

Dear City Council,

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

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Introduction

Other than family and friends, nothing is so important or emotionally charged as home and hearth. Many shoreline residents have deep concerns over the recent Draft Shoreline Master Program and the effect it will have on their ability to maintain, use, and improve their property. Department of Ecology guidance states clearly that SMPs must “*balance both use and protection of shoreline resources”, and “*must provide for preferred shoreline uses.....like...owner occupied single family residences .*”¹ Many shoreline residents contend that specific language in the draft SMP has bias against such single family uses through regulations such as the Non Conforming Structures section. This report will deal with the subject of legal non conforming single family residences in the shoreline jurisdiction.*

Recent Changes in Conformity and existing rules

On December 20, 2005 a new Critical Areas Ordinance was enacted which increased most setbacks on Lake Sammamish from 25’ to 50’². The set back is measured from the Ordinary High Water Mark (OHWM) which in the past was often defined at about 27.00 feet³. The draft SMP raises this elevation to 28.12⁴, which in many cases moves the starting point for this setback 10’ or more inland, depending on the degree of slope at the waters edge. These two rules make most of the residences along the eastern shore of Lake Sammamish Non-Conforming⁵. Reductions in impervious surface requirements would also create additional non-conformance.⁶

Policy Options for Legal Non Conforming Structures

Legal non conforming structures, like the homes along Lake Sammamish, were built in good faith with building permits that complied with existing laws and building codes in effect at the time. When codes and regulations are made more restrictive it is a generally accepted principal that those with existing uses should be granted specific exemptions, commonly called “Grandfathered rights”. However the

¹ Lake Washington/Sammamish SMP Guidance Fall 2008 page 1.

² COA 21A.50.351-1 45’ Buffer, with additional 5’ building setback.

³ This elevation can be determined by a biologist examining the shoreline vegetation and contours. Other municipalities have used 27.00 as a fixed elevation for determining the OHW line on Lk Sammamish for years.

⁴ See page 34 (SMP 25.07.010-2)

⁵ Common knowledge and anecdotal evidence. The Shoreline Inventory by Adolfsen and Assoc does not quantify this observation.

⁶ Current rules on lots under 9,029sf allow for up to 70% impervious (21A.25.030-A-5c). Approximately 50% of existing lots on Lk Sam are under this size. Draft SMP may reduce impervious areas to as little as 30% of lot area. This information was not made available to the planning commission. This is a huge reduction. This will be addressed further in a report on Impervious Surface regulations.

recommended policy as stated by ESA Adolfson is to “reduce non-conformity over time”⁷. It would appear that the City has a policy of creating non-conformity in the shoreline jurisdiction and then working to remove the same non-conformity over time. This makes shoreline residents understandably nervous, as nothing less than their homes, hopes, and financial well being are at stake. Said another way, the City has indicated by its actions and policy that it wants shoreline residents to remove their homes and improvements over time. Shoreline residents find this offensive, and in direct conflict with DOE policies and guidance⁸

On February 14, 2009 a group of shoreline residents met to discuss the Draft SMP language. Shoreline policies of Redmond, Bellevue, and Issaquah were discussed and compared to the Draft. It was noted that the unique method of buffer offsets employed in the Sammamish Draft was not understandable⁹ and that the other jurisdictions had regulations which could be understood¹⁰.

The Bellevue buffer regulation was written to specifically exclude existing buildings, which shows a high level of acceptance of existing legal structures¹¹. This rule makes existing structures conforming while creating a buffer for future developments. City of Sammamish Shoreline residents would appreciate this kind of consideration as well.

All jurisdictions allowed for some kind of increase in the footprint of existing non-conforming structures. It was generally agreed that the additional 1,000 square feet no closer to the shoreline would be reasonable¹². Redmond has especially clear language regarding additions to non-conforming structures¹³ which would be simple to adopt, but may be excessively restrictive to those with very low value structures.

Owners concerns and real world effects

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

⁷ City Council Study Session hand out 2/10/09 page 14.

⁸ Lake Washington/Sammamish SMP Guidance Fall 2008, page 1 & 6. RCW 90.58.020, WAC 173-26-176(3)(h).

⁹ The Sammamish document was unique in using percentages of “addition or reconstruction” as triggers for shoreline restoration or enhancement.

