic or erosion hazards.
9. Development proposals in areas which are designated as or which the City has reason to believe are geologically unstable or hazardous shall be set back a minimum of 25 feet from top, toe and sides of such areas (as applicable). The setback requirement may be increased by the City when necessary to protect public health, safety and welfare, based on information contained in geotechnical reports.
10. Unless associated with a stream or wetland, the City, with a shoreline variance (see subsection 7. J Shoreline Variances and Conditional Use Permits), may allow alteration of an area identified as a geologically hazardous area, or its setback. In order to perform such alteration, the applicant shall submit to the City a geotechnical

report containing all elements described in LMC 17.10.094 and in addition to meeting the requirements of Section 7 - Administrative Regulations, must demonstrate:

- a) The proposed development will not create a hazard to the subject property, surrounding properties, or rights-of-way, nor cause severe erosion or deposit excessive sedimentation on or in off-site properties or bodies of water; and,
- b) The proposed method of construction will reduce erosion, landslide and seismic hazard potential, and will improve, or not adversely affect the stability of slopes; and,
- c) The proposal uses construction techniques which minimize the disruption of existing topography and natural vegetation; and,
- d) The proposal is consistent with the purposes and provisions of LMC Ch. 17.10

11. Alteration allowed by this subsection shall be subject to the following requirements:

- a) All proposed developments be designed and located so as to require the minimum amount of modification to areas of potential geologic instability; and,
- b) All impacts identified in the geotechnical report be adequately mitigated; and,
- c) As a condition of any approval of development containing a geologically hazardous area or its required setbacks, the City may require that:
 - (i) The applicant's geotechnical consultant be present on the site during clearing, grading, filling and construction activities which may affect geological hazard or unstable areas, and provide the City with certification that the construction is in compliance with his/her recommendations and has met with his/her approval; and.
 - (ii) Trees and groundcover be retained and additional vegetation or other appropriate soil stabilizing structures and materials be provided.

12. All development in areas of special flood hazard (see definition in Appendix F) shall be subject to the requirements of LMC Ch. 16.46 "Flood Hazard Area Regulations". In the event of conflicts between the requirements of LMC Ch. 16.46 and this SMP the regulation that is most protective of ecological functions shall be applied.

F. Public Access –Visual and Physical

This section recognizes that there are two types of public "access" to the shoreline. One type is *visual* access – that is, the public's ability to see the shoreline and water. The second type is *physical* access – that is, the public's ability to reach and touch the water's edge.

The following provisions are not intended to require private property owners including the BNSF to increase visual or physical public access to the shoreline. Nor are they intended to encourage or require public access to or through areas or uses which is contrary to public health or safety including the BNSF right-of-way and the wastewater treatment plant grounds.

The fundamental principle underlying this section's provisions is that future development should not result in net loss of currently existing visual and physical public access to the shoreline. The following provisions are intended to increase public visual and physical access to the shoreline, through improvement of existing public property and acquisition of additional public property. It should be recognized that some of the following policies and regulations may only be applicable in the rather unlikely event that the existing Lynnwood shoreline jurisdiction is no longer used by the wastewater treatment plant and/or railroad and is redeveloped or in the event the city annexes other shoreline areas, although this too seems unlikely within the lifetime of this SMP (see Section 1. H above).

"Scenic vista" protection is another aspect of public access and an important shoreline management objective. Consideration must be given to protecting the shoreline's visual quality and maintaining view corridors to and from waterways and adjacent features.

Policies:

1. The City should establish a comprehensive public access plan to provide increased public visual and physical access. The plan should consider the following methods:
 - a) Acquisition of land and/or easements.
 - b) Incentives for providing visual and/or physical access.
 - c) Requirements for public access when new development: is located in the High-Intensity Environment, is a nonresidential use, or includes multiple-family uses of five or more building lots.
2. In single-family residential areas emphasis should be placed on providing public access to the water via unopened road rights-of-way ("road ends"), with a goal of providing comparable access in all neighborhoods.
3. Acquisition of small, unbuildable lots should be considered as a way to increase opportunities for the public to enjoy the shoreline.
4. Intense public use, as opposed to neighborhood use, of the shoreline should be limited to parks and the High-Intensity Environment.
5. Visual and physical public access should be considered during the review of any new private or public developments which diminish existing public access or increase demand for public access. In such cases, public access should be required unless health, safety, or environmental protection needs cannot be met.

6. New shoreline development, uses, and activities should not unreasonably impair or detract from the public's physical and visual access to the water.
7. Public access should not adversely affect the shoreline environment.
8. City-owned shoreline should be reserved for water-dependent or public recreational use, or maintained as open space.
9. Public visual and physical access should be maintained or enhanced on shoreline street-ends, public utility corridors and easements (where possible), and public rights-of-way.
10. Public access should be designed to provide for public safety and minimize potential impacts to private property and individual privacy.
11. Public and private access spaces should be clearly marked and/or separated to avoid unnecessary user conflicts. Such marking/separation should be done in a way that does not unreasonably obscure views.
12. Development should minimize visual impacts to the natural shoreline landscape.
13. The Lynnwood Public Works Department has a program of occasional public tours of the wastewater treatment plant and grounds. The tour program should continue within the availability of staff to escort the tours. The tour program should develop handouts and speaking points addressing the shoreline environment and ecology and how it has been affected by and in turn affects human activity.

Regulations General:

1. Development projects on public land or by public entities shall include provisions for public visual and physical access to the shoreline unless the applicant demonstrates one or more of the following:
 - a) Unavoidable health or safety hazards exist which cannot be prevented by any practical means.
 - b) Inherent security requirements of the use cannot be satisfied through alternative design features or other solutions.
 - c) The cost of providing the access, easement, or alternative public access on or off the development site is unreasonably disproportionate to the total long-term cost of the development. In such instances project proponent shall contribute funds to the City public access, Park or shoreline restoration fund.
 - d) Public access will result in unacceptable environmental harm which cannot be adequately mitigated.

- e) Security and/or health and safety issues make public access impossible or impractical.
2. In order to meet any of the conditions (a) through (e) above, the applicant must first demonstrate, and the City determine in its findings, that reasonable alternatives have been exhausted, including, but not limited to:
 - a) Regulating access by means such as maintaining a gate and/or limiting hours of use.
 - b) Designing separation of uses and activities (e.g., fences, terraces, hedges, or other landscaping).
 - c) Provision(s) for access on sites geographically separate from the proposal such as a street end.
 3. Development, uses, and activities shall be designed and operated to avoid blocking, reducing, or adversely interfering with existing public physical and visual access to the water and shorelines.
 4. Public visual and physical access via shoreline street ends, public utilities, and rights-of-way shall not be diminished. (RCW 35.79.035 or its successor and RCW 36.87.130 or its successor).
 5. Submerged public rights-of-way shall be preserved for public access.
 6. Permitting processes shall consider the balance between visual access and retention of native vegetation.
 7. Development on the water shall be constructed of non-reflective materials compatible in color and texture with the surrounding area.
 8. Public access sites shall be connected directly to the nearest public street.
 9. Required public access shall be fully developed and available for public use at the time of occupancy of the use or activity in accordance with permit conditions.
 10. Public access easements and permit conditions shall be recorded on the title and/or on the face of the plat as a condition running with the authorized land use. Recording with the County Auditor's office shall occur at the time of permit approval. (RCW 58.17.110 or its successor.)
 11. The standard State-approved logo or other approved sign(s) indicating public right of access and hours of access shall be installed, and maintained by the City in conspicuous locations at public access sites. In accordance with regulation 2a above, signs may control or restrict public access as a condition of permit approval.

12. Future actions by the applicant, successors in interest, or other parties shall not diminish the usefulness or value of the public access provided.
13. When properties are subdivided, owners of newly created lots not having water frontage shall be provided common water access, provided this will not cause unacceptable environmental harm which cannot be adequately mitigated.

G. Shorelines of Statewide Significance

The 1971 Shoreline Management Act designated certain shoreline areas as shorelines of statewide significance. Because these shorelines are resources which benefit all people in the state, preference is given to uses which favor public and long-range goals. Within Lynnwood's jurisdiction all areas lying seaward of the extreme low tide line are shorelines of statewide significance. [RCW 90.58.030 (2)(e)(iii) or its successor].



Policies (In order of preference):

1. Recognize and protect the statewide interest over local interest.
 - a) Solicit comments and opinions from groups and individuals representing statewide interests by circulating the SMP, and any amendments thereto affecting shorelines of statewide significance, to State agencies, local officials, adjacent jurisdictions, citizen's advisory committees, and statewide interest groups.
 - b) Recognize and take into account State policies, programs, and recommendations in developing and administering use regulations, and approving shoreline permits.
 - c) Solicit comments, opinions, and advice from individuals with expertise in ecology, geology, limnology, aquaculture, and other scientific fields pertinent to shoreline management.
2. Preserve the natural character of the shoreline:

Designate and administer shoreline environments and use regulations to minimize damage to the ecology and environment of shorelines as a result of man-made intrusions.

3. Result in long-term over short-term benefit.
 - a) Evaluate the short-term economic gain or convenience for development relative to long-term and potentially costly impairments to the natural shoreline.
 - b) In general, preserve resources and values of shorelines of statewide significance for future generations and restrict or prohibit development that would irretrievably damage shoreline resources.
 - c) Actively promote aesthetic considerations when contemplating development, or redevelopment of existing facilities, or enhancement of shoreline areas.
4. Protect the resources and ecology of the shoreline.
 - a) Minimize development activity interfering with natural functions of the shoreline ecosystem including, but not limited to, stability, drainage, aesthetic values, and water quality.
 - b) Shoreline development should be located, designed, constructed, and managed to avoid disturbance of, and minimize adverse impacts on, fish and wildlife resources including spawning, nesting, rearing, and habitat areas and migration routes.
 - c) Restrict or prohibit public access to areas which cannot be maintained in a natural condition with human use.
 - d) Shoreline materials including, but not limited to, bank substrate, soils, beach sands, and gravel bars should be left undisturbed by shoreline development.
5. Increase public access to publicly owned shoreline areas.
 - a) Give priority to developing paths and trails to shoreline areas, linear access along the shorelines, and upland parking.
 - b) Locate development landward of the ordinary high water mark.
 - c) Limit public access when environmental or habitat values warrant such.
6. Increase shoreline public recreational opportunities.

