Attachment D
Summary of Public Comments - City of Kenmore SMP Update

June 23, 2011

The Department of Ecology (Ecology) held a comment period for the Kenmore Shoreline Master Program (SMP) update from March 15, 2011 through April 15, 2011 and a public hearing on March 31, 2011. Testimony was provided by 7 individuals at the public hearing and 17 written comment letters submitted during the comment period. With one exception, individuals that testified at the public hearing also provided written comment.

City of Kenmore responses to the public comment summaries are provided below in italics. Some of the issues raised during Ecology’s public comment period—mitigation ratios, for example—were not identified during the local public process preceding City Council adoption of the SMP. Staff will be working with Ecology on any issues they identify as needing attention, and may present additional recommendations to the City Council in response.

1. **Dave Douglas, Integrity Shoreline Permitting, testimony at the public hearing on March 31, 2011 and comment letter received March 31, 2011.**

   Douglas is of the view that the City of Council and the Planning Commission were not appropriately advised by the City's SMP consultant or the Department of Ecology (Ecology). Douglas also believes that Regional General Permit (RGP) 1 was not appropriately emphasized and that Ecology misapplied RGP 3.

   a. **16.55.030 Shoreline modification table and conditions**

      B2 on page 40: How does a property owner wishing to repair and maintain an existing shoreline stabilization structure document that work will be conducted in a manner that does not cause a net loss of ecological functions to the satisfaction of the City?

      **City Response:** The property owner would submit a report to the city prepared by a qualified professional addressing impacts to ecological functions and how those impacts are avoided or mitigated.

      **Ecology Conclusion:** An exempt activity must meet the standards of an SMP even though a SSDP is not required. It is within the authority of the city to require a No Net Loss assessment for pier repair activities.

   b. **16.55.040 Shoreline stabilization**

      C on page 40: Where is the 4 foot maximum height of a shoreline stabilization structure measured from? Please clarify and reconsider changing this standard to a height that will provide adequate protection to property, dwellings and authorized uses.

      **City Response:** This height is intended to be measured from average existing grade at the lake bottom. We are not aware of any circumstance where this height of structure located at the ordinary high water mark (OHWM) would not be adequate to protect any structure or authorized use in Kenmore.
Ecology Conclusion: It is within the authority of the City to regulate bulkhead height.

c. 16.55.050 Docks, piers, moorage, buoys, floats or launching facilities
Opening paragraph on page 41: How does a property owner demonstrate that a project provides an equal or greater degree of protection of ecological functions and anadromous fish habitat without the need of a very expensive Habitat Management Plan? Why can’t an experienced planner or the City’s Planning Director evaluate projects, especially for replacement of an existing structure, based on reasonable comparison or accept a permit from the Army Corps of Engineers as proof that the project results in a “not likely to adversely affect” (NLAA) listed species or critical habitat? By requiring a Habitat Management Plan the City is placing a financial burden on property owners that the federal agencies charged with protecting threatened and endangered species and their critical habitat do not require. Please explain the City’s position for requiring a Habitat Management Plan when state (WDFW) and federal (Army Corps, USFWS and NMFS) regulatory agencies with qualified fish and habitat biologists will review projects to ensure they result in a NLAA or “no net loss” determination?

City Response: The habitat management plan is not a new regulation in Kenmore and is currently required under the City’s critical areas ordinance for all shorelines of the state. The plan is to be prepared by a qualified professional in consultation with the state Department of Fish and Wildlife (WDFW). WDFW approves the plan. If a habitat management plan approved by WDFW is submitted to the City, the City will accept the plan as adequate. Ecology, in an email dated June 8, 2010, advised the City that inserting language that would accept an issued permit from the Corps as proof of habitat protection would not be approvable by Ecology.

Ecology Conclusion: The City is obligated to ensure that projects achieve no net loss of ecological function pursuant to its SMP. While the City has discretion in how it accomplishes this, it cannot simply abdicate its responsibility. The city may or may not have the expertise on its staff to conduct the technical planning and review that the commenter suggests. Ecology finds that the City's approach is acceptable.

d. B on page 41: Why must the owner of a single family detached unit (single family residence) demonstrate there is no other feasible option for shared use facilities? Piers accessory to a single family residence are considered water dependent uses and WAC 173-26-231(3)(b) states, “Where new piers or docks are allowed, master programs should contain provisions to require new residential development of two or more dwellings to provide joint use or community dock facilities, when feasible, rather than allow individual docks for each residence. Did the City leaders understand that this
was not required under the WAC or SMP Update Requirements? Can the City reconsider its position to align with the WAC? How does a person demonstrate no other “feasible” option?

**City Response:** The requirement for shared use facilities is applied only to projects of two or more dwelling units, not single-family residences. The applicant for a pier or dock accessory to a single-family residence may investigate other feasible options for sharing facilities by asking adjacent waterfront neighbors if joint development or use of a dock would be a possibility, and it is understood that the neighbors may decline. Since the City cannot force a neighbor to share a dock, if the adjacent neighbors decline the City would accept this as evidence of infeasibility. For new development containing more than one proposed single family detached residence, the City may require that docks be shared.

**Ecology Conclusion:** This provision does not preclude single family piers; but rather requires an alternatives analysis. This provision is part of a reasonable approach to minimize the impacts of piers and docks.

e. G3 on page 42: Although ramps are rarely used for projects on fresh water lakes when they are the standard requiring them to be no wider than 3 feet must be clarified or changed. The City should allow the walking surface to be 3 feet wide and not the overall ramp width which is typically 3'-8" wide to allow for engineered rails. If this standard is retained the walking surface will only be 2'-4" which greatly limits access. Can the City change this to state, “The walking surface of ramps shall not be wider than 3 feet and shall be fully grated?” If not, please explain why since ramps actually promote more light penetration that a standard pier section so they should be encouraged.

**City Response:** The use of this standard (taken from the Corps of Engineers RGP-3 standards) was deliberate because there were consultations with federal fish and wildlife services on the RGP-3 standards, reflecting best available science. Flexibility is allowed (see 16.55.050 first paragraph, page 41) and it is anticipated that alternative designs could be developed and approved. For example, if a qualified biologist preparing a habitat management plan for the proposal determined that a 3’-8” ramp would not have any greater impacts than a 3’ wide ramp, or that the marginal impact could be mitigated, such a ramp could be allowed. Handrails installed outboard of the ramp surface instead of in-line with the ramp surface would not be considered in the overall width of the ramp, since the concern is shading of nearshore habitat.

**Ecology Conclusion:** The purpose of this section is to provide nearshore habitat for migrating juvenile Chinook salmon. The City’s utilization of standards taken from the USACE RGP-3 is appropriate.
f. G4 and G5 on page 42: By requiring ells to be over 9 feet of water and floats to be over 10 feet of water it is likely to require longer piers to attain such depths. Please remove these standards from the Kenmore SMP and allow WDFW and the Corps to determine if an ell or float needs to be over the water depths prescribed on a project-by-project basis.

**City Response:** The use of this RGP-3 standard was deliberate because there were consultations with federal fish and wildlife services on the standard reflecting best available science. Flexibility is allowed (see 16.55.050 first paragraph, page 41) and it is anticipated that alternative designs could be developed and approved.

**Ecology Conclusion:** Ecology concurs with the City response. Locating active use areas of piers to water deep enough to avoid nearshore habitat and prop wash is positive and fully within the City's discretion.

g. G7 on page 42. The size of the first set (nearest shore) piling should be determined by the contractor, structural engineer, and local building department and not by the SMP. Please remove this standard from the Kenmore SMP and allow the Corps to determine the size of the first set of inwater piles or direct the City to allow a maximum pile diameter of 8” for the first set. If not, please explain why?

**City Response:** While we recognize the concern that in some instances 4-inch piles would not be appropriate for structural reasons, the code allows for flexibility as long as the alternative would not have greater impacts. The purpose for this standard is to minimize impacts to nearshore habitat, since larger piles provide areas for predators of small fish. If the structural engineer demonstrates that a larger size is necessary for stability, it may be possible to also establish that the location or design of the piles is such that they would not provide any greater predator cover than smaller piles.

**Ecology Conclusion:** The size and location of the first set of piles is an important environmental concern. It is appropriately regulated by the SMP. Ecology concurs with the City response.

h. L on page 43. Most if not all of Kenmore’s existing overwater structures are likely to become legally nonconforming when the updated SMP goes into effect. Can existing legally conforming and nonconforming structures be maintained, repaired and replaced within the existing footprint, and even expanded in some cases without being brought into conformity?
**City Response:** Nonconforming structures are regulated in 16.75.050, where standards discuss nonconforming bulkheads, expansion of a nonconforming use or structure, and expansion of a nonconforming dock.

**Ecology Conclusion:** The SMP allows for maintenance and expansion of existing piers and docks.

**i.** At section M.1.g on page 43, the SMP restricts the total overwater coverage of the piers, floats, ramps, ells, and *canopy* to 600 square feet. This may be the most restrictive and onerous regulation in any Lake Washington or Lake Sammamish waterfront community and was generated as a result of the biological consultant comingling, misinterpreting and misapplying the development standards in the Corps RGP-3 and RGP-1 combined with an old regulation from the previous King County SMP. Douglas requests that Ecology recommend to the City that it eliminate regulation in 16.55.050(M)(1)(g) limiting total overwater coverage to 600sqft including the canopy from the Kenmore SMP.

