



PLANNING COMMISSION AGENDA

Regular Meeting Date: February 6, 2013

Planning Commission
Meeting:

First Wednesday of every
Month @ 7:00pm

Community Center
1808 Main Street
Lake Stevens, WA 98258
www.lakestevenswa.gov

Planning & Community
Development Department

1812 Main Street
Lake Stevens, WA 98258
(425) 377-3235
www.lakestevenswa.gov

Municipal Code

Available online:
www.codepublishing.com/WA/LakeStevens/

- A. CALL TO ORDER: 7:00pm**
Pledge of Allegiance
- B. ROLL CALL**
- C. GUEST BUSINESS**
- D. ACTION ITEMS**
 - 1. Introduction of new Planning Commissioner, Tom Matlack**
 - 2. Election of Officers**
 - 3. Approval of January 2, 2013 Meeting Minutes**
- E. DISCUSSION ITEMS**
 - 1. Phosphorus Plan, Mick Monken**
 - 2. Park Plan Element , Russ Wright**
 - 3. Shoreline Master Program Update, Karen Watkins**
- F. COMMISSIONER REPORTS**
- G. PLANNING DIRECTOR'S REPORT**
 - 1. Inter-jurisdictional Housing Update**
 - 2. Economic Development Activities Update**
- H. ADJOURN**

SPECIAL NEEDS

The City of Lake Stevens strives to provide accessible opportunities for individuals with disabilities. Please contact Steve Edin, City of Lake Stevens ADA Coordinator, at (425) 377-3227 at least five business days prior to any City meeting or event if any accommodations are needed. For TDD users, please use the state's toll-free relay service, at (800) 833-6388, and ask the operator to dial the City of Lake Stevens City Hall number.

PLANNING COMMISSION PUBLIC HEARING MINUTES

Community Center
1808 Main Street, Lake Stevens
Wednesday, January 2, 2013

CALL TO ORDER: 7:00 pm by Chair Hoult

MEMBERS PRESENT: Linda Hoult, Gary Petershagen, Sammie Thurber, Pam Barnet and Janice Huxford

MEMBERS ABSENT: Jennifer Davis

STAFF PRESENT: Planning Director Becky Ableman, Planning/Public Works Coordinator Georgine Rosson

OTHERS PRESENT: Chair Hoult welcomed the following members of the public:

Tom Matlack

Chair Hoult mentioned that Mr. Franz is no longer a Planning Commissioner (his term expired) and she will be working with the Mayor to select a new Commissioner.

Excused absence: Vice-Chair Thurber motioned to excuse Commissioner Davis, Commissioner Barnet second, motion passed 5-0-0-1.

Guest Business: None

Approval of Minutes from November 7, 2012: Commissioner Huxford motioned to approve minutes, Commissioner Petershagen second, motion passed 5-0-0-1.

Appointment of Design Review Planning Commission Commissioner and Alternate:

Planning Director Ableman discussed the mission of the Design Review Board and its relation to planning activities. Commissioner Franz was the Planning Commission representative with Vice-Chair Thurber as the alternate. Since the expiration of Commissioner Franz's term, Vice-Chair Thurber agreed to be the new representative, and Commissioner Barnet volunteered to be the new alternate. Chair Hoult declared a consensus on the appointments.

Discussion Items:

2012 Buildable Lands Report Introduction: Planning Director Ableman presented The Buildable Lands Report (BLR), a high-level analysis that forecasts future development intensities and densities for the County. The BLR project is being conducted under Snohomish County's lead in partnership with cities within the county through participation in the countywide planning organization - Snohomish County Tomorrow. The review is required every five years and is used to determine if a jurisdiction has adequate residential and employment land available to meet growth projections.

The Lake Stevens total population has changed dramatically since the original 2002 study due to annexations. The BLR is using 2002 city boundaries in order to accurately

reflect population growth. The 2013 study shows the City has a surplus of both residential and employment land.

2035 Growth Allocation Introduction: The projected growth, as determined by the State, is consistent with the Puget Sound Regional Council (PSRC) projections. Current land use plans in effect can accommodate estimated 2035 growth, however according to PSRC's Vision 2040 Regional Strategy, the capacity for growth is not in the places where growth needs to be directed. Projected growth will be allocated consistently with PSRC's "Regional Geographies." State mandated comprehensive plan updates must be consistent with Vision 2040 MPP, Countywide Planning Policies (CPPs), and growth targets. The targets are currently negotiated through SCT and Planning Advisory Committee who will make recommendations to the steering committee, and the steering committee will make recommendations to County Council for final adoption in the CPPs. There will be a City Council briefing on growth allocation at the January 14, 2013 meeting.

2013 Planning Commission Draft Work Program and Schedule Introduction: Planning Director Ableman presented several potential work program activities, including the Downtown Redevelopment Framework Plan, Code Amendments, 2013 annual docket/comprehensive plan amendments, preparation for the 2015 comprehensive plan update, wayfinding program, branding program, and, if time allows, updates to the design guidelines for all areas of the city.

Commissioner Reports: Election of officers will be held at the February meeting. Chair Hoult asked Vice-Chair Thurber if she was interested in stepping into the Chair position, Vice-Chair Thurber responded she was perfectly happy remaining the Vice-Chair. Chair Hoult asked the other Commissioners to consider running for the Chair position.

Planning Director's Report.

Shoreline Master Program (SMP) Update: The City is expecting a formal response from DOE any day. Once this response is received, the City has 30 days to respond to DOE, however more time can be requested. The Council has indicated they would like more time than the 30 day window. The process for approval of the SMP will involve public participation and the City Council, with possible adoption by April, 2013.

Economic Development Activities Update: A Request for Qualifications was published and currently, proposals are being reviewed for a Marketing and Business Recruitment Program. The purpose of the program is to formally solicit retailers, businesses, and family wage job employers to the City's growth centers with an early focus on retail development. Planning staff expect to present the proposals to City Council by the end of the month.

Adjourn. Commissioner Petershagen motioned to adjourn at 7:47 p.m., Commissioner Barnet second, motion passed. 5-0-0-1.

Linda Hoult, Chair

Georgine Rosson, Planning/Public
Works Coordinator



LAKE STEVENS PLANNING COMMISSION
STAFF REPORT

Agenda Date: February 6, 2013

Subject: Lake Stevens Phosphorus Management Plan Briefing

Contact Person/Department: Mick Monken, Public Works Director **Budget Impact:** None

RECOMMENDATION(S)/ACTION REQUESTED OF PLANNING COMMISSION: No action at this time.

SUMMARY: The City Council adopted the Phosphorus Management Plan 2013 on January 28, 2013. Mick Monken, Public Works Director will present the plan, describe the implementation of the plan and answer questions.

APPLICABLE CITY POLICIES: N/A

BUDGET IMPACT: None

ATTACHMENT: Council adopted Phosphorus Management Plan 2013

DRAFT



PHOSPHORUS MANAGEMENT PLAN 2013



(Algae bloom June 2012)

Revision: 3 January 2013

Plan Purpose

This phosphorus management plan defines: the existing condition of the lake and watershed; options to address these conditions; and a recommendation to provide for short and long term solutions to the excessive phosphorus loading of Lake Stevens. The plan services as a guide document and will be used for funding consideration.

Problem Statement

Lake Stevens continues to have an influx of internal and external phosphorus loading¹. While phosphorus is important to the health of the lake, high levels of phosphorus can result in water quality deterioration and unwanted algae blooms. The aerator has provided an acceptable level of phosphorus reduction resulting from internal loading from the lake's sediment since 1994. However, the long-term viability of aeration as the single treatment method for excessive phosphorus is unsustainable because of the limitation of the iron bonding capacity within the lake being exceeded by the total volume of internal and external phosphorus loading. In addition, the aerator is very costly to operate and maintain and it is approaching the end of its life-span. With or without the use of the aerator, lake conditions will deteriorate unless a suitable in-lake treatment plan is implemented to help reduce phosphorus levels (TetraTech, 2009). The photo below shows a blue-green algae bloom that occurred in the spring of 2012 when oxygen levels were still high within the lake. This is an indicator of high phosphorus nutrients in the water column.



Figure 1 - June 2012 Algae bloom condition – indication of high phosphorus suspended in the water.

¹ “Loading” refers to input of a nutrient per unit of time.

Background

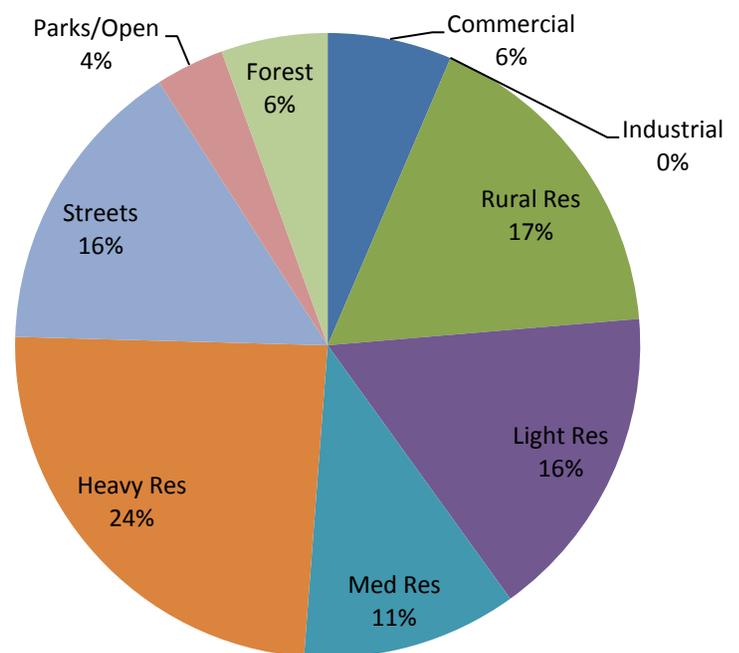
Lake Stevens is the largest natural lake in Snohomish County. The lake covers 1013 acres, and has an average depth of 62 feet (19 meters) and a maximum depth of 150 feet (46 meters). Lake Stevens is fed by Stevens, Lundeen, Kokanee, and Stitch creeks, which comprise the major sources of water feeding the lake. The Lake Stevens watershed area is 4,498 acres including the lake's surface. This 4:1 ratio is a relatively small drainage basin for a lake of this size. The outfall of the lake drains into Catherine Creek and then to the Pilchuck River.

From the 1950's and into the 1980's, Lake Stevens experienced frequent algal blooms, a decline in water clarity, and poor water quality due to increases in phosphorus loading. Initially, external loading was due to forestry and agricultural practices, and in later years, nutrients from housing and commercial developments (Snohomish County 2008). Internal loading was occurring simultaneously from a natural chemical cycling where phosphorus and iron bond in an oxygen enriched environment in the sediment. During the warmer summer months, the sediment in the lake doesn't receive enough oxygen and the chemical reaction which originally immobilized phosphorus is reversed, releasing phosphorus from its bond with iron. In 1994 an aerator system was installed to maintain the required dissolved oxygen levels into the sediment area (hypolimnion) to sustain iron and phosphorus bonding during months when oxygen levels at the lake bottom dropped.

Phosphorus is essential for plant and animal life in an aquatic ecosystem, however an excess of this nutrient acts as a fertilizer and stimulates the growth of algae. This increase dramatically accelerates the rapid growth and death of blue-green algae that clouds water, reduces dissolved oxygen, and can poison fish and wildlife – causing a threat to the health and overall quality of the lake and its surrounding environment (Ecology, 2011).

Phosphorus Sources

Phosphorus is a metal that is found in rocks, soils, and most life forms. It is a natural occurrence and important element to the life cycle of most organic life. As with most lakes, the phosphorus in Lake Stevens comes from internal and external loading sources. Internal loading is phosphorus that is already in the lake. In a review performed by Tetra Tech in 2012, it is estimated the average internal phosphorus load is 432 kg/year (952 lb/year). This comes mainly from two sources: 1) sediment release; and 2) cycling.



Graph A – Existing external P loading/land use shown

Sediment release is where phosphorus has attached to material in the sediment and has settled into the lake bottom. This phosphorus is released by disturbance of the sediment and through lack of oxygen (ie: iron bonding). Cycling is a natural occurrence in the plant and animal life system where organics uptake phosphorus in the growing and feeding stage and the phosphorus is recycled back into the water through waste and decay.

External loading comes from naturally released and imported sources of phosphorus. The natural sources come from erosion of rocks and soils (where phosphorus originates) and from plant and animal decay and waste. The imported sources comes from such things as fertilizers, soaps, dirt collected on vehicles, leaking septic/sewer waste, water fowl and from pets and livestock. While the exact amount of external phosphorus loading is not known, an estimate was prepared by TetraTech in 2012 using current land uses and King County’s published loading coefficients for land-use types. The results are shown in Graph A and Table 1.

Table 1. Estimated Existing External TP Loads per Land-use Area (Tetra Tech 2012)

Land-use Categories	Existing Phosphorus Loads kg/yr (lbs/yr)
Commercial (Office/Commercial/Business)	25.2 (56)
Industrial	0.0 (0)
Light Rural Residential (<1.0 units/acre)	68.0 (150)
Light Urban Residential (1.0 to 4.0 units/acre)	65.0 (143)
Medium Urban Residential (4.0 to 6.0 units/acre)	43.8 (97)
Heavy Urban Residential (>6.0 units/acre)	95.8 (211)
Streets/ROW	61.2 (135)
Park/Open Space	14.2 (31)
Forested	21.8 (48)
Open Water	0.0 (0)
TOTAL PHOSPHORUS LOAD	395.1 (871)

From this table it is estimated that approximately 70% of the external loading comes from residential land uses with approximately 15% from streets. By comparison, internal loading makes up a little more that 50% of the total lake loading.

The external loading of phosphorus has substantially declined since 1986/87 levels. During that period, annual external phosphorus loading was estimated to be 1,385 kg per year (3,053 lbs/year). This reduction (over 70% of current P loading) was a result of restricting access of seagulls to a local land fill which were using Lake Stevens as their home.

Aerator

The aerator’s function is to provide oxygen to the sediment to maintain a phosphorus-iron bond. During the summer months oxygen levels are depleted, especially in the deeper water, and the aerator is activated to replenish the oxygen in the water column. The aerator typically operates from late June through October. The activation is determined based on oxygen level readings of the lake (performed by Snohomish County).

The cost to operate and maintain the aerator system is share between with the City and the County with the City covering the majority of the costs. The share paid by each agency is based on the amount of watershed area contributing to the lake. The annual cost to operate the aerator is approximately \$35,000 which includes power consumption and staffing. However, for the past six years the estimated average annual cost including maintenance (repairs) has been estimated at over \$110,000 per year.

In 2012, the aerator system in the lake stopped functioning when the float support structure failed. Emergency temporary repairs were performed to keep the aerator system from sinking but it was not operational following the work. The repairs to make the system operational were estimated to exceed \$100,000 and would take months to complete. In addition, it was discovered that there may other problems with the system that could not be inspected until the initial operational repairs were completed. A decision was made by the City and County to reassess the continued operations of the aerator system prior to expending further funds on repairs.

Phosphorus Management

A phosphorus managing strategy needs to focus on activities in the watershed and in-lake restoration techniques. According to Washington State Department of Ecology, lake management approaches fall into two categories: 1) the quick-fix; and 2) the long-term. The quick-fix is addressing the symptom, such as an algae treatment but does not address the underlying causes of the problem. A quick-fix being only a short term solution is not considered a good investment of resources. To be effective, a phosphorus management plan needs to be a long-term strategy and commitment.

Long-term management should consider the environmental, cultural, and biological factors affecting the lake and sets a priority on finding lasting solutions. It will require a coordinated effort of community groups, individuals, landowners, and the City and County.

It is important to understand that the phosphorus problem that Lake Stevens is experiencing is a combination of both internal and external loading. If the external source could be entirely eliminated, Lake Stevens would continue to have a phosphorus problem for possibly several decades. This is because phosphorus would continue to recycle within the lake from vegetation and animal life cycles, as well as release from the sediment, continuing the cyclic recurrence of algal growth, death, decay, and overall eutrophication² of the lake. Conversely, if only the internal loading is addressed, the phosphorus condition in the lake will improve but the introduction of new phosphorus would offset the initial benefits of the treatment. Therefore in order to be successful the program should strive to manage both external and internal nutrients.

Aluminum sulfate (alum) is the most commonly used nutrient inactivation chemical for lake projects. Managers may also apply alum in small doses to precipitate water column phosphorus. When applied to water, alum forms a fluffy aluminum hydroxide precipitate called a floc. As the floc settles, it removes phosphorus and particulates (including algae) from the water column (precipitation). The floc settles on the sediment where it forms a layer that acts as barrier to phosphorus. As sediments release phosphorus, it combines with the alum and is not released into the water to fuel algae blooms (inactivation). Algal levels decline after alum treatment because alum addition reduces phosphorus levels in the water. (Except from Washington State DOE web site)

² Excessive richness of nutrients in a lake that stimulate excessive plant growth.

Phosphorus Control Alternatives

There are three basic alternatives to manage the phosphorus loading in Lake Stevens: 1) control internal loading within the lake; 2) reduce external loadings entering the lake; and 3) take no action. Within alternate one and two are possible options that can be considered standalones to accomplish some portion of the phosphorus control. A combination of option one and two is possible too.

Control Internal Phosphorus Loading

ID	Option	Discussion	Phosphorus Control	Estimated annual cost
IL 1	Operation of the aerator only	Aerator is near its life span and has required annual repairs. It is expected that the aerator will need some major repairs in the next five years to keep it operational. The estimated annual cost for O&M is \$120,000 with an additional \$400,000 estimated to the major repairs over the next five years. It may be possible to continue to extend the life of the system, vs replacement, by the performance of continued repairs and upgrades. While it is unknown the extent of this type of improvement needed to accomplish this, it is estimated that a set aside cost of \$200,000 annually should be budgeted (include O&M)	Controls phosphorus bonded with iron in deep water lake sediment. Does not control phosphorus suspended in water column. Aerator abilities to control new phosphorus loading are currently near capacity and algae occurrences are expected to increase.	\$200,000
IL 2	Aluminum sulfate (alum) Treatment only to water column	Aluminum is within the lake from natural occurrence. Addition of aluminum concentration in the lake water is an acceptable practice by the State DOE and would be applied to maintain within EPA drinking water standards very shortly after application.	Controls phosphorus loading in water column. Long term usage of alum is expected to result in a permanent reduction of internal phosphorus loading from the sediment. Algae occurrences are expect to decrease shortly after an application.	\$100,000
IL 3	Aerator and Alum Treatment	Combination of Option IL 1 and IL 2. With the use of the aerator, alum treatment area could be reduced. However, this would result in some phosphorus remaining in the water column.	In the short term, results are expected to be a decrease in algae however, if a reduction in Alum is applied (over IL 2), the sediment could continue to release phosphorus from the deeper waters.	\$250,000 to \$300,000

Reduce External Source Loading – The following options were developed using information provided from the City of Bellingham for phosphorus control on Lake Whatcom in an effort to reduce algae. The cost-benefit is defined solely as phosphorus reduction though there may be other benefit (eg: street trees also have a benefit of shade, reduction in runoff, and aesthesis). The costs shown only reflect costs to the City and not to others such as developers.

ID	Option	Discussion	Cost Benefit \$/lb/P*
X 1	Reducing development land use	This could include the City's acquisition of developable land for open space, down zoning, lot consolidation, and incentives for open space	\$190,000
X 2	Restoration of natural function of City land	City owned land would be restored to a natural condition such as re-forestation	\$50,0000
X3	Vegetated swales	Creation of bio-filtering swales	\$6,000,000
X 4	Rain garden	This could be a private or public bio-retention system that retains surface water runoff into a system that filters and infiltrates water on site. Due to soils conditions and water table levels, there are limited portions of the City where this could be used.	\$6,600,000
X 5	Street trees	Planting of street trees along open spaces on	\$9,405,000
X 6	Lawn replacement to bio-retention	Development of lands to retain water, similar to a rain garden, to prevent offsite runoff	\$5,000,000
X 7	Dry wells	This is not considered feasible due to ground conditions within the City.	NA
X 8	Infiltration trench	It is likely used on private property with very limited usage on public roads	\$318,000
X 9	Pervious pavement	New road construction would need to have both an infiltration system under the pavement and a off-site drainage system to accommodate higher volume storm events. The cost for maintenance of a pervious pavement for a roadway could be significant higher that a traditional paved roadway. Private parking is likely a good application.	\$1,111,000
X 10	Infiltration basin	Storm ponds would be the common application of this type and would be best applied to new development. Due to the City's high water table and soil conditions, this application would be limited.	\$172,721
X 11	Rainwater reuse	Benefits would be too low to estimate a cost to benefit number	NA
X 12	Onsite dispersion	This could be a private or public system that retains surface water runoff into a system that filters and infiltrates water on site. Due to soils conditions and water table levels, there are limited portions of the City where this could be used.	\$4,853,000
X 13	Media filters	Installation of filtration systems would need to be installed at key locations prior to entering the streams. This would be difficult to provide an effective system due to the high number in outfalls.	\$258,000

X 14	Sizing culverts to eliminate erosion	Benefits would be too low to estimate a cost to benefit number	NA
X 15	Street sweeping	The City performs this service regardless of the phosphorus benefit so cost is considered part of existing operation budget.	\$28,500
X 16	Stream erosion control	Could provide indirect phosphorus reduction. Would be very time consuming to investigate and permit for work.	NA**
X 17	Ban phosphorus fertilizer	City would need to pass a regulation banning the use of phosphorus fertilizer and then implement an enforcement effort. Cost for this would be determined based on level of enforcement. This could be covered as part of education.	NA**
X 18	Watershed signs	Education effort to post signs around City. Estimate 300 sign placements. Estimated material cost \$24,000. Staff time is not included.	NA**
X 19	Mass mailing	Preparation and mailing of education material. Mailing could be included in a utility billing. This assumes the cost of printing. Estimated material cost \$3,000/year. Staff time is not included.	NA**
X 20	Online information	Post information on the City's web page	NA**
X 21	Newspaper articles	A press release a few times a year reminding the public of the impacts of phosphorus into the lake and methods to help reduce it.	NA**
X 22	Video presentations	This could be performed through the High School which has video capacity. This would then be posted on the City's cable site (Channel 21).	NA**
X 23	Community events	This is currently being practiced. The City has generated several handout flyers that are provided during community events when the City has a booth setup.	NA**
X 24	Onsite training	This would likely be in partnership with Snohomish County that is set up to provide this type of service to contractors, developers, and the general public. This would require a ILA with the County and it is anticipated that the City would share in the cost for staffing and information. It is estimated that this would be in the range from \$6,000 to \$20,000/year.	NA**
X 25	Resident contacts	Enforcement or education efforts to contact individuals based on observations or suspected practices that are generating phosphorus into the runoff. This could require extensive time to locate.	NA**
X 26	Project consultation	City would provide a consultation service to individuals (such as contractors) on methods to help in the control of phosphorus	NA**
X 27	Incentives	A fund account can be set up that provides monetary incentives for volunteer compliance in City identified methods of phosphorus reduction.	NA**
X 28	Forest condition to pre-development conditions	Does not apply to the City	\$80.65

X 29	Design standard change	Update standards to reduce runoff from future impervious surfaces such as roads and sidewalks the use of infiltration and bio-filtering.	\$371,171
X 30	Reconfigure roadside ditches	Existing roadside ditches would be modified to reduce erosion and provide plants to help with the removal of phosphorus. This would have a significant increase in O&M.	\$6,000,000
X 31	Reconfigure streets	Modify streets to reduce runoff and improve filtration of surface water.	\$4,755,000
X 32	Reduce vehicle trips	This has been incorporated into the two subarea plans and the sidewalk plan that helps reduce the dependents of vehicle for travel within the City.	NA
X 33	Improve recreation facilities	Provide enhancement to City recreation areas to reduce runoff. This study showed that the benefits to be very low.	NA
X 34	Watershed-wide enforcement	This would likely be in partnership with Snohomish County that is set up to provide this type of service to contractors, developers, and the general public. This would require a ILA with the County and it is anticipated that the City would share in the cost for staffing and information. It is estimated that this would be in the range from \$10,000 to \$40,000/year.	NA
X 35	Animal waste	City provides pick up bags at some recreation areas. Education material has been produced by the City that is provided at community events.	NA
X 36	Septic system to sewer connection	It is unknown the level of this condition within the watershed. City is talking with Sewer District on this item.	NA

“*” Cost information provided by “The Lake Whatcom Management Program Work Plan 2010-2014” – July 2010 CH2M Hill

- Costs do not include on-going maintenance and operations.

