



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

PO Box 47600 • Olympia, WA 98504-7600 • 360-407-6000
711 for Washington Relay Service • Persons with a speech disability can call 877-833-6341

July 26, 2010

The Honorable Joan McBride, Mayor
City of Kirkland
123 Fifth Avenue
Kirkland, WA 98033-6189

**Re: City of Kirkland's Shoreline Master Program Comprehensive Update
Resolution R-4786**

Dear Mayor McBride:

I would like to take this opportunity to commend the City of Kirkland (City) for its efforts in developing the proposed Shoreline Master Program (SMP) Update. It is consistent not only with the needs of the City, but also with the policy and procedural requirements of the Shoreline Management Act and the Shoreline Master Program Guidelines.

As we have already discussed with your staff, the Washington State Department of Ecology (Ecology) approves the proposed amendment, **subject to the City's agreement to the required changes detailed in Attachment C**. The findings and conclusions that support Ecology's decision are also enclosed (Attachment B).

Because a change is required, the amendment will not become effective until Ecology receives written notice that the City agrees to the changes¹. The effective date of the SMP update will be the date on which Ecology receives written notice of your agreement.

As a reminder, shoreline procedural rules² require the City to publish a notice that Ecology has taken final action on this SMP update. Therefore, once Ecology acknowledges receipt of your written agreement, the City should publish a public notice.

Finally, the City must forward two hard copies and one digital copy of the final complete package of SMP amendments to Ecology.

¹ WAC 173-26-120(7)(b)(i)

² WAC 173-26-120(9)



The Honorable Joan McBride
July 26, 2010
Page 2

To summarize, if the City agrees with the required changes, it must:

1. Notify Ecology in writing.
2. Wait to hear from Ecology that we received your notice of agreement.
3. Publish a notice that Ecology has taken final action.
4. Forward two hard copies and one digital copy of the final amendment package to Ecology.

Thank you again for your efforts. If you have any questions, please contact our regional planner Joe Burcar at joe.burcar@ecy.wa.gov/ (425)-649-7145.

Sincerely,

Ted Sturdevant by Polly Zehm

Ted Sturdevant
Director

Enclosures

By certified mail [7003 1010 0005 0569 1390]

cc: Joe Burcar, Ecology Northwest Regional Office
Peter Skowlund, Ecology HQ
Paul Stewart, City of Kirkland
Teresa Swan, City of Kirkland
Geoff Tallent, Northwest Regional Office
Interested Parties

**ATTACHMENT B
FINDINGS AND CONCLUSIONS
FOR PROPOSED AMENDMENTS TO THE CITY OF KIRKLAND
SHORELINE MASTER PROGRAM**

SMP Submittal January 6, 2010, *Resolution R-4786*

Prepared by Joe Burcar, on June 27, 2010

Brief Description of Proposed Amendments:

The City of Kirkland (City) has submitted to Ecology for review a comprehensive amendment to their Shoreline Master Program (SMP). The updated master program will reside as a 'stand-alone' SMP codified within Chapter 83 and 141 of the City of Kirkland Municipal Code, these elements including changes required by this approval (**Attachment C**) constitutes the City's complete Shoreline Master Program.

FINDINGS OF FACT

Need for Amendment: The proposed amendments are needed to comply with the statutory deadline for comprehensive update of the local Shoreline Master Program pursuant to RCW 90.58.100.

SMP Provisions to be changed by the Amendment as proposed: This comprehensive SMP amendment is intended to replace the City's existing SMP in entirety.

Amendment History (Timeline summary): The City initiated the comprehensive SMP update consistent with a scope of work described within *SMA Grant No. GO600236*, the original grant was subsidized through additional grant funding (*GO900254*) in 2009. The City's statutory deadline pursuant to RCW 90.58.080 is December 1, 2009, however, the City applied for grant funding as an 'early adaptor', starting their comprehensive SMP update prior to their scheduled (RCW 90.58.100) grant cycle. The grant agreement originally provided \$68,000 to be allocated to the City over two years between July 1, 2005 and June 30, 2007. The grant agreement was signed by both parties on February 6th, 2006, initiating the two-year update process. Pursuant to a legislative amendment to RCW 90.58, a third year was provided for jurisdictions determined to be making "progress toward completing their SMP-update", thus extending the City's grant deadline to July 1, 2008. In addition, the City formally requested an additional \$9600 of grant funding to finalize the local SMP update process in the spring of 2009. Ecology awarded to the City the additional funding, increasing the total grant allocation to \$77,600 spread out over 4-years between 2005 - 2009.

The City committed to locally adopt a SMP on December 1, 2009 through *Resolution #4786*, for which a formal submittal including supporting materials was provided to Ecology on December 17, 2009. In a letter dated January 6, 2010, Ecology acknowledged a complete SMP submittal initiating the formal State review process. Ecology held a public hearing related to the updated SMP on February 9, 2010, also accepting written comment from February 1st, 2010 through March 5, 2010. After completion of the comment period, Ecology summarized in a letter dated March 19, 2010 all of the comments received along with a request that the City provide a final

response to these comments. The City provided Ecology with the requested final response in a letter dated May 11, 2010.

Amendment History (Local Review Process) The City produced a *draft Inventory/Characterization Report* requesting public and agency comment on the analysis in October of 2006. Ecology provided the City with specific written comments on the report in a letter dated October 4th, 2006. After consideration of public and agency comments, the City produced a revised final *Inventory/Characterization Report* dated December 2006, which served as a basis of existing conditions, restoration and protection opportunities for the remainder of the update.

The City produced a *draft SMP Designation/General Policy Report* in June 2007, which served as a starting point for the final draft SMP produced in June 2009. During this timeframe the City continually refined multiple SMP drafts based on citizen input, agency comment, planning commission discussion and community council input. Ecology provided three sets of comments on the draft SMP, generally dated July, September and December 2009. City staff produced a final draft in October 2009, which served as the Planning Commission/Staff recommendation to the City Council for local adoption. The City Council was joined in three separate staff session meetings with the Planning Commission, key City Staff, Ecology and the City's consultant. The Council generally endorsed the work done by the Planning Commission inserting a few minor changes into the City's local adoption.

On December 1, 2009, following timely and effective notice, the City of Kirkland Council held a public hearing on local adoption of the Shoreline Master Program Amendment through adoption of *Resolution #4786*.

With passage of *Resolution #4786* on December 17, 2010, the City authorized staff to forward the proposed amendments to Ecology for formal review of: "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND APPROVING THE PROPOSED KIRKLAND SHORELINE MASTER PROGRAM UPDATE AND THE ACCOMPANYING GOALS AND POLICIES, ENVIRONMENT DESIGNATIONS, REGULATIONS, RESTORATION PLAN AND CUMULATIVE IMPACTS ANALYSIS"

Ecology verified the proposed SMP amendment as complete on January 6, 2010. Notice of the State (Ecology) comment period was distributed on January 20, 2010 to state task force members and interested parties identified by the City in compliance with the requirements of WAC 173-26 and as follows: The State Department of Ecology comment period began on February 1, 2010 and continued through March 5, 2010 including a public hearing held at Kirkland City Hall on the evening of February 9, 2010. Notice of the comment period and public hearing including: a description of the proposed amendment, a link to copies of the amendment and deadlines for public comment were provided in the January 18, 2010 edition of the *Seattle Times Newspaper*.

Consistency with Chapter 90.58 RCW: The proposed amendment has been reviewed for consistency with the policy of RCW 90.58.020 and the approval criteria of RCW 90.58.090(3), (4) and (5). The City has also provided evidence of its compliance with SMA procedural requirements for amending their SMP contained in RCW 90.58.090.

Consistency with “applicable guidelines” (Chapter 173-26 WAC, Part III): The proposed amendment has been reviewed for compliance with the requirements of the applicable Shoreline Master Program Guidelines (WAC 173-26-171 through 251 and -020 definitions). This includes review of a SMP Submittal Checklist. The checklist was originally completed by the City and submitted to Ecology with the City’s initial draft SMP on June 22, 2009. Working with City Staff, Ecology reviewed three updated versions of both the SMP and Checklist including the final SMP checklist listing all previous changes to the draft SMP as completed as of June 2010.

Consistency with SEPA Requirements: The City submitted evidence of SEPA compliance as part of their final submittal to Ecology in December 2009. Ecology did not provide comments on the City’s DNS threshold determination.

Other Studies or Analyses supporting the SMP update: Ecology reviewed the following reports, studies, map portfolios and data prepared by the City in support of the SMP amendment:

- *City of Kirkland Shoreline Inventory & Characterization (draft) October 2006, (final) December 2006;*
- *City of Kirkland Shoreline Environment Designations Summary (draft) June 2007, (final) June 2009;*
- *City of Kirkland Restoration Plan dated June 2009;*
- *City of Kirkland, SMP Update – Cumulative Impacts dated June 2009;*
- *Final SMP-checklist dated December 2009.*

Summary of issues raised during the Public Review Process:

Throughout Ecology’s 33-day comment period (February 1 – March 5, 2010) and formal testimony provided during the February 9, 2010 public hearing a range of issues, questions and comments were provided to Ecology related to the City’s SMP update. Below is a list of SMP topics referenced throughout the Ecology comment period:

- 3-testimon’s focused on the following issues: **SMP Update Process** (Use of Science, Public Involvement), **SMP Protections** (Marina Use/Wildlife Protection, Shoreline Armoring, Vegetation Management, Setback/Buffer standards).
- 7-written comments submitted on the following issues: **SMP Update Process** (Public Involvement, Analysis: Use of Science, Effectiveness of Regulations, No-Net-Loss, Restoration), **SMP Protections** (Setback/Buffers, Vegetation Management Standards, Aquatic Invasive Species), **Shoreline Modifications** (Piers/Docks, Shoreline Armoring Boating Facilities, Dredging), **Shorelines of State-Wide-Significance**, **Shoreline Uses** (Priority-Water-Oriented, Transportation, Utility), **Non-Conforming Uses**, **Public Access** and **Shoreline Administration**.

Pursuant to SMP Guidelines, Ecology summarized all comments received during the public comment period and then provided the summary to the City for a response. The City provided a final response to Ecology on May 11, 2010, for which Ecology has provided a final conclusion in consideration of the original comment, the City’s response and application of the SMP

Guidelines (WAC 172-26). The complete record of Ecology's comment summary, the City's response and Ecology's final conclusion are provided in **Attachment D**.

Summary of Issues Identified by Ecology as Relevant To Its Decision:

Based on on-going coordination throughout the SMP update with City Staff, Ecology comments on draft SMP deliverables and review, response and conclusion of public comments (**Attachment D**), the following provides a general summary of issues relevant to Ecology's final decision on the City of Kirkland's SMP:

Shoreline Update Process: The City spent more than 4-years working on this SMP update. During this time they provided significant local contributions necessary to supplement grant funding provided by the State. The extra time, staff resources and funding required of this update can largely be contributed to the City's commitment to actively involve interested parties in the City's SMP update, beyond the minimal Public Involvement requirements of the Guidelines. This extra effort has helped produce some innovative solutions as part of this SMP update. As stated in the City's response to a citizen comment related to public involvement, the City held 16-study sessions with their Planning Commission, 9-study sessions before the Houghton Community Council, 4-study sessions before the City Council, 2-open houses, 1-public forum, 1-property owner workshop, 1-shoreline tour, and a separate boat tour. All of these events were advertized and open to the general public. In addition, the City held numerous meetings with specific interest groups including neighborhood associations and other advocacy groups. Despite this dedicated effort by the City, comments critical of the City's outreach were still voiced throughout the City's SMP update process. It is important to note that the City did incorporate public input into the Shoreline Master Program as evidence by the many master program amendments between the initial draft SMP release in June 2009 through the final program adoption by the Council under Resolution #4786 in December of 2009.

Ecology also provided an additional public hearing and public comment period after local adoption of the updated SMP. As described within the *Findings/Conclusion* (Attachment B) at Ecology's Public Hearing 3-people provided public testimony followed by 7-written comments submitted throughout the 33-day Ecology public comment period. Pursuant to WAC 173-26-120, the City provided a response to these comments, which are included in Attachment D.

Shoreline Protections: The City faced a challenge at the onset of this update in creating shoreline **Setback/Buffer** and **Vegetation Management** standards that could satisfy no net loss and be administered equitably within the urbanized shoreline environment. Further complicating this task was the existing SMP's (standard) 15-foot building setback, which was not anticipated to provide neither adequate critical area protection nor satisfy the no net loss Guideline requirement related to future development. Existing development patterns generally established upland structures located at the minimum (15-foot) setback in the urban core of the City, contrasted by large variation throughout the City's residential shoreline segments, ranging from a median 43-foot setback in the low density residential segment to a 25-feet (median) setback in the medium/high residential shoreline segment.

With the exception of both the Juanita and Yarrow Bay wetland areas, past shoreline development resulted in characterization of a majority of the City's shoreline as moderate to highly impaired. However, within residential shoreline segments, future redevelopment potential was not consistent, indicating lot-by-lot variation, largely as a result of variation in lot depth or overall parcel size and the ability to accommodate future expansion. Therefore, the City proposed a variable shoreline **Setback/Buffer** of 30% of the lot depth within a range of a minimum of 30-feet and a maximum of 60-feet. As illustrated within the City's Cumulative Impact Analysis and based on the existing residential development pattern and variation in redevelopment potential the 30% (lot depth) setback was determined to be the minimum **Setback/Buffer** to satisfy no net loss¹ of shoreline habitat requirement for the variable residential shoreline parcels. By contrast, both the City's urban and natural shorelines exhibited more consistent development patterns, not showing significant opportunity for future physical expansion through redevelopment. Therefore, SMP standards related to these areas were more or less upgraded to ensure on-going consistency with the Guidelines.

Shoreline Modifications: SMP regulations related to both **Piers/Docks** and **Shoreline Armoring** modifications received a lot of attention during the City's update. Because of the urban/developed condition of a majority of the City's residential shoreline, many property owners voiced concerns related to maintaining existing **Piers/Docks** and bulkheads structures. The City proposed **Shoreline Armoring** regulations consistent with the standards provided in Guidelines, allowing for repairs of existing hard armoring structures, but limiting new and replacement hard armoring to those situations where a primary structure is shown to be in need or dependent on a hard armored bulkhead to protect the upland structure from erosion.

For **Pier/Dock** standards, the City's obligation under the update was to maintain or improve aquatic ecological functions by minimizing or reducing (overall) overwater structure. Again, because of the urban/developed nature of the City's shoreline, a majority of the existing residential lots are already developed with private **Pier/Docks**, for which property owners voiced concern related to maintenance and redevelopment potential of these structure. Further, most of the existing **Pier/Dock** structures were developed prior to current State or Federal standards specifying construction material and orientation/dimension of these overwater structures to minimize impacts to aquatic species. Through regional coordination with neighboring Lake Washington jurisdictions, the City incorporated impact minimizing residential **Pier/Dock** standards based on Regional General Permit standards developed by the Army Corps of Engineers (ACOE) with input from Washington Department of Fish and Wildlife (WDFW) and NOAA-Fisheries. These **Pier/Dock** standards are intended to address Endangered Species Act (ESA) fish habitat concerns, for which individual ESA

¹ In other words, a setback buffer based on a lower % of lot depth would increase overall redevelopment potential resulting in a larger net loss of shoreline habitat (upland buffer area), which would then have to be offset with some type of restoration. Alternatively, establishment of a **Setback/Buffer** based on a higher lot percentage would further restrict redevelopment to locations further away from the shoreline edge, increasing overall (potential) shoreline habitat area above existing conditions

consultation is waived for proposals that are consistent with these standards. By including the Regional General Permit standards into the City's SMP, property owners are provided with an incentive to upgrade their **Pier/Dock** structures to comply with these standards, thus avoiding expensive, unpredictable and time consuming individual ESA consultation.

Finally, the City spend a significant amount of time creating **Vegetation Management** standards that their residential property owners could accept while also satisfying their no net loss obligation under the Guidelines. The central issue was related to tree planting mitigation standards and concerns associated with view impacts. Along these same lines, the City also developed tree retention standards, defining significant tree characteristics and establishing replacement standards for both volunteer and involuntary removal.

Changes to the locally adopted SMP: Attachment C provides an itemized list of amendments to the December 1, 2009 (*Resolution #4786*) locally adopted SMP. These changes are required as part of Ecology's approval of the updated SMP pursuant to WAC 173-26-120. Specifically, the required changes will ensure that the updated SMP is consistent with WAC 173-26 (SMP Guidelines).

CONCLUSIONS OF LAW

After review by Ecology of the complete record submitted and all comments received, Ecology concludes that the City's SMP proposal, subject to and including Ecology's required changes (itemized in **Attachment C**), is consistent with the policy and standards of RCW 90.58.020 and RCW 90.58.090 and the applicable SMP guidelines (WAC 173-26-171 through 251 and .020 definitions). This includes a conclusion that the proposed SMP, subject to required changes, contains sufficient policies and regulations to assure that no net loss of shoreline ecological functions that is anticipated to result from implementation of the new master program amendments (WAC 173-26-201(2)(c)).

Consistent with RCW 90.58.090(4), Ecology concludes that those SMP segments relating to critical areas within Shoreline Management Act jurisdiction provide a level of protection that will achieve no net loss of ecological functions.

Ecology concludes that those SMP segments relating to shorelines of statewide significance provide for the optimum implementation of Shoreline Management Act policy (RCW 90.58.090(5)).

Ecology concludes that the City has complied with the requirements of RCW 90.58.100 regarding the SMP amendment process and contents.

Ecology concludes that the City has complied with the requirements of RCW 90.58.130 and WAC 173-26-090 regarding public and agency involvement in the SMP amendment process.

Ecology concludes that the City has complied with the purpose and intent of the local amendment process requirements contained in WAC 173-26-100, including conducting open houses and public hearings, notice, consultation with parties of interest and solicitation of comments from tribes, government agencies and Ecology.

