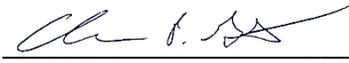




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ADVISORY REPORT
FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS

To: Kirkland Hearing Examiner

From:  Christian Geitz, Project Planner

 Adam Weinstein, AICP, Planning & Building Director

Date: April 8, 2019

File: Juanita Beach Phase II Redevelopment Plan, File No. SHR19-00096

Hearing Date and Place: April 18, 2019
City Hall Council Chamber
123 Fifth Avenue, Kirkland

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I. INTRODUCTION

A. APPLICATION

1. Applicant: Anneke Davis with City of Kirkland Capital Improvement Project Group, for City of Kirkland Parks Department
2. Site Location: 9703 NE Juanita Drive, Juanita Beach Park (see Attachment 1)
3. Request: The City of Kirkland CIP Division is requesting a Shoreline Variance for the development associated with the Phase II portion of the Juanita Beach Park Master Plan update. The proposal includes replacing the existing bathhouse, the addition of two new picnic pavilion structures, an update of the playground area, the expansion of natural areas through mitigation planting, and the removal and adjustment of walkways and pedestrian trails (see Attachments 2 and 3). The replacement bathhouse structure will contain lifeguard facilities, restrooms, changing facilities, storage for Parks services, and watercraft rental.

The development of these improvements requires the project to pursue three (3) separate shoreline variance requests, as the project site is located within the Shoreline Management Jurisdiction. The variances include proposals to: locate the replacement bathhouse within the inner 75% of a Category II wetland buffer; fill one Category III wetland and one Category IV wetland together totaling 8,180 square feet; and reduce the required buffer mitigation standards associated with wetland fill below established standards (see Sections II.J-L).

The application proposes to mitigate impacts through restoration and enhancement both onsite and offsite. The restoration plan includes advanced mitigation completed onsite during the Phase I stage of the park Master Plan redevelopment, installation of 18,823 square feet of onsite mitigation plantings, and 4,866 square feet of offsite wetland enhancement at Juanita Bay Park.

4. Review Process: Process IIA, Hearing Examiner conducts a public hearing and makes a recommendation; the Washington State Department of Ecology makes the final decision.
5. Summary of Key Issues and Conclusions:
 - a. Consistency with the existing Juanita Beach Park Master Plan (see Attachments 4 and 24)
 - b. Compliance with the Washington Administrative Code burden of proof standards for Shoreline Variance Permits (see pages 7-13, Section II.E).
 - c. Compliance with applicable Comprehensive Plan Policies (see pages 13-20, Section II.F).
 - d. Compliance with Shoreline Master Program (see pages 20-41, Sections II.G through II.P).

B. RECOMMENDATIONS

Based on Statements of Fact and Conclusions (Section II), and Attachments in this report, we recommend approval of this application subject to the following conditions:

1. This application is subject to the applicable requirements contained in the Kirkland Municipal Code, Zoning Code, and Building and Fire Code. It is the responsibility of the applicant to ensure compliance with the various provisions contained in these ordinances.
2. Prior to construction, the applicant shall install temporary six-foot tall construction-phase chain link fence with silt screen fabric along the entire limits

- of construction area as proposed (see Conclusion II.J.16).
3. Upon completion of the development project, the applicant shall install the proposed mitigation plantings, the required split rail fencing, and enter into the five-year monitoring and maintenance period as proposed (see Conclusions II.J.18 and II.L.8).
 4. The applicant shall continue the required monitoring and maintenance of the Phase I permit standards in accordance with the recommendations proposed by The Watershed Company (see Conclusion II.J.18).
 5. The applicant shall follow the approved project plans, including the mitigation and erosion control plans (see Conclusion II.J.16 and II.L.6).
 6. Prior to the issuance of any building or land surface modification permit, the application shall submit the necessary approvals from state and federal agencies to the Planning and Building Department (see Conclusion II.P.2)
 7. The applicant shall follow the proposed application plans and BMPs of KZC 83.480 for all aspects of the development project, including the roadway expansion improvements, the mitigation planting area, and the monitoring and maintenance of the mitigated plantings (see Conclusion II.O.2).

II. FINDINGS OF FACT AND CONCLUSIONS

A. SITE DESCRIPTION

1. Site Development and Zoning:
 - a. Facts:
 - (1) Size: Juanita Beach Park encompasses approximately 22 acres and is divided into two sections by NE Juanita Drive. The northern portion includes ball fields, tennis courts, open grass fields, and a small parking area. The southern portion contains the existing bathhouse, playground, swimming beach, amphitheater, pedestrian pathways, parking lot, and shoreline promenade. While Juanita Creek and some associated wetlands span the entire park property, only the southern portion is located along the shores of Lake Washington. The proposed restoration and mitigation planting associated with the project impacts are located both within the Juanita Beach Park site and at an offsite location adjacent to 98th Avenue within the Juanita Bay Park open space area (see Attachment 3). The total area of proposed disturbance for the park redevelopment under Phase II is approximately 60,000 square feet. The disturbed area includes the demolition of existing improvements, installation of new structures, and mitigation plantings within the construction area identified in Attachment 2.
 - (2) Land Use: Public Park
 - (3) Zoning: Park Zoning (P), (Chapter 45 KZC)
 - (4) Shoreline Designation: Urban Mixed (UM) and Urban Conservancy (UC) (see Attachment 5)
 - (5) Terrain and Vegetation: Juanita Beach Park is split by NE Juanita Drive into two distinct areas, both by existing facilities and by terrain and vegetation. The northern portion of the site is generally open, with grassy fields occupied by well-spaced shade trees, and a segment of Juanita Creek in the northwest corner of the property. The stream buffer to Juanita Creek includes several

trees and understory vegetation.

The southern half of the park, where all the proposed development is to be located contains a mix of critical and developed areas. This portion of the park contains five wetlands of varying classifications along with Juanita Creek and the shoreline of Lake Washington. The western half of this section of park contains the outlet of Juanita Creek into Lake Washington, an oxbow wetland, and other wetland areas both independent and directly associated with Juanita Creek. The entire site is generally flat, with a gradual overall grade sloping down from north to south, toward Lake Washington.

Vegetation: The vegetation within the proposed development site for the bathhouse replacement is primarily mowed grasses with a few existing trees (see Attachments 2 and 6). The existing protected areas adjacent to Juanita Creek to the west and Wetland E to the east of the development area contain native trees, shrubs and groundcover plantings installed as previous mitigation and restoration efforts associated with the Phase I park improvements. Some non-native and invasive species have been observed within the restorative planting areas and those areas are subject to 10 years of monitoring and maintenance, with 3 years remaining to meet approved performance standards (see Attachments 6, 7, 11, and 15).

- b. Conclusions: The size and zoning of the project area are not constraining factors in the review of the variance application. The presence of wetlands, Juanita Creek, existing improvements and the proximity to Lake Washington are constraining factors on the application and are the basis for the shoreline variance proposal.

2. Neighboring Development and Zoning:

- a. Facts: The neighboring properties are zoned as follows and contain the following uses:
 - (1) North:
 - (a) RM 2.4, Residential Multifamily
 - (b) JBD 6, Residential Assisted Living
 - (2) East:
 - (a) JBD 1, commercial, office, and residential
 - (b) JBD 5, Residential Multifamily
 - (3) West: RM 1.8, Residential Multifamily
- b. Conclusion: The neighboring development and zoning are not constraining factors in the review of this application.

B. HISTORY

1. Facts:

Juanita Beach Park was established around 1917, a result of the lowering of Lake Washington from the installation of the Montlake Cut and the connection of Lake Washington with the Puget Sound through the ship canal and Hiram Chittenden Locks. Over the past 100 years, the park has operated under both private and public ownership. The original site functioned as a private beach destination until

it was purchased by King County in 1965. The current bathhouse was constructed around 1965, and the park has been operating with the existing facility ever since (see Attachment 4 and 8).

King County Parks owned and maintained the park until it was purchased by the City of Kirkland in 2002. The historical aerial imagery illustrates the beach was primarily sand, from the eastern extent of the park boundary to the mouth of Juanita Creek. Since the park was purchase by the City, extensive habitat enhancement has been installed throughout the park, including within the former beach area (see Attachments 6 and 8).

In 2006, the Master Plan for the Park was approved by City Council under Resolution R-4570 (see Attachments 3 and 9). In 2009, the Parks Department received approval to begin development of the first phase of the redevelopment process. Through the Phase I installation, several pedestrian trails, open space features, and wetland enhancement and mitigation projects were completed. Phase I was completed in 2010 and included improvements impacting three wetlands, a reduction of Wetland E buffer, creation of a new oxbow marsh, rehabilitation of Juanita Creek and related compensatory mitigation.

In 2017, the City of Kirkland Parks Department applied for three shoreline variances to redevelop the bathhouse within the inner 50% of the wetland A buffer, and to fill wetlands C and D, under file SHR17-00775. The Planning Department administered the applicable code evaluation and recommended approval of the application with conditions before the Hearing Examiner. The initial hearing commenced on May 30, 2018, with a continued hearing on June 21, 2018. On June 28, 2018, the Hearing Examiner issued a denial of the Parks Department's requested variances. While the City of Kirkland Parks Department filed an appeal of that decision, for technical reasons, the Washington State Shoreline Hearings Board determined the City of Kirkland Parks Department did not have standing in the case and was therefore unable to complete any appeal with the Board. The Parks Department has submitted the current proposal with what the Planning Department has determined are significant changes that address the alleged deficiencies noted in the June 28, 2018 denial. For instance, the revised submittal increases the mitigation plan, proposes removal of harmful pre-existing structures within the buffer of wetland A, proposes adjustment of pedestrian access to reduce foot-traffic in the buffer of wetland A, and updates the Parks Department's response to the variance criteria with additional materials and supportive documentation.

2. Conclusion: The history of Juanita Beach Park and all associated improvements on the site is not a constraining factor in the review of this application.

C. PUBLIC COMMENT

The formal public comment period for the project ran from February 28, 2019 to April 1, 2019. Pursuant to KZC 150.35, a Process IIA Staff Report must include all comments received by the City prior to distribution of the staff report. The Planning Department received a total of 15 comments on the project, included as Attachment 10. The majority of the comments received were in support of the proposal. A summary of the comments in opposition are included below in based on theme, followed by staff response.

Phase I mitigation success: Karen Walter with the Muckleshoot Indian Tribe Fisheries Division requested detailed information related to the mitigation installation in the oxbow marsh as part of Phase I.

Staff Response: The City of Kirkland Parks Department has continued to monitor and maintain the advanced mitigation created under Phase I of the Master Plan redevelopment process, with permits in 2009. The mitigation was installed in 2012 and has continued to be monitored for the 10 year requirement under the Sensitive Area Decision, file MIS09-00002 #1 (Attachment 15). The year-seven report was recently completed and included recommendations from the City's consulting biologist (see Attachment 11 and Section II.J.18 below). The Parks Department is required to continue monitoring the mitigation areas under the Phase I approvals and the recommendations of this application.

Avoid Wetland Encroachment: There is plenty of space in the park to avoid the encroachment into the wetland.

Staff Response: Information related to avoidance is located in the No Net Loss Mitigation Sequencing section of the staff report, Section II.M and the variance criteria from the WAC code analysis found in section II.E.3. An illustration of the site conditions and impacts of the critical areas and associated buffers can be found as Attachment 12. The illustration shows the location of all critical areas, their associated buffers, and buffer setbacks. Taking into consideration all the encumbrances, approximately 10,000 square feet of buildable area in a unique and essentially parallel configuration would be possible. The applicant has identified that strict application of all buffers and critical areas would prohibit redevelopment of the site. The applicant has proposed a design that balances the priorities of the public in the Master Plan design, the priorities of the State Shoreline Management Act providing access to the shoreline, and the site conditions.