“**” The cost benefit is difficult to estimate and impossible to measure. It is important though that education can result in an accumulative result in phosphorus reduction.

Italic These are current practices in part or whole within the budget.

Take No Action - This is not considered a viable option as it is suspected that algae bloom events would be on an increase with the current internal and external loading.

Discussion

Due to the high levels of phosphorus already in the lake water column and sediment, removal of external phosphorus sources is expected to not be enough to address the water quality problem with algae. The aerator has been the main method for managing phosphorus within the lake for the past 19 years. Its treatment has maintained the iron-phosphorus bond in the lakes sediments in the deepest part of the lake and has had no effect on water suspended phosphorus or the shallow sediments. It had been an effective means to controlling most of the phosphorus problems but in recent years the loading has exceeded the aerator's capacity. In addition, the aerator is close to its operating life and is in need of some extensive repairs and on-going maintenance.

In accordance with a study prepared for Snohomish County by Tetra Tech in September 2012, "Alum treatment, at even a modest maintenance dose, should control internal loading more effectively than continued aeration. Moreover, alum should have more of an effect on reducing the spring cyanobacteria blooms (algae) than aeration." This would address the condition in the lake from both internal and external loading. While alum treatment in the lake is a very cost effective solution, and can function as the only solution to addressing the condition, it does nothing to reduce the external loading condition.

The City of Bellingham had performed an extensive study to manage phosphorus condition in Lake Whatcom. This had an extensive list for reducing external loadings which was used in the development of the Reduce External Loading Source section of this plan. While the costs to benefit numbers are applicable to Lake Whatcom, most of their costs were used in this document for comparison purpose against the different options. From this information, the cost for controlling external loading can be beyond the ability of most public agencies. Especially when compared to the benefits. However, any effort that may reduce the external loading can have a long term effect to water quality and public's awareness.

Recommendations

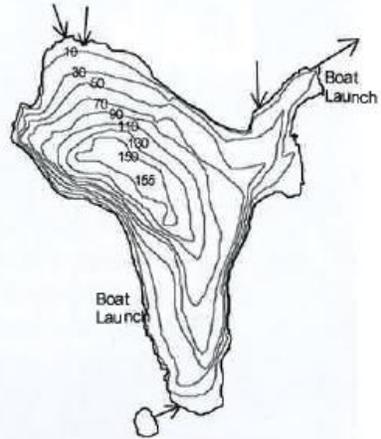
The recommendations are:

1. Control internal loading – Moderate level of Alum treatment to address seal in sediment and reduce internal loading. Alum treatment will also address phosphorus in
2. Reduce the external loading – education, regulations (code and standards), and annual monitoring in lake.
3. Phase out aerator – not a sustainable or long term solution
4. Monitor and review – determine success of actions and revise as needed

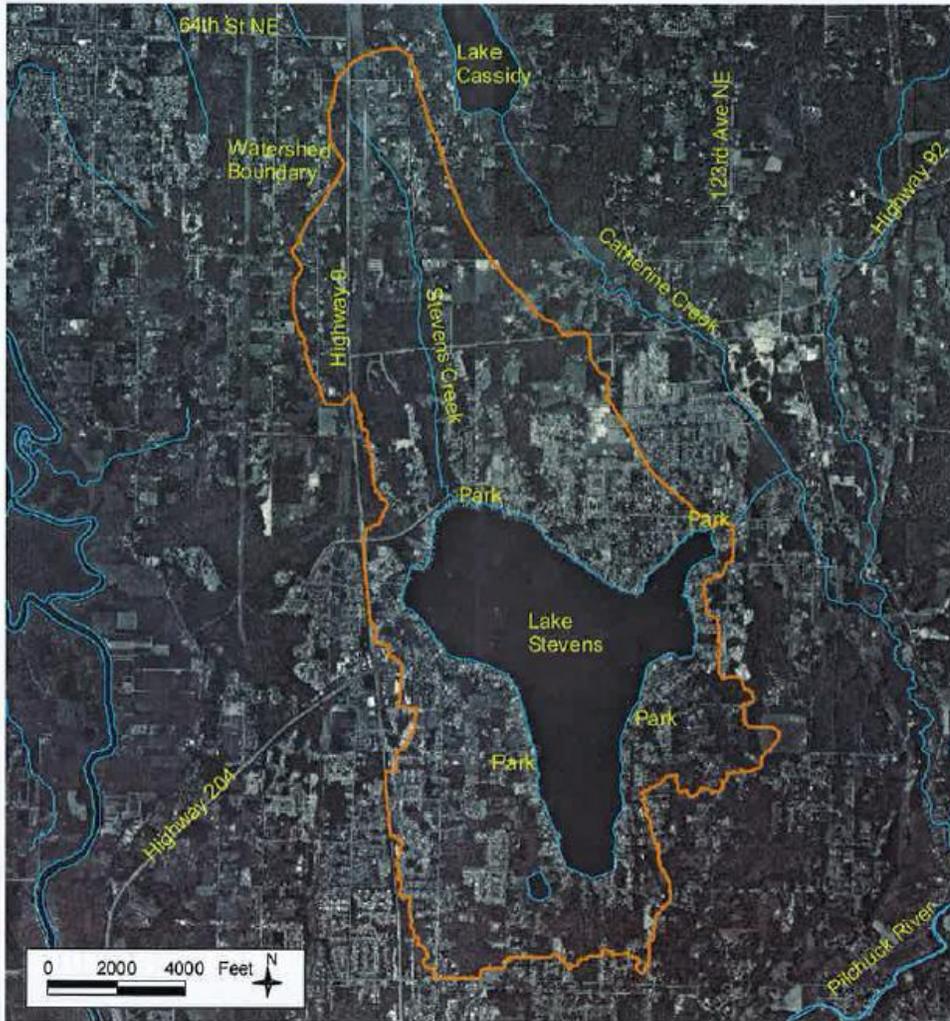
Attachment A

LAKE AND WATERSHED DATA

Lake Area: 1040 acres
 Watershed Area: 4371 acres
 Watershed to Lake Area Ratio: 4.2
 Maximum Depth: 155 feet (47.3 meters)
 Average Depth: 63 feet (19.4 meters)
 Lake Volume: 65,000 acre-feet
 Length of Shore: 7.1 miles



	<u>1972</u>	<u>MID-90'S</u>
# of nearshore homes	330	349
# of homes/1000' of shoreline	8.8	9.3
% of homes with bulkhead or fill		NA
% of homes with some native vegetation near shore		NA
% of watershed developed (residential or commercial)	20%	55% (est.)



Lake Stevens

Attachment B



PRESS RELEASE – 27 June 12

Algae Blooms in Lake Stevens

The City of Lake Stevens and Snohomish County Surface Water Management (SWM) have been monitoring a series of algae blooms occurring this spring on Lake Stevens. Most of the observed algae has been harmless filamentous algae which appears as green and brown free-floating mats. However, in mid-June, blooms of potentially toxic blue-green algae were also detected in isolated parts of the lake.

Also known as cyanobacteria, certain species of blue-green algae can produce toxins that affect the health of people and animals that recreate in lake water. Pets that drink lake water are of special concern. Blue-green algae look like blue, green, or even white paint floating on the surface of the water and will quickly dissipate if agitated.

Water samples were taken within hours of the initial confirmation of blue-green blooms. Since toxin testing takes several days, precautionary notifications were issued to nearby lakefront residents and CAUTION signs (see below) were posted at the public access location around the entire lake. The signs, warn people not to swim or ski in areas of scum, avoid drinking lake water, keep pets away from the water; clean fish well; and avoid areas of scum when boating.

Fortunately, the toxins of concern were found at levels below the recreational standards set by the Washington State Department of Health. The blue-green algae bloom has also since dissipated. Therefore, the CAUTION signs posted at all public access sites will be removed. The County and the City will continue to monitor the algae bloom. It is possible that blue-green algae blooms may re-occur this summer or fall. Citizens should exercise caution if blue-green algae scum is present.

CAUTION

TOXIC ALGAE MAY BE PRESENT
Lake may be unsafe for people and pets

Until further notice:

- **Do not swim or water ski in areas of scum.**
No nade ni riegue el esquí en áreas de la espuma
- **Do not drink lake water.**
No beba el agua del lago
- **Keep pets and livestock away.**
Animales domésticos y ganado de la subsistencia lejos
- **Clean fish well and discard guts.**
Limpie los pescados bien y deseche la tripa
- **Avoid areas of scum when boating.**
Evite las áreas de la espuma cuando canotaje

Call your doctor or veterinarian if you or your animals have sudden or unexplained sickness or signs of poisoning.

Call your local health department:	Report new algae blooms to Department of Ecology: 360-407-6000
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For more information: www.doh.wa.gov/chp/algae/default
www.ecy.wa.gov/programs/wq/plants/algae/index.html

Algae are microscopic organisms similar to plants that can be found in all freshwater lakes including Lake Stevens. Algae are a natural and essential component to the lake because they serve as the base of the aquatic food chain. However, excessive amounts of algae can occur in response to high levels of nutrients and favorable weather conditions. Typical nutrient sources are lawn fertilizers, runoff from roofs and driveways, and pet and animal wastes. Last year's Eurasian water milfoil treatment may also be contributing to the growth. The decomposing plant matter can become a localized source of nutrients feeding algae. This is typical in the first year following a treatment.

To find out more information, track conditions at Lake Stevens, report blooms, or sign up for email toxic algae updates visit the County's web site at: <http://www.lakes.surfacewater.info>.

p:\public works\projects\2011 projects\11045 - sedimentation phosphorus plan\document\staff report\12-10-12 rpt - phosphorus management plan.docx

Exhibit B

**PHOSPHORUS TREATMENT
DRAFT FINANCIAL PLAN**

The following table is the cost projections for the treatment of phosphorus only.

Year	Existing Budget/Forecast	Alum Treatment*	Aerator Only**	Aerator & Alum Treatment***
2013	\$103,400	\$100,000	\$200,000	\$250,000
2014	\$105,300	\$100,000	\$200,000	\$250,000
2015	\$107,200	\$100,000	\$200,000	\$250,000
2016	\$109,100	\$100,000	\$200,000	\$250,000
2017	\$111,200	\$100,000	\$200,000	\$250,000
2018	\$113,200	\$100,000	\$200,000	\$250,000
2019	\$115,300	\$100,000	\$200,000	\$250,000
TOTAL	\$764,700	\$700,000	\$1,400,000	\$1,750,000

Note:

- ‘*’ Includes application of alum and permitting. Not included is the removal of the aerator.
- ‘**’ Includes operating costs, minor annual repairs, and one major repair. The major repair costs is spread over the time evenly. Not includes is replacement costs. It is assumed that the existing unit can be repaired for an extended time beyond a 20 year life (e.g.: 1994 to 2014).
- ‘***’ Includes the same costs as the “Aerator Only” column plus a reduce dosage of alum treatment.

The following table is the cost projections for the aerator.

Alternative Treatment Type	Short Term (10 years)	Long Term (20 years)	Short Term Estimated Cost (10 year span)	Long Term Estimated Cost (replacement)
Alum Treatment	Aerator is left in place for 5 years during evaluation period	Aerator is surpluses and removed from lake	\$300,000	\$0
Aerator Only	Aerator is repaired as needed to keep operational with two major repairs expected	Aerator system is replaced	\$2,000,000	\$4,000,000
Aerator & Alum Treatment	Same as aerator only	Same as aerator only	\$2,500,000	\$4,000,000



Staff Report
City of Lake Stevens
Planning Commission

Briefing
Date: February 6, 2013

Subject: **Planning Commission Meeting**
Contact Person/Department: **Russell Wright, Senior Planner**

SUMMARY:

2013 Park Plan Update Scope of Work & Schedule.

Discussion Item 1 – Park Plan Update

Staff is preparing to update the Parks and Recreation Element of the Comprehensive Plan in 2013. Staff presented a project overview to the Park and Recreation Planning Board (Park Board) at their January meeting. The Park Board had limited discussion on the proposed scope and schedule.

The purpose of this update is to ensure that the city's plan continues to address the recreational needs of the community. The city would also like to make sure that the plan contains all of the elements, recommended by the Recreation & Conservation Office (RCO), which enable the city to compete for grant funding for parks and recreation projects. Some of the important proposed revisions will include a community survey, a review of the adopted Level of Service (LOS), and a needs analysis based on the recommended LOS. Staff will also develop an updated capital facilities list and provide a current fees survey to determine appropriate park impact fees.

Find attached the draft Scope of Work and Schedule for the proposed plan update as presented to the Park Board. Staff is looking to the Planning Commission to comment on the scope of work and proposed elements for inclusion in the updated Park Plan.

Staff will process the updated Park Plan as an amendment to the Comprehensive Plan during the annual docket process. Environmental review and public hearings may be held jointly with other amendments or individually.

ATTACHMENT:

Draft Park Plan Scope of Work
Draft Park Update Schedule

Draft Parks & Recreation Plan Update Scope of Work

I. Recreation & Conservation Office (RCO) Plan Requirements

A. Who Must Plan?

1. Jurisdictions planning under the Growth Management Act
2. Jurisdictions seeking grant funding from the Recreation & Conservation Funding Board (RCFB)

B. RCO Plan Recommendations

1. Agencies must set a level of service (LOS) for park & recreation planning, including trails to identify system strengths & weaknesses

- a) *Number of Facilities (define percent between actual & desired)*
- b) *Active Recreation Opportunities (percent of active facilities)*
- c) *Facility Capacity (percent of demand met by existing facilities)*
- d) *Agency Assessment (percentage of fully functional facilities)*
- e) *Public Satisfaction (percentage of population satisfaction with facilities)*
- f) *Population within Service Area (percentage of population with access to different facilities)*
- g) *Access (percentage of facilities that can be accessed safely by pedestrian, cyclists, & transit)*

2. Estimate LOS for future need based on population growth

- a) *Consider participation by age group*
- b) *User group organization & representation*
- c) *Land use & land designations (greater density will require more parks)*
- d) *Economic conditions*

3. RCO required elements

- a) *Goals & objectives (goals describe desired outcomes, objectives are measurable & more specific)*
- b) *Inventory (facilities & resources)*
- c) *Public Involvement (description of public process e.g., meetings, surveys, publications, etc)*
- d) *Demand & Need Analysis (analysis of public demand with your organization's capacity)*
- e) *Capital improvement program (six year plan for acquisition, development, renovation, & restoration projects)*
- f) *Plan adoption*

C. Growth Management Act & RCFB Plans

1. Retain open space, conserve fish & wildlife habitat, increase access to natural resource areas, & develop parks/ recreational opportunities
2. Development regulations that protect critical areas

3. **General distribution & general location & extent of land uses**
4. **Comprehensive plans include recreational elements, identify open space corridors within & between urban growth for wildlife habitat, trails, & connection of critical areas**
5. **Requesting agency must be party to a countywide planning policy**

D. RCO Review

1. **Agency submits a relevant plan to RCO**
 - a) *Agency submits draft plan to RCO for compliance review*
 - b) *RCO available to provide technical support*
 - c) *Agency submits final plan prior to funding cycle (March)*
2. **Certification**
 - a) *Agency completes manual requirements*
 - b) *Agency completes Self-Certification Form*
 - c) *Agency provides supporting planning, certification, & adopting documents to RCO*
3. **RCO approved plans eligible to apply for identified grant for six years**

II. Draft 2013 Park Plan Contents

A. Introduction

1. **Background of parks program**
2. **Relationship to Comprehensive Plan**
3. **Plan Mission & Vision Statements**
4. **Plan Purpose**
5. **Planning Process**
6. **Plan Accomplishments**

B. Community Profile

1. **Local & regional setting**
2. **Demographics**
 - a) *Population*
 - b) *Age*
 - c) *Economic Profile*
3. **Parks & Recreation Program**
 - a) *Park Board*
 - b) *Planning & Community Development*
 - c) *Public Works*
 - d) *Boys & Girls Club*
 - e) *Lake Stevens School District*

C. Parks Inventory

1. Overview & Classification

- a) *Community Park*
- b) *Neighborhood Park*
- c) *Mini-Park*
- d) *Special Use / Athletic Fields & Recreation Facilities*
- e) *Partnerships*
- f) *Open Space/Natural Areas*
- g) *Trails*

2. Public Parks & Recreation Facilities Inventory

3. Private Facilities Inventory

4. Open Spaces & Natural Areas

- a) *Lake Stevens*
- b) *Streams*
- c) *Wetlands*
- d) *Native Growth Protection Areas*

5. Present & Future Demand Analysis

D. Level of Service

1. LOS defined

2. Analysis of current LOS

3. LOS for Population Growth based on ROC Indicators

E. Park Needs

1. Goals & Objectives for needs (acquisition & development)

2. Goals & Objectives for recreation programs

3. Goals & Objectives for maintenance & operations

F. Volunteers & Partnerships

G. Implementation

1. Program expenditures

2. Impact fees rate survey

3. Other revenue sources

H. Appendices

1. Plan survey

2. Impact fee rate survey

3. LOS comparison

4. Capital System Improvement Plan

PROPOSED 2013 PARK PLAN UPDATE SCHEDULE

ACTIVITY	January	February	March	April	May	June	July	August
1. Introduce scope to Park Board	1/22/13							
2. Introduce scope to Planning Commission		2/06/13						
3. Staff reviews Park Plan, reviews plans from other jurisdictions & assembles facility inventory	1/2013 – 2/2013							
4. Staff update w/ Park Board & Public Visioning Open House		2/26/13						
5. Staff develops LOS analysis & needs survey based on LOS & community vision		2/2013 – 3/2013						
6. Staff update w/ Park Board			3/26/13					
7. Staff distributes needs survey to public				4/2013				
8. Staff prepares Goals & Objectives/plan outline			3/2013 – 4/2013					
9. Staff update w/ Park Board				4/23/13				
10. Staff assembles survey results & prepares 1 st draft of Park Plan & implementation strategy				4/2013 – 5/2013				
11. Draft to Park Board for recommendation					5/21/12			
12. Staff presents revised draft to Planning Commission						6/5/13		
13. Staff introduces Park Plan to City Council						6/17/13		
14. Planning Commission public hearings							7/3/13	
15. City Council public hearing							7/15/13	
16. City Council approves Park Plan								8/5/13
17. Staff update w/ Park Board								8/27/13

DRAFT

January 18, 2013



LAKE STEVENS PLANNING COMMISSION
STAFF REPORT

Agenda Date: February 6, 2013

Subject: Lake Stevens Shoreline Master Program Update – Ecology Comments Briefing (LS2009-11)

Contact Person/Department: Karen Watkins **Budget Impact:** None

RECOMMENDATION(S)/ACTION REQUESTED OF PLANNING COMMISSION: No action at this time.

SUMMARY: The City received comments from the Washington Department of Ecology on January 14, 2013. The letter required a response in 30-days. On January 28, the City Council sent a letter requesting an extension for response to Ecology’s letter until April 30, 2013.

The City Council packet with Ecology’s comment letter is attached. The letter includes ten required changes to the Shoreline Master Program adopted by Council in November 2011. At the Planning Commission Meeting, staff will provide an overview of the required changes and respond to comments.

The City may choose to hold a public hearing, meeting or workshop before accepting Ecology’s required changes or proposing alternative language. If a full public hearing process is followed, then the Council may decide the Planning Commission should hold a public hearing. Staff is working with the Council to finalize a schedule and will keep the Planning Commission updated on the process.

APPLICABLE CITY POLICIES: The State requires all cities to update their Shoreline Master Programs (SMP) on a specific schedule. The City’s current SMP was adopted in 1974.

BUDGET IMPACT: None

ATTACHMENT: City Council Staff Report with Ecology Comment Letter



LAKE STEVENS CITY COUNCIL
STAFF REPORT

Council Agenda Date: January 28, 2012

Subject: Shoreline Master Program Update – Briefing on Ecology’s Conditional Approval (LS2009-11)

Contact Person/Department: Becky Ableman/Karen Watkins **Budget Impact:** Unknown

RECOMMENDATION(S)/ACTION REQUESTED OF COUNCIL: Staff will brief the Council on the Ecology’s Conditional Approval Letter and proposed schedule. Action requested of Council is to:

- (1) Approve draft schedule;
- (2) Authorize the Mayor to sign the request for extension letter; and
- (3) Direct staff on initial analysis.

Staff will return on February 11 and/or 25 with more details on Ecology’s required changes.

SUMMARY: The City Council approved a Shoreline Master Program on November 28, 2011 (Ordinance No. 856). As required by the SMP grant, the SMP Amendment Package was sent to Ecology with completion determined by Ecology on February 27, 2012. Ecology held a comment period on the Lake Stevens SMP April 19-May 21, 2012 and held a public hearing on April 19, 2012 at the Lake Stevens School District Educational Center. Ecology summarized public hearing comments and requested the City respond to the comments. On September 10, 2012, the City submitted to Ecology written response to issues raised during the state comment period. Consistent with Chapter 90.58 RCW, the City’s proposed SMP amendments have been reviewed with consistency with the policy and approval criteria of the Shoreline Management Act. The Conditional Approval letter is Ecology’s response to the review and includes Findings and Conclusions, Ecology required changes, suggested changes, and a responsiveness summary to public comments.

BACKGROUND: Staff received draft required changes from Ecology in late 2012 to review. The draft was shared with the SMP Council Subcommittee on December 10, 2012. The final letter, dated January 4, 2013, was received by Mayor Little on January 14, 2013 (*Attachment 1*). The letter was shared with full Council by email on January 16 and placed on the website with notice to the SMP Interested Parties Email List on January 17, 2012. In addition, staff sent postcards on January 25 to approximately 50 residents who attended SMP meetings, but have not requested to be on the Interested Parties list.

