



MEMORANDUM

DATE: April 22, 2011
TO: Chair Kasner and Members of East Bellevue Community Council
FROM: Catherine Drews, Legal Planner 425-452-6134
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Development Services Department
SUBJECT: City of Bellevue Shoreline Master Program Update—Land Use Code Amendments

On May 3, 2011, the East Bellevue Community Council (“EBCC”) will consider the draft Land Use Code amendments to update the City of Bellevue’s Shoreline Master Program (“SMP”). Staff provided a binder containing the update materials, including the draft code amendments, maps, inventories, and plans to the Deputy City Clerk on April 21, 2011. The most current version of the full draft master program is located at: <http://www.bellevuewa.gov/shoreline-master-plan.htm>. This information will be updated as changes to the program are made in response to Planning Commission direction. A public hearing before the Planning Commission on this item is scheduled for May 25, 2010, with City Council action likely in late fall of 2011.

Shorelines within the EBCC: How are properties within the EBCC affected by the SMP Update?

A portion of the City of Bellevue shoreline jurisdiction lies within the boundary of the EBCC. A map depicting the shoreline jurisdiction within the EBCC is attached as Exhibit A. This area consists entirely of the Lake Hills Greenbelt wetland system that is associated (hydrologically connected) with Phantom Lake, and is characterized as 100% wetlands. The majority of the affected land is primarily owned and managed by the City’s Parks and Utilities Departments. A small portion of the shoreline area within the EBCC is held under private ownership, although this area is dedicated as community owned open space within a non-buildable native growth tract and may not be developed. Also, a small portion of property owned by the Bellevue School District is within shoreline jurisdiction, although this piece of property is also regulated as a wetland.

It is important to note that all areas of shoreline jurisdiction located within the boundary of the EBCC and identified as wetland are also regulated under the City’s Critical Area Overlay District (Part 20.25H LUC). Most private property owners will not be affected by the SMP Update, except that in limited circumstances a shoreline substantial development permit may be required, and will continue to be regulated under the City’s critical areas ordinances because the wetlands and their associated buffers tend to exceed the limits of the shoreline jurisdiction.

East Bellevue Community Council Feedback

Several opportunities exist for the EBCC to provide feedback on the policies and other components of the Draft Bellevue Shoreline Master Program that are currently before the Planning Commission for consideration. Staff will discuss these opportunities at the

meeting. Staff will continue to notify the EBCC of future Planning Commission meetings on the draft SMP Update.

Background on the Shoreline Management Act

The state adopted the Shoreline Management Act (“SMA” or the “Act”) in response to concerns arising from the “uncoordinated and piecemeal development” of the state’s shorelines occurring without sufficient concern for the resource or the public interest. A primary focus of the SMA is to protect and restore the valuable and fragile natural resources the state’s shorelines represent, while fostering those “reasonable and appropriate uses” that are dependent upon waterfront proximity, enhance public access, or increase recreational opportunities for public enjoyment of the shoreline.

The SMA applies to shorelines of the state, which include Shorelines of Statewide Significance (Lakes Sammamish and Washington) and other types of shorelines and shorelands as defined in the Act. The jurisdictional area described in the Act includes lakes 20 acres in size or greater, streams with a mean annual water flow exceeding 20 cubic feet per second, lands underlying waters of the state, and areas extending landward from waters of the state for 200 feet including floodways, floodplain areas, wetlands associated with such streams and lakes.

The SMA requires shoreline master programs to assure no net loss of ecological functions. To evaluate if the standard of no net loss of ecological function has been met through the policies, regulations, and programs included in the SMP, the City is required to complete a cumulative impacts assessment that demonstrates the effectiveness of the shoreline master program when tested with development scenarios. The Cumulative Analysis will be completed following closure of the public hearing and after the Planning Commission provides its recommendation to the Council. Also, the Cumulative Impacts Assessment is included as part of the Shoreline Master Program that is forwarded to the Washington State Department of Ecology (“Ecology”) for review.

