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**MEMORANDUM**

**To:** Planning Commission

**From:** Stacy Clauson, Contract Planner
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**Date:** March 5, 2009

**Subject:** Kirkland's Shoreline Master Program Update (SMP)
File No. ZON06-00017

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## I. RECOMMENDATION

- Discuss feedback from the shoreline property owner's forum as well as next steps for public involvement (see Section III starting on page 2).
- Review and provide direction on shoreline setbacks for the Residential M/H, Urban Mixed, and Urban Conservancy environments (see Section IV starting on page 3).

- Review staff responses to prior feedback provided by the Planning Commission, including providing direction to staff on the issue of shoreline restoration (see Section V starting on page 6).
- Review recommendations from Houghton Community Council and provide direction to staff on how to respond (see Section VI starting on page 8).
- Review and provide direction on general regulations, shoreline use and shoreline modifications provisions that have not previously been reviewed by the Planning Commission (see Section VII starting on page 9).

## II. INTRODUCTION

**A.** **Recommended Agenda**. An overview of the status of review of the different sections of the Shoreline Master Program is provided in Attachment 1. This table provides a synopsis of the different components of the SMP and what areas have been completed and what is left to be reviewed by the Commission. For the March 12th meeting, staff would recommend reviewing the following:

1. **Shoreline setbacks**. Staff recommends that the Planning Commission continue working through the issues related to **shoreline setbacks**, including review of the setback options for the remaining shoreline environments.
2. **Revisions**. Staff has prepared several revisions based upon comments made by the Planning Commission and requests Planning Commission review and feedback on these issues. Staff has also presented information to the Houghton Community Council, who has recommended changes and staff requests Planning Commission feedback on these issues.
3. **Other regulations**. In addition, staff would propose reviewing the following provisions which have been previously brought forward for Planning Commission review, but which the Planning Commission has not had an opportunity to discuss. These include: general regulations, use specific regulations, and shoreline modifications (not including piers).

## III. SHORELINE PROPERTY OWNER'S WORKSHOP

At the request of shoreline property owners, staff conducted a workshop on Saturday February 28 at the Kirkland Community Center. Approximately 40 people attended with the majority from the Market Neighborhood (Lake Avenue West and 5th Avenue West). Attachments 2 and 3 contain copies of several handouts prepared by staff for the February 28th Shoreline Property Owner's workshop. Attachment 4 contains a summary of comments, questions, and concerns from Shoreline Property Owners who attended the February 28th workshop. Staff would recommend that the Planning Commission:

- Discuss the issues brought up at the meeting, using the summary provided in Attachment 4 as well as the insights of the three Planning Commissioners that were in attendance (Byron Katsuyama, Carolyn Hayek, and Matthew Gregory).

- Provide direction and feedback on next steps for public involvement. At the workshop, staff stated that a follow-up meeting with a smaller group of citizens, a few planning commission members, and staff be conducted. The purpose of this meeting would be to go into further detail regarding the concerns raised and talk about how to incorporate property owner concerns most effectively into the process going forward. In order to focus the discussion, staff would suggest that the topics of discussion be scoped to include setbacks, regulatory flexibility, vegetation, shoreline stabilization and piers. Staff would recommend that in preparation for this meeting, staff will put together a response to questions that came up at the meeting, as well as provide the following for Planning Commission and property owner consideration:

  1. A synopsis of State requirements, as well as a synopsis of those areas where the City has more discretion.
  2. An overview of different options and potential implications.

- At the workshop and at previous meetings, there have been requests from some property owners to meet directly with the Planning Commission. Staff would like feedback from the Planning Commission on what steps should be taken to respond to this request from property owners. If the Planning Commission would like to pursue this type of meeting, staff would recommend that this meeting take the place of the small group discussion format noted above. Further, if this direction is pursued, then the Planning Commission provide direction on meeting format, outreach and targeted audience (e.g. would this meeting be targeted only to shoreline property owners or would other interested parties be able to participate as well?).

  The Planning Commission may want to complete the discussion of other topics below, and then come back to this issue at the end of the meeting and check-in to determine whether any changes are needed (e.g. to the issues to be discussed, meeting format, etc.).

## IV. SHORELINE SETBACKS

**A. Planning Commission Direction.** At the January 8, 2009 meeting, the Planning Commission continued its review of shoreline setbacks. The Planning Commission reviewed draft concepts for shoreline setbacks that would apply within the Shoreline – L shoreline environment, but did not have an opportunity to provide direction on setback standards for other shoreline environment designations. The January 8th packet materials provides information on the purpose, state requirements, and existing conditions that may be helpful to review as we continue to discuss these issues. **As a result, please be sure to bring your copy of the January 8th packet to the March 12th meeting, since we will be working from this previous packet as well as the materials enclosed with this packet.**

**B. Residential – L Setback.** Staff did have a clarification to bring forward about the current setback standards. The current provisions do allow a reduction in the required setback. Under this provision, if dwelling units exist immediately adjacent (both to the north and south) of the subject property, the high waterline yard of the subject property is *increased or decreased* to be the average of the high waterline yards of these adjacent

dwelling units. The previous discussions we have had concerning the setbacks have not addressed whether this type of provision should be carried forward in the new regulations.

**Potential Issues.** This type of setback reduction does not address shoreline ecological functions. If everyone has the potential to build closer to the lake if their neighbors are located closer, then the City would have a difficult time addressing no net loss city-wide. Further, it may be difficult for staff to evaluate the cumulative impacts of this type of reduction in shoreline setbacks. Instead, it is recommended that reductions in setback be offset by improvements in ecological function in order to ensure no net loss on a City-wide basis.

**C. Residential – M/H Setbacks.** The Residential – M/H environment contains medium and high density residential development primarily in the area located south of the CBD.

