

# Shoreline Master Program

U P D A T E

## **Responses to Draft SMP Section 20.25E.065 Comments (Includes responses to Shoreline Stabilization comments)**

**September 14, 2011**

This document is the second release in a series of responses to public comments and includes responses to comments received on Draft SMP section 20.25E.065 (and the shoreline stabilization section of Draft SMP section LUC 20.25E.080) since the April 20, 2011 Draft SMP Open House. Each comment is identified by comment number and is followed by a response. The first release included responses to comments on Draft SMP section 20.25E.060 and is available at <http://www.bellevuewa.gov/9596.htm> .

To assist the reader in finding comments and topics of interest, and to focus responses on specific topic areas, this document is organized by topic. Topics include:

- Shoreline Setbacks
- Shoreline Stabilization and Bulkheads
- Nonconforming Structures and Uses (Residential)
- Docks

### **Draft SMP Comments – Shoreline Setbacks**

A total of 84 comments were received from 34 individuals that identified issues related to setbacks.

#### **1. I support a 25-foot setback and no buffer. (17.6; 19.1; 4.5; 11.1; 35.23)**

**Response:** Comment noted. Be aware that the 50-foot buffer is currently required pursuant to existing LUC Section 20.25H.035. The Draft SMP includes a 50-foot setback with no proposed buffer and retains the footprint exception provision under the existing code. Provisions found in section 20.25E.065.E in the Draft SMP do permit the setback, under certain circumstances, to be reduced to a minimum of 25 feet. In general, the Draft SMP represents the maintenance of the protective conditions provided under the existing code that prior analysis deemed necessary to ensure no net loss of ecological function. A draft

provision that would include only a 25-foot setback would not meet the standards for no net loss of ecological functions as required by WAC 173-26-186(8).

**2. I support a 35-foot setback similar to Redmond (1.4)**

**Response:** Comment noted. The City of Redmond adopted a minimum 35-foot building setback for new development and redevelopment. This setback may be reduced to 20 feet if the setback area is revegetated with primarily native vegetation. Establishment of a tree canopy is encouraged. No structures other than those required for waterfront access are allowed within the 20-foot vegetated area. Use of this option requires recording against title confirming that: (1) any allowed structure has been constructed using the flexible setback option; (2) that the structure is conforming, and, (3) that vegetation planted within the 20-foot setback will to remain. Moreover, new development adhering to the 35-foot setback, or remodeling involving greater than 50 percent of the value of existing improvements, is required to plant 50 percent of the area of the minimum 20-foot setback.

**3. Do not increase setback from 25 to 50 feet. (33.5; 14.2)**

**Response:** The setback is not increasing from 25 to 50 feet. The existing land use code Section 20.25H.035 requires a 50-foot dimension (either a buffer or setback). See response to comment #1

**4. Plug gaps in buffer system to protect remaining intact vegetation and require mitigation (25.1; 26.1; 28.1; 29.1; 30.1; 31.1; 69.1; 70.1; 71.1; 72.1; 73.1; 74.1; 75.1; 77.1; 79.1; 80.1;)**

**Response:** The Draft SMP does not include provisions for buffers along the shorelines. The Draft SMP structure setback does include provisions for the preservation of existing native vegetation within the vegetation conservation area (the first 25 feet of setback measured from OHWM) and requires the replacement of vegetation when removal is permitted.

**5. Eliminate incentives that allow reduced setbacks but don't actually require compensatory action to improve shoreline condition. (25.2; 26.2; 27.2; 28.2; 29.2; 30.2; 31.2; 69.2; 70.2; 71.2; 72.2; 73.2; 74.2; 75.2; 77.2; 79.2; 80.2)**

**Response:** The Draft SMP allows limited development within the structure setback without requiring additional mitigation. This approach identifies limited development activities which are common with residential development and allows these to occur in the structure setback without site specific mitigation. All reductions in the structure setback allowed per the menu option and special shoreline report, require a mitigation action which improves the

shoreline condition to varying degrees. The cumulative impacts assessment will identify if any risk to shoreline functions are created by these provisions.

**6. Decks should be allowed to encroach into setback (27.2)**

**Response:** Decks are considered minor building elements per LUC 20.20.025.C and are allowed to encroach a small amount into the structure setback per Draft SMP section 20.25E.065.E.3.

**7. A buffer should be provided in order to protect shoreline function and the buffer should be based on science. Setback is not adequate. (32.12; 32.18; 32.20; 32.25; 32.38)**

**Response:** In preparing the regulatory concepts for Planning Commission review that went into the Draft SMP, staff consulted a wide range of scientific information including peer reviewed articles, very recent published literature that may have not been peer reviewed, and detailed studies by consultants working for the city of Bellevue. Staff also consulted with a number of agency personnel.

The Draft SMP was intended to reflect the Planning Commission's interest in creating more Bellevue-appropriate regulations, while protecting ecological functions in the manner similar to that provided by the shoreline buffer of the existing critical areas ordinance. The approach taken in the Draft SMP recognizes the importance of protecting existing functions when present while at the same time recognizing the inherent conflicts between no touch buffers and recreational use of the shoreline. The structure setback, combined with a vegetation conservation area, provides similar protections, given the pattern of existing urban development in Bellevue, to the protections afforded by a buffer system.

**8. Uses allowed in buffer should be limited to those which require proximity to water. (32.16)**

**Response:** A buffer is not proposed as part of the Draft SMP. Uses allowed within the structure setback are aligned with water enjoyment and water recreation activities associated with residential development. Uses that are not inherently related to the enjoyment of the water were not intended to be permitted.

**9. In order to protect sensitive resources a larger buffer is needed for the UC-OS environment designation. (32.23; 32.26)**

**Response:** The UC-OS environment designation is proposed for those sites which contain critical areas such as wetland and streams and where large buffers are provided for in the

standards for critical areas referenced in LUC 20.25H.035. Where wetlands and streams do not occur such as in developed waterfront parks, the proposed 50-foot setback is intended to be sufficiently protective of ecological functions.

**10. A 50-foot setback is not justified and is not required by the guidelines. (35.10; 35.22; 35.47; 39.50; 39.16; 44.4; 47.4; 35.28)**

**Response:** In preparing the Draft SMP provisions, the Guidelines, scientific information, and existing development patterns all factored into the development of a Bellevue appropriate setback. The Guidelines do not specify a particular dimension but require jurisdictions to protect existing ecological functions. Additionally, the standards require consideration of scientific information when establishing setback dimensions. Shoreline buffer widths adopted as part of the 2006 CAO are based on dimensions recommended in science literature analyzed by staff during the Critical Areas update process and further adjusted to reflect Bellevue's urban condition.

The Commission was provided with GIS data demonstrating the number of structures located within 50 feet from the OHWM within shoreline jurisdiction. This information was provided to the Planning Commission on June 9, 2010. These documents, as were the study session materials from the June 9, 2010 and October 20, 2010 Planning Commission meetings became the basis for the original Planning Commission direction to develop the draft SMP with the 50-foot setback approach.

<http://www.bellevuewa.gov/pdf/Planning%20Commission/PackagePlanningCommissionAgenda6-9-10a.pdf>

<http://www.bellevuewa.gov/pdf/Planning%20Commission/PackagePlanningCommissionAgenda10-20-10a.pdf>

[http://www.bellevuewa.gov/pdf/Development%20Services/PC\\_Map\\_Book\\_6-9-2010\\_v1.pdf](http://www.bellevuewa.gov/pdf/Development%20Services/PC_Map_Book_6-9-2010_v1.pdf)

Of note are recent SMP approvals by the Department of Ecology including setback dimensions.