The following areas are included in Bellevue’s shoreline jurisdiction:

- Lake Washington, including Mercer Slough upstream to Interstate 405 – The lake waters, underlying lands and the area 200 feet landward of the ordinary high water mark, plus associated floodways, floodplains, and wetlands;
- Lake Sammamish – The lake waters, underlying lands and the area 200 feet landward of the ordinary high water mark, and associated wetlands;
- Lower Kelsey Creek – The creek waters, underlying lands, and territory between 200 feet on either side of the top of the banks, plus associated floodways, floodplains, and wetlands;
- Phantom Lake – The lake waters, underlying lands and the area 200 feet landward of the ordinary high water mark, and associated floodways, floodplains, and wetlands (Lake Hills Greenbelt Wetland Complex); and
- On lakes Sammamish and Washington, waterward from the ordinary high water mark to the City’s jurisdictional line, typically halfway across the waterbody.

The City's Shoreline Master Program

Bellevue adopted its SMP in 1974. Components of the SMP include Comprehensive Plan policies under the Shoreline Element and development regulations in Parts 20.25E (Shoreline Overlay District) and 20.25H (Critical Areas Overlay District) Part 20.25E LUC. Unlike the City's current SMP, the regulatory component of the draft SMP Update is being designed as a stand-alone document located in Part 20.25E LUC (including, use charts, permitting and appeals processes, administration, enforcement provisions, and definitions), and will replace the current Part 20.5E LUC in its entirety. Subsequent amendments to certain provisions of the LUC and the Bellevue City Code will be required for consistency with the draft SMP. The update will close gaps in the City's current SMP related to state-required components, align the SMP with current scientific information relevant to protecting shoreline functions and values, provide for a broader range of shoreline uses, and include detailed performance standards to provide use priority and public access to the shoreline.

SMA Required Components

The SMA requires the Bellevue SMP to include the following components:

1. Shoreline Element of the Comprehensive Plan (policies);
2. Shoreline Overlay of the Land Use Code (regulations);
3. Shoreline Environment Designations (maps);
4. Shoreline Jurisdiction (maps);
5. Shoreline Inventory and Characterization (study); and
6. Shoreline Restoration Element (plan).

Additionally, the City will incorporate its Critical Areas Overly District (Part 20.25 LUC) to provide regulatory certainty and consistency. An important addition to the SMP is the classification of Bellevue's shorelines into environmental designations (a zoning overlay). The designations are based on analysis of shoreline uses and available shoreline ecological functions, including the biological and physical characteristics of the shoreline. As a result of the analysis, the shoreline is divided into units, called environmental designations. Shoreline units are treated differently based on their designation. For example, a mostly undeveloped shoreline with high biological benefit would have corresponding policies and regulations that would mostly preserve and support those characteristics; while, a highly-developed shoreline with lower biological benefit would have corresponding policies and regulations appropriate to continue shoreline uses while preventing further degradation of the remaining biological and physical characteristics of the shoreline. The shoreline designation for shoreline properties within the EBCC is Urban Conservancy-Open Space (UC-OS), which allows the continuation of residential uses. The UC-OS designation is based, in part, on the extensive network of wetlands, and development and activities that support low intensity uses that is compatible with maintaining or restoring ecological functions. (Draft LUC 20.25E.010.D.3).

The SMP Update Process

The City is in the process of updating its SMP. All jurisdictions that have shorelines of the state are required under the SMA to update their SMPs. As part of the City's

process, the Planning Commission (in its role as Steering Committee) received science briefings on the environmental functions that are affected by shoreline uses and development. The Planning Commission also has received feedback from shoreline property owners regarding the affect of shoreline regulations on use of their property. In response to direction from the Planning Commission and feedback from the public, staff released the public hearing draft of the SMP on April 8, 2011. The Planning Commission is scheduled to hold a public hearing May 25th, 2011. The Planning Commission will engage in deliberations to review comments received during the public hearing in order to prepare a recommendation to Council. Once Council completes its process and adopts the draft SMP, Ecology will review the draft SMP for conformance with state law requirements, and hold a public hearing on the draft. If necessary, an iterative process may ensue between Ecology and the City to finalize the draft SMP for Ecology's approval.

The Draft Shoreline Master Program

In addition to being consistent with state requirements detailed in the SMA and Ecology's Guidelines for updating master programs, the City of Bellevue Draft SMP is also intended to be tailored to Bellevue-specific conditions. Draft policies and regulations recognize Bellevue's urbanized character, while reflecting the community's image of a "City in a Park" containing neighborhoods where nature enhances livability and personal well-being. Provisions are flexible, predictable, and built on the understanding that some of the policies of the SMP may not be achievable by regulation alone. A brief summary of the draft SMP provisions are provided below.

