



## MEMORANDUM

**To:** Houghton Community Council

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

**Date:** March 16, 2009

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

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### **I. RECOMMENDATION**

- Overview feedback from the shoreline property owner's forum (see Section III starting on page 2).

- Review and provide feedback on shoreline development standards, including shoreline setbacks and lot coverage for the Residential M/H, Urban Mixed, and Urban Conservancy environments (see Section IV starting on page 3).
- Review and provide feedback on shoreline use standards for specific shoreline uses (see Section V starting on page 8).
- Review and provide feedback on shoreline modification standards (see Section VI starting on page 11).
- Review and provide feedback on general regulations (see Section VII starting on page 16).
- Review and provide feedback on permit review processes (see Section VIII starting on page 17).

## **II. INTRODUCTION**

**A. Recommended Agenda.** An overview of the status of review of the different Sections of the Shoreline Master Program is provided in Attachment 1. This table provides a synopsis of the different components of the SMP and what areas have been completed and what is left to be reviewed by the Community Council. For the March 23rd meeting, staff would recommend reviewing the following:

- Shoreline development standards.
- Shoreline use standards.
- Shoreline modification standards.
- Preliminary permitting questions.

## **III. SHORELINE PROPERTY OWNER'S WORKSHOP**

At the request of shoreline property owners, staff conducted a workshop on Saturday February 28 at the Kirkland Community Center. Approximately 40 people attended with the majority from the Market Neighborhood (Lake Avenue West and 5<sup>th</sup> Avenue West). Attachments 2 and 3 contain copies of several handouts prepared by staff for the February 28<sup>th</sup> Shoreline Property Owner's workshop. Attachment 4 contains a summary of comments, questions, and concerns from Shoreline Property Owners who attended the February 28<sup>th</sup> workshop. Staff would recommend that the Houghton Community Council discuss the issues brought up at the meeting, using the summary provided in Attachment 4 as well as the insights of the two Council members that were in attendance (John Kappler and Elsie Weber).

As a follow-up to this meeting, the Planning Commission has opted to hold an **additional meeting with a smaller group of shoreline property owners** to discuss issues of concern. The meeting would be open to the public, with focused discussions with a

smaller group of property owners. A date for this follow-up meeting has not yet been established.

#### **IV. SHORELINE DEVELOPMENT STANDARDS**

**A. Purpose.** Shoreline setbacks and other development standards serve several different functions, including, but not limited to:

- i. **Protecting existing shoreline functions and shoreline habitat.** A number of scientific studies have been completed addressing different riparian functions and the buffers needed to protect these functions<sup>1</sup>. (Note: The studies noted below primarily focus on streams and rivers. While lakes are hydrologically different from streams and rivers, the riparian functions that relate to lakes have many similarities to the functions provided by fluvial systems. Similar inferences can be made to the impacts which result from development along lakeshores). A review of scientific studies for riparian areas, such as streams and lakes, indicates the following:
  - Riparian areas can provide protection by moderating surface water and sediment inputs.
  - Complex buffers with multiple classes of vegetation may be most effective at removing a variety of contaminants.
  - Chemical removal functions increase with buffer width.
  - The literature includes a wide range of recommended buffer widths; those with smaller widths may be adequate, provided the existing buffer is high-quality forest and/or the surrounding land use has low impact. Buffers less than 10 meters in width (approximately 33 feet) are not generally considered functionally effective. (Note: DOE has advised the City that a minimum standard of 25 feet needed to ensure water quality protection).
- ii. **Preventing permanent preclusion of restoration** of shoreline functions and habitat, with the overall goal of achieving new State requirements for no net loss.
- iii. **Avoiding damage** from flooding and erosion.
- iv. Ensuring that new development is adequately sited to **avoid and minimize need for new shoreline stabilization features**.
- v. Preserving and enhancing **views** of the water.

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<sup>1</sup>Desbonnet, A., P. Pogue, V. Lee, and N. Wolff, 1994. Vegetated buffers in the Coastal Zone: A Summary Review and Bibliography. Coastal Resources Center Technical Report No. 2064. University of Rhode Island.

Knutson, K. L. and Naef, V. L. 1997. Management recommendations for Washington's priority habitats: Riparian. Washington Department of Fish

and Wildlife. 181 pp. Available at: <http://www.wdfw.wa.gov/hab/ripsum.htm>

May, C.W., E.B. Welch, R.R. Horner, J.R. Karr, and B.W. Mar. 1997b. Quality Indices for Urbanization Effects in Puget Sound Lowland Streams. Final Report for Washington Department of Ecology, Centennial Clean Water Fund Grant No. G9400121. Department of Civil Engineering, University of Washington, Seattle, WA.

Naiman, R.J., and H. Décamps. 1997. The ecology of interfaces: riparian zones. Annual Review of Ecology and Systematics 28: 621-658.

Osborne, L.L., and D.A. Kovacic. 1993. Riparian vegetated buffer strips in water-quality restoration and stream management. Freshwater Biology 29: 243-257.

vi. Maintaining existing **character and the scenic quality** of Kirkland’s shorelines.

