

Shoreline Master Program

U P D A T E

Draft SMP Section 20.25E.060 Comments and Responses

July 8, 2011

This document includes a list of comments received on the Draft SMP section 20.25E.060 since the April 20, 2011 Draft SMP Open House. Each comment is identified by comment number and is followed by a response.

Draft SMP Comments – Critical Areas

A total of 47 comments were received from 18 individuals that identified issues related to critical areas.

- 1. Shorelines should not be classified as Critical Areas and activity along shorelines should not be prohibited through a critical areas type no-touch buffer. (18.2)**

Response: The Draft SMP eliminates the management of Lakes Washington and Sammamish as Critical Areas and the 25 to 50 foot no touch buffer and structure setback that was adopted under the Critical Areas Ordinance in 2006 no longer applies. Sections 20.25E.060 and 20.25E.065 of the Draft SMP include a 50 foot structure setback overlaid by a 25 to 50 foot vegetation conservation area (25 feet for residential development). Improvements and development of varying intensities is allowed within both the setback and the vegetation conservation area and in many cases no additional requirements are imposed on new or expanded uses within these areas. In some situations, if the proposed improvement cannot be accommodated by the prescriptive provisions provided in the code, or unique circumstances exist and the proposed development cannot meet the prescriptive requirements, a site specific special shorelines report may be submitted to accommodate the proposal.

- 2. Shorelines are to be managed under the Shoreline Management Act. Shorelines cannot and should not be managed as Critical Areas under the Growth Management Act. Rules that apply to shoreline development should be specific to the SMA requirements, not the GMA Critical Areas requirements. (48.15; 48.16; 48.17; 48.25; 48.50; 48.52; 48.59)**

Response: The draft SMP is designed to manage lands and resources within the shoreline jurisdiction in accordance with the objectives of the Shoreline Management Act, RCW 90.58, and WAC 173-26. Where an overlap exists that requires management of resources that are also protected by the Growth Management Act and the City's Critical Areas Ordinance, the Draft SMP is intended to follow recent guidance provided by the State Legislature under EHB 1653 that clarifies the integration of the Shoreline Management Act and the Growth Management Act. A more thorough discussion of the approach taken in the Draft SMP was included in the September 22, 2010 Planning Commission agenda memo available at:

<http://www.bellevuewa.gov/pdf/Planning%20Commission/PackagePlanningCommissionAgenda9-22-10a.pdf>. Under this approach, critical areas that are identified within the shoreline jurisdiction are managed under the same rules that are applied outside of the shoreline jurisdiction. This simplifies the regulation of critical areas through the use of one set of rules that applies both in and out of shoreline jurisdiction. Regulated critical areas include streams, wetlands, geologic hazard areas (steep slopes), and habitat associated with species of local importance. The shorelines of Lake Washington and Lake Sammamish are not classified as critical areas unless they exhibit characteristics or include features associated with one of these critical areas.

3. Existing structures should be exempt from critical areas rules and shoreline rules. (1.1; 14.3)

Response: The Draft SMP includes a footprint exception for primary structures that was modeled after the existing Critical Areas Ordinance section LUC 20.25H.035. Under Draft SMP section 20.25E.065.E.2.c, the portion of a residential structure located outside of the 25 foot vegetation conservation area is considered exempt from the 50 foot setback requirement and may be reconstructed in the existing location without additional requirements. The portion of a residential structure located within the 25 foot vegetation conservation area may be maintained as a nonconforming structure under the maintenance provisions of 20.25E.065.J.4.c for maintenance activities valued at up to 50% of the structures replacement value over a three year period. No change is proposed to the footprint exception for critical areas outlined in LUC 20.25H.035.

4. The current setback from shoreline lakes is 25 feet and in the draft SMP it is being increased to 50 feet. (14.2; 19.1)

Response: The current Critical Areas regulations that govern shoreline development have been in effect since 2006 and include a no touch buffer of 25 or 50 feet, measured from OHWM, depending on whether the site is developed or undeveloped. In addition to the no-touch buffer dimensions noted above, a structure setback of 25 feet is required for

developed sites. In contrast, the Draft SMP, at section 20.25E.065.E, includes only a 50 foot structure setback overlaid by a 25-foot vegetation conservation area. The current Draft SMP does not include a shoreline no touch buffer.

- 5. The Critical Areas Land Use Permit process is very time consuming, complicated, and expensive and often has a negative outcome for the property owner. (15.2; 15.4; 50.1; 50.12)**

Response: The Critical Areas Land Use Permit process, as outlined in LUC 20.25H.230, was designed as an alternative to compliance with prescriptive (safe harbor) standards and is intended for use when the expected critical area functions are not present due to degraded conditions which do not warrant the code required level of protection, or for unique site characteristics or for proposals providing protection in a manner not anticipated by the regulations. This process relies on a site specific analysis of ecological functions and requires evaluation of alternatives to facilitate a project design that is consistent with applicant objectives and includes an overall net improvement to the site's critical areas functions.

