



MEMORANDUM

To: Planning Commission

From: Teresa Swan, Senior Planner
Stacy Clauson, Contract Planner
Paul Stewart, Deputy Director of Planning

Date: July 31, 2009

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

I. RECOMMENDATION

Defer discussion and deliberation on the draft Shoreline Master Program update to the August 27th meeting.

II. BACKGROUND

On July 23, 2009, the Planning Commission held a public hearing and continued the hearing to their August 13th meeting for written comments. They also indicated that they would be open to some additional time to respond to and work through the issues raised at the public hearing with the possibility of meeting on August 27th.

Staff suggests the Planning Commission defer discussion and deliberation on the draft Shoreline Master Program update to the August 27th meeting. Staff has met with several property owners and representatives of the Kirkland Lakeshore Association over the past week to answer their questions, address concerns and explore potential options. The KLA indicated that they will be providing specific comments on the draft SMP to the City and the Planning Commission soon. Once staff has received these comments, we will meet with them again and review their comments with the intent of suggesting possible changes to the draft regulations to the Planning Commission that would still meet the State requirements.

On July 27th, the Houghton Community Council held their public hearing. They continued the hearing to their August 10th meeting for written comment. Staff will also be suggesting that the HCC defer their discussion and deliberation to their August 24th meeting in order for staff to meet with the KLA and property owners and bring back possible changes to the HCC.

III. PUBLIC COMMENTS

Since distribution of the last Planning Commission meeting packet, the City has received seven public comment letters (see Attachments 1-7). Attachments 1 and 2-6 were distributed to the Planning Commission at the public hearing on July 23, 2009 and Attachments 2 and 7 were given to staff during the public hearing.

Attachment 9 is an e-mail dated August 4, 2009 from Kevin Harrang, a representative of the Kirkland Lakeshore Association (KLA). Following the public hearing staff met on July 27th with several property owners and KLA members to discuss the timeframe and how best to address the KLA concerns. Mr. Harrang indicated that they are working with their attorney on a consolidated set of comments to submit to staff and the Commission. We provided them with the draft SMP regulations in Word on a disk as a way for them to comment.

We discussed the schedule and indicated that staff would be recommending the Planning Commission defer taking action at the August 13th meeting to the August 27th. This would give staff and the KLA the opportunity to review the comments and meet with them in an effort to respond to their questions, clarify the regulations and possibly suggest options that could be considered within the framework of the proposed SMP and state requirements. Staff had suggested that it would be helpful to have their comments by August 7th and then staff would sit down with them the following week to review and discuss. Staff has also requested they communicate this intent to the Commission prior to the packet being assembled for the August 13th meeting. Attachment 9 is the e-mail from Mr. Harrang indicating they are making a good faith effort to prepare their comments and that the Commission not take further action while we work through this process.

At the August 4, 2009 City Council meeting the City Manager briefed the Council on the timeline for the SMP. Staff indicated that we were working with the property owners and suggested the City Council schedule a special study session on the SMP in the latter part of September. The Council agreed and staff will be checking Council's availability.

Later in the meeting under Items from the Audience, Mr. Harrang addressed the Council and expressed his desire on behalf of the KLA to have adequate time to prepare their comments and have their concerns addressed to try and reach consensus.

IV. DEPARTMENT OF ECOLOGY'S DRAFT COMMENTS

Attachment 8 is a summary of the Department of Ecology's preliminary informal comments on the draft SMP. These are initial comments from Joe Burcar, our local Ecology representative. Following City Council action, we will transmit the final draft SMP to the Department of Ecology. Ecology will then provide formal written comments, recommendations and required changes.

V. ATTACHMENTS

1. Emails from Jim Tosti, dated July 17, 21 and 22
2. Comments from Jim Tosti, presented at the July 23, 2009 public hearing
3. Letter from Dick Sandaas, dated July 22, 2009
4. Email from Lori Eagle, dated July 23, 2009

5. Email from Alisa Bieber of Department of Fisheries , dated July 23, 2009
6. Letter from Dean Patterson of Future wise, dated July 23, 2009
7. Comments from Kevin Harrang of Kirkland Lakeshore Association, presented at the July 23, 2009 public hearing
8. Summary of the Dept of Ecology's Informal Comments on draft SMP, dated June 2009
9. E-mail from Kevin Harrang, dated August 4th, 2009

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

Teresa Swan

From: Jim Tosti [jetosti@msn.com]
Sent: Friday, July 17, 2009 1:46 PM
To: Teresa Swan
Subject: SMP Update

Teresa,

I have been following updates and have questions and comments on a few items listed below.

1. 83.190 2 b. 3) What are Lake Ave setbacks? Are the houses from Market to end of Lake Ave all grandfathered?
2. 83.190 4 c. a) there is no criteria associated
3. 83.250 Land Division 4 is this view corridor required in Res-L?
4. 83.270 1 b. 1) Why REQUIRE shared dock first? I think this is legislative overreaching and cannot be justified under a property rights discussion. This is clearly a "taking".
5. 83.270 4 New Dock/Pier Dimensions The max size is completely inadequate. How did you arrive at this number? It seems arbitrary. Also, the width provision is too narrow beyond the first 35' of near-shore habitat. Why this width? Where is the science behind this?
6. Mitigation 4) a Is any of this Paragraph new or different then existing law? If so, why? I put in landscape a couple of years ago and it was adequate then, why not now?
7. REPLACEMENT/REPAIR OF PIERS AND DOCKS
 This is the section where I have a huge disagreement with the SMP. The whole of 83.300 needs significant debate and discussion as some of the concepts are dramatic, arbitrary, expensive, and completely unsupported by any science that I have seen or read. Because of this whole section alone I think there is warranted a mandatory extension of this process. This section is bad law, bad policy, not well thought out, and has not had enough discussion with the Res-L owners.
8. 83.360 This section goes beyond "no net loss" and sets up a standard that continually tries to improve on "no net loss". If ecological function can be maintained for "no net loss" why is that not good enough?
9. 83.400 Tree Mitigation Can you plant mitigation off-site? If you get rid of one tree it generally is for a reason. It doesn't make sense to require replacement onsite with three trees.

I would love to meet and discuss these issues with you. In the meantime, the Res-L property owners are requesting an extension on this document. There are too many significant issues left to be discussed and debated and, unfortunately, this is not the main job for most of us so it takes longer to organize meetings and questions for staff and the PC.

Sincerely,
 Jim Tosti

Teresa Swan

From: Paul Stewart
Sent: Friday, July 24, 2009 2:17 PM
To: Teresa Swan
Subject: FW: SMP Update

From: Jim Tosti [mailto:jetosti@msn.com]
Sent: Wednesday, July 22, 2009 10:55 AM
To: Paul Stewart
Subject: RE: SMP Update

Paul,
Thanks for response. I would tend to agree with most of your reply but there are some areas that I don't agree with. As a concerned citizen attending the PC meetings is almost completely worthless. I can't participate in the discussions, the PC members don't own waterfront and are not familiar with the issues and problems, the PC members take to heart everything they get from staff or any other consultant or governmental agency while input from the property owners is looked at as if it is self serving.

I would like to get together and discuss my last note to you and the PC/Council. There are some overarching concepts that need to be discussed before there will be any support from the shoreline owners. These concepts have to do with the shifting of burden of proof from the gov to the property owners. You keep referring to State mandated guidelines. There is a reason it's called a "guideline". It is only a policy initiative and does not have the force of law. These guidelines can be altered, accepted, or outright refused. This is a huge update and I see no reason to push through bad law just to get it done and have to come back later and revisit all of the provisions that are highly interpretive.

Let me know best time to get together. I am available Thurs or Fri.
JT

From: Paul Stewart [mailto:PStewart@ci.kirkland.wa.us]
Sent: Tuesday, July 21, 2009 4:08 PM
To: jetosti@msn.com
Cc: Teresa Swan; CLAUSON Stacy A; Eric Shields
Subject: SMP Update

Hi Jim,
Staff was copied on your e-mail to the City Council. We also forwarded the e-mail to the Planning Commission. I can understand your concern with some of the provisions of the proposed SMP. I believe the Commission has been very responsive to these concerns and have made a sincere effort to address these issues as well as incorporate other incentives and modification provisions while meeting the requirements of the SMA. I would disagree with some of your statements regarding the process but understand your interest in further discussion.

As staff, we have always been open and available to meet and explore options but have been frustrated that no one has taken the opportunity to do so. I also think part of the frustration is that there are misconceptions about the regulations and standards. Very few people have attended the Planning Commission meetings to hear them work through these issues to respond to these questions. Very few people showed up at the open house to interact with Commission members on July 9th. I know you sent an e-mail today with specific questions and those type of comments are helpful.

Jim, please consider this an invitation to meet. We would be more than happy to meet with you and others this Friday or Monday to talk further if that could work with your schedule.

Paul Stewart
425-587-3227

From: Jim Tosti [mailto:jetosti@msn.com]
Sent: Friday, July 17, 2009 12:34 PM
To: KirklandCouncil
Subject: SMP Update

Councilmembers,

This letter is from Jim and Patty Tosti. We live at 245 Lake Ave West in Kirkland. We have been involved in the SMP update for several months and we are writing to alert you to our deep founded concern over the process that is taking place and also to let you know that the shoreline property owners in general have significant issues that are not being addressed.

I have attended many PC meetings and have found that the inability to have a discussion with any of the members on the record is a fatal flaw in this process. We get to testify for 3 minutes and get zero opportunity to ask questions or enter into any kind of meaningful discussion with the PC members or staff.

Since we weren't getting anywhere at these meetings I suggested to staff (Paul Stewart et. al.) that we should have a round-table discussion with the PC members so that they could better understand the nuances of this SMP and how it would affect the shoreline property owners in the Res-L area. (I have done this successfully in several local cities and have found it to be very effective for the citizens, staff, and commission members) I took me 4 separate requests and some fairly stern language over a period of months to get the PC and the staff to meet with us. We finally had our meeting and in less than 2 hours we got more accomplished that the previous 2 years worth of work concerning Res-L.

Since then I have noticed that most of our recommendations were incorporated but several new items have appeared that require more of these meetings and some significant discussions. This is a highly complicated document that has concepts in it that have huge impacts on property owners. These items deserve and demand further discussion and debate.

The property owners have asked for an extension of this process and have been turned down by staff and the PC under the guise of "we need to get this done". I can't get anybody to explain to me why it is necessary to get this done so fast and end up with a contentious document rather than taking the time to do this properly so that when it is adopted all parties to the SMP can proudly support it.

I am herewith asking one more time, please grant an extension on this SMP so we can take the time to get this right. A rushed process will only lead to bad law and significant legal expense for the City.

I would be more than happy to meet with each of you to bring you up to speed on the issues we are gravely concerned about. Please do not hesitate to give me a call at 425-702-8422 or 206-427-0662.

