Item No. 3(e)
May 12, 2014

CITY COUNCIL STUDY SESSION ITEM

SUBJECT
Shoreline Master Program Update Study Session 4 – In-depth review of Draft SMP Update provisions relating to public access and park development, establishment of ordinary high water mark, and the regulation of residential nonconformities.

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FISCAL IMPACT
There is no new fiscal impact anticipated from completion of this in-depth review. 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
Does the Draft SMP Update achieve the Bellevue Appropriate approach desired by the City Council to:

1. Provide for shoreline-related public access and accommodate park development;
2. Establish ordinary high water mark for the purpose of measuring shoreline jurisdiction and setbacks; and,
3. Characterize and regulate residential shoreline development that will become nonconforming to the SMP when it is ultimately approved by Ecology and becomes effective in Bellevue?

DIRECTION NEEDED FROM COUNCIL
X Action
X Discussion
X Information

The May 12 Study Session is the first of three Council engagements scheduled for in-depth review of the issues identified by the Planning Commission as most important to the development of its recommendation, and additional issues identified for discussion by the City Council. Topics for discussion on May 12 include:

- Shoreline public access and accommodation of shoreline park development;
- Establishment of ordinary high water mark for the purpose of measuring shoreline jurisdiction and setbacks; and
- Characterization and regulation of residential shoreline development that will become nonconforming to the SMP once it is updated.

The materials necessary for review of the SMP Update Package have been provided to Council in a separate three-ring binder. The provided binder is organized to hold the SMP Update Package materials that will be used over the course of the next several months, and which must be reviewed and finalized for submittal to the Department of Ecology. **Staff requests that the Councilmembers bring the binders to the Study Session on Monday and to any future scheduled SMP discussions.** The full content of this binder is available for public review at the following link: http://www.bellevuewa.gov/10600.htm.

BACKGROUND/ANALYSIS

During its first meeting on the SMP topic, the City Council endorsed an SMP Update Completion Process for use in finalizing the Planning Commission work for submittal to the Department of Ecology for review and approval. Refer to Attachment A for the completion process schedule endorsed by the City Council.

The May 12 Study Session is the first in a series of three in-depth policy discussions regarding the issues that were identified as important to the Planning Commission and the City Council. Topics identified for this in-depth City Council review currently include:

a. Public Access and Park Development
b. Establishment of Ordinary High Water Mark
c. Nonconforming Residential Development
d. Setbacks/Buffers
e. Vegetation Conservation
f. Critical Areas
g. Docks
h. Shoreline Stabilization
i. Floodplains (addressed in the SMP Conformance Amendments).

The Planning Commission recommendation on each topical issue is provided in this packet for Council review. Current regulations are summarized for comparison purposes, and major policy issues raised during the Planning Commission review are listed for Council reference. Supporting information for each topical area is provided in a series of appendices. These appendices include references to the state law and guidelines, the range of options considered by the Planning Commission, stakeholder concerns raised during the Planning Commission review, and current and recommended policies and regulations. Following its review of each topic, the City Council will be asked whether the Draft SMP achieves the desired Bellevue appropriate approach or whether revisions are desired. If changes are requested to the Draft SMP, amended language will be provided for Council discussion at a future meeting.

1. Public Access

Public access is required by the State to be addressed in updated SMPs, and was identified as a gap that required attention when the City Council launched Bellevue's SMP Update in 2007. Refer to Attachment C for applicable laws and guidelines regarding the provision of public access in shoreline master programs.

Planning Commission Recommendation on Public Access:

The Planning Commission received significant public comment regarding the appropriate location of shoreline public access. The recommended amendments require shoreline access

to be provided for all transportation, utility, and park projects located on public property. The recommended amendments include accommodation for modified access (such as viewing) where physical access poses a safety concern due to the nature or function of the public project with which the access is associated. *Planning Commission Transmittal page 10.*

Current Regulations regarding Public Access:
The goals of the Shoreline Management Act give a preference to uses that increase public access to publicly-owned areas of the shorelines. General policy support within the Comprehensive Plan currently exists in the Parks, Open Space and Recreation Element to provide additional public access to Lakes Washington and Sammamish. Refer to Comprehensive Plan Policy PA-7. Although the community vision articulated in the Shoreline Management Program Element of the Comprehensive Plan also provides policy support for public access, zoning and regulations have not been the primary tools used to achieve this vision. Acquisition and parks projects are the main avenue for achieving the currently-stated shoreline objectives. Where public access is addressed in current regulations, it focuses primarily on the allowance of shoreline modifications (such as overwater structures and landfill) needed to accommodate public access when appropriate mitigation can be provided. Private development, whether water-enjoyment, water-related, non-water oriented or subdivision of land does not require public access to be provided.

Major Policy Issues raised during development of the Public Access Recommendation:

- Constitutionally protected property rights
- Compliance with public access goals in state law and SMP adoption guidelines
- Implementation of public access requirements necessary to ensure objectives in the Comprehensive Plan are met
- Public safety, acquisition, and cost concerns raised by providing public access in association with transportation and utility facilities.

Refer to Attachment B for the enunciated state policy support for shoreline management. Refer to Attachment C for supporting documentation provided to support the City Council conversation regarding the approach to providing appropriate levels of shoreline public access in Bellevue.

2. Park Development
Park development to support recreation is a common use and type of development anticipated to occur within shoreline jurisdiction, and is suggested by the state guidelines to be included in updated SMPs. Refer to Attachment D for applicable laws and guidelines regarding recreation uses and development in shoreline master programs.

Planning Commission Recommendation on Recreation and Meydenbaur Bay Park
The Parks Element sets forth the broad policy direction for Bellevue's stewardship of existing parks and provides the policy underpinning for future acquisition. Several policies are relevant to the Recommended SMP Update. The focus is on acquisition sufficient to ensure parks resources are available as the City continues to grow. Parks policies target a range of park opportunities to sustain Bellevue's quality of life. The Recommended SMP Update advances the objectives of the parks policies by providing process streamlining incentives for parks projects that are included in a Council-adopted master plan, by providing development standards applicable to parks uses that encourage preservation of natural areas and use of

best management practices in park operations, and by requiring public access to shoreline areas in association with public projects in order to create expanded recreation opportunities. *Planning Commission Transmittal page 22.*

Meydenbauer Bay Park—Special Provisions: The Planning Commission engaged in significant discussion regarding the permit review process for Meydenbauer Bay Park. In response to concerns from the public, the Meydenbauer Bay Neighborhood Association, and the Meydenbauer Yacht Club, the recommended amendments require a general conditional use permit for development of specific phases of the park, both in the Shoreline Overlay District and the upland areas of the park. The Land Use Code currently requires a shoreline conditional use permit for portions of the park located in the Shoreline Overlay District, and a general conditional use permit for the upland portions of the park. Requiring a general conditional use permit for Meydenbauer Bay Park addressed the Planning Commission concern about permit process continuity across the entire park property, and retained local control with the City rather than requiring Ecology approval for park development. A Shoreline Substantial Development Permit will be required to meet state permitting requirements within the 200-foot shoreline jurisdiction. The recommended regulations require that the Meydenbauer Bay Park cannot be established, developed, expanded or modified without being consistent with the terms of the Meydenbauer Bay Park and Land Use Plan together with the Council-mandated implementation principles. *Planning Commission Transmittal page 8.*

Current Regulations regarding Recreation Development:
Public park development on the shoreline is currently allowed through a Shoreline Conditional Use Permit (CUP). Trails and public use structures are required to meet performance standards that avoid, minimize and mitigate for impacts to the most sensitive portions of a parks site when development is proposed in the shoreline critical area, buffer or structure setback.

Major Policy Issues raised during development of the Recreation Recommendation:

- Permit review process and outreach for applications to develop park uses
- Protection of adjacent properties from impacts associated with park uses
- Special requirements for Meydenbauer Bay Park.

Refer to Attachment B for the enunciated state policy support for shoreline management. Refer to Attachment D for supporting documentation provided to support the City Council conversation regarding the approach to the regulation of shoreline recreation uses.

3. Determination of Ordinary High Water Mark
Ordinary high water mark (OHWM) is the point from which shoreline jurisdiction and setbacks are measured. It is important to establish OHWM accurately to ensure that structures are located appropriately on a shoreline parcel. Refer to Attachment E for applicable laws and guidelines regarding the determination of OHWM.

Planning Commission Recommendation on Determination of Ordinary High Water Mark:
The Shoreline Management Act of 1971 (RCW 90.58) defines the "ordinary high water mark" (OHWM) as:

" that mark that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation as that condition exists on June 1, 1971, as it may naturally change thereafter, or as it may change thereafter in accordance with permits issued by a local government or the department: PROVIDED, That in any area where the ordinary high water mark cannot be found, the ordinary high water mark adjoining salt water shall be the line of mean higher high tide and the ordinary high water mark adjoining freshwater shall be the line of mean high water."

Typically, a qualified professional makes such determinations on a site-by-site basis according to procedures provided by the Department of Ecology. However, Ecology expressed support for Bellevue's 2004 Lake Sammamish Ordinary High Water Mark Study supporting a specific OHWM elevation from which to measure setback. Although the static elevation provided desirable certainty with respect to setback measurement, public input raised concerns that the study elevation was inaccurate due to human interference and disruption of natural lake levels. For example, management of the Hiram Chittenden locks connecting Lake Washington to Puget Sound establishes a maximum ordinary high water elevation for Lake Washington timed to provide water for summer recreation. Similarly, poor maintenance of the weir at the start of the Sammamish River may have resulted in higher high water for durations long enough to affect the OHWM on Lake Sammamish. Property owners at Phantom Lake raised similar concerns about unusually high water and pointed to infrequent outfall maintenance as the cause.