Relevance of 13-year-old Master Plan: The original plan means nothing especially if the plan was not taking into consideration environmental impacts of our shore and wetlands.

Staff Response: The City Parks Department developed the Juanita Beach Park Master Plan through a collaborative process that spanned several years, including various public agencies, organizations, Citizen Advisory teams, and other members of the public. The master plan is a long-range plan, intended to guide the development and maintenance of the park for decades. The master plan development incorporated assessment and review of each natural system impacting the park.

Safety and Design: The new design creates a more closed off area to the south of the bathhouse and towards the volleyball courts. The current building position provides a wide-open space on the lakeside and doesn't give any illusion of privacy.

Staff Response: The Parks Department and Capital Improvement Project engineers worked with design professionals to implement Crime Prevention Through Environmental Design (CPTED) principles in the development of the park plan. The design is consistent with the CPTED principles and will create a more open space with better sight lines from the surrounding right-of-way, parking lot, driveway, and pedestrian paths. CPTED principles are internationally recognized for designing safe spaces. See discussion sections II.J.17, II.L.7 below.

Design and Placement of Bathhouse concerning height: A neighbor's primary concern is the height of the proposed new bathhouse. The design incorporates a peaked roof, which is not appropriate for the flat roof designs in the area. Request to restrict the building of any structure in the park to one

story with a flat roof.

Staff Response: According to the Master Plan design, the location and structure design of the current application are relatively consistent with the original design created through the public outreach process (see Attachment 4). The bathhouse structure is a single-story building, with a narrow profile relative to the north-south axis, where the dominant view corridors from the abutting Juanita Drive right-of-way exist.

Impact on views: Neighbor across the street is concerned about the placement of the proposed structure and the impact on views.

Staff Response: The location of the building is consistent with the master plan design and is proposed to be screen by existing trees located along the western end of the parking lot. The area between the proposed bathhouse and Juanita Creek will be vegetated with buffer mitigation plantings, primarily consisting of shrubs and ground cover. The planting design is intended to maintain existing view corridors from the adjacent right-of-way and Lake Washington.

D. STATE ENVIRONMENTAL POLICY ACT (SEPA)

SEPA THRESHOLD DETERMINATION

1. Fact: A Determination of Nonsignificance (DNS) was issued on May 1, 2018. The Determination is included as Attachment 13.
2. Conclusion: The City has satisfied all the procedural requirements for SEPA.

E. APPROVAL CRITERIA

1. SHORELINE VARIANCES

- a. Facts: The Hearing Examiner may recommend approval of a proposed shoreline variance permit only if:
 - (1) Pursuant to Kirkland Zoning Code section 141.70.3.d, the application is consistent with the Washington Administrative Code sections WAC 173-27-140 and 173-27-170, and
 - (2) Pursuant to Kirkland Zoning Code section 150.65, the application is consistent with all the applicable development regulations and, to the extent there is no applicable development regulation, the Comprehensive Plan; and it is consistent with the public health, safety, and welfare.
- b. Conclusion:
 - (1) The proposal complies with Kirkland Zoning Code section 141.70.3 and is consistent with the applicable Washington Administrative Code sections 173-27-140 and 173-27-170 (see Sections II.E.2-3 and Attachments 6 and 17).
 - (2) The proposal is consistent with the Comprehensive Plan Shoreline Area chapter (see Section II.F). With the recommended conditions of approval, it is consistent with the applicable development regulations of the Zoning Code and the Shoreline Master Program (see Sections II.G through II.P).

2. **WAC 173-27-140 REVIEW CRITERIA FOR SHORELINE DEVELOPMENT**

- a. Facts: WAC 173-27-140 establishes the general review criteria under which the City may issue a permit for development on the shoreline. The criteria are listed below with staff response following the applicant's

response to applicable criteria which may be found in Attachments 6 and 17.

- (1) *No authorization to undertake use or development on shorelines of the state shall be granted by the local government unless upon review the use or development is determined to be consistent with the policy and provisions of the Shoreline Management Act and the master program.*

Staff Response: The proposed application is consistent with the Kirkland Shoreline Master Program (see Sections II.G-P). The Kirkland Shoreline Master Program was reviewed and approved for consistency with the Shoreline Management Act by the Department of Ecology on July 26, 2010. The application is consistent with both the Shoreline Master Program and Shoreline Management Act.

- (2) *No permit shall be issued for any new or expanded building or structure of more than thirty-five feet above average grade level on shorelines of the state that will obstruct the view of substantial number of residences on areas adjoining such shorelines except where a master program does not prohibit the same and then only when overriding considerations of the public interest will be served.*

Staff Response: The project includes the redevelopment of single-story bathhouse and picnic pavilion structures, with a maximum height of 17'-6" feet above ground level (see Attachment 14). The proposal is consistent with this criterion.

b. Conclusion: The proposal complies with WAC 173-27-140.

3. **WAC 173-27-170 REVIEW CRITERIA FOR VARIANCE PERMITS**

a. Facts: *WAC 173-27-170 establishes the criteria that must be met for a variance permit to be granted. The purpose of a variance permit is strictly limited to granting relief from specific bulk, dimensional or performance standards set forth in the applicable master program where there are extraordinary circumstances relating to the physical character or configuration of property such that the strict implementation of the master program will impose unnecessary hardships on the applicant or thwart the policies set forth in RCW 90.58.020.*

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

Staff Response: The applicant has identified the need for the replacement of the bathhouse facility, installation of picnic pavilions, and the filling of two onsite wetlands in order to maintain adequate open space for active and passive recreational opportunities at Juanita Beach Park. This phase of

the Master Plan improvements will benefit not just local residents, but residents throughout the region.

The proposal to locate the replacement bathhouse structure within the critical area buffer of Wetland A and allow for the filling of Wetlands C and D is the minimum amount necessary to allow adequate space for the variety of active and passive recreational opportunities at the park, as well as maintain both visual and physical access to the publicly owned shoreline of Lake Washington.

The proposal satisfies several of the guidelines outlined in RCW 90.58.020, namely recognizing and protecting the statewide interest over local interest; preserving the natural character of the shoreline; increasing public access to publicly owned areas of the shorelines; and increasing recreational opportunities for the public in the shoreline. The proposed project will increase wetland buffer plantings through mitigation between Wetlands A and B, as well as increase habitat and overall ecological functionality of Wetland A through mitigation plantings along the west side of the proposed bathhouse (see Attachment 3 and 6). The project will also increase the existing forested wetland immediately adjacent to 98th Avenue NE within the Juanita Bay Park wetlands as mitigation for the proposed filling of Wetlands C and D on the subject property (see Attachment 3 and 6).

The combination of the proposed variance activities is consistent with the policies outlined in RCW 90.58.020 and will provide the public opportunity to enjoy the physical and aesthetic qualities of the shoreline and the surrounding natural areas of Juanita Beach Park. Through the approval and development of the proposed improvements, the public interest will suffer no substantial detrimental effect. The public interest will be enhanced through improved access, both visual and physical, to the shores of Lake Washington with the proposed development and ecological mitigation.

- (2) *Variance permits for development and/or uses that will be located landward of the ordinary high water mark (OHWM), as defined in RCW 90.58.030 (2)(b), and/or landward of any wetland as defined in RCW 90.58.030 (2)(h), may be authorized provided the applicant can demonstrate that all of the following criteria are met.*
- (a) *That the strict application of the bulk, dimensional or performance standards set forth in the applicable master program precludes, or significantly interferes with, reasonable use of the property;*

Staff Response: Existing improvements on site, including the location of the parking lot, pathways, community commons area plus the location of the shoreline, wetlands and streams limit the possibility of locating the bathhouse in a reasonable position on the southern portion of Juanita Beach Park (south of Juanita Drive). Complete compliance with all buffer standards and setbacks would place the bathhouse, playground, and picnic pavilions in the center of the active grass recreation area well upland of the swimming beach area (see Attachment 12). Additionally, the adherence to all buffers, associated buffer setbacks, and vegetative buffer standards established by applicable Kirkland Codes (KZC 83.500) would prevent the proposed enhancement of Juanita Beach Park and would interfere with the Parks Department mission to provide access to the open space and the shores of Lake Washington as previously approved under the Master Plan. Furthermore, design of the structures in the reduced areas would prevent the Parks Department from incorporating Crime Prevention Through Environmental Design (CPTED) principles, which are internationally recognized standards that create safe and active public spaces (see Discussion sections II.J.17 and II.L.7).

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

Staff Response: The hardship is related to the location of the existing improvements, the natural features on the site, and because the property is a public park intended to provide access for residents to common open space along the shoreline of Lake Washington. The development area as shown on sheet 1 of Attachment 2, illustrates that the site is restricted to the north by the existing parking lot and several significant trees, to the west by Juanita Creek and an associated wetland (Wetland A), to the south by Wetlands C and D and the shores of Lake Washington, and to the east by Wetland E. Compressing the replacement bathhouse, playground, picnic pavilions, and open lawn space into a central location would not satisfy the needs of the public. The proposal will improve all around access to the park and provide for a vibrant, safe, and pleasant experience where the public can enjoy the natural surroundings. The proposal follows the goals of the City of Kirkland

Park Master Plan and aligns with the Comprehensive Plan Shoreline Area Chapter goals and policies (see Section II.F).

- (c) *That the design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and shoreline master program and will not cause adverse impacts to the shoreline environment;*

Staff Response: The proposed redevelopment of the bathhouse and installation of new picnic pavilions is compatible with other existing and proposed uses in the area. The redevelopment of Juanita Beach Park has been planned since the 2006 approval of the Master Plan by City Council under Resolution R-4570 (see Attachments 4 and 9). The existing park provided recreation, open space, and natural habitat areas for residential, commercial, and transit uses in the area and is compatible with Comprehensive Plan Policies and the Shoreline Master Program as outlined below in Sections II.F through II.P. The proposal will not cause adverse impacts to the shoreline environment.

- (d) *That the variance will not constitute a grant of special privilege not enjoyed by the other properties in the area;*

Staff Response: Juanita Beach Park is a heavily used regional park in the Kirkland area. The park is one of only three beach parks with designated swimming areas in the City of Kirkland. In order for the park to provide water enjoyment opportunities, the failing bathhouse must be replaced with a facility that can serve the surrounding public into the future, allowing enjoyment of the shoreline for a substantial number of people. In order to allow the development and provide the general public access to the shoreline, the variance to relocate into the wetland buffer and to fill the existing wetlands is necessary. The variance will not constitute a grant of special privilege.

- (e) *That the variance requested is the minimum necessary to afford relief; and*

Staff Response: The proposed development plan is the minimum necessary to provide relief from the buffer and wetland standards of the Shoreline Master Program, in order to remain consistent with the Master Plan design and provide adequate public access to the highly used park facility.

Page 1 of Attachment 12 illustrates the location of all critical areas, their associated buffers, and buffer setbacks. Taking into consideration all the encumbrances shown in Attachment 12, approximately 10,000 square feet of buildable area would be possible in a unique configuration. The area illustrated represents the strict application of all buffers and critical areas and would prohibit redevelopment of the site consistent with the Master Plan and goals of the Parks Department. The proposal attempts to effectively serve the public and provide reasonable access to the shoreline for necessary water-dependent uses and water-oriented facilities.