Setbacks. Currently, shoreline setbacks are regulated under the Critical Areas Overlay District (Part 20.25H LUC) and structures are required to comply with a 25-foot "no touch buffer" and a 25-foot structure setback for a total of a 50-foot setback measured from the ordinary high water mark. The draft SMP retains the 50-foot setback, but replaces the 25-foot no touch buffer with a vegetation conservation area that allows limited development related to water recreation coupled with a mitigation planting area. The Planning Commission recognized the inherent conflict between a "no touch buffer" and the typical recreational uses and activities that occur along lake shorelines. Consequently, the draft SMP proposes elimination of the "no touch buffer" along the shoreline.

Nonconforming Uses and Development. A non-conforming use or structure is a use or structure which was legally-established, but does not conform to the current city standards. Under both the current code and the draft SMP, existing legally established residences located 25 feet or greater from the ordinary high water mark are not nonconforming. Even properties where the existing residence is located within the required 50 foot setback can rebuild in their existing footprints without triggering additional requirements. The only residential structures that would be deemed nonconforming are structures located closer than 25 feet from ordinary high water mark. The City's original SMP adopted in 1974, required structures to maintain at least a 25 foot setback from the shoreline.

Allowed Development in Setback. Although the proposal includes a 50-foot setback, there are certain improvements allowed outright in the setback that do not trigger additional standards. The following improvements are allowed when located 25 feet from the ordinary high water mark: up to 500 square feet of expansions to existing residences in a lateral direction from the existing structure; up to a total 200 square feet of accessory structures; 1000 square feet of impervious surfaces and other minor building elements and landscape features. Development exceeding these thresholds can be accommodated by prescriptive mitigation options outlined in the code. Mitigation can be chosen to fit the circumstances for proposed expansion and the site. When prescriptive options do not meet a property owner's needs, they may use the new special shorelines report process to demonstrate how their project and corresponding mitigation create an equivalent or better outcome than the prescriptive standard..

Vegetation. The proposal includes limited circumstances when vegetation must be planted. In the Shoreline Residential environment, planting of 60% of the first 25 feet from ordinary high water mark is required only if: a new house is constructed on an undeveloped site or a house is reconstructed with a lot coverage greater than the existing structure. Existing vegetation could count towards the requirement. Also included in the proposal is flexibility in the selection and location of the vegetation needed to meet this requirement to minimize impacts to views and other existing uses.

Residential Docks. Given the urbanized character of Bellevue's lake frontage, most properties already are developed with a dock, making maintenance and repair an important concern. Under current rules, maintenance and repair of legally-established docks is permitted subject to a specific repair threshold above which proportional compliance to the new standard is required. Under the draft SMP, the repair thresholds have been liberalized with the result that most docks can be fully repaired without triggering compliance with new standards. Complicated proportional compliance provisions have been eliminated, and construction material standards and grating have been made mandatory for all but the most modest repair actions; however, replacement of more than 50% of the piling triggers compliance with the standards for new docks.

Additionally, a standard to update materials to a grated surface is proposed under the repair provisions. When more than 50% percent of the existing piles are totally removed and replaced the new dock would be required to meet design requirements for dock walkways (4 feet) with an option to increase walkway dimension (up to a maximum width of 6 feet). The existing moorage platform does not need to change size or dimension, but should be located at least 30 feet from ordinary high water mark or in at least 9 feet of water depth. Lake-specific standards tailored to respond to vessel diversity and navigational constraints (smaller docks on Phantom Lake and Newport Shores canal and larger docks on Lake Washington and Lake Sammamish) are included in the draft regulations for new docks.

Dock Reconfiguration. Proposals to reconfigure or replace existing residential docks are similarly treated in both the existing critical area standards and the draft SMP. Such proposals must meet the requirements associated with new docks at LUC 20.25E.065.1.3 and 4. These provisions allow dock reconfiguration without incurring a significant coverage penalty, provided the existing moorage platform extends beyond the nine foot depth limitation.

