CALL TO ORDER & ROLL CALL
7:30 PM

APPEARANCES
This is the time set aside for members of the public to speak to the Commission about issues of concern. If you wish to speak, please consider the following points:
- Speak audibly into the podium microphone
- State your name and address for the record
- Limit your comments to three minutes
(Note: The Commission may limit the number of speakers and modify the time allotted. Total time for appearances: 15 minutes)

APPROVAL OF MINUTES
Minutes from January 19, 2011

REGULAR BUSINESS 7:45 PM
Agenda Item #1: Shoreline Master Program update –
  a. 3rd Review of General Regulations
  b. 2nd Review of Shoreline Designations
  c. 2nd Review of Shoreline Use Table
  d. Review of Shoreland Development Standards

OTHER BUSINESS
  Council Liaison Report
  Staff Comments
  Planned Absences for Future Meetings
  Announcements & Communications
  Next Regular Meeting: February 16, 2011

ADJOURN

AGENDA TIMES ARE APPROXIMATE
CALL TO ORDER:
Chair Adam Cooper called the meeting to order at 7:34 PM in the Council Chambers, at 9611 SE 36th Street, Mercer Island, Washington.

ROLL CALL:
Chair Adam Cooper, Vice-Chair Eric Laschever, Commissioners Bryan Cairns, Jon Friedman, Craig Olson and Kristen Omdorff were present. Commissioner Steve Marshall was excused. Council Liaison El Jahncke was excused. City staff was represented by Shane Moloney, Assistant City Attorney; Tim Stewart, Development Services Director; George Steirer, Principal Planner; and Travis Saunders, Planner.

APPEARANCES:
Rita Moore of 4509 Ferncroft Road provided comment regarding the Shoreline Master Program update.

MINUTES:
Commissioner Friedman motioned to approve the minutes from January 5, 2011. Commissioner Cairns seconded the motion. The Commission unanimously approved the minutes as written.

REGULAR BUSINESS:
Agenda Item #1: Shoreline Master Program update – 2nd Review Authority and Purpose; 2nd Review of General Regulations; 2nd Review of Shoreline Map; 2nd Review of Shoreline Permits Administration and Procedures; Review of Shoreline Designations; Review of Shoreline Use Table

George Steirer, Principal Planner, provided a staff presentation. The Planning Commission discussed the exhibits provided by staff, asking questions and directing staff on revisions, including edits to the description of Urban Park in Exhibit 4; the grouping of uses in Exhibit 5’s Use Table; classifying Accessory Dwelling Units as Categorically Exempt in the Urban Residential Environment; classifying Public Schools as Not Permitted in the shoreline environment; review of Houseboat definition; review of sea plane lifts as a permitted use; review of off shore wind turbines as a permitted use; and edits to No Net Loss Standard and Mitigation Sequencing language.

Agenda Item #2:
Election of Planning Commission Chair and Vice-Chair

George Steirer, Principal Planner, provided the procedural guidelines for the election and requested nominations.
Commissioner Friedman nominated Chair Cooper for Chair. Chair Cooper accepted the nomination. No other nominations were made. The Commission unanimously voted to retain Chair Cooper.

Chair Cooper nominated Commissioner Friedman for Vice-Chair. Commissioner Friedman accepted the nomination. No other nominations were made. The Commission unanimously voted Commissioner Friedman for Vice-Chair.

COUNCIL LIAISON REPORT:
None

STAFF COMMENTS:
Tim Stewart, Development Services Director thanked the Planning Commission for their work.

Training regarding quasi judicial decisions is scheduled for February 23, 2011.

The City received an application for a Long Plat. Staff will inform the Planning Commission when the application is deemed complete for public notice.

PLANNED ABSENCES FOR FUTURE MEETINGS:
None

ANNOUNCEMENTS AND COMMUNICATIONS:
None

NEXT REGULAR MEETING:
The next Planning Commission meeting is scheduled for February 2, 2011.

ADJOURNMENT:
The Planning Commission meeting was adjourned at 9:21 PM.

Respectfully submitted by Travis Saunders, Planner
To: Planning Commissioners and Council Member Jahncke
From: George Steirer, Principal Planner
Subject: February 2, 2011 Meeting Regarding SMP Update
Date: January 27, 2011

Background
At the January 19th meeting, the Planning Commission reviewed five exhibits related to the development of the Shoreline Master Program (SMP) draft. The requested research and changes are provided below with reference to the corresponding exhibit.

Exhibit 1a: The Planning Commission struck one sentence in proposed MICC 19.07.110.B.2 to clarify the no net loss provision and accepted the proposed changes shown previously on Exhibit 1. The deleted sentence and other minor changes are shown as a strike and delete on page 3 of Exhibit 1b.

Exhibit 2a: The Planning Commission approved the addition of the label for Luther Burbank Park. No further changes were requested.

Exhibit 3a: The Planning Commission approved the reference to state law regarding appeals for shoreline permits (p. 9) and other minor text clarifications. No further changes were requested.

Exhibit 4: The Planning Commission reviewed the proposed language, with only minor text edits to the “Urban Park Environment” language, as shown in enclosed Exhibit 4a.

Exhibit 5: The Planning Commission requested the following:
   a. More logical grouping of uses in Exhibit 5’s Use Table. Staff has modified the order and placed the uses into two tables. Table A lists uses landward of the OHWM, and Table B lists uses waterward of the OHWM;
   b. Classify Accessory Dwelling Units as Categorically Exempt in the Urban Residential Environment;
   c. Classify Public Schools as Not Permitted in the shoreline environments;
   d. Change ‘dredging and dredge material disposal’ from ‘not permitted’ to ‘permitted’ to be consistent with State Law and the current allowed uses, which may be necessary for activities such as the sewer lake line repair, replacement, or improvement;
   e. Provide a copy of Seattle’s definition for ‘houseboat’. While the specific term is not defined, the Seattle Municipal Code’s SMP, section 23.60.912, does define floating home. A copy of the definition is provided in Exhibit 1b (pg 4) for the Commission’s consideration.
   f. Staff to review the proposed code to determine if off shore wind turbines would be a permitted use. Wind turbines are not a listed use, and thus, would be prohibited unless another use includes wind turbines by definition. Utilities are defined by MICC 19.16.010(U) as:
Facilities providing infrastructure services by a public utility or private utility regulated by the state through fixed wires, pipes, or lines. Such facilities may include water, sewer, storm water facilities (lines, ditches, swales and outfalls) and private utilities such as natural gas lines, telecommunication lines, cable communication lines, electrical lines and other appurtenances associated with these utilities. “Utilities” does not include wireless facilities.

The Code Official does not interpret that definition to include wind turbines, or other mechanical devices used for the purpose of generating electricity. Wind turbines would be considered mechanical equipment for the commercial manufacturing or production of electricity. Commercial uses are not permitted in the shoreline environments, and therefore, wind turbines would be prohibited.

g. Staff to research if seaplane lifts would be permitted under the proposed code. The definition of ‘moorage facilities’, in MICC 19.06.010(M), includes ‘lift stations’. The definition of a ‘lift station’ includes ‘a structure or device normally attached to a dock or pier used to raise a watercraft above the waterline for secure moorage purposes’. The term ‘watercraft’ is not defined in the current code. However, the Code Official interprets watercrafts to include seaplanes. Therefore, a seaplane lift would be allowed wherever a lift station or moorage facility is allowed if complying with all other applicable regulations;

Staff also added Light Rail Transit Facilities as a permitted use per previous Planning Commission discussions. The changes stated above are provided in Exhibit 5a.