The developed condition of the Bellevue shoreline, coupled with the factors noted above, has resulted in a lake level that has not changed "naturally" as required by the definition above. The recommended amendments maintain the certainty of the static elevation that was originally developed for Lake Sammamish in 2004, and identifies specific OHWM elevations for establishing structure setbacks for Lake Washington, Lake Sammamish and Phantom Lake based on a variety of other factors. The recommendation incorporates an elevation of 18.8 NAVD 88 (based on the elevation at the locks) for Lake Washington, 30.6 NAVD 88 (based on original design estimate for the Sammamish Slough dredging) for Lake Sammamish, and 260.7 NAVD 88 (based on public testimony) for Phantom Lake. The Commission included an option for use of a qualified professional as an alternative for deviating from the prescribed elevations and requires the use of such professionals for any work occurring at or below the OHWM. *Planning Commission Transmittal pages 5-6.*

<u>Current Regulations regarding Determination of Ordinary High Water Mark (OHWM)</u>:
The original Bellevue Shoreline Master Program used a "fixed" or "static" elevation of 27 feet to determine where shoreline rules apply (shoreline jurisdiction) and how far structures must be set back from Lake Sammamish (structure setback). In 1989, the Department of Ecology required the City to revise the LUC to establish shoreline jurisdiction in relationship to the OHWM as it is defined in the Shoreline Management Act (SMA). As a consequence, the City reference to elevation 27 feet was amended to establish a dynamic OHWM. The dynamic OHWM was then identified as the location from which shoreline jurisdiction and structure setbacks would be measured.

In 2003, the Council received a formal letter from Rosemont Beach Homeowners Association requesting a land use code amendment to reinstate a fixed reference elevation for the purpose of establishing structure setbacks from Lake Sammamish. The rationale for this request was that the dynamic line established under the current regulation did not provide homeowners with the certainty necessary to undertake remodeling or new construction on the shoreline of Lake Sammamish. In 2004, the City conducted a statistically valid study to identify an elevation that would most approximate the actual OHWM on any given site along the shoreline. A total of 27 properties were randomly selected for the study sample. The results of that study recommended an elevation of 31.76 (or 31.8) NAVD 88.

The static elevation was codified into the Land Use Code as part of the Critical Areas Update to require the shoreline critical area buffer on Lake Sammamish to be measured from elevation 31.8 NAVD 88. The shoreline critical area buffer on Lake Washington and Phantom Lake continue to be measured from the dynamic ordinary high water mark. The location of structures, like bulkheads, at or near the OHWM requires a site specific determination. Additionally, the extent of shoreline jurisdiction is based on the dynamic definition.

Major Policy Issues raised regarding Determination of OHWM:

- Establishment of OHWM that recognizes changing water level conditions over time
- Providing certainty regarding determination of OHWM for shoreline property owners
- Compliance with the state law definition of OHWM to ensure that development does not occur in the water or within the shoreline setback
- Adoption of fixed elevations that approximate the location of OHWM.

Refer to Attachment B for the enunciated state policy support for shoreline management. Refer to Attachment E for supporting documentation provided to inform the City Council conversation regarding the approach to the regulation of shoreline recreation uses.

4. Nonconforming Residential Development

Jurisdictions are permitted to develop nonconforming use development standards and supplant state rules to address local circumstances. Refer to Attachment F for applicable laws and guidelines regarding residential conformities.

Planning Commission Recommendation on Residential Nonconformities:

Consistent with RCW 90.58.620, adopted in 2011, the Commission recommended approach limits the application of nonconforming use provisions in the shoreline residential context. Uses that were lawfully established landward of ordinary high water mark remain lawful even if they could not be permitted as new structures following adoption of the SMP Update. Boathouses and similar overwater structures were restricted to repair and maintenance up to a 50 percent replacement cost threshold only. Reconstructions that exceed the cost threshold are prohibited. *Planning Commission Transmittal page 8.*

Current Regulations regarding Residential Nonconformities:

The shoreline regulations currently contained in the Critical Areas Overlay at LUC 20.25H.115 B.1.b exclude the footprint of a legally established primary structure when it encroaches in a required shoreline critical area buffer or structure setback. Such a primary structure may be expanded into a buffer or setback but only if expansion outside the critical area is not feasible. Expansion outside of the critical area buffer and critical area structure setback is considered

not feasible in limited cases based on the location of the structure's layout and key infrastructure including plumbing, drainage and electrical systems. In such cases, an expansion of up to 500 square feet over the life of the project is authorized as an allowed use. Additional buffer modifications are possible using the 'string test' or using a critical areas report.

Any structure other than a primary structure legally established within a shoreline critical area, critical area buffer, or critical area setback is considered nonconforming. If no modifications are proposed, the nonconforming structure may continue without coming into compliance. Minor remodeling is permitted provided the work is limited to minor, nonstructural repairs; work exceeding these limits shall be brought into compliance. Expansion of accessory structures is not permitted.

Nonstructural development legally established within a critical area or critical area buffer is considered a nonconforming site condition and cannot be changed unless the change conforms to the code.

Major Policy Issues raised regarding nonconforming developments:

- Equitable application of nonconforming use provisions citywide
- Extension of conforming status beyond the primary residence to include accessory structures such as garages and sheds
- Extension of conforming status to all existing development established prior to effective date of the SMP Update
- Extension of conforming status to all development landward of OHWM
- Extension of nonconforming status to boathouses waterward of OHWM
- Value of repairs triggering compliance with updated SMP following accidental destruction or to repair damage.

Refer to Attachment B for the enunciated state policy support for shoreline management. Refer to Attachment F for supporting documentation provided to inform the City Council conversation regarding the approach to the regulation of shoreline residential nonconformities.

ALTERNATIVES

1. Accept Planning Commission recommended Draft SMP Update provisions relating to public access and park development, establishment of ordinary high water mark, and the regulation of residential nonconformities.
2. Direct staff to bring back revisions for Council consideration at a future meeting.

ATTACHMENT

A. Process for Completion of the SMP
B. Enunciated State Shoreline Management Act Goals
C. Public Access Supporting Documentation
D. Park Development Supporting Documentation
E. Ordinary High Water Mark Supporting Documentation
F. Nonconforming Residential Development Supporting Documentation

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)

Public Hearing on Planning Commission Recommended SMP: May 5, 2014

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 and Parks Development
    b. Establishment of Ordinary High Water Mark
    c. Nonconforming Residential Development
    d. Setbacks/Buffers
    e. Vegetation Retention
    f. Critical Areas (incl. fish habitat)
    g. Docks
    h. Shoreline Stabilization
    i. Floodplain (incl. Planning Commission Conformance Amendments)

Public Hearing on Final SMP Update Package: TBD based on progress made during Meetings 4-6

Council Meeting 7: 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)

Chapter 90.58 RCW
SHORELINE MANAGEMENT ACT OF 1971

RCW 90.58.020 Legislative findings — State policy enunciated — Use preference.

The legislature finds that the shorelines of the state are among the most valuable and fragile of its natural resources and that there is great concern throughout the state relating to their utilization, protection, restoration, and preservation. In addition it finds that ever increasing pressures of additional uses are being placed on the shorelines necessitating increased coordination in the management and development of the shorelines of the state. The legislature further finds that much of the shorelines of the state and the uplands adjacent thereto are in private ownership; that unrestricted construction on the privately owned or publicly owned shorelines of the state is not in the best public interest; and therefore, coordinated planning is necessary in order to protect the public interest associated with the shorelines of the state while, at the same time, recognizing and protecting private property rights consistent with the public interest. There is, therefor, a clear and urgent demand for a planned, rational, and concerted effort, jointly performed by federal, state, and local governments, to prevent the inherent harm in an uncoordinated and piecemeal development of the state's shorelines.

It is the policy of the state to provide for the management of the shorelines of the state by planning for and fostering all reasonable and appropriate uses. This policy is designed to insure the development of these shorelines in a manner which, while allowing for limited reduction of rights of the public in the navigable waters, will promote and enhance the public interest. This policy contemplates protecting against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life, while protecting generally public rights of navigation and corollary rights incidental thereto.

The legislature declares that the interest of all of the people shall be paramount in the management of shorelines of statewide significance. The department, in adopting guidelines for shorelines of statewide significance, and local government, in developing master programs for shorelines of statewide significance, shall give preference to uses in the following order of preference which:

(1) Recognize and protect the statewide interest over local interest;

(2) Preserve the natural character of the shoreline;

(3) Result in long term over short term benefit;

(4) Protect the resources and ecology of the shoreline;

(5) Increase public access to publicly owned areas of the shorelines;

(6) Increase recreational opportunities for the public in the shoreline;

(7) Provide for any other element as defined in RCW 90.58.100 deemed appropriate or necessary.

In the implementation of this policy the public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the state shall be preserved to the greatest extent feasible consistent with the overall best interest of the state and the people generally. To this end uses shall be preferred which are consistent with control of pollution and prevention of damage to the natural environment, or are unique to or dependent upon use of the state's shoreline. Alterations of the natural condition of the shorelines of the state, in those limited instances when authorized, shall be given priority for single-family residences and their appurtenant structures, ports, shoreline recreational uses including but not limited to parks, marinas, piers, and other improvements facilitating public access to shorelines of the state, industrial and commercial developments which are particularly dependent on their location on or use of the shorelines of the state and other development that will provide an opportunity for substantial numbers of the people to enjoy the shorelines of the state. Alterations of the natural condition of the shorelines and shorelands of the state shall be recognized by the department. Shorelines and shorelands of the state shall be appropriately classified and these classifications shall be revised when circumstances warrant regardless of whether the change in circumstances occurs through man-made causes or natural causes. Any areas resulting from alterations of the natural condition of the shorelines and shorelands of the state no longer meeting the definition of "shorelines of the state" shall not be subject to the provisions of chapter 90.58 RCW.