City of Kirkland: 30-60 feet

City of Redmond: 35 feet

City of Sammamish: 45/15 feet

**11. Setback reduction menu options are unrealistic, too onerous, and are not an incentive (35.5;35.6; 35.14; 35.25; 35.35.3; 35.32; 35.33; 35.34; 35.35; 35.36; 35.37; 35.39; 35.40; 35.41)**

**Response:** The menu option was created as an alternative to complying with the prescriptive setback dimension and as a means to reduce the setback administratively in support of development without the need for a detailed and costly scientific report. The options available in the menu are calibrated to allow the greatest setback reduction for the greatest amount of ecological improvement. They provide a range of alternatives which vary based on scale and size of improvement. The provisions are not meant to require someone to do all options but to allow a property owner to choose which options are most feasible given their site and development objectives. This approach is modeled after other incentive provisions in the code that have a minimum requirement from which deviation is granted in exchange for public or environmental benefit that is accrued during development.

**12. In the menu options, the regulations should incentivize the use of revetment boulders placed waterward of existing bulkhead. (35.38)**

**Response:** See response to comment #11 above. The use of this technique would be allowed through option #4 in section 20.25E.065.E3b. The method would allow a 10-foot reduction in the required setback.

**13. No rationale has been provided for the specific square footage thresholds for allowed development allowed in setback? (35.24)**

**Response:** The Draft SMP permits up to a 500 square foot expansion into the structure setback when the expansion is parallel to the existing building line and allows up to a 200 square foot accessory structure. The 500 square foot dimension is consistent with provisions contained in the Land Use code for allowed expansions in critical areas up to 500 square feet. The 200 square foot threshold aligned with the threshold for requiring residential building permits. Structures 200 square feet or smaller do not generally require a building permit. Based on their location and size, the Draft SMP considers impacts associated with their construction to be modest.

**14. Reduction of shoreline setback to 25 feet would require replacement of 60% of the shoreline with a deed restricted, “no touch” native vegetation buffer including tall trees. (35.27)**

**Response:** When a setback reduction is approved, the provisions of section 20.25E.065.E.3b.vi would apply. The Draft SMP provision which allows a 25 foot setback reduction does not require the planting of any vegetation or to provide a “no touch” native vegetation buffer, although this action is proposed for other options. The standards do require the recording of the final approved setback dimension with King County. (For a similar provision, see discussion of the City of Redmond’s approach in #2 above.)

**15. The requirement to modify all non-shoreline setbacks before a setback reduction option is used means only new residential will be able to reduce 50-foot setback. (35.30)**

**Response:** The Draft SMP does provide in section 20.25E.065.E3.b.ii that a shoreline setback may be reduced if the applicant can demonstrate that non-shoreline setbacks have been modified to maximum extent allowed to demonstrate avoidance of the shoreline setback was considered before the setback is reduced. This provision was crafted to create equity between property owners adjacent to shorelines and critical areas. A similar provision is in place in the critical areas ordinance and the reduction provisions have not limited their application to only new residential development.

**16. No one can prove ecological function, therefore the Shoreline Special Report is not a real alternative. (35.42)**

**Response:** The purpose of the Shoreline Report is to allow a departure when an applicant cannot reasonably meet the prescriptive standards. It is also intended to provide an alternative to the more cumbersome shoreline variance. The Report is modeled after Critical Areas Report which utilizes a similar functional analysis. This methodology has been applied to the shoreline condition and for the past five years has allowed an applicant to provide an alternative to the prescriptive standards.

**17. BAS document from 2005 notes the extensive development and shoreline armoring on Lake Washington and Lake Sammamish and its impact on shoreline processes and functions. (37.8)**

**Response:** Although the BAS report acknowledges the impacts to existing functions and values of the shoreline critical areas of Lake Washington and Lake Sammamish, the report also notes that although the water bodies are degraded to various degrees by urbanization, they still provide multiple ecological functions that support anadromous and resident fish as well as other wildlife species. Development impacts have not completely removed all function or the potential for function to be provided or restored.

**18. Phantom Lake setback should not extend beyond 1974 25-foot setback and have a setback of 110 or 200 feet. (43.4; 57.9; 59.3)**

**Response:** See response to Critical Areas questions #9 and #10 in July 8, 2011 response to comments. This particular approach is intended to respond to the Planning Commission Principles for drafting an SMP that is “tailored to the unique characteristics of land designated as shoreline jurisdiction in Bellevue.” (See Draft SMP, Shoreline Master Program Element, Overview for more detail.)

[http://www.bellevuewa.gov/pdf/PCD/draft\\_shoreline\\_mngt\\_plan\\_section\\_20\\_comments\\_and\\_repsponses.pdf](http://www.bellevuewa.gov/pdf/PCD/draft_shoreline_mngt_plan_section_20_comments_and_repsponses.pdf) )

**19. Setback reduction menu options are too large as compared with Kirkland and must be analyzed through the cumulative impacts analysis. (57.15)**

**Response:** The options available in the menu are calibrated to allow the greatest setback reduction for the greatest amount of ecological improvement. They provide a range of alternatives which vary based on scale and size of improvement. Feedback from property owners suggested that the reduction dimension must be sufficiently large in order to create a viable alternative to the prescriptive setback. The reduction options will be analyzed as part of the cumulative impacts analysis.

**20. Regulations should allow some limited development in the 25-50 setback (40-50% of area at least) (27.7)**

**Response:** The exceptions provided in the Draft SMP section 20.25E.065.E do allow for limited development in the area between 25 and 50 feet from OHWM. The exact percentage varies based on size of lot and proposed development.

**21. Accessory structures should not be located within setback. (57.17)**

**Response:** Existing accessory structures can be maintained within the structure setback. New accessory structures are only permitted in the 25-50 foot area of the structure setback and generally would be no greater than 200 square feet in size. A variance would be required to locate an accessory structure closer than 25 feet to the OHWM.

**22. There seem to be lots of ways to waive setback and allow development. Structures and hardscape should only be allowed when no other feasible alternative and when mitigation at 2:1 ratio is provided. (32.32)**

**Response:** The Draft SMP provisions allow limited development within the structure setback including structures and hardscape. Mitigation is required at a 1:1 area ratio. The site planning provisions in 20.25E.065.B2 are intended to guide development to assess feasible development alternatives that have the least impact on the site. When development is allowed in the structure setback it is limited to typical residential development that is minor in nature. Development beyond these minor intrusions is required to mitigate for its impacts.

**Draft SMP Comments – Shoreline Stabilization**

Staff identified a total of 40 comments from 18 individuals that spoke directly to the term or concept of “shoreline modification, shoreline stabilization, or bulkheads.”

- 1. The proposed stabilization regulations included in the Draft SMP are excessively complex and exceed the requirements laid out in the Guidelines WAC 173-26-231(A)(iii). (4.3, 4.7, 4.11, 23.16, 24.35,24.36, 35.56, 35.57,35.58, 35.59, 35.65, 37.6, 38T.348, 38T,349. 38T.350, 38T,351, 43.7,47.5,62.2)**

**Response:** The Draft SMP is intended to closely track the intent of the standards in the Guidelines located at WAC 173-26-231(A)(iii). The following discussion begins with a summary of the key elements of the Guidelines as they apply to stabilization, followed by a discussion of how the Draft SMP addresses those elements.

**Focus of the Guidelines as they apply to stabilization.** The standards in the Guidelines are primarily focused on new stabilization and elaborate two broad concepts: (1) new development should be designed and located to avoid the need for future shoreline stabilization; and, (2) new or enlarged stabilization is not allowed except where there is conclusive evidence, documented by a geotechnical analysis, that primary structures are in danger from shoreline erosion caused by tidal action, current, or waves.

**Establishing “need” for stabilization.** In the absence of “scientific or geotechnical analysis,” normal shoreline erosion is not considered demonstration of need under the Guidelines. The content of this geotechnical analysis is outlined at WAC 173-26-231(A)(iii)(D). Key to this analysis is an estimate of the rate of erosion occurring at the shoreline. Hard stabilization is not permitted except where a report confirms that there is a significant possibility that a primary structure will be damaged within three years in the absence of such stabilization or where waiting until the need is immediate, would “foreclose the opportunity” to use measures that avoid impacts on ecological functions. Where need is established, stabilization must be limited to the “minimum necessary.” Furthermore, any new stabilization measure must demonstrate it will not result in a net loss of shoreline ecological functions. As a consequence, there is a distinct preference for “soft” stabilization measures; an applicant must prove that “nonstructural measures” such as setbacks, vegetation, or installing on-site drainage improvements, are not feasible or not sufficient before installing structural stabilization.