Page 2 of Attachment 12 illustrates the location of all critical areas with their associated buffers reduced by 25%, and the buffer setbacks. The reduced encumbrances provide an area of approximately 12,700 square feet of buildable area.

The proposed development areas of the replacement bathhouse, picnic pavilions, playground, and open lawn space are designed to be the active park space adjacent to the shoreline, providing direct physical access to Lake Washington.

The total site disturbance area illustrated in Attachment 3 includes the entire site development and restoration around the construction zone. The proposed location of the bathhouse and filling of wetlands C and D provide the minimum area necessary to satisfy the project requirements for this phase of the Juanita Beach Park Master Plan renovations and to provide adequate space for the current and projected future public use of the park.

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

Staff Response: Through the proposal, the public will benefit from increased recreational facilities, access to Lake Washington, and other active and passive outdoor park spaces. The proposed development is the final stage in the multi-decade park master plan that incorporated extensive public outreach and input. The Master Plan was developed and designed to serve the public for future decades, considering the environmental conditions, recreational needs, and community character. The design of the master plan included as Attachment 4,

illustrates the outcomes of the public process to redevelop the park.

The applicant has proposed to provide mitigation within the subject property and at an offsite location within the park system (see Analysis Sections II.F through II.P below). The mitigation planting and restoration will rehabilitate the surrounding natural areas adjacent to the site disturbance and improve the overall ecological function along the shoreline. The public interest will suffer no substantial detrimental effect and will be enhanced by providing improved public access and utilization of the shoreline while substantially enhancing the shoreline environment over existing conditions.

- b. Conclusion: The proposal complies with WAC 173-27-170.

F. COMPREHENSIVE PLAN

1. Facts:

- a. Pursuant to KZC 150.65, where no applicable development regulation exists, the proposal must be consistent with the Comprehensive Plan policies.
- b. Kirkland Zoning Code section 83.40 establishes the relationship between the SMP and Comprehensive Plan, stating that the policies within the Shoreline Area chapter of the Comprehensive Plan establish intent for the supporting regulations in the SMP.
- c. The following is a list of the applicable policies for the proposal found in the Shoreline Area and Juanita Neighborhood chapters of the Comprehensive Plan, followed by staff response:
 - (1) **Policy SA-2.2:** *Designate properties as Urban Conservancy to protect and restore ecological functions of open space, floodplain and other sensitive lands, while allowing a variety of compatible uses. This type of designation would be appropriate for many of the City's waterfront parks. The following management policies should guide development within these areas:*
 - (a) *Allowed uses should be those that preserve the natural character of the area and/or promote preservation and restoration within critical areas and public open spaces either directly or over the long term.*
 - (b) *Restoration of shoreline ecological functions should be a priority.*
 - (c) *Development, when feasible, should be designed and located to preclude the need for shoreline stabilization, flood control measures, native vegetation removal, or other shoreline modifications.*
 - (d) *Public access and public recreation objectives should be implemented whenever feasible and significant ecological impacts can be mitigated.*

- (e) *Water-oriented uses should be given priority over nonwater-oriented uses. For shoreline areas adjacent to commercially navigable waters, water-dependent uses should be given highest priority.*
- (f) *Commercial and industrial uses, other than limited commercial activities conducted accessory to a public park, should be prohibited.*

Staff Response: Juanita Beach Park has two separate shoreline designations for the two markedly different sections of the park. The eastern majority of the park is located within the Urban Mixed shoreline environment, while the western portion is designated Urban Conservancy. Phase I initiated the protection and natural improvement of the Urban Conservancy section of the park with the installation of the Oxbow wetland and mitigation planting along the western sandy beach area (see Attachment 15). The proposed removal of the western asphalt pathway and installation of mitigation plantings between the new bathhouse and along the perimeter of the beach volleyball courts continue the improved natural area started under Phase I of the Park Master Plan design. Installation of the mitigation planting areas in place of grass and impervious surfaces restore ecological function according to the proposed compliance analysis by Shannon and Wilson, Inc. and confirmed by The Watershed Company. The proposed plans do not remove any native vegetation and incorporates all existing trees in the design. Public access and recreation opportunities are maintained and improved with the proposed plan, accounting for ecological impacts through mitigation (see Sections II.J-P). The swimming beach is the primary and dominant use of the park, defined as a water-dependent use (see Section II.G). As a water-dependent use, the proposed redevelopment falls under the overarching definition of a water-oriented use and should be given priority over non-water-oriented uses. The proposal is consistent with this policy.

- (2) **Policy SA-2.5:** *Designate properties as Urban Mixed to provide for high-intensity land uses, including residential, commercial, recreational, transportation and mixed-use developments. The following management policies should guide development within these areas:*
 - (a) *Manage development so that it enhances and maintains the shorelines for a variety of urban uses, with priority given to water-dependent, water-related and water-enjoyment uses. Nonwater-oriented uses should not be allowed except as part of mixed-use developments, or in limited situations where they do not conflict with or limit opportunities for water-oriented uses or on sites where there is no direct access to the shoreline.*
 - (b) *Visual and physical access should be implemented whenever feasible and adverse ecological impacts can be avoided. Continuous public access along the shoreline should be provided, preserved or enhanced.*
 - (c) *Aesthetic objectives should be implemented by means such as sign control regulations, appropriate development*

siting, screening and architectural standards, and maintenance of natural vegetative buffers.

Staff Response: The subject property contains two different Shoreline Designations, with the boundary between the Urban Conservancy and Urban Mixed Environments being situated approximately along the western edge of the current playground and proposed bathhouse location. The proposed redevelopment of the bathhouse and active use areas (playground, grass spaces, and picnic pavilions), enhances the water-dependent and water-enjoyment uses of the site and maintains both physical and visual access to the shoreline, while avoiding through design and mitigation, any adverse ecological impacts.

- (3) **Shoreline Area Chapter, Policy SA-7.4:** *The shoreline area of the Juanita Business District presently contains a mix of retail, office and residential uses. Visual linkages to the lake in the Juanita Business District are limited, with existing development blocking most of the shoreline. Waterfront access trails are missing in several key locations, limiting access between Juanita Bay Park and Juanita Beach Park, which border the Business District on the north and south.*

The ability to enhance physical and visual access to the lake is challenging in this area. Several of the shoreline properties are developed with residential condominiums, which are unlikely to redevelop. Some of the commercial properties are significantly encumbered by wetlands that are associated with Lake Washington. Should properties redevelop in this area, public access should be required as a part of redevelopment proposals, where feasible.

Despite these challenges, future redevelopment along the shoreline in the Juanita Business District should emphasize Juanita Bay as a key aspect of the district's identity, highlighting recreational opportunities available at Juanita Beach Park and providing better visual and pedestrian connections to both Juanita Bay and Juanita Beach Park and Lake Washington.

Staff Response: The proposed design of the bathhouse and picnic pavilion structures explored the impacts of views from NE Juanita Drive, south to the shoreline of Lake Washington through the Master Plan public process. The orientation of the bathhouse on a north-south axis, plus the open design of the picnic pavilions provides considerable view opportunities from the public right-of-way and adjacent properties (see Attachments 2, 4, and 16). The design also maintains the existing pedestrian trail system, which is heavily used by the public. The proposed design of the structures and pedestrian pathways improves visual and physical access to the shoreline and is consistent with Shoreline Area Chapter Policy SA-7.4.

- (4) **Policy SA-10.3:** *Limit Land Surface Modification activities in the shoreline area.*

Staff Response: Each phase of the Juanita Beach Park Master Plan development process has proposed limited disturbance in only those areas proposed for improvement. Phase II of the

redevelopment plan proposes disturbance will only take place in the centrally located space identified in Attachments 2 and 3.

- (5) **Policy SA-12.1:** *Include provisions for shoreline vegetation restoration, fish and wildlife habitat enhancement, and low-impact development techniques in projects located within the shoreline, where feasible.*

Staff Response: The proposed park Master Plan has incorporated the development of natural areas in the oxbow marsh, the installation of wetland and wetland buffer enhancements along Juanita Creek, and the establishment of protected wetland area along the eastern extent of the property where wetland E is located (see Attachment 15). The park Master Plan separates the natural and more intensive active areas of the park along the boundary between the Urban Conservation and Urban Mixed shoreline environments discussed in section II.G below. The park has included low impact development features in the new parking lot and bioswale installation as part of Phase I (see Attachment 15). Phase II includes the further expansion of the buffer along Juanita Creek, and a bioswale along the west side of the bathhouse, designed to treat runoff from new and replaced impervious surfaces (see Attachment 2).

- (6) **Policy SA-13.1:** *Conserve and protect critical areas within the shoreline area from loss or degradation.*

Staff Response: Both Phase I and Phase II of the Juanita Beach Park Master Plan proposed to protect and maintain the critical areas surrounding the shoreline, Juanita Creek, the created oxbow marsh wetland, and wetland E, through monitoring and maintenance agreements and the installation of protective fencing intended to delineate and educate the boundary of the critical areas. The Parks Department is currently in year seven of the monitoring and maintenance of the Phase I critical area mitigation improvements and will continue pursuant to applicable codes and performance standards.

- (7) **Policy SA-13.2:** *Locate and design public access within and adjacent to critical areas to ensure that ecological functions are not impacted.*

Staff Response: The oxbow marsh and Juanita Creek area along the western extent of the park contain pedestrian trails and educational placards, providing public access to the critical area in limited capacity. Phase II proposes to remove the existing asphalt trail, totaling approximately 3,100 square feet, along the western active space and replace with 12,822 square feet of mitigation planting and a bioswale installation, further expanding the buffer area along Juanita Creek and the associated wetland A (see Attachment 2). Public access to the shoreline promenade and existing overwater pier pathway will continue to be accessed by the public through the more active designed space adjacent to the playground and eastern façade of the bathhouse. The new path will be separated from the buffer plantings by the building and will

increase the distance between the critical area and the public access and active park space.

- (8) **Policy SA-13.4:** *Protect and manage shoreline-associated wetlands.*

Staff Response: Wetland A, E, and the oxbow marsh will be monitored and maintained as required under the Phase I and the proposed Phase II development actions. The City of Kirkland Parks Department has continued to monitor and maintain the oxbow marsh wetland enhancements installed under Phase I and will continue to protect and manage into the future. All protected wetlands are maintained pursuant to the Critical Area Ordinance and Shoreline Master Plan regulations regardless of development activity.

- (9) **Policy SA-13.5:** *Protect and restore critical freshwater habitat.*

Staff Response: Juanita Creek and all the critical area habitat in the form of wetlands at Juanita Beach Park are proposed to be protected with the exception of wetlands C and D which are low functioning grassy wetlands located within active park space.

- (10) **Policy SA-18.1:** *Acquire, develop, and renovate shoreline parks, recreational facilities, and open spaces that are attractive, safe, functional, and respect or enhance the integrity and character of the shoreline.*

Staff Response: The proposed redevelopment and update to the facilities and natural features of Juanita Beach Park is consistent with this policy.

- (11) **Policy SA-18.5:** *Ensure that development of recreational uses does not adversely impact shoreline ecological functions.*

Staff Response: The park master plan has included habitat restoration and enhancement in both Phase I and Phase II. Phase I saw the bulk of the onsite habitat restoration and delineation of existing and created wetlands onsite (see Attachment 15). Both Phase I and this current application have been evaluated by the City's consulting biologist, The Watershed Company, for consistency with the applicable Critical Area Ordinance and Shoreline Master Plan codes, ensuring no adverse impacts are imposed on the critical areas and shoreline (see Sections II.J-M below).