¹⁰ Incorporating the CAO into this SMP further complicates the document. On page 4 of the SMP the “Non-conforming uses and improvements” section of the CAO is specifically excluded. This is the section which allows “grandfathered” uses and additions. It is completely *excluded* here by name (25.01.070). On page 76 it is *included* by reference and by number only, no title or name is mentioned, and only sections (1)(a) and (b) are included (25.10.100 (1)(b)).

¹¹ Meeting notes 2-14-08 study group, and Bellevue City Code 20.25H.035 Critical area buffers and structure setbacks, see drawings attached.

¹² Similar to CAO21A.50.060 this section of partial exemptions only allows for exemptions for non-conformities created before November 27, 1990. The SMP must acknowledge more recent changes such as the CAO and allow exemptions and partial exceptions for those residents. SMP should explicitly allow additions in the buffer.

¹³ Redmond 20D.150.200-020 See page 8&9 of the comparative matrix and letter prepared by Kathy Richardson

complete restoration of 100% of the shoreline¹⁴, and a 75% reconstruction would require that a building be moved behind the buffer and setback. The Council was told by ESA Adolfson that perhaps someone could move their house back part way if they did not have room to relocate to be completely in compliance. Unfortunately the code actually requires if a structure is moved at all it must be brought into complete compliance¹⁵.

The allowance of second story additions without buffer mitigation is another improvement which is not specifically mentioned in the Draft and was not used as an example. When questioned earlier by the Planning Commission, Staff assured the Commissioners that second story additions would be allowed above an existing footprint. This is because there would be no additional impact on the shoreline environment. This should be explicitly noted and allowed in the SMP to avoid unfortunate circumstances such as was experienced by Richard Pizzo and his family¹⁶. The existing footprint should be defined as the two dimensional space covered as viewed from above, rather than the exterior shell of a building. Given the existing footprint, improvements and reconstruction should be allowed within the height limits already allowed in the shoreline jurisdiction. For example a bedroom addition over a garage has no additional impact, even if it is in a buffer, and meets the standard of no net loss.

Reconstruction after loss by fire or calamity

According to ESA Adolfson State codes require that buildings which are damaged more than 75% must be brought into complete compliance with all existing codes, including setbacks from shorelines¹⁷. This is not the case. What the WAC does say is that if no local rules are in place, then the 75% standard will apply¹⁸. Issaquah uses the 75% rule with a 100% exemption for single family¹⁹. The 100% exemption would be a good rule to follow.

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

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

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

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

¹⁷ Study Session Hand out 2-10-09 page #1

¹⁸ WAC 173.27.080, and letter by Kathy Richardson page 3.

¹⁹ Issaquah 18.10.1020, and letter by Kathy Richardson page 9.

Recommendations

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

Respectfully submitted by,

Dwight Martin,

for the Sammamish Home Owners Group

Nonconforming Structures-Research by Kathy Richardson

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

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

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

Sammamish, Redmond, and Issaquah Nonconforming Structures Regulations

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

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

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

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

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

20D.150.200-020 Nonconformances

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

- a) The gross floor area of the structure is increased by 100 percent or more; or
- b) The costs stated on all approved building permit applications for the structure equal or exceed the assessed value of the structure at the beginning of the three year period (Shoreline Regulations p. 53)

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

20F.10.50-080 Restoration.

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

- (1) Level of Restoration. The damaged use or structure may be repaired to the area and footprint of the previous use or structure. In the case of total destruction or need for underground fuel tank replacement, a new structure may be established to the same area or footprint of the previous use or structure. Alternatively, the structure may be built to a more conforming area or footprint.
- (2) Time Limit. The repairs must be commenced within one year of the event causing damage to the structure, and the repairs must be diligently pursued until completed. (Ord. 2118)

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

18.10.1020 Nonconforming development.

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

- A. Nonconforming development may be continued; provided, that it is not enlarged, intensified, increased, or altered in any way which increases its nonconformity toward the shoreline;
- B. A nonconforming development which is moved any distance must be brought into conformance with the Shoreline Master Program and the Shoreline Management Act;
- C. If a nonconforming development is damaged to an extent not exceeding seventy-five (75) percent replacement cost of the original structure, it may be reconstructed to those configurations existing immediately prior to the time the structure was damaged (except a single family residence may be reconstructed to those configurations existing immediately prior to the time the structure was damaged, regardless of the extent of the damage), so long as restoration is completed within one (1) year of the date of damage;