**City Response:** This standard is over and above the RGP standards but was retained in order to limit the extent of canopies over water.

**Ecology Conclusion:** This provision is within the City's discretion. Ecology concurs with the City response.

2. **Elizabeth Mooney, comment emails received April 15, 2011.**

a. Mooney advocates for the strictest plan for us to protect the ecological functions of the shoreline.

Mooney asks that Ecology increase paths and protect the habitat by making landowners increase buffers and decrease height so that we do what is best for future generations. Mooney believes that there should be lower heights at the site of the existing plywood supply and that the buffer and setbacks should be maximum widths to protect the highest degree of ecological function, utilizing best available science, not best available economic profit. Kenmore and the surrounding area will prosper if the standard is high for ecological protection, salmon recovery, natural habitat enhancements and environmental education. We need the widest buffers, the best trees, the wisest ecological plans for building plans. We must protect our clean water and make it cleaner than it is presently.

**City Response:** Comments noted. The SMP requires 150’ buffers plus 15’ building setbacks from Swamp Creek, the Sammamish River and associated wetlands. These standards were based on the best available science at the time the critical area regulations were adopted and are consistent with current guidance for wetland protection. On the Plywood Supply site, the maximum
allowable height under the SMP in the area outside of the critical area buffer and building setback but within the shoreline jurisdiction (between 165’ and 2009 would be 65’ if consistent with underlying zoning and if structures would not obstruct the view of a substantial number of residences.

**Ecology Conclusion:** One of the required changes addresses the H-3 height area. Ecology is concerned that much of this area is within a floodway, rendering it inappropriate for intensive development.

b. Mooney would rather see the eastern shoreline of Log Boom Park, where Stream 08.0056 enters Lake Washington, be designated "natural" instead of "urban conservancy" since, the city’s phase 1 park “improvements” already caused significant adverse environmental impacts by adding too much concrete, creosote posts and irrigation pipes- all actions that did not reflect high standards for protection of ecological function.

**City Response:** The purpose of the Natural Environment is to protect public shoreline areas that include ecologically intact or minimally altered shorelines. Only low intensity uses are to be allowed in this environment. Log Boom Park is a developed park, with parking and a play area inside the shoreline jurisdiction. For this reason, the Urban Conservancy Environment designation was applied. The purpose of the Urban Conservancy Environment is to protect and restore ecological functions of open space, floodplain, and other sensitive lands where they exist in urban and developed settings, while allowing a variety of compatible uses.

**Ecology Conclusion:** Ecology is of the view that the Log Boom Park site best fits the designation criteria for Urban Conservancy. The important criteria, at WAC 173-26-211(5)(e)(iii), states

(iii) **Designation criteria.** Assign an "urban conservancy" environment designation to shoreline areas appropriate and planned for development that is compatible with maintaining or restoring of the ecological functions of the area, that are not generally suitable for water-dependent uses and that lie in incorporated municipalities, urban growth areas, or commercial or industrial "limited areas of more intensive rural development" if any of the following characteristics apply:

(A) They are suitable for water-related or water-enjoyment uses;

(B) They are open space, flood plain or other sensitive areas that should not be more intensively developed;

(C) They have potential for ecological restoration;
(D) They retain important ecological functions, even though partially developed; or

(E) They have the potential for development that is compatible with ecological restoration.

By comparison, the Natural criteria at WAC 173-26-21(5)(a)(iii) does not fit this partially developed park site as well.

3. Rudy Hillinga, comment email received April 15, 2011.

Hillinga is opposed to Kenmore’s Shoreline Management Plan for the high rise building project on the River, request that the Department of Ecology deny the plan and send it back to the Kenmore City Council for revision.

City Response: The SMP does not authorize a high rise building project on the Sammamish Rivet; rather it establishes a critical area buffer of 150' plus a 15' building setback from the river and would allow a height limit of from 65' to 75' upland of this buffer and building setback, if permitted by underlying zoning and if structures would not obstruct the view of a substantial number of residences.

Ecology Conclusion: One of the required changes addresses the H-3 height area. Ecology is concerned that much of this area is within a floodway, rendering it inappropriate for intensive development.

4. Joan Hardy, comment email received April 15, 2011.

a. Hardy supports a plan that would incorporate natural areas, in particular waterfront areas, into the design for Kenmore’s shoreline. Parks are a valuable asset to a community and this plan provides an opportunity to incorporate parks for use by local and other citizens.

• As part of a parks system, Hardy supports more public access to the waterfront.

City Response: The plan requires public access for all public projects and development on public lands, as well as for multifamily and commercial projects and subdivisions of more than 4 lots, unless safety concerns require limited access.

Ecology Conclusion: Ecology concurs with comment and the City's response.

b. Hardy supports Kenmore in raising funds needed to buy land for more parks and open space.
**City Response:** Comment noted.

**Ecology Conclusion:** Ecology supports parks and open space acquisition. Ecology notes that capital budgeting for parks is a local prerogative.

c. Hardy would like to see a public access area for kayaks, canoes, and other non-powered boats incorporated into the plan.

**City Response:** Public boat launches are permitted by the SMP in the Downtown Waterfront, Urban Conservancy, and Aquatic designations. In the Urban Conservancy designation, a boat launch that accommodates motorized vehicles for launching vessels is a conditional use. Facilities for hand launching of non-motorized vessels are allowed.

**Ecology Conclusion:** Ecology concurs with the City response.

d. Hardy supports lower building heights and bigger set back areas to keep the waterfront areas open and views accessible for the largest number of Kenmore citizens.

**City Response:** Comment noted.

**Ecology Conclusion:** The City has local discretion regarding building heights and setbacks within the limits of the SMA. Ecology is proposing to modify the H-3 and H-4 Special Building Height Areas (SBHA).

5. **Valerie Nygaard, comment email received April 15, 2011.**

The Department of Ecology needs to send Kenmore’s Shoreline Management Plan back to the city for revision. How is it that a plywood company can put an office, with tall buildings so close to the shoreline. Nygaard understands this would include disturbing the wetlands along Swamp Creek.

Nygaard believes that Ecology needs to make sure that as many residents as possible understand the consequences of the SMP provisions.

**City Response:** The SMP requires 150’ buffers plus 15’ building setbacks from Swamp Creek, the Sammamish River and associated wetlands. On the Plywood Supply site, the maximum allowable height under the SMP between 165’ and 200’ (outside of the critical area buffer and building setback but within the shoreline jurisdiction) would be 65’ if permitted by underlying zoning and if structures would not obstruct the view of a substantial number of residences.
Ecology Conclusion: Ecology has included a required change modifying the H-3 SBHA due to much of its location being in a floodway. Development in the floodway must meet floodway development standards which are extremely limiting.

6. **Tom Fitzpatrick, comment email received April 15, 2011.**

Fitzpatrick endorses Eric Adman's comments on the City of Kenmore's update of its SMP. Fitzpatrick believes that the flaws in Kenmore's effort as pointed out by Mr. Adman are fatal. Ecology should direct Kenmore's elected officials and staff to direct their efforts toward truly protecting what little natural shoreline environment we have left in our part of urban King County.

**City Response:** See responses to Mr. Adman's comments, page 13.

**Ecology Conclusion:** Ecology is requiring a number of changes to the SMP to address various concerns. Some of those concerns were cited by Mr. Adman.

7. **Victoria Rhoades, comment email received April 15, 2011.**

Rhoades agrees with Eric Adman's expressed objections to the Kenmore Shoreline Management Plan. Swamp Creek floods regularly. Rhoades questions Swamp Creek's suitability for development. Additionally, the heron rookery behind the Park-and-Ride is well-known to birders in the area. The SMP allows too much change in sensitive areas, when there are plenty of better-suited empty spaces in Kenmore for building either residential or commercial structures. Rhoades advocates sending the SMP back to the City of Kenmore for revision.

**City Response:** See responses to Mr. Adman's comments, page 13. The SMP incorporates the City's existing critical area rules for the Sammamish River, Swamp Creek and the heron rookery. These rules require 150' buffers plus 15' building setbacks from the river; Swamp Creek and associated wetlands. The rookery has a 900' protected buffer area, with requirements for a habitat management plan if any activity is proposed.

**Ecology Conclusion:** In addition to the standards cited by the City, the required changes will include a provision for limiting development in the channel migration area of swamp Creek.

8. **Manny Mankowski, comment email received April 14, 2011.**

a. The City of Kenmore appears to have added some special height zones, designated H-1 through H-4 on the Shoreline Environment Designations map.
The H-3 area is currently occupied by Plywood Supply and a mobile home park. This area would be allowed to have heights up to 65 feet, depending on setback. Until there is a specific analysis and plan for these possible impacts, Mankowski does not support the increased heights for this area.