- (12) **Policy SA-19.1:** *Manage natural areas within the shoreline parks to protect and restore ecological functions, values and features. Kirkland is fortunate to have two of Lake Washington's largest and most important wetland and wildlife resources in its public park system: Juanita Bay Park and the Yarrow Bay wetlands, both of which have been mapped as priority wetlands by the Washington Department of Fish and Wildlife (WDFW). Both the Yarrow Bay wetlands and Juanita Bay Park extending up Forbes Creek corridor provide excellent habitat for birds, amphibians, mammals and*

reptiles. The outlets for three of the most prominent streams within the City, Juanita Creek, Forbes Creek and Yarrow Creek, are also located within the City's shoreline parks. These streams are known to support salmonids. In addition, the Forbes Creek corridor has been designated by WDFW as a priority "riparian zone" due to its high fish and wildlife density, species diversity, important fish and wildlife breeding habitat, important wildlife seasonal ranges, high vulnerability to habitat alteration, and presence of unique or dependent species. Preserving wildlife habitat, water quality, and forested areas is an important aspect of good park resource management. The existence of these natural areas also offers a variety of opportunities for aesthetic enjoyment, and passive and low-impact recreational and educational activities.

Staff Response: While Juanita Creek and its associated wetland within the Juanita Beach Park property is not listed as one of Lake Washington's significant wetlands, the enhancement work, both existing and proposed, provides improved ecological functions, values, and features to the Lake Washington environment. The mitigation proposed to offset the fill of Wetlands C and D on the subject property is located within Juanita Bay Park, one of the largest wetlands and wildlife resources on Lake Washington. The proposed wetland and wetland buffer mitigation planting plans are consistent with Shoreline Area Policy SA-19.1.

- (13) **Policy SA-20.3: Incorporate salmon-friendly landscape design practices in shoreline parks.** *Opportunities exist to improve nearshore native vegetation in a number of shoreline parks, including Juanita Beach Park, Waverly Beach Park, the Lake Avenue West street end park, Marina Park, David E. Brink Park, Settler's Landing, Marsh Park, and Houghton Beach Park. Restoration activities could include such practices as native plant buffers at the shoreline edge, control of noxious and invasive species, implementation of sound horticultural practices, use of Integrated Pest Management (IPM) techniques, organic fertilizers, and natural lawn care practices.*

Staff Response: The proposed mitigation and restoration planting plan increases onsite buffer plantings adjacent to Juanita Creek, Wetlands A and B, and offsite mitigation plantings within wetlands adjacent to 98th Avenue NE in Juanita Bay Park (see Attachment 2). All mitigation plantings are located within the shoreline management area, 200 feet from OHWM, and will improve ecological buffer function according to the applicant's biological study and supported by the City's consulting biologist (see discussion sections II.J-M). The application is consistent with Shoreline Area policy SA-20.3.

- (14) **Policy SA-20.5:** *Control non-native species which impact Kirkland's shoreline.*

Staff Response: The wetland enhancement, wetland creation, and buffer restoration completed with the Phase I portion of the

park master plan project was required to monitor and maintain the area for performance as well as invasive and non-native species. The most recent monitoring report identifies the presence of invasive plants in the restored areas and recommendations for compliance with the monitoring standards were included by the City's consulting biologist, The Watershed Company (see Attachment 11). The City of Kirkland Parks Department, through the Kirkland Green Partnership, performs regular maintenance of all parks, removing invasive plants and maintaining park grounds.

- (15) **Policy SA-23.1:** *Provide a public access system that is both physical and visual, utilizing both private and public lands, consistent with the natural character, private rights and public safety.*

Staff Response: Juanita Beach Park contains a public access trail that winds through the park, from east to west, along the shoreline and out into Lake Washington along a boardwalk, and through the oxbow marsh and Juanita Creek area over several pedestrian bridges. The proposal will remove and relocate the asphalt pathway along the western edge of the active park area adjacent to the playground. The replacement path will be located along the east side of the new bathhouse structure, designed to provide additional separation between the active space and natural space at the western end (see Attachments 2 and 3).

- (16) **Policy SA-23.2:** *Enhance and maintain pedestrian and bicycle infrastructure within the shoreline area.*

Staff Response: The current Master Plan and proposed application maintain and enhance the pedestrian and bicycle infrastructure on the property.

- (17) **Policy SA-26.1:** *Preserve public view corridors along the City's street networks and public parks.*

Staff Response: The proposed design, orienting the building perpendicular to the shoreline and maintaining the grassy open space in the active area around the playground, provides view corridors from the adjacent right-of-way and from within the park.

- (18) **Juanita Neighborhood, Open Space and Parks (Section 6).** *Juanita Beach Park was developed under a master plan and is developed with a swimming beach, play structures, restroom and launches for non-motorized boats. Juanita Creek and associated wetlands located within the Park underwent restoration as part of the master plan. Continued implementation of the park master plan should occur, including new restrooms and concessions shelter near the shoreline, and a skate park and playfield on the*

north side of Juanita Drive.

Staff Response: The proposed improvements requested under this variance application consist of the previously approved Master Plan design, developed through community and neighborhood involvement in 2006. The proposal is consistent with the stated goals for continued development of the Master Plan for Juanita Beach Park.

2. Conclusion: All these policies provide support for both the public to gain and maintain access to the shoreline resources in a variety of ways, as well as ensuring environmental protection of the ecological functions of the shoreline. The proposal, with staff recommended conditions, is consistent with the policies of the relevant chapters of the Comprehensive Plan.

SHORELINE MASTER PROGRAM (SMP) KZC 83

The following sections, II.G through II.P, provide facts and conclusions for the proposed project relative to the applicable Shoreline Master Program standards located within Kirkland Zoning Code chapter 83.

G. 83.170 Shoreline Environments, Permitted and Prohibited Uses and Activities

1. Facts:
 - a. KZC 83.170 identifies the uses or activities allowed within each Shoreline Environment along the shores of Lake Washington.
 - b. The proposed development at Juanita Beach Park is located within both the Urban Conservancy and Urban Mixed Shoreline Environments as identified on the Shoreline Environment Designation Map, adopted by ordinance and located for reference as Figure SA-1 in the Shoreline Area Chapter of the Kirkland Comprehensive Plan (see Attachment 5).
 - c. The boundary between the Urban Conservancy and Urban Mixed is located at the approximate western edge of the current playground, where the western façade of the bathhouse structure is proposed to be positioned (see Attachment 5). All proposed structures and improvements are to be located within the Urban Mixed Shoreline Environment area of the park. Pursuant to KZC 83.140, the Urban Mixed designation provides for high-intensity land uses that ensure active use of the shoreline areas.
 - d. Pursuant to KZC 83.170, water-dependent recreational uses are allowed within both the Urban Conservancy and Urban Mixed Shoreline Environment.
 - e. Pursuant to KZC 83.80.133, a water-dependent use is defined as a use or portion of a use that cannot exist in a location that is not adjacent to the water and that is dependent on the water by reason of the intrinsic nature of its operation.
 - f. The primary and overarching use at Juanita Beach Park is the swimming beach, which is inherently a water-dependent use. The park also contains ancillary recreational uses such as the playground, active and passive open space, natural trails, and volleyball courts.
 - g. The bathhouse provides restroom and changing facilities for swimmers, along with lifeguard and watercraft storage space.

- h. Public access piers or boardwalks, swimming beaches, and other water oriented recreational uses are considered water-dependent.
 - i. The park is existing, and the proposal is to relocate structures and add new recreational facilities. The proposed redevelopment of the bathhouse and associated improvements are considered water-dependent uses.
2. Conclusion: The proposed redevelopment of the existing park improvements is consistent with the permitted uses and activities standards of KZC 83.170.

H. 83.220 Parks within Shoreline Jurisdiction

1. Facts:
- a. KZC 83.220.8 states that recreation facilities that support non-water-related, high-intensity activities, such as basketball and tennis courts, baseball and soccer fields and skate parks, shall be located outside of the shoreline jurisdiction.
 - b. The existing park and established master plan maintain the tennis courts and baseball fields on the north side of NE Juanita Drive, outside of the shoreline jurisdiction.
 - c. The proposed bathhouse relocation, picnic pavilions, playground, and associated trails and picnic areas are lower intensity activities, designed to support water-dependent and water-oriented use access to Lake Washington.
 - d. Pursuant to KZC 83.220.9, fragile and unique shoreline areas with valuable ecological functions, such as wetlands, should be used only for non-intensive recreation activities, such as trails, viewpoints, and similar passive activities. Physical public access should be located, designed, and constructed to meet KZC 83.360 for no net loss of shoreline ecological functions.
 - e. The applicant is proposing to remove an existing asphalt path along the west side of the current grassy area immediately east of Juanita Creek and Wetland A. The pathway and lawn area will be replaced with 12,822 square feet of onsite mitigation planting (see Attachment 2). The proposal increases the buffer area surrounding Juanita Creek and Wetland A, separating the active space from the natural passive area and by replacing existing lawn and pathway structures, increases ecological function of the buffer (see discussion Sections II.L and II.M).
 - f. The applicant has submitted a no net loss ecological function evaluation with the application materials (see discussion Section II.M and Attachments 6 and 17).
2. Conclusion: The proposal complies with the requirements to locate high intensity activity areas outside of the shoreline jurisdiction. The applicant should follow the proposed plans for the lower intensity activities within the shoreline jurisdiction as proposed.

I. 83.500 Wetlands-General

1. Facts:
- a. The proposal includes development activity and mitigation planting work located within 200 feet of the OHWM of Lake Washington.

- b. Pursuant to 83.500.1, wetland and wetland buffers located within 200 feet of the OHWM of Lake Washington are under the jurisdiction of the Shoreline Master Program and are subject to the standards listed in 83.500.
 - c. Pursuant to 83.500.2, a wetland determination and delineation should be made following the criteria and procedures contained in the approved federal wetland delineation manual and applicable regional supplements.
 - d. In 2008 the City of Kirkland had Douglas Consulting complete a critical area a delineation report. The report identified the location of wetlands and the shoreline on the subject property. The current application includes an updated delineation report prepared by Shannon & Wilson (see Attachments 6 and 17). The report was reviewed by the City's contract biologist, The Watershed Company (See Attachment 7).
 - e. The delineation report identified the location and class of each wetland and their associated buffers. The wetland and buffer locations are located within the development area for the proposed Phase II improvements.
 - f. The wetland delineation report determined that several wetlands exist on the subject property (see Attachment 6). The following list includes all critical areas identified by Shannon & Wilson and have been confirmed by the City's contract biologist, The Watershed Company:
 - (1) Wetland A: Category II, 125-foot buffer;
 - (2) Wetland B: Category II, 125-foot buffer;
 - (3) Wetland C: Category III, 75-foot buffer (the western portion of formerly identified Wetland E under Phase I (see Attachment 15));
 - (4) Wetland D: Category IV, 50-foot buffer;
 - (5) Juanita Creek: Class A, 75-foot buffer.
 - g. The applicant is proposing to fill Wetlands C and D, relocate the bathhouse within the inner half of the buffer associated with wetland A, re-grade portions of the park to provide more active grassed space, and develop a series of connecting pathways between the existing and proposed improvements. The proposed improvements are located within the identified buffers of Wetlands A, C, and D.
 - h. The maximum buffer reduction option allowed in KZC 83.500.9 is 25% of the width of the buffer.
 - i. When an applicant is unable to comply with the general wetland buffer reduction standards of KZC 83.500.9, or when wetland fill is proposed, the provisions of KZC 83.500.12 apply, allowing for the submittal of a shoreline variance application pursuant to KZC 141.70.
2. Conclusions:
- a. The application complies with the wetland delineation and determination submittal standards of KZC 83.500.
 - b. The location of the proposed improvements within the inner half of the buffer for Wetland A and fill of wetlands C and D require the applicant to comply with the shoreline variance standards of KZC 83.500.12 (see Sections J through L below).