- 6. The SMP should be improved to increase the level of protection for endangered species currently provided in the CAO. (32.1; 32.2; 32.3)**

Response: The Draft SMP was designed to be consistent with the City's Critical Areas Ordinance as required by RCW 90.58.090(4). Changes made to the current Critical Areas Rules as part of the Draft SMP that facilitate the elimination of the current no touch shoreline buffer rely on the use of a landscape standard that is intended to improve the condition of the vegetation conservation area and structure setback, and on balance maintains the level of ecological function while providing the flexibility to use of the shoreline for residential properties in a developed suburban context.

- 7. The Shoreline Management Act requires that the SMP be at least as protective as the City's Critical Areas Ordinance. (32.7; 32.63)**

Response: See #6 above.

- 8. The SMP should include science based buffers similar to those established in the CAO. (32.37)**

Response: Shoreline buffer widths adopted as part of the 2006 CAO are based on dimensions recommended in science literature analyzed by staff during the Critical Areas update process and further adjusted to reflect Bellevue's urban condition. In response to

citizen requests to replace the no-touch buffer used in the current CAO presented as part of this SMP update process, and to accommodate the Planning Commission's interest in crafting more Bellevue-appropriate regulations, staff has identified alternatives to no-touch buffers that achieve a outcomes comparable to the current CAO. The setback and vegetation conservation area concepts currently included in the Draft SMP were presented to the Planning Commission during the June 9, 2010 (<http://www.bellevuewa.gov/pdf/Planning%20Commission/PackagePlanningCommissionAgenda6-9-10a.pdf>), September 22, 2010 (<http://www.bellevuewa.gov/pdf/Planning%20Commission/PackagePlanningCommissionAgenda9-22-10a.pdf>), and October 20, 2010 (<http://www.bellevuewa.gov/pdf/Planning%20Commission/PackagePlanningCommissionAgenda10-20-10a.pdf>) meetings. These concepts are outlined in Draft SMP sections 20.25E.060 and 20.25E.065 and replace the CAO shoreline buffer system with a shoreline setback overlaid by a vegetation conservation area that is supplemented by a landscape standard. These standards are intended to maintain ecological function within the setback while providing flexibility in use of the shoreline edge to the property owner.

9. Phantom Lake should not be designated as a Critical Area. (38T.100; 43.9)

Response: Following guidance provided by the State Legislature under EHB 1653 intended to clarify the integration of the Shoreline Management Act and the Growth Management Act, the Draft SMP does not classify Lakes Washington and Sammamish as Critical Areas. Although these lakeshores are not classified as Critical Areas, specific reaches or segments of the lakeshores may be classified as Critical Areas when they are characterized by elements that meet the State of Washington Growth Management Act definition of a Critical Area. The physical characteristics of Phantom Lake classify it as a wetland system under the State of Washington and United States Army Corps of Engineers definition of a wetland. This classification is not related to the earth berm that controls surface water flow to the northern Larsen Lake wetland system and is also not related to the outlet control structure that controls outlet flow through Phantom Creek. Phantom Lake is classified by the USFWS Cowardin Wetland Classification System as a Lacustrine wetland and is surrounded by a Palustrine wetland system. Phantom lake is identified in the CAO under LUC 20.25H.095.C (<http://www.codepublishing.com/wa/bellevue/LUC/BellevueLUC2025H.html>) as a Category II wetland system. Regulating Phantom Lake as a critical area is intended to advance the Planning Commission principle that the SMP be tailored to unique characteristics of the Bellevue shoreline. This approach was also intended to benefit the shoreline property owners on Phantom Lake by limiting a layer of potentially duplicative regulation.

10. Critical Areas buffers on Phantom Lake make structures non-conforming and take away existing and common uses of the shoreline. (35.105; 43.9; 46.1)

Response: Phantom Lake is classified as a Category II wetland and is protected under the 2006 CAO by a 110 foot buffer measured from the edge of the wetland. LUC 20.25H.055 (<http://www.codepublishing.com/wa/bellevue/LUC/BellevueLUC2025H.html>) allows for common uses and activities to continue in the wetland buffer. LUC 20.25H.035.B (<http://www.codepublishing.com/wa/bellevue/LUC/BellevueLUC2025H.html>) includes a footprint exemption where the wetland buffer and structure setback is drawn around the footprint of the existing primary structure, which eliminates the designation of primary structures as non-conforming. No changes from the current CAO standards for wetlands are proposed as part of the Draft SMP.

11. The current Critical Areas rules were adopted in 2006 through a covert process with little involvement from and limited notice to shoreline property owners. (37.1; 39.1; 39.12; 48.4; 48.34)

Response: The Critical Areas update process was concluded in 2006 and files have been archived. Staff is researching the process used for the update and anticipates providing a response with the next batch of SMP comment responses.