Shoreline Modifications—New Stabilization. Bellevue's existing rules regarding shoreline stabilization were adopted as a component of the 2006 critical areas update and were designed to be consistent with the standards provided in the Guidelines. Current regulations allowing for minor repair of existing hard stabilization, but limiting new and replacement stabilization to those situations where need is clearly demonstrated to protect existing primary structures. The draft SMP approaches the subject in the same way.

Avoiding the need for new stabilization is a primary policy objective of the Guidelines so development that purposefully avoids erosion hazards by locating the primary structure at a safe distance from ordinary high water to avoid those risks is preferred. Where an applicant perceives the need for stabilization on a site without stabilization, the applicant must prove the stabilization is required by hiring a qualified professional to conduct a feasibility test. The test assesses a number of site specific factors, information about wind direction, speed, fetch and likely wave height, as well as risk to the structure and other factors.

Where stabilization is allowed, the new rules follow the prior critical area standards by articulating a clear preference for soft stabilization; hard stabilization is an option only when soft options are not technically feasible or the structure to be protected is so near (less than 10 feet) to ordinary high water mark that hardened stabilization is the default option. In picking soft solutions the applicant is now provided with a wide range of better defined options, outlined in order of priority, ranging from vegetative and bioengineered techniques to a combination of the first two options with some rigid structures incorporated for additional safety. The draft SMP clarifies where stabilization may be located when a documented flood hazard area exists; only soft stabilization is permitted within the area of special flood hazard except that low-angle planted revetments are permitted due to their limited impact on flood storage. In general, stabilization measures are prohibited waterward of the ordinary high water mark with the notable exception that those measures that incorporate approved habitat improvements.

Shoreline Modifications—Repair. Under existing rules, repair of existing legally-established shoreline stabilization is allowed subject to certain thresholds, provided the damage or destruction is not so severe as to cause loss of structural integrity so sufficient as to jeopardize its erosion protection function. Where such a condition exists, or where the cumulative reconstruction exceeds 50% of the structure's linear length over a three year period, the draft SMP defines such repair as major, making it subject to the standards for new stabilization measures, except that legally-established stabilization is presumed necessary; the feasibility test required to establish whether or

not stabilization is necessary is not required. The draft SMP establishes a clearer standard regarding what constitutes repair allowing maintenance and repair of legally-established stabilization to occur where necessary. On balance, the draft stabilization standards in the updated SMP compare favorably with existing rules in terms of the protection afforded critical aquatic and shoreline resources while ensuring no net loss of shoreline ecological functions.

Subdivision standards. As part of the regulatory updates made in conjunction with the 2006 Critical Areas Update, a conservation short plat was added to the subdivision section of the City's Land Use Code. However, it applies only to those sites that abut a critical area of an acre or more, sites that abut known salmon streams, or sites where critical areas abut larger critical areas offsite, or large publically-owned land managed for parks use or open space. To ensure no net loss of ecological function in the Shoreline Overlay District, the draft SMP includes some new criteria applicable to subdivisions of more than four lots. These criteria include a lot clustering provision, compliance with public access standards for subdivisions of more than nine lots, tree retention requirements, dedication of the vegetation conservation area, and shared moorage provisions. These draft criteria are new and represent additional protection not previously included the existing SMP, and represents improved protection for shoreline ecological functions.

Public Access. Given the emphasis in the SMA and the Guidelines supporting public access to shorelines, the draft SMP includes regulations designed to protect, preserve, and enhance the public's opportunity to enjoy the physical and aesthetic qualities of the shoreline and the water. These changes result in additional protection of public access not previously existing in the prior regulations.

Shoreline Restoration Plan Element. The Guidelines include a requirement for a restoration plan designed, in part, to assist in offsetting long-term cumulative impacts of development in the Shoreline Overlay District, in an effort to avoid incremental and unavoidable degradation to shoreline ecological functions. The restoration plan is a new element, not previously included in the existing SMP, and while its force is only felt when implemented, it represents an important planning step to set the stage for potential future restoration of degraded shoreline conditions.

