CITY OF BELLEVUE
BELLEVUE PLANNING COMMISSION
STUDY SESSION MINUTES

December 9, 2009
6:30 p.m.

Bellevue City Hall
City Council Conference Room 1E-113

COMMISSIONERS PRESENT:	Chair Sheffels, Commissioners Ferris, Hamlin, Mathews, Orrico, Robertson
COMMISSIONERS ABSENT:	Commissioner Lai
STAFF PRESENT:	Paul Inghram, Department of Planning & Community Development and Michael Paine, Heidi Bedwell, David Pyle, Development Services Department
GUEST SPEAKERS:	Jean White, Jason Mulvihill-Kuntz, Kirk Lakey, Washington State Department of Fish and Wildlife; Derrick Toba, Washington Department of Natural Resources; Jacalen Printz, Steven Burke, Karen Walter, Dave Radebaugh,
RECORDING SECRETARY:	Gerry Lindsay

1. CALL TO ORDER

The meeting was called to order at 6:35 p.m. by Chair Sheffels who presided.

2. ROLL CALL

Upon the call of the roll, all Commissioners were present with the exception of Commissioner Orrico, who arrived at 7:20 p.m., and Commissioner Lai, who was excused.

3. PUBLIC COMMENT – None

4. APPROVAL OF AGENDA

The agenda as submitted was approved by consensus.

5. COMMUNICATIONS FROM CITY COUNCIL, COMMUNITY COUNCILS, BOARDS AND COMMISSIONS – None

6. COMMITTEE REPORTS

Commissioner Ferris said the Meydenbauer Bay steering committee met after the last Planning Commission meeting to review the final draft of the Environmental Impact Statement which incorporated the recommendations of the steering committee. He said the work of the steering committee is thus completed and the recommendation will be forwarded to the City Council and then to the Parks Board.

7. STAFF REPORTS

Comprehensive Planning Manager Paul Inghram congratulated Commissioner Robertson on her election to the City Council. He noted that the vacant Commission seat will be advertised soon and a new Commissioner should be appointed sometime in February.

8. STUDY SESSION: Shoreline Master Program Update

A. Panel Discussion

Environmental Planning Manager Michael Paine kicked off the last in the series of scientific and technical presentations which were initiated at the direct request of the Commission. He explained that the presentations were intended to be illustrative and educational; they were never intended to be exhaustive of the relevant science.

Mr. Paine clarified the need to have the Commission and the public better understand the inventory and characterization and how it fits into the rubric of science. He said it is not a scientific study in the sense of a peer-reviewed investigation. Rather, the document is more effectively a compendium of information using scientific methodology, the specific purpose of which is to effectively identify the particular areas on the shoreline that are appropriately differentiated in terms of land use and ecological resources. The information allows for parsing the shoreline into different environmental designations. The document is not a foundational document or science study aimed at justifying the regulations that the Department of Ecology has promulgated. The staff are operating on the assumption that the Department of Ecology has done that work already and that the rules were negotiated to address those issues, including the concept of no net loss.

Mr. Paine said the city has been handed a big rule book, and the staff have been trying to follow it. That is why the focus has been on policy choices rather than science choices. The science is important and serves to inform the fine-grain work, but the real focus is on policy choices and regulatory issues, not on science choices.

The Shoreline Management Act recognizes statewide interests over local interests in many instances, particularly with regard to lakes that exceed 1000 acres. The shorelines of such lakes are designated as shorelines of statewide significance. As a consequence, there are certain things the state expects, one of the most important of which is giving consideration to the agency and tribal interests in the resources the lakes represent.

Mr. Paine introduced the panel members and asked each member to give a short presentation on their agency goals and interests, to outline what they would like to see in Bellevue's Shoreline Master Program update, and to outline the outcomes they see as the most important in managing the resources on under jurisdiction.

Jean White, Lake Washington/Cedar River/Lake Sammamish watershed coordinator, said local salmon are threatened in the watershed. Since 2000 there has been an ongoing cooperative effort under way to restore the salmon runs; there are 27 local governments are involved, including Bellevue, along with community groups, state and federal agencies and businesses. The local governments have stepped up to the plate with funding to develop a Chinook conservation plan and are now funding implementation of that plan. Water Resource Inventory Area (WRIA) is a state designation; the specific watershed encompassed by WRIA-8 involves everything that drains out the Ballard Locks and includes Lake Washington, the Cedar River, Issaquah Creek, Lake Sammamish and the Sammamish River.

Ms. White said the Chinook salmon conservation plan was completed for the watershed in 2005

and was adopted by all 27 jurisdictions before being approved as a chapter in the overall Puget Sound Chinook salmon recovery plan under the auspices of NOAA. The plan has three categories of recovery actions: habitat protection and restoration; recommendations on land use and planning; and public outreach and education. The steering committee that helped oversee the development of the plan wanted to make certain that the focus was not just on habitat projects. WRIA-8 is the most populated watershed in the state and if the right thing relative to land use, planning, education and outreach is not done, the outcome will not be successful.

The WRIA-8 salmon recovery council has the lead in implementation of the plan. Support comes from the implementation committee, on which Bellevue staff serves, and the technical committee. The implementation efforts are being coordinated and facilitated, and the progress is being carefully tracked. The WRIA-8 salmon recovery council the avenue through which state and federal funding dollars are allocated to specific projects.

Ms. White said the WRIA-8 plan calls for the protection of the forest cover that is so important to any watershed; the protection of riparian buffers along streams and lakeshores; the implementation of shoreline restoration projects on both Lake Washington and Lake Sammamish; enforcement of buffer requirements; and limiting variances. The plan also encourages incentive programs aimed at getting property owners to comply.

Ms. White said an analysis was conducted of the programmatic actions outlined in the plan. The analysis concluded that many of the things related to land use, outreach and education are going to be implemented through other regional programs. She said Shoreline Master Program updates by local jurisdictions represent the greatest overlap with the WRIA-8 plan. Implementation of the various Shoreline Master Programs will help to implement the WRIA-8 chinook recovery plan. Bellevue is one of the few jurisdictions that must deal with both Lake Washington and Lake Sammamish.

Chinook fry need rearing habitat and resting areas in the three to five months they live in the two lakes. The science indicates that they prefer shallow water habitat with gentle slopes. They like areas with small sandy substrates, overhanging vegetation, and woody debris. They are attracted to the mouths of small creeks; the mouths of larger creeks are home to predators. There is research showing that docks affect the behavior of juvenile salmon; they are shoreline oriented and they tend to swim into deeper water to avoid docks, which makes them more prone to predation.

Ms. White said the WRIA-8 salmon recovery council works in partnership with the jurisdictions in the watershed, NOAA fisheries, the Department of Ecology, the Puget Sound Partnership and the University of Washington on the concept of green shorelines. The idea is that there is a range of practices that could be done to improve shorelines for multiple purposes; the practices run the gamut from full beach restoration to setting back bulkheads, creating vegetative buffers, slope engineering and log placement.

Ms. White said incorporating the green shorelines approach into local Shoreline Master Program updates will improve shoreline conditions. Incentives, both regulatory and non-regulatory, to encourage the practices would be welcomed by the WRIA-8 salmon recovery council. Habitat restoration projects should be incorporated into the watershed characterization of the Shoreline Master Program. In addition, every effort to increase awareness of salmon in the lakes will be welcomed.

Answering a question asked by Chair Sheffels, Ms. White said a series of workshops wrapped up in the summer. She said she would be happy to share the final report with the Commission when

it is completed.