Plan for and encourage development of shoreline recreational facilities.

I. Water Quality

Maintaining high water quality standards and restoring degraded systems is mandated in the Shoreline Management Act (RCW 90.58.020 or its successor). Water quality is affected in numerous ways by human activity. The increase in non-porous surfaces that accompanies development increases surface water runoff causing scouring and stream bank erosion. Erosion increases suspended solid levels and carries heavy metals, wastes, and excess nutrients into the water, causing nutrient enrichment and depressed dissolved oxygen levels. This degradation of water quality adversely impacts wildlife habitat and public health. The purpose of these provisions is to minimize water quality impacts of shoreline uses and activities. These provisions apply to all shoreline development, including development not needing shoreline development permits.

Policies:

1. All shoreline uses and activities, including sewers and/or septic systems, should be located, designed, constructed, and maintained to minimize adverse impacts to water quality and fish and wildlife resources including spawning, nesting, rearing, feeding areas, and migratory routes.
2. Setbacks, native vegetation zones, and stormwater management should be required to minimize negative water quality impacts.
3. Surface water runoff should be treated on-site, unless precluded by slope or other sensitive area conditions.

Regulations - General:

1. Shoreline development shall minimize increases in surface runoff through control, treatment, and release of runoff so the receiving water quality and shore properties and features are not adversely affected. Control measures include, but are not limited to, dikes, catch basins settling ponds, oil interceptor drains, grassy swales, planted buffers, and fugitive dust control.
2. New shoreline residences or businesses within two hundred (200) feet of an existing sewer line and/or within an established sewer service area shall be connected to the sewer system.
3. Shoreline development shall comply with applicable requirements of the Stormwater Management Manual for the Puget Sound Basin (*Ecology* publication #91-75) as amended by Lynnwood's Engineering Design and Development Standards Manual.

J. Restoration of Impaired Ecological Functions

The Shoreline Master Program's governing principles mandate that such Programs contain goals, policies, and actions for restoration of impaired ecological functions, [see WAC 173-26-186(8)(c)]. The ecological functions of Lynnwood's shoreline have been impaired by two major land use actions: construction of the Burlington Northern Santa Fe railroad line, and

construction of Lynnwood's wastewater treatment plant draining to Puget Sound. Neither of these actions can be easily or inexpensively reversed. Both are likely to remain for the foreseeable future. Lynnwood's goals, policies, and actions to restore impaired ecological functions need to be viewed within these constraints. Actions the City takes to restore impaired ecological functions will focus on actions other than changing these primary land uses. Given the small geographic size of Lynnwood's shoreline, such actions may extend beyond Lynnwood's shoreline jurisdiction. Lynnwood's shoreline restoration plan provides more details.

Policies:

1. Lynnwood will protect ecological functions, and restore impaired ecological functions, in its shoreline jurisdiction within reasonable limits of both biological science and cost effectiveness.
2. Lynnwood will protect and enhance ecological functions in the Lund's Creek watershed through land acquisition and management as a means of compensating for the loss of ecological functions within Lynnwood's shoreline jurisdiction.

Section 5 – Specific Shoreline Uses

A. Introduction – Table of Uses

This section contains a table of shoreline uses allowed in each Environment Designation, and policies and regulations relating to specific shoreline uses. Proposed development must comply with the policies and regulations of this section as well as Section 4 – General Policies and Regulations, and Section 6 – Policies and Regulations for Shoreline Modification.

While not all shoreline uses require a shoreline permit, no development shall be undertaken within the shoreline jurisdiction of Lynnwood except those consistent with the Shoreline Management Act, applicable State guidelines, and the Lynnwood SMP. Shoreline uses not specifically identified shall be evaluated on a case-by-case basis for consistency with the SMA and the SMP, and shall require a conditional use permit.

The High-Intensity and Aquatic environment designations apply to the area of current City of Lynnwood jurisdiction.

Shoreline Use	High-Intensity	Aquatic
Bulkheads and similar structures Single-family residential Existing bulkhead w/in 100 ft. Elsewhere	P SSDP CUP	NA
Dredging	NA	CUP
Filling (1)	CUP	CUP
Land surface modification	SDP	NA
Moorage structures and facilities	SSDP/CUP	SSDP/CUP
Parking (accessory)	P	NP
Piers and docks	CUP	SSDP/CUP
Public parks and recreational facilities	NP	NA
Railroad	SSDP	NP
Recreational floats and mooring buoys	NA	P
Wastewater treatment facilities	SSDP	NP (2)
Signs, facility/use identification, public safety/direction and signals	P	CUP
Street	P	NA
Utilities	P	NP

P = Permitted

NP = Not Permitted

CUP = Conditional Use Permit

SSDP = Shoreline Substantial Development Permit

NA = Not Applicable

(1) Fill waterward of the OHWM requires a CUP (WAC 173-27-231 93) (c). This applies to all fill in the aquatic environment.

(2) Permission for outfall line to be included in SSDP/CUP for treatment plant

B. Primary Utility Facilities:

This section contains regulations pertinent to the development of primary utility facilities such as wastewater treatment plants or similar. Regulations for auxiliary utilities are in subsection G of Section 5.

1) Policies

1. Primary utility facilities – including expansion of existing facilities - should be located in shoreline areas only if no practical upland alternative or location exists.
2. Primary utility facilities and expansions should be designed and located to minimize impacts to shoreline ecological functions including riparian and near-shore areas and to the natural landscape and aesthetics.
3. Public health and safety shall be the highest priority for the planning, development and operation of primary utility facilities.

Regulations – General:

1. The principal use permitted by this section is the Lynnwood wastewater treatment plant including sewage collection, holding, transfer and treatment pipelines, tanks, structures, containment facilities, buildings, etc. The following accessory facilities are also permitted:
 - a) Plant monitoring and control facilities and on-site administrative offices.
 - b) Plant access and logistical facilities such as storage areas, material handling ramps and facilities, etc, and including utility delivery (electrical, communication, etc.) facilities.
 - c) Plant security and safety features such as fences, signage, etc.
 - d) Other accessory or auxiliary uses or features, necessary to of the effective and efficient operation of the plant and which cannot feasibly be located outside the shoreline jurisdiction.
2. Expansion of existing primary utility facilities within the shoreline jurisdiction must demonstrate:
 - a) The expansion is designed to protect adjacent shorelands from erosion, pollution, or other environmentally detrimental factors during and after construction.
 - b) The project is planned to fit existing natural topography as much as practical and avoid alteration of the existing natural environment.
 - c) That debris, overburden and other construction waste materials will be disposed of so as to prevent erosion or pollution of a water body.

3. Primary utility facilities and expansions shall include provisions to control the quantity and quality of surface water runoff to natural water bodies, using best management practices to retain natural flow rates. A maintenance program to ensure continued proper functioning of such facilities shall be required.

C. Transportation Facilities:

This section contains regulations pertinent to the development of streets, roads and railroads. These uses are permitted in the High Intensity Environment.

Policies

1. Streets and railroads should only be located in shoreline areas if no feasible upland alternative or location exists.
2. Transportation facilities and expansions thereof should be designed and located to minimize impacts to shoreline ecological functions including riparian and near-shore areas and to the natural landscape and aesthetics.
3. Transportation facilities and expansions thereof shall include facilities to control the quantity and quality of surface water runoff to natural water bodies, using best management practices to retain natural flow rates. A maintenance program to ensure continued proper functioning of such facilities shall be required.
4. Public safety shall be the highest priority for the planning and development and operation of transportation facilities.

Regulations – General:

1. The principal use permitted by this section is railroad tracks including roadbed and subgrade, but not including rail yards or maintenance facilities, terminals, stations, passenger or freight handling or transfer facilities. The following accessory facilities are permitted;
 - a) Safety signals not exceeding 25 ft. in height and signs not exceeding 10 feet in height or four square feet in area.
 - b) Slide fences not exceeding six feet in height.
 - c) Pedestrian fences not exceeding six feet in height and not made of solid or vision obstructing materials.
2. New railroads requiring right-of-way expansion are prohibited.
3. Expansion of existing transportation facilities within existing right-of-way must demonstrate:
 - a) That a shoreline location is needed and that no reasonable upland alternative exists.

- b) The facility is designed to protect adjacent shorelands from erosion, pollution, or other environmentally detrimental factors during and after construction.
- c) The project is planned to fit existing topography as much as possible and avoid unnecessary alteration of the existing natural environment.
- d) That debris, overburden and other construction waste materials will be disposed of so as to prevent erosion or pollution of a water body.

D. Parking:

The following provisions apply to parking areas accessory to a permitted shoreline use. Parking as a primary use is prohibited within the shoreline jurisdiction.

Policies:

1. Parking should directly serve an approved shoreline use and be sensitive to adjacent shorelines and properties.
2. Parking facilities should be located, designed, constructed, and operated to minimize adverse impacts to water quality, aesthetics, public access, vegetation and habitat, stormwater runoff, noise, and glare.
3. Parking should be planned to achieve optimum use. Where possible, parking should serve more than one use (e.g. recreational use on weekends and commercial use weekdays).

Regulations - General:

1. Parking in the shoreline jurisdiction is subject to all requirements of the Lynnwood parking code (LMC Ch. 21.18 (Ord. 2730, Jun. 2008 or its successor) incorporated herein by reference.
2. Parking shall be prohibited over water.
3. Parking in the shoreline jurisdiction shall directly serve a shoreline use.
4. Parking facilities shall be located, designed and landscaped to minimize adverse impacts (including aesthetic impacts) to adjacent shorelines and properties. Landscaping shall consist of native vegetation or species identified in an approved plant list or landscape plan and shall be designed and installed to provide effective and appropriate screening within three (3) years of planting. Plantings shall be maintained for the life of the parking facility.
5. Parking facilities serving individual shoreline buildings shall be located landward of the principal building served, except when the parking facility is within or beneath

the structure and screened, or where an alternate location would have less adverse impacts on the shoreline.

6. Parking facilities shall provide safe, convenient pedestrian circulation within the parking area and to the shoreline.
7. Parking areas shall include facilities to control the quantity and quality of surface water runoff to natural water bodies, using best management practices to retain natural flow rates. A maintenance program to assure continuing proper functioning of such facilities shall be required.