Permitted uses in the shorelines of the state shall be designed and conducted in a manner to minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline area and any interference with the public's use of the water.

[1995 c 347 § 301; 1992 c 105 § 1; 1982 1st ex.s. c 13 § 1; 1971 ex.s. c 286 § 2.]

PUBLIC ACCESS - SUPPORTING INFORMATION

STATE LAW AND GUIDELINES

Applicable Shoreline Management Act Provisions
RCW 90.58.100 (2) — Program contents.

. . . .

(2) The master programs shall include, when appropriate, the following:

. . . .

(b) A public access element making provision for public access to publicly owned areas;

Shoreline Master Program Update Guidelines
WAC 173-26-221
General master program provisions.

The provisions of this section shall be applied either generally to all shoreline areas or to shoreline areas that meet the specified criteria of the provision without regard to environment designation. These provisions address certain elements as required by RCW 90.58.100(2) and implement the principles as established in WAC 173-26-186.

. . .

(4) Public access.

(a) Applicability. Public access includes the ability of the general public to reach, touch, and enjoy the water's edge, to travel on the waters of the state, and to view the water and the shoreline from adjacent locations. Public access provisions below apply to all shorelines of the state unless stated otherwise.

(b) Principles. Local master programs shall:

(i) Promote and enhance the public interest with regard to rights to access waters held in public trust by the state while protecting private property rights and public safety.

(ii) Protect the rights of navigation and space necessary for water-dependent uses.

(iii) To the greatest extent feasible consistent with the overall best interest of the state and the people generally, protect the public's opportunity to enjoy the physical and aesthetic qualities of shorelines of the state, including views of the water.

(iv) Regulate the design, construction, and operation of permitted uses in the shorelines of the state to minimize, insofar as practical, interference with the public's use of the water.

(c) Planning process to address public access. Local governments should plan for an integrated shoreline area public access system that identifies specific public needs and opportunities to provide public access. Such a system can often be more effective and economical than applying uniform public access requirements to all development. This planning should be integrated with other relevant comprehensive plan elements, especially transportation and recreation. The planning process shall also comply with all relevant constitutional and other legal limitations that protect private property rights.

Where a port district or other public entity has incorporated public access planning into its master plan through an open public process, that plan may serve as a portion of the local government's public access planning, provided it meets the provisions of this chapter. The planning may also justify more flexible offsite or special area public access provisions in the master program. Public participation requirements in WAC 173-26-201 (3)(b)(i) apply to public access planning.

At a minimum, the public access planning should result in public access requirements for shoreline permits, recommended projects, port master plans, and/or actions to be taken to develop public shoreline access to shorelines on public property. The planning should identify a variety of shoreline access opportunities and circulation for pedestrians (including disabled persons), bicycles, and vehicles between shoreline access points, consistent with other comprehensive plan elements.

(d) Standards. Shoreline master programs should implement the following standards:

(i) Based on the public access planning described in (c) of this subsection, establish policies and regulations that protect and enhance both physical and visual public access. The master program shall address public access on public lands. The master program should seek to increase the amount and diversity of public access to the state's shorelines consistent with the natural shoreline character, property rights, public rights under the Public Trust Doctrine, and public safety.

(ii) Require that shoreline development by public entities, including local governments, port districts, state agencies, and public utility districts, include public access measures as part of each development project, unless such access is shown to be incompatible due to reasons of safety, security, or impact to the shoreline environment. Where public access planning as described in WAC 173-26-221 (4)(c) demonstrates that a more effective public access system can be achieved through alternate means, such as focusing public access at the most desirable locations, local governments may institute master program provisions for public access based on that approach in lieu of uniform site-by-site public access requirements.

(iii) Provide standards for the dedication and improvement of public access in developments for water-enjoyment, water-related, and nonwater-dependent uses and for the subdivision of land into more than four parcels. In these cases, public access should be required except:

(A) Where the local government provides more effective public access through a public access planning process described in WAC 173-26-221 (4)(c).

(B) Where it is demonstrated to be infeasible due to reasons of incompatible uses, safety, security, or impact to the shoreline environment or due to constitutional or other legal limitations that may be applicable.

In determining the infeasibility, undesirability, or incompatibility of public access in a given situation, local governments shall consider alternate methods of providing public access, such as offsite improvements, viewing platforms, separation of uses through site planning and design, and restricting hours of public access.

(C) For individual single-family residences not part of a development planned for more than four parcels.

(iv) Adopt provisions, such as maximum height limits, setbacks, and view corridors, to minimize the impacts to existing views from public property or substantial numbers of residences. Where there is an irreconcilable conflict between water-dependent shoreline uses or physical public access and maintenance of views from adjacent properties, the water-dependent uses and physical public access shall have priority, unless there is a compelling reason to the contrary.

(v) Assure that public access improvements do not result in a net loss of shoreline ecological functions.

WAC 173-26-241
Shoreline uses.

(1) Applicability. The provisions in this section apply to specific common uses and types of development to the extent they occur within shoreline jurisdiction. Master programs should include these, where applicable, and should include specific use provisions for other common uses and types of development in the jurisdiction. All uses and development must be consistent with the provisions of the environment designation in which they are located and the general regulations of the master program.

. . . .

(3) Standards. Master programs shall establish a comprehensive program of use regulations for shorelines and shall incorporate provisions for specific uses consistent with the following as necessary to assure consistency with the policy of the act and where relevant within the jurisdiction.

. . . .

(c) Boating facilities. For the purposes of this chapter, "boating facilities" excludes docks serving four or fewer single-family residences. Shoreline master programs shall contain provisions to assure no net loss of ecological functions as a result of development of boating facilities while providing the boating public recreational opportunities on waters of the state.

Where applicable, shoreline master programs should, at a minimum, contain:

. . . .

(iv) Provisions for public access in new marinas, particularly where water-enjoyment uses are associated with the marina, in accordance with WAC 173-26-221(4).

(d) **Commercial development.** Master programs shall first give preference to water-dependent commercial uses over nonwater-dependent commercial uses; and second, give preference to water-related and water-enjoyment commercial uses over nonwater-oriented commercial uses.

The design, layout and operation of certain commercial uses directly affects their classification with regard to whether or not they qualify as water-related or water-enjoyment uses. Master programs shall assure that commercial uses that may be authorized as water-related or water-enjoyment uses are required to incorporate appropriate design and operational elements so that they meet the definition of water-related or water-enjoyment uses.

Master programs should require that public access and ecological restoration be considered as potential mitigation of impacts to shoreline resources and values for all water-related or water-dependent commercial development unless such improvements are demonstrated to be infeasible or inappropriate. Where commercial use is proposed for location on land in public ownership, public access should be required. Refer to WAC 173-26-221(4) for public access provisions.

Master programs should prohibit nonwater-oriented commercial uses on the shoreline unless they meet the following criteria:

(i) The use is part of a mixed-use project that includes water-dependent uses and provides a significant public benefit with respect to the Shoreline Management Act's objectives such as providing public access and ecological restoration; or

(ii) Navigability is severely limited at the proposed site; and the commercial use provides a significant public benefit with respect to the Shoreline Management Act's objectives such as providing public access and ecological restoration.

In areas designated for commercial use, nonwater-oriented commercial development may be allowed if the site is physically separated from the shoreline by another property or public right of way.

Nonwater-dependent commercial uses should not be allowed over water except in existing structures or in the limited instances where they are auxiliary to and necessary in support of water-dependent uses.

Master programs shall assure that commercial development will not result in a net loss of shoreline ecological functions or have significant adverse impact to other shoreline uses, resources and values provided for in RCW 90.58.020 such as navigation, recreation and public access.

. . . .

(i) **Recreational development.** Recreational development includes commercial and public facilities designed and used to provide recreational opportunities to the public. Master programs should assure that shoreline recreational development is given priority and is primarily related to access to, enjoyment and use of the water and shorelines of the state. Commercial recreational development should be consistent with the provisions for commercial development in (d) of this subsection. Provisions related to public recreational development shall assure that the facilities are located, designed and operated in a manner consistent with the purpose of the environment designation in which they are located and such that no net loss of shoreline ecological functions or ecosystem-wide processes results.

In accordance with RCW 90.58.100(4), master program provisions shall reflect that state-owned shorelines are particularly adapted to providing wilderness beaches, ecological study areas, and other recreational uses for the public and give appropriate special consideration to the same.

For all jurisdictions planning under the Growth Management Act, master program recreation policies shall be consistent with growth projections and level-of-service standards established by the applicable comprehensive plan.