New Material
In addition to the requested changes and research, staff has provided Exhibit 6. The exhibit is an initial look at the draft shoreline development standards based on previous direction by the Planning Commission, current code, consistency with other draft language, and consistency with the SMA. The most significant changes from current code include:

a. Replacing “bulkheads and shoreline protective structures” with “Hard structural shoreline stabilization” and “Soft structural shoreline stabilization” as previously approved by the Planning Commission to be consistent with WAC 173-26-231. See draft MICC 19.07.110.E.9 on pages 2 through 5.

b. Moorage mitigation, to meet no net loss, is added. The requirements are generally consistent with the RGP-3 standards. Alternatively, an applicant can choose to meet mitigation requirements by the Army Corp of Engineers and Washington State Department of Fish and Wildlife if demonstrating no net loss of ecological functions. See draft MICC 19.07.110.E.3 on pages 10 and 11.

c. Adding the requirement for height limits for handrails: “4 feet for ramps and gangways designed to span the area 0 feet to 30 feet from the OHWM” per Planning Commission direction from the meeting on March 3, 2010. See MICC 19.07.110.E.Table B.H on page 6.

d. Modification to the current ‘deviation’ language that would allow for a higher covered moorage (up to 25 feet rather than 20 feet) and a cover outside the triangle. The previous deviation criteria were exceptionally difficult. See draft MICC 19.07.110.E.3.a on page 9.

e. Changing references of “10 feet from mean low water” to “11.5 feet below OHWM”, which is the same elevation.
Staff Recommendation:
a. Review and provide preliminary approval of Exhibits 1b, 4a, and 5a;
b. Review and provide comments on Exhibits 6.

Once there is a majority consensus on each exhibit, staff will combine all exhibits into one ordinance for a public hearing, and final recommendation by the Planning Commission to the City Council.

Next Steps
At the February 2, 2011 meeting, staff will present the exhibits and seek the Commission’s comments for each exhibit. Additionally, due to noticing requirements, staff is requesting feedback from the Planning Commission for the proposed March 2, 2011 public hearing.

Staff anticipates returning to the Planning Commission on the following dates:
  c. March 16, 2011: SMP recommendation to City Council

Please do not hesitate to contact me at (206)275-7719 or via email at george.steirer@mercergov.org if you have any questions or concerns. Thank you for your volunteering your time.
EXHIBIT 1b
Staff response to comments from the Planning Commission meeting on 1-19-11 regarding Exhibit 1a

CITY OF MERCER ISLAND
ORDINANCE NO. 11C-XX

AN ORDINANCE OF THE CITY OF MERCER ISLAND, WASHINGTON, ADOPTING THE 2011 CITY OF MERCER ISLAND SHORELINE MASTER PROGRAM BY AMENDING MICC 19.07.110, 19.16.010, AND APPENDIX F TO TITLE 19 OF THE MERCER ISLAND MUNICIPAL CODE IN ORDER TO MAKE THE MERCER ISLAND MUNICIPAL CODE COMPATIBLE WITH THE ADOPTED SHORELINE MANAGEMENT ACT, AS REQUIRED BY RCW 90.58.080

WHEREAS, the City has previously adopted a Shoreline Master Program; and

WHEREAS, the State of Washington passed the Shoreline Management Act of 1971 governing the adoption of Shoreline Master Programs, as currently set forth within Chapter 58 of Title 90 of the Revised Code of Washington, and subject to the Washington State Department of Ecology’s administrative rules contained within Title 173 of the Washington Administrative Code; and

WHEREAS, the City applied for, and obtained a grant from the Washington State Department of Ecology to assist in the preparation and adoption of a mandated update to the Mercer Island Shoreline Master Program; and

WHEREAS, the City has completed the preparation of supporting information and background material for the 2011 Shoreline Master Program update; and

WHEREAS, the updated Shoreline Master Program provides for additional protection and development standards on Lake Washington; and

WHEREAS, development applications are reviewed for compliance with these regulations; and

WHEREAS, a State Environmental Policy Act (SEPA) Determination of Non Significance for the 2011 Shoreline Master Program update was issued on March 15, 2010; and

WHEREAS, in accordance with WAC 365-195-620, a notice of intent to adopt the proposed Mercer Island Shoreline Master Program was received by the State of Washington Department of Commerce on xxx, 2011; and

WHEREAS, the public process for the proposed amendments has provided for extensive public participation opportunities at more than #### public meetings and hearings before the Planning Commission and City Council as well as a public open houses, and dialogue sessions between May of 2009 and xxxx of 2011; and

WHEREAS, the Planning Commission held public meetings and public hearings in 2010, and 2011 and forwarded a recommended Shoreline Master Program to the City Council on March xx, 2011; and

Draft: 1/27/2011
AB 46XX
Exhibit X
Page 1
WHEREAS, the City Council considered the proposed Mercer Island Shoreline Master Program at a City Council public hearing on June xx, 2011; and

WHEREAS, the City Council considered the Planning Commission’s recommendation, public comment, and other available information.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MERCER ISLAND, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Repeal and Replace MICC Section 19.07.100 Shoreline Areas and 19.07.110, Shoreline Management Master Program. MICC 19.07.100 “Shoreline Areas” and MICC 19.07.110 “Shoreline Management Master Program” are hereby repealed in their entirety, replaced with the following new Section 19.07.110 “Shoreline Master Program” and shall read as follows:

19.07.110 Shoreline Master Program.

A. Authority and Purpose.

1. Authority. This Section is adopted as part of the shoreline master program of the city. It is adopted pursuant to the authority and requirements of Chapter 90.58 RCW and Chapter 173-26 WAC.

2. Applicability. The requirements of this Section apply to all uses, activities and development within the shorelands, unless specifically exempted.

3. Purpose and Intent. It is the purpose and intent of this section to achieve the Shoreline Master Program (SMP) mandates of the State of Washington and to adopt property development standards within the shorelands that protect the health, safety, welfare, values and property interests of the City of Mercer Island and its residents.

4. Relationship with other Mercer Island Codes and Ordinances. This section is an integrated element of the City of Mercer Island Unified Development Code (Title 19) and other applicable development regulations contained in the Mercer Island City Code, including the storm water management regulations in Title 15. To the extent this section conflicts with any other section of the Mercer Island Municipal Code, the provisions of this Section shall govern within the shorelands.

5. Relationship with other Federal and State Law. The provisions of this Section shall not relieve any responsibility to comply with other Federal and State laws or permits. All work at or waterward of the OHWM may require permits from one or all of the following: U.S. Army Corps of Engineers, Washington Department of Fish and Wildlife, Washington Department of Natural Resources or Washington Department of Ecology.
B. General Regulations.

1. Legal Nonconforming Uses and Structures May Continue. Overwater uses and structures, and uses and structures twenty five (25) feet landward from the OHWM, which were legally created may be maintained, repaired, renovated, remodeled and completely replaced to the extent that non-conformance with the standards and regulations of this Section is not increased.

2. No Net Loss Standard and Mitigation Sequencing. No development shall be approved unless the applicant demonstrates to the code official’s satisfaction that the shoreline development will not create a net loss of ecological function in the shorelands.
   a. Standards Presumed to Meet No Net Loss. Except as specified elsewhere in this section, when a shoreline development complies with all of the applicable mitigation standards of this section, there will be a rebuttable presumption that the project does not create a net loss of ecological function to the shorelands. Where such presumption is met, the City shall not require additional mitigation analysis unless there is a substantial basis for the code official to determine that the specific mitigation standards of this section do not contemplate identifiable harmful ecological consequences of the proposed development project.
   b. Optional Flexible Standards. Whenever a substantial development project is proposed and there are no applicable specific mitigation standards required by this section, there are optional flexible mitigation measures allowed for the project, or a discretionary decision such as a shoreline variance or shoreline conditional use permit is required for approval of the project, the applicant shall provide the City with a mitigation plan that demonstrates the proposed project will not create a net loss in ecological function to the shorelands. The mitigation plan should accomplish no net loss of ecological function by avoiding, minimizing and-or mitigating adverse impacts to ecological functions or ecosystem-wide processes. This mitigation analysis may be conducted through the SEPA process.
   c-i. Off Site Mitigation Permitted. While on-site mitigation is preferred, off site mitigation may be permitted at the discretion of the code official.
   d-ii. Demonstration of No Net Loss Supported by a Qualified Professional. The code official may require any applicant to provide reports by qualified professionals that demonstrate to the code official’s satisfaction that the applicant’s proposed mitigation plan avoids a net loss in ecological function if the presumption is not met.