**B. State Requirements.** Under the State Guidelines, environment-specific regulations will typically include building or structure height and bulk limits, setbacks, maximum density or minimum frontage requirements, and site development standards to account for different shoreline conditions. These standards need to be established in such a way as to assure **no net loss** of shoreline ecological functions.

With regard to no net loss and setbacks, as properties develop or redevelop at increased intensity, (e.g. a larger building covering more land area built closer to the lake), that activity is likely to introduce new impacts that then need to be mitigated in some manner. For instance, if a building is constructed closer to the shoreline than existing development, the impact of shifting the residence closer to the shoreline can include increased activity, noise, and light transmission near the water, as well as a reduction in area to moderate runoff volume and remove waterborne contaminants and further fragmentation of open space area for wildlife habitat. Essentially, **a reduction in the setback shifts many of the impacts associated with development closer to the shoreline interface, impacting shoreline functions.**

Under the no net loss concept, the City needs to ensure that it maintains existing functions, which means that new development or redevelopment that occurs along the City’s shoreline will need to be done in such a manner that no net new impacts are introduced. **Therefore, the City needs to evaluate what ecological functions exist given the City’s existing built conditions and ensure that whatever development standards (including setback standards) are applied, the standards will protect those existing ecological functions.**

**C. Existing Built Conditions**

1. Existing Conditions: The following is a summary of existing conditions for the shoreline environments present in the Houghton Community Council jurisdiction. This information has been gathered by an examination of current aerial photographs through GIS analysis. Existing setbacks and location of existing improvements have been estimated for each waterfront parcel. Average lot depths have been estimated by the average, based on the minimum and maximum lot depths on a property.

<b>Shoreline Environment</b>	<b>Measurement</b>	<b>Existing Conditions</b>
<b>Residential – M/H</b>	Approximate Median Structure Setback	24 feet, or 15.7% of average parcel depth
	Approximate Average Structure Setback	26.6 feet
	Approximate Average Improvement Setback	19.9 feet
	Approximate number of lots with existing nonconforming setbacks	20 lots have setback of <15’; 27 lots have setback of <15% of the lot depth
	Setback Modal Peak	<15’ (nonconforming); otherwise 20-30’
	Approximate Median Total Lot Depth	166.5 feet

Shoreline Environment	Measurement	Existing Conditions
Urban Mixed	Approximate Median Structure Setback	29 feet, or 13.8% of average parcel depth
	Approximate Average Structure Setback	38 feet
	Approximate Average Improvement Setback (e.g. to edge of decks and patios or other similar improvements)	12.8 feet
	Approximate number of lots with existing nonconforming setbacks	4 lots have setback of <15'; 7 lots have setback of <15% of the lot depth
	Setback Modal Peak	20-30 feet
	Approximate Median Total Lot Depth	223.1 feet

**D. Proposed Setbacks** (see Section 83.180 in Attachment 5).

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

- **Recommended Approach.** Use **existing development conditions** to gauge setback requirements. In this case, the setback standard would be 25' or 15% of average parcel depth, whichever is greater. This is recommended to respond to both existing development patterns and shoreline ecological functions, as follows:
  - The approximate existing median setback for properties located in the Residential – M/H environment is 15.7% of the average parcel depth or approximately 24 feet.
  - A minimum setback of 25-feet is proposed in order to provide adequate room to accommodate shoreline access, shoreline vegetation, and provide for shoreline functions such as filtration of pesticides and other chemicals.

**Houghton Community Council:** Does the Houghton Community Council have any questions on the draft setback standards for the Residential – M/H shoreline environment contained in Attachment 5 or comments to transmit to the Planning Commission?

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

- **Recommended Approach.** Due to the variability in lot depths, establish a setback that is based on a **percentage of the lot depth**. Existing median is approximately 13.8 percent of the average lot depth, with an average median setback of 21' in the CBD, 29.5 feet in the JBD, and 32' in the Carillon Point area. As a result, the proposal is: 25' or 15% of average parcel depth, whichever is greater. A maximum setback standard would need to be established for the Carillon Point area, which has very deep lots. Fifteen (15) percent of the average parcel depth was a pre-existing

requirement in all of these areas, so the major change is the increase to a minimum of 25', which is greater than the existing conditions in the CBD. Note: a minimum of 25' in the CBD is proposed to respond to DOE comments that this is the minimum standard needed to ensure water quality protection. Allow reductions for any sites with a greater setback to a minimum of 25' with enhancement.

**Houghton Community Council:** Does the Houghton Community Council have any questions on the draft setback standards for the Urban Mixed shoreline environment contained in Attachment 5 or comments to transmit to the Planning Commission?

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

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

**Houghton Community Council:** Does the Houghton Community Council have any questions on the draft setback standards for the Urban Conservancy shoreline environment contained in Attachment 5 or comments to transmit to the Planning Commission?

