From: Ginette Toskey  
Sent: Mon 2/16/2009 7:47 PM  
To: Don Gerend  
Subject: public comments

Hello Don,

We are not clear on when we can comment about the SMP at the council meeting tomorrow evening: is it at the beginning only or can we comment before the study session?

Thank you for your time and we look forward to see you tomorrow evening.

Best regards,
Ginette Toskey
From: Don Gerend  
Sent: Tuesday, February 17, 2009 7:24 AM  
To: Ginette Toskey  
Cc: Jack Barry; Ben Yazici  
Subject: RE: public comments

Ginette,

I will be checking with Jack and the City Manager and Community Development Director later today (usually do this on Mondays), but I had planned on having the public comment regarding the SMP at the study session, probably after the staff report again.

Regards,

Don Gerend
From: James Creevey  
Sent: Mon 2/16/2009 7:33 PM  
To: Don Gerend; Jack Barry  
Subject: Congratulations and Concerns

Mayor Gerend:

I had intended on being at last week's Sammamish City Council Planning Session, but at the last minute was unable due to an injury to my elderly mom. However, I will be there this week; and, just in case I do not have the opportunity, I want to pass on a couple of things of great importance to me.

First, I want to congratulate you on being elected once again to the position of mayor. I was most impressed with your work in that position before and look forward to the same in the year ahead. I am also pleased that Jack Barry will be serving as the deputy mayor for reasons similar. I have never forgotten the fact that the two of you attended many of the public and neighborhood meetings during those early days of the East Lake Sammamish Trail and that you truly seemed to care about our concerns. Many others recall that as well and still speak highly of the two of you. Also, whenever I have attended Council meetings, I have been impressed by the fact that you and Councilmember Barry make a point to introduce yourselves and thank citizens for coming. That, to me, is far more important than whether we agree with you in the end and a most important part in effective city government. Again, congratulations.

Second, I want to mention my deep concern over the Shoreline Management Plan now being considered by the council. I have not read it in full, but the sections I have read are very disturbing. Not only are they difficult to read, difficult to understand, but they are inconsistent with rules and guidelines from other agencies and local governments (i.e. Redmond). Living in Sammamish should not be that confusing, that complex or that unfair.

I have always been a man of very modest means, living in a small cabin at the foot of Inglewood Hill Road. After reading the new regulations, I wonder if I could even maintain my place with all the legal hurdles and expenses that I'd put forth on just about anything related to my property. The document right now seems to be calling for legal battles, long-delayed permit processes and subjective rulings beyond belief. I encourage you and the council to re-look at the document carefully in the weeks ahead, to listen to those of us who have lived decades here on the lake, and to use us as resource people whenever necessary. I am convinced the City can do better. I ask the council to slow down a bit and try to turn this document into a true "partnership" with lakeshore residents in preserving and protecting the local lakes. Let's make a document of which we are all proud. With you as mayor, I am hoping for just that.

Yours very truly,

Jim Creevey  
1103 E. Lk. Samm. NE  
(425) 868 7004  

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Want to do more with Windows Live? Learn "10 hidden secrets" from Jamie. Learn Now
From: Jessica Strater  
Sent: Tue 2/17/2009 9:51 AM  
To: Jack Barry; Mark Cross; Lee Fellinge; Don Gerend; Kathy Huckabay; Michele Petitti; Nancy Whitten  
Subject: SMP  

Dear City Council members,

As a homeowner on Lake Sammamish I care very much about the ecological health of our lake. At the same time, I am concerned about the SMP putting an unfair burden on waterfront homeowners when the entire watershed affects the health of the lake. The housing developments and golf courses on the plateau have had severe impacts on the lake over the years.

The language of the SMP is too complicated and unclear. The financial burden put on waterfront homeowners is draconian. Do you have any idea how much it costs to move a foundation that requires pinpiles to a depth of 25-60 feet? It is clear that the writers of the SMP and the city council have a lot more work to do on this document.

Where can the public see the “record of public comment”. I have neighbors who say their comments have not been included in this record. We would like to be able to see it. Also, we would like an opportunity to make comments and ask questions during the meetings, not just our 3 minutes after all is said and done.

The Sammamish City Council and the drafters of the SMP should spend some time on the shores of the lake with the Sammamish Homeowners getting an education about the waterfront properties.

Last, the SMP should not be more strict than the State waterfront regulations.

Sincerely,

Jessica Strater
Dear Council Members,

Attached is a report from a group of shoreline owners and residents who are working for a better SMP.

This group effort focuses on the issue of Nonconforming structures in the draft SMP.

I hope that you will receive our alternative views in the spirit with which they are sent. Working with you for a better Sammamish,

Dwight Martin,
For the Sammamish HomeOwners group
Dear City Council,

Attached is a report that was created for you by the Sammamish Homeowners group. We are a group of individuals with the common goal of a better reasoned, more equitable, and more effective Sammamish Shoreline Management Program. As residents who live and own property in the shoreline jurisdiction we have hundreds of years of accumulated knowledge and experience with the shorelines and lakes in the City of Sammamish. Thank you for considering our views and recommendations.

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Four pages by Dwight Martin

Nonconforming Structure Research and Comparisons

Ten pages by Kathy Richardson

Shoreline residents study group on Nonconforming Structures - minutes 2-14-09

Three pages by Mike Pizzo

Lake Washington/Sammamish SMP Guidance: Fall 2008

Seven Pages by DOE
Executive Summary

Non Conforming Structures

Introduction

Other than family and friends, nothing is so important or emotionally charged as home and hearth. Many shoreline residents have deep concerns over the recent Draft Shoreline Master Program and the effect it will have on their ability to maintain, use, and improve their property. Department of Ecology guidance states clearly that SMPs must “balance both use and protection of shoreline resources”, and “must provide for preferred shoreline uses…..like…owner occupied single family residences.” Many shoreline residents contend that specific language in the draft SMP has bias against such single family uses through regulations such as the Non Conforming Structures section. This report will deal with the subject of legal non conforming single family residences in the shoreline jurisdiction.

Recent Changes in Conformity and existing rules

On December 20, 2005 a new Critical Areas Ordinance was enacted which increased most setbacks on Lake Sammamish from 25’ to 50’. The set back is measured from the Ordinary High Water Mark (OHWM) which in the past was often defined at about 27.00 feet. The draft SMP raises this elevation to 28.12, which in many cases moves the starting point for this setback 10’ or more inland, depending on the degree of slope at the waters edge. These two rules make most of the residences along the eastern shore of Lake Sammamish Non-Conforming. Reductions in impervious surface requirements would also create additional non-conformance.

Policy Options for Legal Non Conforming Structures

Legal non conforming structures, like the homes along Lake Sammamish, were built in good faith with building permits that complied with existing laws and building codes in effect at the time. When codes and regulations are made more restrictive it is a generally accepted principal that those with existing uses should be granted specific exemptions, commonly called “Grandfathered rights”. However the recommended policy as stated by ESA Adolfson is to “reduce non-conformity over time”. It would

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1 Lake Washington/Sammamish SMP Guidance Fall 2008 page 1.
2 COA 21A.50.351-1 45’ Buffer, with additional 5’ building setback.
3 This elevation can be determined by a biologist examining the shoreline vegetation and contours. Other municipalities have used 27.00 as a fixed elevation for determining the OHW line on Lk Sammamish for years.
4 See page 34 (SMP 25.07.010-2)
5 Common knowledge and anecdotal evidence. The Shoreline Inventory by Adolfson and Assoc does not quantify this observation.
6 Current rules on lots under 9,029sf allow for up to 70% impervious (21A.25.030-A-5c). Approximately 50% of existing lots on Lk Sam are under this size. Draft SMP may reduce impervious areas to as little as 30% of lot area. This information was not made available to the planning commission. This is a huge reduction. This will be addressed further in a report on Impervious Surface regulations.
7 City Council Study Session hand out 2/10/09 page 14.
appear that the City has a policy of creating non-conformity in the shoreline jurisdiction and then working to remove the same non-conformity over time. This makes shoreline residents understandably nervous, as nothing less than their homes, hopes, and financial well being are at stake. Said another way, the City has indicated by its actions and policy that it wants shoreline residents to remove their homes and improvements over time. Shoreline residents find this offensive, and in direct conflict with DOE policies and guidance.

On February 14, 2009 a group of shoreline residents met to discuss the Draft SMP language. Shoreline policies of Redmond, Bellevue, and Issaquah were discussed and compared to the Draft. It was noted that the unique method of buffer offsets employed in the Sammamish Draft was not understandable and that the other jurisdictions had regulations which could be understood.

The Bellevue buffer regulation was written to specifically exclude existing buildings, which shows a high level of acceptance of existing legal structures. This rule makes existing structures conforming while creating a buffer for future developments. City of Sammamish Shoreline residents would appreciate this kind of consideration as well.

All jurisdictions allowed for some kind of increase in the footprint of existing non-conforming structures. It was generally agreed that the additional 1,000 square feet no closer to the shoreline would be reasonable. Redmond has especially clear language regarding additions to non-conforming structures which would be simple to adopt, but may be excessively restrictive to those with very low value structures.

**Owners concerns and real world effects**

Many questions have been raised about what effects the proposed SMP would have; so many that ESA Adolfson prepared a presentation for the councils first study session to describe how the Draft may be interpreted. Tellingly, the draft itself was not read. Instead simple stories were devised to show the reasonableness of the proposal. However, “reconstructing” more than 50% of a building requires

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9 The Sammamish document was unique in using percentages of “addition or reconstruction” as triggers for shoreline restoration or enhancement.
10 Incorporating the CAO into this SMP further complicates the document. On page 4 of the SMP the “Non-conforming uses and improvements” section of the CAO is specifically excluded. This is the section which allows “grandfathered” uses and additions. It is completely excluded here by name (25.01.070). On page 76 it is included by reference and by number only, no title or name is mentioned, and only sections (1)(a) and (b) are included (25.10.100 (1)(b).
11 Meeting notes 2-14-08 study group, and Bellevue City Code 20.25H.035 Critical area buffers and structure setbacks, see drawings attached.
12 Similar to CAO21A.50.060 this section of partial exemptions only allows for exemptions for non-conformities created before November 27, 1990. The SMP must acknowledge more recent changes such as the CAO and allow exemptions and partial exceptions for those residents. SMP should explicitly allow additions in the buffer.
13 Redmond 20D.150.200-020 See page 8&9 of the comparative matrix and letter prepared by Kathy Richardson.
complete restoration of 100% of the shoreline\textsuperscript{14}, and a 75% reconstruction would require that a building be moved behind the buffer and setback. The Council was told by ESA Adolfson that perhaps someone could move their house back part way if they did not have room to relocate to be completely in compliance. Unfortunately the code actually requires if a structure is moved at all it must be brought into complete compliance\textsuperscript{15}.

The allowance of second story additions without buffer mitigation is another improvement which is not specifically mentioned in the Draft and was not used as an example. When questioned earlier by the Planning Commission, Staff assured the Commissioners that second story additions would be allowed above an existing footprint. This is because there would be no additional impact on the shoreline environment. This should be explicitly noted and allowed in the SMP to avoid unfortunate circumstances such as was experienced by Richard Pizzo and his family\textsuperscript{16}. The existing footprint should be defined as the two dimensional space covered as viewed from above, rather than the exterior shell of a building. Given the existing footprint, improvements and reconstruction should be allowed within the height limits already allowed in the shoreline jurisdiction. For example a bedroom addition over a garage has no additional impact, ever if it is in a buffer, and meets the standard of no net loss.

