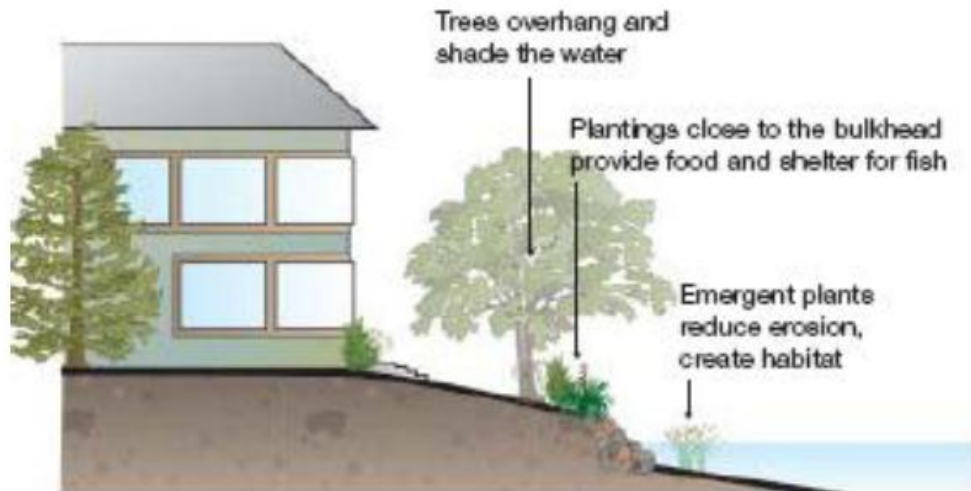


Memorandum

To: Olympia City Council

Date: February 21, 2013

Re: Shoreline Master Program - Setbacks, Flexibility and Nonconformities



At the January 22, 2013 SMP Public Hearing City Council heard from 32 people. The majority of those comments related to 1. Vegetation conservation areas, buffers and setbacks 2. Nonconformities and impacts on specific buildings such as the Olympia Yacht Club, and 3. Maintaining administrative flexibility. Other comments addressed the West Bay trail, the Port, sea level rise, building design, shoreline access and covered moorage. City Council left the record open until February 5, 2013 and received additional comments from 67 individuals, organizations, businesses and other interests.

The written comment totals well over 700 pages and is not easily summarized, as there are many points of view represented with differing opinions on many aspects of the shoreline master program. That being said, it is safe to say that many of the comments contained in the written record also address issues related to setbacks, vegetation conservation areas and buffers, the impacts on existing buildings and uses and administrative flexibility. Staff has summarized these comments and provided an index (attached) that will allow for quick reference to the comments contained in Binder 11.

The analysis below is intended to provide further context and clarification regarding some of the key issues raised in the public comment and to provide information for Council's consideration in providing staff direction to develop a final draft of the Shoreline Master Program. This analysis is broken into three sections addressing setbacks, flexibility and nonconformities. This limited analysis leaves many questions and issues unaddressed; however, given the time allotted, it is not possible to respond to each and every comment directly. The final section provides for considerations that City Council may wish to use in its deliberations and providing staff with final direction.

WORKING DEFINITIONS FOR THIS MEMORANDUM:

Setback: The horizontal *distance* that separates a structure from a designated area, such as the edge of the shoreline. All setbacks within the proposed SMP are measured from the edge of the shoreline.

Buffer: An *area* adjacent to the shoreline that is necessary for the continued maintenance, functioning, structural stability and/or ecological functions of that area.

Vegetation Conservation Area: The vegetation *within a required buffer* that is off-limits to most development.

Vegetation Management Plan: The plan that establishes what kind of - and how much - vegetation is needed within a Vegetation Conservation Area to protect ecological functions and achieve the No Net Loss standard. The plan can also be used to establish when it is appropriate to allow a variation in buffer width, or appropriate uses within the buffer, such as a trail, an access, etc.

SETBACKS

It is not surprising that setbacks and buffers were one of the key issues raised in the public comment, as they have remained one of the key issues throughout the update process and are a key issue in the SMP Handbook.

SETBACKS - EXISTING SHORELINE REGULATIONS

The existing Shoreline Environmental Designation for the Budd Inlet marine shoreline is Urban and setbacks are based on the zoning for the property. There are no rear yard setback requirements in the Urban Waterfront Zoning District that encompasses the majority of the marine shoreline, and the existing shoreline regulations generally provide for a 20 foot shoreline buffer.

SETBACKS -- SMP HANDBOOK

The Department of Ecology's SMP Handbook, Chapter 11, defines the purpose of setbacks and buffers as follows: "Buffers and setbacks protect shoreline ecological functions, provide aesthetic qualities, including views of the land from the water, and protect structures from hazards. Buffers and setbacks also provide space between development and natural shoreline processes, helping to protect structures over the long term from hazards such as wave action, flooding, erosion, and bank sloughing, lessening the need for shoreline stabilization such as bulkheads."