**E. Allowed improvements within required shoreline setback. Section 83.180 of Attachment 5** provides draft standards that address **what improvements** may be permitted within the shoreline setback. These provisions would permit common appurtenances such as decks, walkways, and other improvements within the shoreline setback. The current SMP does not specifically address what encroachments are permitted within the shoreline setback, but the Zoning Code does outline a number of allowed improvements within [KZC 115.115](#). The draft standards are, in certain scenarios, **more restrictive** on the type of encroachments permitted within the shoreline setback than currently provided in KZC 115.115. For instance, the current zoning code provisions addressing setback encroachments permit unlimited improvements in a setback as long as they do not extend more than 4" above finished grade. The proposed SMP standards, however, would propose to limit encroachment for decks and patios to no more the 10 feet or to within 25' feet of the ordinary high water mark, regardless of whether the deck would not extend more than 4" above finished grade. This limitation has been proposed in order to limit impacts to shoreline functions and provide area for shoreline vegetation.

**Houghton Community Council:** Does the Houghton Community Council have any questions on the draft standards addressing improvements within the shoreline setback contained in Attachment 5 or comments to transmit to the Planning Commission?

**F. Regulatory Incentives. Section 83.360 of Attachment 7 provides a regulatory incentive to reduce setbacks in exchange for improvements that will provide benefit to shoreline functions to offset the reduced shoreline setback.** This approach is focused on a series of regulatory incentives. One of the key issues is setting this system

up so that applicants will be enticed to seek the regulatory flexibility that would be provided to the benefit of improving the function of the shoreline.

**Houghton Community Council:** Does the Houghton Community Council have any questions on the draft regulatory flexibility standards contained in Attachment 7 or comments to transmit to the Planning Commission?

- G. Non-conformances. Section 83.520 in Attachment 7 contains special provisions for nonconforming setbacks that would permit minor additions to detached dwelling units in the shoreline setback to existing nonconforming structures located in the shoreline setback.** As a general rule, nonconforming development may be continued provided that it is not enlarged, intensified, increased or altered in any way which increases its nonconformity. The special provisions included would expand the opportunity for applicant's to enlarge structures that otherwise would not conform to shoreline setback standards, in exchange for shoreline restoration. (Note: The conceptual approaches do not include all nonconformance provisions that would apply, such as lot coverage, height and encroachment into other yards, just a special nonconformance provision that is proposed to address minor additions to existing nonconforming structures in the shoreline setback. Please see [WAC 173-27-080](#) for a full list of other standard nonconformance provisions).

**Houghton Community Council:** Does the Houghton Community Council have any questions on the draft nonconformance provisions contained in Attachment 7 or comments to transmit to the Planning Commission?

- H. Other provisions** (see Section 83.180 in Attachment 5). The proposed regulations for minimum lot size, building height, and lot coverage are contained in Attachment 5. Attachment 8 provides a summary of existing zoning and shoreline standards. The following discussion summarizes key changes:
- i. Lot size/Density:** In general, lot sizes have been modified to reflect zoning standards. In an effort to encourage development that would provide public access, staff is proposing to include a **density incentive in the Residential – M/H environment** that would permit a minimum lot area of 1,800 square feet per dwelling unit for up to two dwelling units, instead of the typical 3,600 minimum lot area per unit. This is proposed to encourage an applicant to pursue development of two units, which would require a public access walkway, instead of a single unit on a lot, which does not require public access.
  - ii. Building Height:** In general, the shoreline building height standards established in the Shoreline Master Program have been retained. In some cases, the building height standards provided for in the Zoning Code would be more restrictive than these standards. The current SMP provisions have been retained in order to allow for future flexibility if the zoning regulations were to change. As development occurs, the more restrictive standard (either in zoning or in the SMP) would be applied, so this would not change actual implementation of building heights.

The proposed regulations clarify how the **building height exceptions** that are allowed in the Zoning Code would apply within the shoreline area, such as the Carillon Master

Plan site, PLA 15A zone outside of the master plan area, certain CDB zones and approved Planned Unit Developments that include an increase in height. The proposed regulations also reflect special criteria for views when a building exceeds a height of 35 feet above average building elevation found in the RCW and WACs.

- iii. **Lot Coverage:** New standards have been added for lot coverage not previously addressed in the SMP. In general, the property shoreline standards are consistent with current zoning regulations.

**Houghton Community Council:** Does the Houghton Community Council have any questions on the draft lot size, building height or lot coverage standards contained in Attachment 5 or comments to transmit to the Planning Commission?

- iv. **Shoreline Vegetation.** Please see Section VII of this advisory report for more information.

## V. SHORELINE USE STANDARDS

The draft regulations in Attachment 5 contain provisions that will be applied to specific uses. Provided below is a summary of each issue, input from the public (if any), options to consider (if there are different policy options), together with a staff recommendation, if needed.

### I. **Residential Uses** (see Section 83.200 in Attachment 5).

Key Issues: None.