**i. Recommended Approach.** Use existing development standards to gauge setback requirements. In this case, the setback standard would be 25' or 15% of average parcel depth, whichever is greater. This is recommended to respond to both existing development patterns and shoreline ecological functions, as follows:

**a.** The approximate existing median setback for properties located in the Residential – M/H environment is 15.7% of the average parcel depth or approximately 24 feet.

**b.** A minimum setback of 25-feet is proposed in order to provide adequate room to accommodate shoreline access, shoreline vegetation, and provide for shoreline functions such as filtration of pesticides and other chemicals.

Allow reductions for any sites with a greater setback to a minimum of 25' with enhancement.

**ii. Implications.** Multifamily residential use is not a preferred use and is not water-dependent or water oriented. The SMP must include the preference hierarchy for water-dependent, water-related, water-enjoyment and non-water-oriented uses. This means that multi-family development on the shoreline would be limited to those areas where water-oriented uses are inappropriate, or where the use is combined with a component of water-related or water enjoyment use, or where other "public benefits" such as ecological restoration or public access (which is required under other provisions of the Guidelines) are required.

Under the proposed approach, multifamily development would have a smaller setback provision than other preferred uses, such as single-family residences. Further, these uses are more intense, which might support the need for larger setbacks to protect ecological functions. Finally, the existing shoreline setback average is slightly skewed by the existing overwater residential structures, which are unlikely to redevelop due to the inability to accommodate the existing development under existing or new standards. If the overwater structures are not considered, the approximate existing median setback is 16.9 percent of the average parcel depth or approximately 26.5 feet.

**iii. Alternatives.**

**a.** Increase the setback to ensure protection of ecological functions.

**b.** Establish additional requirements for shoreline restoration, so that multifamily development contributes to the ecological restoration objectives of the Shoreline Management Act. This could be in the form of additional landscape standards or other requirements.

**c.** Distinguish between developed and undeveloped sites. Under this approach, existing development would essentially need to work within their existing impact area, but they would not be considered non-conforming. New development on undeveloped sites would be subject to a greater standard. However, given the small number of undeveloped sites along Kirkland's waterfront, this option is not expected to have much utility. Further, there are issues of fairness that would apply, because there is great variability in existing conditions and development located farther back from the shoreline would be precluded from doing so under these provisions.

**D. Urban Mixed.** The Urban Mixed environment contains business districts located along the lake, including the CBD, JBD, and Carillon Point.

**i. Recommended Approach.** Due to the variability in lot depths, establish a setback that is based on a percentage of the lot depth. Existing median is approximately 13.8 percent of the average lot depth, with an average median setback of 21' in the CBD, 29.5 feet in the JBD, and 32' in the Carillon Point area. As a result, the proposal is: 25' or 15% of average parcel depth, whichever is greater. A maximum setback standard would need to be established for the Carillon Point area, which has very deep lots. Fifteen (15) percent of the average parcel depth was a pre-existing requirement in all of these areas, so the major change is the increase to a minimum of 25', which is greater than the existing conditions in the CBD. Note: a minimum of 25' in the CBD is proposed to respond to DOE comments that this is the minimum standard needed to ensure water quality protection. Allow reductions for any sites with a greater setback to a minimum of 25' with enhancement.

**ii. Implications.**

**a.** This approach provides no priorities for water dependent uses. However, non-water oriented uses are already limited by locational standards.

**b.** The standard proposed in the CBD is likely to cause concerns about nonconformance issues, since many of the sites would not conform to this standard and the lots are very shallow in this section of the City.

**iii. Alternatives.**

**a.** Establish different setbacks based on the land use, to promote water-oriented uses along shoreline. Alternatively, allow encroachments for water-dependent activities, as appropriate.

**b.** Distinguish between developed and undeveloped sites (similar to alternative noted above under the Residential – M/H area). However, there are limited undeveloped sites to apply this to and issues with fairness, as noted previously.

E. **Urban Conservancy.** The Urban Conservancy environment contains mostly publicly owned park properties.

a. **Recommended Approach.** Establish different setbacks based on the land use, to promote water-oriented uses along shoreline, as follows: Water-dependent uses: 0 – 16', Water-related use: 25', Water-enjoyment use: 30', Other uses: Outside of shoreline area, if possible, otherwise 50'.

## V. STAFF RESPONSE TO PREVIOUS PLANNING COMMISSION DIRECTION

At the December 11th and January 8th meeting, the Planning Commission discussed several provisions relating to shoreline uses and activities, including shoreline setbacks in the Residential – L environment, lighting standards, vegetation, and water quality standards. The Planning Commission provided a number of recommendations for policy direction and revisions. (Please note that changes are now tracked in underline/strikeout so that they can better be identified). In response, staff has provided the following:

a. **Policy discussion on requiring removal of hard structural stabilization with construction of new home**. At the December 11, 2008 meeting, the Planning Commission indicated that it wanted to further pursue requiring shoreline enhancement with new upland development and were interested in incorporating the full scope of opportunities in this regard, including softening of the shoreline, for major new development projects. In response to this direction, at the January 8, 2009 staff presented a recommendation that this approach not be included as part of the SMP. This recommendation was based, in part, by discussions with the City Attorney's Office that there may legal questions involved with pursuing this type of regulation. At the request of the Planning Commission, the City Attorney's Office has provide a written analysis for the Planning Commission to consider as it continues to review this policy issue (see Attachment 5).

Staff continues to recommend against inclusion of this approach for the following reasons:

- The approach is not required under the provisions established in the State Guidelines.
- Regulations addressing shoreline stabilization require use of soft approaches unless those are not sufficient. It is anticipated, that this approach will result in gradual improvements along the shoreline as replacement and major repair activities are undertaken.
- Staff has proposed an alternative approach that relies on regulatory flexibility to achieve many of the same improvements and feels that this approach is more appropriate, given the costs and complexity of this issue.
- The proposed approach would not provide property owners with clear standards to apply, since many of the decisions made about appropriate restoration activities are based upon individual property characteristics.