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

18.08.050 Nonconforming situations (including structures and uses).

- A. Continuation of a Legal Nonconforming Situation: Any legal nonconforming situation with respect to this Code may continue, including routine maintenance and repair, unless otherwise regulated by this Code. An existing legal nonconforming situation may be included in and/or changed as part of any development, subject to review and approval under this Code.
- B. Reconstruction of an Involuntarily Damaged or Destroyed Legal Nonconforming Situation: If a legal nonconforming situation is partially or fully damaged or destroyed due to accident, act of nature, or similar involuntary occurrence, the situation may be repaired or reconstructed as follows:
 - 1. Single Family Residential Uses: A nonconforming single family dwelling or duplex may be reconstructed, regardless of value, subject to a Level 0 Review; provided, that the degree of nonconformity shall not be increased.

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

WAC Nonconforming Structures Regulations

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

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

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

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

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

Below is the specific language of the WAC and the draft SMP, with differences noted in yellow where the language of the two sets of regulations differs significantly, and sections noted in grey where the language is essentially the same. Words that are not highlighted represent minor differences or sections of the draft SMP that I could not sufficiently interpret to match or compare to the WAC.

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

WAC 173.27.080	Proposed SMC 20.10.100
<p>existed prior to the applicability of the master program to the site and for which a conditional use permit has not been obtained shall be considered a nonconforming use.</p> <p>(5) A structure for which a variance has been issued shall be considered a legal nonconforming structure and the requirements of this section shall apply as they apply to preexisting nonconformities.</p> <p>(6) A structure which is being or has been used for a nonconforming use may be used for a different nonconforming use only upon the approval of a conditional use permit. A conditional use permit may be approved only upon a finding that:</p> <p>(a) No reasonable alternative conforming use is practical; and</p> <p>(b) The proposed use will be at least as consistent with the policies and provisions of the act and the master program and as compatible with the uses in the area as the preexisting use.</p> <p>In addition such conditions may be attached to the permit as are deemed necessary to assure compliance with the above findings, the requirements of the master program and the Shoreline Management Act and to assure that the use will not become a nuisance or a hazard.</p> <p>(7) A nonconforming structure which is moved any distance must be brought into conformance with the applicable master program and the act.</p> <p>(8) If a nonconforming development is damaged to an extent not exceeding seventy-five percent of the replacement cost of the original development, it may be reconstructed to those configurations existing immediately prior to the time the development was damaged, provided that application is made for the permits necessary to restore the development within six months of the date the damage occurred, all permits are obtained and the restoration is completed within</p>	<p>seventy-five percent (75%) of the existing structure, the property owner(s) would be required to restore and/or enhance all available shoreline buffer area to offset the impact.</p> <p>(iii) If the total area of addition or reconstruction is greater than seventy-five percent (75%) of the existing structure, the property owner(s) would need to relocate the structure to conform with the required buffer and setback provisions.</p> <p>(d) The voluntary addition or reconstruction standards in 25.10.100 (1)(c) are not intended to apply to interior remodels, reconstruction, or renovations that do not modify the exterior footprint of the existing structure. Interior remodels, reconstruction, and renovations shall not require buffer restoration unless the exterior footprint of the structure is modified.</p> <p>(e) If a property owner has previously completed a voluntary shoreline restoration program on a particular property pursuant to a separate City or State permit or approval, and the previous shoreline restoration program is commensurate to current shoreline restoration requirements for that same property, then additional shoreline restoration shall not be required pursuant to 25.100.10 (1)(c). In evaluating the previous restoration program, the City shall consider whether the previous restoration/mitigation addresses the same ecological functions and is commensurate with the impacts of the proposed development.</p> <p>(f) If a non-conforming structure is damaged by fire, explosion, or other casualty and/or natural disaster to an extent that is less than seventy-five percent (75%) of fair market value of the improvements prior to the damage of the structure, it may be reconstructed to those configurations existing immediately prior to the time the damage occurred provided that all of the following criteria are met:</p> <p>(i) The owner(s) makes a good faith effort to</p>