RANGE OF OPTIONS CONSIDERED BY THE PLANNING COMMISSION

No Public Access Requirements	* Public Access required for all public uses	Public Access required for all public and recreation uses	Public Access required for subdivisions (in addition to public and recreation uses)
No zoning requirement: Public access not required as a component of any identified use (existing regulations)	Zoning requirements: Public access is a required component of every public use in shoreline jurisdiction	Zoning requirements: Public access is a required component of every public use and private recreation use in shoreline jurisdiction	Zoning requirements: Public access is a required component of plats in addition to being required as a component of every public use and private recreation use in shoreline jurisdiction
Shoreline modifications that are generally prohibited (such as jetties, groins, weirs and fill), may be permitted with mitigation when necessary to accommodate public access	Applicability: transportation, utility and park projects Not applicable to residential uses or private marinas, yacht clubs and community clubs	Applicability: transportation, utility and park projects and private marinas, yacht clubs and community clubs Not applicable to residential uses	Applicability: plats in addition to transportation, utility and park projects and private marinas, yacht clubs and community clubs
	When Required: new development, reconstruction, replacement or expansion is proposed	When Required: new development, reconstruction, replacement or expansion is proposed	When Required: creation of more than 4 new lots through a plat action in addition to new development, reconstruction, replacement or expansion proposed for a transportation, utility and park project and private marinas, yacht clubs and community clubs

No Public Access Requirements	* Public Access required for all public uses	Public Access required for all public and recreation uses	Public Access required for subdivisions (in addition to public and recreation uses)
	What is Required: physical access unless use is buried, or public access not feasible	What is Required: physical access unless use is buried, or public access not feasible	What is Required: physical access unless use is buried, or public access not feasible
	Alternatives to Requirement: Visual access is acceptable when physical access poses safety hazard, security issue, disproportionate cost or impacts that cannot be mitigated	Alternatives to Requirement: Visual access acceptable when physical access poses safety hazard, security issue, disproportionate cost or impacts that cannot be mitigated	Alternatives to Requirement: Visual access acceptable when physical access poses safety hazard, security issue, disproportionate cost or impacts that cannot be mitigated

*Option recommended by the Planning Commission in the SMP Update

CONCERNS RAISED BY STAKEHOLDERS DURING PLANNING COMMISSION REVIEW

Act does not authorize or require public access exactions on private projects i.e. on private property. The Act at RCW 90.58.020 states: "Increase public access to publicly owned areas of the shorelines." State law, the State SMA, imposes public access requirements only on public property, not on private property. Imposing public access requirements on private property is a taking or otherwise an interference with property rights. *Washington Sensible Shoreline Association comments on Public Hearing Draft; May 2011*

Public access and recreation required where feasible and ecological impacts are mitigated. WAC 173-26-211(5)(e)(ii)(C). The referenced provision provides a universal exception for "Public Access" related to "residential development." The SMP-Guidelines (WAC 173-26-221(4)) require local governments to develop standards for the dedication and improvement of Public Access associated with water-enjoyment, water-related, non-water oriented development and the subdivision of land into four or more new lots. Local governments are allowed to propose a more effective public access plan as well as the authority to identify scenarios where public access would not be required based on a demonstration of infeasibility due to safety, security or impact to the shoreline environment. Required Change: The City should either amend

the referenced provision (consistent with the SMP-Guidelines) or provide a demonstration clarifying how the proposed section of the SMP is consistent with applicable SMP-Guideline requirements. *Department of Ecology comments 3/2013*

The SMP should support the City's long-standing policy of increasing public access to the shoreline and preserving open space. The SMP should recognize that parks use a small percentage of Bellevue's overall shoreline to serve all Bellevue residents. To accommodate demand, intense use of the shoreline is often necessary. The SMP should allow a balance of public access, ecological restoration and historic and cultural preservation and restrict uses in shoreline and wetland parks that do not advance these interests. *Parks and Community Services Board; Planning Commission Transmittal Notebook; Attachment 8, May 2011.*

The changes in this section are substantial without linking those requirements to land-use triggers, similar to other development regulations. It is not feasible to require new public access just because a pump was changed out in a pump station. Previous requirements were based on a 20% expansion of the facility. Also, many utilities projects are constructed on private lands through easement agreements. Seeking or modifying easements on private lands to include this public access requirement is not likely to be successful. Also, facilities located within the lake, such as the sewer lake lines, should not have public access requirements. The exception for "fully buried" may not completely address this concern. *Environmental Services Commission; Planning Commission Transmittal Notebook; Attachment 7, September 2012.*

CURRENT AND RECOMMENDED POLICIES AND REGULATIONS

Current Policy Framework	Draft SMP Policy Framework
Shoreline Management Program Element **Goal 4.** To increase public, physical, and visual access to and along the city's shoreline areas.	**Goal 3.** To protect the public's opportunity to enjoy optimal access to the physical and aesthetic qualities of the shoreline consistent with the overall best interest of the city and the state.
POLICY SH-3. Give priority to uses and activities which improve or are compatible with the natural amenities of the shorelines, provide public access, or depend on a shoreline location.	**Policy SH-2.** Prohibit new over-water uses and development except for water-dependent uses, piers and docks accessory to single-family residences, public access, or ecological restoration.

Current Policy Framework	Draft SMP Policy Framework
POLICY SH-20. Evaluate the needs and opportunities for additional public access in public-owned shoreline areas.	**Policy SH-7**. Implement public access and public recreation objectives whenever feasible, and permit new water-oriented public park development subject to performance standards.
POLICY SH-21. Encourage acquisition and development of public access to the shorelines.	**Policy SH-17**. Provide public access consistent with the existing character of the shoreline.
POLICY SH-22. Improve the existing public access facilities owned by the city. *Discussion: Bellevue's existing public access facilities periodically need renovations and repairs due to age and wear from use and the water environment. To keep these public access areas viable and safe, the city should encourage renovations according to the Park Department's Renovation Plan.*	**Policy SH-37**. Increase public accessibility to the shoreline by giving priority to uses and activities that increase the ability of the general public to reach, touch, and enjoy the water's edge, to travel on waters of the state, and to view the water and the shoreline from nearby locations.
POLICY SH-23. Emphasize public access with foot, bicycle, and handicap paths to and along the water's edge. *Discussion: Access points to and along the shoreline should be linked by pedestrian and bicycle pathways developed as close as possible to the water's edge without disruption to slopes or in environmentally sensitive areas.*	**Policy SH-38**. Acquire, where feasible, additional public access to shorelines. Develop, enhance, and maintain existing public access from existing street right-of-way, including street ends and undeveloped rights-of-way, abutting or near shorelines.
POLICY SH-24. Develop, enhance, and maintain right-of-ways and street ends on the shorelines for public access.	**Policy SH-39**. Locate, design and maintain public access to and along the water in a manner that protects and improves shoreline ecological functions and is consistent with public safety and compatible with water dependent uses.

Current Policy Framework	Draft SMP Policy Framework
POLICY SH-25. Provisions of public access should be consistent with public safety, private property rights, and protection of environmentally sensitive areas. *Discussion: All public access should be clearly defined and be separated from private property. Where separation is necessary, it may be achieved through use of walls, fences, or landscape planting.*	**Policy SH-54**. Provide appropriate public engagement processes when developing and managing public shorelines, including city parks, to achieve a balance of public access to the water, public recreation, and protection and enhancement of ecological functions.
POLICY SH-26. Encourage public access to and along the water's edge for all development excluding individual single-family lots.	**Policy SH-55**. Protect the aesthetic qualities of the shoreline and abutting neighborhoods through implementation of performance standards, architectural design guidelines for water-oriented commercial uses, vegetation conservation, and appropriate standards for public access.
POLICY SH-27. Preserve and enhance views of shoreline and water from public areas. *Discussion: Enhancement of views shall not be construed to mean excessive removal of vegetation or disturbance in environmentally sensitive areas*	**Policy SH-70**. Maximize opportunities to improve existing shoreline functions and utilize the latest technological innovations when designing and building new transportation facilities within the shoreline. Site transportation facilities to avoid, minimize, or mitigate impacts to existing land uses, public shoreline views, public access, shoreline critical areas, and lands designated as shoreline aquatic.
	Policy SH-89. Limit fill waterward of the ordinary high water mark to that necessary to support environmental restoration and mitigation, public access, and water-dependent uses located on the shoreline where no feasible alternative exists.

Current Policy Framework	Draft SMP Policy Framework
	Policy SH-90. Allow piers, docks, and floats only for residential or water-dependent uses such as access to pleasure craft, emergency vessels, recreation, commercial uses, and public access.
	Policy SH-97. Restrict new docks and piers in Mercer Slough to those that provide public access and launching of human-powered watercraft.
	Policy SH-102. Expand acquisition of shoreline areas that are sensitive to urbanization, represent valuable natural and aesthetic resources to the community, or provide the functions that benefit Bellevue's shoreline jurisdiction.
Current Regulatory Approach	**Draft SMP Regulatory Approach**
General Regulations Applicable to All Land Use Districts and Activities - LUC 20.25E.080.B 6. The Bellevue Shoreline Master Program, in conjunction with existing Bellevue land use ordinances and Comprehensive Plan policies, shall guide all land use decisions in the Shoreline Overlay District. Example: **POLICY SH-26.** Encourage public access to and along the water's edge for all development excluding individual single-family lots.	Development Regulations for Public Access – LUC 20.25E.060.I (Shoreline Master Program Overlay) Recreation Use Regulations – LUC 20.25E.070.C (Shoreline Master Program Overlay) Transportation Use Regulations – LUC 20.25E.070.D (Shoreline Master Program Overlay) Utilities Use Regulations – LUC 20.25E.070.E (Shoreline Master Program Overlay)

PARK DEVELOPMENT - SUPPORTING INFORMATION

STATE LAW AND GUIDELINES

Applicable Shoreline Management Act Provisions
RCW 90.58.100 (2) — Program contents.

. . . .

(2) The master programs shall include, when appropriate, the following:

. . . .

(c) A recreational element for the preservation and enlargement of recreational opportunities, including but not limited to parks, tidelands, beaches, and recreational areas;

Shoreline Master Program Update Guidelines
WAC 173-26-241
Shoreline uses.

(i) **Recreational development.** Recreational development includes commercial and public facilities designed and used to provide recreational opportunities to the public. Master programs should assure that shoreline recreational development is given priority and is primarily related to access to, enjoyment and use of the water and shorelines of the state. Commercial recreational development should be consistent with the provisions for commercial development in (d) of this subsection. Provisions related to public recreational development shall assure that the facilities are located, designed and operated in a manner consistent with the purpose of the environment designation in which they are located and such that no net loss of shoreline ecological functions or ecosystem-wide processes results.

In accordance with RCW 90.58.100(4), master program provisions shall reflect that state-owned shorelines are particularly adapted to providing wilderness beaches, ecological study areas, and other recreational uses for the public and give appropriate special consideration to the same.

For all jurisdictions planning under the Growth Management Act, master program recreation policies shall be consistent with growth projections and level-of-service standards established by the applicable comprehensive plan.