Ecology concludes that the City has complied with requirements of Chapter 43.21C RCW, the State Environmental Policy Act.

Ecology concludes that the City's SMP amendment was complete pursuant to the requirements of WAC 173-26-110 and WAC 173-26-201(3)(a) and (h) requiring a SMP Submittal Checklist.

Ecology concludes that it has complied with the procedural requirements for state review and approval of shoreline master program amendments as set forth in WAC 173-26-120.

Ecology concludes that the City has chosen not to exercise its option pursuant to RCW 90.58.030(2)(f)(ii) to increase shoreline jurisdiction to include buffer areas of all critical areas within shorelines of the state. Therefore, as required by RCW 36.70A.480(6), for those designated critical areas with buffers that extend beyond SMA jurisdiction, the critical area and its associated buffer shall continue to be regulated by the City's critical areas ordinance. In such cases, the updated SMP shall also continue to apply to the designated critical area, but not the portion of the buffer area that lies outside of SMA jurisdiction. All remaining designated critical areas (with buffers NOT extending beyond SMA jurisdiction) and their buffer areas shall be regulated solely by the SMP.

DECISION AND EFFECTIVE DATE

Based on the preceding, Ecology has determined the proposed amendments are consistent with the policy of the Shoreline Management Act, the applicable guidelines and implementing rules, once changes set forth in **Attachment C** are acknowledged by the City. Ecology approval of the proposed amendments with changes (**Attachment C**) will become effective on the date at which Ecology receives written notice that the City has agreed to all of the changes listed in **Attachment C**.

As provided in RCW 90.58.090(2)(e)(ii) the City may choose to submit an alternative to all or part of the changes required by Ecology. If Ecology determines that the alternative proposal is consistent with the purpose and intent of Ecology's original changes and with RCW 90.58, then the department shall approve the alternative proposal and that action shall be the final action on the amendment.

Attachment C: Amendments to Resolution 4786 – City of Kirkland Shoreline Master Program

NOTE: ~~Strike-out text~~ indicates existing text/sections that need to be removed from the SMP. Underlined text indicates text/sections that need to be inserted into the SMP.

The following text consists of amendments to Resolution #4786 the locally adopted version of the City of Kirkland’s Shoreline Master Program. These amendments have been determined by the Department of Ecology to be included as part of the final approval of the City’s Shoreline Master Program as described in Attachment B (Findings/Conclusions).

Section 83.190 Lot Size or Density, Shoreline Setback, Lot Coverage and Height [page 44-45 of 138, R-4786 – Attachment 6A]

2. Shoreline Setback –

b. Measurement of Shoreline Setback –

- 1) The shoreline setback shall be measured landward from the OHWM on the horizontal plane and in the direction that results in the greatest dimension from the OHWM (see Plate ~~XX~~ 41).

d. Structures and Improvements – The following improvements or structures may be located in the shoreline setback, except within the Natural shoreline environment, provided that they are constructed and maintained in a manner that meets KZC 83.360 for avoiding or at least minimizing adverse impacts to shoreline ecological functions:

- 1) For public pedestrian access required under KZC 83.420, walkways, benches, and similar features, as approved by the Planning Official.
- 2) For private pedestrian access to the shoreline, walkways within the shoreline setback are permitted, subject to the following standards:
 - a) The maximum width of the walkway corridor area shall be no more than 25 percent of the property’s shoreline frontage, except in no case shall the corridor area required be less than 15 feet in width (see Plate ~~XX~~ 42).

Section 83.270 Piers, Docks, Moorage Buoys and Piles, Boatlifts and Canopies Serving a Detached Dwelling Unit Use (Single-family) [page 57-58 of 138, R-4786 – Attachment 6A]

4. New Pier or Dock Dimensional Standards –

- a. New piers or docks may be permitted, subject to the following regulations:

New Pier, Dock or Moorage Piles for Detached Dwelling Unit (single family)	Dimensional and Design Standards
<p>Maximum Area: surface coverage, including all attached float decking, ramps, ells and fingers</p>	<p>480 sq. ft. for single property owner</p> <p>700 sq. ft. for joint-use facility used by 2 residential property owners</p> <p>1000 sq. ft. for joint-use facility used by 3 or more residential property owners</p> <p>These area limitations shall include platform lifts.</p> <p>Where a pier cannot reasonably be constructed under the area limitation above to obtain a moorage depth of 10 ft. measured</p>

	<p>above <u>below</u> ordinary high water, an additional 4 sq. ft. of area may be added for each additional foot of pier length needed to reach 10 ft. of water depth at the landward end of the pier, provided that all other area dimensions, such as maximum width and length, have been minimized.</p>
<p>Pilings, Moorage Piles, and Buoys</p>	<p>Piles shall not be treated with pentachlorophenol, creosote, chromated copper arsenate (CCA) or comparably toxic compounds.</p> <p>First set of piles <u>pilings for piers or docks</u> located no closer than 18 ft from OHWM. <u>Moorage piles or buoys shall not be closer than 30 ft. from OHWM or any farther waterward than the end of the pier or dock.</u></p> <p>Maximum 2 moorage piles or buoys per detached dwelling unit, including existing piles</p> <p>Maximum 4 moorage piles or buoys for joint use piers or docks, including existing piles</p>

83.280 Piers, Docks, Boat lifts and Canopies Serving Detached, Attached or Stacked Dwelling Units (Multi-family) [page 65-66 of 138, R-4786 – Attachment 6A]

5) New Pier or Dock Dimensional Standards –

- b. Piers and docks shall be the minimum size necessary to meet the needs of the proposed water-dependent use and shall observe the following standards:

<p>New Pier, Dock or Moorage Piles for Detached, Attached or Stacked Dwelling Units (multi-family)</p>	<p>Dimensional and Design Standards</p>
<p>Pilings and Moorage Piles</p>	<p>First set of piles <u>pilings for piers or docks</u> located no closer than 18 ft from OHWM. <u>Moorage piles shall not be closer than 30 ft. from OHWM or any farther waterward than the end of the pier or dock.</u></p> <p>Piles shall not be treated with pentachlorophenol, creosote, chromated copper arsenate (CCA) or comparably toxic compounds.</p>

83.300: Submittal Requirements for New or Enlarged Structural Stabilization Measures [page 77-78 of 138, R-4786 - Attachment 6A]

3. Submittal Requirements for New or Enlarged Structural Stabilization Measures -

In addition to the requirements described in KZC 83.300.2 above, the following shall be submitted to the City for an existing primary structure more than 10 feet from the OHWM or for a new primary structure:

NOTE: ~~Strike-out text~~ indicates existing text/sections that need to be removed from the SMP. Underlined text indicates text/sections that need to be inserted into the SMP.

- a. For a hard structural shoreline stabilization measure, a geotechnical report prepared by a qualified professional with an engineering degree. The report shall include the following:
 - 1) An assessment of the necessity for hard structural stabilization by estimating time frames and rates of erosion and documenting the urgency associated with the specific situation.
 - 2) An assessment of the cause of erosion, looking at processes occurring both waterward and landward of the OHWM including on-site drainage.
 - b. An assessment prepared by a qualified professional (e.g., shoreline designer or other consultant familiar with lakeshore processes and shore stabilization), containing the following:
 - 1) For a hard structural shoreline stabilization measure, an evaluation of the feasibility of using nonstructural or soft shoreline stabilization measures in lieu of hard structural shoreline stabilization measures. The evaluation shall address the feasibility of implementing options presented in Plate ~~XX~~ 43 based on an assessment of the subject property's characteristics.
5. Submittal Requirements for Major Repairs or Replacements of Hard Stabilization Measures -
- The following shall be submitted to the City when the primary structure is located more than 10 feet landward of the OHWM or for a use with no primary structure:
- a. Written narrative that provides a demonstration of need shall be submitted. A qualified professional (e.g., shoreline designer or other consultant familiar with lakeshore processes and shore stabilization), but not necessarily a licensed geotechnical engineer shall prepare a written narrative. The written narrative shall consist of the following:
 - 1) An assessment of the necessity for hard structural stabilization, considering site-specific conditions such as water depth, orientation of the shoreline, wave fetch, and location of the nearest structure. The evaluation shall address the feasibility of implementing options presented in Plate ~~XX~~ 43, given an assessment of the subject property's characteristics.

83.550 Nonconformances [page 134-135 of 138, R-4786 - Attachment 6A]

(5.) Certain Nonconformances Specifically Regulated

(b.) Non-conforming structures –

- 5) Non-conforming structures that are expanded or enlarged within the shoreline setback must obtain a shoreline variance; provided that, a non-conforming detached dwelling unit use may be enlarged without a shoreline variance where the following provisions apply:
 - 5) The enlargement shall not extend further waterward than the existing primary residential structure. For purposes of this subsection, the improvements allowed within the shoreline setback as established in KZC 83.180, such as bay windows, chimneys, greenhouse windows, eaves, cornices, awnings and canopies shall not be used in determining the most waterward location of the building (see Plate ~~XX~~ 44).
- 6) A nonconforming detached dwelling unit that is located on a lot that has less than 3,000 square feet of building area lying landward of the required shoreline setback and upland of required wetland or stream buffers, may be rebuilt or otherwise replaced within the

NOTE: ~~Strike-out text~~ indicates existing text/sections that need to be removed from the SMP. Underlined text indicates text/sections that need to be inserted into the SMP.

shoreline setback and required wetland or stream buffer without a shoreline variance, provided the following standards are met:

- 2) The size of the building footprint shall not be increased and the reconstructed structure shall not extend further waterward than the existing primary residential structure. For purposes of this subsection, the improvements allowed within the shoreline setback as established in KZC 83.180, such as bay windows, chimneys, greenhouse windows, eaves, cornices, awnings and canopies shall not be used in determining the most waterward location of the building (see Plate ~~XX 44~~).
- 7) A primary structure that does not conform to the required shoreline setback and is located on a lot that has less than 3,000 square feet of building area lying landward of the shoreline setback, not including the area located within the required side yard setbacks and up to 10 feet of a required front yard, may be rebuilt or otherwise replaced in its current location within the shoreline setback, provided the following standards are met:
- 2) The size of the building footprint shall not be increased and the reconstructed structure shall not extend further waterward than the existing primary structure. For purposes of this subsection, the improvements allowed within the shoreline setback as established in KZC 83.180, such as bay windows, chimneys, greenhouse windows, eaves, cornices, awnings and canopies shall not be used in determining the most waterward location of the building (see Plate ~~XX 43~~).

NOTE: ~~Strike-out text~~ indicates existing text/sections that need to be removed from the SMP. Underlined text indicates text/sections that need to be inserted into the SMP.

Attachment Plates [Attachment D – R-4786]

The following new plates should be considered part of the approved SMP:

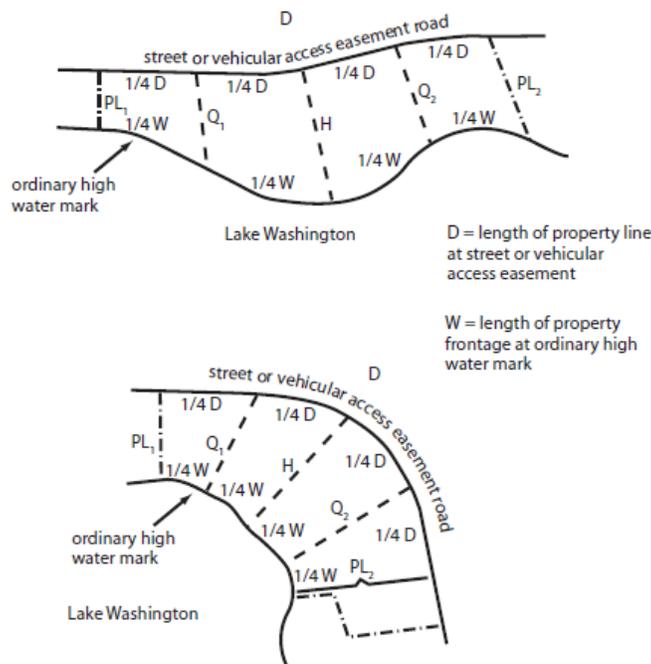
- **Plate 19 - Average Parcel Depth** referenced in 83.80.7 definition of average parcel depth.
- **Plate 41 - Measuring Shoreline Setback** referenced in 83.190.2.b in shoreline setback section.
- **Plate 42 - Maximum Shoreline Walkway Corridor** referenced in Section 83.190.2.d.2 in shoreline setback section.
- **Plate 43 - Options for Shoreline Stabilization Measures** referenced in Section 83.300.5 for submittal of major repair of hard stabilization measures.
- **Plate 44 - Addition to Nonconforming Detached Dwelling Unit** referenced in Section 83.550.5.b.5 in nonconformance section.

Plate 19 – Average Parcel Depth

Attachment 6_C

Plate XX
Calculating Average
Parcel Depth

$$\text{Average Parcel Depth} = \frac{PL_1 + Q_1 + H + Q_2 + PL_2}{5}$$



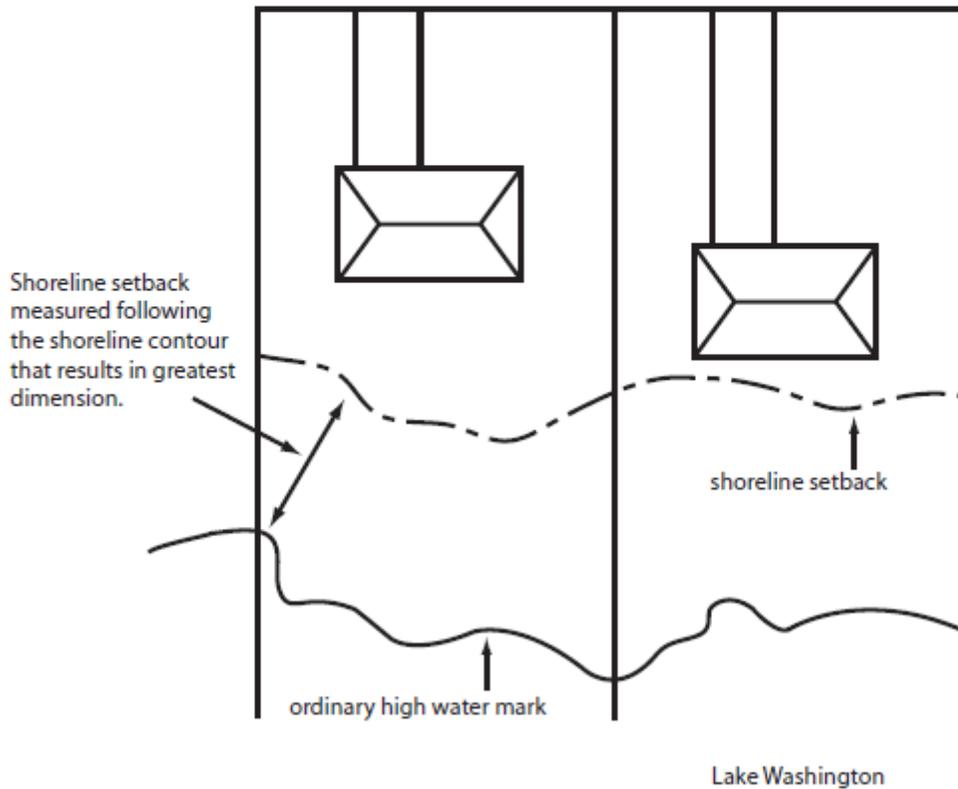
NOTE: ~~Strike-out text~~ indicates existing text/sections that need to be removed from the SMP. Underlined text indicates text/sections that need to be inserted into the SMP.

Plate 41 – Measuring Shoreline Setback

Attachment 6_C

Plate XX

Measuring Shoreline Setback

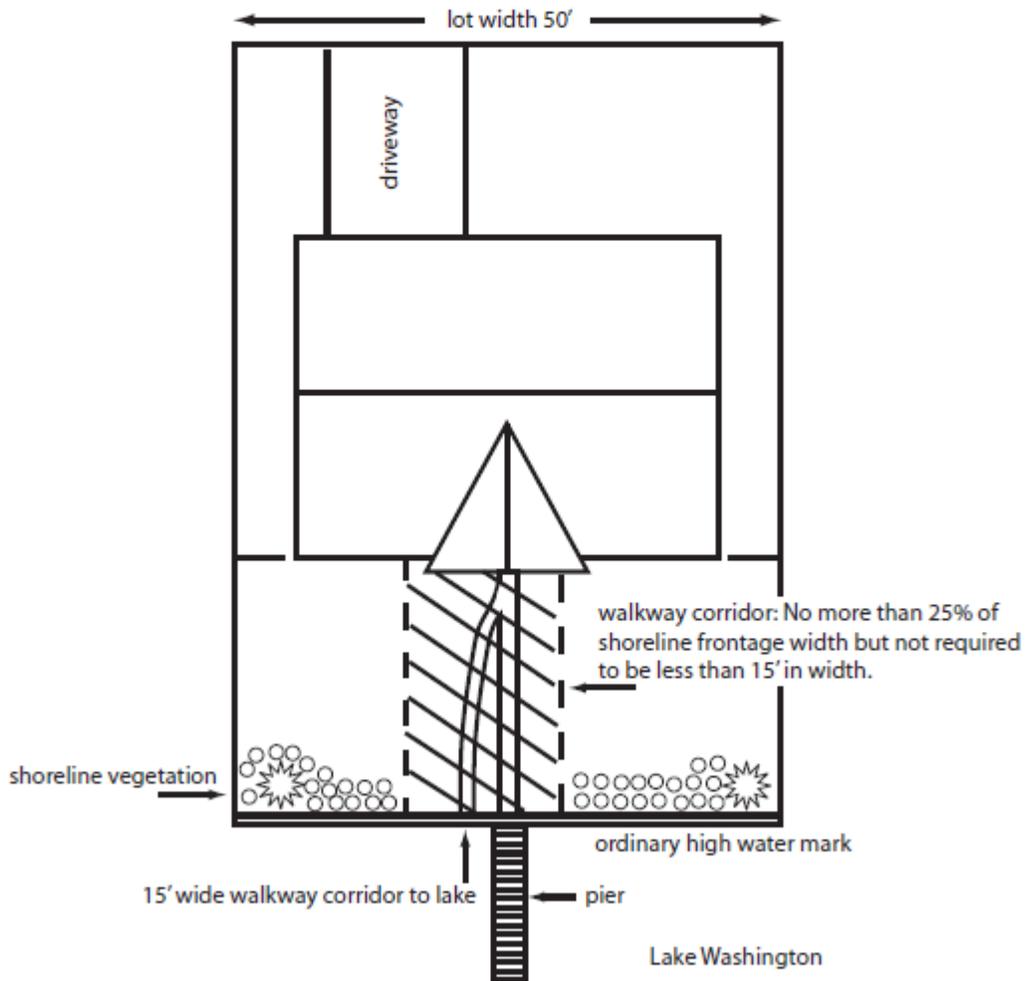


NOTE: ~~Strike-out text~~ indicates existing text/sections that need to be removed from the SMP. Underlined text indicates text/sections that need to be inserted into the SMP.