J. 83.500 Wetlands – Shoreline Variance for Wetland Fill

1. Facts:

- a. The applicant is proposing to fill two onsite wetlands that are completely located within existing grassy lawn areas maintained and mowed by the City Parks Department. The wetlands are identified as Wetlands C and D (see Attachments 5, 6, and 12).
- b. Wetland C was originally “paper filled” as part of the Phase I permitting and improvements and the paper filled wetland and its buffer were mitigated accordingly (see Attachment 15). However, the current wetland C area was not physically altered and remained. The current Phase II application is proposing to finalize the fill.
- c. The total fill area for both wetlands equals 8,180 square feet: 3,870 SF for Wetland C; and 4,310 SF for wetland D (see Attachments 6).
- d. Zoning Code Section 83.500.7 establishes that land surface modification proposed within a wetland must comply with the standard decisional criteria of 83.500.7(c) as well as the variance criteria of KZC 83.500.12.
- e. The applicant has submitted a report, prepared by a qualified professional, meeting the submittal requirements established by KZC 83.500.7(c) and 83.500.12.
- f. The applicant’s report has been reviewed by The Watershed Company, the City’s consultant. The Watershed Company has made recommendations to bring the applicant’s proposal into compliance with the approval criteria (see Attachment 7). Some recommendations from the original review by the Watershed Company have been incorporated into the current application, including the additional planting between the bathhouse and wetland A.
- g. Section II.J.3 through II.J.12 contain the staff findings of facts and conclusions based on the ten (10) standard decisional criteria related to wetland modifications established in KZC 83.500.7(c).
- h. Section II.J.13 through II.J.19 contain the staff findings of facts and conclusions based on the seven (7) variance criteria established in KZC 83.500.12.

2. Conclusion: Based on the following analysis in Sections II.J.3 through II.J.19, the application complies with both the standard wetland modification decisional criteria in KZC 83.500.7 and the criteria for a shoreline variance in KZC 83.500.12.

Standard Decisional Criteria:

3. Standard Decisional Criteria 1: The project demonstrates consideration and implementation of appropriate mitigation sequencing as outlined in KZC 83.490(2).

Fact: The applicant has submitted a mitigation sequencing response pursuant to the standards of KZC 83. The analysis is located within the No Net Loss Standard and Mitigation Sequencing pursuant to KZC 83.360 located below is Section II.M.

Conclusion: Based on the analysis located in Section II.M, the application complies with this criterion.

4. Standard Decisional Criteria 2: It will not adversely affect water quality.

Facts:

- a. Both Wetlands C and D currently consist of grass, providing moderate and low water quality function respectively (see Attachment 6, pages 8-11).
- b. The proposed fill of each wetland is for separate improvements. Wetland C will be replaced with a lawn open space, while Wetland D will be replaced with a portion of the new bathhouse structure and lawn area.
- c. The filling of Wetland C will not add any new pollution-generating impervious surfaces.
- d. The installation of the new bathhouse includes a new storm water facility, designed to treat water runoff from the building and. The storm water facility is comprised of a bio swale running along the western edge of the bathhouse and project site.

Conclusion: Water quality will not be adversely affected by the proposed development.

5. Standard Decisional Criteria 3: It will not adversely affect fish, wildlife, or their habitat.

Facts:

- a. Wetlands C and D and their associated buffers are currently lawn. Lawn areas do not provide significant ecological benefit to fish or wildlife.
- b. The project is designed to enhance the higher-functioning natural areas on the site by converting adjacent lawn areas to functioning buffer.

Conclusion: The proposed project will improve habitat within higher functioning wetland buffer areas. The application is consistent with this criterion.

6. Standard Decisional Criteria 4: It will not have an adverse effect on drainage and/or storm water detention capabilities.

Facts:

- a. The applicant is proposing to install new storm water detention facilities in the form of a bio-retention swale along the western edge of the new bathhouse structure, integrated within the buffer mitigation planting area (see Attachment 2).
- b. The proposal has been designed in accordance with the City's Stormwater code.

Conclusion: The project is consistent with City codes and design standards, and there will be no adverse effects on drainage or Stormwater detention capabilities

7. Standard Decisional Criteria 5: It will not lead to unstable earth conditions or create an erosion hazard or contribute to scouring actions.

Facts:

- a. The area proposed for development is generally flat with an average slope of less than one percent. There are no known steep slopes or landslide hazards on the site.
- b. The project includes use of best management practices (BMPs), including

appropriate stabilization measures to minimize erosion during development activity.

- c. The proposal includes use of surface water drainage facilities such as energy dissipation facilities at pipe outfalls and installation of bio-retention swales, both designed to facilitate stable drainage that will not contribute to erosion.

Conclusion: The proposed design and construction methods have identified the project will not lead to unstable earth conditions or create an erosion hazard. The application is consistent with this criterion.

8. Standard Decisional Criteria 6: It will not be materially detrimental to any other property or the City as a whole.

Facts:

- a. Juanita Beach Park draws visitors from across the City and region. The proposed replacement of the existing bathhouse and filling of two grassy wetlands is designed to increase access to Lake Washington.
- b. The 2006 park Master Plan update included extensive input from the public and was formally adopted by City Council by resolution. The design included the replacement of the bathhouse in the proposed location and development of active and passive recreation space in the location of Wetlands C and D (see Attachment 4).

Conclusion: The application is consistent with this criterion.

9. Standard Decisional Criteria 7: Compensatory mitigation is provided in accordance with the table in subsection (8) of this section.

Fact: See section 18, Variance Criteria 6, below.

Conclusion: The application is consistent with this criterion.

10. Standard Decisional Criteria 8: Fill material does not contain organic or inorganic material that would be detrimental to water quality or fish and wildlife habitat.

Facts:

- a. The applicant is proposing to use fill materials that will meet standard specifications, be clean, and be stored and applied per plans.
- b. The applicant's proposal from Shannon & Wilson has identified the fill material will comprise of soil and other organic amendments (see Attachment 6).
- c. The Watershed Company has reviewed and approved the proposed application.

Conclusion: The applicant should follow the recommendations from Shannon & Wilson, and only use fill materials that will not be detrimental to water quality or fish and wildlife habitat. The application complies with this criterion.

11. Standard Decisional Criteria 9: All exposed areas are stabilized with vegetation normally associated with native wetlands and/or buffers, as appropriate.

Facts:

- a. The application proposes to follow BMPs during construction activities, identifying that exposed areas will be stabilized with temporary erosion and sediment control measures.
- b. The existing lawn grasses covering Wetlands C and D are proposed to be converted to upland lawn.
- c. The applicant proposes to replace areas currently containing lawn with native plantings as part of the buffer enhancement adjacent to Wetland A and the new bathhouse structure.
- d. The Watershed Company has reviewed the proposal and has provided recommendations for incorporation into the plans.

Conclusion: The applicant should follow the recommendations established by The Watershed Company regarding mitigation planting. The application is consistent with this criterion.

12. Standard Decisional Criteria 10: There is no feasible alternative development proposal that results in less impact to the wetland and its buffer.

Facts:

- a. The applicant has identified that any alternative development proposal resulting in less impact to the wetlands is not considered feasible due to the fact it would prevent achievement of the Master Plan redevelopment project goals.
- b. The current wetlands consist of grass and compacted soils. Shannon & Wilson has identified the current wetlands have little to no ecological benefit. The fill and development within the wetlands will result in no net loss of ecological function.

Conclusion: The application complies with this criterion.

Variance Criteria

13. Variance Criterion 1: No other permitted type of land use for the property with less impact on the sensitive area and associated buffer is feasible.

Facts:

- a. The proposed improvements are located within existing open and grassed areas adjacent to the current playground, bathhouse asphalt apron, and pedestrian pathway. Within this portion of the park property there is no other feasible use other than water-enjoyment improvements and open lawn space.
- b. The proposal to fill wetland D allows the bathhouse to be located in close proximity to the shoreline. The bathhouse will provide a lifeguard station, watercraft activity rental space, and restroom and changing facilities. The filling of Wetland C will be replaced with an open grassed space. The filling of both wetlands will provide space for active and passive activities.
- c. The application proposes other structures, pathways, and existing parking to be located and/or maintained outside of the filled wetland areas.

Conclusion: The application complies with this criterion.

14. Variance Criterion 2: The proposal has the minimum area of disturbance.

Facts:

- a. The application proposes to fill two wetlands for the purpose of installing two different improvements. The proposed bathhouse replacement will displace Wetland D. The proposed installation of a useable open grassed picnic space will displace Wetland C. The total square footage of both wetlands equals 8,180 square feet.
- b. The proposed bathhouse is designed to accommodate lifeguard facilities, rental space, changing rooms, and restrooms for the park.
- c. The proposed bathhouse design places the lifeguard facility closer to the water, directly between the beach and playground area. The rental space is designed to promote water-enjoyment rental operations such as boats, kayaks, and paddleboards within close proximity to the water. The changing rooms and restroom facilities will serve the entire park property.
- d. The applicant is proposing to locate the bathhouse structure and associated pathways within wetland D. The bathhouse design was evaluated through an extensive public process during the Park Master Plan update. The design reflects the outcomes of the Master Plan update.
- e. The architect and design team have incorporated Crime Prevention Through Environmental Design (CPTED) principles into the location and design of the bathhouse structure, the playground, picnic shelters, and landscaping. The perpendicular orientation of the bathhouse is essential for minimizing opportunities for illegal activities.
- f. Juanita Beach Park is the busiest Kirkland park, and also the top park in number of calls for service to the Kirkland Police Department. Attachment 18 identifies there were 1507 calls for service between January 2015 and March 2019. The proposed design has improved sight lines for first responders and community patrols.
- g. The proposed grassy picnic area is designed to replace the current space which contains wetland grasses and rushes and is mowed by City maintenance crews. The mowed area is comprised of rough and uneven vegetation and is often wet and unusable for picnicking, sunbathing, and general activity use. The proposal will re-grade and replace with manageable grass, suitable for active and passive use.
- h. The location of other critical areas and associated buffers impact the proposed development area. The location of the existing parking lot, lake and critical areas to the east and west of the current bathhouse location, limit the ability to replace the existing improvements and open space without disturbing critical areas and/or their associated buffers.
- i. The proposed bathhouse, open grass space, and playground are designed to support a high volume of park users from around the region, providing adequate capacity for lifeguard and rental services as well as active and passive park spaces.
- j. The applicant has identified that the project will follow best management practices, incorporating these into the design and establishing protection barriers between the work area and sensitive area to be maintained during construction (see Attachments 6 and 17).

Conclusion: The applicant has identified the proposal has the minimum area of disturbance necessary to provide for the bathhouse relocation and improving a useable open grassed picnic space.

15. Variance Criterion 3: The proposal maximizes the amount of existing tree canopy that is retained.

Facts:

- a. The proposed fill of Wetland C and D involves impacts only one existing tree. Tree #404, a weeping willow, is located within Wetland D. Tree #404 is proposed to be protected and retained throughout the development of the site and incorporated into the design of the park (see Attachments 2 and 3).
- b. The proposal identifies two small trees located outside of the wetland fill area and immediately adjacent to the existing bathhouse will be removed. The trees are not located within any critical area buffers.
- c. The proposal includes tree protection measures following best management practices for all trees located within the construction area (see Attachment 2).
- d. The applicant has proposed mitigation plantings to be installed pursuant to KZC 83.500.8, and discussed in criterion 6 below, which includes supplemental tree installation for the forested wetland buffer.