Sincerely,
Jim Tosti

Jim Tosti July 23, 2009 (provided at public hearing)

ATTACHMENT 2

DISCUSSION POINTS

1. The shoreline property owners are hearing both directly and indirectly from the PC, staff, and City Council that because we have not attended meetings with regularity or in great numbers that we are somehow not that interested. **NOTHING COULD BE FURTHER FROM THE TRUTH.**
2. We have formed an association and are represented by ourselves and Mr. Brent Carson, a land-use attorney with Gordon Derr of Seattle.
3. We are individually and as a group going over the 129 pages of the SMP to try and absorb what it means to each of us as our properties are all different from each other. This document is primarily designed to be "one size fits all" and that just doesn't work for the Red-L zone.
4. Listening to the PC discuss the SMP on matters that don't have anything to do with the Res-L zone is not productive. Only being allowed 3 minutes of testimony with no discussion, questions, or conversation is very frustrating.
5. Nobody from the PC or staff has reached out to me and come down to my house and looked at how this document would affect my property and my neighbors. I would suggest that this tells me **YOU** are not interested our comments and suggestions.
6. Biggest issue has to do with some overarching changes in burden of proof that has been entirely glossed over. If this document passes it will be a wholesale change in the way the shoreline is permitted and controlled. This is a "remaking" of how the shoreline is controlled with the burden of proof for development now being shifted squarely onto the shoulders of the property owners. This should be resisted at all costs and you, as members of the PC, should not be talked into this change by the State DOE because of new guidelines they are proposing. There has been no debate or discussion on this significant shift. If you go this route there will never be any turning back on this issue. (Entire section of 83.300)

RICHARD K. SANDAAS
12453 Holmes Point Drive
Kirkland, WA 98034
425.823.2145
eride@msn.com

July 22, 2009

To: Kirkland Planning Commission
Houghton Community Council
Kirkland Planning Department Staff: Paul Stewart, Teresa Swan, Stacy Clauson

Subject: Comments on Shoreline Master Program Policies and Regulations

I began following the Kirkland SMP update process in August of 2006. Since then, I have attended numerous meetings and provided comments as the process has evolved.

At this critical time it is important to re-state some key points I raised in my October 3, 2006 comment letter on the draft *Inventory*:

- Lake Washington is an urban lake which was forever altered with the construction of the ship canal and locks when the lake was lowered.
- The lowering of the lake resulted in the creation of much of Kirkland's shoreline with bulkheads to contain the newly formed lots.
- The Shoreline Management Act of 1972 and the existing Shoreline Master Program have served the city and public well with the resulting preservation of wetlands in Yarrow and Juanita Bays and the halting of non-water related overwater structures.
- Strong political and staff leadership lead to the acquiring of former shoreline oil tank farms and a lumber yard. Converting them into parks resulting in significant public shoreline access. The *Inventory* shows 43% of Kirkland shoreline area is park/open space.
- One third of Kirkland's shoreline is natural/semi natural. Less than one third of the entire shoreline is vertical or armored shoreline.

This reality is the basis for the SMP updates.

I have also provided criteria which are key to gaining support by shoreline property owners for the SMP updates:

- Based on Sound Science that is reviewed and vetted
- Attain measurable environmental benefits
- Feasible and practical
- Cost effective
- Fair and equitable

- Not impose hardships (required by RCW 90.58.100)
- Not impose risks to property or homes (required by RCW 90.58.100)
- Avoid unintended consequences
- Flexible

In this letter I will discuss how these criteria are being met with the latest draft policies and regulations.

Sound Science

This remains the most significant issue that has not been responded to. Earlier this year I reviewed the scientific studies and reports that have been referred to and relied upon by the SMP update process. In March I prepared a report which documented that the body of science and research is not complete, contains suppositions and hypotheses, is sometimes contradictory, and cannot be applied broadly to all shoreline locations on Lake Washington. You were provided this report and it also had a wide distribution to regulators and other local agency staff. To date I have received no responses, rebuttals or challenges to my conclusions, except for one: Kirkland Planning Department Staff replied that continuing concerns about scientific information should be addressed by state and federal agencies and that the city has consulted best available science. (March 12, 2008 Staff Comments) Best available science is **not** sound science that is peer reviewed and vetted.

Of the many examples in my report, none is more graphic than the list of 13 unanswered questions that are contained in a literature review prepared by the Watershed Company for the City of Bellevue in 2000. Some nine years later these remain unanswered, once again underscoring the lack of sound science. These questions are attached to this letter along with my report.

Another example is the problem that the *Chinook Conservation Strategy for WRIA 8* points out. With respect to the rise and fall of the lake it states “removing of bank hardening structures may not be sufficient to create sandy beaches”. Still another is the statement in the *Synthesis of Salmon Research and Monitoring* study which says “very few fish are found with cobble and larger substrates”. Yet in order for a beach to survive the wave exposure on the Kirkland shoreline it would have to consist of cobbles or rocks rather than the granular sand that the fish seem to prefer.

I point out in my report that now is the time for policy makers to fully understand the extent and applicability of the body of scientific knowledge that exists and make a determination as to which pathway forward to follow, with four suggested options to consider. The fourth being to waive the scientific deficiencies and base the SMP updates on policies and regulations which would be focused mostly on aesthetics and a hopeful outcome for habitat improvement. It is an important choice to make and one that should be carefully deliberated.

Attain measurable environmental benefits

This issue has not been addressed. The environmental benefits are based on hypothesis. It has been suggested that the City of Kirkland should embark on pilot programs in city owned shoreline where the shoreline restoration called for in the regulations would be constructed thereby providing a pilot program to answer this and other questions such as feasibility, along with a true understanding of the costs involved.

Feasible and practical

Bulkhead removal and shoreline landscaping are the standout issues here. Bulkheads exist along the shoreline for a key reason: they are necessary to contain the property that was developed with the lowering of the lake and which is exposed to significant storm impacts. Mr. Allen Schwartz in his follow up letter to the July 9, 2009 Open House provides in-depth analysis on this and other issues.

The landscaping requirements are based on the premise that it will provide shading of the water along with falling debris from overhanging vegetation. As was been pointed out repeatedly, neither will result due to the setting and sun exposure of Kirkland's shoreline. The shoreline has a western exposure so that there is little or no water shade possible from shoreline landscaping. Landscaping will have to be planted far enough away the OHWL to avoid being washed away by wind waves and boat wakes with the result that the trunks will be more than eight feet away from the waters edge. Even at this distance the root system would be vulnerable to erosion. The result is that to get any overhang at all, branches would have to be more than ten feet long. The shoreline landscaping requirements are not feasible, impractical, would not accomplish the intended result of shading and debris production, and unfavorably impact the property owner's view corridor and use of the property.

Cost effective

The SMP update process has never dealt with measurable results, cost impacts, or cost effectiveness. It is now time to do that before adopting the regulations. Are there other projects or improvements that could provide true environmental benefits? What about storm water runoff and non-point pollution? Addressing these issues would have far more beneficial impact on the lake than speculative benefits of landscaping and bulkhead removal. Witness the recent closure of Juanita Beach Park due to poor water quality. Would it not be better to spend money where the benefits are assured?

Fair and equitable

The private shoreline owner will bear extraordinary costs over the time these regulations are in place. The upland owners bear responsibility for stormwater runoff and non-point pollution, as does the city. Higher densities as driven by the Growth Management Act have resulted in significant increases in impervious surfaces along with increases in vehicle miles traveled within the city. These are impacting water quality in streams and Lake Washington. A program to deal with these issues and a way of financing should be adopted concurrently with the SMP update process.

Not impose hardships; Not impose risks to property or homes

These criteria are embodied in RCW 90.58.100 and are of vital interest to all shoreline property owners. There are many unanswered questions about the risks imposed by bulkhead removal, the most important one being damage to a structure, although on-going land erosion also important. The regulations cite the 'significant possibility of an existing structure damaged within 3 years'. The logic behind the three year limit is not apparent. Regardless of the duration, if a home is damaged as a result of SMP policies and regulations it is a violation of the RCW. This arbitrary time period should be eliminated.

Avoid unintended consequences

By their nature, these are not always possible to predict. However, at least two come to mind. One is the risk of impacting the integrity of the sewer interceptor pipes that lie along Kirkland's shoreline by bulkhead removal and other alterations. Another is the impact on adjacent properties by bulkhead removal and alterations on a single property in between. If erosion occurs, or structures are impacted, what is the remedy? Who is liable? The regulations attempt to deal with this by requiring a transition to adjacent properties, but would this really be effective?

Flexible

The development of Kirkland's residential and commercial shoreline over the years has resulted in a wide variety of configurations and settings which makes a "one size fits all" approach impractical. That approach likely would constrain innovative approaches. It also has the potential of discouraging a number of redevelopment projects with the resulting deterioration of housing stock. Mr. Dave Douglas of Waterfront Construction has provided numerous comments on this topic, particularly as it pertains to piers and bulkheads. Other areas of concern with a need for a flexible approach are set-backs, structure footprints, and landscaping.

Much work has gone into the SMP update process involving countless hours of Kirkland Planning Commission members, Houghton Community Council members, staff, and consultants and this should be recognized. However the questions and issues outlined in this letter are very important to shoreline property owners and I urge you to address them.

And, please keep in mind the reality mentioned at the beginning of this letter and build on that.

Very truly yours,

Richard K. Sandaas
PAA Shoreline Property Owner
Chair, SPOCA

A Summary of the Effects of Bulkheads, Piers, and Other Artificial Structures and Shorezone Development on ESA-listed Salmonids in Lakes

T. Kahler, M. Grassley, and David Beauchamp

Thirteen Unanswered Questions,

1. How do juvenile salmonids respond to piers, bulkheads and other artificial structures in local lakes?
2. Is there a relationship between piers and predation on juvenile salmonids in local lakes? How are the structures utilized by the various predators?
3. Which characteristics or combination of characteristics of piers attract bass in local lakes?
4. Do prisms and grating change predator or prey response to piers? How effectively do they reduce shading *in situ*?
5. How do bulkheads and piers affect sediment distribution/composition and benthic invertebrate distribution and abundance in local lakes?
6. How does pier lighting affect the behavior of Chinook fry and their predators in Lake Washington and Lake Sammamish, and ultimately the predation rate on Chinook fry?
7. How do juvenile salmonids and their prey, and adult salmonids respond to drop-hammer and vibratory pile driving in lakes?
8. What are the cumulative impacts of overwater coverage on total lake productivity from the existing structures on Lakes Washington, Sammamish, and Union?
9. How do juvenile salmonids in local lakes respond to temporary construction-related turbidity?
10. What is the current contribution of two-stroke marine engine emissions to PAH contamination in local lakes?
11. How pervasive is the use of dock-cleaning chemicals by homeowners around local lakes and what chemicals are being used? What hazard does this chemical use pose to fish? Same question for lawn-care products.
12. How do juvenile and adult salmonids respond to local boating and swimming activity?
13. How do changes in sediment distribution/composition affect populations of bass?

SHORELINE MASTER PROGRAM UPDATES

SCIENCE AND GREEN SHORELINES

The SMP update processes being conducted by the local governments on Lake Washington are leading to policies and regulations calling for removal of hardened shorelines and replacement with beaches; shoreline landscaping intended to provide shade, while at the same time requiring modification of piers to reduce shading; the reduction of piers, both in size and number; and placement of woody debris along the shoreline. The result will be the expenditure of millions of dollars by shoreline property owners and taxpayers. It also results in loss of usable shoreline and uplands by both private property owners as well as park users.

The drivers behind this are guidance and directives from the Department of Ecology and WRIA 8 taken from research and studies with the focus on salmon habitat. Even though DOE is requiring local governments to use “all available technical and scientific information” and to “solicit additional information through the public participation process”, the body of science and research is not complete, contains suppositions and hypotheses, is sometimes contradictory, and cannot be applied broadly to all shoreline locations on Lake Washington. WRIA 8 has identified the Kirkland shoreline as a Tier 1 Migratory Corridor, but have studies been conducted to support that?

SCIENCE AND ITS DEFICIENCIES

VETTING OF SCIENCE

A number of researchers have been studying Lake Washington for many years. Those studies have found their way into a body of conventional wisdom that is widely used, yet a vetting process for these studies and research is yet to be established. If such studies are to be the basis for establishing public policy and cost property owners and taxpayers millions of dollars, it is reasonable to expect, and compelling, that claims based on science be tested before serving as the basis of public decision making. An example is the vetting of scientific claims developed in connection with the Columbia River. In that important watershed the Northwest Power Planning Council has implemented an Independent Science Review Board to review all studies before they are used as the basis of policy or rule making. With so much at stake a similar process should be invoked for the Lake Washington studies.

AREA SPECIFIC STUDIES – WHERE DO THE FISH TRAVEL?