The handbook also draws a distinction between buffers and setbacks:

"Shoreline buffers typically are naturally vegetated areas adjacent to water bodies that protect the ecological functions of the shoreline and help to reduce the impacts of land uses on the water body, as described in the scientific literature. Buffers provide a transition between the aquatic and upland areas."

Regarding setbacks, the handbook continues:

“The setback separates the structure from the buffer. Buffers should have a mix of trees, shrubs and groundcovers. Buffers and setbacks are measured landward from the Ordinary High Water Mark. Shoreline setbacks are the distances separating two features such as a structure and the water, or a structure and the buffer. Natural native vegetation may or may not exist within a setback.”

Setbacks help to protect views by requiring nearby residences to be a certain distance from the water. Major structures cannot be built, but some uses such as gardens or sheds may be allowed within the setback.

The Handbook notes that the relationship between setbacks and buffers for urban areas with highly developed shorelines can result in an overlap between the buffer area and the required setbacks for structures:

“Some local governments with intensely developed shorelines have established only setbacks from the OHWM. Vegetation conservation is required, and planting new vegetation, replacing noxious weeds and invasive plants with native plants, and other habitat improvements are required for *new or expanded development* (my emphasis). These measures meet the requirements of the SMP Guidelines to protect ecological functions...”

Few of Olympia’s shorelines are naturally vegetated, therefore, as referred to in the Handbook, the proposed setbacks and buffers do indeed overlap. For purposes of this work, therefore, setbacks and buffers will be used interchangeably.

SETBACKS -- TRPC DRAFT/BASELINE

The original TRPC draft issued in 2009 proposed all of the West Bay Drive area to be designated “High Intensity” (reaches 3a and 3c) except West Bay Park and narrow lands to the north of it (south of Reliable Steel / Hardel site) and lands north of Dunlap Towing. Reaches 4, 5 and 6A were also designated as High Intensity. In this High Intensity area a setback of 15 feet was proposed for commercial and industrial development - except no setback was proposed for ‘water-dependent’ buildings. The vegetation conservation area and the setback were generally identical.

This draft was prepared in coordination with the Cities of Lacey, Olympia, and Tumwater starting in 2007. Grant funding was received from the State Department of Ecology to undertake this work. It was a joint planning effort between the cities and Thurston County which was coordinated by Thurston Regional Planning Council (TRPC).

A Draft Shoreline Master Program and other technical reports were prepared using Ecology’s guidelines. Working reports were shared with the planning commission of each city. Additional review was provided by a scientific and technical advisory group made up of staff from state resource agencies, a local tribe, and local experts.

The designation of High Intensity was made based on the inventory and characterization that is summarized in the table below.

Reach	Ecosystem Analysis (Condition and Importance)	Rationale for Designation
BUDD-3A <i>Marina, BMT</i>	Low - high level of alteration due to fill and marina	This shoreline is highly modified. This shoreline is predominately commercial, industrial, and high density residential and contains some water dependant uses.
BUDD-4 <i>5th Ave & Cap Lake Dam</i>	Low - high level of alteration due to Capitol Lake dam; no key habitats	This shoreline is highly modified This shoreline is predominately commercial
BUDD-5 <i>Marinas, Port of Olympia & Cascade Pole</i>	Low - high level of alteration due to fill and industrial use; no key habitats	This shoreline is highly modified with many water dependent uses. This shoreline is predominately commercial, industrial, and high density residential.
BUDD-6A	Low - high level of alteration due to fill and industrial use; no key habitats	This shoreline is highly modified.
TABLE 4: SHORELINE ENVIRONMENTAL DESIGNATIONS FOR MARINE REACHES. Final Proposed SMP Shoreline Environmental Designations for Lacey, Olympia, Tumwater page 9 (2009)		

SETBACKS -- STAFF DRAFT

The staff draft introduced in October of 2010 proposed a 30 foot setback along the marine waterfront. This was a substantial increase over the existing shoreline regulations that generally required no setback and a 20 foot vegetation conservation area along the marine shoreline. This 30 foot setback was based on the need and desire to protect opportunities for physical and visual access to the shoreline, create opportunities for buffers, preserve a sense of openness while recognizing the urban nature of much of shoreline, limit the impacts on existing development, provide an area for mitigation and to provide an area to protect against sea level rise.

SETBACKS - SEA LEVEL RISE

While specific solutions to sea level rise have not been developed, current studies indicate that a 30 foot setback will maintain a sufficient area along the shoreline to allow flexibility as design solutions are developed in the future. Research by the City indicates that downtown Olympia is particularly susceptible to the impacts of rising seas. These impacts, however, are not limited to just the shoreline. Olympia's response to sea level rise will require an

engineered solution that addresses threats at both the shoreline - as well as areas further inland - from intrusions through the stormwater infrastructure. These solutions will likely require a large-scale city led capital facilities project at some point in the future. The impacts of sea level rise cannot be dealt with on a parcel by parcel basis in downtown.