Conclusion: The applicant's proposal is designed to maximize the amount of existing tree canopy retention. The proposal complies with this criterion.

16. Variance Criterion 4: The proposal utilizes to the maximum extent feasible innovative construction, design, and development techniques, including pervious surfaces, that minimize to the greatest extent feasible net loss of sensitive area functions and values.

Facts:

- a. The application is proposing a total of 8,180 square feet of wetland fill with the project. Of that area, approximately 2,000 square feet will be constructed of standard asphalt or concrete in the form of a building footprint for the bathhouse, a perimeter apron, and associated ADA pathway connections (see Attachment 19).
- b. The existing wetlands, C and D, are currently mowed lawn or other improvement that are used heavily by the public year-round. The impacted areas are separated from higher functioning buffers and Lake Washington by existing concrete pedestrian pathways.
- c. The existing soil types and proximity to Lake Washington contribute to a high water table, creating less than ideal conditions for the installation of pervious pavement materials (see Attachment 20).
- d. The applicant has submitted responses to the No Net Loss Standard and Mitigation Sequencing required pursuant to KZC 83.360. See Section II.M below for a complete evaluation.
- e. Section KZC 83.500.5 requires the installation of a temporary six-foot tall construction-phase chain link fence with silt screen fabric along the upland boundary of the entire work area prior to construction. The

applicant has proposed the installation of temporary protection fencing (see Attachment 2).

Conclusions:

- a. The proposal is consistent with this criterion and has designed the project will utilize innovative construction techniques and minimize the physical improvements onsite.
- b. Prior to construction, the applicant should install temporary six-foot tall construction-phase chain link fence with silt screen fabric along the entire limits of construction area as proposed.

17. Variance Criterion 5: The proposed development does not pose an unacceptable threat to the public health, safety, or welfare on or off the property.

Facts:

- a. The existing Juanita Beach Park is a permitted use in the Urban Conservancy and Urban Mixed Shoreline Environment Areas (see Section II.G.1).
- b. The proposed park redevelopment is designed to improve public access to the shores of Lake Washington and open space. The applicant has designed the buildings and landscaping in accordance with the principles of CPTED (Crime Prevention Through Environmental Design).
- c. The inclusion of CPTED principles in the design will improve sight lines for first responders and patrol officers and decrease hiding places for criminal activity.

Conclusion: The applicant's proposal will not pose an unacceptable threat to the public health, safety, or welfare on or off the property. The park redevelopment is designed to improve recreational access and public safety through the overall design.

18. Variance Criterion 6: The proposal meets the mitigation, maintenance, and monitoring requirements of this chapter.

Facts:

- a. Pursuant to KZC 83.500.12(a), an application for shoreline variance must provide adequate compensatory mitigation for the wetland or wetland buffer impact.
- b. The applicant has submitted a restoration and mitigation plan for the wetland fill, prepared by Shannon & Wilson Inc. (see Attachment 2).
- c. The proposal includes mitigation at a ratio of 6:1 for the permanent impacts of the wetland fill and incorporates previous advanced mitigation completed in 2012 during Phase I of the Juanita Beach Park redevelopment plan (see Attachments 6, 11, and 15).
- d. KZC 83.500.8 establishes compensatory mitigation ratios for all wetland types. Category IV Wetlands proposing enhancement only, must install mitigation plantings at a ratio of 6:1 (mitigation area:impact area).
- e. In 2009, a portion of wetland C was proposed to be "paper filled," in the amount of 5,895 square feet. A total of 7,369 square feet (5,895 square feet of created wetland and 2,948 square feet of wetland rehabilitation) was proposed as mitigation to the paper fill. The applicant completed the advanced mitigation through the creation and rehabilitation of the Oxbow

Wetland in 2012, known as Wetland A (see Attachment 11 and 15).

- f. The paper fill area of wetland C was never modified. The applicant is applying the advanced mitigation of 7,369 square feet from 2009 as credit towards the current fill proposal of Wetland C and D (see Attachment 6).
- g. The year seven monitoring report by The Watershed Company was recently completed in February 2019 for the Phase I improvements, including the oxbow marsh (see Attachment 11). The report included performance measures of the mitigation area and provided recommendations and conclusions for continued plantings and invasive plant remediation.
- h. The total proposed wetland fill area equals 8,180 square feet (3,870 square feet from Wetland C, 4,310 square feet from Wetland D). After applying the 7,369 square feet of advanced mitigation from Phase I activity, the net balance totals 811 square feet.
- i. A 6:1 mitigation ratio for enhancement of the remaining 811 square feet of impact from the proposed fill, equals a total of 4,866 square feet. Relative to the proposed wetland fill, the applicant is proposing a mitigation enhancement plan totaling 4,866 square feet (see Attachment 2).
- j. Pursuant to KZC 83.500.10, offsite mitigation may be allowed when existing onsite constraints exist. Juanita Beach Park has limited open space available for buffer enhancement.
- k. The applicant is proposing to install 4,866 square feet of wetland enhancement in an offsite wetland located within Juanita Bay Park, approximately one-quarter mile to the east (see Attachment 2).
- l. The proposed mitigation plan has been reviewed by the City's consulting biologist, The Watershed Company (see Attachment 7). The Watershed Company has provided recommendations to the proposed mitigation plan, which have been included in the final mitigation plan for the project.
- m. Previously mitigated areas were found to contain non-native and invasive plants (see Attachment 7). The City's contract biologist has identified recommendations for renewed mitigation along with monitoring and maintenance.
- n. Pursuant to KZC 83.500.11, applicants proposing to alter wetlands and their buffers should submit a five-year monitoring and maintenance plan prepared by a qualified professional. The applicant has submitted a monitoring and maintenance plan as part of the mitigation proposal, prepared by Shannon & Wilson Inc. (see Attachment 6).
- o. The mitigation, monitoring and maintenance proposed plan and the vegetation installed with Phase I of the park Master Plan redevelopment has been reviewed by the City's consulting biologist, The Watershed Company (see Attachments 7 and 11). The Watershed Company has provided several recommendations to ensure that the proposal is consistent with the regulations in KZC 83.500.
- p. Section KZC 83.500.5 requires the installation of a permanent three to four-foot-tall split rail fence upon project completion along the wetland restoration area. The applicant has included a proposed split rail fence on the mitigation plan (see Attachment 2).

Conclusion:

- a. With the recommendations proposed by The Watershed Company, the application will comply with the mitigation, maintenance and monitoring requirements of the Shoreline Master Program.
- b. The applicant should continue monitoring and maintenance of the Phase I permit requirements in accordance with the recommendations proposed by The Watershed Company in the year-seven report.
- c. Prior to completion of the project, the applicant should install a permanent three to four-foot-tall split rail fence along the upland boundary of the wetland restoration area.
- d. Upon completion of the development project, the applicant should install the proposed mitigation plantings, remove invasive plants from the Oxbow marsh area (Wetland A), and enter into the five- year monitoring and maintenance period for all mitigation areas.

19. Variance Criterion 7: The granting of the shoreline variance will not confer on the applicant any special privilege that is denied by this chapter to other lands, buildings, or structures under similar circumstances.

Facts:

- a. The proposal is unique in that it is a public park located within the Urban Conservancy and Urban Mixed shoreline environments and contains several wetlands and one stream contiguous with Lake Washington. While other parks exist along the shoreline of Lake Washington, none have requested the granting of a shoreline variance for the purpose of filling wetlands to date.
- b. The proposed public park redevelopment project is designed to support the local community residents, the City as a whole, and the surrounding region. The designed improvements are essential to provide public access to Lake Washington as well as active and passive recreational space.

Conclusion: The proposal will not confer on the applicant any special privilege that is denied by this chapter to other lands, buildings, or structures under similar circumstances. The proposal is consistent with this criterion.

K. 83.500 Wetlands – Shoreline Variance for Buffer Mitigation Reduction

1. Facts:

- a. The applicant is proposing to fill Wetlands C and D and mitigate with offsite enhancement plantings at the nearby Juanita Bay Park (see Attachment 2).
- b. Pursuant to KZC 83.500.9.c, wetland buffer impact is assumed to occur when wetland fill is proposed. Any proposal for wetland fill must include provisions for establishing a new wetland buffer to be located around the compensatory mitigation sites and be equal in width to its standard buffer established in 83.500.4(a), or as a reduced buffer by no more than 25 percent of the standard buffer.
- c. As identified in Section J.18 above, the applicant is proposing to mitigate the fill of Wetland D. Wetland D is classified as a Category IV wetland, requiring a standard buffer of 50 feet.
- d. The applicant is proposing to install mitigation planting in the form of enhancement at the prescribed ratio of 6:1 within the northern portion of Juanita Bay Park, pursuant to KZC 83.500.8 (see Section J.18).

- e. The applicant is seeking a shoreline variance in order to forego the establishment of new wetland buffer around the compensatory mitigation site.
 - f. Zoning Code Section 83.500.12 establishes submittal requirements and seven (7) decisional criteria for approving the elimination of wetland buffer establishment around required mitigation planting.
 - g. The applicant has submitted a report, prepared by a qualified professional, meeting the submittal requirements established by KZC 83.500.12.
 - h. The applicant's report has been reviewed by The Watershed Company, the City's consultant. The Watershed Company has made recommendations to bring the applicant's proposal into compliance with the approval criteria (see Attachment 7).
 - i. Section II.K.3 through II.K.9 contain the staff findings of facts and conclusions based on these seven (7) criteria.
2. **Conclusion:** Based on the following analysis in Sections II.K.3 through II.K.9, the application complies with the established criteria for a shoreline variance for the reduced installation of the standard mitigation planting requirements of KZC 83.500.12.
3. **Variance Criterion 1:** No other permitted type of land use for the property with less impact on the sensitive area and associated buffer is feasible.

Facts:

- a. The proposed compensatory mitigation associated with the filling of Wetlands C and D is located along the eastern boundary of Juanita Bay Park, immediately adjacent to the established 98th Avenue NE right-of-way and the Old Market Street Trail (see Attachment 2).
- b. The proposed mitigation is located within the existing Juanita Bay Wetland. There is no other feasible use due to the existence of the Juanita Bay Wetland.

Conclusion: The application complies with this criterion.

4. **Variance Criterion 2:** The proposal has the minimum area of disturbance.

Facts:

- a. The proposal is compensatory mitigation only. No structures are proposed within the mitigation area.
- b. The applicant has identified that the project will follow best management practices, incorporating these into the design and establishing protection barriers surrounding the work area to be maintained during planting activities (see Attachments 2 and 6).

Conclusion: The applicant has identified the proposal has the minimum area of disturbance necessary to provide for the compensatory mitigation plan.

5. **Variance Criterion 3:** The proposal maximizes the amount of existing tree canopy that is retained.

Fact: No trees are proposed for removal within the offsite compensatory

mitigation plan area. The applicant has proposed to retain all existing native plants within the mitigation area (see Attachment 2 and 6).

Conclusion: The applicant's proposal is designed to maximize the amount of existing tree canopy retention. The proposal complies with this criterion.

6. Variance Criterion 4: The proposal utilizes to the maximum extent feasible innovative construction, design, and development techniques, including pervious surfaces, that minimize to the greatest extent feasible net loss of sensitive area functions and values.

Fact: No construction or development is proposed within the mitigation area.

Conclusion: The proposal is consistent with this criterion.

7. Variance Criterion 5: The proposed development does not pose an unacceptable threat to the public health, safety, or welfare on or off the property.