The DOE Guidance Fall 2008 cites one study which “focuses on the affects of shoreline alterations to salmon migration” implying its applicability to all parts of Lake Washington and Lake Sammamish.ⁱ Yet this study was conducted for Cedar River Chinook salmon at the south end of Lake Washington. A close reading of the study and its conclusions shows considerable unanswered questions.

There are several other studies which are also specific to the Chinook at the south end of Lake Washington and one documents their migration along the western shore of Lake Washington past Seward Park to the Ship Canal.^{ii iii} These localized studies are being used in SMP update processes as a basis for actions elsewhere on the lake, far away from the migratory route that these Cedar River Chinook utilize, and these fish are the majority of Chinook found in Lake Washington.

As to where fish travel in other parts of Lake Washington, here are excerpts from other studies:

The distribution of juvenile Coho salmon in Lakes Washington and Sammamish **is poorly understood.**^{iv}

“...small numbers of Chinook salmon spawn in several tributaries to Lake Washington and Lake Sammamish but juvenile production from these streams **is unknown.**”^v

“**However little research has been conducted** to understand habitat use or finer-scale movement patterns of juvenile Chinook salmon during their migratory phase in late-May, June, and July.”^{vi}

Not much information is known about the habitat use of Coho salmon and steelhead in Lake Washington.^{vii}

Outmigration behaviors of sockeye, Coho, and steelhead **have not been studied** in Lake Washington.^{viii}

Juvenile Chinook in the North Lake Washington population are less shoreline-oriented than juveniles from the Cedar River. **More information is needed** about the trajectories of NLW juvenile Chinook in Lake Washington, particularly when they move offshore.^{ix}

EFFECTS OF PIERS AND BULKHEADS ON SALMON

Study Excerpts:

No studies were located that specifically investigated the effects of piers and armored shorelines on the migration of juvenile Chinook and Coho salmon along lakeshores.^x

The question remains whether juvenile salmonids in lakes migrate under, or otherwise utilize, piers, or if they avoid them and/ or traverse their perimeter.^{xi}

Behavior at each structure appears to depend on a variety of factors...although these are based primarily on **anecdotal observation.** (example of non-scientific hypotheses)^{xii}

Additionally, juvenile Chinook salmon may be attracted to boat ramps due to the docks in between the boat ramps **which may provide some overhead cover.**^{xiii}

The substrate and slope are similar along this shoreline and it is unclear why Chinook salmon prefer the north part over the south part. One possibility is that the north sites are close to a **pier which may provide overhead cover** if needed.^{xiv}

The result is that **resource managers are challenged** to recommend and implement Chinook salmon conservation strategies in Lake Washington with few references to unaltered lacustrine habitats, and an **incomplete understanding** of how alterations to the Lake Washington ecosystem affect juvenile Chinook salmon.^{xv}

Shoreline processes of Lake Washington have been changed by the regulated maximum one foot rise and fall of the lake. (Regulated at the Locks) Therefore **the removal of bank hardening structures may not be sufficient to create sandy beaches...**^{xvi}

Studies of the relationship between shoreline armoring and predation on juvenile Chinook or Coho salmon in Lake Washington and Lake Sammamish **were not found.**^{xvii}

While no direct links were identified between predation and bulkheads, an intuitive connection exists. (This is an example of subjective or hypothetical conclusions found throughout many of the studies)^{xviii}

SHORELINE VEGETATION, WOODY DEBRIS, AND BEACHES

Study Excerpts:

Very few fish are found with cobble and larger substrates.^{xix} (This is significant because in many shoreline areas containing bulkheads, the replacement beaches would have to consist of cobbles and larger materials because sand will wash away in the first storm. Extensive beach restoration which must protect property from erosion would require cobble and larger granular material.)

The pattern of woody debris use is **somewhat unclear.**^{xx}

Overall results indicated that there was **no difference** in the abundance of Chinook salmon between shoreline sections with small woody debris and sections without woody debris.^{xxi}

WATER QUALITY

None of the studies listed report on water quality, yet this is fundamental to the health of all aquatic life. The WRIA 8 document develops a hierarchy for tributary streams and lists Juanita Creek (doesn't mention Forbes Creek) as a Tier 3 subarea. The actions for this category are enhancing water quality and hydrologic integrity.^{xxii} Thus for Kirkland, it would seem that the focus should be on storm water runoff and non-point pollution for tributary areas.

UNANSWERED QUESTIONS

The excerpts shown above confirm the issues facing the science underlying the SMP update processes. In addition, there are other questions raised by these studies. A comprehensive list is found in the literature search conducted by The Watershed Company for the city of Bellevue (Reference 4). Page 49 of this report contains 13 unanswered questions which should be reviewed by all local government policy makers. And, to further the body of science, they should be answered.

GREEN SHORELINES

There is another driver and that is a movement that has a push-pull relationship with the SMP update processes. It is called Green Shorelines. Other terms associated with this are salmon friendly, ecologically friendly, soft engineering, soft shorelines, alternative shoreline design, and living shorelines. It is a broad concept, applied to the entire shoreline of Lake Washington in a "one size fits all" way. As yet, it doesn't recognize the physical differences along the lake shoreline, exposure to storm driven waves and boat wakes, fish migratory patterns, extent of existing or potential fish habitat, or other unique characteristics.

Green Shorelines presumes that the restoration envisioned will achieve the goal of improved habitat and support salmon recovery. It also presumes that current scientific studies are sufficient to support and justify the goals for alternatives to shoreline hardening and justify the millions of dollars of expenditures to achieve them.

There is also an aesthetic component, typified by a number of comments lamenting the urbanization of Lake Washington beginning with the construction of the Ship Canal and the Locks and the lowering of the lake and the developments along the shoreline over the years.

A publication titled “*Green Shorelines; Bulkhead alternatives for a healthier Lake Washington*” has been prepared by the City of Seattle. It cites habitat restoration as a prime objective and provides resource information for bulkhead replacement. It does not reference specific scientific studies.

SHORELINE PROPERTY OWNERS’ PERSPECTIVES

There is no group more interested and concerned about the health and ecology of Lake Washington than shoreline property owners. Furthermore there is no group that has more site specific knowledge about the lakeshore and the waters surrounding it than these property owners. For these reasons the criteria that support future actions must be well founded and credible.

Owners will support credible programs with these criteria:

- Attain measurable environmental benefits
- Feasible and practical
- Cost effective
- Fair and equitable
- Not impose hardships
- Not impose risks to property or homes
- Avoid unintended consequences

Based on sound science that is reviewed and vetted

There is a widespread belief among shoreline property owners that the credibility of the SMP update processes and the Green Shoreline movement is hampered by the lack of several of these criteria, a most significant one being vetted science.

HOW TO RESPOND TO THESE DEFICIENCIES AND QUESTIONS?

Policy makers must consider the scientific basis driving the SMP policies and resulting regulations and determine if it is sufficient, or not. The DOE Guidance states:

Ultimately, local government elected officials must consider all of the information put before them, including opposing views and opinions, judge their credibility and decide what standards best achieve SMP guidelines requirements, **given local circumstances**.

If it is determined that the science is not adequate or applicable as a basis for a local government’s SMP update process, several options are available.

The first is to join with the other local governments on Lake Washington to put in place a vetting process for the science that is being used to support the SMP update processes. This effort should be led by the Department of Ecology and coordinated with the other regulatory agencies so that the end result is endorsed by all.

Second, further studies should be conducted to answer the questions still remaining, the most significant ones being those contained in the Literature Search mentioned above. The vetting process would likely raise additional questions and concerns.

Third, studies should be conducted that are site specific to a local government’s shoreline so that actions can be implemented that will insure real environmental benefit. A key issue is where do salmon migrate, to

what extent to they utilize a local government's shoreline? It is not enough to say, 'It seems Chinook are all over the lake'.^{xxiii} One example of a site specific study is the *Movement and Habitat Use* study that was conducted for Chinook coming from the Cedar River to the Ship Canal (Reference 5). This study follows the rationale of the site specific requirement being imposed on private shoreline property owners who must provide an engineering report to justify the retention of bulkheads to protect their property.

The fourth option is to waive the scientific deficiencies and base the SMP updates on policies and regulations which would be focused mostly on esthetics and a hopeful outcome for habitat improvement.

In any event, now is the time for policy makers to fully understand the extent and applicability of the body of scientific knowledge that exists and make a determination as to which pathway forward to follow.

In the meantime, the real and serious issues of stormwater runoff and non-point pollution, true threats to fish habitat, continue.

Prepared by Richard Sandaas
Shoreline Property Owner
Chair, SPOCA, Shoreline Property Owners and Contractors Association
March 10, 2009
eride@msn.com

ⁱ R. A. Tabor and R. M Piaskowski, 2002. Nearshore Habitat Use by Juvenile Chinook Salmon to Lentic Systems of the Lake Washington Basin. Annual Report, 2001. U.S. Fish and Wildlife Service, Lacey, WA.

ⁱⁱ R. A. Tabor, J. A. Schuerer, H. A. Gearns, and E. P. Bixler. 2004. Nearshore Habitat Use by Juvenile Chinook Salmon to Lentic systems of the Lake Washington Basin. Annual Report, 2002. U.S. Fish and Wildlife Service, Lacey WA.

ⁱⁱⁱ Multiple Contributors. 2008. Synthesis of Salmon Research and Monitoring. Seattle Public Utilities, U.S. Army Corps of Engineers

^{iv} T. Kahler, M. Grassley, and David Beauchamp, 2000. A Summary of the Effects of Bulkheads, Piers, and Other Artificial Structures and Shorezone Development on ESA-listed Salmonids in Lakes. City of Bellevue. Page 9

^v Mark T. Celedonia, R. A. Tabor, S. Sanders, D. W. Lantz, and I. Grettenberger, 2008. Movement and Habitat Use of Chinook Salmon Smolts and Two Predatory Fishes in Lake Washington and the Lake Washington ship Canal. U. S. Fish and Wildlife Service, Lacey, WA. Page 1

^{vi} Ibid, Page 3

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- vii Multiple Contributors, Synthesis, Page 41
- viii Ibid, Page 45
- ix Chapter 4: Chinook Conservation Strategy for WRIA 8, Page 32
- x Kahler, A Summary of the Effects, Page 43
- xi Ibid, Page 44
- xii Celedonia, Movement and Habitat, Page 2
- xiii Tabor, Nearshore Habitat, 2001, Page 49
- xiv Tabor, Nearshore Habitat, 2004, Page 29
- xv Celedonia, Movement and Habitat, Page 1
- xvi Chapter 4: Chinook, Pages 32 and 33
- xvii Kahler, A Summary of the Effects, Page 36
- xviii Ibid, Page 36
- xix Multiple Contributors, Synthesis, Page 40
- xx Tabor, Nearshore Habitat, 2004, Page 52
- xxi Ibid, Page 12
- xxii Chapter 4: Chinook, Pages 25 and 26
- xxiii R. A. Tabor, Comments, November 18, 2008, Chinook salmon usage of Kirkland shorelines

Teresa Swan

From: Lori Eagle [huthhuth@msn.com]
Sent: Thursday, July 23, 2009 3:31 PM
To: Teresa Swan
Subject: Please better protect Lake Washington's shoreline

Kirkland Planning Commission
Dear Planning Commission Member,,

Thank you for your work to protect Lake Washington and other streams in Kirkland. By improving existing inadequate wetland buffers and better protecting intact shorelines, the draft SMP already includes many good aspects.

But, there are important changes needed to adequately protect Lake Washington's shorelines ? most importantly, we need to adopt science-based buffers that will protect lakes and streams.