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

Proposed Regulations: See Attachment 5

### II. **Commercial Uses** (see Section 83.210 in Attachment 5).

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

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

- Giving preference to water-dependent commercial uses over non-water-dependent commercial uses; and second, giving preference to water-related and water enjoyment commercial uses over non-water-oriented commercial uses.
- Requiring that public access and ecological restoration be considered as potential mitigation of impacts to shoreline resources and values for all water-related or water-dependent commercial development unless such improvements are demonstrated to be infeasible or inappropriate.
- Assuring that commercial development will not result in a net loss of shoreline

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ecological functions or have significant adverse impact to other shoreline uses, resources and values provided for in 90.58.020 RCW such as navigation, recreation and public access.

Proposed Regulations: See Attachment 5.

### III. **Industrial Uses** (see Section 83.220 in Attachment 5).

Key Issues: None.

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

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

Proposed Regulations: See Attachment 5.

### IV. **Recreational Uses** (see Section 83.230 in Attachment 5).

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

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

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

Proposed Regulations: See Attachment 5.

### V. **Transportation Facilities** (see Section 83.240 in Attachment 5).

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

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

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

Proposed Regulations: See Attachment 5. Regarding street trees, the proposed regulations address tree selection and placement and note that street trees shall be selected and located so that they do not impair public views of the lake from properties east of the roadway.

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

**7. Utilities** (see Section 83.250 in Attachment 5).

Key Issues: None.

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

- Ensuring that utility facilities are designed and located to assure no net loss shoreline ecological functions, preserve the natural landscape, and minimize conflicts with present and planned land and shoreline uses while meeting the needs of future populations in areas planned to accommodate growth.
- Limiting utility production and processing facilities, such as power plants and sewage treatment plants, or parts of those facilities that are non-water-oriented.
- Limiting transmission facilities for the conveyance of services, such as power lines, cables, and pipelines, to outside of the shoreline area where feasible.
- Locating utilities in existing rights of way and corridors whenever possible.
- Limiting development of pipelines and cables on tidelands.

Proposed Regulations: See Attachment 5.

**8. Land Division** (see Section 83.260 in Attachment 5).

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

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

- Providing standards for the creation of new residential lots through land division that accomplish the following:

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

Proposed Regulations: See Attachment 5.

**Houghton Community Council:** Does the Houghton Community Council have any questions on the draft use standards contained in Attachment 5 or comments to transmit to the Planning Commission?

## VI. SHORELINE MODIFICATIONS.

The regulations in Attachment 6 contain provisions that will apply to typical structures and activities that modify the shoreline environment. Provided below is a summary of the key issues, input from the public or Planning Commission (if any), options to consider (if there are different policy options), together with a staff recommendation, if needed.

### 1. **Piers, Docks, Floats and Boatlifts** (see Section 83.280 in Attachment 6).

Key Issues: Dimensional standards for new piers. Standards for replacement piers. Standards for repair activities.

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

- i. **Allowed** only for:
  1. **Water dependent use (including single-family docks)**
  2. **Public access**
- ii. Permitted only when the applicant has demonstrated that a specific **need** exists to support the intended water-dependent use (except single-family)
- iii. **Minimum size** necessary to meet the needs of the proposed water-dependent use
- iv. New residential development of two or more dwellings to provide **joint use** or community dock facilities, when feasible, rather than allow individual docks for each residence
- v. Piers and docks shall be designed and constructed to **avoid or, if that is not possible, to minimize and mitigate the impacts to ecological functions.**
- vi. Master programs should require that structures be made of **materials** that have been approved by applicable state agencies.

(Note: Please see your February 23<sup>rd</sup> packet for more background information).

Houghton Community Council Input:

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

Staff Response: The proposed draft provides greater flexibility in area, if additional area is needed to reach a greater water depth (see Attachment 6, Section 83.280).

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

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

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

The Planning Commission has reviewed the feedback from the Houghton Community Council and is recommending that the 4-foot standard be used. Please note that this standard would only apply to new piers (of which there is capacity for only approximately 25 additional piers within the City) and extensions of existing piers (only the portion to be extended). Replacement piers would have the option of negotiating with federal and state agencies for an alternative pier size which, if approved, would be accepted by the City.

- iii. The Houghton Community Council requested visual studies to better evaluate the potential visual impacts of multiple boatlift canopies that could be installed at piers designed for multiple residences.

Staff Response: Please see Attachment 22 which provides some **visual examples** of boat lift canopies. The proposed regulations contained in Attachment 6 would allow for one canopy to be installed per overwater structure. Please review this provision and determine whether additional flexibility should be provided.

- iv. The Houghton Community Council expressed concerns about the **thresholds proposed for distinguishing between pier replacement and pier repair activities** (60% of pilings or 60% of substructure modified over a 5-year time frame would be considered as replacement rather than repair).

Staff Response: Please see proposed language in Attachment 6, Section 83.280. These provisions can be difficult to establish. This provision is intended to ensure that improvements occurring over a several year span be considered cumulatively and improvements made, where possible.