**City Response:** The SMP requires 150' buffers plus 15' building setbacks from the Sammamish River and associated wetlands. On the Plywood Supply site, the maximum allowable height would be 65' upland of this buffer and building setback if permitted by underlying zoning and if structures would not obstruct the view of a substantial number of residences. H-3 properties are currently developed with commercial and mobile home park uses. The existing mobile home park extends to the edge of the river. The Cumulative Impacts Analysis takes into account the fact that areas affected by the height increases are already developed and were developed under less stringent standards for shoreline, habitat; and water quality protection than would apply to redevelopment. As such, although buildings could be taller in the shoreline jurisdiction outside of the wetland/stream buffers and building setbacks than at present the shoreline environment would be better protected after redevelopment than it is currently.

In one limited area, where area H-3 abuts Swamp Creek Park, the additional height could have a limited shading effect on the park, which is designated Natural. However; because this location at just west of Swamp Creek Park, contains both the mouth of Swamp Creek and is shown to contain wetlands on the NWI data set, setbacks and buffers would restrict any new structures to the area furthest from the shoreline, and any impacts would likely be small. Specific review of such impacts would occur with any permit application on that site.

**Ecology Conclusion:** Ecology has included a required change eliminating the H-3 SBHA because it is located primarily in a floodway.

b. Area H-4 is an area of greater question and concern for Mankowski. Area H-4 appears to be the area along Swamp Creek from Bothell Way north to NE 185 St. The area encompassed is a large area of what is also known as, and identified in the Shoreline Inventory as, Swamp Creek Wetland # 3. This is identified as “highest quality wetland” by description in the inventory. The area is designated Urban Conservancy. Setting aside “H-4” as an area allowing increased heights suggests a plan for increased density of development.

**City Response:** The City recognizes the large wetland areas along Swamp Creek and the SMP includes regulations to protect them. The shoreline jurisdiction extends from Swamp Creek to the edge of the protected associated wetlands. In most of the residential portion of the H-4 area, the boundaries were
drawn to follow property lines and include large parcels that are partially in the wetlands and partially outside of them. In those limited cases where the shoreline jurisdiction extends beyond the associated wetlands (when the 200' distance from Swamp Creek extends beyond the associated wetlands), increased height could only occur outside of the wetland/stream buffers and building setbacks. Analysis shows that only one parcel appears to have area outside of the associated wetland and within the shoreline jurisdiction. This parcel is located in the R-18 zone north of the commercial zone and adjacent to the main stem of Swamp Creek. Like the commercially zoned lots to the south of it, this one lot is already developed within the required stream buffer and would be subject to the nonconformance standards of the SMP.

In the commercial zoned portion of H-4, on the north side of NE Bothell Way, the wetland/stream buffers and building setbacks apply, as would the nonconformance sections of the SMP for those developed portions of the site inside those buffers/setbacks. The standards of 16.50.030.B.2 prevent new non-water-dependent development in the 200’ shoreline jurisdiction unless accompanied by enhancement of existing buffers, and the only water-dependent uses allowed would be low intensity uses like public access trails. For redevelopment to occur on any lots in the commercial area of H-4 outside of the wetland/stream buffers and building setbacks, the buffer areas would have to be restored substantially, which would offset any minor impacts from shading that might result from 65-foot tall buildings at the outer edge of the shoreline jurisdiction.

**Ecology Conclusion:** Ecology has included a required change that makes it clear that the increased height limits are only allowed outside of the critical area buffer, and in no case closer than 112.5 feet from the OHWM.

c. Mankowski does not believe that the Cumulative Impacts Analysis, or its Future Shoreline Ecological Function Performance Analysis provide an adequate analysis of the impact of allowing increased heights in this area. The impacts which could be reasonably forseen include increased impervious surface, the need for increased infrastructure, increased runoff, decreased vegetation, impaired water quality, decreased habitat function, decreased flood storage capacity, and increased flooding. It would require a very detailed and persuasive analysis to support increased heights and density in the area designated H-4, analysis which has not been presented.

**City Response:** The Cumulative Impacts Analysis takes into account the fact that areas affected by the height increases in H-4 are already developed and were developed under less stringent standards for shoreline, habitat, and water quality protection than would apply to redevelopment. As such, although buildings could be taller in the shoreline jurisdiction outside of the wetland/stream buffers and building setbacks than at present, the shoreline environment would be better protected after redevelopment than it is currently.
The analysis does acknowledge that some shading to the buffer could occur as a result of taller buildings in the outer portion of the shoreline jurisdiction. However within the shoreline jurisdiction, in the commercial area of H-4 along NE Bothell Way and the residential zone immediately north of it, commercial or mixed use redevelopment would result in buffer enhancement, reduced runoff rates, reduced impervious surface area and would not impact flood storage capacity.

**Ecology Conclusion:** Ecology has included a required change that makes it clear that the increased height limits are only allowed outside of the critical area buffer, and in no case closer than 112.5 feet from the OHWM. With the change, Ecology believes that the issue has been adequately addressed.

d. The measures suggested as “Recommended restoration and protection actions” in Table 3 are very general, not project-specific, and not prioritized. The Restoration Plan needs to list specific discrete projects, prioritize them, and set in motion a process where action is taken on them.

**City Response:** The City Council did not change the Planning Commission’s recommendation which did not prioritize the restoration plan projects. The restoration projects will be considered individually as opportunities arise.

**Ecology Conclusion:** While the Restoration Plan does list certain projects, it only prioritizes more general categories of actions. It is noted in the restoration Plan, at Page 32, that:

> During the 7-year interim period between SMP updates, it is valuable to develop implementation and monitoring programs for the individual restoration actions. Due to the nature of restoration actions (i.e., diverse project or site-specific factors that influence their implementation), performance standards and monitoring plans should be developed for individual projects or actions once the City has determined priorities and identified funding sources.

While the Restoration Plan is not specific about individual restoration activity timing, it does infer that the City needs to engage in identified restoration programs and activities in order to implement the SMP. A clear description and listing of project priorities could be a suggested change.

e. The table on page 20 listing Restoration Opportunities on reaches of Swamp Creek omits reaches 01 and 02 as opportunities for “Restoration and preservation of floodplain wetlands” and “preservation of remaining natural areas”. These activities seem appropriate for these reaches. These should be added to the table.
**City Response:** In general, the table indicates opportunities that were identified in previous plans and through the public outreach process. It does not include every possible action that could be undertaken in every reach. The suggestions in this comment were not received during the plan development and are not specific enough to understand what opportunities are implied. The table identifies restoration opportunities in these reaches, just not in these specific categories.

**Ecology Conclusion:** On Page 20 of the Restoration Plan "attenuation of storm water lows" is listed for Swamp Creek reaches 3 and 4. It is unclear what restoration or preservation activities are intended by the comment.

f. Map #4 in the Restoration Plan identifies a number of wetlands by map legend as “Protect High Quality Habitat”. However, none of Swamp Creek Wetland #4 (Reach “SWAM_CK_03”) is designated as such, despite its having been described as “some of the highest quality wetlands in the Kenmore area” on p. 11 of the plan. The map should be modified to show the status of the wetlands and their priority.

**City Response:** This is a good suggestion and the change could readily be made to the map, as it does reflect what the text already states.

**Ecology Conclusion:** Ecology will recommend this as a suggested change.

g. The two parcels on the shore of Lake Washington north of St. Edwards State Park have characteristics associated with the Natural environment designation and should be designated as such. The City has failed to provide a better rationale as to why this parcel not be designated Natural.

**City Response:** The Natural Environment designation is to protect public shoreline areas that include ecologically intact or minimally altered shoreline. One of the characteristics for Natural Environment designation is that the shoreline is in public ownership. The two parcels in question are not in public ownership and were, therefore, designated Urban Conservancy. Urban Conservancy management policy LU-I 7.3.13 states that, “Because the parcels located to the north of Saint Edward State Park and designated Urban Conservancy are largely ecologically intact, if one or more of those parcels are acquired by a public agency for open space purposes, the City should consider redesignating those parcels as Natural if they meet applicable criteria.”

**Ecology Conclusion:** Ecology is including a required change to designate these parcels as Natural. Besides being part of a larger ecologically intact area primarily in public ownership, the area may be difficult to develop without impacting ecological functions.
h. With regard to the area designated as H-4 on the Shoreline Area Designations map, if the intention is to re-develop already paved and developed areas with the possibility of environmental enhancement, the area should be re-drawn so that it does not encompass a large area of wetland, but rather just the already-developed area adjacent to the wetland.

City Response: The boundaries of the H-4 area were chosen to follow property lines and incorporate large parcels that are partially in the associated wetlands and partially outside of those wetlands. As previously discussed no new development can occur in the wetland, or in the 150’ wetland/stream buffers plus 15’ building setbacks.

Ecology Conclusion: The required changes include a modification to the H-4 SBHA to exclude Swamp Creek wetlands and buffers from the increased height allowances.

i. The ratios (presumably for wetland mitigation) specified in the KMC (3:1 for Class 1, 2:1 for Class 2, 1:1 for Class 3) are much less specific, and are require vastly lower amounts of replacement than the ranges specified in the guidance documents provided to the City by the Department of Ecology.

City Response: The adopted mitigation ratios come from the City’s existing critical areas ordinance.

Ecology Conclusion: A required changes increases the wetland mitigation ratios to be consistent with Ecology standards.

9. Ann Hurst, comment email received April 14, 2011.

a. The steep slope hazard areas that have native growth protection easements in place are not protected by City enforcement. A solution would be to designate these lands as Natural.