**Reconstruction after loss by fire or calamity**

According to ESA Adolfson State codes require that buildings which are damaged more than 75% must be brought into complete compliance with all existing codes, including setbacks from shorelines\textsuperscript{17}. This is not the case. What the WAC does say is that if no local rules are in place, then the 75% standard will apply\textsuperscript{18}. Issaquah uses the 75% rule with a 100% exemption for single family\textsuperscript{19}. The 100% exemption would be a good rule to follow.

With regard to rebuilding non-conforming structures and code compliance, it is a common practice to require updates to structural, plumbing, electrical, fire sprinklers, and heating systems when undergoing major reconstruction or additions. This is to protect the public from collapse in an earthquake, loss of life through fire or other hazards, and unsafe or unsanitary conditions. This is quite different than requiring relocation of a building or restoration of shoreline if a building is damaged. There is no net loss by replacing what was damaged.

\textsuperscript{14} 25.10.100-1c (ii) Staff and Adolfson have repeated that “interior remodeling does not require restoration” yet reconstruction remains in the text. Is reconstruction of an existing building not consistent with the principle of no net loss?

\textsuperscript{15} 25.10.100-1 I page 77 Note, although this code is specific and clear, a variance might be possible.

\textsuperscript{16} See public testimony by Dick Pizzo, City Council meeting 2-10-09.

\textsuperscript{17} Study Session Hand out 2-10-09 page #1

\textsuperscript{18} WAC 173.27.080, and letter by Kathy Richardson page 3.

\textsuperscript{19} Issaquah 18.10.1020, and letter by Kathy Richardson page 9.
Recommendations

To fulfill the stated purpose and intent of the SMP this section should be re-written. It should be done in a way that is clear and that respects the existing shoreline residents. Because of the complexity of the Draft and the minimal time allowed to review and improve it, these revisions should be accomplished in the next two weeks to provide adequate time for public review and comment prior to final Council approval. Examples of other drafts and ordinances provide a framework for clear and reasonable regulations.

Respectfully submitted by,

Dwight Martin,

for the Sammamish Home Owners Group
Nonconforming Structures-Research by Kathy Richardson

I respectfully request the Council consider modifying the existing language of the Nonconforming Structures section of the proposed draft SMP as follows:

- Make the section clear for staff and citizens to understand and interpret under what circumstances and to what degree a nonconforming structure can undergo structural modification, addition, and/or replacement.
- Permit structural additions and/or replacement of nonconforming structures as long as they do not extend the structure closer to the shoreline.
- Include incentives to decrease the degree of nonconformity when structural modification, addition, and/or replacement is proposed, incenting homeowners to reduce their degree of nonconformance over time.
- Exclude single family residences from the requirement to conform if they are replaced. Allow and incent reductions in nonconformance in cases of involuntary replacement.

These recommendations are based on reviewing the WAC section on nonconformance (WAC 173.27.80) as well as the regulations of other jurisdictions along the Lake Sammamish shoreline. Below are the specific regulations from each city and a comparison of the draft SMP with the WAC for your review.

Sammamish, Redmond, and Issaquah Nonconforming Structures Regulations

The 50 percent fair market value standard for requiring reconstruction of a nonconforming structure to meet existing regulations is in the current City of Sammamish SMP (25.35.050). However, outside the shoreline jurisdiction the city does not have this standard, per 21A.70.050:

21A.70.050 Nonconformance – Re-establishment of discontinued nonconforming use, or damaged or destroyed nonconforming structure or site improvement.

A nonconforming use that has been discontinued or a nonconforming structure or site improvement that has been damaged or destroyed may be re-established or reconstructed if:

(1) The nonconforming use, structure, or site improvement that previously existed is not expanded;

(2) A new nonconformance is not created; and

(3) The use has not been discontinued for more than 12 months prior to its re-establishment, or the nonconforming structure or site improvement is reconstructed pursuant to a complete permit application submitted to the department within 12 months of the occurrence of damage or destruction. (Ord. O99-29 § 1)

Redmond’s SMP section on nonconforming structures requires additions or reconstruction to conform only if they significantly exceed the structure’s assessed value or floor area, and they allow addition or reconstruction within the setback as long as you don’t build any closer to the lake (Redmond does not
have a buffer on Lake Sammamish but that is a different discussion topic). The specific language is found in Shoreline Regulations pp. 52-53.

20D.150.200-020 Nonconformances

(3) Nonconforming shoreline structures may be maintained and repaired and may be enlarged or expanded provided, however, that **said enlargement or expansion does not extend the structure closer to the shoreline**. A nonconforming structure shall be brought into full compliance with the Redmond Community Development Guide (meaning the development shall be modified to make it compliant) when alteration or expansion of the structure takes place and the following takes place in any three year period:

a) The gross floor area of the structure is increased by 100 percent or more; or
b) The costs stated on all approved building permit applications for the structure equal or exceed the assessed value of the structure at the beginning of the three year period

(Shoreline Regulations p. 53)

I also reviewed Redmond’s Development Guide to determine what additional restrictions might be contained elsewhere in their regulations, and **in the case of involuntary reconstruction they do not require the new structure to conform**. The following is the specific language of their Development Guide:

20F.10.50-080 Restoration.

Any building containing a nonconforming use or any nonconforming structure may be repaired and restored to its nonconforming state if the need for repairs or restoration shall be the result of fire, explosion, earthquake, imminent public hazard, replacement of underground fuel tanks, vandalism or other accidental destruction. Such restoration shall comply with the following conditions:

(1) Level of Restoration. The damaged use or structure may be repaired to the area and footprint of the previous use or structure. In the case of total destruction or need for underground fuel tank replacement, a new structure may be established to the same area or footprint of the previous use or structure. Alternatively, the structure may be built to a more conforming area or footprint.

(2) Time Limit. The repairs must be commenced within one year of the event causing damage to the structure, and the repairs must be diligently pursued until completed. (Ord. 2118)

The City of Issaquah’s current SMP **specifically excludes single family residences from the 75% rule, and allows addition or reconstruction as long as you don’t build any closer to the lake**, as follows:

18.10.1020 Nonconforming development.
Nonconforming development is a shoreline use or structure which was lawfully constructed or established prior to the effective date of the Shoreline Management Act or the Shoreline Master Program, or amendments thereto, but which does not conform to present regulations or standards of the Shoreline Master Program or policies of the Shoreline Management Act. In such cases, the following standards will apply to the nonconforming development:

A. **Nonconforming development may be continued; provided, that it is not enlarged, intensified, increased, or altered in any way which increases its nonconformity toward the shoreline;**

B. A nonconforming development which is moved any distance must be brought into conformance with the Shoreline Master Program and the Shoreline Management Act;

C. If a nonconforming development is damaged to an extent not exceeding seventy-five (75) percent replacement cost of the original structure, it may be reconstructed to those configurations existing immediately prior to the time the structure was damaged (except a single family residence may be reconstructed to those configurations existing immediately prior to the time the structure was damaged, regardless of the extent of the damage), so long as restoration is completed within one (1) year of the date of damage;

Outside the shoreline jurisdiction, Issaquah’s Nonconforming situations regulation also does not require a single family residence to conform if it is involuntarily damaged or destroyed. The following is the specific language of their Development Guide:

**18.08.050 Nonconforming situations (including structures and uses).**

A. Continuation of a Legal Nonconforming Situation: Any legal nonconforming situation with respect to this Code may continue, including routine maintenance and repair, unless otherwise regulated by this Code. An existing legal nonconforming situation may be included in and/or changed as part of any development, subject to review and approval under this Code.

B. Reconstruction of an Involuntarily Damaged or Destroyed Legal Nonconforming Situation: If a legal nonconforming situation is partially or fully damaged or destroyed due to accident, act of nature, or similar involuntary occurrence, the situation may be repaired or reconstructed as follows:

1. Single Family Residential Uses: A nonconforming single family dwelling or duplex may be reconstructed, regardless of value, subject to a Level 0 Review; provided, that the degree of nonconformity shall not be increased.

I have included a table of the nonconforming regulations from each city at the end of this document, which hopefully will be a useful reference as you consider changes to the language of this section.

**WAC Nonconforming Structures Regulations**
WAC 173.27.080, which was referenced as the source of the 75% guideline, begins by stating that this standard applies “when nonconforming use and development standards do not exist in the applicable master program”. It does not state that this specific standard must be adopted. An excerpt from the WAC is below:

**WAC 173-27-080 Nonconforming use and development standards.**

When nonconforming use and development standards do not exist in the applicable master program, the following definitions and standards shall apply:

(8) If a nonconforming development is damaged to an extent not exceeding seventy-five percent of the replacement cost of the original development, it may be reconstructed to those configurations existing immediately prior to the time the development was damaged, provided that application is made for the permits necessary to restore the development within six months of the date the damage occurred, all permits are obtained and the restoration is completed within two years of permit issuance.

The Planning Commission draft has used some of the language and principles established in the WAC for the section on nonconformance, but there are many other portions of this section that differ significantly from the WAC. In particular, the paragraphs regarding voluntary addition and restoration of buffers are not in the WAC standards.

Below is the specific language of the WAC and the draft SMP, with differences noted in yellow where the language of the two sets of regulations differs significantly, and sections noted in grey where the language is essentially the same. Words that are not highlighted represent minor differences or sections of the draft SMP that I could not sufficiently interpret to match or compare to the WAC.
<table>
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<tr>
<th>WAC 173.27.080</th>
<th>Proposed SMC 20.10.100</th>
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<tr>
<td><strong>WAC 173-27-080 Nonconforming use and development standards.</strong></td>
<td>25.10.100 Non-conforming Use and Development – Alteration or Reconstruction</td>
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<td>When nonconforming use and development standards do not exist in the applicable master program, the following definitions and standards shall apply:</td>
<td>(1) Non-conforming Structures</td>
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<tr>
<td>(1) &quot;Nonconforming use or development&quot; means a shoreline use or development which was lawfully constructed or established prior to the effective date of the act or the applicable master program, or amendments thereto, but which does not conform to present regulations or standards of the program.</td>
<td>(a) Structures that were legally established but which are non-conforming with regard to setbacks, buffers; area; bulk; height or density may be maintained, or repaired, provided that the maintenance/repair does not increase the extent of non-conformity by further encroaching upon or extending into areas where new construction or use would not be allowed.</td>
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<td>(2) Structures that were legally established and are used for a conforming use but which are nonconforming with regard to setbacks, buffers or yards; area; bulk; height or density may be maintained and repaired and may be enlarged or expanded provided that said enlargement does not increase the extent of nonconformity by further encroaching upon or extending into areas where construction or use would not be allowed for new development or uses.</td>
<td>(b) Structures that are non-conforming to building setback and/or buffer requirements for shorelines, wetlands, streams, ponds or landslide hazard areas may undergo structural modification, addition, and/or replacement pursuant to SMC 21A.50.060, sections (1)(a) and (1)(b). Structure non-conformity for any reason other than building setback and/or buffer requirements for wetlands, streams, ponds or landslide hazard areas must comply with regulations (c) through (g) of this section.</td>
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<td>(3) Uses and developments that were legally established and are nonconforming with regard to the use regulations of the master program may continue as legal nonconforming uses. Such uses shall not be enlarged or expanded, except that nonconforming single-family residences that are located landward of the ordinary high water mark may be enlarged or expanded in conformance with applicable bulk and dimensional standards by the addition of space to the main structure or by the addition of normal appurtenances as defined in WAC 173-27-040 (2)(g) upon approval of a conditional use permit.</td>
<td>(c) Voluntary additions to or reconstruction of the exterior portion of an existing, legally established non-conforming structure is allowed provided that the addition or reconstruction does not increase the degree of non-conformity subject to the following criteria</td>
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<td>(4) A use which is listed as a conditional use but which existed prior to adoption of the master program or any relevant amendment and for which a conditional use permit has not been obtained shall be considered a nonconforming use. A use which is listed as a conditional use but which existed prior to the applicability of the master program to the site and for which a conditional use permit has not been obtained shall be considered a nonconforming use.</td>
<td>(i) If the total area proposed for voluntary addition or reconstruction is fifty percent (50%) or less of the original structure area (total square feet), property owner(s) would need to restore an equivalent portion of the shoreline buffer to offset the impact, such that the area of the reconstruction and/or addition is equal to the area of shoreline buffer restoration and/or enhancement.</td>
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<td>(5) A structure for which a variance has been issued shall be considered a nonconforming use.</td>
<td>(ii) If the total area of addition or reconstruction is greater than fifty percent (50%) of the existing structure and is less than or equal to seventy-five percent (75%) of the existing structure, the property owner(s) would be required to restore and/or enhance all available shoreline buffer area to offset the impact.</td>
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(iii) If the total area of addition or reconstruction is greater than seventy-five percent (75%) of the existing structure, the property owner(s) would need to relocate the structure to conform with the required buffer and setback provisions.

