The City of Lake Forest Park adopted Resolution #1225 on October 18, 2010 authorizing submittal of the updated Shoreline Master Program (SMP) to the Department of Ecology (Ecology) for review. Ecology received the complete submittal in February 2011, initiating formal review of the updated SMP. Pursuant to WAC 173-26-120, Ecology provided an initial public comment period for the SMP that opened February 25, 2011 and closed March 28, 2011. Based on a public comment suggesting that sufficient notice was not provided during the first public comment period, Ecology provided notice for a second comment period from July 22, 2011 through August 22, 2011. Ecology did not hold a public hearing for this SMP amendment.

Legal notice was published in the February 23rd, 2011 and the July 20th, 2011 issue of the Seattle Times. Further notice was provided by mail to 196 individuals listed as regional and local interested parties. Throughout both comment period’s, Ecology received written comments from three individuals as summarized below.

In a letter to the City dated September 12, 2011, Ecology summarized the key issues from all the public comments received. The City provided Ecology with a response to these comments on December 9, 2011. This document is a compilation of both the Ecology comment summary the City’s response, and Ecology’s final conclusion.

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

1. Comment received from Tom French dated March 15, 2011 raising concern associated with insufficient notice not received by all interested parties and suggesting that Ecology re-notice the public comment period and expand the distribution list to include all interested parties previously involved during the City’s development of the updated SMP. **Ecology Note:** As stated above, Ecology provided a second public comment opportunity from July 22 – August 22, 2011, related to the City’s SMP that included distribution to 114-additional interested parties.

   **City Response:** No additional comment.

   **ECOLOGY CONCLUSION:** As previously noted, Ecology responded to request by providing a second public comment period including expanded notice to an additional 114 interested parties.

2. Issue summary of comments received from Muckleshoot Indian Tribe Fisheries Division (MITFD) submitted by representative Karen Walter on March 28, 2011:

   **SMP-Update Process:** MITFD states that they did not receive draft materials from the City during the SMP-update. Citing effective coordination with other Lake Washington jurisdictions through periodic email notice, MITFD is hopeful that this feedback will lead to improved coordination between the City, Ecology and the Tribe in the future.

   **City Response:** Notification of the City’s SMP update was sent out in a letter to interested parties in 2006, including MITFD. Since that time, a citizen task force, Planning Commission, and City Council have all taken part in review of the SMP and supporting materials. An Open House was conducted in 2008 after initial Council review. A public review draft was released in 2010. All of these activities were announced on the City’s website. The City is also hopeful that improved coordination will occur in the future.

   **ECOLOGY CONCLUSION:** As stated by both MITFD and within the City’s response, Ecology expects that the City will work with the Tribe to ensure improved coordination in the future.
SMP Administration: In an effort to avoid adverse affects to treaty protected fisheries resources and tribal fishing, MITFD request to receive all (regardless of the type\(^1\) of permit) notices of applications for proposed shoreline projects within the City’s jurisdiction. MITFD notes that section 3.4.C within the updated SMP does not require the City to provide notice to the Muckleshoot Indian Tribe, for which MITFD request that the City amend this section to ensure future notice is provided to the Tribe.

**City Response:** Notification and coordination with MTFID is already conducted by Ecology through Ecology’s review process. It is not the City’s intent to duplicate this effort by including additional notification of all shoreline permit actions directly to the Tribe.

**ECOLOGY CONCLUSION:** [Suggest that the City agree to provide notice of permits to MTFID – point out inconsistency in response in reference to Ecology’s notice to MTFID (i.e., this is only related to the SMP-update)]

Aquaculture: MITFD suggests that Aquaculture should not be prohibited by the SMP, as it may be needed as an enhancement, mitigation or restoration measure to maintain fisheries resources important to the Tribe. The Tribe requests that the SMP be revised to consider Aquaculture consistent with the criteria provided within the SMP-Guidelines and not prohibit the use.

**City Response:** It is not the City’s intent to allow such aquaculture activities in shoreline jurisdiction. Such activities could occur in other areas of the City, outside of shoreline jurisdiction. As stated in the Applicability of Section 7.3, “if such operations are established in the future, regulations will be established by amendment to this program.”

**ECOLOGY CONCLUSION:** In addition to the City’s response, it is important to recognize that enhancement, mitigation and restoration related to fisheries resources are allowed/encouraged by the SMP. The City’s definition of “Aquaculture” provided within section 7.3, specifically focuses on “farming or culturing of food fish”, which Ecology perceive as distinct from enhancement or restoration to maintain fisheries resources.