Staff has prepared a letter requesting an extension to Ecology’s 30-day response requirement to the Conditional Approval Letter. This letter requests an extension to April 30, 2013 to allow for Council discussion and a Public Process before developing a response to Ecology (*Attachment 2*). The April deadline is predicated on a draft schedule (*Attachment 3*).

DISCUSSION: The City received 10 required changes from Ecology and one suggested change, which was from City Staff. Some of these changes were discussed in an email from Ecology received before Council’s final approval of the SMP (*Attachment 4*). As a comparison, Snohomish County received 19

required changes and the City of Sammamish received 77 required changes. The following provides information on issues and process.

Proposed Schedule. *Attachment 3* proposes a schedule for review of Ecology's Conditional Approval and preparing a response. It includes a public process for participation by residents and interested parties. The schedule proposes March 11 for an Open House before the Council Meeting and for the public to come forward at the beginning of the Council Meeting to provide up to 3 minutes of public input. If Council gets feedback that requires additional discussion, there is a placeholder for the SMP Council Subcommittee to meet with interested parties, if requested, in an open forum between March 12 and 22.

Staff Analysis of Ecology's Required Changes. Staff prepared a response to Ecology's Required Changes in their Attachment B for discussion with the SMP Council Subcommittee (*Attachment 5*). The response includes where the original language came from and how it may affect lakeshore property or implementation of the SMP.

SMP Council Subcommittee. A few questions and comments came up at the Subcommittee Meeting on December 10, 2012. Staff researched the issues and provide the following information:

- The Watershed Company has successfully completed SMP Updates for Past Clients (Covington, Darrington, Kent, Lake Forest Park, Maple Valley, Marysville, Monroe, SeaTac, and Stanwood). Their Current Clients include Chelan County, San Juan County, Skagit County, and cities of Anacortes, Arlington, Beaux Arts, Bellevue, Bonney Lake, Bothell, Brier, Buckley, Carnation, DuPont, Hunts Point, Kirkland, Lake Stevens, Medina, North Bend, and Yarrow Point.
- The following local cities have completed the SMP Update Process: Arlington, Lynnwood, Marysville, Monroe, Mukilteo, Snohomish County and Sultan.
- Local cities in the SMP Update Process include: Bothell (Ecology Review), Edmonds (Planning Board Recommendation), Gold Bar, Mountlake Terrace, Snohomish, and Stanwood. The City of Everett does not have to complete the update by 2014.

Appeal of an SMP Update. Under the Shoreline Management Act, all concerned parties have 60 days to appeal Ecology's decision regarding an updated SMP to the Growth Management Hearings Board. Ecology would defend the plan with the City as a co-defendant, except in the case the City is one of the appellants.

Very few appeals of SMP Updates have been attempted. *Attachment 6* is the 2009 Growth Management Hearings Board for Western Washington's Digest of cases related to shorelines. Two appeals are summarized below:

- Yakima County's SMP Update was appealed by Tribes with three of four protection issues defended by Ecology and only one issue, related to surface mining, were remanded back to Ecology and the County.
- Whatcom County's SMP Update by citizen group claiming "regulations contained in the SMP constitute a direct or indirect tax, fee, or charge on development in violation of RCW 82.02.020". The Supreme Court of the State of Washington concluded, "Department of Ecology retains control over the final contents and approval of SMPs. Therefore, SMP regulations are the product of state action and are not subject to RCW 82.02.020".

During research on the potential for appeal, Staff found the following statement from the Growth Management Hearings Board website (underline added as it relates to Lake Stevens):

If the city or county action concerns a Shoreline Master Program, the Board's review must be based on the requirements and policy of the SMA, the SMP Guidelines codified at WAC Chapter 173-26, and the GMA internal consistency requirement for comprehensive plans and development regulations, or SEPA compliance. However, if the appeal concerns a Shoreline of Statewide Significance, the Board may not consider GMA internal consistency or SEPA compliance – only SMA requirements, policy and guidelines – and must uphold the Department of Ecology's approval or denial of the SMP unless the Board finds clear and convincing evidence that Ecology's decision is inconsistent with SMA policy and guidelines. (RCW 90.58.190(2)(c))
From: "Practicing Before the Growth Management Hearings Board, March 2012"

Because Ecology reviews adopted SMP Updates to determine consistency with SMA policy and guidelines to determine required changes, it would be very difficult to prove Ecology's decision is inconsistent with SMP policy and guidelines. In fact, page 3 of Ecology's Attachment A states "The proposed amendment has been reviewed for consistency with the policy of RCW 90.58.020 and the approval criteria of RCW 90.58.090(3), (4) and (5)." This is probably why very few SMP Updates are appealed.

In order to appeal Ecology's required changes, such as the 4-foot wide dock in the first 30 feet from shore, additional technical studies would be required plus attorney costs for an approximately 180 day appeal process (*Attachment 7*). In addition, Ecology has already approved the same width on all lakes including Lake Stevens in the Snohomish County SMP and has stated that it is the Ecology's policy set by the Olympia Office to require the 4-foot dock width in the first 30 feet in all future SMP Updates. Ecology has biological studies to support the 4-foot width requirement in the first 30 feet; these studies would have to be proven incorrect to get the 4-foot width requirement changed.

FUTURE DISCUSSIONS: Council will need to determine if staff and/or consultants should complete additional analysis before drafting alternative proposals and responding to Ecology's Conditional Approval.

APPLICABLE CITY POLICIES: The State requires all cities to update their Shoreline Master Programs (SMP) on a specific schedule. The City's current SMP was adopted in 1974.

BUDGET IMPACT: The City received a two year, \$60,000 Shoreline Master Program Update grant from the Washington Department of Ecology for consultants. This funding was spent by 2011. Depending on additional technical analysis, additional funding may be required for consultant time.

ATTACHMENTS:

- 1 – Ecology's Conditional Approval Letter dated January 4, 2013
- 2 – Draft Letter to Ecology Requesting Response Extension to April 30, 2013
- 3 – Draft Schedule for Response to Ecology
- 4 – Email from Ecology dated 11/21/11 Regarding Comments on SMP
- 5 – Staff Response to Ecology's Required Changes
- 6 – Digest of Shoreline Cases to 2009 for Western Washington Growth Management

Hearings Board
7 – Growth Management Hearings Board 180-Day Appeal Process

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STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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January 4, 2013

The Honorable Vern Little
City of Lake Stevens
1812 Main Street
Lake Stevens, WA 98258-0257

**RE: City of Lake Stevens Comprehensive Shoreline Master Program Update -
Conditional Approval, Ordinance No. 856**

Dear Mayor Little:

I would like to take this opportunity to commend the city of Lake Stevens (City) for its efforts in developing the proposed comprehensive Shoreline Master Program (SMP) update. It is obvious that a significant effort was invested in this update by your staff and engaged community of stakeholders. The SMP will provide a framework to guide development and restoration in the City's shoreline along Little Pilchuck Creek, Catherine Creek and Lake Stevens. The Washington State Department of Ecology (Ecology) applauds the City's "pre-designation" of anticipated future annexation areas. This improves predictability for all concerned regarding future incorporation of these areas.

As we have already discussed with your staff, Ecology has identified specific changes necessary to make the proposal approvable. These changes are detailed in Attachment B. Suggested changes are also included in Attachment C. Ecology's findings and conclusions related to the City's proposed SMP update are contained in Attachment A.

Pursuant to RCW 90.58.090 (2)(e) at this point the City may:

- Agree to the proposed changes, or
- Submit an alternative proposal. Ecology will then review the alternative(s) submitted for consistency with the purpose and intent of the changes originally submitted by Ecology and with the Shoreline Management Act.

Final Ecology approval will occur when the City and Ecology agree on language that meets statutory and Guidelines requirements.

Please provide your written response within 30 days to the Director's Office at the following address:

WA State Department of Ecology
Attention: Director's Office
PO Box 47600
Olympia, WA 98504-6700

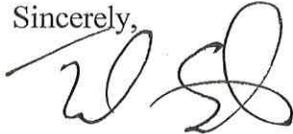


Honorable Vern Little
January 4, 2012
Page 2

Ecology appreciates the dedicated work that you, the city council, Planning & Community Department staff, and the planning commission have put into the Shoreline Master Program update.

Thank you again for your efforts. We look forward to concluding the SMP update process in the near future. If you have any questions or would like to discuss the changes identified by Ecology, please contact our Regional Planner, Joe Burcar, at Joe.Burcar@ecy.wa.gov or (425) 649-7145.

Sincerely,



Ted Sturdevant
Director

Enclosures (3)

By Certified Mail [7012 1010 0003 3028 2600]

cc: Rebecca Ableman, City of Lake Stevens
Karen Watkins, City of Lake Stevens
Joe Burcar, Ecology
Peter Skowlund, Ecology
Geoff Tallent, Ecology

ATTACHMENT A: FINDINGS AND CONCLUSIONS -
COMPREHENSIVE UPDATE TO THE CITY OF LAKE STEVENS SHORELINE MASTER PROGRAM

SMP Submittal February 27th, 2012¹, Ordinance No. 856
Prepared by Joe Burcar, on October 23rd, 2012

BRIEF DESCRIPTION OF PROPOSED AMENDMENTS:

The City of Lake Stevens (City) submitted to Ecology a comprehensive amendment to their Shoreline Master Program (SMP) to comply with the Shoreline Management Act (SMA) at RCW 90.58 and the SMP Guidelines requirements at WAC 173-26 (Part Three). The updated master program submittal includes locally tailored shoreline management: policies, regulations, environment designation maps, administrative provisions, and integration of applicable sections of the City's Critical Areas Ordinance (Ordinance No. 741 effective May 8, 2007 and Ordinance No. 773 effective April 21, 2008) as provided in "Appendix B" of the updated SMP.

FINDINGS OF FACT

NEED FOR AMENDMENT: The City is required by RCW 90.58.080 to develop and submit an updated Shoreline Master Program (SMP) to Ecology for review prior to December 1, 2011. The amendment is also necessary for the City to ensure compliance with the planning and procedural requirements of the SMP Guidelines contained in WAC 173-26 and 27. The updated SMP is intended to replace the City's existing SMP, which was adopted in 1974 and has not been amended or comprehensively updated since the original adoption (The Watershed Company and Makers, 2010). The SMP update is necessary to address land use changes that have occurred along the City's shorelines over the past 30-plus years and to provide consistency between the updated SMP and the environmental protection and land use management policies/practices provided by the City's Critical Areas Ordinance, Comprehensive Plan, Flood Management Plan and Zoning Ordinance.

As a part of the City's local notice related to the SMP-update, the intent of the update is described as follows:

The SMP has been updated to meet State requirements to protect the ecological functions of Lake Stevens and associated wetlands and streams. The SMP is based on State guidelines and comments received from a Citizen Advisory Committee, public open houses, public comments to the Planning Commission and City Council, and comments from State Agencies.

SMP PROVISIONS TO BE CHANGED BY THE AMENDMENT AS PROPOSED: This comprehensive SMP update is intended to entirely replace the City's existing SMP. The updated SMP increases shoreline jurisdiction to cover areas annexed by the City since adoption of the original SMP and will also "pre-designate" shorelines throughout the City's Urban Growth Area (UGA) as depicted in Figure 14 of the City's Shoreline Analysis Report (The Watershed Company and Makers, 2010). As a result, this SMP will now apply to approximately 9.2 linear miles of lake, river and associated wetlands.

¹ Ecology received the City's submittal package on December 29th, 2011, for which additional materials were requested from the City and verified as a complete submittal on February 27, 2012 pursuant to WAC 173-26-110.

The following table and Figure 14 from the City's Shoreline Analysis Report (The Watershed Company and Makers, 2010) provide a description of each of the *Shoreline Assessment Units* analyzed by the City, considering the type of shoreline, length (linear feet) and area (acres) of shoreline segment, Land-use (general > 5%), and distinction between segments located within existing City limits or within the UGA.

City of Lake Stevens – Shoreline Assessment Units						
	Lake Stevens	Lake Stevens UGA	Lake Stevens Assoc. Wetland	Catherine Creek	Catherine Creek UGA	Little Pilchuck Creek UGA
Shoreline Type	Lake > 1000-acres	Lake > 1000-acres	Assoc. Wetland	River > 20-cfs	River > 20-cfs	River > 20-cfs
Length (Area)	29,818 (144.4)	7,557 (39.3)	(94.5)	3,212 (30.4)	2,165 (19.9)	3,353 (33.6)
Land-use	Residential (91%) Public (5%)	Residential	Residential	Residential (75%) Public/Light Industrial (14%)	Residential	Residential (47%) Industrial (33%) Public (18%)
City or UGA	Within City	UGA	Within City	Within City	UGA	UGA

Table Note: See "Table 2" in the *City's Inventory Analysis Report* (The Watershed Company and Makers, 2010) for additional details related to characteristics of these Shoreline Assessment Units.

AMENDMENT HISTORY, REVIEW PROCESS: The City initiated the comprehensive SMP update consistent with the scope of work described within *SMA Grant No. G10000027*. The grant provided \$60,000 in state funding allocated to the City between July 1st, 2009 and June 30th, 2011. Throughout this time period the City provided Ecology with quarterly progress reports, deliverables and submitted payment requests for work completed consistent with the grant agreement. The City submitted their final payment request on July 7, 2011, requesting the balance of grant funding. However, the City was not yet prepared to locally adopt the updated SMP at this time, thus the City also requested a 'no-cost' extension to their grant agreement to provide additional time (through December 2011) to locally adopt the updated SMP.

As part of this effort, the City prepared an inventory of shoreline features, characterizing shoreline conditions throughout the City's jurisdictional area (The Watershed Company and Makers, 2010). Based on this *Inventory/Characterization* report, the City then prepared shoreline environment designations, corresponding policies and regulations as part of a *Draft SMP*. Finally, the City prepared a *Restoration Plan* (The Watershed Company and Makers, 2011a), *Cumulative Impact Assessment* (The Watershed Company and Makers, 2011c), and a *No Net Loss Report* (The Watershed Company and Makers, 2011b) to analyze potential impacts resulting from anticipated future development based on implementation of the proposed SMP policies and regulations. As specified in the SMP grant agreement awarded to the City, the *Cumulative Impact Assessment* and *No Net Loss Report* are intended to support a final conclusion related to the updated programs consistency with applicable standards from the SMP-Guidelines (WAC 173-26), including demonstration of consistency with the No Net Loss of Shoreline Ecological Function requirement of this update.

The record shows that the City established a Citizen Advisory committee that held six meetings during the initial stages of the SMP update from March to December 2010. City staff also hosted three public workshops held on; April 15, 2010 (Open House #1), June 24, 2010 (Open

House #2), and November 18, 2010 (Open House #3). The City initiated local adoption of the updated SMP with a Planning Commission meeting on April 4, 2011 and Public Hearing on May 4, 2011. City Council Public Hearings related to the SMP-update were held on May 23rd and June 13, 2011. Affidavits of publication provided by the City indicate that the City provided notice to interested parties and the general public for all workshops and Public Hearings associated with this SMP update.

With passage of Ordinance #856, on November 28, 2011, the City Council authorized staff to forward the proposed amendments to Ecology for review and approval.

The locally approved SMP amendment package was received by Ecology and verified as complete on February 27, 2012. Notice of the state comment period was distributed on April 10, 2012 to state interested parties as well as local interested parties identified by the City in compliance with the requirements of WAC 173-26-120 (2). The state comment period began on April 19, 2012 and continued through May 21, 2012. On April 19, 2012, Ecology held a public hearing at the Lake Stevens School District Education Learning Center² to solicit input on the proposed amendments. Notice of the hearing, including a description of the proposed amendment and the authority under which the action is proposed, the times and locations of the hearing and the manner in which interested persons may obtain copies and present their views was published in the April 10, 2012 edition of the *Everett Herald Newspaper*, the City's official newspaper of record.

During the comment period, a total of 11 individuals or organizations provided either formal testimony at the public hearing, or submitted written comments on the proposed amendment to Ecology. Ecology summarized and then provided the oral and written comments received to the City for response on June 26, 2012. On September 10, 2012, the City submitted to Ecology written response to issues raised during the state comment period (Attachment D).

CONSISTENCY WITH CHAPTER 90.58 RCW: The proposed amendment has been reviewed for consistency with the policy of RCW 90.58.020 and the approval criteria of RCW 90.58.090(3), (4) and (5). The City has also provided evidence of its compliance with SMA procedural requirements for amending their SMP contained in RCW 90.58.090(1) and (2).

CONSISTENCY WITH “APPLICABLE GUIDELINES” (CHAPTER 173-26 WAC, PART III): The proposed amendment has been reviewed for compliance with the requirements of the applicable Shoreline Master Program Guidelines (WAC 173-26-171 through 251 and 173-26-020 definitions). This included review of a SMP Submittal Checklist, which was used throughout the City's approval process by the City and Ecology to identify consistency/inconsistency of SMP provisions with applicable SMP-Guideline requirements.

² The Lake Stevens School District Education Learning Center is the same facility used by the City for Planning Commission and City Council meetings and is located at 12309 – 22nd Street NE, Lake Stevens, WA 98258.

CONSISTENCY WITH SEPA REQUIREMENTS: The City submitted evidence of SEPA compliance. The City published notice for a Determination of Non-Significance (DNS) for the proposed SMP amendment on April 15, 2011. As a part of the DNS notice the general public and interested parties were provided an opportunity to comment within 14-days of issuance of the DNS or SEPA-addendum. Ecology did not provide comment to the City on the DNS.

OTHER STUDIES OR ANALYSES SUPPORTING THE SMP UPDATE: In addition to multiple drafts of the updated SMP (Policies & Regulations), Ecology reviewed the following reports, studies, map portfolios and data prepared by the City in support of the SMP amendment:

- *City of Lake Stevens Shoreline [Inventory] Analysis* dated February 25, 2010 (The Watershed Company and Makers, 2010);
- *City of Lake Stevens Shoreline Master Program - Restoration Plan* dated April, 2011 (The Watershed Company and Makers, 2011a);
- *City of Lake Stevens Shoreline Mater Program – No Net Loss Summary* dated November, 2011 (The Watershed Company and Makers, 2011b);
- *City of Lake Stevens Shoreline Master Program Update – Cumulative Impact Analysis* dated December, 2011 (The Watershed Company and Makers, 2011c); and
- Final SMP-checklist dated November 28, 2011.

SUMMARY OF ISSUES RAISED DURING THE PUBLIC REVIEW PROCESS: Ecology recorded testimony from five individuals at the Public Hearing (April 19, 2012) and received six written comments during the 32-day public comment period. As provided in Attachment D, all of the comments and testimony received by Ecology were summarized and then provided to the City for response. In general, the eleven comments spanned the following SMP topic areas:

- **Shoreline Modifications – Overwater Structures:** Comment focused primarily on SMP dimensional standards (i.e., dock length, width, etc.) related to redevelopment or new construction of a single-family pier/dock along the shoreline of Lake Stevens. Other comments focused on either aesthetics or ecological impact concerns associated with the City's covered moorage regulations.
- **Non-Conforming Uses and Existing Structures:** A number of comments submitted to Ecology, requested clarification as to how an existing structure may be affected by regulatory changes resulting from adoption of the updated SMP. Other comments provided additional questions or suggestions specific to redevelopment of existing uses.
- **SMP-Update Process:** Ecology received multiple comments requesting verification that materials submitted during the City's local update process also be included as part of formal record considered by Ecology.
- **Shoreline Modifications – Shoreline Stabilization:** Ecology received comments highlighting the City's good work in prioritizing stabilization preferences, but recommending that the City strengthen regulatory language in the SMP to ensure adequate mitigation is required for impacts related to future stabilization projects.

- **Shoreline Setback/Buffer/Vegetation Management and Mitigation:** Ecology received a variety of comments providing conflicting suggestions related to the adequacy of shoreline: setback, buffer, vegetation management and mitigation standards within the locally approved SMP.

SUMMARY OF ISSUES IDENTIFIED BY ECOLOGY AS RELEVANT TO IT'S DECISION: Based on review of the locally adopted SMP, supporting analysis and consideration of testimony and comments provided during Ecology's comment period/Public Hearing (See Attachment C), the following issues remain relevant to Ecology's final decision on this master program:

Shoreline of Statewide Significance: According to the City's Shoreline Analysis (The Watershed Company and Makers, 2010) Lake Stevens qualifies as a Shoreline of Statewide Significance (SSWS) pursuant to RCW 90.58.020, as the size of the lake³ is greater than 1,000-acres in size. As a SSWS, the SMP-Guidelines in WAC 173-26-251 require the "Department" (Ecology) to ensure, "...optimal implementation of the policy of this chapter to satisfy the statewide interest". Preservation of "statewide interests" through optimal implementation of updated master program, emphasize the need to: "Preserve resources for future generations"⁴, prioritize SMA "preferred uses" located within the SSWS, ensure long term protection of ecologic resources of "statewide importance"⁵ through consideration of cumulative impacts of permitted development to ensure No Net Loss of Shoreline Ecologic functions.

Considering that Lake Stevens is a SSWS and to recognize Ecology's obligation to ensure "optimal implementation" of SMP-Guideline policies and SMA objectives, the following area of the City of Lake Stevens SMP were reviewed in detail and in some cases lead to required changes as described in the rationale provided in Attachment B.

Shoreline Modification – Overwater Structures: WAC 173-26-231 (2) provides "General Principles" applicable to all Shoreline Modifications, first requiring demonstration of a need for a shoreline modifications consistent with the objectives of the SMA. If a Shoreline Modification is needed, then a jurisdiction is directed to apply development standards to ensure adverse effects (potentially) resulting from the development are avoided, if they cannot be avoided, then the impacts should be minimized in number and extent and appropriate compensatory mitigation is to be required in exchange for allowing the modification.

Pier/Dock - Dimensional Standards – WAC 173-26-231 (3) (b) state that pier/dock proposals associated with a single-family residence can be considered water-dependent (and therefore preferred), "...provided that it is designed and intended as a facility for access to

³ According to the City's Shoreline Inventory, Lake Stevens is reported to be 1,014-acres in size.

⁴ WAC 173-26-251(3)(b) state: "Prepare master program provisions on the basis of preserving the shorelines for future generations. For example, actions that would convert resources into irreversible uses or detrimentally alter natural conditions characteristic of shorelines of statewide significance should be severely limited. Where natural resources of statewide importance are being diminished over time, master programs shall include provisions to contribute to the restoration of those resources".

⁵ "statewide importance" may vary by jurisdiction, but examples in WAC 173-26-251(3)(d)(i) are: "anadromous fish habitat, forage fish spawning and rearing areas, shellfish beds, and unique environments"

watercraft and otherwise complies with the provisions of this section.” Further, the SMP-Guidelines require that pier/dock proposals be restricted to the minimum size necessary and be “...designed and constructed to avoid or, if that is not possible, to minimize and mitigate the impacts to ecological functions...” As described in the rationale provided in Attachment B (Items #1, 2, and 3) certain Pier/Dock provisions within the City’s locally approved SMP are determined to not be consistent with applicable SMP-Guideline standards, for which required changes are necessary to ensure compliance with “optimal implementation” under the SMA and Shoreline Modification/Impact-Mitigation/No-Net-Loss standards from the SMP-Guidelines.