Plate 42 – Maximum Shoreline Walkway Corridor

Attachment 6_C

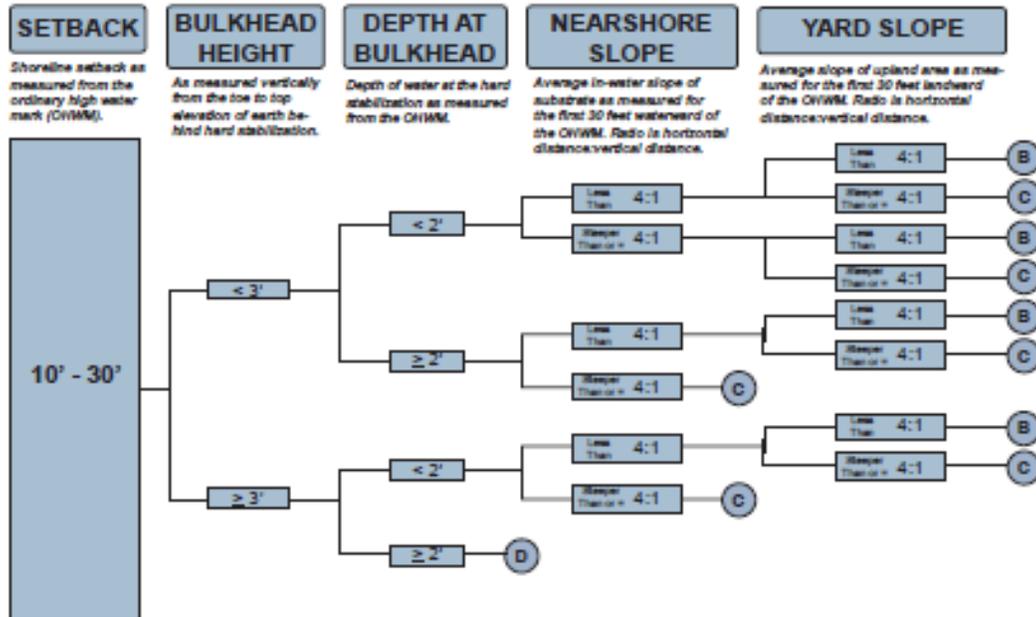
Plate XX
Maximum Shoreline Walkway Corridor



NOTE: ~~Strike-out text~~ indicates existing text/sections that need to be removed from the SMP. Underlined text indicates text/sections that need to be inserted into the SMP.

Plate 43 – Options for Shoreline Stabilization Measures (pages 1 of 2)

**Plate XXA
 Options for Shoreline Stabilization Measures
 Building Setback 10' - 30'**



Typical Options:

- (A) Full beach, beach cove, pullback, bioengineering, enhancement, gradient improvement
- (B) Beach cove, pullback, bioengineering, enhancement, gradient improvement
- (C) Pullback, bioengineering, enhancement, gradient improvement
- (D) Bioengineering, enhancement, gradient improvement

Definitions: (In Order of Restoration Preference)

Full beach: hard stabilization removal and beach restoration

Beach cove: partial hard stabilization removal and pullback to create beach cove

Hard stabilization pullback: repositioning of hard stabilization landward of existing location to improve shoreline gradient and possibly form a beach

Slope bioengineering: shoreline stabilization using plant material and other biodegradable materials to hold upland soils in place

Hard stabilization enhancement: hard stabilization may stay in same general location, but modifications may include sloping back existing hard structure and/or modifying material type and layout to create potential beach cove areas

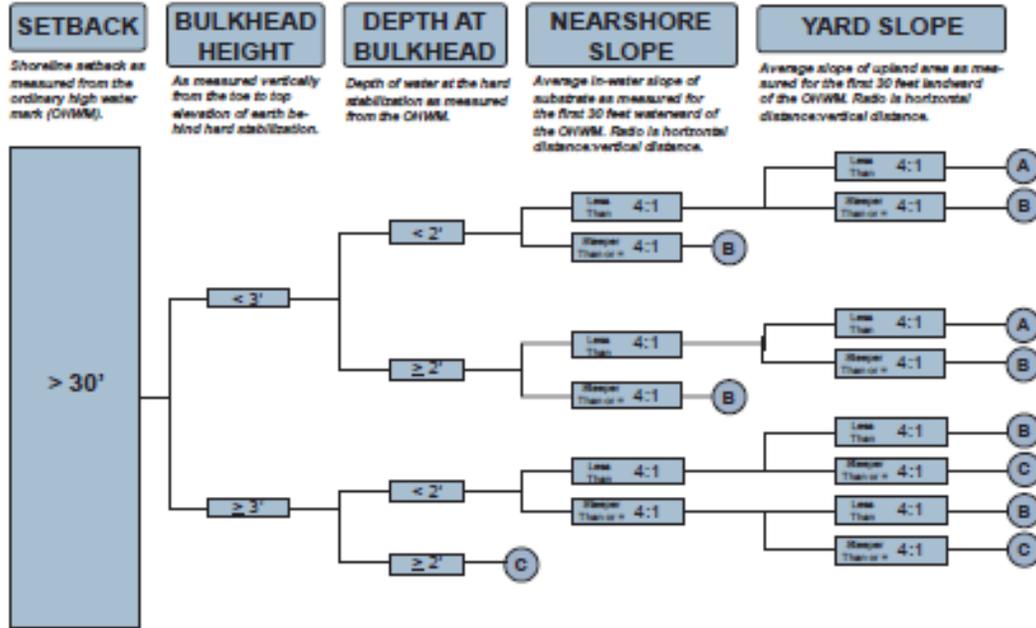
Nearshore gradient improvement: installation of gravel/cobble substrate wedge for the purposes of improving nearshore gradients

Notes: Sites with less than a 10' shoreline setback are not included with this decision tree as those sites will likely require some form of hard stabilization. However, those sites may still benefit from the addition of an in-water gravel/cobble wedge to improve shoreline gradient along with a native plant buffer.

NOTE: ~~Strike-out text~~ indicates existing text/sections that need to be removed from the SMP. Underlined text indicates text/sections that need to be inserted into the SMP.

Plate 43 – Options for Shoreline Stabilization Measures (pages 2 of 2)

Plate XXB
Options for Shoreline Stabilization Measures
 Building Setback > 30'



Typical Options:

- (A) Full beach, beach cove, pullback, bioengineering, enhancement, gradient improvement
- (B) Beach cove, pullback, bioengineering, enhancement, gradient improvement
- (C) Pullback, bioengineering, enhancement, gradient improvement
- (D) Bioengineering, enhancement, gradient improvement

Definitions: (In Order of Restoration Preference)

Full beach: hard stabilization removal and beach restoration

Beach cove: partial hard stabilization removal and pullback to create beach cove

Hard stabilization pullback: repositioning of hard stabilization landward of existing location to improve shoreline gradient and possibly form a beach

Slope bioengineering: shoreline stabilization using plant material and other biodegradable materials to hold upland soils in place

Hard stabilization enhancement: hard stabilization may stay in same general location, but modifications may include sloping back existing hard structure and/or modifying material type and layout to create potential beach cove areas

Nearshore gradient improvement: installation of gravel/cobble substrate wedge for the purposes of improving nearshore gradients

Notes: Sites with less than a 10' shoreline setback are not included with this decision tree as those sites will likely require some form of hard stabilization. However, those sites may still benefit from the addition of an in-water gravel/cobble wedge to improve shoreline gradient along with a native plant buffer.

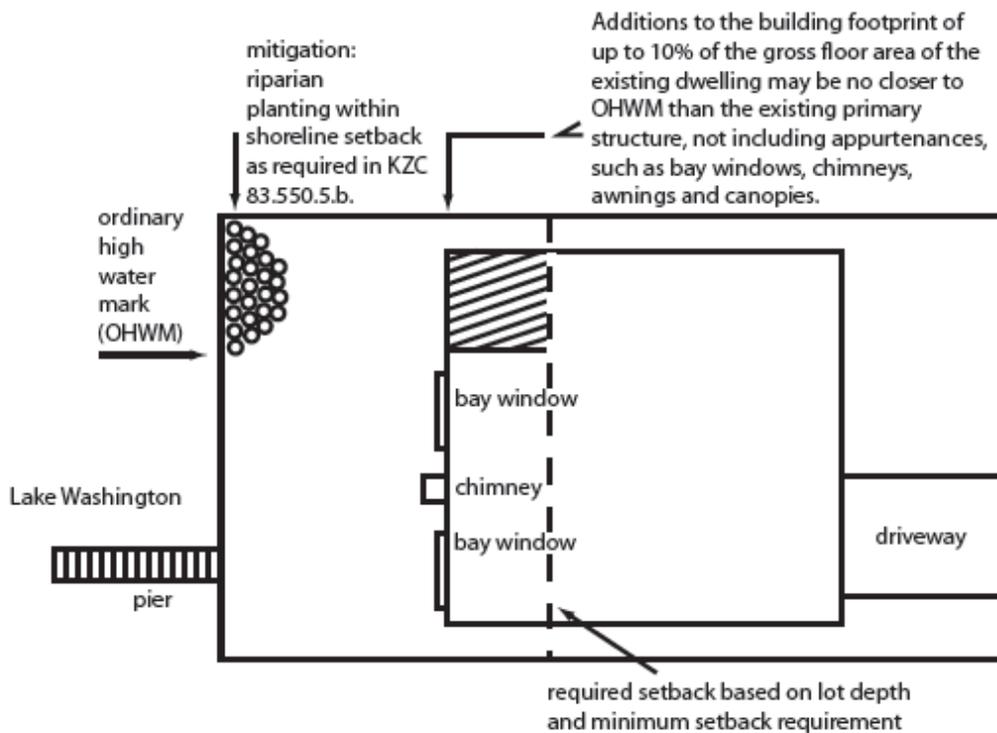
NOTE: ~~Strike-out text~~ indicates existing text/sections that need to be removed from the SMP. Underlined text indicates text/sections that need to be inserted into the SMP.

Plate 44 – Additions to Nonconforming Detached Dwelling Units

Attachment 6_C

Plate XX

Addition to Nonconforming Detached Dwelling Unit



The following plates should not be considered part of the approved SMP:

- **Plate 22** – WD 11 North Property Line Yard and Height of Structure.
- **Plate 27A, 27B, 27C** – Shoreline View Corridor.
- **Plate 28** – North Property Line – Waterfront District (WD) Zones.

NOTE: ~~Strike-out text~~ indicates existing text/sections that need to be removed from the SMP. Underlined text indicates text/sections that need to be inserted into the SMP.

Plate 22 – WD 11 North Property Line Yard and Height of Structure.

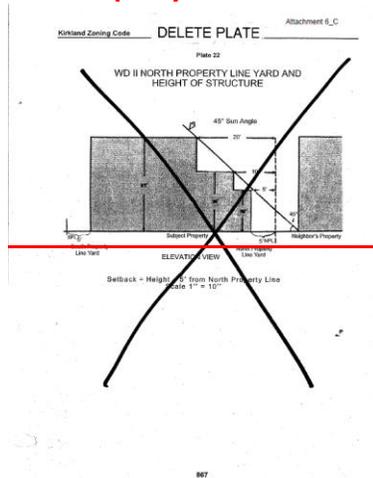


Plate 27A, 27B, 27C – Shoreline View Corridor.

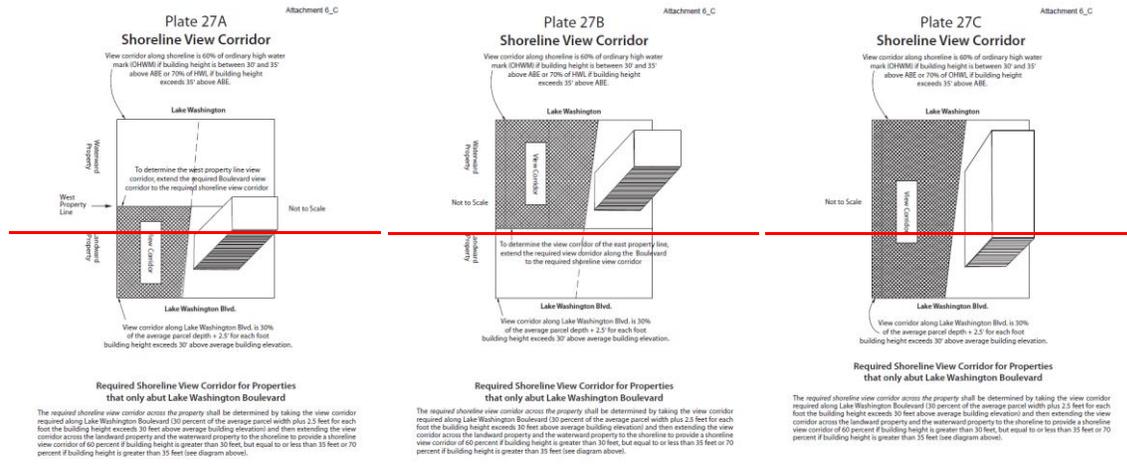
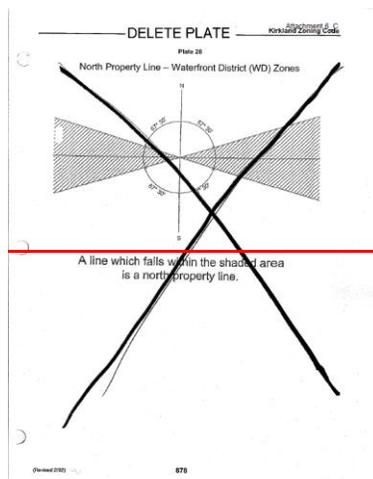


Plate 28 – North Property Line – Waterfront District (WD) Zones.



NOTE: Strike-out text indicates existing text/sections that need to be removed from the SMP. Underlined text indicates text/sections that need to be inserted into the SMP.

141.40: Exemption from Permit Requirements [page 1 of 6, R-4786 - Attachment 6B]

2. Special Provisions – The following provides additional clarification on the application of the exemptions listed in WAC 173-27-040:
 - b. Residential Appurtenances - ,
 - 1) Normal appurtenances to a single-family residence, referred to in Chapter 83 KZC as a detached dwelling unit on one lot, are included in the permit exemption provided in WAC 173-27-040(2)(g). For the purposes of interpreting this provision, normal appurtenances shall include those listed under WAC 173-14-040(2)(g) as well as tool sheds, greenhouses, swimming pools, spas, accessory dwelling units and other accessory structures common to a single family residence located landward of the OHWM and the perimeter of a wetland.
 - 2) Normal appurtenant structures to a single-family residence, referred to in Chapter 83 KZC as a detached dwelling unit on one lot, are included in the permit exemption provided in WAC 173-27-040(2)(~~b~~) **(c) for structural and non structural shoreline stabilization measures**. For the purposes of interpreting this provision, normal appurtenant shall be limited to the following structures listed under WAC 173-14-040(2)(g): a garage; deck; driveway; and utilities.

141.70: Procedures [page 3-5 of 6, R-4786 - Attachment 6B]

1. Substantial development permits.

d. Decision -

- 1) At the time of a final decision, the Planning Official shall mail a copy of the decision, staff advisory report, transmittal sheet and shoreline checklist to the applicant, Department of Ecology, and the Washington State Attorney General’s Office, pursuant to RCW 90.58.140 and WAC 173-27-130. The permit shall state that construction pursuant to a permit shall not begin or be authorized until twenty-one (21) days from the date the permit decision ~~was filed~~ **is received by the permit applicant** as provided in RCW 90.58.140(6); or until all review proceedings are terminated if the proceedings were initiated within twenty-one days from the date of **filing receipt** as defined in RCW 90.58.140(5) and (6). “Date of **Filing Receipt**” is that date that the **permit applicant receives written notice from the** Department of Ecology ~~received a copy of the decision notifying the applicant of receipt of the decision~~.
 - 2) An appeal of a shoreline substantial development permit shall be to the State Shorelines Hearings Board and shall be filed within twenty-one (21) days of the receipt of the ~~City’s decision by~~ the Department of Ecology’s **permit action letter** as set forth in RCW 90.58.180.
- e. Effect of Decision – For shoreline substantial development permits, no final action or construction shall be taken until the termination of all review proceedings initiated within twenty-one (21) days after notice of the final action taken by the City is ~~filed~~ **received by the permit applicant from** the Department of Ecology.

2. Conditional use permits.

e. Decision -

- 1) Once the City has approved a conditional use permit it will be forwarded to the State Department of Ecology for its review and approval/disapproval jurisdiction under WAC 173-27-200.

NOTE: ~~Strike-out text~~ indicates existing text/sections that need to be removed from the SMP. Underlined text indicates text/sections that need to be inserted into the SMP.