**Replacement of legally-established stabilization.** The performance standards in the Guidelines are less detailed when dealing with the replacement of existing shoreline stabilization; “repair” is not specifically mentioned and the guidance is confined to replacement of existing shoreline stabilization functions. WAC 173-26-231(A)(iii)(C) notes that “an existing stabilization structure” may be replaced with a similar structure if there is a “demonstrated need” to protect principle uses or structures from erosion caused by currents, tidal action, or waves. This implies there must be a finding of “need” as outlined above for new stabilization although there is no specific cross reference to the requirement for

geotechnical analysis. “Replacement” is defined to mean the construction of a new structure to perform a shoreline stabilization “function” of an existing structure that can no longer serve its purpose. Additions to or increases in size of existing shoreline stabilization measures shall be considered “new” structures and subject to the standards under WAC 173-26-231(A) (iii). Furthermore, any replacement stabilization measure must demonstrate it will not result in a net loss of shoreline ecological functions.

**Draft SMP – Technical Feasibility** In drafting the stabilization section at LUC 20.25E.080(F), the intent was to follow the standards outlined in Guidelines while providing additional flexibility, more definitional precision, and a Bellevue-specific approach. For example, an applicant requesting new or enlarged stabilization must begin by showing that “avoidance” is not technically feasible (see LUC 20.25E.080. (F) (4)). Such a requirement parallels the Guideline standard prohibiting new or enlarged stabilization except where there is conclusive evidence that the primary structure is in danger from shoreline erosion caused by tidal action, current, or waves. However, while the Guideline standard is specific to a single parameter—erosion rates within a three year period as determined by a geotechnical analysis—the Draft SMP requirement is more broadly focused on a range of site and other environmental factors, including fetch, wind direction and speed, wave height, and site slope important to determining the need for shoreline stabilization. Consequently, the Draft SMP standard is intended to provide flexibility in determining whether stabilization is justified. (It is worth noting that Ecology has questioned this approach: See question #9 below.)

**Draft SMP – Options for New or Enlarged Stabilization.** Once need is demonstrated for new or enlarged stabilization, the Draft SMP requires an applicant build soft stabilization measures unless it can be shown that such measures are not technically feasible. (See LUC 20.25E. (4) for details.) There is an exception for developed sites with less than 10 feet between the structure and the ordinary high water mark where it is assumed that some form of hard stabilization will be required. The Draft SMP is intended to provide addition clarity and to adapt to a range of different site conditions, by providing a range of soft and hard stabilization options and establishing a hierarchy of preference for both. Choices for soft stabilization range from mostly vegetative and bioengineering techniques to incorporation of more rigid structures for more active shorelines. Options are also included for hard stabilization with a preference shown for revetments made from rip-rap not to exceed 3:1 in slope combined with slope contouring, beach nourishment, live staking and other enhancement. (Sloped revetments are used in many of the highest energy shoreline environments in the world and provide greater protection and higher habitat functions than vertical bulkhead systems.) Other combinations rip-rap options are possible up to 1.5:1 where primary structures are located close to the water. New vertical concrete bulkheads are prohibited.

**Draft SMP – Repair or replacement of existing shoreline stabilization.** The Guidelines are silent about routine repair but permit replacement of an existing structure provided there is demonstrated “need” to protect principal uses or structures from wave-caused erosion. However, the replacement structure should be designed, located, sized and constructed to assure no net loss of ecological functions. In an effort to address the issue of need and no net loss, the Draft SMP was intended to create two classes of repair: minor and major. Minor repair addresses those restorative actions short of total replacement and may proceed up to a threshold of 50 percent of the linear length of the stabilization over three years. Major repair concerns those repairs needed to restore an existing stabilization measure that has collapsed, eroded away, or otherwise demonstrated loss of structural integrity sufficient to jeopardize its erosion protection function or in which cumulative reconstruction involves over the 50 percent threshold. The critical concept here is the understanding that if more than 50 percent of the structure needs reconstruction, the usual approach is to rebuild or replace the entire structure. Where reconstruction or replacement is warranted, the Guidelines appear to require a showing of “need;” the Draft SMP dispenses with this requirement for legally-established structures putting in its place the required hierarchy for “new” stabilization such that an applicant must demonstrate the replacement conforms to LUC 20.25E F.4.b and the preference hierarchies for soft or hard stabilization. These options are further constrained when an area of special flood hazard is present. Because of the unique structural characteristics of existing legally-established hard stabilization in the Shoreline Residential Canal environment, it can be repaired or replaced in its existing configuration.

**2. The Draft SMP includes regulations that unreasonably constrain property owners seeking to repair or replace their existing stabilization. (35.56 – 35.60)**

**Response:** See discussion above under *Draft SMP – Repair or replacement of existing shoreline stabilization*. The intent of the Draft SMP was to provide a clear distinction between routine maintenance necessary to prevent degradation and “replacement” necessary to restore an existing stabilization measure that has collapsed, eroded away, or otherwise demonstrated loss of structural integrity sufficient to jeopardize its erosion protection function. In addition, the Draft SMP is intended to simplify the requirement that an applicant show “need” by providing performance standards governing how the stabilization “function” may be replaced.

**3. Can a property owner be made to remove their armored shoreline? (24.36)**

**Response:** The Draft SMP contains no regulations that would require a property owner to remove a legally-established shoreline stabilization measure.

**4. Was the stabilization study conducted by the City designed around SMP requirements? (23.10 )**

**Response:** WAC 173-26-201 outlines the kind of information that should be considered for incorporation into the Shoreline Master Program update process. This section suggests that jurisdictions should utilize the “most current, accurate, and complete scientific or technical information available.” Since the City possessed detailed GIS survey data accurate to 0.10 of a foot inventorying and characterizing shoreline stabilization, stream ends and utility outfalls for the Bellevue shoreline, it was viewed as an accurate and cost effective way to depict key parameters used to measure shoreline ecological function in our possession; e.g. the disruption by armoring of key links between terrestrial and aquatic systems including the availability of habitat, leaf litter and food items important to juvenile salmonids and other aquatic species. Since the study was initially prepared to respond to the 1999 ESA listing of Puget Sound Chinook, it addressed one of the elements thought to be one of the most important indicators of shoreline development and habitat impairment.

- 5. The City’s use of existing GIS data for stabilization makes the shorelines on Lake Sammamish appear in worse condition than is actually the case thereby requiring more levels of regulation that are not required. (23.10, 23.11, 23.12, 23.13, 23.14)**

**Response:** On the contrary, the reverse is the case. If this survey-accurate data overstates the impact structural stabilization has on ecological function, then it is likely the Analysis Report is overstating the degree of impairment. If it was discovered that existing structures exerted less impact than previously thought, the functional score would go up not down. If the ecological function of these reaches appears to be in better condition than is actually the case, more protection and regulation would be required than is currently identified in the Draft SMP, not less.

- 6. Soft stabilization will not work on Lake Sammamish due to ferocity of winter storms. (52.4, 4.3)**

**Response:** Different types of soft stabilization are successfully in use on Puget Sound and Lake Washington. Both shorelines are subject to energetic storms, with higher wind velocities, longer fetch and higher wave heights than is generally the case on Lake Sammamish. The Draft SMP includes a range of options for soft stabilization (see 20.25E.080.4) that can be tailored to the specifics of individual sites. Where such options are not feasible, the Draft SMP permits use of hardened options.

- 7. LUC 20.25E.080.F.4.i (Expansion of the Shoreline Jurisdiction from shift in OHWM) should include the standards of RCW 90.58.580. (57.38; 38T.354)**

**Response:** Comment noted. Staff will suggest to the Planning Commission that they amend this section to include the specific standards outlined in RCW 90.58.580. The legislature clearly intended to provide relief to property owners in such cases, while protecting the

viability of shoreline restoration projects. Restoration projects that shift the location of the shoreline can inadvertently create hardships for property owners, particularly in urban areas. Hardship may occur when a shoreline restoration project shifts shoreline management act regulations into areas that had not previously been regulated under the act or shifts the location of required shoreline buffers.