City Response: Steep slope areas in the shoreline are regulated by the city’s critical areas regulations (KMC Chapter 18.55) which have been incorporated into the SMP.

Ecology Conclusion: Ecology concurs with the City response. Many factors go into environment designations such as ecological function and existing development. Steep slope areas may not be appropriate for the Natural designation.
b. The Kenmore shoreline over and adjacent to the Kenmore Dump looks to be up for major development no matter what lies beneath the site. If Kenmore won't protect the Lake, Hurst believes that Ecology can require protection.

**City Response:** Assuming that the “Kenmore Dump” is the Lakepointe property, there are shoreline regulations applicable to the site. These regulations encourage water-dependent uses, but acknowledge that the area is degraded and that restoration and public access may be appropriate tradeoffs for allowing additional development on the site if impacts are mitigated such that there is no net loss of shoreline ecological processes or functions.

**Ecology Conclusion:** As part of an agreement separate from the SMP, hazardous materials must be cleaned up on the LakePointe property prior to any new development occurring.

c. Hurst believes that the City should address the upland wetlands directly associated with Kenmore's major bodies of water, such as the upland wetland of Saint Edward State Park where Stream #0226 originates.

**City Response:** The Shoreline Master Program regulates only “associated” wetlands. Associated wetlands to the shoreline include only those directly adjacent to the shoreline. The upland wetland of Saint Edward State Park is not an associated wetland and is not, therefore, part of the shoreline discussion.

**Ecology Conclusion:** Ecology concurs with the City response.

d. Hurst believes that the City should utilize inter-local agreements with other cities to protect Lake Washington.

**City Response:** Comment noted.

**Ecology Conclusion:** While interlocal agreements may be excellent tools to accomplish certain tasks, such agreements are not typically part of an SMP.

10. **Matthew Hinck, Cal Portland, comment letter received April 15, 2011.**

CalPortland owns and operates a major water-dependent barge-offloading operation in Kenmore, at the north end of Lake Washington. Hinck states that the operation is a critical component of CalPortland's business, and is essential to its continued ability to supply affordable aggregate materials and concrete products throughout King County and Snohomish County.
The facility is in an area that would be designated Downtown Waterfront. The barge-offloading facility appears to come within the definition of "pier" in the SMP.

a. KMC 16.55.050(G)(2). It is not clear how the four-foot limitation on the width of piers applies to an offloading facility that has multiple components, including pilings. Hinck suggests this regulation be revised to clarify that the limitation applies to "pier walkways," not the facility as a whole.

City Response: The standards were developed primarily to address residential docks. There were no specific standards adopted for commercial or industrial piers, but flexibility was included to allow for alternative designs for other uses (see 16.55.050 first paragraph, p. 41). The cement plant appears to use a retractable gangway system, which would not be regulated in the same manner as a permanent overwater pier or ramp, since it would only be over water during loading and unloading activities. At least at present, it appears that the old piers at the cement plant site have been abandoned and are in disrepair.

Ecology Conclusion: A required change is included to clarify that commercial piers are allowed in Kenmore so long as they are built to only serve their intended use and achieve project specific no net loss of ecological function. Specific design features of commercial docks need to serve the water dependent use and achieve non net loss of ecological function.

b. KMC 16.55.050(G)(3) The three-foot limitation on ramps is not realistic for vehicular ramps, such as those serving our offloading facility. Hinck suggests that this regulation be revised to apply to "pedestrian ramps."

City Response: The retractable gangway ramp would not be regulated in the same manner as a permanent overwater pier or ramp, since it would only be over water during loading and unloading activities.

Ecology Conclusion: A required change is included to clarify that commercial piers are allowed in Kenmore so long as they are built to only serve their intended use and achieve project specific no net loss of ecological function. Specific design features of commercial docks need to serve the water dependent use and achieve non net loss of ecological function.

c. KMC 16.55.050(G)(7) The limitations on piling widths might be feasible for residential structures, but they are inadequate for pilings serving other types of water-dependent structures. We suggest this regulation be modified to take into account the loads created by larger vessels (such as barges) using piers. At a minimum, pilings that are at least 24 inches in diameter should be allowed in the first 18 feet waterward of the Ordinary High Water Mark.
City Response: The standards were developed primarily to address residential docks. There were no specific standards adopted for commercial or industrial piers, but flexibility was included to allow for alternative designs for other uses (see 16.55.050 first paragraph, p. 41). The standards are designed to result in no net loss of ecological functions, so any design that can demonstrate that it meets that standard could be approved.

Ecology Conclusion: A required change is included to clarify that commercial piers are allowed in Kenmore so long as they are built to only serve their intended use and achieve project specific no net loss of ecological function. Specific design features of commercial docks need to serve the water dependent use and achieve non net loss of ecological function.

d. The buffer standards should allow for adjustments when areas that are already intensively developed, or contain impervious surface, up to the OHWM. We see no ecological benefit to imposing buffers that would only leave asphalt surfaces bare rather than potentially used in a productive manner.

City Response: Water-dependent and water-related uses may be allowed within shoreline buffers if impacts are mitigated and there is no net loss of shoreline ecological processes or functions. Non-water-dependent uses may also be allowed along the inner harbor if the uses are developed in conjunction with public access and mitigation is provided. Otherwise, a 20' buffer applies.

Ecology Conclusion: Ecology concurs with the City response.

e. Hinck suggests that the word "or" be added at the end of KMC 16.65.020(B)(1)(b) to clarify that buffer uses within the specified shoreline locations are allowed if any (as opposed to all) of the three specified standards are met.

City Response: The provision of flexibility for non-water-dependent facilities in the shoreline was discussed extensively through the public process, and the provisions described in this section were expressly indicated as being necessary as a package, not as alternatives. Water dependent uses are not subject to these limitations.

Ecology Conclusion: Ecology concurs with the City response.

f. It is unclear why outdoor storage for water-dependent use is singled out in KMC16.65.020(A)(B)(3). In many cases such storage would have no adverse effect at all on shoreline ecological processes or functions, especially when a site is already intensively developed. Hinck suggests that B(3) be deleted, and that outdoor storage
be treated like any other use related to a water-dependent activity. Alternatively, B(B) should be revised to allow outdoor storage within the buffer if there is not net loss of ecological function or value.

**City Response:** Outdoor storage carries risks of spills, generally requires impervious surfaces and removal of vegetation, and often includes lighting, all of which adversely affect ecological functions. Outdoor storage is not water-dependent in and of itself, therefore a minimal setback has been added to provide a small buffer from the shoreline, while still allowing continued operation of a water-dependent use. This standard would make already developed areas nonconforming, which means they could continue to be used as in the past provided there is no expansion of the nonconformity, and subject to all other limits on nonconforming uses. Any redevelopment would be required to provide the required setbacks for outdoor storage.

**Ecology Conclusion:** Ecology concurs with the city response.

11. **Lauralya Feetham, comment email received April 15, 2011.**

a. Provision should be made to retain the vibrant liveaboard community at Harbour village Marina within the guidelines specified in their DNR Lease.

**City Response:** The new regulations would allow live-aboard communities if they meet certain standards. Other city regulations, including P-suffix conditions on the Harbour Village Marina site, currently prohibit live-aboards and would require a change to the Municipal Code, separate from the shoreline regulations.

**Ecology Conclusion:** The City has elected to make live-aboards a permitted use with reasonable environmental safeguards.

b. Feetham is concerned that the changes in plans for the Lake Pointe project which increase building heights and reduce the square footage of public access to the waterfront.

**City Response:** The shoreline regulations do not change the components of the approved Lakepointe Master Plan and Commercial Site Development Permit. The project would have to obtain a new shoreline permit before it could proceed as the shoreline permit has expired. The new regulations focus on continued provision of public access, encourage water-dependent uses, and, in fact, reduce the height limits for a portion of the project within shoreline jurisdiction.
Ecology Conclusion: The SMP sets out minimum standards for public access, water dependent uses, and restoration areas. Half of the area within shoreline jurisdiction within the LakePointe project must be used for these purposes. Ecology concludes that public access, restoration, and water-dependent uses are adequately addressed for this area in the SMP.


Special Height Areas

a. The City appears to have added some special height zones, designated H-1 through H-4 on the Shorelines Environment Designations map.

The Cumulative Impacts Analysis or its future shoreline Ecological function Performance Analysis do not provide an adequate analysis for allowing increased heights in the H-3 area. A number of impacts which could be reasonably foreseen include increased impervious surface, the need for increased infrastructure, increased runoff from the site, decreased vegetation, and impaired water quality. Until there is a specific analysis and a plan for addressing these possible impacts, Adman does not support the increased heights for this area.

City Response: The SMP establishes critical area buffers of 150’ plus 15’ building setbacks from the Sammamish River and associated wetlands and would allow a height limit of up to 65’ only in areas outside of these buffers and building setbacks on the upland portions of these properties, consistent with existing zoning. Separate city regulations control stormwater impacts and protect water quality.