- 2) ~~At the time of a final decision by the State Department of Ecology for a shoreline conditional use permit, the Planning Official shall, pursuant to RCW 90.58.140 and WAC 173-27-130, mail a copy of the decision, staff advisory report, transmittal sheet, and Shoreline Checklist to the applicant, Department of Ecology, and the State of Washington's Office of the Attorney General.~~ The permit shall state that construction pursuant to a permit shall not begin or be authorized until twenty-one (21) days from the date the permit decision **was filed is received** as provided in RCW 90.58.140(6); or until all review proceedings are terminated if the proceedings were initiated within twenty-one days from the date of **filing receipt** as defined in RCW 90.58.140(5) and (6). **"Date of Filing" is that date that the Department of Ecology received a copy of the decision.**
- 3) Appeals of a shoreline conditional use permit or shall be to the State Shoreline Hearings Board and shall be filed within twenty-one (21) days of the receipt of the **City's decision by** the Department of Ecology's **permit action letter**, as set forth in RCW 90.58.180.

3. Variances.

e. Decision -

- 1) Approval by Department of Ecology. Once the City has approved a variance permit it will be forwarded to the State Department of Ecology for its review and approval/disapproval jurisdiction under WAC 173-27-200.
- 2) ~~At the time of a final decision for a shoreline variance permit, the Planning Official shall, pursuant to RCW 90.58.140 and WAC 173-27-130, mail a copy of the decision, staff advisory report, transmittal sheet, and Shoreline Checklist to the applicant, Department of Ecology, and the State of Washington's Office of the Attorney General.~~ The permit shall state that construction pursuant to a permit shall not begin or be authorized until twenty-one (21) days from the date the permit decision **was filed is received** as provided in RCW 90.58.140(6); or until all review proceedings are terminated if the proceedings were initiated within twenty-one days from the date of **filing receipt** as defined in RCW 90.58.140(5) and (6). **"Date of Filing" is that date that the Department of Ecology received a copy of the decision.**
- 3) Appeals of a Shoreline Variance Permit shall be to the State Shoreline Hearings Board and shall be filed within twenty-one (21) days of the receipt of the **City's decision by** the Department of Ecology's **permit action letter**, as set forth in RCW 90.58.180.

NOTE: **Strike-out text** indicates existing text/sections that need to be removed from the SMP. **Underlined text** indicates text/sections that need to be inserted into the SMP.

Comments - City of Kirkland SMP Update - Attachment D

The Department of Ecology (Ecology) held an open comment period on Kirkland's Shoreline Master Program (SMP) update from February 1, 2010 through March 5, 2010. Testimony was provided by four parties at the public hearing (February 9, 2010) and seven written comment letters submitted during the comment period.

In a letter dated March 19, 2010, Ecology summarized the key issues from all the public comments received. The City then responded to the summarized comments including some additional comments in a letter dated May 11, 2010. This document is a compilation of both the Ecology comment summary, City Response and Ecology Conclusion.

City Note: references are made below to sections in Chapter 83 that contain Kirkland's new shoreline regulations and sections in Chapter 141 that contain Kirkland's new shoreline administration provisions. Both new chapters will be placed in the Kirkland Zoning Code.

1. Issue summary of testimony from **Lisa McConnell** at the public hearing (February 9, 2010)

Testimony -Marina Use/Wildlife concerns: Citing the close proximity of both the Carillon Point and Juanita Bay marinas to the Yarrow Point and Juanita Bay wetland complexes, Mrs. McConnell raises concerns associated with future float plane operations and the potential impact to waterfowl/wildlife that may utilize the adjacent wetland habitats. After submitting testimony, Mrs. McConnell provided Ecology with three citations as well as an inquiry to the Federal Aviation Administration (FAA) Environmental Impact Research Division requesting any other literature related to float plane effects to wildlife. Mrs. McConnell specifically requested that baseline activity of particular waterfowl be analyzed to ensure wildlife impacts can be avoided prior to allowance of float plane service to or from the Kirkland marinas.

***City Response:** Concerning potential impacts to **marina use/wildlife**, during public review of the SMP update potential impacts from commercial floatplane usage were discussed by the Planning Commission, Houghton Community Council and City Council. As part of the discussion, the City considered the three goals of the SMA (WAC 173-25) – encouraging water-dependant uses, protecting the shoreline natural resources and promoting public access. Since the use is water-dependant and provides public access to the water, the City concluded that the use meets two of the SMP goals and thus could potentially be allowed through a Conditional Use Permit (CUP). The use would be subject to the mitigation sequencing requirements in Section 83.260 in which impacts on nearby wildlife would be reviewed and addressed and subject to the WAC criteria for a CUP. As stated in Section 141.70.3, conditions and restrictions can be placed on the use. Ecology has review and final approval over CUPs. The City would support working with interested parties on a baseline study as suggested by Ms. McConnell.*

Ecology Conclusion: As summarized above, Mrs. McConnell provided testimony at the February 9, 2010 Public Hearing related to the potential **Marina Use** by commercial floatplanes and any anticipated effects to **Wildlife**. Ecology concurs with the City's response, acknowledging SMP preference for water-dependent uses and promotion of public access. As the City has stated floatplane service does not currently exist within the City. Therefore, if someone was to propose this service in the future, a detailed analysis of potential **Wildlife** impacts would be required. Within this analysis, natural resource impacts, including **Wildlife** impacts must be avoided, minimized or mitigated in order for the use to be allowed. Therefore, the results of project proposal study would dictate if the use could be established and would need to illustrate no long-term impacts to **Wildlife**. Alternatively, minimal anticipated **Wildlife** impacts could dictate a variety of permit outcomes potentially limiting the scale of the commercial floatplane operation to avoid significant **Wildlife** impacts.

Comments - City of Kirkland SMP Update - Attachment D

2. Issue summary of testimony from **Peter Davidson** at the public hearing (February 9, 2010)

Testimony - Science related to fish migration: Mr. Davidson complimented the City Council on taking care of citizen's needs through the SMP update, but remains unsatisfied as to his previous questions related to the scientific evidence of fish migration, which he sees as the largest basis for the updated plan. Mr. Davidson would like to understand the "net effect" of the Kirkland shoreline based on how many fish enter Kirkland compared to how many fish leave. He feels that this information is essential in order to set a baseline and determine if there is improvement or not. He is glad to hear there will be some consistency between neighboring jurisdictions SMP's, but would also like to see a streamlined process to replace solid pier decking with flow through materials to encourage this improvement.

***City Response:** Concerning the issue of **adequate science on fish migration** and population for Lake Washington, the City reviewed and discussed relevant scientific information from a multitude of local agencies and from various publications and studies. During the SMP update process, the City provided this information on its web site as well as in staff memos and during presentations at many Planning Commission and Houghton community Council meetings, and other public forums. Staff memos to the Planning Commission that covered information on the science, included the memos dated January 14, 2009, March 5, 2009, April 9, 2009, April 15, 2009 and August 20, 2009. The issue of science can be debated, but it does not relieve the City of meeting the No Net Loss standard and other directives in the Guidelines. Furthermore, the Department of Ecology's Shoreline Master Program Guidelines (WAC 173-26) contain what is commonly termed the "precautionary principle" – namely, that when information about ecological resources is incomplete or unavailable, the regulations must be "more protective...to avoid unanticipated impacts..."*

***City Response:** Concerning the process time to approve **grated (flow through) decking**, in Section 141.40 the City proposes exemptions to Substantial Development Permits (SDP) for replacement of solid wood decking with grated (flow through) decking or similar material. Thus, the City's review process would be relatively quick. The City hopes to establish an expedited review process with Washington Department of Fish and Wildlife and US Army Corps of Engineers in the future.*

Ecology Conclusion: As summarized above, Mr. Davidson provided testimony at the February 9, 2010 Public Hearing with questions focused on the adequacy of **Science** used during the update to understand shoreline issues related to fish migration. Ecology concurs with the City's reference to the "Precautionary Principle" and the obligation to satisfy no net loss of shoreline ecological function. See further discussion on **Science** under the response to Dick Sandaas.

3. Issue summary of testimony from **Kevin Harrang on behalf of the Kirkland Lakeshore Association (KLA)** at the public hearing (February 9, 2010).

Testimony - SMP Update Process: Mr. Harrang began his comments by describing the KLA as a group who are interested in the well being of the lakeshore along Kirkland. The group describes themselves as active in the local update process including going to the expense of hiring expert legal council to help educate their group on the SMP update in an effort to more effectively contribute to the City's update. Unfortunately, KLA is not sure if their effort was worthwhile, but hopes it is appreciated. KLA reiterated multiple times that their intent was not to slow progress on the update, but rather to ensure that the SMP meets the State mandate, while minimizing impacts on residential uses, which they note is listed as a preferred use by the SMA. Finally, Mr. Harrang states that the public process may not be as welcoming as either Ecology or the City have hoped it to be, for which he points to the 3-min limit on comments at meetings as a opportunity to be heard, but not effective at making accommodations or changing the

Comments - City of Kirkland SMP Update - Attachment D

agenda of the SMP update. Therefore, Mr. Harrang concludes by stating that KLA supports the main goal of the SMP update, but has a slightly dissenting view on some of the specific elements of the plan.

Testimony -SMP Protections: In addition to process issues, KLA perceived the update as an opportunity to place more restrictions on development instead of actually requiring improvements to the lake. Mr. Harrang provides an example of the 2 to 1 tree replacement ratio along the shoreline as a requirement that is not directly tied to no-net-loss.

City Response: *Concerning the SMP update process, the public contributed effectively to the new shoreline policies and regulations and their efforts were very much appreciated. The public had the opportunity to participate in many forums, boat tours, workshops, open houses, formal public meeting and hearings and individual staff meeting as listed in the Public Outreach Log submitted to the Department of Ecology on December 17, 2009. These public outreach events included:*

- 16 study session before Planning Commission
- 9 study sessions before the Houghton Community Council
- 2 public hearings held before the Planning Commission and the Houghton Community Council and then continued for an additional month for more comment time
- 3 study sessions and 1 final consideration meeting before the City Council
- 2 open houses, 1 public forum and shoreline tour, 1 public forum and boat tours and 1 property owner workshops in which several Commissioners and Council members attended. There was no time limit on how long KLA members could provide comments to the City.
- 1 focus group meeting with City staff and interested parties, including the KLA, to review the draft regulations
- 1 meeting with the Planning Commission and invited stakeholders, including the KLA. The public and Planning Commissioners sat around a table and had an open and interactive dialogue. No time limit was set for public input during this discussion.
- 2 meetings between the KLA, their legal representatives and staff to go over the KLA recommended changes to Chapters 83 and 141 page by page. Many of the requested changes were made to the draft SMP regulations. The Planning Commission also went through the requested KLA changes and reviewed the suggested changes from staff. Both staff and the Planning Commission were very appreciative of the time spent by the KLA reviewing and proposing edits to the new shoreline regulations. The City Council was provided a copy of the KLA requested changes and detailed information on what was changed and not changed in Chapters 83 and 141 and why.
- Numerous staff meetings with various KLA members both at City Hall and at their properties and via email correspondence
- Listserv notice and information to 250 participants

City Response: *Some of the requests from KLA could not be incorporated into the shoreline regulation, these requests were inconsistent with the State Guidelines or would result in Kirkland not meeting the No Net Loss standard. The requested changes were as follows:*

- No replacement of trees removed in the shoreline setback;
- Hard shoreline stabilization allowed to protect land (not solely primary structures) with no needs assessment;
- Retaining existing shoreline setback standards;

Comments - City of Kirkland SMP Update - Attachment D

- *Allowing existing non-conforming structures to be reconstructed in the same location (within the shoreline setback); and*
- *A cap on mitigation costs.*

City Response: *Concerning **SMP protection**, the requirements placed on development result in meeting the No Net Loss standard. Improvements to the lake may be an outcome of the regulations if they are needed to meet the Guidelines. The City was careful to craft shoreline regulations that did not go beyond the No Net Loss standard on private property and looked to the Restoration Plan as a means to improve the shoreline beyond the baseline conditions described in the 2006 Shoreline Inventory. The cited example of the 2 to 1 tree replacement ratio for removal of certain existing trees in the shoreline setback is needed to meet the NNL Standard. The replacement ratio is only required for large, mature trees of 24 inch in diameter or greater. These trees have high wildlife and ecological value that cannot be met with a replacement ratio of 1:1. The City's tree replacement standard is a three tiered approach and is based on the size, type and value of a tree. The objective of the replacement ratio is to meet the NNL standard and not to improve the shoreline.*

Ecology Conclusion: As summarized above, Mr. Harrang representing the Kirkland Lakeshore Association provided testimony at the February 9, 2010 Public Hearing related to the **SMP Update Process** and **SMP Protections**. The City has provided a comprehensive response to the **SMP Update Process** concerns which far exceed the minimum public outreach requirements of the Guidelines. Ecology have also concluded that the City has done all it can in balancing the need for new **SMP Protections** to satisfy the Guideline no net loss requirements, while also integrating new flexibility to accommodate future growth and preserve redevelopment opportunity for many of the existing residential sites within the City. Ecology believes that this critical balance is well described not only within the City's response to comments, but also within the final Cumulative Impact Analysis (The Watershed Company, 2009).

4. Issue summary of comments from **Harold Forsen** received by Ecology on February 3, 2010.

Comment Summary - Aquatic Invasive Species: Concern with *Eurasian Milfoil* citing beach litter and promotion of algae growth in Yarrow Bay, Mr. Forsen requests assurance that management of this invasive plant is considered within the SMP.

City Response: *Concerning **aquatic invasive species**, the City recognizes the impacts of aquatic weeds in Lake Washington, particularly Eurasian watermilfoil. In particular, the nearshore areas surrounding both Juanita Bay and Yarrow Bay have large monocultures of this invasive aquatic plant. Additionally, many other areas along the City's waterfront have also been subject to extensive growth of Eurasian watermilfoil. Not only are aquatic weeds a problem for boats and swimmers, but they also tend to reduce dissolved oxygen to lethal levels for fish, hampering foraging opportunities. For these reasons, reduction of non-native invasive weeds has been identified as a priority in the City's adopted Restoration Plan. Once milfoil becomes well-established within a waterbody, as it is in Lake Washington, it is difficult to remove. The City mechanically controls milfoil within the swimming areas for patron safety. Expansion of milfoil removal beyond the swimming areas would be a significant budget cost not available at this time and may have environmental impacts. The City would unlikely pursue other methods to remove milfoil, including herbicide use, due to environmental concerns. It is also important to note that invasive removal along Kirkland's shoreline will very likely not eradicate the problem. Milfoil is able to reproduce very successfully and rapidly through the formation of plant fragments. These fragments will float to other areas, sink, and start new plants. A new plant can start from a tiny piece of a milfoil plant. Once established in its new home, water currents may carry milfoil fragments and start*

Comments - City of Kirkland SMP Update - Attachment D

new colonies within the same waterbody. Because of this growth pattern, milfoil is a lake-wide problem, one that needs to be addressed on a regional basis. The SMP update is a regulatory program that does not restrict the ability to remove aquatic invasive species. The City's Restoration Plan notes this as an implementation priority. Long term control of aquatic non-native invasive plants in Lake Washington will be very difficult to achieve without the additional coordinated inter-jurisdictional collaboration, including involvement, funding, and leadership from the State of Washington.

Ecology Conclusion: As summarized above, Mr. Forsen submitted comments related to management of **Aquatic Invasive Species**. Ecology concurs with the City's response to Mr. Forsen's comments, highlighting the significant technical, budgetary and feasibility challenges to removal of *Eurasian watermilfoil* within Kirkland's nearshore areas. In summary, the City has prioritized within their Restoration Plan (The Watershed Company, 2009) a goal to reduce the presence of non-native invasive weeds such as *Eurasian milfoil*. However, as stated by the City, the regulatory component of the SMP applies to proposed projects and would not require the City to remove aquatic weeds, for which it is important to ensure that the regulations in the SMP do not constrain the City from appropriately managing *Eurasian milfoil*.

5. Issue summary of testimony and comments from **Dick Sandaas** at public hearing (February 9, 2010) and through written comments received by Ecology on February 9, 2010.

Comment Summary/Testimony – Science: Mr. Sandaas characterizes the lack of sound science in the SMP as the “*most significant issue that has not been responded to*”. As a basis for this comment, Mr. Sandaas reports that he has reviewed all the scientific studies referred to and relied upon during the SMP update process and suggests the following deficiencies:

- *The body of science and research is not complete.*
- *The studies and reports have not been vetted or subject to peer review.*
- *The studies and reports contain suppositions and hypothesis.*
- *The studies and reports contain contradictory conclusions.*
- *The science cannot be applied broadly to all shoreline locations on Lake Washington.*

Please note that most of Mr. Sandaas' questions related to “*sound science*” are directed at Ecology as the City has already provided a response.

Comment Summary - Measurable Environmental Benefits/Costs/Unintended Consequences: Mr. Sandaas asserts that environmental benefits from the updated SMP have only been partially addressed by the City and are based on “*hypothesis*”. Mr. Sandaas suggests that the City should perform a pilot project to test many of the shoreline restorations called for in the SMP on city owned shoreline to answer questions of feasibility and true restoration costs. Mr. Sandaas predicts that this test would take many years to learn the true benefits. Mr. Sandaas claims that the SMP update has never dealt with measurable results, cost impacts or cost effectiveness. Citing stormwater/water quality concerns, Mr. Sandaas questions the fairness and equity of private shoreline owners “*bearing extraordinary costs*” throughout the implementation of these regulations. Referencing the feasibility of landscaping to shade nearshore area, Mr. Sandaas questions the potential benefit/effectiveness of vegetation to shade nearshore areas along Kirkland's shoreline based on the western exposure, suggesting a lack of shade and further raising concern as to the feasibility to maintain vegetation along the shoreline considering the wind/wave action.

