



CITY OF KIRKLAND
Planning and Building Department
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MEMORANDUM

To: Kurt Triplett, City Manager

From: Christian Geitz, Planning Supervisor
Jeremy McMahan, Deputy Planning and Building Director
Adam Weinstein, Planning and Building Director

Date: October 22, 2019

Subject: **Final Adoption and Codification of the Shoreline Master Program Periodic Update (Shoreline Management Regulations and Policies); and Critical Area Ordinance Amendments (Stream and Wetland Regulations), File CAM19-00026**

I. RECOMMENDATION

The City Council should consider the proposed amendments based upon recommendations from the Planning Commission and Houghton Community Council, as well as recommendations and required changes from the Washington State Department of Ecology (Ecology).

With regard to the City's Shoreline Master Program (SMP) the Department of Ecology establishes required periodic update targets for local jurisdictions under Revised Code of Washington (RCW) 90.58.080 and Washington Administrative Code ([WAC](#)) [173-26-090 \(2\)](#). The initial required deadline for the City of Kirkland to complete its periodic review was June 29, 2019. Ecology, however, allowed additional time for the City to complete its local legislative review process and consideration of proposed amendments due to increased public participation and public outreach by the City. Ecology has final approval authority over the City's SMP and any subsequent amendments.

Staff recommends that the City Council adopt the following enclosed ordinances:

- O-4700: Update to the Shoreline Area Element of the Comprehensive; and
- O-4701: Amendment to chapters 5, 83, 90, 141, and 180 of the Kirkland Zoning Code .

II. BACKGROUND

The City's Shoreline Master Program establishes regulations that apply to all property within 200 feet of the ordinary high water mark of Lake Washington, as well as large wetlands associated with the Lake (Yarrow Bay, Juanita Bay and Forbes Valley). The regulations govern preferred uses, public access and ecological protection.

Every eight years after the comprehensive update in 2010, as mandated by the Shoreline Management Act and reflected in [WAC 173-26-090 \(2\)](#), the City must conduct a *periodic review* of the SMP and prepare necessary amendments to ensure consistency with any changes to state law, local plans and regulations, local circumstances, and/or new information or improved data.

WAC 173-26-090(2)(d)(iii) states: "The periodic review is distinct from the comprehensive updates required by RCW 90.58.080(2). The presumption in the comprehensive update process was that all master programs needed to be revised to comply with the full suite of ecology guidelines. By contrast, the periodic review addresses changes in requirements of the act and guidelines requirements since the comprehensive update or the last periodic review, and changes for consistency with revised comprehensive plans and regulations, together with any changes deemed necessary to reflect changed circumstances, new information or improved data. There is no minimum requirement to comprehensively revise shoreline inventory and characterization reports or restoration plans."

The Shoreline Master Program periodic update includes amendments to the following:

- Zoning Code Chapter 5 – Definitions
- Zoning Code Chapter 83 – Shoreline Management
- Zoning Code Chapter 90 – Critical Areas: Wetlands, Streams, Minor Lakes, Fish and Wildlife Habitat Conservation Areas, And Frequently Flooded Areas
- Zoning Code Chapter 141 – Shoreline Administration
- Zoning Code Chapter 180 – Plates
- Shoreline Area Chapter of the Comprehensive Plan – goals and policies

During this periodic review process the City is considering the following changes to the current SMP and wetland and stream regulations:

- **Amendments necessary to address changes to state laws since 2010 based upon the periodic review checklist provided by the State Department of Ecology (Ecology).** These proposed amendments are the minimum necessary to meet Ecology requirements of the periodic update.
- **Amendments that have been compiled since adoption of the City's shoreline regulations in 2010.** The list includes clarifications, incorporation of two code interpretations, and code amendments to address issues that have come up with permitting of shoreline projects.
- **Amendments to bring the existing critical area wetland and stream regulations contained in the SMP into consistency with the more recent (2016) critical area regulations in Chapter 90 KZC that are now applicable only for lands outside shoreline jurisdiction.** The proposed amendments to Chapter 83 KZC would adopt Chapter 90 by reference to provide consistent stream and wetland regulations within and outside shoreline jurisdiction. During this process, the Chapter 90 KZC regulations must be updated

as necessary to be consistent with current best available science direction from the State. In addition, staff has maintained a list of necessary code amendments for Chapter 90 KZC that will be considered. These amendments include clarifications and minor code amendments to address issues that have been identified as part of work on projects involving critical areas.

On August 27, 2019, the City of Kirkland submitted the final SMP and Critical Area Ordinance update recommendations from the Planning Commission and Houghton Community Council to the Washington State Department of Ecology for consideration. On October 7, 2019, the Determination of initial concurrence was presented to the City by Ecology (see Attachment 1). Ecology determined the City's proposed amendments, subject to two recommendations and four required changes (see Attachment 2), are consistent with the standards of RCW 90.58.020 and RCW 90.58.090.

III. SEPA REQUIREMENTS

The requirements of the State Environmental Policy Act of Chapter 43.21C RCW and Chapter 197-11 WAC have been met by issuance of a SEPA Addendum to the 2035 Comprehensive Plan Environmental Impact Statement (EIS) on April 15, 2019.

IV. DEPARTMENT OF COMMERCE NOTICE

Under RCW 36.70A.106, the City is required to submit a Notice of Intent to Adopt along with the draft amendments to the Washington Department of Commerce (WDOC) at least sixty days prior to final adoption. The City submitted the Intent to Adopt and the draft policies and zoning amendments to the WDOC on April 10, 2019.

V. PUBLIC OUTREACH

The updates to the City's SMP and Chapter 90 KZC wetland and stream regulations have been through an extensive review process since the beginning of the project in January 2019.

After the February Houghton Community Council (HCC) and Planning Commission (PC) study sessions, a March City Council briefing, an April Park Board briefing, the April open house and joint public hearing with the City and Ecology, and the close of Ecology's 30-day public comment period on May 8, staff received substantial comments from single family homeowners on the Lake expressing concern about the proposed amendments. The project schedule was revised to allow for additional public outreach and comment. To that end, two public meetings focusing primarily on issues of interest to single-family homeowners along the Lake shoreline were hosted by staff on May 21 and June 18.

The two public meetings were held by City staff, consultants, and Department of Ecology representatives. Notice of these public meetings were sent to subscribers of the SMP project list serv and individuals who submitted public comment. The second meeting notice was also sent to Kirkland Alliance of Neighborhoods (KAN), and the Finn Hill and Juanita Neighborhood Associations. The objectives of both meetings were to listen to property owner concerns, answer questions, clarify how the shoreline is currently regulated and explain proposed changes to SMP regulations. The second meeting was oriented toward single family shoreline regulations because regulations affecting this

stakeholder group garnered the most interest and concern about the update. A total of 42 people attended the first meeting and 26 people attended the second.

Additionally, a small group meeting with stakeholders was held on June 12 to discuss questions and concerns. The PC and HCC agreed to hold an additional public hearing to consider comments and take additional testimony on the proposed amendments. Finally, the public comment period was extended through July 25 to coincide with the additional public hearing in order for the PC and HCC to consider public comment received since April 25. All public comments received prior to submitting the initial determination request to Ecology have been responded to and are included as Attachment

3. An FAQ document of the common questions and concerns presented during these meetings was developed by staff (see Attachment 4).

VI. STUDY SESSIONS, BRIEFINGS, AND ECOLOGY/CITY PUBLIC HEARINGS

Links below are to the staff memorandums prepared for these meetings.

On [February 25, 2019](#) and on [February 28, 2019](#), respectively, the HCC and PC held study sessions to review background information, review a first draft of the amendments and provide direction and comments for preparation of the next draft of the amendments.

On [March 5, 2019](#), the City Council had a briefing to receive an overview of the SMP amendments, review the PC's direction, along with comments from the HCC, and to provide direction to staff on additional issues that were discussed in the second draft for the April 25 public hearing.

On [April 25, 2019](#), the Department of Ecology, the PC and the HCC held a joint state and local public hearing on the second draft of the amendments following an open house, where the public had the opportunity to learn more about the proposal.

Following the April 25 joint public meeting, the City received a large volume of comments and questions about the periodic review of the SMP. Staff requested the PC and HCC reopen the public hearing and allow for public meetings to occur in order to provide adequate opportunity for comments and questions to be received and clarified as discussed in section VI above.

On [July 25, 2019](#), the PC and HCC held a joint public hearing on the final draft amendments following the previous public hearing and two public informational meetings (May 21 and June 18).

VII. PROPOSAL

The following is a brief summary of the proposed amendments, including those items that have received increased interest from the public. The full list of amendments is explained within the summary chart and found in the track changes versions of each code section. Additionally, the Q & A handout prepared by staff provides responses to the majority of questions submitted throughout the process (see Attachment 4).

A. Amendments to Chapter 83 – Shoreline Management

Gap Analysis of Proposed Shoreline Amendments contains a summary of the proposed changes to KZC 83 (see Attachment 5).

The bulk of the changes are to stand-alone critical area wetland and stream Sections 83.490 KZC through 83.510 KZC. These are replaced by incorporating by reference Chapter 90 critical area regulations.

Sections 83.270 KZC through 83.290 contain the bulk of the remaining changes to:

- **Clarify text** and incorporate two Zoning Code Interpretations - one addressing boat canopies and the other addressing pier bumpers.
- **Revise the hours of operation and limitations on accessibility for public access along the shoreline.** The Planning Commission requested that the hours in which walkways located on private property may be accessed by the public end at sunset, rather than dusk, as sunset is a recognizable and verifiable time, whereas dusk can be subjective. Staff has proposed to revise the hours of accessibility to between 10:00 a.m. and 10 minutes after sunset (see section 83.420) during spring and summer. The specific hours will continue to govern during fall and winter months consistent with existing code requirements. It should be noted that existing public access along the lake is subject to the terms of recorded easements and the terms of those easements will continue to govern. New public access easements would be subject to the new requirements based on sunset rather than dusk.
- **Revise the minimum water depth requirement and residential pier length standards.** Staff recommends removal of the depth standards for ells and fingers, which generally conflicts with the length standards (i.e., additional length is often required to meet depth standards).
- **Clarify the allowable length of piers for single-family residential properties.** Staff recommends clarifying that the allowable length of a pier be determined based on neighboring or nearby piers. Staff has established a clarifying series of plates (47 and 48 A/B) which establish how to calculate the allowed length of a pier.
- **Allow two boat lifts.** Staff recommends allowing an increase in the number of boat lifts for single-family residential properties to two (currently limited to one boat lift). Only one boat lift canopy will be allowed.
- **Delete the administrative approval option** that allows a larger area, less depth and/or wider pier than Chapter 83 KZC permits if federal and state agencies approve the deviation. Staff has found that federal and state agencies do not have firm standards but rather use biological analysis to approve deviations from the City's pier standards. Staff does not think that the administrative approval option should continue, but that the local pier regulations in Chapter 83 KZC should prevail. The administrative approval option was not required by Ecology, but was a concept included by the City in 2010. The provision has been used rarely since then.
- **Add a setback reduction option for removal of 50% of a bulkhead.** The idea is to incentivize replacing hard bulkheads with soft shoreline stabilization measures and restoring the shoreline to a more natural state. Creating this mid-range option between what is now allowed may entice some shoreline property owners to consider converting at least 50 percent of their lake frontage to a more natural state in exchange for a 10 percent reduction in the required setback between the lake and

allowed development/redevelopment. Soft shoreline stabilization measures result in a more gradual gradient between the beach and the developed portion of the site, helping dissipate wave energy and providing related ecological benefits.

The remaining changes are minor edits and code amendments, and include reorganization of Section 83.420, Public Access, and Section 83.270, Piers and Docks serving a Detached Dwelling Unit (Single Family).

B. Amendments to Chapter 141 – Shoreline Administration

Gap Analysis of Proposed Shoreline Amendments (Attachment 5) contains a summary of all proposed changes to KZC 141. Various clarifications to the review procedures, including reference to regulations in Chapter 173-26 WAC for the Shoreline Management Act, are also proposed.

C. Amendments to the Shoreline Goals and Policies in the Shoreline Area Chapter of the Comprehensive Plan

All but two of the amendments to the Shoreline Area Chapter are minor revisions to reflect the 2011 annexation area in the chapter, including the mention of O.O. Denny Park, Juanita Drive and the multifamily area west of Juanita Beach Park.

One new policy (SA-11.2) is proposed to support the revised pier regulation found in Sections 83.270 and 83.280: that new single and multifamily piers should not exceed the length of adjacent piers so that they are in character with the neighborhood and do not create a boating hazard. This new policy states, "Design and construct new or expanded piers so that they are in character with adjacent neighboring piers for length." This further strengthens existing policy SA-11.1 which states, "Design and locate private piers so that they do not interfere with shoreline recreational uses, navigation, or the public's safe use of the lake and shoreline."

D. Amendments to Chapter 90 Wetland and Stream regulations resulting from the list of needed clarifications and minor amendments

Since adoption in 2016, Planning staff has been reviewing critical area wetland stream proposals and issuing land use and building permits using Chapter 90 KZC. Staff has kept a list of needed clarifications and minor amendments. In addition, changes are proposed to bring the wetland and stream regulations into consistency with current best available science as required by the State.

Gap Analysis of Proposed Critical Area Amendments on the SMP website is a matrix listing all changes recommended by staff to KZC Chapters 5 and 90 (see Attachment 6). The matrix identifies the location of the proposed amendment in the Chapter, the type of amendment (i.e. clarification, code amendment, or policy change), a description of the proposed change and the rationale for the suggested change.

VIII. NEXT STEPS

1. Houghton Community Council provides their response to the City Council ordinance, by resolution.
2. The adopted amendments are sent to Ecology for approval by the State, which has final authority over the SMP amendments.
3. SMP effective 14 days after approval from Ecology's Director.

IX. ATTACHMENTS

1. Department of Ecology Initial Determination of Consistency
2. Department of Ecology Required and Recommended Changes
3. Summary of Public Comments with Response
4. Planning Department Q & A Response Document
5. KZC 83 Gap Analysis
6. KZC 90 Gap Analysis

X. EXHIBITS

1. Draft Comprehensive Plan Ordinance, O-4700 with Exhibit
2. Draft Zoning Code Ordinance, O-4701 with Exhibit

TO: Christian Geitz, Planning Supervisor – City of Kirkland
FROM: Misty Blair, SMA Policy Lead, WA Department of Ecology
Date: October 7, 2019
Subject: **SMP Periodic Review - Determination of initial concurrence**

Sent via email to: CGeitz@kirklandwa.gov; jcha461@ecy.wa.gov

Brief Description of Proposed Amendment

The City of Kirkland (City) has submitted Shoreline Master Program (SMP) amendments to Ecology for initial determination of concurrence to comply with periodic review requirements of RCW 90.58.080(4). The City has elected to utilize the optional joint review process for SMP amendments available per WAC 173-26-104; therefore Ecology is required under WAC 173-26-104(3)(b) to make an initial determination of consistency with applicable laws and rules. The City proposes amendments to bring the SMP into compliance with requirements of the Act or State Rules that have been added or changed since the City's comprehensive SMP update. The City is also proposing updates to the critical areas regulations that are incorporated by reference into the SMP, and miscellaneous amendments intended to improve the clarity, consistency, and administration of the SMP.

FINDINGS OF FACT

Need for amendment

The City's comprehensive update to their SMP went into effect in 2010. The proposed amendments are needed to comply with the statutory deadline for a periodic review of the City's Shoreline Master Program pursuant to RCW 90.58.080(4). The City has identified that this periodic review will result in amendments to the SMP to address updates to the Act or implementing State Rules, changed local circumstances, new information, and improved data.

SMP provisions to be changed by the amendment as proposed

The City's proposed changes fall primarily into four categories:

- those required to incorporate changes in State law (RCW 90.58) or State rule (WAC 173-26 & WAC 173-27);
- those added to update critical areas provisions;
- those locally initiated changes to address implementation issues identified by staff and to provide flexibility for reasonably foreseeable development; and
- those added in response to public comment.

The City of Kirkland SMP consists of shoreline goals and policies contained within the Kirkland Comprehensive Plan Section XVI. Shoreline Area; shoreline regulations contained in Kirkland Zoning Code (KZC) Chapters 83 and 141. The City filled out the Ecology SMP Periodic Review checklist to address requirements of the act or state rules that have been added or changed since the last SMP amendment. Those proposed changes along with the City's locally initiated proposed changes modify the following

SMP sections: Kirkland Comprehensive Plan Section XVI: Shoreline Area, Kirkland Zoning Code (KZC) Chapter 83: Shoreline Management, KZC Chapter 141: Shoreline Administration, KZC Chapter 5: Definitions, and KZC Chapter

Kirkland Comprehensive Plan Section XVI: Shoreline Area

A. Introduction – Minor narrative edits to reference SMP Periodic Review process occurring in 2019 and add reference to O.O. Denny Park, which was annexed into the City after the SMP comprehensive update in 2010.

B. Shoreline Goals and Policies –

Subsection 1. Shoreline Land Use and Activities

Minor edits to the total lineal feet of shoreline reference and replace the term *sensitive areas* with *critical areas*. Other minor clerical errors were fixed. Additional modifications clarify that the annexation area also includes a business district west of Juanita Beach Park, single-family residential uses in the Finn Hill Neighborhood, and medium to high density residential uses west of Juanita Beach Park. The City added modified Policy SA-6 to clarify that public access requirements only apply to subdivisions of five or more lots. The City proposes to add Policy SA-11.2, below, and re-number remaining policies to accommodate.

Policy SA-11.2: Design and construct new or expanded piers so that they are in character with adjacent neighboring piers for length.

Private piers should not exceed the length of neighboring piers. A pier that exceeds the length of neighboring piers can be a boating hazard for the neighbors and the general public, result in unnecessary additional overwater coverage and create a structure out of character with the neighborhood.

Subsection 2. Shoreline Environment

Edits to *Goal SA-13: Preserve, protect, and restore the shoreline environment* are proposed to identify how the City's critical areas regulations in KZC Chapter 90 are incorporated by reference into the SMP. Edits to *Policy SA-13.5: Protect and restore critical freshwater habitat* are proposed to add Denny Creek and Champagne Creek and update information related WDFW identified habitats and nesting areas for bald eagle, great blue herons, trumpeter swans, and pileated woodpeckers.

Additional edits to the cross-reference Note associated with Goal SA-13, Policy SA13.5, and Policy SA-15.4 are proposed to eliminate the external cross-reference to the Natural Environment chapter of the Comprehensive Plan.

Subsection 3. Shoreline Parks, Recreation, and Open Space

Policy SA-19.1 is modified to add a Denny Creek to the list of streams that have outlets within City parks. Minor edits are proposed to Policy SA-20.2 related to existing boat trailer parking. O.O. Denny Park is added to the list of parks within *Policy SA-20.3* and *Policy SA-20.7*.

Subsection 4. Shoreline Transportation

The term *sensitive areas* is replaced with the term *critical areas*. *Policy SA-23.2* is modified to add Juanita Drive to the list of opportunities available to improve public access and provides an update to the name of the City's Transportation Master Plan. Clarification is added to *Policy SA-24.2* related to the siting of floatplane facilities so they do not interfere with public swimming beaches and also maintain safe boating corridors.

Kirkland Zoning Code Chapter 83 – Shoreline Management

Section 83.80 Definitions* –

Added the following to the introductory:

Where definitions in this chapter conflict with definitions elsewhere in the KMC or KZC, the definitions provided in this section shall control. In addition, all the definitions in RCW 90.58.030, WAC 173-26-020, and WAC 173-27-030 shall be deemed definitions in this chapter.

Average Parcel Depth – added vehicular in front of easement road and access easement in this existing definition for clarification.

Removed outdated Stream type Class A- Class B – Class C definitions.

Development – added “Development” does not include dismantling or removing structures if there is no other associated development or re-development.

Nonconforming use or development – this definition is modified and separated into three for nonconforming development, nonconforming use, and nonconforming lot.

Pier Bumpers definition is added.

Piling is modified.

Normal Maintenance or Repair definition is added for WAC 173-27-040 with the addition of the following sentence: Examples of maintenance and repair include painting; repair of stairs, roof, siding, decking, and structural supports. Examples of replacement include replacement of siding, windows, or roofing; changing doors to windows and windows to doors; replacement of failing shoreline structures.

Skirting definition is modified to clarify that the boards along the edge can be vertical or horizontal.

Utility Transmission Facilities definition is modified to add the specific types of power lines, and pipelines that are considered utility transmission facilities rather than just utilities.

Deleted definitions that were simply references to Chapter 5 KZC or where the same definition exists in Chapter 5 KZC, because the introduction already includes a general reference to the applicability of all of those definitions.

