

## CITY COUNCIL STUDY SESSION ITEM

### SUBJECT

Plan for Completion of the Shoreline Master Program Update, and Transmittal of the Planning Commission Recommendation on the Shoreline Master Program Conformance Amendments.

### STAFF CONTACT

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### FISCAL IMPACT

There is no new fiscal impact anticipated from completion of this process. This work is necessary for completion of the Shoreline Master Program Update that is a component of the Council-endorsed code amendment work program.

### POLICY ISSUES

The Planning Commission has finished the last piece of its work necessary to complete the Shoreline Master Program (SMP) Update package for submittal to the Department of Ecology. The Planning Commission recommended by a 4-2 vote that the City Council approve the SMP Conformance Amendments. These amendments are a companion piece to the SMP Update transmitted by the Commission to Council in May 2013, and are intended to ensure that the updated SMP and other provisions of the Land Use Code synchronize in a manner that allows the updated SMP to function as intended.

The policy question posed is whether the City Council should review the Planning Commission Recommended SMP Update consistent with the Completion Process outlined in this Study Session memo in order to finalize the necessary submittal package for review and approval by the Department of Ecology?

### DIRECTION NEEDED FROM COUNCIL

- Action
- Discussion
- Information

During the July 15, 2013 Study Session, the City Council directed staff to engage with the Planning Commission to complete the SMP Conformance Amendments, and to engage with the City's consultant to complete the Cumulative Impact Analysis (CIA) so that all the required elements of the SMP Update package would be available for review by the City Council. The Planning Commission work was completed and the consultant work will be completed in mid-April, so the package is ready to initiate City Council review.

The March 10 Study Session is the first in a series of Council engagements scheduled for review of the Planning Commission recommended SMP. This Study Session will include a staff presentation of the recommended process for completion of the SMP Update for submittal to the Department of Ecology. This Study Session will also include a presentation of the Planning Commission's recommendation on the SMP Conformance Amendments. Staff does not expect Council to draw substantive conclusions after this introductory presentation. However, it would be helpful to identify issues that the Council would like to explore in greater depth than is provided for in the Completion Process outlined below. Upcoming Council Study Sessions are planned to review the Planning Commission's recommended policies and regulations with particular focus on the issues identified by the Planning Commission as most important to the development of its recommendation. Time will be scheduled for other issues, as needed.

The materials necessary for review of the SMP Update Package, including the most recent recommendation of the Planning Commission on the SMP Conformance Amendments, have been provided to Council in a separate three-ring binder. The Cumulative Impact Analysis will be provided as soon as it is completed. The provided binder is organized to hold the SMP Update Package materials that will be used over the course of the next several months, which must be reviewed and finalized for submittal to the Department of Ecology. The full content of this binder is available for public review at the following link:  
<http://www.bellevuewa.gov/10600.htm>

## **BACKGROUND/ANALYSIS**

The Shoreline Master Program Update is perhaps the most significant environmental policy/code amendment effort by the City since the adoption of the Critical Areas Overlay in 2006. The SMP applies to shorelines as they are defined by state-law. Shoreline Overlay District jurisdiction includes identified lake and/or stream waters, lands underlying those waters, the area 200 feet landward of the ordinary high watermark of identified waters, plus associated floodways, floodplains, and wetlands. In Bellevue, the Shoreline Overlay District jurisdiction specifically applies to the following waterbodies:

1. Lake Washington, including Mercer Slough upstream to Interstate 405;
2. Lake Sammamish;
3. Lower Kelsey Creek; and
4. Phantom Lake.

Like the Critical Areas Overlay, the Shoreline Master Program is an "overlay" that applies to properties located within the above-referenced shoreline jurisdiction, and modifies or augments the underlying zoning requirements that are generally applicable to development city-wide. The SMP is, however, a unique regulation in that it ultimately requires Department of Ecology approval following a showing that the requirements of the Shoreline Management Act (SMA) and Shoreline Guidelines (Guidelines) have been met.

Approximately 1,500 properties are located within shoreline jurisdiction. These properties are developed primarily for single family use, which is the first-listed shoreline use priority under the SMA. However, properties affected by the shoreline policies and regulations also include commercial properties (such as Bellefield Office Park), recreational properties (such as the

Meydenbauer and Newport Shores yacht clubs) and public properties (including Parks Department holdings such as Meydenbauer Bay Park and Marina, and Utility and Transportation Department facilities). Therefore, it was necessary for the Planning Commission to develop a SMP that addressed the wide range of uses found on the Bellevue shoreline and the associated shoreline development that was anticipated to support the intended function of those uses.

The Planning Commission worked diligently to create a document that they described in their transmittal and May 2013 presentation to Council as “balanced and user friendly.” In order to achieve these objectives, the Commission did not take a cookie-cutter approach to developing a plan that looked like something approved in another shoreline community. Rather, the Planning Commission developed a document that was Bellevue-appropriate and responsive to the applicable state requirement in a way that was tailored to Bellevue shoreline conditions and integrates seamlessly into the Bellevue Comprehensive Plan and Land Use Code.