E. Signs:

Signs are regulated through LMC, Chapter 21.16, Signs (Ord. 2013, May 2000, or its successor). The following policies apply to signs within the Shoreline Master Program jurisdiction.

Policies:

1. Signs should be designed and placed, and be made of materials compatible with the aesthetic quality of the existing shoreline and adjacent land and water uses.
2. Signs should not block or interfere with visual access to the water or shorelands.
3. Signs should be permanent in nature, and should serve and be attached to an approved use.

Regulations- General:

1. Signs in the shoreline jurisdiction are subject to requirements of the Lynnwood Sign Code (LMC 21.16) incorporated herein by reference.
2. The following signs shall be permitted in the High-Intensity Environment:
 - a) Facility or development identification signs attached to the use or structure or free-standing signs not more than four feet high.
 - b) Directional, information or regulatory signs, placards or plaques not more than four feet high and four square feet in area.
 - c) Signs identifying private property and prohibiting trespassing or public access provided such are not more than four feet high and two-square feet in area.
 - d) Signs necessary for public safety or the safe operation of a use permitted in the High Intensity Environment including railroad signals up to 25 ft. high.
3. Signs are prohibited in the aquatic environment unless it can be demonstrated that:

- a) The sign is necessary for the public health or safety, and:
 - b) It is not feasible to place the sign in an upland area, or that its purpose could not be achieved if placed in an upland area.
5. A shoreline conditional use permit is required for any sign in the aquatic environment.

F. Piers, Docks, Floats, and Mooring Buoys:

Uses which employ a pier or dock (for example industry) are subject to the provisions herein as well as the provisions contained in Section 4, General Policies and Regulations. Community or joint-use docks serving five (5) or more single family residences also must comply with the provisions of this section.

Pursuant to RCW 90.58.030 (3-e-vii) or its successor, certain activities are exempt from obtaining a Shoreline Substantial Development Permit. For the benefit of the owner, surrounding properties, and water body users, the City will review all proposals for piers and docks to determine whether:

1. The proposal is exempt from the requirements for a shoreline permit;
2. The proposal is suitably located and designed and potential impacts have been recognized and mitigated; and
3. The proposal is consistent with the intent, policies, and regulations of the Act (RCW 90.58.140(1) or its successor) and this Program.

Exempt activities are subject to the provisions of the SMP.

Policies:

1. Multiple use and expansion of existing conforming piers, docks, and floats should be encouraged over construction and/or proliferation of new facilities. Joint use facilities are preferred over new, single-use piers, docks, and floats.
2. The use of mooring buoys should be encouraged in preference to piers or docks.
3. Piers, docks, and floats should be designed to minimize interference with navigable waters, public use of the shoreline, and views from adjoining properties.
4. Piers, floats, and docks should be sited and designed to minimize possible adverse environmental impacts, including potential impacts on littoral drift, sand movement, water circulation and quality, and fish and wildlife habitat.
5. Proponents of commercial pier, float, and dock projects are encouraged to provide public docking, launching, and recreational access.

6. Local programs and coordinated efforts among private and/or public agencies should be initiated to remove or repair failing, hazardous, or nonfunctioning piers and docks and restore such facilities and/or shore resources to a natural and/or safe condition.
7. Use of natural, non-reflective materials in pier and dock construction should be encouraged. Precautions should be taken to ensure containment of plastics and other non-biodegradable materials.
8. The proposed structure size and use intensity of any dock, pier, and/or float should be compatible with the surrounding environment and land and water uses.
9. Pier and dock construction shall be restricted to minimum size necessary to meet the needs of the proposed water dependent use.
10. New pier and dock construction, excluding docks accessory to single family residences, should be permitted only when the applicant has demonstrated that a specific need exists to support the intended water dependent use.

Regulations – General:

1. Piers and docks shall be conditionally permitted in the High-Intensity and Aquatic Environments.
2. Proposals for piers and docks shall include, at a minimum, the following information:
 - a) Description of the proposed structure, including its location, dimensions, materials, design, and any shoreline stabilization or other modification required by the project;
 - b) Ownership of uplands, tidelands, and shorelands within three hundred (300) feet of the property boundaries;
 - c) Proposed location of piers, floats, or docks relative to property lines, OHWM, the line of navigation, the construction limit line, and the contour of the extreme low tide, as applicable;
 - d) Location, width, height, and length of piers and docks on adjacent property,
 - e) Agreements, if any, for cooperative use.
3. Piers and docks shall be prohibited in areas identified by the City, the Washington Dept. of Fish and Wildlife (DFW), or Dept. of Natural Resources (DNR) as having high environmental value for shellfish, fish life, or wildlife, except:
 - a) Where functionally necessary to the propagation, harvesting, testing, or experimentation of said marine fisheries or wildlife, or

- b) Where approved as a conditional use if it can be demonstrated that the dock or pier will not be detrimental to the natural habitat or species of concern.
- 4. Piers, floats, buoys, and docks shall not interfere with use of navigable waters.
- 5. Piers and docks may be limited in length or prohibited, where necessary, to protect navigation, public use, or habitat values.

Regulations – General Design and Construction Standards:

- 1. Pilings must be structurally sound prior to placement. Large spans on a few pilings shall be favored over small spans on more pilings.
- 2. Piles, floats, or other elements in direct contact with water shall not be treated or coated with biocides such as paint or pentachlorophenol. The use of arsenate compounds or creosote-treated members is prohibited.

Regulations – Mooring Buoys and Floats:

- 1. Mooring buoys and floats for recreational use shall be permitted in the Aquatic Environment offshore from the High-Intensity Environment. Mooring buoys for commercial use shall be permitted as a conditional use offshore from the High-Intensity Environment.
- 2. Buoys shall not interfere with navigation, shall be visible in daylight one hundred (100) yards away, and shall have reflectors for night visibility.
- 3. Owners of buoys located seaward of the extreme low tide line shall obtain a navigable waterbed lease from the DNR. (WAC 332-30-122 (1)(ii) or its successor).
- 4. Buoys shall lie between the side lot lines of waterfront property extended seaward, except those on DNR tidelands. Vessels moored to the buoys shall not be allowed to swing across the extended side lot lines. Where the configuration of the lot precludes these requirements, the buoy owner shall file with the City a written statement from the affected, adjacent, waterfront property owner(s) agreeing to the buoy placement.
- 5. Mooring buoys shall be installed at least twenty (20) yards from other permitted piers, docks, floats, or buoys so as not to interfere with or obstruct existing piers, docks, floats, or buoys.
- 6. Owners of waterfront property are permitted to install one (1) mooring buoy per waterfront lot, except that where the waterfront lot is owned in community, the City may permit upon the owner's application, additional buoys to total not to exceed one (1) per owner in the community. (WAC 332-30-122 (1)(ii) or its successor).
- 7. Buoys shall be located no more than two-hundred (200) feet beyond the extreme low tide line, the three (3) fathom depth contour (18 feet at mean

low tide), or the line of navigation, whichever is closest to shore. (WAC 332-30-148(2) or successor).

G. Utilities:

Accessory utilities are associated with all types of shoreline development. These provisions apply to all development, including those not needing a shoreline development permit. (Refer to Section 5.A Table of Uses for primary use utility provisions.)

Policies:

1. Utilities are necessary to shoreline uses and should be properly installed and operated to protect the shoreline and water from degradation.
2. Utility facilities and rights-of-way should be placed outside shoreline areas to the maximum extent feasible. When a shoreline location is necessary, utility lines should be underground.
3. Utility facilities should be designed, located and maintained to assure no net loss of shoreline ecological functions, preserve the natural landscape and minimize conflict with existing and planned land uses.

Regulations- General:

1. In shoreline areas, utility lines, including pipelines and cable, shall be placed underground unless this is demonstrably not feasible. Such lines shall use existing rights-of-way, corridors and/or bridge crossings whenever possible. Proposals for new corridors in the shoreline area either parallel to the shoreline or involving a water crossing must fully substantiate the infeasibility of existing or other routes.
2. Utility development shall, coordinate with government agencies, to provide for compatible multiple use of sites and rights-of-way. Such uses include shoreline access points, trails, and other recreation and transportation uses, provided such will not unduly interfere with utility operations or endanger public health and safety.
3. Septic fields shall be located on the landward side of development, where possible.
4. Sites disturbed for utility installation shall be stabilized during and following construction to avoid adverse impacts from erosion. Sites shall be replanted with native vegetation immediately following construction.

Section 6 – Shoreline Modification

A. General Principles:

These provisions pertain to all shoreline modifications associated with or supporting a specific shoreline use. They also apply to projects whose chief intent is to protect the shoreline of a particular property to which the permit applies.

General Principles:

1. Allow structural shoreline modifications only where they are demonstrably necessary to support or protect an allowed primary structure or legally existing shoreline use in danger of loss or substantial damage, or are necessary for reconfiguration of the shoreline for mitigation or enhancement.
2. Reduce the adverse effects of shoreline modifications and, as much as possible, limit shoreline modifications in number and extent.
3. Allow only shoreline modifications appropriate to the specific type of shoreline and environment conditions for which they are proposed.
4. Assure shoreline modifications individually and cumulatively do not result in a net loss of ecological functions by giving preference to shoreline modification types with less impact on ecological functions and requiring mitigation of identified impacts from shoreline modifications.
5. Base provisions on scientific and technical information and comprehensive analysis of drift cells for marine waters or reach conditions for rivers and streams. Contact the *Ecology* for available drift cell characterizations.
6. Plan for enhancing impaired ecological functions where feasible and appropriate while accommodating permitted uses. As shoreline modifications occur, incorporate measures to protect ecological shoreline functions and ecosystem-wide processes.
7. Avoid and reduce significant ecological impacts according to the mitigation sequence in WAC 173-26-201(2) (e).

Policies:

1. Rip-rapping and other bank stabilization measures should be located, designed, and constructed primarily to prevent damage to existing development and property.
2. New development should be located and designed to prevent or minimize shoreline stabilization and flood protection measures.
3. Stabilization and protection works which are more natural in appearance, more compatible with on-going shore processes, and more flexible for long-term

streamway management, such as protective berms or vegetative stabilization, should be utilized over structural means such as concrete revetments or extensive rip-rap.