**8. New development should be designed to avoid the need for shoreline stabilization per WAC 173-26-231(3)(a)(iii)(A). (57.39)**

**Response:** Comment noted. The intent of Draft SMP was to address this requirement as outlined at LUC 20.25E.060.E.2. However, the requirement outlined at WAC 173-26-231(3)(a)(iii)(A) is more prescriptive and detailed as it calls for regulations to assure that the lots created will not require shoreline stabilization in order for reasonable development to occur.

**9. There is a need for a requirement in the Draft SMP for a geotechnical analysis as discussed in WAC 173-26-231(3)(a) and defined at WAC 173-26-020(16). For shoreline stabilization to be approved under the Guidelines, the geotechnical report must document the need for any shoreline stabilization consistent with WAC 173-26-231(3)(a)(iii)(B)(I) including the specified time periods (generally 3 years) for erosion threat. (57.40, 57.42)**

**Response:** Comment noted. The Draft SMP includes a feasibility standard for stabilization at LUC 20.25E.080.3 that includes a risk analysis to the primary structure or public use based on the rate of erosion over a three year period. Such a determination would be made by a qualified professional meaning a coastal engineer or geotechnical analyst. While staff believes the Guidelines singular focus on evidence of erosion is insufficient by itself to judge whether or not stabilization is required—some understanding of site and shoreline characteristics, potential for flooding, wind direction and frequency, and velocity and fetch is necessary to get a complete picture—staff will recommend to the Planning Commission that they revise the Draft SMP to include a more complete definition of the required geotechnical report.

**10. Shoreline Stabilization must achieve no net loss of ecological function per WAC 173-26-231(3)(a)(iii)(B)(I). (57.41)**

**Response:** Comment noted.

**11. The logs used for stabilization will become battering rams smashing the shoreline, docks and boats. (52.4, 4.7, 4.11)**

**Response:** The anchoring mechanisms for securing logs are very well developed and have successfully kept logs in place in very high energy environments including large rivers and marine shorelines. When proper anchoring system is installed, logs will remain in place. The key is designing soft stabilization as a single system with beach contouring, vegetation, large rocks, stabilized logs and even the partial use of rigid structures all playing a part.

**12. Can a property owner be required to give up useable area of property in order to remove existing shoreline stabilization or replace it with a softer form of stabilization? (24.36)**

**Response:** Replacement of vertical bulkheads with soft stabilization or sloped revetments may require some “useable” upland property, the actual amount being set by the slope of the site from ordinary high water and other site characteristics. Once constructed, however, shorelines utilizing soft stabilization often result in improved water access when compared with a vertical bulkhead and the useable area may actually be expanded. Moreover, the slope contouring often required with soft stabilization may actually move part of the stabilization waterward of ordinary high water thereby further reducing impacts on useable upland property. In either case, a property owner is not “required” to give up useable upland area unless they choose to build a new stabilization project and the characteristics of the site require it.

**Draft SMP Comments – Nonconforming Structures and Uses**

A total of 21 comments were received from 7 individuals that identified issues related to the Draft SMP’s nonconforming provisions.

**1. How do I determine if my property or structure was legally established and therefore is legally nonconforming? What happens if I cannot document that structure was legally established? (21.1, 35.45, 35.77)**

**Response:** Draft SMP sections LUC 20.25E.040.D and 25E.065.J.3 identify how a property owner may document that a use or development was legally established. The method of documentation required in LUC 20.25E.040.D and 20.25E.065.J.3 is similar to and consistent with the method to document nonconforming uses and development in other provisions of the Land Use Code. If the use or development cannot be documented as legally established, under the requirements of LUC 20.25E.040.D and 20.25E.065.J.3, the use or development are not considered legally nonconforming. Illegal uses and structures do not enjoy the protections afforded to legally-established nonconforming uses and development. Typically uses or development that were not legally established must be brought into conformance with applicable City code provisions, when an applicant undertakes redevelopment or the City receives and confirms a code violation complaint

- 2. The City should adopt the Washington State Department of Ecology’s Nonconforming provisions (WAC 173-27-080), with the exception that property owners should be allowed to restore completely damaged structures. One year to complete replacement of a destroyed structure is unreasonable. Nonconforming residences and overwater structures should be allowed to be totally replaced. The phrase “outside the control of the owner” provides staff with discretion and should be removed. (24.29, 24.30, 24.32, 35.18, 35.21)**

**Response:** WAC 173-27-080 is a default provision to regulate nonconforming uses and development when a shoreline master program does not regulate nonconforming uses and development. The Draft SMP is intended to provide Bellevue-specific nonconforming provisions consistent with nonconforming provisions that apply city wide. LUC 20.25E.040.C.2 and 20.25E.065.J include standards designed to recognize historic development patterns, protect legally-established nonconforming uses and development, allow maintenance and repair, and in appropriate circumstances, allows the replacement or expansion of nonconforming uses and structures when performance standards are met. The Draft SMP nonconforming rules also include specific standards that allow for the maintenance and redevelopment of legally-established nonconforming structures and changes in nonconforming uses to occur without requiring a shoreline conditional use permit, as is required in WAC 173-27-080.

The Draft SMP does not require that property owners complete reconstruction of accidentally destroyed structure in one-year. Instead, the Draft SMP provides one year within the date of destruction to start construction, and is consistent with the City’s current SMP. WAC 173-27-080 provides only a six month period to start construction following the destruction event.

The term “outside the control of the owner” is preceded by a list of events that inform what type of destructive events would be considered outside the control of the property owner. Typically destruction that is accidental or an unforeseen disaster beyond the control of the owner will occur in one event (typically a natural disaster), not as a decline over time which is commonly due to poor maintenance.

- 3. Why do the nonconforming standards differentiate between repair and replacement when the WAC provisions (WAC 173-27-080) do not? Why is the City using thresholds to differentiate between maintenance and repair? Repair thresholds should not apply to replacement or repair of improvements because the SMA does not differentiate. (24.29, 24.31, 35.18, 35.19, 35.46, 35.60).**

**Response:** Maintenance thresholds were added to the shoreline rules as part of the critical areas update process in 2006. Prior to 2006, structures were prohibited in the historic 25-foot structure setback since Bellevue adopted its first SMP in 1974. Under the Draft SMP, structures located within the 25-foot vegetation conservation area are limited to repair only,

while structures within the 50-foot structure setback can be repaired, replaced, or expanded. The Draft SMP is intended to provide more flexibility than has ever existed within Shoreline Jurisdiction, and is more lenient than any other non-conforming provision that currently exists city-wide.

**4. Under the proposed regulations a large number of structures will become nonconforming. Nonconforming status carries consequences such as reduced property values (24.32, 34.5, 35.1, 35.11, 44.6)**

**Response:** The Draft SMP contains provisions to regulate nonconforming uses and development in the shoreline. Nonconforming uses and development are also regulated city wide under other provisions of the Land Use Code. Generally, the code allows lawful nonconforming uses and development to continue, provided they are not enlarged, intensified, increased, or altered in any way that increases their nonconformity.

Consistent with the City's critical areas ordinance, the draft residential nonconforming standards found in LUC 20.25E.065.J provide a footprint exception for legally established residential primary structures that are located within the within the 50-foot shoreline structure setback and outside of the 25-foot vegetation conservation area. A structure located within the footprint exception is considered legally conforming and may be may be expanded or replaced (within the existing footprint), and maintained if applicable performance standards are met. Only those primary residential structures that encroach into the 25-foot vegetation conservation area will become nonconforming to shoreline setback standards. These structures may be rebuilt in conformance with the nonconforming requirements. The setbacks were selected to ensure the least number of structures greater than 800 square feet would be become nonconforming, while considering the pre 2006 25-foot setback that has been in place since 1974. The supporting data is contained in the Planning Commission Map Book (June 9, 2010) located at:

[http://www.bellevuewa.gov/pdf/Development%20Services/PC\\_Map\\_Book\\_6-9-2010\\_v1.pdf](http://www.bellevuewa.gov/pdf/Development%20Services/PC_Map_Book_6-9-2010_v1.pdf)

Bellevue citizens have historically valued protections on their ability to maintain, repair, and modify nonconforming structures. The Draft SMP is intended to provide flexibility that property owners need to maintain, repair, and modify nonconforming structures, while meeting the requirements of the SMA, in order to help foster redevelopment and reinvestment in property and avoid property decline that can impact neighborhood character and livability. Consequently, it is unlikely that property values will be diminished.