Shoreline Protections and No Net Loss: Ecology finds that the SMP-Guidelines require the City to consider potential cumulative impacts that could result from reasonably anticipated future development allowed (within shoreline jurisdiction) through implementation of applicable policies and regulations⁶ provided within the updated SMP. As part of this requirement the City is obligated to analyze and consider potential impacts to Shoreline ecological functions and then identify ways to avoid, minimize or mitigate these impacts consistent with Part three of the SMP Guidelines. This sequence of analysis is required to ensure consistency with the following provisions from the SMP Guidelines: “Governing Principles” (WAC 173-26-186), “Master Program Content” (WAC 173-26-191), and “Process to Prepare or Amend shoreline master programs” (WAC 173-26-201).

As described in the rationale provided in Attachment B, the identified changes to the SMP are necessary to satisfy applicable SMP-Guideline requirements related to Shoreline Protection (WAC 173-26-201 (2) (c) and No Net Loss (WAC 173-26-186). These changes are consistent with local analysis provided by the City within their final Cumulative Impact Assessment (The Watershed Company and Makers, 2011c) prepared in support of the City’s updated SMP.

Therefore, Ecology finds that the proposed SMP as approved by the City under Ordinance # 856 is not consistent with the applicable SMP-Guideline requirements as specifically identified and analyzed in the rationale within Attachment B (Required Changes). However, Ecology also finds that the SMP can be amended to be compliant with the SMP-Guidelines through the City’s acceptance of “Required Changes” listed within Attachment B. Pursuant to WAC 173-26-120, Ecology identified “Suggested Changes” to the SMP as provided within Attachment C.

⁶ Cumulative Impacts resulting from anticipated future development as regulated by: General Master Program Provisions (WAC 173-26-221), Shoreline Modifications (WAC 173-26-231) and, Shoreline Uses (WAC 173-26-241).

CONCLUSIONS OF LAW

After review by Ecology of the complete record submitted and all comments received, Ecology concludes that the City's SMP proposal, subject to and including Ecology's itemized analysis and rationale of required changes (provided in **Attachment B**), will be consistent with the policy and standards of RCW 90.58.020 and RCW 90.58.090 and the applicable SMP guidelines (WAC 173-26-171 through 251 and .020 definitions), upon the City's acceptance of the required changes (Attachment B). This includes a conclusion that the proposed SMP, including acceptance of the required changes (Attachment B), contains sufficient policies and regulations to assure that no net loss of shoreline ecological functions are anticipated to result from implementation of the new master program amendments (WAC 173-26-201 (2) (c)).

Ecology concludes that the proposed SMP amendment, subject to the required changes and rationale provided in Attachment B and recommended changes provided in Attachment C, satisfy the intent of the provision for no net loss of shoreline ecological functions pursuant to WAC 173-26-186 (8) and WAC 173-26-201 (2) (c).

Ecology concludes that the City of Lake Stevens choose not to exercise its option pursuant to RCW 90.58.030 (2) (f) (ii) to increase shoreline jurisdiction to include land necessary for buffers for critical areas located within shorelines of the state. Therefore, as required by RCW 36.70A.480 (6), for those designated critical areas with buffers that extend beyond SMA jurisdiction, the critical area and its associated buffer shall continue to be regulated by the City's critical areas ordinance. In such cases, the updated SMP shall also continue to apply to the designated critical area, but not the portion of the buffer area that lies outside of SMA jurisdiction. All remaining designated critical areas (with buffers NOT extending beyond SMA jurisdiction) and their buffer areas shall be regulated solely by the SMP.

Ecology concludes that the City of Lake Stevens have complied with applicable requirements from WAC 173-26-150 and 173-26-201 to allow for predesignation for shoreline areas within the City's Urban Growth Area (Figure 14 - The Watershed Company and Makers, 2010). Therefore, the shoreline designations and applicable policies and regulations provided for within this master program will apply to these areas (without the need to amend the master program) upon completion of annexation by the City.

Ecology concludes that those SMP segments relating to shorelines of statewide significance provide for the optimum implementation of Shoreline Management Act policy (RCW 90.58.090 (5)).

Ecology concludes that the City of Lake Stevens have complied with the requirements of RCW 90.58.100 regarding the SMP amendment process and contents.

Ecology concludes that the City of Lake Stevens have complied with the requirements of RCW 90.58.130 and WAC 173-26-090 regarding public and agency involvement in the SMP amendment process.

Ecology concludes that the City of Lake Stevens have complied with the purpose and intent of the local amendment process requirements contained in WAC 173-26-100, including conducting open houses and public hearings, notice, consultation with parties of interest and solicitation of comments from tribes, government agencies and Ecology.

Ecology concludes that the City of Lake Stevens have complied with requirements of Chapter 43.21C RCW, the State Environmental Policy Act.

Ecology concludes that the City of Lake Stevens SMP amendment submittal to Ecology was complete pursuant to the requirements of WAC 173-26-110 and WAC 173-26-201 (3) (a) and (h) requiring a SMP Submittal Checklist.

Ecology concludes that it has complied with the procedural requirements for state review and approval of shoreline master program amendments as set forth in WAC 173-26-120.

DECISION AND EFFECTIVE DATE

Based on the preceding, Ecology has determined the proposed amendments are consistent with the policies of the Shoreline Management Act, the applicable guidelines and implementing rules, once changes set forth in **Attachment B** are accepted by the City. Ecology's approval of the proposed amendment with required changes will become effective 14-days after the date at which Ecology receives written notice that the City has agreed to the required changes.

As provided in RCW 90.58.090 (2) (e) (ii) the City may choose to submit an alternative to all or part of the changes required by Ecology. If Ecology determines that the alternative proposal is consistent with the purpose and intent of Ecology's original changes and with RCW 90.58, then the department shall approve the alternative proposal and that action shall be the final action on the amendment.

References:

Watershed & Makers 2010, The Watershed Company and Makers. February 2010. Shoreline Analysis Report for the City of Lake Stevens Shorelines: Lake Stevens, Catherine Creek, and Little Pilchuck Creek. Prepared for the City of Lake Stevens Planning and Community Development Department, Lake Stevens, WA.

Watershed & Makers 2011a, The Watershed Company and Makers. April 2011. Shoreline Restoration Plan for the City of Lake Stevens Shorelines: Lake Stevens, Catherine Creek, and Little Pilchuck Creek. Prepared for the City of Lake Stevens Planning and Community Development Department, Lake Stevens, WA.

Watershed & Makers 2011b, The Watershed Company and Makers. November 2011. No Net Loss Summary Report for the City of Lake Stevens Shorelines: Lake Stevens, Catherine Creek, and Little Pilchuck Creek. Prepared for the City of Lake Stevens Planning and Community Development Department, Lake Stevens, WA.

Watershed & Makers 2011c, The Watershed Company and Makers. December 2011. Cumulative Impacts Analysis for the City of Lake Stevens Shorelines: Lake Stevens, Catherine Creek, and Little Pilchuck Creek. Prepared for the City of Lake Stevens Planning and Community Development Department, Lake Stevens, WA.

Department of Ecology. 2011. Shoreline Master Program Handbook; SMP Updates Piers, Docks and other structures. Accessed at:
http://www.ecy.wa.gov/programs/sea/shorelines/smp/handbook/pdf/Piers_docks_guidance_1-10-11.pdf

ATTACHMENTS

Attachment B - Ecology identification and rationale of Required Changes

Attachment C – Ecology Suggested Changes

Attachment D – Responsiveness Summary

Final SMP Checklist

ATTACHMENT 1

The following changes are required to comply with the SMA (RCW 90.58) and the SMP Guidelines (WAC 173-26, Part III);

ITEM	SMP PROVISION	TOPIC	BILL FORMAT CHANGES [<u>underline-additions</u> ; strikethrough-deletions]	ECOLOGY - DISCUSSION/RATIONALE
1	<p>Chapter 2 – Environment Designations Section B. Shoreline Environment Designation Maps</p>	<p>Shoreline Jurisdiction</p>	<p>The Shoreline Environment Designation Maps can be found in Appendix A. Pursuant to WAC 173-26-211, the maps illustrate the shoreline environment designations that apply to all shorelines of the state within the City of Lake Stevens’ jurisdiction. The lateral extent of the shoreline jurisdiction shall be determined for specific cases based on the location of the ordinary high water mark (OHWM), <u>effective</u> floodway, and presence of associated wetlands. The maps should be used in conjunction with the Environment Designation tables in Section C below. In the event of a mapping error, the City will rely upon the boundary descriptions and the criteria in Section C below.</p>	<p><i>The required change is necessary to ensure appropriate reference to the FEMA “Floodway” which may change as a function of FEMA’s issuance to updated FIRM maps.</i></p> <p><i>Note: the City provides reference in Chapter 3, Section B (Policies and Regulations), 5 (Flood Hazard Reductions), c. (Regulations), 1.b. to the “Flood Insurance Study for Snohomish County, Washington and incorporated areas” dated November 8, 1999.</i></p>
2	<p>Chapter 4 – Shoreline Modifications Section C.3.c Overwater Structure (OWS) Regulation (Pg. 56)</p>	<p>Pier/Dock Alternative Design</p>	<p>20. Alternative Design. The City shall approve new, replaced or additions to docks different from the standards below subject to Washington Department of Fish and Wildlife approval of an alternate project design of a width up to 6 feet for new docks or up to existing width on legally existing docks in the first 30 feet, <u>limited to the following features:</u> size of pilings, replacement area, and/or different decking requirements subject to a Hydraulic Permit Approval. With submittal of a building permit, the applicant shall provide documentation that the Washington Department of Fish and Wildlife has approved the alternative proposal design.</p>	<p><i>In order to maintain consistency with the planning assumptions described within the City’s Cumulative Impact Assessment and to ensure consistency with the No Net Loss (NNL) policy goal of the SMP-Guidelines, flexibility related to the alternative design provision with the City’s SMP, must be limited to Pier/Dock elements that commonly vary through use of a range of similar dock construction materials. Defining the limits to this flexibility will ensure that the City’s ability to satisfy NNL requirements (WAC 173-26-186 (8)) are not compromised. Further, shifting the authority to WDFW to adjust <u>any</u> SMP standard places an unreasonable burden on WDFW staff, as they may be asked to waive SMP-standards outside of their agencies regulatory focus/authority, which would undermine the City and Ecology’s obligation to maintain consistency with SMA/ SMP-Guideline implementotio obligations.</i></p> <p><i>Therefore, the identified amendment is necessary to limit WDFW consideration of alternative project design to project specific elements such as piling material/size and decking requirements.</i></p>
3	<p>Chapter 4 – Shoreline Modifications Section C.3.c OWS Regulation (Pg. 60)</p>	<p>Pier/Dock Replacement</p>	<p><u>Replacement of Existing Private Pier or Dock</u></p> <p>25. Proposals involving replacement of the entire private pier or dock, or 50 percent or more of the pier-support piles can be replaced up to 100% of the size area (square footage and dimension) of the existing pier or dock and shall comply with the following standards:</p> <p>a. Decking: All replacement piers must include decking with a minimum of 40 percent open space as described in subsection c.24.a. above.</p> <p>b. Replacement piles must be sized as described above under subsection 24.b, and must achieve the minimum 12-foot spacing to the extent allowed by site-specific engineering or design considerations.</p> <p><u>c. Width shall comply with “New Private, Non-Commercial Piers” standards (see Chapter 4 Section C.3.c.24.d).</u></p>	<p><i>The required changes are necessary to satisfy no net loss requirements, mitigate impacts to shoreline ecologic functions as recommended within the City’s Shoreline Analysis and Cumulative Impact Analysis (Watershed & Makers, 2010 and 2011) and to ensure consistency with Pier/Dock standards (173-26-231.3.b) from the SMP Guidelines.</i></p> <p><i>The SMP-Guidelines (WAC 173-26-231.3.b) characterize Pier/Docks as a Shoreline Modification, which should be restricted to the minimum size necessary and “designed and constructed to avoid or, if that is not possible, to minimize and mitigate the impacts to ecological functions” (Ecology, 2011). Pier/dock width greater than 4-feet within “nearshore” areas have not been shown to be consistent with SMP-Guideline requirements associated with Protection of Ecological Functions (WAC 173-26-201-2-c) and Environmental Mitigation (Mitigation Sequencing) at WAC 173-26-201 (2) (e). Mitigation Sequencing requires that Moster programs first <u>avoid impacts</u>, then for those impacts that cannot be avoided, jurisdictions are to minimize impacts. Finally remaining impacts which could not be avoided, or minimized, are to be <u>mitigated</u> as the third and final step in the sequence (Ecology, 2011). As analyzed and provided within the City’s Shoreline Inventory/Characterization Report (Watershed & Makers, 2010), the City’s Cumulative Impact Assessment (Watershed & Makers, 2011) and the Snohomish Basin Salmon Conservation Plan (SBSRF, 2005) existing habitat is recommended for “protection” and/ or “restoration” through reduction of overwater cover and in-water structures. The Shoreline Inventory/Characterization Report (Watershed & Makers, 2010; 47) recommends that SMP Pier/Dock standards provide clear “replacement” and “repair” definitions and</i></p>

ITEM	SMP PROVISION	TOPIC	BILL FORMAT CHANGES [<u>underline-additions</u> ; strikethrough-deletions]	ECOLOGY - DISCUSSION/RATIONALE
				<p>standards consistent with the SMP-Guideline section WAC 173-26-231-3b and “clear dimensional standards for new piers and replacement/modified piers”, that are consistent with Washington Department of Fish & Wildlife (WDFW) practices on the lake.</p> <p>The City’s Cumulative Impact Assessment (Watershed & Makers, 2011) cites adverse affects to shoreline ecological functions associated with Pier/Dock construction and provides a conclusion that the SMP will satisfy the No Net Loss of Ecological Functions requirement, when ecological improvements (such as use of transparent grating, reduction of overwater/in-water structure) are incorporated into replacement dock proposals. Therefore, the required change is necessary to implement the recommendations of the City’s supporting analysis and to ensure compliance with applicable SMP-Guideline requirements.</p>
4	<p>Chapter 4 – Shoreline Modifications Section C.3.c OWS Regulation (Pg. 60)</p>	Pier/Dock Additions	<p>27. When proposed additions to a private residential pier result in a pier that exceeds the maximum total length or width allowances for new docks as described in c.24 above, the addition may be proposed under a Variance application and subject to the following provisions:</p> <ul style="list-style-type: none"> a. The applicant must remove any in-water structures rendered obsolete by the addition; b. The additional length of walkway or ell must be no wider than <u>4 feet within the first 30 feet from shore and up to 6 feet for walkway or ell sections located more than 30 feet from shore</u>; c. The decking of all new pier elements include decking with a minimum of 40 percent open space as described in subsection c.24.a. above; and d. Any proposed new piles must comply with standards under subsection c.24.b. above. 	<p>Same justification as item #3 above.</p>
5	<p>Chapter 5 – Use Policies & Regulations Provision C.8.a. Residential Use, Applicability definition (Pg. 84)</p>	Residential Applicability definition	<p>8. Residential Development</p> <ul style="list-style-type: none"> a. Applicability <ul style="list-style-type: none"> Residential development means one or more buildings, <u>or structures, lots, parcels or portions thereof</u> which are designed for and used or intended to be used to provide a place of abode, including single-family residences, duplexes, other detached dwellings, floating homes, multi-family residences, mobile home parks, residential subdivisions, residential short subdivisions, and planned residential development, together with <u>normal appurtenances common to a single-family residence pursuant to WAC 173-27-040 (2) (g).</u> accessory uses and structures normally applicable to residential uses, including, but not limited to, garages, sheds, tennis courts, swimming pools, parking areas, fences, cabanas, saunas, and guest cottages. Residential development does not include hotels, motels, or any other type of overnight or transient housing or camping facilities. 	<p>The definition for “Residential Use” provided through the “Applicability” statement in the City’s SMP is too broad and conflicts with other definitions provided in the SMP. Therefore, the proposed provision is inconsistent with the Residential Use description in the SMP-Guidelines at WAC 173-26-241.</p> <p>On page 98 of the SMP, the City has defined “Appurtenance” consistent with WAC 173-27-040(2) (g). However, as noted above the subject provision provides a much broader description of Residential Uses, which includes reference to “accessory uses”, which again broadens the potential application of Residential Uses in a manner that is not consistent with WAC 173-27, or applicable sections of the SMP Guidelines. Broad applicont of undefined Residential Use elements beyond the scope of “normal appurtenance”, could undermine cumulative impact assumptions anticipated by both the SMA and supporting materials relied upon for the local SMP-update. Cumulative impacts to shoreline ecological functions must be considered as part of this SMP-update.</p> <p>Therefore, Residential Use elements are authorized to include “normal appurtenances” (WAC 173-27), but cannot be broadly defined, as anticipation of the scope and intensity of future development is necessary to inform the cumulative impact assessment and overall assessment of no net loss resulting from implementation of the updated SMP. Therefore, this required change is necessary to appropriately define the scope and description of “Residential Uses” and “normal appurtenances”.</p>

ATTACHMENT 1

ITEM	SMP PROVISION	TOPIC	BILL FORMAT CHANGES [<u>underline-additions</u> ; strike-through-deletions]	ECOLOGY - DISCUSSION/RATIONALE
6	Chapter 5 – Use Policies/Regulation Provision C.8.c.3.a.i (Pg. 85)	New Residential Setbacks	<p>3. New residential development, including new structures, new pavement, and additions, within shoreline jurisdiction on lakes shall adhere to the following standards:</p> <p>a. Setbacks:</p> <p>i. New buildings: Set back all covered or enclosed structures <u>the average of the setbacks of existing houses on adjacent lots on both sides of the subject parcel</u>, with a standard minimum setback, which is a lake setback of 60 feet from the OHWM (consisting of 50 feet from the OHWM plus an additional 10 foot building setback). <u>Where the Shoreline Administrator finds that an existing site does not provide sufficient area to locate the residence entirely landward of this setback, the Shoreline Administrator may allow the residence to be located closer to the OHWM, provided all other provisions of this SMP are met and impacts are mitigated.</u></p>	<p><i>The subject provision, as proposed does not provide any limits or necessary details describing how the Shoreline Administrator would evaluate the need to waive or reduce shoreline setback standards. Further, the subject provision does not include a restriction to limit new structures from being constructed waterward of existing adjacent structures on neighboring lots.</i></p> <p><i>Therefore, the required changes are necessary to ensure consistency with the City's Cumulative Impact Analysis related to anticipate impacts resulting from future shoreline development. The change is also necessary to ensure consistency with the City's stated Shoreline Residential Management Policies (Chapter 2, Section C.4.c.), General Use Policies (Chapter 5, Section C.1.b.), Residential Use Policies (Chapter 5, Section C.8.b 1-7), or applicable SMP-Guideline standards (No Net Loss 173-26-186, Residential Use 173-26-241.3.j).</i></p> <p><i>As referenced above, a provision intended to limit construction of new residential structures waterward of adjacent structures on neighboring parcels, was included in previous drafts of the City's updated SMP. However, this provision limiting waterward migration of residential structures was not included in the locally approved SMP (Ord. #856). The identified change is necessary to ensure that the City's SMP is consistent with the policies listed above and the City's Final Cumulative Impact Analysis (Watershed and Makers, 2011). The City's analysis reiterate the importance of preserving shoreline setbacks by limiting waterward migration of residential structures closer to the shoreline to maintaining shoreline ecological functions to satisfy the no net loss goal of the master program update. The analysis refers to the "Average Setback" within the Shoreline Residential environment surrounding Lake Stevens, as greater than 60-feet, and provides the following conclusion related to potential cumulative impacts related to redevelopment potential of existing residential structures around the lake:</i></p> <p><i>"Although it would be possible, in some instances, for residences to be relocated closer to the shoreline than their existing condition, they would not be allowed further waterward than the greater of 60 feet or the average of their two adjacent structures. Presumably, this will continue to maintain an average setback greater than 60 feet, thereby minimizing the likelihood of additional degradation of ecological functions."</i> (Watershed and Makers, 2011:26).</p> <p><i>Therefore, in order to ensure consistency with the City's analysis of no net loss, the required change is necessary to manage waterward migration through redevelopment of residential structures to maintain consistency with SMP-Guideline requirements.</i></p>
7	Chapter 5 – Use Policies/Regulation Provision C.8.c.3.d. (Pg. 87)	New Residential Development Patio	<p>d. If there is no bulkhead, or if a bulkhead is removed, a small waterfront deck or patio can be placed along <u>within</u> the shoreline setback <u>provided the property owner agrees to not construct a bulkhead or install any hard shoreline stabilization to protect the deck in the future, and:</u></p>	<p><i>This required change is necessary to ensure that a property owner understands that a patio or deck constructed under this provision cannot be protected in the future with a bulkhead or hard stabilization. Therefore, the patio/deck should be installed at an appropriate location far enough away from the shoreline edge to not need protection in the future.</i></p>
8	Chapter 5 – Use Policies/Regulation Provision C.8.c.3.e. (Pg. 87)	New Residential Development Patio	<p>e. All property owners who obtain approval for a waterfront deck or patio in exchange for removing a bulkhead and retaining or planting native vegetation must prepare, and agree to <u>not construct a bulkhead or install hard shoreline stabilization to protect the deck in the future, and</u> adhere to, a shoreline vegetation management plan prepared by a qualified professional and approved by the Shoreline Administrator that:</p>	<p><i>Same rationale as provided above under Item #7.</i></p>

ITEM	SMP PROVISION	TOPIC	BILL FORMAT CHANGES [<u>underline-additions</u> ; strikethrough-deletions]	ECOLOGY - DISCUSSION/RATIONALE
9	Chapter 5 – Use Policies/Regulation Provision C.8.c.4. (Pg. 88)	New Residential Development Vegetation Retention	4. For new development on previously undeveloped lots, any existing native vegetation shall be retained along the-shoreline to <u>a minimum of 50-feet 20-feet upland</u> from the OHWM. If little or no native vegetation exists on the previously undeveloped lot, native vegetation shall be planted along the shoreline to 20 feet from the OHWM. 25 percent of the required vegetated area can be cleared or thinned for view maintenance and waterfront access, provided 75 percent of the area remains vegetated. Invasive species may be removed, vegetation trimmed, and trees —limbed up from the ground to provide views. In the 25 percent cleared area, pathways for access to the water are allowed.	<p><i>The City has <u>not</u> demonstrated that limiting vegetation retention to 20-feet upland of the OHWM will adequately protect water quality or habitat shoreline ecological functions pursuant to the SMP-Guideline at WAC 173-26-201(3) (d) (i). The City’s Critical Areas Ordinance (CAO) list Lake Stevens as a “Fish and Wildlife Habitat Conservation Area” (FWHCA), for which buffers range from 50’ to 150’ upland of the OHWM. Further, the City’s. SMP’s must include policies and regulations designed to achieve no net loss of shoreline ecological functions (WAC 173-26-186 (8) (b)).</i></p> <p><i>This change is required to ensure compliance with SMP-Guideline requirements related to Governing Principles of the Guidelines within WAC 173-26-186 (No Net Loss), Basic Concepts within WAC 173-26-201-2 (Use of Scientific/Technical Information, Adoption of Policies/Regulations and Protection of Ecological Functions)</i></p>
10	Chapter 5 – Use Policies/Regulation Provision C.8.c.7. (Pg. 89)	New Residential Development Creation of New Lots	<p>7. The creation of new residential lots within shoreline jurisdiction on lakes shall be prohibited unless the applicant demonstrates that all of the provisions of this SMP, including setback and size restrictions, can be met on the proposed lot. Specifically, it must be demonstrated that:</p> <ul style="list-style-type: none"> a. The residence can be built in conformance with all applicable setbacks and development standards in this SMP. b. Adequate water, sewer, road access, and utilities can be provided. c. The intensity of development is consistent with the City’s Comprehensive Plan. d. The development will not cause flood or geological hazard to itself or other properties. <u>e. Land-division creating four or more new parcels shall provide Public Access (see Chapter 2 Section 4.c.5. and Chapter 3 Section B.7.).</u> <p>In addition, new residential development on new lots that contain intact native vegetation shall conform to the regulations of subsection c.4 above. (See also vegetation conservation standards in Chapter 3 Section B.11).</p>	<p><i>This required change is necessary to ensure internal consistency between the subject provision and a “Public Access” related provision within Chapter 3 – Section B.7., and to satisfy SMP-Guideline requirements related to Residential subdivision that create four or more new parcels (WAC 173-26-241.3.j)</i></p>

References:

Watershed & Makers 2010, The Watershed Company and Makers. February 2010. DRAFT Shoreline Analysis Report for the City of Lake Stevens Shorelines: Lake Stevens, Catherine Creek, and Little Pilchuck Creek. Prepared for the City of Lake Stevens Planning and Community Development Department, Lake Stevens, WA.