*This entire section will have to be renumbered to accommodate the definitions proposed removed and added.

Section 83.160 User Guide – The City proposes to add that a conditional use permit must also meet criteria for a substantial development permit. This section is also edited to update an internal KZC reference.

Section 83.170 Shoreline Environments, Permitted and Prohibited Uses and Activities Chart –

The City proposes to combine non-motorized and motorized Boat Launch uses, clarifying that the associated prohibition or CUP is only applicable to a new or expanded boat launch.

Section 83.180 Shoreline Development Standards – The City proposes to modify the following: Recreational Uses – Add that water-dependent uses have no setback and water-related uses have a 25’ setback in the Urban Mixed SED.

DEVELOPMENT STANDARDS	SHORELINE ENVIRONMENT					
	Aquatic	Natural	Urban Conservancy	Residential – L	Residential – M/H	Urban Mixed
Shoreline Setback ¹	n/a	Water-dependent uses: 0’, Water-related use: 25’, Water-enjoyment use: 30’, Other uses: Outside of shoreline area, if feasible, otherwise 50’.	Water-dependent uses: 0’, Water-related use: 25’, Water-enjoyment use: 30’, Other uses: Outside of shoreline jurisdictional area, if feasible, otherwise 50’.	Same as Detached Dwelling Units uses.	R-M/H (A) environment: The greater of: a. 25’ or b. 15% of the average parcel depth. R-M/H (B) environment: 45’ minimum.	Water-dependent uses: 0’, Water-related use: 25’. Other uses: The greater of: a. 25’ or b. 15% of the average parcel depth. In the PLA 15A zone located south of NE 52nd Street, mixed-use developments approved under a Master Plan shall comply with the Master Plan provisions.

Utilities Uses – footnote 7 providing that storm water outfalls may be within the shoreline setback is added.

An additional edit is proposed to footnote 1 updating the KZC reference for critical area buffers.

Section 83.180 Lot Size or Density, Shoreline Setback, Lot Coverage and Height –

Subsection 2.d. is modified to clarify that the allowed 8 foot private pedestrian access walkway may be divided into two narrower walkways if together they do not exceed the 8 foot width and all walkways must be perpendicular to the lake.

Subsection 9.b is modified to clarify the horizontal dimensional include any allowed walkways. The reference to residential structures is replaced with primary structure and it is clarified that this is based on the length of the façade facing the lake.

Subsection 16 is modified to include non-permeable artificial turf in the list of structures or improvements that are not allowed within the shoreline setback.

Section 83.200 Residential Uses – The City proposes to modify subsection 3 to add a cross-reference to 83.190 for activities permitted within the shoreline setback and provide a more specific list of example of water-dependent accessory uses that might also be allowed waterward of the principal residence.

Section 83.210 Commercial Uses – Subsection 3, Retail Establishments Providing Gas and Oil Sale for Boats is modified to clarify that this use includes mobile fueling businesses.

Section 83.240 Utilities – The City proposes to add a new subsection 1.c prohibiting geothermal heat pumps waterward of the OHWM, the remaining subsections are renumbered to accommodate this addition.

Section 83.250 Land Division – The City proposes to add a new subsection 1.c providing that new lots created will not result in an increased nonconforming shoreline setback.

Section 83.260 General – The City proposes to limit the no net loss standard and requirement for mitigation sequencing to only conditional use permits, variances, or other unique uses or activities such as marinas and multifamily piers.

Section 83.270 Piers, Docks, Moorage Buoys and Piles, Boat Lifts and Boat Canopies Serving a Detached Dwelling Unit Use (Single-family) –

The City proposes to clarify, within subsection 1.a, that residence upland lots with legal lake access and their guests may also use these water-dependent accessory single-family residential structures.

Subsection 3. General Standards are modified to remove the administrative approval process for alternative dock and pier standards. A new subsection c. is added to require that moorage be located at least 30 feet from the OHWM. A new subsection d. is added to require pier ladders for lake access on all piers. Residential boat launches and boat rails are added to the list of prohibited structures and improvements. This section is also modified to clarify that utility lines located waterward of the OHWM must be affixed below the pier or dock and above the water. Clarification is added to the moorage buoy standards. The water depth standard for moorage buoys is proposed to be deleted. The City proposes to allow pier bumpers and provides standards.

Subsection 4. New Pier or Dock Dimensional Standards.

- This table is re-organized and the Maximum length standard is modified to clarify that the maximum length is either the average of the nearby piers or 150 feet, whichever is less. The City also provides new Plates 47 and 48A/B to illustrate this standard. Maximum width standards are modified to include that even piers and docks with no ells or fingers must be no more than four (4) feet wide within 30 feet of the OHWM. Minimum Water Depth standard is removed throughout the table. The city proposes to clarify that ells, fingers and deck platforms shall be located near the terminal (waterward) end of the pier. The term *pier piling* replaces the term *piling* and moorage buoy standards are relocated outside the Pier Piling and Moorage Pile section.
- This section is deleted – removing the administrative approval for alternative design of new pier or dock for detached dwelling unit process.

The following Plates: Plate 47, 48A, and 48B were created to illustrate the provisions of KZC 83.270.4:

Plate 47: Establishing average pier length/navigation line

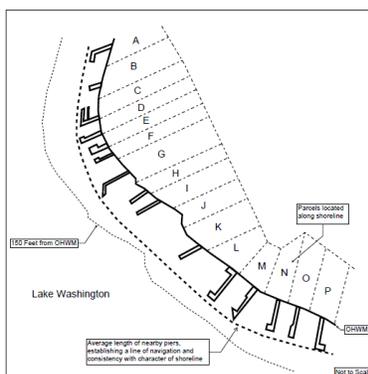


Plate 48A - How to determine the allowable length of a single-family pier (83.270.4).

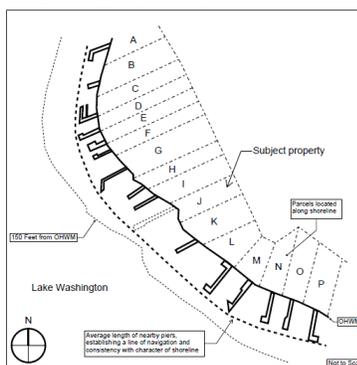
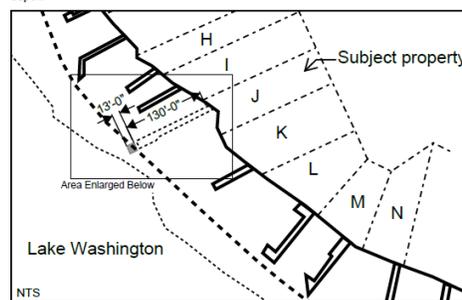


Plate 48B - How to determine the maximum length a pier may extend beyond existing nearby piers (KZC 83.270.4).

An additional 10% of the average length may be proposed if water depth is required (KZC83.270.4). In this example, the average nearby pier lengths equals 130 feet. The parcel may propose up to 13.0 feet additional length if necessary to achieve water depth.



Subsection 5. Mitigation – for new dock and piers

Modifies subsection a. to remove limitation of the application of this provision for only moorage structures or recreational uses within 30 feet of OHWM. Provides a new example of a required joint-use pier and moves the language regarding joint-use piers from subsection c. into a new subsection d. Subsequent sections are re-numbered accordingly. Adds clarity to subsection e. by removing the alternative planting plan option and providing that existing non-native vegetation can remain, but cannot be counted toward meeting the vegetation mitigation requirements. New subsection f. provides that planting plans on properties that include bulkheads shall include species which promote growth overhanging the water. Additional modifications to subsection g. are proposed to remove allowances for compliance with federal or state permit monitoring requirements to meet the City's monitoring requirement.

Subsection 6. Replacement of Existing Pier or Dock.

The City proposed to Delete subsection b. which allows for alternative designs when approved by the US Army Corps of Engineers and the Washington State Department of Fish and Wildlife.

Subsection 7. Additions to Piers or Docks. Removes water-depth from the dimensional standards and modifies the mitigation requirements for the RSA zone to require the removal of the more non-conforming pier or dock, if two piers or docks or covered moorage structures are located on the subject property.

Subsection 8. Repair of Existing Pier or Dock. Additional language added to subsection a. to provide that if repairs that occur over any five year period exceed that allowances of this section if shall be reviewed as a replacement rather than a repair. Adds cross reference to 83.270.4 for pier dimensional standards and adds allowances for cross bar anchor stabilization additions to existing piers. And removes a cross-reference to 83.270(5)(b) because that alternative design option is proposed to be deleted.

Subsection 9. Boat Lifts and Boat Lift Canopies. The City proposes to increase the height limit which boat lifts are allowed to extend above the pier from seven (7) feet to twelve (12) feet and increase the number of freestanding or deck-mounted boat lift per detached dwelling unit to two (2).

Section 83.280 Piers, Docks, Moorage Buoys, Boat Lifts and Canopies Serving Detached, Attached or Stacked Dwelling Units (Multi-family) – The City proposes to make the same clarifications, additions, and deletions described in the Single-family section (83.270 see previous descriptions).

Section 83.290 Marinas and Moorage Facilities Associated with Commercial Uses –

The City proposes to add Public Parks to this entire section, including a cross reference to KZC 83.220.5. The City also proposes to make the same clarifications, additions, and deletions described in the Single-family section (83.270 see previous descriptions) with the addition of the following:

Subsection 4. General Standards

Subsection c. modifications include the reduction in the number of required trash cans from two (2) to one (1). Subsection f. is modified to only require a pump-out facility if another facility is not already located nearby. New subsection g. is added to allow pier bumpers and provide standards.

83.300 Shoreline Stabilization –

Includes minor clarifications to consistently utilize the terms minor and major within the context of repair, maintenance, and replacement actions. Clarifies that boulders alone are not considered soft stabilization, but boulders can be used occasionally for habitat complexity as part of soft stabilization projects. The City also proposes to clarify that if more than one section of bulkhead is located on a property the entire length of all sections shall be included in any calculations required within subsection 4. Major Repair or Major Replacement of Hard Structural Shoreline Stabilization. A requirement that plans must be prepared by a qualified professional and if a 3-party consultant is retained to review the shoreline stabilization plan they will attend a pre-submittal meeting for the building permit are added to Subsection 8 Submittal Requirements.

83.360 No Net Loss Standard and Mitigation Sequencing –

Minor edits proposed to provide clarity, examples, or update references. A new subsection g. is proposed to require at any mitigation analysis required be prepared by a qualified professional and subject to 3rd party review.

83.370 Federal and State Approval – Minor edit proposed to add the City's clearing and grading permit, called a land surface modification permit to the list of permits the City will not issue without documentation verifying other necessary state and federal agency approvals or authorizations have been obtained.

83.380 Shoreline Setback Reduction – Minor re-organization of subsection 2.b is proposed, but contains no substantive change to the purpose, intent or implementation of this provision. In addition, a provision is added to subsection 2.b.4 requiring that reduced setbacks be documented with the filing of an electronic copy of the approved as-built landscape plan in the City's electronic permitting system. A cross-reference to KZC 141.70.4 is added as new subsection e. relating to properties where hard shoreline stabilization has been removed. New option is added to Shoreline Setback Reduction Options Chart in subsection f. to allow a shoreline setback reduction if at least 50 percent of the linear lake frontage on a parcel is protected with nonstructural or soft shoreline options rather than hard armoring. Remove the incentive related to biofiltration/infiltration mechanisms and add more prescriptive standards (1.5 trees per 100 linear feet and a reference to 83.400.3.2 for shrub and groundcover standards) to the landscape strip incentive. Clarifying that the preservation or restoration must occur within the shoreline jurisdiction in order to use the setback reduction allowance.

83.380 Tree Management and Vegetation in Shoreline Setback – Language added to the Planting Requirements section providing that where there is an existing bulkhead, plantings shall include species which promote growth overhanging the water.

83.420 Public Access— The City proposes minor modifications, clarifications, and re-organization within this section and the following language is added as new subsection 1:

Treaty Rights - The Muckleshoot Indian Tribe has federally-protected treaty rights to fisheries resources within their usual and accustomed areas (“U&A”), including access to these resources. Kirkland’s regulated shoreline areas are a subset of the Muckleshoot Tribe’s larger “U&A” area. Activities and development regulated under this Shoreline Master Program have the potential to impact treaty-protected fisheries resources and tribal members’ ability to access to these resources. Accordingly, the City will work with the Muckleshoot Tribe to ensure that permitted projects do not unduly impede or impair in-water or upland tribal fishing access.

83.480 Water Quality, Stormwater, and Nonpoint Pollution – The City proposes minor edits to this section to update references and clarify applicable BMPs.

83.480 Critical Areas – The City proposes delete many of the stand-alone SMP critical areas provisions and replace them with critical areas provisions from KZC 90 through incorporation by reference, with the exception of a short list of excluded provisions. KZC 83.500 Wetlands, KZC 83.510 Streams are deleted in their entirety. Specific Geologically Hazardous Areas provisions of KZC 83.520, Flood Hazard Reduction provisions of KZC 83.530, and Archaeological and Historic Resources provisions of KZC 83.540 remain unchanged within the SMP.

83.550 Nonconformances – The City proposes minor modifications and clarifications to expand examples and improve implementation. A new subsection b) is added to 83.550.5.b 5) to require that nonconforming accessory structures located at or waterward of the OHWM, including overwater decks, pier flares, stairs, or similar improvements be removed or otherwise brought into conformance if the cost of alterations to a primary structure exceeds 50 percent of the replacement value. Clarification is added to address if there is more than one pier or dock located on a property it is the more non-conforming structure that must be removed. The City also clarifies that water-dependent uses are not considered discontinued after 90-days when they are inactive due to typical operational considerations.

Kirkland Zoning Code Chapter 141 – Shoreline Administration

141.30 Review Required and 141.40 Exemption from Permit Requirements- The City proposes to add clarifying text consistent with WAC 173-27 addressing the shoreline substantial development permit, shoreline conditional use permit, variance permit, and exemptions from the shoreline substantial development permit process.

141.45 Development not required to obtain shoreline permits or local review Exemption from Permit Requirements – The City added this new section to address remedial action, boatyards, WSDOT facilities, RCW 90.58.045 and Energy Facility Site Evaluations.

141.60 Applications – The City added a reference to the primary proponent of a project per WAC 173-27-180(1) as a person who may apply for a permit.

141.70 Procedures – The City made modifications to clarify the permit process and submittal or filing requirements to improve consistency with WAC 173-27.

Kirkland Zoning Code Chapter 5 – Definitions

The KZC Chapter 5 Uses Guide (Section 5.05) already directs users to Chapter 83 for shoreline management definitions. The modifications to definitions includes adding the critical areas definitions previously contained with KZC Chapter 90 into Chapter 5 and removing or updated cross references related to shoreline management in KZC Chapter 83. As a result of the City’s proposed incorporation by reference of critical areas provisions, with exceptions, found in KZC Chapter 90, these proposed modifications remove unnecessary exclusions and redundancies between KZC Chapter 90, 83, and 5.

Kirkland Zoning Code Chapter 90 – Critical Areas: Wetlands, Streams, Minor lakes, Fish and Wildlife Habitat Conservation Areas, and Frequently Flooded Areas

For the purpose of this review we have focused on sections proposed for incorporation into the SMP. As proposed KZC Chapter 83 subsections 83.500 Wetlands and 83.510 Streams will be deleted and replaced with the following Chapter 90 sections:

90.05	User Guide
90.10	Purpose
90.15	Applicability
90.20	Critical Areas Maps and Other Resources
90.25	Regulated Activities
90.40	Permitted Activities, Improvements or Uses Subject to Development Standards
90.50	Programmatic Permit – Public Agency and Public Utility
90.55	Wetlands and Associated Buffer Standards
90.60	Wetland Modification
90.65	Streams and Associated Buffer Standards
90.70	Stream Modification
90.75	Daylighting of Streams
90.80	Buffer Reduction for Meandering or Daylighting of Stream
90.85	Stream Channel Stabilization
90.95	Fish and Wildlife Habitat Conservation Areas
90.100	Frequently Flooded Areas
90.105	Critical Area Determination
90.110	Critical Area Report
90.115	Buffer Averaging
90.120	Limited Buffer Waivers – not to include KZC 90.120.2 – Type F Stream Buffer Waiver.
90.125	Increase in Buffer Width Standard
90.130	Vegetative Buffer Standards
90.135	Trees in Critical Areas and Critical Area Buffer
90.140	Structure Setback from Critical Area Buffer
90.145	Mitigation – General
90.150	Wetland Compensatory Mitigation
90.155	Measures to Minimize Impacts to Wetlands
90.160	Monitoring and Maintenance
90.165	Financial Security for Performance, Maintenance and Monitoring
90.170	Subdivisions and Maximum Development Potential
90.175	Dimensional Design Standards for Residential Uses
90.190	Critical Area Markers, Fencing and Signage
90.195	Pesticide and Herbicide Use
90.200	Critical Area Buffer and Structure Setback from Buffer under Prior Approvals
90.205	Code Enforcement
90.210	Dedication and Maintenance of Critical Area and Buffer
90.215	Liability

The above referenced KZC Chapter 90 sections, modified KZC 83.490 Critical Areas, 83.520 Critical Areas: Geologically Hazardous Areas, and 83.530 Flood Hazard Reduction together make up the SMA required critical areas protections within the shoreline jurisdiction.

Amendment History, Review Process

The City used Ecology's checklist of legislative and rule amendments to review amendments to chapter 90.58 RCW and department guidelines that have occurred since the master program was last amended, and determine if local amendments were needed to maintain compliance in accordance with WAC 173-26-090(3)(b)(i). The City also reviewed changes to the comprehensive plan and development regulations to determine if the shoreline master program policies and regulations remain consistent with them in accordance with WAC 173-26-090(3)(b)(ii). The City considered whether to incorporate any amendments needed to reflect changed circumstances, new information or improved data in accordance with WAC 173-26-090(3)(b)(iii). The City consulted with Ecology and solicited comments throughout the review process. Ecology completed an Initial, pre-public comment period, review of the City's proposed amendment in February and provided written comments to City staff and their consultant on March 11, 2019. Issues identified by Ecology were resolved prior to the joint local-state comment period.

The City prepared a public participation plan in accordance with WAC 173-26-090(3)(a) to inform, involve and encourage participation of interested persons and private entities, tribes, and applicable agencies having interests and responsibilities relating to shorelines. The City executed this plan by hosting an open house, creating a web page, and initiating outreach to residence, neighboring jurisdictions and tribes.

The City provided public notice of the SMP Periodic Review process and promoted public input as outlined in their Public Participation Plan via:

- Postcards were mailed to 1,395 shoreline jurisdiction property owners on February 9, 2019;
- The City established a ListServ for the SMP periodic review process;
- Public notice signs and flyers were posted at four (4) waterfront parks: Houghton Beach, Marina, Juanita Beach, and Denny;
- Study Sessions were held at the Houghton Community Council on February 25th and at Planning Commission on February 28th, followed by a City Council briefing on March 5th;
- Additional noticing was provided on March 20, 2019 to the above referenced shoreline property owners, stakeholders, and ListServ subscribers noticing the 30-day joint local-state comment period;
- Open House followed by Joint local-state Public Hearing occurred on April 25, 2019;
- Additional public meeting occurred on May 21, 2019, followed by a small group meeting on June 12, 2019 and another public meeting on June 18, 2019;
- Additional noticing for a second Public Hearing before the Joint Planning Commission and Houghton Community Council meeting on July 25, 2019 was provided on July 11, 2019 to the above referenced shoreline property owners, stakeholders, and ListServ subscribers;
- On July 25, 2019 the City held an additional Public Hearing during a joint Planning Commission and Houghton Community Council meeting;

On April 15, 2019 the City issued an addendum to the City of Kirkland 2015 Comprehensive Plan Update & Totem Lake Planned Action – Draft and Final Environmental Impact Statement pursuant to WAC 197-11-625 to meet the City's SEPA responsibilities for this SMP Periodic Review and associated

amendments. A copy of this EIS Addendum was provided to Ecology for this SMP Amendment adoption record.

The City provided notice to local interested parties, including a statement that the hearings were intended to address the periodic review in accordance with WAC 173-26-090(3)(c)(ii). Ecology distributed notice of the joint comment period and public hearing to state interested parties on or before April 8, 2019.

The City and Ecology held a joint local/state comment period on the proposed amendments following procedures outlined in WAC 173-26-104. The comment period began on April 8 and continued through May 8, 2019. A joint local/state public hearing was held on April 25, 2019.