Sea level rise along West Bay Drive may be addressed by private property owners at the time of development by raising the elevation of the property or by building barriers. These areas do not contain significant public infrastructure and will be likely to address sea level rise on a property by property basis. As noted above, however, the 30 foot setback area is proposed for purposes other than just responding to the threat of sea level rise and a 30 foot setback or greater may be appropriate to achieve other shoreline purposes.

SETBACKS - TRAIL

Olympia enjoys excellent physical and visual access to its marine shoreline. A public trail exists along the majority of the Budd inlet including Priest Point Park, the sidewalk along East Bay Drive, the trail along the Port Peninsula, the Port Plaza, Percival Landing, the 4th Avenue Bridge and portions of West Bay Drive. There are further opportunities for expansion of the trail system along the City’s West Bay Park, West Bay Drive and possibly on the privately owned waterfront properties along West Bay Drive.

The 30 foot setback area provides sufficient room for creation of this trail system, shoreline softening and sea level protection. The City’s recently constructed Percival Landing accomplishes all three of these objectives and provides a model for future development along the marine waterfront in a tightly constrained urban environment.

The City’s current zoning regulations encourage, but do not require the development of the shoreline trail by providing for expanded development envelopes as provided in the table below. A developer can choose to develop below these standards and forego the dedication of the trail.

Amenity Provided	Limits on Horizontal View Blockage and Height
Waterfront Trail	70% up to 42 ft., OR 45% up to 65 ft.
Expanded Waterfront Trail Corridor Facility (or small waterfront park area).	50% up to 42 ft., OR 45% up to 50 ft.
Both	70% up to 65 ft.
Any development over 42 feet shall be required to include a minimum of 20% of the usable building area for residential purposes.	

As noted in previous staff presentations and written materials, the Shoreline Master Program and the implementing regulations contained therein must respect private property rights. The

Supreme Court’s Nollan and Dolan decisions held that: there must be a rational nexus between the impact of the development project and the public dedication sought. To say it another way, there must be a rational basis. In addition, the mitigation must be roughly proportional to the impact of the project.

TAKINGS

The *Advisory Memorandum on Avoiding Unconstitutional Takings of Private Property* prepared by the Office of the Attorney General’s Office can be found on the Attorney General’s web site. The direct link direct link to the document is provided here for your convenience: [Attorney General's Advisory Memorandum](#). Ultimately, the statutory objective is that state agencies and local governments carefully consider the potential for land use activity to “take” private property, with a view toward avoiding that outcome.

As previously summarized by staff, the Department of Ecology Guidance at (WAC) 173-26-186 (5) states, “The policy goals of the act, implemented by the planning policies of master programs, may not be achievable by development regulation alone. Planning policies should be pursued through the regulation of development of private property only to an extent that is consistent with all relevant constitutional and other legal limitations (where applicable, statutory limitations such as those contained in chapter 82.02 RCW and RCW 43.21C.060) on the regulation of private property. Local government should use a process designed to assure that proposed regulatory or administrative actions do not unconstitutionally infringe upon private property rights.

SETBACKS - VEGETATION CONSERVATION

In areas where existing native vegetation exists along the shoreline it would be preserved to the greatest extent possible within the shoreline. In those areas where no native vegetation exists, replanting within the buffer area will be required, consistent with the need to mitigate the impacts of any proposed development of the site and to achieve no net loss of environmental function. The specific vegetation requirements, allowed uses, etc., for a Vegetation Conservation Area will be determined on a parcel-by-parcel basis with the development and approval of a Vegetation Management Plan through the permitting process when new development is proposed.

SETBACKS -- PLANNING COMMISSION DRAFT

The Planning Commission developed a reach by reach approach to setbacks and building heights and proposed substantially different shoreline environmental designations and setbacks than were proposed in the staff draft.

PLANNING COMMISSION SETBACKS AND HEIGHTS			
SHORELINE REACH	Planning Commission Setback	Planning Commission Veg. Buffer	Planning Commission Height
BUDD 2	50'-100'	50'	25'-35'

BUDD - 3A	50'-70'	20'	20'-35'
BUDD - 3B	50'-100'	50'	20'-35'
BUDD - 3C*	50'100'	50'	20'-35'
BUDD - 4	50'-100'	20'	25'-35'
BUDD - 5A	50'-100'	20'	35'
BUDD - 5B	30'-50'	20'	No Recommendation
BUDD - 5C	100'	50'	No Recommendation
BUDD - 6A	75'-100'	20'	25'
BUDD - 6A**	N/A	50'	N/A
BUDD - 6B	20'-35'	20'	20'-35'
BUDD - 6B***	N/A	50'	N/A
7	100'	20'	35'
8A and 8B	No Recommendation	50'	No Recommendation
* Combined with BUDD 3B			

SETBACKS -- CITY COUNCIL OCTOBER 2012 DRAFT

In October of 2012 City Council provided direction to staff to amend the setbacks and buffers.