Vegetation Management: MITFD suggest that any significant trees that are removed through development of shoreline projects, be placed within the affected water body or if not feasible, then be made available to support salmon restoration projects throughout WRIA 8. Further, MITFD requests that regulatory standards be increased and applied to situations of un-permitted tree removal by property owners.

**City Response:** Applicants for tree removal permits may be encouraged by City staff to consider making the tree(s) available for salmon restoration projects, but the City will not require this within the Shoreline Master Program. The City believes it has adequate tree replacement requirements for property owners who remove significant trees without permits (see LFPMC Section 16.14.).

**ECOLOGY CONCLUSION:** Based on the dialogue between the Tribe and the City, it appears that on-going coordination between the two parties could support salmon recovery by encouraging property owners to make available significant trees that may be removed from a site for use in a regional restoration project.

Shoreline Modifications: MITFD objects to the allowance within the SMP of groins. Citing environmental impacts, MITFD recommends that the City modify the SMP to prohibit groin structures.

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\(^1\) Shoreline Variance, Conditional Use, Exemption or Substantial Development Permit
City Response: Groins have some similar impacts as breakwaters and jetties, but in some instances they may be useful to restoration or enhancement projects or community access points. As such, the City does not want to prohibit their use. Regardless, groins would likely have a very limited application in Lake Forest Park. The regulations in Chapter 8.3, Section F. (Groins), spell out their limited application as well as the stipulation that their design criteria must meet State, Federal and local Tribe regulations.

ECOLOGY CONCLUSION: Ecology concurs with the City’s response related to the limited use of Groins in support of a restoration projects. In addition to the City’s reference to the requirement to satisfy other “State, Federal and local Tribe regulations”, it should be noted that the proposal also needs to be consistent with all of the applicable polices and regulations within the SMP, for which mitigation sequencing standards as well as (general) shoreline modification standards will also serve to narrow the application of Groins to appropriate projects.

3. Issue summary of comments submitted by Futurewise through representative Dean Patterson, received by Ecology on August 6, 2011:

Shoreline Administration: Futurewise provided comments, stating that the SMP does not adequately describe expectations of project proponents for their project to receive an exemption from the Substantial Development Review process. According to Futurewise, a description of the exemption process is important to ensure that all shoreline projects are consistent with overall SMP requirements to provide for compensatory mitigation to avoid degradation to shoreline ecological functions. Futurewise provided the following suggestions intended to alleviate their concerns with shoreline exemptions: (1) Add a new section to the SMP to summarize details related to exemptions; or, (2) expand the use of the shoreline permit application to include shoreline exemptions.

City Response: As stated under SMP section 3.3.C.2, “An exemption from the substantial development permit process is not an exemption from compliance with the Shoreline Management Act or this Shoreline Master Program, nor from any other regulatory requirements. To be authorized, all uses and developments must be consistent with the policies and provisions of this Shoreline Master Program and the Shoreline Management Act.” From this statement, it is clear that all exemptions must still comply with all other relevant aspects of the SMP. This would include provisions to follow mitigation sequencing and provide compensatory mitigation as needed.

ECOLOGY CONCLUSION: Ecology concurs with the City’s response related to administration of the updated SMP.

SMP (General) Regulations: Futurewise acknowledged the City’s use of the phase ‘No Net Loss’ within the SMP, but question if specific development standards within the SMP actually require enough protection to satisfy the stated goal. Citing multiple examples, Futurewise suggests that the City’s SMP appropriately describes ecological impact avoidance and minimization requirements, but does not clearly reference requirements to compensate for remaining impacts.

City Response: Existing Policy 6.4.1 addresses the need for avoidance, minimization and mitigation by stating “the adverse impacts of shoreline uses and activities on the shoreline environment should be avoided, if feasible, and then minimized during all phases of development (e.g., design, construction, management and use). Mitigation for impacts must be provided such that the use or activity overall will result in no net loss of shoreline ecological functions.” Several regulations follow which specifically emphasize avoidance and minimization for impacts to water
quality (Regulation 6.E), impacts to land and water uses (6.F), and need for shoreline protection structures (6.I).

The City will consider the addition of a new regulation (6.4(L.)) based on the City of Kirkland’s approved SMP to further implement Policy 6.4.1. The intent of this new regulation would be to identify that if a development action is permittable and meets the standards of the SMP then it would not require additional mitigation sequencing (for it has already been shown to achieve NNL). However, for CUPs or Variances, or other activities not specifically allowed by the SMP, mitigation sequencing would be required.