Watershed & Makers 2011, The Watershed Company and Makers. December 2011. Cumulative Impacts Analysis for the City of Lake Stevens Shorelines: Lake Stevens, Catherine Creek, and Little Pilchuck Creek. Prepared for the City of Lake Stevens Planning and Community Development Department, Lake Stevens, WA.

Snohomish Basin Salmon Recovery Forum (WRIA 7). 2005. Snohomish River Basin Salmon Conservation Plan Final. June 2005.

Department of Ecology. 2011. Shoreline Master Program Handbook; SMP Updates Piers, Docks and other structures. Accessed at: http://www.ecy.wa.gov/programs/sea/shorelines/smp/handbook/pdf/Piers_docks_guidance_1-10-11.pdf

ATTACHMENT 1

The following changes are recommended to clarify elements of the City's updated SMP.

ITEM	SMP PROVISION	TOPIC	BILL FORMAT CHANGES [<u>underline-additions</u> ; strikerthrough-deletions]	ECOLOGY - DISCUSSION/RATIONALE
A	Chapter 5 – Shoreline Use Provision 8.c Regulation 13 (Pg. 56)	Residential Development Standard	b. <u>Detached ((G))garages and vehicle (motorized and recreational) parking areas</u> ((and pavements for motorized vehicles (drives and parking areas))) shall be set back at least 200 feet from the OHWM. If the Shoreline Administrator determines that the property is not sufficiently deep (measured perpendicularly from the shoreline) to allow construction of garages or parking areas outside of shoreline jurisdiction then (s)he may allow such elements to be built closer to the water, provided that the garage or parking area is set back from the water as far as physically possible.	<i>This recommended change is requested by the City of Lake Stevens to clarify application of this provision.</i>

Responsiveness Summary to Public Comments

The City of Lake Stevens (City) adopted Ordinance #856 on November 28, 2011 authorizing submittal of the updated Shoreline Master Program (SMP) to the Department of Ecology (Ecology) for review. Ecology notified the City of a complete submittal in a letter dated February 27, 2012, initiating formal review of the updated SMP. The Department of Ecology accepted public comments on the City's updated SMP between April 17 and May 18, 2012 and at a public hearing hosted by Ecology on April 19, 2012. Notice of the comment period and public hearing was published in the Everett Herald on April 10, 2012 and was also mailed to over 100 individuals listed as regional or local interested parties. Ecology received testimony from five individuals at the Public Hearing (PH) on April 19th and written comments (W) from six individual as summarized below.

Please note, the statements below are not the opinions or comments of Ecology, but rather summary of comments received during the public comment period.

Item No.	Comment Topic	Name of Commenter	Comment	Local Government Response
W-1	Shoreline Modification (Section 3C) Overwater Structures – Covered Moorage, Regulations 15 and 34	Cliff Call callcg@aol.com	(Covered Moorage) Stated opposition to the allowance of (new) covered moorage, recommend prohibition of new covered moorage structures within the City's shoreline jurisdiction. Mr. Call contends that neither walled nor open (no walls) covered moorage structures are necessary to shelter the relatively small lake boats that are common to Lake Stevens. Further he states that commercially available canvas covers are adequate in protecting boats/watercraft used on the Lake and can easily be removed in the off-season. Mr. Call points out that permanent covered moorage structures obstruct views of the lake from nearby neighbors or nearby public parks and require long term maintenance, for which he highlights concerns related to paint/stain polluting the water quality of the lake and the potential lack of commitment to long-term maintenance by future land owners after properties with covered moorage structures change hands.	<p>City of Lake Stevens Response: In considering the allowance of covered moorage, the City recognized that the portions of the lakeshore under County jurisdiction are allowed "boathouses" with no walls under Ecology's approved Snohomish County Shoreline Management Program. In order to minimize the visual obstructions and overwater coverage, the City adopted specific criteria for new covered moorage in SMP 4C3c34:</p> <p>34. Covered moorage with no sides may be permitted as an accessory to residential development provided that:</p> <ol style="list-style-type: none"> Only one per dock; Dimensions no larger than a total of 240 square feet; Maximum height of roof at 8 1/2 feet above dock; Structure shall be located at least 30 feet waterward from the OHWM; and Flat roofs are prohibited. <p>In order to protect the lake, water and wildlife, the SMP includes specific description of the types of paint, stain or preservatives for use on overwater or in-water structures at SMP 4C3c13.</p>
W-2	Shoreline Modification (Section 3.24C) Overwater Structures	John Volpone 10430 Sandy Beach Drive Lake Stevens, WA	(Dock Length) Concern that the 150-foot dock length is too limiting for moorage, due to shallow water along some parts of the lake. Specifically, Mr. Volpone requests retention of the 200' dock length limit provided in earlier draft of the SMP, that he states is necessary to allow adequate depth for moorage during low water summer months.	<p>City of Lake Stevens Response: SMP 4C3c24ci does include an exception for the Shoreline Administrator to approve a longer dock to reach the 5 and a half foot depth. However, the same exception states that no dock should extend more than 150 feet from the shore. Throughout the process, it was felt that 150 feet was an appropriate limitation given the size and configuration of Lake Stevens.</p>

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Responsiveness Summary to Public Comments

Item No.	Comment Topic	Name of Commenter	Comment	Local Government Response
PH-1	(same as above)	Testimony of John Volpone.	(Summary Testimony) Mr. Volpone also provided testimony generally consistent with comments summarized above, at the Public Hearing on April 19. In addition to requesting that the maximum dock length be extended to 200-feet, Mr Volpone points to the recent popularity of the use of “wake boats” on the lake, which he identifies the waves from this activity as contributing to damage to the bottom of his boat from hitting the bottom of the lake when the lakes water level is low. Finally, Mr. Volpone notes that this problem is isolated to the northeast corner of the lake, which he predicts will be ongoing, as describes the input of silt is transported to the north end of the lake by the prevailing south winds throughout the year.	City of Lake Stevens Response: See Response W-2 above.
W-3	Shoreline Modification Length of Overwater Structures	Ted Boysen 10432 Sandy Beach Drive Lake Stevens, WA lbaysen@comcast.net	(Dock Length) Similar comment to Item W-2 (above), Mr. Boysen is also concerned that 150-foot dock length limit will not provide a reasonable depth for mooring his boat. Mr. Boysen states that a 175-foot limit would be a fair compromise. He concludes that the proposed (shorter) limit would be: unfair, dangerous, cause damage, and would restrict the intended recreational use of the lake. (Placement of Weir Boards) For Lake Stevens City Officials, can you please put the weir boards in now? The lake level has already gone down around 6 inches.	City of Lake Stevens Response: Dock Length. See Response W-2 above. Placement of Weir Boards. The City uses an adopted Lake Management Plan to determine the placement of the weir boards and monitors the weir weekly. The lake level is actually higher than the desired elevation for this time of year. The concern with placement of the weir too early is that the lake can rise rapidly during heavy rain events (seen this past month) and result in some potential flooding conditions. This can be seen from the rain event this last weekend where the lake elevation increased by 2 inches over 72 hours without the weir being in place.
W-4	Shoreline Modification (Section 3) Overwater Structures	Bruce Morton 11222 Vernon Road Lake Stevens, WA	(Roof Style – Covered Moorage) Mr. Morton states that the SMP’s prohibition on flat roofs for covered moorage structures, should be removed and states that it “...is an arbitrary decision”, not based on “...preservation or enhancement of the ecological functions of the lake”.	City of Lake Stevens Response: The City Council discussed the issue of flat vs. peaked roofs on covered moorage extensively at the public hearings. The motion was made on whether to allow flat roofs and five votes for no flat roofs and two for flat roofs so the no flat roof language was adopted as a preference for Lake Stevens.
W-4a	Non Conforming Use	(same as above)	(Non-Conforming Question) Mr. Morton requests confirmation on existing non-conforming elements that can be maintained and will not be required to discontinue or change?	City of Lake Stevens Response: SMP 7G describes existing structures and development legally established prior to the effective date of the SMP. It also states that any expansion or reconstruction must meet the provisions of the SMP. In general, legal existing structures, uses and appurtenances may remain and be maintained.

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Item No.	Comment Topic	Name of Commenter	Comment	Local Government Response
PH-2	(summary of above comments)	Testimony of Bruce Morton.	(Summary Testimony) Mr. Morton also provided testimony at the Public Hearing on April 19, consistent with comments summarized above.	City of Lake Stevens Response: See Response to W-4a above.
W-5	SMP-Update Process	Futurewise, Contact Dean Patterson Dean@futurewise.org	(Supplemental Materials) Futurewise have submitted three guidance documents that they request be added to the official record for the City's SMP update: <ul style="list-style-type: none"> • "Futurewise's Guidance on No-Net-Loss of Ecological Functions, Cumulative Impact Analysis and Restoration" • "Futurewise's Guidance on Establishing Shoreline Environments" • "Futurewise's Guidance on Buffer Options Using Science" 	City of Lake Stevens Response: The letter from Futurewise with the three guidance documents were submitted as written testimony. The City Council considered all verbal and written comments in their final decision on adoption of the SMP. The City concludes that adequate environmental protections are included in the SMP submitted to Ecology for final review and approval.
W-5a	Mitigation (Environmental Impacts)	(same as above)	(General Mitigation) General comment that the SMP lacks sufficient compensatory mitigation requirements. Futurewise recommend that the City revise the SMP to "require mitigation plans" (not optional), except for a few exceptions that are listed in comments. They also have provided recommended language (page 2) within their comment letter, which they recommend be integrated into the City's SMP. (Compensatory Mitigation) In addition Futurewise suggests that the City incorporate either specific compensatory mitigation requirements for each use, or as illustrated by a Bainbridge Island example, integrate into the SMP more general compensatory mitigation requirements.	City of Lake Stevens Response: The Critical Areas Regulations for Shoreline Jurisdiction were based on the adopted Critical Areas Regulations for the City (Chapter 14.88 LSMC), which was based on Best Available Science. In addition, the City and Ecology spent months discussing the shoreline critical areas regulations with the final outcome that the City changed the shoreline regulations to be consistent with Ecology's "Wetlands & CAO Updates: Guidance for Small Cities. Western Washington Version" dated January 2010 (revised July 2011).
W-5b	Shoreline Stabilization	(same as above)	(Stabilization Definition) Futurewise note that the City developed an excellent statement of preference regarding hard, hybrid and soft stabilization measures, but recommend that stronger regulatory language be incorporated into the SMP to ensure consistent implementation of these preferences. (Stabilization Mitigation) Similar to mitigation comments (item 5a) above, Futurewise recommend that the City provide additional regulations describing how compensatory mitigation should be done for Shoreline Stabilization projects.	City of Lake Stevens Response: Currently, about 78-83 percent of the Lake Stevens shoreline is armored. The lake is an active recreational lake with different types of motored equipment causing wave action on the shore. Shoreline Stabilization requirements are very specific in Ecology's SMP Guidelines to ensure all jurisdictions provide appropriate protection. The City modified the shoreline stabilization section after early comments from Ecology. In addition, the City reviewed shoreline stabilization sections of other adopted SMPs. SMP 4C2b1 is a policy about the preference for soft over hybrid over hard structures and that requirement must be demonstrated. Although language is

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				<p>not again repeated in the regulations, SMP 1E1 clearly states:</p> <p><i>“ALL new development, uses, and activities must comply with the policies and regulations set forth in the City of Lake Stevens Shoreline Master Program, including those developments, uses, and activities that are exempt from permits.”</i></p> <p><i>The current language in the SMP meets the Ecology Guidelines and Shoreline Management Act, is consistent with recently adopted SMPs and is protective of the shoreline of Lake Stevens.</i></p>
W-5c	<p>Overwater Structures Pier/Dock standards (Section 3.c.4 and .15)</p>	(same as above)	<p>() Futurewise comment that “...temporary cabanas need to be prohibited,” as they are not a water-dependent use and would be inconsistent with RCW 90.58.020 (fourth paragraph) and WAC 173-26.241(2)(a).</p> <p>() Futurewise state [that] “The SMP correctly prohibits walled covered moorage”, but further recommend that all covered moorage be prohibited, as they conclude that allowance of such facilities is not necessary to support water-dependent components of uses within the City and is inconsistent with the intended purpose of mitigation sequencing to avoid unnecessary impacts. As an alternative, Futurewise could accept allowance of “small non-structural, translucent boat canopies”.</p> <p>(Pier/Dock Area) Futurewise argue that the City’s SMP should provide overwater structure “...area limits of 500 to 700 square feet, consistent with what other jurisdictions have adopted with Ecology approval”. Futurewise also recommend narrower pier/dock width requirements, and mitigation for “distinct impacts” of allowing use of 40% (open-space) grating/no grating more than 30-feet seaward of OHWM.</p> <p>(Overwater Structures – General) Futurewise recommend specific language as provided on page 4 (2nd paragraph) of their comment letter be incorporated into the City’s SMP regarding “Public, Community and Commercial Overwater Structures”.</p> <p>(Overwater Structure Mitigation) Finally, Futurewise recommend that mitigation be specified for dock and pier proposals that not only minimize, but offset all impacts, for which other options may need to be considered, including out of kind mitigation such as removal of armoring, vegetation</p>	<p>City of Lake Stevens Response: Non Water-Dependent. The Shoreline Management Act and Ecology’s SMP Guidelines allow for accessory structures for single-family residential uses including garages, sheds, tennis courts, swimming poles, etc. Temporary cabanas allowed for five months of the year (SMP 4C3c1) is an accessory use to a single-family residence, would not create additional coverage of the water if placed on a dock, nor harm the shoreline if placed on the shore as it is a temporary structure. It is not inconsistent with the referenced RCW or WAC.</p> <p>Covered Moorage. Please see previous discussion of covered moorage in Response W-1. Ecology recently adapted the Snohomish County’s Shoreline Management Program with the allowance for non-walled boathouses. It would be inconsistent to restrict open covered moorage on the same lake within the City with the recent approval by Ecology on other areas of Lake Stevens within Snohomish County jurisdiction.</p> <p>Pier/Dock Area . Lake Stevens is not under the jurisdiction of the Army Corps of Engineers Regional General Permits as required on Lake Washington and other areas with Chinook Salmon. Lake Stevens has Kakanee, which tends to use the first 30 feet from share for migration. Therefore, discussions with Fish and Wildlife and Ecology lead to the current restrictions of a four-foot width in the first 30 feet with 40 percent open space, but allowing for six-foot widths past the first 30 feet and no maximum dock area. However, there are other restrictions on number of docks per lot, length/width of ells, fingers and float, and replacement of docks. Currently, many docks on Lake Stevens are six to ten feet in width with no open space, so over time, the new regulations will reduce overwater coverage. These regulations are also consistent with</p>

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			<p>enhancement, etc. Futurewise conclude that at a minimum, a mitigation plan must be required and must address the avoidance, minimization and compensation components of mitigation sequencing, for which their comments provide some additional examples.</p>	<p><i>the recently adopted Snohomish County SMP.</i></p> <p>Overwater Structures – General. <i>During the SMP process, it was brought to the City’s attention that there is at least one existing community with more than one dock and more than four houses. This community has on the face of the approved plat and in the covenants that seven individual docks and a shared dock for the rest of the houses was allowed. This would not fit with the proposed language. In order to allow the existing community docks to continue, SMP 4C3c44 was added. In the SMP, boating facilities (SMP 5C3) are related to commercially-related boating facilities such as marinas, boat launch ramps, etc. not related to private residential development.</i></p> <p>Overwater Structure Mitigation. <i>SMP 3B4c lays out the environmental impact regulations for shoreline projects including a clear sequence of steps in order of priority from avoid, minimize, rectify, reduce/eliminate, compensate, and monitor impacts. The Critical Areas Regulations for shoreline areas has many specific requirements related to mitigation enhancement, monitoring, etc. Based on the No Net Loss Report specific mitigation is not required for private residential docks and piers as long as they meet the policies and regulations in the SMP. Residential docks are on allowed water-dependent use under the SMA and do not require proof of need or a mitigation plan. There are some regulations that allow for additional structure or uses, for example a lakeside deck of 200 sq.ft. if specific mitigation is completed. These also would not require a mitigation plan as long as they meet the policies, regulations and specific mitigation listed within the SMP. The City has specific submittal lists that are consistent with the WAC for review of all shoreline permits (WAC 173-27-040).</i></p>
W-5d	Shoreline Setbacks (Section C.8.c.3.a)	(same as above)	<p>(Setback Standards) Futurewise state concerns with the City’s setback standards, which they argue do not account for the variation in existing waterfront setbacks along the lake. Of particular concern, Futurewise state that at least ¼ of the existing development along the lake is located more than 50-feet from the OHWM (some more than 100-feet), for which they argue that the City’s Cumulative Impact Analysis does not account for the potential net loss of shoreline ecological functions when/if these existing structures were redeveloped at a location closer to the shoreline, which would be allowed by the SMP. Futurewise recommend two alternative</p>	<p>City of Lake Stevens Response: <i>One of the first steps in the SMP process is completion of an Inventory and Analysis report to set the existing baseline of the shoreline areas. This was completed by the City’s consultant, The Watershed Company. In addition, the current setback from the lake is 50 feet with a building setback of an additional 10 feet. The lake is highly urbanized with mostly small parcels. Per the City’s Cumulative Impacts Analysis, the average setbacks for existing residences is 64 feet on the western shoreline of Lake Stevens, 103 feet on the eastern shoreline, and 98 feet on the northern shoreline. After listening to public testimony about other jurisdictions with 35</i></p>

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			<p>amendments to the existing shoreline setback standards as described on pages 4 and 5 of their comment letter.</p>	<p>foot setbacks it was determined to retain the existing minimum 60 ft setback for development. However, also due to public testimony, the Council allowed for existing homes within the minimum setback some expansion, however, mitigation will be required (SMP 5C83a). Single-family residences are proposed to allow appurtenant structures, but there is a 40 percent impervious surface requirement. However, as per Futurewise, the SMP would allow a property owner to subdivide a large lot, which could bring a house closer to the shoreline, or a new house could be built closer to the shoreline if the existing house was removed. Tree retention regulations and planting in the first 20 feet of shoreline for new development is expected to reduce the impacts for new development.</p>
W-5e	<p>Vegetation Management (Incentives and compensatory enhancement)</p>	(same as above)	<p>(Vegetation Management Incentives) Futurewise characterize re-vegetation incentive C.8.c.3.d allowing "...on-the-water docks covering 25 percent of the water frontage in exchange for replanting a narrow width for the rest of the frontage" as "...not an incentive, [but] it is a give-away development allowing for non-water dependent uses...to cause new impacts" which they conclude is not consistent with either the SMA or the SMP-Guidelines. They state their opposition to this particular regulation and suggest that if the provision remains as part of the SMP, then additional mitigation such as pulling an existing bulkhead should be required.</p> <p>(New Development) Related to compensatory vegetation enhancement, Futurewise provide multiple recommendations covering a number of shoreline development scenarios. For development on vacant lots, Futurewise state that the SMP will only protect intact native vegetation and require replanting within 20-feet of the shoreline edge, which they argue is inadequate to offset anticipated impacts from future development. Futurewise argue that new development on vacant lots will have much larger (new) impacts compared to impacts resulting from redevelopment/expansion of existing uses. Based on this logic, they recommend (at a minimum) that the full setback (50-feet) be replanted to mitigate impacts from new development on vacant lots.</p> <p>(Existing Development) In regard to expansion of existing development, Futurewise suggest that in order to compensate for Cumulative Impacts, the City should supplement their 20-foot enhancement area approach by</p>	<p>City of Lake Stevens Response: Vegetation Management Incentives. The referenced incentive for waterfront deck or patio could only be used if the parcel has not reached the impervious surface requirement of 40 percent, does not have a bulkhead or removes the bulkhead, and meets a number of other requirements. As part of the No Net Loss report, this was shown to not have significant impacts to the loss of the resource. Under SMA, it is considered on appurtenant use for a single-family residence and could be allowed.</p> <p>New Development. Of the approximately 417 lakefront parcels on Lake Stevens, 398 are built out. Another six are parks. This leaves 12 parcels undeveloped. It is likely that they are undeveloped because they have critical areas or are not large enough for development and thus, will not be developed in the future. With minimal undeveloped parcels, having more restrictions on new development would not provide much benefit to the resource. In addition, the Cumulative Impacts Analysis and No Net Loss Report show no loss of habitat or significant impacts from the regulations in the proposed SMP.</p> <p>Existing Development. The City appreciates the concerns Futurewise has to protect the shores of Lake Stevens. The SMA requires a very specific process spelled out by Ecology in SMP Guidelines to follow when updating the SMPs. The City and their consultants worked closely with Ecology, Fish and Wildlife, residents and the public to find the best path for protection of the resource. The Shoreline Management Act does not require a shoreline to be returned to</p>