I appreciate that you are trying to distinguish between what's appropriate in a natural area vs in a developed area, but there are a couple of things I hope you'll fix to better protect our natural shorelines. First, only things that need to be on the water (?water-dependent? uses and activities) should be allowed in the buffer and vegetation areas. Second, the small buffers may work for developed areas, but Natural areas should have science-based buffers. And finally, it might make sense to allow a number of things to happen in setbacks for developed areas, but it's not appropriate in the Natural areas.

Thank you for your consideration. And thanks again for your work to better protect Lake Washington!

Lori Eagle
10507 NE 48th Pl
Kirkland, WA 98033

Teresa Swan

From: Bieber, Alisa J (DFW) [Alisa.Bieber@dfw.wa.gov]
Sent: Thursday, July 23, 2009 3:56 PM
To: Teresa Swan
Subject: RE: Notice of Availability for City of Kirkland draft updated Shoreline Master Program

Teresa,

Thank you for notice that the SMP updates were available for review. Overall, they look like they will mesh fairly well with state requirements. I have a few comments, below. Please contact me if you have questions.

1. When grating is discussed, 40% open area is required. Nearly all the grating used is greater than 40% and I think we should encourage more and more open area. It would be clearer to say "40 % or greater open area". Also, I've been asked if I can approve glass, so you might want to think about whether that would work for you.
2. Currently, the draft requires grating if more than 50% of the decking is replaced. I would recommend adding a time period for it, so if over half the decking is replaced over a period of 5 years, grating is required. Allowing people to replace half one year and half the next wouldn't work with WDFW guidelines and wouldn't benefit the habitat.
3. On re-decking projects, WDFW guidelines require all new decking to be grating, not the first 30 ft. If Kirkland decides not to incorporate only 30 ft into their code, it will still be important for the planners talking to project proponents to know that WDFW is going to require full grating, even if Kirkland doesn't.
4. Are platform lifts regulated as part of the dock or as a boat lift or some other way? I would recommend that they are regulated as part of the dock (when it comes to size and location and grating, etc).
5. What should be included in a "needs assessment"? The SMP should specify what reasons are valid for replacing an old hard shoreline bulkhead with another hard shoreline. Is it ok to say "it would be too expensive" or "I don't think it would work" or "I don't like how it looks?" I'm ok with not requiring an expensive geotech report, but the needs assessment needs to be more precisely defined to make sure that people aren't using it as a loophole to replace bulkheads that aren't necessary to protect their property.
6. I was interested in the administrative approval option that allows people to have up to 26' long fingers and 8' wide ells if approved by State and Federal agencies. While it is important that all the permitting agencies are coordinated, it also is understandable that each agency and municipality has different mandates and priorities. I appreciate that Kirkland has the 26' and 8' limits that are placed on piers within the administrative approval option, but I was wondering if you want to limit the length of ells or the width of fingers as well.
7. 21.8 is given as the OHWL in Lake Washington. For clarity, it should say the datum is being used is NGVD 29. The other datum, NAVD 88, yields a different OHWL.

Alisa Bieber
 Area Habitat Biologist, WDFW
 Region 4, Issaquah Office
 425-313-5681

From: Teresa Swan [mailto:TSwan@ci.kirkland.wa.us]
Sent: Thu 7/16/2009 3:51 PM
To: Jean White; thomas.sibley@noaa.gov; Brock, David W (DFW); Bieber, Alisa J (DFW); mark.isaacson@kingcounty.gov; mary.r.reed@nws02.army.mil; hugo.flores@wa.dnr.gov
Subject: Notice of Availability for City of Kirkland draft updated Shoreline Master Program

Dear Agencies with Jurisdiction:

The City of Kirkland is providing you with a **Notice of Availability** for our **draft updated Shoreline Master Program**.

If you have any questions on the notice or the draft documents, please contact me.

Thank you.

Sincerely,

Teresa Swan
Teresa Swan
Senior Planner
(425) 587-3258 Fax (425) 587-3232
tswan@ci.kirkland.wa.us
City of Kirkland
123-5th Ave
Kirkland, WA 98033
Tuesdays-Thursday 8:45pm to 5pm



Please don't print this e-mail unless you really need to. Reduce, Reuse, Recycle.

Teresa Swan

From: Dean Patterson [Dean@futurewise.org]
Sent: Thursday, July 23, 2009 2:03 PM
To: Teresa Swan
Subject: SMP comments
Attachments: FW ltr Kirkl SMP 09Jul final.pdf

Teresa,
Attached are comments from Futurewise. Please pass them on to the PC.

I want to compliment you, your staff, and the PC on your system for dealing with existing urban areas, while also including enhancement of those degraded areas. It is the best we have seen, though we have a couple minor reservations that should be easy to address. We will recommend that other jurisdictions look to Kirkland as a model for how to do it well.

Thanks,

Dean Patterson - Shoreline Planner
futurewise

email: dean@futurewise.org
web: www.futurewise.org

814 Second Avenue, Suite 500
Seattle, WA 98104-1530
Direct Cell 509-823-5481 / HQ office 206-343-0681 / Fax 206-709-8218



July 23, 2009

City of Kirkland Planning Commission
C/O Teresa Swan, Senior Planner
Kirkland Planning Department
123 5th Avenue
Kirkland, WA 98033

Sent by email to: TSwan@ci.kirkland.wa.us

Re: Kirkland Shoreline Master Program Update

Dear City of Kirkland Planning Commissioners:

Thank you for the opportunity to comment on the proposed Kirkland Shoreline Master Program. Our mission at Futurewise is to promote healthy communities and cities while protecting working farms, working forests, and shorelines for this and future generations. Futurewise has members across Washington State, including many in the City of Kirkland.

We congratulate you on developing very good Shoreline Master Program (SMP) that deals with the challenges of urban areas. It is the best we have seen so far. The SMP also does a good job of addressing many of the issues that are required under the SMP Guidelines. The staff and Planning Commissioners should be proud of their work.

We have one organizational recommendation that will help readers better understand the requirements of the SMP. The remainder of our comments are focused on detailed issues. Please note that our comments are as much to prevent gaps that could result in inappropriate shoreline development as to address concerns of inadequate protection.

The draft SMP has many good elements. Some of the key provisions, which we strongly support, are:

- We are very pleased to see the excellent system for enhancing degraded urban shorelines over time, including ways to enhance vegetation along the water. Maintaining the water quality of Lake Washington and the streams that help support the lake will require the reintroduction of native vegetation along the shorelines.
- The draft SMP prohibits new private recreational floats and boathouses, and addresses the proliferation of other boating structures. This type of development “consistently results in a reduction of fish and invertebrate diversity and the dominance of the fish assemblage by disturbance tolerant species (centrarchids - primarily smallmouth bass), and the extirpation of rare species.”¹ They also reduce the primary productivity of Lake

¹ Tom Kahler, The Watershed Company, and Martin Grassley and David Beauchamp, Washington Cooperative Fish & Wildlife Research Unit, *Final Report: A Summary of the Effects of Bulkheads, Piers, and Other Artificial*

Washington on which all life in the lake depends. The proposed provisions will help address these serious adverse impacts on Lake Washington.

- The shoreline stabilization section is very well written. The standards are detailed and well thought out. We believe they provide an appropriate level of property protection while protect shoreline functions.
- The public access section is very well written, and includes details of how to do public access. One of the policies of Washington's Shoreline Management Act is to increase public access to publicly owned rivers, streams, and lakes.² As our population increases, we need more public access. The development needed to accommodate this growth can also interfere with the traditional public accesses that people have used for years to boat, swim, watch wildlife, and fish. The Shoreline Master Program Guidelines implement the Shoreline Management Act policies by including requirements for public access.³ We support the city's efforts to provide for public access and to minimize the potential adverse effects of public access on nearby property owners. Well located and well designated public access also benefits nearby property owners by minimizing trespass by city residents seeking access to Lake Washington and the city's other shorelines.
- The problem of docks is addressed by developing detailed standards for them. Docks adversely impact shorelines by encouraging the development of nuisance species, reducing the number of native species, such as salmon, and reduce the primary productivity on which all life in the lake depends.⁴
- The proposal includes buffers that will be adequate to protect the wetlands that lie along city's shorelines. Adequate wetland buffers are needed to protect shorelines from water pollution, light pollution, noise pollution, and to provide habitat for the fish and wildlife that depend on the wetlands.⁵
- The SMP proposes measures to native vegetation along the lake. Maintaining native vegetation along the lake is needed to maintain terrestrial insects and detritus on lake organisms and fish and which is necessary to maintain the health of the fish populations in lake Washington.⁶ Native vegetation also helps to filter pollution out of

Structures and Shorezone Development on ESA-listed Salmonids in Lakes p. 48 & p. 2 (Prepared for the City of Bellevue: 13 July 2000). Accessed on July 22, 2009 at:

http://www.ci.bellevue.wa.us/pdf/Utilities/dock_bulkhead.pdf.

² RCW 90.58.020.

³ WAC 173-26-221(4)(d).

⁴ Tom Kahler, The Watershed Company, and Martin Grassley and David Beauchamp, Washington Cooperative Fish & Wildlife Research Unit, *Final Report: A Summary of the Effects of Bulkheads, Piers, and Other Artificial Structures and Shorezone Development on ESA-listed Salmonids in Lakes* p. 48 (Prepared for the City of Bellevue: 13 July 2000).

⁵ Sheldon, D., T. Hruby, P. Johnson, K. Harper, A. McMillan, T. Granger, S. Stanley, and E. Stockdale, *Wetlands in Washington State - Volume 1: A Synthesis of the Science* p. 5-38 & p. 5-49 (Washington State Department of Ecology Publication #05-06-006. Olympia, WA: March 2005). Accessed on July 22, 2009 at:

<http://www.ecy.wa.gov/biblio/0506006.html> A copy is included on the CAO on CD provided with the paper original of this letter in the "wetlands" directory filename: "0506006.pdf"

⁶ Tom Kahler, The Watershed Company, and Martin Grassley and David Beauchamp, Washington Cooperative Fish & Wildlife Research Unit, *Final Report: A Summary of the Effects of Bulkheads, Piers, and Other Artificial*

the runoff that enters the lake. Emergent vegetation along the lake's shoreline can effectively reduce wave energy and property erosion.⁷ Native vegetation also reduces the number of unwanted geese on the shoreline, reducing their negative impact on properties along the lake.

- The most intact shorelines are protected with a Natural designation. This will help protect them from adverse impacts/

Below we provide our recommendations to improve SMP. Our comments include the regulations and the Cumulative Impacts Analysis.

Recommendations on the Shoreline Master Program

Organization of SMP

The General Regulations apply to all or almost all development. They have been placed at the end of the ordinance, with the specific use and modification requirements placed in front of them. We recommend that the General Regulations be placed first so the reader gains an understanding of requirements for all development, before reading the specific regulations, which add onto the general regulations. This will help readers better understand the requirements of the SMP.

General Provisions

The Applicability section (83.20) needs a subsection to describe what kind of activity is subject to the regulations. We recommend text that says: "The provisions of this Title (or chapter) shall apply to all uses, land and water alterations, and development within the City of Kirkland shoreline jurisdiction," or something similar. It can be followed by exceptions such as federal activity on federal land, tribal jurisdiction, etc.; and should include the continued operation of existing lawfully established uses as they have historically been operated. The list items in the recommended text are important to avoid confusion about what is subject and not subject to the SMP in the future.

The Purpose and Intent section (83.30) needs to include the policy statement of the Shoreline Management Act (SMA; RCW 90.58.020)). Subsection 5 lists the policy statement for Shorelines of Statewide Significance, however, the most important policy statement is not included. We recommend that the three paragraphs of the state policy needs to be part of the Purpose and Intent section of the regulations. It is very important that these principles be very visible in the SMP to ensure their consideration in implementation of the SMP – of which the most important statement is: "This policy contemplates protecting against adverse effects to the **public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life**, while protecting generally **public rights of navigation** and corollary rights incidental thereto." The SMA policy statement in RCW 90.58.020(3) regarding public access, should also be included.