Commissioner Hamlin asked what kinds of incentives have been considered. Ms. White said property owners have indicated an interest in incentives such as tax breaks, streamlined and less expensive permitting, receiving technical assistance, and regulatory incentives.

Commissioner Ferris said the Commission has received testimony regarding various conditions along the shorelines that result in greater ecological functions in some areas compared to other areas. He noted that one scientist making a presentation to the Commission suggested that instead of a piecemeal approach it would be better to encourage or incentivize restoration efforts in areas that would provide the greatest contribution. He asked Ms. White if she agreed with that approach, and if so what areas offer the greatest opportunity for restoration success. Ms. White said for Lake Washington the best areas for restoration are those closest to the mouth of the Cedar River. The fry coming out of that system and entering the lake are most in need of shallow water habitat and overhanging vegetation. The same is true in Lake Sammamish close to the mouth of Issaquah Creek. There certainly are areas that may be more important than others, and there are areas that have more opportunity for a variety of reasons.

Jason Mulvihill-Kuntz with the Puget Sound Partnership said the agency is relatively new on the block. The agency was commissioned by the Governor and the legislature in 2007 to coordinate and create a plan to guide the recovery efforts in Puget Sound; it is not a regulatory agency. The primary functions are to coordinate the various efforts that are going on and to emphasize supporting policy and funding to get the job done.

Mr. Mulvihill-Kuntz said one of the first things the Partnership did was conduct an 18-month planning effort that resulted in the action agenda, the guide for recovering Puget Sound. The document lays out regional strategies, protections for ecosystem functions, restoration actions for ecosystem functions, actions to prevent water pollution sources, and identifies how all of the various agencies, jurisdictions and organizations can work together to achieve the common goal and make a difference. The plan identifies Shoreline Master Program updates and shoreline protection efforts by the various jurisdictions as vitally important. The plan also stresses the important of maintaining public access and recreational opportunities.

The main functions for the Partnership in the Shoreline Master Program process are to coordinate state agency efforts, and to support funding for local jurisdictions to do the work. Grants are available through the Department of Ecology which enable jurisdictions to fund projects.

Mr. Mulvihill-Kuntz commended the Commission for asking for the series of scientific presentations in an effort to inform its process.

The Partnership sees the Shoreline Master Program update process as integral to protecting fragile shoreline ecosystems. It also is important relative to guiding growth in ways that will have fewer impacts on resources while maintaining access and recreational opportunities for the public. Maintaining healthy shoreline ecosystems is important for a variety of reasons, not the least of which is preventing pollution and improving water quality. By creating buffers, runoff is facilitated in settling out.

The Partnership would like to see Bellevue's Shoreline Master Program update involve policymakers early and often in the process. It is important to get their feedback well in advance of taking action to establish policy and regulations. The best available science should be relied to the extent possible. All agency technical assistance and resources should be used in the update process. The process should seek to meet the minimum guidelines established by the Department

of Ecology but should also look for opportunities to go above and beyond them. The WRIA-8 Chinook Conservation Plan and associated work plan identifies various restoration projects that could be included or referenced in the restoration plan component of the update process.

The specific outcomes of the Shoreline Master Program update process that are seen as most important by the Partnership include sufficient protections for shoreline habitats and functions on the broad regional scale; allowing for appropriate public access and recreational opportunities; and promoting low-impact development alternatives. The restoration plan should reflect existing opportunities and leveraged work done to date for the area. The update should be strongly supported by local policymakers and the community as a whole.

Commissioner Ferris asked how much of the Partnership's work is focused on inland shorelines as opposed to Puget Sound shorelines. Mr. Mulvihill-Kuntz said the scope of the Partnership takes in everything from the crest of the Cascades to the marine environment. The emphasis is on the fact that what happens in the upland areas is critical to the marine environment. Freshwater shorelines are just as important as marine environments, if not more so, and are in need of being protected.

Commissioner Hamlin asked how the Partnership is funded. Mr. Mulvihill-Kuntz said the organization was established to guide and coordinate the overall efforts. It is funded both with state and federal dollars.

Chair Sheffels asked Mr. Mulvihill-Kuntz if he has met with other jurisdictions to see how they are handling their Shoreline Master Program updates. He answered that the Partnership has not been all that involved to date with the jurisdictions that are finished or nearly complete with their Shoreline Master Program updates. There have, however, been conversations with those jurisdictions aimed at garnering information about lessons learned. One thing learned was that the decision makers would have preferred to have been well educated and up to speed before having to take action.

Kirk Lakey with the Washington State Department of Fish and Wildlife said he serves as the watershed stewardship team coordinator for the Puget Sound area. He explained that the Department serves the citizens of Washington state by protecting, restoring and enhancing fish and wildlife and their habitat. Department staff work closely with local planners and managers to provide the science needed to inform the decision-making process. The deliverables include data, maps, field visits, and education. Protection of fish and wildlife resources can only be achieved through a partnership with landowners, cities, counties and others.

With regard to Shoreline Master Program updates, Mr. Lakey said the Department looks for actions that will identify and protect priority shoreline areas before planning decisions are made, which will help to avoid future species listings. The Department also looks for restoration projects that will enhance fish and wildlife habitat.

The Department is involved in inventory and analysis of environmental information, including some of the shoreline environmental designations and restoration plans. The Department also reviews and comments on general policies, regulations and specific shoreline uses. A variety of technical assistance is offered, including management recommendations based on best available science, mapping data, priority habitats and species lists. Through the priority habitat and species program the Department has developed maps of key habitats for various species and specific nesting sites. The aquatic habitat guideline program has documents related to integrated stream bank protection and nearshore habitat protection.

In addition to general guidelines, the Department has put together a series of white papers that are scientifically in-depth. The topics range from over-water structures and their impacts, marine and estuarine shorelines, dredging and gravel removal, and ecological issues in floodplains and riparian corridors. There are interactive mapping resources available on the Department website, including salmon habitat and spawning and rearing areas. There are a number of links on the site back to the various salmon recovery plans and the action agenda of the Puget Sound Partnership. A number of planning tools are also available on the website.

Commissioner Hamlin asked if the Department participates in any analysis activities other than data gathering. Mr. Lakey said in the Department there are quite a few different programs; he said he serves in the habitat program, but there is also the fisheries program and the wildlife program, both of which are involved in data collection and analysis.

Chair Sheffels allowed that the Commission is quite concerned with the issue of buffers and how large they should be. She asked if the Department has technical data and material that could be referred to in developing regulations. Mr. Lakey said the documentation regarding riparian corridors contains information of that sort. For lakeshores, the recommendation from the Department is for a 250-foot buffer based on best available science and fully functioning buffers.

Commissioner Ferris asked if the mapping done by the Department regarding the shoreline areas in Bellevue differentiates the potential ecological functions. Mr. Lakey allowed that it does not. He said the mapping is in regard to salmon and priority species with nesting sites in those areas.

Derrick Toba with the Washington Department of Natural Resources explained that the department manages state-owned aquatic lands on behalf of the citizens of the state. The aquatics division of the DNR is not a regulatory agency. When Washington became a state, it joined the union on the equal footing doctrine. As a result, the aquatic lands were given to the state to own and manage. The state constitution includes articles that specifically address aquatic lands; one is the assertion of ownership of the lands; another is Article 15 which establishes a commission to establish harbor areas. State aquatic lands include tidelands, shore lands, harbor areas, and the beds of navigable waters. In all, the DNR manages 2.4 million acres of aquatic lands.

Mr. Toba explained that over time the state has sold off a number tidelands and shore lands to private individuals, but has generally retained ownership of the bedlands. There is a harbor area within the city limits of Bellevue, and it is designated for commerce and navigation, uses that are given precedence over any other uses. All of the shore lands along Lake Sammamish have been sold off and are privately owned.