Ecology and the City of Kirkland initially accepted public comments on the proposed SMP update during a 30-day joint public comment period from April 8 through May 8, 2019, and at a joint public hearing in Kirkland on April 25, 2019. Comments continued to be received and accepted by the City after the close of the joint public hearing through a second hearing held by the City on July 25, 2019. One person provided oral comment at the public hearing on April 25, and twelve people provided oral comment at the public hearing on July 25. A total of sixty-two (62) written comments from individuals or organizations were received by the City.

The City prepared a Comment Summary and Response Table which identifies 70 different commenters. The comments were organized into Table 2, which provides a summary of issues raised during the comment period as well as a response to the issues raised pursuant to WAC 173-26-104 (2). All comments were considered by the City. Nine (9) revisions made in response to public comment were specified within Table 2 and incorporated into the City's draft SMP Amendment prior to initial submittal.

The City provided their initial submittal of the proposed SMP amendments to Ecology pursuant to WAC 173-26-104 via email on August 27, 2019 with additional submittal items related to public comments received on September 6, 2019 and the submittal was determined to be complete. This began Ecology's review and initial determination.

Other Studies or Analyses supporting the SMP update

Ecology also reviewed supporting documents prepared for the City in support of the SMP amendment. These documents include a public participation plan, a periodic review checklist, Gap Analysis - *City Initiated Amendments Proposed to Chapter 5 and Chapter 90 KZC*, Gap Analysis – *City Initiated Amendments Proposed to Chapter 83 and 141 KZC and Shoreline Area chapter of the City's Comprehensive Plan*, and the City of Kirkland Initial Determination Consistency Memo.

Consistency with SEPA Requirements

The City submitted evidence of SEPA compliance in the form of an issued EIS Addendum for the proposed SMP amendments. Ecology did not comment on the SEPA.

Consistency with Chapter 90.58 RCW

The proposed amendments have been reviewed for consistency with the policy of RCW 90.58.020 and the approval criteria of RCW 90.58.090(3), (4) and (5). The City has also provided evidence of its compliance with SMA procedural requirements for amending their SMP contained in RCW 90.58.090(1) and (2).

Consistency with applicable guidelines (Chapter 173-26 WAC, Part III)

The proposed amendment has been reviewed for compliance with the requirements of the applicable Shoreline Master Program Guidelines (WAC 173-26-171 through 251 and 173-26-020 definitions). This included review of a SMP Periodic Review Checklist, which was completed by the City.

Summary of Issues Identified by Ecology as Relevant to Its Decision

Ecology is required to review all SMPs to ensure consistency with the Shoreline Management Act (SMA) and implementing rules including WAC 173-26, State Master Program Approval/Amendment Procedures and Master Program Guidelines. WAC 173-26-186(11) specifies that Ecology “shall insure that the state’s interest in shorelines is protected, including compliance with the policy and provisions of RCW 90.58.020.”

Based on review of the proposed amendments to the SMP for consistency with applicable SMP Guidelines requirements and the Shoreline Management Act, and consideration of supporting materials in the record submitted by the City, the following issues remain relevant to Ecology’s final decision on the proposed amendments to the City’s SMP, with Findings specific to each issue identifying amendments needed for compliance with the SMA and applicable guidelines:

Critical Areas Protection Standards of the SMP

The City’s current SMP contains imbedded critical areas provisions. The City is now proposing to remove some of those provisions and replace them with an incorporation by reference of the City-wide critical areas regulations, with some exceptions.

Critical Areas regulations are incorporated by reference into the SMP to address SMA required critical areas protection standards. Ecology has identified changes to the City’s proposed amendment to the SMP’s proposed critical areas provisions that are necessary for consistency with WAC 173-26-201(2)(a) & (c), WAC 173-26-221, and WAC 173-26-191(2)(b) & (c) (Attachment 1, Item Req-3). Ecology also identified changes to the General provisions section of KZC 83.260 necessary for consistency with WAC 173-26-201(2)(c).

Finding. *Ecology finds that all new development and uses are subject to mitigation sequencing and the no net loss of shoreline ecological function standards of the SMA and Guidelines. Ecology finds that the City’s SMP provides some prescriptive mitigation sequencing, BMP, and compensatory mitigation measures pre-designed by the City to the SMP no net loss standard. The City is proposing to clarify that in those instances where the SMP provides prescriptive mitigation standards additional no net loss and mitigation analysis reporting is not required. Ecology has identified that provisions of KZC 83.360 require additional clarification to ensure consistency with the WAC 173-26-201(2)(c).*

Ecology finds that specific regulations (bulk, dimensional, or performance standards) must also be accompanied by prescriptive mitigation measures in order to eliminate the need for site specific mitigation sequencing and no net loss reports; therefore mitigation measures must be added to KZC 83.360.1 (Attachment 1, item Req-3) for consistency with WAC 173-26-201(2).

Finding. *Ecology finds that the proposed SMP amendment provisions of KZC 83.490.1 and KZC 83.490.2 do not clearly identify how the critical areas provisions apply within the shoreline jurisdiction. Ecology finds that, for consistency with WAC 173-26-191(2)(b) & (c), the reference to incorporation of the City’s*

Critical Areas Ordinance KZC 90 (identified in Attachment 1, item Req-3) needs to be modified to clarify that those provisions are regulations of the SMP to be implemented through the authority of the SMA. KZC may provide additional review considerations, submittal requirements, and decision criteria but as an incorporated provision of the SMP they must be reviewed and processed through the shoreline permit system as provided in KZC 141.

Finding. *Ecology finds that the proposed SMP amendment provisions of KZC 83.490.4 are not consistent with the wetland protection requirements of WAC 173-26-221(2). Ecology also finds that if implemented, these provisions could result in a net loss of shoreline ecological function. The City is proposing to include as permitted activities within wetlands and their buffers all Cross Kirkland Corridor and Eastside Rail Corridor project and development associated with City Parks, Transportation, and Utility Master Plans. The Cross Kirkland Corridor and Eastside Rail Corridor are not located within the City's shoreline jurisdiction, so this provision does not need to be incorporated into the SMP. City Parks, Transportation, and Utility Master Plans are often not detailed enough to provide the project level analysis necessary to determine compliance with the SMP. Ecology finds that allowing Master Plan projects within wetlands and buffers is not consistent with the SMA requirements for wetland protection, mitigation sequencing, and no net loss of shoreline ecological function standards.*

Ecology finds that KZC 90.40 subsections I and j must be excluded from incorporation into the SMP (Attachment 1, item Req-3) for consistency with WAC 173-26-211(2) and WAC 173-26-201(2).

SMP Administration, Permits and Procedures

Ecology has identified changes to the City's Shoreline Administrative section KZC 141 and KZC 83.160 that are necessary for consistency with RCW 90.58 and WAC 173-27 (Attachment 1, Items Req-1 & Req-4).

Finding. *Ecology finds that the Shoreline Management Act (SMA) establishes three types of shoreline permits: substantial development permit, conditional use permit, and variance permit. Proposals for development and activities within shoreline jurisdiction may require one, two or all of those permits – or none at all. Ecology also finds that conditional use permits and variances can be issued for projects that do not include "substantial development" or with a development activity that is exempt from the shoreline substantial development permit process per WAC 173-27-040.*

Ecology finds that KZC 141.70 and KZC 83.160.1.c must be modified to remove the proposed requirement that all conditional use permits or variances must also meet the substantial development permit criteria (Attachment 1, items Req-1 & Req-4) for consistency with RCW 90.58.140 and WAC 173-27-130 through 170.

Additional items identified as recommended changes

In addition to the issues identified above as requiring changes to ensure consistency with the SMA and its implementing guidelines, Ecology has also identified changes recommended to fix minor errors, provide clarity or improve implementation. These items can be found within Attachment 1, items Rec-1 & Rec-2.

Findings. *Ecology finds that Attachment 1, item Rec-1 recommended changes, if implemented would be consistent with the policy and standards of RCW 90.58 and the applicable guidelines, however, the*

inclusion of these changes are at the discretion of the City and are not necessary in order to approve this Periodic Review amendment.

INITIAL DETERMINATION

After review by Ecology of the complete record submitted, Ecology has determined that the City proposed amendments, subject to and including Ecology's required and recommended changes (itemized in Attachment 1), are consistent with the policy and standards of RCW 90.58.020 and RCW 90.58.090 and the applicable SMP guidelines (WAC 173-26-171 through 251 and .020 definitions).

Next Steps

- Consider the changes recommended by Ecology as required and recommended to resolve the issues identified above and within Attachment 1. Please let me know if you would like to discuss alternative language or different approaches for resolving these issues.
- If these issues are resolved prior to local adoption, we anticipate being able to approve your SMP Periodic Review amendment "as submitted" promptly after formal submittal is provided consistent with WAC 173-26-110.

10.7.2019 City of Kirkland SMP Periodic Review Initial Determination of Consistency -

Ecology Recommendations to Resolve Issues Identified as Required and Recommended, October 7, 2019

The changes in **red are required** to comply with the SMA (RCW 90.58) and the SMP Guidelines (WAC 173-26, Part III). Changes in **blue are recommended** and consistent with SMA (RCW 90.58) policy and the SMP Guidelines (WAC 173-26, Part III).

Item	SMP Provision	BILL FORMAT CHANGES (underline = additions; strikethrough = deletions)	RATIONALE
Rec-1	Comprehensive Plan XVI. Shoreline Areas Subsection 2. Shoreline Environment Goal SA-13: Preserve, protect, and restore the shoreline environment	Critical areas found within the shoreline area include geologically hazardous areas, frequently flooded areas, wetlands, and fish and wildlife habitat conservation areas. Floodplains, while not a designated critical area, are also addressed in this section due to the relationship with frequently flooded areas within the City. No critical aquifer recharge areas are mapped within the City. Critical areas in the shoreline area are <u>subject to regulated by the critical areas regulations contained in</u> Chapter 90 KZC <u>critical areas regulations incorporated and included</u> by reference into the City's SMP.	Recommended change: modify this policy reference for internal consistency with KZC 83.490, to add clarity and reduce the likelihood of future implementation or interpretation challenges.
Rec-2 Req-1	KZC 83.160 User Guide Subsection 1.c.	<p>1. Explanation of Uses Table – The table contained in KZC 83.170 identifies uses and activities and defines whether those uses are prohibited, permitted by application for exemption or shoreline substantial development permit, or permitted by a shoreline conditional use permit. <u>The Shoreline Management Act (SMA) establishes three types of shoreline permits: substantial development permit, conditional use permit, and variance permit. Proposals for development and activities within shoreline jurisdiction may require one, two or all of those permits – or none at all. When a substantial development permit and a conditional use or variance permit are required for a development, the permits shall be issued concurrently.</u> If a use is not specifically listed, then it may be considered through a shoreline conditional use permit (see Chapter 141 KZC). The following symbols apply:</p> <p>a. “X” means that the use or activity is prohibited in the identified Shoreline Environment. Shoreline uses, activities, or conditions listed as prohibited shall not be authorized through a variance, conditional use permit, or any other permit or approval.</p> <p>b. “SD” means that the use or activity may be permitted by approval of the Planning Official through a letter of shoreline exemption (see Chapter 141 KZC) or through a shoreline substantial development permit (see Chapter 141 KZC).</p> <p>c. “CU” means that the use or activity may be permitted by approval of the Planning Official and Department of Ecology through a shoreline conditional use permit (see Chapter 141 KZC). Uses that are not specifically prohibited under KZC 83.170 may be authorized through a shoreline conditional use permit. A conditional use permit must also meet criteria for a substantial development permit.</p>	<p>Recommended Change: The proposed modification, underlined in the column to the left, is intended to clarify the permit system consistent with WAC 173-27.</p> <p>Required Change: Delete the addition, because it is not consistent with WAC 173-27.</p> <p>If a proposal meets the definition of substantial development and it doesn't meet any of the exemptions listed in WAC 173-27-040, then a Substantial Development Permit is required. The associated use or shoreline modification may also trigger a Shoreline Conditional Use Permit or the proposed development may need a variance to one of the SMPs bulk, dimensional, or performance standards. These are separate permits related to development, use, and standards. A CUP does not always trigger a SDP, for example, a change of use within an existing structure where no exterior alterations or other development action is proposed may only require a CUP.WAC 173-27-140 through 170 provides the different review and approval criteria for each of these permit types.</p>

10.7.2019 City of Kirkland SMP Periodic Review Initial Determination of Consistency - **Attachment 1**

Req-2	KZC 83.260 General	1. See KZC 83.360 for no net loss standard and mitigation sequencing for Conditional Use Permits or Variances, or where specific regulations <u>and mitigation measures</u> for a proposed use or activity are not provided in this chapter such as marinas and multifamily piers.	Required Change: Modify to clarify that the SMP no net loss standard and requirement for mitigation sequencing apply to all new development and use, but a>NNL report is not required for proposed uses and activities where the SMP provides prescriptive mitigation sequencing measures, BMPs, and compensatory mitigation pre-designed to meet the SMP no net loss standard. The recommended modification, underlined in red in the column to the left, is intended to clarify that the requirement to complete mitigation sequencing and provide a no net loss analysis applies to any proposed use of activity where the SMP does not already include prescriptive mitigation measures.
Req-3	KZC 83.490 Critical Areas: Wetlands, Streams, Fish and Wildlife Habitat Conservation Areas, and Frequently Flooded Areas	<p>1. Applicable Critical Areas Regulations – The following critical areas and their buffers located within shoreline jurisdiction <u>are subject to shall be regulated in accordance with</u> the provisions of KZC Chapter 90-Critical Areas, adopted [Date to be added] (Ordinance # __), which is herein incorporated by reference into this SMP, with the exclusions, clarifications and modifications contained in this section.</p> <ol style="list-style-type: none"> Wetlands Streams Fish and wildlife habitat conservation areas Frequently flooded areas; and Vegetative buffers required for the above. <p>2. Review Process – <u>The critical areas regulations of KZC Chapter 90 incorporated by reference are provisions of the SMP to be regulated along with the other provisions of KZC Chapter 83 through the Shoreline Administration process of KZC Chapter 141.</u> The City shall consolidate and integrate the review and processing of the critical areas aspects of the proposal <u>with in</u> the shoreline permit or review required for the proposed activity. Any references in <u>KZC Chapter 90 to process, decision making authority, or KZC Chapter 145, standards or decision criteria are supplemental and</u> do not replace the SMP requirements contained within this chapter and Chapter 141. <u>Any additional decision criteria and submittal requirements within KZC Chapter 90 shall be considered supplemental to the shoreline permit or review required for the proposed activity.</u></p> <p>3. Conflicting Provisions -- Unless otherwise stated, no development shall be constructed, located, extended, modified, converted, or altered, or land divided without full compliance with the provision adopted by reference and the Shoreline Master Program. Within shoreline jurisdiction, the regulations</p>	<p>The City is proposing to go from a standalone Shoreline Master Program to a more integrated approach which includes the incorporation of policies and regulations in other Kirkland Zoning Code Sections to satisfy the critical area provision requirements of the SMA.</p> <p>1. Required Change: modifying this incorporation provision to add clarity and reduce the likelihood of future implementation or interpretation challenges. Stating that critical areas in the shoreline are regulated by Chapter 90, is not entirely accurate. Some of the critical areas regulations of Chapter 90 have been incorporated by reference into the SMP; as part of the SMP these critical areas are regulated through the authority of the SMA via Chapter 83 and 141 and must be reviewed and permitted consistent with those authorities.</p> <p>2. Required Change: modify this section to add clarity and reduce the likelihood of future implementation or interpretation challenges. This is not a consolidated or integrated review of both a critical areas permit and shoreline permit, it is only</p>

Ecology and the City of Kirkland initially accepted public comments on the proposed SMP update during a 30-day joint public comment period from April 8 through May 8, 2019, and at a joint public hearing in Kirkland on April 25, 2019. Comments continued to be received and accepted by the City after the close of the joint public hearing through a second hearing held by the City on July 25, 2019. Notice of the comment period and public hearing was published in *The Seattle Times* on March 25, 2019, and notice was sent to over 1,300 shoreline jurisdiction property owners, project list serv subscribers, stakeholders, and parties of record. One person provided oral comment at the public hearing on April 25, and twelve people provided oral comment at the public hearing on July 25. 62 written comments from individuals or organizations were also received as summarized in Table 1 below. Table 2 provides a summary of issues raised during the comment period as well as a response to the issues raised pursuant to WAC 173-26-104 (2).

Table 1 (below) lists all the individuals or organizations that provided comment and reference to each particular topic/issue as summarized in Table 2 beginning on page 5.

TABLE 1: LIST OF COMMENTERS AND WHERE THEIR COMMENTS MAY BE FOUND IN THE COMMENT SUMMARY TABLE		
COMMENT NO.	ORGANIZATION - COMMENTER NAME (DATE RECEIVED)	SUMMARY/RESPONSE (TABLE 2 – BELOW)
1	<i>Muckleshoot Indian Tribe Fisheries Division- Karen Walter</i> (5.8.19)	B-4, B-5, B-6, B-7, B-8, B-9, B-10
2	<i>Puget Sound Energy</i> (4.23.19)	C-1, C-2, C-3, C-4, C-5, C-6
3	Dallas Evans (4.18.19 email, 4.25.19 oral hearing comments, 3.2.19 letter, 5.10.13 email, 5.13.19 (2) emails)	A-1, B-15, G-1, G-2, E-3, E-4, E-2, B-11
4	Richard Sandaas (5.8.19, 5.13.19, 5.16.19, 5.17.19, 6.30.19, 7.25.19 oral hearing comments)	A-1, E-4, D-2, B-11, B-8, D-3, E-2, F-1, B-19, G-1, B-12
5	Abby Moore (5.8.19)	A-1
6	Robert C. Welford (5.8.19)	A-1, B-3
7	Bryan Loveless (5.6.19, 5.8.19, 7.1.19, 7.25.19 oral hearing comments)	A-1, B-3, B-11
8	Chantal Balcom (5.8.19)	A-1, B-3, B-15, G-1, G-2, E-3, E-4, E-2, B-11
9	Russ Sach (5.8.19)	A-1
10	Rashno Davoodi (5.8.19)	A-1
11	Pamela Sursely (5.8.19)	A-1
12	“Stacy” (5.8.19)	A-1, B-3, G-1, G-2

TABLE 1: LIST OF COMMENTERS AND WHERE THEIR COMMENTS MAY BE FOUND IN THE COMMENT SUMMARY TABLE		
COMMENT NO.	ORGANIZATION - COMMENTER NAME (DATE RECEIVED)	SUMMARY/RESPONSE (TABLE 2 – BELOW)
13	Dave and Cindy Flynn (5.8.19, 5.21.19)	A-1, B-3, B-15, E-3, E-4, E-2, B-11, G-1, G-2
14	Dave Rumpf (4.28.19)	E-2
15	Dean and Gretchen Young (5.8.19)	A-1, B-3
16	Dori Slosberg (5.8.19, 7.1.19)	A-1, B-1, B-3
17	Edward Slosberg (5.8.19)	A-1, B-3
18	Enrica Zeggio (5.8.19)	A-1
19	Hossein Sabour-Mohajer (5.8.19)	A-1
20	Karen Levenson (4.24.19)	B-17
21	Launa Johnson (4.25.19)	B-18
22	Launa Johnson (4.25.19)	B-18
23	Kevin and Lora Cruze (5.7.19, 5.11.19)	A-1, B-15, G-1, G-2, E-3, E-4, E-2, B-11
24	Tom Sterken (5.8.19)	A-1
25	Lyle Gradden (5.8.19)	A-1
26	Mark Enstrom (5.8.19)	A-1
27	Mary and Dave Rumpf (5.3.19)	B-2
28	Mary Shaber (5.8.19)	A-1, B-3
29	Megan Lenseigne (4.25.19)	E-2
30	Nancy and David Auth (5.8.19)	A-1, B-3
31	Pam Crowley (5.8.19)	A-1
32	Parivash Khajavi (5.8.19)	A-1

TABLE 1: LIST OF COMMENTERS AND WHERE THEIR COMMENTS MAY BE FOUND IN THE COMMENT SUMMARY TABLE		
COMMENT NO.	ORGANIZATION - COMMENTER NAME (DATE RECEIVED)	SUMMARY/RESPONSE (TABLE 2 – BELOW)
33	Patrick Smith (5.8.19)	A-1
34	Rich and Becky Budke (5.8.19)	A-1
35	Ross Baharmast (5.2.19)	A-1
36	Moe Krabbe (6.17.19)	E-3, E-4
37	Henry Brown (5.23.19, 6.17.19)	A-1, E-3, E-4, F-2, G-1, B-12, E-2
38	Greg Gunther (5.22.19)	B-16
39	Katherine Kearny (6.19.2019, 7.3.19)	B-12
40	Bruce Lingle (5.22.19)	A-1, B-3
41	Julie Taylor (5.21.19)	E-4, E-2, B-12, E-1
42	Christopher and Marsha Nelson (6.27.19)	G-1
43	Dean Young (6.30.19)	B-1
44	Rebecca Penn and John Beck (7.1.19)	F-1
45	Stacey@wyngateproductions.com (7.1.19)	A-1, B-1, B-3, B-11
46	Enrica Zeggio (7.1.19)	B-1
47	Mark Nelson (7.1.19, 7.25.19 oral hearing comments)	A-2
48	Calvin Knapp Jr. and Beth Malone (7.1.19)	B-11
49	Ross Baharmast (7.1.19)	G-1, G-2
50	Jerald and Misty Pruner (7.1.19)	B-2
51	Wilbur and Sharon Smith (7.12.19)	B-1
52	Allen Schwartz (7.13.19)	B-1

TABLE 1: LIST OF COMMENTERS AND WHERE THEIR COMMENTS MAY BE FOUND IN THE COMMENT SUMMARY TABLE		
COMMENT NO.	ORGANIZATION - COMMENTER NAME (DATE RECEIVED)	SUMMARY/RESPONSE (TABLE 2 – BELOW)
53	Ian and Donna LeGrow (7.14.19)	E-3, E-4, G-1
54	James Carroll (7.15.19)	B-1
55	Gary Gelow (7.15.19)	B-1
56	Ken Davidson (7.22.19, 7.25.19 oral hearing comments)	E-4, G-1, G-2
57	Robert Horwitz (7.23.19)	B-11, B-1
58	Jack and Marilyn R (7.24.19)	G-1, G-2, E-1, E-3, D-1
59	Mary Rumpf (7.24.19)	B-2
60	W. Larne Gabriel (7.24.19)	B-1
61	Scott Morris (7.25.19)	A-2, E-2, G-1, G-2
62	James H. Miller, Chris DiJulio, Mike Looney (7.25.19)	B-1
63	Scott Morris (7.25.19 oral hearing comments)	A-1, B-11, E-2, G-1, G-2, D-3, D-4
64	Chris Nelson (7.25.19 oral hearing comments)	G-1
65	Michele Kenny (7.25.19 oral hearing comments)	A-1, G-1, B-3
66	Russ Sack (7.25.19 oral hearing comments)	A-1, B-11
67	Richard Lures (7.25.19 oral hearing comments)	G-1
68	Lee Thornson (7.25.19 oral hearing comments)	B-11, B-3, G-1, E-4
69	Annie Williams (7.25.19 oral hearing comments)	B-11
70	Loren Gabriel (7.25.19 oral hearing comments)	B-11, A-2

Table 2 (below) summarizes comments by topic and provides a response from the City. Please note, the statements below are not the opinions or comments of the City of Kirkland, but rather a summary of SMP issues received during the public comment period.