Staff would recommend that the Planning Commission consider the additional information presented and determine how to proceed on this issue.

b. **Shoreline setbacks** (see Attachment 6, SECTION 83.180).

   i. The shoreline setback for the Residential – L shoreline environment has been established per preliminary Planning Commission direction.

   ii. The provisions addressing deck, patio and similar improvements within the shoreline setback have been revised to allow encroachment of up to 10 feet, but no closer than 25-feet to the ordinary high water mark.

   iii. A new provision has been added to address retaining walls within the shoreline setback in response to public comments.

   iv. Setback reduction (see Attachment 7, SECTION 83.340).
      1. Revised to indicate minimum length of watercourse opening.
      2. Revised Option 5 as a result of Planning Commission direction to require shielding for single family residences. Staff is seeking input on the new option.

c. **Shoreline Vegetation** (see Attachment 7, SECTION 83.350).

   i. Language has been proposed that responds to Planning Commission concerns about selection of vegetation to be installed within view corridors.

   ii. Language has been added about use of vegetation from the Kirkland Native Plant List.

   iii. Language has been clarified about the dimensional standards for the landscape strip.

   iv. Standards for tree pruning have been revised, after consulting with the City's Urban Forester.

   v. Standards for hazardous trees have been revised, after consulting with the City's Urban Forester.

d. **Lighting** (see Attachment 7, SECTION 83.420). The draft standards have been revised to require exterior building-mounted and ground-mounted light fixtures associated with single family residences to be directed downward and use "fully shielded cut off" fixtures. This requirement would only apply to those fixtures that face the lake.

e. **Water Quality** (see Attachment 7, SECTION 83.430).

i. In response to Planning Commission questions about referencing information resources for pesticide, herbicide and fertilizer BMPs, staff has included a reference to the 2005 Stormwater Management Manual for Western Washington. Excerpts from this manual are included as Attachment 8 for your information.

ii. The provisions addressing spray application have been clarified to indicate that spray application of pesticides should not occur within 100 feet of open water, which is a recommendation from the 2005 Stormwater Management Manual..

f. **Lot Coverage** (see Attachment 6, SECTION 93.180). The maximum permitted lot coverage for recreational uses in the Natural Environment is 10 percent.

G. **Land Surface Modification** (see Attachment 9, SECTION 83.310). Revised to eliminate duplicative language addressing tree removal.

**For the above items, staff would recommend that the Planning Commission review the proposed revisions and determine whether the response adequately addresses your concerns.**

## VI. RECOMMENDATIONS FROM HOUGHTON COMMUNITY COUNCIL

At the February 23rd meeting, the Houghton Community Council discussed proposed regulations addressing shoreline stabilization and piers. The Houghton Community Council provided a number of recommendations for policy direction and revisions. Staff is seeking direction on how to respond to these issues.

A. **Mitigation Plantings**. The Houghton Community Council recommended that the requirement for trees to be included in the mitigation planting standard be eliminated (see Attachment 9, SECTION 83.280).

Staff Response: While staff understands the concerns about trees and the potential for impacts to view issues, the tree standard has been recommended for several reasons, as follows:

- Mitigation planting plans required under the RGP-3 standard include a standard that at least two native trees and three willow plants be included in the planting plan. Under this standard, planting density and spacing should be commensurate with spacing recommended for each individual species.

- Trees provide ecological functions that shrubs and groundcover alone do not perform such as more effective shoreline stabilization through their root systems, temperature moderation in some circumstances, as well a source of large woody

debris input into the lake. Trees can also provide more effective screening between upland light and activity disturbances and the lake.

Staff would recommend that the Planning Commission discuss this issue and provide direction on how to respond.

B. **New Pier Standards**.

i. The Houghton Community Council recommended that for new piers, additional pier area be provided to enable property owners with shallow water depth to exceed the area limitations imposed by the RGP-3 standards.

Staff Response: Staff looked back at recently approved piers and observed that several piers did need to have a longer pier to reach a deeper water depth. As a result, staff would support this type of proposal that would allow greater flexibility in area, if it were needed to reach a greater water depth.

Staff would recommend that the Planning Commission discuss this issue and provide direction on how to respond.

ii. The Houghton Community Council recommended that the maximum walkway width standard for new piers be increased to 5 feet.

Staff Response: Staff has recommended the 4-foot walkway standard for new piers in order to:

- Respond to State Guideline direction to minimize the size of structures.
- Be consistent with RGP-3 provisions which require a 4-foot maximum walkway width.

Staff would recommend that the Planning Commission discuss this issue and provide direction on how to respond.

C. **Allowed Number of Canopies**. The Houghton Community Council requested visual studies to better evaluate the potential visual impacts of multiple boatlift canopies that could be installed at piers designed for multiple residences.

Staff Response: Staff would recommend that the Planning Commission discuss this issue and provide direction on how to respond.

D. **Defining threshold for repair or piers**. The Houghton Community Council have concerns about the thresholds proposed (60% of pilings or 60% of substructure modified over a 5-year time frame would be considered as replacement rather than repair).

Staff Response: This is an area that the City has broad discretion, since it is not specifically addressed in the Guidelines. Staff recommended that a standard be created to distinguish between repair and replacement, because these two activities may have differing requirements and, as a result, a definition would provide greater clarity. Staff would recommend addressing this issue in more detail when the draft pier standards are presented for your review at the April meeting.

## VII. TOPICS CARRIED OVER FROM PREVIOUS MEETINGS

The following topics were originally presented in several earlier packets, but, because of time constraints, have yet to be discussed by the Planning Commission. If time is available at the March 12th meeting, staff would recommend reviewing these items. Please review the specific proposed code language in Attachments 6, 7 and 9 and be prepared to discuss any recommended changes.