The SMP Update recommended by the Planning Commission includes six new environmental designations (which are the shoreline jurisdiction equivalent to zoning designations), and unique development regulations applicable to the range of uses found on Bellevue shorelines. Residential properties are given a high priority in the SMA and constitute the single most prevalent use on Bellevue’s shoreline. As a result, the Planning Commission focused considerable attention on the regulations addressing residential property development. The Planning Commission recommendation also includes new approaches to the regulation of existing and non-conforming uses that would be unique to shoreline properties, and to the regulation of shoreline modifications, which would be permitted to occur in the water or at the interface with the ordinary high water mark.

Ultimately, the City Council will need to review the Planning Commission proposal and decide whether it provides the right policy balance between allowed shoreline use and development and the environmental protections necessary to preserve Bellevue’s identity and vision as a “City in a Park.” Staff has hired a consultant to assist in analyzing and providing feedback regarding the alignment between the final SMP Update Package and the applicable state shoreline requirements.

Recognizing that adoption of a Bellevue-appropriate SMP includes a number of complicated components, it is suggested by staff that the City Council review the Planning Commission’s recommended SMP Update Package over a series of Study Sessions as described in more detail below.

## **1. SMP Update Completion Process and Schedule**

Attachment A provides an Outline of the SMP Completion Process that is described in greater narrative detail below.

### **March 10 – SMP Completion Process and SMP Conformance Amendment Transmittal**

Staff will provide a presentation on the proposed SMP Completion Process for Council endorsement. Following the staff presentation, Chair Tebelius will present the SMP Conformance Amendments to the City Council, which formally completes the Planning Commission tasks toward development of the SMP Update for Council approval. Because the

conformance amendments ensure that the updated SMP and other provisions of the Land Use Code synchronize in a manner that allows the updated SMP to function as intended, staff does not expect Council to draw substantive conclusions or provide direction on the Conformance Amendments following this presentation. Substantive review of the Conformance Amendments is proposed to occur following Council review of the Recommended SMP Update and final incorporation of any revisions that the Council may request.

**April 14 – Review Planning Commission recommended Policies, Shoreline Overlay.** At this meeting the Council will be re-oriented to the need for the SMP Update and to the state SMP adoption requirements. An overview of the SMP Update process that has occurred to-date, and the tasks remaining for City Council completion will be provided. A high level review will be provided for sections of the SMP Update that did not generate extensive discussion before the Planning Commission (such as the sections addressing procedures, required permits, administration and enforcement, and definitions).

**April 28 – Review of the Cumulative Impact Analysis and Light Rail Component retained by Council for development.** The Cumulative Impact Analysis is a key indicator of whether an SMP can be approved by the Department of Ecology. During the April 28 meeting, Council will be briefed regarding “No Net Loss” and the roll of a Cumulative Impact Analysis in demonstrating that objective has been met. During this meeting, staff will also introduce recommended language necessary for Council to supplement the recommended SMP to address Light Rail uses and development in a manner that is consistent with the Light Rail Overlay adopted by Council in February 2013.

**May through Early June (meetings currently scheduled for May 12, May 27 and June 9) – Council review of issues identified by the Planning Commission as most important in its development of the SMP Update.** During its 2011 annual retreat, the Planning Commission identified the main issues needing resolution in order to complete its recommendation to Council. Between October 2011 and the completion of its tasks in December 2013, the Commission took an “issue based” approach to reviewing the SMP that was originally drafted for Public Hearing in Spring of 2011. The ultimate goal was to provide direction to staff on code revisions necessary to achieve Planning Commission objectives developed in response to public comments they received. Topics identified for this “issue based” approach included:

- a. Public Access
- b. Lake Levels
- c. Setbacks/Buffers
- d. Vegetation Conservation
- e. Critical Areas
- f. Docks
- g. Shoreline Stabilization
- h. Nonconforming and Existing Uses
- i. Floodplains (addressed in the SMP Conformance Amendments).

The Planning Commission recommendation on each of these issues will be presented to the Council for its review. Staff anticipates that three of these important issues will be presented during each Study Session scheduled in May and early June. Following its review, the City Council will be asked to determine if there are areas of the plan that require revisions to achieve Bellevue’s policy objectives so that the SMP Update can be finalized, and

preparations can be made to facilitate discussions with the Department of Ecology that will be necessary to secure its approval.

**Late June through Early July – Public Hearing and Final SMP Update Package Adoption.**

Following review and preparation of the SMP for final approval, any remaining environmental review will be completed, and the City Council will be required to hold a public hearing. Following the public hearing, the Council will be asked to adopt the SMP Update Package by resolution with any changes the Council concludes are necessary to address comments received at the public hearing. A strategy for review of the plan with Ecology will be developed when there is a better understanding of the remaining issues.

**2. Expert Assistance**

To-date, the SMP Update process has been managed solely by the Shoreline Update Team in the Development Services Department, with consultation provided as necessary from the City Attorney's Office. This City team includes individuals with extensive experience with City of Bellevue and Growth Management Act requirements related to the adoption of comprehensive plan policies and local development regulations, as well as subject matter experts in shoreline ecology and critical areas. What this group does not have, however, is hands-on experience with the Department of Ecology's SMP approval process.