TABLE 2 : COMMENT SUMMARY/RESPONSE TABLE				
LINE	COMMENT TOPIC	COMMENT NO. (TABLE 1)	COMMENT SUMMARY	CITY OF KIRKLAND RESPONSE
Review Process				
A-1	Transparency and outreach	3,4,5,6,7,8,9,10,11,12,13,15,16,17,18,19,23,24, 25,26,28, 30, 31,32,33,34, 35, 37, 40, 45, 63, 65, 66	Several comments received expressed the opinion that the process was being moved along too quickly without adequate awareness and input from shoreline property owners. Commenters requested additional time and forums to help understand the changes and provide feedback.	<u>Comment noted. Comment period was extended.</u> In accordance with Ecology requirements, a public participation plan was developed at the beginning of the process and was implemented throughout. This included noticing all shoreline property owners with a direct mailing prior to the first public comment period and hearing the City met, or exceeded the public involvement requirements required by Ecology for a SMP periodic update. However, in response to the comments received indicating that many shoreline property owners were not aware of the update and wanted more time to comment, the public involvement process was extended. Two additional public meetings were held as well as individual meetings with key stakeholders. A FAQ document was created and posted to the SMP website to answer some recurring questions along the way, which supplements this response to comments, and written stakeholder input was directly requested in the form of a topic summary matrix circulated to interested parties. A second public hearing was held on July 25, 2019 and all comments received from the beginning of the first comment period through the close of the second hearing are being addressed in this matrix.
A-2	Scope of periodic update	47, 61, 70	Some comments requested that the scope of revisions be limited to those required by state law which are the minimum a periodic update must include. Commenters felt the updates were advertised as minor when really they would have significant repercussions for shoreline property owners.	<u>Comment noted.</u> The revisions required by law are presented in the SMP checklist. The City is choosing to propose additional revisions beyond the minimum required as the periodic update is an opportunity to make adjustments to the SMP based on the experience of staff and property owners during the administration of the SMP since 2010. The revisions proposed are intended to be minor adjustments and clarifications to the existing code, not a major update.

TABLE 2 : COMMENT SUMMARY/RESPONSE TABLE				
LINE	COMMENT TOPIC	COMMENT NO. (TABLE 1)	COMMENT SUMMARY	CITY OF KIRKLAND RESPONSE
General Comments				
B-1	General opposition to the proposal	43, 46, 52, 62, 51, 54, 55, 60	Several comments expressed general opposition to the updates and/or requested that no changes be made at all to the SMP.	<p><u>Comments noted.</u></p> <p>State law requires jurisdictions to review and update their SMPs every eight years in accordance with the Shoreline Management Act, RCW 90.58.080 (4) and its current guidelines and legislative rules. The majority of the proposed amendments are clarifications and “clean-up” changes which maintain the same underlying regulation with adjusted text, allowing applicants and staff clarity when submitting or reviewing code.</p>
B-2	General support for the proposal	14, 27, 50, 59	Some comments expressed general support for the updates, or for a particular aspect of the updates.	<p><u>Comments noted.</u></p>
B-3	Financial Implications	7,13,16,17, 30, 40, 65, 68	Several comments were concerned with the perceived negative impact the proposed amendments would have on property values. Some questioned whether the City had conducted any analysis of the proposed amendments effect on fair market value of properties.	<p><u>Comment noted.</u></p> <p>The revisions proposed are intended to be minor adjustments and clarifications to the existing code, not a major update. Existing development, including nonconforming structures, continue to be allowed to be maintained. A specific fiscal analysis was not within the scope of this update. See additional discussion below of nonconforming development.</p>

TABLE 2 : COMMENT SUMMARY/RESPONSE TABLE

LINE	COMMENT TOPIC	COMMENT NO. (TABLE 1)	COMMENT SUMMARY	CITY OF KIRKLAND RESPONSE
B-4	Treaty rights	1	The Muckleshoot Tribe noted previous comments submitted on the SMP during the comprehensive update process in 2009 which requested acknowledgment of the importance of Lake WA for tribal fishing rights. The comment requests SMP revisions to reflect that shoreline and in-water projects can negatively impact the Tribe's access to fisheries resources, as well as requesting early coordination for all in-water work.	<p><u>Comment noted. Revision proposed.</u></p> <p>The SMP already includes provisions for protection of fisheries resources as well as archeological and historical resources. While these provisions do not specifically reference the Muckleshoot Tribe, they are designed to protect these resources for all shoreline and lake stakeholders. The City routinely coordinates with the Tribe on in-water work through the SEPA process.</p> <p>To more specifically acknowledge the Tribe's right to access fisheries resources the following text is proposed to be added to SMP section 83.420.1:</p> <p><i>Treaty Rights - The Muckleshoot Indian Tribe has federally-protected treaty rights to fisheries resources within their usual and accustomed areas ("U&A"), including access to these resources. Kirkland's regulated shoreline areas are a subset of the Muckleshoot Tribe's larger "U&A" area. Activities and development regulated under this Shoreline Master Program have the potential to impact treaty-protected fisheries resources and tribal members' ability to access to these resources. Accordingly, the City will work with the Muckleshoot Tribe to ensure that permitted projects do not unduly impede or impair in-water or upland tribal fishing access.</i></p>
B-5	Culverts	1	The Muckleshoot Tribe commented on the federal court decision regarding barrier culverts as an impediment to treaty rights and requested a broader definition to "culvert". They also noted the culvert standards language in 90.40.05 is limited in terms of requirement replacements for fish passage.	<p><u>Comment noted. No revision proposed.</u></p> <p>Few culverts that are currently fish passage barriers are known within the City's shoreline jurisdiction, according to WDFW's fish passage map (https://geodataservices.wdfw.wa.gov/hp/fishpassage/index.html). The SMP includes policies and regulations to ensure significant projects provide fish passage including 83.230.5.c which requires any street expansion affecting streams to be designed to allow fish passage.</p> <p>Critical areas regulations also address culverts and fish passage including requiring design to meet Washington Department of Fish and Wildlife's guidelines. The CAO also has regulations encourage stream daylighting.</p>

TABLE 2 : COMMENT SUMMARY/RESPONSE TABLE

LINE	COMMENT TOPIC	COMMENT NO. (TABLE 1)	COMMENT SUMMARY	CITY OF KIRKLAND RESPONSE
B-6	Stream daylighting	1	The Muckleshoot Tribe stated that KZC 90.75 standards for stream daylighting lack the requirement to daylight streams when there is a project near piped streams and it could be done as part of the project.	<u>Comment noted. No revision proposed.</u> Provision 4 of the noted stream daylighting section, 90.75.4, states that the City may require a stream to be daylighted as part of a Process IIA permit pursuant to Chapter 150 KZC or IIB permit pursuant to Chapter 152 KZC if the required daylighting is proportionate to the scope and nature of the Process IIA or IIB permit.
B-7	Aquaculture prohibition	1	The Muckleshoot Tribe asked for explanation why aquaculture is a prohibited use in all shoreline designations. They note it is a water dependent use and can vary by size such as a small egg box.	<u>Comment noted. No revision proposed.</u> There is no change proposed to this provision as part of the periodic update. The decision was made by the City at the time of the comprehensive update in 2010 to prohibit all aquaculture as it was not a desired shoreline use in the city.
B-8	Geothermal projects	1, 4	The Muckleshoot tribe expressed support for prohibition of geothermal projects in Lake WA as they could harm salmon and their habitats. Other commenters expressed disapproval of this prohibition.	<u>Comments noted. No revision proposed.</u> The prohibition is intended to clarify that geothermal heat pumps are not permitted waterward of the OHWM. Proposals for geothermal heat pumps in the lake have previously been rejected because the code currently prohibits locations that adversely impact ecological functions. The revision supports those provisions. Viable upland alternatives exist to install geothermal systems.
B-9	Beaver management	1	The Muckleshoot Tribe expressed opposition to the proposed exemption for beaver management actions which have received an HPA from WDFW due to the fact that beaver deceivers can be a barrier for salmon. They would like mitigation sequencing to be demonstrated and fish passage monitoring required, which they say is not consistently required by WDFW.	<u>Comment noted. No revision proposed.</u> The proposed exemption for beaver management is intended to streamline the approval process, in some cases to protect fish passage. WDFW is a primary agency concerned with fish passage and it is appropriate to defer to them and expect that they would condition the HPA appropriately if fish passage needed to be addressed.

TABLE 2 : COMMENT SUMMARY/RESPONSE TABLE

LINE	COMMENT TOPIC	COMMENT NO. (TABLE 1)	COMMENT SUMMARY	CITY OF KIRKLAND RESPONSE
B-10	Urban stream designation	1	The Muckleshoot Tribe expressed opposition to the proposed urban stream designation as they felt it did not consider legal requirements for removal of fish barriers and could result in a net loss of riparian functions.	<p><u>Comment noted. Revision proposed.</u></p> <p>The proposed “urban stream designation” was meant to formalize criteria for determining when fish habitat is not recoverable, in streams where it is not currently present, for the purpose of determining an appropriate buffer width. The city has continued to review this approach and has removed the urban stream designation from the CAO. Instead, a new limited buffer waiver has been added to Chapter 90.120.2 which allows the Planning Official to apply a Type N stream buffer, instead of a Type F buffer on a project by project basis if, based on an analysis of established criteria, fish habitat in the subject area could not reasonably be recovered by restoration or management. The new buffer waiver will not apply within shoreline jurisdiction.</p>
B-11	Scientific basis for proposals	3, 4, 23, 45, 48, 63, 66, 68, 69, 70	Some commenters questioned the science proposed as rational for some revisions, including the use of Kirkland shorelines by salmon.	<p><u>Comment noted.</u></p> <p>The State requires shoreline regulations to use “the most current, accurate and complete scientific and technical information available”. When the current SMP was developed, extensive background documentation was prepared to ensure these standards were met and to help understand the City’s baseline condition. The City referred to many scientific studies to help align the goals and policies to accommodate environmental improvement of the shoreline and lake ecosystem. The scope of the periodic update does not include re-visiting the science used in 2010 for the comprehensive update. The current proposals are supported by the science the 2010 regulations were based on.</p> <p>Salmon are known to use Lake Washington and that could include Kirkland shorelines. Thus, there are regulations aimed at salmon habitat protection and restoration. However, it is important to note that the SMA also applies to shorelines that do not have any salmon use. SMPs for non-salmon bearing waters still have dimensional standards for overwater structures etc. It is not exclusively the use of Kirkland’s shorelines by salmon that are driving the regulations.</p>

TABLE 2 : COMMENT SUMMARY/RESPONSE TABLE

LINE	COMMENT TOPIC	COMMENT NO. (TABLE 1)	COMMENT SUMMARY	CITY OF KIRKLAND RESPONSE
B-12	Milfoil removal noticing	1, 37	<p>The Muckleshoot Tribe expressed support for the proposed amendment to require notification to the City and neighbors of chemical milfoil management. They noted other aquatic plants, such as elodea are also sprayed with aquatic pesticides so the City should consider expanding its review beyond milfoil. They also noted the City should inform Ecology staff administering the aquatic pesticides NPDES program of regulatory changes and provided the contact.</p> <p>Another commenter expressed support of the required notification to the City and neighbors because of safety concerns. She noted that current notification policies in place by other agencies are not adequate and requested a specific timeframe be included in the notice.</p> <p>Finally, a number of comments were received disproving of the proposed amendments as they felt they were overly burdensome to applicants.</p>	<p><u>Comments noted. Revision proposed.</u></p> <p>The City was considering revisions to the chemical milfoil removal notice requirements dependent on the outcome of Ecology's revisions to their notice process which were occurring simultaneously. The City wants to ensure that adequate notice is provided to neighbors, but does not intend to add a redundant requirement if such notice is provided through another agency.</p> <p>After reviewing Ecology's recently revised Aquatic Plant and Algae Management General Permit, released July 5, 2019, the City finds the original milfoil noticing proposal added to the SMP to be duplicative to the notification process already required by Ecology. Therefore, the revision proposed to 83.480.3 has been removed from the current draft of the SMP.</p>
B-13	Lighting	1	<p>The Muckleshoot Tribe asked the city to reconsider the exemptions to lighting standards in 83.470.2.b based on new information regarding artificial lighting impacts to salmon (Tabor et al 2017).</p>	<p><u>Comment noted. No revision proposed.</u></p> <p>The exemptions to the lighting standards are for temporary or shorter term lighting uses which do not warrant the level of regulation that permanent light sources do. Any impacts from the exempt lighting would be temporary.</p>

TABLE 2 : COMMENT SUMMARY/RESPONSE TABLE

LINE	COMMENT TOPIC	COMMENT NO. (TABLE 1)	COMMENT SUMMARY	CITY OF KIRKLAND RESPONSE
B-14	Piolet program to evaluate "remediation measure" effectiveness	4	One commenter referred to comments he had submitted at the time of the comprehensive SMP update questioning whether the "remediation measures" proposed would provide the intended results (environmental benefits). He proposed a pilot program be initiated to evaluate effectiveness and states he received a commitment from the city that such a program would be initiated. He asks whether that ever happened and what the results were.	<p><u>Comment noted.</u></p> <p>No pilot program to evaluate effectiveness has been started at this time. However, on a project by project basis monitoring of mitigation projects is required and reviewed by the City. Based on the projects completed since the 2010 Comprehensive Update, the City has recorded just over a half an acre of newly planted shoreline riparian area with native vegetation, the planting of 158 native trees and the <u>voluntary</u> removal of approximately 230 feet of bulkhead. The projects that have removed hard stabilization measures (bulkheads) and replaced with soft shorelines have been successful through the monitoring period of five years. Specifically the Taylor and Bendich properties have been successful examples of bulkhead removals and installation of soft shoreline stabilization and are leaders in the Green Shores for Homes program, which is a certification program developed by Washington SeaGrant. There have been additional questions about the placement of spawning gravel in the Lake, but this is a State (rather than City) requirement and the City has not monitored the success of such measures.</p>
B-15	No net loss standard	3,8,13	Some comments stated they felt the proposed changes went beyond the requirement for no net loss which only requires that functions remain the same as the baseline established during the comprehensive update, not that they be further improved.	<p><u>Comment noted.</u></p> <p>At a minimum, proposed revisions must not result in a net loss of the baseline shoreline ecological function established at the time of the comprehensive update. However, the City also has goals and policies which promote ecological improvement and restoration of degraded function over time. The proposal must also consider the cumulative effect of the entire suite of SMP provisions which includes some regulations more protective than others. Proposed revisions are intended to meet the no net loss standard while providing predictability for the applicant as well as flexibility, where appropriate.</p>

TABLE 2 : COMMENT SUMMARY/RESPONSE TABLE				
LINE	COMMENT TOPIC	COMMENT NO. (TABLE 1)	COMMENT SUMMARY	CITY OF KIRKLAND RESPONSE
B-16	Bald eagle listing	38	One commenter expressed support for the possibility of designating the bald eagle as a species of local importance.	<p><u>Comment noted.</u></p> <p>Shortly after adoption of the current Chapter 90, the bald eagle was delisted by the state and federal governments due to the remarkable success of recovery efforts. Because the bald eagle is no longer designated as a protected species it no longer meets the criteria for wildlife species of local importance. The City does have the option of designating the bald eagle locally and adding it back onto the list of species of local importance, but that would require the City to develop management strategies without the support of agencies with expertise. For the same reasons that the state and federal agencies delisted the bald eagle and because the City relied on their expertise to regulate the species, staff recommends against local designation of the bald eagle. The Planning Commission concurred with the staff recommendation to continue the status quo (no local listing) but instead deferring to the U.S. Fish and Wildlife Service and the federal protection of the Bald and Golden Eagle Protection Act.</p>
B-17	Concern with recent LED light installation	20	One commenter expressed concern with a recent project that she says installed LED lights in the shoreline setback without evaluating lower impact options.	<p><u>Comment noted.</u></p> <p>This comment was not in regard to the proposed SMP changes. No changes are proposed to lighting standards or mitigation sequencing requirements. Project specific inquiries can be handled outside of the scope of the periodic update process.</p>

TABLE 2 : COMMENT SUMMARY/RESPONSE TABLE

LINE	COMMENT TOPIC	COMMENT NO. (TABLE 1)	COMMENT SUMMARY	CITY OF KIRKLAND RESPONSE
B-18	Juanita Beach	21, 22	One commenter requested play areas for smaller kids be installed at Juanita Beach and expressed concern with the location change of the bathhouse.	<p><u>Comment noted.</u></p> <p>These comments are not in regard to the proposed SMP updates. The proposed updates would not change the City's ability to install such play areas if desired and the bathhouse replacement project is undergoing its own public process.</p>
B-19	Aspirational policy for removal of residential overwater structures	3, 68, 4	A few commenters expressed concern with the aspirational policy added to the comprehensive plan in regard to removal of residential overwater structures.	<p><u>Comment noted. Revision proposed.</u></p> <p>The aspirational policy to promote opportunities to remove overwater residential structures over time was included at the request of a planning commissioner. In response to public comment and further planning commission discussion, it has been removed from the draft.</p>
Utilities				