Structures and Shorezone Development on ESA-listed Salmonids in Lakes p. 48 (Prepared for the City of Bellevue: 13 July 2000).

⁷ *Id.* at p. 49.

Permitting Provisions – Chapter 141

A statement is needed in 141.30 that “no uses, land and water alterations, or development shall be undertaken without obtaining a permit or letter of exemption to ensure conformance with the SMP.” I could find no similar statement that actually requires review by the City. This statement provides an important link to implementing the regulations that is not accomplished by 141.30.1. The section should actually be titled “Review Required” rather than “Permit Required” because even exemptions must be reviewed for conformance with the SMP standards (they are only exempt from going through the permit process).

Section 141.40 includes procedures for how to administer or review an exemption from the Substantial Development Permit. This section is very important because under the current structure of the SMP, exemptions will be the most common type of shoreline review.

The primary concern is that exemptions that don’t have consistent rules will not be implemented to meet the policies and regulations of the SMP. A loophole or gap and will result in continued degradation of shoreline ecological functions. In 141.40, the text on exemptions needs to clearly state:

- That exempt development is only exempt from the Substantial Development Permit process, and is still subject to the Variance and Conditional Use Permit processes when applicable.
- That prohibited uses and activities can not be allowed under an exemption.
- That exempt development must still meet the SMP standards.
- That the exemption is not permission to degrade the shoreline.
- That exemptions are to be construed narrowly.
- That if any part of the development is not exempt the entire project must be reviewed in the permit.
- That a letter of exemption is required to document conformance with the SMP standards.
- That a project not qualifying for an exemption might still apply for a permit.
- That sufficient documentation must be submitted for the administrator to determine that the project qualifies for the exemption and meets the development standards.
- That conditions may be attached to the letter of exemption to ensure compliance with the development standards.

Section 141.40.3 requires a proponent to provide materials needed to review the project, which are listed on the application form. However, it then allows applicants to provide a JARPA application instead, which may not include the information needed. We recommend that when the JARPA is used, the city also specify the necessary supporting information. This subsection also allows the administrator to waive the submittal requirements. An exemption review can not be accomplished without adequate submittal information. This is especially true given the issues raised in the next paragraph. In addition, 141.40.6 implies that a “letter of exemption” may not be issued for exemptions. The WACs require that (1) all development be reviewed, (2) that all development, including exemptions, result in no-net-loss of ecological functions, and (3) jurisdictions keep track of all development in their jurisdiction. If submittals are not required, then the jurisdiction cannot know whether the project will have an impact or not. If letters of exemption are not issued, then they have no means of documenting what

was approved or not approved. If either of these practices is happening, then the jurisdiction cannot keep track of the development in its shorelines. This inevitably leads to cumulative impacts and loss of ecological functions, which has been the practice for the last 30 years in this state.

The subject of exemptions is closely related to nonconforming development and variances in the draft SMP because it is written such that development close to the water does not have to obtain a Shoreline Variance. Development on small residential lots close to the water will get reviewed through an exemption, whether for expanding existing residences or establishing new ones on vacant land. For this system to work effectively, the city needs to make sure that potential impacts, including cumulative impacts, and mitigating measures have been identified in advance.

Section 141.70 describes the Variance and Conditional Use permit processes; however, neither describes what these reviews are for. Variances are for development that can not meet a standard, and needs relief from the requirement. A Conditional Use is a development that is appropriate in some parts of a shoreline environment, or otherwise needs particular care or attention in its review. Descriptions of these reviews are needed in the General subsections for each permit type.

Critical Areas Ordinance (CAO)

Several places in the SMP partially incorporate the Kirkland critical areas regulations into the SMP. They also exclude certain inappropriate parts from incorporation. However, there are other parts of the CAO that should be excluded from incorporation into the SMP, because the requirements of the SMP should apply instead:

- The CAO permitting processes or references to them should be excluded.
- Any application process sections should be reviewed for compatibility with SMP requirements.
- The exclusion of certain critical areas from protection needs to be left out, such as the statements that eliminate protection for small wetlands.
- The enforcement provisions should be excluded.

Enforcement

Enforcement in the SMP is covered in one paragraph that defers to the WACs. More details are needed to give details and authority for how to do enforcement. We recommend that the penalties be increased to better cover costs of enforcement and discourage violations. We have three recommendations to better cover costs of enforcement and discourage violations. If a jurisdiction has a lax enforcement system, it is extremely unfair to law abiding citizens, because it penalizes them by making them pay the expense and jump through the hoops of getting a permit, and rewards those ignoring or breaking the law by having not consequences. We recommend:

- 1) Violations should be required to pay a penalty fee of double or triple the normal amount, and require violations that might have qualified for an exemption to pay variance fees for whatever standards they didn't follow at the double or triple fee.
- 2) The City should initiate a fine system, which may also require implementation by a deputized enforcement officer from your other building and land use fine systems.

- 3) The City should withhold other land use and building permits until the violation is resolved.

These are steps that establish effective and efficient incentives to comply with the law and protect our important shoreline resources.

Definitions

The definitions for Significant Vegetation Removal and the subsequent regulations that use the term only require addressing significant levels of impacts; 'insignificant' degradation is apparently acceptable and doesn't have to be mitigated. This is an approach to impacts and mitigation that is systematic throughout the SMP, and will result in cumulative degradation of ecological functions over time. Correcting it will need careful review.

The definition of Upland would include wetland areas, since wetlands have a wetland boundary rather than an ordinary high water mark.

Piling only refers to being used for piers. Yet pilings are often used for docks and other structures.

Riparian Area lists the ecological functions that vegetation has, but it misses one of the primary functions that is intensely dependent on vegetation – fish and wildlife habitat. As listed in the policy of the SMA, the protection of fish and wildlife are a primary reason for and policy of the Act.

Use Table

We generally support the use of a Use Table. The table provided in the SMP does a good job at addressing uses based on water-dependency categories for some types of uses. However, a use table is only of benefit when it consistently captures all the use and permit level information in the SMP. As currently written, much of the use provisions and permit level information is found in the text, and is sometimes contradictory with the table. This means that the reader has to not only look at the table, but also look in the text for each type of development and modification to determine whether or not something is allowed. The benefit of having a table is to present all the use and permit level information in one location (not adding an additional location to look), rather than having it scattered throughout the entire SMP document. As written, we are concerned that the current application of the use table will create gaps and confusion. We recommend screening each section of the SMP for use and permit level provisions, and moving them to the table.

The Use Table has a number of innovative entries that seem to cover special issues well. It also does a good job of covering many issues that some jurisdictions are missing, such as resource uses. Below are some specific comments on the use table:

- Empty entry under Mining has permit levels listed.
- Commercial uses are categorized by water dependency: Water dependent use; Water-related & water-enjoyment uses; and Nonwater oriented & nonwater-dependent use.
 - We recommend dropping the “nonwater-dependent” term from the last one, since its covered by “nonwater-oriented”, to avoid confusion.
 - Each category except Water-Dependent has a “catch-all” entry for things not covered in the detailed entries. The Water-Dependent category needs one too.

- The catch-all entry needs to cover other commercial uses besides just “retail”.
- The catch-all terms need to refer to their categories.
- Recommended entries: “Any *water-dependent commercial use* [i.e. fill in the commercial category name] selling goods or providing services other than those specifically listed in this chart.
- Hotel/Motel and Entertainment or Cultural Facility are listed as a “Water-related, water-enjoyment commercial use.” However these uses do not meet the definitions such uses in WAC 173-26-020. Cultural uses have a wide range of possibilities, many of which would be focused inside a building and do not provide opportunities to enjoy the shoreline. These entries should be moved to the nonwater-oriented category and allowed in the different environments appropriately. Better definition of intended cultural facilities may indicate a better connection with the shoreline to remain as water-enjoyment.
- The items in the Institutional Uses category are not really institutional uses, but rather “Community Services”. The name should reflect the entries of the category.
- Float planes are listed in Institutional – this seems to be a copy error from commercial.
- Institutional uses are not a category of land use in the SMP Guidelines. They are more like Commercial Uses, and in fact, some of them (such as care centers) are actually commercial ventures. The entries under Institutional Uses should be moved to the Commercial section. The section should be titled “Commercial and Community Service”. This should be carried through the related parts of the SMP. Of particular concern is that non-water-oriented commercial uses (and industrial too) have strict limits for when they are allowed in shoreline jurisdiction. These need to apply equally to Community Services.
- Industrial Uses also includes a water-dependency categorization. The water-dependent industrial entry for Aquatic indicates that it is allowed, if allowed for the adjacent upland environment. Yet it is prohibited in all upland environments. If this is intended, the SMP should also prohibit the use in the Aquatic environment.
- Recreational Uses also uses water-dependency categories, similar to Commercial Uses. The same strategy described above should be used for catch-all entries for the different categories.
- Recreational Uses includes two entries for piers/docks. The “detached” units term seems to be duplicative for both and seems to mean single family residential, but should clearly indicate so. The second entry seems to be for “multi-family” structures, and should clearly indicate so. **Please note** that in the SMP Guidelines, piers and docks are only allowed for water-dependent uses and public access, and residential uses are not water-dependent, except specifically a dock for a single family residence’s watercraft.⁸ Thus multi-family development may not have a dock/pier. See our comments on Pier/Docks for details of this issue.
- Some recreational use entries seem to be blank for Aquatic.
- The Transportation section is categorized for “water-dependent” and “nonwater-oriented”. This is an incomplete categorization that misses two water-dependency categories. The better categories would be “water-oriented” and “nonwater-oriented”.
- Similar to Commercial and Recreational uses, Transportation needs catch-all entries for facilities not matching the detailed entries in each category.

⁸ WAC 173-26-231(3)(b).

- Similar to Transportation, the Utilities section needs a “water-oriented” and “nonwater-oriented” categorization. This is needed to meet the SMP Guidelines.⁹
- The modifications portion of the table is very small and is often contradicted by the many use provisions placed in the text rather than in the table. This may inadvertently mislead the reader of the table. Specifically, the modifications have to be for certain types of development – for example: fill in the water is only allowed for water-dependent uses, but this is not reflected in the table. Many other examples exist. These qualifications should be included in the table from the text.

On a side note, we found the design of the Use Table to be cumbersome. It is printed in landscape format, yet the table is narrow enough to print in portrait format. Some of the columns are unnecessarily wide and could be narrowed to make the table fit, if needed.

The Development Standards Table is also cumbersome, though mainly because of the amount of text placed in it. Experimenting with column width and table will greatly improve its readability. For example, the Development Standards column is 25% of the table width, but is mostly blank space. Specific comments on the setbacks/buffers in the table are discussed below.

Shoreline Jurisdiction and Maps

Section 83.90 is titled Shoreline Jurisdiction and Official Shoreline Maps, yet the section is only about maps and map designations. The extent of shoreline jurisdiction is found under 83.20 Applicability. We recommend adding a clarification, as follows with strikeout and underlined edits:

83.20 Applicability

1. Shoreline Jurisdiction

- a. The provisions of this Chapter shall apply to all shoreline of the state, all shorelines of statewide significance, and shorelands, the extent of which are found in the definitions of those terms.
- b. Lake Washington, its underlying land, associated wetlands and stream deltas, together with those lands extending landward 200 feet from the OHWM shall be within shoreline jurisdiction.
- c. Shoreline jurisdiction does not include buffer areas for wetlands or streams that occur within shoreline jurisdiction, except those buffers contained within lands extending landward 200 feet from the OHWM of Lake Washington.

