



CITY OF KIRKLAND
Planning and Building Department
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MEMORANDUM

To: Houghton Community Council

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

Date: April 17, 2020

Subject: Final Approval: 2019 Shoreline Master Program (SMP) Periodic Update and Amendments, File Number CAM19-00026

Staff Recommendation

Adopt enclosed Resolution 2020-2 to approve the 2019 City initiated amendments to the Shoreline Area Chapter of the Comprehensive Plan and Chapters 5, 83, 90, 141, and 180 of the Zoning Code, adopted by Ordinance 4700 and 4701 on April 7, 2020 by the Kirkland City Council.

Background

The amendments are included as Exhibits A to Ordinance numbers [4700](#) and [4701](#).

On April 25, 2019 and July 25, 2019, the Planning Commission (PC) and Houghton Community Council (HCC) held a public hearing on the Shoreline Master Program Periodic Update. At the conclusion of the July 25 meeting, a recommendation from the joint hearing was completed and presented by staff to the Washington State Department of Ecology (Ecology) for an Initial Determination of Consistency on August 27, 2019.

On October 7, 2019 the City received an Initial Determination of Consistency from Ecology. Ecology determined the amendments recommended by the PC and HCC are consistent with the standards of RCW 90.58.020 and RCW 90.58.090, subject to two recommendations and four required changes (see Attachment 1),. Staff incorporated the required changes within O-4700 and O-4701.

On [April 7, 2020](#) the City Council adopted O-4700 and O-4701. The proposed ordinance included the amendments consistent with the Planning Commission and Houghton Community Council recommendations with the exception of the following:

- Ecology recommendations and requirements in Attachment 1;
- Adjustments to Pier Length (83.270.4(a));
- Maintenance of the Administrative Option Approval (KZC 83.270.4(b)); and
- Non-Conforming Overwater Structures (KZC 83.550.5(b)(5)).

The amendments associated with pier length, the Administrative Option, and Non-conformances are discussed below.

Single-Family Pier Length (KZC 83.270):

City Council directed clarifications regarding how the length of a pier would be measured relative to adjacent piers, and also new code language that considers the average depth of neighboring piers. The following table, from KZC 83.270.4(a), contains the pier length code that was ultimately incorporated into Ordinance O-4701.

<p>Maximum Length for piers, docks, ell, fingers and attached floats (See Plates 47 and 48A/B)</p>	<p>A pier or dock shall not project into the lake further than a line established by the lakeward extent of adjacent neighboring piers, or 150 feet in overall length of the proposed pier or dock, whichever is less (see Plate 47). Pier or dock length may be increased beyond the lakeward extent of adjacent neighboring piers or docks, but not more than 150 feet in overall length under any of the following circumstances:</p> <ol style="list-style-type: none"> 1. An applicant is entitled to increase the overall length of the proposed pier or dock by 10% to extend beyond the lakeward extent of neighboring piers or docks (see Plates 48A/B). 2. An applicant may propose to further increase the overall length of the proposed pier or dock to a length that achieves the average water depth at either the lakeward extent or primary moorage area, whichever is less, of the two piers on either side of the proposed pier or dock. The applicant must demonstrate the proposed additional length will not have an adverse impact on navigation. 3. An applicant is entitled to further increase the overall length of the proposed pier or dock when subsections 1 and 2 still do not result in a water depth adequate to prevent boats from sitting on the lakebed. The applicant must demonstrate the proposed additional length will not have an adverse impact on navigation. <p>The overall length of a pier or dock shall be measured from the furthest landward point of the OHWM.</p> <p>A shoreline variance shall be required for any pier or dock that exceeds 150 feet in length.</p>
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The changes provide additional clarification, incorporating the use of the lakeward extent of neighboring piers as the comparative fixed point in the lake when considering a new pier or pier. The final code language also establishes an average depth standard to the table, seeking to create a reasonable and equitable allowance when designing a new pier or pier addition.

Administrative Approval Option (KZC 83.270.4(b))

The administrative approval option allows applicants to request State and Federal permits that are more permissive than certain City regulations. The PC and HCC supported the staff proposal to remove the administrative approval option from the current SMP. City Council retained the standards in the current code.

Non-Conforming Overwater Structures (NCOWS) (KZC 83.550.5)

The PC/HCC recommendation from July 25th included the following amendment language.

5) If the applicant is making an alteration to the primary structure, the cost of which exceeds 50 percent of the replacement cost of the structure or constructing a new primary structure, the following existing structures must be removed or otherwise brought into conformance:

a) Nonconforming accessory structures located in the required shoreline setback, including decks, patios, or similar improvements;

b) Nonconforming accessory structures located at or waterward of the OHWM, including overwater decks, pier flares, and stairs, or similar improvements; except that existing boat launches for non-motorized boats may be continued, and moorage buoys may be continued if established prior to 1978 and applicable county, federal and state agency permits were approved.

c) Additional pier or dock located on the subject property. The more non-conforming pier or dock must be removed in the RSA or RMA zone; and

d) Covered boat moorage structure located on the subject property in the RSA or RMA zone; except for boat canopies that comply with KZC 83.270(9).

The City Council approved the following, removing the second sentence in subsection 5(c).