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			<p>requiring a 1-sq-foot enhancement for each square foot of new development proposed within shoreline jurisdiction. Along with this recommendation, Futurewise note that the City's existing SMP standard only requires the "one-to-one enhancement" for expansion of structures within the 50-foot shoreline jurisdiction and allows for use of low-impact development techniques as a substitute for vegetation enhancement. Therefore, Futurewise recommend that the SMP standard be amended to apply to all development anywhere within shoreline jurisdiction, limit mitigation to "in-kind" vegetation enhancement (i.e., not low-impact development substitutes), specify that all intact vegetation within the setback must be protected, and as a minimum vegetation standard require that mitigation for expansion of existing development enhance degraded vegetation conditions within a 20-foot width for 75% of shoreline frontage.</p>	<p><i>pristine conditions, but instead to not reduce the current baseline so showing No Net Loss. The Inventory and Analysis Report was completed to determine the baseline, which for Lake Stevens is an almost completely built out and armored urban lake with minimal natural vegetation except in specific areas. The Cumulative Impacts Analysis and the No Net Loss Report show that the SMP policies and regulations do protect the habitat and resource from increasing the baseline environment. In addition, the City is required to monitor how the regulations are working as development occurs and at the next update will be required to make modifications if the regulations are not meeting the required protections of the SMA.</i></p>
W-5f	<p>Shoreline Buffers (Setback Reduction, Scientific Basis and Cumulative Impact Analysis)</p>	(same as above)	<p>(Buffer/Setback Reduction) In reference to the SMP's allowance for buffer reduction based on intervening development, Futurewise recommend that this standard only be allowed for areas where native vegetation has already been eliminated, as native vegetation provides ecological functions.</p> <p>(Scientific Basis) Futurewise state that they could not find a "scientific basis" for the City's proposed buffer system, for which they have included on a CD a copy of their Critical Areas Ordinance Guidance, which they suggest the City use to cite scientific references provided in the Guidance to justify the SMP's buffer system within the context of buffer science and the applicable requirements of the SMA and GMA.</p> <p>(Cumulative Impact Analysis) Futurewise conclude that the City's CIA does a good job describing the SMP's protection measures, but is vague in describing impacts allowed through regulatory gaps in the SMP. They recommend that the City supplement the CIA by including "...a more careful assessment of the impacts that the SMP will allow." and cite their Guidance as providing additional details related to this recommendation.</p>	<p>City of Lake Stevens Response: Buffer/Setback Reduction. <i>The definition of Significant Ecological Impact includes a reduction or harm to ecological functions or ecosystem-wide processes, which if affected would require mitigation sequencing. In addition, the City's current code has a Tree Retention requirement (LSMC 14.76.120).</i></p> <p>Scientific Basis. <i>The current lake setback was set in 2007 as part of the Critical Areas update, which included Best Available Science. As discussed previously, one of the first steps in updating the SMP was to determine a baseline including setbacks. Based on the reality in place around the lake today and the minimal 12 undeveloped or underdeveloped properties, it was determined between Ecology and the City's Wetland Consultants that staying with the current 50 foot setback plus 10 foot development setback would be protective of the lake habitat and minimize nonconforming structures and uses around the lake. An increase of lake setback of 100 feet would put most development including houses and appurtenant structures within the buffer and create nonconforming structures and uses.</i></p> <p>Cumulative Impact Analysis. <i>Futurewise's proposal to create three different setbacks around the lake to better meet the varied setbacks of 63, 98 and 100 feet of current structures would reduce the number of additional nonconforming structures and uses discussed in the paragraph above. However, the code would be more challenging for property owners than to</i></p>

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				<i>use one lake setback. Again, with only 12 parcels undeveloped on the lakeshore, there is probably minimal impact to the cumulative impacts from a change to varied setbacks.</i>
PH-3	(Summary of above comments)	(Testimony) Kristin Kelly – representing Futurewise 1429 Avenue D, #523 Snohomish, WA 98290	(Summary Testimony) Ms. Kelly stated that she is representing Futurewise, Audubon Society and People for Puget Sound. She provided written copies of the comment letter and supplemental Guidance documents and then provided a summary of the written comments consistent with the summary of issues provided above.	City of Lake Stevens Response: <i>The City Council did take under consideration previous written and verbal testimony from Ms. Kelly when adopting the SMP for submittal to Ecology. Any new verbal or written testimony submitted as part of the Ecology review process has not been considered by the City Council.</i>
PH-4	SMP Update Process – Public Input	(Testimony) Gigi Burke. 920 East Shore Drive Lake Stevens, WA	(Public Input) Provided testimony to remind everyone that a number of lake residents have invested a lot of time effort and resources into the SMP update, for which Ms. Burke stated that she did not want to reiterate all the points that were already made. However, she believes that people involved in the update want a healthy lake for fish and wildlife and future generations, but want to make sure that preservation is done in a reasonable manner that is not going to cost a lot of money and will provide people with the ability to maintain their existing properties as they do today. Ms. Burke raised concern with other testimony provided during the hearing, which she stated does not represent people who live on the lake and hopes that materials and concerns previously presented to the City will be taken into consideration.	City of Lake Stevens Response: <i>Throughout the two year SMP Update process, the City has worked with experienced SMP consultants, a Citizen Advisory Committee, Ecology, Fish and Wildlife, residents, Futurewise, and other concerned parties. There are many complicated concerns and issues that had to be worked out. The proposed SMP is a coordinated effort to protect the shoreline habitat for No Net Loss as well as provide future use for property owners, lake users, and visitors. The process involved give and take on all sides, but the end product was required to meet the SMP Guidelines and the requirements of the Shoreline Management Act and to prove No Net Loss and show negligible cumulative impacts. The City believes the Council adopted SMP meets these objectives.</i>
PH-5	Shoreline Modification (Section 3) Overwater Structures	(Testimony) Patricia Perry 1611 Vernon Road Lake Stevens, WA	(Safety) Ms. Perry raised diving safety concerns related to dock length limits within the SMP that intend to minimum length to achieve a minimum of 5 ½-feet of water depth for boat moorage. Ms. Perry acknowledges that docks are intended for moorage of boats, not for diving, but states that the reality is that kids will dive/swim off docks and suggest that the City increase the minimum water depth standard to 8 ½-feet consistent with an American Red Cross recommendation to support safe diving. Having personally experienced a spinal injury after diving into shallow water, Ms. Perry would like to avoid this happening in Lake Stevens and remains concerned about the potential (legal) liability to a property owner, if someone was injured while diving off a	City of Lake Stevens Response: Safety. <i>The City Council did take the information provided from the American Red Cross with all other public testimony including depth required for size of boats on the lake to make a determination on depth at the end of the dock. The Council chose to keep the 5 and a half foot depth at the end of the dock because of Ecology guidelines that say a dock is intended for moorage, not diving.</i> Overwater Structure side-yard setback. <i>Based on the Cumulative Impacts Analysis, there are only 19 lots with no docks and 12 of these are</i>

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Item No.	Comment Topic	Name of Commenter	Comment	Local Government Response
			<p>private dock.</p> <p>(Overwater Structure side-yard setback) Ms. Perry raised a second point recommending that the City reinstate the 15-foot or 20-foot minimum side yard setback between adjacent docks on neighboring properties. Ms. Perry stated that the proposed 10-foot minimum (dock) side yard standard is too small and would allow a number of narrow (existing) parcels the ability to build a private dock, which they could not do under current standards. Ms. Perry concluded that her concern is based on increased cumulative impacts associated with the allowance for new docks on these smaller parcels and the subsequent regulatory limits that are then applied to larger (wider) lots for docks, so that the City is able to satisfy the no net loss standard.</p>	<p><i>undeveloped. With the minimal amount of new docks vs. replacement docks, stricter regulations on these potential 19 docks would make negligible difference to the potential 398 replacement or enlarged docks according to the Cumulative Impacts Analysis prepared for this process.</i></p>
W-6	SMP Update Process (SMP submittal record)	<p>Save our Shorelines Lake Stevens (SOSLS) Samuel Rodabough Groen Stephens & Klinge, 11100 NE 8th Street, Suite 750 Bellevue, WA 98004</p>	<p>(Supplemental Materials) SOSLS request that the following correspondence be added to the official record for the City's updated SMP:</p> <ul style="list-style-type: none"> • Email and Attachment dated May 18, 2012 4:47PM, Subject: "FW Proposed Lake Stevens SMP – EHB 1653 Ecology Letter.pdf" • Email and Attachment dated May 18, 2012 4:47PM, Subject: "FW Proposed Lake Stevens SMP – Wetland Buffers Wetland Buffer Reduction Provisions.docx" • Email string dated May 18, 2012 4:50 PM, Subject: "FW Proposed Lake Stevens SMP – Wetland Buffers" 	<p>City of Lake Stevens Response: Although the exact emails in the first two bullets were not included directly as public testimony as they were provided as part of the discussion with the Council Subcommittee and the issues discussed with the Subcommittee and SOSLS, the information contained was included in the Council's November 21, 2011 Public Hearing Packet (Attachment A), Attachment 7 of Supplemental Information sent to Council by email separately from staff report (Attachment B) and discussed by Planning Director Ableman during the public hearing (see minutes, Attachment C).</p> <p>The Wetland Buffer issue had been discussed over many emails and on November 21, there was a much longer email string than the two sent to Joe Burcar on May 18th and listed in the first two bullets. As the email string in Attachment D shows, the City and Mr. Rodabough went back and forth many times until 2:59 pm on November 21, 2011. The Council Staff Report included a note (page 5 of the overall packet) stating language changes for Wetland Buffer Reductions would be provided under separate cover. As part of the supplemental information sent by email, the proposed new wetland buffer reduction language was included as Attachment 7. Then, as shown in the minutes for the November 21 hearing, Planning Director Ableman stated new language was drafted by the citizen group and reviewed by staff, but would be discussed with Ecology by phone in two days. In the same minutes, Mr. Rodabough is shown providing testimony on the same subject on page 3 and</p>

Attachment D
 Responsiveness Summary to Public Comments

Item No.	Comment Topic	Name of Commenter	Comment	Local Government Response
				<p>stating he had spoken with Tom Clingman and Jeff Talent at Ecology.</p> <p>As part of the November 28, 2011 Council Public Hearing Staff Report (Attachment E, page 25 of entire packet), it was again discussed that the Wetland Buffer Reduction language was reviewed by staff with Ecology and new language was included as Attachment 8. In addition, the November 28, 2011 minutes (Attachment F, page 1 show Planning Director Ableman again mentions the wetland buffer reduction information. These same minutes (page 3) show Mr. Rodabough stating:</p> <p>“(1) wetland buffer issue: It is his understanding that a compromise was struck today dealing with Ecology. He's seen that language, it's not perfect, but it is largely acceptable. He would recommend Council take action on that.”</p> <p>As you can see from the summary above and the attached documents, that although the specific email string was not entered into the public testimony directly, the information was definitely discussed with Council, was included in the staff reports, and verbal testimony by Mr. Rodabough on the same subject was provided to Council.</p> <p>In regards to the third bullet, the City was not a party to the email nor included as a cc on the letter. The City is aware that Ecology provided a response to Mr. Rodabough, but does not have a copy of the response letter.</p>
W-7	Existing Structures (Chapter 5, Section 8.c.3)	(same as above)	<p>(Existing Use Standards) SOSLS request verification that the SMP provision allowing for up to 600-square feet of expansion of an existing structure (located within the standard setback) is intended to be applied as a “footprint limit” as opposed to a “total square foot limit” as the total would count area of multiple floors, which they feel does not accurately reflect the minimal impact difference between one vs. multi-story structures. SOSLS recommend that this provision be clarified to be consistent with this intent.</p> <p>(Side-yard Expansion) In addition, SOSLS voiced concern related to Ecology’s comments at the public hearing in reference to tighter adherence to mitigation sequencing and the encouragement for new development to be located landward of setback areas. SOSLS suggest that since most shoreline homes along Lake Stevens are oriented toward the shoreline, “practical</p>	<p>City of Lake Stevens Response: Existing Use Standards. The minutes in Attachment F shows the motion made to be up to 600 square feet allowed in the side yard setback provided mitigation sequencing is applied (page 4). Based on the final language adopted by Council, staff would implement the regulation as 600 square feet as a maximum footprint.</p> <p>Side-yard Expansion. This comment is based on Ecology’s comments. From the City’s perspective on the proposed SMP, an applicant would need to describe in the application, written by a biologist or advised by a biologist, why they cannot avoid, minimize, rectify, reduce/eliminate, compensate, and monitor impacts (mitigation sequencing). If they can provide documentation for each step that would be concurred with by the City’s Environmental Consultant, then the applicant would be able to build in a particular location</p>

Responsiveness Summary to Public Comments

Item No.	Comment Topic	Name of Commenter	Comment	Local Government Response
			realities" related to future remodel of specific rooms (kitchens, family rooms, etc) located on the shoreline side of an existing residence should also be considered when determining the appropriate location for expansion to existing structures.	<i>with appropriate mitigation.</i>
W-8	Shoreline Modification (Section 3) Overwater Structures	(same as above)	(Overwater Structure Dimensional Standards) SOSLS restate that Ecology lacks the justification for imposing narrower dock widths (within 30-feet of OHWM) in Lake Stevens. Characterizing Regional General Permit (RGP) 3 as a "safe harbor" for applicants with the Army Corps of Engineers, SOSLS state that the RGP standards are not applicable to Lake Stevens, further stating that the Army Corps routinely grants individual permits that exceed the overwater dimensions contained in RGP 3.	City of Lake Stevens Response: Question is pased to Ecology, not to the City of Lake Stevens.

January 28, 2013

Mr. Joe Burcar
WA State Department of Ecology
Northwest Regional Office
3190 160th Avenue SE
Bellevue, WA 98008-5452

**RE: CITY OF LAKE STEVENS – SHORELINE MASTER PROGRAM (SMP) UPDATE
Request for Extension of 30-Day Requirement for Response to Ecology's
Conditional Approval Letter**

Dear Mr. Burcar:

This letter is to request an extension to the 30-day response to Ecology's Conditional Approval Letter dated January 4, 2013, but received by the City on January 14, 2013. We are requesting an extension to April 30, 2013.

The residents within the City have been very involved in creating the Shoreline Master Program and will want involvement in responding to Ecology's required changes. Therefore, the City Council requests additional time for a public process to collect citizen comments, review the comments in light of the required changes, and determine whether to accept the changes or submit an alternative proposal.

If a decision is made to propose alternative language, additional research and analysis may be required. Staff and consultants will need time to complete this analysis.

Therefore, the City of Lake Stevens would like to request an extension of the 30 days to respond to Ecology's Conditional Approval Letter to April 30, 2013. Please contact Rebecca Ableman at 425-377-3229 or Karen Watkins, Principal Planner, at 425-377-3221 with questions.

Sincerely,

Vern Little
Mayor

Cc: Project File

City of Lake Stevens
SHORELINE MASTER PROGRAM UPDATE SCHEDULE (LS2009-11)

ACTIVITY	2013 JAN	FEB	MARCH	APRIL	MAY	JUNE	JULY
Ecology Signs Decision Package & Transmits to City (30-Day Response Period)	4--14-----	-4					
Ecology Letter to City Council, placed on website and notice sent to interested parties	16-25						
Briefing on Ecology's Conditional Approval	28						
Letter to Ecology Requesting Extension of 30-Day Response	29						
Staff completes additional analysis	29	-7					
Second Briefing to Council		11					
Third Briefing to Council		25					
Publication of Open House & Public Comment Notice in LSJ		27					
Public Open House & Public Comments to Council			11				
PLACEHOLDER – Subcommittee meetings if requested as open forums			12-22				
Council Discussion of Alternative Language			25				
Attorney Review of Alternative Language			29	-5			
Notice Council Public Meeting/Public Hearing in LSJ				3			
Council PM/PH and Adoption of Alternative Language and Response to Ecology				8			
Response Letter Sent to Ecology				12			
Address Additional Comments from Ecology							
Submit Final Package to Commerce							

From: [Burcar, Joe \(ECY\)](#)
To: [Karen E. Watkins](#); [Becky Ableman](#)
Cc: [Tallent, Geoff \(ECY\)](#); [Anderson, Paul S. - NWRO SEA \(ECY\)](#); [Bails, Jamie L \(DFW\)](#); sam@GSKLegal.pro; [Dan Nickel](#)
Subject: RE: Lake Stevens SMP - Council Public Hearing Packet
Date: Monday, November 21, 2011 11:09:09 AM
Attachments: [image001.png](#)

Hi Karen and Becky,

Please find the following comments related to the recent changes listed within the 11-21-2011 draft of the SMP. I have not included any comments related to wetlands as our wetland specialist is just returning to the office today, after being gone for last two weeks. I will attempt to discuss the wetland situation with our wetland specialist today, but I am not confident that there will be sufficient to come up with a solution prior to the Councils meeting tonight. Therefore, please pass along to your Council our agencies commitment to resolve the wetland concerns (i.e. requirement for wetland delineation adjacent to heavily developed shoreline areas at the north end of the lake) either prior to the City's local adoption (November 28), or through Ecology's review and approval process.

I would also like to pass along a sincere appreciation for all the hard-work on this SMP-update by all parties involved. With the exception of a few inconsistencies mainly isolated to the **Shoreline Modifications** section of the SMP (described below), the current draft of the SMP represents a successful effort by your community in updating your shoreline management plan. I look forward to continuing to work with the City through the final adoption of this SMP.

Best regards,

-Joe

Comments on November 21, 2011 amendments:

General Comments related to 11/21/2011 staff report:

Covered Moorage - Related to the Councils consideration of 'covered moorage', in addition to appropriate size and location criteria to minimize aesthetic impacts and satisfy no net loss requirements, Ecology suggest that the City check-in with Washington Department of Fish and Wildlife (WDFW) to make sure that they can approve covered moorage proposals as envisioned by your council. A check-in with WDFW would ensure consistent with a recommendation from the City's Shoreline Inventory/Characterization Report (Watershed & Makers, 2010a; 47), which recommends that SMP Pier/Dock standards provide; "...*clear dimensional standards for new piers and replacement/modified piers, that are consistent with Washington Department of Fish & Wildlife (WDFW) practices on the lake*".

Side-yard additions - The Councils request to allow up to 200 square foot additions to the side-yard of "existing residential" structure located within a setback or buffer, is understood to not create significant impacts. This conclusion is based on an amendment to the Cumulative Impact Assessment, concluding that only 5-lots will have the potential to

take advantage of this provision, and the fact that the impervious surface limits within the SMP will still apply. With this said, we do recommend that the City include in this provision appropriate mitigation sequencing steps to require applicants to first consider locating the expansion outside of applicable setbacks/buffers. If because of lot constraints, the expansion cannot be located outside of setback/buffer areas, then the limited additions to side-yard areas seem appropriate with appropriate mitigation and within other limits of the SMP, such as maximum impervious surface ratios.

Chapter 4 Shoreline Modification Provisions

Ecology has provided previous comments to Shoreline Modification sections of the Lake Stevens SMP. The following comments focus on recent amendments included within 11-21-2011 version of the SMP, but are also consistent with previous comments provided to the City on earlier versions of the SMP (see email from April 20, 2011 – below). The following comments are primarily focused on inconsistency between **Shoreline Stabilization** and **Overwater Structure** SMP provisions and the applicable sections of the SMP-Guidelines provided in WAC 173-26.

C. Policies and Regulations

2. Shoreline Stabilization (Including Bulkheads)

Page 55, a. Applicability (Maintenance Repair, and Replacement) – In addition to the reference to WAC 173-27-040(2)(b), **it is equally important for the SMP to also recognize other relevant subsection, including;** (1) *“Application and Interpretation of exemptions”* (a) *“Exemptions shall be construed narrowly...”* and (b) *“An exemption from the substantial development permit process is not an exemption from compliance with the act or the local master program, nor from any other regulatory requirements...”*

Page 55, b. Policies – Policy #1 as written, is not consistent with **Shoreline Stabilization** provisions within WAC 173-26-231(3)(a) of the SMP-Guidelines. To ensure consistency with the SMP-Guidelines the City should incorporate the following amendments:

1. *“Soft stabilization”* measures should be listed as *“preferred”* over *“hybrid”* (structural measures) and;
2. References to protection of an *“allowed primary structure or a legally existing structure”* are not consistent with the SMP-Guidelines and should be amended to use the same language as the WAC 173-26-231(3)(a) allowing for consideration of new shoreline stabilization only to protect *“existing primary structures”*, or for replacement when there is a demonstrated need to protect *“principle uses or structures”*. The existing language in the City’s SMP is too broad and will not be approved by Ecology.

Page 58, c. Regulations (Repair, Maintenance and Replacement) – Standard #13 as written is not consistent with the SMP-Guidelines as a ‘demonstrated need’ to protect principle uses or structures is required in order to justify either replacement or expansion of an existing stabilization structure.

3. Over-Water Structures – Including Piers and Docks, Floats, and Boardwalks

Page 63 & 64, c. Regulations (General Regulations for Private and Public Structures) - Please see Ecology previous comments (email dated April 20, 2011 – provided below) related to

Over-Water Structures standards within the SMP. Ecology's previous comments reiterate the overall intent of **Overwater Structures** to provide moorage in support of water-dependent uses, for which the SMP-Guidelines emphasize the need to minimize the size of overwater structures to the minimum size necessary to serve the specific moorage needs of the jurisdiction. Generally, the following standards are too broad and do not provide sufficient side-boards to ensure that the size of overwater structures are minimized through implementation of predictable SMP standards. More specifically;

1. Regulation #19 (ADA provisions) – Based on a 2003 U.S Access Board publication titled *Accessible Boating Facilities*, five feet of pier width is shown to be sufficient to support ADA needs. However, Ecology has allowed other jurisdictions the flexibility to increase pier widths up to six feet to accommodate ADA access. Therefore, the City should identify a specific limit to overwater structure width that is less than six feet to accommodate ADA access.

2. Regulation #20 (Alternative Compliance) – similar to the ADA-comments provided above, the "*Alternative Compliance*" provision within the SMP cannot allow for unlimited flexibility related to overwater structure width. Ecology has allowed other jurisdictions to build-in limited (well defined) administrative flexibility into pier/dock widths for replacement of existing overwater structures. Within the City of Kirkland, Sammamish and Renton's approved SMP's, administrative 'alternative compliance' limits pier/dock width to no wider than six-feet for components of a overwater structure that is located more than 30-feet water-ward of the shoreline edge. To protect critical nearshore areas, these SMP's restrict pier/dock width to four feet for components of the overwater structure located within 30-feet of the shoreline edge.

In other words, the alternative compliance flexibility should not apply to the critical nearshore areas within 30-feet of the shoreline edge, for which new and replacement pier/dock structures should be limited to four feet in width, unless ADA accommodations are necessary for the property owner, in which case the width can be expanded up to six feet. In summary alternative compliance cannot be approved as written, but could be amended to allow replacement of overwater structures to maintain the same square footage as the original structure, but must be re-oriented the structure to reduce pier width to no greater than four feet within the first 30-feet water-ward of the shoreline edge and up to six feet for other sections of the structure in deeper water.

Page 68, c. Regulations (New Private, Non-Commercial Piers) - SMP standard #24.d (width) "*Exception*" allowing for expansion of the width of a new pier from four feet to six feet within the first 30-feet water-ward of the shoreline edge, is not consistent with the SMP Guidelines and cannot be approved as written. The SMP Guidelines require that the size of new and replacement overwater structures be reduced to the minimum necessary to serve the moorage use of the structure, for which Ecology is not aware of a justification supporting the need for wider structures (i.e., more than four feet) necessary to provide (private single-family) access to boat moorage, with one exception described above related to ADA accommodation.