Comments - City of Kirkland SMP Update - Attachment D

Comment Summary - Shoreline Stabilization: Mr. Sandaas provides multiple references to shoreline stabilization requirements in the SMP, highlighting general concerns with; increased risk to property/homes, unintended consequences, and questions related to the practicality or feasibility of bulkhead removal and/or shoreline landscaping. Mr. Sandaas states that bulkheads exist along the shoreline because they are necessary to contain property that was developed with the lowering of the lake. Further, he references storm exposure, potential impacts from boat wakes and a necessity to protect privately owned structures and public utilities.

Comment Summary – Flexibility: Mr. Sandaas suggests that the Kirkland residential and commercial shoreline are characterized by a “*wide variety of configurations and settings which makes a one size fits all approach impractical*”, for which he suggests that a lack of flexibility will constrain innovation and discourage redevelopment, ultimately “*resulting in deterioration of housing stock*”.

City Response: Concerning the question of the **science** used to develop the provisions in the State Guidelines, see the City’s response in comment No. 2. During the SMP update process, the City provided links on its web site, information in staff memos and during presentations on various publications, studies and agencies information supporting the science.

City Response: Similar to the question of science, the issue of **measurable environmental benefits/costs/untended consequences** is not a requirement of the Guidelines. The State Guidelines do not require a cost/benefit analysis and assumes the environmental benefits that will result from the new provisions are based on various studies and developed science. The City’s SMP update is based on and consistent with the State Guidelines provisions, including the nearshore native vegetation requirements in Chapter 83.

City Response: Concerning the **hard shoreline stabilization** regulations in Chapter 83, the regulations are consistent with and reflect the provisions of the State Guidelines. Concerning the **3-year timeline** required in the needs assessment to determine if shoreline erosion is occurring, this is a requirement in the State Guidelines (WAC 173-26-231(3)(a)) and not a timeline developed by the City.

City Response: Concerning **flexibility**, the City has provided considerable flexibility in Chapter 83. The City’s shoreline setback is based on an analysis of each lot’s average parcel depth and takes into account the wide variety of configurations and settings. The shoreline setback is not a one size fits all regulation. The SMP update provides many flexible options, including administrative approval process for alternative pier and dock standards, setback reduction options, alternative vegetation planting and tree replacement options, less expensive mitigation options, and non-conformance provisions for expansion of existing non-nonconforming structures and redevelopment of encumbered lots. In addition, the City reduced the required front and side yard setbacks and increased the allowable height in the Residential Low shoreline environment to provide more flexibility in siting structures. Concerning the mailed **notice** that Mr. Sandass received, Ecology sent the notice. The City provided notice on eight public notice boards, on its SMP web site and to the web listserv participants.

City Response: Concerning **storm water runoff**, the City has adopted the 2009 King County Surface Water Design Manual and Addendum earlier this year and the City’s 2009 Stormwater Management Program for the entire watershed. For more information, see Attachment 4, Response to Public Comments, in the staff memo for the August 27, 2009 Planning Commission meeting. Concerning the **native vegetation requirements** in Chapter 83, these are consistent with and reflect the provisions of the State Guidelines.

Comments - City of Kirkland SMP Update - Attachment D

Ecology Conclusions: As summarized above, Mr. Sandaas submitted both testimony and written comments focused on the following SMP topics: **Environmental Effects, Shoreline Armoring, and Flexibility** associated with SMP Implementation. Generally, Ecology concurs with the City's response to Mr. Sandaas's comments as detailed under each topic below:

Ecology Conclusion - Environmental Effects: As the City has stated, the Guidelines do not require a formal Cost/Benefit Analysis to guide development of shoreline protection measures as part of the SMP update. However, Mr. Sandaas concern related to the effectiveness of SMP policy's/regulations serves as an appropriate question to be asked of this update process. Even though a formal Cost/Benefits analysis is not a SMP-update requirement, SMA policy and the Guidelines recognize the need to balance both *use* and *protection* of shoreline resources. Thus, SMPs must provide for preferred shoreline uses set forth in the SMA (RCW 90.58.020). These include water-dependent uses like port development, public access facilities, and owner occupied single-family residences. This balance is represented in several ways within a SMP update, including consistency with WAC 173-26-186(5) (Private Property Rights) while also satisfying the overall no net loss of ecological function goal of the update. It is important to recognize that the SMP is not retroactive and cannot require a private property owner to upgrade a structure to a new standard until the property owner decides to instigate shoreline development beyond the City's established maintenance threshold. Further, the SMP update requires a Cumulative Impact Assessment to analyze the effectiveness/necessity of SMP regulations for many of the reasons that Mr. Sandaas has suggested. The Cumulative Impact Assessment is intended to anticipate potential impacts from future development and ensure that sufficient protection measures exist within the SMP to allow the development in a form that will not further decline shoreline ecological conditions. Even though the City has prepared a comprehensive, well founded Cumulative Impact Assessment, the ultimate SMP effectiveness test will be a future program review to analyze the performance of the SMP in achieving the goals of the SMA. This future review will not just focus on ecological protection effectiveness, but will need to consider all aspects of the SMP including future development goals and policies found within Goal #5 (Private Property Rights), Policies 2.3 – 2.5, 6.0 – 6.4 (Residential Development), etc. Pursuant to RCW 90.58, once adopted, the City's SMP will need to be reviewed in 7-years, for which effectiveness measures will be reviewed and considered for adjustment similar to Mr. Sandaas comment.

Ecology Conclusion – Science: Mr. Sandaas has also directed specific questions to Ecology related to appropriate use of science within the SMP update. Ecology appreciates the significant effort that Mr. Sandaas has dedicated to reviewing technical documents that the City has referenced within their Inventory/Characterization Report (The Watershed Company, 2006). In reference to the City of Kirkland SMP update, Ecology has concluded that the City adequately reviewed, referenced and applied appropriate science based conclusions consistent with Guideline standards and requirements¹. Specifically, Mr. Sandaas asserts that the science referenced in the City's update is insufficient based on misuse use of on-going research, lack of vetting or peer review, contains suppositions and hypothesis (not conclusions), contradictory conclusion (between multiple documents) and finally the broad scope of these reports should not be applied to all locations in Lake Washington. In response, as previously cited, WAC 173-26-201.2(a) describes the intended "Use of scientific and technical information", for which local governments are not obligated to take on new research to inform a SMP update. This same section of the Guidelines references dependence on both "scientific" and "technical" information as well as appropriate use of "experience" and "anecdotal evidence" to "identify and assemble the most current, accurate and complete scientific and technical information available that is applicable to the

¹ WAC 173-26-201.2(a): Use of scientific and technical information, within section titled "Comprehensive process to prepare or amend shoreline master program".

Comments - City of Kirkland SMP Update - Attachment D

issues of concern” (WAC 173-26-201.2.a, emphasis added). In other words, SMP management decisions must have a basis, but can be based on a variety of sources, for which a jurisdiction is obligated to assemble the most relevant information, for which Ecology believes the City’s Inventory/Characterization report is a sound product of this SMP requirement. In regards to gaps, uncertainty and ongoing research, local governments are required to implement a precautionary principle. WAC 173-26-201(3)(g) states; “*As a general rule, the less known about existing resources, the more protective shoreline master program provisions should be to avoid unanticipated impacts to shoreline resources*”. If there is a question about the extent or condition of an existing ecological resource, then the master program provisions shall be sufficient to reasonably assure that the resource is protected in a manner consistent with the policies of these guidelines. Again, Ecology believes that the City’s SMP appropriately reflects this Guideline requirement as well.

Ecology Conclusion - Shoreline Armoring: As stated in the City’s response, the Kirkland SMP provides Shoreline Armoring standards consistent with the Guidelines (WAC 173-26). As described within multiple public hearings by both the City and Ecology, the SMP Guidelines provide very specific shoreline stabilization standards, which will need to be implemented similarly within all jurisdictions that update their SMP in order to comply with the Guidelines. These standards exhibit a clear preference for use of non-structural armoring techniques, but fundamentally do not restrict property owners from adequately protecting primary structures on their property from erosion. As previously noted SMP standards are not retroactive, thus a property owner would only be required to consider/analyze the feasibility of alternative shoreline armoring, when a new or replacement development is proposed on-site. Further, the City’s SMP provides criteria to be considered at a site specific level to determine the potential erosion/risk for the particular site, which serves as the primary guide in determining the appropriate type of shoreline armoring technique to be considered. The fundamental reason for this site specific analysis is to ensure on-going protection of an existing primary structure, which if site conditions warrant, non-structural or less ecologically damaging shoreline armoring treatments should be considered.

Ecology Conclusion - Flexibility - Shoreline Implementation: Ecology concurs with the City’s response. Local jurisdictions are required to document existing ecological functions within a shoreline Inventory/Characterization (WAC 173-26-201). The Guidelines (WAC 173-26, Part III) require local governments to address cumulative impacts by considering commonly occurring shoreline development and foreseeable impacts caused or avoided by proposed SMP policies and regulations. Ultimately, SMP policy and regulations must ensure no net loss of ecological functions with reference to the baseline shoreline conditions described within the locally prepared Inventory/Characterization. Because of the no net loss of ecological function requirement of the Guidelines, predictable dimensional standards are necessary for some SMP elements to ensure consistency with this overall update requirement. Without specific standards, there would be no certainty in local projections of future (planned) shoreline conditions, and hence no justification that the no net loss standard can be achieved.

6. Issue summary of comments received from **Bob Style** through three emails forwarded from the City of Kirkland to Ecology on February 9, 2010.

Comment Summary - Shoreline Setbacks: Mr. Style has lived on the shoreline for 23-years, when the 15-foot setback was established and claims the City has not proven “*degradation of migration*”, therefore he believes the setback should not change. He also does not think a variance should be required in order for a property owner to use their property “*in a way equal to their neighbors*”, further stating that; “*The ordinance should acknowledge existing land-uses and should not require a variance to comply with pre-existing land uses*”.

Comments - City of Kirkland SMP Update - Attachment D

Comment Summary - Shoreline Stabilization: Mr. Style submitted a video showing waves hitting a rock bulkhead during a storm (narrated 20-25 knots of wind). In addition to the video, Mr. Style has added a comment with reference to “*best available science*” and a lack of consideration of physics that he believes would limit fish migration during storm conditions. Further, Mr. Style comments that the State should pay for re-sloping the beach for which he believes this precedent has already been established by the City’s financial support of private property improvements on Juanita Creek. Finally Mr. Style comments that: “*Until the state comes up with the money for environmental improvements, it should not expect property owners alone to pay for unfunded state mandates.*”

City Response: Concerning **shoreline setback**, the shoreline setback regulations proposed in the SMP update are based on existing conditions rather than existing shoreline regulations. This approach is needed to assure that the No Net Loss of ecological function standard is met using the benchmark of the 2006 City Shoreline Inventory. For example, many existing structures are located further from the shoreline than is required under the current SMP. With redevelopment, these structures could be moved closer to the shoreline, thus resulting in not meeting the No Net Loss standard if other structures close to the shoreline remain. The SMP takes this into consideration and provides mitigation measures that were evaluated in the Cumulative Impact Analysis which shows that the SMP is meeting the No Net Loss standard. In addition, Ecology has provided the City with the guidance that a minimum shoreline setback of 25’ should be required, possibly with the exception of very constrained areas. The current SMP regulations do not meet this minimum standard.

City Response: Concerning **shoreline stabilization**, the softer stabilization measures can successfully withstand storms if designed for the site and surrounding conditions, and are installed correctly. The City and State recognize that not all sites will be appropriate for installation of a complete soft shoreline stabilization solution, and this is reflected in the proposed regulations. Specifically, geotechnical reports must be submitted documenting the need for hard shoreline stabilization at a specific site. The regulations also identify and enable a variety of mechanisms to improve function of existing and replacement hard structural shoreline stabilization, including installation of material waterward of the OHWM. Furthermore, the City has prepared a decision tree to assist property owners in evaluating the potential options at their site.

Ecology Conclusion: As summarized above, Mr. Style provided written comments and a video raising questions related to the City’s **Shoreline Setback** and **Shoreline Armoring** standards. Ecology concurs with the City’s response to Mr. Style, providing a solid rationale for both the **Shoreline Setback** and **Shoreline Armoring** standards as required by the SMP Guidelines. See further discussion on **Shoreline Armoring** under the response to Dick Sandaas.

7. Issue summary of comments received from **Futurewise** through two letters dated February 10, 2010 and March 5, 2010.

Comment Summary - Policy on Shorelines of Statewide Significance: Futurewise has previously commented to the City, stating that the specific policy statement related to *Shorelines of Statewide Significance* is not included within the SMP. City staff provided Futurewise with a response, which according to Futurewise still does not provide adequate emphasize of the importance of *Shorelines of Statewide Significance*.

Comment Summary - SMP Administration: Futurewise provides the City with a number of comments on SMP Administration specifically related to shoreline exemption and non-conforming regulations

Comments - City of Kirkland SMP Update - Attachment D

identifying; thresholds/limits on maintenance/repair, use changes, wetland, stream and lake non-conformities and on-going degradation as summarized below:

- Exemptions-In reference to Section 141.40.4, Futurewise have previously commented and continues to be concerned that this section does not require sufficient submittal of materials and/or review to ensure that exempt actions are consistent with the SMP.
- Maintenance Thresholds/Time-limits (Non-Conforming)-Futurewise have previously commented stating that the 50% threshold to define “*major expansion*” is too high. Futurewise suggests that the threshold be reduced to 25-30% and should be calculated from the time that the original non-conformity first occurred, in order to limit multiple expansions over time.
- Changes of Shoreline Use (Non-Conforming)-Futurewise notes that improvements to properties can also involve a change in use, for which they do not believe the SMP adequately acknowledges. As a general comment, Futurewise suggests that if a use changes to a more intensive use, that conformance to the use standards should be required similar to the “*major improvement*” provisions applied to maintenance activities.
- Wetland, Stream and Lake Nonconformities-Futurewise has commented that the SMP’s Non-Conforming section refers exclusively to “*buffer*” or “*setbacks*”, for which they are concerned leaves a “*gap*” in reference to wetlands, streams and lakes. They suggest using the term “*waterward of the buffer or setback*” to alleviate this concern.
- On-going Degradation of Bulkheads/Docks-Finally, Futurewise have suggested that on-going ecological impacts are associated with non-conforming docks and bulkheads and should be addressed when any use of the property is enlarged or changed. Specifically, they believe that bulkheads are missing from the City’s non-conforming system and recommend that; “-.550(5)(b & c) be supplemented to require that major expansion or use changes located on properties with shore armoring implement one of the Water Related Conditions or Actions in Table 83.380 (2)d.”

Comment Summary - SMP Use Table: Futurewise reiterated a previous concern related to unlisted uses and believe that a conditional use review would not require consistency with related use standards or regulations. Therefore, they have suggested that a “*catch-all*” standard be added to the SMP’s use table stating that any use not specifically listed within the table is prohibited; thereby limiting the potential for unforeseen uses to negatively impact shoreline functions without appropriate development standards.

Comment Summary – Parking: Futurewise notes that underground parking would be allowed within a shoreline setback/buffer, for which they have raised concerns as to potential geo-hydraulic or groundwater interference between subsurface flow from uplands to the lake. Specifically, Futurewise references the potential impacts from excavation and construction of underground parking structures close to the high water mark within a shoreline setback or buffer?

Comment Summary - Transportation/Utilities: applicable to both Transportation and Utilities, Futurewise suggests that a regulation be added to ensure that off-site disposal of project materials are adequately disclosed and considered during shoreline permit review. Specific to Transportation uses, Futurewise have reiterated their concern related to “*linear facilities*” which they believe the SMP does not address all “*known or common impacts*”. Therefore, according to Futurewise these uses should only be considered when they are water-dependent. For “*non-linear*” facilities, Futurewise suggest that they be reviewed as other uses (i.e. commercial, industrial, etc.).

Comment Summary - Public Access: (See issue described below under Cumulative Impact Assessment) Boating Facilities/Pier Docks: Futurewise provided previous comments to the City distinguishing between single-family residential Pier/Docks and “*Boating Facilities*” serving multi-family or commercial

Comments - City of Kirkland SMP Update - Attachment D

uses. They have summarized the City's response to this issue and remain unsatisfied in the SMP's lack of consistency with Guideline's "Boating Facility" standards to be applied to multi-family residential and commercial moorage facilities. Further, Futurewise has suggested the language in section 83.270.1.b.1 be revised from reference to "waterfront access rights" to "water frontage".

Comment Summary - Boating Facilities/Pier Docks: Futurewise provided previous comments to the City distinguishing between single-family residential Pier/Docks and "Boating Facilities" serving multi-family or commercial uses. They have summarized the City's response to this issue and remain unsatisfied in the SMP's lack of consistency with Guideline's "Boating Facility" standards to be applied to multi-family residential and commercial moorage facilities. Further, Futurewise has suggested the language in section 83.270.1.b.1 be revised from reference to "waterfront access rights" to "water frontage".