### A. GENERAL STANDARDS

The draft regulations in Attachment 7 contain provisions that would apply to general uses. Provided below is a summary of each issue, input from the public (if any), options to consider (if there are different policy options), together with a staff recommendation, if needed.

1. **Parking** (see SECTION 83.400 in Attachment 7)

   Key Issues: None.

   Background: The Guidelines addressing parking are contained in WAC 173-26-241(3)(k) and focus on limiting parking within the shoreline and minimizing the environment and visual impacts of parking.

   Proposed Regulations: The City's existing SMP contains provisions addressing parking; the concepts from the existing regulations are carried forward to the new shoreline regulations, with clarifications on standards, as follows:

   - New **prohibition on parking within the waterfront setback**, except for subsurface parking designed to meet certain standards;
   - **Restrictions on parking extending closer to the shoreline** than the permitted structure; and
   - **New design standards** for parking garage facades that may be face public pedestrian walkways, use areas, or parks.

2. **Miscellaneous Standards** (see SECTION 83.390 in Attachment 7)

   Key Issues: New standards addressing the design of water-oriented uses.

   Background: Site Planning and Building Design standards are one mechanism that local jurisdictions can use to respond to the management policies established for the Urban Mixed shoreline environment.

   Proposed Regulations: The proposed standards include provisions addressing screening of outdoor storage areas, rooftop appurtenances and garbage

receptacles, glare and special standards for water-enjoyment uses to ensure that these uses are designed to facilitate enjoyment of the shoreline.

3. **Signage** (see SECTION 83.410 in Attachment 7)

   Key Issues: None.

   Background: Sign standards are one mechanism that local jurisdictions can use to respond to the management policies established for the Urban Mixed shoreline environment. Existing zoning regulations already limit the use of electrical signs along portions of Lake Washington Blvd.

   Proposed Regulations: New provisions are proposed to address signage in view corridors as well as signage that may be constructed over-water.

4. **In-water Activity** (see SECTION 83.380 in Attachment 7)

   Key Issues: None.

   Proposed Regulations: Standards are proposed by staff to address many of the best management practices that should be used when constructing structures within water.

## B. SHORELINE USES AND ASSOCIATED DEVELOPMENT STANDARDS

The draft regulations in Attachment 6 contain provisions that will be applied to specific uses. Provided below is a summary of each issue, input from the public (if any), options to consider (if there are different policy options), together with a staff recommendation, if needed.

1. **Shoreline Development Standards** (see SECTION 83.180 in Attachment 6)**.**

   Key Issues: Proposed changes to a number of existing SMP standards for building height, lot coverage and minimum lot size/density address **inconsistencies between existing zoning and SMP standards**.

   Background: The State Guidelines reference the use of standards for density, setbacks, height and lot coverage in a number of different areas, including as part of the management policies for shoreline environments.

   Proposed Regulations: The proposed regulations are contained in Attachment 6. Attachment 10 provides a summary of existing zoning and shoreline standards. The following discussion summarizes key changes:

   1. ***Lot size/Density***: In general, lot sizes have been modified to reflect zoning standards. In an effort to encourage development that would provide public access, staff is proposing to include a **density incentive in the Residential – M/H environment** that would permit a minimum lot area of 1,800 square feet per dwelling unit for up to two dwelling units, instead of the typical 3,600 minimum lot area per unit. This is proposed to encourage an applicant to pursue development of two units, which would require a public access walkway, instead of a single unit on a lot, which does not require public access.

2. ***Building Height*:** In general, the shoreline building height standards have been modified to reflect the existing zoning standards. In a number of instances, this results in a **decrease in allowable building height from the existing SMP standards**. However, the end result is the same because even if the shoreline standard allows taller buildings, the more restrictive zoning regulation would prevail.

For instance, the proposed shoreline building heights in a portion of CBD 2 on the west side of Lake St South is 28 feet above Lake Street South and in JBD 4 it is 26 feet above average building elevation to reflect current zoning standards, but the current SMP would allow up to 41' above average grade level.

In some zones the **method for calculating building height** has been modified from the existing SMP standard to be consistent with the current Zoning Code. In the CBD zones, height is currently measured above the midpoint of the abutting right-of-way so that building height more clearly relates to the building mass perceived at the street level, whereas the current SMP measures above existing grade of the proposed building.

The proposed regulations clarify how the **building height exceptions** that are allowed in the Zoning Code would apply within the shoreline area, such as the Carillon Master Plan site, PLA 15A zone outside of the master plan area, certain CDB zones and approved Planned Unit Developments that include an increase in height. The proposed regulations also reflect special criteria for views when a building exceeds a height of 35 feet above average building elevation found in the RCW and WACs.

**4.** ***Lot Coverage***: New standards have been added for lot coverage not previously addressed in the SMP. In general, the property shoreline standards are consistent with current zoning regulations, except that in CBD 2, lot coverage on properties that abut Lake Washington has been reduced from 100% to 90% to reflect new requirement for vegetation along the shoreline edge.

**2. Residential Uses** (see SECTION 83.190 in Attachment 6)**.**

Key Issues: None.

Background: The State Guidelines addressing residential uses are contained in WAC 173-26-241(3)(j) and focus on assuring no net loss of shoreline ecological functions will result from residential development, including include specific regulations for setbacks and buffer areas, density, shoreline armoring, and vegetation conservation requirements.

Proposed Regulations: See Attachment 6

3. **Commercial Uses** (see SECTION 83.200 in Attachment 6)**.**

Key Issues: New standards for **float plane** landing and mooring facilities.

Background: The State Guidelines addressing commercial uses are contained in WAC 173-26-241(3)(d) and focus on:

- Giving preference to water-dependent commercial uses over non-water-dependent commercial uses; and second, giving preference to water-related and water enjoyment commercial uses over non-water-oriented commercial uses.