The DNR has been working with other government entities on the Shoreline Master Program update. The basic goal of the Department is to prevent conflicts between DNR statutes and local regulations, and to better coordinate with other agencies on the goals. Issues of concern to the DNR include recreational docks, stormwater outfalls, harbor area maintenance, and treated wood issues.

The DNR is going through the process of negotiating the habitat conservation plan with the US Fish and Wildlife Service and with NOAA. The process has resulted in a lot of data being gathered and shared information, including information regarding overwater structures.

Chair Sheffels asked the city in developing its Shoreline Master Program update must satisfy the state as the primary controller or the federal government. Mr. Toba said the DNR only manages the state aquatic lands and as such can only condition its leases and use authorizes for those

areas. The DNR does not condition anything that happens on private shore lands.

Mr. Inghram explained that state's Shoreline Management Act exists to implement the federal Coastal Zone Management Act.

Commissioner Mathews asked how having aquatic lands in private ownership affects the DNR's management of the shoreline areas. Mr. Toba said it makes management of those lands much more difficult because the DNR can only condition state-owned aquatic lands. Local Shoreline Master Program updates can affect all of the lands, not just DNR-controlled areas.

Jacalen Printz, a regulatory project manager with the US Army Corps of Engineers, said the Corps operates under the authority of Section 10 of the Rivers and Harbors Act of 1899, and Section 404 of the Clean Water Act. The purpose of the Rivers and Harbors Act is to preserve the navigability of the navigable waters. The Act requires persons to obtain a permit from the Corps for any structural work in or affecting a navigable water. Activities both above and below the water are regulated under Section 10, including bulkheads, buoys, floats, piers and boat lifts on navigable waters.

The purpose of Section 404 of the Clean Water Act is to restore and maintain the chemical, physical and biological integrity of the waters of the United States. The Act requires persons to obtain a permit from the regulatory branch for the discharge of dredged or fill material in any waters of the United States, which includes navigable waters such as Lake Washington and Lake Sammamish, all tributaries to those navigable waters, and wetlands. The activities regulated include the placement of fill in the form of rock or gravel, grading, excavation, and in some instances pilings.

Ms. Printz said the Corps has a wide range of permit types. The general and individual permits increase in complexity with the amount of proposed impact. The regional general permit relates to overwater structures, both new and modification of existing structures.

Before any permit review is complete, the Corps has the responsibility for assuring compliance with all federal laws, including the Endangered Species Act, the National Historic Preservation Act, and the National Environmental Policy Act. A big portion of the reviews conducted by the Corps relate to the Endangered Species Act, which in Lake Washington and Lake Sammamish include Puget Sound chinook, steelhead and bull trout. As a federal agency, the Corps is required to consult with the US Fish and Wildlife Service and that National Marine Fisheries Service regarding any project that may affect a listed species.

Ms. Printz said the Corps, in consultation with the US Fish and Wildlife Service, has come up with some streamlining procedures that include shoreline protection alternatives. Where conservation measures and construction specifications are met, the process can be streamlined to shorten the processing time.

With regard to the involvement of the Corps relative to local Shoreline Master Program update work, Ms. Printz said Corps staff have attended meetings with the Department of Ecology to provide information regarding regulatory programs and how some of the streamlining activities could be incorporated into Shoreline Master Program updates. The Corps participated in the green shoreline workshops as well.

Steven Burke, manager of the noxious weed control program of the King County Department of Natural Resources, said each county has a noxious weed program as required by the state. In short, landowners are required to undertake certain levels of weed control on their properties.

Class A weeds, those which are labeled the most urgent and devastating, are to be eradicated, and the spread of the Class B or lower classes of noxious weeks are to be controlled. The Department advises and promotes the active management and control of the Class C weeds, which are the most widespread.

Mr. Burke noted that Lake Washington has a number of submerged aquatic weeds that are known to clog or otherwise disrupt waterway systems; Eurasian water milfoil is probably the best known example. In Mercer Slough there are emerging aquatic weeds such as purple loosestrife, fragrant water lily, and yellow flag iris. Lake Sammamish has a good collection of aquatic weeds as well. The Department works actively with private property owners and local jurisdictions to achieve the effective management of aquatic noxious weed species.

There is a lot of synchrony between what the Department wants to achieve and what Bellevue wants to achieve through its Shoreline Master Program. Both entities seek to provide benefit through appropriate land management actions. The state noxious weed law is currently consistent with the code specifications that flow out of the Shoreline Master Program, and every effort will be put into maintaining that consistency through the update process. The Land Use Code exempts noxious weed control from the permits and planning requirements to undertake control practices; similar provisions should be included in the Shoreline Master Program update. It should be made as easy as possible for landowners to comply with the best practices for noxious weed control.

Commissioner Mathews asked what it means for the shorelines that local landowners are responsible for the control of noxious weeds. Mr. Burke clarified that whoever owns title to the land is responsible for the management of the regulated noxious weeds associated with the property.

Chair Sheffels noted that the experts have been testifying before the Commission relative to the need for fish habitat along the shorelines and asked if noxious weeds in fact provide habitat for fish. Mr. Burke said in general fish habitats function much better with native, non-invasive vegetation. Noxious weeds can provide habitat, but once removed native plants can take over and provide even better habitat. In general, invasive species are bad for fish and wildlife. Significant grant resources are available to bring about the removal of invasive plants and subsequent restoration of native plants.

Commissioner Hamlin asked if property owners are liable for incurring the costs associated with the removal of noxious weeds from the shorelines. Mr. Burke said in general the landowner is the party responsible for control of noxious weeds. There is some assistance available in cases where landowners are financially or physically incapable of doing the work. Enforcement is pursuant to the provisions of the RCW, but the Department seeks to cooperate with landowners whenever possible.

Karen Walter, watershed and land use team leader with the fisheries division of the Muckleshoot Indian tribe, which has as its goal and purpose protecting and restoring fish habitat for the tribe's ceremonial, subsistence and commercial fisheries. As a part of that effort, the tribe seeks to protect its ability to access waterways. Structures in the water can sometimes interfere with the ability of the tribe to fish in its fisheries resources. Accordingly, the tribe screens projects from Bellevue and other jurisdictions within the tribe's usual and accustomed fishing area, which includes WRIA-8, WRIA-9 and WRIA-10.

Ms. Walter said the tribe has an interest in reviewing the Shoreline Master Program documents from all of the cities within its jurisdiction. The planning documents cover a lot of geography

and contain aspects relative to protecting ecological functions, restoration, and development activities, all of which can affect the fisheries. To date the tribe has reviewed and commented on the Shoreline Master Program updates for King County, Pierce County, Auburn, Issaquah, Renton, Sammamish, Kenmore, Woodinville, Kirkland and Kent. The tribe will review the Bellevue plan when it is drafted, as well as the plans for every jurisdiction within WRIA-8, WRIA-9 and WRIA-10.

Ms. Walter commented that in addition to fisheries resources, the tribe has treaty protected rights to wildlife and cultural and gathering resources. Those are managed by other divisions of the Muckleshoot Indian tribe.