(d) The voluntary addition or reconstruction standards in 25.10.100 (1)(c) are not intended to apply to interior remodels, reconstruction, or renovations that do not modify the exterior footprint of the existing structure. Interior remodels, reconstruction, and renovations shall not require buffer restoration unless the exterior footprint of the structure is modified.

(e) If a property owner has previously completed a voluntary shoreline restoration program on a particular property pursuant to a separate City or State permit or approval, and the previous shoreline restoration program is commensurate to current shoreline restoration requirements for that same property, then additional shoreline restoration shall not be required pursuant to 25.100.10 (1)(c). In evaluating the previous restoration program, the City shall consider whether the previous restoration/mitigation addresses the same ecological functions and is commensurate with the impacts of the proposed development.

(f) If a non-conforming structure is damaged by fire, explosion, or other casualty and/or natural disaster to an extent that is less than seventy-five percent (75%) of fair market value of the improvements prior to the damage of the structure, it may be reconstructed to those configurations existing immediately prior to the time the damage occurred provided that all of the following criteria are met:

(i) The owner(s) makes a good faith effort to initiate the redevelopment process, including initiating the permit application process, within twelve (12) months of the date the damage occurred.

(ii) All permits are obtained and the restoration is completed within two (2) years of permit issuance. This period may be extended for one additional year by the director if the applicant has submitted the applications necessary to establish the use or activity and has provided written justification for the
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<td><strong>landward of the ordinary high water mark</strong> which was established in accordance with local and state subdivision requirements prior to the effective date of the act or the applicable master program but which does not conform to the present lot size standards may be developed if permitted by other land use regulations of the local government and so long as such development conforms to all other requirements of the applicable master program and the act.</td>
<td>(g) If a non-conforming structure is damaged by fire, explosion, or other casualty and/or natural disaster, to an extent exceeding seventy-five percent (75%) of fair market value of the improvements prior to the damage of the structure, it shall be reconstructed to conform to the dimensional requirements of this Program unless there is no feasible means of meeting the dimensional standards, in which case it may be reconstructed to those configurations existing immediately prior to the time the damage occurred.</td>
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(h) A structure for which a variance has been issued shall be considered a legal non-conforming structure and the requirements of this section shall apply as they apply to pre-existing non-conformities.

(i) A non-conforming structure which is moved outside the existing footprint must be brought into conformance with this Program and RCW 98.58.
# Sammamish, Redmond, and Issaquah Nonconforming Structures Regulations

## Nonconforming structure regulations for voluntary alteration or reconstruction

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<tr>
<th>City of Sammamish</th>
<th>Redmond</th>
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<td><strong>25.10.100 Non-conforming Use and Development – Alteration or Reconstruction</strong>&lt;br&gt;(c) Voluntary additions to or reconstruction of the exterior portion of an existing, legally established non-conforming structure is allowed provided that the addition or reconstruction does not increase the degree of non-conformity subject to the following criteria:&lt;br&gt;(i) If the total area proposed for voluntary addition or, reconstruction is fifty percent (50%) or less of the original structure area (total square feet), property owner(s) would need to restore an equivalent portion of the shoreline buffer to offset the impact, such that the area of the reconstruction and/or addition is equal to the area of shoreline buffer restoration and/or enhancement.&lt;br&gt;(ii) If the total area of addition or reconstruction is greater than fifty percent (50%) of the existing structure and is less than or equal to seventy-five percent (75%) of the existing structure, the property owner(s) would be required to restore and/or enhance all available shoreline buffer area to offset the impact.&lt;br&gt;(iii) If the total area of addition or reconstruction is greater than seventy-five percent (75%) of the existing structure, the property owner(s) would need to relocate the structure to conform with the required buffer and setback provisions.&lt;br&gt;(d) The voluntary addition or reconstruction standards in 25.10.100 (1)(c) are not intended to apply to interior remodels, reconstruction, or renovations that do not modify the exterior footprint of the existing structure. Interior remodels, reconstruction, and renovations shall not require buffer restoration unless the exterior footprint of the structure is modified.&lt;br&gt;(e) If a property owner has previously completed a voluntary shoreline restoration program on a particular property pursuant to a separate City or State permit or approval, and the previous shoreline restoration program is commensurate to current shoreline restoration requirements for that same property, then additional shoreline restoration shall not be required pursuant to 25.100.10 (1)(c). In evaluating the previous restoration program, the City shall consider whether</td>
<td>20D.150.200-020 Nonconformances&lt;br&gt;(3) Nonconforming shoreline structures may be maintained and repaired and may be enlarged or expanded provided, however, that said enlargement or expansion does not extend the structure closer to the shoreline. A nonconforming structure shall be brought into full compliance with the Redmond Community Development Guide (meaning the development shall be modified to make it compliant) when alteration or expansion of the structure takes place and the following takes place in any three year period:&lt;br&gt;a) The gross floor area of the structure is increased by 100 percent or more; or&lt;br&gt;b) The costs stated on all approved building permit applications for the structure equal or exceed the assessed value of the</td>
<td>18.10.1020 Nonconforming development.&lt;br&gt;A. Nonconforming development may be continued; provided, that it is not enlarged, intensified, increased, or altered in any way which increases its nonconformity toward the shoreline;&lt;br&gt;B. A nonconforming development which is moved any distance must be brought into conformance with the Shoreline Master Program and the Shoreline Management Act;</td>
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the previous restoration/mitigation addresses the same ecological functions and is commensurate with the impacts of the proposed development.

(h) A structure for which a variance has been issued shall be considered a legal non-conforming structure and the requirements of this section shall apply as they apply to pre-existing non-conformities.

(i) A non-conforming structure which is moved outside the existing footprint must be brought into conformance with this Program and RCW 98.58.

**Nonconforming structure regulations for involuntary reconstruction**

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<tr>
<th>City of Sammamish</th>
<th>Redmond</th>
<th>Issaquah</th>
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<td><strong>25.10.100 Non-conforming Use and Development – Alteration or Reconstruction</strong>&lt;br&gt; (f) If a non-conforming structure is damaged by fire, explosion, or other casualty and/or natural disaster to an extent that is less than seventy-five percent (75%) of fair market value of the improvements prior to the damage of the structure, it may be reconstructed to those configurations existing immediately prior to the time the damage occurred provided that all of the following criteria are met:&lt;br&gt;(i) The owner(s) makes a good faith effort to initiate the redevelopment process, including initiating the permit application process, within twelve (12) months of the date the damage occurred.&lt;br&gt;(ii) All permits are obtained and the restoration is completed within two (2) years of permit issuance. This period may be extended for one additional year by the director if the applicant has submitted the applications necessary to establish the use or activity and has provided written justification for the extension.&lt;br&gt;(g) If a non-conforming structure is damaged by fire, explosion, or other casualty and/or natural disaster, to an extent exceeding seventy-five percent (75%) of fair market value of the improvements prior to the damage of the structure, it shall be reconstructed to conform to the dimensional requirements of this Program unless there is no feasible means of meeting the dimensional standards, in which case it may be reconstructed to those configurations existing immediately prior to the time the damage occurred.</td>
<td><strong>20D.150.200-020 Nonconformances</strong>&lt;br&gt;No difference between voluntary and involuntary.</td>
<td><strong>18.10.1020 Nonconforming development.</strong>&lt;br&gt;C. If a nonconforming development is damaged to an extent not exceeding seventy-five (75) percent replacement cost of the original structure, it may be reconstructed to those configurations existing immediately prior to the time the structure was damaged (except a single family residence may be reconstructed to those configurations existing immediately prior to the time the structure was damaged, regardless of the extent of the damage), so long as restoration is completed within one (1) year of the date of damage;</td>
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</table>
Nonconforming structure regulations outside the shoreline jurisdiction

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<td>21A.70.050 Nonconformance – Re-establishment of discontinued nonconforming use, or damaged or destroyed nonconforming structure or site improvement. A nonconforming use that has been discontinued or a nonconforming structure or site improvement that has been damaged or destroyed may be re-established or reconstructed if: (1) The nonconforming use, structure, or site improvement that previously existed is not expanded; (2) A new nonconformance is not created; and (3) The use has not been discontinued for more than 12 months prior to its re-establishment, or the nonconforming structure or site improvement is reconstructed pursuant to a complete permit application submitted to the department within 12 months of the occurrence of damage or destruction. (Ord. O99-29 § 1)</td>
<td>20F.10.50-080 Restoration. Any building containing a nonconforming use or any nonconforming structure may be repaired and restored to its nonconforming state if the need for repairs or restoration shall be the result of fire, explosion, earthquake, imminent public hazard, replacement of underground fuel tanks, vandalism or other accidental destruction. Such restoration shall comply with the following conditions: (1) Level of Restoration. The damaged use or structure may be repaired to the area and footprint of the previous use or structure. In the case of total destruction or need for underground fuel tank replacement, a new structure may be established to the same area or footprint of the previous use or structure. Alternatively, the structure may be built to a more conforming area or footprint. (2) Time Limit. The repairs must be commenced within one year of the event causing damage to the structure, and the repairs must be diligently pursued until completed. (Ord. 2118)</td>
<td>18.08.050 Nonconforming situations (including structures and uses). A. Continuation of a Legal Nonconforming Situation: Any legal nonconforming situation with respect to this Code may continue, including routine maintenance and repair, unless otherwise regulated by this Code. An existing legal nonconforming situation may be included in and/or changed as part of any development, subject to review and approval under this Code. B. Reconstruction of an Involuntarily Damaged or Destroyed Legal Nonconforming Situation: If a legal nonconforming situation is partially or fully damaged or destroyed due to accident, act of nature, or similar involuntary occurrence, the situation may be repaired or reconstructed as follows: 1. Single Family Residential Uses: A nonconforming single family dwelling or duplex may be reconstructed, regardless of value, subject to a Level 0 Review; provided, that the degree of nonconformity shall not be increased.</td>
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</table>
Sammamish Home owners study group
Nonconforming Stuctures
2-14-09