**Public Input:** The City has received significant public input on pier regulations. Staff recommends reviewing previous public comments. Generally, there have been concerns expressed that the regulations be flexible to provide property owners with options to pursue alternative designs that may be approved by other federal and state agencies who, along with the City, review proposals for piers. In addition, there have been comments that the regulations should allow property owners to replace their existing piers with piers of the same area and dimensions.

**Proposed Regulations:** See Attachment 6, Section 83.280.

**Houghton Community Council:** Does the Houghton Community Council have any questions on the draft pier standards contained in Attachment 6 or comments to transmit to the Planning Commission?

## **2. Marinas** (see Section 83.290 in Attachment 6).

**Key Issues:** **Dimensional standards** for marinas.

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

- (i) Location at suitable sites, considering environmental conditions, shoreline configuration, access, and neighboring uses.
- (ii) Compliance with health, safety, and welfare requirements.
- (iii) Including regulations to avoid, or if that is not possible, to mitigate aesthetic impacts.
- (iv) Provisions for public access in new marinas.
- (v) Regulations to limit the impacts to shoreline resources from boaters living in their vessels (live-aboard).
- (vi) Regulations that assure that the development of boating facilities, and associated and accessory uses, will not result in a net loss of shoreline ecological functions or other significant adverse impacts.
- (vii) Regulations to protect the rights of navigation.
- (viii) Regulations restricting vessels from extended mooring on waters of the state except as allowed by applicable state regulations and unless a lease or permission is obtained from the state and impacts to navigation and public access are mitigated.

Many of the standards contained in the proposed regulations are found in the City's existing SMP, with the exception of dimensional standards proposed for piers associated with marinas. In order to prepare the standards proposed, staff evaluated a recently approved extension of a marina within Kirkland to determine the width of walkways and fingers – the proposed standards are consistent with this previously approved project. Staff is also consulting with federal agencies involved in review of marinas to determine

if there is any additional guidance on this issue and will follow-up with any feedback we are able to obtain.

Proposed Regulations: See Attachment 6.

**Houghton Community Council:** Does the Houghton Community Council have any questions on the draft marina standards contained in Attachment 6 or comments to transmit to the Planning Commission?

**3. Shoreline Stabilization** (see Section 83.300 in Attachment 6). **(Note: These draft regulations were reviewed by the Houghton Community Council at your February 23<sup>rd</sup> meeting.**

Proposed Regulations: See Attachment 6.

Houghton Community Council Input: The Houghton Community Council recommended that the requirement for trees to be included in the mitigation planting standard be eliminated (see Attachment 6, Section 83.280).

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

- Mitigation planting plans required under the RGP-3 standard include a standard that at least two native trees and three willow plants be included in the planting plan. Under this standard, planting density and spacing should be commensurate with spacing recommended for each individual species.
- The provisions include an allowance for submittal of an alternative plan that can be negotiated with state and federal agencies. If this alternative plan were not to include trees, the City would accept it under these provisions.
- Trees provide ecological functions that shrubs and groundcover alone do not perform, including providing perch habitat for birds, more effective shoreline stabilization through their root systems, temperature moderation in some circumstances, as well a source of large woody debris input into the lake. Trees can also provide more effective screening between upland light and activity disturbances and the lake.

The Planning Commission has reviewed this provision and the feedback from the Houghton Community Council and has not recommended a change at this time.

**Houghton Community Council:** Does the Houghton Community Council have any questions on the draft shoreline stabilization standards contained in Attachment 6 or comments to transmit to the Planning Commission?

**4. Breakwaters/jetties/groins** (see Section 83.310 in Attachment 6).

Key Issues: None.

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

Proposed Regulations: See Attachment 6.

## **5. Dredging and dredge materials disposal** (see Section 83.320 in Attachment 6).

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

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

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

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

Proposed Regulations: See Attachment 6.

## **6. Land Surface Modification** (see Section 83.330 in Attachment 6).

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

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

Proposed Regulations: The proposed regulations focus on **limiting potential impacts from land surface modification within the shoreline setback** area by narrowly scoping the permitted land surface modifications activities in this area (see Attachment 6). This is similar to current provisions contained in the SMP, which limit land surface modification

within the high waterline yard to 1) improvements by a public agency to public safety, recreation, or access, 2) part of a development and to improve access to a pier, dock or beach, 3) necessary to provide public pedestrian access or a public use area, 4) necessary for the structural safety of a structure, 5) restoration of shoreline as a result of erosion (see Attachment 9). Under the current standards, vegetation removal within the shoreline setback was not regulated by the City. The new provisions propose additional standards that would limit removal of native vegetation or vegetation installed as part of an enhancement plan. The new standards also address potential erosion and drainage impacts.

**7. Fill** (see Section 83.340 in Attachment 6).

Key Issues: None.

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

Proposed Regulations: See Attachment 6.

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

**8. Shoreline habitat and natural systems enhancement projects** (see Section 83.350 in Attachment 6).

Key Issues: None.

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

Proposed Regulations: See Attachment 6.