Page 68, c. Regulations (Replacement of Existing Pier or Dock) - SMP standard #25 (as amended 11-21-2011) to allow 100% replacement for "*square footage and dimensions*" is

not consistent with the SMP Guidelines and cannot be approved as written. As referenced above (Regulation #20 Alternative Compliance), Ecology has allowed for limited flexibility to be applied to pier/dock replacements to allow a property owner to maintain the same overwater structure area, but cannot support allowing the same pier/dock “*dimensions*” when the structure is going to be completely replaced. It is important to recognize that Ecology is supportive of on-going ‘repair’ of existing overwater structures, as long as a clear threshold is identified within the SMP to trigger compliance with ‘replacement’ standards when cumulative repairs reach a point where the existing structure is in all practical purposes being replaced. Many jurisdictions’ utilize a percentage of decking or pile replacement as a threshold to distinguish between ‘repair’ and ‘replacement’.

Chapter 5 Shoreline Use Provisions

C. Shoreline Use Policies and Regulations - 8. Residential Development

Page 95, b. Policies – Policy #1 as written is not consistent with the Shoreline Management Act (RCW 90.58.020) or the SMP-Guidelines (WAC 173-26-241(3)(j)) and will need to be amended to include all relevant components of the policy statement. The reference in the current SMP to single-family residences as a “*preferred use*” is incomplete and does not include all relevant language from the SMA qualifying that a single-family residential use is only considered a priority use, when developed in a manner consistent with the control of pollution and prevention of damage to the natural environment. See WAC 173-26-241(3)(j) stating:

Single-family residences are the most common form of shoreline development and are identified as a priority use when developed in a manner consistent with control of pollution and prevention of damage to the natural environment. Without proper management, single-family residential use can cause significant damage to the shoreline area through cumulative impacts from shoreline armoring, storm water runoff, septic systems, introduction of pollutants, and vegetation modification and removal.

Chapter 6 Definitions

(Page 109) The definition of “*Accessory Use*” is inappropriate in that it includes reference to “*lawns associated with residential development*”. “*Lawns*” are not ‘structures’, they are not intrinsic to the ‘primary use’, and they are not a ‘normal appurtenances’ to a single family use. Therefore, “*Lawns*” cannot be protected or exempted from review and are not preferred under the SMA. This definition should either be removed or amended to distinguish an “*Accessory use*” from structures or appurtenances which are intrinsic to a residential shoreline use.

(Page 115) The definition of “*Existing Uses*” is also inappropriate, in that it includes “*Accessory uses*”, for which inconsistency with the SMA is described above. Similar to the comment above related to the “*Accessory uses*” definition, the “*Existing Uses*” definition, should also be removed or revised and cannot be approved as part of the SMP as currently written.

(Page 127) The “*Water-Dependent Use*” definition includes the following qualifying statement; “*but not limited to*”. This change to the definition is not consistent with the “*Water-Dependent Use*” definition provided in the SMP-Guidelines at WAC 173-26-020(39) and cannot be approved within the SMP as written.

The following changes are required to comply with the SMA (RCW 90.58) and the SMP Guidelines (WAC 173-26, Part III);

ITEM	SMP PROVISION	TOPIC	BILL FORMAT CHANGES [<u>underline-additions</u> ; strikethrough-deletions]	ECOLOGY - DISCUSSION/RATIONAL	CITY OF LAKE STEVENS RESPONSE
1	Chapter 2 – Environment Designations Section B. Shoreline Environment Designation Maps	Shoreline Jurisdiction	The Shoreline Environment Designation Maps can be found in Appendix A. Pursuant to WAC 173-26-211, the maps illustrate the shoreline environment designations that apply to all shorelines of the state within the City of Lake Stevens' jurisdiction. The lateral extent of the shoreline jurisdiction shall be determined for specific cases based on the location of the ordinary high water mark (OHWM), <u>effective</u> floodway, and presence of associated wetlands. The maps should be used in conjunction with the Environment Designation tables in Section C below. In the event of a mapping error, the City will rely upon the boundary descriptions and the criteria in Section C below.	<i>The required change is necessary to ensure appropriate reference to the FEMA "Floodway" which may change as a function of FEMA's issuance to updated FIRM maps.</i> <i>Note: the City provides reference in Chapter 3, Section B (Policies and Regulations), 5 (Flood Hazard Reductions), c. (Regulations), 1.b. to the "Flood Insurance Study for Snohomish County, Washington and incorporated areas" dated November 8, 1999.</i>	<i>This change should <u>not</u> have any effect on implementation of the SMP, but only ensures consistency with FEMA floodway requirements.</i>
2	Chapter 4 – Shoreline Modifications Section C.3.c Overwater Structure (OWS) Regulation (Pg. 56)	Pier/Dock Alternative Design	20. Alternative Design. The City shall approve new, replaced or additions to docks different from the standards below subject to Washington Department of Fish and Wildlife approval of an alternate project design of a width up to 6 feet for new docks or up to existing width on legally existing docks in the first 30 feet, <u>limited to the following features:</u> size of pilings, replacement area, and/or different decking requirements subject to a Hydraulic Permit Approval. With submittal of a building permit, the applicant shall provide documentation that the Washington Department of Fish and Wildlife has approved the alternative proposal design.	<i>In order to maintain consistency with the planning assumptions described within the City's Cumulative Impact Assessment and to ensure consistency with the No Net Loss (NNL) policy goal of the SMP-Guidelines, flexibility related to the alternative design provision with the City's SMP, must be limited to Pier/Dock elements that commonly vary through use of a range of similar dock construction materials. Defining the limits to this flexibility will ensure that the City's ability to satisfy NNL requirements (WAC 173-26-186 (8)) are not compromised. Further, shifting the authority to WDFW to adjust <u>any</u> SMP standard places an unreasonable burden on WDFW staff, as they may be asked to waive SMP-standards outside of their agencies regulatory focus/authority, which would undermine the City and Ecology's obligation to maintain consistency with SMA/ SMP-Guideline implementation obligations.</i> <i>Therefore, the identified amendment is necessary to limit WDFW consideration of alternative project design to project specific elements such as piling material/size and decking requirements.</i>	<i>In 5/23/11 proposed SMP, this was under new dock width (21.d.i) and came from the May 10, 2011 meeting at Fish & Wildlife with Ecology, City staff and City consultant. It was eventually moved to a separate section and titled Alternative Design. After the meeting, Ecology began to talk internally about the 4 ft width on all docks w/i 30 feet and they have remained strong on this for all jurisdictions in the process including Snohomish County. In an 11/21/11 email from Ecology (attached), they specifically stated the section as proposed could not be approved.</i> <i>This change should <u>not</u> have a major negative effect on the use of the shoreline as it is mainly removing the specific width, but does not necessarily exclude anything approved by the HPA.</i>
3	Chapter 4 – Shoreline Modifications Section C.3.c OWS Regulation (Pg. 60)	Pier/Dock Replacement	<u>Replacement of Existing Private Pier or Dock</u> 25. Proposals involving replacement of the entire private pier or dock, or 50 percent or more of the pier-support piles can be replaced up to 100% of the size-area (square footage and dimension) of the existing pier or dock and shall comply with the following standards: a. Decking: All replacement piers must include decking with a minimum of 40 percent open space as described in subsection c.24.a. above. b. Replacement piles must be sized as described above under subsection 24.b, and must achieve the minimum 12-foot spacing to the extent allowed by site-specific engineering or design considerations. <u>c. Width shall comply with "New Private, Non-Commercial Piers" standards (see Chapter 4 Section C.3.c.24.d).</u>	<i>The required changes are necessary to satisfy no net loss requirements, mitigate impacts to shoreline ecologic functions as recommended within the City's Shoreline Analysis and Cumulative Impact Analysis (Watershed & Makers, 2010 and 2011) and to ensure consistency with Pier/Dock standards (173-26-231.3.b) from the SMP Guidelines.</i> <i>The SMP-Guidelines (WAC 173-26-231.3.b) characterize Pier/Docks as a Shoreline Modification, which should be restricted to the minimum size necessary and "designed and constructed to avoid or, if that is not possible, to minimize and mitigate the impacts to ecological functions" (Ecology, 2011). Pier/dock width greater than 4-feet within "nearshore" areas have not been shown to be consistent with SMP-Guideline requirements associated with Protection of Ecological Functions (WAC 173-26-201-2-c) and Environmental Mitigation (Mitigation Sequencing) at WAC 173-26-201 (2) (e). Mitigation Sequencing requires that Master programs first <u>avoid impacts</u>, then for those impacts that cannot be avoided, jurisdictions are to minimize impacts. Finally remaining impacts which could not be avoided, or minimized, are to be <u>mitigated</u> as the third and final step in the sequence (Ecology, 2011). As analyzed and provided within the City's Shoreline Inventory/Characterization Report (Watershed & Makers, 2010), the City's Cumulative Impact Assessment (Watershed & Makers, 2011) and the Snohomish Basin Salmon Conservation Plan (SBSRF, 2005) existing habitat is recommended for "protection" and/ or "restoration" through reduction of overwater cover and in-water structures. The Shoreline Inventory/Characterization Report (Watershed & Makers, 2010; 47) recommends that SMP Pier/Dock standards provide clear "replacement" and "repair" definitions and standards consistent with the SMP-Guideline section WAC 173-26-231-3b and "clear dimensional standards for new piers and replacement/modified piers", that are consistent with Washington Department of Fish & Wildlife (WDFW) practices on the lake.</i> <i>The City's Cumulative Impact Assessment (Watershed & Makers, 2011) cites adverse affects to shoreline ecological functions associated with Pier/Dock construction and provides a conclusion that the SMP will satisfy the No Net Loss of Ecological Functions requirement, when ecological improvements (such as use of transparent grating,</i>	<i>Change in first paragraph takes it back to original 5/23/11 SMP proposal. The change was made using the proposed language suggested by Urban Concepts in their April 8, 2011 comment letter (section at that time was Ch 4, 3.c.22).</i> <i>In an 11/21/11 email from Ecology (attached), they specifically stated the section as proposed could not be approved.</i> <i>New "c" references back to:</i> d. Width. i. The maximum width of a dock walkway is 4 feet for the first 30 feet from shore and up to 6 feet for portions of walkways which extend more than 30 feet from the shore. ii. The maximum width of ells and floats is 6 feet. Ells and floats shall be positioned beyond 30 feet from shore. iii. Any additional fingers must be no wider than 4 feet if beyond 30 feet from shore. iv. The maximum width of a ramp connecting a dock to a float is 4 feet. <i>This change is being required on all more recent SMPs, including Snohomish County's SMP, and Ecology is stating they will be consistent throughout future SMPs.</i>

ITEM	SMP PROVISION	TOPIC	BILL FORMAT CHANGES [<u>underline-additions</u> ; strike-through-deletions]	ECOLOGY - DISCUSSION/RATIONAL	CITY OF LAKE STEVENS RESPONSE
				<p>reduction of overwater/in-water structure) are incorporated into replacement dock proposals. Therefore, the required change is necessary to implement the recommendations of the City's supporting analysis and to ensure compliance with applicable SMP-Guideline requirements.</p>	
4	<p>Chapter 4 – Shoreline Modifications Section C.3.c OWS Regulation (Pg. 60)</p>	<p>Pier/Dock Additions</p>	<p>27. When proposed additions to a private residential pier result in a pier that exceeds the maximum total length or width allowances for new docks as described in c.24 above, the addition may be proposed under a Variance application and subject to the following provisions:</p> <ul style="list-style-type: none"> a. The applicant must remove any in-water structures rendered obsolete by the addition; b. The additional length of walkway or ell must be no wider than <u>4 feet within the first 30 feet from shore and up to 6 feet for walkway or ell sections located more than 30 feet from shore</u>; c. The decking of all new pier elements include decking with a minimum of 40 percent open space as described in subsection c.24.a. above; and d. Any proposed new piles must comply with standards under subsection c.24.b. above. 	<p>Same justification as item #3 above.</p>	<p>Although not directly spelled out in the 11/21/11 email from Ecology, the justification would be the same as per the email.</p> <p>This change is being required on all more recent SMPs, including Snohomish County's SMP, and Ecology is stating they will be consistent throughout future SMPs.</p>
5	<p>Chapter 5 – Use Policies & Regulations Provision C.8.a. Residential Use, Applicability definition (Pg. 84)</p>	<p>Residential Applicability definition</p>	<p>8. Residential Development</p> <ul style="list-style-type: none"> a. Applicability Residential development means one or more buildings, <u>or</u> structures, lots, parcels or portions thereof which are designed for and used or intended to be used to provide a place of abode, including single-family residences, duplexes, other detached dwellings, floating homes, multi-family residences, mobile home parks, residential subdivisions, residential short subdivisions, and planned residential development, together with <u>normal appurtenances common to a single-family residence pursuant to WAC 173-27-040 (2) (g).</u> accessory uses and structures normally applicable to residential uses, including, but not limited to, garages, sheds, tennis courts, swimming pools, parking areas, fences, cabanas, saunas, and guest cottages. Residential development does not include hotels, motels, or any other type of overnight or transient housing or camping facilities. 	<p>The definition for "Residential Use" provided through the "Applicability" statement in the City's SMP is too broad and conflicts with other definitions provided in the SMP. Therefore, the proposed provision is inconsistent with the Residential Use description in the SMP-Guidelines at WAC 173-26-241.</p> <p>On page 98 of the SMP, the City has defined "Appurtenance" consistent with WAC 173-27-040(2) (g). However, as noted above the subject provision provides a much broader description of Residential Uses, which includes reference to "accessory uses", which again broadens the potential application of Residential Uses in a manner that is not consistent with WAC 173-27, or applicable sections of the SMP Guidelines. Broad applicant of undefined Residential Use elements beyond the scope of "normal appurtenance", could undermine cumulative impact assumptions anticipated by both the SMA and supporting materials relied upon for the local SMP-update. Cumulative impacts to shoreline ecological functions must be considered as part of this SMP-update.</p> <p>Therefore, Residential Use elements are authorized to include "normal appurtenances" (WAC 173-27), but cannot be broadly defined, as anticipation of the scope and intensity of future development is necessary to inform the cumulative impact assessment and overall assessment of no net loss resulting from implementation of the updated SMP. Therefore, this required change is necessary to appropriately define the scope and description of "Residential Uses" and "normal appurtenances".</p>	<p>This language has been in the proposed SMP since May 23, 2011. The new language refers to the following definition from the WAC:</p> <p>(g) Construction on shorelands by an owner, lessee or contract purchaser of a single-family residence for their own use or for the use of their family, which residence does not exceed a height of thirty-five feet above average grade level and which meets all requirements of the state agency or local government having jurisdiction thereof, other than requirements imposed pursuant to chapter 90.58 RCW. "Single-family residence" means a detached dwelling designed for and occupied by one family including those structures and developments within a contiguous ownership which are a normal appurtenance. An "appurtenance" is necessarily connected to the use and enjoyment of a single-family residence and is located landward of the ordinary high water mark and the perimeter of a wetland. On a statewide basis, normal appurtenances include a garage; deck; driveway; utilities; fences; installation of a septic tank and drainfield and grading which does not exceed two hundred fifty cubic yards and which does not involve placement of fill in any wetland or waterward of the ordinary high water mark. Local circumstances may dictate additional interpretations of normal appurtenances which shall be set forth and regulated within the applicable master program. Construction authorized under this exemption shall be located landward of the ordinary high water mark;</p> <p>This change should not have a negative effect on shoreline development.</p>
6	<p>Chapter 5 – Use Policies/Regulation Provision C.8.c.3.a.i (Pg. 85)</p>	<p>New Residential Setbacks</p>	<p>3. New residential development, including new structures, new pavement, and additions, within shoreline jurisdiction on lakes shall adhere to the following standards:</p> <ul style="list-style-type: none"> a. Setbacks: <ul style="list-style-type: none"> i. New buildings: Set back all covered or enclosed structures <u>the average of the setbacks of existing houses on adjacent lots on both sides of the subject parcel</u>, with a standard minimum setback, which is a lake setback of <u>60 feet from the OHWM (consisting of 50 feet from the OHWM plus an additional 10 foot</u> 	<p>The subject provision, as proposed does not provide any limits or necessary details describing how the Shoreline Administrator would evaluate the need to waive or reduce shoreline setback standards. Further, the subject provision does not include a restriction to limit new structures from being constructed waterward of existing adjacent structures on neighboring lots.</p> <p>Therefore, the required changes are necessary to ensure consistency with the City's Cumulative Impact Analysis related to anticipate impacts resulting from future shoreline development. The change is also necessary to ensure consistency with the City's stated Shoreline Residential Management Policies (Chapter 2, Section C.4.c.), General Use Policies (Chapter 5, Section C.1.b.), Residential Use Policies (Chapter 5,</p>	<p>The revised language was originally in the 5/23/12 proposed SMP with the sentence on the Shoreline Administrator finding. The Citizen Group's attorney, Sam Rodabough proposed removal of the language referring to the average setback to the adjacent houses in his 11/19/12 revisions. Ecology is just going back to the originally proposed language based on the use of the adjacent lots in the Cumulative Impact Analysis. Because of this language, Ecology did not have a problem with the additional development within the side yard.</p> <p>The Watershed Company by phone on 10/19/12 stated, the removal</p>

ITEM	SMP PROVISION	TOPIC	BILL FORMAT CHANGES [<u>underline-additions</u> ; strike-through-deletions]	ECOLOGY - DISCUSSION/RATIONAL	CITY OF LAKE STEVENS RESPONSE
			<p>building setback). Where the Shoreline Administrator finds that an existing site does not provide sufficient area to locate the residence entirely landward of this setback, the Shoreline Administrator may allow the residence to be located closer to the OHWM, provided all other provisions of this SMP are met and impacts are mitigated.</p>	<p>Section C.8.b 1-7), or applicable SMP-Guideline standards (No Net Loss 173-26-186, Residential Use 173-26-241.3.j).</p> <p>As referenced above, a provision intended to limit construction of new residential structures waterward of adjacent structures on neighboring parcels, was included in previous drafts of the City's updated SMP. However, this provision limiting waterward migration of residential structures was not included in the locally approved SMP (Ord. #856). The identified change is necessary to ensure that the City's SMP is consistent with the policies listed above and the City's Final Cumulative Impact Analysis (Watershed and Makers, 2011). The City's analysis reiterate the importance of preserving shoreline setbacks by limiting waterward migration of residential structures closer to the shoreline to maintaining shoreline ecological functions to satisfy the no net loss goal of the master program update. The analysis refers to the "Average Setback" within the Shoreline Residential environment surrounding Lake Stevens, as greater than 60-feet, and provides the following conclusion related to potential cumulative impacts related to redevelopment potential of existing residential structures around the lake:</p> <p>"Although it would be possible, in some instances, for residences to be relocated closer to the shoreline than their existing condition, they would not be allowed further waterward than the greater of 60 feet or the average of their two adjacent structures. Presumably, this will continue to maintain an average setback greater than 60 feet, thereby minimizing the likelihood of additional degradation of ecological functions." (Watershed and Makers, 2011:26).</p> <p>Therefore, in order to ensure consistency with the City's analysis of no net loss, the required change is necessary to manage waterward migration through redevelopment of residential structures to maintain consistency with SMP-Guideline requirements.</p>	<p>of the adjacent requirement could still meet the CIA. However, they would need to provide proof of this and the sentence used by Ecology as proof the adjacency requirement is necessary, would need to be modified.</p> <p>In order to change this language back, The Watershed Company would need to change CIA and the City would have to make sure the language meets the other sections of code referenced by Ecology.</p> <p>11/20/12 – Phone conference between Ecology, Watershed & City discussed how this recommended change might be removed. The outcome was additional analysis of all shoreline properties with setbacks, where roads are located, and other justification to show that the lake would retain the 60 foot setback and any loss of frontage would not negatively affect the ecological function of the lake.</p> <p>City would complete analysis for Watershed to make changes to the Cumulative Impacts Analysis. City and Watershed would be in contact with Ecology as information is collected. Any alternative recommendations could be presented at a Council workshop or briefing.</p> <p>Additional Analysis does not guarantee Ecology will agree to removal of this required revision, but provides additional information for Ecology to review with the Shoreline Management Act and SMP Guidelines.</p>
7	Chapter 5 – Use Policies/Regulation Provision C.8.c.3.d. (Pg. 87)	New Residential Development Patio	<p>d. If there is no bulkhead, or if a bulkhead is removed, a small waterfront deck or patio can be placed <u>along within</u> the shoreline <u>setback</u> provided <u>the property owner agrees to not construct a bulkhead or install any hard shoreline stabilization to protect the deck in the future, and:</u></p>	<p>This required change is necessary to ensure that a property owner understands that a patio or deck constructed under this provision cannot be protected in the future with a bulkhead or hard stabilization. Therefore, the patio/deck should be installed at an appropriate location far enough away from the shoreline edge to not need protection in the future.</p>	<p>This change is consistent with all comments from Ecology and has not been a concern by residents, although keeping current bulkheads have been a concern with residents.</p> <p>This should <u>not</u> be a major effect as the regulations already require no bulkhead or removal of bulkhead to get the incentive.</p>
8	Chapter 5 – Use Policies/Regulation Provision C.8.c.3.e. (Pg. 87)	New Residential Development Patio	<p>e. All property owners who obtain approval for a waterfront deck or patio in exchange for removing a bulkhead and retaining or planting native vegetation must prepare, and agree to <u>not construct a bulkhead or install hard shoreline stabilization to protect the deck in the future, and</u> adhere to, a shoreline vegetation management plan prepared by a qualified professional and approved by the Shoreline Administrator that:</p>	<p>Same rational as provided above under Item #7.</p>	<p>Same as for Response to #7 above.</p>
9	Chapter 5 – Use Policies/Regulation Provision C.8.c.4. (Pg. 88)	New Residential Development Vegetation Retention	<p>4. For new development on previously undeveloped lots, any existing native vegetation shall be retained along the shoreline to <u>a minimum of 50-feet 20-foot upland</u> from the OHWM. If little or no native vegetation exists on the previously undeveloped lot, native vegetation shall be planted along the shoreline to 20 feet from the OHWM. 25 percent of the required vegetated area can be cleared or thinned for view maintenance and waterfront access, provided 75 percent of the area remains vegetated. Invasive species may be removed, vegetation trimmed, and trees —limbed upll from the ground to provide views. In the 25 percent cleared area, pathways for access to the water are allowed.</p>	<p>The City has <u>not</u> demonstrated that limiting vegetation retention to 20-feet upland of the OHWM will adequately protect water quality or habitat shoreline ecological functions pursuant to the SMP-Guideline at WAC 173-26-201(3) (d) (i). The City's Critical Areas Ordinance (CAO) list Lake Stevens as a "Fish and Wildlife Habitat Conservation Area" (FWHCA), for which buffers range from 50' to 150' upland of the OHWM. Further, the City's SMP's must include policies and regulations designed to achieve no net loss of shoreline ecological functions (WAC 173-26-186 (8) (b)).</p> <p>This change is required to ensure compliance with SMP-Guideline requirements related to Governing Principles of the Guidelines within WAC 173-26-186 (No Net Loss), Basic Concepts within WAC 173-26-201-2 (Use of Scientific/Technical Information, Adoption of Policies/Regulations and Protection of Ecological Functions)</p>	<p>This change will only affect three undeveloped lots:</p> <ul style="list-style-type: none"> • 11826 & 11830 7th Street NE (0.46 & 0.2 ac) – same owner of both parcels; parcels <100 feet from shoreline with vegetation along shoreline. Houses could be built on front of lots probably w/o affecting shoreline vegetation. • 11325 Machias Cutoff (~.75 ac) –SW corner owned and shows up as part of same parcel on SE corner of intersection. It could become a separate parcel as a road (S. Lake Stevens Rd) divides it from the house on the SE corner. Approx 250 feet long, one tree on shoreline, so nothing to protect, but would need to replant within 20 feet from OHWM. • 1125 Springbrook Road (1.5 ac). Approx 350 long, a lot of shoreline vegetation. Area for development available with leaving 50 feet from shore intact with existing vegetation. <p>There is one other undeveloped parcel, but it is across the road from</p>