ATTACHMENT D

RANGE OF OPTIONS CONSIDERED BY THE PLANNING COMMISSION

Shoreline Conditional Use/ SSDP	General Conditional Use/SSDP *Required for Meydenbauer Bay Park	*Council-Adopted Master Plan/SSDP
Beach parks on Lake Washington, Lake Sammamish, Phantom Lake and Larson Lake require a Shoreline CUP (existing regulations)	Beach Parks on Lake Washington, Lake Sammamish, Phantom Lake and Larson Lake require a General Conditional Use Permit	Beach park identified in a Council-adopted Master Plan is permitted through a Shoreline Substantial Development Permit (framework used for Light Rail Permit process)
Beach park with area located inside shoreline jurisdiction and outside shoreline jurisdiction would also be required to obtain a general CUP for the upland portion of the site	Beach park development governed by a single General CUP applicable to shoreline and upland areas	Beach park planning governed by the Council-adopted master plan, and mitigation associated with shoreline development approved through a Shoreline Substantial Development Permit
Shoreline CUP includes: -Public notice of application -Recommendation by the DSD director -Public hearing and decision by the Hearing Examiner -Opportunity for appeal to City Council (Process I Decision)	General CUP includes: -Public notice of application -Recommendation by the DSD director -Public hearing and decision by the Hearing Examiner -Opportunity for appeal to City Council (Process I Decision)	Council-adopted master plan would include public outreach.
Shoreline CUPs are required to go to Ecology for final approval after the City has rendered a final Process I decision (Process I Decision)	SSDP required, City approves. No affirmative Ecology approval required (Process II Administrative Decision)	SSDP includes: -Public notice of application -Public meeting (optional) -Decision by the DSD director -Opportunity for appeal to Shoreline Hearings Board (Process II Decision)

*Option recommended by the Planning Commission in the SMP Update

CONCERNS RAISED BY STAKEHOLDERS DURING PLANNING COMMISSION REVIEW

The SMP should recognize that parks use a small percentage of Bellevue's overall shoreline to serve all Bellevue residents. To accommodate demand, intense use of the shoreline is often necessary. The SMP should allow a balance of public access, ecological restoration and historic and cultural preservation and restrict uses in shoreline and wetland parks that do not advance these interests. The SMP should allow a balance of public access, ecological restoration and historic and cultural preservation and restrict uses in shoreline and wetland parks that do not advance these interests. *Parks and Community Services Board; Planning Commission Transmittal Notebook; Attachment 8, September 2012.*

The Board understands that there has been interest in the Meydenbauer Bay Park and Land Use Plan and its relationship to the Shoreline Master Program. The Parks & Community Services Board strongly supports the Council's adopted master plan. Several documents are attached to provide the Commission with information specific to this plan. It is worth noting that the City has invested over $1.5 million supporting the public outreach and planning that resulted in the park and land use plan. The plan's Implementation Principles ensure that public outreach will continue in the future under the full oversight and control of the City Council. *Parks and Community Services Board; Planning Commission Transmittal Notebook; Attachment 8, March 2012.*

CURRENT AND RECOMMENDED POLICIES AND REGULATIONS

Current Policy Framework	Draft SMP Policy Framework
Shoreline Management Program Element **Goal 4.** To increase public, physical, and visual access to and along the city's shoreline areas.	**Goal 4.** To increase and encourage water-enjoyment recreation for the public on the city's shorelines when appropriate and consistent with the public interest.
POLICY SH-28. Increase and give high priority to a variety of recreational activities along the shoreline where appropriate and consistent with Environmental Element policies. *Discussion: Recreational activities include public parks, recreational fishing, boating, and public swimming areas. Nonmotorized boating shall be permitted on Larsen and Phantom Lakes.*	**Policy SH-7.** Implement public access and public recreation objectives whenever feasible, and permit new water-oriented public park development subject to performance standards.

Current Policy Framework	Draft SMP Policy Framework
POLICY SH-29. Encourage opportunities for passive forms of recreation and open space. *Discussion: Passive forms of recreation, for example, include walking, sitting, viewing, and other nonstructured activities with minimal facilities.*	**Policy SH-37.** Increase public accessibility to the shoreline by giving priority to uses and activities that increase the ability of the general public to reach, touch, and enjoy the water's edge, to travel on waters of the state, and to view the water and the shoreline from nearby locations.
POLICY SH-30. Encourage commercial shoreline uses to incorporate recreational activities into their shoreline area.	**Policy SH-53**. Restrict recreational development to water-oriented uses. Allow limited non-water-oriented recreation and commercial uses in support of a water-oriented recreation.
POLICY SH-31. Work with other appropriate government agencies and jurisdictions to expand recreational opportunities through acquisition programs, development, and maintenance of shoreline areas.	**Policy SH-54.** Provide appropriate public engagement processes when developing and managing public shorelines, including city parks, to achieve a balance of public access to the water, public recreation, and protection and enhancement of ecological functions.
POLICY SH-32. Lake Washington: Provide regional launch facilities which recognize the boating demand in Bellevue and the carrying capacity of city infrastructure to support the boat launch.	**Policy SH-55**. Protect the aesthetic qualities of the shoreline and abutting neighborhoods through implementation of performance standards, architectural design guidelines for water-oriented commercial uses, vegetation conservation, and appropriate standards for public access.
POLICY SH-33. Separate boat launching from swimming areas wherever possible, to prevent accidents and contamination of swimming areas.	**Policy SH-56**. Locate new recreation facilities at sites with suitable environmental conditions, shoreline configuration, and access while ensuring compatibility with other in-water recreational activities and neighboring upland uses.

Current Policy Framework	Draft SMP Policy Framework
POLICY SH-34. Lake Washington: Encourage private marinas to provide public small boat launching facilities.	**Policy SH-57**. Encourage recreation facilities to provide non-motorized boat launching facilities.
POLICY SH-35. Provide facilities for launching small nonmotorized boats separate from other launching facilities.	**Policy SH-97.** Restrict new docks and piers in Mercer Slough to those that provide public access and launching of human-powered watercraft.
Current Regulatory Approach	**Draft SMP Regulatory Approach**
Permit process for City Park Use – LUC 20.10.440 (Recreation Charts – Note 10)	Special Provisions for Meydenbauer Bay Park: Shoreline Use Charts - LUC 20.25E.030 (Shoreline Overlay District) • Residential Chart - Note 7 • Transportation and Utilities Chart - Note 12 • Wholesale and Retail Chart - Note 3 • Services Chart – Note 4 • Recreation Chart – Note 3 • Resources Chart – Note 3
Uses and Development Allowed in Critical Areas: New or expanded city and public parks – LUC 20.25H.055.B (Critical Areas Overlay)	City Park Use – Permit Review Framework: Shoreline Use Charts - LUC 20.25E.030 (Shoreline Overlay District) • Recreation Chart – Note 2
New or expanded city and public parks: Performance Criteria - LUC 20.25H.055.C.3.g (Critical Areas Overlay)	Specific Use Regulations: Recreation – LUC 20.25E.070.C (Shoreline Overlay District)
Recreation Activities Regulations – LUC 20.25E.080.P (Shoreline Overlay District)	

ATTACHMENT E

ORDINARY HIGH WATER MARK - SUPPORTING INFORMATION

STATE LAW AND GUIDELINES

RCW 90.58.030
Definitions and concepts.

. . . .

(2) Geographical:

. . . .

(c) "Ordinary high water mark" on all lakes, streams, and tidal water is that mark that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation as that condition exists on June 1, 1971, as it may naturally change thereafter, or as it may change thereafter in accordance with permits issued by a local government or the department: PROVIDED, That in any area where the ordinary high water mark cannot be found, the ordinary high water mark adjoining salt water shall be the line of mean higher high tide and the ordinary high water mark adjoining freshwater shall be the line of mean high water;

RANGE OF OPTIONS CONSIDERED BY THE PLANNING COMMISSION

Individualized Assessment	Static Elevation based on a Lake Study/ Individualized Assessment	* Static Elevation based on Public Testimony
Approach established in 1989	Approach established in 2004, and codified in the Critical Areas Overlay in 2006 (existing regulations)	Approach recommended by Planning Commission based on public testimony received during SMP Update process
Ordinary high water mark required to be determined on a site by site basis where development within shoreline jurisdiction is proposed	Static elevation was adopted for measurement of shoreline setback on Lake Sammamish in response to request by Rosemont Beach residents	Static elevations adopted for Lake Washington, Lake Sammamish and Phantom Lake

Determination required to be made by a qualified professional pursuant to definition contained in the Shoreline Management Act	Static elevation of 31.76 (or 31.8) NAVD 88 for Lake Sammamish is based on a statistically valid study to identify an elevation that approximates OHWM	Lake Washington elevation for shoreline in Bellevue established at 18.8 NAVD 88 based on the elevation at the Hiram Chittenden locks
	Static elevation provides safe harbor, with opportunity for property owners to obtain site specific determination by qualified professional	Lake Sammamish elevation for shoreline in Bellevue established at 30.6 NAVD 88 based on original design estimate for the Sammamish Slough dredging
	No lake studies conducted to support static elevation on Lake Washington or Phantom Lake	Phantom Lake elevation established at 260.7 NAVD 88 based on public testimony