This regulation may include the following:

• If specific standards, such as setbacks, pier dimensions and tree planting requirements, are provided in this Master Program, then the City shall not require additional mitigation sequencing analysis under these provisions.

• In the following circumstances, the applicant shall provide an analysis of measures taken to mitigate environmental impacts:
  1) Where specific regulations for a proposed use or activity are not provided in this Master Program;
  2) Where either a conditional use or variance application are proposed; and
  3) Where the standards contained in this Master Program require an analysis of the feasibility of or need for an action or require analysis to determine whether the design has been minimized in size.

• Maintenance activities shall be conducted in a manner that minimizes impacts to fish, wildlife, and their associated habitat and utilizes best management practices, unless specific standards in this Master Program are already provided for maintenance activities and thereby do not require additional mitigation sequencing analysis.

**ECOLOGY CONCLUSION:** A required change to the locally adopted SMP has been drafted consistent with the City’s response and will need to be accepted by the City as part of Ecology’s approval of the updated SMP. See Item 1 within Attachment B – Required Changes.

**Public Access:** Related to Public Access, Futurewise provides the following comment: “…public access requirements also need to include a standard preventing the enclosure and partial enclosure of public waters, and prevent construction of docks at spacing that effectively creates partial enclosure of public waters. The standards should also include a more general statement that preventing the public use of shoreline waters adjacent to docks is prohibited”.

**City Response:** The SMP contains two policy statements related to ensuring overwater structures do not prevent public use of shoreline waters. Policy 8.5.2 states, “Piers should be discouraged where conflicts with recreational boaters and other recreational water activities would be created by pier construction,” and Policy 8.5.6.b which states, “(O)verwater structures, including piers, boatlifts and moorage covers, should only be authorized after consideration of: b. The effect such structures have on navigation, water circulation, recreational and commercial boating, sediment movement and littoral drift and shoreline access.” Per the overwater structures regulations, with the exception for joint-use structures, “piers shall be spaced a minimum of 20 feet apart from adjacent piers or 10 feet from the side yard, whichever is greater.”

**ECOLOGY CONCLUSION:** Ecology concurs with the City’s response, which appears consistent with the authority and intent of the applicable SMP-Guideline requirements.
SMP (Use) Regulations: *Futurewise* suggest that the City distinguish “landscape beds” from vegetation management areas, specifically recommending the following: “A statement is needed that the area shall not be established as a landscaped yard area, but rather must be of a plant composition and planting density to create a dense native vegetation area capable of providing ecological functions.”

**City Response:** The SMP contains language emphasizing that vegetation requirements are primarily for ecological—not landscaping—purposes. Regulation 6.7(C)(3.) indicates that the reason vegetation is required in the shoreline setback is because of the ecological functions vegetation provides. This regulation relates that “riparian vegetation contributes to shoreline ecological functions in a number of different ways” and that the SMP’s vegetation standards are required “in order to minimize potential impacts to shoreline ecological functions from development activities.” The SMP also currently contains language that indicates that planting areas, as stated above, “must be of a plant composition and planting density to create a dense native vegetation area capable of providing ecological functions.” Regulation 6.7(C)(3.)(a.)(2.)(b.) states that the “installation of native vegetation shall consist of a mixture of trees, shrubs .... At least 60% of the landscape bed shall consist of shrubs.” Regulation 6.7(C)(3.)(a.)(2.)(c.) states that “plant materials must be native and selected from a local list of native plants, or other native or shoreline appropriate species ...”

**ECOLOGY CONCLUSION:** Ecology concurs with the City’s response, which appears consistent with the authority and intent of the applicable SMP-Guideline requirements.

**Residential uses:** Related to residential uses, *Futurewise* notes the following: “If residences are to be allowed they cannot cause damage and still be preferred.” Citing a need to justify any residential uses that may cause damage to shoreline ecological functions, *Futurewise* offered the following recommendation to the City: “We recommend that all development within 100 feet of the water be reviewed with a Variance, CUP, or similarly detailed process in order to; (1) ensure there is a very good reason for developing close to the water, (2) to ensure that mitigation sequencing is being used fully, and (3) to ensure that compensation for impacts of development is being implemented.”