12. Wildlife habitat is inappropriate along reaches of residential developed shoreline. (37.11; 41.2; 41.4; 51.5; 51.7; 51.11; 60.12; 64.1; 66.1)

Response: The Draft SMP does include requirements to preserve and in some circumstances install native vegetation within the proposed shoreline structure setback and associated vegetation conservation area. One of the objectives of these requirements is the development of vegetative structure known to support wildlife species that have historically and continue to populate Bellevue's shorelines. The type of vegetative structure targeted for enhancement is not intended to support threatening or predatory mammals. The vegetation conservation and landscape concepts were developed as an alternative to the current no-touch buffer restrictions and to provide for enhanced flexibility to shoreline property owners while meeting the SMA objective of no net loss of ecological function. The Draft SMP includes a landscaping standard to be implemented with development or redevelopment that would be allowed to occur within a portion of the setback and vegetation conservation overlay as opposed to maintaining the current no touch buffer restriction from the Critical Areas Ordinance.

13. Critical Areas rules have an adverse impact on property values. (38T.5; 38T.6)

Response: The current Critical Areas rules were developed under the requirements of the Washington State Growth Management Act and are intended to protect regionally and locally significant and sensitive resources. The current Critical Areas rules do include restrictions on the use and development of property when adjacent to a natural resource area classified for protection. The current Critical Area rules include allowance for the use and development of property when the use or development does not significantly degrade the quality of the resource and is not in conflict with resource management policies.

14. The SMP must identify and provide protection for critical freshwater habitats. (57.9)

Response: Development of the Draft SMP included the completion of shoreline characterization report that evaluated the level of ecological function of Bellevue's shorelines on a reach by reach scale. Rules in the Draft SMP are intended to appropriately protect freshwater habitat through overwater structure limitations intended to restrict the location and size of new and replacement overwater structures, landscape standards intended to improve opportunity for ecological function, stabilization restrictions intended to improve the coupling between upland and aquatic areas, and vegetation conservation standards intended to preserve existing native vegetation along the shoreline edge.

15. Phantom lake wetland buffers should be specifically identified in the SMP and should be consistent with those currently applied in the CAO. (57.18)

Response: The wetland buffer restrictions that apply to Phantom Lake were adopted as part of the 2006 Critical Areas update and are included in section LUC 20.25H.095 of the Critical Areas rules. The Draft SMP does not list wetland buffer restrictions that are included in the Critical Areas rules. To achieve consistency with the Critical Areas rules, a direct reference to the Critical Areas rules is provided in 20.25E.060.G. An analysis of the approach taken to incorporate Critical Areas into the draft SMP was included in the September 22, 2010 Planning Commission agenda memo available at: <http://www.bellevuewa.gov/pdf/Planning%20Commission/PacketPlanningCommissionAgenda9-22-10a.pdf> Also refer to Response to Comment #9 above.

16. Regulatory exemption (exclusion) of small wetlands is not supported by scientific literature and must be afforded protection in the SMP. (57.44)

Response: The intent of the Draft SMP is to apply the existing critical area regulations that are applicable City wide to critical areas located within shoreline jurisdiction. The

exclusion referenced is only applicable to Category IV wetlands under 2,500 square feet. Given Bellevue's urbanized condition, and the fact that the preservation of these low-quality wetlands would have substantial impact on building on existing lots, the City Council approved this exemption. Such an approach is in keeping with the Planning Commission review principle that acknowledges "the substantially urbanized condition that was identified during the inventory of Bellevue shorelines."

Draft SMP Comments – Public Access

A total of 16 comments were received from 6 individuals that spoke directly to public access requirements.

- 1. The SMP must ensure that tribal member's access is to treaty protected fisheries is not degraded.(16.3)**

Response: Section 20.25E.060.I of the Draft SMP requires public access improvements with redevelopment of a significant scale. Tribal members and other members of the public have the right to access shorelines through public access points. The Draft SMP does not include restrictions or limitations on the use of navigable waters and does not restrict or limit sustenance fishing practices protected by treaty rights when fishing occurs from points of public access.

- 2. Private property should not be required to provide public access – public access should be provided at publicly owned locations and may be provided to the public on a voluntary basis only. (18.12; 18.13; 18.14; 18.15; 18.17; 38T.72; 38T.75; 38T.78)**

Response: Section 20.25E.060.I of the Draft SMP was modeled after WAC 173-26-221(4)(d)(iii) and requires the development of public access on private property with projects of relatively large scale, including water dependent and water related development and residential subdivision, where the objective of providing public benefit should be balanced with the objective of private development. Public access on private projects of a smaller scale is not required in the Draft SMP.

WAC 173-26-221(4)(d)(iii) *Provide standards for the dedication and improvement of public access in developments for water-enjoyment, water-related, and nonwater-dependent uses and for the subdivision of land into more than four parcels. In these cases, public access should be required....*

- 3. Requiring public access on private property is a taking of private property rights. (38T.79)**

Response: Comment noted. See #2 above for response on WAC requirements for public access.