**5. Can nonconforming piers be repaired or replaced under the proposed draft? (24.33)**

**Response:** The Draft SMP section LUC 20.25E.065.I creates two categories that allow for repair and replacement of existing docks to provide definitional clarity and enhanced usability over the treatment of repair under existing land use code.

(1) A repair or replacement action that includes the replacement of no more than 50% of the dock piling. This action may be executed in combination with the complete replacement of the dock surface and substructure, and repair of all of the remaining piling through sleeving, capping, and splicing. As long as no more than 50% of the piling is replaced, this category is treated as a repair.

(2) A repair or replacement action that includes the replacement of more than 50% of the dock piling is considered a replacement and must meet the standards applicable to new docks.

**6. The footprint exception means that the City has determined that expanding homes will harm the lake, which is not credible. (34.5, 34.44)**

**Response:** Draft SMP section LUC 20.25E.065.E.2.c exempts the footprint of existing legally-established residential dwellings from the 50-foot shoreline setback by drawing the setback around the footprint of the residential dwelling. This exemption was created to grant relief to those homes that were constructed in compliance with the 25-foot shoreline setback in place between 1974 and 2006 and to avoid the creation of new nonconforming structures. The footprint exemption does not apply to structures within the 25-foot vegetation conservation area. Limitations on the establishment and expansion of single family homes within the structure setback are required by the State Shoreline Guidelines. WAC 173-26-241(j) specifically identifies that the development of single-family residences can cause significant damage to shoreline resources and requires that SMP's include policies and regulations intended to ensure no net loss of ecological functions. This section of the State Shoreline Guidelines also requires that SMP's include specific regulations for shoreline buffers and setbacks.

**7. Loss of nonconforming residential status violates public property rights because the provision does not account for selling periods that may take more than one year, and a residence may go unoccupied for during attempts to sell the property. (35.19, 35.46)**

**Response:** Vacancy for the purpose of sale does not constitute abandonment and does not impact the nonconforming status of a structure or a use.

**8. Normal maintenance of Nonconforming structures should be exempt from the requirements to obtain a shoreline substantial development permit. (35.77)**

**Response:** Comment noted. Under the SMA, development within the shoreline requires a shoreline substantial development permit. RCW 90.58.140. In some cases, however, normal repair and maintenance is allowed through a shoreline exemption and does not require a shoreline substantial development permit. See Draft SMP section LUC 20.25E.170.C.2. Development exempt from the requirements of a shoreline substantial development permit are still required to be consistent with the SMA and the Draft SMP.

**9. The applicability provisions of the Draft SMP are too broad without clarifying that the regulations apply to only new construction on vacant lots and not to existing homes or sites. Existing homes were not constructed in compliance with the newly proposed, highly detailed design and site planning regulations. If not clarified, this approach would cause essentially all existing homes to become nonconforming for reasons that both minor and potentially impossible to correct. And this would occur despite the footprint exception. (38.24L)**

**Response:** Comment noted. The provisions of the Draft SMP apply to development undertaken on the shorelines of the state, as required under the SMA. RCW 90.58.140(1). The applicability provisions of the Draft SMP are consistent with those in the Land Use Code and apply to new development, redevelopment, and shoreline uses. The new residential standards incorporate the general development requirements in the LUC, so legally-established new homes will conform to the new standards, and the footprint exception maintains legal conformity for primary residential structures located within the 50-foot structure setback and outside the 25-foot vegetation conservation area. Finally, the detail and specificity of the standards are designed to allow property owners to benefit from the presumption that the standards are presumed to meet the requirement of no net loss of ecological function set forth in LUC 20.25E.060.B.2.

### **Draft SMP Comments – Docks**

Staff identified a total of 127 comments from 15 commenters that spoke directly to draft residential dock standards. More than 90 of the comments were from three commenters (series 24, 35, and 38T).

**1. Mitigation should not be required for replacement docks that conform dimensionally to the new rules. Doesn't replacing the dock with new materials constitute an improvement? (5.2; 24.38; 35.82)**

**Response:** Although replacing an existing dock with a new dock that uses improved materials does constitute an improvement, it does not account for the temporal impact associated with the location and long-term maintenance of a dock. The requirement to provide mitigation is intended to offset the long term temporal impact of precluding the area occupied by the dock from performing ecological functions. Mitigation for new and replacement docks is required under WAC 173-26-231(b). The Department of Ecology has indicated that mitigation for new and replacement docks is required unless the SMP can demonstrate that the dock standards, without mitigation, are sufficient to avoid impacts to shoreline ecological functions.

- 2. Rules for shared residential docks should allow covered moorage for all dock users and should allow for partial replacement or expansion to accommodate a shared ownership interest. (10.1; 10.2)**

**Response:** Covered moorage is governed under Draft SMP section LUC 20.25E.065.I.4.b.v. This section limits the number of open sided boat covers to one per dock, although the intent for shared docks was to allow one open sided boat cover per shared dock user. Staff will point alert the Planning Commission to the possible need for additional clarification. The draft dock rules do allow for a partial expansion or replacement if the performance standards can be met. In all cases, a shared dock is considered as one consolidated unit for the purpose of application of the SMP, although additional square footage is allowed when the dock accommodates more than one user.

- 3. Phantom Lake dock rules are far more restrictive than other waterfront areas. Larger docks with wider walkways and more surface areas should be allowed. The surface grating requirement should be removed. (15.1; 15.6; 35.106; 68.8)**

**Response:** Draft dock rules for Phantom Lake were crafted to meet the requirements of WAC 173-26-231(b). Specifically, the WAC guidelines restrict dock design to the minimum necessary to support a water dependent use such as recreational boating. Pleasure viewing, picnicking, or using the dock surface as a gathering place (activities that can be accommodated from the land) are not included as a water dependent activities and are not given recognition when designing a dock (WAC 173-26-231(b)). Recreational boating activity on Phantom Lake is limited to small wind and human-powered personal watercraft that have limited moorage requirements. Due to the type of water dependent activity on Phantom Lake, the minimum necessary dock construction to provide access to recreational boating is reduced from that required on Lake Washington and Lake Sammamish – this is reflected in the different rules. Further, inclusion of unique dock standards in the Draft SMP for Phantom Lake is intended to respond to the Planning Commission Principles for drafting an SMP “that is tailored to the unique characteristics of land designated as shoreline jurisdiction in Bellevue.” Grating is required as a design feature intended to reduce the impact of shading on shoreline functions. Grating has become common practice in dock construction and there are now several grating products available. Note that grating is only required if more than 20 sf of dock surface is replaced, and only that portion being replaced needs to be converted to grating. In most cases, regular maintenance of the dock surface will result in an area of less than 20 sf being replaced so that the grating requirement is not triggered.