3. Expansion of Legal Nonconforming Uses and Structures. Expansions of legal nonconforming over water uses and structures and uses and structures upland twenty five (25) feet from the OHWM are permitted provided that the expanded use or structure is constructed in compliance with all of the standards and provisions of the Mercer Island development regulations.

4. Shoreline Habitat and Natural Enhancements Held Harmless. In those instances where the OHWM moves further landward as a result of any action required by this Section, or in accordance with permits involving a shoreline habitat and nature systems enhancement approved by the city, a state or federal agency, the shoreline setback shall be measured.
from the location of the OHWM that existed immediately prior to the action or enhancement project.

C. Shoreline Map and Designations. The Shoreline Map with Designations, dated May 19, 2010 as shown by Appendix F is adopted as the Official Mercer Island Shoreline Map and Designation.
   2. Urban Residential Environment.

D. Use Regulations.
   [To be added at future date]

E. Development Standards
   [To be added at future date]

Section 2. Amendments to MICC 19.16.010, Definitions. MICC 19.16.010 “Definitions” is hereby amended as follows:

E

Ecological functions or shoreline functions: means the work performed or role played by the physical, chemical, and biological processes that contribute to the maintenance of the aquatic and terrestrial environments that constitute the shoreline’s natural ecosystem.

Ecosystem-wide processes: means the suite of naturally occurring physical and geologic processes of erosion, transport, and deposition; and specific chemical processes that shape landforms within a specific shoreline ecosystem and determine both the types of habitat and the associated ecological functions.

F

Floating Home: means a single-family dwelling unit constructed on a float, which is moored, anchored or otherwise secured in waters.

M

Moorage Facility: Any device or structure used to secure a boat or a vessel, including piers, docks, piles, lift stations, personal watercraft lifts or buoys.
Ordinary High Water (OHW): The point on the shore that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation as that condition exists on June 1, 1971, as it may naturally change thereafter in accordance with permits issued by a local government or the department.

Ordinary High Water Mark (OHWM): The point on the shore that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation as that condition exists on June 1, 1971, as it may naturally change thereafter in accordance with permits issued by a local government or the department of ecology; provided, that in any area where the OHWM cannot be found, the OHWM adjoining fresh water shall be the line of mean high water, or as amended by the State. For Lake Washington, the OHWM corresponds with a lake elevation of 21.8 feet above sea level, based on the National Geodetic Vertical Datum of 1929 (NGVD 29). Alternatively, the identical OHWM corresponds with a lake elevation of 25.38 feet above sea level, when based on North American Vertical Datum of 1988 (NAVD 88).

P

Personal Watercraft (PWC) Lift: A structure or device with a frame width no wider than 5 feet 6 inches which is used to raise a personal watercraft weighing less than 2,000 pounds, such as a jet-ski or wave runner, above the water line for secure moorage purposes.

R

Restoration of ecological functions: means the reestablishment or upgrading of impaired ecological shoreline processes or functions. This may be accomplished through measures including but not limited to re-vegetation, removal of intrusive shoreline structures and removal or treatment of toxic materials. Restoration does not imply a requirement for returning the shoreline area to aboriginal or pre-European settlement conditions.

S

Shorelands: Lake Washington, its underlying land, associated wetlands, and those lands extending landward 200 feet from its Ordinary High Water Mark (OHWM).
Shorelands: Those areas extending landward for 200 feet in all directions, as measured on a horizontal plane from the ordinary high water mark, floodways and contiguous floodplain areas landward 200 feet from such floodplains and all wetlands and river deltas associated with the streams, lakes and tidal waters subject to the Shoreline Management Act (Chapter 90.58 RCW).

Section 3: **Repeal and replace to Appendix F of Title 19 MICC, Shoreline Designated Environments.** Appendix F of the Title 19 MICC, the map identifying Shoreline Designated Environments, is hereby replaced with Exhibit 2.

Section 4: **Severability.** If any section, sentence, clause or phrase of this ordinance or any municipal code section amended hereby should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity of any other section, sentence, clause or phrase of this ordinance or the amended code section.

Section 5. **Ratification.** Any act consistent with the authority and prior to the effective date of this ordinance is hereby ratified and affirmed.

Section 6: **Effective Date.** This ordinance shall be published in the official newspaper of the City, and shall be transmitted to the Washington State Department of Ecology for review and approval. This ordinance shall become effective on the date that the Department of Ecology issues formal approval of the ordinance.

PASSED by the City Council of the City of Mercer Island, Washington at its regular meeting on the ____ day of _____________, 20___ and signed in authentication of its passage.

CITY OF MERCER ISLAND

________________________________
Jim Pearman, Mayor

ATTEST:

______________________________
Allison Spietz, City Clerk

Draft: 1/27/2011

AB 46XX

Exhibit X

Page 6
Approved as to Form:

________________________________________
Katie Knight, City Attorney

Date of Publication: ________________

Recommended by the City of Mercer Island Planning

________________________________________
Adam Cooper, Chair                       Date
Mercer Island Planning Commission
C. Shoreline Map and Designations. The Shoreline Environmental Designations Map, dated May 19, 2010 as shown by Appendix F is adopted as the Official Mercer Island Shoreline Environmental Designations Map. Different areas of the city’s shorelands have different natural characteristics and development patterns. As a result, two shoreline designated environments are established to regulate developments and uses consistent with the specific conditions of the designated environments and to protect resources of the Mercer Island shorelands. They are:

1. Urban Park Environment. This environment consists of shoreland areas designated for public access and active and passive public recreation. The areas include, but are not limited to, street ends, public utilities and other publicly owned rights-of-way. The uses located in this environment should be water-dependent and designed to maintain with regard to the natural character of the shorelines, including restoration of ecological functions.

2. Urban Residential Environment. The purpose of the Urban Residential Environment is to provide for residential and recreational utilization of the shorelands, compatible with the existing residential character in terms of bulk, scale and type of development.

D. …
19.07.110

D. Use Regulations. The following table specifies the shoreline uses and developments which may take place or be conducted within the designated environments. The uses and developments listed in the matrix are allowed only if they are not in conflict with more restrictive regulations of the Mercer Island development code and are in compliance with the standards specified in subsection E of this section.

**KEY:**

CE: Permitted via Shoreline Categorically Exempt
P: Permitted Use
P-1: Uses permitted when authorized by a conditional use permit for the applicable zone shall also require a Shoreline Substantial Development permit and a shoreline mitigation plan in compliance with MICC 19.07.110.B.2

SCUP Shoreline Conditional Use Permit
NP: Not a Permitted Use

The following regulations apply to all uses and development within the shorelands, whether or not that development is exempt from the permit requirements.

### Table A – Shoreland Uses Landward of the Ordinary High Water Mark Table:

<table>
<thead>
<tr>
<th>SHORELAND USE LANDWARD OF THE OHWM</th>
<th>Urban Residential Environment</th>
<th>Urban Park Environment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single Family Dwelling <strong>including accessory uses and accessory structures</strong></td>
<td>CE</td>
<td>NP</td>
</tr>
<tr>
<td>Accessory dwelling units</td>
<td><strong>PCE</strong></td>
<td>NP</td>
</tr>
<tr>
<td>Accessory buildings and structures incidental to the main building</td>
<td><strong>CE</strong></td>
<td>P</td>
</tr>
<tr>
<td>The use of a single-family dwelling as a bed and breakfast</td>
<td>P-1</td>
<td>NP</td>
</tr>
<tr>
<td>A state-licensed day care or preschool</td>
<td>P-1</td>
<td>NP</td>
</tr>
<tr>
<td>Government services, public facilities, and museums and art exhibitions</td>
<td>P-1</td>
<td>P</td>
</tr>
<tr>
<td>Public parks and open space</td>
<td>P</td>
<td>P</td>
</tr>
<tr>
<td>Private recreational areas</td>
<td>P</td>
<td>NP</td>
</tr>
<tr>
<td>Semi-private waterfront recreation areas for use by 10 or fewer families</td>
<td>P</td>
<td>NP</td>
</tr>
<tr>
<td>Semi-private waterfront recreation areas for use by more than 10 families</td>
<td>P-1</td>
<td>NP</td>
</tr>
<tr>
<td>Noncommercial recreational areas</td>
<td>P-1</td>
<td>P</td>
</tr>
<tr>
<td>Commercial recreational areas</td>
<td>NP</td>
<td>NP</td>
</tr>
<tr>
<td>Places of worship</td>
<td>P-1</td>
<td>NP</td>
</tr>
<tr>
<td>Retirement homes located on property used primarily for a place of worship</td>
<td>P-1</td>
<td>NP</td>
</tr>
</tbody>
</table>
### Staff response to comments from the Planning Commission meeting on 1-19-11 regarding Exhibit 5