Comment Summary - Shoreline Setback Vegetation Management/Reduction: Futurewise have provided previous comments to the City related to shoreline setbacks/buffers. In general, they acknowledge the limits on establishment of large protective buffers within the City's urbanized setting with reference to their Urban Buffer Guidance². However, they do continue to emphasize the need to establish wider buffers necessary to protect shoreline functions in areas such as the Natural environment where these protections can be accomplished. Further, Futurewise have provided follow-up comments to the City's initial response on the following shoreline buffer issues:

- Stream Buffers-Futurewise notes that the City's stream buffers are not based on *Best Available Science* and suggest the "enhancement standards used for setbacks" should be applied to stream buffers. Futurewise is concerned that the City's responses to their original comment on this issue were miss-understood. They reiterate to the City, that the "enhancement standards" are necessary not just for cases when the standard buffer is reduced, but for all future development adjacent to streams to properly mitigate development impacts.
- Water Enjoyment Uses-Futurewise has provided a follow-up suggestion to previous comments related to increasing setback/buffers for Water-Enjoyment Uses. Citing potentially unnecessary degradation, Futurewise does not believe that Water Enjoyment Uses are justified in receiving any closer setback/buffer than non-water-oriented uses, as a larger setback would still allow for views of the water to maintain the water-enjoyment function.
- Setback Buffer Incentives-Futurewise has stated a "major concern" with incentives intended to encourage enhancement, but potentially awarded for development that may not result in a net ecological improvement. As an example, Futurewise, cites a scenario where a setback/buffer reduction may be allowed when the "Presence of natural shoreline conditions..." on site would not require any enhancement, which they believe encourages extra development without a net improvement to ecological functions. Futurewise has reviewed the City response to their previous comments and believe the City misunderstood their concerns. Futurewise reiterates that they support incentives, but are concerned that the City's SMP will: "(1) encourage non-water-oriented development close to the water, while doing nothing to improve shoreline conditions to mitigate the impacts, or (2) encourage non-water-oriented development to degrade the remaining functions to the threshold level without enhancement to offset the impacts of development close to the water." In conclusion, Futurewise recommends that the language of the existing incentives be amended to require overall improved conditions or a net improvement in order to allow the incentive.

Comment Summary - Restoration Plan: Futurewise has stated that they are not concerned with the projects listed in the City's Restoration Plan, "But rather that the Plan identified restoration goals and objectives, and the restoration projects not in the plan should be consistent with these goals and

Comments - City of Kirkland SMP Update - Attachment D

objectives". Finally, Futurewise suggests that the City provide a connection between the Restoration Plan and the many protection measures/standards in the SMP that will help to restore shoreline ecological functions.

Comment Summary - Cumulative Impact Assessment: Futurewise states that "*protection of ecological functions*" is one of the highest SMA policy preferences, for which they question (as an example) the SMP's public access standards, which is allowed to be located within setbacks/buffers, which they believe "*...will encourage intense development extremely close to the water, with associated impacts*". Futurewise concludes stating that their comment letter points out similar instances which unless corrected [the SMP] "*...will not be able to prevent cumulative impacts*".

City Response: *Concerning SMA policy text on shorelines of statewide significance, the City does not call out specific policies in its Zoning Code as a general rule, but rather provides applicable references to the Comprehensive Plan. The City believes that the regulatory and policy documents should be kept separate. Section 83.40.3 references the Shoreline Chapter of the Comprehensive Plan and states the intent of the SMP of implementing the SMA and Guidelines. In the new Shoreline Chapter of the Comprehensive Plan, the City has listed the three goals of the SMA and references RCW 90.58. It is the City's position that the goals and policies in the Shoreline Chapter appropriately reflect the policy statement in RCW 90.58.020 and that the actual policy statement in RCW 90.58.020 should not be a specific goal or policy in the City's Comprehensive Plan.*

City Response: *Concerning exemptions, Section 141.40 does require a formal application for an exemption, including submittal requirements. City can approve, deny or approve with conditions the exemption. Furthermore, the section states that the exemption must meet the regulations in Chapter 83 and review of the regulations is part of the City's consideration of the exemption. The provisions do allow the City to waive the application for any proposal that does not require an Army Corps of Engineers Section 10 or Section 404 approval. This is consistent with the provisions of WAC 173-27-050, which requires a letter of exemption to be submitted to the Department of Ecology only when an Army Corps of Engineers Section 10 or Section 404 approval is required. The City acknowledges its requirement to document project review actions in shoreline areas. Even in cases where an application is waived, the Planning Official is still required to conduct review for compliance with the shoreline regulations contained in Chapter 83 KZC in conjunction with a related development permit, such as a building permit.*

City Response: *Concerning maintenance threshold/time-limits (non-conforming), the Guidelines provide no standards or directives on thresholds for non-conforming structure so jurisdictions have discretion to set the threshold based on their own existing conditions and on the results of their Cumulative Impact Analysis. The threshold of 50% improvement of the value of the property or structure for bringing certain non-conformances up to code over a 12-month time period is the standard threshold in the City's Zoning Code. The City's believes that this same threshold should apply to the new shoreline regulations that will be placed in the Zoning Code. The City's position is that this is a reasonable threshold and time period given the extent of changes that would be required to bring a structure or site up the code. It is not unusual in the City that the 50% threshold is met or exceeded, such as adding a 2nd floor or enlarging the ground floor of a structure.*

City Response: *Concerning changes of shoreline use (non-conforming), the Guidelines provide no standards or directives on change in use so jurisdictions have discretion to set the standards. Approval of a change in use would require that the use be an allowed use in the shoreline environment and meet the standards for that new use. If the change in use is more intensive, then the new use must meet the stricter standards for that more intensive use. For example, a single-family home converted to a multifamily development would require compliance with the shoreline setback, public access, shoreline*

Comments - City of Kirkland SMP Update - Attachment D

vegetation and other requirements. Concerning the **expansion of a primary structure or a change in use**, this action does not always cause impacts to the shoreline functions. In the City's regulations, the required shoreline setback must be met for major expansions and existing shoreline setbacks must be maintained for minor expansions, except for a special provision in Section 83.550.5.b.5) where shoreline vegetation mitigation is required if a small expansion of the non-conforming structure goes into the shoreline setback. More intense uses, such as commercial uses, are only allowed in limited locations along the shoreline where other intense uses already exist and have specific regulations that must be met to mitigate impacts.

City Response: Concerning **wetland, stream and lake nonconformities**, Section 83.550.5 contains a subsection D covering Nonconforming Wetland and Stream Buffer. This subsection regulates when nonconforming structures and improvements in a buffer must be brought into conformance.

City Response: Concerning **on-going degradation of bulkheads/docks**, the Guidelines do not require removal of bulkheads with replacement of existing primary structures so jurisdictions have discretion to set the threshold for removal based on the result of their Cumulative Impact Analysis. The City considered the concept of requiring removal of bulkheads with redevelopment when the bulkhead would not be altered, but concluded that it would go beyond the No Net Loss standard. Ecology agreed with the City. Thus, the City does not treat existing bulkheads as non-conforming structures, but does have a threshold for when a needs assessment is required for major repair of a bulkhead.

City Response: Concerning **SMP use table for unlisted uses**, the WAC provisions allow unlisted uses to be considered through a CUP process. WAC 173-27-160 criteria (3) addresses unlisted use by stating that:

(3) Other uses which are not classified or set forth in the applicable master program may be authorized as conditional uses provided the applicant can demonstrate consistency with the requirements of this section and the requirements for conditional uses contained in the master program.

The use would need to meet both the general review criteria under WAC 173-27-140 and the specific criteria for a CUP under WAC 173-27-160. It would have to receive Ecology approval as well. The City cannot foresee all potential appropriate shoreline uses that may be proposed in the future so the SMP update should allow unlisted uses to be considered through a CUP. The current SMP also treats unlisted uses the same way. A past example in Kirkland of an unlisted use that went through a CUP was a rowing club. Through the CUP, an applicant for an unlisted use would potentially have higher standards to meet than the development standards listed for uses in Chapter 83. An unlisted use must meet the mitigation sequencing under Section 83.360 to demonstrate that the No Net Loss standard would be met. Minimization of impacts and/or mitigation would be required that reflected the actual impacts of the use. The City would look to comparable uses in Chapter 83 for standards along with other standards recommended from the mitigation sequencing analysis. The approach is preferred over developing "best guess" standards for unlisted uses in advance. An unlisted use can be denied because the City may conclude that impacts could not be avoided, minimized or mitigated.

City Response: Concerning **subsurface parking**, Kirkland's current Urban Mix and Residential M/H shoreline environments is where subsurface parking structures could be located and are mostly composed of hard armoring, lawn, surface and subsurface parking and primary structures. The areas have low ecological function already due to the urban, intense conditions that exist. Thus, the No Net Loss standard would be met if a subsurface parking structure were constructed. In many instances, subsurface parking lots are the only option because there is no location for surface parking due to the shallow depth of many lots along Kirkland's shoreline or due to blockage of views to the lake in the required view corridor by vehicles parked on surface parking lots. In many ways, subsurface parking lots are preferred since they do not block views or public access to the lake. The City is not aware of any study that indicates that subsurface parking lots would interfere with the ground water eventually going

Comments - City of Kirkland SMP Update - Attachment D

into the lake or that groundwater is such a critical factor for cooling lake water. According to a study completed in 2003, the Cedar and Sammamish Rivers contribute 84% of the lake's water (TetraTech ISG, Inc. and Parametrix 2003). The large number of streams in the Lake Washington basin likely contributes the majority of the remaining water, with some unknown contribution from groundwater. Furthermore, the study notes that temperature of the lake is "determined largely by climatic factors" (TetraTech ISG, Inc. and Parametrix 2003). Source: <http://your.kingcounty.gov/dnrp/library/2003/kcr1479.pdf>

City Response: Concerning **transportation/utilities**, deposit of debris outside of the SMA jurisdiction is not an issue of the SMP, but would be addressed as part of the SEPA environmental review. For clear organization and a user-friendly format, the City prefers to address linear and non-linear transportation facilities in one section of the regulations. Mitigation sequencing will be used to determine if the facilities are appropriate for the proposed location and any needed mitigation. In addition, Section 83.230 contains five general standards and five construction and maintenance standards along with specific standards for a passenger only ferry terminal, water taxi, and roads and bridges. Concerning additional comments on **transportation/utility**, each SMP is tailored to reflect the jurisdictional characteristics. Kirkland does not contain floodplains or floodways, airports or freeways within the SMA jurisdiction so these facilities are not mentioned in the use listing in Section 83.160. Private driveways and utilities associated with a use along the shoreline would be regulated as part of the primary use and not as a transportation facility under Section 83.230 and Section 83.240.

City Response: Concerning **public access**, the existing public access walkways in Kirkland are generally constructed next to the water's edge to give the public close proximity to the water and to provide separation for privacy to homeowners and businesses. Any improvement to this current condition would meet the No Net Loss standard. Section 83.420 requires that public walkways be set back an average of 10 feet but no closer than 5 feet from the OHWM. Riparian vegetation of at least 15' in width must be planted within the shoreline setback not including the area of the walkway. This new standard is an improvement over existing conditions. When developing the public access regulations, the City considered the two statements in the Guidelines on public access that read: "public access includes the ability of the general public to reach, touch, and enjoy the water's edge...and to view the water and the shoreline from adjacent locations" and "assure that public access improvements do not result in a net loss of shoreline ecological functions and the right to privacy for property owners." The City believes that its regulations on public access meet these standards while improving the shoreline condition.

City Response: Concerning the **view corridors** requirement, they only apply to properties west of Lake Washington Blvd and Lake Street South and do not include public park use. The only property west of Lake Washington Blvd in the Natural shoreline environment is the Yarrow Bay Wetland Park. There is no Natural shoreline environment west of Lake Street South.

City Response: Concerning **boating facilities/pier docks**, the boating facilities section of the WAC only excludes docks serving four or fewer single-family residences from the requirements of that section – it does not exclude docks serving other types of residential uses. These uses would fall under the broad definition of boating facilities, which as stated by Futurewise, should address marinas, as well as private community facilities for multiple users, public boat launch and moorage facilities. The City believes that the provisions established for boating facilities associated with multi-family developments adequately meet the requirements of WAC 173-26-241(3)(c). Section 83.280 establishes setback standards to ensure that development is adequately located. Restroom facilities are not required as the boat users and their guests are expected to use those facilities in their home on-site. However, other health, safety and welfare requirements are required. Visual concerns are addressed through a number of provisions. Requirements are also established to meet No Net Loss and mitigation sequencing. Provisions also address moorage on waters of the State. Section 83.80 defines "boating facilities" and clarifies that for

Comments - City of Kirkland SMP Update - Attachment D

Kirkland's SMP piers and docks include those for multi-family (detached, attached and stacked dwelling units) along with marinas (note: occupants of multi-family housing that own boats moored at a community pier are members of the boating public who utilize their boats on the lake for recreation as intended by the Boating Facilities section of the WAC). Since Kirkland has so many existing boating facilities for multi-family development, the City determined that it would be clearer if a chart was provided noting specific boating facilities associated with multifamily developments. The City also decided that the regulations for multifamily boating facilities should be more restrictive in certain design regulations than for marinas, such as pier width and minimum water depth, since they serve fewer people than marinas and are restricted to the residents and guests. However, many of the other general regulations are the same for all boating facilities. For example, multi-family boating facilities are required in general to be located and designed to address the No Net Loss standards, utilize mitigation sequencing, and meet some additional location standards as addressed in Section 83.280.1 and 2. They are also required to provide public access and at least two waste receptacles. The City assumes that it is meeting the intent of the SMA and Guidelines and believes that Ecology will allow jurisdictions some discretion in how the regulations are set up. Concerning **upland lots and non-commercial (multi-family) boating facilities**, Section 83.280 only permits a new boating facility if there is an existing dwelling unit on the lot. Kirkland has a few upland lots and they all contain dwelling units. To our knowledge, Kirkland does not contain upland lots with legal rights to have a boating facility. If a subdivision results in an upland lot with access rights for a boat facility, then a shared facility would be required.

Concerning **upland lots and piers associated with single-family homes**, to our knowledge Kirkland has no upland single-family lot with legal rights to have a pier. Nonetheless, the Guidelines do not state that an upland single-family lot must share a pier with a waterfront lot. The Guidelines only require that a new development with two or more dwelling units or a subdivision have shared piers. Concerning **piers and docks for non-moorage water-dependant and non moorage non-water-dependant uses**, the City has already listed and addressed some foreseeable known uses, such as public piers and boardwalks, and fueling and boat repair. The City does not want to outright exclude some unforeseen, unlisted use from all of the environments as this may result in future prohibition of an appropriate use in a particular shoreline environment. As discussed above on page 11, for Kirkland a CUP process is the preferable approach for an unknown, unlisted use.

City Response: Concerning **shoreline setback vegetation management/reduction**, Ecology has provided the City with direction that the wetland and stream buffers and the shoreline setback address different requirements. Buffers typically provide protection for wetland and streams by prohibiting development or improvements i.e. retaining the buffer area in a natural state. The shoreline setback provides separation from the lake for riparian vegetation and to reduce impacts of light, noise and other impacts from the upland activities, but still allows for some improvements, access and water dependant uses. Thus, the required shoreline setbacks in the Natural shoreline environment are regulated as such and specifically not as an untouched buffer. In most areas, the shoreline setback will be contained within the required greater wetland setback and building buffer setback. Most of the Natural shoreline environment areas are covered by wetlands. For those few areas not covered by wetland or wetland buffer, only the shoreline setback would apply.

City Response: Concerning **stream buffer standards**, the City does not contain any streams that would be considered shorelines or shorelines of statewide significance. The City of Kirkland's non-shoreline streams are addressed under the Guidelines section on Critical Areas located within shoreline jurisdiction, namely critical freshwater habitats. The City believes that given existing conditions, the shoreline regulations do meet these standards. The City's non-shoreline streams are predominately located within large wetland complexes. The wetland buffer standards in Section 83.500 were based on Best Available

Comments - City of Kirkland SMP Update - Attachment D

Science and would provide protection of ecological functions of the streams within the wetland complex, consistent with the provisions established for critical freshwater habitats. Two streams are currently outside of the large wetland complexes. One is located in the Carillon Point Master Plan site that is fully developed. The existing buildings and parking structures are located next to the stream. It is highly unlikely that any redevelopment would occur in the master plan over the next 20 years and thus the stream buffers in Section 83.510 would be appropriate, given these existing conditions and no potential for site redevelopment. The other stream is in Juanita Beach Park. As part of the redevelopment of the park currently under way, a wetland mitigation project will create a wetland around Juanita Creek. Thus, this creek will have the additional protection of a wetland and its associated buffer surrounding the stream. Since all of the shoreline streams but one are or will be located within wetland complexes, a stream buffer enhancement requirement is not needed. The wetlands and their associated buffers will provide greater protection to the streams than the stream buffers. The City does not want intrusion into the wetland complexes to enhance the stream. For the one stream not surrounded by a wetland, it is highly unlikely that redevelopment (tear down and rebuild) will occur in the Carillon Point development master plan site. Even so, if redevelopment would occur at Carillon Point, the result of mitigation sequencing and conditions of approval for an amendment to the master plan can require further enhancement of the stream. Concerning **stream bank protection**, it is the City's position that stream bank protection in Kirkland's non-shoreline streams does not explicitly fall under the Guideline section on shoreline stabilization, but under the Guidelines section on critical areas located within shoreline jurisdiction, namely critical freshwater habitats. This section suggests integration of the SMP provisions for shoreline stabilization, among other sections. The City's stream bank protection Section 83.510.10 accomplishes this by requiring similar standards for shoreline stabilization, such as using non-structural or soft structural stream bank protection, rather than hard stabilization; providing documentation prepared by a qualified professional that no adverse impact will occur to fish, wildlife and their habitat; and documenting that vegetation or other biological materials is not an option to control erosion. The City's shoreline stabilization Section 83.300 specifically addresses the lake environment with bulkheads not permitted within wetlands. The Washington Department of Fish and Wildlife's Integrated Stream Bank Protection Guidelines is a more appropriate, science-based tool for stream environments.

City Response: Concerning **water enjoyment, water-oriented uses**, these types of uses are a preferred use over a non-water enjoyment, non-water-oriented uses under the SMA in that they are opened to the public to provide public access and enjoyment of the shoreline. The City's shoreline setback standards are in "order of preference" based on the Guidelines: water dependant uses have no setback; water enjoyment uses have a 30' required setback; and non water-oriented uses having a setback of 50'. Water enjoyment uses have a less of a shoreline setback than non water-oriented uses so the public has enhanced access to the lake. The City's position is that the setback for water enjoyment use is appropriate and reasonable.