We recommend that item (c), above, be changed to include buffers rather than excluding them. As written, such wetlands would be protected under the existing critical areas regulations, which do not meet the Best Available Science requirement – being only 1/3 to 1/2 of the width in the SMP. Thus wetlands that extend near the edge of the 200 foot boundary from the lake would not be adequately protected from adjacent development, and would be degraded over time. This will be particularly important for the Natural designated areas, where intact buffer areas may still exist. Also, the *Anacortes* decision has created a significant level of confusion over when shoreline master program provisions control and when critical areas

⁹ WAC 173-26-241(3)(l).

regulations control.¹⁰ We think the safest approach is to expand the shoreline jurisdiction to include the necessary buffers and use the SMP to manage critical areas within shoreline jurisdiction.

In 83.90.1.b.2.c, the text discusses interpretations for wetlands extending beyond the mapped area. This should also include stream deltas into the lake. In this interpretation section, item (a) discussing the use of property lines, we also recommend adding a rule for when property lines are moved.

Shoreline Environments

The different environments are described in 83.100-150. These sections include Purpose and Designation Criteria sections. However, they do not include the Management Policies section (from the SMP Guidelines), or equivalent, that is normally found in other SMPs. This section would in general terms describe the appropriate and inappropriate uses for the environment. The details of which would be implemented in the use table and regulations. Without them it is difficult to determine if uses and regulations are compatible with the environment, and by extension, whether development projects are also consistent with them.

Subdivisions

A policy is needed to protect critical areas during subdivision – something like: “To stop the parcelization of certain critical areas among many owners and better protect critical area functions, subdivisions that include them should include extensive critical areas in separate tracts.” A related regulation would be: “Subdivisions that include streams, wetlands, their buffers, Floodways and CMZs, and (some) geologic hazards shall provide them with long-term protection in the form of either critical areas tracts using separate parcels, or attaching such areas to one of the subdivision parcels. Such areas shall be held in common by the subdivision landowners, or by just one landowner”

Commercial

A quirk of the SMP guidelines is that Community Services, such as government buildings/uses, churches, hospitals, etc. is not described specifically. Since they have many of the same characteristics, we recommend including them with commercial uses, such that the category becomes Commercial and Community Service. The change would need to be made in several places in the document. This also ensures they are not left out of the general intent of the SMP Guidelines to limit non-water-oriented commercial and industrial uses.

The Use Table and Section 83.210 do not really capture the requirements in the SMP Guidelines¹¹ for allowing non-water-oriented commercial uses. One example is that they are allowed if accompanied by a water-‘*oriented*’ use, when the guidelines state that they must be accompanied by a water-‘*dependent*’ use. Changes are needed to meet the requirements in the guidelines.

¹⁰ *Futurewise v. Western Washington Growth Management Hearings Bd. (Anacortes)*, 164 Wn.2d 242, 245 – 48, 189 P.3d 161, 162 – 64 (2008).

¹¹ WAC 173-26-241(3)(d).

Parking

Underground parking is allowed within the setback, even within 5 feet of the water. There are underground functions that setbacks/buffers provide. For example, allowing cooler, infiltrated water to flow into lakes to support habitat during periods when the lake water temperatures increase for fish (such as salmon) that require cooler water without exposing them to the predators in deeper lake water. The SMP Guidelines state that “parking facilities are not a preferred uses and shall be allowed only as necessary to support an authorized use.”¹² Placing parking closer to the shoreline water than the primary use is contrary to the idea of limiting parking to be only as necessary to support the use. Other structures must meet the buffer. Underground parking should also meet the setback.

Glare from parking lot lighting is an important impact on fish and wildlife habitat. A standard needs to be added that minimizes and avoids illumination of the water, setback/buffer areas, wetlands, and other wildlife habitat areas. A similar standard is found in the Overwater Structures section.

Transportation

Historically, transportation projects have had some of the most destructive impacts on shoreline ecological functions. Linear transportation projects have special characteristics that need to be addressed with detailed regulations to deal with the inherent impacts they have. We recommend using mitigation sequencing to reduce or avoid the impacts by providing details specific to transportation uses.

The Transportation section has a number of good provisions. However additional clarification is needed relating to the mitigation sequencing aspect of avoidance, using language similar to the following: “Facilities should be located out of shoreline jurisdiction unless there is no feasible alternative. When necessary, they should be located as far landward as possible.”

A regulation is needed that addresses a practice that can do as much damage as an actual project: “To prevent secondary impacts from transportation projects, the disposal location of excess material and waste materials shall be disclosed in submittal materials.”

Additional standards are needed to deal with the peculiarities of linear transportation projects impact on water systems by covering the issues below:

- In floodplains, construct linear transportation corridors at grade or otherwise provide flood water pass-through, especially for flood overflow channels.
- Don’t cut off or isolate hydrologic features
- Minimize the number of bridges, by first requiring the use of alternative access points, sharing existing bridges, and sharing new bridges with adjacent lots whenever possible.
- Span both the OHWM & floodway

The transportation section is intended to include some non-linear transportation facilities (ferries & water taxis). However the use table and Section don’t seem address to other types of non-linear transportation facilities. We recommend grouping the linear and non-linear standards and focusing the language as needed. Additional standards may be needed in the

¹² WAC 173-26-241(3)(k).

regulations or use table to cover the range of transportation facilities. Examples include freeways and airports; if maintenance/storage yards are allowed they should be prohibited in environments they would be inconsistent with.

It is unclear whether access roads and driveways have to meet these standards, yet they can have as much impact (at a localized scale) as a larger facility. They have bridges and segments that may run parallel to the shoreline, and these aspects need to meet the same standards as other transportation facilities.

Utilities

Like the Transportation section, the Utility section needs additional standards to deal with the peculiarities of how utilities impact water systems:

- The standards should address major facilities (sewer plants, water treatment, transfer stations, substations, power generation) specifically and limit them to only their water-dependent components or prohibit them.
- Avoid erosion failures due to stream bed mobilization. In the CMZ or floodway and near streams, locate 4 feet below the bed or 1/3 of bankfull depth.
- Require lines under water features to be placed in a sleeve to avoid the need for excavation in the event of a failure in the future.
- Use an installation method preference order to reduce impacts of utility crossings. The preferences should be: Clear span, attach to bridge, boring, plowing, trenching.
- For underground utilities in high groundwater areas, prevent french-drain effects from draining/rerouting groundwater patterns that support wetlands and streams. Use native soil plugs or collars that interrupt gravel pipe-bedding spaced at intervals.
- Treat roads associated with utilities as roads.
- Return grade to previous or better condition that provides for normal floodwater passage.
- New underground utilities always have excess material. Always require disclosure of excess material disposal locations before approval to prevent secondary damage to the shoreline.

The Utility use provisions are incomplete, and the use table needs refinement to deal with the water-orientation of central facilities, and the different scales of utilities. Specifically: utility main lines which should be conditional uses in all environments; non-water-oriented processing facilities and substations should be prohibited in all environments; water-oriented processing facilities and substations should be prohibited in the environments they are inconsistent with, and should otherwise be conditional uses.

It is unclear whether utility services to individual uses have to meet these standards, yet they can have as much impact (at a localized scale) as a larger facility. They have stream crossings and segments that may run parallel to the shoreline and these aspects need to meet the same standards as other utility facilities.

Dredging

The dredging section is a dramatic example of the disconnect between what is allowed in the use table compared to the text. The table indicates that dredging for any reason is allowed.

However, the text appropriately limits when dredging is allowed. Using both systems is counterproductive and confuses the reader. The use limits in the text should be moved to the table to provide the detail about the limits on dredging. The dredging regulations should note that disposal of dredge material on lands should be considered as fill.

Fill and Excavation

Similar to dredging, the purpose for the fill needs to be differentiated. It should not be allowed in water, wetlands, or channel migration zones (CMZs). These limits need to be included in the table.

Most of the policies and regulations for fill can be applied equally well to excavation. We recommend you expand such instance to cover both upland fill and excavation. Alternatively, these provisions and the Land Surface Modification section may be combined.

Similar to transportation and utility regulations, there should be a provision for excavation to disclose the location of excess excavation material to prevent secondary impacts.

Restoration and Enhancement

Both the Policies and Regulations should include a statement that stand-alone restoration projects and mitigation enhancement work should be consistent with and use information from the Restoration Plan. It is an important link between all the required parts of the SMP Guidelines.

There are a number of provisions in the SMP that discuss the same issue of restoration projects that move the OHWM or wetland edge, etc. The provisions say that the shoreline jurisdiction or buffer doesn't change. This is based on House Bill 2199. However, the provisions do not implement the bill correctly. The bill established a process for changing the applicable shoreline boundary to the previous one, but it doesn't do this automatically, as indicated in the various SMP provisions. These provisions need to be changed to comply with the law. Please contact Tom Clingman at the Department of Ecology for details.

Public Access

Overall, the public access policies and regulations are some of the best we have seen. The only recommendation we have is that facilities should meet the full setbacks and buffers, unless they need a water-front location (swimming beach, fishing pier, access to such facilities, etc.).

Shore Stabilization

Section 83.510 includes a subsection regarding bulkheads in streams. Please note that these standards do not meet the SMP Guidelines.¹³ Note that the section addressing bulkheads on lakes does meet the SMP guidelines, and those on streams should be treated the same way. The Shoreline Stabilization section has many good provisions, including preference statements; however, the preferences need to be implemented by requiring that less impacting methods and structures be determined to not work before the more impacting ones are used. We strongly support the revegetation requirements for new projects. Section 83.310 discusses breakwaters, jettys, and groins. Please note that these are some of the most damaging in-

¹³ WAC 173-26-231(3)(A)

water structures, and should only be allowed for water dependent uses; and not be allowed for residential uses of any sort.

Pier, Docks, Boat Lifts and Canopies

These sections (83.280 & 83.290 & 83.300) are highly duplicative and consume 17 pages. Most SMPs have just one section for piers, docks, etc. and one section for “Boating Facilities” (using the SMP Guidelines term). Boating facilities typically address the peculiarities of larger multi-user pleasure boat facilities such as marinas and public boat launches (sewage handling, safety, garbage, lighting, navigation, etc.), and leave the detailed regulations for boating structures to the pier/dock section. The piers, docks, etc. sections typically deal with specific issues of non-boating piers/docks, and the details of boating structures. We recommend that these sections be clarified along these lines. We recommend that the piers/docks section be titled “Piers, docks, and boating structures.”

Of particular concern is the section devoted to piers/docks for multi-family residences. Note that the WAC for Piers and Docks¹⁴ states: “New piers and docks shall be allowed **only for water-dependent uses** or public access. As used here, a dock associated with a single family residence is a water dependent use provided that it is designed and intended as a facility for **access to watercraft...**” This has several consequences:

- (1) Residences are not water-dependent. However, a special exception is made for single family docks. Single family docks for purposes besides “access to watercraft” are not allowed. Note that detached docks or floats for single family recreation would not be allowed. The SMP appears to implement this point.
- (2) Docks for other residential uses (multi-family & long-term room rental) are prohibited since they are not water dependent. The SMP, as written, is contrary to this point. The provisions for these uses in the use table and text (83.290) need to be removed. Existing facilities would be nonconforming uses that can continue, but should not be expanded.
- (3) All other uses must be water-dependent or provide public access to have a dock/pier or a float. This standard needs to be added.
- (4) These provisions also apply to piers/docks used for **non-mooring** purposes. Examples include ship cargo handling, ship fueling, boat building/repair, in-water utility facilities, public docks for fishing or swimming, etc.

The piers/docks section for single family residences makes a good start at addressing the problem of the proliferation of boating structures, however we recommend adding specifics to better guide how its done. This is a primary issue for us, as it is needed to protect the shoreline functions. We recommend that a policy be added or expanded to be similar to the following strategy to reduce proliferation. Some of these items may already be in the SMP, and specifics of the text below may need to be changed to deal with the structures that are most common in your jurisdiction.