<table>
<thead>
<tr>
<th>SHORELAND USE WATERWARD OF THE OHWM</th>
<th>Urban Residential Environment</th>
<th>Urban Park Environment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Moorage facilities and covered moorages 600 square feet or less and Moorage Facilities</td>
<td>P</td>
<td>P</td>
</tr>
<tr>
<td>Covered moorage larger than 600 square feet</td>
<td>SCUP</td>
<td>SCUP</td>
</tr>
<tr>
<td>Floating platforms</td>
<td>P</td>
<td>P</td>
</tr>
<tr>
<td>Mooring piles, diving boards and diving platforms</td>
<td>P</td>
<td>P</td>
</tr>
<tr>
<td>Boat ramp</td>
<td>P</td>
<td>P</td>
</tr>
<tr>
<td>Boat houses</td>
<td>NP</td>
<td>NP</td>
</tr>
<tr>
<td>Houseboats</td>
<td>NP</td>
<td>NP</td>
</tr>
<tr>
<td>Public access pier or boardwalk</td>
<td>P</td>
<td>P</td>
</tr>
<tr>
<td>Utilities</td>
<td>P</td>
<td>P</td>
</tr>
<tr>
<td>Public transportation facilities including roads, bridges, light rail transit facilities, and transit</td>
<td>P</td>
<td>P</td>
</tr>
<tr>
<td>Dredging and dredge material disposal</td>
<td>NP</td>
<td>NP</td>
</tr>
<tr>
<td>Breakwaters, jetties, and groins (except those for restoration of ecological functions)</td>
<td>NP</td>
<td>NP</td>
</tr>
<tr>
<td>Restoration of ecological functions including shoreline habitat and natural systems enhancement</td>
<td>P</td>
<td>P</td>
</tr>
</tbody>
</table>

Notes:

A use not listed in this table it is not permitted within shorelands.

A use permitted by this table shall meet all other applicable regulations, including, but not limited to, being an allowed use in the applicable zone.
EXHIBIT 5a
Staff response to comments from the Planning Commission meeting on 1-19-11 regarding Exhibit 5

E.

...
19.07.110

E. Shoreland Development Standards. All development within the shoreline jurisdiction shall be in compliance with all development requirements specified in this section.

1. Standards Landward of the OWHM. The standards in Table A shall apply to development located landward of the OHWM:

<table>
<thead>
<tr>
<th>Table A. Requirements for Development Located Landward from the OHWM</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Setbacks for All Structures (Including Fences over 48 Inches High) and Parking</strong></td>
</tr>
<tr>
<td>A* 25 feet from the OHWM and all required setbacks of the development code, except light rail transit facilities. If a wetland is adjacent to the shoreline, measure the shoreline setback from the wetland’s boundary.</td>
</tr>
<tr>
<td><strong>Height Limits for All Structures</strong></td>
</tr>
<tr>
<td>B Shall be the same as height limits specified in the development code but shall not exceed a height of 35 feet above average building elevation, except light rail transit facilities</td>
</tr>
<tr>
<td><strong>Maximum Impervious Surface Coverage</strong></td>
</tr>
<tr>
<td>C 10%: between 0 and 25 feet from OHWM</td>
</tr>
<tr>
<td>D 30%: between 25 and 50 feet from OHWM</td>
</tr>
<tr>
<td><strong>Minimum Land Area Requirements</strong></td>
</tr>
<tr>
<td>E All semi-private, commercial and noncommercial recreational tracts and areas shall have minimum land area: 200 square feet per family, but not less than 600 square feet, exclusive of driveways or parking areas. Screening of the boundaries with abutting properties</td>
</tr>
<tr>
<td><strong>Shoreland Surface Modification</strong></td>
</tr>
<tr>
<td>Alterations over 250 cubic yards – outside the building footprint requires SEPA</td>
</tr>
<tr>
<td><strong>Height Limits for Light Rail Transit Facilities within the Existing I-90 Corridor</strong></td>
</tr>
<tr>
<td>The trackway and overhead wires, support poles, and similar features necessary to operate light rail transit facilities may be erected upon and exceed the height of the existing I-90 bridges</td>
</tr>
</tbody>
</table>

*The letters in this column refer to the Plan View(A) and Section(A) diagrams.*
2. Bulkheads and Shoreline Stabilization Structures.
   a. An existing shoreline stabilization structure may be replaced with a similar structure if there is a demonstrated need to protect principal uses or structures from erosion caused by currents or waves, and the following conditions shall apply:
      i. The replacement structure should be designed, located, sized, and constructed to assure no net loss of ecological functions.
ii. Replacement walls or bulkheads shall not encroach waterward of the ordinary high water mark or existing structure unless the primary structure was occupied prior to January 1, 1992 and there are overriding safety or environmental concerns. In such cases, the replacement structure shall abut the existing shoreline stabilization structure.iii. Soft shoreline stabilization measures that provide restoration of shoreline ecological functions may be permitted waterward of the ordinary high-water mark.

iii. For purposes of this section standards on shoreline stabilization measures, "replacement" means the construction of a new structure to perform a shoreline stabilization function of an existing structure which can no longer adequately serve its purpose. Additions to or increases in size of existing shoreline stabilization measures shall be considered new structures.

iv. Construction and maintenance of normal protective bulkhead common to single-family dwellings requires only a shoreline exemption permit, unless a report is required by the code official to ensure compliance with the above conditions; however, if the construction of the bulkhead is undertaken wholly or in part on lands covered by water, such construction shall comply with SEPA mitigation.

b. New Structures for Existing Primary Structures: New or enlarged structural shoreline stabilization measures for an existing primary structure, including residences, should not be allowed unless there is conclusive evidence, documented by a geotechnical analysis, that the structure is in danger from shoreline erosion caused by currents, or waves. Normal sloughing, erosion of steep bluffs, or shoreline erosion itself, without a scientific or geotechnical analysis, is not demonstration of need. The geotechnical analysis should evaluate on-site drainage issues and address drainage problems away from the shoreline edge before considering structural shoreline stabilization. New or enlarged erosion control structure shall not result in a net loss of shoreline ecological functions.

c. New development should be located and designed to avoid the need for future shoreline stabilization to the extent feasible. This future shoreline stabilization standard does not apply to stabilization that occurs pursuant to subsection a of this section. New structural stabilization measures in support of new nonwater-dependent development, including single-family residences, shall only be allowed when all of the conditions below apply:

i. The erosion is not being caused by upland conditions, such as the loss of vegetation and drainage.

ii. Nonstructural measures, such as placing the development further from the shoreline, planting vegetation, or installing on-site drainage improvements, are not feasible or not sufficient.

iii. The need to protect primary structures from damage due to erosion is demonstrated through a geotechnical report, in compliance with MICC 19.07.110.E.2.h. The damage must be caused by natural processes, such as currents, and waves.

iv. The erosion control structure will not result in a net loss of shoreline ecological functions.

d. New development on steep slopes or bluffs shall be set back sufficiently to ensure that shoreline stabilization is unlikely to be necessary during the life of the structure, as demonstrated by a geotechnical analysis, in compliance with MICC 19.07.110.E.2.h.
e New structural stabilization measures in support of water-dependent development shall only be allowed when all of the conditions below apply:
   i. The erosion is not being caused by upland conditions, such as the loss of vegetation and drainage.
   ii. Nonstructural measures, planting vegetation, or installing on-site drainage improvements, are not feasible or not sufficient.
   iii. The need to protect primary structures from damage due to erosion is demonstrated through a geotechnical report, in compliance with MICC 19.07.110.E.2.h.
   v. The erosion control structure will not result in a net loss of shoreline ecological functions.