TABLE 2 : COMMENT SUMMARY/RESPONSE TABLE				
LINE	COMMENT TOPIC	COMMENT NO. (TABLE 1)	COMMENT SUMMARY	CITY OF KIRKLAND RESPONSE
C-1	Definitions	2	<p>PSE suggested the following change to the definition of “Utility Transmission Facilities”-</p> <p>“Infrastructure and facilities for the conveyance of services, such as electrical transmission lines <u>operating at 115kv or higher</u>, cables, natural gas pipelines <u>operating at 60 psi or greater</u>, and sewer pump lift stations.</p>	<p><u>Comment noted. Suggested revision accepted.</u></p> <p>PSE clarified that the “transmission” definition in the energy business means a facility that is operating above the pressure or voltage suitable for distribution to customers, etc., and such voltage or pressure is set for the transportation of energy to a particular area – not intended for consumption. Specifying the pressure and voltage clarifies the City’s intent to denote transmission facilities with this definition, rather than distribution.</p> <p>83.80 is proposed to be revised as follows: 131. Utility Transmission Facilities – Infrastructure and facilities for the conveyance of services, such as power lines <u>electrical transmission lines operating at 115kv or higher</u>, cables, and natural gas <u>pipelines operating at 60 psi or greater, and sewer pump lift stations.</u></p>
C-2	Shoreline Environments, Permitted and Prohibited Uses and Activities Chart	2	<p>PSE suggested the following change to the Shoreline Environments, Permitted and Prohibited Uses and Activities Chart:</p> <p>Utility transmission facilities, footnote 24: This use may be allowed provided there is no other feasible route or location outside the shoreline environment. Must be underground, unless not feasible, <u>or if undergrounding will result in more net loss of shoreline ecological functions than overhead facilities. Undergrounding shall be facilitated in accordance with all applicable rates and tariffs on file with the WUTC.</u></p>	<p><u>Comment noted. No revision proposed.</u></p> <p>83.240.b and f already adequately cover the siting of utilities. The City also does not need to list other agencies regulations.</p>

TABLE 2 : COMMENT SUMMARY/RESPONSE TABLE

LINE	COMMENT TOPIC	COMMENT NO. (TABLE 1)	COMMENT SUMMARY	CITY OF KIRKLAND RESPONSE
C-3	Lot Size or Density, Shoreline Setback, Lot Coverage and Height	2	PSE suggested the following change to Shoreline Setback regulations regarding allowed improvements within the setback (83.190.2.d.5): 5) Underground utilities accessory to a shoreline use approved by the Planning Official, provided there is no other feasible route or location <u>outside the shoreline environment, where undergrounding may result in a greater impact to the shoreline environment, and in accordance with all applicable rates and tariffs on file with the WUTC.</u>	<u>Comment noted. No revision proposed.</u> 83.240.b and f already adequately cover the siting of utilities. The City also does not need to list other agencies regulations.
C-4	Utilities general regulations	2	PSE suggested the following change to the general utilities regulations, 83.240: j.h. Utilities shall provide screening of facilities from the lake and adjacent properties in a manner that is compatible with the surrounding environment. The City will determine the type of screening on a case-by-case basis, <u>provided that all clearance requirements required under WAC and NESC are able to be maintained, screening does not cause deviation from such code, and screening is consistent with "Landscape Plans and Utility Plans" noted in the tree management and required landscaping section of the Kirkland Zoning Code.</u>	<u>Comment noted. No revision proposed.</u> The reference to other parts of the zoning code is not necessary and the City does not need to refer to other agencies regulations.
C-5	Construction and Maintenance	2	PSE suggested the following change to the utilities construction and maintenance regulations, 83.240.2.b: b. Clearing of vegetation within utility corridors shall be the minimum necessary for installation, infrastructure maintenance and public safety, <u>including but not limited to, tree removal as deemed required by the utility to eliminate an imminent threat to the safety and reliability of the facility.</u>	<u>Comment noted. No revision proposed.</u> The provision for clearing of vegetation in utility corridors does not exclude tree removal, if it is the minimum action necessary for installation, maintenance and public safety. Additionally, this is already addressed in 95.20.2. Therefore, the City feels the suggested change is not necessary.

TABLE 2 : COMMENT SUMMARY/RESPONSE TABLE				
LINE	COMMENT TOPIC	COMMENT NO. (TABLE 1)	COMMENT SUMMARY	CITY OF KIRKLAND RESPONSE
C-6	CAO Vegetative Buffer Standards	2	PSE suggested the following change to the Vegetative Buffer Standards in 90.130.3.b.3: 3. For new utility poles the buffer shall be calculated based on the combined area of all new utility pole footprints and be vegetated at a minimum of 1:1 ratio (net new impervious area equals total square feet of buffer vegetation), meeting the vegetated buffer standard at a proportional rate. <u>Vegetation to be coordinated with the utility to mitigate conflicts to the safety and reliability of the facilities, and consistent with the "Landscape Plans and Utility Plans" noted in the tree management and required landscaping section of the Kirkland Zoning Code.</u>	<u>Comment noted. No revision proposed.</u> The references suggested are not applicable.
Tree Management and Vegetation in Shoreline Setback				
D-1	Alternative design option	27, 58	One commenter supported the removal of the administrative design approval option that allows a longer and/or wider pier than Chapter 83 KZC permits if federal and state agencies approve the deviation, while others requested to see this option continue. A few commenters specifically referenced the applicability of this provision, and their support or opposition to the controversial Bel Lago pier project in Juanita Bay.	<u>Comment noted. No revision proposed.</u> The administrative approval option is not required and has rarely been used since it was implemented as an option. When it was used Staff found that federal and state agencies do not have firm standards but rather use biological analysis to approve deviations from the City's pier standards. In one case, state and federal agencies were going to approve a multifamily pier in very shallow water within Juanita Bay that both staff and the Muckleshoot Tribe determined would have significant impacts to salmon, navigation and the ecological function of the lake. The City prefers to maintain local control of the pier regulations by removing the administrative design approval option.

TABLE 2 : COMMENT SUMMARY/RESPONSE TABLE

LINE	COMMENT TOPIC	COMMENT NO. (TABLE 1)	COMMENT SUMMARY	CITY OF KIRKLAND RESPONSE
D-2	Green shorelines pamphlet	4	One commenter specifically questioned the accuracy and credibility of portions of the "Green Shorelines" pamphlet which he feels has be incorporated into many approaches in the SMP.	<p><u>Comment noted.</u></p> <p><i>Green Shorelines: Bulkhead Alternatives for a Healthier Lake Washington</i> is a guidebook produced by the City of Seattle to help property owners on Lake Washington and Lake Sammamish understand options for their waterfronts other than hard structural armoring. While not specifically incorporated into the SMP, the principles the guidebook describes are intended to benefit the lake ecosystem and thus are appropriate approaches for the SMP to consider, along with the other priorities established by the Shoreline Management Act. Restoration practices are always evolving but qualified shoreline professionals consider the approaches in the guidebook- such as setting back bulkheads, use of wood and plantings, and beach coves, to be effective ways to restore or preserve shoreline ecological function.</p>
D-3	Function of trees along shoreline	3, 4, 63	Several commenters questioned the rationale for requiring tree planting in shoreline setbacks and requested that the alternative option for planting required vegetation in shoreline setbacks provided in 83.400.3.f be retained.	<p><u>Comment noted. Revision proposed.</u></p> <p>Shoreline mitigation planting standards established in KZC 83.400 are not proposed to be changed, except for minor clarifications. Trees are an important component of ecological functions along the shoreline, providing both habitat and water quality functions. The overhanging vegetation provided by trees (and larger shrubs) planted along the shoreline provides organic input critical for aquatic life. It provides food in the form of various insects and other detritus that feeds benthic macroinvertebrates and provides beneficial cover for juvenile Chinook that use the nearshore environment.</p> <p>However, the City recognizes that the 83.400.3.f alternate compliance option provides flexibility to the City and the applicant regarding when departures from required vegetation in the shoreline setback applies and the SMP has been revised to retain this option.</p>

TABLE 2 : COMMENT SUMMARY/RESPONSE TABLE				
LINE	COMMENT TOPIC	COMMENT NO. (TABLE 1)	COMMENT SUMMARY	CITY OF KIRKLAND RESPONSE
D-4	Overwater coverage and salmonids	63	Several commenters questioned why overwater coverage is bad for salmon and felt that limiting the overwater coverage from docks conflicted with other SMP provisions which require overhanging vegetation as both the vegetation and docks are providing shade to the water.	<p><u>Comment noted.</u></p> <p>The dappled shade from vegetation overhanging the lake is a natural shading which provides cover for juvenile Chinook salmon that use the nearshore environment for predator avoidance, rest etc., plus the overhanging branches drop insects and debris which make up the diet of juvenile salmon and other small aquatic species. The grated decking required by all jurisdictions in Lake Washington (for the first 30 feet of the pier) mimics the 40% light transmittance, similar to native vegetation.</p> <p>In contrast, shading provided by overwater coverage, such as a dock, provides sharp edges and cover for predators of salmon and causes salmon migration paths to be diverted around the docks into deeper water where there tend to be more predators present.</p>
Pier Standards and Moorage buoys				
E-1	Pier bumpers	41,58	Some commenters expressed support for the proposal to add pier bumpers as an allowed feature. However, some also questioned the size standards proposed and expressed concern that a gap would be present large enough to allow a boat to slip under the bumpers and sustain damage.	<p><u>Comment noted. No revision proposed.</u></p> <p>There is only a 6 inch gap required between the lake surface at low water (in the winter on Lake WA to accommodate for construction activity). Design standards were the result of consultation with the Department of Fish and Wildlife. Pier skirting has been prohibited since the comprehensive update in 2010, and was removed then because it was not supported by BAS primarily because it creates shading for predator fish to hide. The proposed pier bumper regulations avoid skirting but still allow the boat owner additional protection. Individual bumpers off the boat may also still be used.</p>

TABLE 2 : COMMENT SUMMARY/RESPONSE TABLE

LINE	COMMENT TOPIC	COMMENT NO. (TABLE 1)	COMMENT SUMMARY	CITY OF KIRKLAND RESPONSE
E-2	Pier length/depth	3, 4, 27, 29, 37, 61, 63	<p>Several commenters expressed opposition to the removal of a depth standard for ells, fingers and platforms and the prioritization of pier length as the average of adjacent piers. Some comments noted neighboring cities have a depth standard and Kirkland's should also remain.</p> <p>A few commenters expressed support for the pier length standards as they were concerned about recent proposals for piers they felt were too long (Bel Lago). One commenter also opposed to the Bel Lago pier opposed the pier length standards for the same reason, claiming the new standards would clear the way for more long piers.</p>	<p><u>Comment noted. Revision proposed.</u></p> <p>The revisions proposed related to single family pier length and depth are intended to clarify how the provision is already administered and to provide more predictability to applicants in determining the allowable length for each property. As currently written the depth standard sometimes conflicted with other dimensional requirements and was difficult to administer. Allowed pier length is determined by the average of neighboring pier lengths and by navigation considerations consistent with the Shoreline Area policies in the Comprehensive Plan and the purpose and intent section of the SMP. The depth requirement for ells and floats is removed in the proposed draft, but the maximum length of 150-feet is not changed. Most boats in Kirkland do not need anywhere near the 9-10 feet depth for ells and floats required currently in the code. Some pier owners have proposed piers much longer than needed to obtain the required water depth when a shorter pier would have been adequate for both the needed water depth and boat size. The longer pier would have resulted in unnecessary impacts to navigation and environment on shorelines of the State. Long piers result in additional overwater coverage that can adversely affect juvenile salmon.</p> <p>However, in response to property owner comments, a revision has been proposed from the public comment draft. The proposed revision allows an applicant to propose a dock length that exceeds the average length of adjacent docks by up to 10% (but in no case may it be longer than 150 feet, as is now the rule). Currently, dock lengths are limited by existing code to the average of adjacent piers and additional length is only considered after demonstrating that the boat would bottom out on the lakebed if the length were limited to the average length of adjacent docks. With this change, docks may be longer than the average of neighboring docks by up to 10%, when there is a need for additional water depth, without demonstrating that they will not have an adverse impact on navigation. Beyond this length the pier owner would need to demonstrate that there is no adverse impact to navigation.</p> <p>The rationale for this change is to acknowledge that in some cases a longer dock than the average is necessary to provide adequate depth, and may be warranted as long as navigation is not adversely affected.</p>

TABLE 2 : COMMENT SUMMARY/RESPONSE TABLE

LINE	COMMENT TOPIC	COMMENT NO. (TABLE 1)	COMMENT SUMMARY	CITY OF KIRKLAND RESPONSE
E-3	Boat lifts	3, 36, 37, 53, 58	While no changes to the boat lift provisions were proposed in the public comment draft, several commenters requested allowance be added for more than one boat lift.	<u>Comment noted. Revision proposed.</u> In response to stakeholder requests, the City has decided to propose allowance of an additional boat lift. Other jurisdictions on the lake allow multiple lifts and ecologically, it would not be detrimental to do so. Boat lifts allow boats to be stored out of the lake, which is better for water quality and fish habitat and can reduce shading impacts. The revised draft includes an allowance for “two freestanding or deck-mounted boat lifts per detached dwelling unit” (83.270.9).
E-4	Moorage buoys	3, 4, 36, 37, 53, 68	While no changes to the mooring buoy provisions were proposed in the public comment draft, several commenters requested allowance be added for a moorage buoy in addition to a pier or dock, rather than in lieu of. Some of the comments stated that buoys were needed for safety, to delineate swimming/non-motorized recreation areas.	<u>Comment noted.</u> In the current SMP, the number of moorage buoys per single family property is limited to one, and a moorage buoy is only allowed in lieu of a pier to provide moorage space. No change is proposed or recommended with this SMP periodic update to the existing regulations. Speed limit buoys are used to protect shoreline properties and water users from excessive wake and to demark the navigation channel. The use of moorage buoys to serve another purpose is beyond the scope of this periodic update without additional study, coordination, and notice. They are the responsibility of King County Sheriff’s Marine Unit (KCMU) and not within the purview of the SMP to regulate, maintain or enforce. The City Police Department is in contact with King County regarding the replacement of missing speed limit buoys. In the nonconformance section of the SMP (83.55.5.b.5.b) a change is proposed which would allow nonconforming moorage buoys to remain if it is documented that they were legally established prior to 1978.
Bulkheads and Erosion				
F-1	Comprehensive plan policy to remove bulkheads at O.O. Denny Park	44, 4	One comment expressed opposition to the comprehensive plan policy change to remove bulkheads at O.O. Denny Park and another expressed concern that removal of the bulkhead would cause erosion.	<u>Comment noted. No revision proposed.</u> The policy to reduce armoring in shoreline parks to improve and restore the aquatic environments already exists. The proposal simply adds O.O. Denny Park to the list of parks where opportunities exist to do so. The policy applies equally to all parks with shoreline armoring, O.O. Denny had just previously been left off the list.

TABLE 2 : COMMENT SUMMARY/RESPONSE TABLE

LINE	COMMENT TOPIC	COMMENT NO. (TABLE 1)	COMMENT SUMMARY	CITY OF KIRKLAND RESPONSE
F-2	Bulkhead removal	37	Some commenters expressed opposition to what they perceived as a requirement to remove bulkheads from residential properties.	<u>Comment noted. No revision proposed.</u> No changes are proposed to the requirements for bulkhead removal. Bulkheads are allowed to be retained or replaced through various code regulations. The SMP does not require the removal of a bulkhead except when more than 50% of the length of the bulkhead is proposed to be replaced and the primary structure on the property is located more than 10 feet away from the Ordinary High Water Mark and a needs assessment from a qualified professional (geotechnical engineer or geomorphological engineer) confirms that the bulkhead is not necessary to protect the primary structure.
Nonconformances				
G-1	Expansion of existing annexation area requirement that overwater boat houses and additional piers must be removed under certain circumstances, to the rest of the City	3,37, 42, 49, 53, 58, 61, 63, 64, 65, 67, 68	Several commenters wanted all existing nonconforming structures "grandfathered in". Concerns were expressed about the value of nonconforming structures, especially boathouses, which property owners paid for when purchasing the property. Some commenters suggested using a trigger other than replacement value of upland development for bringing nonconformances into conformance.	<u>Comment noted. Revision proposed.</u> The code currently requires removal of certain conformances in the annexation area when certain development thresholds are triggered. This was a decision made at the time of the annexation, when the SMP was updated to apply to that area. Rolling back those regulations would require additional analysis that is beyond the scope of the periodic review. Therefore, the revised draft retains the existing requirement that overwater boat houses and additional piers must be removed under certain circumstances, only in the annexation area. However, in response to public and planning commission comments, the draft no longer proposes to extend these regulations to apply City wide at this time.
G-2	Clarification to the rules that Citywide, overwater nonconforming accessory structures waterward of the OHWM into the water must be removed with major alterations to the home/new home.	3,12, 13, 49, 56, 58, 61, 63	Several commenters did not want to see expanded requirements for removal of existing overwater structures.	<u>Comment noted. Revision proposed.</u> The current regulations already require nonconforming accessory structures in the shoreline setback to be removed or brought into conformance. The proposed revision is intended to clarify the original intent that accessory structure waterward of the OHWM (generally more impactful than those in the setback) also must be removed. Based on public comment received this provision (83.550.5.b.5.b) has been revised to remove boat launches from the list of structures which must be removed and clarify that existing boat launches may be continued.

Transparency and Outreach

1. How can property owners communicate directly with City Council about the impact of regulations on property owners?

Staff Response: Individuals may submit letters to City Council or may bring items from the audience during council meetings. The SMP Periodic Review process that the City is currently following with the Department of Ecology (Ecology), as well as through the City's additional public meetings and public hearing held and scheduled for Summer 2019, provide additional opportunities to identify any questions or concerns with the proposed code amendments. All written comments submitted to the Planning Department during the process will be included as attachments to the staff memorandums that will ultimately be considered by City Council, prior to their final decision on the amendments. See the City's [SMP Periodic Update website](#) for ways to submit comments and when public meetings will take place.

2. How are public comments incorporated into the planning process?

Staff Response: Public comments and questions are reviewed by City Staff and provide the necessary input from the community that helps assist in understanding the impacts of the proposed code changes. Comments from property owners, businesses, residents, agencies with jurisdiction, and other members of the public are encouraged to be submitted. As part of the Ecology Periodic Review process, staff compiles comments and provides responses. The comments are transmitted to Ecology with the City draft SMP amendments and other documentation. In addition, the Planning Commission and Houghton Community Council consider these comments when they make their recommendation to the City Council. Ultimately the City Council will consider all comments when they make their final decision on the proposed amendments to the SMP.

3. What is the timeline of the SMP process

Staff Response: State statute established a June 30, 2019 deadline for jurisdictions within King, Pierce, and Snohomish Counties (group A). The Department of Ecology may allow additional time to complete the mandatory update if requested. The City of Kirkland has requested additional time from the Department of Ecology in order to reopen the public hearing before the Planning Commission and Houghton Community Council and provide time for additional public outreach and response to comments. After a follow up public meeting and a second public hearing before the Planning Commission and Houghton Community Council, the City hopes to submit draft SMP amendments to the Department of Ecology for an initial determination of consistency with state laws and rules. The submission will include the draft amendments, periodic review checklist, response to public comments received, SEPA documents, GMA notice, public hearing record and other materials. As part of Ecology's review, they may provide required or recommended changes to the SMP, and the amendments may be revised further as appropriate. The final draft amendments will then be transmitted to the City Council for adoption. The Houghton Community Council will then provide their final approval. After local adoption, the amendments will be formally submitted to Ecology for final action. Ecology may either approve the amendments as adopted or may recommend or require changes necessary for approval.

4. What is the outreach process for public comment?

Staff Response: The Ecology Periodic Review process has required noticing standards that are established by [WAC 173-26-104](#). The City chose to exceed the minimum requirements and provided a courtesy postcard notice to stakeholders and property owners located within the shoreline jurisdiction. Approximately 1,300 shoreline property owners were sent the notice back in early February, 14 days prior to the Houghton Community Council and Planning Commission study sessions held on February 25 and February 28, 2019, respectively. On March 14, 2019, the City distributed public notice to 74 stakeholders, approximately 1,300 shoreline property owners, and individuals that signed up to the SMP

listserv. The notice provided information on the Ecology Periodic SMP update process, invited public comment on the draft amendments available for view on the SMP update website during the joint Ecology/City comment period that ran from April 8, 2019 to May 8, 2019 and provided notice of the joint local and state public hearing held on April 25, 2019. In addition to these notices, the City installed 4 public notice signs at shoreline parks to provide additional notification to the public and attempt to enlist comments from others. The City also notified the process through the local paper, city website, and public meeting calendar.

5. What other chances will the public have to comment?

Staff Response: The City is proposing to host an additional public meeting with staff on June 18th to take in comments and provide responses to questions. A second Joint Public Hearing with the Houghton Community Council and Planning Commission will be held on July 25th and a joint study session to deliberate on the proposed amendments will be held on August 8th. The public can provide comments at Public Meeting #2, the Joint Public Hearing on July 25th, or submit in writing at any time to jbrill@kirklandwa.gov. Public comment is accepted until City Council adoption this fall.