“Avoid the proliferation of pier/dock & boating structures through the use of mitigation sequencing, using the following preference criteria:

¹⁴ WAC 173-26-231(3)(B)

1. New single family residential subdivisions may only use shared or community facilities. Such facilities should have limits on their size, and single-user structures are not allowed.
2. For existing single family residential lots:
 - Non-waterfront lots may not have boating structures, but rather must use a marina or community or public facility.
 - Waterfront lots first should try to share nearby existing facilities or use nearby public facilities. When that is not possible, new facilities need to be shared with adjacent or nearby lots that do not have facilities, if there are any present. Cost sharing or late-comer agreements should be allowed, similar to those used for shared roads/driveways and utilities.
3. Multi-family development is not water-dependant, and may not have such structures.
4. Non-Residential uses should share an existing or new facility whenever possible before building a single-user facility.”

A related mitigation sequencing policy is also needed.

“When a new pier/dock & boating structure is warranted or necessary, avoid the use of more-impacting structures through the use of mitigation sequencing using a preference for less-impacting facilities. Proposals shall demonstrate that a less impacting structure won’t work before using a more impacting structure in the preference list below. For platform or mooring structures, the minimization sequence is in the following order of preference: Avoidance, Buoy or Float, Dock/pier, Solid quay (review as fill/excavation and stabilization instead). For launching structures, the minimization sequence is in the following order of preference is: Avoidance, Soft ramp (for rare-use site), lifts that do not result in additional overwater coverage when the boat is stored, rails, hard ramp (also review as fill/excavation).”

In developing implementing regulations, we recommend including a requirement to demonstrate why a lesser impacting facility will not work before a greater impacting facility will be approved.

The table is fairly thorough on different boating structures, but it should be supplemented to deal with piers/docks for non-mooring uses. We recommend adding the following lines in the table.

- Pier/dock for non-moorage water-dependent uses. Allow in all environments except Natural. Should be conditional use in Urban Conservancy.
- Pier/dock for non-moorage nonwater-dependent uses. Prohibited in all environments.

Setbacks, buffers, and vegetation management

The SMP includes “buffers” for wetlands and streams, and “setbacks” with vegetation management for Lake Washington. The *wetland* buffers are based on science (whereas those in the critical areas regulations were not), and we support them.

The *stream* buffers in the SMP are the same as those in the critical areas regulations – 75 feet or less. The stream buffers are not based on science, but rather based on existing developed situations.

The SMP setbacks, similar to the stream buffers, are not based on science, but rather on the existing development patterns and the ease of development in the future. In addition, the vegetation requirements are much less than is typical for a “buffer”. In most situations this approach would be inadequate. *However*, we support the setback system because most of the urban area is highly developed with little or no existing vegetation, and the system includes a demonstrated commitment to enhancing degraded shoreline areas in the limited areas where it is possible.

The smaller setbacks/buffers are compensated for by the reasonable requirements to enhance vegetation both along the shoreline and in the water when opportunities exist. The result will be a gradual increase in vegetation and habitat for fish and small animals over time. This will meet the requirement¹⁵ to plan for restoration of the jurisdictions degraded shorelines, and meet the requirement¹⁶ to achieve overall improvements in shoreline ecological functions. *These are some of the most difficult requirements to meet, and Kirkland’s SMP is the best example of how to do it that we have seen.*

This system works well in highly urbanized locations. The modifications that we think are needed relate to the application of this system in locations that can provide the wider buffers necessary to protect shoreline functions or otherwise have a substantial amount of vegetation. For example, the maintenance of large woody debris requires 100 to 150 foot wide buffers.¹⁷ This is important to maintaining habitat along the lake. For example, coho salmon smolts seek cover near large woody debris during migration.¹⁸ Another example is wildlife habitat as is found in the Natural environment. Wildlife habitat generally requires buffers of 100 to 200 feet wide, with wider buffers needed for some wildlife.¹⁹

We recommend the following important changes for making the excellent system you have developed work across the range of shoreline conditions.

- (1) The Natural environment should include buffers and setbacks wide enough to protect their shoreline functions. These locations are capable of meeting a buffer of 100 to 150 feet, as is necessary to protect wildlife habitat. If there are other locations not designated as Natural but capable of meeting these buffers, the same buffers should apply to those areas.

¹⁵ WAC 173-26-186(8)(c).

¹⁶ WAC 173-26-201(2)(f).

¹⁷ K. L. Knutson & V. L. Naef, *Management Recommendations for Washington’s Priority Habitats: Riparian* p. 164 (Wash. Dept. Fish and Wildlife, Olympia WA: 1997). Available at: <http://wdfw.wa.gov/hab/ripxsum.htm>

¹⁸ Tom Kahler, The Watershed Company, and Martin Grassley and David Beauchamp, Washington Cooperative Fish & Wildlife Research Unit, *Final Report: A Summary of the Effects of Bulkheads, Piers, and Other Artificial Structures and Shorezone Development on ESA-listed Salmonids in Lakes* p. 9 (Prepared for the City of Bellevue: 13 July 2000).

¹⁹ *Management Recommendations for Washington’s Priority Habitats: Riparian* p. 165 – 67.

- (2) Like the setbacks, the stream buffers are not science-based. The enhancement standards used for setbacks should also be applied to stream buffers to ensure they also improve over time.
- (3) There are a number of special standards that are acceptable in highly urbanized settings, but are not so in Natural environments. This would be similar to the public access requirement not applying in the Natural environment. The standards needing this treatment are view corridors, walkway/access corridors, setback reductions, and the extensive amount of uses, facilities, and structures allowed in the setbacks (nearly a page of items in 83.330 Land Surface Modification, nearly two pages of items in the Shoreline Setback section of 83.190.2, Underground Parking structures in 83.440), Minor Modifications in several locations, and similar lists). These items need to be substantially reduced to those that have a real need to be near the water or provide access to the water.

Note that, in the SMP setbacks table, water-enjoyment uses do not have to be next to the water to maintain their water-enjoyment function. Yet the table allows them to unnecessarily degrade the shoreline by allowing them to locate closer to the water than other uses that don't need to be close to the water. They should have wider setbacks/buffers that are the same as non-water-oriented uses.

The SMP (in 83.500.4 and 83.510.4) allows many things in stream and wetland buffers that eliminate vegetation and degrade ecological functions. For example, stream buffers are not applied to piped streams. If there is no buffer or setback, then the SMP allows construction over those piped streams, thereby precluding any restoration or daylighting opportunities in the future. These sections also allow stormwater outfalls, water quality facilities, roads, utilities, and "minor improvements" to eliminate the ecological functions performed by buffer vegetation when other structures and facilities are not allowed to do so.

Shoreline Setback Reduction

This section goes into great detail about reducing the required shoreline setback. It is supposed to provide incentives to encourage enhancement. We have a major concern that these incentives seem to be written in a way that projects that don't do anything to enhance the shoreline will qualify for the setback reduction. For example, option 1 uses a typical phrasing: "Presence of natural shoreline conditions ... located at, below, or within 5 feet landward of the lake's OHWM along at least 75 percent of the linear lake frontage of the subject property." This doesn't require any enhancement. *It may even encourage extra development* up to the 5 foot and 75% thresholds, since the developer would get the reduction anyway. Option 5 could be obtained by changing a natural shoreline form into soft stabilization measures, which would reward the use of stabilization measures when they may not be needed. All the incentives have this problem. All of these incentives should only be used if they actually help the shoreline ecological functions. Thus they should be rewritten to be limited to situations where the structures or features of concern already exceed the threshold and are being reduced to the threshold level needed to qualify for the incentive.

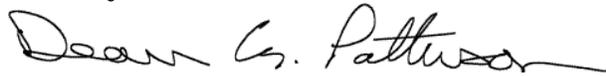
Cumulative Impact Analysis

The SMP only requires mitigation for “significant vegetation removal.” Yet the Cumulative Impact Analysis doesn’t acknowledge that this. This results in the smaller impacts accumulating to a continual degradation of shoreline ecological functions. This is an approach to impacts and mitigation that is systematic throughout the SMP. Correcting it will need careful review.

The stream buffer requirements in the SMP are not consistent with the need to protect shoreline functions. They are largely based on dealing with existing developed areas close to the water. Yet they are applied as if they are adequate, and are applied to the intact shoreline areas. Such application of vegetation protection will inherently result in individual and cumulative impacts that result in degradation of shoreline ecological functions.

Thank you for considering our comments. If you require additional information please contact me at dean@futurewise.org or 509-823-5481.

Sincerely,



Dean Patterson
Shoreline Planner
Futurewise

Submission to Planning Commission, Public Meeting of July 23, 2009

From the Kirkland Lakeshore Association

- No one cares more deeply about protecting the well-being of the shoreline environment than KLA members, many of whom live and own property along Lake Washington. KLA members support the SMP Update process to the extent that it complies with State law.
- With the last major revision of the Update published on **June 29, 2009**, there has simply not been sufficient time to review this 127 page draft and respond with constructive feedback.
- We do not believe it is reasonable to forward this proposal to the City Council without a sufficient opportunity for those affected to understand and respond to the proposal. This is especially true given that the deadline for action under State law is December 2009, and actually December 2010 if only the City asks for an extension.
- If the Planning Commission does forward the SMP Update to the City Council over the objection of those Kirkland residents affected, the only alternative will be to seek defeat of the Update at the Council level, or legal action -- neither of which are preferable to further cooperation and collaboration.

Didn't lakeshore residents already have an opportunity to participate in the SMP process?

Pursuant to law, the Planning Staff and Planning Commission did conduct an open process in developing the draft SMP Update dated June 29, 2009. And at the repeated urging of some lakeshore residents, there was one meeting to which all interested parties were invited, and two follow up meetings where a handful of property owners were invited and participated. KLA and its members appreciate these efforts, but unfortunately, these were insufficient to inform the hundreds of affected parties, whose individual properties are affected often in unique ways. Moreover, affected property owners deserve a reasonable opportunity to review the final proposal, which was not published until June 29, 2009. Given the need to employ expert legal counsel to review the 127 pages of detailed and technical regulations, a few weeks is not reasonably sufficient for this process. It does not seem reasonable to argue that it is now too late for input by affected residential property owners, less than 30 days after publication of the final proposal.

Wouldn't any delay in the process be expensive?

No. There is no reason that allowing adequate time for reasonable review and comment by affected property owners should cost the City significant amounts of money. What would be expensive would be for the City to attempt to pass regulations without reasonable opportunity for the subjects of the regulation to review, understand, and provide feedback to the process. Given that compliance with the proposed regulations could cost each affected property owner tens of not hundreds of thousands of dollars, it does not seem reasonable to cut short the process based on the possibility of additional administrative costs to the City. In any event, regulations that invite litigation are the most expensive, and no one wins from that eventuality.

What would be gained by allowing more time?

Among other things, additional time would allow KLA and its members adequate time to have the June 29, 2009 regulations reviewed by expert legal counsel, and if necessary, preparation of reasonable alternative proposals and draft language to be discussed with Staff and reviewed by the Planning Commission.

How much more time would be sufficient?

KLA members and legal counsel have not completed initial review of the 127 page June 29, 2009 proposed SMP Update, so it is not possible to respond with a specific number of days or weeks. We would be happy to negotiate a reasonable and finite period in which all feedback would be collected, prepared, and forwarded to Planning Staff. Following that, a reasonable period of review and collaboration on any suggested alternative would be required. Any artificial deadline in advance of the December 2009 (or December 2010 if an extension were sought like other Lake Washington municipalities are doing) serves no legitimate public policy purpose.