H-3 properties are currently developed with commercial and mobile home park uses. The existing mobile home park extends to the edge of the river. The Cumulative Impacts Analysis takes into account the fact that areas affected by the height increases are already developed and were developed under less stringent standards for shoreline, habitat, and water quality protection than would apply to redevelopment. As such, although buildings could be taller in the shoreline jurisdiction outside of the wetland/stream buffers and building setbacks than at present the shoreline environment would be better protected after redevelopment than it is currently.

In one limited area, where area H-3 abuts Swamp Creek Park, the additional height could have a limited shading effect on the park, which is designated Natural. However because this location at just west of Swamp Creek Park contains both the mouth of Swamp Creek and is shown to contain wetlands on the NWI data set setbacks and buffers would restrict any new structures to the
area furthest from the shoreline, and any impacts would likely be small. Specific review of such impacts would occur with any permit application on that site.

**Ecology Conclusion:** A required change is to modify the H-3 SBHA. Much of this area is within a floodway and is not suitable for residential development for floodway encroachments.

b. The H-4 area encompassed is a large area of what is also known as, and identified in the Shoreline Inventory as Swamp Creek Wetland #3. This is identified as a “highest quality wetland” by description in the inventory. This is one of the largest remaining wetlands on Swamp Creek, about 90 acres. It provides wildlife habitat and flood attenuation functions. Most of the area shown on the map is undeveloped wetland. This area is within the 100-year floodplain on FEMA maps. Urban flooding has increased dramatically in this area, and is expecting to worsen. The city of Kenmore continues to have to acquire properties along the perimeter of this wetland because they get flooded so much.

The H-4 area is designated Urban Conservancy. Designating an area H-4 suggests a plan for increased density of development. To quote the regulations, “The purpose of the Urban conservancy Environment is to protect and restore ecological functions of open space, streams, wetlands, and floodplain, including areas below the ordinary high water mark in Swamp Creek.

The cumulative impacts Analysis does not provide an adequate analysis of the impact of allowing increased heights in this area, the impacts which would be reasonably foreseen include increased impervious surface, the need for increased infrastructure, increased runoff, decreased vegetation, impaired water quality, decreased habitat function, decreased flood storage capacity, and increased flooding. It would require a very detailed and persuasive analysis to support increased heights and density in the area designated H4. Such analysis has not been provided.

**City Response:** The City recognizes the large wetland areas along Swamp Creek, and the SMP includes regulations to protect them. The shoreline jurisdiction extends from Swamp Creek to the edge of the protected associated wetlands. In most of the residential portion of the H-4 area, the boundaries were drawn to follow property lines and include large parcels that are partially in the wetlands and partially outside of them. In those limited cases where the shoreline jurisdiction extends beyond the associated wetlands (when the 200’ distance from Swamp Creek extends beyond the associated wetlands), increased height could only occur outside of the wetland/stream buffers and building setbacks. Analysis shows that only one parcel appears to have area outside of the associated wetland and within the shoreline jurisdiction. This parcel is located in the R-18 zone north of the commercial zone and adjacent to the main stem of Swamp Creek. Like the commercially zoned lots to the south
of it, this one lot is already developed within the required stream buffer and would be subject to the nonconformance standards of the SMP.

In the commercial zoned portion of H-4, on the north side of NE Bothell Way, the wetland/stream buffers and building setbacks apply, as would the nonconformance sections of the SMP for those developed portions of the site inside those buffers/setbacks. The standards of 16.50.030.B.2 prevent new non-water-dependent development in the 200’ shoreline jurisdiction unless accompanied by enhancement of existing buffers, and the only water-dependent uses allowed would be low intensity uses like public access trails. For redevelopment to occur on any lots in the commercial area of H-4 outside of the wetland/stream buffers and building setbacks, the buffer areas would have to be restored substantially, which would offset any minor impacts from shading that might result from 65-foot tall buildings at the outer edge of the shoreline jurisdiction.

The Cumulative Impacts Analysis takes into account the fact that areas affected by the height increases in H-4 are already developed and were developed under less stringent standards for shoreline, habitat, and water quality protection than would apply to redevelopment. Within the shoreline jurisdiction, in the commercial area of H-4 along NE Bothell Way and the residential zone immediately north of it, commercial or mixed use redevelopment would result in buffer enhancement reduced runoff rates, reduced impervious surface area and would not impact flood storage capacity.

**Ecology Conclusion:** A required change will only allow the H-4 height to be increased at least 112.5 feet from the OHWM of Swamp Creek. The change will make this provision consistent with the critical area protections.

**Restoration Plan**

c. The measures suggested as "Recommended restoration and protection actions" in table 3 of the Restoration Plan are very general, not project-specific, and not prioritized. The Restoration Plan should list discrete projects.

**City Response:** The City Council did not change the Planning Commission’s recommendation which did not prioritize the restoration plan projects. The restoration projects will be considered individually as opportunities arise.

**Ecology Conclusion:** While the Restoration Plan does list certain projects, it only prioritizes more general categories of actions. It is noted in the restoration Plan, at Page 32, that:
During the 7-year interim period between SMP updates, it is valuable to develop implementation and monitoring programs for the individual restoration actions. Due to the nature of restoration actions (i.e., diverse project or site-specific factors that influence their implementation), performance standards and monitoring plans should be developed for individual projects or actions once the City has determined priorities and identified funding sources.

While the Restoration Plan is not specific about individual restoration activity timing, it does infer that the City needs to engage in identified restoration programs and activities in order to implement the SMP. A clear description and listing of project priorities could be a suggested change.

d. The table on page 20 listing Restoration Opportunities on reaches of Swamp Creek omit reaches 01 and 02 as opportunities for "restoration and preservation of floodplain wetlands" and "preservation of remaining natural areas." These activities seem appropriate for these reaches.

City Response: In general, the table indicates opportunities that were identified in previous plans and through the public outreach process. It does not include every possible action that could be undertaken in every reach. The suggestions in this comment were not received during the plan development and are not specific enough to understand what opportunities are implied. The table identifies restoration opportunities in these reaches, just not in these specific categories.

Ecology Conclusion: On Page 20 of the Restoration Plan "attenuation of stormwater lows" is listed for Swamp Creek reaches 3 and 4. It is unclear what restoration or preservation activities are intended by the comment.

e. Map #4 in the Restoration Plan identifies a number of wetlands by map legend as "Protect High Quality Habitat". However, none of Swamp Creek Wetland #4 is designated as such, despite its having been described as "some of the highest quality wetlands in the Kenmore area" on p. 11 of the plan.

City Response: This is a good suggestion and the change could readily be made to the map, as it does reflect what the text already states.

Ecology Conclusion: This is included as a suggested change.

Area Designations
f. The two parcels on the shore of Lake Washington, immediately north of St. Edwards Park, have characteristics associated with Natural Environment Designation and should be designated as such. The City has failed to provide a better rationale as to why this parcel is not being designated Natural.

**City Response:** The Natural Environment designation is to protect public shoreline areas that include ecologically intact or minimally altered shoreline. One of the characteristics for Natural Environment designation is that the shoreline is in public ownership. The two parcels in question are not in public ownership and were, therefore, designated Urban Conservancy. Urban Conservancy management policy LU-I 7.3.13 states that, “Because the parcels located to the north of Saint Edward State Park and designated Urban Conservancy are largely ecologically intact, if one or more of those parcels are acquired by a public agency for open space purposes, the City should consider redesignating those parcels as Natural if they meet applicable criteria.”

**Ecology Conclusion:** Ecology is including a required change to designate these parcels as Natural. Besides being part of a larger ecologically intact area primarily in public ownership, the area may be difficult to develop without impacting ecological functions.

g. With regard to the area designated as H4 on the Shoreline Area Designations map, if the intention is to redevelop already paved areas with the possibility of environmental enhancement, the area should be redrawn so that it does not encompass a large area of wetland, but rather just the already-develop area adjacent to the wetland.

**City Response:** The H-4 boundaries were chosen to follow property lines and incorporate parcels that are partially in the wetland and wetland/stream buffers and partially outside those buffers. As previously discussed no new development can occur in the 150’ wetland/stream buffers plus 15’ building setbacks.

**Ecology Conclusion:** A required change will refine the H-4 standards to not allow increased building heights within 112.5 feet of Swamp Creek.

**Mitigation Ratios**

h. The Kenmore Municipal Code should be modified so that its rating system (3 classes) is consistent with department of Ecology’s 4 category system. The mitigation ratios provide vastly lower amounts of replacement than ranges specified in the guidance documents provided by the department of Ecology. Wetland mitigation, while allowed, is generally considered, by environmental professionals, to be ineffective. This portion of the plan should not be approved until the mitigation ratios are consistent with Department of Ecology guidelines.
**City Response:** The adopted wetland classes are from the City’s existing critical areas ordinance. The Department of Ecology has approved use of the City’s 3-tier wetland classification system as it is based on the jurisdiction’s best available science. The adopted mitigation ratios also are from the City’s existing critical areas ordinance.

**Ecology Conclusion:** The City has adequately demonstrated that the 3-tier wetland classification system in the critical area ordinance adequately protects wetlands. Ecology is requiring a change to the mitigation ratios to ensure adequate mitigation. The mitigation ratios will still reflect the city’s 3-tier wetland system, but requires additional mitigation to be similar to Ecology's wetland mitigation ratio guidance.