4. Public access should be required with major redevelopment (subdivisions and commercial development). (20.1; 20.4)

Response: Section 20.25E.060.I includes a requirement that public access be developed for projects of a certain scale. Projects that require public access include water dependent and water related development and residential subdivision, where the objective of providing public benefit should be balanced with the objective of private development. Public access on private projects of a smaller scale is not required in the Draft SMP.

5. Encourage signage identifying points of public access to facilitate public use and enjoyment of the shoreline. (20.6)

Response: The Draft SMP does not currently include policy language or rules that require the installation of way finding or shorelines access signage for existing public access locations. Section 20.25E.060.I.7.e does require that new public access locations be identified with directional signs. Draft signage policy language is included as Policy 47 at: http://www.bellevuewa.gov/pdf/Land%20Use/Public_Hearing_Draft_Policies.pdf.

6. Public access facilities should not be located in areas that impact views. (34.23)

Response: The Shoreline Management Act and the Shoreline Master Program Update Guidelines found in WAC 173-26 do not afford protection of private views. The City does not have a view protection program and creation of a view protection program is not proposed as part of the Draft SMP. However, Section 20.25E.060.I.4.h of the Draft SMP does require consideration of impacts to the privacy of adjacent properties as a design requirement for the development of public access. It should be noted that although private view protection is not included in the SMA and Draft SMP, the establishment and protection of public access is a priority and is focused on establishing points of access for the public to view and touch the State's shorelines.

7. Shoreline promenades that provide public access should be limited to areas landward of the OHWM and overwater promenades should be discouraged or prohibited. (34.31)

Response: Shoreline promenades are public access elements primarily identified under Draft SMP section 20.25E.070.C.3.h, although regulations related to public access in 20.25E.060.I also apply. Shoreline promenades are surface trails or paths built

perpendicular to the water's edge and are required to be setback a minimum of 20 feet landward from the ordinary high water mark. Shoreline promenades do not include overwater structures which are regulated under a different section of the Draft SMP (20.25E.070.C.3.g), although a shoreline promenade may provide access to an overwater structure. Overwater structures, such as viewing platforms and public access piers, are allowed when in support of public use and enjoyment of the shoreline.

- 8. The SMP must include public access requirements for marinas, water-enjoyment, water-related, and nonwater-dependent uses as well as residential development and public projects as is required by the WAC SMP guidelines. (57.37)**

Response: See #4 above.

Draft SMP Comments – Accessory Parking

One comment was received that spoke directly to the Draft SMP accessory parking requirements.

- 1. The draft SMP allows accessory parking when developed as part of a permitted use. Accessory parking should also be allowed when developed in support of an approved expansion to an allowed shoreline use. (18.9)**

Response: Accessory parking is allowed in support of an approved expansion to an allowed shoreline use. Accessory parking is defined in LUC 20.50.010 as “parking provided to serve a specific use” and is intended to be allowed in conjunction with an expansion of an allowed use.

Draft SMP Comments – Vegetation Conservation

A total of 39 comments were received from 18 individuals that identified points of concern related to vegetation conservation.

- 1. The draft SMP requires vegetation in inappropriate locations that are not currently vegetated, are subject to seasonal fluctuations and will add phosphorous to the lake systems. (1.5; 17.4)**

Response: In accordance with WAC 173-26-221(5) the Draft SMP targets the protection and installation of appropriate vegetation in areas that will contribute to the ecological functions of the shoreline. These areas are often naturally subject to a historical seasonal fluctuation due to the regions weather patterns. Phosphorous loading in lakes due to transport of detritus and other terrestrial plant material is not a significant source of phosphorous. Excessive phosphorous in lakes related to vegetation is typically associated with internal phosphorous loading where phosphorous recycling occurs with algae and

aquatic plant blooms and where accumulated phosphorous stored in lakebeds is re-activated through aquatic and algal plant growth, uptake, and decomposition.

2. Required vegetation and trees will block views of property owners and neighbors. (4.9)

Response: The Draft SMP requires the installation of shoreline appropriate native or native compatible trees within a limited portion of the vegetation conservation area in conjunction with development actions of different scales and when existing trees are removed. The location of the trees to be installed is open to the discretion of the property owner, although the trees do need to be installed within the shoreline structure setback or vegetation conservation overlay.

3. Trees larger than 4” in diameter that are cleared or removed within 200 feet of water resources should be placed back into the water bodies to mitigate against the temporal loss of future wood recruitment necessary to create and maintain salmon habitat. (16.9)

Response: Draft SMP section 20.25E.060.K(13)(c) does include retention of downed wood and vegetation within the vegetation conservation area. However, if the area where the tree falls or is felled is considered disturbed with legally established landscaping and has been routinely maintained, the tree may be cut up and exported off site as a maintenance activity, which is an allowed activity under Draft SMP section 20.25E.060.K(11).