f. New structural stabilization measures to protect projects for the restoration of ecological functions or hazardous substance remediation projects pursuant to RCW 70.105D shall only be allowed when all of the conditions below apply:
   i. Nonstructural measures, planting vegetation, or installing on-site drainage improvements, are not feasible or not sufficient.
   ii. The erosion control structure will not result in a net loss of shoreline ecological functions.

g. Bulkheads shall be located generally parallel to the natural shoreline. No filling may be allowed waterward of the ordinary high water mark, unless there has been severe and unusual erosion within one year immediately preceding the application for the bulkhead. In this event the city may allow the placement of the bulkhead to recover the dry land area lost by erosion.

h. Geotechnical reports pursuant to this section that address the need to prevent potential damage to a primary structure shall address the necessity for shoreline stabilization by estimating time frames and rates of erosion and report on the urgency associated with the specific situation. As a general matter, hard armoring solutions should not be authorized except when a report confirms that there is a significant possibility that such a structure will be damaged within three years as a result of shoreline erosion in the absence of such hard armoring measures, or where waiting until the need is that immediate, would foreclose the opportunity to use measures that avoid impacts on ecological functions. Thus, where the geotechnical report confirms a need to prevent potential damage to a primary structure, but the need is not as immediate as the three years, that report may still be used to justify more immediate authorization to protect against erosion using soft measures.
   i. When any structural shoreline stabilization measures are demonstrated to be necessary, pursuant to above provisions, the following shall apply:
      i. Limit the size of stabilization measures to the minimum necessary. Use measures designed to assure no net loss of shoreline ecological functions. Soft approaches shall be used unless demonstrated not to be sufficient to protect primary structures, dwellings, and businesses.
      ii. Ensure that publicly financed or subsidized shoreline erosion control measures do not permanently restrict appropriate public access to the shoreline except where such access is determined to be infeasible because of incompatible uses, safety, security, or harm to ecological functions. See public access provisions; WAC 173-26-221(4). Where feasible, incorporate ecological restoration and public access improvements into the project.
iii. Mitigate new erosion control measures, including replacement structures, on feeder bluffs or other actions that affect beach sediment-producing areas to avoid and, if that is not possible, to minimize adverse impacts to sediment conveyance systems. Where sediment conveyance systems cross jurisdictional boundaries, local governments should coordinate shoreline management efforts. If beach erosion is threatening existing development, local governments should adopt master program provisions for a beach management district or other institutional mechanism to provide comprehensive mitigation for the adverse impacts of erosion control measures.

3. Transportation and Parking.
   a. Shoreline circulation system planning shall include safe, reasonable, and adequate systems for pedestrian, bicycle, and public transportation where appropriate. Circulation planning and projects should support existing and proposed shoreline uses that are consistent with all regulations.

   b. Transportation and parking facilities shall be planned, located, and designed where routes will have the least possible adverse effect on unique or fragile shoreline features, and will not result in a net loss of shoreline ecological functions or adversely impact existing or planned water-dependent uses.

   c. Where other options are available and feasible, new roads or road expansions should not be built within shorelands.

   d. Parking facilities in shorelands shall be allowed only as necessary to support an authorized use.

4. Standards Waterward of the OHWM. Moorage facilities may be developed and used as an accessory to dwellings on shoreline lots with water frontage meeting or exceeding the minimum lot width requirements specified in Table A. The standards in Table B shall apply to development located waterward of the OHWM:

Table B. Requirements for Moorage Facilities and Development Located Waterward from the OHWM

<table>
<thead>
<tr>
<th>Setbacks for All Moorage Facilities, Covered Moorage, and Floating Platforms</th>
<th>A*</th>
<th>10 feet from the lateral line</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>B</td>
<td>35 feet from adjoining moorage structures (except where moorage facility is built pursuant to the agreement between adjoining owners as shown in Figure B below)</td>
</tr>
<tr>
<td></td>
<td>C</td>
<td>Where a property shares a common boundary with the Urban Park Environment, the setback shall be 50 feet from the lateral line or 50% of the water frontage of the property, whichever is less.</td>
</tr>
</tbody>
</table>

| Setbacks for Boat Ramps and Other Facilities for Launching Boats by Auto or Hand, Including Parking and Maneuvering Space | D  | 25 feet from any adjacent private property line |

<p>| Length or Maximum Distance Waterward from the OHWM for | E  | Maximum 100 feet, but in cases where water depth is less than 11.5 feet below OHWM, length may |</p>
<table>
<thead>
<tr>
<th><strong>Moorage Facilities, Covered Moorage, Boatlifts and Floating Platforms</strong></th>
<th>extend up to 150 feet or to the point where water depth is 10 feet at mean low water, whichever is less</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Width of moorage facilities</strong></td>
<td>F Maximum 8 feet; does not apply to boat ramps, lift stations, personal watercraft lifts, or floating platforms</td>
</tr>
<tr>
<td><strong>Height Limits for Walls, Handrails and Storage Containers Located on Piers</strong></td>
<td>G 3.5 feet above the surface of a dock or pier. 4 feet for ramps and gangways designed to span the area 0-feet to 30 feet from the OHWM.</td>
</tr>
<tr>
<td><strong>Height Limits for Mooring Piles, Diving Boards and Diving Platforms</strong></td>
<td>H 10 feet above the elevation of the OHWM</td>
</tr>
<tr>
<td><strong>Height Limits for Light Rail Transit Facilities within the Existing I-90 Corridor</strong></td>
<td>The trackway and overhead wires, support poles, and similar features necessary to operate light rail transit facilities may be erected upon and exceed the height of the existing I-90 bridges</td>
</tr>
</tbody>
</table>

*The letters in this column refer to the Plan View(B) and Section(B) diagrams.*
Table B (continued) Requirements for Moorage Facilities and Development Located Waterward from the OHWM

<table>
<thead>
<tr>
<th>Minimum Water Frontage for Moorage Facility</th>
<th>J*</th>
<th>K</th>
<th>L</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single-family lots: 40 feet</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Shared – two adjoining lots: 40 feet combined</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Semi-private recreational tracts:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2 families: 40 feet</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3 – 5 families: 40 feet plus 10 feet for each family more than 2</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6 – 10 families: 70 feet plus 5 feet for each family more than 5</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>11 – 100 families: 95 feet plus 2 feet for each family more than 10</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>101+ families: 275 feet plus 1 foot for each family more than 100</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Covered Moorage

Permitted on single-family residential lots subject to the following:
(a) Maximum height above the OHWM: 20 feet; 20 to 25 feet subject to criteria of MICC 19.07.110.E.5.a
(b) Location/area requirements: See Figure A for single-family lots and Figure B for shared moorage.
(c) Building area: 600 square feet, however a covered moorage may be built larger than 600 square feet within the triangle subject to a shoreline conditional use permit
(d) Covered moorage shall have open sides.
(e) Translucent canopies are required.

Boatlifts

Permitted subject to the following:
(a) Minimum distance waterward from the OHWM: 30 feet. This does not apply to personal watercraft lifts.

*The letters in this column refer to the Plan View(C).
5. The covered portion of a moorage shall be restricted to the area lying within a triangle as illustrated in Figure A, except as otherwise provided in MICC 1907.110.E.5.a. The base of the triangle shall be a line drawn between the points of intersection of the property lateral lines with the ordinary high water mark. The location of the covered moorage shall not extend more than 100 feet from the center of the base line of such triangle. In cases where water depth is less than 11.5 feet from OHWM, the location of the covered moorage may extend up to 150 from the center of the base line or to the point where water depth is 11.5 feet at OHWM, whichever is less. The required 10 foot setbacks from the side property lines shall be deducted from the triangle area.

a. A covered moorage is allowed outside the triangle, or a canopy up to 25 feet, if the covered moorage meets all other regulations and:
   i. Will not constitute a hazard to the public health, welfare, and safety, or be injurious to affected shoreline properties in the vicinity;
   ii. Will not compromise a reasonable interest of the adjacent property owners;
   iii. Is necessary to the reasonable enjoyment of property rights of the applicant; and
   iv. Is not in conflict with the general intent and purpose of the SMA, the shoreline master program and the development code.