13. **Karen McFadden, testimony at the public hearing on March 31, 2011 and comment letter received April 6, 2011.**

a. McFadden is concerned that the Cumulative Impact Analysis does not cite specific standards and regulations to address the No Net Loss of Ecological Functions. Increasing the density development in H-3 and H-4, without the specifics and regulations, renders the Shoreline Master Plan incapable of mitigation of impacts required in WAC 1762762013D, including, but not limited to impacts of building heights, parking requirements, and additional roads.

DOE Guidelines direct that existing urban areas, such as Kenmore Village, should be utilized before expanding into other areas, such as development by any water bodies. The infrastructure is in place in existing urban areas and they need to operate at full capacity before leapfrogging into undeveloped areas. There are other adjacent urban areas that are already planned with existing infrastructure that should be utilized first. I request that you not adopt H3 and H4 density standards.

**City Response:** The SMP establishes critical area buffers of 150’ plus 15’ building setbacks from the Sammamish River Swamp Creek and associated wetlands and would allow development in areas outside of these buffers and building setbacks on the upland portions of these properties, consistent with existing zoning and if structures would not obstruct the view of a substantial number of residences.

**Ecology Conclusion:** Ecology agrees that the Cumulative Impacts Analysis is not specific as to which potential ecological impact will be addressed by which regulation. While such specificity is desirable, it is not a requirement. Changes to the SMP required by Ecology will significantly alter the H-3 and H-4 SBHAs. The policy to develop in established urban areas before non-urban areas is a GMA principle - not an SMA principle.
b. The small map provided in the proposal made it difficult to identify the specific locations. Swamp Creek is in a flood plain that would require building to FEMA standards, which do not address No Net Loss of Ecological Functions.

City Response: The city has prepared a full-size map of the shoreline environments showing underlying property boundaries. Most of the Swamp Creek floodplain is within the buffers protecting Swamp Creek.

Ecology Conclusion: In response to Ecology concerns, the City has prepared a map adequate to show the shoreline environment for each individual parcel.

c. The two parcels north of St. Edward State Park should be designated Natural. State Senator Marilyn Chase has applied for funds to buy these two parcels under a Wildlife Grant.

City Response: The Natural Environment designation is to protect public shoreline areas that include ecologically intact or minimally altered shoreline. One of the characteristics for Natural Environment designation is that the shoreline is in public ownership. The two parcels in question are not in public ownership and were, therefore, designated Urban Conservancy. Urban Conservancy management policy LU-I 7.3.13 states that, “Because the parcels located to the north of Saint Edward State Park and designated Urban Conservancy are largely ecologically intact, if one or more of those parcels are acquired by a public agency for open space purposes, the City should consider redesignating those parcels as Natural if they meet applicable criteria.”

Ecology Conclusion: A required change is to designate these parcels Natural.


a. How can it be legal to increase the heights along Swamp Creek? There is a heron rookery in that area that is a very sensitive area. A few people have had to move their houses out of that area because of flooding from Swamp Creek because so many of the floodways have been developed on the Snohomish County side of Swamp Creek.

City Response: The new height limits would not apply within the wetlands or buffers associated with Swamp Creek. The city’s critical area rules continue to apply in the area (they are adopted into the SMP), including the protections for the heron rookery. The SMP height change does not change existing zoning, which already allows these heights on portions of the property outside of the wetlands and buffers.
Ecology Conclusion: Ecology has included a required change that makes it clear that the increased height limits are only allowed outside of the critical area buffer, and in no case closer than 112.5 feet from the OHWM.

b. Bates asks that Ecology send the Kenmore Shoreline Management Plan back to the city to remove the H-1, H-2, H-3, and H-4 height areas over the shoreline and wetland areas.

City Response: Comment noted.

Ecology Conclusion: The H-1 and H-2 SHBA does not create an obvious conflict with the SMA. However, a required Ecology change to the SMP will required that proposals for taller buildings demonstrate that they will not block view of a substantial number of residents, not cause environmental degradation or net loss of ecological function. The H-3 and H-4 areas have been significantly altered and minimized.

c. For the portion of area H-4 that is over Swamp Creek, Bates has concerns because that area is essentially a flood plain that is continually flooded at this point.

Due to the overdevelopment over the north end of Swamp Creek, a lot of the water has been forced to the lower part of the creek. Wetland #3, which is between 73rd, Bothell Way, and 80th, is the one area where there is enough undeveloped land for the creek to spread out. The creek has taken over this wetland over the last few years. The water has caused continuous flooding for houses along 73rd street and the city has had to buy a few properties along Swamp Creek.

The Mayor has indicated that no buildings would be built within the buffer of the wetland. But the H-4 area overlays class 1 wetland and part of Swamp Creek itself. If there is no intention of building over this area, then take the height overlay out of the plan completely.

On 73rd, Bates is concerned that at least one property owner is planning to put tall buildings on his land which overlays wetland buffers. This development will cause further water problems for properties that surround wetland #3 as water is directed away from the new buildings.

City Response: The SMP establishes critical area buffers of 150’ plus 15’ building setbacks from the creek and associated wetlands and would allow a height limit of up to 65’ only in areas outside of these buffers and building setbacks on the upland portions of these properties, consistent with existing zoning and if structures would not obstruct the view of a substantial number of residences.
Ecology Conclusion: The H-4 area is being significantly minimized to eliminate any potential impact to Swamp Creek or its associated wetlands.

15. Ann Aagaard, testimony at the public hearing on March 31, 2011 and comment letter received April 15, 2011.

Plywood Supply

a. In 1991, when Plywood Supply proposed storage structures, there was supposed to be a 100 foot setback. In addition, there was a permanent bio-filtration swale, a 50-foot landscape buffer and a 30-foot river protection easement and public access easement. The outfall was to be total vegetated. Aagaard asks that Kenmore's compliance officer go back and double-check to be sure that the 100 foot setback is being met.

City Response: Comment noted.

Ecology Conclusion: This comment relates to compliance with previous permit conditions rather than the current SMP proposal.

b. The geotechnical report indicated that peat ranged from 18 to 23 feet deep on this site. Ground water table was up to the surface to 3 feet deep on the site. The ecological function so the site cannot be replicated. Aagaard is opposed to the H-3 height limits. The revised height limits have not been addressed in the Cumulative Impacts Analysis. Increase height limits would impose impacts on the park across the street and the natural area which is Swamp Creek Park. The H-3 area also includes a portion of the Shoreline Residential area as well. SMP policies 17.2.1.2 and 17.2.1.3 talk about how this is for multi-family with recreational and community recreational facilities and adequate utilizes and public services. None of these things are currently planned for the area.

City Response: The SMP establishes critical area buffers of 150’ plus 15’ building setbacks from the Sammamish River and associated wetlands and would allow a height limit of up to 65’ only in areas outside of these buffers and building setbacks on the upland portions of these properties, consistent with existing zoning and if structures would not obstruct the view of a substantial number of residences.

Ecology Conclusion: A required change is to modify the H-3 SBHA. Much of this area is within a floodway and is not suitable for residential development for floodway encroachments.

Restoration Plan
c. The City should prepare a memo to supplement their Restoration Plan.

**City Response:** Comment noted.

**Ecology Conclusion:** While the Restoration Plan does list certain projects, it only prioritizes more general categories of actions. It is noted in the restoration plan, at Page 32, that:

*During the 7-year interim period between SMP updates, it is valuable to develop implementation and monitoring programs for the individual restoration actions. Due to the nature of restoration actions (i.e., diverse project or site-specific factors that influence their implementation), performance standards and monitoring plans should be developed for individual projects or actions once the City has determined priorities and identified funding sources.*

While the Restoration Plan is not specific about individual restoration activity timing, it does infer that the City needs to engage in identified restoration programs and activities in order to implement the SMP. A clear description and listing of project priorities could be a suggested change.

**Parcels Located North of St. Edward State Park**

d. The two parcels of private land located north of St. Edward State Park in Lake Washington Reach WA-2 have proposed designations of Urban Conservancy in the Kenmore Shoreline Master Program. (KSMP). These two parcels appear to have much in common with Reach Lake WA-1, which is designated Natural. This area meets all the criteria of a Natural Environment designation “ecologically intact or minimally altered shorelines” and the designation criteria of WAC 173-26-211(5)(a) and (e)

Low intensity uses are allowed in this environment [with a setback of 150’]. In order to develop the area i.e. to provide access, adverse impacts to the ecological functions of the naturally vegetated, minimally altered, intact steep shoreline would occur. Policy language of LU-17.3.13 and the designation in the KSMP of Urban Conservancy is not consistent with Ecology’s Guidelines. The Policy Language and Urban Conservancy designation should not be approved as proposed in the KSMP.

**City Response:** The Natural Environment designation is to protect public shoreline areas that include ecologically intact or minimally altered shoreline. One of the characteristics for Natural Environment designation is that the shoreline is in public ownership. The two parcels in question are not in public ownership and were, therefore, designated Urban Conservancy. Urban Conservancy management policy LU-I 7.3.13 states that, “Because the parcels
located to the north of Saint Edward State Park and designated Urban Conservancy are largely ecologically intact, if one or more of those parcels are acquired by a public agency for open space purposes, the City should consider redesignating those parcels as Natural if they meet applicable criteria.”