4. Structural solutions to reduce shoreline damage should be permitted only after demonstrating through a geotechnical analysis that nonstructural solutions would not achieve the same purpose.
5. Sloping revetments or other energy-dissipating designs are preferred to reduce the destructive scouring effect of bulkheads on beaches.
6. Shoreline stabilization projects should provide for long-term multiple use and shoreline public access, where appropriate.
7. Natural features such as snags and stumps support fish and other aquatic systems and when not intruding on navigational channels or threatening other permitted uses, should be left undisturbed except for approved beach stabilization projects.

Regulations- General:

1. All shoreline modifications must be in support of an allowable shoreline use in conformance with the SMP. Shoreline modifications not supporting a conforming shoreline use are prohibited.

Exception: Shoreline stabilization may be allowed as a shoreline use if such is demonstrably necessary to maintain shoreline stability and habitat as set forth in WAC 173.26.231(3)(a)(iii), and complies with all provisions of the SMP. Shoreline stabilization shall be limited to the minimum size necessary to accomplish the purpose.

2. All applicable Federal and State permits shall be obtained and complied with in the construction and operation of shoreline stabilization and flood protection works.
3. All new development activities shall be located and designed to prevent or minimize the need for shoreline stabilization. New development on steep slopes and bluffs shall be set back sufficiently to prevent the need for future shoreline stabilization.
4. The City shall require and/or use the following information during its review of shoreline stabilization, modification, and flood protection proposals:
 - a) Project purpose;
 - b) Environment of the project including:
 - i. Existing shoreline and stabilization and flood protection devices within three-hundred (300) feet on each side of the proposed project;
 - ii. Physical, geological, and/or soil characteristics of the area;

- iii. Net direction of littoral drift and tidal currents, if any;
 - iv. Profile rendition of beach and uplands; and,
 - v. Physical or geological stability of uplands (beach type, slope and materials; uplands type, slope and materials; soils types [Soil Conservation Service]).
 - c) Design, construction materials, and methods (to include annotated drawings):
 - i. Materials used, dimensions, designs;
 - ii. Slope angle; and,
 - iii. Location of project relative to toe and crest of uplands and upland structures;
 - d) Potential impact upon area shore and hydraulic processes, upland stability, adjacent properties, and shoreline and water uses;
 - e) Alternative measures, including nonstructural, which will achieve the same purposes.
5. The City shall require and use the following information to review all shoreline modification proposals:
- a) Shoreline stabilization measures shall not be designed or constructed so as to result in channelization of normal stream flows;
 - b) Stream channel direction modification, realignment and straightening are prohibited unless essential to uses consistent with this program;
 - c) Shoreline stabilization shall not be designed so as to cause scouring of the beach at the toe of protective devices or erosion on the level of the seaward beach or impact adjacent properties; and,
 - d) Upon project completion, all disturbed shoreline areas shall be restored to as near pre-project configuration as possible and replanted with native vegetation or other species approved by the City.

Regulations - Prohibited:

- 1. New development that would require shoreline stabilization that will significantly affect adjacent or down current shorelines and properties.
- 2. Shoreline stabilization and flood protection works in wetlands and on point and channel bars, and in salmon and trout spawning areas, except for fish or wildlife habitat enhancement.

3. Beach enhancement if it interferes with the normal public use of the navigable waters of the State.

B. Beach Enhancement

Beach enhancement is the upgrading of terrestrial and tidal shorelines and/or submerged shorelines for purposes of stabilization, recreational enhancement, and aquatic habitat creation or restoration using native or similar materials. Materials used depend on the intended use and shoreline dynamics such as grade, drift, etc. For recreation uses various grades of clean sand or pea gravel are often used to create, restore, or enhance a beach. To restore or recreate a shore feature or underwater aquatic environment, such as a reef, may require a rock matrix and/or combination of other materials appropriate for the intended environment.

Policies:

1. All beach enhancement projects should ensure aquatic habitats, existing water quality levels, and flood-holding capacities are maintained.
2. Beach restoration/enhancement utilizing naturally regenerating systems should be required where:
 - a) The length and configuration of the beach will accommodate such systems;
 - b) Such protection is a reasonable solution to the needs of the specific site; and,
 - c) Beach restoration/enhancement will accomplish one or more of the following:
 - i. Recreate or enhance natural conditions.
 - ii. Create or enhance natural habitat.
 - iii. Erosion mitigation.
 - iv. Enhance public shoreline access.
3. Supplementary beach nourishment should be encouraged where existing shoreline stabilization is likely to increase impoverishment of existing beach materials at or downdrift from the project site.

Regulations - General:

1. Beach enhancement shall be a conditional use in all environments, but shall be undertaken only for restoration, enhancement, maintenance of natural resources, or to enhance public shoreline access.

2. Beach enhancement may be permitted as a conditional use when the applicant has demonstrated that no significant change in littoral drift adversely affecting adjacent properties or habitat will result.
3. Natural beach restoration/enhancement shall meet the following standards:
 - a) Design Alternatives. Design alternatives shall include the best available technology such as, but not limited to:
 - i. Gravel berms, drift sills, beach nourishment, and beach enhancement when appropriate.
 - ii. Planting with short-term mechanical assistance, when appropriate. All plantings provided shall be maintained.
 - b) Design Criteria. Natural beach restoration/enhancement shall not:
 - i. Detrimentially interrupt littoral drift, or redirect waves, current or sediments to other shorelines;
 - ii. Result in any exposed groin-like structures, except that small "drift-sill" groins may be used as a means of stabilizing restored sediment as part of a well-planned beach restoration program;
 - iii. Extend waterward more than the minimum amount necessary to achieve the desired stabilization;
 - iv. Result in contours sufficiently steep to impede easy pedestrian passage, or trap drifting sediments;
 - v. Create additional dry land mass; or,
 - vi. Disturb significant areas of valuable shallow water fish/wildlife habitat as determined by the DFW, unless such habitat is immediately replaced by comparable or better habitat.
 - c) Natural Beach Restoration Construction Standards:
 - i. The size and/or mix of materials to be added to a beach shall be as similar as possible to the undisturbed beach sediment, but large enough to resist current, wake, or wave action at the site.
 - ii. The restored beach shall approximate, and may slightly exceed, the natural beach width, height, or profile (but not so as to obviously create additional dry land mass).

Regulations - Prohibited:

1. Beach enhancement is prohibited in spawning, nesting, or breeding habitat and also where littoral drift of the enhancement materials adversely affects adjacent spawning grounds or other areas of biological significance.
2. Dikes, levees, jetties, groins (except drift sills for beach enhancement), gabions and breakwaters are prohibited.

C. Shoreline Armoring (Revetments and Bulkheads)

In high-energy wave environments, bulkheads reflect some energy downward which may scour and erode the base, or "toe" of the bulkhead, lowering the beach level. This scouring may also undercut the bulkhead to the point of collapse. Bulkheading may also adversely impact long-shore fishery habitat. The slope and irregular surface of revetments tends to absorb the wave energy similar to the run-up on a natural beach.

The SMA exempts construction or repair of a normal protective revetment or bulkhead from the substantial development permit process when it is necessary to protect an existing single-family residence. Even when exempt, however, these structures must comply with all applicable SMP regulations. New revetments or bulkheads must comply with the requirements of WAC 173-26-231(3)(a)(iii)(B). Replacement revetments or bulkheads must comply with WAC 173-26-231(3)(a)(iii)(C). A statement of exemption for a single-family residence must be obtained from the City before commencing construction of any bulkhead or revetment.

Policies:

1. The use of armored structural revetments should be limited to situations where it is demonstrated that nonstructural solutions, such as bioengineering, setbacks, and buffers or any combination thereof, will not provide sufficient shoreline stabilization.
2. Because of the potential impact on complex, littoral long-shore drift systems and potential damage to other shoreline properties, bulkhead construction should be discouraged, unless it can be demonstrated that a revetment or nonstructural solution (bioengineering, setbacks, native vegetation zones) is not feasible.
3. Shoreline armoring should be designed, improved, and maintained to provide public access whenever possible.
4. Shoreline armoring should not be constructed waterward of feeder bluffs.
5. Neighboring property owners should be encouraged to coordinate planning and development of revetments or other solutions for an entire sector to avoid erosion of down-drift properties.

Regulations – General:

1. Revetments and bulkheads are permitted uses in the High-Intensity Environment where there are bulkheads or revetments within approximately 100 feet on either side of the property. If there are no bulkheads or revetments within 100, new bulkheads and revetments shall be conditional uses. Bulkheads and revetments may be permitted in the Aquatic Environment if they are permitted in the adjacent upland environment and are located at or near the OHWM, otherwise bulkheads and revetments shall be prohibited in the Aquatic Environment. A statement of exemption shall be obtained from the City prior to construction of any bulkhead or revetment in front of an existing single-family residence. The statement of exemption shall meet all requirements of this SMP. Replacement walls or bulkheads shall not encroach waterward of the OHWM or existing structure unless the residence was occupied prior to January 1, 1992 and there are overriding safety and environmental concerns.
2. All forms of protective structures shall be designed, constructed, and maintained so as to not degrade water quality and/or fisheries habitat, and conform to state agency policies and regulations, including DFW criteria and permit requirements.
3. Proposed protective structures shall be professionally designed if it is determined there are uncertainties, such as:
 - a) Inadequate data on local geophysical conditions;
 - b) Potential effect on adjacent property; or,
 - c) Potential adverse effects on beaches seaward of structure.
4. Natural materials and processes such as protective berms, drift logs, brush, beach feeding, or vegetation stabilization shall be used to the maximum extent possible.
5. Revetments and bulkheads shall be allowed for the operation and location of water dependent and water-related activities consistent with the SMP only when geotechnical analysis demonstrates that the following conditions exist:
 - a) Tidal action, current or wave erosion threatens an existing primary structure or use:
 - b) The erosion is not being caused by upland conditions such as de-vegetation or drainage.
 - c) All alternatives are infeasible (i.e., use relocation, redesign, nonstructural shore stabilization).
 - d) The use of natural materials and processes and nonstructural solutions for shoreline stabilization are unworkable to protect existing development.
 - e) The bulkhead or revetment will not result in a net loss of ecological functions.

6. Revetments shall be constructed no steeper than a 45 degree slope (1 horizontal to 1 vertical).
7. Shoreline stabilization structures shall be limited to the minimum size necessary.
8. Impacts to sediment transport shall be avoided or minimized.
9. Ensure that publicly financed or subsidized shoreline erosion control measures do not restrict public access except when such access not feasible due to incompatible uses, safety, or ecological impacts.