Public Input: Respondents to the survey indicated that a preferred method for the City to encourage restoration is to reduce review time – processing restoration projects as Exemptions or Substantial Developments will help enable this. Prior to creation of this Section, some projects might have required a CUP because of fill activity that might have been proposed landward of the ordinary high water mark. This Section enables these projects to be reviewed as enhancement of the shoreline.

**Houghton Community Council:** Does the Houghton Community Council have any questions on the draft shoreline modification standards contained in Attachment 6 or comments to transmit to the Planning Commission?

## VII. GENERAL REGULATIONS

The Houghton Community Council reviewed many of the General Regulations contained in Attachment 7 as part of its November 24, 2008 meeting. Since that time, new regulations have been drafted addressing shoreline vegetation and nonconformances and revisions have been made to previous Sections reviewed by the Houghton Community Council, either in response to Houghton Community Council or Planning Commission input. Provided below is a summary of the new section added addressing shoreline vegetation. In addition to reviewing this provision, staff requests that the Houghton Community Council also review the other provisions in this section and provide comments on any other items you would like to be considered.

### A. **Shoreline Vegetation** (see Attachment 7, Section 83.370).

Key Issues: Shoreline vegetation is an important component to shoreline functions and processes. Presently, much of Kirkland’s shoreline does not contain shrub or trees within the riparian area. The standards proposed would focus on 1) **retaining existing trees** within the shoreline area and 2) providing for **installation of shoreline vegetation** with development activities in order to improve existing conditions. In addition, an **alternative compliance provision to the shoreline vegetation requirement has been provided**, to allow for property owner flexibility to undertake alternative shoreline enhancements.

Background: The State Guidelines addressing shoreline vegetation conservation are contained in WAC 173-26-231(5) and focus on including planning provisions that address vegetation conservation and restoration, and regulatory provisions that address conservation of vegetation; as necessary to assure no net loss of shoreline ecological functions and ecosystem-wide processes, to avoid adverse impacts to soil hydrology, and to reduce the hazard of slope failures or accelerated erosion.

The State Guidelines address shoreline functions that are provided by vegetation (see Attachment 10) and also provides guidance to the City to establish vegetation conservation standards that implement the principles in WAC 173-26-221(5)(b). This section focuses on a number of different provisions, including the need to use available scientific and technical information to establish vegetation standards.

Methods to protect shoreline functions that are provided by vegetation may include setback or buffer requirements, clearing and grading standards, regulatory incentives, environment designation standards, or other master program provisions. Selective pruning of trees for safety and view protection may be allowed and the removal of noxious weeds should be authorized.

Proposed Regulations: See Attachment 7.

Public Input: Staff anticipates vegetation standards to be an area of concern for property owners near the shoreline, given the potential for conflicts with views. Staff has included language addressing vegetation placement in response to this issue. Staff has also included allowances for alternative plans and provisions for tree pruning to respond to this issue.

**Houghton Community Council:** Does the Houghton Community Council have any questions on the draft vegetation conservation standards contained in Attachment 7 or comments to transmit to the Planning Commission?

B. **Nonconformances** (see Attachment 7, Section 83.510).

Key Issues: Staff is proposing **special provisions for nonconforming setbacks that would permit minor additions in the shoreline setback to existing nonconforming structures located in the shoreline setback** As a general rule, nonconforming development may be continued provided that it is not enlarged, intensified, increased or altered in any way which increases its nonconformity. The special provisions included would expand the opportunity for applicant's to enlarge structures that otherwise would not conform to shoreline setback standards, in exchange for shoreline restoration. (Note: The conceptual approaches do not include all nonconformance provisions that would apply, such as lot coverage, height and encroachment into other yards, just a special nonconformance provision that is proposed to address minor additions to existing nonconforming structures in the shoreline setback).

Background: Please see [WAC 173-27-080](#) for a full list of other standard nonconformance provisions.

Proposed Regulations: See Attachment 7.

**Houghton Community Council:** Does the Houghton Community Council have any questions on the draft nonconformance standards contained in Attachment 7 or comments to transmit to the Planning Commission?

**Houghton Community Council:** Does the Houghton Community Council have any questions on any other general regulations contained in Attachment 7 or comments to transmit to the Planning Commission?

## VIII. **HOUGHTON COMMUNITY COUNCIL REVIEW PROCESS QUESTIONS**

- A. In order to eliminate overlap that exists between Shoreline and Zoning regulations, staff would like to propose that **uses which occur solely within the shoreline jurisdiction be eliminated from review under the Zoning Code** and instead reviewed entirely under the provisions of the Shoreline Master Program. As a result of the shoreline jurisdictional boundaries, this change would only apply to those uses occurring waterward of the ordinary high water mark, such as marinas, piers, public boardwalks and similar uses. (Note: Other uses have the potential of being located both within and outside of shoreline jurisdiction, so need to be addressed in both zoning and shoreline regulations). The proposed change could have some implications to Houghton Community Council participation in the review of permit applications. Staff has summarized these changes below and would like to discuss this issue with the Community Council.