6. Why does the permit process to build a dock take so long?

Staff Response: The City permit process for Substantial Development Permits or similar permits is established by state statute, typically 120-150 days from a complete application. There are several other permits that are required from State and Federal agencies for inwater work, such as Washington Department of Fish and Wildlife and the Army Corps of Engineers. Depending on the scope of the project, those state and federal permits can take longer than the City permits. Additionally, the permits are related and generally consecutive, requiring one to be completed before the next can be approved.

7. What is the end goal of the SMP? What is the point of the SMP regulation? What is the rational of regulating the shoreline and limiting use of private property?

Staff Response: The following is the Purpose and Intent section of the SMP. These principles are derived from State law established by the Shoreline Management Act:

It is the intent of the Kirkland Shoreline Master Program (SMP) to manage the use and development of the shorelines of Kirkland, giving preference to water-dependent and water-related uses, and encouraging shoreline development and uses to avoid, minimize and mitigate impacts. In addition, the SMP, consisting of this chapter, the Shoreline Area chapter of the Comprehensive Plan and the Restoration Plan, has the following purposes:

1. Enable current and future generations to enjoy an attractive, healthy and safe waterfront.
2. Protect the quality of water and shoreline natural resources to preserve fish and wildlife and their habitats.
3. Protect the City's investments as well as those of property owners along and near the shoreline.
4. Efficiently achieve the SMP mandates of the state.
5. In interpreting the provisions of this chapter, preference shall be given in the following order to uses that:
 - a. Recognize and protect the statewide interest over local interest;
 - b. Preserve existing natural areas along the shoreline;
 - c. Result in long-term over short-term benefit;

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- d. Protect the resources and ecology of the shoreline;
- e. Increase public access to publicly owned areas of the shorelines;
- f. Increase recreational opportunities for the public in the shoreline; and
- g. Provide for any other element as defined in RCW 90.58.100 deemed appropriate or necessary.

8. This process has not been transparent, how has the scope of the process changed?

Staff Response: Working drafts of the proposed code amendments were posted to the web preceding the public meetings in February - April; Houghton Community Council - February 25th, Planning Commission - February 28th, City Council - March 5th, and Joint Ecology/ Planning Commission / Houghton meeting April 25th. Staff has uploaded the state required documents and additional documents throughout the process. All proposed code amendments are shown in red underlined for new text and red strikethrough for eliminated text, to make them clearly visible while reviewing the documents.

9. There has been no representation from lakeside property owners in the planning process till now

Staff Response: Outreach to all 1,300 shoreline property owners was sent out on February 12, 2019 in a courtesy notice of the Periodic Review Process, and again on March 25, 2019 notifying of the 30-day comment period and April 25th joint hearing between the Houghton Community Council, the Planning Commission, and the Department of Ecology and open house. The City posted 4 public notice signs at 4 waterfront parks, listed the proposal in the newspaper, and posted the project to the City website. The City sought early input from the general public, including shoreline property owners.

10. Code and proposed changes are hard to understand, can you simplify them for lay people?

Staff Response: see [SMP Periodic Update](#) website. A summary of all proposed amendments is provided by following this link:

<https://www.kirklandwa.gov/Assets/Planning/Planning+PDFs/032719+Summary+of+SMP+Amendments.pdf>

In addition, a [simplified summary of amendments oriented to single family private property owners](#) is provided by following this link:

11. Why are these regulations changing?

Staff Response: State law requires jurisdictions to review and update their SMPs every eight years in accordance with the Shoreline Management Act, RCW 90.58.080 (4) and its current guidelines and legislative rules. The majority of the proposed amendments are clarifications and “clean-up” changes which maintain the same underlying regulation with adjusted text, allowing applicants and staff clarity when submitting or reviewing code.

Bulkheads and Erosion

12. Why are bulkheads allowed on public property if they aren't allowed to be maintained on private property?

Bulkheads protect property. Have planning staff considered the impacts of erosion caused by the removal of bulkheads on private property?

Staff Response: Bulkheads are allowed to be retained or replaced on public and private property through various regulations. The SMP does not require the removal of a bulkhead except when more than 50% of the length of the bulkhead is proposed to be replaced when the primary structure on the property is located more than 10 feet away

from the Ordinary High Water Mark **and** a needs assessment from a qualified professional (geotechnical engineer or geomorphological engineer) confirms that the bulkhead is not necessary to protect the primary structure. The City has permitted approximately 132 feet of bulkhead repair since the 2010 SMP adoption. Some of the repair was completed through standard repair methods, such as replacing rip rap boulders or gravel with filter fabric behind the bulkhead wall. Other repairs were completed through the removal and replacement of solid bulkhead with new solid bulkhead. The method or repair depends on the situation and is allowed under current and proposed codes without a needs assessment provided the amount of work is less than 50% of the linear bulkhead length (see KZC 83.300). The majority of bulkhead repair has been completed through the removal of hard stabilization and installation of soft shoreline stabilization, totaling approximately 230 feet. Those projects were all completed through the voluntary provisions of the SMP, and utilized the shoreline setback reduction options of section 83.380 in conjunction with new or remodel projects. Bulkheads that are determined to be necessary to protect property from impacts caused by erosion are permitted to be replaced if no more than 50% replacement is proposed and the location is no further waterward of the Ordinary High Water Mark. Replacements that meet those criteria are exempt from a shoreline permit, and instead require only a shoreline exemption.

13. Has the effect of erosion been considered with the requirement to remove bulkhead?

Staff Response: The impacts of erosion have been considered in the Shoreline Stabilization section of the SMP (KZC 83.300). The City is not proposing any changes in the stabilization section, other than a couple of clarifying updates. The SMP allows for the maintenance of existing bulkheads.

Boathouses

14. What is the scientific reason for removal of boathouses?

Staff Response: Boathouses are overwater structures that are non-conforming to current and previous SMP codes. The removal of overwater coverage increases light transmission in the nearshore littoral zone and removes habitat of predators to juvenile salmon. This is the area with a water depth that allows sunlight to reach the lakebed and is the critical area where juvenile salmonids migrate when in lakes, such as Lake Washington. This is also the area where the majority of structures such as piers, docks, lifts, and boathouses are located. The removal of overwater structures improves nearshore habitat and ecological function. The City of Kirkland prohibited the construction of boathouses prior to the 2010 Comprehensive SMP Update and so did King County. When Kirkland annexed the Finn Hill area in 2011, annexation area voters approved Kirkland's SMP and Kirkland's Zoning. Due to the presence of boathouse structures in the Annexation Area, Kirkland's SMP included a specific statement in 83.550 requiring the removal of non-conforming overwater structures, like boathouses, if certain thresholds were reached. The preclusion of boathouses is not new. The King County SMP prior to annexation also prohibited boathouses (25.16.120.B) adopted by Ordinance 12763 in 1997. The prohibition on overwater structures dates back to 1978, wherein Section 409(4)(b) prohibited covered moorage.

15. Boathouses are needed to keep boats out of the water and protect from the elements. Some properties have steep driveways and configurations, making it difficult to maneuver boats on trailers.

Staff Response: The SMP allows the installation of boatlifts to lift boats up and out of the water. Within the entire shoreline of Kirkland, a total of 21 boathouses currently exist within the area annexed in 2011, and 2 exist in the former Kirkland boundary. The remaining shoreline property utilize boatlifts or remove boats on trailers during the winter months.

Buoys (no changes to regulations have been proposed)

16. Buoy regulations are not consistent around the lake.

Staff Response: Each jurisdiction on Lake Washington has established their own SMP regulations based on shoreline conditions and the policies and goals developed by City Council, the Planning Commission, and stakeholders. No change to current regulations has been proposed - the current code prohibits moorage buoys if a pier exists on the property. The proposed update maintains that prohibition and adds some clarifying language on location and spacing from other structures.

17. Buoys protect property and docks from boats on the lake.

Staff Response: Staff recognizes the usefulness of buoys in protecting pier structures as well as the boat itself during storm events. The current and proposed minor amendment allow for the use of a moorage buoy in lieu of a pier (KZC 83.270.4 table current code, 83.270.3.m proposed amendment).

18. Is there evidence of the positive impacts of buoys on boat safety and the lake?

Staff Response: Moorage buoys are a preferred method for moorage since they produce no overwater shading. Former and current King County Zoning only allow a pier or moorage buoy, not both (same as Kirkland's SMP). The King County Code in effect prior to annexation required alternatives to piers be investigated and that a property forgo installation of a pier if a commercial marina, floating moorage buoy, or joint use moorage pier are available or feasible options.

19. What are the negative effects of buoys?

Staff Response: Independent moorage buoys are a preferred method for mooring a boat in lieu of a pier, provided they can achieve the required setbacks from side property lines for the property.

Jurisdiction

20. Would like customized rules based on annexation history.

Staff Response: A review of the King County codes dating back to 1978 identifies the shoreline regulations have adjusted over time but have certain allowances and prohibitions. The County went so far as to establish in section 25.16.140, that *single-family piers for the sole use of the property owner shall not be considered an outright use on King County shorelines*. The City of Kirkland took into consideration the conditions and environment when establishing all the SMP Environmental Designation areas, both within the pre-Annexation Kirkland boundaries and the Annexation Area. The regulations within the current SMP reflect the goals and policies adopted back in 2010-2011.

21. Why can we not grandfather existing uses in?

Staff Response: Existing structures are allowed to continue subject to the Non-Conformance codes of 83.550. No changes are proposed to 83.550 that alter how non-conformances are treated on single-family properties in the shoreline management area, except they are now expanded to cover not just the annexation area, but the entire City. The City's nonconformance regulations do consider all legal uses and improvements grandfathered in, and only subject to conformance if specified thresholds are triggered.

22. How does Kirkland shoreline regulation differ from previous county regulation?

Staff Response: The pre-annexation King County Shoreline regulations limited the number of moorage buoys and piers to only one, and a property could only contain one, not both types of moorage. Boathouses were prohibited. Existing non-conforming boat houses were required to be brought into conformance when modification to the boathouse exceeded 50% of the value for the structure. Only one boat lift per property were allowed.

23. Is there consistency between shoreline regulations between jurisdiction on the lake?

Staff Response: All jurisdictions on Lake Washington are required to establish SMPs that are consistent with the Shoreline Management Act through review by the Department of Ecology. Each jurisdiction has unique environments and existing infrastructure/improvements along the shoreline. In addition, each city or county has its own priorities and policies for how they want their jurisdiction to develop over time.

24. Has there been an analysis of the consistency of shoreline regulation between jurisdictions on the lake?

Staff Response: The City has not conducted a comprehensive review of how other jurisdictions regulate shoreline development. A summary of [shoreline regulations of other Lake Washington jurisdictions](#), pertaining to a selection of topics related to single family development is provided on the City website.

These are complex regulations that attempt to balance the SMA priorities with use preference based on existing and reasonably foreseeable future development specific to each jurisdiction. All specific provisions must be considered in the context of the other supporting regulations of each jurisdiction's particular code, such as minimum lot size, impervious surface maximums, buffer and setback size, shoreline environment designations, and allowances or lack thereof provided for within the non-conforming provisions.

25. What are the effects of different jurisdiction regulations?

Staff Response: All are working within the required framework of the SMA and must be approved by the Department of Ecology for consistency with the Statewide Shoreline Management Act.

Piers

26. Why are there pier regulations? What are the scientific reasons for regulation number of piers and pier length?

Staff Response: Overwater structures can impact the natural biological processes that are critical to fish. Structures located over the water can shade out aquatic plants that provide food and habitat for fish, as well as block migration patterns, forcing fish out into deeper water where they are more susceptible to predation. All jurisdictions along shorelines of the state, are required through the Shoreline Management Act, to incorporate dimensional standards that limit overwater structures and seek to improve the long-term environmental benefit of the shoreline. In addition to ecological reasons to regulate piers, the City established regulations based on policies that protect statewide, regional, and local interests in public use of Lake Washington, including navigation issues, and protecting the community character through establishment of consistent regulations for all property owners.

27. Do boats really hit long piers? What is the true public danger of this regulation?

Staff Response: The navigational standards are intended to limit overwater coverage and provide property owners and the general users of the lake, unencumbered navigation around the lake. The SMP considers all boating types. Comments received during applications have raised concerns related to kayak, canoe, kite surfers, and paddleboarder impacts related to pier length. The City is proposing to maintain the existing 150-foot maximum length for single family

piers and the limitation that piers are no longer than the adjacent neighboring piers. The code update is a clarification and adjustment of the language to make it clearer for applicants and City staff. **What is the rational for changing pier length?**

Staff Response: No change is proposed. The code language is being updated to more clearly identify how the City measures pier length and how applicants can determine the allowable length for each property. The regulations in effect under the current SMP and the former King County SMP, limit the amount of overwater coverage, intended to help improve the nearshore environment. The two sections below are pulled directly from the current code and the proposed changes.

Current code from 83.270.4 table states:

- 150 feet, but piers or docks extending farther waterward than adjacent piers or docks must demonstrate that they will not have an adverse impact on navigation
- 26 feet for ells
- 20 feet for fingers and float decking attached to a pier

Proposed code from 83.270.4 table states:

- No longer than the average of the adjacent neighboring piers, or 150 feet, whichever is less, except when a water depth adequate to prevent boats from sitting on the lakebed cannot be achieved within the average length of neighboring piers, it may extend to a maximum of 150'. If a length exceeding 150 feet is required to meet adequate depth a shoreline variance shall be required. Piers or docks extending farther waterward than adjacent piers or docks must demonstrate that they will not have an adverse impact on navigation. The length of a pier or dock shall be measured from the furthest landward point of the OHWM.
- 26 feet for ells
- 20 feet for fingers and float decking attached to a pier

Shoreline habitat

28. Is the mitigation required by regulation proven to work in application?

Staff Response: Shoreline mitigation planting standards established in KZC 83.400 are not proposed to be changed with the Periodic Update currently underway, except for minor clarifications (see current and proposed amendments). Based on the projects completed since the 2010 Comprehensive Update, the City has recorded just over a half an acre of newly planted shoreline riparian area with native vegetation, the planting of 158 native trees and the voluntary removal of approximately 230 feet of bulkhead. The projects that have removed hard stabilization measures (bulkheads) and replaced with soft shorelines have been successful through the monitoring period of five years. Specifically the Taylor and Bendich properties have been successful examples of bulkhead removals and installation of soft shoreline stabilization and are leaders in the [Green Shores for Homes](#) program, which is a certification program developed by Washington SeaGrant. There have been additional questions about the placement of spawning gravel in the Lake, but this is a State (rather than City) requirements and we have not monitored the success of such measures.

29. Shoreline maintenance and city regulation are a financial hardship on the property owner

Staff Response: The current and proposed codes do not mandate specific maintenance of the shoreline, with the exception of piers. Piers must be maintained to provide a safe and useable surface that does not pose risk of failure. Only with the proposed development or redevelopment of a primary structure or shoreline improvement (pier or bulkhead) does the current and proposed SMP require native plantings be installed with the permit. Regular maintenance of bulkheads or piers are generally reviewed through the administrative processes of the City and State. The current and proposed codes are intended to allow for the regular maintenance of structures within the shoreline setback and overwater. As each property and improvement is unique, City staff are trained to assist in determining the process through which each project falls, based on the scope, conditions, and current regulations.

30. Do these regulations help salmon habitat? What is the scientific proof?

Staff Response: The current SMP was written to incorporate policies and regulations which follow best available science to improve the shoreline environment along the 9.9 miles of Kirkland shoreline on Lake Washington. When the current SMP was developed, the City referred to many [scientific studies](#) to help align our goals and policies to accommodate environmental improvement of the shoreline and lake ecosystem.

31. What is the use of denying the property owner the ability to build a pier/boathouse/bulkhead, as long as they mitigate the effects?

Staff Response: Both the current and proposed adjustments to the SMP allow for single-family properties to replace or install an individual pier on the parcel. The maintenance of an existing bulkhead is also allowed through KZC 83.300. See question #14 above for information and background on the long history of boathouse prohibition in Kirkland and King County.

32. Why is “leafy” shade different than shade from a dock?

Staff Response: The dappled shade from vegetation overhanging the lake is a natural shading which provides cover for juvenile Chinook salmon that use the nearshore environment for predator avoidance, rest etc., plus the overhanging branches drop insects and debris which make up the diet of juvenile salmon and other small aquatic species. The grated decking required by all jurisdictions in Lake Washington (for the first 30 feet of the pier) mimics the 40% light transmittance, similar to native vegetation.

Shading provided by overwater coverage, such as a dock, provides cover for predators of salmon and causes salmon migration paths to be diverted into deeper water where there are more predators present.

General Concerns

33. Milfoil regulations are complicated, how to make regulations less of a financial hardship on homeowners

Staff Response: The proposed inclusion of notification was intended to allow neighboring property owners to know when herbicide chemicals would be broadcast into the lake within close proximity. The Department of Ecology is currently updating their standards for notification and the City is considering eliminating the proposed code, as it will be duplicative. The City acknowledges the importance of following the established DOE standards for completion of necessary permits and following the required notification process. Inclusion of the proposed code will allow for the City to educate and follow up with property owners through the Code Enforcement process.

34. Code and planning process do not consider the needs of those who live on the lake

Staff Response: The Comprehensive SMP Update in 2006-2010 included shoreline property owners and numerous professionals that work within the shoreline jurisdiction. While the City understands the position of shoreline property owners, the broader picture must consider the general public as a whole, whereas Lake Washington is a shoreline of the State and must be protected and maintained in a manner consistent with the Shoreline Management Act overarching goals and policies.

35. Is the scientific reasoning sound for regulations?

Staff Response:

The State requires shoreline regulations to use “the most current, accurate and complete scientific and technical information available”. When the current SMP was developed, extensive background documentation was prepared to ensure these standards were met and to help understand the City’s baseline condition. See the original [inventory and analysis report prepared in 2006](#), and the [cumulative impact analysis](#) prepared in 2009. The City referred to many [scientific studies](#) to help align our goals and policies to accommodate environmental improvement of the shoreline and lake ecosystem. The scope of the periodic update does not include re-visiting the science used in 2010 for the comprehensive update.

City Initiated Amendments Proposed to Chapter 83 and 141 KZC and Shoreline Area chapter of the City's Comprehensive Plan

Section/ Title of Chapter	Type of Amendment	Proposed Change	Rationale
Chapter 83- Shoreline Management Kirkland Zoning Code			
KZC 83.80 Definitions	Clarifications	<ol style="list-style-type: none"> 1. Add, revise or remove definitions to reflect consolidation of regulations related to wetlands, streams and fish and wildlife habitat conservation areas within and outside of shoreline jurisdiction. 2. Add definition of pier bumper which prevent boats from going under a pier to reflect pier bumpers regulations added to Chapter 83.270 KZC. 3. Minor clarifications to some definitions 	<ol style="list-style-type: none"> 1. Clarifies that SMP definitions are limited to those specific to shoreline jurisdiction and may differ from general definitions. Now that SMP will reference Chapter 90 for critical areas regulations no critical areas definitions are needed in SMP. 2. Adopts interpretation No. 12-6, in effect since 2012, allowing pier bumpers. 3. Clarification
KZC 83.160 User Guide	Clarification	Clarify that Conditional Use Permits also must meet criteria for a Substantial Development Permit.	Clarification
KZC 83.170 Permitted and Prohibited Uses Chart	Minor code amendment	Add process for expansion of existing boat launch in shoreline parks and eliminate non-motorized residential boat launches and boat rails as a permitted use in all other shoreline environments.	See 83.270, Rationale 8
KZC 83.180 Shoreline Development Standards	<ol style="list-style-type: none"> 1. Clarification 2. Minor code amendment 	<ol style="list-style-type: none"> 1. Add missing setbacks for Water Dependent uses (i.e. parks, marinas, piers) under Recreational Use category. 2. Add a footnote to Shoreline Setback for Utilities allowing stormwater outfalls to be installed within the setback. 	<ol style="list-style-type: none"> 1. Clarification 2. Per City Public Works department, storm water outfalls have increased requirements under current Ecology standards (adopted by the City per the 2016 King County Stormwater Design Manual) that exceed what is currently described for acceptable utilities within the shoreline setback. In particular, energy dissipation structures and related features (such as reinforced channels) are neither underground structures (they necessarily have to outlet above the lake level in order to achieve discharge) nor are they pipes and similar, as presently described for utilities. These structures often cannot be installed further back than the current utility setbacks, or even as far from the OHWM as possible, as even a relatively gradual slope down-gradient of the energy dissipator's outlet will result in a significant increase in flow velocity before reaching the lake's OHWM (thus negating the benefits and compliance required of the dissipator in the first place, as well as requiring a much larger permanent channel to be constructed between dissipator and lake shoreline). In other words, energy dissipation represents a requirement that can generally only be realized at or very near to the point of discharge.
KZC 83.190 Lot Size or Density, Shoreline Setback, Lot Coverage and Height	<ol style="list-style-type: none"> 1. Minor code amendment 2. Clarification 3. Minor policy change 	<ol style="list-style-type: none"> 1. Clarify that private shoreline walkways in the shoreline setback can be either 8 feet wide or broken into two walkways that are 4 feet wide and that they should be perpendicular from a deck or patio. 2. Clarify what is measured for maximum allowable width of improvements in shoreline setback, such as decks and patios. 3. Clarify that non-permeable turf is prohibited in shoreline setback (permeable is allowed). 	<ol style="list-style-type: none"> 1. Gives homeowner flexibility while also preventing a walkway being built parallel to the patio as a way of increasing patio size into the required shoreline setback. 2. The standards in Chapter 115.115 for required yards are referenced in this section. 3. Clarifies that permeable artificial turf is allowed as an alternative to lawn because it could reduce a source of pollutants while still allowing infiltration of runoff.
KZC 83.200 Residential Uses	Clarification	Clarify that certain accessory structures to residential uses (i.e. decks and patios) and structures supporting a water dependent use, such as a private walkway to	Clarification- This change clarifies those accessory structures to a residential use that are allowed in the shoreline setback yard.