City Response: Concerning **setback reduction incentives**, the incentive options are designed to at least offset any impact from allowing a structure to be closer to the lake than required by the shoreline setback standard. As suggested in the comment letter, net improvement of ecological function letter on a site-by-site basis would go beyond the No Net Loss standard and thus is not required. Currently, Kirkland only has a few properties with a natural shoreline so the setback reduction option for an existing natural shoreline is only applicable in rare situations. The Cumulative Impact Analysis concluded that the No Net Loss standard would be met with the setback reduction incentive option.

City Response: Concerning the **Restoration Plan**, the City views its SMP update as having four components that are interrelated and interdependent: the Shoreline Chapter and other applicable chapters in the Comprehensive Plan, the shoreline regulations in Chapter 83 and 141 of the Zoning Code,

Comments - City of Kirkland SMP Update - Attachment D

*the Restoration Plan and the Cumulative Impact Analysis. A restoration project not specifically listed in the Restoration Plan would be regulated under Chapter 83 by either specific regulations for shoreline modification, wetlands or streams or under Section 83.350 for Shoreline Habitat and Natural System Enhancement Projects. A Substantial Development Permit would be required. In the review and approval of the SDP, the restoration project would need to be consistent with the Shoreline goals and policies in the Comprehensive Plan, the regulations in Chapter 83 and the goals and objectives in the Restoration Plan. The Shoreline Chapter in the Comprehensive Plan has several goals and policies on restoration, including Goal SMP 2, Policy SMP 8.3, Goal SMP 13, Policy SMP 13.5 and Policy SMP 16.1. These goals and policies are consistent with the goals and objectives of the Restoration Plan. The Restoration Plan specifically addresses private restoration projects that may result from the protection measures and standards in the SMP regulations. These projects will help towards restoring shoreline ecological functions. Concerning an **additional comment on the Restoration Plan**, WAC 173-26-186(8)c states that the master program elements and not just the Restoration Plan itself should consider any “restoration effects that may flow indirectly from shoreline development regulations and mitigation standards.” The City’s Cumulative Impact Analysis did consider both mitigation of site specific impacts and any possible restoration that results from the new shoreline regulations in determining if the combination of the new shoreline regulations and the Restoration Plan would result in No Net Loss of ecological function and restoration of the shoreline over the planning horizon.*

City Response: Concerning the **Cumulative Impact Analysis**, major improvements are currently found along Kirkland’s shoreline up to the edge of the OHWM, including required public access walkways, decks, patios, swimming pools, commercial outdoor seating areas and private walkways. These are permitted under the current SMP. Under the SMP, the public access walkways will no longer be allowed along the edge of the OHWM, patios and decks must be at least 25 feet from the OHWM (with the exception of the 19 single family lots just north of the downtown), swimming pools are no longer permitted in the shoreline setback and improved private walkways are limited in size. Commercial outdoor seating areas must be no closer than 16 feet and balconies no closer than 21 feet from the OHWM. All of these improvements must be made of pervious material. None of the encroachments are permitted in the Natural shoreline environment. Thus, under the new shoreline regulations these improvements will be further away from the shoreline than existing conditions while still allowing property owners and the public an opportunity to enjoy the shoreline. Given the existing conditions along the Kirkland, the No Net Loss standard will be met in Kirkland with the SMP update. Concerning the **heading for Section 141.30**, it does read “Review Required” as recommended in the comment letter and not “Permit Required” as stated in the comment letter.

City Response: Concerning **commercial uses**, the definition in Section 83.80 includes services. The catch-all listing is “Any Retail Establishment other than those specifically listed in this chart, selling goods and services including banking and relative services”. This is the same terminology used throughout the Kirkland Zoning Code. The definition of “retail” is further defined in Section 5.795 of the Kirkland Zoning Code reflecting this general catch-all term. Chapter 83 uses the same breakdown in uses, basic format and definitions as the remainder of the Zoning Code. It is very important to the City that Chapter 83, a new chapter in the Zoning Code, is internally consistent with the rest of the Zoning Code. The City believes that the State Guidelines and SMP provide jurisdictions with the latitude on how they want to organize and categorize uses, provided that the intent of the SMA is met. Like other development regulations, jurisdictions take a variety of approaches on how they organize their Zoning Code and Comprehensive Plan. The City believes that the organization of uses provided in the Zoning Code is appropriate for the shoreline regulations and does not conflict with intent of the SMA or the Guidelines.

Comments - City of Kirkland SMP Update - Attachment D

City Response: Concerning **institutional uses**, again the City is very concerned about having internal consistency with all chapters of the Zoning Code and believes that the organization of uses in Chapter 83 does not conflict with the State Guidelines and the intent of the SMA. Institutional uses are called out separately in Chapter 83 from commercial uses as they are in the remainder of the Zoning Code. Institutional uses are defined in the Zoning Code to include schools, churches, day cares, government and community facilities (see Section 5.410). These uses are allowed in almost all zones of the City, including residential zones. This is not the case for commercial uses that are limited generally to commercial zones. Commercial and institutional uses have the same standards for height, setbacks and lot coverage. In the chart of Section 83.170, resource land use, residential uses, land division, institutional, utilities and shoreline modification are not divided by water-dependent, non water-dependant and water-related because the uses within each of these categories are of the same shoreline type.

City Response: Concerning **hotels, motels, restaurants and taverns as water-enjoyment uses**, these uses are commonly located along the shores of Lake Washington, including Kirkland, and other shorelines in Washington providing the general public with the opportunity to enjoy the water and views beyond. They provide an “aesthetic enjoyment of the shoreline for a substantial number of people as a general characteristic of the use” (WAC 173-26-020). The definition of water-enjoyment does not say “sole” characteristic. Their very nature is to be open to the public and to serve a substantial number of people. The City requires that hotels, motels, restaurants and taverns meet five design criteria in Section 83.390 to assure that they are designed and function as water enjoyment uses for the public. It is the City’s position that these uses are appropriate water enjoyment uses if designed correctly and meet certain requirements.

City Response: Concerning **recreational facilities**, Section 83.220 states that non water-oriented sports fields, skate parks and the like must be located outside of the shoreline jurisdiction as much as possible. This statement establishes that these types of facilities are not considered water-oriented recreation. A CUP is required for a recreational use in all environments, except the Urban Mix environment so the various CUP criteria must be satisfied met along with proving that the goals and intent of the SMP are met.

City Response: Concerning the **aquatic environment** column in Section 83.160, this is a minor typographical error in the chart. The field containing the text “see adjacent upland environment” needs to be continued onto the next page.

City Response: Concerning **lighting standards**, Section 83.460 contains applicable regulations for parking lots. The regulations are very specific as how to do avoiding adverse impact – lighting shall be directed downward and have “fully shielded cut off” fixtures. The height and location of lighting are restricted and timers and sensors must be used. Overwater structures have additional standards besides the standards in Section 83.460 due to the close proximity to the lake. The only exceptions to the regulations are emergency lighting for public safety, public rights-of-way, temporary community events at parks, seasonal decoration lighting and lighting for signage regulated under Section 83.460. These exceptions are reasonable and/or necessary.

City Response: Concerning **fill**, similar to the discussion on transportation and utilities in this document, the City believes that the combination of meeting the specific standards for fill and the mitigation sequencing requirements in Section 83.340 provide adequate and appropriate review standards. Concerning **land surface modification** in the Natural shoreline environment, there are single-family homes and some vacant single family lots located in this environment. There may be a case where a land surface modification (such as grading or fill) activity is required for a soft shoreline or natural shoreline measure. A SDP or CUP is required depending on the activity.

Comments - City of Kirkland SMP Update - Attachment D

City Response: Concerning **utility production and processing facilities and utility transmission facilities**, Section 83.240 contains general standards, construction and maintenance standards and specific standards for these uses. Similar to the discussion above on transportation and general utilities, the City believes that the combination of meeting the specific standards for these uses and the mitigation sequencing requirements provide adequate and appropriate review standards.

Ecology Conclusion: As summarized above, Futurewise submitted comprehensive comments focused on the following SMP topics: **Shorelines-of-Statewide-Significance, Shoreline Exemptions, Non-Conforming maintenance thresholds, Non-Conforming changes in use, On-going Ecological Degradation, Unlisted/Unanticipated Uses, Subsurface Parking, Transportation/Utilities, Public Access, Boating Facilities, Critical Areas Buffers, SMA-Priority Uses, Setback Incentives, Restoration Plan, Cumulative Impact Assessment, and Water Enjoyment Uses.** Generally, Ecology concurs with the City's response to the Futurewise comments through appropriate interpretation and application of the SMP Guideline provisions for each of the topics considered. Please see detailed conclusion for each topic listed below:

Ecology Conclusion - Shorelines-of-Statewide-Significance: Neither the comment by Futurewise nor the City's response suggests inconsistency with the "Shorelines-of-State-Wide-Significance" policy statement from RCW 90.58.020, but rather, questions if the City is required to repeat the policy statement within the updated SMP? WAC 173-26-176 provides a list of "General Policy Goals of the act..." which according to WAC 173-26-191.2.a.i (Master Program Contents – Master Program Policies) "shall provide clear, consistent policies that translate broad statewide policy goals...into local directives." Therefore, it appears that the City has met its obligation through reference and/or translation of statewide policy goals within the updated SMP.

Ecology Conclusion - Shoreline Exemptions: Ecology concurs with the City's response acknowledging the obligation to ensure SMP consistency of exempt actions, for which requirement of a formal Shoreline Exemption application is an option for jurisdictions to consider. Finally, Futurewise provides a valid comment acknowledged by the City related to identification of a method to account for future SMP authorizations as part of the future 7-year SMP review.

Ecology Conclusion - Non-Conforming Maintenance Thresholds: As stated by the City, jurisdictions have the authority to either create their own Non-Conforming standards or default to WAC 173-27-080. Under either option the jurisdictions is required to satisfy illustrate consistency with the no net loss of ecological functions SMP policy goal. As described within the City's Cumulative Impact Assessment (The Watershed Company, 2009) thresholds related to the scope and timing of repair/maintenance to existing non-conformities was necessary to appropriately distinguish when the new standards should be complied with as opposed to on-going maintenance of an existing structure/use. The City has considered the threshold within their Cumulative Impact Assessment and determined that the standard is in compliance with the No Net Loss Guideline requirement.

Ecology Conclusion - On-going Ecological Degradation Critical Areas Buffers/Setback Incentives: Ecology concurs with the City's response related to on-going ecological degradation from existing shoreline structures. The Guidelines do not provide any additional authority to retroactively require removal of existing structures. Therefore, the City is correct in focusing SMP regulations on removal of these structures through redevelopment and establishment of a threshold on repair. Related to critical area buffers, the City have updated wetland regulations to satisfy Best Available Science and Guidelines standards. As documented within the City's Inventory Characterization (The Watershed Company,

Comments - City of Kirkland SMP Update - Attachment D

2006), there are not any shoreline jurisdictional streams² within the City's shoreline management area. However the City does have lower flow non shoreline jurisdictional streams for which the City have concluded these streams are either water courses as part of large wetland complexes (regulated by updated wetland standards) or within two other locations. The two isolated streams are located in fully developed area and a public park setting, both of which do not currently meet the City's 75-foot buffer requirement, for which any future development adjacent to these critical areas would result in ecological improvements consistent with these standards. As stated by the City's response, the SMP's setback incentives are considered within the Cumulative Impact Assessment (The Watershed Company, 2009), concludes that the standards are consistent with the no net loss guideline requirement. Further, based on the City's urban characteristics, redevelopment including incentives to encourage additional ecological improvement is the dominate driver to improving the existing degraded ecological baseline. Finally, the City has appropriately designated multiple "Natural" shorelines providing heightened protection of these more natural areas that are so unique within the predominately urban landscape.

Ecology Conclusion - Unlisted/Unanticipated Uses/SMA-Priority Uses/Water Enjoyment Uses: The City is not required to prohibit unanticipated future uses. As referenced by the City, Conditional Uses (WAC 173-27-160) are intended to be a tool for consideration of unanticipated uses. However, the City is obligated to actively consider all anticipated uses within the SMP update, for which anticipated uses should be defined and appropriately regulated within the SMP. The Futurewise comments appear to focus on "unanticipated uses" as opposed to suggesting that the City did not adequately include all anticipated uses. Therefore, Ecology concurs with the City's reference and authority to depend on a Conditional Use review when/if considering a unlisted future use. Ecology concurs with the City's response related to prioritization of water-oriented uses through administration of variation in setback standards to balance ecological protection with other public benefits such as public access. Ecology also concurs with the City's interpretation of Water Enjoyment Uses providing the public with an opportunity to "...enjoy the water's edge and view the shoreline from adjacent locations".

Ecology Conclusion - Subsurface Parking Transportation/Utilities/Public Access: At the request of Futurewise, the City has taken a closer review of any potential impacts resulting from subsurface parking. The City has concluded that subsurface parking would be limited in scope to two designations (Urban Mix, Residential M/H), would not impact groundwater movement within this geographic area and is perceived to enhance both visual and physical public access opportunities by placing this urban service (parking) underground providing additional public access opportunity on the above ground shoreline area. Ecology appreciates Futurewise's concern, but concur with the City's conclusion that subsurface parking appears appropriate for these urban shoreline sections.

Ecology Conclusion - Boating Facilities: The City has acknowledged comments from Futurewise suggesting that Marina standards should be applied for Boating Facilities. However, the City has pointed out that Boating Facilities will mainly be associated with multi-family housing, which are very common in Kirkland's shoreline area. The City also points out that because the Boating Facilities are associated with multifamily housing some of the Marina standards are not necessary, for which the City will not require bathroom facilities, but have created more restrictive dimensional standards based on visual and ecological goals of the SMP. Ecology, concurs with the City's conclusion that their Boating Facility standards are consistent with WAC 173-26-241(3)(c) and overall SMP Guideline requirements.

Ecology Conclusion - Restoration Plan/Cumulative Impact Assessment: Ecology concurs with the City's response to Futurewise concerns related to the Restoration Plan (The Watershed Company, 2009) and Cumulative Impact Assessment (The Watershed Company, 2009) by referencing the multi-component

² Shoreline Jurisdictional Stream defined as mean annual flow greater than 20 cubic feet per second.

Comments - City of Kirkland SMP Update - Attachment D

aspects of the City's Shoreline Master Program. Citing Shoreline Goals as part of the City's Comprehensive Plan, SMP regulation and Restoration plan, projects not specifically listed within the Restoration Plan will still need to be reviewed for SMA consistency through multiple ordinances. There does not appear to be a clear gap or void for which a future proposal could be proposed without consistency verification through multiple SMP related reviews. Ecology finds the City's Cumulative Impact Assessment (The Watershed Company, 2009) to adequately satisfy Guideline requirements in its scope and level of detail of analysis of the City's shoreline program. The report adequately anticipates potential impacts of future actions allowed by the SMP, while also providing important conclusions related to necessary protection standards necessary to offset anticipated impacts of future development to maintain or improve shoreline ecological functions consistent with the Guidelines no net loss policy goal.

8. Issue summary of comments received by Ecology from **Jason Crutcher** dated February 15, 2010.

Comment Summary - Pier/Dock (Policy): Mr. Crutcher requests that Policy's SMP-11.2 and SMP-20.1 be amended to mention "laminated glass" in addition to "grated" materials as a preferred method to maintain light transmission under overwater structures.

City Response: *The regulations for piers and boating facilities in Chapter 83 state that grating decks or similar materials that allow a minimum of 40% light transmittance of light through the materials are required. Thus, if laminated glass meets this performance standard, it could be allowed.*

Ecology Conclusion: As summarized above, Mr. Crutcher provided written comments related to **Pier/Dock** policies and regulations within the SMP. Ecology concurs with the City's response; the light transmission standard can apply to a multitude of materials that can be shown to satisfy the standard.

9. Issue summary of comments received by Ecology from **Robert Pantley** dated March 5, 2010.

Comment Summary - Shoreline Stabilization: Mr. Pantley is concerned that the current code is more "penalty" rather than "supportive" of soft shoreline projects. Mr. Pantley is supportive of soft shore conversions, but believes the current code language "boxes the applicant, the City and Ecology" from making a more meaningful effort to create more soft shore projects along the lake.

Comment Summary: Within his previous comments to the City, Mr. Pantley provides additional details related to his opinion that the current rules will discourage, not encourage soft shorelines. Mr. Pantley's specific comments have been summarized below:

- Flexible setbacks: allowing for only the "minimum relief necessary", discourages property owner consideration of soft-shore projects.
- Promote volunteer soft-shore: appropriate incentives and flexibility should be emphasized to encourage, not require soft-shore. Disincentives, such as lengthy permit review or conversion of too much upland property will not encourage people to consider a soft-shore project.
- Exemption for Landmark tree removal: protection of landmark trees should not be a barrier to potential soft-shore projects. The City should allow some flexibility in landmark tree protection when someone is considering a soft-shore project.
- Soft-shore projects should not affect neighbors: again new protections that might be triggered by a soft-shore project should not affect neighboring properties; otherwise this will serve as a disincentive for people to consider a soft-shore project.

Comments - City of Kirkland SMP Update - Attachment D

- Encourage innovation in soft-shore creations: The City should find a way to give “special support” to “above the code” ideas to encourage ongoing innovation in design.
- Encourage neighbors to work together: The City should consider providing incentives to encourage neighbors to do “master plan” to implement soft-shore together.
- Priority processing of soft-shore permits: As previously mentioned, permitting of soft-shore projects should not be a barrier. Therefore, the City should prioritize processing of soft-shore projects.

City Response: Concerning **shoreline stabilization**, the SMP regulations reflect the specific provisions of the State Guidelines. The City has provided as much flexibility in the regulations and threshold standards as reasonable for repair of hard shoreline stabilization measures while still meeting the No Net Loss standard. Additional comments related to discouraging soft shorelines are noted:

City Response: Concerning **flexible shoreline setback**, the shoreline setback can be reduced down to 25 feet depending on what setback reduction incentive options are incorporated into the site plan. The incentive option for soft shoreline measure has the highest reduction by reducing the setback in half, but no closer than 25 feet. Ecology has indicated to the City that a shoreline setback in developed urban areas should be no less than 25', except possibly in very constrained area, such as shallow lot depths or size. Thus, the shoreline setback in Chapter 83 is the minimum that will likely be approved by Ecology and setback averaging is not an option.