- 4. A maximum overwater coverage limit should be established for docks. Suggest using the limitation established by the Army Corps of Engineers and endorsed by Ecology. (16.10; 16.11; 32.54)**

**Response:** The standards contained in the Draft SMP were crafted to be compatible with other agencies rules while meeting the requirements of WAC 173-26-231(b). Specifically, the WAC guidelines restrict dock design to the minimum necessary to support a water dependent use such as recreational boating and do not require a maximum overwater coverage be established. Bellevue's draft dock standards are intended to limit overwater coverage and in-water structure within the nearshore (first 30 feet from OHWM) in an effort to reduce impacts to shoreline ecological functions. To provide a flexible moorage configuration over deeper water, the draft dock standards guide moorage platform design by limiting platform size to what is necessary for the smaller vessels found on Phantom Lake and Lake Sammamish, providing more area for larger vessels found on Lake Washington, and establishing a maximum size limitation related to the moorage function the docks is designed to serve. Preliminary spatial analysis of Bellevue's shoreline that considered water depth and distance from shore indicates average overwater coverage of less than 480 square feet for Lakes Washington and Sammamish. To ensure compatibility with other agencies standards, the dock standards in the Draft SMP also include many of the elements relied upon by other the agency's rules (in addition to a maximum overwater coverage) to ensure impacts on habitat resources and shoreline ecological function is limited – including requiring the use of surface grating and land based mitigation measures. The Draft SMP dock standards include elements designed to limit the dock size to the minimum necessary, to ensure no net loss of ecological function, and provide the required flexibility to provide functional moorage.

- 5. Open sided boat covers should be required to be made from translucent materials. (16.12)**

**Response:** Draft SMP section LUC 20.25E.065.I.4.b.v allows for the construction of one open sided structural boat cover through the special shorelines report process where an improvement in shoreline ecological function can be demonstrated. The use of translucent materials is one technique that would be allowed to avoid and mitigate for impacts from boat covers. To receive a permit through the specials shorelines report process, the applicant must demonstrate how avoidance, minimization, and mitigation of impacts to shoreline ecological functions have been achieved, consistent with WAC 173-26-231(b).

- 6. Why is dock repair limited to the replacement of no more than 50% of the piling (if more than 50% is considered a repair)? This is inconsistent with WAC 173-27-040(2)(b) and since piling replacement almost always ends up with an improved environmental**

**condition over the existing condition due to the use of improved materials there is no impact. Limiting repair of piling to 50% exceeds the State requirement. If a dock repair exceeds the 50% threshold, then it must meet the new dock standards. (24.1; 24.2; 24.3; 24.4; 24.5; 24.23; 24.24; 24.25; 24.26; 24.29; 24.31; 24.40; 24.41; 24.47; 24.48; 24.49; 35.82; 35.86; 38T.245; 38T.288; 44.8)**

**Response:** Draft SMP section 20.25E.065.I.5 limits the replacement of piling under the provision for repair to 50% of the existing piling. WAC 173-27-040(2)(b) does include a definition of normal repair, although this definition is used in the determination of permitting requirements, not performance standards and is unrelated to SMP requirements which may regulate maintenance to achieve consistency with the State SMP Update Guidelines and the SMA. Draft SMP section LUC 20.25E.065.I.5 is intended to define repair for the purpose of application of performance standards and does not dictate permit process requirements (Shoreline Exemption vs. Shoreline Substantial Development Permit) as opposed to WAC 173-27-040(2)(b) which dictates permit process requirements and identifies when a Shoreline Exemption is acceptable. Permit process requirements for Shoreline Exemptions are included in Draft SMP section LUC 20.25E.170.

Under the draft dock standards, repairs that include the replacement of more than 50% of the dock piling are required to meet new dock standards, although credit is given for a platform that exceeds the size allowed under the new standards – the existing platform size may be retained. Compliance with new dock standards is required as replacement of more than 50% of dock piling presents an opportunity to reconfigure the dock to meet new standards. Although replacement with new materials and replacing the dock surface with grated materials does provide for an improvement, existing docks are often oversized in the nearshore where impacts are greatest from shading and in-water structure. The intent of this requirement is to phase out old dock configurations and replace docks with new configurations that are better aligned with moorage needs and that focus on protection of the nearshore environment.

- 7. The definition of watercraft lift should be revised to eliminate the restriction on keeping the lift above the Ordinary High Water Mark and instead should restrict the attached lift to having no contact with the substrate. There is no justification to limit the number of watercraft lifts. (24.6; 35.87; 35.94; 38T.244a; 38T.293)**

**Response:** The definition of boat and watercraft lift in the Draft SMP could be amended to focus on limiting the amount of in-water structure and avoiding contact with the substrate as opposed to requiring it to be elevated above the OHWM. The number of watercraft lifts is related to the “minimum necessary” requirement presented in WAC 173-26-231(b) and is intended to limit the use of single family residential docks to moor and store multiple boats

and “avoid” impacts to shoreline ecological functions as required by the State Guidelines. Limiting the number of boatlifts and watercraft lifts to two and four (respectively) is an increase over the one boatlift currently allowed. There is no current or proposed limit on the number of boats or watercraft moored at a single family residential dock.

8. **The dock standards do not include a maximum overwater coverage limitation. This may be misleading to applicants as other agencies that regulate dock construction do have maximum overwater coverage limitations. Suggest adding a note to the dock standards that directs the applicant to other agencies to ensure dock designs are compatible with all standards. (24.7; 24.9; 24.46)**

**Response:** Agreed. This section in the Draft SMP could be amended to include a note directing the reader to State and Federal requirements.

9. **Penalties for increasing the width of a dock walkway are not proportional to the benefit of decreasing the walkway width. Suggest deleting this section. (24.8; 35.90; 35.93; 38T.257; 38T.269b)**

**Response:** Draft SMP section LUC 20.25E.065.I.4 (Table Footnote 3) does include a provision to widen the dock walkway up to 6 feet although the additional width beyond 4 feet is provided as a disincentive and requires a deduction from the maximum dock platform at a ratio of 2:1. For example, the width of a walkway on a new dock on Lake Sammamish may be increased from 4 feet to 6 feet but the maximum platform size of 250 square feet must be reduced to 190 square feet for a dock with a 30 foot long walkway. Section LUC 20.25E.065.I.4 (Table Footnote 4) also includes an incentive to decrease walkway width by allowing an increased platform size. For a dock on Lake Sammamish, this means that a decrease in walkway width from 4 feet to 3 feet for a 30 foot long walkway would allow for an increase in the maximum platform size by 30 square feet to 280 square feet total. The disincentive to widen the walkway and the incentive to narrow the walkway are purposely not proportional and are intended to provide emphasis on protecting the nearshore environment where impacts to shoreline ecological functions from overwater coverage and in-water structure are most significant. The rationale for limiting the benefit from narrowing the walkway to a 1:1 tradeoff is to cap dock size to the minimum necessary to provide the moorage function and to avoid and limit impacts to shoreline ecological functions as required by WAC 173-26-231(b).

10. **The SMP should not regulate the location of a platform based on a minimum distance from the shoreline or a minimum depth and should not regulate piling size and location. This should be left to State and Federal agencies who are charged with protecting endangered or threatened species. (24.11; 38T.265)**

**Response:** Draft SMP section LUC 20.25E.065.I.4 does restrict the placement of the moorage platform to a minimum depth and minimum distance from shore. WAC 173-26-231(b) limits docks for the purpose of moorage and requires avoidance, minimization, and mitigation of impacts to shoreline ecological functions. The restriction on the location of the dock moorage platform is to direct moorage to a location appropriate for the moorage and storage of boats and watercraft and to avoid impacts to shoreline ecological functions in the more sensitive nearshore. To implement the SMA, the State SMP Guidelines do require the protection of shoreline ecological functions. This requirement is comprehensive with respect to ecological functions and unrelated to other State and Federal endangered species mandates that provide authority for these agencies to regulate docks.

**11. Dock walkway piling should not be limited to 8 inches. Dock piling size should not be restricted as this could lead to an unsafe situation. (24.12; 35.89; 35.91 )**

**Response:** Draft SMP section LUC 20.25E.065.I.4 does limit dock piling to 8 inches for structural walkway piling and 12 inches for moorage platform piling. Piling sizes may be increased through submittal of a shoreline special report as allowed under LUC 20.25E.065.I.3.d. Current City of Bellevue dock rules limit dock piling to 4 inches in the nearshore and 12 inches for the remainder of the dock. Draft dock standards focus on locating moorage on the moorage platform. Piling size is related to the function of each portion of the dock – smaller piling are prescribed for the dock walkway where less lateral support is needed and where impacts from in-water structures can impact ecological functions. Larger piling are prescribed for the moorage platform where moorage is located and lateral loading must be considered.