- Requiring that public access and ecological restoration be considered as potential mitigation of impacts to shoreline resources and values for all water-related or water-dependent commercial development unless such improvements are demonstrated to be infeasible or inappropriate.
- Assuring that commercial development will not result in a net loss of shoreline ecological functions or have significant adverse impact to other shoreline uses, resources and values provided for in 90.58.020 RCW such as navigation, recreation and public access.

Proposed Regulations: See Attachment 6.

4. **Industrial Uses** (see SECTION 83.210 in Attachment 6).

Key Issues: None.

Background: The State Guidelines addressing industrial uses are contained in WAC 173-26-241(3)(f) and focus on:

- Giving preference to water-dependent industrial uses over non-water-dependent industrial uses; and second, giving preference to water-related industrial uses over non-water-oriented industrial uses.
- Assuring that industrial development will be located, designed, or constructed in a manner that assures no net loss of shoreline ecological functions and such that it does not have significant adverse impacts to other shoreline resources and values.
- Incorporating public access as mitigation for impacts to shoreline resources and values unless public access cannot be provided in a manner that does not result in significant interference with operations or hazards to life or property.

Proposed Regulations: See Attachment 6.

5. **Recreational Uses** (see SECTION 83.220 in Attachment 6)**.**

Key Issues: New standards for **tour boat facilities** and **boat launches**.

Background: The State Guidelines addressing recreational uses are contained in WAC 173-26-241(3)(i) and focus on:

- Assuring that shoreline recreational development is given priority and is primarily related to access to, enjoyment and use of the water and shorelines of the State.
- Assuring that the facilities are located, designed and operated in a manner consistent with the purpose of the environment designation in which they are located and such that no net loss of shoreline ecological functions or ecosystem-wide processes results.

Proposed Regulations: See Attachment 6.

**6. Transportation Facilities** (see SECTION 83.230 in Attachment 6)**.**

Key Issues: New standards for **water taxis** and **passenger only ferry terminals**. New standard regarding the section and placement of **street tree** to address protection of public views from the adjacent rights-of-way.

Background: The Guidelines addressing transportation facilities are contained in WAC 173-26-241(3)(k) and focus on:

- Planning, locating, and designing proposed transportation and parking facilities where routes will have the least possible adverse effect on unique or fragile shoreline features, will not result in a net loss of shoreline ecological functions or adversely impact existing or planned water-dependent uses. Where other options are available and feasible, new roads or road expansions should not be built within shoreline jurisdiction.

Proposed Regulations: See Attachment 6. Regarding street trees, the proposed regulations address tree selection and placement and note that street trees shall be selected and located so that they do not impair public views of the lake from properties east of the roadway.

The Houghton Community Council had a discussion last year about protecting private views. However, in the past the City Council has taken the policy position that private views are not to be protected. The Comprehensive Plan reflects this policy decision in the Community Character Element Policy CC-4.5 and the Transportation Element Policy T-6.3 in which it is stated that public views are protected, but not private views.

**7. Utilities** (see SECTION 83.240 in Attachment 6)**.**

Key Issues: None.

Background: The Guidelines addressing utilities are contained in WAC 173-26-241(3)(l) and focus on:

- Ensuring that utility facilities are designed and located to assure no net loss shoreline ecological functions, preserve the natural landscape, and minimize conflicts with present and planned land and shoreline uses while meeting the needs of future populations in areas planned to accommodate growth.

- Limiting utility production and processing facilities, such as power plants and sewage treatment plants, or parts of those facilities that are non-water-oriented.
- Limiting transmission facilities for the conveyance of services, such as power lines, cables, and pipelines, to outside of the shoreline area where feasible.
- Locating utilities in existing rights of way and corridors whenever possible.
- Limiting development of pipelines and cables on tidelands.

Proposed Regulations: See Attachment 6.

**8. Land Division** (see SECTION 83.250 in Attachment 6)**.**

Key Issues: New standards for land division added to SMP.

Background: The State Guidelines addressing land division are contained in WAC 173-26-241(3)(i) and focus on:

- Providing standards for the creation of new residential lots through land division that accomplish the following:
  - Public access is provided where it could not be required without the division of land.
  - Plats and subdivisions must be designed, configured and developed in a manner that assures that no net loss of ecological functions results from the plat or subdivision at full build-out of all lots.
  - Prevent the need for new shoreline stabilization or flood hazard reduction measures that would cause significant impacts to other properties or public improvements or a net loss of shoreline ecological functions.

Proposed Regulations: See Attachment 6.

## C. SHORELINE MODIFICATIONS.

The regulations in Attachment 9 contain provisions that will apply to typical structures and activities that modify the shoreline environment. Provided below is a summary of each issue, input from the public (if any), options to consider (if there are different policy options), together with a staff recommendation, if needed.

**1. Marinas** (see SECTION 83.270 in Attachment 9)**.**

Key Issues: Dimensional standards for marinas.

Background: The State Guidelines addressing breakwaters, jetties and groins are contained in WAC 173-26-241(3)(c) and focus on assuring no net loss of shoreline ecological functions, as well as the following:

(i) Location at suitable sites, considering environmental conditions, shoreline configuration, access, and neighboring uses.

(ii) Compliance with health, safety, and welfare requirements.

(iii) Including regulations to avoid, or if that is not possible, to mitigate aesthetic impacts.

(iv) Provisions for public access in new marinas.

(v) Regulations to limit the impacts to shoreline resources from boaters living in their vessels (live-aboard).

(vi) Regulations that assure that the development of boating facilities, and associated and accessory uses, will not result in a net loss of shoreline ecological functions or other significant adverse impacts.

(vii) Regulations to protect the rights of navigation.