**Ecology Conclusion:** the required changes include changing the environment designation of these parcels to Natural.

### Expansion of Nonconforming Uses and Structures

e. KSMP proposed language in 16.75.050 D would allow expansion of a nonconforming dock by up to 25%. While there are requirements to reduce the impacts to critical fish habitat and not cause adverse impacts on adjacent shoreline uses, this provision would allow a pre-existing dock that exceeds the new standards in the SMP to further expand. The regulation language 16.75.050 D together with the policy language of LU-23.2.8 and LU-24.1.6 would make a non-conforming dock larger than the standards for a new or conforming dock. That is a current non-conforming dock could expand an additional 25%. A new or conforming dock would not be able to expand 25%. The current cumulative impact analysis does not address expansion of non-conforming docks by 25%.

Please do not adopt section 16.75.050D allowing 25% expansion of non-conforming docks or associated policy sections.

**City Response:** The allowance for increased size was intended as an incentive to improve habitat quality. The expansion could be allowed by the director when the applicant demonstrates that the expanded dock would reduce the impacts of the existing dock on critical fish habitat. If the applicant chooses not to meet this standard, expansion would only be allowed through a conditional use permit.

**Ecology Conclusion:** Ecology is requiring a change that modifies this standard. While an incentive to improve the ecological performance of existing piers is appropriate, the allowance for expansion and lack of specific criteria has been a concern.

### Public Access

f. The concept of rough proportionality is not explained or defined in the KSMP. If this is a requirement for public access, then the terms should be defined and referenced so that the public and the applicant understands how the public access requirement will be implemented.

**City Response:** “Rough proportionality” is an evolving legal concept established through court cases and is itself an interpretation of the U.S. Constitution. It refers to the fact that the City must consider whether the burden
placed on the particular owner is roughly proportional to the impact of that owner’s proposed development. The City is required under the U. S. Constitution to consider this principal in making its decisions, and will always need to be aware of the evolving legal precedents related to this concept.

**Ecology Conclusion:** Ecology concurs with the City response.

Accessory Uses Associated with Mixed Use Development.

**g.** Shoreline Use Criteria Footnote to Shoreline Use Table KMC 16.50.030.A. Section B.2.a. Development that is part of a mixed use project is required to include a water dependent use in which at least fifty percent of the land area (including uses accessory to the water dependent use). An accessory use is defined to include outdoor storage, offices, and parking incidental to the principal use. Parking can be over-water if the lot is constricted. The amount of site use incidental to the principal use is not specified and could vary from 1% to 49% of the “mixed-use”. To ensure that mixed use development in the Waterfront Environment is committed to 50% water dependent uses, the regulation as written should be denied. Please require KSMP to rewrite the criteria footnote of Shoreline Use Table KMC 16.50.030.A. Section B.2.a. to assure that the intent of the SMA to give preference to water dependent uses is followed so that 50% water dependency of the mixed use does not allow incidental accessory uses to be counted towards this requirement.

**City Response:** Including uses accessory to water-dependent uses in the calculation supports the inclusion of water-dependent uses—which may not be able to efficiently operate without those accessory uses. If the restrictions on water-dependent uses are too great, an applicant might simply provide public access or restoration instead, thus defeating the purpose of encouraging water-dependent uses in already developed shoreline areas.

**Ecology Conclusion:** A required change limits uses accessory to a water-dependent use so that which is fully incidental and subordinate to the water-dependent use.

**Critical Areas**

**h.** Mitigation in the Kenmore Sensitive Areas Ordinance (KSAO) is for creation or restoration that is in-kind, on-site, the same class. It does not include ratios for unauthorized alterations, and use of wetland mitigation banks.

The KSAO ratios are 3:1 for Class I, 2:1 for class 2, and 1:1 for Class 3 and do not compare favorably with Ecology and Corps of Engineers Classification system or the acreage replacement ratios. The Ecology recommended ratios used in the
recommended table are dependent on the hydrogeomorphic setting of the site not being altered and use a four tier category system. Category IV for establishment or creation is 1.5:1 and rehabilitation is 3:1, enhancement only is 6:1. Category III creation is 2:1, rehabilitation 4:1 and enhancement only 8:1. Category II is higher if forested 6:1 (all others 3:1) rehabilitation 12:1 and 8:1 and enhancement only is 12:1. In addition, Ecology and the Corps Use a 4 tier rating system and a functional analysis rating system.

The standards referenced in the cumulative impact analysis table Attachment 1 in the KSMP utilize general references to KSAO to conclude that there will be no net loss of shoreline ecological functions to those wetlands associated with shoreline jurisdiction. An example is found in the cumulative impact analysis in reference to the Lakepointe Development in reach Lake-WA.-03. The functions of these associated wetlands (significant areas which are in floodplain) include hydrological hyporheic, and water quality functions as well as vegetation and habitat. These additional functions are not addressed in l6.65.020 which address only vegetation and habitat.

Because the rating systems are different and ratios for creation (and indeed enhancement) significantly different, it is not possible to determine whether the KSAO that is adopted by reference into the KSMP is adequate to provide no-net-loss of ecological functions.

I request that Ecology not adopt the KSAO as regulations for the KSMP and that they require the City of Kenmore to provide critical area regulations for the KSMP that are adequate to evaluate for no-net-loss of ecological functions.

City Response: The adopted wetland classes and mitigation ratios are from the City’s existing critical areas ordinance. The Department of Ecology has approved use of the City’s 3-tier wetland classification system as it is based on the jurisdiction’s best available science.

Ecology Conclusion: The City has adequately demonstrated that the 3-tier wetland classification system in the critical area ordinance adequately protects wetlands. Ecology is requiring a change to the mitigation ratios to ensure adequate mitigation. The mitigation ratios will still reflect the city's 3-tier wetland system, but requires additional mitigation to be similar to Ecology's wetland mitigation ratio guidance.

Special Height Standards for Lakepointe H-1 and H-2

i. The September 2, 1998 Shoreline Permit (SDP) issued to Pioneer Towing Co. addressed the necessary shoreline conditions for development at Lakepointe.
Page 13 of the SDP (which has expired) gives the heights of the structures within the Lake Washington jurisdiction, a 100’ vegetated buffer with public access and view points. The 100-200’ area allowed 45’. Near the Sammamish River no higher than 35’.

The Lake Washington shoreline is a Shoreline of Statewide Significance. Therefore, the statewide interest over local interest is the first use priority. The CSDP and Master Plan are the same as that proposed in the SDP in 1998, (and covered in the EIS) there can be no justification now reducing the shoreline setback to 50’ and allowing the height to be 45’ within the first 100’ and 75’ within the 100-200’. The required re-establishment of the vegetation and riparian habitat for mitigation is the same as required in 1998. I request that Ecology require a minimum 100’ setback along the Lake Washington Waterfront in the City of Kenmore, and within the 100-200’ jurisdiction the height be limited to 45’ in order that there be no-net-loss of ecological functions.

**City Response:** The approved Lakepointe plans provide for a 35’ height limit along the Sammamish River. The adopted SMP contains the same limitation. The buffer against the river is 150’, plus a 15’ building setback.

New shoreline regulations along the west end of the site and along the inner harbor have been crafted to match the approved CSDP and Master Plan to a large degree, although the height limits have actually been reduced from the height proposed by the applicant in one portion of the site, and there is added emphasis on water-dependent uses, public access, and restoration on the site. The buffers from Lake Washington have not been reduced. Current standards are 0’ buffers for water-dependent uses and 20’ buffers for water-related uses that can be reduced to 10’ if public access is provided. Non-water-dependent uses have a 50’ buffer that can be reduced to 20’ if public access is provided. The standards adopted by the City Council require 20’ buffers for water-dependent and water-related uses and 50’ buffers for non-water-dependent and non-water-related commercial development. This buffer can go to 0’ for water-dependent uses if impacts are mitigated such that there is no net loss of shoreline ecological processes or functions. For non-water-dependent uses, the buffer can only be reduced if a public access promenade is provided and if impacts are mitigated.

**Ecology Conclusion:** The question that needs to be addressed as part of the SMP review is what buffers are necessary at LakePointe to achieve no net loss of ecological function. The characterization noted that there is extensive shoreline armoring and historic and existing industrial uses. Given the existing ecological condition of the site, the proposed buffers and restoration will likely achieved no net loss of ecological function within the reach.

**Area H-3 Waterfront and Suburban Residential**
j. The Kenmore SMP area H-3 allow buildings to exceed the 35 height limit to 45' (50-100') and 65' (100-200'). The area outlined is the same as the Citizen task force recommended TOD Transportation Oriented Development overlay which would give incentives to increase density over the planned density.

Flood plain is shown on the map for both Plywood Supply and the neighboring S.R. property. The designation of this property as H-3 allowing 65' height within 100' of the current structural setback line, and 45' within 50'-100' is not adequately addressed in the cumulative impact analysis. The current SDP for the light industrial development required a 100' and a vegetated shoreline buffer.

It is difficult to justify a reduction in the setback to 50', and increased height from 0-45' and from 100-200' a 65' (30' increase in height) —all with significantly increased density and impacts from the current SDP requirements.