CITY COUNCIL SETBACKS AND HEIGHTS			
SHORELINE REACH	City Council Designation	City Council Setback	Vegetation Buffer*****
BUDD 2	UC -- Urban Conservancy	150'	50'
BUDD - 3A	UI -- Urban Intensity	30'	30'
BUDD - 3B	WR - Waterfront Recreation	150'	150'
BUDD - 3C*	Combined with 3B		
BUDD - 4	UI -- Urban Intensity	30'	0'
BUDD - 5A	UI -- Urban Intensity	30'	0'
BUDD - 5B	PMI -- Port Maritime Industrial	0'	0'
BUDD - 5C	MR -- Marine Recreation	50'****	30'
BUDD - 6A	UI -- Urban Intensity	Zoning (no minimum setback)	0'

BUDD - 6A**	UC -- Urban Conservancy	To Road	To Road
BUDD - 6B	SR -- Shoreline Residential	Zoning	
BUDD - 6B***	UC -- Urban Conservancy	0'	To Road
7	SR -- Shoreline Residential	30'	20'
8A and 8B	N - Natural	200'	200'
* Merged with Budd 3B			
** Parallel designation			
*** Parallel designation			
**** 50 foot setback with a maximum building height of 25 feet. Setbacks of less than 50 feet allowed subject to enhanced mitigation. Minimum setback 30 feet with enhanced mitigation. Maximum height of 40 feet allowed with a 75 foot setback.			

ZONING REGULATIONS

Zoning regulations are a powerful regulatory tool that the City uses to regulate height, setbacks, bulk, mass, building coverage, building design, parking ratios and other physical characteristics of the use of the property. These regulations effect all property within the city including the shoreline. Presently the Urban Waterfront Zoning District does not require a rear yard setback, however, there are specific design regulations for the West Bay Drive waterfront. A link to the [West Bay Drive Design Regulations](#) is provided here. Building step-backs and other urban design techniques may best be addressed through zoning and design regulations rather than the Shoreline Master Program.

PROJECT LEVEL REVIEW

Implementation of the Shoreline Master Program occurs at the project level. The City can plan for issues such as restoration, mitigation, access, trails and view protection. The City can develop regulations that address these policies, however, until there is a project submitted it is difficult to ascertain exactly how the policies and regulations will be applied because each project is going to be different -- different location, different use, different shoreline, different impacts and different approaches to mitigation. Issues like view impacts, environmental impacts and mitigation cannot be fully addressed in the abstract. They require a project and a review process to fully assess and respond to the impacts.

All development within 200 feet of the shoreline, unless otherwise exempted, requires a shoreline substantial development permit that requires consideration by the Hearing Examiner and in some cases further consideration by the Department of Ecology if a shoreline conditional use permit is required. This process comes replete with public notice requirements, opportunities for public testimony, expert evaluation of impacts and mitigation and special studies when deemed necessary.

SETBACKS AND BUFFERS IN OTHER COMMUNITIES

There are many approaches to establishing and protecting buffers or vegetation conservation areas in approved Shoreline Management Plans from around the Puget Sound and this list is growing. On January 28, 2013 the City of Bellingham accepted final amendments to its SMP from the Department of Ecology. Given this recent adoption and the similarity of Bellingham to Olympia with its urban waterfront, port and ecologically significant Bellingham Bay, several references are provided below illustrating how the City of Bellingham dealt with issues relating to setbacks and nonconformities.

As previously noted, buffers are meant to protect and enhance the biological functions of the shoreline. They are the first line of defense in trying to achieve no net loss. The State's guidance recognizes that buffers will and should vary from location to location though, based on the health and use of the shoreline. In general, large setbacks or buffers greater than 50 feet are found in rural areas with natural shorelines. Buffers in urban areas with intensively developed and highly altered shorelines tend to be 50 feet or less.

Within these more urban areas there are a number of communities that have used a variety of tools such as buffer averaging or buffer reduction allowances to encourage a higher degree of restoration than would be accomplished through normal project mitigation. The analysis below provides examples of how other communities have structured their Shoreline Master Programs to encourage greater restoration and regulatory flexibility.

BELLINGHAM'S APPROACH TO SETBACKS

The City and Port of Bellingham are currently involved in a master planning effort for the Waterfront District Special Development Area (NWSDA). The Shoreline Guidelines describe 'Special Area Planning' as a regulatory tool which allows local governments to address shoreline management issues on complicated sites where a range of issues must be addressed. WAC 173-26- 201(3)(d)(ix) provides that some shoreline sites or areas require more focused attention than is possible in the overall master program development process due to complex shoreline ecological issues, changing uses, or other unique features or issues. In these circumstances, the local government is encouraged to undertake special area planning. Special area planning also may be used to address: Public access, vegetation conservation, shoreline use compatibility, port development master planning, ecological restoration, or other issues best addressed on a comprehensive basis.