**12. Remove dock walkway moorage restriction. (24.13; 35.87; 35.95)**

**Response:** Draft SMP section LUC 20.25E.065.I.4.c does include a design standard that restricts the moorage of boats to at least 30 feet from the Ordinary High Water Mark. This is intended to protect nearshore ecological functions by directing boat moorage to deeper water.

**13. Eliminate invasive weed removal requirement for new and replacement docks. Removal of invasive weeds cannot be done in a piecemeal manner. (24.14)**

**Response:** Draft SMP section LUC 20.25E.065.I.4.d.iv does require the removal of invasive weeds in conjunction with a new or replacement dock. This is consistent with the requirements of RCW 17.10.140 that requires the removal of invasive weeds. Removal of

this citation would not remove the property owners obligation under state law to remove invasive weeds.

- 14. The additional mitigation requirements for new and replacement docks should be removed from the SMP. Mitigation is already required by State and Federal requirements. (24.16; 24.17; 24.18; 24.19; 24.20; 24.21; 24.22; 35.100; 38T.279; 38T.280; 38T.281; 38T.282; 38T.283; 38T.284; 38T.285; 38T.286)**

**Response:** Draft SMP section LUC 20.25E.065.I.4.d.v does require mitigation for new or replacement docks. Mitigation for impacts related to docks is required under State SMP Guidelines section WAC 173-26-231(b) that requires avoidance, minimization, and mitigation. To implement the SMA, the State SMP Update Guidelines do require the protection of shoreline ecological functions. This requirement is in addition to and unrelated to other State and Federal endangered species mandates that provide authority for these agencies to impose mitigation requirements.

- 15. Modify piling repair limitations to include sleeving. (24.27)**

**Response:** Agree. Draft SMP section LUC 20.25E.065.I.5.b.i could be amended to include sleeving.

- 16. Dock replacement does not need to meet the no net loss criteria. (24.44; 24.45; 24.50)**

**Response:** This is not true. The SMP Guidelines require that all development actions protect ecological functions of the shoreline. WAC 173-26-201(2)(c) requires that SMPs include provisions to address the impacts from all development activities and modification actions on the shoreline. Dock replacement is considered a development action and is required to meet the no net loss criteria. No net loss is addressed for replacement docks through the implementation of mitigation requirements intended to offset the long term temporal affect of constructing a dock. (See the answer to #1 in this section for additional discussion on mitigation and no net loss.)

- 17. The City should leave dock regulation to the State and Federal agencies that have jurisdiction and avoid duplication. Further, the City does not have the expertise to design safe docks. (35.81; 35.92; 35.93;38T.256;38T.259; 38T.275;38T.276; 38T.289; 44.7)**

**Response:** The City is required to regulate docks as part of its SMP to implement the SMA. State and Federal endangered species mandates provide authority for other agencies to regulate docks. Although safety is considered as part of other agencies review processes,

docks are considered structures and must comply with building codes and must obtain a building permit under which structural stability and safety are evaluated.

**18. The dock standards for new docks and repair are overly restrictive and could result in excessive costs to the property owner. (35.83)**

**Response:** Comment noted. Similar to other structures and development in the City of Bellevue, design standards are in place to ensure that dock design is appropriate for the location where the dock is to be located and will not negatively affect adjacent property owners and members of the public who use the public waters.

**19. More than one covered moorage should be permitted. (35.88; 35.10; 38T.296)**

**Response:** Comment noted. Draft SMP section LUC 20.25E.065.I.4.b.v allows one open sided covered moorage and section LUC 20.25E.065.I.7.c allows one boatlift canopy per dock. The number of moorage covers is related to the “minimum necessary” requirement presented in WAC 173-26-231(b) and is intended to limit the use of single family residential docks to moor and store multiple boats and “avoid” impacts to shoreline ecological functions as required by the State Guidelines. The number of moorage covers allowed under the Draft SMP is consistent with what is allowed in the current code. There is no current or proposed limit on the number of boats or watercraft moored at a single family residential dock.

**20. Regulations say “boat cover.” Does this include a boat canopy? (35.102)**

**Response:** Draft SMP section LUC 20.25E.065.I.4.b.v allows one open-sided covered moorage and section LUC 20.25E.065.I.7.c allows one boatlift canopy per dock.

**21. Restrict lighting by requiring lighting design that eliminates artificial light spillover beyond the dock surface. (57.21)**

**Response:** Draft SMP section LUC 20.25E.065.I.3.b does limit dock lighting to prevent artificial light spillover beyond the dock surface.

**22. Dock walkways should be limited to 4 feet unless proposed to provide barrier free access. If a wider walkway is needed mitigation should be required. (57.22)**

**Response:** Draft SMP section LUC 20.25E.065.I.4 does limit dock walkways to 4 feet. If a wider walkway is requested it is allowed up to 6 feet at a disincentive to the applicant

through a 2:1 deduction from the moorage platform maximum size allowance. See #9 above.

- 23. The Army Corps restricts overwater dock coverage area to 480 square feet and dock walkway width to 4 feet. Based on a review of applicable science this size has been selected as not having an adverse effect on shoreline functions. The Draft SMP restricts overwater coverage based on the length of the walkway and the size of the platform. If the walkway was longer, this could lead to a total overwater coverage that exceeds the 480 square feet set by the Army Corps. Larger overwater coverage may not be supportable by applicable science. (57.20; 57.23)**

**Response:** The Draft SMP allows docks to exceed the current 480 square feet limit targeted by the Army Corps of Engineers. A more detailed explanation is found in #9 above. WAC 173-26-231(b) does not include a maximum dock size restriction but rather limits dock size to the minimum necessary to provide the intended function where avoidance and minimization of impacts can be demonstrated and a finding of no net loss of ecological functions can be made. To avoid confusion, however, references to state and federal regulations could be included as part of the Draft SMP

- 24. The draft dock standards include an allowance for finger piers to extend beyond the platform and finger piers do not count against overwater coverage. Finger piers must be counted as part of the overall allowed dock surface area. (57.24)**

**Response:** Comment noted. The Draft SMP, section LUC 20.25E.065.I.4 (table footnote 6), does allow the inclusion of up to two finger piers no wider than 2 feet when the dock is configured in an h shape. Narrow finger piers have a reduced impact (smaller footprint and less shading) as compared to large overwater structures and provide benefit in the form of increased flexibility in moorage configuration. By requiring the dock to be constructed in an h configuration boat orientation at moorage places the propulsion system in deeper water and pushes water away from the nearshore reducing impact to shoreline ecological functions from motor propelled water.

- 25. Residential docks should be the minimum size necessary to accomplish their water dependent purpose as well as meet the size standards in the SMP regulations. (57.25)**

**Response:** Draft SMP section LUC 20.25E.065.I.4 is intended to limit the size of a dock to what is considered the minimum size necessary for a residential pleasure craft dock and does include limitations on the size and location of the moorage platform. Docks sizes for Phantom Lake and lakes Washington and Sammamish include different dimensional limitations to reflect the different sized boats commonly used on each lake.

**26. Residential development of two or more lots shall require a joint use dock unless demonstrated to be infeasible. (57.26)**

**Response:** Comment noted. Draft SMP section LUC 20.25E.065.I.4 does allow for the development of joint use docks, although it is not required.

**27. Limiting the dock walkway to 4 feet is overly restrictive and will result in an unsafe condition. (63.4; 38T.257)**

**Response:** Draft SMP section LUC 20.25E.065.I.4 (Table Footnote 3) does include a provision to widen the dock walkway up to 6 feet although the additional width beyond 4 feet is provided at a disincentive and requires a deduction from the maximum dock platform at a ratio of 2:1. See additional response under # 9 above. Four feet of walkway width is commonly required in residential dock construction and for finger piers in many marinas. A history of safety issues has not been raised by dock construction contractors or marina operators familiar with the use of a 4-foot wide walkway to provide dock access. Some commercial moorage facilities in the Lake Washington basin use 4-foot wide or narrower walkways to provide access to multiple moorage slips, including fire or emergency services access with no known safety issues.