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					<p>the lake and the road would stop any shoreline regulations:</p> <ul style="list-style-type: none"> 11517 N. Lakeshore Drive (0.2 ac) <p>11/20/12 – City discussed this recommended change with Ecology. With the justification of the few properties that would be affected, City can propose an alternative change to Ecology with the above justification to leave at 20 feet and not change to 50 feet. Ecology would compare with the Shoreline Management Act and SMP Guidelines to determine whether to retain the required revision. However Ecology did state that the reverse is true that the 50 feet would affect so few properties, there isn't much of a reason to go to the 20 feet.</p>
10	Chapter 5 – Use Policies/Regulation Provision C.8.c.7. (Pg. 89)	New Residential Development Creation of New Lots	<p>7. The creation of new residential lots within shoreline jurisdiction on lakes shall be prohibited unless the applicant demonstrates that all of the provisions of this SMP, including setback and size restrictions, can be met on the proposed lot. Specifically, it must be demonstrated that:</p> <ol style="list-style-type: none"> The residence can be built in conformance with all applicable setbacks and development standards in this SMP. Adequate water, sewer, road access, and utilities can be provided. The intensity of development is consistent with the City's Comprehensive Plan. The development will not cause flood or geological hazard to itself or other properties. <p><u>e. Land-division creating four or more new parcels shall provide Public Access (see Chapter 2 Section 4.c.5. and Chapter 3 Section B.7.).</u></p> <p>In addition, new residential development on new lots that contain intact native vegetation shall conform to the regulations of subsection c.4 above. (See also vegetation conservation standards in Chapter 3 Section B.11).</p>	<p><i>This required change is necessary to ensure internal consistency between the subject provision and a "Public Access" related provision within Chapter 3 – Section B.7., and to satisfy SMP-Guideline requirements related to Residential subdivision that create four or more new parcels (WAC 173-26-241.3.j</i></p>	<p>As noted, the City's adopted SMP does have this language in Chapter 2, Section 4.c.5 and Chapter 3, Section B.7.1; however, the City's language uses "should", not the proposed "shall". The City could propose to keep the proposed language with a change from "shall" to "should" to be consistent with other sections of SMP.</p> <p>Chapter 2:</p> <ol style="list-style-type: none"> New multi-family development and new subdivisions of land into more than four parcels should provide public access, which could include benches for viewing in a public right of way, community access, or similar types of public access. <p>Chapter 3</p> <ol style="list-style-type: none"> Policies <ol style="list-style-type: none"> Public access should be considered in the review of all private and public developments with impacts on public access and related to the size of the impacts and with the exception of the following: <ol style="list-style-type: none"> Single-family residential including one- and two-family dwelling units and residential subdivisions of four lots or less and their accessory structures (e.g., docks, garages, shoreline modification, etc.); or

References:

Watershed & Makers 2010, The Watershed Company and Makers. February 2010. DRAFT Shoreline Analysis Report for the City of Lake Stevens Shorelines: Lake Stevens, Catherine Creek, and Little Pilchuck Creek. Prepared for the City of Lake Stevens Planning and Community Development Department, Lake Stevens, WA.

Watershed & Makers 2011, The Watershed Company and Makers. December 2011. Cumulative Impacts Analysis for the City of Lake Stevens Shorelines: Lake Stevens, Catherine Creek, and Little Pilchuck Creek. Prepared for the City of Lake Stevens Planning and Community Development Department, Lake Stevens, WA.

Snohomish Basin Salmon Recovery Forum (WRIA 7). 2005. Snohomish River Basin Salmon Conservation Plan Final. June 2005.

Department of Ecology. 2011. Shoreline Master Program Handbook; SMP Updates Piers, Docks and other structures. Accessed at: http://www.ecy.wa.gov/programs/sea/shorelines/smp/handbook/pdf/Piers_docks_guidance_1-10-11.pdf



WESTERN WASHINGTON
GROWTH MANAGEMENT HEARINGS
BOARD

DIGEST OF DECISIONS

FIFTH EDITION – through August 15, 2009

- The most effective solutions to GMA issues are those developed at the local level as long as those solutions fall within the parameters of the GMA. Mediation and settlement procedures used by the parties are commended. *Eldridge v. Port Townsend* 96-2-0029 (FDO, 2-5-97)

SHORELINE MANAGEMENT ACT (SMA)

- *CRSP/Jepson v. Whatcom County/Dept. of Ecology*, Case No. 08-2-0031, Final Decision & Order (April 20, 2009)[In response to assertions that the County failed to adhere to the SMA public participation requirements because it adopted Ecology's revisions to the Draft SMP without any public participation. The challenge was grounded in the activity that occurred *after* the Revised SMP was returned to the County from Ecology, and, in that regard the Board stated]:

Although Petitioners cite GMA-based public participation cases, this statute [RCW 36.70A.480] specifically states that it is the procedures of RCW 90.58 which guide the adoption of SMPs, not those of the GMA. Thus, the interpretation of GMA-based public participation requirements, although potentially helpful, is not controlling. Therefore, the Board looks to RCW 90.58.090 for the procedures to be followed in the approval or amendment of a shoreline master program. FDO, at 7.

The Board notes that neither the RCW nor the WAC sets forth any requirements for public input on a Revised SMP returned by Ecology to the originating jurisdiction. In accordance with RCW 90.58.090, after Ecology has conducted its review of a submitted SMP, it may do one of three things [Ecology selected Option 3 (Recommended specific changes) and Whatcom selected Option 2 (Submit an alternative proposal)]; with the submittal of an alternative Ecology has several Options, and it selected Option 1 (alternative was consistent/approval SMP) ... The language of RCW 90.58.090(2)(e)(ii) is instructive here. If an alternative proposal is returned to Ecology, there is no language in the statute requiring Ecology to undergo additional public participation; it is free to approve the alternative SMP if it finds consistency. However, it is specifically noted that if Ecology deems the alternative inconsistent, it may return an alternative for *public and agency review*. Similar language is not present in RCW 90.58.090(e)(i) – which simply permits a local government to agree to Ecology's proposed changes. In addition, the Board notes that RCW 90.58.090 has no provision requiring

the local government to subject a Revised SMP that has been returned from Ecology for additional public scrutiny and comment as to those revisions made by Ecology. Similarly, WAC 173-26-120 only addresses the local government's obligations up and until submittal of a proposed SMP to Ecology. Based on a plain reading of the SMA, there is nothing that requires additional public review of a Revised SMP that has been returned to the originating jurisdiction by Ecology if a jurisdiction decides to agree to Ecology's recommendations. FDO, at 9-10.

The Board is also mindful of the provision in RCW 90.58.130 that requires Ecology and the County to provide the public with "a full opportunity for involvement in both [the] development and implementation" of master programs, and to "not only invite but actively encourage participation". In addition, the Board interprets the language in WAC 173-26-090 to provide for "early and continuous public participation" as applying throughout the adoption process. FDO, at 11.

- The regulations at issue for [Petitioner] in this case relate primarily to the County's adoption of Channel Migration Zones (CMZs) for four of its most prominent rivers. The Board notes all of these rivers are within the jurisdiction of the SMA and therefore land located within 200 feet of either side of the rivers falls under the jurisdiction of the SMA. Therefore, despite the lack of a mandate and the pending motion for reconsideration [in the case of *Futurewise, et al v. WWGMHB*, 162 Wn.2d 242 (2008)], this Board will adhere to the Court's unambiguous holding that critical areas within the shoreline are regulated by the SMA. Thus, for the area of the CMZ that is within the 200 foot shoreline jurisdiction, the Board views the County's action effectively as a segment of its SMP update which is subject to review and approval by Ecology. However ... CMZs are not limited to a 200 foot area bordering either side of a river. Rather CMZs expand outward from the river's edge and encompass land in excess of the area within the SMA's regulatory boundaries. For the area of the CMZs that are located outside the 200 foot shoreline jurisdiction, these are critical areas squarely within the GMA's jurisdiction pursuant to RCW 36.70A.060, .170, and .172. As such, this Board has jurisdiction to review the adopted regulations for compliance with the GMA. *OSF/CPCA v. Jefferson County*, Case No. 08-2-0029c, FDO, at 16-17 (Nov. 19, 2008).
- Pursuant to RCW 36.70A.280(1)(a), a growth management hearings board has jurisdiction to determine compliance with the Shoreline Management Act only "as it relates to the adoption of Shoreline Master Program or amendments thereto." Where the petition for review alleges only violations of the Shoreline Management Act but the county's

challenged actions did not involve amending its Shoreline Master Program, the board has no jurisdiction. *Stephens v. San Juan County*, 02-2-0001 (Order of Dismissal, 3-20-02)

- Where a new rural marine industrial designation allows a wide range of uses which are inconsistent with the SMA, SMP and GMA CA protections, the failure to even make a threshold determination does not comply with the SEPA requirements of the GMA. *Anacortes v. Skagit County* 00-2-0049c (FDO, 2-6-01)
- Where a shoreline buffer reduction provision requires a geotechnical study to insure the setback would preclude the need for hard-armoring for the lifetime of the residence and which provides for native vegetation retention, the ordinance complies with the Act. *ICCGMC v. Island County* 98-2-0023 (Compliance Order, 10-12-00)
- A provision that allows reduction of shoreline buffer areas through buffer averaging of existing residential setbacks, even with a requirement for a HMP, does not include BAS and does not comply with the Act. *ICCGMC v. Island County* 98-2-0023 (Compliance Order, 3-6-00)
- Where SEPA challenges are limited specifically to DOE's approval of SMP amendments, a GMHB reviews DOE's decision. Thus, a county motion to dismiss SEPA challenges is meaningless where the motion was not joined by DOE. *Floatplane v. San Juan County* 99-2-0005 (MO 5-3-99)
- The recent amendment to RCW 36.70A.290(2) authorizes a petition to a GMHB to include a challenge to whether the CP, DR, or amendments thereto adopted under GMA also comply with the SMA. *Storedahl v. Clark County* 96-2-0016 (MO 7-31-97)
- RCW 36.70A.300 and .330 provide jurisdiction for a GMHB to review compliance of GMA actions with the SMA in subsequent compliance hearings since the goals and policies of the SMA and local SMP are now a part of the requirements of GMA under RCW 36.70A.480(1). *Storedahl v. Clark County* 96-2-0016 (MO 7-31-97)
- The SMA and the SMP adopted by a local government are an element of a GMA CP. *Storedahl v. Clark County* 96-2-0016 (MO 7-31-97)
- RCW 90.58.190 requires a GMHB to uphold the decision of DOE unless an appellant sustains the burden of proving that DOE's decision did not comply with the requirements of the SMA including the policies of RCW 90.58.020 and applicable guidelines, the goals and requirements of the GMA, and the SEPA requirements for adoption of amendments under RCW 90.58. *San Juan County & Yeager v. DOE* 97-2-0002 (FDO, 6-19-97)
- A CP must be consistent with the policies and requirements of the SMA and the local SMP. *Moore-Clark v. La Conner* 94-2-0021 (FDO, 5-11-95)

SHORELINES

1. Shorelines of Statewide Significance

- A GMHB must uphold the decision of DOE concerning an amendment to the local SMP relating to shorelines of statewide significance unless the GMHB is persuaded by clear and convincing evidence that the DOE decision is inconsistent with the policy of RCW 90.58.020 and the applicable guidelines set forth in WAC 173-16. *San Juan County & Yeager v. DOE 97-2-0002* (FDO, 6-19-97)

2. Shorelines of the State

- In an appeal of a proposed amendment to the local SMP for shorelines of the state, a GMHB must answer the questions of whether there is compliance with the requirements of the SMA, the requirements of the GMA, the policy of RCW 90.58.020 and applicable guidelines and SEPA compliance relating to the adoption of the proposed amendment. *San Juan County & Yeager v. DOE 97-2-0002* (FDO, 6-19-97)

SHORELINES MASTER PROGRAMS (SMP)

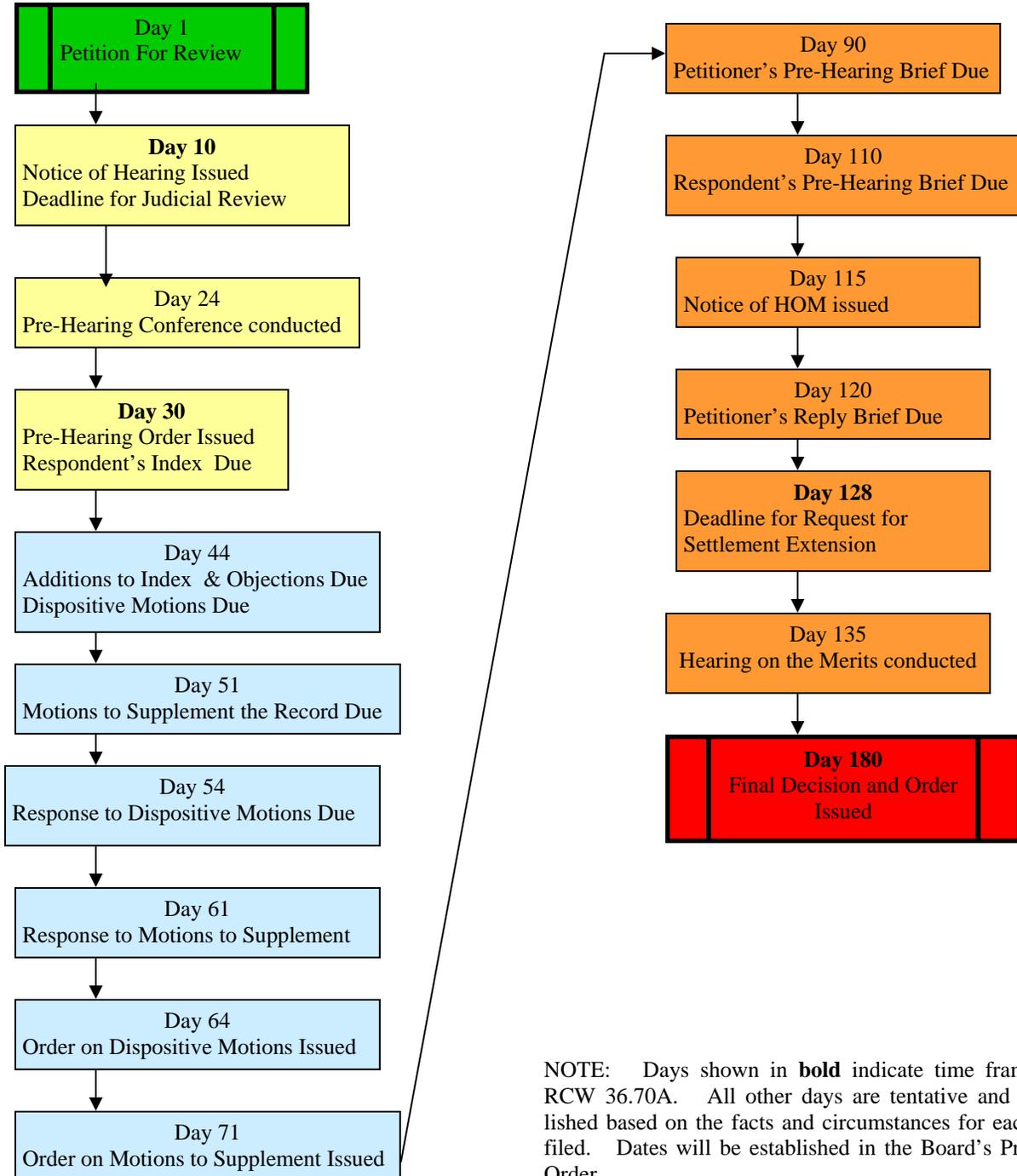
- [Relying in part on the Board's previous holding in *Evergreen Islands v. Anacortes* and WAC 173-26-191, the Board stated]: [The designation of critical area in the shoreline are by the Critical Areas Ordinance], which are incorporated by reference, are to be subject to public review at the time of their incorporation ... Petitioners/Intervenor were entitled to "an opportunity to participate in the formulation of the regulations" including "their incorporation into the master program". To suggest that the public has no right to appeal the regulations as they are incorporated into the master program would render them passive participants and the SMA's provisions related to public participation meaningless. *CRSP/Jepson v. Whatcom County/Ecology*, Case No. 08-2-0031 FDO, at 14-15. (April 20, 2009)
- Had the County merely designated its shorelines as critical areas without consideration of whether those shorelines qualified as critical areas, the County would have run afoul of RCW 36.70A.480(5)'s requirement to designate those "specific" shorelines of the state that "qualify for critical area designation" ... RCW 36.70A.480(5) permits Shorelines of the State to be considered critical areas when specific areas located within these shorelines qualify for critical area designation based on the definition of critical areas set forth in RCW 36.70A.030(5) and they have been designated as such by the local government ... The County CAO designates as critical areas all areas that are of critical importance to the maintenance of special status fish, wildlife and/or

plant species. . *CRSP/Jepson v. Whatcom County/Ecology*, Case No. 08-2-0031 FDO, at 16-17. (April 20, 2009)

- [After reviewing the Record related to specific water bodies, the Board held]: In short, the County developed a record in its CAO, CAO maps, and Shoreline Inventory which supports the designation of Whatcom County's shorelines as a type of critical area – specifically, fish habitat. While the Board might well wonder whether some areas of the shoreline are so developed or isolated from protected species as to afford little habitat, Intervenors have not carried their burden of proof by showing that these [blanket] designations were clearly erroneous ... The record in this case shows that these shorelines were designated as critical areas because of their role as fish and wildlife habitat conservation areas. . *CRSP/Jepson v. Whatcom County/Ecology*, Case No. 08-2-0031 FDO, at 19. (April 20, 2009)
- The County's adoption of Ordinance 7-2006 was not an amendment of the County SMP. Whatever regulations the SMP imposed on construction in shoreline jurisdiction prior to the adoption of Ordinance 7-2006 remain unaltered. We therefore conclude that the County was not required to comply with the notice and adoption procedures applicable to an amendment of its SMP. *Friends of San Juans, et al v. San Juan County*, Case No. 03-2-0003c coordinated with *Nelson, et al v. San Juan County*, Case No. 06-2-0024c, FDO/Compliance, at 56 (Feb. 12, 2007)
- Pursuant to RCW 36.70A.290(2)(c), appeals of Shoreline Master Program amendments to this Board are not ripe until the Department of Ecology has approved or disapproved the amendments, and notice of that decision is published. *Friends of the San Juans, Lynn Bahrych, and Joe Symons v. San Juan County* 03-3-0003 (Corrected FDO, 4-17-03)
- Where a new rural marine industrial designation allows a wide range of uses which are inconsistent with the SMA, SMP and GMA CA protections, the failure to even make a threshold determination does not comply with the SEPA requirements of the GMA. *Anacortes v. Skagit County* 00-2-0049c (FDO, 2-6-01)
- Where a CAO provisions are in addition to the SMP, there is no inconsistency between the CAO and the SMP. *PPF v. Clallam County* 00-2-0008 (FDO, 12-19-00)
- A CP policy adoption prohibiting mining within 100-year floodplain did not amount to a *de facto* amendment of the SMP and thus approval by DOE was not required. *Storedahl v. Clark County* 96-2-0016 (RO 9-15-97)
- For GMA planning counties adoption of amendments to the local SMP after July 23, 1995, are reviewed by a GMHB. *Storedahl v. Clark County* 96-2-0016 (MO 7-31-97)
- A SMP element of a CP and/or DR must be internally consistent and consistent with all other aspects of a CP and DRs adopted by a local government. *Storedahl v. Clark County* 96-2-0016 (MO 7-31-97)

- Consistency between a CP and DRs and a SMP must be achieved immediately by a local government. The 24-month grace period set forth in RCW 90.58.060 relating to guidelines adopted by the DOE does not apply to GMA adoptions by a local government. *Storedahl v. Clark County* 96-2-0016 (MO 7-31-97)
- The portions of a SMP dealing with goals and policies are considered an element of the CP. All other portions of the SMP are considered DRs. *Storedahl v. Clark County* 96-2-0016 (MO 7-31-97)
- 1995 amendments to RCW 36.70A.280 transferred jurisdiction to GMHBs to decide issues concerning amendments to local SMPs adopted by cities and counties planning under the GMA. *San Juan County & Yeager v. DOE* 97-2-0002 (FDO, 6-19-97)
- Under RCW 36.70A.480(2) amendments to SMPs continue to be processed under the provisions of the SMA, which requires approval by DOE. *San Juan County & Yeager v. DOE* 97-2-0002 (FDO, 6-19-97)
- A GMHB must uphold the decision of DOE concerning an amendment to the local SMP relating to shorelines of statewide significance unless the GMHB is persuaded by clear and convincing evidence that the DOE decision is inconsistent with the policy of RCW 90.58.020 and the applicable guidelines set forth in WAC 173-16. *San Juan County & Yeager v. DOE* 97-2-0002 (FDO, 6-19-97)
- In an appeal of a proposed amendment to the local SMP for shorelines of the state, the scope of review addresses the question of whether there is compliance with the requirements of the SMA, the requirements of the GMA, the policy of RCW 90.58.020 and applicable guidelines and SEPA. *San Juan County & Yeager v. DOE* 97-2-0002 (FDO, 6-19-97)
- A local government in amending its SMP must consider consistency with the goals and requirements of the GMA, SEPA and the SMA in reaching its decision. DOE is not authorized to and does not include the provisions of GMA or SEPA in its decision. *San Juan County & Yeager v. DOE* 97-2-0002 (FDO, 6-19-97)
- Under RCW 36.70A.480, SMP use regulations are equivalent to GMA DRs. *Seaview v. Pacific County* 95-2-0076 (Compliance Order, 2-6-97)
- In 1996 the Legislature expanded the jurisdiction of a GMHB to include review of adoption of SMPs or amendments thereto. *Seaview v. Pacific County* 96-2-0010 (FDO, 10-22-96)
- Where an amendment to the SMP was adopted after a DNS that did not include actual consideration of environmental factors shown in the record, a conclusion that a mistake was made under the clearly erroneous test was reached. *Seaview v. Pacific County* 96-2-0010 (FDO, 10-22-96)
- A CP must be consistent with the policies and requirements of the SMA and the local SMP. *Moore-Clark v. La Conner* 94-2-0021 (FDO, 5-11-95)

Western Washington Growth Management Tentative Case Schedule



NOTE: Days shown in **bold** indicate time frames set in RCW 36.70A. All other days are tentative and are established based on the facts and circumstances for each petition filed. Dates will be established in the Board's Pre-Hearing Order.