Regulations - Prohibited:

1. Gabions (wire mesh filled with concrete or rocks) are prohibited.
2. Revetments and bulkheads shall be prohibited for any purpose if they will cause significant erosion or beach starvation.
3. Construction of a bulkhead, revetment, or other armoring structure for the purpose of retaining a landfill or creating dry land is prohibited.
4. Shoreline hardening (i.e., revetments, bulkheads, seawalls) shall not be located on shores where valuable geo-hydraulic or biological processes are sensitive to interference and critical to shoreline conservation such as feeder bluffs, marshes, wetlands, or accretion shoreforms such as spits, hooks, bars, or barrier beaches.

Regulations – Location:

1. Shoreline armoring shall not be approved in any known or suspected midden site without the written permission of the State Historic Preservation Officer. (RCW 27.53.060 or its successor).
2. Shoreline hardening (revetments and bulkheads) shall be permitted only where local physical conditions such as foundation-bearing material and surface and subsurface drainage are suitable for such alterations.
3. On all shorelines, armoring structures shall be located landward of the OHWM, landward of protective berms (artificial or natural), and generally parallel to the natural shoreline except as allowed below:
 - a) On marine accretion beaches, bulkheads shall be set back a minimum of twenty-five (25) feet landward of the OHWM and shall parallel the natural shoreline. On slopping or bluff/cliff shores, armoring structures shall be placed as far landward of the OHWM as feasible.
 - b) On bluff or bank shorelines where no other armoring structures are adjacent, such structures shall be as close to the bank as possible. However, a

revetment footing shall extend waterward sufficiently to permit adequate run-up to dissipate wave energy.

- c) Revetments and bulkheads shall be flush with existing bulkheads on adjoining properties, except where the adjoining bulkheads extend waterward of the OHWM or the toe of the bank or permitted landfill, in which case the location requirements above shall apply.
4. New development should be located and designed to avoid the need for future shoreline stabilization to the extent feasible. Subdivision of land must be regulated to assure that the lots created will not require shoreline stabilization in order for reasonable development to occur using geotechnical analysis of the site and shoreline characteristics. New development on steep slopes or bluffs shall be set back sufficiently to ensure that shoreline stabilization is unlikely to be necessary during the life of the structure, as demonstrated by a geotechnical analysis. New development that would require shoreline stabilization which causes significant impacts to adjacent or down-current properties and shoreline areas should not be allowed (WAC 173-231(3)(a)(iii)).

Regulations – Design:

1. If an armored revetment is employed, the following design criteria shall be met:
 - a) The size and quantity of the material shall be limited to only that necessary to withstand the estimated energy intensity of the hydraulic system;
 - b) Filter cloth or adequate smaller filter rock shall be used to aid drainage and help prevent settling; and,
 - c) The toe reinforcement or protection must be adequate to prevent a collapse of the system from wave action.
2. Revetments shall be sited and designed consistent with appropriate engineering principles. Professional, geologic, site studies or design may be required for any proposed revetment or bulkhead if the City determines sufficient uncertainties or potential for damage to other shoreline properties and features exist.
3. When a revetment is required at a public access site, provision for safe access to the water shall be incorporated into its design.
4. Stairs or other permitted structures may be built into a revetment, but shall not extend waterward of it.
5. Revetments shall be designed to permit the passage of surface or ground water without causing ponding or saturation of retained soil/materials.
6. Adequate toe protection shall be provided to ensure revetment stability without relying on additional rip-rap.

7. Revetment construction shall use stable, non erosion-prone, homogeneous materials such as concrete, wood, rock rip-rap, or other suitable materials which accomplish the desired end with the maximum preservation of natural shoreline characteristics.

D. Dredging and Dredge Material Disposal

Dredged material disposal on land is also subject to the landfill policies and regulations of the SMP.

Pursuant to WAC 173-27-040 or its successor, certain activities, such as those associated with normal maintenance and repair, are exempt from the requirements for a Shoreline Substantial Development Permit (SSDP), but may still require a shoreline conditional use permit or variance.

Actions exempt from SSDPs are required to comply with the SMA and all provisions of the SMP. *Ecology*/Army Corps of Engineers notifications of dredging proposals will be reviewed by the City to determine whether they are exempt from the SSDP requirement and to ensure compliance with regulations of the SMA and SMP.

Policies:

1. Dredging and dredge material disposal should be located and conducted in a manner which minimizes damage to the existing ecology and natural resources of the area to be dredged, and to the disposal site.
2. Dredging waterward of the OHWM for the primary purpose of obtaining fill material shall not be allowed except when the material is necessary for restoring ecological functions.
3. Dredging operations should be planned and conducted to minimize interference with navigation and adverse impacts to other shoreline uses, properties, and values.
4. Dredged material disposal in marine waters, other than for approved environmental enhancement or remediation projects or other uses permitted by this SMP, should only be allowed at sites designated through, and in a manner consistent with the policies and procedures of the Puget Sound Dredged Disposal Analysis (PSDDA) program (managed jointly by the Army Corps of Engineers, US Environmental Protection Agency, and Washington State DNR & *Ecology*).
5. When dredged material has suitable organic and physical properties, dredging operations should be encouraged to recycle dredged material for beneficial use in beach enhancement, habitat creation, sediment remediation (capping), or aggregate or clean cover material at a landfill (where appropriate).

Regulations – General:

1. Dredging shall be permitted as a conditional use in the Aquatic Environment and shall be for the restoration, enhancement, or maintenance of natural resources and navigational channels.
2. Applications for shoreline dredging and dredged material disposal shall include copies of all information, data, and analyses submitted in accordance with the PSDDA evaluation procedures for managing the in-water disposal of dredged material and the Corps of Engineers process for Section 10 (Rivers and Harbors Act), and Section 404 (Clean Water Act) permits. This shall include the PSDDA-approved Sampling Analysis Plan, the PSDDA data report and quality and control (QA/QC) report, and the suitability decision issued by the PSDDA agencies.
3. In evaluating permit applications for dredging projects, the adverse effects of the initial dredging, subsequent maintenance dredging, and necessary dredged material disposal shall be considered. Dredging and dredged material disposal shall be permitted only where it is demonstrated that the proposed actions will not:
 - a) Result in significant and/or ongoing damage to water quality, fish, shellfish, and other essential marine biological elements; and,
 - b) Adversely alter natural drainage and circulation patterns, currents, and tidal flows, or significantly reduce flood water capacities.
4. Dredging and dredged material disposal shall be scheduled to protect biological productivity and minimize interference with fisheries. Dredging shall not occur in commercial fishing (e.g., gill net, crabbing, etc.) areas during a fishing season, unless specifically addressed and mitigated for in the permit.
5. Dredging and dredged material disposal shall be prohibited in or on archaeological sites on, or eligible for listing on, the Washington State Register of Historic Places until such time as they have been released by the State Archaeologist.

Regulations – Dredging:

1. Dredging below the OHWM shall be permitted as a conditional use only:
 - a) For navigation or navigational access: Dredging of established navigation channels and basins is restricted to maintaining existing authorized location, depth, and width. Additional dredging is allowed only where needed to accommodate existing navigational uses and when ecological impacts are minimized;
 - b) In conjunction with a water-dependent use of water bodies or adjacent shorelines;

- c) As part of an approved habitat or environmental remediation project; or,
 - d) In conjunction with a navigational structure, wastewater treatment facility, or other public facility for which there is a documented public need and where other feasible sites or routes do not exist.
- 2. When dredging is permitted, the dredging shall be the minimum necessary to accommodate the proposed use.
- 3. Dredging shall utilize techniques that cause minimum dispersal and broadcast of bottom material.

Regulations - Prohibited Dredging:

- 1. New dredging activity is prohibited in the following locations:
 - a) In environmentally sensitive habitats (e.g., stream mouth estuaries, wetlands) except by shoreline conditional use permit.
 - b) Along net-positive drift sectors and where geo-hydraulic processes are active and accretion shoreforms would be damaged, altered, or irretrievably lost.
 - c) In shoreline areas with bottom materials prone to significant sloughing and refilling due to currents or tidal activity, resulting in the need for continual maintenance dredging.
 - d) In critical life-cycle habitats of officially designated or protected fish, shellfish, or wildlife.
 - e) Where concentrations of environmental pollutants or toxic chemicals are present in sediments and would be released in dredging operations, except as part of a permitted environmental enhancement or remediation program.
- 2. Dredging for the primary purpose of obtaining landfill material is prohibited.

Regulations – Dredge Material Disposal:

- 1. Unconfined disposal of dredged material in marine waters, other than for approved environmental enhancement or remediation projects under a shoreline conditional use permit, shall only be allowed at sites identified through the process defined in the PSDDA report and incorporated in DNR WAC 332-30-166 or its successor (Open Water Disposal Sites).
- 2. Yearly status reports shall be prepared and submitted by the dredge disposal permittee to the Director as requested. The reports shall state the quantity of material dumped, characterize the quality of the material, and review any factors necessary to verify continued compliance with the shoreline permit.

3. In-water disposal shall utilize techniques that cause the least dispersal and broadcast of materials, unless specifically designed and approved as a dispersal site.
4. Use of dredged materials for beach enhancement shall be conducted to comply with Section 6, Subsection A. Beach Enhancement, so that:
 - a) Dredged materials deposited on land shall constitute fill and, when deposited within the jurisdiction of the SMP, shall comply with the fill regulations.
 - b) Near-shore or upland disposal of dredged materials not used for beach enhancement shall not be located upon, adversely affect, or diminish environmentally critical areas, recognized wildlife habitat, public access, water quality, or drainage.
 - c) Revegetation of land disposal sites with native species and other approved plants shall be required.

E. Fill

Fill is the placement of soil, sand, rock, gravel, existing sediment or other material (excluding solid waste) to create new land, tideland, or bottom land area along the shoreline below the OHWM, or on wetland or upland areas in order to raise the elevation. Any landfill conducted within shoreline jurisdiction must comply with the following policies and regulations, and with the other provisions of the SMP. Beach enhancement as defined in the SMP shall not be considered fill.