Participants:
-Dwight Martin
-Russell and Markia Dawe
-Skip & Susan Buchanan
-Annette McNabb/Bill VanDeBogert
-Ginnette Toskey
-Mike Pizzo

General
Two types of nonconformance:
-Nonconforming issues: No issues from committee
-Nonconforming structure issues

Comments regarding complexity of current proposal:
-Redmond is understandable; Sammamish is not
-Stated Policy: removal of non-conformance over time
  -We find this offensive. We don't want our use to be phased out.
  -Recall that residential is preferred usage along shoreline
  -We should be able to use with a reasonable expectation to improve

-replacing a burned down house has no new impact

Non-conformance
-Definition of Legal Non-conforming
  -We're legal, city has changed the rules.
-Current statement: We can maintain or repair as long as doesn't increase level of nonconformance
  -need wording that clarifies that the 2-d footprint should define non-conformance
  -not building envelope
  -Intent of SMP is to protect environment . The impact is the 2d footprint.
-Lists restrictions according to critical area ordinance
  -can add up to 1000 sqft as long as no closer to lake

Redmond : Existing nonconforming can be maintained and extended as long as not closer to the water.
  -Can't double the area or value w/in 3 years or must bring into conformance
Issaquah: similar (no closer to water)

Bellevue City Code says current footprint excepted from the buffer or setback (section 20.25H.035,
Critical area buffers and structure setbacks, excerpted below:
Where a primary structure legally established on a site prior to August 1, 2006, encroaches into the critical area buffer or structure setback established in subsection A, the critical area buffer and/or structure setback shall be modified to exclude the footprint of the existing primary structure. Expansion of any existing structure into the critical area buffer or critical area structure setback shall be allowed only pursuant to the provisions of LUC 20.25H.055 (single-family primary structures) or LUC 20.25H.230 (all other primary structures).

Voluntary additions:
- Current proposal: you may add on but you must restore an area of the buffer equivalent to the square footage added
  - how do you restore if you don't have that much land in front of your house?
- adding area outside of setback; no improvement required
  - clarify that increasing square footage of 2-d footprint requires equivalent restoration of buffer (as per examples). Building up (w/in existing regulations) has no environmental impact on the buffer.

Ability to rebuild:
- 75% is not requirement from (ref?) but the default if there are no rules
  *** issaquah exempts single family non-conforming from having to conform if burned down/rebuilt, regardless of extent of damage.
  - what about other structures on property (boathouse, garage,...)  
    - our wording should be "structures" (not single family residence)
    - single family residents and accessory structures are exempt
  - what about earthquakes, etc.?
    - covered as "other natural disasters..."
- plan should offer some encouragement when rebuilding structures to reduce nonconformance

***-damage: (currently) must make best effort to including initiating permit process for completion w/in 12 months
  - would like to make 2 years (for hardship, etc...)
  - clean-up 12 months (health & safety) and 12 months for filing for permit
- Completion: w/in 2 years of permit issuance
  - may be significant cost (i.e., for dock not insured is $50-100K)
-Is restoration definition too loose? Subject to interpretation by staff? Does anyone want to propose new wording? Can looseness help for creativity?

Annette's story; she and her mother's property. Assessed value of the structure is trivial. Encroaching on mother's property; trail, buffer. Now can't rebuild house if it burns down. Paying $9K/year for "recreational property".

(interesting notes from other groups)
Impervious surfaces: <<houses on septic willing to hook up to sewer should receive benefit...>>
50% of lots on Lake Sammamish are less than 9K sqft.
-should have same impervious surface as anyone else in basin
-our water is actually cleaner; hasn't run through as much
To: Lake Washington/Sammamish Local Government; staff, planning commissions, citizen advisory committee and elected officials working on updating Shoreline Master Programs

From: Washington State Department of Ecology – Shorelands & Environmental Assistance Program

Subject: On-going guidance on Shoreline Master Program updates

Ecology is aware of recent letters and emails raising questions related to updates of local Shoreline Master Programs (SMP) within Lake Washington and Lake Sammamish. In an effort to offset any miscommunication and ensure broad understanding of the SMP Guidelines (WAC 173-26), Ecology has attempted to synthesize many of the comments voiced and provide some guidance to these questions for your consideration.

**SMP Questions sent to Local Governments:**

**What is the definition of “No Net Loss of Ecological Functions”? Is “no net loss” applied state-wide, by jurisdiction or on a project-by-project basis?**

**What is No Net Loss of Ecological Functions?** Simply stated, the no net loss standard is designed to halt the introduction of new impacts to shoreline ecological functions resulting from planned for and permitted new development. This means that through implementation of the updated SMP, the existing condition of shoreline ecological functions should remain the same or be improved over time. The Shoreline Master Program Guidelines (Guidelines) set forth the obligation to assure that no net loss of ecological functions will be achieved within the SMP’s planning horizon by implementing updated SMP policies and regulations. No net loss of ecological function is a jurisdiction specific determination that is based on anticipated future uses and associated ecological risks from allowed uses within shoreline areas. SMA policy and the Guidelines recognize the need to balance both use and protection of shoreline resources. Thus, SMPs must provide for preferred shoreline uses set forth in the SMA (RCW 90.58.020). These include water-dependent uses like port development, public access facilities, and owner occupied single-family residences. Impacts resulting from these preferred shoreline uses, when they cannot be avoided, must be reduced by other SMP environment designations and regulations which follow the required mitigation sequence. 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.

The no net loss analysis is intended to inform the SMP planning process by describing both the presence and potential risks to existing shoreline ecological functions. The analysis should evaluate the intensity of future uses that are appropriate for segments of shorelines to ensure no overall or net loss of ecological functions. A no net loss of ecological functions determination will need to be justified by local governments through a Cumulative Impact Analysis, which essentially anticipates build-out of shoreline areas pursuant to the intensity of development allowed through the updated SMP. This determination must conclude that build-out of the local shoreline will not further threaten existing shoreline ecological functions. In sum, the no net loss
standard applies to each local jurisdiction as it updates its SMP. Consistent with the no net loss standard, the required mitigation sequence is also applied as the SMP is implemented over time and individual shoreline projects are reviewed and approved by local government. Mitigation sequencing and/or alternative project specific monitoring for no net loss, should provide clear linkage to jurisdiction-wide not net loss goals.

The Department of Ecology (DOE) is overstepping its authority. DOE has an agenda. DOE is over regulating Piers/Docks and Bulkheads without conclusive evidence of their affect on shoreline resources (i.e. overlapping regulations unwarranted changes)

By way of example, recent studies focusing on the affects of shoreline alterations to salmon migration in the littoral environment of lakes (Tabor et al, 2002)¹ (Kahler et al, 2000)² have raised concern pertaining to both the physical barrier of a dock/pier as well as affects to aquatic habitat for both migrating and rearing salmon species. In addition to environmental concerns, increased pier/dock density along shorelines can also negatively affect “normal public use” of the shoreline for recreation and navigation uses upon waters of the state. The state legislature, in RCW 90.58.020 policy, lists Environmental Protection and Public Access as fundamental policy goals/preferred uses within the Shoreline Management Act. In order to provide environmental protection to shorelines, local jurisdictions are required to document existing ecological functions within a shoreline Inventory/Characterization (WAC 173-26-201). The Guidelines (WAC 173-26, Part III) require local governments to address cumulative impacts by considering commonly occurring shoreline development and foreseeable impacts caused or avoided by proposed SMP policies and regulations. Ultimately, SMP policy and regulations must ensure no net loss of ecological functions with reference to the baseline shoreline conditions described within the locally prepared Inventory/Characterization.

In preparing shoreline regulations, local governments are also required to implement a precautionary principle. At WAC 173-26-201(3)(g) the guidelines state “As a general rule, the less known about existing resources, the more protective shoreline master program provisions should be to avoid unanticipated impacts to shoreline resources”. If there is a question about the extent or condition of an existing ecological resource, then the master program provisions shall be sufficient to reasonably assure that the resource is protected in a manner consistent with the policies of these guidelines.

Local governments are required to regulate Piers/Docks through the following sections of the SMP Guidelines (WAC 173-27-211):

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² Kahler, T., M. Grassley and David Beauchamp. 2000. A summary of the effects of bulkheads, pier and other artificial structures and Shorezone development on ESA-listed salmonids in lakes. City of Bellevue
• WAC 173-26-211(5)(c)(ii)(D) states: “All developments and uses on navigable waters or their beds should be located and designed to minimize interference with surface navigation ... and to allow for the safe, unobstructed passage of fish and wildlife, particularly those species dependent on migration.”

• WAC 173-26-231(b) “Piers and docks, including those accessory to single-family residences, shall be designed and constructed to avoid or, if that is not possible, to minimize and mitigate the impacts to ecological functions...”

• WAC 173-26-221 (2)(c)(iii) and (iv). “Master programs should require that structures be made of materials that have been approved by applicable state agencies.”

Flexibility versus specific standards for Piers/Docks? Redevelopment standards versus new Piers/Docks standards?

In order to meet the no net loss requirement, jurisdictions updating their SMP’s must consider the cumulative impacts of future allowed shoreline uses. Specific to Piers/Docks, jurisdictions will need to refer to specific development standards as a basis for evaluating the build-out potential allowed through future implementation of the updated SMP. This analysis of cumulative impacts must consider the potential risks to shoreline ecological functions if the shoreline were to be fully developed to the maximum intensity allowed through the updated SMP. Therefore, specific to new Piers/Docks, dimensional standards must be proposed as part of the updated SMP. Without specific standards, there would be no certainty in local projections of future (planned) shoreline uses and their impacts and hence no justification that the no net loss standard will be achieved.

The Army Corps of Engineers Regional General Permit (RGP) #3 consist of regionally specific, science based Pier/Dock development standards. These standards reflect completed consultation for Endangered Species Act (ESA) Section 7 and essential fish habitat (EFH) review from federal resource agencies. Pursuant to the SMP Guidelines, updated SMP’s are required to be based on objective use of relevant scientific information, for which the RGP standards provide an opportunity for local jurisdictions to incorporate existing minimizing Pier/Dock standards. Local jurisdictions have the option to come up with different standards, but they will need to supply sufficient science based analysis illustrating potential risks to shoreline ecological functions. Regardless, if jurisdictions decide to utilize the RGP standards or create their own Pier/Dock standards consideration of cumulative impacts as well as a determination of no net loss (risk) of shoreline ecological functions must be concluded.

Existing Pier/Dock redevelopment strategies will need to be jurisdiction specific. These standards should be based on the jurisdictions SMP Inventory/Characterization, with appropriate sideboards identified to ensure that expanded or reconstructed Piers/Docks will not result in net loss of ecological functions. For example, a shoreline with a high density of existing Piers/Docks, may be able to define redevelopment standards that allow some flexibility in the size or orientation of the redeveloped overwater footprint or structures, while also incorporating some degree of restoration. This management strategy must acknowledge existing shoreline resources and maintain or restore shoreline ecological functions through
redevelopment. Restoration of impaired ecological functions should be included in the evaluation of no net loss to help offset impacts introduced from new planned shoreline development allowed in the updated SMP. Alternatively, with less developed shorelines, Ecology suggests that local governments clearly distinguish between new and re-development standards to ensure adequate protection of existing ecological functions.