Asked how the tribe's program objectives overlap with the objectives of the Shoreline Management Act, Ms. Walter said some of the goals are similar but some of the goals are quite different. The similar goals are those that talk about preserving the natural character of the shoreline, those that result in long-term benefits over short-term benefits, and those that talk about protecting the resources and ecology of the shorelines. The tribe would like to see in the Shoreline Master Program updates for each jurisdiction a recognition of the fact that the Muckleshoot Indian tribe fishes and relies on the fishery resources in the shoreline areas of Lake Sammamish and Lake Washington. The tribe has treaty rights to those fishery resources which could be affected by the Shoreline Master Program. The tribe intends to develop a plan for how to work through the various issues. One approach will be for the tribe to receive notice of all development projects that come through that are with the shoreline, and to given review authority to determine how the fisheries will be impacted and to make sure the tribe has access to the resources. Currently the tribe reviews projects that must undergo the shoreline substantial development permitting process, but certain projects are granted shoreline exemptions; the tribe wants the opportunity to review all projects undergoing shoreline review within the city so that any concerns can be addressed early on.

Ms. Walter said the tribe will also be recommending meaningful regulatory and voluntary measures that will protect and restore salmon habitat within the city's Shoreline Master Program jurisdiction. That recommendation will include restoration plans as a requirement. The green shorelines document has a number of ideas that would be useful to include. It will be useful to have a vision for what to expect from the shorelines when it comes to restoration efforts. When the shorelines were not as developed as they are now, when there were very few piers and docks, and when the shorelines had native vegetation, the fish populations were much larger. As each development and redevelopment project comes forward, the tribe will want to see implemented methods that will minimize impacts and maximize mitigation and restoration opportunities.

The Commissioners were informed that aquaculture is a preferred use talked about in the Shoreline Management Act. Such uses are certainly water dependent, and while they may not be appropriate for areas within the city of Bellevue's jurisdiction, they should not be precluded.

Ms. Walter said the tribe has seen some jurisdictions allow the lumping of in-stream structures. She said such structures can include utility piping or piers and docks, but the term can also apply to logs that are used in restoration projects. She encouraged the city to distinguish between natural features that have a restoration purpose from structures that have more of a utilitarian purpose.

The tribe will recommend limiting the number and size of piers and docks in both lakes in accord with the best available science. The city should encourage joint dock facilities with size limitations. The Corps of Engineers' 404 permitting process and the Regional General Permit conditions include recommendations concerning sizing standards, the number of pilings, and

nearshore restoration activities needed to meet the conditions of the permits. Those particulars could be made the standard. While there would be a need to provide for exceptions, every effort should be made to limit the exceptions as much as possible. Incentives should be an important component, especially to bring about restoration efforts when dock repairs need to be made.

Ms. Walter said the tribe will recommend maximizing the amount of shoreline with native vegetation. Where native vegetation exists, it should be protected to the greatest extent possible. Restoration efforts should include maximizing the amount of new native vegetation.

Restoration plans will need to include very specific actions. It will also be important to talk about how to fund and implement restoration plans. The city should also work with its neighbors to develop and implement a common vision for the shorelines. The city should also look into developing an accounting system to help city planners keep track of where shoreline restoration actions have occurred, as well as shoreline impact activities, all aimed at better tracking the overall restoration planning process.

Dave Radebaugh, Department of Ecology project manager for the Bellevue Shoreline Master Program update, said the Shoreline Management Act was updated in the 1990s to require comprehensive updates from each local jurisdiction in the state. The Shoreline Master Program updates are carried out under a partnership between the local jurisdictions and the state. The Department of Ecology provides grant funding and technical assistance. The local Shoreline Master Programs must be consistent with the Shoreline Management Act and the shoreline guidelines. Before an Shoreline Master Program can go into effect, it must be approved by the Department of Ecology.

Mr. Radebaugh said the primary overarching goals of the Shoreline Management Act include encouraging water-dependent uses. Such uses are uses where there is an intrinsic need for a shoreline location; marinas are a good example. Another goal is to protect the shoreline natural resources, including land, vegetation, wildlife, waters of the state, and aquatic life. Yet another goal of the act is to promote public access.

Both Lake Washington and Lake Sammamish are shorelines of the state. The Shoreline Management Act has specific policies relating to shorelines of statewide significance. The policies include recognizing and protecting statewide interests over local interests; recognizing the natural character of the shoreline; giving preference to long-term over short-term benefits; protecting the resources and ecology of the shoreline; increasing public access to publicly owned areas of the shoreline; increasing recreational opportunities; and providing for other elements in the goals of the Act as appropriate.

In 2003 after settlement discussions, the Department of Ecology and many other organizations signed an agreement that resulted in the current shoreline guidelines. The shoreline guidelines are mandatory and serve as the principle tool for reviewing Shoreline Master Program updates. The key features of the guidelines include inventory and characterization; shoreline designations which are analogous to zoning designations; and the development of shoreline policies and regulations. The cumulative impact analysis is a technical document that city staff in conjunction with consultants will be working on. In its simplest form, it looks at the proposed policies and regulations and answers the question of whether or not they will achieve no net loss of ecological function. Restoration planning is another major component of the Shoreline Master Program; there is a requirement for a separate restoration plan that identifies restoration opportunities. Restoration plans do not involve project-specific mitigation.

The guidelines require extensive public outreach. In Bellevue the window of opportunity is open

for a reasoned and respectful dialog of shoreline issues.

Mr. Radebaugh said the concept of no net loss is an important element of the guidelines. All Shoreline Master Programs must contain policies and regulations that will assure no net loss of the ecological functions necessary to retain shoreline natural resources. The no net loss standard is designed to halt the introduction of new impacts on ecological functions resulting from planned and permitted new development. That means the existing conditions of ecological functions should remain the same and hopefully improve over time in conjunction with the implementation of restoration plans. The resulting impacts of planned for and appropriate shoreline development should be identified and mitigated so as to maintain the shoreline ecological functions that exist at the time of adoption of the updated Shoreline Master Program. The no net loss concept recognizes that new development will occur over time. The guidelines direct avoiding, minimizing or mitigate the impacts of development projects as they occur. No net loss also looks at the application of a master program across the entire jurisdiction.

Mr. Radebaugh said the guidelines direct the identification and assembly of the most current, accurate and complete scientific and technical information available that is applicable to the issues of concern. The guidelines also direct the basing of Shoreline Master Program provisions on an analysis that incorporates the most complete scientific and technical information available. In establishing vegetation conservation regulations, which often come in the form of buffers and setbacks, local governments must use the available science and technical information. Because not everything is known about every ecological system and existing resources, the Shoreline Master Program provisions should be the most protective possible to avoid unanticipated impacts.

There are two main principles to keep in mind when establishing minimally necessary setbacks and buffers. The first is the notion of achieving no net loss of ecological function. The second is that setbacks and buffers must be at a minimum equal to the protections offered by the critical areas ordinance existing at the time of adoption of the Shoreline Master Program. The Department of Ecology has looked at instances in which administrative buffer reductions were appropriate; most of those instances involved a buffer reduction coupled with an offsetting restoration project. The areas of highest potential for buffer reductions are associated with additional shoreline vegetation enhancement above and beyond what is otherwise necessary, and where appropriate, bulkhead removal has occurred. In all instances of a buffer reduction, there must be a alternate minimum buffer identified in the regulations. Such buffer reductions should be durable by including a notice on title, monitoring and reporting.

Answering a question asked by Commissioner Orrico, Mr. Radebaugh said if the city were to entertain any changes to the currently adopted critical areas ordinance prior to adoption of the Shoreline Master Program update, the Department of Ecology would be very concerned and would review the proposed changes very carefully. Any reduction in the buffer size from a fixed standard would need to be coupled with vegetation enhancement over and above what would otherwise be required by the proscriptive buffer. Buffer reduction proposals are scrutinized in light of the cumulative impact analysis.