Use	Current SMP	Current Zoning	Proposed SMP	Proposed Zoning	Change in Houghton Community Council Review
Retail Establishment providing new or used Boat Sales or Rental (accessory to a marina)	Substantial Development Permit	Process IIB (where allowed in Houghton Community Council jurisdiction)	Conditional Use Permit (Process IIA)	Delete from Zoning Chart	Yes
Retail establishment providing gas and oil sale for boats (accessory to a marina)	Substantial Development Permit	Process IIB (where allowed in Houghton Community Council jurisdiction)	Conditional Use Permit (Process IIA)	Delete from Zoning Chart	Yes
Retail establishment providing boat and motor repair and service	Substantial Development Permit	Process IIB (where allowed in Houghton Community Council jurisdiction)	Conditional Use Permit (Process IIA)	Delete from Zoning Chart	Yes
General Moorage Facility (in PLA 15A (Carillon and Yarrow Bay	Substantial Development Permit	Process IIB	Substantial Development Permit	Delete from Zoning Chart	Yes

Marina properties)					
General Moorage Facility (in PLA 3B (Villaggio)	Substantial Development Permit	Process IIB	Substantial Development Permit	Delete from Zoning Chart	Yes

**Houghton Community Council:** Does the Houghton Community Council have concerns about the proposed process changes?

**IX. PUBLIC COMMENTS**

**A. Public Comments.** This memo includes 11 written comment letters (see Attachments 11-21).

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

I. Scientific Studies. We have received a number of comments on the “science” being referenced in several previous staff reports and documents. The City has a responsibility and requirement to consult the best available science on shoreline issues, which staff has. The City is not in the position to undertake new scientific studies. In addition, the fundamental issue is that the City needs to prepare plan the meets the requirements of the guidelines as adopted by the Legislature and obtain approval from the Department of Ecology. The Guidelines contain specific guidance for new standards addressing many of the topics that are of concern related to the scientific studies, including shoreline stabilization and piers. In its review of the City’s plan, the Department of Ecology will use this guidance as criteria for review of the adequacy of the program. Therefore, in order to prepare a plan that will meet Department of Ecology review criteria, the standards in the City’s program need to respond to the provisions in the guidelines addressing such issues as shoreline stabilization and piers. The following checklist provides an overview of the submittal requirements for the SMP:

[http://www.ecy.wa.gov/programs/sea/sma/st\\_guide/SMP/download/updated\\_smp-checklist.pdf](http://www.ecy.wa.gov/programs/sea/sma/st_guide/SMP/download/updated_smp-checklist.pdf)

Therefore, staff is recommending that the continuing concerns about the scientific information that is available be addressed to the respective state and federal agencies charged with overseeing these studies or management of endangered species or SMA issues, including the US Department of Fish and Wildlife, NOAA Fisheries, Washington State Department of Fish and Wildlife, and Department of Ecology.

**X. ATTACHMENTS**

1. Status Update on Shoreline Master Program
2. Shoreline Property Forum Handout: No Net Loss
3. Shoreline Property Forum Handout: Conceptual Shoreline Restoration along Kirkland's Shorelines
4. Summary of Shoreline Property Forum
  - a. Enclosure 1
  - b. Enclosure 2
  - c. Enclosure 3
5. Use Specific Regulations
6. Shoreline Modification Regulations
7. General Regulations
8. Summary of existing development standards
9. Existing land surface modification language
10. WAC 173-26-221(5) addressing shoreline vegetation
11. Letter from Bob Style dated January 21, 2009
12. Letter from Dave Douglas dated January 22, 2009
13. Letter from Bob Style dated January 27, 2009
14. Letter from Dave Douglas dated January 28, 2009
15. Letter from Richard Sandaas dated February 7, 2009
16. Letter from Gary Gelow dated February 26, 2009
17. Letter from Richard Sandaas dated February 27, 2009
18. Letter from Richard Sandaas dated February 27, 2009
19. Letter from Kevin Harrang dated February 28, 2009
20. Letter from Peter Davidson dated March 12, 2009
21. Letter from Dave Douglas dated March 13, 2009
22. Photographs of boat canopies

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



**Summary of Houghton Community Council Review of Shoreline Master Program**

<b>Element of SMP</b>	<b>Date Reviewed</b>	<b>Status</b>
<b>Shoreline Inventory and Characterization</b>		
Shoreline Inventory	2006	Done
Shoreline Characterization	2006	Done
Shoreline Use Analysis		Still pending.
<b>Shoreling Goals and Policies</b>		
Shoreline Goals and Policies	2008	Preliminary Review Done. Need to consider changes as a result of regulation development.
<b>Shoreline Regulations</b>		
<b>Authority and Purpose</b>		
Authority		Still pending.
Applicability		Still pending.
Purpose and Intent		Still pending.
Relationship to other codes and ordinances		Still pending.
Interpretation		Still pending.
Liberal Construction		Still pending.
Severability		Still pending.
<b>Definitions</b>		
Definitions	11/24/2008	Preliminary Review Done. Need to consider changes as a result of regulation development.
<b>Shoreline Environment Designations and Shorelines of Statewide Significance</b>		
Shoreline Jurisdiction and Official Shoreline Map	11/24/2008	Done
Natural	11/24/2008	Done
Urban Conservancy	11/24/2008	Done
Residential - L	11/24/2008	Done
Residential – M/H	11/24/2008	Done
Urban Mixed	11/24/2008	Done
Aquatic	11/24/2008	Done
<b>Uses and Activities in Shoreline Environment</b>		
User Guide	11/24/2008	Done
Shoreline Environments, Permitted Uses and Activities Chart	11/24/2008	Done
<b>Use Specific Regulations</b>		
Shoreline Development Standards		Still pending.
Residential Development		Still pending.
Commercial Uses.		Still pending.