(viii) Regulations restricting vessels from extended mooring on waters of the state except as allowed by applicable state regulations and unless a lease or permission is obtained from the state and impacts to navigation and public access are mitigated.

Many of the standards contained in the proposed regulations are found in the City's existing SMP, with the exception of dimensional standards proposed for piers associated with marinas. In order to prepare the standards proposed, staff evaluated a recently approved extension of a marina within Kirkland to determine the width of walkways and fingers – the proposed standards are consistent with this previously approved project. Staff is also consulting with federal agencies involved in review of marinas to determine if there is any additional guidance on this issue and will follow-up with any feedback we are able to obtain.

Proposed Regulations: See Attachment 9.

**2. Breakwaters/jetties/groins** (see SECTION 83.290 in Attachment 9)**..**

Key Issues: None.

Background: The State Guidelines addressing breakwaters, jetties and groins are contained in WAC 173-26-231(3)(d) and focus on assuring no net loss of shoreline ecological functions. The Guidelines and the proposed regulations limit the shoreline environments in which these types of structures may be approved, and prohibit them from use for any other purpose than protection of "water-dependent uses, public access, shoreline stabilization, or other specific public purpose." Most of the standards contained in the proposed regulations are found in the City's existing SMP.

Proposed Regulations: See Attachment 9.

**3. Dredging and dredge materials disposal** (see SECTION 83.300 in Attachment 9)**.**

Key Issues: **Slightly more restrictive standards for dredging**. Proposed regulations do not allow dredging to accommodate new uses, just to maintain existing uses or implement a restoration project.

Background: The State Guidelines addressing dredging and dredge material disposal are contained in WAC 173-26-231(3)(f) and focus on assuring no net loss of shoreline ecological functions. Dredging projects have the potential for the following impacts:

- re-suspend contaminants that may be contained in the soil
- disturb substrates that have established aquatic vegetation
- disturb or harm invertebrates and fish that may be present in the substrate, and
- may cause short-term but acute turbidity problems

Accordingly, dredging is allowed only for specific purposes, such as maintenance of existing navigation channels, restoration, maintenance of existing boat moorage (both public and private), and maintenance of other water-dependent or public uses. To establish that the dredging is implemented to minimize impacts and is the minimum extent necessary, the proposed regulations include a requirement for submittal of a detailed plan and may require special studies to assess contaminant levels in the material to be disturbed. Placement of dredged materials into the lake is tightly controlled.

Proposed Regulations: See Attachment 9.

Public Input: A number of property owners who reside in **Juanita Bay** have noted the desire to see **dredging** activities in this bay. The City's **Final Shoreline Analysis Report** contains a discussion about sedimentation in Juanita Bay. As explained in the report, the City has planned projects to do improvements along Juanita Creek to reduce erosion from going into Juanita Creek. In addition, the City is in the process of preparing a Surface Water Master Plan to address the overall condition of the City's drainage basins, including storm water runoff and erosion.

**4. Land Surface Modification** (see SECTION 83.310 in Attachment 9)**.**

Key Issues: More restrictive standards for land surface modification activities on upland property.

Background: The State Guidelines do not specifically address land surface modification, but do focus on the use of clearing and grading regulations as one of the techniques that should be used as part of shoreline vegetation management.

Proposed Regulations: The proposed regulations focus on **limiting potential impacts from land surface modification within the shoreline setback** area by narrowly scoping the permitted land surface modifications activities in this area (see Attachment 9). This is similar to current provisions contained in the SMP, which limit land surface modification within the high waterline yard to 1) improvements by a public agency to public safety, recreation, or access, 2) part of a development and to improve access to a pier, dock or beach, 3) necessary to provide public pedestrian access or a public use area, 4) necessary for the structural safety of a structure, 5) restoration of shoreline as a result of erosion (see Attachment 11). Under the current standards, vegetation removal within the shoreline setback was not regulated by the City. The new provisions propose additional standards that would limit removal of native vegetation or vegetation installed as part of

an enhancement plan. The new standards also address potential erosion and drainage impacts.

**5. Fill** (see SECTION 83.320 in Attachment 9)**.**

Key Issues: None.

Background: The State Guidelines addressing fill are contained in WAC 173-26-231(3)(c) and focus on assuring no net loss of shoreline ecological functions. Circumstances in which fill are allowed are limited to those fills associated with water-dependent or public access uses, to accommodate certain transportation corridors, and for restoration. These regulations actually expand the circumstances where fill may be allowed, accommodating fills for soft shoreline stabilization or restoration purposes.

Proposed Regulations: See Attachment 9.

Public Input: A number of citizens and those with interest in Kirkland's shoreline have requested that the existing SMP be revised to allow private fills that would enable alternative shoreline stabilization or restoration. At least one citizen was precluded from implementing a restoration project as a result of provisions in the existing SMP. State and federal agencies with jurisdiction on Lake Washington have been approving and encouraging these types of fills for several years as a means to improve ecological functions.

**6. Shoreline habitat and natural systems enhancement projects** (see SECTION 83.330 in Attachment 9)**.**

Key Issues: None.

Background: This is a new SMP section, and is addressed in the State Guidelines under WAC 173-26-231(3)(g). This section is designed to provide a clear and simple path for permitting and approval of projects specifically intended for the primary purpose of "establishing, restoring, or enhancing habitat for priority species in shorelines." A number of enhancement actions are covered under this section, including native vegetation establishment, removal of non-native vegetation, conversion of hard structural shoreline stabilization to soft shoreline stabilization, implementation of projects identified in the Restoration Plan that will be prepared as part of this SMP, and implementation of any projects identified in the WRIA 8 documents. Many of these projects may qualify for a Shoreline Exemption while others will require a Shoreline Substantial Development permit.

Proposed Regulations: See Attachment 9.