Figure A: Area of Permitted Covered Moorage, Individual Lots
EXHIBIT 6

Where a covered moorage or moorage facility is built pursuant to the agreement of adjoining owners of single-family lots, the covered moorage area shall be deemed to include, subject to limitations of such joint agreement, all of the combined areas lying within the triangles extended upon each adjoining property and the inverted triangle situated between the aforesaid triangles, as illustrated in Figure B below.

Figure B: Area of Permitted Covered Moorage and Moorage Facilities, Two Adjoining Single-family Lots

6. New and Expanded Moorage Facilities. All permits for new and expanding moorage facility shall meet the following mitigation standards unless otherwise exempted.
   a. Development Standards. A proposed moorage facility shall be presumed to not create a net loss of ecological function pursuant to 19.07.110.B.2 if:
      i. the surface coverage area of the moorage facility is:
         (A) 480 square feet or less for a single property owner,  
         (B) 700 square feet or less for two residential property owners (residential), or  
         (C) 1,000 square feet or less for three or more residential property owners,  
      ii. Piers, docks, and platform lifts must be fully grated with materials that allow a minimum of 40% light transmittance;  
      iii. Vegetation. The code official approves a vegetation mitigation plan that conforms to the following standards:  
         (A) the total canopy at maturity shall cover no less than 25 percent of the setback area with native plants, and  
         (B) there shall be one tree for every 10-feet of linear shoreline frontage; large shrubs shall be planted four to seven feet on center; and small shrubs and ground cover shall be planted one to four feet on center, unless otherwise approved by the Code Official.  
      iv. Only piers, ramps, personal watercraft lifts may be within the first 30 feet from the OHWM. No skirting is allowed on any structure.  
      v. The height above the OHWM for moorage facilities, except floats shall be a minimum of 1.5 feet and a maximum of 5 feet.  
      vi. The first in-water (nearest the OWHM) set of pilings shall be steel, 10 inch in diameter or less, and at least 18 feet from the OHWM. Piling sets beyond the first shall also be spaced at least 18 feet apart and shall not be greater than 12 inches in diameter. Piles shall not be treated with pentachlorophenol, creosote, CCA or comparably toxic compounds. If ammoniacal copper zinc arsenate (ACZA) piling are proposed, the applicant shall meet all of the Best Management Practices, including a post-treatment
procedure, as outlined in the amended Best Management Practices of the Western Wood Preservers. All piling sizes are in nominal diameter.

vii. Any paint, stain or preservative applied to components of the overwater structure must be leach resistant, completely dried or cured prior to installation. Materials shall not be treated with pentachlorophenol, creosote, CCA or comparably toxic compounds.

viii. No more than two mooring piles shall be installed per structure. Joint-use structures may have up to four mooring piles. The limits include existing mooring piles. Moorage piling shall not be installed within 30 feet of the OHWM; and shall not be placed any further waterward than the end of the pier. These piles shall be as far offshore as possible.

ix. The applicant shall abide by the work windows for listed species established by the U.S. Army Corp of Engineers.

x. Disturbance of bank vegetation shall be limited to the minimum amount necessary to accomplish the project. Disturbed bank vegetation shall be replaced with native, locally adapted herbaceous and/or woody vegetation. Herbaceous plantings shall occur within 48 hours of the completion of construction. Woody vegetation components shall be planted in the fall or early winter, whichever occurs first. The applicant shall take appropriate measures to ensure revegetation success.

b. Alternative Development Standards. The code official shall approve moorage facilities not in compliance with the Development Standards in subsection MICC 19.07.110.E.6.b if all other requirements of the development code are met and the applicant:

i. demonstrates to the Code Official’s satisfaction that proposed project will not create a net loss in ecological function of the shoreline, and

ii. provides the City with documentation of approval of the moorage facilities by both the U.S. Army Corps of Engineers and the Washington Department of Fish and Wildlife.

7. Breakwaters, jetties, groins, and weirs. Breakwaters, jetties, groins, weirs, and similar structures are prohibited, except for those structures installed to protect or restore ecological functions, such as woody debris installed in streams. Breakwaters, jetties, groins, and weirs shall be designed to protect critical areas and shall provide for mitigation according to the sequence defined in WAC 173-26-201 (2)(e).

8. Dredging.

a. Dredging shall be permitted only if navigational access has been unduly restricted or other extraordinary conditions in conjunction with water-dependent use; provided, that the use meets all state and federal regulations.

b. Dredging shall be the minimum necessary to accommodate the proposed use.

c. Dredging shall utilize techniques that cause the least possible environmental and aesthetic impact.

d. Dredging is prohibited in the following locations:

i. Fish spawning areas.

ii. In unique environments such as lake logging of the underwater forest.

e. Disposal of dredged material shall comply with Ecology Water Quality Certification process and U.S. Army Corps of Engineers permit requirements. The location and manner of the disposal shall be approved by the city.
9. General Requirements. The following requirements apply to the following types of activities that may be waterward and/or landward of the OHWM:
   a. Critical Areas within the shorelands are regulated by MICC 19.07.
   b. Utilities
      i. Utilities shall be placed underground and in common rights-of-way wherever economically and technically practical.
      ii. Shoreline public access shall be encouraged on publicly owned utility rights-of-way, when such access will not unduly interfere with utility operations or endanger public health and safety. Utility easements on private property will not be used for public access, unless otherwise provided for in such easement.
      iii. Restoration of the site is required upon completion of utility installation.
   c. Archaeological and Historic Resources
      i. If archaeological resources are uncovered during excavation, the developer and property owner shall immediately stop work and notify the City, the Office of Archaeology and Historic Preservation, and affected Indian tribes.
      ii. In areas documented to contain archaeological resources by the Office of Archaeology and Historic Preservation, a site inspection or evaluation is required by a professional archaeologist in coordination with affected Indian tribes.

   ...

   [Section 2 of ordinance.]
   
   ...
**Please sign in to speak**

<table>
<thead>
<tr>
<th>NAME</th>
<th>MAILING ADDRESS</th>
</tr>
</thead>
<tbody>
<tr>
<td>David Douglas</td>
<td>Integrity Shoreline Permitting</td>
</tr>
<tr>
<td></td>
<td>818 Mill Ave, So. Puget Sound WA 98270</td>
</tr>
<tr>
<td>Robert Anderson</td>
<td>8716 38th SE 27th MT 98060</td>
</tr>
<tr>
<td>Amanda Clark</td>
<td>4319 86th Ave SE, MT 98044</td>
</tr>
<tr>
<td>City News</td>
<td>4589 Francis 4th Rd</td>
</tr>
<tr>
<td>Rebecca Henderson</td>
<td>Marine Restoration</td>
</tr>
<tr>
<td>Marc Henderson</td>
<td>PO Box 984, Kirkland, WA 98083</td>
</tr>
</tbody>
</table>

8. Did not wish to address the commission. 

9. 

10. 

11. 

12. 

13. 

14. 

15. 

16. 

17. 
February 2, 2011

City of Mercer Island
Attn: Planning Commission
George Steirer- Principal Planner
Travis Saunders- Planner
9611 36th St SE
Mercer Island, WA 98040

Dear Planning Commissioners, Mr. Steirer and Mr. Saunders,

Thank you for your valiant efforts on the update of the Mercer Island Shoreline Master Program. As your work on this document which will impact thousands of your residents for years to come winds down and is passed on to the City Council for review and approval, I want to extend my sincere gratitude to each Commissioner, Mr. Steirer and Mr. Saunders on a job well done. Your genuine interest in the well-being of Mercer Island residents is most refreshing. I most appreciate the fact that while many local governments have quickly yielded to overreaching demands and pressure from the state and aggressive conservation groups you have asked relevant questions on the science and intent behind many of the requirements in order to prepare a SMP draft that reflects the character of your city and the needs of your shoreline residents. Many citizens living in other cities along the shorelines of Lake Washington and Lake Sammamish must admire the position you have taken on behalf of Mercer Island residents. We must hope that the City's competent and dedicated Council follows your lead in support of the awesome work you have done.