4. Allow for the removal of aquatic noxious and nuisance weeds according to DOE regulations without prejudice to the means of removal. (18.10)

Response: Comment noted. Section 20.25E.060.K(12) of the Draft SMP does currently state a preference for removal of specific invasive species with hand labor and hand operated equipment, but does not prohibit the use of DOE approved chemical treatment practices for other nuisance or noxious weeds if mechanical means are demonstrated to be impractical.

5. Existing intact native vegetation is essential to providing ecological functions and must be protected. (32.11)

Response: Draft SMP section 20.25E.060.K requires the retention of existing native vegetation within the vegetation conservation area.

- 6. The relationship between the different vegetation requirements is unclear and in many instances appears to be waived for specific types of development. Recommend the consolidation of all vegetation standards/requirements in one location. (32.27)**

Response: Comment noted. Different standards for different types of development were located with standards specific to the development type. This was done to improve the document usability.

- 7. The SMP does not include protection for vegetation outside of the vegetation conservation area and seems to have an assumption that unlimited development outside the vegetation conservation area has no impacts. Areas of intact native vegetation outside of the vegetation conservation area still have functions, should be protected, and when impacted should be mitigated at a ratio of 2:1 and in some instances will require off-site mitigation. (32.29)**

Response: Section 20.25E.060.E of the Draft SMP does limit the disruption of natural shoreline resources in areas outside of the shoreline structure setback and vegetation conservation area overlay by requiring land disturbing activity such as clearing and grading to be the minimum necessary to accommodate the permitted use or development. In addition to these standards, the rules and standards applicable on a citywide basis to all development apply in these areas.

- 8. Many normal elements of development are located in the vegetation conservation area, are in conflict with the vegetation conservation standards, and cannot be maintained. (27.4; 27.6; 35.13; 35.15; 35.44; 35.48; 39.7; 39.17; 41.1; 41.3; 59.8)**

Response: Specific activities and developments are allowed within the vegetation conservation area under the residential regulations in section 20.25E.065.G of the Draft SMP. Additionally, section 20.25E.060.K.11 allows for the maintenance of existing landscaping. In most instances, the vegetation conservation standards contained in the Draft SMP will not significantly affect existing residential development until redevelopment occurs unless tree removal is proposed.

- 9. Vegetation conservation standards do not apply retroactively to existing uses and structures. (37.10)**

Response: The vegetation conservation standards included in the Draft SMP do not apply retroactively to existing uses and structures; however, they would, upon adoption, apply to future land management and development activity.

10. Replanting requirements include the planting of large trees and shrubs that will block views and are inappropriate for installation along the shoreline. (46.2; 48.6; 60.4; 60.8)

Response: Requirements for replanting rely on the Critical Areas Handbook (to be amended to include additional shoreline planting information) to set the baseline for the types of vegetation that are appropriate for different areas dependent on site specific conditions. The alternatives for plant replacements are not limited to those identified in the handbook, although replacement trees and vegetation must replicate the structural habitat and ecological functions provided by native species common to Bellevue's shorelines.

11. The templates found in the Critical Areas handbook include planting densities that are far higher than what is actually required and there is no justification for the quantity, type, and size of the required plantings. (35.52; 43.5; 43.6; 48.38; 48.39; 48.40; 48.41; 48.42; 48.43; 48.44; 48.45; 57.47)

Response: Requirements for replanting densities rely on the Critical Areas Handbook (to be amended to include additional shoreline planting information) to set the baseline for the quantities of each type of vegetation that are appropriate for different areas dependent on site specific conditions. The plant densities identified are not limited to those listed in the handbook. Planting densities for replacement trees and vegetation must replicate the structural habitat and ecological functions provided by native species common to Bellevue's shorelines.

12. The SMP does not define native vegetation. (48.5)

Comment noted. Such a definition could be added.

13. The vegetation conservation area is essentially the same as a buffer. (50.14)

Response: Shoreline buffer widths adopted as part of the 2006 CAO are based on dimensions recommended in science literature analyzed by staff during the Critical Areas update process and further adjusted based to reflect Bellevue's urban condition. In response to citizen requests to replace the no-touch buffer used in the current CAO presented as part of this SMP update process, and to accommodate the Planning Commission's interest in crafting more Bellevue-appropriate regulations, staff have identified alternatives to no-touch buffers that achieve a outcomes comparable to the current CAO. The setback and vegetation conservation area concepts currently included in the draft SMP were presented to the Planning Commission during the June 9, 2010

(<http://www.bellevuewa.gov/pdf/Planning%20Commission/PacketPlanningCommissionAgenda6-9-10a.pdf>), September 22, 2010

(<http://www.bellevuewa.gov/pdf/Planning%20Commission/PacketPlanningCommissionAgenda9-22-10a.pdf>), and October 20, 2010

(<http://www.bellevuewa.gov/pdf/Planning%20Commission/PacketPlanningCommissionAgenda10-20-10a.pdf>) meetings. These concepts are outlined in Draft SMP sections 20.25E.060 and 20.25E.065 and replace the CAO shoreline buffer system with a shoreline setback overlaid by a vegetation conservation area that is supplemented by a landscape standard. These standards are intended to maintain ecological function within the setback while providing flexibility in use of the shoreline edge to the property owner..