The resultant plans may serve as the basis for facilitating state and local government coordination and permit review. Special area planning shall provide for public and affected Indian tribe participation and compliance with all applicable provisions of the act and WAC [173-26-090](#) through [173-26-120](#). Given the complexity of the West Bay area it would seem to qualify for such special consideration.

In the [City of Bellingham's recently adopted SMP](#), Section 22.03.30 F. 6. f. requires that, "The maximum setbacks and buffers within the Waterfront District shoreline mixed-use sub-area may be reduced down to the minimum setbacks and buffers (both as specified in BMC 22.11.30.F, *Development Regulation Matrices*) as conditioned upon the adoption of a Comprehensive Plan amendment for a Waterfront District Master Plan and Development

Agreement (WDMPDA) for the entire Waterfront District Special Development Area or, upon the adoption of a master plan for a portion of land area within the Waterfront District; Provided, said draft WDMPDA shall be reviewed by Ecology's Bellingham Field Office for consistency with SMA Policy and this SMP at the time the WDMPDA is presented to the Bellingham Planning Commission. Said consistency review (not a SMP amendment) shall be performed within sixty (60) days of receipt by Ecology's Bellingham Field Office and also prior to final adoption of the WDMPDA by the City. If a master plan - as specified above - is not adopted the maximum setbacks and buffers within table 22.11.30 F., *Shoreline Environmental Designations* for the mixed- use sub-area shall apply." This regulation basically says that until a master plan is complete for this area the City of Bellingham is going to require a 50 foot setback in the Waterfront District shoreline mixed use sub-area. If a master plan is adopted then the minimum setback of 25 feet may be considered.

In an area such as West Bay where a great deal of planning has taken place and where the city has plans to continue to study further shoreline restoration possibilities such a master plan might be an effective approach to achieving levels of consensus and understanding about how to balance restoration and development along West Bay among the City, Squaxin Island Tribe, the Port and private property owners.

OTHER NOTES FROM BELLINGHAM REGARDING SETBACKS:

Setbacks and buffer widths vary in Bellingham's SMP from 0 feet to 50 feet.

Waterfront District Water Oriented Uses Area requires a 0 foot setback and no buffer for a water-dependent use, water related and water enjoyment uses require a 50 foot setback and no buffer.

Waterfront District Mixed Uses area requires a 0 foot setback and a 25 to 50 foot buffer per 22.03.30 F. 6. F. above. This section requires that a Waterfront District Master Plan be developed for the effected parcels before the minimum setbacks can be employed.

In the Waterfront District Mixed Uses Area, Bellingham's SMP also provides that where there is an existing bulkhead or sheet pile in the Waterfront District Mixed Uses area there is no buffer required.

The Waterfront District Recreational Uses area there is no setback for water dependent uses, a 50 foot setback for water-related uses and a 100 foot setback for water-enjoyment. A 50 foot buffer is required except that the portion of the use for the water-dependent use may encroach the required buffer.

Bellingham also has a SED known as Urban Maritime. Setbacks and buffers for this SED are 0 feet. These areas are intensively developed and support the ferry terminal and among other uses. In the Urban Maritime Shoreline Mixed Use area the setback is 0 while the buffer is 45 feet for structures greater than 35 feet in height. Structures less than 25 feet no buffer is required. Finally in the Urban Maritime Shoreline Recreation Area a 45 foot buffer is required.

FLEXIBILITY

Another issue raised in the public hearing and in the public comment has been to ask the City to consider adding additional flexibility into the administration of the SMP. Olympia's SMP, as presently drafted, offers limited opportunities for flexibility.

FLEXIBILITY - OLYMPIA'S APPROACH

3.33 18.34.495 - Vegetation Conservation Area Standards

B. The minimum depth of vegetation conservation areas is set forth in Table 6.2 and measured perpendicular to the ordinary high water mark along the entire shoreline of the property. To account for site conditions and to create a more natural vegetation conservation area, the minimum may be reduced by 25% by the Administrator upon finding that the total VCA of the parcel is equivalent to the minimum area, and such reduction will not result in adverse impacts to the shoreline functions. Vegetation conservation areas exceeding minimums may be proposed or required if necessary to ensure no net loss of shoreline ecological functions will result from proposed shoreline development.