*Option recommended by the Planning Commission in the SMP Update

CONCERNS RAISED BY STAKEHOLDERS DURING PLANNING COMMISSION REVIEW

The OHWM is a critical datum and must be considered in relation to water level control. Water elevation and consequential flood potential not only affect shoreline development but insurance and property values as well. The SMP must follow State law, which defines OHWM based on the vegetation line, or mean high water if no vegetation line exists, as that condition existed on June 1, 1971 —as it may naturally change thereafter. That means artificially caused changes do not affect the OHWM. Unfortunately, government agencies are failing to properly control lake water levels on Lake Sammamish and Phantom Lake causing artificially high lake levels and that can result in improper OHWM determinations. It must be recognized that a change of a foot in lake level causes a shift of the water line by a dozen feet or more on many gently sloping properties. Lake Sammamish and Phantom Lake should be treated similar to Lake Washington with respect to water level control. Lake Sammamish and Phantom Lake both have outlet control structures that WSSA has demonstrated are not being properly maintained. The most serious implication of WSSA's studies of lake water levels it the potential for flooding and loss of property. Water levels on these lakes MUST be managed more actively and effectively to ensure minimal flood potential like Lake Washington where the locks accomplish this control. Recognize that the United States has firmly established 30.56 NAVD88 as the historic OHWM for Lake Sammamish, and property owners should be able to use that line as the "mean high

water line" according to State law. Similarly, property owners on Phantom Lake should be able to use 260.2' NAVD88 as the historic mean high water level. *Washington Sensible Shorelines Association; Notebook Tab 3, March 2011.*

Phantom Lake Levels. Available lake level data show that lake levels frequently exceed 260.7 NAVD 88. Since 1972, for the years with lake elevation data, in 29 of the 29 years for which we have data, there have been higher levels than 260.7 NAVD 88 elevations. Therefore, the elevation should not be construed as a maximum high water level for Phantom Lake. *Environmental Services Commission; Planning Commission Transmittal Notebook; Attachment 7, September 2012.*

Use of a "fixed elevation" is a "significant Issue" for which Ecology will continue to work with the City to develop an appropriate standard (consistent with the SMA and SMP-Guidelines) for the updated SMP. *Department of Ecology; 3/2013* Refer to the end of this Attachment E for historical communications between the City of Bellevue and Department of Ecology on this topic.

CURRENT AND RECOMMENDED POLICIES AND REGULATIONS

Current Policy Framework	Draft SMP Policy Framework
POLICY EN-38. Restore and protect the biological health and diversity of the Lake Washington and Lake Sammamish watersheds in Bellevue's jurisdiction.	Goal 2. To protect, preserve, and enhance the ecology, environment, and amenities of the city's shorelines for use and enjoyment of present and future generations by limiting, insofar as practical, any resultant damage to the ecology and environment of the shoreline area.
POLICY EN-39. Restrict the runoff rate, volume, and quality to predevelopment levels for all new development and redevelopment.	**SH-19.** Recognize and protect private property rights consistent with the public interest.
	SH-20. Ensure that all proposed shoreline development will protect the public's health, safety, and welfare by providing regulations appropriate to the shoreline jurisdiction and consistent with the underlying land use district, land use code and comprehensive plan. Standards should include setbacks, building heights, lot coverage, impervious surface, and other regulatory controls essential to guide future

	growth and development within the shoreline jurisdiction.
	SH-22. Preserve and enhance the character and aesthetic quality of the shoreline while allowing for appropriate development to meet the needs of the City and its residents.
Current Regulatory Approach	**Draft SMP Regulatory Approach**
Designation of Shoreline Critical Area Buffers – LUC 20.25H.115.B (Critical Areas Overlay)	Shoreline Overlay Jurisdiction – LUC 20.25E.010.C.2 (Shoreline Overlay District)
	Measurement of Shoreline Structure Setback – LUC 20.25E.050.B.2 (Shoreline Overlay District)
	Measurement of Residential Structure Setback – LUC 20.25E.065.E.1.b (Shoreline Overlay District)

STATE OF WASHINGTON

DEPARTMENT OF ECOLOGY

Northwest Regional Office • 3190 160th Avenue SE • Bellevue, Washington 98008-5452 • (425) 649-7000

October 6, 2009

Carol V. Helland
Land Use Director
City of Bellevue
Development Services Department
PO Box 90012
Bellevue, WA 98009-9012

RE: Lake Sammamish OHWM

Dear Ms. Helland:

Thank you for your email dated September 14, 2009 in which you ask Ecology to restate its position on the matter of using fixed elevation datums for measuring shoreline jurisdiction on Lake Sammamish.

The short answer is that Ecology's position and guidance on the matter has not changed as the statute has not changed.

As you are aware, the Shoreline Management Act defines the ordinary high water mark (OHWM) as

> *"that mark that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation..."* [RCW 90.58.030(2)(b) and WAC 173-22-030(6)].

The OHWM is not a static line or level, and may change over time due to natural events or as a result of permitted actions. The mark is determined on a case by case basis, and is based on a combination of soil, vegetation and hydrologic indicators. The indicators may vary depending on the shoreline environment (lake, stream, marine).

It is rare that indicators cannot be found for a site. For that reason Ecology rarely defaults to mean higher high water (marine) or mean high water (lakes) as allowed in the statute.

We agree that making individual OHWM determinations on relatively uniform shoreline environments like Lake Sammamish can be time consuming and expensive for all involved. For that reason we support the City's reliance on its 2004 study to administer the Shoreline Management Act, particularly with respect to measuring setbacks from the shoreline. Due to conditions that may change on the lake over time, we continue to recommend that OHWM for new bulkheads be confirmed in the field.

I have attached the hydrograph of Lake Sammamish, using the USGS gage data from October 1995 through early July 2009. You will notice that the Corps of Engineers 27-foot datum for OHWM goes under water in at least a foot of water for several weeks to a month every winter. You will also note that the lake is trending higher, at a very slight rate, based on the dates above.

Incidentally, the City of Issaquah is using the Bellevue study for measuring setbacks and evaluating bulkhead projects. Peter Rosen recently mentioned that a creosote bulkhead replacement project in the City did not trigger Corps of Engineer review as it was using an OHWM above the 27-foot elevation used by the Corps. He felt that provided an incentive to landowners interested in rebuilding their shoreline.

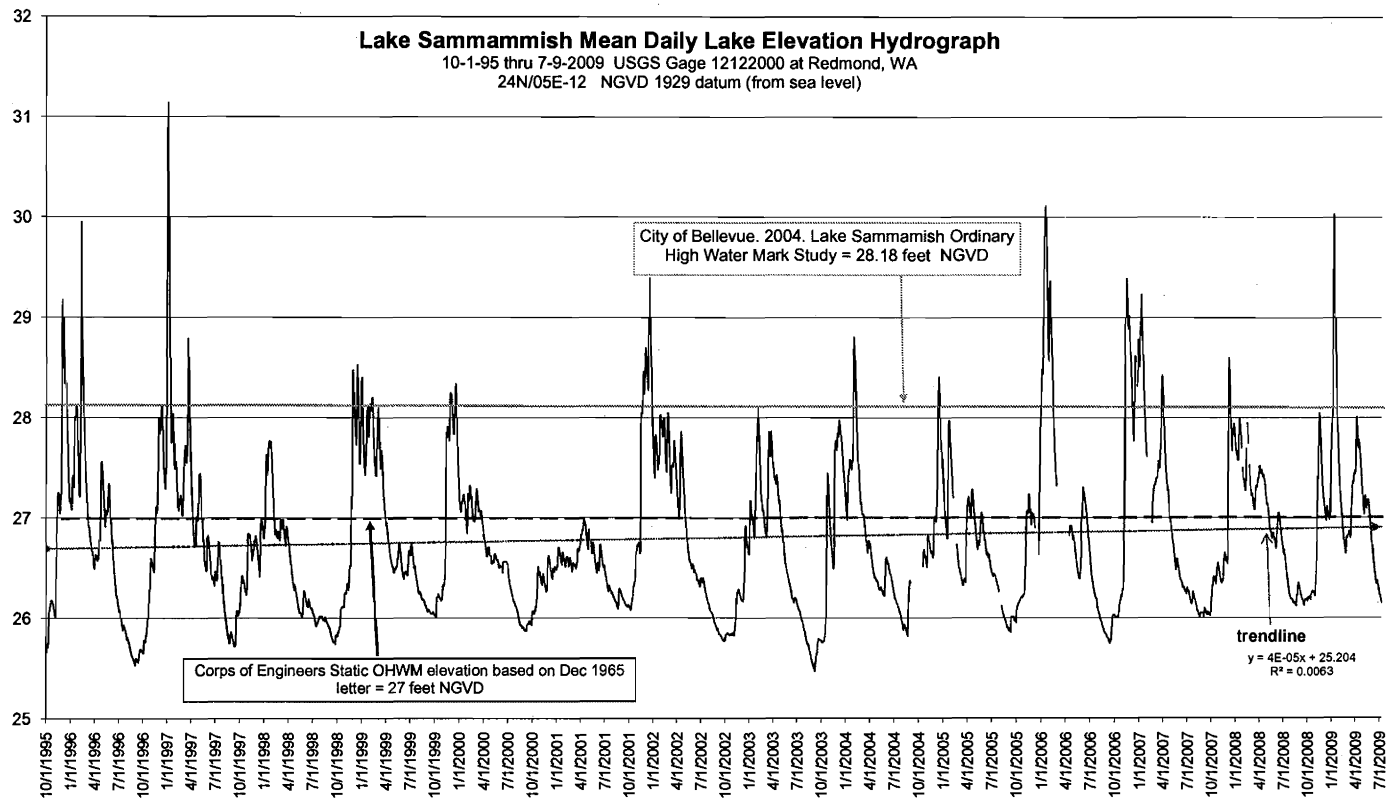
Please feel free to call me at 425-649-7061 if you have any questions.