So to sum up:

- All we are asking for is a reasonable opportunity for the subjects of the regulations to review, understand, and comment on the most significant lakeshore regulations in decades (perhaps ever).
- We don't think that is asking too much, especially given that the statutory deadline is December 2009, and actually December 2010 by simple request.
- There is no reason this could not be easily accomplished within a reasonable period of months if not weeks.
- Finally, KLA members and our legal counsel would very much look forward to working with the Commission and Staff going forward if you would permit us to do so. But if the Planning Commission does not feel this request should be granted, we respectfully request a clear statement that the Commission believes it is too late for further public involvement, and that our only alternatives going forward lie with the City Council and/or the courts.

Summary of Ecology (informal) comments on the City of Kirkland's DRAFT (June 2009) SMP

Generally, the DRAFT SMP is very well done (*Kudu's to City: staff, consultants, Planning Commission and involved Citizens*) providing what appears to be a fair balance of both utilization and protection of shoreline areas. The DRAFT appears to be based on supporting analysis developed throughout the SMP update process, for which Ecology is only suggesting some relatively minor amendments to ensure consistency with the Guidelines through-out future implementation of the Master Program.

Note: *I was not able to review all the sections for which I have noted within the SMP-Checklist that Ecology will follow-up with comments on these sections prior to Council review of the SMP.*

SMP Uses:

*Even though the use matrix provided in section 83.170 lists: **Agriculture, Aquaculture, Forest Practices and Mining** as prohibited, all uses that are listed in WAC 173-26-241(i.e. **Agriculture, Aquaculture, Boating Facilities, Commercial, Forest Practice, Industry, In-Stream Structure, Recreation, Residential, Transportation, Utilities**) must be defined and either prohibited or listed within the SMP as conditional or permitted uses with appropriate development standards identified to satisfy the no net loss policy goal of the SMP.*

Suggestion: *The City should consider either, provide an additional sub-section to section 83 summarizing (listing) all Prohibited Uses including definitions for each use, or individual insertion of this information into each SMP Use section (based on WAC 173-26-241). In summary each SMP Use should be defined (consistent w/Guidelines) and either listed as Prohibited, Conditional or Permitted with appropriate development standards.*

Critical Areas:

The Critical Areas sections of the SMP all provide a "Reasonable Use Exemption" that does not appear consistent with the Guidelines. In reference to wetlands, Ecology has previously discussed this issue with the City and understand the intent of the "Reasonable Use Criteria/Exemption" to be limited to a small number of existing lots located within the Natural shoreline designation. However, Section 83.500.6 (Permit Process) provides administrative flexibility to vary buffer widths up to 25% before requiring a shoreline Variance. Further, all Reasonable Use determinations are listed as exempt from requiring a variance, which is not consistent with the Guidelines. The SMP Guidelines provide flexibility to be considered for constrained lots through review of a shoreline variance and do not provide a categorical exemption for departure from SMP dimensional standards.

*Section 83.500.10 suggests that Reasonable Use Exemptions are limited to "detached dwelling units in the Natural shoreline environment". It is not clear if the Reasonable Use Exemption is limited to the Natural environment or available anywhere within the City's shoreline jurisdiction? **Please Note:** this comment/question would apply to all the Critical Areas referenced within the SMP.*

Discussion/Suggestion: *Ecology would appreciate the opportunity to further discuss appropriate application of the City's CAO-based Stream, Floodplain and Geologic Hazard standards within the SMP. As currently referenced, Stream protection measures (i.e. 75' buffer) and "Reasonable Use" exception may not be consistent with the SMP Guidelines. However, Ecology also understands that streams within Kirkland's shoreline jurisdiction do not meet the SMA threshold to be considered*

Shorelines of the State. Therefore, Ecology would hope to work with the City to ensure adequate protection for all critical areas within shoreline jurisdiction in an effort to avoid regulatory gaps and ensure consistency with the Guidelines.

The City has a few options to consider in relation to the referenced inconsistency between the Guideline requirement to review any departure from SMP dimensional standards as a variance vs. preserving the Reasonable Use Exemption when dealing with future development on constrained shoreline properties:

- **Option 1:** *Require a shoreline variance for any departure from SMP dimensional standards, but also include the City's Reasonable Use standards/criteria as additional review criteria under which the variance is reviewed.*
- **Option 2:** *Provide more specific geographic distinction of potential areas where the Reasonable Use Exemption criteria would be considered. Therefore, limiting the scope of allowed deviation from SMP standards to a defined number of lots for which build-out potential then needs to be considered within the Cumulative Impact Assessment and shown to maintain No Net Loss of Ecological Function. Note: under this option the City would either need to demonstrate that application of Reasonable Use consideration would be limited to specific lots based on SMP regulatory thresholds or identify geographic limits within the SMP for reasonable use criteria consideration. In other words, the City would essentially need to pre-authorize changes to critical area dimensional standards within a defined area (or defined lot configuration), as opposed to 'exempting' or not applying critical area or SMP standards to constrained lots.*

Shoreline Stabilization:

Within section 83.80, the City has provided specific definitions for: Shoreline Stabilization (89), Hard Structural Shoreline Stabilization (44), and Soft Shoreline Stabilization (95). A definition for "structural stabilization" does not appear within this section. However, section 83.300 consistently refers to "Structural Stabilization". It is not clear if this reference is intended to only refer to "Hard Structural Stabilization", or if it is also intended to include "Soft Shoreline Stabilization"?

(Discuss) 83.300.9.K, requiring adjacent property owner consent when beach restoration results in a change in OHWM location thus changing shoreline jurisdiction. This standard could be perceived as a barrier to future restoration projects within the City's shoreline areas.

Requirement/Question: *(Suggestion) The first sentence of standard 1 (General), c. should be rewritten by deleting the word, "prevent", to make the sentence easier to understand.*

(Requirement) Clarify the definition of "Structural Stabilization" used throughout the SMP. Is this the same as "Hard Structural Shoreline Stabilization" as defined in 83.80, or different? If different, a definition will need to be added to distinguish the two meanings.

(Discuss) Ecology suggests that the City replace the adjacent property owner notice requirement with the new flexibility offered through new legislations (House Bill 2199) providing necessary relief to upland property owners that come into shoreline jurisdiction as a result of an adjacent restoration project.

Boating Facilities:

The City should clarify if section 83.290 (Marinas & Moorage Facilities...) are “Boating Facilities”? All of the uses listed in WAC 173-26-241 must be addressed within the updates SMP. Therefore, the City needs to define “Boating Facilities” and either prohibit or permit with appropriate development standards.

Requirement/Suggestion: *(Discuss) The City could define “Boating Facilities” as “Marinas & Moorage Facilities...” either within section 83.80 (Definitions) or 83.290. Further, pier/dock standards applicable to multi-family moorage should be moved from the single-family Residential section to the Boating Facility section of the SMP.*

Commercial Uses:

Other than prohibiting most (not all) non-water oriented commercial uses, it is not clear how preference has been given to water-dependent commercial uses within section 83.170? Also, section 83.210 (Commercial Uses) also does not provide a clear preference for water-dependent uses.

Requirement/Suggestion: *Ecology suggests that the City consider adding a “General” heading to section 83.210 (Commercial Uses) that provides a clear preference for protection and encouragement of water-dependent uses over non-water dependent uses. Ecology can discuss with Staff other options. There does not appear to be a emphasis on water dependent recreational uses within either section 83.170 or 83.220?*

Residential Use:

Any Residential use allowed through the proposed SMP should be defined within the Master Program. Within the SMP, section 83.170 lists the following Residential Uses: Detached Dwelling Units, Accessory Dwelling Units, Detached, Attached or Stacked Dwelling Units, Houseboats, Assisted Living Facility, and Convalescent Center. With the exception of Houseboats, all of these Residential Uses are allowed in at least one SMP Designation, but are not defined within section 83.80 or 83.200. If allowed by the SMP, definitions will need to be added to ensure consistent evaluation of the variety of Residential Uses the City will be allowing.

Requirement/Suggestion: *The City can choose to either define the specific Residential Uses in the SMP in either the Definitions (83.80) or Residential (83.200) section of the SMP.*

Thank you for the opportunity to comment on this initial draft of the SMP. Please feel free to contact me with any specific questions related to these comments. As referenced above, please see (preliminary) specific comments within the attached SMP Checklist.

Sincerely,



Joe Burcar, Shoreline Planner – Department of Ecology
Jobu461@ecy.wa.gov or 425-649-7145

From: Kevin Harrang [kharrang@hotmail.com]
Sent: Tuesday, August 04, 2009 3:17 PM
To: Paul Stewart
Cc: Teresa Swan; Eric Shields; Stacy Clauson (COK); Kirkland Lakeshore Association
Subject: RE: SMP Update Process/ Status of Kirkland Lakeshore Association Input

Paul:

As we discussed in person during our recent meeting and in follow up by phone, the Kirkland Lakeshore Association (KLA) is making every effort to be responsive to the timing requests of the Planning Staff regarding the SMP Update. This email (together with your email appended below) is a short summary of our efforts in this regard that you may share with other staff, and in particular, with the Planning Commission to update them. As such, this communication supersedes the prior communication we submitted in person during the last public meeting of the Planning Commission.

At the most recent Planning Commission meeting, KLA members made the point that many affected lakeshore property owners remain unaware of the effects of the proposed Update on their residences. In this context, KLA has suggested that the Kirkland City Council consider seeking an extension of the deadline for enacting the Update, the purpose of which is to allow further discussion and consensus building. We understand that Planning Staff and the Planning Commission have recommended against this approach, and in fact, it was unclear to us from the discussion whether the Staff and/or Commission would actively entertain formal comments from the KLA to the latest draft of the Update. The purpose of our in-person meeting was to see if a reasonable schedule could be agreed upon at the Staff level for this purpose. The idea is that to the extent that KLA can get the concerns of its members addressed within the timeframe desired by Staff, then this would render moot the question of seeking an extension of the statutory deadline.

In a good faith attempt to meet the schedule you set forth below, KLA is making every effort to get to Staff a consolidated set of comments by August 7, 2009 (or as soon thereafter as practicable), which comments we will be producing through our expert legal counsel. We would then target August 12th or 13th for an in-person review of those comments with our counsel. After we have been able to take these steps, we will hopefully have a better idea of where we stand, and a further update could be given to all interested parties.

As I stated to you in our meeting, our plea on behalf of our members is to be heard and to have our concerns addressed in the process. As I hope you will agree, we are making every effort to accommodate the scheduling desires of Staff, and we would hope that no further action would be taken by the Planning Commission while we are working through our agreed upon process with all possible speed.

If this matter should require further attention, please do not hesitate to contact me.

Sincerely,

KIRKLAND LAKESHORE ASSOCIATION
By Kevin Harrang, Member

Subject: RE: Phone Message from Kevin Harrang
Date: Mon, 3 Aug 2009 09:42:06 -0700
From: PStewart@ci.kirkland.wa.us
To: kharrang@hotmail.com
CC: TSwan@ci.kirkland.wa.us; EShields@ci.kirkland.wa.us; SCLAUSON@Lcog.org

Hi Kevin,

The City's network and phone system went completely down on Friday so no e-mails or voice mails were coming in or going out. Sorry for the technical difficulties. I'm in and available most of today.

Here is the timeline.

On July 23rd the Planning Commission held the public hearing and continued it to August 10th and kept it open for additional written comments. We are putting their packet together now and we are suggesting that they not take any action on the 10th but continue it again to their August 27th meeting to give you time to get something to us and for us to meet again.

In our meeting on July 27th we had requested that it would be helpful if you could have your comments by August 7th. Earlier is better if possible and then we could meet sometime during the week of August 10.

The City Council is scheduled to meet and review the Planning Commission's recommendation on Sept. 15th - however we are again suggesting the Council defer this to a later date in September if possible in order to make sure we have time to meet with you before the Commission makes a recommendation.

I hope that all makes sense. If you're around today we can talk further. You didn't include your mobile number in your e-mail so give me call today. I'm in meetings from 10-11, from 1-2 and from 4-5.
Thanks.

Paul Stewart
425-587-3227