C. In general, protected and restored vegetation conservation areas shall be composed of native vegetation comparable in species density and diversity to an ecologically similar undisturbed area. Such species density and diversity shall be determined by the Administrator based on best available science. Provided, however, that up to 25% of the vegetation conservation area may be utilized for authorized uses and activities described in OMC 18.34.493. If an authorized use or activity requires more than 25% of the VCA, such as transportation facilities, utilities, and public recreation trails, the applicant shall provide an equivalent area elsewhere on-site and shall ensure that the proposed use or activity will not result in a net loss to shoreline ecological functions.

3.41 18.34.620 - Use and Development Standards Tables

D. Upon demonstration of adequate provisions for protection or creation of the minimum required vegetation conservation area on the same property, an applicant may obtain approval of a development incorporating an increased maximum building height ('VCA bonus') or as set forth in the Marine Recreation environment, a reduced minimum principal building setback.

Provision D. above only relates to the Marine Recreation Shoreline Environmental Designation (SED) no other flexibility or reduction is provided for in any of the other SEDs. Other jurisdictions from around the Puget Sound area provide for administrative reductions in required setbacks and buffer widths in exchange for enhanced restoration. Generally such reductions are tied to providing additional restoration beyond what would be required for mitigation of project impacts. Given Olympia's highly altered shoreline such an approach may be one way to encourage greater amounts of restoration along Olympia's shorelines.

The City of Kirkland's SMP includes such setback reduction options and is excerpted below.

FLEXIBILITY -- KIRKLAND'S APPROACH TO SETBACKS

[Kirkland's SMP](#) includes a series of specific mitigation measures that allow for setback reductions. In Kirkland setbacks start at 60 foot and by implementing a series of mitigation measures setbacks can be reduced as low as 25 feet or 15 feet in certain residential shoreline designations. Reduction options, as noted below, encourage implementation of mitigation measures.

City of Kirkland -- Reduction Allowances			
	Shoreline Setback Reduction Options	Standard Reduction (min. 25 ft. setback)	Residential - L (A), (F) and (J) environments (min. 15 ft. setback)
Water Related Conditions or Actions			
1	Presence of nonstructural or soft structural shoreline stabilization measures located at, below, or within five (5) feet landward of the lake's OHWM along at least 75 percent of the linear lake frontage of the subject property. This can include the removal of an existing hard structural shoreline stabilization measure and subsequent restoration of the shoreline to a natural or semi-natural state, including creation or enhancement of nearshore shallow-water habitat consistent with the soft structural shoreline stabilization provisions in KZC 83.300 . This option cannot be used in conjunction with Options 2, 4 or 5 below.	Reduce required setback by 15 percentage points, or in cases where the required setback is 60 feet or greater reduce setback by 30 feet	Reduce required setback by 15 feet
2	Presence of nonstructural or soft structural shoreline stabilization measures located at, below, or within five (5) feet landward of the lake's OHWM along at least 15 linear feet of the lake frontage of the subject property. This may include the removal of an existing hard structural shoreline stabilization measure and subsequent restoration of the shoreline to a natural or semi-natural state, including creation or enhancement of nearshore shallow-water habitat consistent with the design provisions for soft structural shoreline stabilization in KZC 83.300 . This option cannot be used in conjunction with Option 1 above or Options 4 or 5 below.	Reduce required setback by five (5) percentage points, or in cases where the required setback is 60 feet or greater reduce setback by 10 feet	Reduce required setback by five (5) feet
3	Opening of previously piped on-site	Reduce required	Reduce required

	<p>watercourse to allow potential rearing opportunities for anadromous fish for a minimum of 25 feet in length. Opened watercourses must be provided with a native planted buffer at least five (5) feet wide on both sides of the stream, and must not encumber adjacent properties with a 5-foot-wide buffer without express written permission of the adjacent property owner. A qualified professional must design opened watercourses. The opened watercourse shall be exempt from the buffer provisions of KZC 83.490. The opened watercourse is exempt from the buffer requirements and standards of KZC 83.510.</p>	<p>setback by five (5) percentage points, or in cases where the required setback is 60 feet or greater reduce setback by four (4) feet</p>	<p>setback by five (5) feet</p>
4	<p>Existing hard structural shoreline stabilization measures are reconstructed to set back from the OHWM between two (2) feet and four (4) feet based on feasibility and existing conditions and/are sloped at a maximum three (3) vertical (v): one (1) horizontal (h) angle to provide dissipation of wave energy and increase the quality or quantity of nearshore shallow-water habitat.</p>	<p>Reduce required setback by five (5) percentage points, or in cases where the required setback is 60 feet or greater reduce setback by four (4) feet</p>	<p>Reduce required setback by five (5) feet</p>
5	<p>Shoreline enhancement measures are installed waterward of an existing hard structural shoreline stabilization measure to create or enhance nearshore shallow-water habitat. They may include the use of gravels, cobbles, boulders, and logs, as well as vegetation. The material shall be of a size and placed to remain stable and accommodate alteration from wind- and boat-driven waves and shall be graded to a maximum slope of one (1) vertical (v): four (4) horizontal (h). The effect of the placed material cannot result in</p>	<p>Reduce required setback by two (2) percentage points, or in cases where the required setback is 60 feet or greater reduce setback by four (4) feet</p>	<p>Reduce required setback by two (2) feet</p>