Regards,

Erik Stockdale

Erik Stockdale
Wetlands/401 Unit Supervisor

Cc: Geoff Tallent, Ecology
David Radabaugh, Ecology
Tom Clingman, Ecology
Peter Rosen, City of Issaquah


Lake Sammammish Mean Daily Lake Elevation Hydrograph
10-1-95 thru 7-9-2009 USGS Gage 12122000 at Redmond, WA
24N/05E-12 NGVD 1929 datum (from sea level)
City of Bellevue. 2004. Lake Sammamish Ordinary High Water Mark Study = 28.18 feet NGVD
Corps of Engineers Static OHWM elevation based on Dec 1965 letter = 27 feet NGVD
trendline
y = 4E-05x + 25.204
R² = 0.0063
32
31
30
29
28
27
26
25
10/1/1995
1/1/1996
4/1/1996
7/1/1996
10/1/1996
1/1/1997
4/1/1997
7/1/1997
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4/1/2009
7/1/2009

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
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July 12, 1989

Stephanie Brod, Legal Planner
City of Bellevue
Design and Development
Department
11511 Main Street
Bellevue, WA 98009-9012

SUBJECT: Proposed modifications to Bellevue Shoreline Master Program submittal

Dear Stephanie:

As we recently discussed, an issue concerning the definition of "ordinary high water mark" has indirectly been brought to our attention. At issue is the method by which the OHWM is established. As stated in RCW 90.58.030(2)(b) (and in Section 20.50.038 of the proposal), the line determined by physical characteristics including hydrology, soils and vegetation is to be used unless such a line cannot be found, in which case, the line of mean high water can be used by default.

Unfortunately, Section 20.25E.010 "Definition of District" of the proposal references the OHWM and states that it is generally considered to be a certain elevation for Lake Washington and Lake Sammamish respectively. Although we have previously attempted to clarify the relationship of these referenced elevations as being the default measurement only, the above ambiguous clause still needs to be remedied.

In addition, although we were not aware until recently of any controversy during the development of your proposal, the OHWM issue is of great concern to a group of residents in the Rosemont area with regard to bulkhead construction. The regulation of bulkhead height, Section 20.25E.080.E(3), limiting the height to 30" is directly related to the OHWM location. In order to evaluate the proposed regulation,

staff has reviewed the department's historical files, public comments, hydrologic data and conducted field work. As a result of our investigation it is quite evident that the referenced elevation of 27 feet for Lake Sammamish does not accurately reflect or even approximate the OHWM. Unless the City can conclusively demonstrate that the cited elevations correctly represent the OHWM, staff is recommending deletion of the following clauses of Section 20.25E.010:

Lake Washington - delete "considered to be elevation 15.03 feet based on the U.S. Coast and Geodetic Survey Datum plane of 1929 as amended, measured as 21.85 feet from the Corps of Engineers Datum Plane of 1919 as amended"

Lake Sammamish - delete "generally considered to be elevation 27 feet based on the U.S. Coast and Geodetic Survey Datum plane of 1929 as amended".

Our evaluation of Section 20.25E.080 Bulkhead Regulations reveal its provisions to be generally adequate provided the correct OHWM is used. Our information suggests that an additional 6" in height could be allowed under item 3 and that item 3(b)(ii) could be set at 48" to provide more adequate protection.

Several other minor corrections which need to be made are listed below:

Section 20.25E.013 Correct "line of Ordinary High Water" to "Ordinary High Water Mark".

Section 20.50.016 Definition - Development Correct the referenced section at the end to read "20.25E.017A".

Section 20.25E.080K Landfill Regulations - For clarification, replace "shall not be permitted" and "is not permitted" with "is prohibited" in item 3 and 6 respectively.

Section 20.50.054 Definition - Wetlands Insert after "or defined" the reference "as a marsh, bog or swamp in Chapter 173-22 WAC and" in order to be consistent with state regulations.

Section 20.50.046 Correct the last sentence to reference "Part 20.25E" and "See 20.25E.017C" respectively.

In accordance with WAC 173-19-064 (1h), we request your written concurrence of the above modifications prior to

adoption. We will be glad to meet with you to discuss the issues or provide further clarification if necessary. In order to be in time for the scheduled adoption on July 25th, your written response by Friday July 21st will be greatly appreciated. Thank you for your cooperation and patience in this sometimes arduous but important process.

Sincerely,

Barry A. Wenger
Shorelands and Coastal
Zone Management Program

CHAPTER 3

Determining SMA Jurisdiction Boundaries

NOTE: The following guidelines are intended for use in the field and office as a reference. These guidelines are not official rules or regulations except as specifically provided in the SMA and related rules and regulations cited herein. Always look to the RCW and WACs first and then use these rules as guidance in applying the regulations on a specific site.

Ordinary High Water Mark Determinations

The SMA defines the ordinary high water mark (OHWM) as "that mark that will be found by examining the bed and banks and ascertaining where the presence and action of waters are **so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation...**" [RCW 90.58.030(2)(b) and WAC 173-22-030(6)].

Determining the OHWM, as evidenced from the preceding language of the SMA, is not exclusively an engineering calculation or a precise scientific endeavor. Although based on empirical evidence as much as is practical, an OHWM determination is a result of a consideration of a variety of biological and hydrological factors, historical patterns, observations and measurements in order to carry out the intent of the SMA. The OHWM on any particular site is **not a static line or level**, such as a surveyed mean tide elevation but rather is **the dynamic edge** of the waterbody under legal jurisdiction of the Act. As such, the OHWM (i.e. the waterbody edge) may change over time due to natural events or as a result of permitted actions. Examples would include: a

river changing course over the years (natural), or a landfill or shoreline excavation for a large marina (manmade).

Determination of the OHWM is of key importance in not only delineating shoreline jurisdiction (200 feet measured from OHWM) but also in applying regulations and establishing setbacks which are usually measured from the OHWM. Many master programs have separate regulations for projects based on whether they are located "upland" (of the OHWM) or are "over/in-water" (waterward of the OHWM).

Special Tip

Tip: For the purposes of the following section, the term "wetland" shall be synonymous with "marsh, bog or swamp" per WAC 173-22-030 (5).

I. General Guidelines For All Water Bodies

A. **Clear Vegetation Mark** - Look for the uppermost clear mark on the bank with respect to vegetation. Often this is where permanent upland vegetation begins at the edge of bare soil. The mark may be defined by a combination of soil, elevation, or channel development.

"Here's where the vegetation changes."

B. **Wetland/Upland Edge** - Look for a clear wetland-upland edge if the wetland is continuous from the water's edge with respect to soils, vegetation, or hydraulic continuity.

C. **Combination Changes** - If a mark is not obvious, look for a change as evidenced by:

1. Change in vegetation as one moves in an upland direction;
2. Increase in land elevation;
3. Landward limit of drift deposition;
4. Soil surface changes from algae or sediment deposition areas to areas where the soils show no sign of depositional processes from the water;
5. Changes in soil profile from wetter or drier conditions (low chroma, high organic matter, lack of mottling) to drier conditions (higher chroma, less organic matter, brighter mottles). Use Munsell Soil Chart.

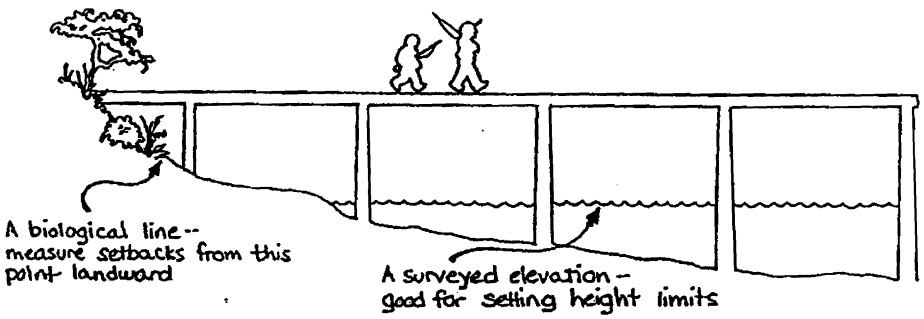
D. **Elevation** - Identify the elevation of the obvious mark and project where appropriate into areas where mark is unclear (such as where disturbance has occurred). Use either your eyes and estimate a level elevation or use a transit or pea level, or use the natural "level" of the water itself when it reaches the targeted benchmark during a high tide or event.

E. **Non-SMA ditches, streams, and pipes** entering SMA waters:

1. Project the OHWM elevation up the channel.
2. For pipes or culverts, project the OHWM elevation through the pipe or culvert if the OHWM elevation connects with another water body at that elevation. Otherwise, cut off OHWM at the downstream end of the pipe or culvert.
3. Tidegates and/or flapgates may complicate the determination and require special evaluation and analysis. Indirect water level influence may be enough to establish associated wetlands in some instances.

Special Tip

Tip: Remember that fresh water can be tidally influenced.



The ordinary high water mark (OHWM) should not be confused with other measures of elevation, water level or tides.

II. Additional Instructions

A. Rivers, Streams, and Creeks are defined as: A naturally occurring body of periodic or continuously flowing water contained within a channel (an open conduit either naturally or artificially created). Excluded are artificially created irrigation, return flow, or stockwatering channels [WAC 173-22-030(8)].

1. Use the **general guidelines** and,

2. **Braided streams** - the OHWM is found on the banks forming the outer limits of the depression within which the braiding occurs [WAC 173-22-030]. The outer limit is usually interpreted to mean the outermost channel which has been active within the last ten years. Also note that there may be "islands" of land not subject to inundation within these outer limits and having their own OHWM.

3. **River Deltas** - those lands formed as an aggradational feature by stratified clay, silt, sand and gravel deposited at the mouths of streams where they enter a quieter body of water. The upstream extent of a river delta is that limit where it no longer forms distributary channels [WAC 173-22-030(7)]. Excluded are lands which can reasonably be expected to be protected by governmental flood control devices [WAC 173-22-040(3)(d)].

4. Where the OHWM cannot be found, use the line of mean high water (WAC 173-22-030). Sometimes gauging station data is useful.

Special Tip

Tip: Use caution in evaluating undercutting or accretion areas that may be the result of abnormal events such as floods, landslides, etc.