Policies:

1. Fill waterward of the OHWM should be allowed only if necessary for water-dependent and/or public access uses consistent with the SMP, and with a shoreline conditional use permit as outlined under WAC 173-26-231 (3) (c). Fill for a restoration project does not require a conditional use permit.
2. Shoreline fills should be designed and located so there will be no significant damage to existing natural resources, including surface water drainage systems.
3. In evaluating fill projects, factors that should be considered include:
 - a) Conflict with potential and current public use of the shoreline and water surface area as identified in adopted City plans, policies, and programs;
 - b) Total water surface reduction;
 - c) Navigation restrictions;
 - d) Impediments to water flow and drainage;
 - e) Reduction of water quality; and,

- f) Destruction of habitat.
- 4. The perimeter of fills should be designed to avoid or eliminate erosion and sedimentation impacts, both during initial fill activities and over time.
- 5. Where permitted, fills should be the minimum necessary to provide for the proposed use and permitted only for a specific development proposal permitted by the SMP. Speculative fill activity is prohibited.

Regulations – General:

- 1. Fill shall be permitted as a conditional use in the High-Intensity Environment.
- 2. Fill in the Aquatic Environment shall be permitted as a conditional use only for water-dependent or public uses, or as part of a permitted environmental enhancement or remediation project.
- 3. Applications for fill permits shall include the following:
 - a) Proposed use of the fill area;
 - b) Source of the fill material and physical, chemical, and biological characteristics of the fill material as required by the Director;
 - c) Method of placement and compaction;
 - d) Location of fill relative to the OHWM and natural and/or existing drainage patterns.
 - e) Perimeter erosion control or stabilization means; and,
 - f) Type of surfacing and runoff control devices.
- 4. Pile or pier supports shall be utilized when feasible in preference to fills. Fills for approved road development in floodways or wetlands shall be permitted only if pile or pier supports are proven infeasible.
- 5. Fill shall be permitted only if it is demonstrated that the proposed action will not:
 - a) Result in significant damage to water quality, fish, shellfish, and/or wildlife habitat; or,
 - b) Adversely alter natural drainage and circulation patterns, currents, river and tidal flows, or significantly reduce flood water capacities.
- 6. Fills shall be the minimum necessary for the proposed use and permitted only for a proposal permitted by the SMP. Speculative fill activity is prohibited.

Regulations – Design and Construction:

1. Where permitted, the fill shall be the minimum necessary to accommodate the proposed use.
2. Where fills reduce public access, compensatory public access shall be provided as part of the development project.
3. Fills shall be designed, constructed, and maintained to prevent, minimize, and control all material movement, erosion, and sedimentation from the affected area. Perimeters of permitted fill projects shall be designed and constructed with silt curtains, vegetation, retaining walls, or other mechanisms, and appropriately sloped to prevent erosion and sedimentation both during initial fill activities and afterwards. Such containment practices shall occur during the first growing season following completion of the fill.
4. Fill materials shall be sand, gravel, soil, rock, or similar material. Use of contaminated dredge material is prohibited.
5. The timing of fill construction shall be regulated to minimize damage to water quality and aquatic life within the time restraints recommended by the Washington DFW.

Section 7 – Administrative Regulations

A. General

The administrative system assigns responsibilities for implementation of the SMP and shoreline permit review, prescribes an orderly process for review of proposals and permit applications, and ensures persons affected by the SMP are treated fairly and equitably.

B. Director

1. The Lynnwood Community Development Director or his/her designee (hereinafter "Director"), is vested with the following:
 - a) Overall administrative responsibility for the SMP;
 - b) Authority to grant statements of exemption from shoreline permits;
 - c) Authority to approve, conditionally approve, or deny shoreline substantial development permits and permit revisions in accordance with the policies and regulations of the SMP, provided that the decision may be appealed in accordance with Section J below;
 - d) Authority to determine if a shoreline variance permit application is minor, qualifying it for administrative decision; if the shoreline variance is not minor, it will be processed under the applicable procedures in Subsection K below;
 - e) Authority to approve, conditionally approve, or deny minor shoreline variance permit applications, provided that the decision may be appealed in accordance with Section J below;
 - f) Authority to determine compliance with the State Environmental Policy Act (RCW 43.21C or its successor).
2. The duties and responsibilities of the Director shall include:
 - a) Specifying required application forms and submittal requirements including type, details, and number of copies for shoreline substantial development, conditional use, and variance permits. At a minimum, the application shall include the information required in WAC 173-27-180 or its successor.
 - b) Determining if development proposals or other activities are consistent with the Shoreline Management Act (RCW 90.58) and the SMP.
 - c) Tracking and periodically evaluating cumulative effects of all project review actions in the shoreline jurisdiction.
 - d) Notifying the public of all permit applications.

- e) Advising interested citizens and applicants of the goals, policies, regulations, and procedures of the SMP.
- f) Making administrative decisions and interpretations of the policies and regulations of the SMP and the Shoreline Management Act.
- g) Determining whether a Shoreline Substantial Development Permit, shoreline conditional use permit, or shoreline variance permit is required.
- h) Collecting applicable fees.
- i) Determining if all applications and necessary related information are provided.
- j) Making field inspections.
- k) Conducting a thorough review and analysis of permit applications and related materials, and making written findings and conclusions.
- l) Making decisions pursuant to paragraph 1 above.
- m) Submitting applications and all relevant information and materials along with written findings and recommendations to the Hearing Examiner.
- n) Providing technical and administrative assistance to the Council, as needed, for effective and equitable implementation of the SMP and the SMA.
- o) Proposing amendments to the SMP as deemed necessary to more effectively and equitably achieve its goals and policies.
- p) Seeking remedies for alleged violations of the SMP, the SMA, or conditions of any approved shoreline permit.
- q) Coordinating information with affected agencies.
- r) Forwarding shoreline permits to *Ecology* for filing or appropriate action.
- s) Deciding whether to require any applicant granted a shoreline permit to post a bond or other acceptable security to assure the applicant and/or applicant's successors in interest shall adhere to the approved plans and all conditions attached to a shoreline permit. Such bonds or securities shall have a face value of at least one hundred (100) percent of the estimated development cost, including attached conditions. The City Attorney shall approve such bonds or securities as to form.

C. Hearing Examiner

1. The City of Lynnwood Hearing Examiner is vested with authority to:
 - a) Approve, conditionally approve, or deny Shoreline variance and shoreline conditional use permit applications after holding an open record public hearing and after considering the findings and recommendations of the Director, which shall be given substantial weight.
 - b) Affirm, affirm with modifications, or reverse decisions on shoreline substantial development permit applications, minor Shoreline variance applications, and shoreline exemptions on appeal.
2. Further duties and responsibilities of the Hearing Examiner shall include:
 - a) Ensuring that proper notice is given to appropriate persons and the public for all hearings before the Hearing Examiner.
 - b) Basing all decisions on shoreline permits and administrative appeals on the criteria established in the SMA and the SMP.
 - c) Deciding whether to require any applicant granted a shoreline permit to post a bond or other acceptable security to assure the applicant and/or the applicant's successors in interest shall adhere to the approved plans and all conditions attached to the shoreline permit. Such bonds or securities shall have a face value of at least one hundred (100) percent of the estimated development cost, including attached conditions. The City Attorney shall approve such bonds or securities as to form.

D. Planning Commission

The Lynnwood Planning Commission shall be responsible for hearing and making recommendations for action to the City Council on amendments to the Shoreline Master Plan

E. City Council

The City Council is vested with authority to review and act upon any recommendations for amendments or revisions of the SMP. To become effective, amendments to the SMP must be reviewed and approved by *Ecology*, pursuant to RCW 90.58.190 or its successor and WAC Ch. 173-26 or its successor.

F. Permit or Exemption Required Before Undertaking Development or Activity

1. Permits Required
 - a) A development, use, or activity shall not be undertaken within the jurisdiction of the Shoreline Management Act (Chapter 90.58 RCW or its successor) and

the Shoreline Master Program, unless it is consistent with the policy and procedures of the Shoreline Management Act, applicable State regulations and the Shoreline Master Program.

- b) A substantial development shall not be undertaken within the jurisdiction of the Shoreline Management Act and the Shoreline Master Program, unless an appropriate shoreline permit has been obtained, the appeal period has been completed, any appeals have been resolved, and/or the applicant has been given permission by the proper authority to proceed.
- c) Any person wishing to undertake substantial development or exempt development on shorelines shall apply to the Director for an appropriate shoreline permit or a Statement of Exemption.
- d) If a development, use or activity is listed as a conditional use by the SMP, such development, use, or activity shall not be undertaken within the jurisdiction of the SMA and the SMP, unless a shoreline conditional use permit has been obtained, the appeal period has been completed, any appeals have been resolved, and/or the applicant given permission to proceed by the proper authority.
- e) If a development, use, or activity cannot comply with the regulations of the SMP, a shoreline variance must be obtained before commencement of development or construction, or beginning the use or activity.
- f) If a project includes uses or activities that include both permitted and conditional uses, or a regular (major rather than minor) shoreline variance is required, the permit shall be heard and decided by the Hearing Examiner using the procedures, requirements, and criteria for a shoreline conditional use and/or variance.
- g) See WAC 173-27-070 or its successor for a description of how the permit requirements apply to developments undertaken prior to passage of the SMA.
- h) See WAC 173-27-060 or its successor for a description of how the permit requirements apply to federal agency projects.

2. Statement of Exemption

- a) No use or activity described in WAC 173-27-050 or other exempt development shall be undertaken within the jurisdiction of the SMA and the SMP, unless a statement of exemption has been obtained from the Director.
- b) The request for the statement of exemption shall be in writing, on forms required by the Director, and shall include the information required by the Director. In the case of an emergency, the Director may waive this requirement and authorize the use or activity orally or in writing. If authorized orally, it shall be put in writing as soon as possible. A statement of

exemption may be for a single development event, but the Director can issue a programmatic statement of exemption for a finite series of development events or regularly repeated activity, as long as the series of events or repeated activity can be described and predicted in sufficient detail so a determination can be made that they are and will as a whole, be exempt under WAC 173-27-050.