WAC 173.27.080	Proposed SMC 20.10.100
<p>two years of permit issuance.</p> <p>(9) If a nonconforming use is discontinued for twelve consecutive months or for twelve months during any two-year period, the nonconforming rights shall expire and any subsequent use shall be conforming. A use authorized pursuant to subsection (6) of this section shall be considered a conforming use for purposes of this section.</p> <p>(10) An undeveloped lot, tract, parcel, site, or division of land located landward of the ordinary high water mark which was established in accordance with local and state subdivision requirements prior to the effective date of the act or the applicable master program but which does not conform to the present lot size standards may be developed if permitted by other land use regulations of the local government and so long as such development conforms to all other requirements of the applicable master program and the act.</p>	<p>initiate the redevelopment process, including initiating the permit application process, within twelve (12) months of the date the damage occurred.</p> <p>(ii) All permits are obtained and the restoration is completed within two (2) years of permit issuance. This period may be extended for one additional year by the director if the applicant has submitted the applications necessary to establish the use or activity and has provided written justification for the extension.</p> <p>(g) If a non-conforming structure is damaged by fire, explosion, or other casualty and/or natural disaster, to an extent exceeding seventy-five percent (75%) of fair market value of the improvements prior to the damage of the structure, it shall be reconstructed to conform to the dimensional requirements of this Program unless there is no feasible means of meeting the dimensional standards, in which case it may be reconstructed to those configurations existing immediately prior to the time the damage occurred.</p> <p>(h) A structure for which a variance has been issued shall be considered a legal non-conforming structure and the requirements of this section shall apply as they apply to pre-existing non-conformities.</p> <p>(i) A non-conforming structure which is moved outside the existing footprint must be brought into conformance with this Program and RCW 98.58.</p>

Samamish, Redmond, and Issaquah Nonconforming Structures Regulations

Nonconforming structure regulations for **voluntary** alteration or reconstruction

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

City of Sammamish	Redmond	Issaquah
<p>property, then additional shoreline restoration shall not be required pursuant to 25.100.10 (1)(c). In evaluating the previous restoration program, the City shall consider whether the previous restoration/mitigation addresses the same ecological functions and is commensurate with the impacts of the proposed development.</p> <p>(h) A structure for which a variance has been issued shall be considered a legal non-conforming structure and the requirements of this section shall apply as they apply to pre-existing non-conformities.</p> <p>(i) A non-conforming structure which is moved outside the existing footprint must be brought into conformance with this Program and RCW 98.58.</p>	<p>more; or</p> <p>b) The costs stated on all approved building permit applications for the structure equal or exceed the assessed value of the structure at the beginning of the three year period (Shoreline Regulations p. 53)</p>	

Nonconforming structure regulations for involuntary reconstruction

City of Sammamish	Redmond	Issaquah
<p>25.10.100 Non-conforming Use and Development – Alteration or Reconstruction</p> <p>(f) If a non-conforming structure is damaged by fire, explosion, or other casualty and/or natural disaster to an extent that is less than seventy-five percent (75%) of fair market value of the improvements prior to the damage of the structure, it may be reconstructed to those configurations existing immediately prior to the time the damage occurred provided that all of the following criteria are met:</p> <p>(i) The owner(s) makes a good faith effort to initiate the redevelopment process, including initiating the permit application process, within twelve (12) months of the date the damage occurred.</p> <p>(ii) All permits are obtained and the restoration is completed within two (2) years of permit issuance. This period may be extended for one additional year by the director if the applicant has submitted the applications necessary to establish the use or activity and has provided written justification for the extension.</p>	<p>20D.150.200-020 Nonconformances</p> <p>No difference between voluntary and involuntary.</p>	<p>18.10.1020 Nonconforming development.</p> <p>C. If a nonconforming development is damaged to an extent not exceeding seventy-five (75) percent replacement cost of the original structure, it may be reconstructed to those configurations existing immediately prior to the time the structure was damaged (except</p>

City of Sammamish	Redmond	Issaquah
<p>(g) If a non-conforming structure is damaged by fire, explosion, or other casualty and/or natural disaster, to an extent exceeding seventy-five percent (75%) of fair market value of the improvements prior to the damage of the structure, it shall be reconstructed to conform to the dimensional requirements of this Program unless there is no feasible means of meeting the dimensional standards, in which case it may be reconstructed to those configurations existing immediately prior to the time the damage occurred.</p>		<p>a single family residence may be reconstructed to those configurations existing immediately prior to the time the structure was damaged, regardless of the extent of the damage), so long as restoration is completed within one (1) year of the date of damage;</p>

Nonconforming structure regulations outside the shoreline jurisdiction

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

Samamish Home owners study group

Nonconforming Structures

2-14-09

Participants:

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

General

Two types of nonconformance:

- Nonconforming issues: No issues from committee
- Nonconforming structure issues

Comments regarding complexity of current proposal:

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

-replacing a burned down house has no new impact

Non-conformance

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

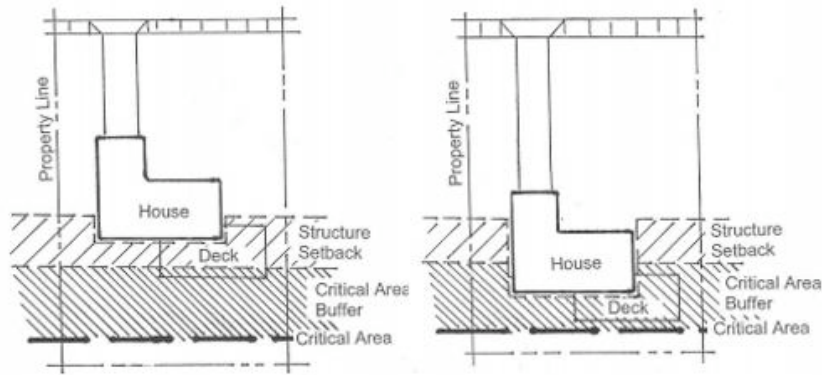
Redmond : Existing nonconforming can be maintained and extended as long as not closer to the water.

- Can't double the area or value w/in 3 years or must bring into conformance

Issaquah: similar (no closer to water)

Bellevue City Code says current footprint excepted from the buffer or setback (section 20.25H.035, *Critical area buffers and structure setbacks*, excerpted below:

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



Voluntary additions:

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

Ability to rebuild:

- 75% is not requirement from (ref?) but the default if there are no rules
- ***-issaquah exempts single family non-conforming from having to conform if burned down/rebuilt, regardless of extent of damage.
 - what about other structures on property (boathouse, garage,...)
 - our wording should be "structures" (not single family residence)
 - single family residents and accessory structures are exempt
 - what about earthquakes, etc.?
 - covered as "other natural disasters..."
- plan should offer some encouragement when rebuilding structures to reduce nonconformance
- ***-damage: (currently) must make best effort to including initiating permit process for completion w/in 12 months
 - would like to make 2 years (for hardship, etc...)
 - clean-up 12 months (health & safety) and 12 months for filing for permit
- Completion: w/in 2 years of permit issuance
 - may be significant cost (i.e., for dock not insured is \$50-100K)

-Is restoration definition too loose? Subject to interpretation by staff? Does anyone want to propose new wording? Can looseness help for creativity?

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

(interesting notes from other groups)

Impervious surfaces: <<houses on septic willing to hook up to sewer should receive benefit...>>

50% of lots on Lake Sammamish are less than 9K sqft.

-should have same impervious surface as anyone else in basin

-our water is actually cleaner; hasn't run through as much

Lake Washington/Sammamish SMP Guidance: Fall 2008

To: Lake Washington/Sammamish Local Government; staff, planning commissions, citizen advisory committee and elected officials working on updating Shoreline Master Programs

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

Subject: On-going guidance on Shoreline Master Program updates

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

SMP QUESTIONS SENT TO LOCAL GOVERNMENTS:

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

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

The no net loss analysis is intended to inform the SMP planning process by describing both the presence and potential risks to existing shoreline ecological functions. The analysis should evaluate the intensity of future uses that are appropriate for segments of shorelines to ensure no overall or net loss of ecological functions. A no net loss of ecological functions determination will need to be justified by local governments through a Cumulative Impact Analysis, which essentially anticipates build-out of shoreline

areas pursuant to the intensity of development allowed through the updated SMP. This determination must conclude that build-out of the local shoreline will not further threaten existing shoreline ecological functions. In sum, the no net loss standard applies to each local jurisdiction as it updates its SMP. Consistent with the no net loss standard, the required mitigation sequence is also applied as the SMP is implemented over time and individual shoreline projects are reviewed and approved by local government. Mitigation sequencing and/or alternative project specific monitoring for no net loss, should provide clear linkage to jurisdiction-wide not net loss goals.

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

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

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

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

¹ Tabor, R.A., and R.M Piaskowski, 2002. Nearshore habitat use by juvenile Chinook salmon to lentic systems of the Lake Washington Basin. Annual Report, 2001. U.S. Fish and Wildlife Service, Lacey, WA.