B. **Lakes** - a body of standing water in a depression of land or expanded part of a river, **including reservoirs** (20 ac).

1. Use the **general guidelines** and,

2. If the mark is unclear in a reservoir, use the maximum pool elevation then add as appropriate for the effects of waves or other modifiers.

3. In the unlikely event that the OHWM CANNOT be found, use the line of mean high water [WAC 173-22-030 (6)(b)]. Sometimes gauging station data is useful.

C. **Estuarine Area**

1. Use the **general guidelines** and,

2. **"The OHWM is coincident with the landward limit of salt tolerant vegetation where such is present." "Salt tolerant vegetation" means vegetation which is tolerant of interstitial soil salinities greater than or equal to 0.5 parts per thousand. See WAC 173-22-030(6)(a)(ii).**

3. Tidal systems often have dendritic channels (sloughs) which clearly fluctuate and overflow with tidal action. Observing the site during high tide can help in delineating the OHWM.

NONCONFORMING DEVELOPMENT - SUPPORTING INFORMATION

STATE LAW AND GUIDELINES

Applicable Shoreline Management Act Provisions

RCW 90.58.620

New or amended master programs — Authorized provisions.

(1) New or amended master programs approved by the department on or after September 1, 2011, may include provisions authorizing:

(a) Residential structures and appurtenant structures that were legally established and are used for a conforming use, but that do not meet standards for the following to be considered a conforming structure: Setbacks, buffers, or yards; area; bulk; height; or density; and

(b) Redevelopment, expansion, change with the class of occupancy, or replacement of the residential structure if it is consistent with the master program, including requirements for no net loss of shoreline ecological functions.

(2) For purposes of this section, "appurtenant structures" means garages, sheds, and other legally established structures. "Appurtenant structures" does not include bulkheads and other shoreline modifications or over-water structures.

(3) Nothing in this section: (a) Restricts the ability of a master program to limit redevelopment, expansion, or replacement of over-water structures located in hazardous areas, such as floodplains and geologically hazardous areas; or (b) affects the application of other federal, state, or local government requirements to residential structures.

Notes:

Findings -- 2011 c 323: "(1) The legislature recognizes that there is concern from property owners regarding legal status of existing legally developed shoreline structures under updated shoreline master programs. Significant concern has been expressed by residential property owners during shoreline master program updates regarding the legal status of existing shoreline structures that may not meet current standards for new development.

(2) Engrossed House Bill No. 1653, enacted as chapter 107, Laws of 2010 clarified the status of existing structures in the shoreline area under the growth management act prior to the update of shoreline regulations. It is in the public interest to clarify the legal status of these structures that will apply after shoreline regulations are updated.

(3) Updated shoreline master programs must include provisions to ensure that expansion, redevelopment, and replacement of existing structures will result in no net loss of the ecological function of the shoreline. Classifying existing structures as legally conforming will not create a risk of degrading shoreline natural resources." [2011 c 323 § 1.]

Shoreline Master Program Update Guidelines

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:

(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.

(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.

(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.

(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 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.

(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.

(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:

(a) No reasonable alternative conforming use is practical; and

(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.

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.

(7) A nonconforming structure which is moved any distance must be brought into conformance with the applicable master program and the act.

(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.

(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.

(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.

RANGE OF OPTIONS CONSIDERED BY THE PLANNING COMMISSION

Conforming/Nonconforming Status Determined by Structure Type	*Legally Created Structures Conforming (irrespective of type)	All Existing Structures Conforming (irrespective if type or legal status)
Critical Area Overlay approach to nonconforming development in shoreline areas (adopted in 2006)	All residential development waterward of OHWM considered conforming (no distinction between primary and accessory structures)	All residential development in existence on effective data of the SMP considered conforming (legal status not required)
Primary structure (residence) is considered conforming to the shoreline setback through footprint exception	All residential development is considered conforming to the shoreline setback through footprint exception	All residential development is considered conforming to the shoreline setback through footprint exception
Primary structure can be: -maintained -reconstructed within footprint -expanded into critical area buffer up to 500 sf pursuant to performance criteria	All existing residential development can be: -maintained -reconstructed within footprint -expanded into shoreline setback up to 200 sf pursuant to performance criteria	All existing residential development can be: -maintained -reconstructed within footprint -expanded into shoreline setback up to 200 sf pursuant to performance criteria
Primary structure expansion into the critical area is prohibited	Expansion of exiting development toward OHWM is prohibited	Expansion of exiting development toward OHWM is prohibited

Accessory structures (garages, sheds) deemed legally nonconforming	Boathouses (structures waterward of OHWM) deemed legally nonconforming	Boathouses (structures waterward of OHWM) deemed legally nonconforming
Accessory structures can be: -continued -reconstructed if damaged to the extent no exceeding 75 % replacement cost of the original structure	Boathouses can be: -continued -remodeled up to 50% replacement value of the structure in a 3 year period -reconstructed within the footprint of the original structure if damaged or destroyed (without limitation on replacement cost)	Boathouses can be: -continued -remodeled up to 50% replacement value of the structure in a 3 year period -reconstructed within the footprint of the original structure if damaged or destroyed (without limitation on replacement cost)
Accessory structures cannot be enlarged, intensified, increased, altered or moved in any way that increased its nonconformity	Boathouses cannot be expanded, enlarged or increased in nonconformity	Boathouses cannot be expanded, enlarged or increased in nonconformity
Legal status of structure existence on effective date of the SMP must be demonstrated based on criteria (modeled after Bel-Red Overaly)	Legal status of structure existence on effective date of the SMP must be demonstrated (no criteria provided)	Structure must be in existence as of effective date of the SMP

*Option recommended by the Planning Commission in the SMP Update

CONCERNS RAISED BY STAKEHOLDERS DURING PLANNING COMMISSION REVIEW

Bellevue's shoreline property owners constructed homes and improvements with the expectation of being able to fully maintain and repair those improvements. For decades, the existing shoreline program has been followed creating an acceptable and attractive shoreline residential environment. The Shoreline Management Act has a strong policy and a specific rule authorizing maintenance of existing improvements with no restrictions. The City regulations should respect existing homes and improvements by avoiding creation of nonconformities and by allowing maintenance and repair. Spurious designation of development as non-conforming will impact the investments made by residents and would also reduce the City tax base. Importantly, maintaining existing development will not in fact cause any new impact to the shoreline environment —

there can be no net loss of ecological function when repairs and maintenance are undertaken that do not change the nature of the existing improvements. *Washington Sensible Shorelines Association; Notebook Tab 3, March 2011.*

The DRAFT-SMP provides multiple "non-conforming" provisions, for which it is not clear which of these provisions apply to the variety of shoreline "uses" or "modifications" regulated by the City's SMP? It is still not clear which of the many "non-conforming" provisions apply to different shoreline "uses" or "modifications", please explain. In addition to identification of relevant policies and development standards, Ecology encourages the City to demonstrate (within this checklist or the CIA) "how" the cited draft SMP provisions are consistent with the referenced SMP-Guideline requirement. *Department of Ecology, September 2013.*

CURRENT AND RECOMMENDED POLICIES AND REGULATIONS

Current Policy Framework	Draft SMP Policy Framework
LU-19 Maintain stability and improve vitality of residential neighborhoods through adherence to, and enforcement of, the city's land use regulations.	**SH-9.** Recognize residential development, appurtenant structures, and water-dependent and water-enjoyment recreation activities as preferred where they are appropriate and can be developed without significant impact to ecological functions identified in the Shoreline Analysis Report or displacement of water-dependent uses.
	SH-19. Recognize and protect private property rights consistent with the public interest.
	SH-20. Ensure that all proposed shoreline development will protect the public's health, safety, and welfare by providing regulations appropriate to the shoreline jurisdiction and consistent with the underlying land use district, land use code and comprehensive plan. Standards should include setbacks, building heights, lot coverage, impervious surface, and other regulatory controls essential to guide future growth and development within the shoreline jurisdiction.

	SH-59. Provide for limited building footprint expansion options for existing single family structures within 25feet of the ordinary high water mark only in a manner that does not degrade shoreline ecological functions.
	SH-60. Prohibit new over-water residences, including floating homes.
	SH-95. Prohibit new or expanded enclosed or walled overwater structures such as boathouses and residences.
Current Regulatory Approach	**Draft SMP Regulatory Approach**
Nonconforming Development – LUC 20.25E.055.C (Shoreline Overlay District)	Nonconforming Residential Development: Purpose – LUC 20.25E.065.I.1 (Shoreline Overlay District)
Buffer and Setback on Sites with Existing Primary Structures – LUC 20.25H.035.B (Critical Areas Overlay)	Nonconforming Residential Development: Applicability – LUC 20.25E.065.I.2 (Shoreline Overlay District)
Uses and Development Allowed within Critical Areas: Expansion of existing single-family primary structures)– LUC 20.25H.055B (Critical Areas Overlay)	Regulations and Thresholds Applicable to Nonconforming Boathouses – LUC 20.25E.065.I.3 (Shoreline Overlay District)
Expansion of Existing Single-Family Primary Structures: Performance Criteria – 20.25H.055.C.3.c (Critical Areas Overlay)	Existing Residential Development within the Shoreline Structure Setback: Footprint exception – LUC 20.25E.065.I.4 (Shoreline Overlay District)
Shoreline Buffers and Setbacks: Footprint Exception – LUC 20.25H.115.B.1 and C.2. (Critical Areas Overlay)	Residential Structure Setback: Footprint exception – LUC 20.25E.065.E.1.c (Shoreline Overlay District)
Buffer Modification: String Test – LUC 20.25H.115.B.2 and C.3 (Critical Areas Overlay)	Residential Structure Setback Allowances: Expansion of footprint - LUC 20.25E.065.E.2 (Shoreline Overlay District)