Public Input: Respondents to the survey indicated that a preferred method for the City to encourage restoration is to reduce review time – processing restoration projects as Exemptions or Substantial Developments will help enable this. Prior to creation of this section, some projects might have required a CUP because of fill activity that might have

been proposed landward of the ordinary high water mark. This section enables these projects to be reviewed as enhancement of the shoreline.

## VIII. PUBLIC COMMENTS

**A. Public Comments**. This memo includes 9 written comment letters (see Attachments 12-20).

**B. Response to Specific Issues.** Staff would like to provide a response or clarification to specific comments addressing scientific studies, as follows:

I. Scientific Studies. We have received a number of comments on the "science" being referenced in several previous staff reports and documents. The City has a responsibility and requirement to consult the best available science on shoreline issues, which staff has. The City is not in the position to undertake new scientific studies. In addition, the fundamental issue is that the City needs to prepare plan the meets the requirements of the guidelines as adopted by the Legislature and obtain approval from the Department of Ecology. Therefore, staff is recommending that the continuing concerns about the scientific information that is available be addressed to the respective state and federal agencies charged with overseeing these studies or management of endangered species or SMA issues, including the US Department of Fish and Wildlife, National Marine Fisheries, Washington State Department of Fish and Wildlife, and Department of Ecology.

## IX. ATTACHMENTS

1. Status Update on Shoreline Master Program
2. Shoreline Property Forum Handout: No Net Loss
3. Shoreline Property Forum Handout: Conceptual Shoreline Restoration along Kirkland's Shorelines
4. Summary of Shoreline Property Forum
   a. Enclosure 1
   b. Enclosure 2
   c. Enclosure 3
   d. Enclosure 4
5. Memo from City Attorney dated March 5, 2009
6. Use Specific Regulations
7. General Regulations
8. Excerpts from 2005 Stormwater Management Manual for Western Washington
9. Shoreline Modification Regulations
10. Summary of existing development standards
11. Existing land surface modification language
12. Letter from Bob Style dated January 21, 2009
13. Letter from Dave Douglas dated January 22, 2009
14. Letter from Bob Style dated January 27, 2009

15. Letter from Dave Douglas dated January 28, 2009
16. Letter from Richard Sandaas dated February 7, 2009
17. Letter from Gary Gelow dated February 26, 2009
18. Letter from Richard Sandaas dated February 27, 2009
19. Letter from Richard Sandaas dated February 27, 2009
20. Letter from Kevin Harrang dated February 28, 2009

cc: File No. ZON06-00017, Sub-file #1

**Summary of Planning Commission Review of Shoreline Master Program**

| Element of SMP | Date Reviewed | Status |
|---|---|---|
| **Shoreline Inventory and Characterization** | | |
| Shoreline Inventory | 2006 | Done |
| Shoreline Characterization | 2006 | Done |
| Shoreline Use Analysis | | Still pending. |
| **Shoreling Goals and Policies** | | |
| Shoreline Goals and Policies | 2008 | Preliminary Review Done. Need to consider changes as a result of regulation development. |
| **Shoreline Regulations** | | |
| **Authority and Purpose** | | |
| Authority | | Still pending. |
| Applicability | | Still pending. |
| Purpose and Intent | | Still pending. |
| Relationship to other codes and ordinances | | Still pending. |
| Interpretation | | Still pending. |
| Liberal Construction | | Still pending. |
| Severability | | Still pending. |
| **Definitions** | | |
| Definitions | 9/11/2008 & 10/9/2008 | Preliminary Review Done. Need to consider changes as a result of regulation development. |
| **Shoreline Environment Designations and Shorelines of Statewide Significance** | | |
| Shoreline Jurisdiction and Official Shoreline Map | 9/11/2008 & 10/9/2008 | Done |
| Natural | 9/11/2008 & 10/9/2008 | Done |
| Urban Conservancy | 9/11/2008 & 10/9/2008 | Done |
| Residential - L | 9/11/2008 & 10/9/2008 | Done |
| Residential – M/H | 9/11/2008 & 10/9/2008 | Done |
| Urban Mixed | 9/11/2008 & 10/9/2008 | Done |
| Aquatic | 9/11/2008 & 10/9/2008 | Done |
| **Uses and Activities in Shoreline Environment** | | |
| User Guide | 9/11/2008 & 10/9/2008 | Done |
| Shoreline Environments, Permitted Uses and Activities Chart | 9/11/2008 & 10/9/2008 | Done |
| **Use Specific Regulations** | | |
| Shoreline Development Standards | 11/20/08, 12/11/08, & 1/8/09 | Minimum Lot Size – Still Pending. Shoreline Setbacks – Concept for Residential – L done. Remaining SEDs need to be determined. |

| Element of SMP | Date Reviewed | Status |
|---|---|---|
| | | Lot Coverage – Preliminary review done, PC needs to review changes as directed.<br>Building Height – Still Pending. |
| Residential Development | | Still pending. |
| Commercial Uses. | | Still pending. |
| Industrial Uses | | Still pending. |
| Recreational Development | | Still pending. |
| Institutional and Religious Uses | | Still pending. |
| Transportation Facilities | | Still pending. |
| Utilities | | Still pending. |
| **Shoreline Modification Regulations** | | |
| Piers, Docks, Floats and Boatlifts | 1/22/09 | Concepts evaluated. Draft regulations need to be presented to PC for consideration. |
| Marinas | | Still pending. |
| Shoreline stabilization | 10/9/2008, 11/20/2008, 1/22/09 | Preliminary Review Done. Need to respond to requested changes from 1/22 meeting. Need to finalize discussion of shallow lots. |
| Breakwaters, jetties, rock weirs, groins | | Still pending. |
| Dredging and dredge material disposal | | Still pending. |
| Land Surface Modification | 1/8/09 | Preliminary Review Done. |
| Landfill | | Still pending. |
| Shoreline habitat and natural systems enhancement projects | | Still pending. |
| **General Regulations** | | |
| Shoreline Setbacks | 1/8/09 | Preliminary Review Done. Need to respond to requested changes addressing encroachments from 1/22 meeting.<br>Need to finalize shoreline setback reduction provisions. |
| Shoreline Vegetation Management | 1/8/09 | Preliminary Review Done. Need to respond to requested changes from 1/22 meeting. |
| View Corridors | 9/11/08 | Preliminary Review Done. Need to respond to requested changes from 1/8 meeting (interaction of shoreline vegetation and view corridor). |
| Public Access | 9/11/08 | Done. |