Streamlined permitting process at what cost to property rights?

It is anticipated that any identified streamlined process would not be the only option available to shoreline property owners. For certain uses, local governments do have an opportunity through updating of their SMP to pre-analyze impacts of certain minimal impact activities and provide a streamlined review process for those limited uses. In general, the scope of projects fitting within a streamlined permitting process must be more specific and potentially restrictive to ensure certainty and broad consistency with SMP goals and policies. For example, Pier/Dock proposals consistent with federally established guidelines could be streamlined through a local shoreline permit process for some shoreline areas where shoreline ecological functions can be shown to not be negatively impacted.

Restrictive Pier/Dock standards are thwarting of shoreline property owner’s property rights.

Under Washington State law a private dock is not a shoreline property right associated with ownership of shorelines of the state. Construction of a dock or pier is a privilege that may be allowed under certain circumstances when consistent with Shoreline Management Act policy (RCW 90.58.020), the local government Shoreline Master Program and the Public Trust Doctrine.

The Public Trust Doctrine is a legal principle derived from English Common Law. The essence of the doctrine is that the waters of the state are a public resource owned by and available to all citizens equally for the purposes of navigation, conducting commerce, fishing, recreation and similar uses and that this trust is not invalidated by private ownership of the underlying land. The doctrine limits public and private use of tidelands and other shorelands to protect the public's right to use the waters of the state. (See State Supreme Court case Caminiti v. Boyle, 107 Wn. 2d 662, 732 P.2d 1989). The Public Trust Doctrine does not allow the public to trespass over privately owned uplands to access the tidelands. It does, however, protect public use of navigable water bodies below the ordinary high water mark. Protection of the trust is a duty of the State, and the Shoreline Management Act is one of the primary means by which that duty is carried out. The doctrine requires a careful evaluation of the public interest served by any action proposed. This requirement is fulfilled, in major part, by the planning and permitting requirements of the Shoreline Management Act and locally approved SMPs.

In any case, local governments do have the authority to regulate the size and require mitigation for potential impacts associated with docks to protect the public interest.
**QUESTIONS DIRECTED TO ECOLOGY:**

What baseline is used for each individual property based on the SMP Guideline no net loss of ecological function requirement?

The baseline for SMP updates is derived from the individual shoreline Inventory and Characterization prepared for each jurisdiction during the initial stages of their shoreline program update. This analysis is intended to inform the SMP planning process through description of both the presence and potential risks to existing shoreline ecological functions as described within WAC 173-26-201(3)(c) and (d). The Inventory/Characterization is not necessarily intended to evaluate individual properties. Rather, the analysis should describe what intensity of future shoreline uses and activities should be planned and anticipated for each segment of shoreline to ensure that the end result is no overall or net loss of ecological functions. In other words, it is understood (and should be evaluated) that some projects will have minimal negative impacts and some projects will improve ecologic conditions, as long as a jurisdiction can illustrate overall maintenance or improvement to ecological conditions, then they are meeting the no net loss requirement. The no net loss determination will need to be justified through a Cumulative Impacts Analysis, which essentially anticipates build-out of shoreline areas pursuant to the intensity of development allowed through the updated SMP. With this information, the impacts to existing shoreline ecological functions resulting from future development can be anticipated and where appropriate avoided. It is important to understand that this analysis will vary by jurisdiction and is fundamentally based upon the characteristics of each individual jurisdiction’s shoreline.

Specific to implementation of an updated SMP, individual project review should consider no net loss as a governing principal (WAC 173-26-186). So, in summary, the baseline for each individual property is the ecological conditions that existed at the time a local SMP is comprehensively updated per SMP Guidelines requirements.

**Will new piers or bulkheads replacing existing structures be evaluated against existing site conditions?**

Yes, existing site conditions are one consideration, but also the specific planning policies and regulations contained in the SMP that apply to new piers and bulkhead replacements and the particular shoreline site will need to be considered as well. SMP updates are two-dimensional, requiring jurisdiction-wide planning for future uses as well as implementation over time of the SMP on an individual project-by-project basis. From a jurisdiction-wide planning perspective, the shoreline Inventory and Characterization documents shoreline modifications that may or may not impair existing shoreline ecological functions. Regardless of the degree of existing modifications, the bottom line is that updated SMP’s need to adequately protect existing shoreline ecological functions. For example, within heavily developed shorelines, redevelopment strategies that account for improvements to existing site conditions might be an appropriate approach. Whereas, within unaltered (natural) shorelines, emphasis should be placed on protection measures for which existing structures should be phased out overtime as existing non-conforming uses.
Example Question: How is DOE suggesting local governments view a scenario where an applicant is pulling a full length bulkhead and replacing with transitional bulkheads at either end and a cove beach in the middle?

Ecology would be in support of partial restoration of shorelines as described within the scenario above, because it represents an improvement in existing conditions when compared to the existing full length bulkhead. For jurisdictions with highly developed shorelines, Ecology would suggest that local governments clearly describe redevelopment perimeters to encourage partial shoreline restoration.

What is DOE doing to encourage local governments to have a process acknowledging individual improvements associated with shoreline redevelopment?

As previously stated, redevelopment strategies should be jurisdiction specific with appropriate sideboards to ensure no net loss. Also, as part of the comprehensive SMP update, jurisdictions are creating individually customized shoreline restoration plans, where non-regulatory shoreline improvements would be prioritized and encouraged for each stretch of shoreline. In implementing a local restoration plan, all jurisdictions should be encouraged to maintain a list of “individual improvements associated with shoreline redevelopment”, so that in the future progress can be identified and evaluated.

Does DOE have a responsibility to protect local governments from vulnerability to thwarting private property rights of shoreline property owners?

Both local governments and the department have the responsibility to ensure private property rights in shoreline areas are not thwarted. There are multiple references both in the SMA itself (starting at RCW 90.58.020) and again in the SMP Guidelines (starting at WAC 173-26-176(3)(h) ensuring private property rights are protected.

Local governments are directed to consider private property rights in the preparation of all local SMPs as is Ecology and the Attorney General’s Office (AGO) when approving the SMPs. Specifically, the AGO is directed by state law to advise state agencies and local governments in an orderly, consistent process to evaluate proposed regulatory or administrative actions to assure that these actions do not result in unconstitutional takings of private property. The AGO does in fact review SMP submittals to ensure private property rights are protected before the SMPs are approved by Ecology. Following is a link to this guidance posted on our shorelines management web site:

How is DOE addressing the apparent conflict with biological consulting firms assisting local governments in their SMP update in fairly evaluating and applying SMP standards in a reasonable and practical manner?

Biological consulting firms when involved in SMP updates are only one source of available information. Local governments are required to use all available technical and scientific information in the development of their SMP. This includes contacting all “relevant state agencies, universities, affected Indian tribes, port districts and private parties for available information…. The requirement to use scientific and technical information in these guidelines does not limit a local jurisdiction’s authority to solicit and incorporate information, experience, and anecdotal evidence provided by interested parties as part of the master program amendment process. Such information should be solicited through the public participation process…” (WAC 173-26-201(2)(a).

It is not clear how any conflict exists if there is no limitation on sources of available information. Ultimately, local government elected officials must consider all of the information put before them, including opposing views and opinions, judge their credibility and decide what standards best achieve SMP guidelines requirements, given local circumstances.
From: Daved
Sent: Fri 2/13/2009 6:44 AM
To: Jack Barry; Mark Cross; Lee Fellinge; Don Gerend; Kathy Huckabay; Michele Petitti; Nancy Whitten
Cc: Maren Van Nostrand; Richard Sandaas; Mike Collins
Subject: WA DOE LAKE WASHINGTON/LAKE SAMMAMISH SMP GUIDANCE FALL 2008

Dear Sammamish City Council Members,

Good day.

I have attached a copy of the Lake Washington/Lake Sammamish SMP Guidance Fall 2008 referenced in my comment letter so you can review the complete document and not rely on second hand information. The City and all other Lake Washington/Sammamish jurisdictions received a copy of this from DOE in October.

Thank you,

Dave Douglas
Permit Coordinator
Waterfront Construction, Inc.
206-786-6470
To: Lake Washington/Sammamish Local Government; staff, planning commissions, citizen advisory committee and elected officials working on updating Shoreline Master Programs

From: Washington State Department of Ecology – Shorelands & Environmental Assistance Program

Subject: On-going guidance on Shoreline Master Program updates

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standard applies to each local jurisdiction as it updates its SMP. Consistent with the no net loss standard, the required mitigation sequence is also applied as the SMP is implemented over time and individual shoreline projects are reviewed and approved by local government. Mitigation sequencing and/or alternative project specific monitoring for no net loss, should provide clear linkage to jurisdiction-wide not net loss goals.

The Department of Ecology (DOE) is overstepping its authority. DOE has an agenda. DOE is over regulating Piers/Docks and Bulkheads without conclusive evidence of their affect on shoreline resources (i.e. overlapping regulations unwarranted changes)

By way of example, recent studies focusing on the affects of shoreline alterations to salmon migration in the littoral environment of lakes (Tabor et al, 2002)¹ (Kahler et al, 2000)² have raised concern pertaining to both the physical barrier of a dock/pier as well as affects to aquatic habitat for both migrating and rearing salmon species. In addition to environmental concerns, increased pier/dock density along shorelines can also negatively affect “normal public use” of the shoreline for recreation and navigation uses upon waters of the state. The state legislature, in RCW 90.58.020 policy, lists Environmental Protection and Public Access as fundamental policy goals/preferred uses within the Shoreline Management Act. In order to provide environmental protection to shorelines, local jurisdictions are required to document existing ecological functions within a shoreline Inventory/Characterization (WAC 173-26-201). The Guidelines (WAC 173-26, Part III) require local governments to address cumulative impacts by considering commonly occurring shoreline development and foreseeable impacts caused or avoided by proposed SMP policies and regulations. Ultimately, SMP policy and regulations must ensure no net loss of ecological functions with reference to the baseline shoreline conditions described within the locally prepared Inventory/Characterization.

In preparing shoreline regulations, local governments are also required to implement a precautionary principle. At WAC 173-26-201(3)(g) the guidelines state “As a general rule, the less known about existing resources, the more protective shoreline master program provisions should be to avoid unanticipated impacts to shoreline resources”. If there is a question about the extent or condition of an existing ecological resource, then the master program provisions shall be sufficient to reasonably assure that the resource is protected in a manner consistent with the policies of these guidelines.

Local governments are required to regulate Piers/Docks through the following sections of the SMP Guidelines (WAC 173-27-211):


² Kahler, T., M. Grassley and David Beauchamp. 2000. A summary of the effects of bulkheads, pier and other artificial structures and Shorezone development on ESA-listed salmonids in lakes. City of Bellevue
Lake Washington/Sammamish SMP Guidance: Fall 2008

- WAC 173-26-211(5)(c)(ii)(D) states: “All developments and uses on navigable waters or their beds should be located and designed to minimize interference with surface navigation ... and to allow for the safe, unobstructed passage of fish and wildlife, particularly those species dependent on migration.”