- c) The Director shall decide requests for a Statement of Exemption based on WAC 173-27-040 or its successor and the provisions of the SMA and SMP.
- d) Before determining that a proposal is exempt, the Director may conduct a site inspection to ensure that the proposal meets the exemption criteria.
- e) Exempt developments and activities shall comply with the SMA and SMP. The Director shall condition statements of exemption to ensure the exempt development or activity complies with the SMA and SMP.
- f) In the case of development subject to the policies and regulations of the SMP, but exempt from the substantial development permit process, shoreline management requirements may be made conditions of the building permits and/or other permits and approvals. For example, the approval of a building permit for a single-family residence can be conditioned with provisions from the SMP.
- g) Whenever a development falls within the exemptions stated in WAC 173-27-040 or its successor, a letter exempting the development from the substantial development permit requirements of RCW 90.58 or its successor shall be given to the applicant and to *Ecology*.

G. Fees

A filing fee in an amount established by the City Council ~~by resolution~~ shall be paid at the time of application. After the fact permit fees will be triple the otherwise required amount.

H. Permit Application

The Director shall provide the necessary application forms for shoreline substantial development, conditional use, and variance permits. The application shall provide, at a minimum, the information required by WAC 173-27-180.

I. Shoreline Substantial Development Permit Process

1. Shoreline Substantial Development Permit Review Procedure
 - a) The applicant shall submit a complete application including a site plan, the required fees, and a SEPA Checklist to the Director.

- b) The Director shall review the application and determine within 28 days whether it is complete. The application shall not be deemed filed until the Director determines the application is complete and all required fees are paid. If the application is not complete, the Director shall contact the applicant and request the needed information or fee.

2. Notice

- a) The Director shall give notice of the shoreline application by at least one of the following methods:
 - i. Mailing of the notice by first class mail, postage prepaid, to the applicant, the property owner and each person identified by the real property records of the Snohomish County auditor as the owner of property within three hundred (300) feet of any boundary of the subject property, and of any contiguous property owned by the owner of the land on which the proposal is sited. The notices shall include the information required by WAC 173-27-110 or its successor.
 - ii. Posting notice in a conspicuous manner on the property where the project is to be constructed.
 - iii. Any other means deemed appropriate to accomplish the objectives of reasonable notice to adjacent landowners and the public.
- b) Failure to receive a properly mailed notice shall not affect the validity of any testimony received at the hearing or of any action taken.
- c) An affidavit(s) attesting that the notice has been properly published and/or properly mailed shall be completed and included in the application file.
- d) Costs of notification shall be the responsibility of the applicant.

3. Public Comment - The City shall not make a decision on the permit until after the end of the comment period.

- a) A thirty (30) day public comment period shall be given for shoreline permits.
- b) The public comment period shall be twenty (20) days for substantial development permits for a limited utility extension or for erosion control measures to protect a single-family residence and its appurtenant structures. (See Page A-9, Appendix A for definition of "limited utility extension.")
- c) SEPA review shall be conducted as provided by LMC Chapter 17.02 or its successor. The required SEPA notices should be included with the shoreline notices when possible. SEPA documents should be circulated with permit documents where possible.

4. Decision - After the thirty (30) day comment period has ended, the Director shall issue a decision on the application.
 - a) The Director may approve, approve with modifications, or deny any substantial development permit.
 - b) In making the decision, the Director shall consider the applicable provisions of the SMA, as amended; WAC 173-27 or its successor; the SMP; all other applicable law; and any related documents and approvals. The Director shall also consider whether the cumulative impact of additional past and future requests that reasonably may be made in accordance with the Comprehensive Plan, or similar planning document, for like actions in the area will result in substantial adverse effects on the shoreline environment and shoreline resources.
 - c) The applicant(s) shall have the burden of proving that a proposed development is consistent with the approval criteria and SMP policies and regulations. [WAC 90.58.140(7) or its successor].
 - d) The Director may require additional information if necessary.
 - e) The Director shall issue a written decision which contains the following:
 - i. A statement indicating the application is approved, approved with modifications, or denied;
 - ii. A statement of any conditions included as part of an approval or approval with modifications;
 - iii. A statement of facts upon which the decision, including any conditions, is based, and conclusions derived from those facts; and
 - iv. A statement of the right of any person to appeal the decision of the Director pursuant to section I below.
5. Distribution/notification of Administrative Decision.
 - a) The Director shall mail the applicant the original of the completed permit form and the findings and conclusions, and shall forward a copy of the same documents to *Ecology* and the Attorney General's Office as required by WAC 173-27-130 or its successor.
 - b) All persons who submitted comments on the application during the comment period (see paragraph 3 above) and anyone else requesting notification in writing, shall be notified in a timely manner of the decision and mailed a copy of the decision.

J. Appeals

1. Local appeals of SSDPs (for appeal of CUPs & variances, see Section J).
 - a) The Director's decision may be appealed to the Hearing Examiner within twenty-one (21) calendar days following issuance of the decision.
 - b) Appeals shall be initiated by filing a notice of appeal with the Community Development Dept. setting forth the action being appealed and the principal points of the appeal together with a filing fee as prescribed by the Council.
 - c) If an appeal is filed, the case shall be reviewed by the Hearing Examiner at an open record hearing following the procedures of LMC 1.35.200 or its successor.
 - d) Within eight (8) days of final action by the City, including completion of appeals or expiration of appeal periods, the Director shall file copies of the action with the *Ecology* and the Attorney General.
2. Washington State Department of Ecology Appeal Period
 - a) The twenty-one (21) day appeal period begins from the "date of receipt" – the date the applicant receives the Ecology appeal period letter. Date of receipt is defined in RCW 43.21B.001 (*Ecology* sends a letter to the Director and the applicant informing them of the 21 day appeal period.)
 - b) During the appeal period, the City decision on the permit may be appealed to the Washington State Shorelines Hearings Board under RCW 90.58.180 or its successor and WAC 461-08 or its successor. Development pursuant to a shoreline permit shall not begin and is not authorized until:
 - i. Thirty (30) days from the filing date of the Hearings Board decision defined in RCW 90.58.140(5)(b &c) or its successor and WAC 173-27-090 or its successor, or;
 - ii. All review proceedings initiated within twenty-one (21) days from the filing date have been terminated, except as provided in RCW 90.58(b) or its successor.
3. Revisions to Permits
 - a) An applicant wishing to revise a permit must submit detailed plans and text describing the proposed changes. If the Director determines the proposed revisions are within the scope and intent of the original permit, consistent with WAC 173-27-100 or its successor, the Director may approve the revision.

- b) "Within the scope and intent of the original permit" means all of the following:
 - i. No additional over-water construction is involved, except that pier, dock, or float construction may be increased by five hundred (500) square feet or ten (10) percent, whichever is less;
 - ii. Ground area coverage and/or height of each building is not increased more than ten (10) percent;
 - iii. The revision does not authorize development to exceed height, setback, lot coverage, or any other requirement of the SMP;
 - iv. Additional landscaping is consistent with conditions, if any, attached to the original permit and with the SMP;
 - v. The use authorized by the original permit is not changed; and
 - vi. No adverse, environmental impact will be caused by the revision. WAC 173-27-100 (2)(a-f) as amended.
- c) If the sum of the proposed revision and any previously approved revisions do not meet the criteria above, a new shoreline permit application must be filed. If the revision involves a shoreline conditional use or variance conditioned by *Ecology*, the revision also must be reviewed and approved by *Ecology*.
- d) A City or *Ecology* decision on a permit revision may be appealed within twenty-one (21) days of such decision, in accordance with RCW 90.58.180 or its successor.
- e) Construction allowed by a revised permit, but not under the original permit is undertaken at the applicant's risk until expiration of the appeals deadline.

4. Duration of Permits

- a) Substantial Progress
 - i. Substantial progress towards completion of a permitted activity shall be undertaken within two (2) years after approval of the permit. See Section 8, Appendix A for definition of "substantial progress."
 - ii. The Director may, with prior notice to parties of record and *Ecology*, grant a single one (1) year extension of the two (2) year substantial progress period based on reasonable justifying factors, including the inability to expeditiously obtain other required governmental permits. The extension request must be filed before the end of the time limit.
- b) Five Year Permit Authorization

- i. The authorization granted by an approved permit to construct any structure or conduct any use or activity shall terminate five (5) years from the date the permit is approved by the City, except that the permit may be authorized for a lesser period of fixed duration.
 - ii. Where an approved permit authorizes construction, the use and maintenance of the structure or facility may continue after the five (5) year period, provided the structure was completed during the five (5) year time limit or any approved extension.
 - iii. Where an approved permit authorizes a use or activity which does not require a structure, such as mining or maintenance dredging, the use or activity shall cease at the end of the five (5) year limit or any extension as granted in paragraph (4) below.
 - iv. The Director may, with prior notice to parties of record and *Ecology*, grant one (1) extension of up to one (1) year based on reasonable justifying factors. The extension request must be filed before the end of the time limit.
- c) The time periods shall not include time during which an activity was not actually pursued due to the pendency of reasonably related administrative appeals or litigation or other government approvals or permits as provided in WAC 173027-090(4).
 - d) When a permit is conditioned, the conditions shall be satisfied prior to occupancy or use of a structure, or prior to commencement of a nonstructural activity, provided an alternative compliance limit may be specified in the permit. Permit revisions may be authorized after expiration of the original permit under paragraph b of this section, provided this procedure shall not be used to extend the original permit time requirements. [WAC 173-27-090 or its successor].

K. Shoreline Variance and Shoreline Conditional Use Permits

This subsection applies to all applications for shoreline variances and shoreline conditional use permits. Where a development includes several uses or activities one or more of which requires a shoreline conditional use permit, all uses and activities shall be processed and decided following the shoreline conditional use procedures.

1. Shoreline variance: The purposes of a shoreline variance permit are strictly limited to granting relief to specific bulk, dimensional, or performance standards of the SMP, where there are extraordinary or unique circumstances relating to the property such that strict implementation of the SMP would impose unnecessary hardships on the applicant or thwart SMA policies as stated in RCW 90.58.020 or its successor. Variances from the SMP use and modification regulations are prohibited.