**28. Redefine moorage platform to provide more emphasis on moorage and safe boarding. (38T.244b)**

**Response:** Comment noted. The moorage design standards purposely do not include detailed requirements on the design and configuration of the moorage platform. Specific design requirements were omitted to allow flexibility in design for the individual user to accommodate a range in vessel types.

**29. Redefine walkway to focus on providing access to the shore. (38T.246)**

**Response:** The definition of walkway provided in LUC 20.25E.065.I.2 focus on providing access to the shore.

**30. Redefine watercraft to read “personal watercraft”. (38T.247)**

**Response:** Agree. This definition could be changed to read “personal watercraft.”

**31. The accidental destruction provision contains too many conditions on reconstruction of a damaged dock. One year is too short or at a minimum there should be an extension**

**option for up to three years. The reference to “beyond the control of the owner” is undefined and could be improperly used to undercut “accidental.” Beyond control of the owner could be misused to claim that owner should have done better job maintaining dock to prevent destruction. (38T.253)**

**Response:** Comment noted. The accidental destruction provision of the Draft SMP is found in LUC 20.25E.065.I.3.c is intended to provide relief for a dock that does not conform to the current dock design standards. The requirement that the dock reconstruction is commenced within one year of destruction is consistent with the abandonment of use restrictions that limit the continuation of a nonconforming use Citywide to one year of abandonment. Typically destruction that is “accidental” or “unforeseen disaster beyond the control of the owner” will occur in one event, not as a decline over time which is commonly due to poor maintenance.

- 32. This provision addressing the use of a Shoreline Special Report is redundant with the introductory provision that states that a Shoreline Special Report may not be used to change these provisions. (38T.254)**

**Response:** Agree. This section could be redrafted to eliminate this redundancy. Having this statement in two places was intended to make the use and application of the special shorelines report clear to the reader.

- 33. The maximum platform size for Lakes Washington and Sammamish is too limited because the totals include finger piers too. (38T.261)**

**Response:** The total overwater coverage limitations for dock platforms does not include two finger piers less than 2 feet in width when the dock is platform is configured in an h formation. Please see LUC 20.25E.065.I.4 (table footnote 6).

- 34. For Lakes Washington and Sammamish, the maximum platform size provision is too restrictive as stated for new, since any increase in an existing dock is treated as new. The Notes should clarify that “No Greater Than Existing Moorage Platform” allows the size to be maintained even if the configuration or location is changed. That appears to be the intent, but some clarity is required. There is no impact if the platform does not get any larger, so this accommodation would encourage positive changes without punishing property owners. (38T.263)**

**Response:** Draft SMP section LUC 20.25E.065.I.4 does allow the replacement of a dock that currently has a platform (as defined in the Draft SMP section 20.25E.065.I.4) that is larger than the dock platform allowed under the Draft SMP dock design standards to retain

the existing sized platform and the platform may be moved or reconfigured. For example, if the platform on a Lake Washington dock is currently 600 square feet, the dock may be replaced with a platform that is also 600 square feet instead of the 350 square feet limitation set by the Draft SMP dock standards. Likewise, if the existing dock has a platform that is smaller than that which is allowed under the draft dock standards, the platform may be enlarged to the maximum allowed at the point of dock replacement.

- 35. The moorage piling provision is vague or too restrictive. The reference to “set” is unclear, but appears to refer to a “pair” of pilings – one on each side of the walkway. Plus, in deep water with a 30 foot walkway, the restriction to one pair may be inadequate for safely supporting the walkway. Spacing of piling on Lakes Washington and Sammamish and is vague in referring to “maximum feasible” spacing, to “minimize shading,” to avoid a “wall effect.” (38T.266; 38T.272)**

**Response:** Draft SMP section LUC 20.25E.065.I.4 (table footnote 7) does include a limitation on the spacing of piling to the “maximum feasible” distance between piling. This requirement is consistent with WAC 173-26-231(b) which requires that dock construction avoid, minimize, and mitigate impacts to shoreline ecological functions. The size, number, and location of piling is one factor that must be considered when determining if a dock design is the minimum necessary to meet the intended function of the dock, which in this case is moorage of a pleasure craft on a residential dock. Agree that “set” is the same as “pair” of piling and the language could be clarified along with providing more specificity regarding piling standards and spacing.

- 36. Define mooring pile. (38T.267)**

**Response:** Agree. This should be defined.

- 37. The limitation that decking be grated is also too restrictive as the Corps or WDFW may authorize other translucent materials, or other options may be created in the future. (38T.268)**

**Response:** Comment noted. Draft SMP section LUC 20.25E.065.I.4 does require that dock surfaces be grated. This requirement may also be amended through a shorelines special report if the site where the dock is to be located is unique or a special circumstance warrant the use of an alternative means to reduce the shading effect of the dock. This section could be amended to include a provision that allows other translucent material, without a special shorelines report, provided they have been approved by state and federal agencies with jurisdiction.

- 38. Dock setbacks should not apply to boatlifts or personal watercraft lifts. The dock setback is an established rule, trying to apply it to an underwater piece of a lift is confusing. (38T.269a)**

**Response:** Comment noted. This requirement is intended to eliminate conflicts between property owners and boaters and functions much like a structure setback from a driveway or access easement. This was included as staff has encountered several situations where boatlifts were placed in the navigation course of an adjacent dock owner blocking or severely restricting navigation to an adjacent dock.

- 39. Note excludes two finger piers from size calculations, but only if in h shape. Finger piers do not have sufficient width to cause any shading effects so limiting this allowance to only h shapes has no connection to preventing harm—it is just an arbitrary and punitive restriction. (38T.271)**

**Response:** Comment noted. See comments #21 and #33.

- 40. The combined frontage provision is confusing because it provides an exception for ii but ii authorizes docks on all existing lots and new lots compliant with the zoning codes. So, it is unclear when this exception would apply or if a different and problematic meaning is given to ii. (38T.273)**

**Response:** Comment noted. This provision could use additional clarity.

- 41. The provision prohibiting new boathouses is vague or too restrictive because boathouses are undefined and if applied to a structure housing a boat anywhere within 200 feet of the water, it is too restrictive. Plus, the harm caused by boathouses on shore is not demonstrated. (38T.274; 38T.297)**

**Response:** Comment noted. Draft SMP section LUC 20.25E.065.I.4 does prohibit new boathouses. Boathouse is defined in the existing Land Use Code under section LUC 20.50.012 as “A covered moorage or overwater structure screened or enclosed by one or more sides exceeding 30 inches in height, except for vessels”. Boathouses are typically large overwater structures that cause a significant shading effect on the nearshore environment. A more specific definition would be helpful in distinguishing the range of covered structures that are permitted on the shoreline.

- 42. Skirting is prohibited unnecessarily because it can be a safety feature especially with docks high above low water as required by some of these regulations. (38T.278)**

**Response:** Comment noted. Skirting is prohibited under LUC 20.25E.065.I.4 due the shading effect it causes. Safety bumpers that extend from the dock fascia into the water are not prohibited and are allowed to prevent boats from drifting under the dock during low water or wave action.

- 43. Subpart ii is vague and may be read as requiring replacement of 50% or more of pilings to require compliance with piling restrictions in the Chart, which could require complete reconstruction of docks. (38T.290)**

**Response:** Draft SMP section LUC 20.25E.065.I.4 does require compliance with the new or replacement dock standards if more than 50% of the piling are replaced. It is anticipated that this could, in some circumstances trigger dock reconstruction. See comment #6 above.

- 44. The requirement that replacement grating allow light transmission if over 20 SF is confusing because the Chart requires only “grated” decking and no other types of decking with light transmission. This provision is excessive, punitive, and counterproductive by requiring complete replacement if 21 square feet need replacement. Replacing decking should be encouraged even if less than the entire dock.**

**Response:** See comment #37 above.