I request that Ecology deny the height standards proposed in H-3 Waterfront and instead implement 35' height limit throughout the 200' Sammamish Shoreline jurisdictional area with a 100' setback as is currently implemented in the Plywood Supply existing SDP for low impact storage—industrial use. This will protect the ecological functions.

City Response: The SMP establishes critical area buffers of 150' plus 15' building setbacks from the Sammamish River and associated wetlands and would allow a height limit of up to 65' only in areas outside of these buffers and building setbacks on the upland portions of these properties, consistent with existing zoning and if structures would not obstruct the view of a substantial number of residences.

Ecology Conclusion: A required change is to modify the H-3 SBHA. Much of this area is within a floodway and is not suitable for residential development for floodway encroachments.

The Shoreline Residential portion of the H-3 overlay is addressed in the KSMP policies LU-17.2.1, LU-17.2.2 and 2.3.

k. Shoreline Residential policies apply to single-family or multi-family properties planned and platted for residential development. The height of 45' within 50'-100' and the 65' height within 100-200' is not consistent with these policies. LU-17.2.1 states that Density and minimum frontage width, setbacks lot coverage, buffers, critical areas protection and water quality shall be set considering the environmental limitations and sensitivity of the shoreline area and the level of infrastructure and services available. LU-17.2.2 Multi-family and multi-lot residential and recreational development should provide public access and community recreational facilities. LU-17.2.3 Access, utilities, and public services should be available and adequate to serve existing needs and planned future development. The height limits of H-3 discussed in the revised
cumulative impact analysis do not adequately address their policy criteria and will result in a net loss of ecological functions.

**City Response:** The SMP establishes critical area buffers of 150’ plus 15’ building setbacks from the Sammamish River and associated wetlands and would allow a height limit of up to 65’ only in areas outside of these buffers and building setbacks on the upland portions of these properties, consistent with existing zoning. The residential portion of H-3 is an existing mobile home park which extends all the way to the shoreline of the river.

**Ecology Conclusion:** A required change is to modify the H-3 SBHA. Much of this area is within a floodway and is not suitable for residential development for floodway encroachments.

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l. Aagaard concurs with Eric Adman's comments regarding Swamp Creek.

**City Response:** See responses to Mr. Adman's comments, p. 13.

**Ecology Conclusion:** A required change will only allow the H-4 height to be increased at least 112.5 feet from the OHWM of Swamp Creek. The change will make this provision consistent with the critical area protections.

m. Aagaard believes that Urban Conservancy should not include commercial development. Including commercial development is inconsistent with the Department of Ecology guidelines for Urban Conservancy.

Attachment 1 of the Cumulative Impact Analysis states that public access and habitat restoration could be provided with the mixed-use commercial area of H-4. This does not address "no-net-loss" particularly the loss of wetlands should they be impacted by future commercially zoned development.

Please require that the current Urban Conservancy be redefined to eliminate commercial development and require that the H-4 designation height overlay be removed from the Urban Conservancy Swamp Creek area.

**City Response:** The Urban Conservancy designation allows commercial development only where it is allowed in the underlying zone which is in only one area, immediately north of Bothell Way on Swamp Creek. No net loss is ensured as this area is already degraded and additional development is permitted only when ecological restoration and public access enhancement is provided.

**Ecology Conclusion:** For uses allowed in Swamp Creek Urban Conservancy Area - the commercial portion of this area is developed with a shopping center.
The shopping center portion of the site may be better suited with a greater intensity environment. However, protection of Swamp Creek and its associated wetlands is necessary. The H-4 SHBA has been significantly modified to ensure no conflict with Swamp Creek or its associated wetlands.


Hayes expresses concern that neither the City of Ecology has adequately addressed clearing on the Lakepointe site. Hayes believes that a weak SMP will be poorly implemented. Hayes wants the SMP to have every T crossed and every I dotted. Ecology needs to ensure that the SMP accomplishes no net loss of ecological function.

**City Response:**  Comment noted.

**Ecology Conclusion:** As a historic industrial site, the LakePointe site has a minimal amount of vegetation that will be outside of areas that are wetland or shoreline buffers. Because a toxics clean-up is required prior to development, clearing and grading on the site are likely. No net loss of ecological function is a project level requirement of the LakePointe project.

17. Patrick O'Brien, testimony at the public hearing on March 31, 2011.

a. Kenmore has a large flyway corridor with many species of birds utilizing the Sammamish Slough. Ecology should consider what the increased building heights will do to these birds.

**City Response:**  Comment noted.

**Ecology Conclusion:**  Ecology concurs with the comment.

b. Kenmore Air has been in the same location for many years. The FAA code enforces maximum building heights in landing corridors. The planes make every effort to land within the key, which is designated area H1.

**City Response:**  The height restrictions associated with Kenmore Air are unaffected by adoption of the SMP.

**Ecology Conclusion:**  A change is included that requires projects consider ecological impacts of increased building heights.
c. We have seen what liquefaction will do. This should be a consideration in areas H1 and H2.

**City Response:** The city’s critical area standards for seismic hazard areas have been adopted into the SMP and apply within the shoreline jurisdiction.

**Ecology Conclusion:** Ecology concurs with the City response.

d. Previous excavations have found a considerable amount of gas from the old landfill.

**City Response:** Comment noted.

**Ecology Conclusion:** The Site is under a legal agreement called a Consent Decree signed in 2001 to conduct the proposed site cleanup combined with a proposed development called the Lakepointe Development Proposal.

To prepare a Consent Decree and Cleanup Plan, there needs to be a remedial investigation completed at the site. The remedial investigation is to identify and characterize the extent of contamination in soil, groundwater, air, and surface water at the site. For the KIP Site the remedial investigation was conducted in steps.

The final Remedial Investigation (RI) was completed by AMEC Earth and Environmental Inc and dated June 22, 2001. The RI includes a section on Air and Landfill Gas (section 5.0) and states “Landfill gas exists in the subsurface due to on-going decomposition of the underlying peat soils and demolition debris.” The report goes on to say that AMEC has no knowledge that landfill gas accumulations have been reported.“ See page 12 in attachment from AMEC Earth & Environmental Inc., 2001, Remedial Investigation/Feasibility Study – Kenmore Industrial Park. Also attached are the AMEC conclusions and they do not list anything about landfill issues nor landfill gases.

An earlier remedial investigation report by AGRA Earth & Environmental Inc in July 1998 mentioned that landfill records listed that wood, stumps and demolition debris and restaurant wastes were deposited at the site as an unlicensed landfill.

The review of the KIP Site files and extensive soil and groundwater sampling results, has not noted any indication of landfill gases or landfill related substances in the soil and groundwater sampling results at this site.

This site does include peat underlying the surface soils as shown in geologic borings. Peat is common in the subsurface at Mercer Slough, Marymoor Park, the KIP site, and other areas associated with lake and river confluences, and as the peat compacts it may give off gases—a natural process.
e. Tannins from leaffall can be a concern for fish. This can be addressed by carefully choosing the trees being planted. O'Brien supports planting evergreens. O'Brien believes that this would reduce tannins entering shoreline waters.

   **City Response:** While it is acknowledged that some trees produce tannins, and that evergreen trees have been removed from Kenmore shorelines in greater extent than deciduous trees, it is also true that deciduous trees are native to shoreline areas and can be compatible. Consideration of appropriate trees for shoreline areas can be accomplished on a project specific basis, and consideration of excessive tannin inputs to the shoreline can be considered in developing and approving landscape plans.

   **Ecology Conclusion:** Ecology concurs with the City response.

f. The building heights that would be allowed in the H1 and H2 areas are a concern. While O'Brien wants the area to develop successfully, he is concerned about buildings with heights above 35 feet. O'Brien would like to see fertilizers and pesticides restricted near shorelines. O'Brien would like to look at the height limits in Woodinville and Redmond.

   **City Response:** Comments noted. The general shoreline development regulations include standards to prevent contamination of land or water.

   **Ecology Conclusion:** A required change is being added to emphasize that new projects must not impair shoreline ecological functions.

g. O'Brien is comfortable with single family development in the SR designation.

   **City Response:** Comment noted.

   **Ecology Conclusion:** Ecology concurs with the City response.

h. O'Brien expressed concern about the stability of the dam structure at the outlet of Lake Sammamish if there is a major earthquake. O'Brien expressed concern regarding the possible debris created by water released from Lake Sammamish if the outlet structure were to fail.

   **City Response:** Comment noted.

   **Ecology Conclusion:** There is a weir at the outlet of Lake Sammamish. It is not what is commonly understood to be a dam. The weir structure is of minimal
The Sammamish River has a mapped floodplain and floodway below Lake Sammamish.

18. Macy Ratliff, Email received April 15, 2011

The citizens of Kenmore need more public access to the lakeshore. The wetlands and the shoreline needs to have wider buffers, less impervious surfaces and careful protection of the wildlife that calls our area home. The current shoreline master plans needs to be revised in order to do what is best for the wetland ecology and wildlife habitat while providing greater public access to the shoreline.

City Response: The SMP buffers mirror those in the City’s existing critical areas ordinance. Public access is required for all multifamily and commercial developments, and subdivisions of more than four lots, if not precluded by public safety concerns.

Ecology Conclusion: Ecology concurs with the City response.