- WAC 173-26-231(b) “Piers and docks, including those accessory to single-family residences, shall be designed and constructed to avoid or, if that is not possible, to minimize and mitigate the impacts to ecological functions…”

- WAC 173-26-221 (2)(c)(iii) and (iv). “Master programs should require that structures be made of materials that have been approved by applicable state agencies.”

Flexibility versus specific standards for Piers/Docks? Redevelopment standards versus new Piers/Docks standards?

In order to meet the no net loss requirement, jurisdictions updating their SMP’s must consider the cumulative impacts of future allowed shoreline uses. Specific to Piers/Docks, jurisdictions will need to refer to specific development standards as a basis for evaluating the build-out potential allowed through future implementation of the updated SMP. This analysis of cumulative impacts must consider the potential risks to shoreline ecological functions if the shoreline were to be fully developed to the maximum intensity allowed through the updated SMP. Therefore, specific to new Piers/Docks, dimensional standards must be proposed as part of the updated SMP. Without specific standards, there would be no certainty in local projections of future (planned) shoreline uses and their impacts and hence no justification that the no net loss standard will be achieved.

The Army Corps of Engineers Regional General Permit (RGP) #3 consist of regionally specific, science based Pier/Dock development standards. These standards reflect completed consultation for Endangered Species Act (ESA) Section 7 and essential fish habitat (EFH) review from federal resource agencies. Pursuant to the SMP Guidelines, updated SMP’s are required to be based on objective use of relevant scientific information, for which the RGP standards provide an opportunity for local jurisdictions to incorporate existing minimizing Pier/Dock standards. Local jurisdictions have the option to come up with different standards, but they will need to supply sufficient science based analysis illustrating potential risks to shoreline ecological functions. Regardless, if jurisdictions decide to utilize the RGP standards or create their own Pier/Dock standards consideration of cumulative impacts as well as a determination of no net loss (risk) of shoreline ecological functions must be concluded.

Existing Pier/Dock redevelopment strategies will need to be jurisdiction specific. These standards should be based on the jurisdictions SMP Inventory/Characterization, with appropriate sideboards identified to ensure that expanded or reconstructed Piers/Docks will not result in net loss of ecological functions. For example, a shoreline with a high density of existing Piers/Docks, may be able to define redevelopment standards that allow some flexibility in the size or orientation of the redeveloped overwater footprint or structures, while also incorporating some degree of restoration. This management strategy must acknowledge existing shoreline resources and maintain or restore shoreline ecological functions through
redevelopment. Restoration of impaired ecological functions should be included in the evaluation of no net loss to help offset impacts introduced from new planned shoreline development allowed in the updated SMP. Alternatively, with less developed shorelines, Ecology suggests that local governments clearly distinguish between new and re-development standards to ensure adequate protection of existing ecological functions.

**Streamlined permitting process at what cost to property rights?**

It is anticipated that any identified streamlined process would not be the only option available to shoreline property owners. For certain uses, local governments do have an opportunity through updating of their SMP to pre-analyze impacts of certain minimal impact activities and provide a streamlined review process for those limited uses. In general, the scope of projects fitting within a streamlined permitting process must be more specific and potentially restrictive to ensure certainty and broad consistency with SMP goals and policies. For example, Pier/Dock proposals consistent with federally established guidelines could be streamlined through a local shoreline permit process for some shoreline areas where shoreline ecological functions can be shown to not be negatively impacted.

**Restrictive Pier/Dock standards are thwarting of shoreline property owner’s property rights.**

Under Washington State law a private dock is not a shoreline property right associated with ownership of shorelines of the state. Construction of a dock or pier is a privilege that may be allowed under certain circumstances when consistent with Shoreline Management Act policy (RCW 90.58.020), the local government Shoreline Master Program and the Public Trust Doctrine.

The Public Trust Doctrine is a legal principle derived from English Common Law. The essence of the doctrine is that the waters of the state are a public resource owned by and available to all citizens equally for the purposes of navigation, conducting commerce, fishing, recreation and similar uses and that this trust is not invalidated by private ownership of the underlying land. The doctrine limits public and private use of tidelands and other shorelands to protect the public's right to use the waters of the state. (See State Supreme Court case Caminiti v. Boyle, 107 Wn. 2d 662, 732 P.2d 1989). The Public Trust Doctrine does not allow the public to trespass over privately owned uplands to access the tidelands. It does, however, protect public use of navigable water bodies below the ordinary high water mark. Protection of the trust is a duty of the State, and the Shoreline Management Act is one of the primary means by which that duty is carried out. The doctrine requires a careful evaluation of the public interest served by any action proposed. This requirement is fulfilled, in major part, by the planning and permitting requirements of the Shoreline Management Act and locally approved SMPs.

In any case, local governments do have the authority to regulate the size and require mitigation for potential impacts associated with docks to protect the public interest.
QUESTIONS DIRECTED TO ECOLOGY:

What baseline is used for each individual property based on the SMP Guideline no net loss of ecological function requirement?

The baseline for SMP updates is derived from the individual shoreline Inventory and Characterization prepared for each jurisdiction during the initial stages of their shoreline program update. This analysis is intended to inform the SMP planning process through description of both the presence and potential risks to existing shoreline ecological functions as described within WAC 173-26-201(3)(c) and (d). The Inventory/Characterization is not necessarily intended to evaluate individual properties. Rather, the analysis should describe what intensity of future shoreline uses and activities should be planned and anticipated for each segment of shoreline to ensure that the end result is no overall or net loss of ecological functions. In other words, it is understood (and should be evaluated) that some projects will have minimal negative impacts and some projects will improve ecologic conditions, as long as a jurisdiction can illustrate overall maintenance or improvement to ecological conditions, then they are meeting the no net loss requirement. The no net loss determination will need to be justified through a Cumulative Impacts Analysis, which essentially anticipates build-out of shoreline areas pursuant to the intensity of development allowed through the updated SMP. With this information, the impacts to existing shoreline ecological functions resulting from future development can be anticipated and where appropriate avoided. It is important to understand that this analysis will vary by jurisdiction and is fundamentally based upon the characteristics of each individual jurisdiction’s shoreline.

Specific to implementation of an updated SMP, individual project review should consider no net loss as a governing principal (WAC 173-26-186). So, in summary, the baseline for each individual property is the ecological conditions that existed at the time a local SMP is comprehensively updated per SMP Guidelines requirements.

Will new piers or bulkheads replacing existing structures be evaluated against existing site conditions?

Yes, existing site conditions are one consideration, but also the specific planning policies and regulations contained in the SMP that apply to new piers and bulkhead replacements and the particular shoreline site will need to be considered as well. SMP updates are two-dimensional, requiring jurisdiction-wide planning for future uses as well as implementation over time of the SMP on an individual project-by-project basis. From a jurisdiction-wide planning perspective, the shoreline Inventory and Characterization documents shoreline modifications that may or may not impair existing shoreline ecological functions. Regardless of the degree of existing modifications, the bottom line is that updated SMP’s need to adequately protect existing shoreline ecological functions. For example, within heavily developed shorelines, redevelopment strategies that account for improvements to existing site conditions might be an appropriate approach. Whereas, within unaltered (natural) shorelines, emphasis should be placed on protection measures for which existing structures should be phased out over time as existing non-conforming uses.
Example Question: How is DOE suggesting local governments view a scenario where an applicant is pulling a full length bulkhead and replacing with transitional bulkheads at either end and a cove beach in the middle?

Ecology would be in support of partial restoration of shorelines as described within the scenario above, because it represents an improvement in existing conditions when compared to the existing full length bulkhead. For jurisdictions with highly developed shorelines, Ecology would suggest that local governments clearly describe redevelopment perimeters to encourage partial shoreline restoration.

What is DOE doing to encourage local governments to have a process acknowledging individual improvements associated with shoreline redevelopment?

As previously stated, redevelopment strategies should be jurisdiction specific with appropriate sideboards to ensure no net loss. Also, as part of the comprehensive SMP update, jurisdictions are creating individually customized shoreline restoration plans, where non-regulatory shoreline improvements would be prioritized and encouraged for each stretch of shoreline. In implementing a local restoration plan, all jurisdictions should be encouraged to maintain a list of “individual improvements associated with shoreline redevelopment”, so that in the future progress can be identified and evaluated.

Does DOE have a responsibility to protect local governments from vulnerability to thwarting private property rights of shoreline property owners?

Both local governments and the department have the responsibility to ensure private property rights in shoreline areas are not thwarted. There are multiple references both in the SMA itself (starting at RCW 90.58.020) and again in the SMP Guidelines (starting at WAC 173-26-176(3)(h) ensuring private property rights are protected.

Local governments are directed to consider private property rights in the preparation of all local SMPs as is Ecology and the Attorney General’s Office (AGO) when approving the SMPs. Specifically, the AGO is directed by state law to advise state agencies and local governments in an orderly, consistent process to evaluate proposed regulatory or administrative actions to assure that these actions do not result in unconstitutional takings of private property. The AGO does in fact review SMP submittals to ensure private property rights are protected before the SMPs are approved by Ecology. Following is a link to this guidance posted on our shorelines management web site:

How is DOE addressing the apparent conflict with biological consulting firms assisting local governments in their SMP update in fairly evaluating and applying SMP standards in a reasonable and practical manner?

Biological consulting firms when involved in SMP updates are only one source of available information. Local governments are required to use all available technical and scientific information in the development of their SMP. This includes contacting all “relevant state agencies, universities, affected Indian tribes, port districts and private parties for available information…. The requirement to use scientific and technical information in these guidelines does not limit a local jurisdiction’s authority to solicit and incorporate information, experience, and anecdotal evidence provided by interested parties as part of the master program amendment process. Such information should be solicited through the public participation process…” (WAC 173-26-201(2)(a).

It is not clear how any conflict exists if there is no limitation on sources of available information. Ultimately, local government elected officials must consider all of the information put before them, including opposing views and opinions, judge their credibility and decide what standards best achieve SMP guidelines requirements, given local circumstances.
From: Jessica Strater
Sent: Tue 2/17/2009 9:51 AM
To: Jack Barry; Mark Cross; Lee Fellinge; Don Gerend; Kathy Huckabay; Michele Petitti; Nancy Whitten
Subject: SMP

Dear City Council members,

As a homeowner on Lake Sammamish I care very much about the ecological health of our lake. At the same time, I am concerned about the SMP putting an unfair burden on waterfront homeowners when the entire watershed affects the health of the lake. The housing developments and golf courses on the plateau have had severe impacts on the lake over the years.

The language of the SMP is too complicated and unclear. The financial burden put on waterfront homeowners is draconian. Do you have any idea how much it costs to move a foundation that requires pinpiles to a depth of 25-60 feet? It is clear that the writers of the SMP and the city council have a lot more work to do on this document.

Where can the public see the "record of public comment". I have neighbors who say their comments have not been included in this record. We would like to be able to see it. Also, we would like an opportunity to make comments and ask questions during the meetings, not just our 3 minutes after all is said and done.

The Sammamish City Council and the drafters of the SMP should spend some time on the shores of the lake with the Sammamish Homeowners getting an education about the waterfront properties.

Last, the SMP should not be more strict than the State waterfront regulations.

Sincerely,

Jessica Strater
Dear Ms. Strater,

Thank you for your comments. I am forwarding them to our Community Development Director, Kamuron Gurol. You can contact him to find the easiest way to view other public comments. It is our intent to have all comments that have been made included in the record. If any have been missed, that can be corrected by forwarding them to Kamuron.