<b>Element of SMP</b>	<b>Date Reviewed</b>	<b>Status</b>
Industrial Uses		Still pending.
Recreational Development		Still pending.
Institutional and Religious Uses		Still pending.
Transportation Facilities		Still pending.
Utilities		Still pending.
<b>Shoreline Modification Regulations</b>		
Piers, Docks, Floats and Boatlifts	2/23/2009	Concepts evaluated.
Marinas		Still pending.
Shoreline stabilization	2/23/2009	Preliminary Review Done.
Breakwaters, jetties, rock weirs, groins		Still pending.
Dredging and dredge material disposal		Still pending.
Land Surface Modification		Still pending.
Landfill		Still pending.
Shoreline habitat and natural systems enhancement projects		Still pending.
<b>General Regulations</b>		
Shoreline Setbacks		Still pending.
Shoreline Vegetation Management		Still pending.
View Corridors	11/24/2008	Preliminary Review Done.
Public Access	11/24/2008	Preliminary Review Done.
Standards for In-Water Activity	11/24/2008	Preliminary Review Done.
Miscellaneous Standards	11/24/2008	Preliminary Review Done.
Parking	11/24/2008	Preliminary Review Done.
Signage	11/24/2008	Preliminary Review Done.
Lighting	11/24/2008	Preliminary Review Done.
Water Quality, Stormwater and Nonpoint Pollution	11/24/2008	Preliminary Review Done.
Critical Areas – General Standards	11/24/2008	Preliminary Review Done.
Wetlands	11/24/2008	Preliminary Review Done.
Streams	11/24/2008	Preliminary Review Done.
Geologically Hazardous Areas	11/24/2008	Preliminary Review Done.
Flood Hazard Reduction	11/24/2008	Preliminary Review Done.
Archaeological and Historic Resources	11/24/2008	Preliminary Review Done.
<b>Nonconformances</b>		
Nonconformances	1/8/09	Still pending.
Shoreline Restoration		Still pending.

<b>Element of SMP</b>	<b>Date Reviewed</b>	<b>Status</b>
<b>Shoreline Administration and Procedures</b>		
General		Still pending.
Procedures		Still pending.
<b>Cumulative Impact Analysis</b>		
Cumulative Impact Analysis		Still pending.
<b>Restoration Plan</b>		
Restoration Plan		Still pending.

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*Last Saved: Monday, March 16, 2009*





### **No Net Loss of Shoreline Ecological Functions**

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

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

#### **What does no net loss mean?**

- The no-net-loss standard is designed to stop new impacts to shoreline ecological functions resulting from new development. This means that the existing condition of shoreline ecological functions needs to remain the same, and should even be improved as a result of restoration, as the updated SMP is implemented over time.
- This standard is to be met by appropriately regulating public and private development, implementing a Restoration Plan, and improving practices that affect the shoreline.
- Resulting impacts of development should be identified and mitigated so as to maintain shoreline ecological function as it exists at the time of the City’s 2006 shoreline inventory.

#### **How is no net loss measured?**

- No net loss is measured from a city wide, cumulative perspective, but met by project-level mitigation from both public and private development and redevelopment.
- Cumulative impacts consider current circumstances affecting the shoreline and relevant natural processes; reasonable foreseeable future development and use of the shoreline; and beneficial effects of any established regulatory programs under other local, state and federal laws.
- Because there are no easy tools to measure ecological function, indicators that are related to function and can be measured are used to assess possible change in ecological function over time (e.g, square feet of overwater cover, average structure setback, area of native vegetation).

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

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

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

- SMA policy and the guidelines recognize the need for both the appropriate shoreline use **and** protection of shoreline resources. Thus, the SMP must provide for preferred shoreline uses set forth in the State SMA. These include water-dependent uses, such as marinas; public access facilities; and owner-occupied single-family residences. Impacts resulting from these preferred shoreline uses, where they cannot be avoided, must be minimized by application of appropriate regulations.
- Achieving no net loss of ecological function relies on consistent application of mitigation sequencing. Mitigation sequencing sets a priority to first avoid, then minimize, rectify, reduce or compensate for impacts.
- All development must be carried out in a manner that limits further degradation of the shoreline environment. Uses or development, including preferred uses and uses exempt from a shoreline permit, cannot supersede the requirement for environmental protection.

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

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