Commissioner Orrico called attention to the phrase "...vegetation restoration other than is otherwise required..." and what it refers to. Mr. Paine said the changes made to the shorelines program in 2006 were very limited; there was a buffer change, a setback change, and some revisions related to piers and bulkheads. Property owners are allowed a great deal of flexibility to depart from the proscriptive standards by making a proposal through a critical areas report and proposing mitigation. The current code does not include a fixed vegetation standard to go along with the required buffer. Many jurisdictions are adding to their plans a fixed vegetative standard

with the establishment of a buffer.

Commissioner Ferris asked if the Department of Ecology would satisfied if the Shoreline Master Program update were to identify in the inventory stream mouths and other areas that could provide a greater level of ecological function and focus on encouraging or providing incentives to maintain and restore those areas as opposed to other parts of the shoreline that have less opportunity for ecological function. Mr. Radebaugh said the Department would certainly look at such a proposal but made it clear that he could not say up front whether or not that approach would be a good idea or not. He allowed that there are different needs along the shorelines and each area offers its own opportunities, with some areas being more valuable than others in terms of ecologic function. No other jurisdiction has taken a similar approach to date.

Commissioner Orrico asked if the Department of Ecology's review of Bellevue's Shoreline Master Program update would be expedited if Bellevue were to simply adopt an approach taken by some other jurisdiction that has already been approved by the state. Mr. Radebaugh said that approach could speed things up. However, the Department of Ecology would still need to review the update in the context of no net loss and protections equal to the adopted critical areas ordinance. The fact that neighboring jurisdictions share a shoreline does not mean that all conditions are identical, however. The reality is there will be some similarity in the environmental protection standards in the various jurisdictions, but some variation should also be expected depending on local circumstances.

Commissioner Orrico asked if the Department of Ecology will be equitably judging the cities that have shorelines on Lake Washington and Lake Sammamish. Mr. Radebaugh said that is certainly the intent. There are variations in circumstances facing each of those jurisdictions relative to the ecology of their shorelines, and there are variations in where each of the jurisdictions is coming from. It will not be possible for the state to simply apply the same standards to each jurisdiction. Ecological conditions vary, as do the requirements of the various critical area ordinances.

Commissioner Orrico commented that when the city went through the process of adopting its critical areas ordinance there was a similar review process required by the Department of Ecology. Different jurisdictions ended up with different requirements and buffers, all of which were approved by the Department of Ecology. She asked if the Department will be allowing a similar degree of latitude with the Shoreline Master Program updates. Mr. Paine said the role of the Department in reviewing the critical areas ordinances was largely confined to wetland regulations. The approach they took was relatively uniform across all jurisdictions with respect to their recommendations and the letters they wrote regarding the various proposals made. Most Puget Sound jurisdictions adopted the new wetland rating system. The Department did not look at stream regulations; those were addressed by CTED.

Mr. Inghram added that during the critical areas ordinance process CTED and other agencies had a review and comment process. The Department of Ecology actually has an approval authority, which is a very big distinction.

Chair Sheffels read the questions submitted by the audience, beginning with a question asking if the Muckleshoot tribe would be willing to shorten its fishing season and/or agree to take less fish to lessen the burden on shoreline property owners. Ms. Walter said the fishing and regulation of fish for their conservation are apples and oranges issues. Access is yet another component. RCW 90.58.360 specifically states that nothing in the Shoreline Management Act chapter shall affect any rights established by treaty to which the United States is party. That includes fishing access.

Chair Sheffels read a question that asked if the tribe is willing to participate financially to achieve shoreline habitat restoration. Ms. Walter said it could be argued that the tribe is contributing by paying staff to work permits and Shoreline Master Programs. With regard to contributing funds to purchase habitat within Lake Washington, she said that has not happened for a number of reasons. The tribe also does not have any plans to contribute to restoration projects along the shorelines.

The next question asked the Department of Ecology representative to indicate whether or not shorelines are critical areas, and if so, how are they legally defined as such. Mr. Radebaugh said the Bellevue critical areas ordinance defines shorelines as critical areas.

The next question asked why the Department of Ecology's list of emphasis areas did not include protection of property rights. Mr. Radebaugh said there were several items he did not get to in his presentation. He allowed that the point is well taken. The protection of private property rights is an element in Shoreline Master Program planning.

Chair Sheffels read a question that asked which rules, the Shoreline Management Act or the guidelines. Mr. Radebaugh said the Shoreline Management Act is legislation that was approved by the voters in 1971 and has subsequently been amended by the legislature. The legislation in part directs the Department of Ecology to develop the guidelines.

The next question asked if the Redmond Shoreline Master Program has buffers on Lake Sammamish and if it has already been approved by the Department. Mr. Radebaugh said the Department has approved the Redmond Shoreline Master Program. The default standard on Lake Sammamish is a 35-foot setback, and there is a requirement for vegetation enhancement in part of the setback for new development. The Redmond Shoreline Master Program has a provision that allows for a setback reduction, however it includes a substantial requirement for vegetation enhancement within the setback.

Asked if use of the term "setback" over the term "buffer" as done by the city of Sammamish is significant. Mr. Radebaugh hesitated in directly answering that question. He explained that the city of Sammamish recently adopted its Shoreline Master Program, and there were a number of changes to the document made late in the process. The staff are still putting together the submittal documents to the Department of Ecology for final review; the Department has not seen a print copy of what was adopted by the City Council. The document will be reviewed by the Department and the basic buffer and setback standards will apply.

The next question was for the King County Department of Natural Resources representative and asked if the Department would recommend no-cost over-the-counter permits if required for removal of invasive species from Lake Sammamish and Lake Washington, and what other incentives could be recommended. Mr. Burke answered that the county has no specific financial grant program. However, it does support individual landowners who are physically or financially incapable of controlling noxious weeds on their properties. There are grants available for community groups and municipalities as well.

Asked how cities can better work with shoreline owners to improve shoreline biology, if the stick approach is working, and if there are carrots that are working, Ms. White said during the recent workshops she heard a lot of interest on the part of property owners to better understand the permit requirements, and why the requirements are in place. It would be beneficial to have better coordination between jurisdictions at the city level; there is already quite a lot of coordination at the staff level between jurisdictions. There could also be better understanding between the local

and state levels, and between the state and federal levels. If there is going to be improved habitat, it will be necessary to have both regulations and incentives, as well as education efforts and technical assistance.

The next question read by Chair Sheffels asked where there are demonstration projects to educate and equip property owners and contractors to replace hard shoreline stabilization structures with soft measures. Ms. White said the best examples exist on public properties, though admittedly the projects do not lend themselves to the residential scale. The city of Seattle has projects at Chinook Beach, Seward Park, and at Martha Washington Park. She said she hopes to see private property owners who have done shoreline restoration projects willing to be interviewed and tell their stories in a public way, holding up their properties as good examples.

Asked how effective piecemeal restoration and enhancement can be for pollution control when there is still untreated I-90 surface runoff into Lake Sammamish, Mr. Mulvihill-Kuntz allowed that it is not effective. He stressed, however, that each small enhancement is an important part of the overall picture. Low-impact development, wherever it is carried out, will help. One of the biggest things to mitigate for stormwater pollution will be retrofitting the existing infrastructure, which will take a lot of money and a lot of time.

The next question asked if the chemical control of noxious weeds as well as control by mechanical means can be expected to be allowed in the Shoreline Master Program update. Mr. Burke said the focus will be on those techniques that are environmentally and technically most appropriate. The careful and judicious use of pesticides may be a part of the solution depending on the circumstance.

Mr. Radebaugh was asked if the Shoreline Master Program could require restoration changes to part of a property that is not part of a shoreline modification; the example given was whether or not bulkhead maintenance work could trigger a requirement to replace a dock or decking with environmentally friendly materials. He answered that the specifics of how the framework works will need to be carefully reviewed in terms of no net loss. There will be a focus on mitigating for the direct impact.