We have been discussing several ideas about how to provide additional opportunity for input including multiple public hearings and office hours for discussion with councilmembers. We also have to be sure that there is fair access for different, and sometimes conflicting, points of view.

Thanks for your specific suggestions.

Lee Fellinge, Councilmember
City of Sammamish
From: Don Gerend  
Sent: Tuesday, February 17, 2009 7:24 AM  
To: Ginette Toskey  
Cc: Jack Barry; Ben Yazici  
Subject: RE: public comments

Ginette,

I will be checking with Jack and the City Manager and Community Development Director later today (usually do this on Mondays), but I had planned on having the public comment regarding the SMP at the study session, probably after the staff report again.

Regards,

Don Gerend

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From: Ginette Toskey [mailto:gtoskey@comcast.net]  
Sent: Mon 2/16/2009 7:47 PM  
To: Don Gerend  
Subject: public comments

Hello Don,

We are not clear on when we can comment about the SMP at the council meeting tomorrow evening: is it at the beginning only or can we comment before the study session?

Thank you for your time and we look forward to see you tomorrow evening.

Best regards,  
Ginette Toskey
Thank you, Mr. Creevey, for your kind comments. I look forward to your attendance this evening, and the continued input from the community as we well wade through the draft Shoreline Master Program.

Best regards,

Don Gerend, Mayor
City of Sammamish

I had intended on being at last week’s Sammamish City Council Planning Session, but at the last minute was unable due to an injury to my elderly mom. However, I will be there this week; and, just in case I do not have the opportunity, I want to pass on a couple of things of great importance to me.

First, I want to congratulate you on being elected once again to the position of mayor. I was most impressed with your work in that position before and look forward to the same in the year ahead. I am also pleased that Jack Barry will be serving as the deputy mayor for reasons similar. I have never forgotten the fact that the two of you attended many of the public and neighborhood meetings during those early days of the East Lake Sammamish Trail and that you truly seemed to care about our concerns. Many others recall that as well and still speak highly of the two of you. Also, whenever I have attended Council meetings, I have been impressed by the fact that you and Councilmember Barry make a point to introduce yourselves and thank citizens for coming. That, to me, is far more important than whether we agree with you in the end and a most important part in effective city government. Again, congratulations.

Second, I want to mention my deep concern over the Shoreline Management Plan now being considered by the council. I have not read it in full, but the sections I have read are very disturbing. Not only are they difficult to read, difficult to understand, but they are inconsistent with rules and guidelines from other agencies and local governments (i.e. Redmond). Living in Sammamish should not be that confusing, that complex or that unfair.

I have always been a man of very modest means, living in a small cabin at the foot of Inglewood Hill Road. After reading the new regulations, I wonder if I could even maintain my place with all the legal hurdles and expenses that I’d put forth on just about anything related to my property. The document right now seems to be calling for legal battles, long-delayed permit processes and subjective rulings beyond belief. I encourage you and the council to re-look at the document carefully in the weeks ahead, to listen to those of us who have lived decades here on the lake, and to use us as resource people whenever necessary. I am convinced the City can do better. I ask the council to slow down a bit and try to turn this document into a true “partnership” with lakeshore residents in preserving and protecting the local lakes. Let’s make a document of which we are all proud. With you as mayor, I am hoping for just that.

Yours very truly,

Jim Creevey
1103 E Lk. Samm. NE
(425) 868 7004
From: Kathy Richardson
Sent: Wed 2/18/2009 8:24 AM
To: Jack Barry; Mark Cross; Lee Fellinge; Don Gerend; Kathy Huckabay; Michele Petitti; Nancy Whitten
Cc: Maren Van Nostrand; Mike Collins; Dwight Martin; George Toskey
Subject: Additional SMP Study Session Topics

Council members,

I am a regular participant in the informal neighborhood group which has been meeting to understand and discuss possible changes to the proposed draft SMP. As a way to organize our meetings we polled our participants for their top issues with the SMP. I am happy to say that the Study Session topics will cover many of our top areas of concern and knowing when each topic will be reviewed with the Council will help us prepare public comment which is relevant to each Study Session.

Per the schedule published last night, impervious surface will be reviewed during the 4/14 Study Session, just three days prior to the deadline for amendments prior to the 2nd Public Hearing. Impervious surfaces was deemed one of the most important issues based on our informal poll. There are a number of reasons this topic is so critical, as follows:

* The degree of change (from 70% to 30% for some properties).
* Many properties will become nonconforming due to the impervious surfaces limit if it is approved as proposed.

* The WAC does not have a specific impervious surface guideline/regulation for properties designated Urban Conservancy or Shoreline Residential.
* Impervious surfaces and stormwater retention of upland properties have a greater impact on the overall ecological function of the watershed than those along the shoreline, yet upland properties have an impervious surface limit of 55%, 70%, or 75% depending on zoning. It will be important for citizens to have an opportunity to review and comment on proposed amendments to this section and I am concerned that three days will not be enough time to draft amendments. If you share this concern, perhaps you will consider swapping the topics from Study Session #3 and #4.

Our neighborhood group has also identified a few issues that are not specifically scheduled to be discussed, including interior setbacks, and clearing and vegetation management. I would appreciate your considering adding these topics to one of the planned study sessions. If you feel there isn’t sufficient time in the schedule to formally cover these topics, please let me know how to best provide our input so that you are aware of our concerns and suggestions. Thank you.

Kathy Richardson
206-406-5164
Maren,

Thank you!! I very much appreciate your help.

I find this process overwhelming and your personal touch and friendly demeanor are very welcome.

It is very hard to navigate the multi-jurisdictional area without standing.

If I can return the favor in the future please just let me know.

Best wishes - Mike Collins

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From: Maren Van Nostrand To: Mike Collins Sent: Thursday, February 19, 2009 2:48 PM Subject: RE: SMP

Dear Mike,

By now you should have received your word copy of the SMP. I am waiting to hear back from Redmond, and will do what I can to help you with the other cities.

Thanks,
Maren Van Nostrand, Shoreline Policy
City of Sammamish
801 228th Avenue SE, Sammamish, WA 98075
425-295-0538

-------- Original Message -------

From: Mike Collins
Sent: Wednesday, February 18, 2009 12:22 AM
To: Maren Van Nostrand
Cc: Ben Yazici; Cathy Beam
Subject: SMP

Hi Maren, It was great to talk to you last night, thanks for your help!
Here is my email address.

1) you were going to send me the word version of the current Sammamish Draft SMP.
2) you were going to call Bellevue, Issaquah and Redmond's Cathy Beam and request a word version of their SMP and send it to me.

Cathy Beam, AICP, Principal Environmental Planner
City of Redmond Planning Department, 2SPL
15670 NE 85th Street
PO Box 97010
Redmond, WA 98073-9710
phone: 425.556.2429
fax: 425.556.2400
CBEAM@REDMOND.GOV

3) If you hear about how to get the Council room 10a to noon Saturday 2-21-09 please let me know. I emailed Joanna jputhoff@ci.sammamish.wa.us and filled out the online form. Also looking for a staff person if they would like to come? The Council will all be invited once we have the room. We would need access to the projector computer to run Dave Douglas' presentation.

Thank you again! - Mike Collins

Mr. Yazici Thank you also!! - Mike Collins
From: Lee Fellinge
Sent: Wednesday, February 18, 2009 12:58 PM
To: Ed Murray; Michele Petitti; Mark Cross; Nancy Whitten; Jack Barry; Don Gerend; Kathy Huckabay; Kamuron Gurol
Cc: Ben Yazici
Subject: RE: Shoreline Master Plan (SMP)

Ed,

Thanks for your comments and all your research. It is all very helpful and I am forwarding it on to staff.

I found Jim Creevy's passionate and well constructed comments to be most interesting and am intrigued that your and his path crossed on his dock.

Thanks,

Lee

Lee Fellinge, Councilmember
City of Sammamish

From: Ed Murray
Sent: Wed 2/18/2009 9:00 AM
To: Michele Petitti; Mark Cross; Nancy Whitten; Jack Barry; Lee Fellinge; Don Gerend; Kathy Huckabay
Subject: Shoreline Master Plan (SMP)

Greetings,

I'd like to thank all of you for your time and effort in reviewing the SMP with the citizens of Sammamish.

I'm Ed Murray and I actually grew up on West Lake Sammamish. Once I graduated from college it was always a goal of mine to get back on the lake. I finally realized that goal in 1999 and I currently reside at 145 East Lake Sammamish Shorelane NE. I'll be 47 on February 24th which gives me roughly 37 years experience in all things Lake Sammamish. As a resident I consider myself a steward of the lake. A clean, thriving, ecologically sound lake environment will always be my goal.

Last night you heard Jim Creevy speak very passionately about his experiences while living on Lake Sammamish. Ironically enough, at one time I was actually one of those students reveling at his end of the year school party. During his speech Jim painted a picture of a powerful storm, I think he mentioned one hundred mile per hour winds and six foot waves. While storms of that magnitude are rare we regularly see very powerful and violent storms. It's difficult to imagine the intense nature of these storms, they are awesome and humbling to witness.

I mention this as last night I presented to you my concerns regarding shoreline stabilization. I believe the current SMP puts an unnecessary and possibly harmful emphasis on bio-stabilization. In many cases I believe a combination of hard and soft methods of shoreline stabilization are required for safe, ecologically responsible shoreline management. As I said last night I'd like to see the document modified such that it encourages rather than emphasizes the use of soft stabilization methods. When replacing existing structures, the WAC specifically allows for the use of hard stabilization techniques. In fact, when replacing an existing structure the WAC specifically states "An existing shoreline stabilization structure may be replaced with a similar structure if there is a demonstrated need to protect principal uses or structures from erosion caused by currents, tidal action, or waves." As stated by one of the speakers last night, (I apologize as I didn't get his name) bulkheads can be constructed with a gain in ecological function. If our goal is "no net loss", perhaps we should emphasize that fact and give people the freedom to use of any combination of stabilization techniques allowed by the WAC in order to achieve that goal.

My other major concerns are the permitting requirements. WAC 173-27-040 is very specific regarding exemptions from a substantial use permit. Should I ever need to replace my bulkhead, the proposed SMP would require that I obtain a substantial development permit. Under WAC rules I would be exempt from such a...
requirement. Obtaining a substantial development permit is an expensive and
time consuming endeavor. I don't understand what is unique about Sammamish that
I would be required to obtain a substantial development permit. At a minimum
I'd like to understand the reasoning behind this requirement. Ideally I'd like
to see the SMP changed such that the requirements align directly with WAC
173-27-040, it's quite explicit and clear.

I've noticed in many places the SMP deviates from WAC requirements and
guidelines put forth by the Department of Ecology. During their presentations
I'd like to see the City of Sammamish point out where the SMP differs and
explain the reasoning why. As an example take the requirement for a substantial
development permit when repairing or replacing a bulkhead - why does the City of
Sammamish feel a substantial development permit is necessary when the WAC
specifically exempts it? There are many other areas in the document where we
should be asking the question why? Why are we deviating from what's already out
there? I'm not a lawyer and I certainly don't know how these documents are
required to be structured. However, as a citizen I believe there should at a
minimum be a companion document detailing the reasoning behind the requirements,
especially with a document this large and complex).