	the enlargement of the existing hard structural shoreline stabilization measure.		
Upland Related Conditions or Actions			
6	Installation of biofiltration/infiltration mechanisms in lieu of piped discharge to the lake, such as mechanisms that infiltrate or disperse surface water on the surface of the subject property. These mechanisms shall be sized to store a minimum of 70 percent of the annual volume of runoff water from the subject property, for sites with poor soils, or 99 percent of the annual volume of runoff water from the subject property, for sites with well-draining soils. This mechanism shall apply to sites where the total new or replaced impervious surface is less than or equal to 5,000 square feet. The mechanisms shall be designed to meet the requirements in the City's current surface water design manual.	Reduce required setback by two (2) percentage points, or in cases where the required setback is 60 feet or greater reduce setback by four (4) feet	Reduce required setback by two (2) feet
7	Increasing the width of the required landscape strip within the reduced shoreline setback a minimum of five (5) additional feet in width.	Reduce required setback by two (2) percentage points, or in cases where the required setback is 60 feet or greater reduce setback by four (4) feet	Reduce required setback by two (2) feet
8	Installation of pervious material for all pollution generating surfaces such as driveways, parking or private roads that allow water to pass through at rates similar to pre-developed conditions. Excluded from this provision are the vehicular easement roads, such as 5th Avenue West or Lake Avenue West in the Residential - L shoreline environment.	Reduce required setback by two (2) percentage points, or in cases where the required setback is 60 feet or greater reduce setback by four (4) feet	Reduce required setback by two (2) feet
9	Limiting the lawn area within the	Reduce required	Reduce required

	shoreline setback to no more than 50 percent of the reduced setback area.	setback by two (2) percentage points, or in cases where the required setback is 60 feet or greater reduce setback by four (4) feet	setback by two (2) feet
10	Preserving or restoring at least 20 percent of the total lot area outside of the reduced setback and any critical areas and their associated buffers as native vegetation.	Reduce required setback by two (2) percentage points, or in cases where the required setback is 60 feet or greater reduce setback by four (4) feet	Reduce required setback by two (2) feet

SETBACKS -- OTHER COMMUNITIES USING REDUCTIONS

Lakewood and Sammamish provide for similar reductions in required setbacks through the provision of enhanced restoration.

FLEXIBILITY -- PORT TOWNSEND’S APPROACH

Restoration/Public Access Incentive - The requirement, regarding dedication of no less than 25% of the total floor area to water-oriented uses, may be waived in whole or in part when the proposal provides restoration of ecological functions, habitat enhancement, and/or provision of public access improvements (e.g., parks, esplanades, etc.) that constitute a significant public benefit beyond that which would be required as mitigation for the development. (Thus allowing for an additional 25% of residential/transient or non-water oriented uses accessible to the general public).

FLEXIBILITY - BELLINGHAM’S APPROACH

The Director may allow the buffer width to be averaged between the minimum and maximum buffer widths specified in BMC 22.11.30 *Development Regulation Matrices A-F* (except within the Waterfront District Shoreline Mixed-Use shoreline designation) when all of the following are demonstrated:

- a. The width averaging will not result in a net loss of shoreline ecological functions including a net loss to those habitats for anadromous fish and terrestrial species;
- b. The recommended buffer width is not reduced below the minimum in any location;
- c. The width averaging will not be located within another critical area or associated buffer; and
- d. The averaging is part of a restoration or enhancement project that has been reviewed and approved by the Washington State Department of Fish and Wildlife and overall, achieves a net gain in shoreline ecological function.

Restoration and enhancement projects, when approved by the Director and the Bellingham Field Office of the Department of Ecology, may approve buffers and setbacks different from those included in the Development Regulation Matrices in Section 22.11.30.A-F, *Development Regulation Matrices*, provided such projects meet the purpose and intent of this Chapter and are agreed to by affected property

owner(s). Said restoration projects shall include sufficient legal and/or fiscal guarantees to assure specific performance of the project.

6. Restoration and enhancement projects that alter the location of the OHWM on affected properties shall be subject to the applicable requirements in Section 22.09.100 *Restoration and Conservation*.

NONCONFORMITIES

One of major concerns raised by property owners in the public testimony and in the written record is the impact of the proposed regulations on existing buildings and the impact of a building being deemed nonconforming.

Nonconformities are potentially created along reach Budd 4 with buildings such as Image Source, Bay View, the Olympia Yacht Club and the Oyster House all potentially affected by a 30 foot setback along this reach. The 150 foot setback along Budd 3B also creates potential impacts to existing development located along the east side of West Bay Drive and to development located west of West Bay Drive north of the City's park. Tug Boat Annie's may also become nonconforming.