**City Response:** Given that the City’s shoreline is currently characterized by a considerable degree of urban residential development within 100 feet of the shoreline, such a recommendation seems incongruous with existing conditions. The actual median setback in the Shoreline Residential environment is 19.65 feet and the mean is 24.20 feet. For residential development, the standard shoreline setback will vary from 40 to 50 feet depending on parcel depth, and can be reduced to a minimum of 20 feet provided that the property owner implements a number of impact minimization and compensation measures divided between upland and water-related actions. Mitigation measures to obtain a setback reduction include removing bulkheads, preserving existing and/or restoring native vegetated buffers, daylighting piped streams, limiting impervious surfaces and lawn area, or committing to limited and appropriate use of landscape chemicals. These measures are strictly intended to compensate for potential impacts related to redevelopment of shoreline residential uses. The establishment of native vegetation in this area will help to improve overall ecological functions by helping to maintain water temperature, removing excessive nutrients and toxic compounds, attenuating wave energy, stabilizing sediment, and providing woody debris and other organic matter to the aquatic environment.

Moreover, the Washington State Legislature specifically gave preferential accommodation of single-family uses in the state’s shoreline. For example, RCW 90.58.020 states “alterations of the natural condition of the shorelines of the state, in those limited instances where authorized, shall be given priority for single-family residences and their appurtenant structures ....” Requiring
single-family residential uses to undergo a “variance, CUP, or similarly detailed process” appears contrary to the intent of RCW 90.58.020.

**ECOLOGY CONCLUSION:** [Placeholder – Anticipate required changes to not allow reduction to less than 25-feet and amend Incentive 4 and 5 to not allow for reduction for “Preservation”, refer to August 20, 2010 comments to the City related to these two issues. (Re-review CIA)].

**Shoreline Modifications:** Related to Shoreline Modifications, *Futurewise* has recommended that the City incorporate the following general modification standards into the updated SMP: (1) An additional regulation clarifying that a modification is subject to the same use limits as the primary use, (2) Provide a new section within the SMP noting that all modifications including appurtenant or accessory structures are subject to compliance with the SMP standards.

**City Response:** In regards to comment (1), the second paragraph of Section 8.1 states that “a proposed development must meet all of the regulations for both applicable uses and activities as well as the general and environment designation regulations.” As the definition of “development” includes modifications, this language indicates that modifications must meet applicable use regulations. Additionally, the provisions for specific modifications include similar language. For example, Regulation 8.2.2(B.) states that “clearing and grading activities may only be allowed when associated with a permitted shoreline development.” Finally, Regulation 6.2(A.) states that “all shoreline uses, and shoreline modification activities, including those that do not require a shoreline substantial development permit, must conform to the intent, policies, and regulations of this Master Program, including Shoreline Management Goals, Shoreline Environment Designation provisions (including the environment designation map), General Regulations, Specific Shoreline Use Policies and Regulations, and Shoreline Modification Activity Regulations.”

In regards to comment (2), Regulation 6.2(A.), stated above, would address modifications including appurtenant or accessory structures.

**ECOLOGY CONCLUSION:** Ecology concurs with the City’s response, which appears consistent with the authority and intent of applicable SMP-Guideline requirements.

**(Modifications) In-water structures:** *Futurewise* raised concerns citing inconsistency between mitigation sequencing requirements to “avoid” impacts and allowance within the SMP of “Boathouses” and “Covered Moorage”. Similar concerns were provided related to “excavated moorage slips”, for which, *Futurewise* has recommend that the City prohibit these modifications.

**City Response:** Regulation 8.5(A.)(16.), which states “boathouses or other walled covered moorage are not permitted,” avoids impacts of such moorage structures. Regulation 8.5(F.)(2.) contains provisions that minimize impacts associated with covered moorage. As stipulated in Regulation 8.4(B.), excavated moorage slips for all residential uses are prohibited in the City of Lake Forest Park. For remaining uses, they require a conditional use permit. As such, they will be subject to the rigorous requirements of 3.8(B.), including a demonstration that the excavated moorage slip is consistent with the SMP.

**ECOLOGY CONCLUSION:** Ecology concurs with the City’s response, which appears consistent with the authority and intent of applicable SMP-Guideline requirements.

**(Modifications) Overwater structure dimensional standards:** *Futurewise* note that the existing SMP provides maximum size dimensional standards, for which they suggest the standards be amended to first consider smaller structures unless larger or longer structures are justified by site/use specific constraints such as shallow depth or other moorage needs.
**City Response:** Regulation 8.5(A.)(9.) states that “all pier and dock dimensions shall be minimized to the maximum extent feasible. The proposed length must be the minimum necessary to support the intended use.”