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

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

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

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

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

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

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

Streamlined permitting process at what cost to property rights?

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

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

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

The Public Trust Doctrine is a legal principle derived from English Common Law. The essence of the doctrine is that the waters of the state are a public resource owned by and available to all citizens equally for the purposes of navigation, conducting commerce, fishing, recreation and similar uses and that this trust is not invalidated by private ownership of the underlying land.

The doctrine limits public and private use of tidelands and other shorelands to protect the public's right to use the waters of the state. (See State Supreme Court case *Caminiti v. Boyle*, 107 Wn. 2d 662, 732 P.2d 1989). The Public Trust Doctrine does not allow the public to trespass over privately owned uplands to access the tidelands. It does, however, protect public use of navigable water bodies below the ordinary high water mark. Protection of the trust is a duty of the State, and the Shoreline Management Act is one of the primary means by which that duty is carried out. The doctrine requires a careful evaluation of the public interest served by any action proposed. This requirement is fulfilled, in major part, by the planning and permitting requirements of the Shoreline Management Act and locally approved SMPs.

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

QUESTIONS DIRECTED TO ECOLOGY:

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

The baseline for SMP updates is derived from the individual shoreline Inventory and Characterization prepared for each jurisdiction during the initial stages of their shoreline program update. This analysis is intended to inform the SMP planning process through description of both the presence and potential risks to existing shoreline ecological functions as described within WAC 173-26-201(3)(c) and (d). The Inventory/Characterization is not necessarily intended to evaluate individual properties. Rather, the analysis should describe what intensity of future shoreline uses and activities should be planned and anticipated for each segment of shoreline to ensure that the end result is no overall or net loss of ecological functions. In other words, it is understood (and should be evaluated)

that some projects will have minimal negative impacts and some projects will improve ecologic conditions, as long as a jurisdiction can illustrate overall maintenance or improvement to ecological conditions, then they are meeting the no net loss requirement. The no net loss determination will need to be justified through a Cumulative Impacts Analysis, which essentially anticipates build-out of shoreline areas pursuant to the intensity of development allowed through the updated SMP. With this information, the impacts to existing shoreline ecological functions resulting from future development can be anticipated and where appropriate avoided. It is important to understand that this analysis will vary by jurisdiction and is fundamentally based upon the characteristics of each individual jurisdiction's shoreline.

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

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

Yes, existing site conditions are one consideration, but also the specific planning policies and regulations contained in the SMP that apply to new piers and bulkhead replacements and the particular shoreline site will need to be considered as well. SMP updates are two-dimensional, requiring jurisdiction-wide planning for future uses as well as implementation over time of the SMP on an individual project-by-project basis. From a jurisdiction-wide planning perspective, the shoreline Inventory and Characterization documents shoreline modifications that may or may not impair existing shoreline ecological functions. Regardless of the degree of existing modifications, the bottom line is that updated SMP's need to adequately protect existing shoreline ecological functions. For example, within heavily developed shorelines, redevelopment strategies that account for improvements to existing site conditions might be an appropriate approach. Whereas, within unaltered (natural) shorelines, emphasis should be placed on protection measures for which existing structures should be phased out overtime as existing non-conforming uses.

Example Question: How is DOE suggesting local governments view a scenario where an applicant is pulling a full length bulkhead and replacing with transitional bulkheads at either end and a cove beach in the middle?

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

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

As previously stated, redevelopment strategies should be jurisdiction specific with appropriate sideboards to ensure no net loss. Also, as part of the comprehensive SMP update, jurisdictions are creating individually customized shoreline restoration plans, where non-regulatory shoreline improvements would be prioritized and encouraged for each stretch of shoreline. In implementing a

local restoration plan, all jurisdictions should be encouraged to maintain a list of *“individual improvements associated with shoreline redevelopment”*, so that in the future progress can be identified and evaluated.

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

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

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

[http://www.atg.wa.gov/uploadedFiles/Home/About_the_Office/Takings/2006%20AGO%20Takings%20Guidance\(1\).pdf](http://www.atg.wa.gov/uploadedFiles/Home/About_the_Office/Takings/2006%20AGO%20Takings%20Guidance(1).pdf)

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

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

It is not clear how any conflict exists if there is no limitation on sources of available information. Ultimately, local government elected officials must consider all of the information put before them, including opposing views and opinions, judge their credibility and decide what standards best achieve SMP guidelines requirements, given local circumstances.