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Section/ Title of Chapter	Type of Amendment	Proposed Change	Rationale
		access a pier or dock, may locate between the primary structure and the lake as stated in KZC 83.190.	
KZC 83.210 Commercial Uses	Minor code amendment	Add mobile fueling businesses to those retail establishments providing gas and oil sales for boats	Recognizes various delivery methods. Underground and above ground fuel tanks as well as fuel truck delivery are used to provide fuel at commercial fuel docks.
KZC 83.240_Utilities	Minor code amendment	Clarify that geothermal heat pumps are not permitted waterward of the OHWM (ordinary high water mark).	Proposals for geothermal heat pumps in the lake have previously been rejected because the code currently prohibits locations that adversely impact ecological functions. Geothermal heat pumps disturb salmon spawning and the lakebed. They can also heat up the lake water. Viable upland alternatives exist to install geothermal systems. WDFW and the Muckleshoot Tribe do not support geothermal heat pumps in the lake and DOE has concerns about them.
KZC 83.250 Land Division	Minor code amendment	State that a subdivision may not increase a non-conforming shoreline setback for an existing structure.	Reflects existing regulations that prohibit creation or expansion of nonconformances with subdivisions.
KZC 83.260_General Shoreline Modification Regulations	Clarification	Clarify that no net loss standard and mitigation sequencing are required for Conditional use and Variance Permits or when specific regulations for a proposal are not specified such as marinas and multifamily piers.	Clarification – clarifies that proposals are subject to analysis where dimensional and materials standards are not well-defined.
KZC 83.270_Piers for detached dwelling units	<ol style="list-style-type: none"> 1. Policy change 2. Code amendment 3. Policy change 4.3. Minor code amendments 4-5. Clarification of interpretation 6. Minor code amendment 7. Policy change 8-13. code amendments 14. Clarification 15. Code amendment 16. Clarification 	<ol style="list-style-type: none"> 1. Delete Administrative Approval Alternative Design (83.270.4.b) for maximum area, width, and depth of pier (minor City policy implication). This provision allows an applicant to go to Army Corps of Engineers and WDFW for approval of piers that exceed City standards for maximum area, width and depth, and dimensional standards and thus circumvent the City's standards. 2. Reformat the dimension standard chart for clarity and revise length and depth requirements. Limit length of pier to same length as adjacent-nearby piers or shorter but in no case longer than 150 feet (existing allowed length) and remove depth standard for ells and float decking. Allow the length of the pier to increase up to 10% of adjacent-nearby piers-pier length following the methodology under current code application. Staff has produced explanation plates that illustrate how staff has determined the average nearby pier length and how to calculate the 10% additional length. 3. Require removal of non-conforming structure, such as boathouses, as mitigation for additions to piers (83.270.7) for entire shoreline and not just in annexation area. 4.3 Allow pier bumpers per Interpretation No 12-6. 5.4 Allow height of boat canopies to be up to 12 feet in height and not limit to 7 feet in height per Interpretation No. 12-8. 6.5 Require pier ladder. 7.6 Clarify that boats cannot be moored 30 feet or closer to the OHWM (nearshore is fish spawning area). 8.7 Update 83.270.3.f.4 and the allowed uses chart (83.170) to indicate that residential boat launches and boat rails for non-motorized boats are not 	<ol style="list-style-type: none"> 1. This change would eliminate the Administrative Approval Alternative Design option. Staff has found that these agencies have no set standards and thus rely on a biological report. Staff questions their rigorous analysis and justification for deviating from the City standards. In one case, they were going to approve a pier in extremely shallow water in Juanita Bay until the Muckleshoot Tribe challenged the proposal. State and federal agencies have different mandated considerations compared to the City. In particular, the SMP has a unique emphasis on views, public access, and protection of water-dependent uses. These considerations further support removing reference to state and federal agencies. 2. This code amendment would update language to more clearly identify how the City measures pier length and how applicants can determine the allowable length for each property. Allowed pier length is determined by the average of neighboring-nearby pier lengths and by navigation considerations consistent with the Shoreline Area policies in the Comprehensive Plan and the purpose and intent section of the SMP. The amendment to allow a proposal to extend up to 10% further than the average of the adjacent-nearby piers is intended to establish some reasonable flexibility. Instead of utilizing a sharp line, the 10% additional length allows the line to become more of a band that is reasonable given the need for additional depth is justified by the current bathometric conditions. The depth requirement for ells and floats is removed but the maximum length of 150-feet is not changed. Most boats in Kirkland do not need anywhere near the 9-10 feet depth for ells and floats required currently in the code. Some pier owners have proposed piers much longer than needed to obtain the required water depth when a shorter pier would have been adequate for both the needed water depth and boat size. The longer pier would have resulted in unnecessary impacts to

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Section/ Title of Chapter	Type of Amendment	Proposed Change	Rationale
		<p>permitted. (Residential boat launches for motorized boats are already prohibited.)</p> <p>9-8. Delete option to use alternative plantings approved by the state and federal agencies to meet mitigation planting requirements pursuant to 83.270.5.e.1 and instead allow the City's alternative compliance provisions, which will be retained.</p> <p>40-9. Delete option of using the monitoring report from state and federal agencies to replace City's requirement for monitoring report.</p> <p>11-10. Require vegetation in shoreline plantings to hang over existing bulkheads for fish habitat.</p> <p>12-11. Remove the term "recreational use" from section 83.270.5.a and clarify that any structures needs to be removed regardless of location or function.</p> <p>13-12. Require in 83.270.8 that when piers are repaired through replacement of decking and decking substructure and/or less than 50% of the piles, the new decking shall comply with the pier dimensional standards of 83.270.4 to the maximum extent feasible.</p> <p>44-13. Remove reference to the older term "high waterline", which is being replaced with OHWM throughout the SMP.</p> <p>15-14. In 83.270.9, change the allowed number of boat lifts from 1 to 2 per detached dwelling unit.</p> <p>16-15. Correct code section cross-references in 83.270.8.a and b and clarify that repairs in a five year time period that don't cumulatively exceed 50% replacement of total pilings will continue to be reviewed under the repair section.</p>	<p>navigation and environment on shorelines of the State. Long piers result in additional overwater coverage that can adversely affect juvenile salmon.</p> <p>The primary reason for previously having a water depth standard was to limit overwater cover in shallow areas used by juvenile Chinook salmon. However, the proposed code adequately protects these areas by prohibiting moorage and pier structures contributing to the greatest amount of overwater coverage (fingers, ells and platforms) from within the nearshore 30 feet. The proposal also requires ells, fingers and platforms to be located near the terminal end of the pier as a means to further push these structures away from shallower areas. Additionally, boat moorage must also be designed to ensure adequate depth to prevent the boat from sitting on the lakebed. The change allows more flexibility for the applicant to determine and document the moorage depth needed for their particular vessel. Generally, the desired depth which is adequate to prevent damage to the boat is also adequate to prevent damage to the lakebed. A new pier or addition to an existing pier must maintain consistency with the surrounding piers. Averaging the pier length with those surrounding piers will produce consistent design and configuration, maintaining the character of the shoreline.</p> <p>3. This change would expand existing requirement for boathouses in the annexation area to other parts of City shoreline (boathouses were prohibited by King County in the annexation area and by the City in the pre-annexation area). With the 2011 annexation, the 2010 shoreline regulations needed to be amended to reflect the annexation area, which were a carryover from King County. Several non-conformances were identified in the annexation area, such as boat houses, that should be removed with redevelopment of a site. The 2011 amendments were limited to the annexation area. These amendments should now be expanded to include the entire shoreline area.</p> <p>43. Codification of Interpretation No 12-6, in effect since 2012.</p> <p>54. Codification of Interpretation No 12-8, in effect since 2012. State Department of Fish and Wildlife supports taller boat canopies because they allow light in the near shore area that deters predatory fish and thus protects salmon.</p> <p>65-76. Clarifications</p> <p>87. The intent is to prohibit structural boat launches (ramps and rails) except in waterfront parks. Structural boat ramps for both motorized and non-motorized boats remain allowed in the urban mixed environment where waterfront parks are located. The change prohibits non-motorized boat launches in all other environments, where boat launches for motorized boats are already prohibited. Reasoning is that boat launch structures (boat rails and ramps etc.) adversely impact the beach substrate below OHWM which is detrimental to salmon habitat. Homeowners could still launch their non-motorized boat by hand on their private beach, off of their dock, bulkhead or shoreline. They might also be encouraged and have another reason to create soft shoreline stabilization on a portion of their property, where the gradient would allow them to more easily</p>

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Section/ Title of Chapter	Type of Amendment	Proposed Change	Rationale
			<p>launch their boat into the water. They can also take their boat to the public boat launches or soft shoreline present at waterfront parks.</p> <p>98. The City still allows alternative compliance for departures from the required vegetation in shoreline setbacks pursuant to 83.400.3.f. Alternative plantings that meet state and federal standards instead of the standards in Chapter 83 KZC should not be allowed because as it turns out the agencies do not require shrubs important to an adequate shoreline planting strip and the same standards for trees. Staff recommends removing the option and using only the City's standards. Recent changes to the federal permitting approach (known as the Integrated Restoration and Permitting Program (IRPP)) have numerical standards for shoreline vegetation, which may not be consistent with a functional vegetated shoreline.</p> <p>409. This code amendment eliminates the option of accepting State and federal agency monitoring reports in lieu of the City's required monitoring report because the agencies have a reduced standard for vegetation and the time period for their reports are not five years from the date of installation but from the date that the project is approved. A single monitoring report is typically submitted to all agencies. The proposed change would not be expected to change the contents of a monitoring report significantly or generate significant additional work for the applicant.</p> <p>4410. Vegetation that hangs over existing bulkheads is good for fish habitat and recommended by the Muckleshoot Tribe.</p> <p>4211. For single family pier or dock proposals this code amendment requires as mitigation, removal of any existing in-water or overwater structure regardless of location, unless they are part of the new proposal in order to limit a net increase in overwater coverage.</p> <p>4312. This code amendment requires that substantial repairs to existing docks bring the width and height into conformance when feasible. The width can and should be reduced in some cases where they have unnecessary cantilevers or design features that project well beyond the 4 foot max width.</p> <p>4413. Clarification. High Waterline and OHWM have the same definition in KZC. All references in the SMP to the older term high waterline should be replaced with OHWM for consistency and simplicity.</p> <p>4514. In response to stakeholder requests, the City has decided to propose allowance of an additional boat lift. Other jurisdictions on the lake allow multiple lifts and ecologically, it would not be detrimental to do so. Boat lifts allow boats to be stored out of the lake, which is better for water quality and fish habitat and can reduce shading impacts.</p> <p>4615. Clarification</p>

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Section/ Title of Chapter	Type of Amendment	Proposed Change	Rationale
KZC 83.280 Piers for Attached and Stacked Dwelling Units	Same as detached dwelling unit amendments	Same as detached dwelling unit amendments above	See same comment for piers for detached dwelling relating to alternative design and mitigation.
KZC 83.290_Marinas and Commercial Moorage Facilities	<ol style="list-style-type: none"> 1. Reference another section 2. Minor policy change 3. Minor code amendment 4. Clarification of interpretation 5-7. Clarifications 	<ol style="list-style-type: none"> 1. Reference public piers standards in KZC 83.220.5. 2. Delete alternative design option if approved by the state and federal agencies similar to piers for detached dwelling units. 3. Require mitigation (removal of non-conforming in-water structures) for repair of marina piers similar to piers for detached and attached dwelling units. 4. Incorporate Interpretation No 12-6 about pier bumpers. 5. Reference public parks in the headers to the setback and dimensional standards charts in 80.290.2 ,80.290.5.c, 6.b and c. 6. Revise number of waste receptacles required to one (1) to be consistent with the standard in 83.220.5. 7. Remove reference to the older term "high water line", which is being replaced with OHWM throughout the SMP. 	<ol style="list-style-type: none"> 1. Clarification 2. See same comment for piers for detached dwelling relating to alternative design and mitigation. 3-6. Clarifications 7. Clarification. High water line and OHWM have the same definition in KZC. All references in the SMP to the older term high water line (or "waterline") should be replaced with OHWM for consistency and simplicity.
KZC 83.300_Shoreline Stabilization	<ol style="list-style-type: none"> 1. Clarification 2. Minor code amendment 3. Clarification 	<ol style="list-style-type: none"> 1. Clarify that for replacement or major repair of a bulkhead, when there is more than one section, the entire length of all sections is included in the measurement, which determines when the proposal is considered major replacement or repair. 2. Require for replacement or major repair of a bulkhead that construction plans be prepared by qualified professional, with knowledge in hydrology and construction of hard and soft shoreline stabilization methods. 3. Require for replacement or major repair of a bulkhead that if consultant is required, that they attend pre-submittal meeting for building permit. 4. Clarify in 83.300.1.d and 83.300.5.a.3 that boulders used in soft shoreline stabilization are for habitat purposes. 5. Remove in 83.300.10.e.2.e the allowance for an alternative planting plan approved by other state or federal agencies. 	<ol style="list-style-type: none"> 1. Clarification- this change clarifies how to measure the length of the proposal to perform a major repair or major replacement of a bulkhead. 2. This amendment is necessary to ensure competency in design of proposal. 3. Necessary to ensure that the contractor and consultant coordinate prior to submittal of building permit. 4. Clarification at suggestion of public works department 5. Necessary for consistency with removal of the state and federal approval option (see rationale under 83.210). Only the City's alternative compliance standards that provide flexibility within the planting strip as allowed in 83.400.3.f should be cited.
KZC 83.360 No Net Loss	Clarification	Clarifies that the required mitigation analysis (if needed for an exception to Code standards) to determine if no net loss standard is met must be prepared by qualified professional.	Necessary to ensure competent analysis, for example if a shoreline variance is sought.
KZC 83.370.2 and 83.370.3 Federal and State Approval	Clarification	Specify that the documentation verifying necessary state and federal agency approvals must be submitted to the City prior to issuance of a building permit or land surface modification permit,	Clarification

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Section/ Title of Chapter	Type of Amendment	Proposed Change	Rationale
KZC 83.380 Shoreline Setback Reduction Option	1. Reference another section 2. Minor policy change 3. Clarification 4. Minor code amendment 5. clarification	1. Add cross reference KZC 141.70.4 which addresses relief from shoreline setback and lot coverage requirements when OHWM is moved upland due to removal of bulkhead and creation of soft shoreline setback. 2. Add setback reduction option for removal of 50% of bulkhead (current regulation only gives option for removal of 75% of bulkhead). 3. Clarify what vegetation must be installed to meet Option 7 where additional landscape strip width is provided. 4. Remove incentive 6 in the setback reductions option chart (83.380.2.f) related to installation of biofiltration mechanisms. 5. Reformat wording in 83.380.2.b for clarity.	1. Ensures consistency with Comprehensive Plan and existing Code to not penalize owner for moving OHWM further landward. 2. Provides and additional incentive for soft shoreline stabilization. Adding the option to remove 50% of bulkhead instead of 75% of bulkhead would encourage removal of at least part of the bulkhead in exchange for a shoreline setback reduction. The percent of the setback reduction would be proportionately less for the 50% bulkhead removal option than the 75% removal- 10% rather than 15% setback reduction. 3. Clarification- provides clearer guidance. 4. The current storm water manual requires this type of improvement where feasible anyway, so it is no longer considered an incentive. It is not appropriate to give an applicant credit toward reducing the required setback for something that is now required anyway. 5. Clarification
KZC 83.400 Tree Management and Vegetation in Shoreline Setback	minor code amendment	Require vegetation overhanging bulkheads	This code amendment is intended to enhance fish habitat in the lake. Overhanging vegetation provides organic input critical for aquatic life. It provides food in the form of various insects and other detritus that feeds benthic macroinvertebrates and provides beneficial cover for juvenile Chinook that use the nearshore environment.
KZC 83.410 View Corridors	Minor code amendment	Clarify that in the Urban Mixed shoreline environment within the Juanita Business District, view corridors are not required in the JBD 4 and 5 zones only.	Reflects existing Zoning Code provisions that do require view corridors in the JBD2 and 3 zones when height is increased up to 13' above the 26' height limit, but not in JBD 4 and 5, where the height limit is 26 feet above ABE, and there is no flexibility to increase the height.
KZC 83.420 Public Access	1. Minor reorganization of the chapter 2. Minor code amendment 3. Clarification	1. Move exception to public access requirement to beginning of section instead of at end of section. 2. Clarify wording for when the public access trail must be opened to the public. 3. Clarify that all new uses, including piers, must provide public access, except single family. 4. Add a statement on Muckleshoot treaty rights and access to fisheries resources in U & A areas.	1. Improve clarity 2. Clarification. 3. Clarification 4. This statement has been added in response to a comment received by the Muckleshoot Tribe requesting acknowledgment of federally protected treaty rights to fisheries resources and access to these resources.
KZC 83.480 Water Quality, Stormwater and Nonpoint Pollution	1. -2. Clarifications	1. Replace reference to Surface Water Master Plan with City's adopted surface water design manual. 2. Replace reference to 2005 Stormwater Manual with City's adopted surface water design manual	1. Correction- BMPs are in the design manual, not the Master Plan. 2. Reference to the 2005 manual is outdated.
KZC 83.490-540 Shoreline Critical Areas	Code amendment	As discussed in Section 3 of the Gap Analysis, The Watershed Company recommends adoption of Chapter 90 by reference, identifying exceptions as required by the SMA.	his option provides the greatest consistency between the SMP and CAO. In the future a single update of Chapter 90 maintains consistency between SMP and CAO. Will help with ease of administration- particularly for projects that cross SMP/GMA

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Section/ Title of Chapter	Type of Amendment	Proposed Change	Rationale
			<p>boundaries, only one set of code requirements would apply. Certain Chapter 90 sections including exemptions, City review process, and appeals will be excluded from the SMP as SMP provisions will apply instead. Critical area reviews for activities in shoreline jurisdiction occur within the context of the SMP permitting procedures. Additionally, some wetland and stream regulations from Chapter 90 will be excluded within shoreline jurisdiction as they are not in compliance with SMA requirements.</p> <p>Note that Chapter 90 does not contain geologically hazardous areas regulations (which are instead contained in Chapter 85) and the geohazard regulations currently in Chapter 83 provide additional, shoreline specific detail not in Chapter 85, therefore these will be retained.</p> <p>Similarly, the flood hazard reduction regulations of 83.530 will be retained, in addition to adopting the frequently flooded area regulations of Chapter 90 as they are needed to address shoreline specific issues, not addressed in Chapter 90.</p>
KZC 83.550 Nonconformances	<p>1. Clarification 2. Clarification 3.4. Code amendment<u>Clarification</u></p>	<p>1. Clarify that adding or repairing sunroofs does not trigger bringing a nonconforming structure into conformance</p> <p>2. Reorganize 83.550.5 to clarify which nonconformances are landward and which are waterward of the ordinary high water mark. Clarify that stairs and boat launches are an assessor structure waterward of the OHWM, which also must be removed if an alteration to primary structure is made exceeding 50% of replacement cost or a new primary structure is built.</p> <p>3. Extend current nonconforming regulations in Section 83.550.5 for alterations that exceed 50% of the replacement cost of the house, currently in effect only in the annexation area, that require removal of boat houses and additional docks, into the remainder of the City shorelines. In addition, require removal of the more non-conforming pier or dock if there are more than one on the property in the RSA and RMA zone.</p> <p>4. Bring section Clarify in 83.550.6 into consistency with proposed regulations for additions to single family piers City wide, by requiring the existing annexation area regulations to apply City wide (removal of non-conforming boat houses and additional docks), and to require removal of that the more non-conforming pier or dock must be removed if there are more than one on the property when additions to a pier or dock are proposed in the RSA or RMA zone.</p>	<p>1. Clarification</p> <p>2. Clarification. These structures are located both in the shoreline setback and extend waterward of the OHWM. The removal of stairs and boat ramps<u>improvements</u> waterward of the ordinary high watermark minimize impacts on native fish and wildlife and their habitat. <u>In response to public comment, the proposal includes an exception that existing boat launches for non-motorized boats may be continued, and moorage buoys may be continued if established prior to 1978 (when King County adopted code to prohibit both a pier and moorage buoy on same property) and applicable county, federal and state agency permits were approved.</u></p> <p>3 and 4. The regulations in effect in the annexation area should be extended to all City shorelines, to be consistent with Shoreline Area Policy SA-11.3 to design and construct new or expanded piers and their accessory components, such as boat lifts and canopies, to minimize impacts on native fish and wildlife and their habitat. Specifically, this policy calls for minimizing overwater coverage from piers and for reducing or eliminating the number of boathouses and solid moorage covers, (e.g. the use of clear, translucent materials proven to allow light transmission for new canopies).</p> <p>Minimizing overwater coverage reduces predation threats on juvenile salmon. Salmon avoid areas with shadows, which forces them into deeper water where predators are found. Removal of overwater coverage encourages juvenile salmon to stay closer to the shore where predatory fish are less likely to be found.</p>