- 14. Any proposed vegetation conservation standards must be in compliance with WAC 173-26-221(5)(b), which identifies the purpose of vegetation conservation is to “protect and restore the ecological functions and systemwide processes performed by vegetation along the shorelines.” (57.11)**

Response: The Draft SMP includes vegetation conservation standards and landscape standards that are intended to comply with WAC 173-26-221(5)(b). Vegetation conservation standards are outlined in Draft SMP sections 20.25E.060.K and 20.25E.065.G. Landscape standards are included in Draft SMP sections 20.25E.065.K(6) and 20.25E.065.F.

Draft SMP Comments – Water Quality

A total of 14 comments were received from 7 individuals that identified water quality as an issue in the Draft SMP.

- 1. Lake Sammamish is on plan by the state to regulate phosphorous levels. There is a certain level that cannot be exceeded without triggering expanded runoff control. This requirement must be honored. (1.3)**

Response: Comment noted. The City’s Storm and Surface Water Utility Code includes guidance for the planning, security, design, construction, use, maintenance, repair and inspection of public and private storm and surface water systems. The Draft SMP does include a citation in section 20.25E.060.L requiring compliance with this code.

- 2. Waterfront activity has a very small impact on the lake systems. The real problem is runoff from the upland developed areas. The focus should be on basin-wide efforts such as maintaining and improving upland water quality facilities, reducing upland runoff, and improving the capacity of the lake outlets (Phantom and Sammamish); not on restricting water-front development. (64.2; 68.91) (1.6; 13.1; 13.7; 17.2; 33.2; 33.8)**

Response: Comment noted. This comment have been forwarded to the Bellevue Environmental Services Commission for consideration during the update of the Storm and Surface Water System Plan.

3. The required plantings will degrade water quality by adding phosphorous to the lake systems. (43.15)

Response: Phosphorous loading in lakes due to transport of detritus and other terrestrial plant material is not a significant source of phosphorous. Excessive phosphorous in lakes is typically associated with internal phosphorous loading where phosphorous recycling occurs with algae and aquatic plant blooms and where accumulated phosphorous stored in lakebeds is re-activated through aquatic and algal plant growth, uptake, and decomposition.

4. Stormwater should be monitored to ensure it is in compliance with rules and regulations. (44.5)

Response: Comment noted. This comment has been forwarded to the Bellevue Environmental Services Commission for consideration during the update of the Storm and Surface Water System Plan.

5. Stormwater facilities that drain into and out of Phantom Lake should be improved to be capable of handling more runoff during major storm events. (45.1)

Response: A Policy has been added to the Draft SMP that is intended to respond to this issue, see SH-86.

6. Polluted water flowing into Phantom Lake should be re-directed for proper treatment. (55.3; 55.8)

Response: Comment noted.

7. Meydenbauer Creek is discharging sediment into Meydenbauer Bay silting up the bay. (58.1)

Response: Comment noted.

8. Polluted runoff generated during construction should be controlled. (81.2)

Response: See #1 above.

Draft SMP Comments - No net loss

A total of 14 comments were received from 7 individuals that spoke directly to the term or concept of “no net loss of ecological function.”

1. The analysis of Bellevue’s shorelines is subjective, lacking in quantification and therefore inappropriate for establishing a no net loss baseline. (5.6)

Response: In preparing the shoreline analysis, the intent was to follow the process outlined in WAC 173-26-201 (d). Such a characterization is required to consist of three steps: (1) identification of the ecosystem processes and ecological functions present on the shoreline based on a list provided by Ecology; (2) a determination of whether these processes and functions are healthy or impaired; and, (3) identification of specific measures to protect or restore these functions and processes. In the absence of a specific regional study, the City chose to conduct the study by assembling all pertinent and reasonably available scientific and technical information, and then subjecting the information to a methodological process using GIS. Each identified lake reach was scored 1 through 5 based on 16 separate categories indicative of ecological integrity and healthy ecological function ranging from impervious surface, housing density, vegetative cover to shoreline armoring and exposure. Such an approach is similar to that employed by most jurisdictions involved with shoreline planning.

As it happens, Bellevue’s store of available information is somewhat greater than that available to many jurisdictions so as a consequence the analysis for Bellevue shorelines is somewhat more detailed. For example, a detailed digital survey of the extent of shoreline armoring, the location of stream centerlines, and stormwater outfalls was conducted in 1999 and incorporated into the shoreline analysis.