- a) Application - An application for a shoreline variance shall be submitted on a form provided by the City. The application should be accompanied by maps, a completed environmental checklist, applicable fees, and any other information specified in the SMP or requested by the Director.
- b) Criteria for Granting Shoreline variances - Shoreline variance permits for development to be located landward of the OHWM, except within wetlands may be authorized provided the applicant can demonstrate the following:
 - i. That the strict application of the bulk, dimensional, or performance standards in the applicable Master Program precludes or significantly interferes with a reasonable use of the property not otherwise prohibited by the SMP.
 - ii. The hardship described above is specifically related to the property and the result of unique conditions, such as irregular lot shape, size, natural features, and the application of the SMP, and is not, for example, from deed restrictions or the applicant's own actions.
 - iii. The design of the project will be compatible with other permitted activities in the area and will not cause adverse effects to adjacent properties or the shoreline environment.
 - iv. The shoreline variance authorized does not constitute a grant of special privilege not enjoyed by the other properties in the area and will be the minimum necessary to afford relief.
 - v. The public interest will suffer no substantial detrimental effect.
- c) Applications for shoreline variance permits when the authorized development will be located waterward of the OHWM or in wetlands may be approved or approved with conditions or modifications subject to approval by *Ecology*, if the decision maker finds the applicant has demonstrated compliance with the following criteria as well as those stated in paragraphs b and d:
 - i. Strict application of the bulk, dimensional, or performance standards in the SMP precludes all reasonable economic use of the property not otherwise prohibited by the SMP.
 - ii. Public navigation and shoreline use rights are not adversely affected.
- d) In granting shoreline variance permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if shoreline variances were granted to other developments in the area where similar circumstances exist, the totality of such variances should remain consistent with the policies of RCW 90.58 or its successor and should not produce substantial adverse shoreline environment effects.

2. Conditional Uses - The purpose of a shoreline conditional use permit is to allow greater flexibility in applying the SMP use regulations in a manner consistent with RCW 90.58.020, or its successor. Shoreline conditional use permits should also be granted in circumstances where denial of the permit would result in thwarting policy enumerated in RCW 90.58.020 or its successor. The City or *Ecology* may attach special conditions to the permit to prevent undesirable effects from the proposed use. Uses specifically prohibited by the SMP may not be authorized by a shoreline conditional use permit. In granting conditional use permits consideration shall be given to the cumulative impacts of additional requests for like actions in the area.
 - a) Uses classified as conditional uses may be authorized provided the applicant can demonstrate all the following:
 - i. The proposed use will be consistent with the policies of RCW 90.58.020 or its successor and the policies of the SMP.
 - ii. The proposed use will not interfere with the normal public use of the shorelines.
 - iii. The proposed use of the site and design of the project will be compatible with other permitted uses in the area.
 - iv. The proposed use will not cause unreasonable adverse effects to the shoreline environment designation in which it is located.
 - v. There will be no substantial detrimental effect to the public interest.
 - vi. The proposed use is consistent with the Lynnwood Zoning Ordinance (LMC Title 21) and Comprehensive Plan.
 - b) Uses not listed as permitted or conditionally permitted in the SMP, but not prohibited may be authorized as conditional uses provided the applicant in addition to the criteria set forth in 2a above demonstrates that
 - i. Extraordinary circumstances preclude reasonable economic use of the property in a manner consistent with RCW 90.58.020, or its successor, and
 - ii. The proposed use would not produce significant adverse effects on the shoreline environment.
3. If the Director determines that a shoreline variance permit application is minor in its potential impacts, the Director shall decide the application following the procedures in Section H above Shoreline Substantial Development Permit Process, under 1. The Director's decision is subject to *Ecology* approval as stated in paragraph 7 below. A shoreline variance shall be considered minor if it meets the following criteria:
 - a) Projects of relatively small scale;

- b) Projects involving only one property; or
 - c) Projects which have not generated significant public input.
- 4. Applications for shoreline variances not determined to be minor and all shoreline conditional use permits shall be decided by the Hearing Examiner upon holding an open record public hearing.
 - a) The Director shall prepare a staff report identifying the approval criteria, providing available information on the application, analyzing the proposal, making a recommendation on the proposal, making recommended findings of fact and conclusions of law, and including any other information or recommendations the Director finds appropriate. The Director shall provide a copy of the staff report to the applicant and the Hearing Examiner.
 - b) In making a decision, the Hearing Examiner shall consider the applicable criteria in 1 and 2 above. The applicant has the burden of proof to show that the proposal complies with the decision criteria and all applicable requirements. [RCW 90.58.140(7) or its successor].
 - c) The Hearing Examiner may attach conditions of approval to permits as necessary to assure consistency of the proposal with the approval criteria.
 - d) There is no local appeal of the Hearing Examiner's decision on shoreline variances and conditional use permits.
- 5. The Director shall mail the final City decision to the applicant, *Ecology*, and the Attorney General. The permit must be received by *Ecology* within eight (8) days of the date of the decision. Within eight (8) days, the Director shall also mail the decision to any person requesting notice of the decision.
- 6. *Ecology* shall approve, approve with conditions, or deny all shoreline variance and shoreline conditional use permits approved by the City. *Ecology's* decision must be made within thirty (30) days of the date the permit and other information required by WAC 173-27-130 or its successor are received by *Ecology* and the Attorney General. *Ecology* will send a letter to the applicant and the City informing them of the decision. Up receipt of the *Ecology* decision, the Director shall notify persons requesting such.
- 7. Twenty-one Day Appeal Period
 - a) If the permit or shoreline variance was denied by the City, the twenty-one (21) day appeal period begins the day the applicant receives the denied permit or shoreline variance and other information required by WAC 173-27-130 or its successor. *Ecology* usually sends an appeal period letter to the Director and the applicant

- b) If the permit or shoreline variance was approved by the local government, the twenty-one (21) day appeal period begins from the "date of receipt" – the date the applicant receives the Ecology appeal period letter. Date of receipt is defined in RCW.
- c) During the appeal period, the City and/or *Ecology* decision may be appealed to the Washington State Shorelines Hearings Board as provided by RCW 90.58.180 or its successor. Construction, development, or any authorized use or activity shall not begin until after the twenty-one (21) day appeal period, or until such review is terminated except as described in RCW 90. 58.140(5). Note RCW 90.58.140(5) b is required in full to explain

L. Nonconforming Development

Applicability:

This section applies to shoreline uses or structures lawfully constructed or established prior to the effective date of the SMP, but which do not conform to present regulations or standards of the SMP or policies of the SMA.

Nonconforming uses and developments may be continued provided they meet the following provisions:

1. Nonconforming Uses

- a) Nonconforming uses shall not be altered or expanded in any way that increases the nonconformity.
- b) If a nonconforming use is discontinued for twelve (12) consecutive months or for 12 months in any two (2) year period, any subsequent use shall conform.
- c) A nonconforming use can change to another nonconforming use with a CUP if:
 - i. It meets the criteria of WAC 173-27-080(6)(a) & (b); 2
 - ii. No reasonable alternative conforming use is practical, and;
 - iii. The proposed use is consistent with the SMA and SMP and compatible with other uses in the area.

2. Nonconforming Structures

- a) Enlargement or expansion of a structure cannot increase the extent of nonconformity by further encroaching upon or extending into areas where construction or use would not be allowed for new development or use. Repair, reconstruction, and expansion of nonconforming structures which does not increase the nonconformity shall be permitted.

- b) Permitted expansion of a nonconforming structure shall not obstruct existing views of the water from primary waterfront residences or public rights-of-way to any greater degree than a fully conforming structure.
- c) If a nonconforming development is damaged to an extent not exceeding seventy-five percent of the replacement cost of the original development, it may be reconstructed to those configurations existing immediately prior to the time the development was damaged, provided that application is made for the permits necessary to restore the development within six months of the date the damage occurred, all permits are obtained and the restoration is completed within two years of permit issuance (WAC 173-27-080 (8)).

M. Master Program Review

The Shoreline Master Program and Restoration Plan shall be periodically reviewed by the Director and City Council and adjustments made as necessary to reflect changing local circumstances, new information or improved data, and/or changes in State statutes and regulations. This review process shall be consistent with RCW 90.58.080 (4) and shall include a local citizen involvement effort and public hearings to obtain the views and comments of the public. Consistent with the aforementioned statute, a Shoreline Master Program Review shall be undertaken at least once every seven years.

N. Amendments to Master Program

The provisions of the SMP may be amended as provided in RCW 90.58.120, 90.58.200 or its successor and WAC 173-26 or its successor. Any person, including the City, may submit an application for an amendment to the Director together with any required fee. Any SMP amendment must satisfy the requirements of the State Environmental Policy Act (Chapter 43.21C RCW or its successor).

The City Council shall approve, modify, or deny an application for an amendment after conducting at least one public hearing considering the proposal. The City shall publish notice of the hearing at least once in each of the three (3) weeks immediately preceding the hearing in one or more newspapers of general circulation in the area within the jurisdiction of the SMP. The notice shall include:

1. Reference to the authority under which the action is proposed;
2. A statement or summary of the proposed changes to the SMP;
3. The date, time, and location of the hearing, and the manner in which interested persons may present their views; and
4. Reference to the availability of the proposal for public inspection at the local government office, or upon request.

Amendments and revisions to the SMP are not effective unless approved by the *Ecology*.

Proponents of shoreline environment redesignations (i.e., amendments to the shoreline maps and descriptions) have the burden of demonstrating consistency with the shoreline environment designation criteria of the SMP.

The Director shall send a copy of any locally approved amendment and the information required by WAC 173-26-062 or its successor to *Ecology* within fourteen (14) days of the date of the City's decision. If *Ecology* denies or modifies the proposed amendment, the City may appeal the decision to the *Growth Management Hearings Board* as provided in RCW 90.58.190.

O. Severability

If any provision of the Shoreline Master Program, or its application to any person, legal entity, parcel of land or circumstances is held invalid, the remainder of the SMP and application of its provisions to other persons, legal entities, parcels of land or circumstances, shall not be affected.

P. Inspections

Whenever it is necessary to make an inspection to enforce any provision of this ordinance or whenever the Director has reasonable cause to believe that there exists in any building, or upon any premises, any condition which makes such a building or premises nonconforming, the Director or his designee may enter such building or premises. If the building or premises is occupied, the Director or designee shall present proper credentials and request entry. If the building or premises is unoccupied, the Director shall make reasonable efforts to locate the owner or other persons having charge or control of the building or premises and request entry. If entry is refused, the Director shall have recourse to every remedy provided by law to secure entry, including administrative search warrant.

Q. Enforcement

Enforcement of this Shoreline Master Program shall be in accordance with the provisions of LMC 1.40, Code Violations, except that penalties cannot exceed \$1,000 per violation.