The next question asked why the cost of getting rid of noxious weeds should rest with the property owners if the properties legally end at the shoreline. Mr. Burke said their responsibility ends at the property boundary, and each adjacent landowner shares the responsibility of their land.

Chair Sheffels read a question that asked if the Washington State Department of Natural Resources has any shorelines in the city of Bellevue. Mr. Toba allowed that it has almost none.

Asked why the spiny ray finfish is protected given that bass are non-native predators of salmon, Mr. Lakey said one of the responsibilities of the state Fish and Wildlife department, handed down by the federal government, involves the setting of seasons and catch limits on specific fish and wildlife species. The catch limits on the spiny ray is focused on continuing the population. He allowed that that practice is an area of differing opinion among biologists because they are non-native to the system.

Mr. Lakey was asked why no mention was made of the fact that the 250-foot buffer was based on streams and forest habitat and not on lakeshore habitat. He responded by saying the 250-foot buffer the Department has in its recommendations is set for significant waters of the state, which includes both Lake Washington and Lake Sammamish.

Chair Sheffels read a question that asked when the sockeye salmon spawning maps will be updated. Mr. Lakey said the Department has been working toward that end with some agencies, including King County. Many of the beach spawning maps require underwater surveys as well as aerial surveys. The maps are being updated as the information becomes available. The anticipation is that as the work progresses, more spawning areas will be found and mapped; it is unlikely that the already mapped areas will be eliminated.

Mr. Toba was asked when the inner city harbor lines be relocated reasonable distances offshore given that Lake Washington and Lake Sammamish are no longer used for commerce. He replied that Lake Sammamish does not have a harbor area, but portions of Lake Washington do. He allowed that the statutes are somewhat complicated in that the harbor area in front of Bellevue was established by the legislature; changes to that harbor area must be done by act of the legislature. The Department has recommended that the Harbor Line Commission be allowed to modify any harbor lines within the state.

Chair Sheffels thanked the panelists for their time and information.

Mr. Inghram stressed that every answer submitted by the public is being cataloged and the answers are being posted to the website.

B. Staff Presentation

Mr. Inghram noted that staff and the Commission have heard from the public an interest in establishing a process in which members from the community can talk with the Commission outside the formal public comment period. He said the subject was broached with the Commission on November 18. Subsequently, the staff discussed options and concluded that the first step should be to identify principles of engagement and review them with the Commission, then craft an appropriate process in conjunction with stakeholders.

Mr. Inghram reminded the Commissioners that various techniques have been successfully implemented in the past. The Crossroads process involved a large community stakeholder group which committed to participating in several workshop-type meetings and reviewing the alternatives. The Bel-Red project involved meetings with property and business owners at which verbatim transcripts were made and reviewed by the Planning Commission.

Mr. Inghram said the desire is to craft an approach that will work for both the Commission and the variety of different stakeholders from geographic areas.

Associate Planner Heidi Bedwell reviewed with the Commissioners the steps involved in the Shoreline Master Program update process. She noted that the process began in November 2008 and has only moved as far as conducting the inventory and analysis and designating some environments. The most recent months have been focused on the scientific and technical briefings.

The original target for submitting the Shoreline Master Program update to the Department of Ecology was slated for June 2010. Staff now realizes that the work yet to be done will require pushing that date back to December 2010.

Ms. Bedwell said immediately following the release of the inventory and characterization, there was a public opinion phone survey and a focus group specifically targeting residential property owners. The phone survey involved 520 registered voters in the city, of which 120 were specifically shoreline property owners. The focus group involved shoreline property owners who

were asked to identify issues and ways of creating incentives to bring about restoration projects. The shoreline boat tour involved members of the public as well as the Commission. There have also been talks with marina property owners and operators, and with contractors.

Ms. Bedwell said staff was looking for direction from the Commission regarding the principles concerning additional community outreach. There are many iterative steps in the review draft policies and regulations moving toward a recommendation from the Commission for the Council to review and approve before the final package can be transmitted to the Department of Ecology.

As the regulatory discussions are initiated, defining the public stakeholder interests will be very important. The enhanced community outreach will inform that process. The information outflow will serve as the input for creating the initial draft regulations. The draft documents will be subjected to additional public comment and more Commission review leading up to a refined draft that will be made the subject of a formal public hearing.

Ms. Bedwell noted that the potential principles for an enhanced community outreach as drafted by staff included: involving a wide range of Bellevue citizens, affected interests and stakeholders; making certain that the enhanced outreach is perceived as fair by all parties; encouraging open engagement where differing perspectives, opinions and values can be shared openly and respectfully; providing an opportunity to identify interests, obstacles and solutions.

Associate Planner David Pyle said staff has gone through all of the comments and questions received from the public and has carefully reviewed the meeting minutes and the audio recordings in an attempt to identify which comments and questions have not been addressed. A spreadsheet has been produced and in time every question will be answered and documented.

C. Public Comments

Mr. Marty Nizlek, 312 West Lake Sammamish Parkway NE, spoke on behalf of the Washington Sensible Shorelines Association regarding the enhanced outreach proposal. He said the organization would like to have an hour and a half at a Commission meeting. Additionally, a fifth item should be added to the four principles submitted by staff that is in line with WAC 173.26.185. According to state law, single family residences and their appurtenant structures shall be given priority for use of all regulated shorelines. That would include Lake Washington and Lake Sammamish. Beyond the limits of the legal provisions, the city should apply common sense after determining who is the most impacted by the proposed regulations. The shoreline property owners are frustrated and want their voices to be heard. The fifth principle should read "In recognition that shoreline regulations shall not unconstitutionally infringe on private property rights, enhanced outreach will provide an extended opportunity for input from shoreline residents." The Commission should allow shoreline property owners an hour and a half to present their case, preceded with adequate notification by direct mail and/or signage posted in the affected neighborhoods.

Mr. Scott Sheffield, 2220 West Lake Sammamish Parkway SE, noted that in a previous Commission meeting he called for additional notification to property owners, including signage posted and direct mailings. That is the approach the city of Kirkland is using. He said he would be happy to have a sign posted on his property for his neighbors to see. He said in reviewing the memo from Mr. Paine and Ms. Bedwell to the Commission he came away with some uncomfortable observations regarding the process. To date there have been 14 meetings, with six additional meetings scheduled through May 2010. No meeting focused on the topic of property rights has been conducted, nor is one scheduled to occur. If the process is to be considered balanced, there should be a meeting focused on that subject along with fish and water quality.

While the city has stated it wants to be fair, the process to date seems unbalanced. The Shoreline Management Act requires that priority be given to single family residences in deference to property rights, but the staff by their actions have seemingly ignored that requirement. The process must be balanced.