**ECOLOGY CONCLUSION:** Ecology concurs with the City’s response. The dimensional standards related to Overwater Structures provided within the SMP, provide a limit for which a variance would need to be submitted for the City to consider a proposal for a structure that exceed these standards. Further, general mitigation sequencing and shoreline modification policy and standards require that proposals should be the minimum size necessary to support the allowed use, in other words requiring that a future applicant justify the size of their proposal based on their use, while staying within the limits of applicable dimensional standards provided in the SMP. To ensure consistent implementation of these policies, the City should develop appropriate administrative protocols such as shoreline permit (application) questions or internal review criteria.

(Modifications) Overwater structure spacing: Futurewise commented that the City dock spacing standard (20-feet) could interfere with public use of shoreline waters, for which they have suggested that the City integrate mitigation sequencing considerations into all dock and boating facility decisions (also see “public access” above).

**City Response:** The SMP contains two policy statements related to ensuring overwater structures do not prevent public use of shoreline waters. Policy 8.5.2 states, “Piers should be discouraged where conflicts with recreational boaters and other recreational water activities would be created by pier construction,” and Policy 8.5.6.b, which states, “(O)verwater structures, including piers, boatlifts and moorage covers, should only be authorized after consideration of: The effect such structures have on navigation, water circulation, recreational and commercial boating, sediment movement and littoral drift and shoreline access.” Per the proposed additional regulation provided above in response to earlier comments regarding mitigation sequencing, the City would assume that if a development action is permittable and meets the standards of the SMP then it would not require additional mitigation sequencing (for it has already been shown to achieve NNL).

**ECOLOGY CONCLUSION:** Ecology concurs with the City’s response. T

(Modifications) Overwater structure moorage limits: Futurewise provided cumulative impact concerns, noting that the SMP does not limit a property owner from proposing multiple different moorage types at a single site, for which they suggest the SMP be amended to limit moorage to one type per lot.

**City Response:** The City will consider a new regulation (8.5(A.)(19.)) limiting multiple moorage types on a single lot. The new regulation would state, “No more than one moorage type is allowed per single-family residential lot.”

**ECOLOGY CONCLUSION:** A required change to the locally adopted SMP has been drafted consistent with the City’s response and will need to be accepted by the City as part of Ecology’s approval of the updated SMP. See Item 2 within Attachment B – Required Changes.

(Modifications) Overwater structure Recreational float size: Related to Recreational Floats, Futurewise commented that the maximum square footage (300-square feet) allowed by the SMP is too large and should be reduced to less than 100-square feet in size.

**City Response:** The City will consider amending regulation 8.5(H.)(1.)(a.) to change the maximum size allowed from 300 to 100 square feet.
**ECOLOGY CONCLUSION:** A required change to the locally adopted SMP has been drafted consistent with the City’s response and will need to be accepted by the City as part of Ecology’s approval of the updated SMP. See Item 3 within Attachment B – Required Changes.

**(Modifications) Mitigation Sequencing:** Finally, Futurewise recommend that the City require a compensatory mitigation plan for all in-water modification proposals to ensure compliance with mitigation sequencing requirements (i.e. illustrate consideration of project impact “avoidance”, then “minimization” and then compensatory “mitigation” of remaining impacts).

**City Response:** As discussed above in response to earlier comments regarding mitigation sequencing, the City would assume that if a development action is permittable and meets the standards of the SMP then it would not require additional mitigation sequencing (for it has already been shown to achieve NNL). The City will consider adding a clarifying regulation which may include the following:

- If specific standards, such as setbacks, pier dimensions and tree planting requirements, are provided in this Master Program, then the City shall not require additional mitigation sequencing analysis under these provisions.

- In the following circumstances, the applicant shall provide an analysis of measures taken to mitigate environmental impacts:
  1) Where specific regulations for a proposed use or activity are not provided in this Master Program;
  2) Where either a conditional use or variance application are proposed; and
  3) Where the standards contained in this Master Program require an analysis of the feasibility of or need for an action or require analysis to determine whether the design has been minimized in size.

- Maintenance activities shall be conducted in a manner that minimizes impacts to fish, wildlife, and their associated habitat and utilizes best management practices, unless specific standards in this Master Program are already provided for maintenance activities and thereby do not require additional mitigation sequencing analysis.

**ECOLOGY CONCLUSION:** A required change to the locally adopted SMP has been drafted consistent with the City’s response and will need to be accepted by the City as part of Ecology’s approval of the updated SMP. See Item 1 within Attachment B – Required Changes.