I have tried to be a voice of balance and common sense as a shoreline permitting agent who has spent the last 9 years, 8 with a marine contractor and the last as an independent consultant working with property owners and local governments in every waterfront community on Lake Washington and Lake Sammamish. This resonates so deep within me that I have invested over 2,200 hours at no charge to individual property owners, local governments or the state. I think people would say I have a strong grasp of the way waterfront property owners think, from the most affluent to those that struggle to keep their properties. My work has also provided some keen insight and relationships with state and federal regulators who handle their positions in a very personal and ownership driven manner to support an environmental agenda that many of us cannot grasp. This has laid the foundation for every SMP update in over 250 Washington State cities and counties and also explains why things can get a little adversarial from time to time. This is why local Planning Departments, Commissions, and Councils have been placed in a very uncomfortable position between the state and their citizens so each civic leader and local staff member has my respect.

Before the draft is forwarded for review and approval by the Council I would ask that you take the time to review a couple of very important issues that may cause you to make some last minute changes to the document. I

- SHORELINE MODIFICATIONS/BULKHEADS
  I would first ask if you feel you have done everything within your grasp and based on the information you were given concerning bulkheads to adequately serve your property owners. I have attached WAC 173-26-231 on Shoreline Modifications with certain items highlighted. It becomes apparent when reviewing this that the author and legislature was directing attention and efforts to shoreline armoring occurring along marine shorelines and rivers and not shorelines associated with fresh water lakes such as Lake Washington and Lake Sammamish. I believe any qualified and impartial marine biologist would conclude that the terminology is for the most part used when referencing salt water applications with tidal influences.
If any of the proposed regulations regarding shoreline armoring, particularly hard armoring, were developed based on misinformation or through cross transferring the conditions occurring in tidal waters over to fresh water lakes I would ask that you take another look. The conditions and impacts from bulkheads in tidal areas differ greatly from those in water bodies like Lake Washington, Lake Sammamish and other fresh water lakes.

- DEFINITION OF LIFT STATION
  Please reevaluate your definition of a lift station. While many years ago the proposed definition would be accurate, nearly all watercraft lifts being installed in lakes today are freestanding hydraulic lifts that are not attached to the pier structure.

  Please consider the following definition for a lift station: A structure or device either attached to a dock or pier or standing independently on the substrate used to raise a watercraft above the waterline for secure moorage purposes.

- MOORAGE MITIGATION TO MEET NO NET LOSS
  The Army Corps RGP-3 standards are listed but it is vital that this is only used to regulate new structures and not the modification or replacement of existing structures. There must be a quantifiable method in place whereby a property owner can replace an existing pier with a less impacting pier and clearly show to the Planning Director that no net loss has been met. An example would be a person who replaces an 800 square foot pier with a 650 square foot pier in a more environmentally friendly design. Less overwater coverage, fully grated, elevated higher above the OHWM smaller diameter and fewer, longer spans between piles, ell and lift further from the shoreline, and a planting plan approved by the Corps. Despite this pier being much larger than the 480 square feet recommended by the Corps, what agency would dare to say it represents a net loss of ecological functions. Ecology would lead you to believe this would constitute a net loss of ecological functions.

  If the Commission has put a process in place to allow for this type of action to occur, not because it has been approved by the Army Corps or WDFW but standing on its own merit during the initial phase of the project with the shoreline and SEPA review, it will benefit the environment, the City and its citizens. Should the design change during the application process with the Army Corps or WDFW (this is pretty unlikely) this change will be submitted immediately to Project Planner to review against the City’s land use requirements. Design changes will always be less impacting than what the City already approved so public notice and additional reviews will not be necessary.

  I strongly recommend the City require a copy of the Army Corps Permit (for work below the OHWM) and WDFW Hydraulic Project Approval (for any work near or over the water) as a part of the Building Permit application so it knows that all permits have been obtained by the applicant, agent or contractor.

- CHANGING REFERENCES OF “10 FEET FROM MEAN LOW WATER” TO “11.5 FEET BELOW OHWM” WHICH IS THE SAME ELEVATION
  While this will make it easier to understand I don’t believe that 11.5 feet below OHWM is not the same as 10 feet from mean low water. The OHWL or OHWM for Lake Washington is 21.8 feet and OLW is 20.0 feet. This means in order to allow the existing regulation of a pier to extend out to a depth of 10 feet below the OLW or mean low water this reference needs to read, “11.8 feet below OHWM or equivalent to a depth of 11 feet 10 inches. This is only a difference of 4 inch water depth but if the intent is to keep the regulation the same as it is currently the 11.8 will need to be used.

- STRUCTURE TO STRUCTURE SETBACK OF 35 FEET
  I have wrestled with this issue over the years since Mercer Island (35 feet) and Kirkland (25 feet) are the only 2 local governments that have what is known as a pier to pier setback. The fact that no other governments have adopted a similar regulation indicates that there is no real need for such a thing. Navigational safety could be cited but there have been no reports of boating accidents attributed to piers being closer together so this is unsupported.
This regulation is unnecessary and essentially prevents or requires a deviation or variance for property owners who would otherwise meet all other setback requirements. It also rewards those who have structures in nonconforming locations and prevents many property owners from replacing more impacting structures since it will require them to relocate a new pier toward the middle of the property rather than simply meet the side property of 10 feet from the lateral line. A single mooring pile 10 feet from the common property line will require a new pier to be installed no closer than 25 feet from a person’s own property line. Does this make sense? This means that structures close to the common property line will dictate the location of new and replacement structures for many years to come.

I would like the City to consider removing the 35 foot structure and retain the 10 foot setback from the lateral line similar to all other Lake Washington communities. If that will not be considered I would ask that the 35 foot be reduced to 20 feet which would be the same distance two structure would be apart if both were to have conforming piers 10 feet from the common lateral line. I would further request that if a structure to structure setback is retained that it not apply to mooring piles. There is no detrimental impact and I believe it provide a benefit when owners are considering replacing older, more impacting structures.

**Scenario:** A subject property is 70 foot wide and both neighbors have nonconforming piers on the common property line property. The subject owner would like to build a new pier but must be 35 foot from each of the adjacent structures. How would this be processed and approved and should it require a special process for a property owner who is meeting all other regulations. If the setback was eliminated the property owner could build 10 feet from either lateral line and have 50 feet of frontage to work with. If the setback is reduced to 20 feet the property owner could place the pier 20 feet from either lateral line and have 30 feet of the frontage to work with.

For narrower lots (Mercer Island has a minimum width of 40 feet) property owners would have no options based on the existing rule but by eliminating it would have 20 feet of frontage to work with.

- **INWATER WORK WINDOWS**
  Please include WDFW work windows which are in additional to Army Corps work windows and includes documented sockeye spawning areas. The violation and fine for working inwater during a WDFW closure is extensive.

- **DISPOSAL OF DREDGE MATERIAL**
  The City of Mercer Island should not regulate or approve (per se) where disposal of dredged material is carried out. There is a specific regulatory agency, the Dredged Materials Management Office (DMMO), which determines how, when and where dredged material is to be handled. This is a jointly staffed office of several regulatory agencies responsible for all in-water dredging.

Thank you for your time and hard work on the SMP Update. If you have any questions I can be reached at 425-343-2342 or integritypermitting@hotmail.com. I also invite you to check out my company’s very informative website at integrityshorelinepermitting.com.

Sincerely,

David Douglas
Permit Manager/ Shoreline Consultant

Integrity Shoreline Permitting • 818 Mill Ave • Snohomish WA 98290 • Phone: 425-343-2342 • Fax: 206-220-3737
EXHIBIT 4a

Staff response to comments from the Planning Commission meeting on 1-19-11 regarding Exhibit 4a

19.07.110

C.