City Response: Concerning the **promotion of volunteer soft shore**, the SMP update reduces the required front and side yard setbacks to allow homes to be shifted to the east of Lake Washington and/or widened on the north and south sides so that more shoreline area would be available to create a soft shoreline without compromising the size of the home. The amount of land area that is needed to create a soft shoreline will depend on the water depth at the shoreline and site topography. The City has provided an exemption from an SDP for soft shoreline, thus shortening the process time for the projects.

City Response: Concerning **landmark tree removal**, a large, mature (landmark tree) is rare along the Kirkland waterfront and has significant ecological function for shoreline wildlife. Its value over the 20-year planning horizon of the shoreline is very high. According to the City's biological consultants who design soft shoreline measures, a landmark tree can be worked into the design of soft shoreline measures and are not necessarily obstacles to restoration. However, if the landmark tree is a hazardous or nuisance tree, it can be removed and replaced with two new trees.

City Response: Concerning **soft shoreline projects that may affect neighborhoods and relief of regulations**, in most cases a soft shoreline measure can be installed without altering the OHWM. In the event that the OHWM shifts, the possible change in lot coverage, shoreline setback and other standards only would affect the subject property and not the properties to the north or south. The neighboring property's OHWM would not change. It could affect a property to the east. However, in those cases where an OHWM shifts landward, the definition of shoreline jurisdiction contained in the SMA would require that the regulations be extended to the new area encompassed by this shift in location. In order to address this issue, the State Legislature passed House Bill 2199. The City must ensure that its regulations comply with new provisions established by House Bill 2199. These provisions allow Kirkland to grant relief from shoreline regulations (see Section 141.70.4) that apply if a shoreline restoration project causes or will cause a landward shift in the OHWM that results in:

- Land that had not been regulated under the SMA before construction of the restoration project being brought under shoreline jurisdiction;

Comments - City of Kirkland SMP Update - Attachment D

- *Additional regulatory requirements applying due to a landward shift in required shoreline buffers or other regulations of the applicable master program; and*
- *The application of the shoreline regulations preclude or interfere with use of the property in ways permitted by local development regulations, thus presenting a hardship to the project proponent.*

City Response: Under Bill 2199, relief may only be granted by a local government if specific requirements are met, including:

- *The proposed relief is the minimum necessary to relieve the hardship;*
- *The restoration project for which the relief is proposed will result in a net environmental benefit; and*
- *The granting of proposed relief is consistent with the objectives of the shoreline restoration project and consistent with the master program.*

City Response: The Bill provisions also require the City to submit the application for relief to the Department of Ecology for approval or disapproval. In responding to this Bill, the City has established two provisions:

1. *Shoreline setbacks and lot coverage requirements are permitted to be measured from the location of the OHWM that existed immediately prior to the action or enhancement project. However, if an expansion of the SMA jurisdiction were to occur and encompass additional property not previously regulated under the SMA, then the requirement in section 2 below must be met.*
2. *The City would notify the affected property owner in writing, and the City may propose to grant relief for the affected property owners from applicable shoreline regulations resulting in expansion of the shoreline jurisdiction. The proposal to grant relief must be submitted to the Department of Ecology with the shoreline permit under the procedures established in KZC 141.70.5. If approved, notice of the relief, in a form approved by the City Attorney, shall be recorded on the title of the affected property with the King County Bureau of Elections and Records.*

If the standards are met, the City would support relief and recommend approval to the Department of Ecology.

City Response: Concerning the **encouragement of innovation in soft-shore creations**, the City will provide as much support as possible to “above the code” ideas to encourage ongoing innovation in design. The City will look into expedited building permit review, make information on potential regional funding opportunities available similar to those listed in Appendix E of the Restoration Plan and consider other ideas. Concerning **neighbors to work together**, the City has provided several incentives in the SMP update, including shoreline setback reductions, reduction in other setbacks, increase in allowable structures height and exemptions for soft shoreline measures. In addition, funding sources for improvement to the shoreline are listed in Attachment E of the city’s Restoration Plan that may be available for private property owners who propose replacement of several bulkheads for soft shoreline over a large stretch of the shoreline. The new shoreline regulations do not prevent several neighbors from proposing multiple restoration plans. The City would encourage such a project and provide any support that it can.

City Response: Concerning **priority processing of soft-shore permits**, as mentioned above the City will consider priority permit review as the City already offers for built green developments once the SMP update is approved. Concerning **flexibility**, the City has provided flexibility in the street or easement road

Comments - City of Kirkland SMP Update - Attachment D

setbacks to help offset the greater shoreline setbacks in some cases and to encourage soft shoreline measures by allowing homes to be located further eastward and way from the lake. Along public streets, homeowners can choose from a 10' setback or the average of the abutting setbacks. Along easement roads, the homeowner can choose from a 5' setback or the average of the abutting setbacks. The City also provides flexibility in side yard setbacks by removing the existing large north property line sun angle setback and replacing it with the standard minimum of 5' and the two side yards must equal 15' OR 5' for both side yards with the upper floors reduced by 15% of the first floor.

City Response: Concerning **hatcheries and their associated fish ladders**, these are considered aquaculture facilities and are prohibited in Kirkland under the SMP update. Staff believes that Mr. Pantley is considering construction of a fish-accessibly stream channel that would likely be considered a habitat enhancement project which is permitted under the SMP update.

City Response: Concerning **shared docks and piers**, these facilities are required with subdivisions under the State Guidelines. Section 83.270 provides for larger piers and docks when a joint use facility is proposed. The City decided to not require shared piers for existing homeowners because it is difficult to get homeowners to agree to share a facility, but shared piers and docks are permitted on a voluntary basis.

City Response: Concerning **exemptions from required permits**, Section 141.40 exempts replacement of a hard shoreline stabilization measure with a soft shoreline stabilization measure from an SDP. Should it be determined in advance that there was no way to avoid shifting the OHWM, the applicant could submit the preliminary design to the City and Ecology for their approval for relief of regulations while the building permit is under review by the City of Kirkland.

Ecology Conclusion: As summarized above, Mr. Pantler provided written comments related to **Shoreline Armoring** (identification of potential disincentives, impacts to neighbors, stifling of innovation, etc.) and flexible **Shoreline Setback** standards within the SMP. Ecology concurs with the City's response concluding that the **Shoreline Armoring** standards reflect the requirements of the Guidelines for which the City has incorporated as much flexibility as possible. Related to **Shoreline Setbacks**, the City has incorporated as much flexibility as possible while satisfying the no net loss requirement of the Guidelines through use of a range of setbacks determined by overall lot depth. These setback standards have been extensively analyzed through the City's Cumulative Impact Assessment (The Watershed Company, 2009)) providing a basis for the standards and concluding no net loss consistent with Guideline requirements. Finally, many of Mr. Pantley's non-regulatory volunteer soft shore promotional suggestions including encouragement of innovative soft shore designs can continue to evolve and be implemented without regulatory changes to the SMP regulations.

10. Issue summary of comments received by Ecology from **William Wassmer** dated March 5, 2010.

Comment Summary – Dredging: Mr. Wassmer has been a resident on Lake Washington/Juanita Bay for 21-years, during which time he believes development within the City of Kirkland and unincorporated King County has allowed “stormwater to wash 1,000's of tons of silt and mud into Yarrow and Juanita Bay”, raising the bottom of the lake in these areas and allowing milfoil growth to take over the area. Mr. Wassmer suggests that the State of Washington should require King County and the City of Kirkland to pay to dredge these areas from the existing 2-3 foot depths to the historic 15 foot + depth, which he believes will alleviate the milfoil problem and increase flow in Yarrow and Juanita Creeks. Mr. Wassmer also believes that the Army Corps of Engineers lowering of the lake in the late summer creates hazards to navigation as boat go aground every July, August and September. Finally, Mr. Wassmer recommends that the dredging section of the SMP “needs to be expanded and the dredging restrictions lifted...”

Comments - City of Kirkland SMP Update - Attachment D

City Response: Concerning **dredging**, the City did identify dredging as an option to consider in the Juanita Beach Master planning process, but in subsequent discussions with various regulatory agency representatives they indicated that it would appear highly unlikely that such a project would be approved. If approved, the required mitigation measures would likely be so extensive as to make dredging financially unfeasible. Another important consideration is that silt continues to enter into Juanita Bay so dredging would not be a permanent solution to the problems in the bay.

Ecology Conclusion: As summarized above, Mr. Wasmer has provided written comments related to **Dredging**, to alleviate continual silting (sediment accretion) adjacent to Juanita Beach. Ecology concurs with the City's response concluding that a large scale **Dredging** project as suggested by Mr. Wasmer, is not a feasible management solution when considering the multitude of potential impacts and other regulatory constraints beyond the SMP that such a project would need to satisfy. The Guidelines and the City's updated SMP both allow consideration of **Dredging** proposals, but as the City has stated, large scale **Dredging** of Juanita Bay may not be a realistic long-term management solution to this issue.

- 11.** Issue summary of comments received by Ecology from the **Muckleshoot Tribe Fisheries Division (MITFD)** submitted by their representative, Karen Walter, in an email dated March 5, 2010.

Comment Summary – Policy: MITFD notes a potential typographical error, for which they would like to ensure that: “*scientific devises (Sic) located in the shoreline area are not precluded as a result of this policy*”?

Comment Summary - No Net Loss: Referencing previous comments related to shoreline setback/buffers, MITFD reiterates their concern that these standards will not result in a restored shoreline along Lake Washington. MITFD requests a technical basis to demonstrate that the 25-30 foot setback along with a 5-10 vegetated buffer, “...will allow the protection and full restoration of riparian functions necessary to support salmon including juvenile Chinook salmon in Lake Washington”? MITFD does not believe the Cumulative Impact Assessment adequately addresses this concern. Further, MITFD cites specific impervious surface estimates of future development compared with restored acreage for which impervious surface area is anticipated to exceed restoration area, prompting the question of how this future condition would affect shoreline ecological functions? MITFD further comment that; “*It is important to distinguish that some improvement of shoreline functions does not necessarily mean restoration of these functions, impaired functions, or no net loss of shoreline functions.*”

Comment Summary – Redevelopment: MITFD requests to see how shoreline redevelopment “*involving decks, patios, balconies, outdoor seating and retaining walls*” affect the SMP no net loss standard as “*these structures would eliminate the existence of any existing shoreline functions and would eliminate future restoration opportunities*”.

Comment Summary – Piers: MITFD has commented that both new and reconstructed piers should be required as mitigation for the pier to provide native plants along the entire shoreline length of the parcel.

City Response: Concerning **policy for scientific devices**, the City has already made this change. Concerning the **No Net Loss** standard, the requirement of the State Guidelines WAC 173 is to meet the No Net Loss of Shoreline Ecological Function (NNL) standard and not full restoration. Shoreline setbacks are not required to be developed or managed in the same way as critical area buffers. According to Ecology's handout dated April 24, 2008, mitigation is required for new development and re-development to maintain the existing conditions as of the date of the city's inventory, and overall shoreline restoration

Comments - City of Kirkland SMP Update - Attachment D

is to be implemented through the city's Restoration Plan. The Restoration Plan includes significant shoreline restoration at city shoreline parks over time and implementation of various programs and plans that will result in restoration. The vegetative buffer of 15' for multifamily and 10' for all other uses is based on what the City's biological consultant's recommended as an adequate area to offset projected impacts of new development and re-development in conjunction with new lighting standards and tree retention measures. The vegetation will accomplish some biofiltration, provide a source of organic debris, and buffer human activity. The origin of this number is the requirement of NOAA's and the Corps' vegetation conservation measure related to impacts of docks and bulkheads. Given that most of the shoreline is currently lawn or hard surfaces, a 10 to 15 foot wide vegetation area is a step towards restoration although its primary intent is to compensate for impacts of new and redevelopment.

City Response: Concerning **redevelopment**, improvements are currently found along Kirkland's shoreline up to the edge of the OHWM, including required public access walkways, decks, patios, swimming pools, commercial outdoor seating areas and private walkways. These are permitted under the current SMP. Under the SMP update, the public access walkways will no longer be allowed along the edge of the OHWM, patios and decks must be at least 25 feet from the OHWM (with the exception of the 19 single family lots just north of the downtown), swimming pools are no longer permitted in the shoreline setback and private walkways are limited in width. Commercial outdoor seating areas must be no closer than 16 feet and balconies at least 21 feet from the OHWM. All of these improvements must be made of pervious material. In some cases, property owners will set back the primary structures greater than required in order to have decks and/or patios. None the encroachments are permitted in the Natural shoreline environment. Thus, under the new shoreline regulations, these improvements will be further away from the shoreline than existing conditions while still allowing the public an opportunity to enjoy the shoreline. Given the existing conditions along the Kirkland shoreline, the No Net Loss standard will be met with the SMP update. Also, the Shoreline Management Act (SMA) includes policies for both the need to promote public access and to protect the shoreline natural resources (WAC 173-25). The City's proposed SMP update strives to balance and meet both of these goals by allowing limited encroachment into the shoreline setback with these outdoor improvements.

City Response: Concerning **piers**, the replacement of a pier does not require mitigation with vegetation since the pier and its impact already exists. This approach meets the No Net Loss standard. However, the replacement pier will still need to meet the dimensional standards for a new pier and provide grated decking. New piers must provide vegetation as mitigation. Concerning **dredging in the Natural environment**, the activity requires an approved shoreline CUP and is only permitted for certain soft shoreline measures and habitat and natural enhancement measures. The City's position is that some dredging may be necessary for a soft shoreline measure, a measure preferred in the Guidelines over hard shoreline stabilization. Habitat and natural enhancement measures would be consistent with the Tribes' statement that dredging would be acceptable for "fisheries enhancement and restoration projects."

City Response: Concerning the required **shoreline setback**, Ecology indicated that a setback in an urban area should not be less than 25', unless lot depth or other conditions are a constraint. The No Net Loss standard is based on existing conditions and mitigating any new impacts, and not the Best Available Science standard used for critical areas outside of the SMA jurisdiction. The City first determined the median setback of existing structures, the number of non-conformances resulting from several setback options, the anticipated new development and re-development over the 20-year horizon and the range of parcel depths in each environment to determine the appropriate setback for Kirkland. The City then considered several setback scenarios and shoreline setback reduction options that provide additional enhancement of the shoreline, new vegetation, tree retention and lighting standards, and the likelihood of redevelopment (past permit trends and the age of existing homes) to determine if the cumulative

Comments - City of Kirkland SMP Update - Attachment D

impact of new development or redevelopment would meet the No Net Loss standard. The one exception to the 25' urban setback standard proposed is for a unique area in Kirkland covering 19 single-family homes south of the Lake Ave West Street End Park. In this small geographic area, the City decided that the average of the existing setback of the homes abutting the home to be redeveloped, but no closer than 15' is appropriate. This area is very constrained with shallow lots and existing homes very close to the OHWM. A 25 ft setback would leave little to no developable area and most if not all existing homes would become significantly non-conforming. Redevelopment would not be an option if a 30' or 25' setback would be required and would result in no new shoreline vegetation, changes in lighting, removal of accessory structures located next to the shoreline edge and other shoreline improvements.

City Response: Concerning **lot coverage** (all imperious areas), the City did not change the existing regulations with the SMP update. Since Kirkland has very few vacant lots that would result in new paved area, the Cumulative Impact Analysis did not show a need to lower the lot coverage standards to meet No Net Loss. Pollution-generating impervious surfaces would be addressed through the City's stormwater management regulations. Accordingly, impervious coverage was not a strong indicator for shoreline function. Vegetation condition in the area immediately adjacent to the lake (the shoreline setback) was a stronger indicator, and the SMP contains a number of regulations limiting introduction of impervious surfaces and increasing introduction of native vegetation into this area.

City Response: Concerning **new piers**, vegetation is required in the SMP update along 75% of the shoreline and emergent vegetation waterward of the OHWM is required. The remaining 25% provides for access to the shoreline, including an area to move a boat and other equipment in and out of the water. The City views the 75%/25% ratio a reasonable approach to meeting the goals of the SMA of promoting public access and protecting the shoreline natural resources.

Ecology Conclusion: As summarized above, the Muckleshoot Tribal Fisheries Division (MTFD) provided written comments related to **No Net Loss, Redevelopment** and **Pier** standards within the SMP. Ecology concurs with the City's response concluding that the **No Net Loss** standard (WAC 173-26) does not require full restoration, but does require that jurisdictions provide adequate protection standards to avoid additional impairments from anticipated future development/redevelopment within shoreline management areas. Thus, the City has increased protections related to shoreline setbacks, **Pier** standards, etc. to ensure future shoreline development does not result in a net impact or further degraded shoreline ecological functions. Further, after adoption of the updated SMP, the City will need to account for future shoreline development and restoration activity to inform a scheduled 7-year review of the SMP intended to evaluate any trends (positive or negative) to baseline ecological functions.

References:

The Watershed Company. (2006). *Final Shoreline Analysis Report - Including Shoreline Inventory and Characterization for the city of Kirkland's Lake Washington Shoreline*. Shoreline Master Program Inventory & Characterization Report, Prepared for the City of Kirkland, Kirkland, WA.

The Watershed Company. (2009). *Shoreline Cumulative Impact Analysis for City of Kirkland Shoreline Master Program*. Shoreline Master Program Cumulative Impact Analysis, Prepared for the City of Kirkland, Kirkland, WA.

The Watershed Company. (2009). *Shoreline Restoration Plan Component of the Shoreline Master Program for the City of Kirkland*. Shoreline Master Program Restoration Plan, Prepared for the City of Kirkland, Kirkland, WA.