Conclusion

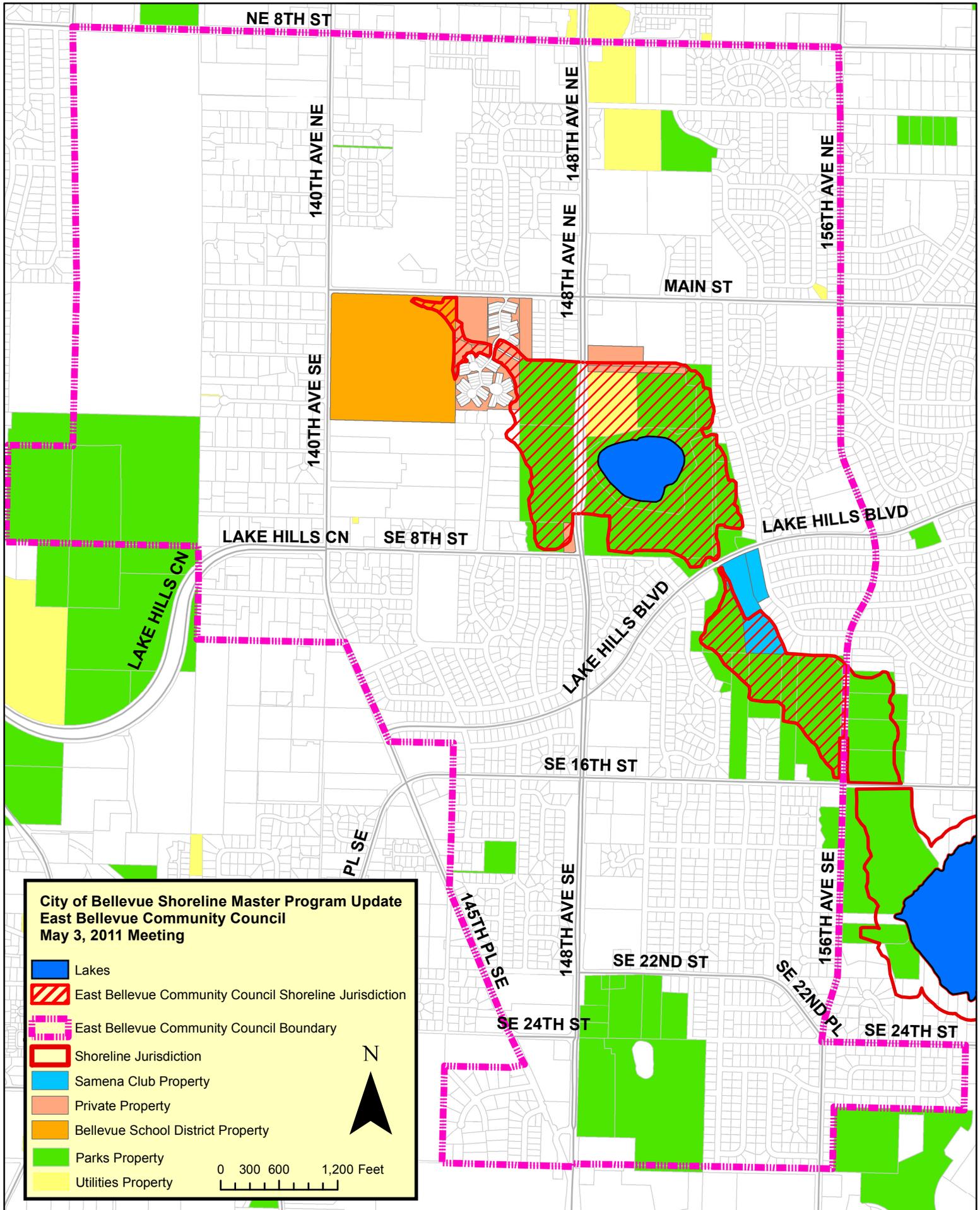
Following the courtesy hearing, the Planning Commission requests any feedback or comments you have on the draft ordinance. Please contact either me or David Pyle if you have any questions before the May 3, 2011, meeting.

Attachment:

- Exhibit A – Map of shoreline jurisdiction within the EBCC boundary

Attachment 1 - Shoreline Jurisdiction Within EBCC

East Bellevue Community Council Shoreline Jurisdiction



**City of Bellevue Shoreline Master Program Update
East Bellevue Community Council
May 3, 2011 Meeting**

- Lakes
- East Bellevue Community Council Shoreline Jurisdiction
- East Bellevue Community Council Boundary
- Shoreline Jurisdiction
- Samena Club Property
- Private Property
- Bellevue School District Property
- Parks Property
- Utilities Property

0 300 600 1,200 Feet

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