Mr. Mike Lunenschloss, 2242 West Lake Sammamish Parkway SE, noted that the petition to list the Lake Sammamish kokanee as a threatened and endangered species states that a fish weir was built and used to channel the kokanee into holding tanks and prevent them from reaching the 32 miles of spawning territory beyond the hatchery, which is Issaquah Creek. When it was determined that there was no commercial value or viable use for the kokanee, and that the ponds could be used for more lucrative fish, the ponds were drained, leaving all of the kokanee trapped to die. The exact year that occurred is not known, but if it happened to coincide with a particularly strong return of the kokanee to spawn, the effects would have significantly impaired the ability of the early run to recover. The document states that in 1940 an estimated 14 million kokanee eggs were removed from Lake Sammamish by the Washington Department of Fish and Wildlife; that is the department that is claiming it is the shoreline property owners who have destroyed the fish in the lake. The eggs were taken from Lake Sammamish to stock other lakes. The Department of Fish and Wildlife also introduced into the lake pike minnows, cutthroat trout, bass and yellow perch, all of which are known to feed upon young kokanee. The document prepared for the cities of Bellevue, Sammamish, Redmond, King County and the US Fish and Wildlife Service regarding Lake Sammamish on the topic of late-run kokanee states that other regional lakes with kokanee and sockeye, such as Lake Ozette, have demonstrated that cutthroat trout can consume 17 percent of the kokanee and sockeye aged zero production per thousand cutthroat, and that the cutthroat has a 25 times greater predation on kokanee and sockeye than did pike minnow. The cutthroat study done in 1998 estimated that between 32 and 100 percent of the sockeye fry planted into an Alaskan lake were consumed by the cutthroat trout, and stated that the available data from Lake Sammamish appeared to be consistent with that finding. Lake Alexandra in Alaska is about the same size as Lake Sammamish. It has only three structures on it, no docks, no breakwaters, and has a setback of about 50 miles to the south and 1100 miles to the north and east. The lake, however, has suffered a complete collapse of its fishery; the salmon have been wiped out by the northern pike. Authorities have decided to poison the lake in an attempt to kill the pike, which had been introduced by the Alaska state Department of Fish and Wildlife. Most of the experts who testified with regard to Lake Sammamish stated that the best place to do anything is on the streams. The US Army Corps of Engineers in 1964 straightened and shortened the Sammamish river in an attempt to improve water flow during floods; the action eliminated many side channels in which salmon could rest and they swim upstream to the hatchery.

Mr. Brian Parks, 16011 SE 16th Street, said his home is on the north shore of Phantom Lake. He noted that there is currently a beaver dam blocking the outlet flow of the lake. Many of the shorelines around the lake are flooded as a result, which adds to the nutrient loading of the lake, something that is not helpful. One problem Phantom Lake has faced is lack of maintenance of the existing outlets and inlets. Phantom Lake originally drained toward the west, but that outlet was blocked off to prevent flooding on 156th Avenue SE. The farmer dug and dynamited a slough that is now called Winona Creek that empties in the opposite direction; that is outlet is the one currently blocked by a beaver dam. Flooding in Phantom Lake causes a number of problems, one of which is that the roots of trees rot and the trees fall. The beaver dam is causing the high water level in the lake to remain, which is damaging and killing more trees. By elevating the water level of the lake, property owners could see more of their properties affected by required buffers. The detention ponds that feed water into Phantom Lake have issues; they regularly overflow because they are not being maintained and silt builds up. The ponds are not large enough to handle the runoff. The oil separator unit is not properly maintained; one year the

vendor was caught pumping the oil out of the separator and into the detention pond. A bacteria growing in the oil separator is making its way into the detention pond. The upshot is that untreated water is being allowed to flow directly into the lake, harming the ecosystem. Silt is building up in the lake. Before the burden is put on the property owners to make things better, the city should address all maintenance issues, and a new detention pond should be built to better handle runoff.

Mr. David Douglas, 818 North Avenue, Snohomish, said he is a permit coordinator with Waterfront Construction. He said he has followed ten Shoreline Master Program updates on Lake Washington and Lake Sammamish. He noted that the processes in both Sammamish and Kirkland started out with a great deal of combatancy between their planning commissions and local property owners; it was only through cooperative efforts that both jurisdictions ended up establishing good Shoreline Master Programs. He encouraged the Commission to engage the public in the process given that shoreline property owners are the best stewards of the lakes and shorelines. The Commissioners were urged to read the Herrera Environmental report very carefully; staff has stated that there is a certain level of trust the Commission can have regarding the work of governmental agencies and the like, but it must be understood that there are two sides to each of the issues. The concept of no net loss has been a moving target. In the fall of 2008 the concept involved keeping shoreline ecological functions the same or improving them; now it appears the focus is on keeping the shoreline ecological functions the same while requiring improvements through restoration. Unless the city seeks to cooperate with property owners, the result will be angry property owners who avoid the permit process altogether. A mitigation offset chart should be implemented. The Regional General Permit III is a very flexible document as applied by the federal government; it is not, however, flexible inside the confines of a Shoreline Master Program. Absent a flexible process, property owners will be deterred from making improvements over existing structures. The Regional General Permit VI has a mitigation offset chart under which someone can be allowed credits for replacing existing structures with structures having a more fish-friendly design.

Mr. Dwight Martin, 5101 East Lake Sammamish Parkway NE, said as a contractor he is familiar with the process of working across the counter with city planners, architects and homeowners. He agreed that the Shoreline Master Program update process in the city of Sammamish was very ugly in the beginning but did improve over time, resulting in a plan that had a lot of collaboration with local property owners. The city officials showed themselves to be very bright people, but so did the shoreline property owners, and it had to be admitted that the two groups had different points of view. By opening the lines of communication, solutions were found. The lines of communication have not yet been opened in the city of Bellevue, but they should be. The commission should produce a draft document as soon as possible to avoid the fear of the unknown on the part of the citizens; that would give them something specific around which to develop a constructive dialog. Citizens who come with concerns should seek to be as specific as possible. The Council and the mayor should be involved in the process as early as possible. It should be kept in mind that if the plan meets the requirements of the Shoreline Management Act, the Department of Ecology will be required to approve it. Shoreline property owners often see regulators as bullies and therefore do not trust them; the city should take whatever steps it can to turn that point of view around.

Ms. Alfy Rahr, 16509 SE 18th Street, said she has lived near Phantom Lake for 50 years. She said when she moved there the lake was viable and beautiful, but it declined to detention pond status in less than 15 years beginning with the development of the I-90 Business Park. The $2 million restoration effort implemented by the city failed miserably and only made things worse. The outlet to the lake is very restrictive. It passes through private property so it cannot be expanded. The fix has kept 164th Avenue SE from flooding, but it has done nothing to improve

the lake ecology. The Commission will be amiss in updating the Shoreline Master Program if it does not focus on water quality; every lake in the area will be lost if water quality is not improved. Fine glacial till is working its way into the water; the particles become electrically loaded, stay suspended for up to five years, act as heat absorbers, and have phosphorous attached to them. Between 1985 and 1990 the phosphorous input into Phantom Lake increased fivefold. Phosphorous that is not utilized by plants in the lake gets stored in the bottom of the lake, so even if the flow of phosphorous into the lake is stemmed, the levels will remain high for years to come. Toxic blue-green algae blooms result, the essential zooplankton levels fall, and the fish that rely on the zooplankton die.

Mr. John Strong, 1604 West Lake Sammamish, said he attended the open house event a few months ago and was alarmed at the level of fear shown by property owners. He suggested that the atmosphere has improved somewhat since then, largely because steps have been taken to open the lines of communication. He encouraged the city to do all it can to communicate with the public and to listen to what the property owners have to say.

D. Commission Discussion

Chair Sheffels said Commissioner Lai passed along to her some concerns. She said he had several questions about the Washington Sensible Shorelines Association and the speakers they want to make presentations to the Commission, what the group's charter or mission statement is, who their leadership is, who is on their board if they have a board, who their members are, and what percentage of them are Bellevue residents. She said he proposed that anyone making formal presentations to the Commission should be recognized experts in the field in which they will be testifying.