Fact: The proposed compensatory mitigation planting will be located within the existing Juanita Bay wetland area.

Conclusion: The applicant's proposal will not pose an unacceptable threat to the public health, safety, or welfare on or off the property.

8. Variance Criterion 6: The proposal meets the mitigation, maintenance, and monitoring requirements of this chapter.

Fact: See discussion section II.J.18 for complete analysis of mitigation, maintenance and monitoring requirements.

Conclusion: Based on the conclusions from discussion section II.J.18, the application is consistent with this criterion.

9. Variance Criterion 7: The granting of the shoreline variance will not confer on the applicant any special privilege that is denied by this chapter to other lands, buildings, or structures under similar circumstances.

Facts:

a. The proposal is unique in that the mitigation area is limited by the adjacent 98th Avenue NE right-of-way. The location of the paved roadway to the east and wetland area to the north, south, and west, does not allow for new buffer to be established around the mitigation area.

b. The siting of the proposed mitigation planting is designed to enhance and improve the existing wetland.

Conclusion: The proposal will not confer on the applicant any special privilege that is denied by this chapter to other lands, buildings, or structures under similar circumstances. The proposal is consistent with this criterion.

L. 83.500 Wetlands – Shoreline Variance for Wetland Buffer Modification (Bathhouse Structure)

1. Facts:

a. KZC 83.500.9(d)(1)(a) establishes that buffers may not be reduced at any point by more than 25 percent of the standards specified in KZC 83.500.4, unless approved through a shoreline variance.

b. Wetland A is associated with Juanita Creek and was determined by the

applicant's biologist and confirmed by the City's contract biologist to be a Category II wetland with a habitat score of 20 points (see Attachments 6 and 7). Pursuant to KZC 83.500.4, Category II wetlands with 20 habitat points have an associated buffer of 125 ft.

- c. The applicant is proposing to develop and locate the replacement bathhouse structure and associated improvements 55 feet from wetland A (see Attachment 2). The proposed development is within the inner 75 percent of the standard wetland buffer.
 - d. Pursuant to KZC 83.500.9(d)(1)(b), when development or land surface modification occurs within the inner 75 percent of a wetland buffer, the impacts are assumed to have direct wetland impacts that must be compensated for as described in KZC 83.500.8.
 - e. Mitigation is required pursuant to KZC 83.500.8, explained below in subsection 8 (Criterion 6).
 - f. Zoning Code Section 83.500.12 identifies submittal requirements and seven (7) decisional criteria for approving a shoreline variance for the installation of an improvement within the inner 75% of a buffer associated with a wetland contiguous with Lake Washington.
 - g. The applicant has submitted a report, prepared by a qualified professional, meeting the submittal requirements established by KZC 83.500.12.
 - h. The applicant's report has been reviewed by The Watershed Company, the City's consultant. The Watershed Company has made recommendations to bring the applicant's proposal into compliance with the approval criteria (see Attachment 7). Since the original application, the applicant has modified the buffer enhancement plan, incorporating some of the recommendations illustrated in Attachment 2.
 - i. Section II.L.3 through II.L.9 contain the staff findings of facts and conclusions based on these seven (7) criteria.
2. Conclusion: Based on the following analysis in Sections II.L.3 through II.L.9, the application complies with the established criteria for a shoreline variance requesting to locate a structure within the inner half of a wetland buffer in KZC 83.500.12.
 3. Variance Criterion 1: No other permitted type of land use for the property with less impact on the sensitive area and associated buffer is feasible.

Facts:

- a. The proposed bathhouse structure, playground, and associated pavement pathway areas are located within existing open grassy lawn area and current playground space. This portion of the park is within close proximity of Lake Washington. Currently, only water-enjoyment improvements and open lawn space exist in this area.
- b. The proposal to build the bathhouse within the inner 75% of the buffer associated with Wetland A allows the bathhouse to be located in close proximity to the shoreline, while maintaining the playground, picnic area, and grassy lawn space for recreation. The bathhouse will provide a lifeguard station, activity rental space, and restroom and changing facilities.
- c. The application proposes other structures, pathways, and existing parking

to be located and/or maintained outside of the filled wetland areas.

- d. The proposed improvements are located within the existing park. No proposed expansion of the parking lot or other structures is proposed.
- e. The proposed development activity will provide direct public access to the shores of Lake Washington through active and passive facilities including the bathhouse, pathways, open lawn areas, and nature trails.

Conclusion: The application complies with this criterion.

4. Variance Criterion 2: The proposal has the minimum area of disturbance.

Facts:

- a. The Juanita Beach Park Master Plan update process, approved in 2006, identified the facilities necessary for the park to serve the public. The proposed bathhouse will provide lifeguard facilities, a rental kiosk, storage for City equipment, locker rooms, and restrooms. The proposed structure incorporates the same facilities and will operate the same as the current bathhouse.
- b. According to the associated building permit for the bathhouse structure (BNR18-02893), the proposed replacement bathhouse and perimeter apron paving is approximately 7,200 square feet, compared to the current bathhouse and perimeter paving which is approximately 7,000 square feet (see sheet C3.0 of Attachment 21).
- c. The current bathhouse structure contains approximately 4,000 square feet of floor area. The proposed replacement bathhouse will provide a total of 2,800 square feet of floor area (see Attachment 22).
- d. The application is proposing to remove an existing asphalt pathway located within ten feet of wetland A and replace with a pathway along the eastern side of the bathhouse, incorporating the pathway into the building apron (see Attachment 2).
- e. The applicant has identified that the project will follow best management practices, incorporating these into the design and establishing protection barriers between the work area and sensitive area to be maintained during construction (see Attachments 3 and 6).

Conclusion: The applicant has identified the proposal has the minimum area of disturbance necessary to provide facilities identified through the Master Plan Update process.

5. Variance Criterion 3: The proposal maximizes the amount of existing tree canopy that is retained.

Facts:

- a. The applicant has identified the proposed location of the bathhouse will require no trees to be removed.
- b. Three trees identified as numbers 404, 406, and 209, are located within close proximity of the proposed development. The applicant has provided a tree protection plan and identified measures to protect and retain the trees throughout the development of the site (see Attachments 2 and 3).

Conclusion: The applicant's proposal is designed to maximize the amount of

existing tree canopy retention. The applicant should follow the identified tree protection plan included with the application (see Attachment 2). The proposal complies with this criterion.

6. Variance Criterion 4: The proposal utilizes to the maximum extent feasible innovative construction, design, and development techniques, including pervious surfaces, that minimize to the greatest extent feasible net loss of sensitive area functions and values.

Facts:

- a. The project site is located within 200 feet of the shoreline where the ground water level is high. The applicant submitted a Geotechnical Report that identified soil conditions and drainage design recommendations. Installation of pervious pavement is not suitable within this area due to soil conditions and groundwater (see Attachment 20).
- b. The application is proposing a net decrease in total impervious surfaces by approximately 370 square feet (see Attachment 21).
- c. Section KZC 83.500.5 requires the installation of a temporary six-foot tall construction-phase chain link fence with silt screen fabric along the upland boundary of the entire work area prior to construction. The applicant has proposed the installation of temporary protection fencing (see Attachment 2).
- d. An evaluation of no net loss of ecological function is included in Section II.M.

Conclusions:

- a. The proposal is consistent with this criterion and has been designed to utilize available innovative construction and design to the maximum extent feasible.
- b. Prior to construction, the applicant should install temporary six-foot tall construction-phase chain link fence with silt screen fabric along the entire limits of construction area as proposed.

7. Variance Criterion 5: The proposed development does not pose an unacceptable threat to the public health, safety, or welfare on or off the property.

Facts:

- a. The existing Juanita Beach Park is a permitted use in the Urban Conservancy and Urban Mixed Shoreline Environment Areas (see Section II.G.1).
- b. The architect and design team have incorporated Crime Prevention Through Environmental Design (CPTED) principles into the location and design of the bathhouse structure, the playground, picnic shelters, and landscaping. The perpendicular orientation of the bathhouse is essential for minimizing opportunities for illegal activities.
- c. Juanita Beach Park is the busiest Kirkland park, and the top park in number of calls for service to the Kirkland Police Department. Attachment 18 identifies there were 1507 calls for service between January 2015 and March 2019. The proposed design has improved sight lines for first responders and community patrols.

- d. The orientation and positioning of the replacement structure utilize CPTED principles to create open spaces and improves sight lines for police. The existing bathhouse and vegetation create a space on the lake side of the structure where visibility is difficult.

Conclusion: The applicant's proposal will not pose a threat to the public health, safety, or welfare on or off the property. The park redevelopment is designed to improve recreational access and public safety through the overall design.

8. Variance Criterion 6: The proposal meets the mitigation, maintenance, and monitoring requirements of this chapter.

Facts:

- a. Pursuant to KZC 83.500.12(a), an application for shoreline variance must provide adequate compensatory mitigation for the wetland or wetland buffer impact.
- b. The applicant has submitted a restoration and mitigation plan for the buffer impacts associated with the development of the bathhouse within the inner 75% of a category II wetland buffer. The mitigation plan was prepared by Shannon & Wilson Inc. (see Attachment 2 and 6).
- c. KZC 83.500.8 establishes that compensatory mitigation ratios for all wetland types. Category II Wetlands proposing rehabilitation only must install mitigation plantings at a ratio of 6:1 (mitigation area:impact area).
- d. The proposed bathhouse installation includes a total of 8,421 square feet of permanent buffer impact (see Attachment 14). At the standard rehabilitation ratio of 6:1, the application should provide a minimum of 50,526 square feet of mitigation in the form of buffer rehabilitation.
- e. The applicant has identified that the park property, current configuration, and the design requirements of the Master Plan are inconsistent with mitigation planting standards. The installation of mitigation at the full ratio would eliminate physical and visual public access to the shoreline of the state (see Attachments 6 and 17).
- f. The proposal includes mitigation at a ratio of 2.23:1 for the permanent impacts of the bathhouse structure and associated improvements to be located within the inner 75% of the standard 125-foot buffer. The proposed mitigation equals an area of 18,823 square feet.
- g. While KZC 83.500.8 establishes the rehabilitation ratio for the project at 6:1, it also allows for proposals to implement more effective rehabilitation or enhancement actions at a lower ratio dependent upon current and proposed conditions and ecological function.
- h. The applicant has submitted a biological assessment from their consultant, Shannon & Wilson, identifying the unique conditions of the existing site that warrant a reduction in the ratio for mitigation (see Attachment 6 and 23). The applicant identifies that the buffer reduction does not directly impact the wetland and the proposed mitigation, including the removal of a pathway located 10 feet from the wetland, is an improvement from the existing conditions (pathway and lawn area).
- i. The applicant is proposing to install 6,001 square feet of buffer rehabilitation adjacent to Wetlands A and B (see Attachment 2). An additional 12,822 square feet of buffer rehabilitation is proposed to be

installed in the form of standard mitigation plantings and a bio-retention swale. Both mitigation forms are located between the proposed bathhouse and Wetland A (see Attachment 2).