| Element of SMP | Date Reviewed | Status |
|---|---|---|
| Standards for In-Water Activity | | Still pending. |
| Miscellaneous Standards | | Still pending. |
| Parking | | Still pending. |
| Signage | | Still pending. |
| Lighting | 1/8/2009 | Preliminary Review Done. Need to respond to requested changes from 1/8 meeting. |
| Water Quality, Stormwater and Nonpoint Pollution | 9/11/2008, 1/8/2009 | Preliminary Review Done. Need to respond to requested changes from 1/8 meeting. |
| Critical Areas – General Standards | 9/11/2008 | Preliminary Review Done. |
| Wetlands | 9/11/2008 & 10/9/2008 | Preliminary Review Done. |
| Streams | 9/11/2008 & 10/9/2008 | Preliminary Review Done. |
| Geologically Hazardous Areas | 9/11/2008 | Preliminary Review Done. |
| Flood Hazard Reduction | 9/11/2008 | Preliminary Review Done. |
| Archaeological and Historic Resources | 9/11/2008 | Preliminary Review Done. |
| **Nonconformances** | | |
| Nonconformances | 1/8/09 | Preliminary Review of Special Provisions for nonconforming setbacks done.<br>Preliminary Review of nonconforming shoreline vegetation done. |
| Shoreline Restoration | 10/9/2008, 12/11/2008, and 1/8/2009 | Need to finalize approach (e.g. will re-evaluation of shoreline stabilization with significant new development be required).. |
| **Shoreline Administration and Procedures** | | |
| General | | Still pending. |
| Procedures | | Still pending. |
| **Cumulative Impact Analysis** | | |
| Cumulative Impact Analysis | | Still pending. |
| **Restoration Plan** | | |
| Restoration Plan | | Still pending. |

# SHORELINE MASTER PROGRAM UPDATE

## No Net Loss of Shoreline Ecological Functions

The State Shoreline Management Act (SMA) provides a broad policy framework for protecting the shoreline environment. The Shoreline Master Program Guidelines adopted in 2003 establish the" no net loss" principle as the means of implementing that framework.

The standard of no net loss of ecological functions is to be achieved over the City's SMP planning horizon of 20 years by implementing the updated SMP policies and regulations.

### What does no net loss mean?

- The no-net-loss standard is designed to stop new impacts to shoreline ecological functions resulting from new development. This means that the existing condition of shoreline ecological functions needs to remain the same, and should even be improved as a result of restoration, as the updated SMP is implemented over time.

- This standard is to be met by appropriately regulating public and private development, implementing a Restoration Plan, and improving practices that affect the shoreline.

- Resulting impacts of development should be identified and mitigated so as to maintain shoreline ecological function as it exists at the time of the City's 2006 shoreline inventory.

### How is no net loss measured?

- No net loss is measured from a city wide, cumulative perspective, but met by project-level mitigation from both public and private development and redevelopment.

- Cumulative impacts consider current circumstances affecting the shoreline and relevant natural processes; reasonable foreseeable future development and use of the shoreline; and beneficial effects of any established regulatory programs under other local, state and federal laws.

- Because there are no easy tools to measure ecological function, indicators that are related to function and can be measured are used to assess possible change in ecological function over time (e.g, square feet of overwater cover, average structure setback, area of native vegetation).

**Does that mean that an SMP must prohibit all development that will result in a loss of shoreline ecological functions?**

- No. The "no net loss of ecological function" standard means that the updated SMP must contain provisions for mitigating these unavoidable impacts by restoring degraded shorelines and by avoiding or minimizing impacts.

**When should impacts be avoided, and when may they be minimized?**

- SMA policy and the guidelines recognize the need for both the appropriate shoreline use **and** protection of shoreline resources. Thus, the SMP must provide for preferred shoreline uses set forth in the State SMA. These include water-dependent uses, such as marinas; public access facilities; and owner-occupied single-family residences. Impacts resulting from these preferred shoreline uses, where they cannot be avoided, must be minimized by application of appropriate regulations.

- Achieving no net loss of ecological function relies on consistent application of mitigation sequencing. Mitigation sequencing sets a priority to first avoid, then minimize, rectify, reduce or compensate for impacts.

- All development must be carried out in a manner that limits further degradation of the shoreline environment. Uses or development, including preferred uses and uses exempt from a shoreline permit, cannot supersede the requirement for environmental protection.

**What are current conditions affecting Kirkland's shoreline and the relevant natural processes?**

- Lack of shoreline vegetation and inability to recruit organic material, which contributes to continuing degradation of fish and wildlife habitat.
- Steep shoreline conditions which lack ability to attenuate wave energy; waves reflect or bounce off the hard bulkhead surface, scouring away beach sediments. Changes in sediment size and distribution affect the plants and animals that can live there. Scouring can also lead to the loss of sand and gravel covering bulkhead footings, thereby causing these structures to become more vulnerable to failure.
- Shading from piers and other overwater structures interferes with migration of juvenile salmonids and provides habitat for non-native predators.
- Lack of upland water and sediment storage that reduce water quality and soil infiltration.
- Contamination of the lake from excessive nutrients and chemicals in runoff.
- Lighting and noise impacts.