Commissioner Ferris said the Commission had heard a lot of testimony aimed at establishing a science background for influencing the update as it goes forward. He agreed that a presentation around private property rights would be important for the Commission to hear before it moves into developing a plan. It would also be helpful to be updated with regard to the parameters in which the city will have flexibility in moving forward; some of the information presented to date has been confusing. The Commission was told in the beginning of the process that science would serve as the basis for the update, and the individual Commissioners have spent a lot of time reading documents that were provided to document the science, yet staff is saying that rather than challenging the science the Commission should trust the science as presented and allow it to serve as the foundation of the update. Some clarification is needed.

Commissioner Ferris suggested that five minutes is simply not enough time in which to present a viewpoint, and those of the public who would like more have a valid point. He suggested it would not be practical to allow every concerned group to come forward with hour-and-a-half presentations. A determination should be made relative to how many groups are going to want to make presentations, how much time each should be permitted, and when the presentations should be made. He pointed out that the schedule calls for gathering public comment on the plan once it is drafted, but suggested that to respond clearly and logically will take more than five minutes per person. He said he had no arguments against the principles as proposed provided they are carried out in a logical flow that will result in informed comment from both the Commission and the public.

Mr. Inghram acknowledged the call for providing the public an opportunity beyond the five-minute limit while the focus is on what should go into the plan, and again when there is a draft plan to respond to. Speakers addressing the Commission during the formal public hearing that comes later in the process will be limited to five minutes each.

Mr. Inghram allowed that while the Commission has expressed some frustration with the staff, which is both fair and justified given that staff is the information delivery mechanism, the staff also get frustrated with how the Shorelines Management Act and the guidelines have been established. There are some areas in which the guidelines are quite prescriptive and must be followed exactly, but there are other areas where the guidelines are broader and provide more opportunities for cities to do things differently; the guidelines are very specific with regard to dealing with shoreline hardening, but they do not delineate a specific shoreline buffer distance. Furthermore, in some of the areas where the guidelines allow for flexibility, there are tensions between competing rules relating to property rights on the one side and no net loss and all the ecological rules on the other side. The intent of staff is to address each of the regulatory issues individually when the focus is on developing the regulations.

Chair Sheffels said it would also be helpful for the Commission to receive from the legal staff a presentation on what the Commission can and cannot do in developing the update. Mr. Inghram said staff will make an attempt at summarizing the legal aspects, and the areas of the guidelines that allow for flexibility and those that do not.

Ms. Bedwell said staff is as anxious as the Commission to get to the conversation about the regulatory outcomes and what they will mean in the context of the guidelines, both with the Commission and in the expanded community engagement process. All of the science presentations made to date have been aimed at informing that process.

Commissioner Hamlin said he could agree with the principles as drafted but suggested that they do not necessarily address the issues; they do nothing to make shoreline residents believe they will in fact have their say. He agreed that if an organization comes forward wanting to address the Commission, the Commission should know something about the organization. Five minutes is clearly not enough time in which to outline concerns and arguments, but allowing groups an hour and a half might be going too far in the other direction. The Commission should have broad principles in place, but they should be coupled with some prescriptive guidelines with which the public can be comfortable.

Commissioner Orrico said timing will be important. All of the outstanding questions should be answered before the open public meeting; if those answers are not forthcoming by then, there will only be additional frustrations. She said she is hopeful the Commission will be able to be able to accommodate the desire of the public for open communication, and stressed the need to be flexible in allowing more time if needed; discussion should not be cut off prematurely.

Commissioner Mathews said some of the frustration he was experiencing was related to the lack of focus on the part of all the parties relative to what is supposed to be addressed. To some extent, that frustration could be eliminated by having a draft document in hand; that would give everyone specific points to address, revise and agree on. Having the scientific background presentations will prove helpful, but it is time to return to getting a document to discussion. He added that he agreed with the principles as outlined.

Mr. Inghram agreed that having something to focus on will help to move the conversation along. He allowed, however, that staff has been reluctant to put together a draft without first having some of the background conversations. If staff had developed and released a draft to kick off the process, the argument would have been that staff already knew what they wanted to see done. He agreed that the next step should be to identify the different components in the framework provided by the state and clarify which cannot be changed and which allow for flexibility, and then identify the potential issues. That will give everyone something to react to.

Mr. Inghram said the next step should be to determine how many groups from the public want to make full-length presentations. He suggested that if there is only one group, allowing an hour and a half might be a workable solution, but if there are multiple groups, allowing each that amount of time could prove cumbersome to the overall process. He said staff will do that research by talking with members of the community and report back to the Commission in January.

Chair Sheffels highlighted the need to sort out the specific issues related to Phantom Lake and how they relate to the Shoreline Management Program update.

10. OTHER BUSINESS

Commissioner Harris said he would like to see the schedule include some discussion regarding the debate occurring around the location of light rail running through the City. Mr. Inghram said the topic could be added to the agenda for the first meeting in January. He said he would coordinate discussions with the mayor and with Chair Sheffels with regard to what role if any the Commission will have.

11. APPROVAL OF MINUTES

A. October 14, 2009

Motion to approve the minutes as submitted was made by Commissioner Orrico. Second was by Commissioner Mathews and the motion carried unanimously.

B. November 4, 2009

Motion to approve the minutes as submitted was made by Commissioner Orrico. Second was by Commissioner Mathews and the motion carried without dissent; Commissioner Ferris abstained from voting.

12. PUBLIC COMMENT

Ms. Alfy Rahr, 16509 SE 18th Street, said blue-green algae can produce toxins that can kill life forms within ten minutes. They produce organophosphates, which is the ingredient used in pesticides. The other issue facing Phantom Lake is that once the algae die down as the water gets colder, they need immense amounts of dissolved oxygen. The lake is 56 feet deep, but below the nine-foot level there is no oxygen in the water. Fish need cooler water in the summer when the water of the lake begins to heat up, but going deeper is not an option for them because of the lack of dissolved oxygen. The city simply cannot allow the problems in the lake to continue. Water quality issues must be placed at the very top of the list.

Mr. Marty Nizlek, 312 West Lake Sammamish Parkway NE, said the Washington Sensible Shorelines Association will be happy to provide information about itself and any speakers asked to address the Commission. The members of the organization are residents along both Lake Washington and Lake Sammamish, and part of the presentation will involve timelines of what has occurred in those lakes as well as Phantom Lake. The 40 or so members are sufficiently concerned and have hired a professional team consisting of planners and experts in fish species and habitats. There are opinions out there that are different from those that have been presented to the Commission to date, and the group only seeks time to express those opinions. The level of anxiety is high, especially given the statement that the regulations in Bellevue are already in

place and that the city is happy with them. Those regulations were put in place without the vast majority of citizens even knowing about it, and that is where the frustration is largely coming from. He said during the requested hour and a half, the group will present some science counter to what has been presented, clarify issues of concern, and offer alternatives.

Ms. Anita Neil, 9302 SE Shoreland Drive, said there is a general trend going on in the country and the world that seems to be chipping away at private property rights. Many of the decisions have been based on weird science. She said the morning newspaper had one headline talking about global warming and another talking about seeding clouds in Moscow so that the city will not have to deal with snow cleanup. There are large-scale actions being taken that could seriously harm the environment, and those actions are far more important than a few salmonoids. The country was founded on the issue of separation of church and state. The environment, however, has become the new religion and everyone is being asked to take everything on faith. Like religion, the science cannot be proven. The decision makers should be very careful to make sure environmental concerns do not move the country away from the principles that has made the country what it is.

13. NEXT PLANNING COMMISSION MEETING

A. January 13, 2010.

14. ADJOURN

Chair Sheffels adjourned the meeting at 10:28 p.m.

Paul Inghram
Staff to the Planning Commission

3/22/10
Date

Pat Sheffels
Chair of the Planning Commission

3/22/10
Date