The methodology employed is supported by the Guidelines (see WAC 173-26-201(2)(d)) and is intended to identify reaches of similar function for the purpose of placing environment designations on them. While this assessment is the central store of information about processes and functions on a reach basis, it does not set the “no net loss” baseline for the SMP overall. That is set by the cumulative impact analysis that will be conducted on the SMP ultimately recommended by the Planning Commission. See WAC 176-26-201(3)(e) for details on addressing cumulative impacts.

2. The City must ensure the implementation of the SMP does not continue to degradation of treaty protected fishery resources or impact Tribal members’ ability to access these resources. (16.2)

Response: Comment noted. The City's intent was to incorporate the concept of no net loss as required by WAC 173-26-186(8). As a consequence, this Draft SMP includes regulations and mitigation ensuring that each permitted development will not cause a net loss of ecological function with special focus on statewide resources and threatened and endangered species. This approach was consistent with the Planning Commission objectives for review of the Draft SMP which reiterated the commitment to ensure no net loss of existing shoreline functions.

- 3. Policy SH-70 should specifically require compliance with no net loss and mitigation sequencing; feasibility test and BMPs not sufficient on their own. (16.4)**

Response: Comment noted.

- 4. The foundation of the Shoreline Master Program concept of no net loss is based on existing conditions at the time the shoreline inventory was taken. (24.43)**

Response: See discussion at 1. The concept of no net loss in the context of the Shoreline Master Program depends on the regulations and mitigation provided to offset impacts from development over a predicted future time period until the next required update. That is set by the cumulative impact analysis that will be conducted on the SMP ultimately recommended by the Planning Commission. See WAC 176-26-201(3)(e) for details on addressing cumulative impacts.

- 5. Replacement of a structure or development meets the no net loss criteria. (24.50)**

Response: Comment noted.

- 6. The presumption that meeting SMP standards as drafted results in no net loss as outlined at 20.25E.060 (B)(2) cannot be true absent an understanding of the project scale, scope, and ecological sensitivity of the site. (32.19)**

Response: Comment noted. The intent of the Draft SMP was to provide a regulatory safe harbor for those applicants who complied with the regulations. This comment suggests that absent regulations that guarantee mitigation of every identified impact from development, the claim that an applicant meets no net loss is not demonstrated. It is clear that the entire shoreline area is subject to regulation pursuant to the Shoreline Management Act (SMA), and that the Guidelines requirement of no net loss applies to each increment of development no matter its location on the site. However, the Draft SMP incorporates the notion the burden on property owners can be greatly reduced, and the immediate benefit to aquatic habitat potentially increased, if regulations and incentives are targeted to protecting a smaller area on either side of the ordinary high water mark. The Draft SMP is intended to moderate development impacts to this interface between land and water in order to optimize the most positive effects on a range

of critical water quality and habitat functions, including those components most important to juvenile Chinook survival in Lake Washington and Lake Sammamish.

Consequently, the regulations in the Draft SMP are mostly focused on the first 50 feet above Ordinary High Water Mark (OHWM)—the area represented by the 50-foot setback—and the area below OHWM out 30 feet or until 9 feet of water depth is reached. This approach is justified because the coupling between terrestrial and aquatic systems is particularly strong along the lakeshore and it is in this area where human activities and their impacts can most interfere with this relationship. Other areas on a shoreline property, being further removed from this sensitive zone, are simply more resilient, and the Draft SMP reflects this fact by providing policies and regulations aimed primarily at protecting an area around this interface between land and water rather than the entire shoreline area outside this zone. In addition, the Draft SMP adds a landscape standard for new residential development wherever it occurs on the site, and for redevelopment within the setback area. Since this draft standard applies to new development outside the setback—something not previously regulated under the critical area protections—it may foster planting of the vegetation conservation area at a rate similar to or exceeding the functional mitigation that would otherwise be required.

- 7. The SMP must ensure that all impacts, no matter how small, must be compensated to meet the requirements of no net loss. (32.22)**

Response: Comment noted. See response at #6 above.

- 8. Assuming implementation of our (Futurewise) recommended changes, all development impacts will be compensated for by the SMP. (32.39)**

Response: Comment noted. See response at #6 above.

- 9. Definition of no net loss in 20.25E.060 is incorrect because it can be read to supersede all detailed regulations in subsequent chapters.**

Response: The intent of the Draft SMP in placing this definition here is to be clear that the concept of no net loss applies to all subsequent chapters of the Draft SMP thus obviating the need to reiterate this generally applicable concept throughout the SMP thereby reducing potential redundancy and document length.

- 10. The City has interpreted the mandate of “no net loss of ecological function to mean restoration of ecological function to some level that existed years ago. This is exemplified by the requirement to replace a hazardous tree with three new ones. (39.4)**

Response: The intent of the Draft SMP is to meet the WAC requirements for no net loss as outlined at WAC 173-26-186(8). In the case of tree removal on the shoreline, the

mitigation requirements reflect normal mitigation practice where the loss of mature canopy is compensated on a functional basis taking into account both spatial and temporal effects. A single immature tree cannot mitigate for the spatial extent of the lost canopy or the time it takes for it to grow into a mature tree. In addition, mitigation often fails, so additional trees provide the necessary insurance of success. This approach to mitigation is consistent with mitigation requirements applied city-wide where tree retention is prescribed and at the state and federal level.