- j. The proposed mitigation plan has been reviewed by the City's consulting biologist, The Watershed Company (see Attachment 7). The Watershed Company has provided recommendations to the proposed mitigation plan, which have been included installation of additional plantings north of the bathhouse between the parking lot and wetland A.
- k. Pursuant to KZC 83.500.11, applicants proposing to alter wetlands and their buffers should submit a five-year monitoring and maintenance plan prepared by a qualified professional. The applicant has submitted a monitoring and maintenance plan as part of the mitigation proposal, prepared by Shannon & Wilson Inc. (see Attachment 6).
- l. The mitigation, monitoring and maintenance plan has been reviewed by the City's consulting biologist, The Watershed Company (see Attachment 7). The Watershed Company has provided several recommendations to ensure that the proposal is consistent with the regulations in KZC 83.500.
- m. Section KZC 83.500.5 requires the installation of a permanent three to four-foot-tall split rail fence upon project completion along the wetland restoration area. The applicant has included a proposed split rail fence along all the mitigation areas for wetlands A and B (see Attachment 2).

Conclusion:

- a. With the recommendations proposed by The Watershed Company, the application will comply with the mitigation, maintenance and monitoring requirements of the Shoreline Master Program.
 - b. Prior to completion of the project, the applicant should install a permanent three to four-foot-tall split rail fence along the upland boundary of the wetland restoration area as proposed.
 - c. Upon completion of the development project, the applicant should install the proposed mitigation plantings and enter into the five- year monitoring and maintenance period as proposed.
9. Variance Criterion 7: The granting of the shoreline variance will not confer on the applicant any special privilege that is denied by this chapter to other lands, buildings, or structures under similar circumstances.

Facts:

- a. The proposal is unique in that it is a public facility providing restroom and changing facilities that promote access to a water-dependent use, which is located within the urban conservancy and urban mixed shoreline environments and a wetland buffer. While other parks exist along the shoreline of Lake Washington, none has requested the granting of a shoreline variance to date.
- b. The proposed redevelopment of Juanita Beach Park is designed to support the local community, the City as a whole, and the region. The designed improvements are essential to support improved access to a shoreline of the state and to provide access to park open space for all.
- c. The proposed redevelopment is consistent with the Juanita Beach Park Master Plan, approved by City Council by Resolution. The applicant has analyzed the proposed improvements relative to the Master Plan (see Attachment 24).

Conclusion: The proposal will not confer on the applicant any special privilege that is denied by this chapter to other lands, buildings, or structures under similar circumstances. The proposal is consistent with this criterion.

M. 83.360 No Net Loss Standard and Mitigation Sequencing

1. Facts:
 - a. Pursuant to KZC 83.360.1(b), an applicant is required to provide an analysis of measures taken to mitigate environmental impacts where a variance application is proposed.
 - b. Pursuant to KZC 83.500.12, when an applicant is unable to comply with specific standards of the wetlands section in the SMP (83.500), a shoreline variance must be obtained.
 - c. Under Chapter 173-26 WAC, uses and shoreline modifications along Kirkland's shoreline shall be designed to achieve no net loss of shoreline ecological functions.
 - d. Pursuant to KZC 83.360.2, an applicant is required to complete the no net loss mitigation sequencing. The following is a list of all six guidelines, in order of preference, that must be considered in the design, construction, and operation of the proposal:
 - (1) Avoid the impact altogether by not taking a certain action or parts of an action;
 - (2) Minimize 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;
 - (3) Rectify the impact by repairing, rehabilitating, or restoring the affected environment;
 - (4) Reduce or eliminate the impact over time by preservation and maintenance operations;
 - (5) Compensate for the impact by replacing, enhancing, or providing substitute resources or environments; and
 - (6) Monitor the impact and the compensation projects and taking appropriate corrective measures.
 - e. The applicant has submitted a no net loss analysis assessment as part of the application (see Attachments 6 and 17).
 - f. The redevelopment project is limited to the southern portion of the park property, involving the replacement of the existing bathhouse and establishment of new picnic pavilions and grass areas for active and passive recreation. The bathhouse is a water-dependent use and by definition, requires locating close to the shoreline.
 - g. The proposed improvements were developed as a result of several years of evaluation and public input.
 - h. The site is encumbered with wetlands, a stream, and the shoreline. These critical areas and their buffers extend throughout the park property, limiting space within the park improvements (see Attachment 12).
 - i. The applicant has identified that strict application of all buffers and critical areas would prohibit redevelopment of the site.
 - j. The proposal is intended to increase access to a shoreline of the state by the general public.
 - k. The installation of the bathhouse, playground, picnic pavilions, and associated walking paths is designed to improve public access and use of the shoreline.
 - l. The application includes protection measures to be incorporated with the development of the improvements, intended to minimize impacts on the wetland buffer (see Attachment 2).
 - m. The application identifies compensatory areas of enhancement as

- mitigation for the permanent loss and temporary disturbance of vegetated wetland buffer (see Sections II.J.18, II.K.8, and II.L.8).
- n. The City's contract biologist made recommendations to the applicant's initial proposal, identifying requirements to incorporate in order to comply with the mitigation standards of KZC 83.360 and 83.500 (see Attachment 7).
2. Conclusions:
- a. The applicant is proposing the minimum necessary to replace the existing bathhouse and playground, and install new picnic pavilions, pathways and grassy recreational areas necessary for the park to serve the public. The additional improvements are designed to improve public access and use of the shoreline. The mitigation plans are designed to repair and improve the ecological function of the wetland and shoreline environment.
 - b. Based on the proposed application, the application is consistent with the no net loss mitigation sequencing standards of KZC 83.360.

N. 83.340 Fill

1. Facts:
- a. Pursuant to KZC 83.80.44, fill is defined as the addition of soil, rock, gravel, sediment, earth-retaining structure, or other material in wetlands, in a manner that raises the ground elevation or creates dry land.
 - b. Pursuant to KZC 83.340.1, fill is permitted only where an applicant demonstrates the proposal will not result in significant damage to water quality, fish, aquatic habitat, and/or wildlife habitat. Additionally, fill should not adversely alter drainage or circulation patterns or stream flows.
 - c. Pursuant to KZC 83.340.2, fills landward of the OHWM should be designed, constructed, and maintained to prevent, minimize, and control all material movement, erosion, and sedimentation from the affected area.
 - d. The applicant has proposed filling of the project area to support the development of the bathhouse, playground, and open space areas within wetland and wetland buffers. The applicant provided a biological assessment and report identifying the proposal will cause no environmental or habitat impacts (see Attachments 6 and 17).
 - e. The proposal includes the preliminary construction plans that identify construction techniques, temporary erosion control, and water quality systems to occur throughout development activity (see Attachments 3 and 21).
2. Conclusion:
- a. The proposed park redevelopment project is consistent with the Fill standards of KZC 83.340.
 - b. As part of the Building permit, the applicant should follow the proposed application, including the mitigation and erosion control plans.

O. 83.480 Water Quality, Stormwater, and Nonpoint Pollution

1. Facts:
- a. Pursuant to KZC 83.480, development within the shoreline jurisdiction

should incorporate all known, available, and reasonable methods in prevention, control, and treatment of surface or ground water quality. Proposed development activity should include temporary erosion control measures and storm water detention, water quality treatment and storm water conveyance facilities in accordance with the City's adopted surface water design manual.

- b. The proposed project description and implementation plan identifies temporary erosion control and water quality measures will be included with the development permit application and managed during the construction according to state and local standards (see Attachments 3 and 21).
- c. Pursuant to the standards of KZC 83.480.3(g), the application of pesticides, herbicides or fertilizers within shoreline setbacks should utilize best management practices outlined in the BMPs for Landscaping and Lawn/Vegetation Management Section of the 2005 Stormwater management Manual for Western Washington.
- d. Spray application of pesticides should not occur within 100 feet of open waters including wetlands or the waters of Lake Washington.
- e. The majority of the proposed development activity and mitigation planting area is located within 100 feet of the OHWM of Lake Washington and associated wetlands.
- f. The proposal identifies that all noxious or invasive plants located within the mitigation planting areas will be cleared and removed by hand. The maintenance plan also specifies removal of invasive plants by hand or with hand-tools (see Attachment 6).

2. Conclusions:

- a. The proposed application complies with the water quality, storm water and nonpoint pollution provisions of KZC 83.480.
- b. The applicant should follow the proposed application plans and BMPs of KZC 83.480 for all aspects of the development project, including the bathhouse and picnic pavilion improvements, site grading, mitigation planting areas, and the monitoring and maintenance of the mitigation and enhancement plantings.

P. 83.370 Federal and State Approval

1. Facts:

- a. Pursuant to KZC 83.370, all work at or waterward of the OHWM requires permits or approvals from one or more of the following state and federal agencies: U.S. Army Corps of Engineers, Washington Department of Fish and Wildlife, Washington Department of Natural Resources, or Washington Department of Ecology.
- b. Pursuant to KZC 141.70(3), the City will forward the final recommendation on a shoreline variance application to the Washington State Department of Ecology for final approval.

2. Conclusion: Prior to construction, the application should submit the necessary approvals from state and federal agencies to the Planning and Building Department.

III. SUBSEQUENT MODIFICATIONS

Modifications to the approval may be requested and reviewed pursuant to the applicable modification procedures and criteria in effect at the time of the requested modification.

IV. APPEALS AND JUDICIAL REVIEW

The following is a summary of the deadlines and procedures for appeals. Any person wishing to file or respond to an appeal should contact the Planning Department for further procedural information.

Appeal to Shoreline Hearings Board:

Pursuant to RCW 90.58.180 and WAC 173-27-220 any person aggrieved by the City's final decision on the Shoreline Substantial Development Permit may seek appeal to the State Shoreline Hearings Board by filing a petition for review. All petitions for review shall be filed with the Shoreline Hearings Board within 21 days of the date the applicant receives written notice from the Department of Ecology that the Department has received the City's decision. Within seven days of filing any petition for review with the Shoreline Hearings Board, the petitioner shall serve copies of the petition for review on the Department of Ecology, the State Attorney General, and the City of Kirkland. The petition for review must contain items required by WAC 461-08-055.

V. LAPSE OF APPROVAL

Pursuant to RCW 90.58.200 and WAC 173-27-090, construction or substantial progress toward construction of a project for which a Shoreline Variance Permit has been granted pursuant to the Shoreline Management Act must be undertaken within two (2) years after the date of filing. The project must be completed within five (5) years and a one (1) year extension may be considered.

"Date of filing" means the date the decision of the Department of Ecology is transmitted by the department to the City of Kirkland. The permit time periods do not include the time during which a use or activity was not actually pursued due to the pendency of administrative appeals or legal actions pursuant to RCW 90.58.180 and WAC 173-27-220.

VI. APPENDICES

Attachments 1 through 24 are attached.

1. Vicinity Map
2. Proposed Improvement and Mitigation Plans
3. Proposed Site Plan
4. Juanita Beach Park Master Plan
5. Shoreline Environment Designation Plan
6. Shannon & Wilson Environmental Report
7. The Watershed Company review report
8. Historical Review with Aerial Imagery
9. Resolution R-4570 (Juanita Beach Park Master Plan approval)
10. Public Comments
11. Phase I Year-Seven Monitoring Report
12. Avoidance Illustrations
13. SEPA DNS
14. Building Height Plans
15. Phase I Sensitive Area Decision
16. Park Conceptual Design
17. Shannon & Wilson Compliance Analysis proposal
18. Kirkland Police Department Incident Data

19. Wetland D fill area plan
20. Geotechnical Report
21. Lot Coverage Analysis plans from BNR18-02893
22. Bathhouse Floor Area Comparisons
23. Buffer Reduction Direct Impact
24. Master Plan Consistency Analysis Memo

VII. PARTIES OF RECORD

Applicant: Anneke Davis, City of Kirkland Capital Improvement Project Division
Mary Gardocki, City of Kirkland Parks Department

Parties of Record
Planning and Building Department
Department of Public Works

The Hearing Examiner will issue a written recommendation within eight calendar days of the date of the open record hearing.