5) If the applicant is making an alteration to the primary structure, the cost of which exceeds 50 percent of the replacement cost of the structure or constructing a new primary structure, the following existing structures must be removed or otherwise brought into conformance:

a) Nonconforming accessory structures located in the required shoreline setback, including decks, patios, or similar improvements; and

b) Nonconforming accessory structures located at or waterward of the OHWM, including overwater decks, pier flares, and stairs, or similar improvements; except that existing boat launches for non-motorized boats may be continued, and moorage buoys may be continued if established prior to 1978 and applicable county, federal, and state agency permits were approved; and

c) Additional pier or dock located on the subject property in the RSA or RMA zone; and

d) Covered boat moorage structure located on the subject property in the RSA or RMA zone; except for boat canopies that comply with KZC 83.270(9).

Conclusion

The adopted amendments established in O-4700 and O-4701 have been sent to Ecology for approval by the State, which has final authority over the SMP amendments. The SMP amendments will be effective 14-days after approval from Ecology's Director.

Attachments

1. Ecology Recommended and Required Changes, October 7, 2019

Cc: File **CAM19-00026**

Kirkland Neighborhood Associations

Kirkland Alliance of Neighborhoods

Kirkland Chamber of Commerce

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 Chapter 90 KZC 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>

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<p>Req-2</p>	<p>KZC 83.260 General</p>	<p>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.</p>	<p>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.</p>
<p>Req-3</p>	<p>KZC 83.490 Critical Areas: Wetlands, Streams, Fish and Wildlife Habitat Conservation Areas, and Frequently Flooded Areas</p>	<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> <ul style="list-style-type: none"> a. Wetlands b. Streams c. Fish and wildlife habitat conservation areas d. Frequently flooded areas; and e. 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 with <u>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>

RESOLUTION 2020-2

A RESOLUTION OF THE HOUGHTON COMMUNITY COUNCIL APPROVING ORDINANCE NO. O-4700 ADOPTED BY THE KIRKLAND CITY COUNCIL ON APRIL 7, 2020, ADOPTING THE SHORELINE MASTER PROGRAM PERIOD UPDATES TO THE SHORELINE AREA CHAPTER OF THE COMPREHENSIVE PLAN (CASE NO. CAM19-00026).

WHEREAS, the Houghton Community Council has received from the Kirkland City Council Ordinance No. O-4700, adopting the amendments to the Comprehensive Plan.

WHEREAS, the subject matter of this ordinance, pursuant to Ordinance 2001, that is subject to the disapproval jurisdiction of the Houghton Community Council shall become effective within the Houghton Community Municipal Corporation only upon approval by the Houghton Community Council or the failure of said Community Council to disapprove this ordinance within 60 days of the date of the passage of this ordinance; and

WHEREAS, the pertinent subject matter of this ordinance was reviewed and discussed by the Houghton Community Council at the joint public hearing with the Planning Commission on July 25, 2019; and

WHEREAS, the pertinent subject matter of this ordinance was reviewed and discussed by the Houghton Community Council at a meeting held on July 25, 2019 and at said meeting the Houghton Community Council provided recommendations on said subject matter; and

WHEREAS, the pertinent subject matter of this ordinance will serve the interests and promote the health, safety, and welfare of the Houghton Community Municipal Corporation;

NOW, THEREFORE, be it resolved that Ordinance O-4700 is hereby approved and shall be effective within the Houghton Community Municipal Corporation.

PASSED by majority vote of the Houghton Community Council in regular, open meeting this ____ day of _____, 20__.

SIGNED IN AUTHENTICATION thereof this ____ day of _____, 20__.

Rick Whitney, Chair
Houghton Community Council

City Clerk

RESOLUTION 2020-3

A RESOLUTION OF THE HOUGHTON COMMUNITY COUNCIL APPROVING ORDINANCE NO. O-4701 ADOPTED BY THE KIRKLAND CITY COUNCIL ON APRIL 27, 2020, ADOPTING THE SHORELINE MASTER PROGRAM PERIOD UPDATES TO THE CHAPTERS 5, 83, 90, 141, AND 180 OF THE KIRKLAND ZONING CODE (CASE NO. CAM19-00026).

WHEREAS, the Houghton Community Council has received from the Kirkland City Council Ordinance No. O-4701, adopting the amendments to the Zoning Code.

WHEREAS, the subject matter of this ordinance, pursuant to Ordinance 2001, that is subject to the disapproval jurisdiction of the Houghton Community Council shall become effective within the Houghton Community Municipal Corporation only upon approval by the Houghton Community Council or the failure of said Community Council to disapprove this ordinance within 60 days of the date of the passage of this ordinance; and

WHEREAS, the pertinent subject matter of this ordinance was reviewed and discussed by the Houghton Community Council at the joint public hearing with the Planning Commission on July 25, 2019; and

WHEREAS, the pertinent subject matter of this ordinance was reviewed and discussed by the Houghton Community Council at a meeting held on July 25, 2019 and at said meeting the Houghton Community Council provided recommendations on said subject matter; and

WHEREAS, the pertinent subject matter of this ordinance will serve the interests and promote the health, safety, and welfare of the Houghton Community Municipal Corporation;

NOW, THEREFORE, be it resolved that Ordinance O-4701 is hereby approved and shall be effective within the Houghton Community Municipal Corporation.

PASSED by majority vote of the Houghton Community Council in regular, open meeting this ____ day of _____, 20__.

SIGNED IN AUTHENTICATION thereof this ____ day of _____, 20__.

Rick Whitney, Chair
Houghton Community Council

City Clerk