The Bellevue SMP was originally adopted in 1974, and it remained essentially unchanged, with modest amendments, since that time. No amendments to the Bellevue SMP have been undertaken since the SMP Update was mandated by the State, and substantive guidelines for SMP content became effective in 2004. City staff have read the SMP guidelines thoroughly and have navigated the process to-date by consulting with the Watershed Company, with staff from other jurisdictions who have navigated the process before us, and with Ecology staff when questions of practical application of the process have been raised.

As the experts and agency in control of the adoption process, Ecology staff have the clear advantage when navigating the Formal Approval steps, and with interpreting the Ecology guidelines. The balance of expertise that favors Ecology in the process was reported in 2013 in an article in *The Seattle Times* regarding the status of approval for the Mercer Island SMP Update. In order to place the City on a more level playing field with Ecology staff, we have enlisted the consultant services of Richard Settle to assist and optimize the City's opportunity to achieve the outcomes ultimately desired by the City Council. This expert advice is intended to support the Council's final policy decision-making role. It will not be Mr. Settle's role to advise the Council on the policy choices to be made. Mr. Settle is a Professor of Law Emeritus at the Seattle University School of Law, was a founding Faculty Member of the University of Puget Sound School of Law, and has lectured and written extensively on land use, environmental law, the Shoreline Management Act, and the State Environmental Policy Act. In addition to his academic career, he has been Of Counsel with Foster Pepper PLLC since 1986; served as a mediator to successfully resolve litigation challenging the 2000 Shoreline Guidelines; and has played a major role in significant shoreline management litigation.

### **3. Department of Ecology Engagement**

In consultation with Mr. Settle, staff are recommending the following principles and policies in order to efficiently and cooperatively work with Ecology as we embark on the SMP Completion Process. The City intends to provide the Department of Ecology with notice of all upcoming public engagements involving the Council's discussion of the SMP. Based on that notice, Ecology may either attend those discussions or provide written comment. Should Ecology desire to meet with City staff during the Council's considerations of various shoreline topics and applicable guidelines, staff will be available to answer questions or provide information as requested, and can draw upon Ecology's technical expertise.

The Guidelines translate the broad policies and requirements of the Shoreline Management Act into a framework of parameters to guide local adoption of shoreline master programs in compliance with the requirements of the Act. Within the policies and regulations of the Guidelines, there appears to be broad discretion to adopt regulations unique to Bellevue and its local circumstance. Providing Ecology with notice of all upcoming shoreline discussions allows the Council to "show its work" and provide the educational and scientific justifications to support an SMP tailored to local needs for the City of Bellevue.

#### **ALTERNATIVES**

1. On the Process for Completion of the SMP Update the Council may:
  - a. Endorse the Process recommended by staff in Attachment A;
  - b. Provide alternative direction to staff on the Process for Completion of the SMP Update.
2. On the SMP Conformance Amendments, the Council may:
  - a. Receive Transmittal of the Recommendation from the Planning Commission for consideration during the SMP Completion Process;
  - b. Request additional information necessary to complete its review as part of the SMP Completion Process.

#### **ATTACHMENT**

A. Process for Completion of the SMP

#### **AVAILABLE IN COUNCIL OFFICE FOR REVIEW**

n/a

## Process for Completion of Shoreline Master Program (SMP) Update

### **Council Meeting 1: March 10, 2014**

1. Endorse a Process for SMP Completion
2. Receive the Planning Commission Recommendation on SMP Conformance Amendments

### **Council Meeting 2: April 14, 2014**

1. Describe the need for the SMP Update
2. Provide orientation to state SMP adoption requirements
3. Conduct high level review of the Planning Commission recommended SMP Update package

### **Council Meeting 3: April 28, 2014**

1. Describe the roll of a Cumulative Impact Analysis in the demonstration of "No Net Loss"
2. Review the CIA prepared by Watershed Company
3. Introduce the Light Rail use and development regulations retained by Council  
(required for consistency with the Light Rail Transit Overlay adopted in February 2013)

### **Council Meeting 4 - 6: May 12, May 27, June 9, 2014**

1. Review policy topics and receive Council direction  
(3 topics/meeting – could increase to accelerate schedule)
2. Issues of importance identified by the Planning Commission
  - a. Public Access
  - b. Lake Levels
  - c. Setbacks/Buffers
  - d. Vegetation Retention
  - e. Critical Areas (incl. fish habitat)
  - f. Docks
  - g. Shoreline Stabilization
  - h. Nonconforming Uses
  - i. Floodplain

### **Council Meeting 7: TBD based on progress made during Meetings 4-6**

1. Hold Public Hearing on Final SMP Update Package

### **Council Meeting 8: TBD based on progress made during Meetings 4-6**

1. Adopt final package by resolution
2. Direct staff to submit to Ecology (and formulate negotiation strategy as necessary)