- 11. Absent detailed and specific regulations covering all development in the shoreline, it is difficult to accept the contention, as outlined at LUC 20.25E.060.B.2, that meeting the letter of the regulations will achieve no net loss of ecological function. (57.5) (57.11)**

Response: Comment noted. Please refer to comment # 6.

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

Response: Comment noted. The intent of the Draft SMP is to ensure no net loss of ecological function associated with the construction of new shoreline stabilization consistent with the Planning Commission principle of ensuring constitutional and other legal limitations on the regulation of private property rights are preserved.

- 13. Please provide reasonable guidelines for the future and do not try to create past conditions. (78.4)**

Response: Comment noted. The intent of the Draft SMP is to ensure no net loss of existing shoreline functions rather than requiring a return to predevelopment conditions, consistent with Planning Commission principles for review of the Draft SMP.

Draft SMP Comments - Mitigation Sequencing

A total of 16 comments were received from 5 individuals that spoke directly to the concept of mitigation sequencing.

- 1. What is meant by mitigation and mitigation sequencing (34.43, 35.61, 35.76, 38T.57, 38T.58, 38T.59, 38t.57, 38T.58, 38T.59, 38T,60)**

Response: As used in the Draft SMP, mitigation means those strategies, policies, programs, actions, and activities that, over time, will serve to avoid, minimize, rectify, reduce, or compensate for the impacts to or disruption of ecological processes and functions associated with shoreline development. (See WAC 173-26-201(2)(c) for details.) Mitigation sequencing refers to the sequence of steps—avoid, minimize, rectify, reduce, or compensate—by which mitigation actions are prioritized and applied. Mitigation sequencing always includes some component of monitoring sufficient to

ensure success and to identify appropriate corrective action. See WAC 173-26-201(2)(e) for details.

2. Mitigation of individual shoreline functions is not feasible. (38T.62)

Response: The Draft SMP relies on mitigation sequencing as a tool for balancing economic development with environmental protection, and is the primary component for ensuring no net loss. Compensatory mitigation is the fifth step of this sequence with avoidance, minimization, rectification, and reduction of impacts preferred over actual compensation. As is the case with wetlands mitigation, which relies on a functional mitigation approach, the Draft SMP is intended to support compensatory mitigation when other mitigation options are not feasible by ensuring ecological functions are appropriately identified, categorized and protected.

3. Proposed mitigation requirements are excessive for small mitigation projects on single family residential sites (38T.64, 38T.65)

Response: The intention of the mitigation section in the Draft SMP (see 20.25E.060.D) is to include mitigation requirements sufficient to address the full range of development impacts and to ensure the successful establishment and success of any proposed mitigation. In actual practice, these requirements are scalable to individual sites based on the type and magnitude of the impact.

4. The mitigation-monitoring period is inadequate; it should be extended to 10 years to ensure no net loss of environmental functions when woody vegetation is used in compensatory mitigation. (57.45)

Response: Comment noted. The intent of the Draft SMP was to ensure regulatory consistency with current mitigation monitoring requirements contained in the Critical Areas Code (LUC 20.25H). State and federal standards often specify a longer monitoring period, but the Draft SMP was developed to ensure consistent code application city-wide.

5. The City needs to adopt specific enhancement ratios for mitigating lost function via enhancement. (57.46)

Response: Comment noted.

Draft SMP Comments - Technical Feasibility Analysis

Two comments were received from one individual that spoke directly to the concept of technical feasibility as outlined in the Draft SMP at LUC 20.25E.060.C.

1. The requirement that a qualified professional prepare an analysis of feasibility is excessive and should be qualified to allowing a waiver where necessary. (38T.54)

Response: Comment noted. The intention of this section is provide clear guidance on how the question of technical feasibility is to be decided when construction of new or expanded facilities, systems, techniques, or measures are allowed when there is no other technically feasible alternative. As such, it applies primarily to infrastructure associated with local, state and federal projects. Since such uses are only allowed in the shoreline where no technically feasible alternative is available, as demonstrated using science-based methods, the use of a qualified professional is justified and is consistent with the approach taken city-wide for similar technical feasibility tests required for development in critical areas.

2. **The requirement for a feasibility analysis here at LUC 20.25E.060.C seems to conflict with that required at 20.25E.080.F for shoreline stabilization creating confusion. (38T.55)**

Response: Comment noted. A clarification could be added to note that the general technical feasibility analysis described as LUC 20.25E.060.C is not applicable to section 20.25E.080.F, where a more tailored requirement has been provided.