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Section/ Title of Chapter	Type of Amendment	Proposed Change	Rationale
Chapter 141- Shoreline Administration Procedure Kirkland Zoning Code			
KZC 141.70.30.1	Clarification	State the difference between Substantial Development Permit, Conditional Use Permit and Variance and refer to applicable WAC for decisional criteria.	Clarification
KZC 141.70.30.2 Review Required	Clarification	Add that project exempt from a Substantial Development Permit may need to obtain other development permits.	Clarification
KZC 141. 40.1 Exemption from Permit Requirements	Clarification	Add that the applicant has the burden of proof to show that proposal meets the applicable standards in Chapter 83 KZC for projects exempt from a Substantial Development Permit.	Clarification
KZC 141. 60.1 Applications	Clarification	Add that applicant can be the property owner or primary proponent of the project per WAC-173-27-180(1).	Clarification
KZC 141.70.2.d and 3.d Conditional Use and Variances	Minor code amendment	Add under Burden of Proof section that criteria for a substantial development permit in WAC 173-27-150 must also be met.	Clarification
KZC 141.70.2.e and 3.e. Conditional Use and Variances	Clarification	Clarify that Conditional Use or Variance has to complete all local administrative appeals or reconsideration periods prior to being forwarded to Ecology for its approval/disapproval jurisdiction.	Clarification
KZC 141.70.3. e.3 Conditional Use and Variances	Clarification	Clarify that filing date for shoreline variance appeals are counted from the date that Ecology transmits its decision, not the date the City mails the permit decision to Ecology.	Clarification
KZC 141.70.4 Request of Relief from Standards	Clarification	Clarify that relief from shoreline standards (shoreline setback and lot coverage) may also apply to upland lots.	Clarification
Shoreline Area Chapter Comprehensive Plan			
Shoreline Area Chapter of the Comprehensive Plan	-Minor edits throughout chapter	Reflect 2011 annexation area throughout chapter, including references to O.O. Denny Park, Juanita Drive and multifamily area located west of Juanita Beach Park.	Update reflecting annexation area parks
Policy SA-2.4 Residential – Medium/High development	Clarification	Clarify that additional density beyond 15 units per acre is allowed using the provisions of the Zoning Code, including a Planned Unit Development, affordable housing, low impact development and cottage housing.	Reflects existing Zoning Code provisions.

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Section/ Title of Chapter	Type of Amendment	Proposed Change	Rationale
New Policy SA-6.3	New policy	Add new aspirational policy to promote opportunities to remove overwater residential structures over time.	Policy supports existing goal SA-6 to protect and enhance the character, quality and function of existing residential neighborhoods within the City's shoreline area.
Policy SA-6.4 Subdivision of Land	Clarification	Clarify that public access is not required for 4 or fewer new single family lots.	Clarification. WAC 173-26-241 requires public access for the subdivision of land for more than four parcels.
Policy SA-7.5 Commercial uses between CBD and Planned Area 15 (Carillion Point.)	1. Clarification 2. Minor edit	1. Add the word "west side of Lake Washington Blvd/Lake Street S" to the first sentence so that it is clear that it does not apply to east side of street. 2. Revise the "interfere with nearby uses" statement at the end of the paragraph.	1. Clarification 2. Clarification- change "interfere with nearby uses" to "interfere with nearby water dependent and water-related uses"
New Policy SA-11.2 Piers	New policy	Add new policy that length of pier should be in character with adjacent-nearby pier lengths.	1. Policy supports changes to KZC 83.270 and KZC 83.280 addressing single and multifamily piers that should have pier lengths consistent with nearby pier lengths or shorter. See above. 2. Renumber policies that follow this new policy
Policy SA-13.5 Fish and Wildlife Habitat Conservation Areas	Minor edit	Add reference to Denny Creek and Champagne Creek and Kirkland's <i>Best Available Science Report</i> dated December 2015 to reflect wildlife and fish habitat in the shoreline area.	Update to reflect annexation area
Policy SA-20.3 Landscape design practices in shoreline parks	Minor edit	Add O.O. Denny Park to list of parks that need shoreline vegetation.	Update to reflect annexation area
Policy SA-20.7 Shoreline armoring in shoreline parks	Minor edit	Add O.O. Denny Park to list of parks where bulkhead removal and replacement with non-structural (soft) shoreline stabilization opportunities exist and should be explored if repair or replacement is needed.	Update to reflect annexation area
Policy SA-24.2 Floatplane moorage in commercial shoreline areas	Minor edit	Two minor edits to floatplane moorage policy as an outcome of a recently reviewed floatplane permit.	The policy should support having floatplane moorage in certain commercial locations (Carillion Point and Marina Park) by not have policy text that is ambiguous, such as "protection of adjacent development and uses" and "not interfere with boating corridors." Retaining the more specific text about "human safety, including limiting noise and other impacts" addresses the key issues for a floatplane moorage facility. A float plane must cross a boating corridor to reach its mooring pier.
Shoreline Area Chapter of the Comprehensive Plan	Minor edit	Add text in the introduction that refers to the 2019 periodic review. A new sentence is added to page 3.	The Shoreline Element does not reflect the 2019 SMP periodic review process.
Shoreline Area Chapter of the Comprehensive Plan	Minor edit	Make minor changes to reflect SMP reference to KZC 90. Sentence added to B.2.	Comprehensive Plan policies should reflect SMP updates
Comprehensive Plan Policy SA-13	Minor edit	Update language to reflect current designation status of species. See updated language in Policy SA-13.	Comprehensive Plan references outdated species status (i.e. bald eagle)

Table 6. City Initiated Amendments Proposed to Chapter 5 and Chapter 90 KZC

Attachment 6

Section Title of Chapter	Type of Amendment	Proposed Change	Rationale
Chapter 5 Kirkland Zoning Code			
KZC 5, Definitions	1. Clarification 2-6. Consistency updates	<ol style="list-style-type: none"> 1. Revise culvert definition to clarify that culverts may convey streams and are specifically related to road crossings. 2. Revise frequently flooded areas, geologically hazardous areas, institutional uses, impervious surface, ordinary high water mark, pervious surface, stream, upland, watershed, wetland and wetland category or wetland rating to remove reference to another definition in Chapter 83 KZC. 3. Revise maximum units per acre and structure setback definitions to include reference to Chapter 83. 4. Add definition of Wetlands of High Conservation Value . 5. Revise definition of wildlife habitats and species of local importance (.992) to remove the word "wildlife" and specific species list and remove the redundant species of local importance definition (.883.15). 6. Revise definition of Qualified Critical Area Professional (5.10.748) to include qualified shorelines professional. 	<ol style="list-style-type: none"> 1. Clarification 2. The SMP references Chapter 5 definitions for all definitions that are the same for properties within and outside of shoreline jurisdiction. Only SMP specific definitions should be contained in Chapter 83 KZC. Now that the SMP will reference Chapter 90 for critical areas regulations, no critical areas definitions are necessary in the SMP. There never was a definition for institutional uses in SMP. 3. Clarification 4. Internal consistency. Wetlands mapped by DNR as Wetlands of High Conservation Value should be considered Category I wetlands but currently no definition was provided in code to help determine this. 5. Clarification of regulated species and habitats- Per 90.95.2.b KZC, wildlife habitat and species of local importance are those habitats and species which are on the states Priority Habitats and Species (PHS) list that are located within the city. Bald eagles are no longer on the PHS list. Including specific species in the definition makes the code less adaptable if the state list changes again. Per 90.85.8 habitats and species of local importance, in addition to PHS species, can also be designated by the City. Definition will clarify these two components of habitats and species of local importance. In the future should the city chose to designate additional species they would be listed here. Definition .883.15 is redundant with the proposed revisions to .992. 6. The current definition does not include any specific criteria for professionals qualified to evaluate shoreline specific projects, nor is a shoreline professional defined anywhere else in the code.
Chapter 90 Kirkland Zoning Code			
KZC 90.30, City Review Process	<ol style="list-style-type: none"> 1. Minor policy amendment 2. Clarification 	<ol style="list-style-type: none"> 1. Stream channel stabilization should be a planning official decision rather than Process I 2. Change title of the "type of action" row from Interrupted Buffer to Limited Buffer Waiver. 	<ol style="list-style-type: none"> 1. Bumping down the significance of the decision to make it more consistent with the other types of action 2. The title of the cited section (90.120) is Limited Buffer Waiver, not Interrupted Buffer. Additionally, with the proposed addition to this section (see entry for 90.120 below), it will encompass more than just interrupted buffers.
KZC 90.35 Exemptions	<ol style="list-style-type: none"> 1. Minor policy amendment 2. Minor policy amendment 	<ol style="list-style-type: none"> 1. Add a new exemption for beaver management with an approved HPA. 2. Add a new exemption for private flood prevention activities recommended by Public Works 	<ol style="list-style-type: none"> 1. Based on past project reviews, beaver management, such as installation of beaver deceiver devices, is sometimes warranted, and when approved by an HPA, should be allowed by Chapter 90 with no further review. Insignificant environment impact would be expected when HPA conditions are followed. 2. Based on past project reviews, Public Works at times requires or recommends an action that is difficult or not possible to permit though Chapter 90. Revisions remove this barrier for projects necessary for flood preventions and public safety.
KZC 90.40, Permitted Activities, Improvements, or Uses Subject to Development Standards	<ol style="list-style-type: none"> 1. Clarification 2. Clarify interpretation 3. Clarification 4. minor policy amendment 	<ol style="list-style-type: none"> 1. Clarifications that mitigation area shall be equal to disturbance area in 90.40.6.b and 90.40.6.c 2. Clarify in 90.40.6.c.3 that boardwalks are not counted toward lot coverage 3. Clarify that 90.40.6.d.3 applies to piped stormwater outfalls 4. Add allowance for temporary construction impacts in wetland and stream buffers 	<ol style="list-style-type: none"> 1, 2, and 3. Clarifications 4. Temporary buffer impacts may be necessary for construction related purposes even when all permanent wetland and buffer impacts can be avoided. As the least impactful alternative these temporary impacts should be allowed when they can be fully restored, as a disincentive to proposing additional, permanent impact.
KZC 90.45, Public Agency and Public Utility Exceptions	Clarification	Clarify that all public agency exceptions for all critical areas must include all submittal materials listed in this subsection.	Clarification

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Section Title of Chapter	Type of Amendment	Proposed Change	Rationale
KZC 90.55, Wetlands and Associated Buffer Standards	1. Policy amendment 2. Policy amendment	1. Revise habitat point ranges and wetland buffer widths for some wetlands pursuant to Ecology's July 2018 guidance update. 2. For a wetland with a habitat score of 6 or more, add an additional requirement that to utilize the standard buffers a wildlife corridor must be established between the wetland and any other WDFW defined priority habitat on the subject parcel.	1. Clarification. The change in guidance is the result of Ecology's continued evaluation of the 2014 wetland rating system as it relates to the 2004 wetland rating system. Ecology's intent was that the change from the 2004 to 2014 rating system would not significantly affect resulting buffers. The recommendation assigns wetlands with a habitat score of 5 as "low" function instead of a separate "low/moderate" grouping. This reduces the buffer for wetlands with a habitat score of 5 to 75 feet instead of 105 feet. It also reduces the recommended buffer for "moderate" habitat functions (scores of 6 and 7) to 110 feet instead of 165 feet. 2. Chapter 90 KZC utilizes the buffers presented in Ecology's Wetland Guidance for CAO Updates Table XX.1 which requires the use of minimization measures, and when appropriate, protection of a wildlife corridor. The wetland impact minimization measures are included in 90.155 KZC and the requirement that they be implemented if standard buffers are used is noted in the wetland buffer table in 90.55 KZC. However, a corridor protection requirement is not currently included in Chapter 90. To better align with BAS, a corridor protection requirement is proposed in order for wetlands with a habitat score of 6 or more to use the standard buffers. The corridor is only required if an existing, relatively undisturbed corridor at least 100 feet wide exists between the subject wetland and another WDFW priority habitat, <i>and</i> the off-site portion of the corridor is already protected by a legal mechanism. If so, the applicant must extend the corridor protection onto the subject parcel to connect it to the wetland. If such a corridor exists but the protection is not provided, the standard buffers must be increased by 33% to provide additional habitat protection to the wetland. If no corridor is present, the standard buffers may continue to be used with the other applicable criteria contained in 90.55 alone. Note that with the smaller buffer widths now proposed (110 feet) for wetlands with a habitat score of 6-7 (based on item 2 above), the 33% increase in buffer width (to 150 feet) potentially required if the habitat corridor requirement is not met would still result in a smaller buffer than currently required (165 feet) for these wetlands.
KZC 90.60, Wetland Modification	Clarifications	1. Reorder section for clarity, identifying applicability up-front 2. Clarify what type of wetland and wetland buffer modification proposals are allowed	It was not clear to staff or consultants how 90.60 was intended to be applied. Clarifications were made to more clearly indicate that wetland fill should be prohibited except under the certain exceptions (now listed as 1, including reasonable use exception) or for the certain small, low functioning wetlands listed in 3. Buffer modifications are allowed only as part of a wetland modification, interrupted buffer waiver or buffer averaging.
KZC 90.65.1, Table: Streams and Associated Buffer Standards	Clarification	Revise table language to be consistent with the title of the limited buffer waiver section (90.120).	Current language refers to 90.120 as only applying to interrupted buffers. The title is actually "limited buffer waivers" and while only interrupted buffers were covered in that section before, now with the addition of the Type F Limited Buffer Waiver the stream table should be revised to reflect the accurate section title to indicate that all waiver types covered in that section are applicable.
KZC 90.70, Stream Modification	Clarifications	1. Reorder section for clarity, identifying applicability up-front 2. Clarify that stream buffer modifications may only be approved as part of a stream modification, except for averaging and interrupted buffer waiver 3. Clarify that stream channel relocation includes meandering of a stream 4. Clarify that applicant shall be responsible for the cost of inspection, report <u>and</u> peer review 5. Correct language in 3.e to be "limited buffer waivers", consistent with title of 90.120 6. Revise 90.70.4 and 5 to clarify that the decisional criteria for all the listed proposals in 90.70.3 should be decided upon using the applicable decisional criteria for each buffer modification by the Planning Official. 7. Correct the applicable reference to the Daylighting Streams section to 90.75, not 90.80.	Clarifications

Table 6. City Initiated Amendments Proposed to Chapter 5 and Chapter 90 KZC

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Section Title of Chapter	Type of Amendment	Proposed Change	Rationale
KZC 90.75.3.c, Daylighting of Streams	Clarification	Clarify that the applicant is responsible for funding peer review, if deemed necessary by the planning official.	Clarification
KZC 90.85.3 and 90.85.4, Stream Channel Stabilization	Clarification	Change the process and decisional criteria for stream channel stabilization from a Process I to a Planning official Decision.	Clarification, to be consistent with the change proposed in 90.30
KZC 90.90, Minor Lakes- Totem Lake and Forbes Lake	Clarification	Remove reference to the older term "high waterline", and replace it with "ordinary high water mark" (OHWM).	Clarification. High Waterline and OHWM have the same definition in KZC. All references in the SMP and CAO to the older term high waterline should be replaced with OHWM for consistency and simplicity.
KZC 90.95 Fish and Wildlife Habitat Conservation Areas	Clarifications	<u>1. Remove the word "wildlife" from 90.95.8</u> <u>2. Update the criteria for providing wildlife corridor measures in a wildlife habitat management plan from a wetland score 5 or more points to 6 or more points. Clarify this reference is to wildlife habitat points.</u>	<u>1. Habitat and Species of Local Importance can refer to both fish and wildlife, so removing the word "wildlife" is more accurate.</u> <u>2. Clarification and revision for consistency with the revisions to the wetland section where a wildlife score of 5 is now grouped with the "low" function category. The cutoff for the wildlife corridor requirement in the wetland section is also 6 habitat points based on BAS.</u>
KZC 90.110, Critical Area Report	Clarifications	1. Clarify in 90.110.4.h that Critical Area Report is submitted with development permit application 2. Clarify the types of actions requiring a revegetation plan	Clarifications
KZC 90.120, Limited Buffer Waivers	Policy amendment	Add a new buffer waiver for certain Type F streams, that would reduce the buffer from 100 to 50 feet, if the stream meets the definition of Type F but does not currently support fish use and it is determined that fish habitat could not be reasonably recovered based on criteria addressed in a critical areas report.	The State's stream classification system was designed for forested areas, and it does not account for piped, urbanized streams that provide little or no potential value for fish habitat. The change acknowledges this by allowing a smaller buffer, on a project by project basis, for streams that do not currently have fish, and which could not reasonably be restored to support fish use, though they otherwise meet the definition of Type F.
KZC 90.130, Vegetative Buffer Standards	Clarifications	1. Clarify in 90.130.3 that the calculation of impervious area includes coverage of pervious pavement and/or pavers 2. Clarify in 90.130.6 the types of actions requiring a vegetative buffer plan 3. Clarify in 90.130.7 that a maintenance and monitoring plan is submitted with a development permit application and financial security is submitted with a building permit or land surface modification application and that that applicant is responsible for the cost of peer review	Clarifications
KZC 90.160, Monitoring and Maintenance	Clarification	1. Clarify that monitoring and maintenance applies to vegetative buffer plantings as well as mitigation (90.160.1.a and 90.160.3). 2. KZC 90.160.4.d finish sentence to read "... and one site inspection in third year."	Clarifications
KZC 90.180 Reasonable Use Exception	Clarification	1. Remove zones and just list uses allowed 2. Change "commercial" to "non-residential" in 180.6.b	Clarifications
KZC 90.185, Nonconformances	1, 3, and 6. Clarifications 2, 4, and 5. Minor policy changes	1. Clarify in 90.185.2.a that one-time expansion limit does not apply to above-ground floor expansions (i.e., building up). 2. Allow reconstruction of nonconforming structures with the same square footage or smaller if the footprint is moved away from the critical area. 3. Clarify in 90.185.4.c.3 that the 50 percent threshold applies to the primary structure and attached improvements 4. Substitute "structure" for "building" in preface of 185.5.	1, 3, and 6. Clarification 2. Allow incentive to improve conditions 4. Since the expansion in this section won't increase the degree of nonconformance because it will occur outside the critical area, buffer or building setback, we don't care if it is a habitable building. 5. A patio, deck, or walkway would be less impactful than a building.

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Section Title of Chapter	Type of Amendment	Proposed Change	Rationale
		5. Discuss whether expansion in 185.6 can be a new patio, deck, or walkway (KCHA ADA ramp example) and not just an addition to a building. 6. Clarify that the one-time expansion is that specified in 90.185.6.b, c, d, and e.	
KZC 90.190, Critical Area Markers, Fencing and Signage	Clarification	Clarify "critical area or its buffer" in 90.190.2.b and 3.a.4	Clarification
KZC 90.195 Pesticide and Herbicide Use	1. Clarification 2. minor policy change	1. Remove reference to King County Stormwater Pollution Prevention Manual and clarify that BMPs apply to pesticides, herbicides, and fertilizers. 2. Remove 90.195.2	1. The manual does not include all of the herbicide and pesticide guidance that is included in code. 2. Ecology would not require a permit for herbicides sprayed on terrestrial systems.