2. Urban Residential Environment. The purpose of the Urban Residential Environment is to provide for residential and recreational utilization of the shorelands, compatible with the existing residential character in terms of bulk, scale and type of development. Landscape designs should take into account the natural character of the shorelines, including restoration of ecological functions when feasible.

EXHIBIT 5a

Staff response to comments from the Planning Commission meeting on 1-19-11 regarding Exhibit 5

Transit facilities including light rail transit facilities and transit stops, and associated parking lots

EXHIBIT 6

E. Table A

Row 1 of table

30 feet from the OHWM and all required setbacks of the development code, except light rail transit facilities. If a wetland is adjacent to the shoreline, measure the shoreline setback from the wetland’s boundary. If a watercourse is adjacent to or run through the shoreline area, the buffers are those of the watercourse.

Row 3 of table

10%: between 0 and 30 feet from OHWM

30%: between 30 and 50 feet from OHW

3. Transportation and Parking

d. Parking facilities in shorelands shall be allowed only as necessary to support an authorized use and non shorelands parking cannot be built within a reasonable distance from the supported water use.

Table B

[Comments from Rita Moore, submitted on Feb. 1, 2011, via email]
Covered moorage – 20’-25’ seems unreasonably high. This height will significantly block neighboring views of the lake. I called around to several commercial moorages on Lake Washington and east of the Ballard locks to get an idea of the height of their covered moorage. Only one place had 20’, one had 17’, one had 12’ & 15’ and two others had 15’. I propose the covered moorage height above OHWM be limited to 10’-12’.

Page 10

6.a.iii Vegetation

A. ) the total canopy vegetative cover, at maturity, shall cover no less than 75 percent of the setback area with native plants, and

(B) there shall be average one tree for every 12-feet of linear shoreline frontage; large shrubs shall be planted four to seven feet on center depending on the mature width of the plant; and small shrubs and ground cover shall be planted one to four feet on center depending on the mature width of the plant, unless otherwise approved by the Code Official.

[Comments from Rita Moore, submitted on Feb. 1, 2011, via email]
King County Noxious Weed List

The King County Noxious Weed Control Board has adopted this Noxious Weed List in accordance with RCW 171.05 and WAC 176-750.

Class A Weeds have limited distribution in Washington. Preventing new infestations and eradicating existing infestations is the highest priority. Eradication is required by law throughout Washington state.

Class B Weeds are abundant in some parts of the state and less common in others. The following Class B weeds have been designated by state law or selected by the County Weed Board as priority weeds in King County.

Control and containment of these species is required by law.

Weeds of Concern are invasive plants in King County that are not listed as noxious weeds under the State Noxious Weed Law. The King County Weed Board recognizes these plants as invasive and is collecting information on their distribution. The Board recommends control and containment of existing populations and discourages new plantings.

Non-regulated Noxious Weeds are Class B and C weeds from the State Weed List that also impact the county, but are at the same time, widespread, and control recommended but not required.

KEY
- Known to occur in King County.
- Weeds in hold are new for this year.
- Reported to be toxic to livestock and/or humans.
- Species under USDA Pests Plant Research Laboratory, USDA Natural Resources Conservation Service, WA State Weed Service, and the other weed control programs.
- Control of Scotch broom is required on King County’s section of the State Route 2 and 150 between mile markers 34 and the Kittitas County line.
- Brazilian elodes is designated for control throughout King County except in Lake Washington, Lake Sammamish, Lake Union and Lake Fenwick.

Giant Hogweed Class A Noxious Weed

Garlic Mustard Class A Noxious Weed

Wheatgrass, Kentucky Blysoxia altissima

Non-regulated Noxious Weeds are:
- Class B and C weeds from the State Weed List that also impact the county, but are at the same time widespread, and control recommended but not required.

Weeds of Concern are:
- Invasive plants in King County that are not listed as noxious weeds under the State Noxious Weed Law.

Non-regulated Noxious Weeds:

Class A Weeds:

Weeds of Concern:

King County’s Critical Areas Ordinance cites this list of weeds as invasive vegetation that threatens native ecosystems by displacing beneficial vegetation and degrading wildlife and native plant habitat.

Key:
- Known to occur in King County.
- Weeds in hold are new for this year.
- Reported to be toxic to livestock and/or humans.
- Species under USDA Pests Plant Research Laboratory, USDA Natural Resources Conservation Service, WA State Weed Service, and the other weed control programs.
- Control of Scotch broom is required on King County’s section of the State Route 2 and 150 between mile markers 34 and the Kittitas County line.
- Brazilian elodes is designated for control throughout King County except in Lake Washington, Lake Sammamish, Lake Union and Lake Fenwick.
What Are Noxious Weeds?

Noxious weeds are non-native plants that are highly destructive, competitive and difficult to control or eliminate. They can reduce crop yields, destroy native plant and animal habitat, damage recreational opportunities, clog waterways, lower land values, and poison humans and livestock.

Where Do They Come From?

Noxious weeds are found everywhere in King County, from cities to farmlands, from forests to rivers and lakes, from Puget Sound to the mountain passes. Over the years, people have introduced non-native species to our region either intentionally in gardens and landscapes or unintentionally through contaminated hay, seeds or bark. A small but dangerous number of these species have turned out to be highly invasive and damaging.

What Are the Costs of Noxious Weeds?

Each year noxious weeds cost King County millions of dollars in reduced agricultural production, environmental degradation and control costs. Once invasive plants become established, it is very expensive to eradicate them. In natural areas, it may not even be feasible to remove them once they take hold.

What Is the State Noxious Weed Law?

Washington’s noxious weed law (RCW 17.10) requires public and private landowners including city, county, and state land agencies to control and prevent the spread of designated noxious weeds on their property. "Control", as defined in WAC 16-750 as the prevention of all seed production. Federally owned lands are subject to the Federal Noxious Weed Act (Public Law 93-629). Since many people are unfamiliar with noxious weeds, this county weed program is available to provide information on identification and control methods. Landowners can choose the control method they feel is most appropriate for their property.

Why Is There a Law to Control Noxious Weeds?

Noxious weeds affect everyone. Weeds do not obey property lines or jurisdictional boundaries. It takes a coordinated effort to prevent new noxious weeds from establishing and to control and eradicate the weeds already here. The noxious weed law provides a tool to quickly and effectively stop the spread of the new and most damaging weeds.

Which Weeds Should Be Controlled?

To help protect people, resources and private lands, the Washington State Noxious Weed Control Board adopts a state weed list each year (WAC 16-750). *Noxious weeds are separated into classes A, B, and C based on distribution, abundance, and level of threat (how dangerous the plant is to humans, animals, private and public lands, and native habitats). The goal is to prevent the spread of new and recently introduced weeds while it is still cost-effective. Class A weeds are the most limited in distribution and therefore the highest priority for control. Class B and C weeds vary in priority based on local distribution and impacts. Noxious weeds that are widespread in King County are called non-designated noxious weeds and control of these is recommended but not required.

What Is the Role of the King County Noxious Weed Program?

We educate property owners on identification, impacts and control methods for state-listed noxious weeds. It is also our job to locate noxious weed infestations that are not being effectively controlled. To achieve this, the program conducts annual surveys and follow-up checks on existing noxious weed locations.

What Does the County Do When Noxious Weeds Are Found?

Program staff provide the landowner with information on how to identify and control the noxious weeds on their property. If requested, we will meet with the owner or property manager to review the weed locations and discuss site-appropriate control methods.

What Will Happen If the Noxious Weeds Are Not Controlled?

We will make several attempts to contact the landowner to achieve control. If there is no control when we return to survey at the specified time, landowners may be issued a Notice of Violation giving them 30 days (or 48 hours if weeds are in flower or seed) to control the noxious weeds. If the noxious weeds are not completely controlled by the end of the NOV time limit, the program is authorized by Washington’s noxious weed law (RCW 17.10) to hire a contractor to complete the control work, and bill the owner for the contractor's fees plus the program’s administrative costs of the enforcement.

*Between November and April, any person may request a change to the Washington State Noxious Weed List for the following year. For more information, call the State Noxious Weed Control Board office at 360-902-2094.