I spent the entire day yesterday researching shoreline stabilization techniques,
SMA requirements, and WAC requirements regarding shoreline stabilization. I
wish I could devote a similar amount of time researching all areas of the SMP. As
I've already done the research here are a couple of links to documents that are
pertinent to the issues stated above. I hope you'll take the time to review
some of these documents along with my concerns. If you would like me to print
some or all of these documents (or sections thereof) for inclusion in your
notebook please let me know, I'd be more than happy to.

Thank you,
Ed Murray
145 E Lk Sammamish Shorelane NE

RCW 90.58.030 Definitions and concepts. (Always good to have handy)

WAC 173-26-231 Shoreline modifications. This is quite detailed and quite good
I'd like to see the SMP simply adopt these regulations, (which it pretty much
does except for the emphasis and requirements regarding bio-stabilization.)

The Benefits and Drawbacks of Living Shoreline Erosion Control Methods:
http://coastalmanagement.noaa.gov/initiatives/shoreline_alternatives_sup.html

NOTE: I apologize but I was unable to find any references to studies involving
the use of soft stabilization techniques in Lake Sammamish, (or other Washington
lakes).

Developments exempt from substantial development permit requirement:

Application requirements for substantial development, conditional use, or
variance permit:

More information regarding requirements for substantial development, conditional
use, or variance permit:
p=1

Public involvement in the SMP process (I think we're doing the right thing here
- thank you)
From: Michael Pizzo  
Sent: Wednesday, February 18, 2009 6:19 PM  
To: kgurol@ci.sammamish.wa.us  
Subject: Follow-up on Deinal of Request for Pizzo Remodel

Kamuron;

I appreciated the opportunity to meet you last night at the City Council meeting. For your reference, attached is a soft-copy of the testimony I delivered to The Council.

My parent's property (3123 E Lake Sammamish PKWY NE) has an existing legal non-conforming primary structure approximately 1800 square feet in size which the buyer wanted to extend in two ways:

1) Build a room over the garage (which is outside of the setback), and
2) Extend the Southern 2nd story bedroom over the existing first floor footprint (which is inside of the setback) as shown in the photo below.

In meeting with the city, the buyer (along with his contractor and architect) were told that extending the 2nd story bedroom over the existing footprint would not be allowed, since it would "increase the 3-dimensional footprint within the buffer". I followed up with a call to your office (on or around September 22nd, 2008) and spoke with Rob Garwood who confirmed his opinion that extending the second story would likely be interpreted as somehow increasing the level of non-conformance, although he was unable to cite specific wording within the code to that affect.

I would appreciate if you could either clarify that such an extension is allowed under the current code (and proposed SMP), or point me to the text in the CAO, interim, or proposed SMP that defines such an extension as increasing non-conformance, as I truly believe this type of extension should not only be allowed, but should be the preferred way of adding square footage as it results in no net loss to the environment (versus other more impactful means of increasing square footage such as extending the footprint whether inside or outside of the buffer.)

Secondly, I would like to pursue having this property re-zoned as Residential, rather than Conservancy, as I understand several other properties have been re-zoned based on the obvious fact that they were legally allowed to be used for residential purposes. I would appreciate your help in directing such a request.

Thank you for your attention in this matter,

Sincerely,

Michael Pizzo
Good Evening; my name is Mike Pizzo. Last week you heard my father describe the impact that the planning staff’s denial of a remodel, resulting in the withdrawal of an offer to purchase their home, had on he and my mother. Tonight I'd like to go into a little more detail on the staff's justification for denying the remodel.

My parent's home is a nice but modest older 1800 square foot home on a shy 100' of Lake Sammamish waterfront. We put the home up for sale in June of last year, and managed to receive a full price offer from a buyer who intended on making only minor extensions to the existing structure.

The intended extensions included no change to the existing footprint, but did bump out the walls of an existing upstairs bedroom to match the existing lower story (see photo of existing structure below). The extension was still well within height requirements (in fact, it was no higher than the existing structure), imposed no increase to the existing footprint, impervious areas, or structural coverage, and would have resulted in far less environmental impact than a complete tear-down and rebuild as is most commonly the case with older houses along the water front.

When the buyer and his contractor discussed their plans with the City of Sammamish, they were told that increasing the square footage of the upper story, even within the existing footprint of the lower floor, somehow increased the level of non-conformance by increasing the building's "3 dimensional footprint".

Ironically, it appears that they could have increased square footage by building outside of the 50' setback, increasing impervious surface and having a far greater impact on the environment.

I scoured both the existing code and the proposed Shoreline Master Plan in an attempt to find a definition of "footprint" that could be interpreted as including the 3-dimensional envelop of the building. Failing to find such a definition I turned to Merriam-Webster, who defines footprint as "an impression of a foot on a surface." We all intuitively understand how to apply this to a building as the area of ground on which the building sits. Should there be any doubt, Merriam-Webster adds a second, more general definition: "the area on a surface covered by something".
Going beyond a technical definition, what is the intention of the regulation? I hope we can all agree that the rightful intention of the shoreline master plan is to help preserve the shoreline and water quality that we all, none more so than those who live on the lake, hold so dear.

I have yet to find anyone who can explain to me how increasing the square footage of a second story bedroom within the footprint of the existing first floor has a negative impact on the environment. In fact, building within the existing footprint, whether inside of the setback or otherwise, should be the preferred option over increasing the footprint outside of the setback/buffer.

In an attempt to understand the somewhat convoluted wording within the Sammamish plan, I looked to see how other cities addressed the issue in their application of King County's Shoreline Master Plan. I found that the City of Bellevue, for example, nicely (and reasonably) addresses the issue by explicitly excluding the footprint of an existing legal non-conforming primary structure. (Ref Bellevue City Code, section 20.25H.035, Critical area buffers and structure setbacks, excerpted below):

*Where a primary structure legally established on a site prior to August 1, 2006, encroaches into the critical area buffer or structure setback established in subsection A, the critical area buffer and/or structure setback shall be modified to exclude the footprint of the existing primary structure. Expansion of any existing structure into the critical area buffer or critical area structure setback shall be allowed only pursuant to the provisions of LUC 20.25H.055 (single-family primary structures) or LUC 20.25H.230 (all other primary structures).*

This sad situation highlights at least two issues:

1) The difficulty in understanding, interpreting and applying the overly complicated wording of the proposed plan, and

2) The tendency to apply an unreasonably restrictive interpretation of the code without regard to the impact on the landowners and without taking into consideration the actual environmental impact.

I understand that we are under extreme pressure to approve a final Shoreline Master Plan, but I implore The Council to adopt wording, similar to the City of Bellevue, excluding the footprint of an existing legal non-conforming structure from the buffer or setback and clarify (specifically, in the new paragraph 25.10.100(1)(d)) that expansion, including adding additional square footage, within that 2-dimensional footprint does not increase the level of non-conformance of the structure.

Thank you.
Given the concern so timely expressed by Ms. Richardson about the presentation of the information and discussion on impervious surface limitations, would it be possible to swap topics bringing the topic of impervious surface limitations forward? Nancy

From: Kathy Richardson
Sent: Wed 2/18/2009 8:24 AM
To: Jack Barry; Mark Cross; Lee Fellinge; Don Gerend; Kathy Huckabay; Michele Petititi; Nancy Whitten
Cc: Maren Van Nosstrand; Mike Collins; Dwight Martin; George Toskey
Subject: Additional SMP Study Session Topics

Council members,

I am a regular participant in the informal neighborhood group which has been meeting to understand and discuss possible changes to the proposed draft SMP. As a way to organize our meetings we polled our participants for their top issues with the SMP. I am happy to say that the Study Session topics will cover many of our top areas of concern and knowing when each topic will be reviewed with the Council will help us prepare public comment which is relevant to each Study Session.

Per the schedule published last night, impervious surface will be reviewed during the 4/14 Study Session, just three days prior to the deadline for amendments prior to the 2nd Public Hearing. Impervious surfaces was deemed one of the most important issues based on our informal poll. There are a number of reasons this topic is so critical, as follows:

a. The degree of change (from 70% to 30% for some properties).
b. Many properties will become nonconforming due to the impervious surfaces limit if it is approved as proposed.
c. The WAC does not have a specific impervious surface guideline/regulation for properties designated Urban Conservancy or Shoreline Residential.
d. Impervious surfaces and stormwater retention of upland properties have a greater impact on the overall ecological function of the watershed than those along the shoreline, yet upland properties have an impervious surface limit of 55%, 70%, or 75% depending on zoning. It will be important for citizens to have an opportunity to review and comment on proposed amendments to this section and I am concerned that three days will not be enough time to draft amendments. If you share this concern, perhaps you will consider swapping the topics from Study Session #3 and #4.

Our neighborhood group has also identified a few issues that are not specifically scheduled to be discussed, including interior setbacks, and clearing and vegetation management. I would appreciate your considering adding these topics to one of the planned study sessions. If you feel there isn't sufficient time in the schedule to formally cover these topics, please let me know how to best provide our input so that you are aware of our concerns and suggestions.

Thank you.

Kathy Richardson
206-406-5164
From: Jack Barry  
Sent: Thursday, February 19, 2009 4:01 PM  
To: Kamuron Gurol  
Subject: Greetings  

SMP questions;  

I believe you wish to have amendments as we come up with them, is that correct?  

And, are Councilmember's the only ones who can make amendments?  

Jack
One follow up question

It seems that one of my esteem Councilmember's requested that a new version of the nonconformance, docks, bulkheads, and buffers be provided to the public in advance of the first public hearing on March 17th. Will a new version be provided in advance of the first public hearing and if so, is there a deadline for amendments to be considered for that draft?

Jack
I had mentioned this in an early email, but it may have gotten lost at the bottom of the mail.

I would like to pursue having my parent's property (3123 E Lake Sammamish PKWY NE) re-zoned as Residential, rather than Conservancy. I understand several other properties have been similarly re-zoned based on the obvious fact that they were legally allowed to be used for residential purposes. I would appreciate your help in directing such a request.

Thanks,

Michael Pizzo
Describe the comment or change you propose to the Public Review Draft Shoreline Master Program Update. Please include any alternative language or changes to the text, table or maps; attach pages as needed. Specify policy numbers and page numbers to ensure we understand your comment. This process will help guide the Planning Commission in making a recommendation to the City Council.

Date: February 18, 2009

Name: Thomas E. Harsh
Address: 1841 E. Lake Samm. Pkwy. NE
City: Sammamish, State: WA Zip: 98074
E-mail: tharsh@fwp-inc.com

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Comments:
The example in the ESA Adolfson presentation of February 17, 2009 (page 19) is misleading. The drawing shows a parcel of 150' frontage by 200' + depth. On the entire 10+ miles of Lake Sammamish shoreline in the City of Sammamish (approximately 500 lake front parcels), I believe that there are less than 10 parcels (less than 2%) that have either 150' of lake front and/or 200' of depth without an intervening rail/trail corridor.

The impact of this portion (buffer usage) of the SMP (buffer usage) on smaller lots is far more significant as many lakefront lots are not even as large as the buffer (6700 sq.ft.) as shown in this example.

Example: 60' lake front X 45' buffer = 2700 sq. ft. buffer X 15% active use area = 405 square feet of "active use". This gives the owner a strip 9' wide X 45' long (buffer depth) portion of his beach for active use. Ridiculous!