It should be noted that the 150 foot setback along reach 3B would also impact the City's ability to develop West Bay Park in the future.

The proposed SMP addresses this issue in OMC 18.37.090 Nonconforming and Conforming Buildings and Uses within Shorelines and seeks to the maximum extent permissible to allow existing structures to continue, be replaced and to even be expanded if done so in manner that does not increase the extent of the nonconformity. Concerns remain regarding the link to [Section 18.37 of the Olympia Municipal Code](#) that sets certain limitations and requirements on reestablishing such buildings.

18.37.090 - Nonconforming and Conforming Buildings and Uses within Shorelines

A. Subject to the provisions of this Chapter, a use, lot, or structure lawfully existing prior to the effective date of that chapter or any amendment thereto, which is rendered nonconforming may continue in the manner and to the extent that it existed upon the effective date of the relevant ordinance.

B. All structures and uses including single-family homes, appurtenances and other accessory structures that were legally established prior to the effective date of Chapter 18.34 are considered conforming buildings and uses with respect to Chapter 18.34 and may be continued, remodeled and restored; provided that any change of use or enlargement of such structure must conform with the provisions of this Chapter (18.37) and Chapter 18.34.

C. Any additions, expansions or reconstruction exceeding the provisions of RCW 90.58.030(3)(e) shall conform with Chapter 18.34 and all other applicable development regulations; provided that subject to the limitations of OMC 18.37.092, the Administrator is authorized to approve structural additions above or landward or

both of existing structures upon finding that such addition is otherwise consistent with the Shoreline Program of the City and will not result in a net loss of shoreline function.

D. Retention of the conforming use status described above is subject to the discontinuation of nonconforming use provisions of OMC 18.37.060(E). Further, in the event that any such conforming structure is destroyed, a building permit for restoration shall be secured within twelve (12) months from the date of destruction for the restoration of such structure.

E. Existing roads, trails, utility lines and similar linear facilities, together with any associated facilities such as pump stations or stormwater treatment ponds, which do not conform to the provisions of Chapter 18.34 may expand within existing easements and rights-of-ways. Modification or expansion outside of existing easements or rights-of-way which would otherwise be prohibited may be authorized by the decision maker upon finding there is no feasible alternative, the development is necessary for the public welfare, and as proposed and designed including appropriate mitigation the development is not likely to result in a net loss of shoreline ecological functions.

The City of Bellingham allows for legally established nonconformities to be continued, rebuilt or expanded in manner similar to that provided by Olympia. Other approaches to minimizing the effects of shoreline regulations on existing structures could include reducing or eliminating setbacks along certain reaches such as Budd 4, using parallel designations along certain reaches such as Budd 3B or allowing overwater structures and covered moorage.

OTHER ISSUES

Other comments addressed the West Bay trail, the Port, sea level rise, building design, shoreline access and covered moorage. These and many other issues are not addressed in this analysis.

CONSIDERATIONS

1. Consider providing more flexibility for ‘water-dependent’ uses and buildings than for other uses.
2. Consider that sea level rise along West Bay Drive may be addressed by private property owners at the time of development by raising the elevation of the property or by building barriers.
3. Consider that the proposed 30 foot setback area is proposed for purposes other than just responding to the threat of sea level rise and a 30 foot setback or greater may be appropriate to achieve other shoreline purposes.
4. Consider that zoning regulations are a powerful regulatory tool and can be used in place of SMP regulations to address a variety of urban design issues including but not limited to setbacks, step backs, building height, building design and parking issues.
5. Consider use of a variety of tools such as buffer averaging or buffer reduction allowances to encourage a higher degree of restoration than would be accomplished without such measures.
6. Consider that a master plan, as provided in [Shoreline Guidelines, WAC 173-26-201\(3\)\(d\)\(ix\)](#), might be an effective approach to achieving levels of consensus and understanding about how to maximize restoration and provide for development along West Bay.

7. Consider allowing water-dependent uses to encroach the required setback.
8. Consider allowing the administrator to approve buffers and setbacks different from those included in the proposed regulations provided such projects meet the purpose and intent of this Chapter.
9. Confirm that the SMP seeks, to the maximum extent permissible, to allow existing structures to continue, be replaced and to even be expanded if done so in manner that does not increase the extent of the nonconformity and modify the language to the extent necessary to meet this direction.
10. Consider other approaches to minimizing the effects of shoreline regulations on existing structures including reducing or eliminating setbacks along certain reaches such as Budd 4, using parallel designations along certain reaches such as Budd 3B or allowing overwater structures and covered moorage.
11. Consider the impacts of a 150 foot setback along reach 3B on the ability to develop West Bay Park.

Note: All underlines have been added to provide emphasis and were generally not part of the original source material.